

MINUTES
Approved by the Committee
Public Defense Reform Interim Committee
Tuesday, July 22, 2014
8:00 AM - 4:00 PM
WW53, State Capitol
Boise, Idaho

Co-chair Representative Darrell Bolz called the meeting to order at 8:05 a.m. and requested a silent roll call. Members present were: **Co-chair Senator Todd Lakey**, Senators Dean Mortimer, Jim Guthrie, and Cherie Buckner-Webb; and Representatives Lynn Luker, Christy Perry, Janet Trujillo, and Carolyn Meline and Senator Curt McKenzie was absent and excused.

Others in attendance included: Representatives Sue Chew and Thomas Dayley, and Senator Dan Johnson; Dan Chadwick, IAC; Leo Morales, Richard Eppink, Kathy Griesmyer, and Jeremy Tamsen, ACLU; Sara B. Thomas, State Appellate Public Defender; Judge Barry Wood and Michael Henderson, State Supreme Court; Judge Molly Huskey, 3rd District Court; Mark Mimura, Mimura Law Offices; Holly Koole, IPAA; Lorna Jorgensen, Ada County Prosecutor's Office; and Joel Robinson.

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: <http://www.legislature.idaho.gov/sessioninfo/2014/interim/defense.htm>.

Senator Mortimer moved to approve the committee's minutes from the January 14, 2014, meeting. The motion was seconded and passed unanimously. **Co-chair Representative Bolz** thanked former **Senator Mortimer** for his service as co-chair and welcomed both **Senator Lakey** as the incoming co-chair position and **Senator Guthrie** as a new member. He shared that the Public Defender Commission members have been appointed, save for the member from the Senate. Appointees include: Representative Jason Monks (House of Representatives), Judge Molly Huskey (State Supreme Court), Kimber Ricks (Idaho Association of Counties), William Wellman (defending attorney), Sara Thomas (State Appellate Public Defender office) and himself (Juvenile Justice Commission).

Co-chair Representative Bolz introduced **Mr. Daniel Chadwick, Executive Director, Idaho Association of Counties** and **Mr. Seth Grigg, Senior Public Analyst, IAC**. In his preliminary remarks, **Mr. Chadwick** explained in the past few months he has participated in several regional conferences where there was much interest expressed in what Idaho is doing with their public defense system. Additionally, he recently sat on a panel with his counterpart from Montana and he coauthored two articles summarizing Idaho's efforts with **Mr. David Carroll**, 6th Amendment Center. **Mr. Chadwick** told the members IAC Resolution 2014-1 was adopted on February 5th and that IAC Resolution 2014-5 will be considered at the September meeting of the Idaho Association of Counties. He also stated that the county clerks 2012-2014 public defense expenditures data includes **Mr. Grigg's** recent field survey results. The handout can be accessed at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/pdef0722_chadwick.pdf.

Co-chair Representative Bolz stated the Public Defender Commission is scheduled to meet Wednesday, August 27th, the day after this committee's next meeting. **Co-chair Senator Lakey** asked **Mr. Chadwick** to summarize the current status of Montana's efforts. **Mr. Chadwick** stated that Montana went from an individual county system to a regional system, one where the county is still involved, putting their \$11 million on the table. Though some he spoke with from Montana voiced concern about the increased costs (estimated at a total of \$24 million), **Mr. Chadwick** noted that American University's study that assessed how well the system was working did not identify any problems so far.

Representative Luker asked if there was any discussion about balancing the costs on prosecution side with the costs on the public defense side and **Mr. Chadwick** commented that, though

this is an important discussion topic, it was not discussed. **Mr. Grigg** reviewed the county clerks data tables and the charts from the PowerPoint presentation "Counties and the Public Defender: Current Status, Budgets and Future Options." This presentation can be accessed at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/pdef0722_chadwick2.pdf.

Mr. Grigg noted 100% of the counties responded to the survey. He stated that amounts expended by the counties for the year, as of July 1, were at about 70% of what was budgeted and were close to where they should be. Summarizing the data, he observed:

- County public defense expenditures from 2012 to 2013 increased 3.3%;
- The estimated public defense expenditures from 2013 to 2014 increased 10%;
- Expenditures in 2014 do not include the changes that occurred with House Bill 542 from the last legislative session;
- He anticipates an even higher increase for 2015, because in the next two years 65% of county contracts will expire and they will renew contracts under the terms established by House Bill 542 and that will increase the overall costs; and
- The increase from 2012 to 2014 is just under 14%.

