

**MINUTES**  
**PUBLIC DEFENSE REFORM INTERIM COMMITTEE**  
**November 20, 2013**  
**9:00 a.m. to 4:00 p.m.**  
**Room WW17, Capitol Building**  
**Boise, Idaho**

**Co-chair Senator Dean Mortimer** called the meeting to order at 9:00 a.m. and requested a silent roll call. Members present were: **Co-Chair Representative Darrell Bolz**, Representatives Lynn Luker, Christy Perry and Carolyn Meline; and Senators Curt McKenzie, Cliff Bayer and Todd Lakey. Representative Trujillo and Senator Cherie Buckner-Webb were absent and excused. Legislative Services Office staff members present were Brooke Brouman and Jackie Gunn.

Others in attendance included: Daniel Chadwick, IAC; Monica Hopkins and Richard Eppink, ACLU; Sara Thomas, SAPD; and Holly Koole, IPAA.

NOTE: Copies of the presentations, reference materials and handouts are on file at the Legislative Services Office. PowerPoint presentations and handouts are posted on the Idaho Legislature website: [www.idaho.legislature.gov](http://www.idaho.legislature.gov).

**Representative Luker** moved to approve the committee's minutes from the October 17, 2013, meeting. The motion was seconded by **Senator Lakey** and passed unanimously.

**Mr. Daniel Chadwick, Executive Director, Idaho Association of Counties** reported that the ICJC subcommittee on misdemeanors and reclassification met for the second time yesterday. The subcommittee's report will be filed December 13, 2013, and recommendations will be presented during the 2015 legislative session. He noted that subcommittee members **Ms. Holly Koole, Ms. Sara Thomas, and Ms. Monica Hopkins** were in the audience and willing to answer questions.

**Co-chair Representative Bolz** expressed thanks to **Mr. Chadwick** and subcommittee members for their hard work.

**Senator McKenzie** asked **Mr. Chadwick** if the subcommittee was looking at municipal codes. **Mr. Chadwick** replied the subcommittee did review the municipal codes. **Senator McKenzie** followed up, asking how the recommendations will be presented in the report. **Mr. Chadwick** replied the report will list the specific recommendations.

**Representative Luker** asked if the subcommittee discussed raising the infraction fine threshold of \$100, as there may be a desire to raise the threshold. **Mr. Chadwick** replied the threshold level was not discussed. **Senator Lakey** stated support for **Representative Luker's** suggestion to explore raising the infraction fines. **Mr. Chadwick** agreed to look into the matter.

**Co-chair Senator Mortimer** referred the members to the meeting discussion points and asked if they wished to adopt the ABA Ten Principles as guidelines.

**Representative Luker** stated the principles are good broad guidelines, but should be used as “guidelines without mandate.”

**Co-chair Senator Mortimer** introduced **Mr. David Carroll, Executive Director, Sixth Amendment Center**, who was participating telephonically, and asked for his opinion on the role of the principles. **Mr. Carroll** stated the principles are the parameters for ethical actions and the interim committee members are tasked with creating a system that fits within the parameters.

**Senator Lakey** agreed with **Representative Luker**, stating that it is best to look at them as a general agreement, while recognizing the need to include a good dose of reality. **Representative Bolz** concurred with **Senator Lakey's** comments. **Co-chair Senator Mortimer** recognized consensus from the members that the principles will serve as guidance moving forward through deliberations.

**Co-chair Representative Bolz**, addressing the issue of structure and organization, asked **Mr. Carroll** to provide more details related to the earlier estimated \$42 million cost for a countywide system. **Mr. Carroll** stated that it did not necessarily need to be a countywide system, but that \$42 million is a rough average cost, looking across the nation. A countywide system might be a bit more expensive. There are more efficient ways of doing it to bring the costs down a little. For instance, there are cost efficiencies to be had through regionalization.

**Senator Lakey** emphasized the importance of leaving the decision to the local entities. He opined some may want to use or create their own in-house system, so do not mandate the type of system. For smaller counties, they will want to pull together for efficiencies. We need to provide incentives for regional cooperation, particularly if our decisions precipitate an increase in costs they must absorb. Allow the counties to get together where appropriate and allow others to have in-house systems.

**Representative Luker** stated support for **Senator Lakey's** comments. He emphasized the importance of counties having skin in the game. Counties need to be in the loop regarding increased costs imposed on the public defense system. He suggested the members review the Minidoka County model and tweak it to provide greater incentive for counties to move toward this model.

