Meeting Minutes

STATE PUBLIC DEFENSE COMMISSION

Date | time 3/22/2017 1:00 PM | *Location* PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

Meeting: March Commission Meeting

# Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Shellee Daniels, IAC Representative | Eric Fredericksen, SAPD | Linda Copple Trout, Representative of the Courts | William Wellman, Defense Attorney |

Kimberly Simmons, Executive Director | Kelly Jennings, Deputy Director

Andrew Masser, Research Analyst | Nichole Devaney, Admin. Asst.

# Commission Members Absent

Christy Perry, Vice Chair, Representative | Chuck Winder, Senator

# Others Present

David Carroll, 6th Amendment Center | Kathy Griesmyer, ACLU |Vanessa Fry, Boise State University | Greg Hill, Boise State University

|  | Item | Responsible |
| --- | --- | --- |
| 1:00pm | Welcome and Call to Order: Chair Bolz called the meeting to order at 1:05pm.  **Roll Call**  Darrell Bolz, Chair Yes  Shellee Daniels, Member Yes  Eric Fredericksen, Member Yes  Linda Trout, Member Yes  William Wellman, Member Yes  Chuck Winder No (Arrived approximately 2 p.m.)  Christy Perry No | Bolz |
| 1:05pm | Approval of Prior Meeting Minutes (2/22/17): Fredericksen moved to approve the minutes from 2/22/17, Trout second, and the motion was unanimously approved. Justice Trout moved to amend the agenda to include her presentation to the Administrative District Judges. Wellman seconded and the motion was approved unanimously. | Bolz |
| 1:10pm | Budget / Financial Update:   1. Personnel 2. Operating: The fiscal worksheets were reviewed by all members. 3. Training/Scholarships: ED Simmons summarized the scholarship award worksheet. 4. Trustee & Benefits: ED Simmons explained that all remaining trustee and benefits monies can be used toward ELF applications. One application has been received, however the case is being dismissed therefore the attorneys will likely resend their funding request. | Simmons |
| 1:15pm | Executive Director Report:   1. Senate Bill 1119: Update, Possible Gap in Language: ED Simmons reported that the bill sailed through the Senate yesterday with no questions. It will now go to the House floor. Senator Davis had a question when it was before the Judiciary and Rules Committee: If a victim in a civil case requests the information, could it then be released? Sen. Davis asked if the Commission could investigate the need to develop language to protect the information on that basis. Mr. Masser has provided a memo to address the issue. Trout offered after a brief explanation that Senator Davis’s question was a good question. ED Simmons agreed that the Commission should continue to work on the language to add additional protection in civil cases. Fredericksen stated that post-conviction may be an area were the information could be requested however, it would not be from the Commission’s files but the attorney’s. The members discussed how the information could possibly be used. ED Simmons asked if additional research was needed. The members agreed it should be discussed in the future. David Carroll offered that he had never heard this type of situation before but he will do some investigation. 2. Regional Coordinators Hiring Update: ED Simmons summarized that an exam had been administered to those who applied and she received a hiring list based on those who passed the exam. A cover letter and resume have been requested from those on the list. Bolz asked what DHR’s role is in the process. ED Simmons responded that they set up the exam and posting however will not participate in the interview process. Interviews will be conducted in late March and April with a decision being made end of April. Bolz asked if the intent was to hire all three coordinators. ED Simmons responded that yes that was the intent with the eastern coordinator position handling districts 6 & 7, the central coordinator covering 3, 4 & 5 and the north Idaho coordinator handling the remaining districts. She added that District 7 is very large and needs more attention hence, the eastern coordinator will cover only the two districts. 3. County Visits Update: ED Simmons & DD Jennings visited Idaho Falls and Pocatello visiting with Commissioners, Clerks and PD’s. Caribou, Bear Lake and Franklin are still considering a joint office. Five attended the town hall meeting in Idaho Falls. ED Simmons reported that it went well. They discussed the grant application and workload study. District 3 & 4 meetings will be held next week, Twin Falls tomorrow and north Idaho in April. ED Simmons will send out the dates to the members, should they like to attend. Bolz asked Mr. Carroll how he thinks the Commission is doing. Mr. Carroll commented that the legislation passed by Idaho is the strongest out of the three states they have been involved with. Michigan is taking a similar approach, however were held back a year due to moving from the judicial to the executive