Mr. Grigg also observed that the data suggests that those counties with an in-house public defender system spend more per capita and per filing on cases than those counties on a contract basis. At present he stated:

- Six counties have an in-house public defender office and they are for the most part the larger counties in the state
- Cassia and Minidoka counties share offices and serve as a good model for successful regional collaboration; and
- 82% of counties are contracting right now.

He emphasized the difficulty faced by those counties in the process of negotiating contracts. Because the Public Defense Commission is just now beginning their work, the counties have no sense of what the standards are going to be. He illustrated the breakdown of their present status by relaying the responses of participating counties when asked how they planned to provide for public defense services in the future: 18 counties (41%) will continue with contract-based system, so long as it is allowed and permitted by law; 1 county will continue to collaborate (Minidoka County with Cassia County); 7 counties plan to go with an in-house public defender offices; and one county (Bingham County) is exploring the option of creating an in-house system.

Referring to his slide on the Justice Fund, **Mr. Grigg** discussed the activities it supports as well as fiscal levy limits:

- Operation of county sheriff's department;
- Operation and maintenance of county jails and juvenile detention facilities;
- Operation of prosecuting attorney's office;
- Provision of public defender service;
- Operation of the office of the clerk of the district court;
- Fund is separate and distinct from county current expense fund (General Fund); and
- Capped at 0.20% of taxable market value.

In closing, **Mr. Grigg** suggested the Legislature must balance constitutional rights and public defense funding and provide counties with the flexibility to fund public defense systems or counties and the state will face lawsuits. He reiterated the Public Defense Commission must quickly establish contract standards to provide counties with certainty and must establish eligibility standards to qualify as a public defender.

Co-chair Senator Lakey asked if any of the counties up for renewal are shifting to another kind of contract. **Mr. Grigg** responded that most counties continue to choose the flat-fee contract, though one county is exploring expanding their contract service, which would require the county to absorb some of the additional costs such as special witnesses and investigations. Following up, **Co-chair Senator Lakey** remarked that he understood there are not many options for the counties to choose from, so most simply make small adjustments to their most recent flat-fee contract. He asked if some counties have put out request for proposals (RFPs). **Mr. Chadwick** agreed to provide the committee with RFP samples. He stated the IAC provided contract training for IAC members and **Ms. Thomas** met with the IAC. He identified the big issue as getting standards from the commission. He stated that he fears the lawsuit and does not want to go down that road. He acknowledged that funding will be critical. He recognized the important partnership between the counties and the Legislature and questioned, "how much is the county going to be obligated to put on the table and, in addition, what is the state willing to put on the table that will cover costs for providing public defense services?" He reaffirmed that he will bring the new data to the committee after the fiscal year closes in October.

Co-chair Representative Bolz stated it was critical to know what the difference in cost is going from a flat-fee contract model to an alternative model. **Senator Guthrie** voiced his concern that other interests, which are in competition with public defense for the reimbursement funds, will continue to beat out public defense for the Justice Fund moneys. Recognizing this, he asked if public defense could be reimbursed a fixed outlay. **Mr. Chadwick** agreed there is huge competition for the fund moneys and suggested that a solution might be the creation of a separate levy to cover those costs or the crafting of some sort of restriction for the use of levy-generated funds. **Representative Meline** asked if the appellate money comes out of the \$22 million to \$24 million and **Mr. Chadwick** responded that it does not, but the money does go to support trial level public defense services. For appeals, as long as a county is participating in the Capital Crimes Defense Fund (CCDF), the criminal appeals go to the State Appellate Public Defender. Following up, **Representative Meline** asked if the training money approved by the Joint Finance-Appropriations Committee (JFAC) comes through the new commission. **Co-chair Representative Bolz** confirmed it was the commission who allocates the \$105,000 to \$110,000 for training.