**Co-chair Senator Mortimer** asked for more discussion on how we provide independence yet create responsibility. **Representative Luker** stated that the state can help through providing training and requiring certain levels of training. He advised separating out the cost of litigation in an effort to strike the right balance.

**Representative Perry** asked how the state would provide uniformity if counties are allowed to put into place structures that meet their unique situation. **Co-chair Senator Mortimer** stated that established regional boards could be the solution; they'd still be under the oversight board but enjoy independence at the local level.

**Senator Lakey** stated that he was comfortable with some type of oversight but wanted no budget control authority given to a regional board. He opined that should

be at the county level, while the regional board should deal with assessing the adequate level of training and staffing.

**Co-chair Representative Bolz** asked for **Senator Lakey's** thoughts regarding whether counties should have the option to adopt either an in-house or a contract system. **Senator Lakey** agreed that they should have the option. He stated he reviewed the Oregon contract, and though complex, he stated it was worthwhile to consider. He suggested developing sideboards where a contract would be appropriate. His county prefers the in-house model, but is not ready to throw out the contract system.

**Co-chair Representative Bolz** asked the members to look at the commission option set out in Appendix 12 of the *Final Report to the Idaho Criminal Justice Commission's Public Defense Subcommittee*. The final report is available online at: [http://www.idoc.idaho.gov/content/document/hoskins\\_final\\_report](http://www.idoc.idaho.gov/content/document/hoskins_final_report).

**Co-chair Senator Mortimer** asked if the possible governing or regional board was addressed in the report. **Co-chair Representative Bolz** stated the report presented proposed legislation that would set up a commission and it outlined who would be on the commission or statewide board.

**Representative Luker** stated that he had no problem with looking at a statewide commission for data collection and training. He stated that state funding needs to be put toward data collection and training, but cautioned against micromanaging.

**Senator Lakey** stated he was reluctant to create a state commission and was intrigued by a state association concept because they are self governed. He preferred laying out criteria via a sideboard with the association responsible for providing training.

**Co-chair Senator Mortimer** asked in the absence of a state commission, could the parameters of educational training be addressed by statute.

**Senator Lakey** suggested the criteria and the guidelines could be delineated in statute and broad sideboards should be provided. The association would be charged with making sure criteria and sideboards were met.

**Co-chair Senator Mortimer** asked how much the state would provide to the association. **Senator Lakey** stated that with the prosecutor's association a portion of funding comes from the POST Academy (\$100,000). Each county is assessed dues by county population. The total budget is roughly \$200,000. He suggested the state would provide an amount comparable to what the POST Academy provides to the prosecutor's association.

**Representative Perry** stated she was uncomfortable with the association concept, commenting that separate associations would continue the adversarial culture. She suggested they focus on parity. **Co-chair Senator Mortimer** asked **Representative Perry** what she envisioned. **Representative Perry** replied establishing one association or commission for both prosecutors and public defenders.

**Representative Luker** stated that regardless of whether it is an association or a commission, he emphasized the state is finally responsible. He stated that training is a good place to show what is important. He opined we need a commission with not too stringent a dictate. Let the commission gather data. This will show that as a state we are engaged in trying to solve the problem. He stated though he doesn't like new commissions, there is a need for this one. Regarding counties, he asked the members to review the red-lined version of proposed amendments to sections 19-859 through 19-863B, from the prosecuting attorneys.

**Co-chair Senator Mortimer** asked **Representative Luker** if the commission members would be volunteers. **Representative Luker** replied members would not be paid but would be reimbursed per diem for travel. Regarding composition, he suggested someone from judiciary, from the state bar (criminal law section), and a data collection specialist. He asked the members to look at the red-lined handout titled *19-859 – Public Defender Authorized – Court appointed Attorneys – Joint County Public Defenders*, referenced by **Co-chair Representative Bolz**. In subsection (a) he suggested amending the paragraphs so there would be three options:

(a)(1) Establishing and maintaining an office of public defender in the judicial district that they reside;

(a)(2) Arranging with one (1) or more other counties to establish and maintain a joint office of public defender; or

(a)(3) Contracting with an existing public defender office.

**Senator Lakey** stated he appreciates **Representative Perry's** sentiment regarding prosecutors and public defenders working together but he emphasized their goals are not similar. He recognized they do collaborate in the work setting but he didn't believe that one association would work.

**Representative Luker** emphasized that contracting with the individual private attorneys is the problem that needs to be addressed immediately. **Senator Lakey** suggested contracting under a joint powers agreement and setting up a funding mechanism, whether or not they set up a separate entity. **Representative Perry** asked **Senator Lakey** if he intended that counties could go in together and contract. **Senator Lakey** stated that is his intent.