branch. Mr. Carroll explained that Idaho seems to be having the most success so far. He was excited at the invitation to the meeting and at what has happened thus far with the Commission, including hearing how counties joining services is being considered in some locations was great. Mr. Carroll had asked Rep. Perry to present to the Department of Justice regarding the changes Idaho has made. In his perception, it does not appear that the current federal administration will disrupt progress. Public defense seems to be a nonpartisan issue that concerns everyone. He would like to one day come back and see how things are actually working out in the field but on paper things look good. ED Simmons shared that Idaho, Utah and Michigan are holding a collaborative call every two months to discuss issues and it is helping tremendously. Nevada is planning to add a Commission very soon. Mr. Carroll continued, sharing that a slow and thorough approach is best, and the worst thing is if states jump too far too fast and then have legislation repealed. Bolz responded that he appreciated that comment, as he has said from the beginning that it would be a slow process. 4. Conferences/Seminars Attended: Masser attended a Western Juvenile conference last week. They are working on programs to help make Juveniles aware of their rights. Bolz asked if the Juvenile Justice Commission should be aware of the topic. Mr. Masser agreed to prepare the information and pass it along to Chair Bolz. ED Simmons and DD Jennings attended a conference in Seattle and ED Simmons has been attending a supervisory clinic provided by the state that has been helpful. Both will attend an NAPD leadership training next month. The DUI Seminar will be held in Coeur d’Alene on May 19. Wellman shared that the IACDL conference was very good and there were 137 attendees. Bolz shared that he spoke to Tera Harden, chief public defender for Canyon County. She commented that there are national programs the attorneys should attend. ED Simmons responded that was true and the PDC is providing scholarships for attorneys to attend those trainings. The hope is to continue to provide scholarships for those that are truly in need of the information. | Simmons |
| 1:30pm | Indigent Defense Grants: The FY2018 Application has gone out, there are questions regarding standards.   1. Non-Intent Form: One county contacted ED Simmons stating that they would not be applying for a grant this year because they have not used the monies from the previous year. However, there is data that the commission would still like to have. ED Simmons offered to prepare a form for the member’s consideration to capture the necessary information. 2. Grant Agreement Form: The Commission should know how funding has been spent; ED Simmons will prepare a form for the member’s consideration to capture the necessary information. 3. Instructions to Counties on Where to Put the Money (how to earmark it): ED Simmons explained that there is some unique accounting occurring in some of the counties. She asked if providing some instruction to counties as to how to account for the funds would be something the Commission would like to do. Bolz asked if Daniels thought the issue should go to IAC. Daniels responded it should and the members agreed. | Simmons |
| 2:00pm | Attorney Appointment by Judges:  Justice Trout’s Presentation to the Administrative District Judges: 1. Justice Trout shared that she asked the judges about appointing counsel not contracted with the county. The judges responded that it does not occur often. When it does happen, it is generally in the smaller counties for child protection cases. They were amenable to no longer using the process and understood the problem. 2. Schedule and practice of initial appearance: The judges thought this standard would be difficult to achieve, as they do not know if a PD will be assigned or whom the PD may be. It may not be the same attorney representing the client. Contracted PD’s are not expected to appear if it is not convenient for them. 3. Vertical Representation: There were concerns in Ada County due to scheduling; however, Judge Moody said that it would no longer be a problem. ED Simmons and DD Jennings agreed that they had heard the same regarding Ada County. 