

**MINUTES**  
**Approved by the Committee**  
**Public Defense Reform Interim Committee**  
**Tuesday, January 14, 2014**  
**4:00 P.M.**  
**Capitol Building, EW20**  
**Boise, Idaho**

**Co-chair Senator Dean Mortimer** called the meeting to order at 4:07 p.m. and requested a silent roll call. Other members present were: **Co-chair Representative Darrell Bolz**; Senators Cliff Bayer and Todd Lakey; Representatives Lynn Luker, Christy Perry, Janet Trujillo and Carolyn Meline. Senators Curt McKenzie and Cherie Buckner-Webb were absent and excused. Legislative Services Office staff members present were Brooke Brouman and Charmi Arregui.

Others in attendance included: Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Richard Eppink, ACLU; Judge Barry Wood and Patti Tobias, Idaho Supreme Court; Judge Jack Varin, Juvenile Justice Director; Jared Hoskins, LSO Budget and Policy; Daniel Chadwick and Seth Grigg, Idaho Association of Counties (IAC); Jan Sylvester; Sara Thomas, State Appellate Public Defender (SAPD); and Bob Ehlert, Idaho Statesman.

NOTE: Copies of the two drafts on the agenda, reference materials and handouts are on file at the Legislative Services Office.

**Co-chair Bolz moved to approve the committee's minutes from January 8, 2014, seconded by Representative Meline, and the motion was approved unanimously by voice vote.**

**Co-chair Mortimer** invited **Representative Luker** to address his revised draft SBB054. This draft has to do with making modifications on the front-end, trying to transition misdemeanors into infractions. **Representative Luker** said that the only change since the last meeting was on page 1, lines 34-36. This addition of section (3) under 18-113A had been discussed at the previous meeting and was added to this draft. **Representative Luker** asked for the support of the committee on this draft, and there were no comments. **Representative Luker** asked if that meant unanimous consent to support the draft. **Co-chair Bolz asked for a unanimous consent (on record) that this committee supports this draft moving forward. There were no objections, and Co-chair Mortimer announced this unanimous consent request was approved.**

**Co-chair Mortimer** moved to the next agenda item, revised draft SBB049, and he asked **Ms. Brooke Brouman**, Principal Legislative Research Analyst, to go over the revisions made since the last meeting.

The changes to SBB049 were as follows:

1. **Ms. Brouman** called attention to page 1, lines 27-28, 19-849(c) (State Public Defense Commission) which read: "(c) Four (4) representatives appointed by the governor and confirmed by the senate as follows:"
2. On page 2, lines 5-7, 19-849(3) which read: "Thereafter, gubernatorial appointed members of the commission shall serve a term of three (3) years and all other members of the commission shall serve a term of two (2) years." Those terms are staggered, she said.
3. On page 2, 19-850(a)(i) on line 24, the words "post-conviction" were added.
4. On page 2, 19-850(1)(b) on lines 29-31, provided a date by which the commission must make recommendations and clarified that it shall "make recommendations to the legislature for legislation"
5. On page 2, 19-850(1)(c) on line 42 this was added: "(c) Hold at least one (1) meeting in each calendar quarter."

6. On page 2, 19-850(2)(a) on lines 43-48 were added; on page 3, 19-850(2)(b)-(c) lines 1-10 were added.
7. On page 4, 19-859(1) on line 4 these words were added: "one (1) of the following:" for clarification.
8. On page 4, 19-859(1)(d) lines 13-15 now read: "Contracting with a defending attorney, provided that the terms of the contract shall not include any pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney." This was revised per the committee's discussion – county may contact with any defending attorney but no flat-fee contracts; and
9. On page 4, 19-860(1) on lines 37-38 language was removed that set a term of office for the public defender.

**Co-chair Mortimer** thanked Ms. Brouman for her work on this draft.

**Representative Bolz** commented that he had checked with Dan Chadwick about 19-862(1)-(2), page 5, lines 40-45, and on page 6, lines 1-2, having to do with contributions to counties. Mr. Chadwick told him that he wasn't aware of any donations having ever been given to counties, but he saw no harm in leaving the language there.

