Meeting Minutes

STATE PUBLIC DEFENSE COMMISSION

Date | time 3/14/2018 2:00 PM | *Location* PDC Office, 816 W Bannock, Suite 201, Boise

Meeting: March Commission Meeting

# Commission Members

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

Kimberly Simmons, Executive Director | Kelly Jennings, Deputy Director

Brianne McCoy, Regional Coordinator | Nichole Devaney, Admin. Asst.

# Commission Members Absent

Christy Perry, Representative | Chuck Winder, Senator

# Others Present

Andrew Masser, Private Attorney | Aaron Bazzoli, Canyon County Public Defender | Kathy Griesmyer, ACLU | Tony Geddes, Ada County Public Defender | Arriving for Workload Study Portion: Vanessa Fry | Greg Hill | Leslie Hayes | Bryan Nickels

|  | Item | Responsible |
| --- | --- | --- |
| 2:00pm | Welcome and Call to Order: Chair Bolz called the meeting to order at 2:06pm  ROLL CALL:  Christy Perry, Member Absent  Eric Fredericksen, Vice Chair Present  Linda Trout, Member Present  Chuck Winder, Member Absent  Paige Nolta, Member Present  Shellee Daniels, Member Present via Conference Call  Darrell Bolz, Chair Present  Review of Attachments, if needed, by the Commission | Bolz |
| 2:10pm | **Consent Agenda**  *Items on the Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless a Commissioner or citizen so requests, in which case the item will be removed from the Consent Agenda and placed on the Regular Agenda.* |  |
|  | Approval of Prior Meeting Minutes (2/7/2018) | Bolz |
|  | Budget / Financial Update |  |
|  | CEC Plan |  |
|  | Trout moved to approve the consent agenda items. The motion was seconded by Fredericksen and the members unanimously approved the agenda.  **REGULAR AGENDA** |  |
| 2:20pm | Executive Director Report   1. Regional Coordinator Updates: The members reviewed the updates provided by the RC’s, no questions were asked. 2. Legislative Update: The rules were just passed by the Senate with the change the House has presented as a concurrent resolution. The statutes have passed both houses and should be headed to the Governor’s office for signature. Bolz asked if ED Simmons had heard about the trailer bill, she stated that she had not. The budget was approved and sent to the Governor with a restriction as to how Trustee & Benefit funds can be used. The Governor had not recommend the Commission’s first two items on our budget request because he wanted the Commission to use T&B funds that had been reverted in previous years for those items. However the legislature has restricted how T&B funds can be used and no encumbrances are allowed of the funds. The result of the change does not allow for the additional training funding the Governor intended for the Commission. Bolz shared that there was some miscommunication in the JFAC that resulted in the restriction of the T&B Funds. He asked if the senate was going to make any changes, but after a meeting with representatives from the committees, DFM and legislative services they decided they would not. Daniels shared a concern with capping the merger incentive funds as she has pushed that component heavily with the counties. Bolz responded that it is a concern of all the members. Trout asked for confirmation that the Commission would be limited to only the $150,000 allocation for joint merger grants. Bolz responded that yes that is correct. Nolta asked what the process would be if we needed more funds for the merger grants. ED Simmons responded that the commission would have to submit a supplemental for the additional funds but it would not be granted until after the Oct. 1 distribution date. 3. District Judge Presentation: The judges had questions about the capital defense roster competent, attorney services and if the Commission would be setting a pay rate. Fredericksen shared that the judges also were asking about incentives to become capitol roster qualified and/or provide attorneys who can assist for those not currently qualified. 4. Idaho Criminal Justice Commission Presentation: The presentation went well ED Simmons said. 5. Town Hall Meetings: The dates have been chosen for the next set of Town Hall Meetings. These are being held to provide information to stakeholders on the next set of standards. ED Simmons requested that at least one commission member attend each of the meetings. The RC will be asked to contact all of their stakeholders within their regions to attend the meetings. The counties will also have an opportunity to meet one on one if desired. 6. Rule Negotiation: This is something that is ongoing and we will take comments from anyone who would like to send them. A workload standard, contracts and annual reporting are the next priorities the Commission indicated it would like to work on. ED Simmons shared that she and Chair Bolz had a meeting with Rep. Keough? and Sen Dixon, County Commissioners from Boundary and Bonner, and Seth Grigg, and the counties expressed concerns over the permanence and amount of grant funds. They also expressed concern over the availability of attorneys in Northern Idaho to provide public defense. | Simmons |
| 2:45pm | Compliance Issues: Deadline March 31, 2018- The first deadline is coming up, the RC have prepared a list of what they will be looking at in terms of compliance at the deadline.   1. Vertical Representation in Ada and Canyon Counties: Tony Geddes provided an update on vertical representation, he stated that they have staff and a plan but the Supreme Court has asked them not to move forward at this time. Trout asked who made the request, he responded the Administrator of the Court had. Once they receive word to move forward they are set to go. Aaron Bazzoli shared that Canyon has been providing vertical representation since 2014. However, with the change to Odyssey that program is no longer working efficiently. They found that they had multiple attorneys sitting around waiting for appearances. They do have a modified system that appears to be working at the moment. 2. Political and Judicial Influence (*ex: Teton BOCC report*): Trout recalled reading that County Commissioners are feeling ill at ease selecting a qualified attorney and thus they have the prosecutors assist them. She does not understand why prosecutors are participating in the hiring of defense attorneys. She does not have a problem with the prosecutors assisting in developing general requirements but they should not be participating in the selection process. Daniels shared that she does not believe that prosecutors would see it as their roll to participate in the selection process due to the repercussion consequences. In her county they have all types of attorneys apply for conflict positions that may or may not be qualified and then the judge appoints whom he sees fit. Daniels expressed that they have had concerns with the volatility of the information provided by applicants. ED Simmons responded stating, that was the question, how would the Commission like to handle it. Trout suggested that the Commission send out a best practices letter to advise the counties on how the selection process should work. Fredericksen commented that he is in support of that type of letter with a note asking that prosecutors be restricted from negotiations. Mr. Geddes shared that the prosecutor’s role is to serve as the attorney for the county and thus it would be very difficult for them not to participate in some aspect. Bolz asked that ED Simmons work with Com. Daniels to develop a letter to address the issue. Mr. Bazzoli shared that Canyon County is struggling to develop contracts they are playing a back and forth game with the prosecutor’s office. The Prosecutor’s office is trying to limit the amount being paid to conflicts rather than feeling like it is an open check book. |  |
