

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 6/20/2018 1:00 PM | *Location* 322 E. Front Street, Suite 570– State Appellate Public Defender Office

Meeting: June Commission Meeting

Commission Members

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

Kimberly Simmons, Executive Director | Kelly Jennings, Deputy Director
Brianne McCoy, Regional Coordinator | Nichole Devaney, Admin. Asst.

Commission Members Absent

Chuck Winder, Senator

Others Present

Zach Hope, PDC Intern | Marilyn Paul, Twin Falls Public Defender | Becky Boone, Associated Press | Seth Grigg, IAC | Kelly R. Aberasturi, Owyhee County Commissioner | Angie Barkell, Owyhee County Clerk | Danica Comstock, Ada County Public Defender | Kathy Griesmyer, ACLU | Rolando Rulano, ACLU

Approx. Time

Item

Responsible

1:00pm	Welcome and Call to Order: Chair Bolz called the meeting to order at 1:10pm	Bolz
	ROLL WAS CALLED:	
	Christy Perry, Member	Arrived at 1:32pm
	Eric Fredericksen, Vice Chair	Present
	Linda Trout, Member	Present
	Chuck Winder, Member	Absent
	Paige Nolta, Member	Present
	Shellee Daniels, Member	Present via Teleconference
	Darrell Bolz, Chair	Present

MOTION AND ORDER TO AMEND AGENDA

Trout, Member, MOVES THAT THIS GOVERNING BODY, PURSUANT TO IDAHO CODE 74-204, AMEND THE AGENDA FOR THIS MEETING AS FOLLOWS: To include Capital Counsel Application Review.

Good faith reason item was not included in posted agenda: Item was mistakenly left off the agenda.

Fredericksen seconded and the members voted as follows:

Darrell Bolz, Chair	Yes
Eric Fredericksen, Vice Chair	Yes
Linda Trout, Member	Yes
Chuck Winder, Member	Absent
Paige Nolta, Member	Yes

	Approx. Time	Item	Responsible
		Shellee Daniels, Member	Yes
		Christy Perry, Member	Yes
		Review of Attachments, if needed, by the Commission	
ACTION ITEM	1:10pm	<u>CONSENT AGENDA</u>	
		<i>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.</i>	
		Approval of Prior Meeting Minutes (3/14/2018)	Bolz
		Budget / Financial Update	
		Revised Public Records Request Form	
		Revised ELF Policy	
		FY2019 Strategic Plan	
		Trout had a question about the Strategic Plan and the wording on the Vision Statement. There was a conversation previously changing the wording. ED Simmons will check to see if the language was changed. Trout moved to approve the consent agenda. Fredericksen seconded and all members approved the motion.	
		<u>REGULAR AGENDA</u>	
		Regional PD Office – District 2 – Presentation: Nolta stated she is not presenting as a member of the commission but simply as an attorney in the second district. Nolta envisions that the office could be set up similarly to the public health office. The PDC would be responsible for the oversight and distribution of funding with each region having an office. Region 2 would like to be the first to pilot the project. She broke down the number of attorneys needed for each county in Region 2 based on national workload standards. She sees the primary office for the region seated in Nez Perce, with staff being employees of the state. Trout asked if there is space available currently to house an office such as this. She then asked how many existing attorneys are in the region. Nolta responded that there are five currently that would be willing to participate in the program. Mr. Grigg asked how many offices are currently providing services Nolta responded saying three. There was a question as to how institutional offices would work in this type of system. Nolta replied that joining would be optional at the beginning, as this system will not work for all counties. Daniels asked if an attorney would be based in some of the bigger counties or would everyone travel from one office. Nolta responded no that would not be the case. Support staff would be available to handle scheduling and things. Daniels asked in the case of institutional office if the smaller counties in the region could have a regional office and the institutional office would be able to operate on its own. Nolta responded that yes that was how she envisioned it. She continued the presentation explaining how staffing expenses and other expenses would be broken up between the state and counties. Conflict cases could be sent to another region. Trout asked if she had completed the calculations to compare what is being expended currently versus a regional system. Nolta provided a calculation comparison. She then provided the statute language that would need changed. ED Simmons shared that she has worked with Nolta on the language to allow for such an office. The deadline for the Commission to submit the statute changes would be July 13 if the members chose to go	The Nolta

