

MINUTES
Approved by the Committee
Public Defense Reform Interim Committee
Tuesday, August 26, 2014
8:00 am to 3:00 pm
WW53, State Capitol
Boise, Idaho

Co-chair Senator Todd Lakey called the meeting to order at 8:05 a.m. and requested a silent roll call. Members present were: **Co-chair Representative Darrell Bolz**, Representatives Lynn Luker, Christy Perry, and Caroline Meline; and Senators Dean Mortimer, Jim Guthrie, and Cherie Buckner-Webb. Representative Janet Trujillo and Senator Curt McKenzie were absent and excused. Legislative Services Office staff members present were Brooke Brouman, Ryan Bush, Jared Hoskins and Jackie Gunn.

Others in attendance included: Representatives Sue Chew and Thomas Dayley; Lorna Jorgensen, Ada County Prosecutor's Office; Marilyn B. Paul, Twin Falls County Public Defender's Office; Leo Morales and Kathy Griesmyer, ACLU; Nancy Stricklin and Justin Ruen, Association of Idaho Cities; Tera Harden, Canyon County Public Defender's Office; Bryan Taylor, Canyon County Prosecutor's Office; John Foster, Kestrel West; Barry McHugh, Kootenai County Prosecutor's Office; Holly Koole, IPAA; Sara B. Thomas, State Appellate Public Defender; Roger Bourne, Ada County Deputy Prosecuting Attorney; Judge Barry Wood and Michael Henderson, State Supreme Court; Daniel Chadwick, IAC; and Elana Salzman, Former Staff Attorney, IPDC.

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 July 22, 2014, seconded by Senator Buckner-Webb, and the motion was approved unanimously by voice vote.

Co-chair Senator Lakey introduced **Tera Harden, incoming Chief Public Defender for Canyon County. Ms. Harden** provided the committee a brief summary of her professional background. This summary is available at: <http://www.legislature.idaho.gov/sessioninfo/2014/interim/defense.htm>.

Ms. Harden recounted that her first day on the job was July 1 and that she was given 90 days to set up her office. She recruited her former office administrator from California to join her in the Canyon County office. She stated that she is building an amazing team that, when complete, will include 19 lawyers and 12 support staff. She identified two planned internal changes: assigning one lawyer to one client, which will require managing calendars so that lawyers can make it to all of their court appearances; and working with the judiciary to start streamlining so that clients will be assigned to one courtroom. She emphasized that training will be a big component of her office and discussed bringing in high caliber lawyers and experts to present webinars via the Internet, which will alleviate some of the costs typically associated with training. Her office will be open for business October 1.

Co-chair Representative Bolz asked **Ms. Harden** for her opinion on what kind of training the Public Defense Commission should provide for public defenders. **Ms. Harden** responded that it is essential to provide training in the areas of law most prevalent; for example, driving Under the Influence (DUI), domestic violence, and lewd and lascivious conduct/child molestation. **Senator Guthrie** asked if her applicants were qualified and also asked where her pay scale falls compared to other counties in the state. **Ms. Harden** responded that in Canyon County there is parity between the prosecutor and the public defender offices. Looking outside of the state, compared to Washington, Oregon, and California, the pay in Idaho is low. She observed that the pool of young lawyers applying are qualified; the pool of lawyers with three to nine years experience is very good; and there are a lot of qualified older lawyers. She emphasized that hiring decisions will be based on who has the right attitude and the right skill set for the office. The culture change, she opined, will lead

to a client-priority focus. She added that critical character traits in new hires are a strong ethical foundation and integrity. **Senator Guthrie** followed up, asking how Canyon County's wages compare to those in other offices in state and **Ms. Harden** responded that the wages are competitive with Ada and Kootenai Counties, which are the only other two counties with offices similar to Canyon County's office.