**Co-chair Senator Mortimer** asked **Mr. Carroll** if he would provide examples of regional boards, where counties are given a good amount of autonomy to determine the appropriate delivery system. **Mr. Carroll** stated there are plenty of examples of this flexibility. He emphasized the importance of ensuring uniformity in standards. He thinks the regional board model needs more committee review. The public defender feels pressure to accept the budget when it is determined at the county level, but if the budget is determined by the state, the public defenders can negotiate and voice their concerns.

**Co-chair Senator Mortimer** asked how little counties are accommodated when they don't have an option to participate in a regional system nor contract with another county's public defender office. **Mr. Carroll** agreed it is difficult to find a means to get the struggling counties into the system. Perhaps consider a three- or four-county region supervised by a commission, where the average cost per case is determined

and there is a charge back to the county determined by how many cases they have. This might spur prosecutors and public defenders to more closely analyze how many cases move forward in the system. There are cost efficiencies to regionalize for the sake of the small counties.

**Co-chair Senator Mortimer** asked the members how the state can provide sufficient funding. **Representative Luker** referencing the *2012 Prosecuting Attorney Budgets by County* fact sheet and the *Public Defense Expenditures by County, 2012* fact sheet, noted that Butte County's public defender budget is roughly 25 percent of the county's prosecutors and in Custer County it is 50 percent. There are different tensions going on that a commission will have to deal with. The challenge is to recognize the independence of the counties for their budgeting, yet somehow get them up to standards.

The fact sheets can be reviewed at:

[http://www.legislature.idaho.gov/sessioninfo/2013/interim/defense0912\\_budgets.pdf](http://www.legislature.idaho.gov/sessioninfo/2013/interim/defense0912_budgets.pdf).

[http://www.legislature.idaho.gov/sessioninfo/2013/interim/defense0815\\_chadwick2.pdf](http://www.legislature.idaho.gov/sessioninfo/2013/interim/defense0815_chadwick2.pdf).

**Co-chair Senator Mortimer** asked if the tables he referenced reflect caseload data.

**Representative Luker** replied that the tables indicate only county population.

**Co-chair Senator Mortimer** followed up, asking if any of the counties came close to 64 percent, which is Oregon's overall average. **Representative Luker** replied Canyon County is 50 percent and Ada County is 58 percent. By great contrast, Bannock County spends more on public defenders than prosecutors.

**Co-chair Representative Bolz** asked **Mr. Chadwick** if he has received feedback from any counties regarding their preferred delivery systems. **Mr. Chadwick** responded that Kootenai, Ada and Canyon counties stated their preferences, but by and large, there has not been much conversation; they have all simply voice their basic concerns.

**Representative Luker**, referring to his earlier stated three delivery options, asked **Mr. Chadwick** if this will provide the incentive to find something that will work for them. **Mr. Chadwick** noted that the option of contracting was left out. He stated that they may not be willing to give it up. **Representative Luker** suggested establishing a requirement for cooperative efforts, employing Minidoka County/Cassia County delivery system as the model. **Mr. Chadwick** commented that the requirement should also address standards.

**Senator Lakey** asked **Mr. Chadwick** if he thought the counties are following the statute-mandated requirement regarding who hires and who appoints. He stated he did not think they all were. **Mr. Chadwick** responded, stating that it is dependent on the situation. He did not think there is absolute compliance. He also stated that he did not think there is a two-year review going on anywhere.

**Representative Luker** advised not to hamstring the counties too much - consider cooperating or contracting by judicial district instead of by county. **Mr. Chadwick** stated that practically, cooperation or contracting should be done on a regional basis by judicial districts.

**Senator McKenzie** stated that the wide disparity across districts or counties results from two things: no oversight body that sets down principles and funding. He commented that this committee can address oversight at the state level but we still have to address the funding challenge. He suggested we look at Montana's model and apply it to Idaho. Idaho's current spending is \$21 million. Implementation of the Montana model increases spending to \$38 million. He asked how do we put in place an oversight body and then tell the counties their costs are going to go up.

**Senator Lakey** suggested that any mandated requirements put forward by the oversight body be constrained to mandating required years of experience, but not mandate hourly rates.

**Co-chair Senator Mortimer** suggested that members first reach consensus on regional structures and then move on to standards, budgets and the rest.