Looking at last year's data, **Representative Luker** observed that misdemeanor defense totals far exceeded all other totals. He asked **Mr. Chadwick** if analysis of the data shows what percentage of the misdemeanors are city generated and he asked him for an update on discussions regarding misdemeanor reclassification. **Mr. Chadwick** stated he chairs the misdemeanor reclassification subcommittee for the Criminal Justice Commission and it meets in August to discuss this topic. The committee will recommend that some misdemeanors be reclassified to infractions. He stated that he expects the commission to make a recommendation in the fall to the Governor regarding reductions on these types of crimes. He stated he believes the committee will also discuss the city issue. Following up, **Representative Luker** asked if there was data compiled on the impact the legislation had on court costs and flat-fee contracts. **Mr. Chadwick** answered that reporting requirements mandate information must flow from the public defender to the county commissioner, so they can monitor the costs.

As it relates to the parity issue, **Representative Perry** asked if the percentage costs for the prosecution increased at the same rate as the public defense, which last year was 14%. **Mr. Chadwick** responded that the ICA focused solely on public defense, so he does not have the data for the prosecutors. **Co-chair Senator Lakey** asked if anyone analyzed the impact recent legislation amending of the indigency definition had upon the number of cases granted. **Mr. Chadwick** stated they were not tracking this. He concluded his remarks by reaffirming that the IAC stands ready to help. **Senator Guthrie** asked **Mr. Grigg** if he would provide the budgeted versus actual figures for 2012 and 2013 and **Mr. Grigg** stated that it was roughly a 5% yearly increase and he agreed to provide more accurate data at the next meeting.

Co-chair Representative Bolz introduced **Judge Molly Huskey**, 3rd District Court. In her introductory remarks, **Judge Huskey** recounted that before she took the bench, Canyon County's public defense services operated with a flat-fee contract system. In 2009 or 2010, the county put the contract out to bid due to a concern for costs, and the public defender who had held the contract was not awarded the new contract. The transition was difficult and during this period the running of the court was disrupted. In early 2012, she was asked to chair a new subcommittee of the Criminal Justice Planning Council. The subcommittee was tasked to answer specific questions: "what are the circumstances around the appointment of the public defender; what is the definition of indigency; and what is a valid mechanism for determining indigency?" As well, the council wanted the new subcommittee to present its recommendation on whether to proceed with a contract system or with an in-house model. If it recommended an in-house model, the council expected very specific details regarding its operation. The make up of the subcommittee consisted of: a defense attorney, a deputy prosecutor, a sheriff's deputy, the chief deputy clerk, and an assistant trial court administrator.

Judge Huskey emphasized the subcommittee was confidential. Members had individual assignments where they would compile certain statistics in their area of expertise and then report their findings. The subcommittee pulled the data together and had open discussions in order to come up with their recommendations. She stated the subcommittee found that the prosecutor's office counted cases one way, the county clerk's office another way, and the Supreme Court yet another way. The subcommittee used the Supreme Court numbers as it appeared the most neutral and objective and the subcommittee did recommend one of the in-house models they evaluated. She noted finding adequate facilities for the staff was a challenge and at present not every attorney has their own office. A unique use of meeting rooms and shared spaces helps ameliorate the situation. The subcommittee recommended purchasing a software package that supports time-tracking all cases. Additionally, the subcommittee recommended a budget that supports office expenses, including the software package, equipment and training.

Concluding her remarks, **Judge Huskey** stated they presented their recommendations to the commission in December, 2012. The commission relayed their recommendations on to the board, as well as their support for a particular in-house model. In closing, she recognized the efforts of her subcommittee members and she identified that keys to the success of the subcommittee included having stakeholders: motivated to truly explore all the options in a safe arena; and willing to stand by their recommendations. In this way, all the members were invested in the final product.

Representative Trujillo asked what were the recommendations related specifically to the 2% cap and shifting moneys. **Judge Huskey** explained that her subcommittee did not make a recommendation related to the 2% cap. She stated the subcommittee did not feel it appropriate to weigh in on this very complex issue. **Representative Luker** asked how they identified the best software package and asked if she believed there would be a benefit going with a statewide contract for tracking package in order to collect consistent data. **Judge Huskey** prefaced her answer, explaining there is divergence of opinion regarding the option of a statewide tracking package. Some of the seven standalone public defender offices are using Odyssey, while some offices do not. Canyon County wasn't slated to come on board with Odyssey until early 2016, so the county needed something for the interim. Their IT department created a homegrown package to both meet their specific present needs and to integrate well with Odyssey in 2016. She recognized the value of a statewide package. She then commented that the Supreme Court right now is working on a universal definition for what is a criminal case and what is a civil case. She opined that the success of a statewide software package is contingent on the development of a universal definition of "case."