Referring to **Judge Molly Huskey's** report, **Co-chair Senator Lakey**, asked if **Ms. Harden** saw anything that stood out from the report and asked how her goals related to those pertinent points. **Ms. Harden** responded that the report outlines how the ABA Ten Principles fit with required standards of criminal defense attorneys - that essentially it is a report of how not to get sued as a county and as a lawyer. A critical caseload question Canyon County must address is "what is an appropriate number of cases for each attorney?" She explained her first priority is to assess whether her office can adequately handle the appointed cases with 21 lawyers. She noted that, unlike a lot of other criminal defense offices included in the report, the lawyers in her office will track their time. The tracking allows for analysis of how the lawyer is working, whether they are doing their job, and whether they are overworked. In an effort to cut down on the wasted time of no-shows, **Ms. Harden** explained they are working on tracking clients via a case management system where clients are sent reminders of their future court dates through text messages and emails. **Co-chair Representative Bolz** noted the committee's discussions related to caseload versus workload and assumed Canyon County was tying in workload with caseload by keeping track of hours. **Ms. Harden** stated that in addition to tracking hours, her lawyers will make every effort to avoid wasting valuable court time on administrative work that can be handled ahead of time.

Representative Luker commented that it sounded like she was going to assign vertical representation and asked if Canyon County has a caseload management goal and asked what the potential caseload might be. **Ms. Harden** stated she plans to assign vertical representation and explained that the lawyers would not be assigned strictly to felonies or strictly to misdemeanors. She stated the caseloads will break down to 20 active felony cases per lawyer and misdemeanors will be spread out among all the attorneys. Following up, **Representative Luker** asked if she has determined a weighting system. Though **Ms. Harden** prefaced that right now Driving Without Privileges (DWPs) are probably the lowest in the weighting system, she answered that she has not yet determined a weighting system for the office, but it will probably somewhat mirror the ABA Ten Principles.

Appreciating the out-of-state experience **Ms. Harden** brings to her new post, **Senator Guthrie** asked if she would speak to any glaring existing problems she plans to address. **Ms. Harden** responded that the number one issue to address is getting support from the judges to revise the management of the court calendar. At present, the set pretrial time creates real challenges. She stated that she is working with **Canyon County Magistrate Judge Jayme B. Sullivan** and **3rd Judicial District Administrative District Judge Thomas J. Ryan** on this issue. Another challenge to overcome is that clients with multiple cases appear in front of multiple judges. Her office's goal is to have clients appear in front of only one judge when they are involved in multiple crimes. **Senator Buckner-Webb** asked if **Ms. Harden** is making considerations for diverse populations as she builds her staff. **Ms. Harden** answered that she is attentive to diverse populations in her hiring process and noted that a big problem is the inability of clients to communicate with their lawyers. She opined the need for certified interpreters and bilingual staff. She also voiced the importance of compensating her staff for their language skills.

Co-chair Senator Lakey introduced **Michael Henderson, Idaho State Supreme Court**. **Mr. Henderson** provided information requested by the committee at their July 22nd meeting in the following areas: (1) fines, fees, and costs in criminal cases, including the distribution of fines; (2) the priority of payments; and (3) moneys collected through the tax intercept program. His PowerPoint presentation lists details on the distribution of fines under Section 19-4705, Idaho Code. He also reviewed a packet of handouts that contained information on: (1) fees in criminal and infraction cases; (2) additional fees charged in specified cases; (3) information on how the fees are distributed;

the fine and fee distribution in speeding cases; (5) the distribution in dollar amounts of the fines and fees in infraction cases when a city officer issues the citation; and (6) the priority of payments adopted by the Idaho Supreme Court. The presentation, as well as the handouts, are available at: <http://www.legislature.idaho.gov/sessioninfo/2014/interim/defense.htm>. Additionally, **Mr. Henderson** agreed to provide the members with the actual amounts that correspond to the percentages listed in the data tables.

Senator Mortimer asked if there is a movement afoot to work with the Legislature to develop a good collection procedure. **Mr. Henderson** affirmed the court's desire to work with the Legislature and agreed to provide more current data on the percentages that they are collecting. He noted that collections are north of 60%. In infraction cases they collect about 95% and in misdemeanor cases collection is somewhere around 70%. He noted that there are various methods of collection under Idaho Code Section 19-4708, including collection agencies. Noting that misdemeanors occurring in a city are the responsibility of the city, **Senator Guthrie** asked if this was true for felonies as well. **Mr. Henderson** responded that it is the statutory responsibility of the prosecuting attorney to prosecute all felonies occurring within the county.