forward. Mr. Aberasturi asked how willing the state would be to commit the large amount of funding needed. Nolta responded that with implementation of the standards, budgets are and will continue to increase. Stating that the legislators she has spoken to seemed interested but needed to see the numbers. RC McCoy asked if she has done any other projections beyond what was presented today. Nolta responded she had not. Mr. Grigg shared that he would like to sit down with Nolta and speak to her about the plan as IAC has been working on a similar project. Nolta replied that she was happy to do that, she would like to see both organizations move forward on a mutual proposal. Perry asked if Nolta was aware, the Interim Committee looked at a regional model and wondered if she had spoken to any of the individuals on the committee. Daniels shared that many of the larger counties were not interested in a regional system because they would like to continue to do things as they have been but the smaller counties are struggling. ED Simmons shared that the legislature seems to be receptive to the idea they just need the data. Perry commented that the money is one issue but the formation of this type of system is completely separate and was not the intent of the committee. They knew that things would need to change as standards developed but a change of this nature was not what was expected. Comstock asked if a collaboration of counties using PDC funds was possible. Ms. Barkell stated that their conflict budget in Owyhee County has grown significantly; they are anticipating a greater increase in conflicted cases as their primary will not be able to handle any additional felony cases after this month. The members agreed that conversations should start. Bolz shared that the proposal of a systematic change such as this should come from IAC rather than the agency itself. It will have more weight. Nolta asked if the Commission would be willing to support the proposal. The members decided that the PDC should stay neutral on the issue and IAC and the counties should bring about any changes of this nature. Mr. Grigg stated that they are actively pursuing changing the system, as the counties cannot sustain it as it is going now. Canyon is also having difficulty keeping up with the funding Mr. Aberasturi shared.

Executive Director Report

Simmons

- a. **Negotiating Meetings Wrap-Up:** The meetings have been going well; last night's meeting was one of the best so far. The message ED Simmons is getting from the legislative representatives attending is if they are provided the data, they will work to get what is needed. No comments directly related to the workload standard or what contracts should look like have been received.
- b. **Regional Coordinator Updates:** Perry asked if there was any feedback on the regional coordinators and if county officials are finding them beneficial. Is there value in the positions? ED Simmons responded that they are valuable because of their ability to meet with counties to discuss issues ED Simmons is not able to communicate. They help with grant applications, funding and other issues. McCoy shared that she visited with Minidoka on Monday that week and they expressed how grateful they were to her because she helped them to feel things were not being crammed down their throats that the PDC is trying to work with them. She also shared how she had assisted a PD with upgrading his technology and the commissioners in that

county were appreciative of her efforts. Perry stated she was glad to hear that, as the addition of the RC's were a sticking point for the committee. The intent was to build the relationships and it is good to hear that is occurring. ED Simmons shared that it is helpful to have the RC's at the town hall and negotiating meetings to provide additional information as it relates to workload. Additionally having someone in the office that can tell her more about the county if helpful to her.

- c. **Idaho Academy of Leadership request – ACTION ITEM:** This is a program ED Simmons was interested in prior to applying to the PDC. She feels it would benefit her if she attended. The cost of the program is \$800. Bolz asked who puts the program on, ED Simmons responded the Idaho State Bar. Trout commented she thought it would be a great idea, Nolta agreed. Trout thought the cost of the program is reasonable. Fredericksen moved that the Commission approve funding for ED Simmons to attend the Idaho Academy of Leadership, Trout seconded and all members unanimously approved the motion.

Old Business:

Simmons

Letter/Meeting with PD (excessive workload) – CAP in the works: ED Simmons would like to know the extent of the complexity of the cases Mr. Archibald is working on, as she feels it makes a difference in regards to workload. Counties continuing to appoint him to cases.

Grant Funding used for court ordered evaluation: ED Simmons shared that ELF funds according to the statute cannot be used for evaluations but grant funding could. Trout asked in terms of their grant application could a county list a specific amount as allocated to evaluations. ED Simmons stated that yes they could. She will address that specific item in future application forms and instructions.

Names sent to Governor's Office – Defending Attorney position; IAC position:

Names have been provided by IAC and should be moving forward.

FY2019 Grant Application Review:

Simmons

Second Review Applications

Benewah: Needed more information on how FY18 & FY19 funds are being used. That information was provided by the county. Recommendation is to approve for maximum eligible amount. Trout moved to approve Benewah County for the maximum eligible amount, Fredericksen seconded and all members unanimously agreed.

Bonner: Cost analysis was needed; the analysis was provided and discussed. Recommendation is to approve for the maximum eligible amount. Noting need for additional funding. Fredericksen moved to approve Bonner County for the maximum eligible amount, Trout second and all members unanimously agreed.