Continuing on the same line, **Representative Luker** asked if she believed Odyssey's attorney tracking component was complex enough to serve as tracking software in the office. **Judge Huskey** stated that the attorney manager component has not been completely built and what has been built has been built primarily for prosecutor offices. As we discover what our needs are, she continued, we can work with Odyssey to provide those components. She opined that Odyssey could be powerful enough.

The first focus must be on the court piece - then they will look at folding other components in. Twin Falls will be the pilot for Odyssey, but at first will not have the attorney manager piece. When Ada County stands up Odyssey after the pilot program is completed, they are looking to integrate the attorney manager piece. **Senator Guthrie** asked if there was enough scrutiny given to the indigency determination process. He also asked her to discuss case conflicts in more detail. Responding to the scrutiny question first, **Judge Huskey** shared some of her own judicial experiences, in order to shed light on the practical challenges of applying a deeper level of scrutiny of the determination process. However, she assured the members that those who file false affidavits of indigency are prosecuted if they have been untruthful. Addressing the case conflict question, she remarked that though conflict-free counsel is a right, it is very difficult to provide in practice, even with their remodel.

Co-chair Senator Lakey stated his concerns regarding plugging in national standards here in Idaho and asked **Judge Huskey** to detail how standards were tailored in Canyon County. After noting a divergence of opinion in the field regarding whether focus should be targeted the number of cases or workload, **Judge Huskey** stated she believed a workload analysis of a public defender office is a better measure than a caseload analysis. She went on to explain how her subcommittee measured the work it takes to do a case, broken down by case type and calculated with an adjustment for quality assurance. They measured the attorney time and staff time. To check their data, they compared anticipated public defense office staffing needs against actual numbers from the prosecutor's office staff dedicated to criminal indigent defense. She stated the numbers matched up exactly. **Co-chair Senator Lakey** then asked if she knew how the county commissioners plan to address growth over time. **Judge Huskey** responded that analysis was outside of their scope of recommendation and she added that it was important for her subcommittee not to step out of the parameters of the predefined objectives.

Co-chair Representative Bolz asked if her subcommittee's work is done and she replied they were done and that the committee was not set up to be an oversight board. She stated that the Criminal Justice Planning Council would probably pick up the oversight responsibilities. **Co-chair Representative Bolz** commented that it will be interesting to see how the public defender's office is staffed and how it relates to your budget recommendations and the eventual actual budget. **Judge Huskey** stated that there is excitement with the opportunities in Canyon County, though we as yet do not know if our proposed budget has been adopted.

Co-chair Representative Bolz introduced Ada County Public Defender **Mr. Alan Trimming**. **Mr. Trimming** responded to remarks made by earlier presenters. He stated that he was intrigued by the numbers presented by **Mr. Chadwick**. He stated that so far this year, his public defender office expenditures are \$7.24 million of a budgeted \$8.3 million, and that's without factoring in the 2% (\$85,000) hold back for budgeting purposes. He presented data on the flat-fee contract in Grant County, Washington, as an example of how statistics sometimes fail to provide a complete picture of the situation. He emphasized that the needs of the public defender offices vary from county to county. He stated that traditionally Ada County has generated 20% to 27% of his total misdemeanor caseload and the balance is brought by the municipalities. For this reason, when evaluating parity in the area of expenses for resources, he suggested the members consider exploring the possibility of municipal contributions. At present, by statute only the counties are held responsible. Referring to **Judge Huskey's** presentation, **Mr. Trimming** stated that in theory he sees the value in tracking time, but has difficulty envisioning its practical application in his work setting. Speaking to the inequity of support between the public defense office and the prosecutor's office, he detailed how the prosecutor offices receive administrative order reimbursements by statute, but the public defender offices do not. He added that the time spent by the public defenders can not be reimbursed.