**Representative Luker** responded that he did not want seven regional commissions but did support more cooperation between adjacent counties. He advised amending section 19-859, Idaho Code, to give counties the three options he mentioned earlier. Once the options are selected, that would be the time to work out the budgets; this is a better approach than mandating everything and it provides the incentive for counties to possibly come together and discuss solutions that might work for them. He stated that standards can't be addressed in a statute. He emphasized the potential efficiencies if counties can get there.

**Co-chair Senator Mortimer** asked about managing those counties who do not want to cooperate. **Representative Luker** stated that the three-option approach creates the opportunity for discussion, while not forcing them to do it one way. He proposed the state will help them with training, as well as provide some sort of conflict assistance. He cautioned not to divorce counties from funding of the public defender offices - they must have skin in the game. **Senator McKenzie** supported the viability of a plan that ties together the three option approach laid out by **Representative Luker** with standards set in place that reflect the ABA Ten Principles.

**Senator Bayer** agreed with **Representative Luker** that is important counties have skin in the game. He asked for more details regarding the role of "enforcement authorization." **Representative Meline** stated that prosecutors set up their guidelines through their training.

**Representative Luker** agreed that much will come from training and reiterated the importance of data collection and the training of public defenders. In order for a commission with state authority to be successful, it needs to be compact, not unwieldy. The counties would not be burdened with enforcement, except for funding. Also, counties would enjoy some relief because the state will fund the training. He stated that he saw this as the partnership. The commission should not be responsible for enforcement, as that would be covered under the certification process through the state bar.

**Representative Meline** commented that all the counties are in trouble; smaller counties need better attorneys and bigger counties are working on overload.

**Representative Perry** followed up, stating that compliance and enforcement is not happening now and that's why the interim committee is here. She stated her support for a commission of some sort and she supports a regional idea.

**Senator Lakey** stated he was not in favor of the commission system, unless its responsibilities are narrowly defined. If broad standards are established at the state level, some also should be established at the county level. When it comes to standards, counties need flexibility for caseloads. The state should define training and direct the establishment and development of the Ten Principles. He agreed a local oversight committee can help monitor training standards. He remarked the association is a good idea if it is self governed and the state would assist in funding the association.

**Co-chair Representative Bolz** asked **Senator Lakey** if he thought the standards should be defined by statute or by rules. **Senator Lakey** responded that the rules process may allow for an easier process for making adjustments as necessary. He suggested addressing training by statute and specifically empowering the local level to handle the specific details. **Representative Perry** commented setting up a system that promotes equity for every citizen is paramount; create consistency across the states for citizens.

**Representative Luker** agreed with **Senator Lakey**, limit the duties of the commission to training and data collection. Do not address standards because counties should be aware of their broad responsibilities. Each county has different caseload needs. He stated training is the key element to get things up and going. We don't need to decide what training is appropriate, instead first establish a group that looks at training needs and looks at state funding to make it happen.

**Co-chair Senator Mortimer** asked **Representative Luker** if he meant to fund training without standards. **Representative Luker** stated that a distinction should be made regarding professional standards.

**Senator McKenzie** opined that a good model will provide a centralized setting of standards with local implementation. A commission should be responsible for more than training and data collection. A commission would set the minimum standards on how the indigent defense system will work uniformly across the state.

**Senator Bayer** restated that ensuring independence and preserving local control are the issues and he asked for more clarification regarding the specific mission of the interim committee. **Senator Lakey** responded that the new standards have increased significantly the caseloads and more time will be needed to assess all the impacts. He stated there needs to be a review of the prescreening process for the eligibility without mandating how it is to be done or its outcome. **Representative Meline** followed up, stating that the prescreening forms have been improved and are in place. She stated her county collects a good amount of money. **Senator Bayer** commented that prescreening is a good area to focus on as it is ground zero for the budget.

**Senator McKenzie** stated that it may not be fixable right away because of the need for early appointment of counsel. He believes improving collection is probably a county and district issue.

**Representative Perry** noted that **Representative Bayer** suggested the Health and Welfare Department's standard should be a guide for the eligibility standard for indigent defense. She explained that in a recent draft she authored the subsidy recipients of the health care exchange will not be excluded from eligibility consideration for access to indigent defense. **Representative Luker** commented there is an immediate need to implement an assets test as part of the eligibility process.

**Co-chair Representative Bolz**, recognizing there is consensus regarding the need for county flexibility, asked what types of county delivery system work best and do we allow for regional or multicounty systems. **Representative Luker** stated that the way to avoid flat fee contracts is to require counties that choose not to do their own public defender offices to combine with other counties on their own terms. He emphasized that one of the requirements should be that public defenders are full time. He stated that he didn't support forcing regional oversight.