Clark: Cost analysis needed, analysis provided and discussed. Recommendation is to approve for the maximum eligible amount. A deficiency exist in regards to first appearances however. Perry asked if it is known why getting the video conferencing up and running is taking so long. The members agreed that internet speed could be an issue. Nolta commented that Lewis county had a similar issue and it turned out no

**ACTION
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one was working on it. Perry asked if they could have follow up. ED Simmons responded that we could. Trout shared that the district is in the process of transitioning their trial court administrator and once that occurs the new administrator could help. Perry moved to approve the grant for the maximum eligible amount, Trout seconded, and all members unanimously agreed. Perry stated she is not willing to call it a willful deficiency, as she did not have enough information. Perry then moved to note a non-willful deficiency for first appearances.

Elmore: The concern with Elmore is that some of the expenses included in their local share do not appear to be indigent defense expenditures. ED Simmons suspects that prior year's numbers may include these expenditures and thus the eligible grant award may not be accurate. The county intends to use the full eligible amount of \$82,000. Perry stated that she is not comfortable voting on the application and would like to hold it until a determination can be made on what is occurring. Fredericksen asked about their caseloads. ED Simmons stated that they are at 164. Perry moved to deny the application but bring it back for consideration at a later date once a determination has been made on the expenditures, Trout seconded, and all members unanimously agreed.

Gooding: Recommendation is to approve for the maximum eligible amount. Trout moved to approve for the maximum eligible amount, Fredericksen seconded and all members unanimously agreed.

Kootenai: Cost analysis needed, analysis provided and discussed. Recommendation is to approve for the maximum eligible amount. Fredericksen moved to approve for the maximum eligible amount, Trout seconded and all members unanimously agreed.

Latah: Recommendation is to hold over the application pending attestation of funds usage. Trout moved to deny the application subject to consideration in July with receipt of attestation, Perry seconded and all members approved unanimously.

Nez Perce: Cost analysis provided, concern that funds are being used solely to compensate attorneys. Recommendation is to note deficiency for lack of contracts with conflicts. Trout moved to approve the grant application for the maximum eligible amount, Perry seconded and all members with the exception of Nolta who abstained agreed. Trout moved to note the non-willful deficiency for lack of contracts. Fredericksen asked if it is for the Commission to question how funds are being used. Bolz responded that he felt it is allowed, especially with respect to compensation as it was suggested originally that they not be used solely for that purpose. Perry seconded Trout's motion and the members agreed with the exception of Nolta who abstained.

Shoshone: Recommendation is to approve for the maximum eligible amount. Perry asked about parity comment, ED Simmons responded that she has not designated parity as a deficiency. Trout moved to approve for the maximum eligible amount, Fredericksen seconded, and all members unanimously agreed.

Washington: Cost analysis was provided and discussed. Recommendation is to approve for the maximum eligible amount, noting non-willful deficiency for lack of contracts with conflict attorneys. Trout moved to approve for the maximum eligible amount, Fredericksen seconded and all members agreed. Trout moved to designate the deficiency as non-willful for lack of contracts with conflict attorneys. Fredericksen seconded and all members unanimously agreed.

First Review Applications

Bannock: Application was reviewed and discussed. Recommendation is to approve for the max amount. Confirmation is needed on hiring of additional personnel to reduce workload. Perry moved to approve Bannock County for the maximum amount eligible, Fredericksen seconded and all members unanimously agreed.

Bear Lake: Application reviewed, recommendation is to approve with a designation of a first appearance deficiency as non-willful. Perry asked if there is a time frame to comply. Daniels shared that they are building a new courthouse and she does not anticipate they will bring the old building into compliance. Perry moved to approve for the maximum amount eligible, Trout seconded and all members unanimously agreed. Trout moved to designate a first appearance deficiency as non-willful. Perry seconded and all members approved the motion.

Bingham: Application was reviewed, recommendation is to approve for the max amount with a recommendation to be mindful of workload but to also have an RC follow up on FY18 funds. Additionally, recognizing a first appearance deficiency as non-willful. Fredericksen commented that he has been struggling with first appearances being willful and non-willful; he then moved to approve Bingham County for the maximum amount eligible. Trout seconded and all member unanimously agreed. Fredericksen moved to designate a willful deficiency for first appearances. Trout questioned if they intend to be in compliance by the end of the county fiscal year. ED Simmons responded that yes it appears so. The intent is to contract with an attorney to provide this service; there is concern with the need for a conflict attorney. Trout asked if they had a solution at one point and stopped due to conflict concerns. ED Simmons responded that was correct. Trout stated that her vote would be non-willful based on that information. Daniels agreed commenting that she did not see it as willful. The motion was put to a vote only Fredericksen voted to approve. Trout moved to declare the deficiency as non-willful, Perry seconded and all members with the exception of Fredericksen voted to approve.

