

IACC RESOLUTION NO. 2014-5

Resolution to amend IAC Resolution Number 2014-01 to clarify IAC's position on the public defense reform efforts underway, allowing counties to maintain local oversight of public defense operations if the county is capable of providing effective trial level public defense. Additionally, the resolution requests that the state provide additional funding to counties if new state standards are imposed that result in increased costs at the county level.

Sponsor: Idaho Association of Commissioners and Clerks (Ada County Commissioners)

Idaho Statute(s): 19-851, 19-872

Impacted County Office(s): Commissioners

Policy Issue: The Sixth Amendment to the United States Constitution, Article I, Section 13 of the Idaho Constitution and the interpreting case law require that in criminal prosecutions, indigent defendants receive effective representation. In order to ensure that indigent defendants are receiving effective representation, the Idaho Legislature has appointed a Public Defense Reform Interim Committee to both review trial level public defense in Idaho and make recommendations.

Proposed Policy: The Idaho Association of Counties strongly supports a public defense system that provides effective representation at the trial level. In order to achieve this the state of Idaho needs to provide a state system for trial level public defense for those counties that lack the necessary resources to provide effective trial level public defense. In the event that a state trial level public defense system is instituted, counties with existing trial level public defense offices that provide effective trial level public defense should be permitted to maintain local control over local operations provided that the state should provide additional funding to these counties for trial level public defense if additional state standards increase the cost of providing county trial level public defense.

Background Information: Both the United States Constitution (6th Amendment) and the Idaho Constitution (Article I, Section 13) guarantee the right to counsel for criminal defendants when faced with the potential of the loss of liberty. The trial level public defense system in the State of Idaho is the responsibility of the State that has been delegated to the counties with the counties currently required to fund, oversee and administer the trial level public defense system pursuant to Idaho Code Sections 19-851 through 19-872. Counties currently appropriate approximately \$22 million in support of the system. The appellate level public defense system is provided for and funded by the State.

The Idaho Criminal Justice Commission and the Idaho Legislature's Public Defense Reform Interim Committee have or are in the process of thoroughly reviewing Idaho's trial level public defense system and have determined that the system may be constitutionally deficient. Legislation was adopted in the 2013 Session of the Idaho Legislature at the recommendation of the Idaho Criminal Justice Commission as a starting point to address the trial level public defense system. The legislation adopted and now law included House Bills 147, 148 and 149.

During the 2014 Legislative Session, the Idaho Legislature adopted and the Governor signed into law House Bill 542 which provides for the creation of a public defense commission, establishes its responsibilities, encourages the creation of public defense offices and prohibits flat fee contracts. The interim committee has been reauthorized and will continue its work over the summer addressing issues such as public defense funding, the role of cities in the public defense system, and impact of misdemeanants on the system. Additionally, the Public Defense Commission will be organized later this summer and tasked with collecting public defender data and analyzing the current public defense delivery system. The work of the commission will be reflected in its recommendations to the Idaho Legislature over the next several years.

Idaho's counties strongly support the creation of an effective trial level public defense system with the understanding that the funds currently generated from property tax dollars are insufficient in some counties to fund a trial level public defense office with enough attorneys to provide effective representation. Additional funding to meet additional state requirements, for what the State defines as constitutional representation, must be provided by the State.

Even though trial level public defense is the responsibility of the State, counties have been providing the funding for trial level public defense. The State would like to require more from counties in the area of trial level public defense. The counties will support additional State requirements that provide counties the option to operate the counties own office or have the state operate the county office. Further, any additional State requirements will be funded by the State.

Fiscal Impact: Approximately \$22 million current county contribution plus additional state contribution of \$10 million or greater.

Date Adopted: 6/12/14 – Motion: Leon Mills, Twin Falls – Second: Angenie McCleary – Vote 27-21