Mr. Trimming remarked on the various efforts occurring simultaneously that will affect the public defender offices, most importantly the work of the Public Defender Commission and this committee, as well as the Supreme Court's integration of the Tyler's Odyssey case manager module. He stated that Ada County is looking to opt in on integration with Odyssey. His constituency, he observed,

represents 25% of the state's population and it appears that Ada County has a higher percentage of filings on the criminal side than any other county. Regarding the members considering a statewide public defense system, **Mr. Trimming** stated his reservations with adopting a one-system-fits-all approach. He observed that counties are uniquely able to judge what is happening in their territory. He asked the members to consider two approaches as they grapple with Idaho's exposure to a lawsuit: 1) If some counties are not providing for adequate representation, respond with regional solutions - tailor delivery of services to their unique situations; and 2) Gauge these same counties by their constitutional deficiencies. He strongly cautioned members, if you adopt standards, you must fund them - if you do not fund the adopted standards, those standards will serve as a launching pad for litigation.

Mr. Trimming stated that he understands the appeal of regional collaboration, in terms of funding and staff, and agreed that he would look into to it more, though he added that collaboration would most probably not work between Ada and Canyon counties. Responding to the statements made earlier on compensation and training, **Mr. Trimming** first pointed to House Bill 452, which took out the requirement for public defender contracts to be at least two years in length. He noted how it created a second-class status, because state appellate public defender is appointed for four. Additionally, he pointed to the language in the legislation that states public defenders will be paid what prosecutors are paid, "where practicable." This too, he emphasized, sends the message of second-class status. He agreed that a training academy might be a solution for providing entry-level public defenders specialized training in the areas that require it. He concluded by suggesting the Legislature take broad strokes in their efforts to assure constitutional standards are met.

Representative Perry asked if a city retains a prosecutor, should it also be required to have a public defender. **Mr. Trimming** responded you would first have to change the statute. He continued, explaining if the city cases were removed it would reduce his caseload by 70%. He added that he agreed with the earlier-discussed alternative of reducing some misdemeanors to infractions and suggested a starting point in gauging parity between the offices is to compare office resources. He opined that it is a starting point, not an end all. **Representative Luker** asked if he saw the benefit in having a state conflict defender similar to a state appellate public defender and **Mr. Trimming** responded that every county is uniquely different from each other and proposed that more efficiencies in delivery at the local level. Following up, **Representative Luker** asked him to discuss potential resolutions to case conflicts in smaller counties where they do not have the resources. **Mr. Trimming** mentioned that he found interesting the suggestion of **Mr. Chadwick**, but he could only speak specifically to the situation in his county.

Co-chair Senator Lakey asked if he had seen an increase in caseload since the passage of last year's legislation and **Mr. Trimming** answered he hasn't seen a perceptible increase due directly to the indigency definition, though perhaps there was a slight uptick of caseloads in the felony division. However, he observed this uptick could be attributed to the state of the economy. Following up, **Co-chair Senator Lakey** asked how he determines what is a constitutionally appropriate caseload and further, if standards are not adopted, what approach would he recommend. **Mr. Trimming** stated he uses caseloads as a starting point and then does a thorough audit of his attorneys and staff. He questions his attorney, "do you feel you can provide constitutional adequate representation?" He observed that, by and large, his attorneys agree that they can. He then presents his findings to the board. He added that the landscape has changed recently, due in large measure to the Legislature increasing the number of judges. Regarding standards, **Mr. Trimming** stated that it is a mistake to adopt standards that are not constitutionally required. And, he emphasized, standards must be attainable. He asked that attorneys be provided facility guidelines and the necessary tools of the trade. He also commented he liked the ABA standard which reads, "a public defender must be insulated from undue judicial and political influences." He observed it is a standard noticeably absent in the scheme that exists now.

Senator Guthrie asked what percentage of "x" comes back as reimbursement and **Mr. Trimming** responded that the percentage is minute. He stated that the public defender's office does have more of a hammer when the defendant is on probation; even if probation has expired, there are ways to recoup some costs. Following up, **Senator Guthrie** asked if a lien recoupment method was ever applied and **Mr. Trimming** answered that he was not aware that it ever had. He mentioned he has seen tax intercept notices used from time to time, but he doesn't know the efficacy of that approach. **Representative Meline** stated her belief that more effort should be put toward collecting, in order to build up the Justice Fund and **Mr. Trimming** responded that though there is a recoupment statute providing, under certain circumstances, that reimbursement for the cost of defense can be pursued by prosecutors, he wished to emphasize that many of his clients have little or nothing to start with, so when you look at increases in fines he has concerns.