Representative Perry asked for the total amount collected from fines that gets deposited into the General Fund in one year. **Mr. Henderson** agreed to provide that information and guessed the amount to be near \$2 million. Following up, **Representative Perry** asked if the 90% collected by the cities was earmarked or went to the city general fund. **Mr. Henderson** responded that the moneys go to a city's general fund.

Looking at the priority list, **Senator Guthrie** asked if the distribution process allows those highest on the priority list to receive 80% and areas coming lower on the priority list to receive some amount less. He expressed concern that some areas may be unfairly shorted. **Mr. Henderson** agreed to provide a breakdown by specific categories. Following up on the distribution concern, **Co-chair Senator Lakey** asked if the higher tiered priority areas are paid in full before moving on to the other areas and **Mr. Henderson** responded that it is a top category to bottom category order of distribution and observed that some of the top priority categories do not require large amounts of money.

Co-chair Senator Lakey introduced **Nancy Stricklin, Association of Idaho Cities**. **Ms. Stricklin** emphasized that cities do not have unlimited money. She noted that cities are funded with property taxes, fee-based services and revenue sharing. She stated that a 2011 study done by the Association of Idaho Cities show that the fine revenues do not begin to pay for the law enforcement services, let alone the prosecution services. She opined that if you divert funds, you will reduce the ability of the city to provide services. Fee increases cannot be used to support law enforcement because Section 63-1311, Idaho Code, specifically restricts fee increases to the actual costs associated with the service. For this reason, she stated, some cities have considered ceding their city law enforcement responsibilities over to the county, but then the level of service provided in the city limit would be limited to the level of service provided elsewhere in the county. She also stated that the majority of fine revenue comes from motor vehicle violations and infractions. These are situations that do not implicate public defenders. She stated the AIC supports reclassification of some misdemeanors to infractions. In addition, she suggested that infractions could be modified so that, instead of being charged under city infraction, they would be charged under state law. Also, she stated cities can be more judicious in what cases they choose to charge. She suggested cities might consider imposing administrative fines instead of going through the criminal system. She closed by observing that the public defender issue should be treated as a statewide issue and she favors a statewide system.

Representative Luker asked where AIC is with encouraging the cities to reclassify some misdemeanors to infractions and implement administrative options. **Ms. Stricklin** stated that the Idaho municipal attorneys meet twice a year and they will discuss the topic in January. Also, the AIC legislative committee will be addressing this as well. Following up, **Representative Luker** stated that one of his concerns with the state funding of the public defense system is the disconnect between

that and the expenditure on the prosecution side. He noted that the counties or the cities generate the cases, which he acknowledged needs to happen, but to counterbalance this, there needs to be some provision for the defense of the cases. He noted that the cities receive 90% of the fine revenue, yet is not having to pay for the costs of the public defense. He asked **Ms. Stricklin** how she sees addressing this issue. **Ms. Stricklin** responded that the cities do not receive 90% of the revenues from all misdemeanors, rather they receive 90% of those that are traffic related, but only when the infractions are charged under city code. She suggested that some misdemeanor charges under the city codes could be eliminated and charged under state law instead.

Senator Guthrie asked if the code specifically states that cities can relinquish their law enforcement responsibilities to the counties. **Ms. Stricklin** stated that the code is not that specific. She stated that most county sheriff's offices do not have enough deputies to provide the same level of services that is needed within cities. **Senator Guthrie** asked if this meant that technically any city could do away with their law enforcement and contract with a county for those services. **Ms. Stricklin** responded in the affirmative, though she cautioned that the level of service would not be anywhere near the same.

Representative Perry asked how many cities have a prosecutors' office. **Ms. Strickland** responded that every city has a city prosecutor because it's statutorily required. Some are inhouse, while others are contracted. Following up, **Representative Perry** asked if there is a requirement for cities to also have a public defender office. **Ms. Stricklin** responded that statutorily there is no such requirement.

Representative Luker asked if some of the cities contract with the county prosecutor to perform prosecutorial functions. **Ms. Stricklin** responded in the affirmative. **Representative Luker** asked the AIC for a list of the number of city prosecutors that handle their own cases versus the alternative. **Ms. Stricklin** agreed to provide the list.