4. A standard form for Indigent Appointment: The judges agreed there should be something in place to make it uniform, with the exception of cases where counsel has to be appointed immediately. She then invited the judges to ask questions. One question was regarding the termination of flat fee rates, does it include expenses. Clarification is needed on this issue. The judges have concerns about the definition of a case and how the cases are being counted. Justice Trout shared that the Commission understands the problem and is working on it. Daniels asked about the Eligibility Form, had the judges seemed open to having a standard form/process. Trout responded that yes they supported it even when asked about appointments based on judge’s direction. Child Protection is the one area that may require exception. DD Jennings expressed that counties mentioned a similar issue in meetings. ED Simmons shared that the opinion from the commissioners and clerks was that appointment by judges is not occasionally happing but occurs in most cases. She encouraged them to have contracts with anyone providing services. DD Jennings asked if it would be helpful for the commission to provide a list of contract attorneys currently providing services to the ADJs. Trout responded that yes that would be helpful. ED Simmons shared that it had been expressed that the initial appearance piece was an issue for the counties, offering different suggestion as to how to make that work, but they were receptive. Daniels commented that it would be helpful if the commission would be lenient and offer different solutions. | Simmons |
| 2:05pm | Speaking to Legislative Bills: Is it our duty to relay to legislature the impact things will have on PD’s? Idaho Code 19-850(1)(b)   1. Victims’ Rights Bill: Not necessary in regards to this bill as it is dead. ED Simmons feels the legislature may appreciate if someone is available to inform them on how some of the bills will affect the public defense systems and/or budgets. She provided an example of a bill. If the members felt it was necessary she offered that staff could develop a policy on how to go about providing testimony. Bolz suggested that she meet with Senator Lakey and Representative Luker to determine what the commission’s role is in making recommendations to the legislature. Jennings offered that from her observance of the legislative proceedings this year the fiscal impact on public defense is not necessarily represented during testimony. Daniels commented that IAC has a political committee that is working on these issues for the counties and she is surprised that IAC is not offering testimony. Bolz also suggested visiting with the Judiciary and Rules Committee chairs to see if they are considering fiscal impact on public defense. ED Simmons and Bolz agreed to have the conversations with the people indicated. Fredericksen commented that on the issue of mandatory minimums the SAPD would have an individual present to ICJC on the matter, as legislation will likely be presented in the next session. | Simmons |
| 2:20pm | ELF Application Update: As stated previously one application has come in. The application will be amended once the public records exemption bill has passed. Bolz asked if ED Simmons would like approval to make the amendments. ED Simmons said that would be great. She explained the language that would need amended to incorporate the public records exemption. Fredericksen moved to amend the language to reflect the exemption bill. Wellman seconded and the members all unanimously agreed. | Simmons |
| 2:35pm | Workload Study Update: The workload studying is on the cusp of getting started. Defender DataPrime, the program used for time tracking, will be a free service to those participating during the tracking period. Time tracking should begin April 10th and continue for twelve weeks. There has been push back and some will not participate, some will need additional training and others will not be using Defender Data to track time as they use other software.   1. Time Used for Study 2. Canyon County’s Time Management System: Bolz expressed that Canyon County had concerns. ED Simmons was unaware of any concerns, commenting that they use their own software to track time and it was anticipated that they would continue to do so. Initially they were not going to participate but after some clarification, they will. ED Simmons expressed disappointment that she is just now hearing these concerns given the amount of communication that has occurred. Another concern relayed is that Ms. Harden feels the study needs to be a two-year study, but no other studies have been conducted for that length of time. Bolz shared that when he visited with Ms. Harden and Deepak, she expressed that the email went out to all the public defenders in her office causing confusion. Wellman and Fredericksen commented that they had received the same call. ED Simmons asked that the members encourage those that call them to call the PDC office to share their concerns, as many issues have been resolved for stakeholders whom have called. DD Jennings asked if any of the members had overlapping concerns about the information that has gone out. Wellman asked what is magical about a 12-week study. DD Jennings responded that she is not aware of any other studies that have gone on for two years, especially studies that require voluntary participation. Wellman asked how long other states have conducted their studies. She responded that sixteen weeks is the longest with the shortest completed in