Representative Luker asked whether or not all of the ABA 10 Principles are premised upon constitutional requirements. **Mr. Trimming** answered he encourages the Legislature to apply broad strokes. He opined the ABA 10 Principles are ideals; for instance, with vertical representation it is presently pragmatically impossible to apply the principle due to the make up of the district court, specifically with 11 district judges and with only his 21 attorneys. Following up, **Representative Luker** asked if what he was saying was there is really no constitutional requirement for vertical representation, even though it is an ABA guideline and **Mr. Trimming** responded that he was not aware of any constitutional requirement.

After a fifteen minute break, **Co-chair Representative Bolz** introduced **Mr. Joel Robinson**, candidate from District 16, who requested the opportunity to make a few comments to the committee. **Mr. Robinson** emphasized the importance of parity, particularly with regards to equal pay for prosecutors and public defenders engaged in the same type of work. He stated this is an ideal goal that should be strived toward.

Co-chair Representative Bolz introduced **Judge Barry Wood**, State Supreme Court. In his opening remarks, **Judge Wood** explained that his handout is provided in order to answer questions the committee posed at the last meeting. The handout includes: House Bill 147, relating to examination of case and discharge or commitment of accused; New Case Filings in Idaho Table, FY 2013; Misdemeanor and Infraction Charges Issued by Agency, FY 2013; 19-4705, Idaho Code, Payment of fines and forfeitures - Satisfaction of judgment - Disposition - Apportionment; and Trial Court Financing Table: Summary by County of Court Revenue Distributions from ISTARs, the Year Ended 9/30/2011. The handout is available online at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/pdef0722_wood.pdf.

Judge Wood first reviewed the pertinent amendments to statutes in House Bill 147 and commented on the case filing data for fiscal year 2013. He stated that when we speak about case numbers frequently a case has multiple charges. So, these statistics and the statistics in the table that presents misdemeanors and infraction charges will not line up exactly. He then discussed the data he provided relating to the notion of the city attorneys charging misdemeanors, but not paying public defense expenses as well as the differences between the misdemeanors and infractions charges. Lastly, he emphasized there is not a one-to-one relation between charges, convictions, dollars assessed and dollars collected.

Judge Wood explained the court is in the process of going away from ISTARs to the new Odyssey system by Tyler, due to the end of life of ISTARs. In the process of compiling the data for the misdemeanor and infraction charges using Odyssey, **Judge Wood** discussed several challenges to relying solely on the data:

- None of the charges issued by citation include those by complaints, so 27,000 additional misdemeanors issued by complaints are not folded into the data, because we can't identify who issued these complaints, though we guess that most are filed by county, not city, prosecutors; and

- The payable misdemeanors numbers, those misdemeanors related to public defense support, are difficult to track, because there are a certain number of misdemeanors that are under the minimum \$271 threshold. These misdemeanors may be paid over the counter, where the defendant never sees a judge and where it is not subject to jail time, so there is no public defender.

Judge Wood closed by noting the correlation between the fine distribution statute (19-4705, Idaho Code), specifically subsection (1)(c), (f), (g) and (h), and the court revenue distributions totals (FY 2011, 2012 and 2013) charted on page 13 of the handout. When a citation is issued by a city officer under the fine distribution, the city gets 90% of it and those dollar amount totals are also charted on page 13.

Co-chair Representative Bolz introduced **Sara Thomas**, State Appellate Public Defender. **Ms. Thomas** answered three main questions in her PowerPoint presentation "Idaho Legislature's Public Defense Interim Committee 2014:"

- What is the status of the Public Defense Commission?
- What issues are being raised in changes to the system?
- What possible enforcement mechanisms are available for public defense standards?

The presentation can be accessed online at:

http://www.legislature.idaho.gov/sessioninfo/2014/interim/pdef0722_thomas.pdf.