Senator Mortimer asked what the cities would think of a statewide system where the cities are billed for public defense costs. **Ms. Stricklin** remarked it is a difficult question to answer, but comes down to the same issue of cities not having the funds. She agreed to take the question back to the AIC.

Co-chair Senator Lakey stated that with a higher level of city law enforcement comes a higher burden on the county system, including the public defense system. He asked **Ms. Stricklin** her thoughts on the city's choice to have a higher level of service, which creates a larger burden for public defense services and the constitutional mandate to provide those services. **Ms. Stricklin** acknowledged that a higher level of law enforcement services puts a larger burden on the public defender's office. She noted that many of the smaller cities are not growing and therefore do not have an increase in property tax revenue. She opined that, because this is a constitutional issue, it should be a statewide obligation to provide for the public defender's office, one where there is an across-the-board system in place ensuring that everyone pays equally for the constitutional protection. Following up, **Co-chair Senator Lakey** asked about local control. **Ms. Stricklin** stated that local control should be in which charges are made from a public safety perspective. She does not see constitutional protections being issues of local control. She stated that there should be consistency in public defense services throughout the state, regardless of which county or city the charges are brought.

Co-chair Senator Lakey introduced **Daniel Chadwick, Executive Director, Idaho Association of Counties**. **Mr. Chadwick** reported on the misdemeanor reclassification subcommittee of the Idaho Criminal Justice Commission. The subcommittee will present its final recommendation to the full Commission on September 26. He provided examples of recommendations under consideration that included transportation, fish and game, general misdemeanors, and city and county ordinances. He noted that these will require action by the legislature and by cities and counties. Additionally, he stated that there are two statutes recommended for repeal, one in the area of motor vehicles and the other in arrest and seizure - refusal to assist an officer in arrest. He closed by stating there will be recommendations regarding diversionary programs for license suspensions for noncriminal reasons.

Representative Luker asked for the statutory references that might require legislation in reclassifying city and county ordinances. **Mr. Chadwick** responded that there may be a controlling statute in

some circumstances. **Representative Luker** asked him to provide the committee with the controlling statutes and **Mr. Chadwick** stated that as soon as the list of recommendations is approved he will provide the statutes. **Senator Guthrie** asked what happens when an infraction is committed multiple times and **Mr. Chadwick** responded that in some circumstances the penalty might increase when an infraction is committed multiple times. **Senator Guthrie** asked if the subcommittee addressed the difficulties inherent in collecting and **Mr. Chadwick** stated that the subcommittee did not consider this issue.

Co-chair Representative Bolz asked if the issue of reducing incarceration was factored into the subcommittee's decisions. **Mr. Chadwick** stated that the driving force of the discussion was the reduction in the need for a public defender. Following up, **Co-chair Representative Bolz** asked if the subcommittee analyzed the impact of this approach and **Mr. Chadwick** replied that they reviewed statistics provided by the courts.

Co-chair Senator Lakey asked **Mr. Chadwick** for an update on the status of the resolutions under consideration by the IAC. **Mr. Chadwick** responded that in February, the IAC adopted a resolution that requested that if the counties put their money on the table that the state would create a statewide system for public defense. At a June meeting, there was an alternative proposal offered that goes before the IAC body in September. This proposal is that counties that have a well-established public defense system will continue to maintain it, and if there are any enhancements that the legislature applies to the public defense system, the state will fund those enhancements. The remaining counties will be able to join together and create a more centralized system.

Senator Guthrie asked if moving some misdemeanors to infractions will precipitate a higher collection rate. **Mr. Chadwick** responded that he did not know the answer. **Mr. Henderson** was also asked his opinion and he stated it is doubtful a higher net level of receipts would be collected.

Representative Luker asked for **Mr. Chadwick's** impression regarding the impact of changes caused by the 2014 legislation. **Mr. Chadwick** stated the transition is working pretty well. He identified the issues right now are the expiring flat fee contracts because the standards are yet undecided and conflict counsel and whether the courts keep their inherent authority to appoint. **Co-chair Senator Lakey** asked if the counties are prepared to handle the "no flat fee contract" issue and **Mr. Chadwick** opined they would be prepared, remarking that **Ms. Sara B. Thomas, State Appellate Public Defender**, provided necessary training and two counties have created contracts that avoid the flat fee. **Representative Luker** asked if the association was looking for suggestions related to solving the conflicts issue or if legislation would be helpful. **Mr. Chadwick** answered that **2nd Judicial District Court Judge John Stegner** is providing guidance to the association.