Bonneville: Application was reviewed. Perry asked about the auxiliary conflict office, ED Simmons explained the need. Perry asked if it is known why their workload is so high. ED Simmons responded that it is not clear; they will likely need to hire an additional attorney. Perry shared that workload is largely led by the prosecution and that makes it difficult given that one impacts the other. Recommendation is to approve for the max amount eligible, noting deficiency for lack of contracts as non-willful. Perry moved to approve the application for the maximum eligible amount, Trout seconded all members agree.

Butte: Cost analysis was not provide, recommendation is to hold pending additional information. Possible deficiency with regard to first appearances. Fredericksen moved to hold the application pending more information, Nolta seconded and all members agreed.

Caribou: Application was reviewed, recommendation is to approve for the maximum amount. Noting deficiency for lack of contract for primary attorney as willful and first appearances as non-willful. Trout moved to approve for the maximum eligible amount, Fredericksen seconded and all members agreed. Fredericksen moved to declare a willful deficiency regarding that lack of a contract with the primary attorney.

Motion was amended to be non-willful, Nolta seconded and all members agreed. Fredericksen moved to recognize a non-willful deficiency for first appearances, Trout seconded and all members unanimously agreed.

Cassia: Application was reviewed. Minidoka was approved previously. Recommendation is to approve for maximum amount, noting a non-willful deficiency for first appearance and lack of contracts for conflicts. Perry moved to approve the maximum amount eligible to include the incentive grant. Fredericksen seconded and all members unanimously approved. Fredericksen move to find a willful deficiency for first appearance, Nolta seconded all members approved. Fredericksen moved to find a non-willful deficiency for lack of conflict contracts, Nolta seconded and all members approved the motion.

Custer: Recommendation is to hold the application pending account of FY18 funds. Fredericksen moved to hold the application pending additional information on use of FY18 funds, Trout seconded and all members unanimously agreed. Perry asked about jail bond election comment and Lifesize equipment. Nolta explained that Lifesize is the video equipment used by a large number of county courthouses for video conferencing.

Franklin: Application was reviewed, recommendation is to hold the application-pending plan for curing first appearance deficiency. Trout asked if they are trying to install video equipment in Cash County, Utah. Daniels explained that there is some concerns with how this system works. Bolz stated he would like a little more information on how things are working between Idaho and Utah. There was discussion on the housing of prisoners outside the state. Nolta moved to hold Franklin County's application for additional information. Perry seconded and all members approved the motion.

Fremont: Recommendation was to hold application pending additional information. Trout so moved, Fredericksen seconded and all members agreed.

Jefferson: Application was reviewed, recommendation is to approve for maximum eligible amount. Fredericksen moved to approve Jefferson County for the max amount eligible, Trout seconded and all members approved.

Lemhi: Application was reviewed, recommendation is to approve from max eligible amount noting deficiency for first appearance. Perry moved to approve Lemhi County for the maximum eligible amount, Fredericksen seconded and all members approved. Perry asked if video equipment was already in place, ED Simmons responded that it is but needs upgraded. Trout moved to find a non-willful deficiency for first appearances, Perry seconded and all members approved.

Teton: Application was reviewed, recommendation is to hold pending cost analysis. Trout moved to hold pending additional information, Fredericksen seconded and all members approved the motion.

Lincoln: There was discussion on the state of the county. No application was submitted. A non-willful deficiency for lack of contracts exists. Trout moved to recognize the non-willful deficiency, Fredericksen seconded and all members approved the motion.

Capital Counsel Applications – Recommendations from CCAR: The committee has reviewed the following application; all applicants are attorneys already on the Supreme Court Capital Roster.

Jennings

Danica Comstock: Recommendation is to approve. Fredericksen moved to follow the recommendation of the committee, Trout seconded and all members agreed.

Deborah Czuba: Rules require that Capital Roster members be a member of the PDC Roster and Ms. Czuba is not, her application will be held.

Tony Geddes: Recommendation is to approve. Fredericksen moved to approve, Trout seconded and the members approved the motion.

Erik Lehtinen: Nolta moved to approve, Trout seconded and all members approved the applicant.

Jay Logsdon: Perry moved to approve, Trout seconded and the members unanimously approved.

Dave Lorello: Perry moved to approve, Trout seconded and all members approved the applicant.