During her presentation, **Ms. Thomas** stated that she provided county commissioners with several resources to use when drafting contracts, including the ABA Criminal Justice Standards. She explained that providing the ABA standards was important because the U.S. Supreme Court has said that when looking at ineffective assistance of counsel, those standards are the starting point.

Co-chair Representative Bolz asked if there is a completed study that analyzes the cost differential of adopting and implementing the standards. **Ms. Thomas** stated that she is not aware of one specifically focused on standards and she agreed to research it further and return with her findings. **Representative Luker** asked for a list of the Supreme Court cases that used the ABA 10 Principles as a starting point and **Ms. Thomas** clarified that it is not the 10 Principles, it is the ABA Standards on Defense Function that were applied in *Wiggins v. Smith*, 539 U.S. 510 (2003), as well as in *Strickland v. Washington*, 466 U.S. 668 (1984). She also cited *U.S. v. Charbonneau*, 979 F. Supp. 1177 (S.D. Ohio 1997) and agreed to send the members links to the pertinent cases. **Ms. Thomas** included a link to the ABA Criminal Justice Standards - The Defense Function in her PowerPoint presentation.

Co-chair Senator Lakey asked if Indiana adopted some mandatory standards or guidelines and **Ms. Thomas** replied that they did for caseloads and workloads and, apart from this, there are guidelines they must follow as to what to do in each case. **Representative Trujillo** asked if any of the models discussed addressed juvenile defense separately. **Ms. Thomas** agreed that there needs to be different standards for juvenile representation, because a certain level of training is demanded in order to understand what you are facing. **Representative Meline** observed that in Indiana 50 of 92 counties opted in and 37 qualified for reimbursement, while in Idaho one county has opted out. She asked **Ms. Thomas** to clarify how we define a qualified system. **Ms. Thomas** stated if you have even one county opting out, you are liable at some level. Following up, **Representative Meline** asked who makes the mandate and **Ms. Thomas** replied that the Legislature makes the mandate.

Co-chair Representative Bolz introduced **Mr. Mark Mimura**, Mimura Law Offices. **Mr. Mimura** stated that he agreed with almost all of the statements made by **Mr. Trimming**. He noted the huge disparity on the amount of compensation between prosecutor and public defense offices. Yet, he continued, it is impossible to compare apples to apples. He added that each county has their own distinct means to manage their misdemeanors. Regarding the state's concern about being held liable depending on whether the public defense contract is flat-fee or hourly reimbursement, **Mr. Mimura** pointed to questions in need of answers: "how do we define a billable hour, how do we track time,

and who will track the time?" He discussed the challenges of the public defense system vying for funds with other more powerful interests. **Mr. Mimura** stated that the present system works against the goal of parity even in routine practices; such as, the prosecutor's office making money in forfeiture, while the public defender's office does not. On the topic of independence, **Mr. Mimura** agreed with **Mr. Trimming** that public defenders need to be free to do their duty without fear of repercussion. He detailed weaknesses in the present system, recounting his experience appearing in front of the same judge on two different cases, held in separate courts, but during the same time period. He also emphasized public defenders should be appointed for the same period of time as the prosecutors and attorney pay should be driven by experience. **Mr. Mimura** concluded by encouraging the Legislature to ensure a transparent selection process for county public defenders.

Representative Luker asked for **Mr. Mimura** to describe the work done in the public defender's office to weed out cases and to explain the relationship between workload and number of cases. **Mr. Mimura** stated that the county public defender's office changed the philosophy and, in turn, the process. Now they look at discovery, get an offer, talk to the client, give him the report, advise him of the pros, cons, and the risks, and if the client accepts the offer, the public defender calls the prosecutor. Yet the public defender's office receives none of the monetary savings from this streamlining effort. Following up, **Representative Luker** asked for the percentage of city misdemeanors as compared to county misdemeanors in Canyon County. **Mr. Mimura** stated that he couldn't answer specifically, but he knows the city dockets are much longer than the county dockets.