**Co-chair Representative Bolz** agreed that it should be left to the county to decide. **Senator Lakey** agreed with **Representative Luker** and with **Co-chair Representative Bolz** that there must be ongoing flexibility for the counties. **Co-chair Senator Mortimer** asked how unmotivated counties can be inspired to enter into one of these public defense delivery systems. **Representative Luker** stated that counties must rise to meet the standards. Give the counties the flexibility to choose the system that fits best for them but, if they fail to choose, take the next step.

**Senator Bayer** stated support for finding the common denominators and then funding them. He pointed to training and establishing a data hub. This process ensures a partnership relationship with the counties.

**Representative Meline** restated that counties always struggle with determining who is indigent. She asked **Mr. Chadwick** if qualification checks are in place for high profile cases, observing that in capital cases there are state standards for public defenders. **Mr. Chadwick** stated that counties will look for public defenders with more experience in high profile homicide cases and other complex cases, but that they don't do it consciously. **Representative Meline** followed up, observing that when budgets are being considered, judges aren't shy to explain that the present defense system allows for poor representation. **Mr. Chadwick** agreed that this is an ongoing saga, the present system struggles forward with inexperienced, under-qualified public defenders.

**Co-chair Senator Mortimer** emphasized that the issue of determining eligibility for indigent defense will be addressed but today he encouraged the members to address structure and standards. **Representative Perry** suggested creating a small, centralized oversight commission because we're not meeting the constitutional requirement.

**Senator Lakey** stated that he supports setting up certain standards at the state level but not the creation of an entity that would provide training. Perhaps set up an association that the state funds but where the professionals govern themselves. He advised directing that the standards be created at the local level.

**Co-chair Senator Mortimer** asked **Mr. Carroll** to summarize the commonalities he's discerned from listening to the committee discussion. **Mr. Carroll** responded that he observed the members support county flexibility to determine at the local level the appropriate delivery system. With Class B contracting, the committee understands that something needs to be done either through code or by rule. He stated the committee is struggling with identifying the appropriate mechanism to ensure that the work is getting done at the local level. Counties must be held accountable to the choices they make in prosecuting the number of cases they do. Other states have set up statewide conflict systems. He emphasized struggling with these options is a beneficial part of the process. He stated that there appears to be consensus that the delivery service should be flexible and local. And, there appears to be no consensus regarding how to ensure independence and provide uniformity in training, in promulgation and enforcement.

**Representative Luker** agreed with **Senator Lakey**, the commission should be a training standards commission to ensure uniform training. The commission should also be in charge of data collection and synthesizing. He stated that he believes the Legislature can recommend funding to help counties with training, whether it's per attorney or through an association.

**Co-chair Senator Mortimer** asked whether the commission strictly sets out the guidelines. **Representative Luker** stated the guidelines have to come from somewhere. The commission would have a narrow focus and be under state purview. **Co-chair Senator Mortimer** followed up, asking if the commission would be legislative based. **Representative Luker** stated that commission members should be people who are versed in what training is needed. **Co-chair Senator Mortimer** asked how that fits with the priority of local control. **Senator Lakey** answered, stating that the devil's in the details. He does not want the commission charged with developing standards and operating at the local level, but other than that stipulation, he supports a commission with a narrowly defined focus. **Co-chair Senator Mortimer** added that he would want to make sure commission doesn't have the option to grow past its legislative intent. **Senator Bayer** concurred, emphasizing that the responsibilities must be well define, as well as the state role.

**Co-chair Senator Mortimer** set the meeting at lunch recess and encouraged the members to come back from lunch ready to frame the structure of a state commission. **Co-chair Representative Bolz** reminded the members to review the handouts because they will prompt more ideas and discussion.

## **Lunch Recess**

The members were asked to review *Handout Public Defense Subcommittee Proposed Legislation – New Section 19-876*.

**Representative Luker** accepted **Co-chair Senator Mortimer's** request to anchor the committee effort to revise New Section 19-876. After lengthy discussion, the following language was agreed upon by the members:

**19-876. CREATION – APPOINTMENT – QUALIFICATIONS – TERM –**

**COMPENSATION.** (a) The state public defense commission is hereby created in the department of self-governing agencies.

(b) The commission shall consist of seven (7) members appointed by the governor as follows:

- (1) One (1) representative from the Idaho association of counties;
- (2) Two (2) representatives from the legislative branch, one (1) from each house;
- (3) One (1) representative designated by the chief justice of the supreme court;
- (4) One (1) representative of the Idaho state bar who is a practicing attorney and has had experience as a public defender;
- (5) One (1) representative from the state appellate public defender's office; and
- (6) One (1) representative from the juvenile justice commission.

