

MINUTES
Approved by the Committee
Public Defense Reform Interim Committee
Thursday, January 28, 2016
4:00 P.M.
WW55, State Capitol
Boise, Idaho

Co-chair Representative Christy Perry called the meeting to order at 4:05 p.m. and requested a silent roll call. Members present were: Co-chair Representative Perry, Co-chair Senator Todd Lakey, Representatives Lynn Luker, Janet Trujillo, Patrick McDonald and John Gannon; and Senators Curt McKenzie, Dean Mortimer, Jim Guthrie, and Cherie Buckner-Webb. Legislative Services Office (LSO) staff members present were Ryan Bush, Jared Hoskins, and Jackie Gunn.

Others present: Dan Blocksom, Idaho Association of Counties; Alan Trimming, Ada County Public Defender; Tera Harden, Canyon County Public Defender; Nancy Werdel, Ada County Prosecutor's Office; Kathy Griesmeyer, ACLU Idaho; Larry Maneely, Ada County Board of County Commissioners; Michael Henderson, Idaho Supreme Court; Sara Thomas and Eric Fredricksen, State Appellate Public Defender's Office; Joe Shreve, and Mike and Holly Porterfield.

Note: Copies of presentations, handouts, and reference materials can be found at: www.legislature.idaho.gov and are also on file at the Legislative Services Office.

Representative Luker moved to approve the committee's minutes from the previous meeting held January 21, 2016, and Senator Mortimer seconded the motion. The motion was approved unanimously.

Co-chair Lakey pointed out the revisions to the draft that were made in response to the suggestions agreed to at the last meeting. Representative Gannon asked if his suggestion to add "reasonable costs" on page 8 was considered and Co-chair Perry stated that it had been considered but not included yet. Representative Luker stated that he believed that an element of reasonableness was implied in the text. He also pointed to page 8, line 10, and asked that the payment time period of "annual" be replaced by "six months." Co-chair Perry stated the members appear in agreement to six months.

Senator Guthrie asked how the commission can hope to hire liaisons who will have the necessary skill sets for such little pay. Co-chair Senator Lakey responded that he envisions that, in a situation where a county is noncompliant and the commission has to step in, the attorney services will be contracted out in order to meet the standards put in place. Representative Luker stated that there are quite a few resources out there, and he suggested contracting with an existing public defender's office already operating.

Co-chair Lakey clarified that the specific standards will be set by rule for caseload and training and that the reporting process will be developed so the responsibility is on the public defense offices to provide accurate data, which the commission will review to confirm compliance via workload data and training completed. Representative Luker added that the Odyssey system should assist in the efforts to get the numbers reported. He also emphasized the importance of auditing to confirm that adequate training is occurring, and he suggested adding a few public defenders to the commission.

Co-chair Perry introduced Ms. Sara Thomas, State Appellate Public Defender, who provided feedback regarding the proposed reporting requirements and the staffing specifics of the draft.

Reporting. Ms. Thomas put forward two recommendations for consideration: allow the commission to make the reporting requirements by rule so they can work with the counties, assuring that the requirements are rolled out as the Odyssey system is rolled out; and 2) allow the commission to get the preliminary grant application and review process started immediately in order to have the

counties and the commission begin their work. Consequently, she suggested editing the sentence on page 8, line 42, to end after the word "Code." A discussion ensued regarding case dispositions, and Ms. Thomas summarized her view, stating that the court is working to create uniform definitions for the case dispositions. She added that the success of the effort to gather the case dispositions from the counties comes back to the statewide roll out of the Odyssey system.

Personnel. Ms. Thomas provided information reflecting the budget timeline for the liaisons. This handout can be accessed at: <http://legislature.idaho.gov/sessioninfo/2015/interim/defense.htm>. Ms. Thomas explained that the seven liaisons will be responsible for: oversight of the county grant process and will play a role in determining what is needed for the budget; observe the daily operations of the county court system and determine what the weaknesses of the public defense services are; lead in the organization of training; consult with judges and the commission and review the applications for the extraordinary costs; and serve as the boots on the ground, reporting what is going on in their particular judicial district.

A discussion ensued regarding the following: the viability of hiring seven liaisons; the proposed roll out the initial grant application process; and the timing of providing funds for supporting the liaisons in advance of the full deployment. Ms. Thomas emphasized the commission can create the initial procedures for grant application, in order to get the tools in the hands of the counties.

Senator Mortimer stated his support for getting money in the hands of the counties. He also stated his support for funding three to four liaisons for the next couple of years. Representative Luker stated that the budget presented appears to be a good start but suggested that the members need to consider the issues that will arise regarding funding the ongoing grants in the future. Representative McDonald stated the proposed budget seems reasonable, when it is compared to the expectations.

Co-chair Perry summarized the immediate discussion and suggestions brought forward by committee members regarding Ms. Thomas' recommendations, and she observed that the reporting recommendation requires a simple fix on page 8 of the draft, while more consideration will be necessary to reach agreement on the personnel issue. She stated that the dates included in the draft still need to be discussed with the counties and she stated that the co-chairs will follow up on this.

