

MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, January 17, 2018

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon, McCrostie, Wintrow

**ABSENT/
EXCUSED:** None

GUESTS: Kimberly Simmons, Brienne McCoy, Kelly Jennings, PDC; Dawn Maglish, Isabella Kokos, Inside Out; Amanda Forest, H.E.R. Oceans Survivor Advocate; Andrew Masser; Tony Geddes, Ada County Public Denfender; Tom Arkoosh, Assoc. Criminal Defense Attorneys; Merikay Jost, IDHT Awareness; Brad Hunt, O.A.R.C.; Eric Fredericksen, SAPD; Matthew Gamette, ISP; Kathy Griesmyer, ACLU Idaho

Chairman Luker called the meeting to order at 1:31 p.m.

In response to a previous Committee member request, **Chairman Luker** explained the taking of remote testimony via teleconferencing and video is currently being piloted in the House Education Committee. Decisions regarding the expansion of that capability to other Committees will be made once the pilot is finished.

MOTION: **Rep. Wintrow** made a motion to approve the minutes of the January 11, 2018 meeting. **Motion carried by voice vote.**

RS 25763: **Rep. Crane** presented **RS 25763**. There is a nuance in Idaho Code § 18-5601 that makes it difficult to charge someone unless they are trafficking more than one person. This RS amends the law to address matters of human trafficking and prostitution by replacing the word "persons" with "another person."

MOTION: **Rep. Kirby** made a motion to introduce **RS 25763**.

In response to questions from the committee, **Rep. Crane** explained the word "interstate" was also removed. There are several pieces of human trafficking legislation that are going through a rewrite to bring them more into conformity with Federal statute, so all will dovetail together once completed.

VOTE ON MOTION: **Chairman Luker** called for a vote on the motion to introduce **RS 25763**. **Motion carried by voice vote.**

RS 25764: **Rep. Crane** presented **RS 25764**. This proposed legislation makes the act of patronizing a prostitute a felony on the first offense. Rep. Crane, said he was unaware of the pervasiveness of the issue of human trafficking until recently. Unfortunately, offenders have been able to evade the current laws. One goal is to cut down on human trafficking by reducing the demand and supporters of this change believe this is a first step.

MOTION: **Rep. McDonald** made a motion to introduce **RS 25764**. **Motion carried by voice vote.**

Chairman Luker turned the gavel over to **Vice Chairman Malek** for presentation of administrative rules.

DOCKET NO. 11-0301-1801: **Matthew Gamette**, Laboratory System Director, Idaho State Police Forensic Services presented the Docket which amends the rule to include the National Highway Traffic Safety Administration's November 2, 2017 Conforming Products List of Evidential Breath Alcohol Measurement Devices. It clearly delineates that all the relative testing instruments in Idaho are approved for use. Because this temporary rule change was necessary during last year's legislative moratorium period, ISP plans to come back next year to complete the rule making process. Mr. Gamette explained there was no additional cost to Idaho to abide by the updated list.

MOTION: **Rep. Wintrow** made a motion to approve **Docket No. 11-0301-1801. Motion carried by voice vote.**

Kimberly Simmons, Executive Director, and **Kelly Jennings**, Deputy Director, Idaho State Public Defense Commission (PDC) provided the annual Legislative update. The mission of the Commission is to improve the delivery of trial-level indigent defense in Idaho. New standards were created, grant funds were dispersed to the counties and ongoing legal education to defending attorneys was provided throughout the state. Through the Indigent Defense Grants and Extraordinary Litigation Fund (ELF), the PDC has distributed more than \$4.2 million of state funds to 43 of Idaho's 44 counties to augment the cost of providing indigent defense. A growing number of attorneys are submitting the required annual report, and the new Regional Coordinators will use data from these reports to create new uniform indigent defense standards tailored for Idaho. Results from the Workload Study are not yet available.

Tom Arkoosh, on behalf of the Idaho Association of Criminal Defense Lawyers stated they support the PDC's goal of developing a workload standard and members are concerned about the independence of criminal defense attorneys when the prosecutors have some input in to the defense process.

DOCKET NO. 61-0104-1701: **Kimberly Simmons**, Executive Director, Idaho State Public Defense Commission (PDC) presented this Docket. Under Idaho Code, the PDC has the responsibility to disperse Indigent Defense Grants. The rule creates definitions and a process for applying for grants. The purpose for putting the rule in place is to allow the counties an appeals process if a grant is denied. In response to questions from the Committee, Ms. Simmons said they haven't yet determined the need or process for taking back unused funds that were dispersed to the counties. In many cases, the counties reported they still have plans for the funds even though they weren't used by the end of the year. However, the Commission will take into consideration the suggestion to have unused funds returned in the future. Every county that has applied has received their maximum eligible amount. It was clarified that information about the appeal process is listed under Section 022.06 (a) and is pursuant to the Idaho Administrative Procedure Act.