(c) Initial terms of members of the commission appointed shall be as follows:

- (1) The representatives from the Idaho association of counties, Idaho state bar, juvenile justice commission, and state appellate public defender's office shall serve terms of two (2) years; and
- (2) The representative designated by the chief justice of the supreme court and the representatives from the legislative branch shall serve terms of one (1) year.

(d) Subsequent terms of members of the commission shall be for two (2) years.

(e) No member of the commission, other than members from the legislative branch shall be a currently serving prosecutor or employee of a law enforcement agency.

(f) A vacancy on the commission shall be filled in the same manner as the original appointment in a timely manner.

(g) Members of the commission may not receive a salary for service on the commission but may be reimbursed for expenses while engaged in the discharge of official duties.

(h) The commission shall appoint for a certain term a chairperson and a vice-chairperson from its membership.

**19-877. POWERS AND DUTIES.** *The state public defense commission shall consult with or train county commissioners about the provision of, or contracting for, indigent defense services and:*

- (a) Promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, establishing the following:
  - (1) Training and continuing legal education requirements for attorneys providing indigent defense services, which shall promote competency and consistency in case types such as criminal, juvenile, abuse and neglect, civil commitment, capital, and civil contempt; and
  - (2) Uniform data reporting requirements regarding indigent defense caseload, workload, and salary and costs of litigation expenditures relating to indigent defense services.
- (b) Study and recommend to the legislature (and finding):
  - (1) Core requirements for contracts between counties and private attorneys and between two (2) or more counties for provision of indigent defense services as well as model contracts for counties to utilize conflict cases and flat fees; and

- (2) Qualifications and experience, standards for attorneys providing indigent defense services.
- (3) For purposes of this section, “case” means ...

In order to force a date certain to make recommendations to the Legislature for legislative action/inaction, the members discussed including a sunset date for section 19-877(b). Additionally, they discussed creating a new chapter to group the sections effectively. The chapter would begin with a short title section.

*Discussion relating to the amendments made above to sections 19-876 and 19-877:*

**Representative Luker** asked **Mr. Henderson, Idaho Supreme Court**, if the Supreme Court could shed some light on the role the court could play in data collection. **Mr. Henderson** replied they can look at doing the data collection. He stated that they'd have to get on it soon in order to incorporate it in to the programs they have contracted for. In terms of coordinating the collection, we can look at that but sometimes it is handy to have an employee solely in charge.

**Representative Luker** asked about using the data collection platform already in place. **Mr. Henderson** stated that it is a question of timing. Odyssey will not be up statewide for another year and a half (March 2015), so you might want to collect data before then. There will be added expense if you wanted to get started now because of the way the contract is set up. It's doable if we're talking about three years down the road.

**Representative Luker** stated there is no reason to spend money on the old system. He suggested that the committee take the long view.

**Co-chair Senator Mortimer**, noting that Odyssey was designed to be used by both the prosecution and the defense, asked **Mr. Henderson** to pursue this suggestion. **Mr. Henderson** agreed to take the suggestion back to his group. **Co-chair**

**Representative Bolz** followed up, stating we're looking three to five years out, but a minimum of three years.

**Senator Bayer** stated the committee should consider that part of the process should include Senate confirmation. **Co-chair Senator Mortimer** asked **Ms. Brouman** to review what has been done in the past and report back to the co-chairs.

**Co-chair Senator Mortimer** asked if there was any more discussion needed regarding either training or data collection.

**Representative Luker** stated there is a benefit to a uniform definition of the term “case.”

**Mr. Henderson** reiterated that data collection could be difficult because of workload. Nothing in the system will tell us how many hours are involved. That will have to come from the counties. And Odyssey won't be able to assist with expenditures, as it is data that has to come from the ground up.

**Co-chair Senator Mortimer** asked **Mr. Henderson** if he knew of any other program we could piggy back. **Mr. Henderson** stated that it varies widely around the state if and what they're keeping track as it relates to case hours. **Mr. Chadwick** followed

up, stating that the Association of Counties is gathering data on an ad hoc basis. The point of putting the provision in was to get a methodology in place. **Co-chair Mortimer** clarified, asking if we come up with the data points, then we can hope to have that collected via the Association of Counties and **Mr. Chadwick** assented.