Co-chair Senator Lakey asked the members if there was any other information they need in order to move forward on a discussion on details. **Co-chair Representative Bolz** reminded the members of their task to wrap up work this year by making proposals on a system and that system's funding mechanism. **Representative Perry** stated the issue of resource parity was discussed last year, but it has not been addressed this year. She asked if the state lab can be re-envisioned to support both the prosecutors and the public defenders in a blind fashion. She asked that someone from the state lab be invited to the next meeting and **Co-chair Senator Lakey** asked **Brooke Brouman** to follow up. **Representative Luker** stated he agreed with **Representative Perry's** statement related to resource parity and he also identified city involvement as an overriding issue. He referenced the State of Alaska statute (AS 18.85.155) as a workable solution to the effort to balance the generation of cases by cities with the obligation to provide public defense services. He noted that other considerations, such as funding and standards, will come through the Public Defense Commission. **Senator Mortimer** agreed with **Representative Luker** and added that the committee needs to understand the costs before funding can be addressed.

Senator Guthrie stated that in terms of funding, the committee needs to know how much the system is short. Until that is assessed, he opined that there are administrative solutions that could

address some of the costs. He suggested moving forward with administrative solutions, like Canyon County's efforts to streamline in order to accentuate efficiencies. Also, he stated that it would be helpful clarify the procedures used to identify conflicts. Finally, he asked whether it would be prudent to look at reclassifying some felonies to misdemeanors. **Co-chair Senator Lakey** agreed it would be worthwhile to invite judges to address the streamlining issue. **Representative Meline** requested that the committee ask the judges for a status report of the Justice Fund. **Mr. Chadwick** stated that data regarding the Justice Fund was provided at the last meeting, but explained that year-end statistics will be provided as soon as they are final. **Representative Luker** also agreed that hearing from the courts about streamlining and vertical representation would be beneficial, though he cautioned members to be mindful of finding a balance between separation of powers. **Mr. Henderson** stated the court is always happy to work on improving court services and, in terms of the streamlining discussed earlier, he offered that **Judge Wood** is heading up the advancing justice initiative and can provide helpful comments. He discussed a recent effort to assign one judge to one defendant with multiple charges, as well as other efforts to avoid conflicting protection orders.

Representative Luker asked about the extent to which public defenders are involved with post-conviction relief. **Mr. Henderson** responded that he will provide additional information on this.

Representative Meline asked **Mr. Henderson** if the judges have opinions about a preferable system. **Mr. Henderson** responded by referencing the presentation given by the administrative judges last year and added that judges have concerns about the resources made available for public defense services.

Co-chair Senator Lakey introduced **Holly Koole, Idaho Prosecuting Attorneys Association**. She commented that in regard to the issue of parity between prosecutors and public defenders, the analogy of "apples to apples" is misguided. She opined a more accurate analogy is "apples to oranges." She continued, agreeing with **Mr. David Carroll, 6th Amendment Center**, who cautions that it is unproductive seeing the relationship between prosecutor and public defender as "us versus them." She emphasized that in the field, prosecutors and public defenders respect and work well with each other. **Ms. Koole** then introduced the next presenter, **Barry McHugh, Kootenai County Prosecutor's Office**. She also stated that **Roger Bourne, Ada County Deputy Prosecuting Attorney; Bryan Taylor, Canyon County Prosecutor's Office; and Lorna Jorgensen, Ada County Prosecutor's Office** are in attendance and available for questions.

After providing a brief summary of his professional background, **Mr. McHugh** presented an overview of the Kootenai County Prosecutor's Office. An organizational chart for Kootenai County is available at: <http://www.legislature.idaho.gov/sessioninfo/2014/interim/defense.htm>. Speaking to parity and funding, he discussed two aspects of the job of an elected prosecutor: (1) the prosecution of both civil and criminal cases; and (2) advising the Board of County Commissioners, as well as other public officers. He stated that an additional responsibility for his office is a juvenile diversion division, which is a non-mandated service. He also noted that the civil division in his office is unusual in that it is included as a separate line item in his budget. **Mr. McHugh** explained once the 8% that goes to the juvenile diversion program is set aside, the budget is split 80% to the criminal division and 20% to the civil division. He noted that the public defender's office and the prosecutor's office are fairly even in budgets, as well as staff numbers. He closed by emphasizing the importance of providing consistent representation in public defender services across all offices.