**Representative Luker** referred to page 2 of draft SBB049, 19-850(1)(b)(iii), under powers and duties of the state public defense commission. On lines 37-41 about funding there were three recommendations listed, and he said that may be unduly restrictive, so he suggested putting there the words "including but not limited to" language so that if the commission does see areas where funding would be appropriate, that would give flexibility to make those recommendations. He also suggested nailing down enforcement, adding that this might be another area for the commission since they are looking at core requirements to make recommendations on enforcement of those requirements.

**Co-chair Mortimer** wondered if this could be added in an "other" provision or as a fourth provision so that the commission has the ability to make recommendations on some other category besides core requirements, qualifications and funding. **Co-chair Mortimer** said he hoped that the commission would look at recommendations for enforcement and other areas that would help them move forward with better public defense.

**Representative Luker** asked if an account section was needed in the draft so that the commission would have money for office supplies, stipends, etc. **Co-chair Mortimer** asked if the commission would need statutory authority to set up a funding account. **Ms. Brouman** agreed to look into this and whether statutory authority was necessary to expend funds authorized by the legislature. **Co-chair Bolz** referred to page one of draft SBB049 in 19-849 where it refers to self-governing agencies, wondering if that might be a place to start. **Co-chair Mortimer** added that the statute on self-governing agencies may give the commission the authorization to set up funding.

**Senator Lakey** asked Mr. Chadwick about language in code and in the draft on page 4, 19-859(2) on lines 18-24. He asked why that language was there and why does it need to reiterate that the counties shall be treated for the purposes of this act as if they were one (1) county. **Mr. Chadwick** responded that he did not know why that language was there, especially if you have joint powers of authority under the law; he said it might be redundant language. **Senator Lakey** asked, in the interest of lack of redundancy, is this needed in this draft at all. **Co-chair Mortimer** asked if this change should be made in this draft. **Mr. Chadwick** commented that this went back to Co-chair Bolz' comment about referencing the appropriate joint powers statute and that is all that would be needed. **Co-chair Mortimer** asked Ms. Brouman to make that change in the draft and she asked if he was requesting that 19-859(2) be removed altogether. **Senator Lakey** said; "I think so, since all it is saying is that if you establish a joint office, then you are treated as one county and it doesn't really serve any purpose." **Representative Luker** commented that in this section the joint powers

reference was going to be mentioned, so he thought that something needed to be left to reference joint powers, but take out the last part. **Ms. Brouman** said she thought it needed to be added to 19-859(1)(b) on page 4. **Co-chair Mortimer** said: "So noted."

**Co-chair Mortimer** asked Mr. Jared Hoskins, LSO Budget and Policy Analyst, to address the committee with regard to his handout on draft scenarios dealing with funding the public defense commission. **Mr. Hoskins** had put together figures that were not set in stone, but a way that policymakers can make decisions and help fill in blanks. He said that there would be four main costs: (1) personnel costs; (2) operating expenditures; (3) capital outlay costs; and (4) trustee and benefit payments. He looked at various agency-sizes for samples of director salaries, as well as costs, repair and maintenance services, administrative services, computer services, administrative supplies, computer supplies, insurance, rentals and operating leases to come up with average and median totals. He said it would be up to the committee as to an estimated amount for the director of the public defense commission, and whether or not that person would be required to be an attorney. He shared possible salary amounts, as well as fixed and variable benefit amounts. He also calculated commission travel expenses including mileage, meals and lodging. **Mr. Hoskins** said that a main decision to be made is where the commission is going to be housed and, therefore, how much rent could be estimated. Who would be doing the budgeting and other support services for the commission, such as computer support? **Mr. Hoskins** said that he and Sara Thomas had talked about possibly housing the public defense commission near the office of the State Appellate Public Defenders (SAPD). There is office space available adjacent to them that could house 1-3 employees, costing about \$1,200 monthly, and they would be in close proximity to each other. They could possibly share a conference room and chip in for IT support and other administrative costs.