**Representative Luker** stated agreement with the placement of sideboards and suggested that legislative staff can be enlisted to help. He supported the use of a "data matrix." He restated it is important not to mandate the program but to lead the offices down the same data collection path. **Representative Perry** concurred, stating the importance of establishing a standardized methodology.

**Co-chair Senator Mortimer** asked **Mr. Carroll** to address the data collection methods used in other states. **Mr. Carroll** indicated that lots of states are moving to time tracking, it is more and more the way public defender offices are going. In Louisiana, the public defender board recently instituted time tracking. He advised the committee to require the definition of case, as well as make certain that case load numbers are being uniformly tracked. He added that the commission should identify the data matrices.

**Ms. Thomas** pointed out that the Idaho Supreme Court is finalizing the criminal case definition. She stated her support time tracking by public defenders. Her office has been doing time tracking by the tenth of an hour for some time. **Senator Lakey** stated that he wants more input from the public defenders before making a decision on time tracking. **Representative Luker** stated the commission should be given the authority to collect and analyze data.

**Co-chair Representative Bolz** advised that when contract requirements are discussed the committee should consider if it is beneficial for the counties to have a standardized contract. **Representative Perry** asked how the committee can effectively communicate the direction that flat fee contracts can't be used. **Representative Luker** suggested that the mandate should be taken up when we look to defining the delivery system. He stated we can put a few sideboards in that relate to contracts. **Senator Lakey** agreed. **Representative Perry** stated there needs to be minimum qualifications noted. **Senator McKenzie** agreed there should be minimum qualifications and suggested the commission could apply the minimum conflict counsel standards.

**Co-chair Senator Mortimer** asked how do we set standards yet provide flexibility when each case is so different. **Senator Lakey** clarified he doesn't want the commission to do some of these things; for instance, "performance standards" are too broad. Also, the commission shouldn't determine caseload, each county is different, and this should be developed at the local level.

**Representative Perry** agreed on the performance standards and stated guidelines for qualifications should come from the commission. **Representative Luker** stated he has no problem with the commission making recommendations to the Legislature on qualifications but not rulemaking.

**Co-chair Senator Mortimer** stated basic qualifications and experience should be set depending on the case, and they need to be more general than specific. He

continued, stating there is valid concern about the ability to get that quality in certain counties.

**Co-chair Senator Mortimer** asked if there was concern that the definition of “case” and the qualifications/experience providing indigent services is too broad.

**Senator Lakey** recapped, stating that in (5)(E) “performance standards” is struck. He stated that this should be handled by the Legislature through statute, not with the commission. **Representative Perry** stated the commission should decide and the Legislature would review the rules.

**Representative Luker** suggested that (5)(E) should be broken out from the rules and add a new paragraph (6) to address minimum qualifications.

**Senator McKenzie** asked how the committee would reach consensus. **Co-chair Senator Mortimer** stated that the members would review a draft that will incorporate the revisions agreed upon and then work toward consensus.

**Co-chair Senator Mortimer** agreed with **Representative Luker’s** suggestion and thought it proactive.

**Representative Luker** stated that the members might consider doing the same with paragraphs (D) and (F). **Co-chair Senator Mortimer** stated he struggles with (F), and would like to delete (F) completely at least right now.

*[The above discussion and suggestions were folded into section 19-877. Subsections (5) (D), (E) and (F) are now amended subsection (b) (1), (2) and (3).]*

**Co-chair Senator Mortimer** asked the committee to review the red-lined handout that includes the recommendations made by prosecuting attorneys, 19-859 – *Public Defender Authorized – Court Appointed Attorneys – Joint County Public Defenders*.

**Representative Luker** restated the three options in Section 19-859(a) agreed to during the morning meeting, and suggested adding the underscored words below:

- (a)(1) Establishing and maintaining an office of public defender in the judicial district that they reside;
- (a)(2) Arranging with one (1) or more other counties to establish and maintain a joint office of public defender within the same judicial district;
- (a)(3) Contracting with an existing public defender office of another county; or
- (a)(4) Two (2) or more counties joining together in a joint contract of representation with a full-time public defender.

**Representative Luker** reemphasized the importance of placing restrictions on individual flat fee contracts. **Senator Lakey** asked if, under subsection (a)(4), a single county would be able to contract as long as it is not a flat fee contract.

**Representative Luker** replied the single county would contract with the existing public defender office. **Senator Lakey** stated it was unlikely a small county would contract with a dedicated public defender office. As long as the criteria are met, one county should be able to contract with another county.