Referring to the information about city-generated prosecutions provided by **Mr. Alan Trimming, Ada County Public Defender's Office**, **Representative Luker** stated that of the 50% misdemeanors handled, 70% were generated by the city and he asked if **Mr. McHugh** could provide the corresponding figures for Coeur d'Alene. **Mr. McHugh** agreed to provide the information to the committee, but explained that Kootenai County is comprised of three cities, each with their own prosecuting office. Following up on a comment about the different duties between prosecutors and public defenders, **Representative Luker** asked if his budget can be broken down to reflect the time

spent by attorneys and staff related to search warrants and investigations without prosecutions. **Mr. McHugh** responded his guesstimate is an average of from three to five hours a week.

Co-chair Representative Bolz asked for more details regarding the type of training provided to attorneys who support the juvenile diversion program. **Mr. McHugh** stated that two office attorneys are assigned to the program and they love the work, they specialize by choice.

Senator Guthrie asked **Mr. McHugh** to identify improvements that could be made to the public defense system. **Mr. McHugh** noted the public defender's office in Kootenai County is in a terrible facility and stated the Commissioners is working toward getting new space. He noted the inconvenience of having their investigators in one space while the attorneys are in another. He noted that the public defenders are skilled. Regarding salaries, he commented that it is always a challenge to retain personnel over time, but this challenge is shared between both the prosecutor and the public defender offices.

Co-chair Senator Lakey asked what the caseload was per attorney in his office and **Mr. McHugh** responded that at any one time, for misdemeanor cases it is 130-150 per attorney and for felonies 60-80 per attorney. Following up, **Co-chair Senator Lakey** asked whether there was about an equal number of attorneys between his office and the public defender's office and **Mr. McHugh** stated there was an equal number.

Representative Meline asked for updated Justice Fund numbers and **Mr. McHugh** explained why they are not using it. **Representative Meline** voiced her concerns regarding levies supporting the public defender services.

Co-chair Senator Lakey asked for more details regarding the management of misdemeanor and felony cases. **Mr. McHugh** explained that in his office one attorney handles all the domestic violence cases at the misdemeanor level and cases are assigned on the basis of level of expertise, as well as on what the attorney likes to work on.

Representative Luker asked if **Mr. McHugh's** office is involved in post-conviction relief. **Mr. McHugh** stated they were not, but they do their own appeals on the civil side, while the State Attorney General's Office handles all others. **Representative Luker** asked if the Attorney General's Office consults with his attorneys on particular cases and **Mr. McHugh** responded his office has this ability, but it has never been an issue.

Co-chair Senator Lakey invited **Mr. Taylor**, **Mr. Bourne**, and **Ms. Jorgensen** to provide their comments and encouraged the members to direct questions to them. **Representative Perry** asked **Mr. Taylor** if any other cities contract with Canyon County besides Nampa. **Mr. Taylor** responded that Nampa is the largest one and other cities contracted for solely county prosecutors are Wilder, Parma, and Notus. He explained that city municipalities have the ability to contract for solely misdemeanor and infractions, whereas felony cases and everything else goes to the county prosecutors.

Senator Guthrie asked **Mr. Taylor** if he could identify any improvements that would make the public defender's office more efficient and **Mr. Taylor** answered he is very impressed with the Canyon County Public Defender's Office. He stated that the big challenge is providing equal representation outside of the big cities, where the public defenders don't have access to the same pool of specialized attorneys as is enjoyed through the county prosecutor's network. **Senator Buckner-Webb** commented that as the committee moves forward they should be focussed on equity for the people they serve.