**Mr. Hoskins** said that another consideration for the committee would be the amount spent for training costs, and he looked at the appropriation given to the Idaho Prosecuting Attorneys Association (IPAA). The POST Academy gets an appropriation in the amount of about \$95,000 annually to go to the IPAA for training costs. Representatives from IPAA said they have two parts in their budget, a business administration-type budget that covers personnel and also a budget for training. It was his understanding that the sole source of those training funds is this appropriation from POST. There is an additional request of another \$10,500 for this year's budget request and also recommended by the Governor. Assuming that is appropriated by JFAC and the legislature, the total would be about \$105,900 annually that IPAA gets for training. It would be up to this committee to make a recommendation as to the amount for training, to be considered by JFAC.

**Co-chair Mortimer** said he did not see a training amount in the handout and **Mr. Hoskins** referred to Draft Scenario 4 under "Trustee & Benefit payments" where he explains about training costs. **Mr. Hoskins** explained the reason it was under that heading was that it was set up this way in the POST budget. If the commission handled this training directly and paid for it directly, it could be included under operating expenses.

**Co-chair Mortimer** asked Mr. Chadwick if the counties were paying more for education than what was being allocated. **Mr. Chadwick** said he had just discussed with Mr. Seth Grigg as to whether IAC had that data available, and he said this might be another survey of counties for this committee. He said he could not give a number on that, but he said that survey could be done with regard to education for public defenders. The prosecutors could tell the committee what their training budgets are. **Co-chair Mortimer** said he would like that information. **Mr. Chadwick** didn't think that counties were currently spending more on public defenders than what was allocated. **Ms. Holly Koole**, IPAA, said that anecdotally this would be different from county to county. Most counties get all training and CLEs (continuing legal education) for prosecutors through IPAA because they cannot afford to send prosecutors to any other training. That is why they have IPAA to provide those CLE credits that pertain to the field of prosecutors. Bigger offices might send prosecutors to national training; she said that would be very unlikely for smaller counties. Most prosecutors use IPAA to get all their CLEs for their deputy prosecutors.

**Representative Luker** asked about the IPAA contribution and wondered if the state contribution was about half of what is expended, what the total budget is, and where the rest of that money comes from. **Ms. Koole** said it is about half, and that has to be supplemented through dues. All prosecutors' offices in counties pay dues to the IPAA (on a proportional scale based on population etc.). Ada County pays a lot more into IPAA than a smaller county. That is where the rest of the money for training or to supplement pay for the executive director comes from. **Ms. Koole** said that the amount IPAA receives from POST is not without strings attached. IPAA has an MOU (memorandum of understanding) with POST and they provide training to police officers; POST officers must be trained, and they come to IPAA as well. Various training is involved with POST-allocated money going to IPAA.

**Senator Lakey** said he had checked with a county prosecutor who said that most training was through IPAA and there isn't much of a travel budget. He said he anticipated that in-house, public defenders do have a training budget since attorneys are required to get CLE credits. So, it would be a matter of how much training would be covered and reimbursed.

**Representative Meline** said she didn't ever recall, when contracting out, whether public defenders went to training or not, and she wondered how many commissioners know how many are going for training. **Senator Lakey** agreed, and said that when he was a county commissioner, he didn't keep track of whether public defenders went to training. However, to keep their license, they must go to training, so he knows they do go. **Representative Meline** asked where they would go to training and Senator Lakey replied that they would go to the various CLE seminars offered around the state; most are going in-state, since out-of-state training costs so much more. **Co-chair Mortimer** added that training may or may not be public defender training, but could be legal training. **Senator Lakey** said that was technically true, but if a firm focuses primarily on defense, that firm would want their attorneys to be sharp and well trained on criminal defense. A civil practice may focus on something else.