eight making twelve middle ground. The study is meant to get a snap shot to help determine what is occurring. Bolz suggested that an information sheet go out to the counties if it would help them understand how the process is working. Wellman commented that he is concerned about the attorney in a small office, asking what information IPI is trying to capture. The difficulty, he continued, is the front-end loading: Who has the time to do it? DD Jennings responded that yes that is an issue of concern. ED Simmons stated that the staff would do everything it can to help get things entered before going live. Wellman expressed that he would like to see the study delayed until the regional coordinators are in place to help with manpower. Daniels asked if having the county commissioners involved might help to support the importance of the study making the PD’s more willing to participate. ED Simmons asked if an email to the county commissioners would be the best way to communicate. Daniels responded yes that would be the best, adding that if you have everyone on board then they all agree that they will need to make sure it is done. ED Simmons went back to Wellman’s comment, if the Commission were to wait until the RCs are on board it may result in the caseload standard not making it in the next legislative session, which is something the legislators wanted to see happen in the next session. Wellman asked what was involved with the data entry. IPI and Mr. Masser explained what fields would need to be filled and it was taking approximately 14 seconds to make those entries. Fredericksen asked with the limited information being entered how that communicates to the remainder of the case. Mr. Masser explained how the process would work. IPI added that it is also a system that can be used mobility.   Idaho Policy Institute (“IPI”) Presentation: Vanessa Fry and Greg Hill from IPI discussed the other states and the periods in which studies have occurred and then discussed how the process will work for Idaho’s study. PD’s across the state will play a key role in developing the standards. They will ensure that there is good representation from all over the state providing for good rural representation. Fredericksen asked what type of information is being requested. Charges, time and tasks will all be a part of the study, DD Jennings responded. Our website contains or will contain information on the study and training to help answer questions. DD Jennings offered that attorney anonymity is important to the outcome of the study and they will have that through the process in which questions and concerns are handled. Ms. Griesmyer asked the chair if she could ask a question. Bolz granted her request. Ms. Griesmyer asked, using the Delphi panel how will the standards balance out between the institution defenders and private defenders. DD Jennings responded that the Delphi panel would contain a balanced representation of private and institutional defenders. The PDC would not be involved in the panel as it will inform the standards but will not set the actual standard.  Wellman asked about time sufficiency. IPI responded that the time would be tracked and determined based on the information that is truly sufficient to complete the task. Fredericksen asked Wellman what would be needed from the regional coordinators that would delay the start of the study. Wellman responded that the coordinators could provide an integrity check. Fredericksen shared that the anonymity is a very good thing and should help to provide for accurate data collection. IPI shared that when studies are anonymous they are generally honest. In addition, if at some point things stop working they can stop and reset to figure out what is lacking.  Wellman commented that the steps to go live have not been well communicated and he feels there will be a lot of trouble as the Commission is asking folks to do something they do not normally do, nor like to do.  DD Jennings asked for Mr. Carroll’s input. He responded that he agreed it would be difficult based on PD’s reluctance to keep time. He has long encouraged PD’s to track time because the perception is they do not function as real lawyers. In other studies, 10 weeks was the prime time period to collect data to provide a good sampling. It is important to express the value of the case weighting to find a true picture of what is happening. A lot will come from the study and it will play a role in determining the type of system that will work best for Idaho. Traditionally a Delphi panel would consist of the best attorneys; therefore he has some questions about the selection process. The process will require some handholding but it can be done. He offered to help in anyway as someone who has been through the process. | Simmons & IPI |