**Co-chair Senator Mortimer** asked if there is enough work to gainfully employ a public defender when two very small counties are involved. **Representative Luker** suggested they look at a three-county model. **Co-chair Senator Mortimer** observed that with three counties there might be enough work for one full-time public defender

but his travel requirements and per diem expenses would be prohibitive. He agrees that full devotion to task is best, but asked at what cost.

**Representative Luker** suggested that one option is funding these counties through the rural assistance fund, if they meet criteria.

**Co-chair Senator Mortimer** asked **Mr. Chadwick** for his thoughts on this issue. **Mr. Chadwick** stated that it depends on the network of counties under review. Options for small, rural counties must be addressed.

**Co-chair Senator Mortimer** asked **Ms. Brouman** to note a sidebar on (4) as it relates to dealing with rural counties from a funding and organizational standpoint.

**Co-chair Representative Bolz** suggested requesting input from those counties that are quite rural. Let's survey and consider their ideas. **Co-chair Senator Mortimer** noted that our justices already travel to those remote counties.

**Representative Luker** stated that the committee needs to decide if it wants a full-time public defender as an operating concept. **Senator McKenzie** agreed with **Co-chair Representative Bolz's** suggestion to have discussions with the small counties. **Co-chair Senator Mortimer** asked **Ms. Brouman** to make a side note.

**Representative Luker** suggested that until we can decide on the full-time public defender issue, the committee should move on to discuss the role cities play. **Senator Bayer** asked for an interim committee timeline, as it relates to the legislative session.

**Co-chair Senator Mortimer** noted there was general consensus on some of the issues today and suggested that perhaps the committee make a list of questions that still need to be addressed and make special note to discuss funding. He also asked the committee to consider meeting one more time to review what has been considered today and come up with additional questions to give the appropriate legislative committees. **Co-chair Representative Bolz** stated that they need to visit with leadership, to decide whether the committee goes forward now or holds for a future session.

**Representative Meline** stated the importance of talking to the county officials and find out what's going on in the smaller counties. **Representative Perry** asked if it is possible to make exceptions using a population cutoff, perhaps leaning toward one direction but make exceptions as needed. **Co-chair Senator Mortimer** agreed with this idea and asked **Senator Lakey** for suggestions on structure-related issues that still need to be discussed. **Senator Lakey** stated he doesn't want to mandate caseload numbers but recognizes we must put into law standards that give counties direction.

**Co-chair Senator Mortimer** asked for suggestions regarding how we accomplish this. **Representative Meline** proposed creating an association for public defenders.

**Representative Meline** suggested that the idea of forming a public defenders association be brought up in the discussions with the counties. **Representative**

**Luker** stated he did not see the need for an association. **Senator Lakey** recognized the benefit to an association but stated that he did not want the participation in an association to be mandated. **Co-chair Senator Mortimer** noted that there would be an incentive to create an association if funding is provided and he invited **Ms. Koole**, Idaho Prosecuting Attorneys Association, to explain in more detail how the association receives funds from the POST Academy. She stated the funds must be used specific to training and it must be dedicated to certain types of training.

**Representative Luker** asked **Ms. Koole** for more history related to this funding and to address how long it has been in place. **Ms. Koole** responded the funding support began in the 1980s. **Representative Luker** asked what percent of funds were for training law enforcement versus for prosecutors. **Ms. Koole** agreed to provide that information.

**Co-chair Senator Mortimer** recognized **Mr. Chadwick**, who reminded the committee that there is a public defender association, as public defenders are members of the Idaho Criminal Defense Lawyers Association and suggested making funds available for public defender training should be a priority. **Representative Meline** asked if public funds are available. **Mr. Chadwick** answered no, public funds are not available.

**Co-chair Senator Mortimer** opened the floor for other topics to address. **Representative Luker**, referring to the handout *Alaska Statute – A.S. 18.85.155 Payment By Municipality*, noted that as is done in Alaska, some associated costs should be contributed by the cities. **Senator McKenzie** suggested shaping up the misdemeanor classification disparity between the city and county. **Representative Luker** asked if a study group will help us move forward with this issue. **Senator McKenzie** replied there needs to be a mechanism in place to collect and track the data in order to move forward. The information provided by the courts is broken down by offense. **Representative Luker** made a motion to recommend the creation of a legislative study committee to look at the possibility of municipal participation in public defense services. The motion was seconded by **Representative Meline** and passed unanimously.

After discussion with the members, **Co-chair Senator Mortimer** set Wednesday, January 8, 2013, from 4:30 p.m. to 6:30 p.m., Room WW17, for the time and place for the next meeting.

**Co-chair Senator Mortimer** adjourned the meeting at 4:00 p.m.