Latah County
BOARD OF COUNTY COMMISSIONERS

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Thomas C. Lamar ♦ ***David McGraw*** ♦ ***Kathie LaFortune***

October 7, 2020

Kathleen J. Elliott, Executive Director
Idaho State Public Defense Commission
816 W Bannock, Suite 201
Boise ID 83702

Dear Kathleen Elliot,

We appreciate the opportunity to provide comment on the upcoming rule changes presented by the Public Defense Commission. We enjoy high quality public defenders in Latah County which allows for equitable representation and ultimately serves all the citizens of our county no matter which side of the bench they are on. We have had a chance to review the proposed rule changes, and have a few concerns that we would like to point out:

First, and most concerning, the proposed rules would allow the PDC, if it determines that there is an immediate need to take action to correct a violation of the rules, to contract with a defending attorney to remedy a perceived violation at the county's expense. IDAPA 61.01.03.50.05.b.iii.
Because this appears to be an unlawful assumption of county budget authority, we do not believe that the PDC would have authority to take this action.

Second, the proposed rules include language which recommends the County hire outside legal counsel to advise on all public defender issues. IDAPA 61.01.02.30.05. It is unclear whether the PDC would help pay for this through grant funding. Our concern with this paragraph, albeit a recommendation, is that the Prosecutor is statutorily mandated to advise the BOCC unless the BOCC determines it is necessary to hire outside counsel. Our prosecuting attorney office, in their role as civil counsel, has historically limited their involvement to providing general county-specific legal and risk management advice, not the substantive decisions regarding individual public defender offices.

Finally, the rules include a requirement of equity and resource needs between prosecutors and public defenders. IDAPA 61.01.02.40.04-05. It also requires "frequent review" and assessment of this equity and resource need but provides no information on what is supposed to be reviewed and assessed, how to review or assess it and when. Our prosecuting attorney office currently has 4 FTE's dedicated to the civil work of the county. Public defenders are only appointed in approximately 49% of total cases filed. Combined with the civil work our prosecuting attorney's office performs, it appears that court appointed counsel is only involved in about 22.5-25% of the workload our PA's office performs.

Thank you for your time in reviewing our concerns. We share the same interest in good and adequately funded public defense, as lacking such only serves to frustrate the interests of justice.

Sincerely,

Thomas C. Lamar
Chair

David McGraw
Commissioner

Kathie LaFortune
Commissioner