| 3:05pm | Sixth Amendment Center Discussion on Commission Progress: Mr. Carroll shared that he would like to be a resource to the Commission and every single state is dealing with similar issues. He has been very proud of the work that has come from this group. He wants to continue to be able to support the Commission in their work while being conscious of allowing the Commission to do the work. Bolz asked if there are any recommendation the Commission could put forth to the legislature regarding the statue. Mr. Carroll responded that there were, at some point the statue will need to be revised but it will take some time to determine what is needed. Having legislators on the Commission that have been through the whole process is valuable to provide clarification on what the Legislature’s intentions were. He suggested that every two to three years the Commission would likely need to go back to the legislature to amend the statute. He believes at some point counsel will need to be appointed at the time of detainment which will affect public defense drastically. Fredericksen asked if he had any concerns about having a designated attorney at first appearance. Mr. Carroll responded that vertical representation is also important in terms of information relay. Things are leaning toward having representation at bail hearings and at some point that will likely be the norm. Video representation is not ideal but having an attorney present is the most important goal.   1. Recommendation letter to DOJ on behalf of the 6th Amendment Center: Mr. Carroll explained that the federal government does not see indigent defense as a federal obligation but something the states need to address. However, they are willing to provide technical assistance. The grant program the Sixth Amendment Center will be applying for will allow them to extend their reach. They would like to submit the best application they can and that includes letters of recommendations. They will take whatever recommendation they can get, a letter from the Commission would be fine but more participation is better. Wellman moved to draft a letter to support the Sixth Amendment grant application. Fredericksen and Trout seconded and the members present unanimously agreed. The letter will be due May 1, 2017. The letters should be sent to the Sixth Amendment Center for submission in their application package. Trout offered to present a letter to the Chief Justice. | David Carroll |
| 3:35pm | Compensation Plan, CEC Plan and Salaries:   1. Legislative Budget Approval: The governor’s budget recommendation did not include the personnel increases requested and therefore they were not a part of the Commission’s budget presentation to JFAC. Jared Hoskins came to ED Simmons later asking what was needed for the retention and salary parity increases. He was requesting the information with the intent of making a recommendation in the budget setting hearing, utilizing a line item transfer as a means of funding for the increases, which ED Simmons explained was not known to her at the time she provided the information to Mr. Hoskins 2. DFM’s Initial Response: In preparation for the appropriation bill passing ED Simmons contacted Adam Jarvis to inquire about implementation. He asked if ED Simmons and Hoskins had worked together to sway the legislature’s opinion on the motion. ED Simmons responded that she had not; she simply supplied some figures to Mr. Hoskins. She explained she felt it was important for the members to be aware of the conversation. Continuing, she stated that the Commission is required to submit a Compensation Policy and she would like to adopt the policy DHR uses. If the members would like to see that, they are welcome to. She then went over the CEC Matrix that is being proposed along with the memorandum to DFM. Fredericksen commented that he was doing separate matrices, one for CEC and then another for retention and compensation. ED Simmons asked that the members review the CEC and matrix for further discussion at the next meeting. | Simmons |
|  | Scheduled Executive Session: Pursuant to Idaho Code 74-206, convene in executive session to consider personnel matters (Idaho Code 74-206(1)(b). Purpose/Topic summary: Discuss Executive Director Simmons’ Evaluation; Fredericksen seconded  The meeting was adjourned at this point, with all other business being postponed until the next meeting.  AND THE VOTE TO DO SO BY ROLL CALL.  Darrell Bolz, Chair Yes  Shellee Daniels, Member Yes  Eric Fredericksen, Member Yes  Linda Trout, Member Yes  William Wellman, Member Yes  Chuck Winder Yes  Christy Perry Absent, Excused | Commission |
| 4:05pm | Future Meetings -   1. Next Meeting: April 25th at 1:00pm. 2. Next Meeting Location: PDC Office - 816 W. Bannock Street, Suite 201, Boise, ID 83702 | Commission |
| 4:15pm | Adjournment: Chair Bolz adjourned the meeting at 4:21pm – All other business will be moved to the next meeting. | Bolz |

Attachments: ELF Public Records and Civil Discovery Memo

6th Amendment Center Grant Recommendation