**Ms. Sara Thomas**, Idaho State Appellate Public Defender, addressed the committee and she clarified about training and problems in Idaho. The Idaho Association of Criminal Defense Lawyers (IDACDL) does provide annual training including one-day training three times annually and a two-day training every March. Public defenders actually go to that training and they bring in top-notch national speakers. She asked the committee to take into consideration that having no capital training in Idaho is a serious problem. Defense attorneys who handle capital cases actually have to have 12 capital credits every three years, and that training is not offered in Idaho. The federal defenders used to offer that training for free but, with budget cuts in the federal government, that is no longer being offered. Trial attorneys are required to go out-of-state to get that training and that is something we need to be very cognizant of. In addition to that, other free training is offered. The federal public defenders put on a training every year and **Ms. Thomas** said that her office can go for free. Brown-bag lunch training is also offered, so her attorneys go to public defense offices to provide an hour with a CLE credit. Members from her office can go to the federal defenders' office for lunch and training. **Ms. Thomas** said she had not had a training budget for five years and she didn't know if Ada County had one or not, but attorneys do attend some seminars throughout the year.

**Mr. Hoskins** said that the committee would have to decide the salary for the director of the commission, whether there would be any additional support staff, where the public defense commission would be housed, whether the commission would have its own office space or if it would share with another agency, and the amount for training. Those decisions need to be made and, once made, more detailed expenses could be determined; he said the estimated costs in his handout were very close for now.

**Representative Luker** asked Mr. Hoskins about personnel and variable benefits. **Mr. Hoskins** referred to Figure 2 in his handout and explained that variable benefits included FICA (Social Security and Medicare), unemployment insurance, life insurance, regular retirement rate, unused sick leave benefit, DHR fees, and workers' compensation. Fixed benefits include health insurance, medical,

dental, retiree subsidy, disability, flex spending, and administrative costs. For FY 2015 for full-time employees the variable benefits would be 21.69% of salary, and for part-time employees that rate would be 8.3%. He said the committee could add those percentages onto the gross salary amount to get variable benefit amounts. **Co-chair Mortimer** thanked Mr. Hoskins for his hard work that gave the committee a very good place to start a discussion on numbers.

**Co-chair Mortimer** asked the committee for input on what to recommend as a budget item for the first year for the public defense commission. Co-chair Bolz said that based on numbers in Figure 2 in Mr. Hoskins' handout, his estimation was as follows:

• Administrator salary including fixed & variable benefits	\$104,910.86
• Admin I salary including fixed & variable benefits	\$ 44,041.52
• Admin I (part-time) including variable benefits	\$ 14,903.16
• Rent estimate	\$ 20,000.00
• Travel	\$ 7,500.00
• Training costs estimate	\$110,000.00
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• <b>Total</b>	<b>\$301,355.54</b>

**Co-chair Mortimer** said that **Co-chair Bolz'** estimate was around \$300,000 and he asked if there was discussion or additional suggestions.

**Representative Perry** asked how the training money would go into the budget this year to start the commission. She wondered if Ms. Thomas had suggestions in that regard as far as funding; did it seem equitable to go ahead and use similar numbers as IPPA, or did she have other suggestions.

**Ms. Thomas** replied that it did seem equitable to have similar training money as prosecutors. The counties would hopefully be providing additional dollars in contracts or through their system. They may already be paying things like the Idaho Association of Criminal Defense Lawyers dues. It seemed reasonable and equitable to her that the state would pay equally for both sides, but she was not sure about distribution. It was her recommendation to the commission that people apply for scholarships and then have the commission pay for the training being provided by others.

**Representative Perry** said that information was helpful, and she thanked Ms. Thomas.

**Co-chair Mortimer** asked Ms. Thomas if she thought for a first-year budget that it would be necessary to allocate that full amount or less. **Ms. Thomas** asked if he was talking about FY 2015 and that was affirmed. She said this should be fully funded for the commission setup; there should be about six months for training available by the time the commission is up and running. She added that anything not used for training could be converted back, but at least that money would be available for people to go to the IACDL (Idaho Association of Criminal Defense Lawyers) seminar and to get the capital defense attorneys trained. Initially, she thought there would be a big rush for those funds. She advised funding at 100% for the first year, pointing out that anything not spent on training could be converted. **Co-chair Mortimer** asked if there were more prosecutors than defense attorneys; he wondered if, from a numbers standpoint, the committee was being fair. **Ms. Thomas** replied that there are more prosecutors than public defenders. She added: "That should not be true." There are also more requirements for training public defenders than for prosecutors. Anyone on a capital case must have those additional credits, specifically in death penalty cases. That is not so for the prosecution, although she suspected they did get that training. If done on a scholarship basis, that gives the commission the ability to look at training to decide if it's appropriate training for a public defender and to make sure that the money can

be distributed evenly around the state. Even if there are fewer public defenders, some may need to be sent out-of-state for training and that would cost more.