Co-chair Senator Lakey asked if **Mr. Mimura** has noticed a change in the indigency levels since the 2013 legislation took effect. **Mr. Mimura** responded that it is hard to say, though possibly there is a change. Continuing, he stated that there are peaks and valleys, but caseloads remain fairly constant. Following up, **Co-chair Senator Lakey** asked for more discussion on the topic of fiscal responsibility. **Mr. Mimura** stated that compensation should be related to the complexity of the case and that a pay-by-the-hour system will not work. **Co-chair Senator Lakey** asked **Mr. Mimura** to speak to staff parity between the two offices. **Mr. Mimura** noted that it is not a very level playing field and though prosecutors are compensated for more staff due to their civil caseload, he pointed out that public defenders also provide services associated with civil cases and yet they receive no staffing compensation.

Senator Guthrie asked if private defense is excluded when calculating caseload. **Mr. Mimura** stated that public defenders are involved in private defense, though they are not compensated. They give key advice to the private attorneys related to everything from judge temperament to court processes. **Senator Buckner-Webb** opined that we are at the intersection of expedience and equity and asked for his thoughts. **Mr. Mimura** stated that whether there is equity is really dependent on the luck of the draw, because it depends on what judge you get. **Representative Perry** stated that the focus needs to be on assuring that there is justice. She commented on her concern regarding the number of plea bargains and asked if there is something he feels the members should address in this area. **Mr. Mimura** referenced the stacking tickets process in Nampa as an example for how plea bargaining works to the mutual advantage of the client and the community.

Co-chair Senator Lakey asked for specific recommendations on how to improve the public defender appointment process and **Mr. Mimura** emphasized that the process needs to: be open and transparent; provide for a sounding board for process concerns by applicants; and ensure that similar interview questions are posed to all applicants.

Co-chair Representative Bolz asked the members to identify areas that need to be explored further. He asked if members wish to hear from prosecuting attorneys. **Representative Luker** stated that city participation should be given a fair amount of consideration and suggested it would be helpful to review a flow chart that illustrates where the money goes between misdemeanors and infractions. Also, he requested an effort be made to find out how other states respond to this challenge, as well as how they address city participation. **Senator Guthrie** noted the medically indigent are held

accountable via scheduled payments and asked if this process could be applied to the legally indigent. He asked if the members had explored the specific financial repercussions of the state being sued. He also asked for a review of the 3% cap and the Justice Fund in terms of specific amounts.

Senator Mortimer asked for the members to explore local control alternatives and agreed with **Representative Luker** that the committee should review data that will help us determine the city responsibility. **Representative Luker** emphasized the importance of controlling costs and asked **Mr. Chadwick** to provide more details about efforts to reduce misdemeanors to infractions. **Representative Meline** noted that the 3% cap is not paying the bills and, because of that, the indigent are billed fees beyond their ability to pay. **Representative Perry** requested exploring reimbursement options, specifically related to whether state tax refunds can be used for paying restitution fines. She also asked for data that would show how much of the collected fine moneys go into the General Fund.

Co-chair Representative Bolz asked **Judge Wood** if the Supreme Court would provide a breakdown of who collects fines and as well as who recoups them. Additionally, he asked the court to provide a breakdown of fees and costs and **Judge Wood** agreed to provide this data to the members. **Representative Trujillo** stated the critical need for a training center that could be supported by moneys collected by statute. **Co-chair Senator Lakey** identified two issues he thought essential to explore: 1) Funding - Determine how much revenue is reasonable to expect to receive from the cities compared to the costs. Associated with this, he stated the importance of partnering with the counties and the need to evaluate how much funding that would be moving forward; and 2) Standards - He stated his support for moving forward with mandatory minimums, not guidelines.

Co-chair Representative Bolz asked **Mr. Henderson** if he had access to and could provide a list of the distribution of restitution moneys by recipient/division, in rank order. **Mr. Henderson** agreed to provide the information. He went on to state that the priority of payments was established by the Supreme Court in conjunction with the Legislature. But, he stated, there has been very little guidance from the Legislature beyond court costs and victim's restitution. He reiterated that the court would like to work with the committee in its efforts to address collections in a comprehensive way. **Representative Luker** commented that he agreed with **Co-chair Senator Lakey** that a committee priority should be to flesh out the constitutional requirements. He asked **Ms. Brooke Brouman** to review the pertinent court cases and provide the members with a list of standards that are in court cases. Also, he asked that the members explore how reimbursed moneys can be funneled back to public defense services. Finally, he asked that the members take up the topic of public defender selection, including terms and open meetings.

The meeting adjourned at 2:50 p.m.