| 3:00pm | Regional Public Defender Offices Discussion: Some of the counties in the north would like to gather together to develop a regional office. Nolta shared that when the PDC was first formulated there was a push for the development of regional offices but there was considerable opposition from the counties. When she began providing service in Lewis county she attended a meeting in which a Judge stated the county would not be able to provide effective services unless they have a regional office. Nolta did more research and found that other stakeholders shared that opinion. After some investigation into cost and other aspects related to public defense, she found that many of the stakeholders feel it is an unfunded mandate and public defense is an open check book. Nolta would like to propose the development of a pilot project for a regional office. The idea is that counties and the state would pay into the office operation. Attorneys and support staff would be state employees and counties would provide facilities and additional expense. The pilot project would require some statutory language changes and those changes are outlined in the copy provided to the members. ED Simmons asked if she is working on a budget for the project, Nolta responded that she was. Using numbers provided by the PDC in surrounding counties. She anticipated the project would need to operate for three to five years to insure it works. District two is willing to participate in the first pilot, those counties include Idaho, Lewis, Nez Perce, Latah, and Clearwater. The second pilot office, Ann Taylor from Kootenai County would like to head and could include three to four counties in District One. Trout asked who would do the hiring, Nolta responded that she thought Joanna McFarland could do it, Joanna is who Nolta would suggest to head the first pilot office. The PDC would handle the HR and administrative aspects, then the head of the office would handle the actual operation of their office. Daniels asked if it is modeled after the Health and Welfare, Nolta responded that it was modeled more after the Public Health Department. Bolz shared that the interim committee considered state regional office and ultimately decided against it. Trout shared that some of the issue with that was that when they sit down and run the numbers the cost didn’t equal out and some counties would be paying for those counties who could not hold up their end. She suggested that there may be a way to pitch the project based on the district that may not result in a state-wide system. Nolta stated that as a public defender she doesn’t care where the program stems from but as a member of the commission with oversight responsibility she would like to see it run out of the PDC. Trout asked why the staff would need to be state employees couldn’t they be county employees. Nolta responded that the personnel costs would be too great for the counties to handle. She shared that as the result of another circumstance with a memorandum for understanding the counties are not willing to make those type of agreements to formulate a regional office. |  |
| 3:30pm | PDC role in the Appointment of a Public Defender  *EX: Juvenile case in Payette; Fremont County Judge asking incriminating questions/not appointing because won’t impose jail:* In cases where a public defender has not or would not be appointed what is the Commission’s role – Trout stated that it depends on the situation; in speaking with Ms. S. Thomas she feels that when it involves a judge it should be taken to the Administrator of the Court to handle, as opposed to the PDC trying to speak to judges. She feels the two issues that were brought to the Commission’s attention should be dealt with in this manner. Fredericksen shared that he agreed and that as the Commission continues to provide the education piece these types of issues will become fewer and fewer. There was some discussion on how the counties typically appoint a public defender and if there is a uniformform across the state to help the judge make the determination. ED Simmons shared that she was researching that topic in the supreme court rules as well as if initial appearance enforcement is only restricted to when a defendant appears before a magistrate. Bolz and Trout agreed that it will be an education process to work out some of ~~the~~ these issues. Bolz asked if the trial court administrators should be involved in the process. ED Simmons responded that the regional coordinators are including them. |  |
|  | **Executive Session**: Pursuant to Idaho Code 74-206, convene in executive session to communicate with legal counsel (Idaho Code 74-206(1) (f). An executive session was not necessary during the meeting. | Commission |
| 4:15pm | Workload Study Presentation – Webinar: Ms. Fry reviewed the study information. McCoy asked why an average to account for missing data was used rather than a more sophisticated process. Ms. Fry responded that it was the calculation that was used in other studies and in their opinion the best process known at this point. The IPI group felt that providing the standard deviation helps to clarify the information, but agreed to look into it. It was asked if additional graphs would be provided once the information requested from the Idaho Supreme Court is received. Ms. Fry responded that yes depending on the information provided assuming it was a simple plug and play they could do that. Mr. Geddes asked if in the Estimated Total Case Time graph was the 64.11 hours in the Delphi Round 1 how long they are saying a case should take. Ms. Fry responded yes it was. ED Simmons shared that for a case that goes to trail 64 hours is probably reasonable, that would not be the same for all. Ms. Fry repeatedly stated that the thing to be most mindful of is that each case is different. | Simmons/Fry |
|  | Future Meetings – April 11, 2018 at 1:00pm, PDC Office  Tentative Topics: ED Simmons Performance Evaluation | Commission |
| 6:00pm | Adjournment: Trout and Fredericksen had to leave at 4:47. Chair Bolz formally adjourned the meeting at 4:57pm. | Bolz |

Attachments: Town Hall Meeting Schedule

Email/Letter from Aaron Bazzoli

Statutory language for Regional Public Defender office

Fremont County update from Jared Ricks

Randy Smith’s email regarding Payette County

Teton BOCC Update/Report