**Co-chair Bolz** commented that there were seven public defender offices and an eighth to start before year's end. There has not been training provided before, so he thinks there will be a need for training. Startup costs typically are higher than once things are up and running. **Ms. Thomas** said that without advocating one way or the other, she asked if her office would be able to access those training dollars, or if those were for a trial level. She just wanted clarification for her attorneys. **Co-chair Mortimer** said they would take that under advisement.

**Co-chair Mortimer** asked the committee if there was consensus on **Co-chair Bolz'** suggestion of a starting amount for the commission in the amount of \$300,000, wanting to make sure there is enough, but not too much. **Representative Trujillo** asked if operating expenses were included in this number. **Representative Bolz** answered "somewhat, and as close as he could get." **Representative Luker** said that he came up with a similar number, arriving at the total a little differently, looking at Scenario 2 in Mr. Hoskins' handout. He thought the operating expense was a little high compared to other examples such as Hispanic Affairs (with rent included), so he used \$65,000 for operating expenses (rather than \$91,632), \$7,000 for commission travel, \$110,000 for stipends and about \$8,000 for the plant, arriving at fairly close to \$300,000. He said he would feel comfortable with this amount and he thought that should be divided specifically to designate money for the stipends, separate from the operating expenses and personnel costs, so that it is clear that money is reserved for that. **Co-chair Mortimer** agreed that would be a good budgetary thing to consider.

**Senator Lakey** said he was okay with the \$300,000 and agreed that the funds should be separated so that the amount for training is specifically reserved for that. He asked **Co-chair Bolz** if two full-time people would need to be hired at the start, wondering if that was excessive the first several months. He asked if JFAC has the ability to control who is hired and when they are hired, if positions are funded. **Co-chair Bolz** said he just used that figure to make sure there would be ample money for startup. **Senator Lakey** said that with regard to whether 1 or 2 people get hired, he asked if this was a JFAC decision. **Co-chair Mortimer** thought that it would be a commission decision. He thought it was important that this committee make a recommendation. **Senator Bayer** said this is a jumping-off point, so there are only so many parameters that can be set. As everything becomes established, there are checks and balances in the budgeting process and FTPs are defined. He thought that the typical process of a budget request would address positions, as part of that budget in the future.

**Co-chair Mortimer** said that there being no further comments by the committee, he asked for a unanimous consent request for an initial allocation in the amount of \$300,000 for the public defense commission. He said "this is so moved."

**Representative Luker** said with regard to stipends, on page 2 of draft SBB049, he said he did not see authorization to administer the training stipend program and he wanted to make sure this was in the draft. Is this a separate subsection? **Ms. Brouman** wondered if the committee wanted a training fund that is administered by the administrator or executive director of the commission subject to legislative appropriation to make sure that money is separate from all other money, which she thought should be another section in the draft. **Representative Luker** thought that would be a good idea. **Co-chair Mortimer** gave committee approval to separate this out in the draft. He asked: "Is that under the commission or the director; does the training expenditure come down the chain of command or does it jump one?" **Senator Lakey** thought that if the commission meets quarterly, it may be difficult for them to evaluate scholarship applications on a timely basis. They may establish criteria for the scholarships, but he thought that the distribution of awards probably should be left to the executive director. **Co-chair Mortimer** said he sensed agreement within the committee on that point. **Representative Luker** commented that it should be made clear that the commission should set policy for the distribution. However, the executive director should actually take care of handling the application and following whatever the policy is.

**Co-chair Mortimer** expressed thanks to the committee for their commitment. He said he thought the state of Idaho was much better for this committee having met. **Co-chair Bolz** said that Ms. Brouman would be drafting the concurrent resolution for this committee to continue for another year, and he wanted the members to be aware of that.

**Co-chair Mortimer** adjourned the meeting at 5:13 p.m.