Senator Guthrie asked **Mr. Bourne** if he could identify any improvements that would make the public defender's office more efficient. **Mr. Bourne** answered that **Mr. Trimming's** office is very efficient and they seem to have all the money they need for experts, as they can ask the judge to order experts and the court provides them. He observed that the prosecutor's office works well with the public defender's office and they have access to the same computer tools, the same evidence, and to the state lab. He stated he saw no parity problem between offices. **Representative Luker** asked if

his office contracts with any cities and asked him to explain how conflicts are handled. **Mr. Bourne** answered they have contracts with Kuna and with Eagle. With conflicts they go to Canyon County for support. Ada County provides the same support for Canyon County prosecutors. Additionally, he stated that some conflicts go to the Attorney General, some to Gem County and Twin Falls County - we trade work so we don't have to pay each other. **Senator Guthrie** asked the members if they should invite representatives from smaller counties to discuss their parity concerns **Representative Luker** also voiced interest in hearing from the rural counties. **Co-chair Senator Lakey** stated that he would look into the request to invite representatives from smaller counties, but also stated the main issue is constitutional minimum standards for training and personnel. **Senator Guthrie** added that the smaller counties may provide some insights, because they have had to do more with less.

Co-chair Senator Lakey introduced **Elana Salzman**, former staff attorney for the Indiana Public Defender Commission. **Ms. Salzman** provided a brief summary of her professional background and then reviewed a PowerPoint entitled *The Indiana Public Defender Commission: An Overview*, which is available at: <http://www.legislature.idaho.gov/sessioninfo/2014/interim/defense.htm>. After identifying the makeup of the Public Defender Commission, she detailed their efforts, identifying: the standards set for defender services; how counties enter the program; what is included in a comprehensive plan; what role the commission plays; the standards for adequate support staff and caseload standards; salary requirements; and attorney qualifications. She concluded by discussing the advantages and challenges of Indiana's program.

Noting that 53 counties were in the statewide Indiana program and 39 were not, **Senator Guthrie** asked if the counties who chose not to participate were in a worse position than before the program was instituted. **Ms. Salzman** responded that she did not see that those counties were negatively affected by choosing not to participate. **Senator Guthrie** asked how the attorney salary amounts were determined. **Ms. Salzman** responded that she is not sure. **Representative Luker** asked how the time is divided in her office between compliance monitoring and administering funds. **Ms. Salzman** answered that it is hard to distinguish time spent between the two, though she guesses it is about half and half. Following up, **Representative Luker** asked if the commission frequently reviews standards and asked how often the standards are updated. **Ms. Salzman** responded that standards were updated as issues arose. **Representative Luker** asked how much of the \$22 million budget is reimbursements versus running the program. **Ms. Salzman** stated that in FY2012, \$17,509,310 was the total for reimbursements.

Co-chair Senator Lakey asked who oversees the public defender offices for compliance. **Ms. Salzman** responded that the commission makes sure standards are being followed. She noted that the chief public defender a county employee who is answerable to the Board of County Commissioners.

Senator Guthrie asked what reasons a county might decide to leave the program. **Ms. Salzman** explained that some counties did not understand the full extent of the caseload/pay standards. In some instances, she continued, the county could not or would not restructure. **Senator Guthrie** asked what the average cost increase is for a participating county. **Ms. Salzman** stated that there is no average and that in many instances it is cheaper to participate, though it all depends on how a county is structured.

Senator Mortimer asked her to evaluate the success of the program. **Ms. Salzman** stated there are challenges because the commission is working in a structure they cannot change. She opined the system could be more efficient, with a more centralized system and a more uniformity. She stated more counties would participate if misdemeanors were included.

Co-chair Representative Bolz asked who sets the standards for the contracts. **Ms. Salzman** stated the commission sets the standards and the county boards are free to draft contracts as they wish. She stated that the commission gave samples to the counties. **Co-chair Representative Bolz** asked if there is a standard for training minimums and maximums. **Ms. Salzman** stated there are training requirements for appeals and for a few other specialties.

Representative Luker stated that an issue the committee must address is that cities have a prosecuting staff but no obligation to provide for public defense, and asked if this is the case in Indiana. **Ms. Salzman** stated that to her knowledge, there is no separate city prosecutor - prosecutors are paid by the state and the county and public defenders are paid only by the county. She did not know if city misdemeanors were prosecuted by city prosecutors.

Co-chair Senator Lakey adjourned the meeting at 2:40 p.m.