Co-chair Perry stated that another big issue for the committee to address is whether there should be a last resort enforcement back stop and if so, what it should look like. She summarized the various options already considered by the committee and noted that none are included in the present draft. A discussion ensued. Members provided their concerns and suggestions, with specific focus on: 1) the state's exposure to litigation if a state enforcement back stop is put in place; and 2) if the state were to takeover, identifying a viable revenue stream to access. Mr. Hoskins briefly explained the precedent set with the municipal bond issue. Senator Mortimer suggested putting the last resort back stop provision back in the draft as item (f) on page 3. Co-chair Perry stated she is more comfortable with revenue withholding than with the option of the state suing the county.

Senator Guthrie stated he is troubled with the aggressive punitive action in the draft, noting that it has to pass the Legislature and he predicted a fight if the present version of the draft goes up for consideration. Senator McKenzie expressed support for Senator Guthrie's view, and stated a huge bureaucracy is created in the draft because the counties aren't being trusted to follow the standards. Representative McDonald stated there is a need in every contract to enunciate consequences when the expectations are not met.

Representative Luker stated his reservations regarding putting teeth in the draft at this time, and supported the views of Senators Guthrie and McKenzie. In light of Judge Hoagland's dismissal of the lawsuit, he suggested that the committee leave the responsibilities with the counties. He observed that the counties must have skin in the game. The members briefly discussed the significance of the 4th District Court's lawsuit dismissal, made public Thursday by Judge Samuel Hoagland.

Representative Gannon stated that there needs to be some kind of enforcement remedy of last resort in the statute, one that is applied only in extreme situations of willful noncompliance on the part of the county. Senator Guthrie echoed Representative Luker's concern that the enforcement mechanism on the table for consideration places the liability right back on the state. Representative Luker stated that the county is the delivery vehicle of the services and they are responsible for that level of service and that the state's role is to assist. He voiced his concern that a takeover mechanism will make the state a target for litigation and that it would take away the counties' incentive to be responsible.

Co-chair Senator Lakey emphasized to the members that the real goal is to ensure that the people get effective assistance of counsel. Senator Guthrie suggested that perhaps an enforcement mechanism can be knitted into the training and education piece when the counties appeal to the state for additional help.

Co-chair Perry encouraged the members to decide: 1) will there be a last resort back stop or not; and 2) if there is a back stop, how will the state recoup the costs of that service from the counties. Co-chair Senator Lakey stated that he sees the need for a back stop, and Co-chair Perry stated that the commission emphasized that an enforcement mechanism is necessary.

Representative Luker stated there is some amount of a back stop built into the grant application process and he would like to see how that works. He added that the back stop can be added later. Senator Mortimer stated he is persuaded by Representative Luker's points and supports his proposal of no back stop. Representative Gannon stated that the state will be at a disadvantage if there is no last resort enforcement mechanism like the one proposed earlier.

Representative Luker observed that it all comes back to the takeover and to the cost component. He stated that the enforcement mechanism, used as a last resort, can be the ability to withhold the grant. At that point, if the plan isn't followed, the county loses that money. He suggested letting the counties prove themselves. He stated that there is relief if there is a dispute about the withholding of a grant; so, he asked that the members focus on the standards, the grants and getting things up and running in a cooperative way.

Representative Gannon suggested reserving the right to takeover the public defense services in the county and leave open the reimbursement issue. Senator Guthrie stated this is a huge, far-reaching issue, one where the counties themselves are split on what is the best course of action. He asked the members not to be discouraged. He stated that the teeth can be taken out and suggested the training piece can be used to fold in state involvement if the counties get in a jam.

Senator McKenzie moved, and Senator Mortimer seconded the motion that stated, "the legislation shall not contain a back stop – no revenue withholding, no takeover, and no ability to recoup money." Members in favor: Senators McKenzie, Mortimer, Guthrie, Buckner-Webb and Representative Luker; Members opposed: Co-chair Senator Lakey, Co-chair Representative Perry, Representatives Trujillo, McDonald, and Gannon. Co-chair Perry noted the split five-five vote, and stated the motion dies on a tie.

Co-chair Perry stated that she supports the idea of discussing the other options and she encouraged the members to think outside of the box. Senator McKenzie stated that he supports taking a cautious approach, moving forward on what they can agree on, and following up with the review process. Representative Trujillo stated that the members need to be doing something beyond just setting up the commission. She stated that the commission must be given the tools to successfully accomplish the goals and they must move forward with this because there are problems. Representative Luker suggested they move forward on what can be agreed upon. He stated that Section 19-859 places the responsibility on the counties to provide for the indigent defense and that he does not want that diluted by inserting some sort of state takeover.

Co-chair Perry assigned the member the task of returning to the table in a week's time with their suggestions for revisions to the draft – revisions that the committee can agree on. Representative Luker suggested that no enforcement mechanisms be included in the draft under review next week. The members agreed to meet again next Thursday, February 4, at 4 p.m. The meeting adjourned at 6:05 p.m.