Jon Loschi: Fredericksen moved to approve, Trout seconded and all members approved the applicant.

David Martinez: Fredericksen moved to approve, Trout seconded and all members approved the applicant.

Brian Marx: Fredericksen moved to approve, Trout Seconded and all members approved the applicant.

Nicole Owens: Fredericksen moved to approve, Trout seconded and all members approved the applicant.

Marilyn Paul: Trout moved to approve, Nolta seconded and all members approved the applicant.

Kent Reynolds: Recommendation is to table the application pending CLE Info. Fredericksen so moved, Nolta seconded and the members unanimously agreed.

Keith Roark: Fredericksen moved to approve, Nolta seconded and all members approved the applicant.

Eric Rolfsen: Trout moved to approve, Fredericksen seconded and all members approved the applicant.

Shannon Romero: Trout moved to approve Nolta seconded and all members with the exception of Fredericksen who abstained from the vote approved the applicant.

Anne Taylor: Fredericksen moved to approve, Trout seconded and all members approved the applicant.

Ian Thomson: Nolta moved to approve, Trout seconded and all members with the exception of Fredericksen who abstained from the vote approved the applicant.

Sean Walsh: Trout moved to approve, Fredericksen seconded and all members approved the applicant.

**ACTION
ITEM**

Oversight Program

Simmons

- a. **List of Designated Deficiencies:** Regional Coordinators reviewed deficiencies as a result of the IDG's reviewed last month as required by rule. The members discussed the list. ED Simmons stated that the PDC is required to maintain the list for review at any time.
- b. **Periodic Reviews:** Reviews have been completed by the RC's.
- c. **Corrective Action Plans:** A form will be developed on corrective action plans. It will include reported issues and will be brought to the commission for designation.

State Resources

Fredericksen

- a. **Westlaw:** A representative for Westlaw reached out to Fredericksen to see if the Commission would be interested in providing access to Westlaw for county PD's. Counties could opt in and pay fees directly to Westlaw. Comstock offered that during negotiations pay attention to add on language, as it may not be provided. Fredericksen responded that Westlaw would offer different plans at different costs. Perry stated it was worth looking into if it can save the counties money. Bolz asked what would be required from of the Commission. Fredericksen responded that it would be minimal just providing the information.
- b. **Case Management System:** When the Commission is ready, a similar option could be used for case management.

Legislation for next year – Indigent Defense Assistance; PD Regional Office; Local Share & Grant Calculations: ED Simmons would like the members to consider changing the wording in the statute from grant to financial assistance and changing application to proposal. Trout asked what prompted the suggested changes. ED Simmons responded that the counties have been asking for it for a while. Grant sounds temporary in their opinion. ED Simmons is simply asking for permission to submit the idea. Actual verbiage can be decided on at a later date. Perry moved to go forward with the idea of the change. Trout seconded and all members unanimously approved the motion.

Simmons

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Local Share: Legislative idea is to amend the percentage to 20% of the local share and to freeze the local share amount. Perry shared that the committee had chosen not to freeze the local share amount. Perry offered that if ED Simmons does not have to provide a percentage amount then she might want to consider leaving it out. Perry asked if there would be an intent to sunset the clause again, Fredericksen agreed that it was necessary. Perry expressed that the freeze is another issue. Fredericksen moved to go forward with the percentage increase, Trout seconded all member unanimously approved the motion.

Regional Office Language: Should this idea move forward. The counties can still move forward with the legislation through IAC and the members agreed.

Contracts for Conflict Counsel: Adjust the reporting requirements for contract attorneys providing services with less than 10 cases a year. ED Simmons suggested that Odyssey could be used to accomplish the data collection. Trout agreed it would be a good idea.

Simmons

Approx. Time	Item	Responsible
	Executive Session: Pursuant to Idaho Code 74-206, convene in executive session to consider personnel matters, consider records that are exempt from public disclosure or communicate with legal counsel (Idaho Code 74-206(1)(a), (b) & (d)). An Executive Session was not necessary during this meeting.	Commission
	Future Meetings – July 18, 2018	Commission
	Schedule: August and September meetings	
4:00pm	Adjournment: Meeting was adjourned at 4:49pm	Bolz

Attachments: FY2019 County Grant Application Summaries
FY2019 Grant Application Worksheet
DRAFT ELF Policy – updated
Public Records Request Form – updated
DRAFT Legislation: 19-850; 19-851 and 19-862A
Costs associated with proposed legislation
IDAPA 61_01_06 List of Designated Deficiencies
FY2019 Strategic Plan Draft