MOTION: **Rep. Perry** made a motion to approve **Docket No. 61-0104-1701. Motion carried by voice vote.**

DOCKET NO. 61-0106-1701: **Kimberly Simmons**, Executive Director, Idaho State Public Defense Commission (PDC) presented this Docket, which includes procedures for the oversight and enforcement of the Indigent Defense Standards. The rule outlines the participants and roles; minimum standards; oversight program management and procedures; corrective actions; and compliance verification and enforcement. In response to questions from the Committee, Ms. Simmons explained defendants can report to the PDC complaints of non-compliance and the Regional Coordinator would investigate. Defendants may not know about the process at this point, but the ACLU is directing people to the PDC and staff is doing what it can to inform defendants within the parameters of respecting attorney client privilege. She stated the mechanism for reporting accountability at this time is through annual reports to

the Executive and Legislative branches as noted in Section 023.04. Since the rule is new, attorneys have a six-month grace period to comply.

Andrew Masser, Baldauf Masser testified **in support** of this rule. He stated his background as a former ACLU and Public Defender intern, Public Defense Commission attorney and private practice criminal defense attorney provides a unique perspective. He stated this rule provides a measured use of regulatory authority. He is pleased with the collaborative approach the PDC is taking to work with the counties and defense attorneys to achieve the goal of creating a better system. The fact the PDC has included language to address removing barriers shows it is committed to moving forward in a collaborative way and not creating compliance expectations blindly. While it is natural to expect some criticism for not going far enough with the standards and compliance, it's important to take a methodical approach and understand it has to be done in collaboration with the counties. By making compliance too hard, too soon, it could sabotage the end goal.

Kathy Greismyer, Policy Director, American Civil Liberties Union of Idaho (ACLU) testified as a neutral party on the enforcement rules to hold the counties and public defenders accountable, but there are still some concerns they would like to see addressed as the rule-making process continues. Those items are identified in the attached communication with the State Public Defense Commission provided as testimony. (Attachment 1) In response to questions from the Committee, Ms. Greismyer said there are a number of topics the PDC can discuss with clients without interfering with attorney, client privilege. Such topics include whether the attorney was present at the initial appearance, whether they are responding to clients' inquiries regarding their cases, whether they are discussing case strategy with enough time to gather the necessary resources such as expert witnesses, etc.

Ada County Board of Commissioners also provided written information that is included as testimony. (Attachment 2)

MOTION: **Rep. Perry** made a motion to approve **Docket No. 61-0106-1701**. **Motion carried by voice vote.**

DOCKET NO. 61-0107-1701: **Kimberly Simmons**, Executive Director, Idaho State Public Defense Commission (PDC) presented this docket, which amends the rule by creating standards for defending attorneys who represent indigent defendants in capital cases, and standards related to investigation and the use of experts. The definitions and documents incorporated by reference were taken out of this rule and moved to another chapter to streamline the process and cost of updating definitions and documents in the future. The rule also updates the Public Defense and Capitol Counsel Rosters. In response to questions from the Committee, Ms. Simmons explained the purpose of maintaining a roster of Former Defending Attorneys is to better understand why they may no longer be practicing as public defenders such as retired, no longer taking these types of cases, contracts not renewed, non-compliant, etc. Currently, there isn't a time frame for purging names from the Former Defending Attorneys roster, but it is something that can be looked at in the future. The rosters are public record but are not online and need to be requested from the PDC office.

MOTION: **Rep. Perry** made a motion to approve **Docket No. 61-0107-1701**. Speaking to the motion, Rep. Perry commended the PDC and stakeholders who provided input to building this program from the ground up.

SUBSTITUTE MOTION: **Chairman Luker** made a substitute motion to approve **Docket No. 61-0107-1701**, with the exception of **Section 020.01(d)**. Speaking to the motion, Chairman Luker said he was concerned that a public list of Former Defending Attorneys is required, when these attorneys are no longer providing public defense services.

Following questions from the Committee, **Ms. Simmons** said she did not believe removing the Former Defending Attorney (FDA) Roster from the rule would have any affect on the operation of the PDC. However, she clarified the docket requires the Commission to maintain a list of deficiencies, which includes attorneys that are deemed to be non-compliant, and therefore, removed from the list of compliant attorneys and added to the Secondary Roster.

**VOTE ON
SUBSTITUTE
MOTION:**

Vice Chairman Malek called for a vote on the substitute motion to approve **Docket No. 61-0107-1701**, with the exception of **Section 020.01(d)**. **Motion carried by voice vote.**

**DOCKET NO.
61-0108-1701:**

Kimberly Simmons, Executive Director, Idaho State Public Defense Commission (PDC) presented this Docket, which is the single location to incorporate documents and define terms used in all rules promulgated by the PDC. **Kelly Jennings**, Deputy Director, PDC presented an overview of Documents Incorporated by Reference, which include Idaho's Principles of an Indigent Defense Delivery System; Standards for Defending Attorneys; and an Application for the Capital Counsel Roster. The standards only apply to indigent defense attorneys and public defense capital case attorneys and does not apply to the entire base of defense attorneys in the State Bar. In response to questions from the Committee, Ms. Jennings said attorneys can go before a resource judge to request funds for experts, but if they are declined, they may apply for Extraordinary Litigation Funds. The PDC will standardize the numbering system between dockets.

MOTION:

Rep. Gannon made a motion to approve **Docket No. 61-0108-1701**. **Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 4:09 p.m.

Representative Luker
Chair

Wendy Carver-Herbert
Secretary