

MINUTES
Approved by the Committee
Public Defense Reform Interim Committee
Thursday, February 04, 2016
4:00 PM to 6:00 PM
WW17, State Capitol
Boise, Idaho

Co-chair Senator Todd Lakey called the meeting to order at 4:24 p.m. and requested a silent roll call. Members present were: Co-chair Senator Todd Lakey, Co-chair Representative Christy Perry, Senators Dean Mortimer, Jim Guthrie, and Cherie Buckner-Webb; and Representatives Lynn Luker, Janet Trujillo, Patrick McDonald (via phone) and John Gannon. Legislative Services Office (LSO) staff members present were: Ryan Bush, Jared Hoskins, and Ana Lara. Senator Curt McKenzie was absent and excused.

Others present: Dan Blocksom, Idaho Association of Counties; Alan Trimming, Ada County Public Defender; Tera Harden, Canyon County Public Defender; Nancy Werdel and Lorna Jorgensen, Ada County Prosecutor's Office; Kathy Griesmeyer, ACLU Idaho; Adam Jarvis, Department of Financial Management; Michael Henderson, Idaho Supreme Court; Sara Thomas, State Appellate Public Defender's Office; and Joe Shreve.

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 Gannon moved to approve the minutes of the January 28, 2016, meeting. The motion was seconded by Senator Mortimer and passed by voice vote.

Co-chair Lakey named the discussion topics: draft DRRCB042, draft DRRCB099, the back-stop issue, and an intermediary.

Representative Luker discussed his concerns on draft DRRCB042, page 7, subsection 11. He stated his concerns about the language that implies that 'the commission would undertake the provision of indigent services in lieu of the county.' He shared that it may not be prudent or feasible for the commission to take over the process for a number of reasons. He suggested that the commission should rather focus on correcting the specific deficiencies and not taking the matter over 'in lieu of the county.' Representative Luker said he has made some adjustments to the language addressing those items in the draft for the committee's review. It was his opinion that the term "intermediary" should be replaced with "mediator." On page 7, line 42, he suggested striking "undertake the provision of" and replacing it with "intent to correct the failure or provide indigent defense services" as well as striking "in lieu of the county" and replacing it with "to the extent necessary to correct the failure."

Representative Luker also suggested inserting an extra procedural step on page 7, subsection 11, with the addition of a mediation process. Senator Buckner-Webb discussed her concern regarding the timeframe proposed that could extend the time before the clients are able to receive the services needed. Representative Luker responded that there would only be an additional 30 days for the mediation process to address the systemic problem. Representative Gannon inquired if shortening one or more of the timeframes, the initial informal timeframe perhaps, would help address the timetables of clients waiting to receive the services needed. Senator Guthrie stated his concern regarding the measurements proposed to evaluate efficiency of counsel. Co-chair Lakey clarified that what are being adopted in code are principals that do not determine ineffectiveness of counsel; they only provide a guide. He emphasized that a goal is to avoid as many ineffective counsel claims on a broader, systemic level.

Senator Mortimer expressed his concern regarding the backstop, suggesting the best alternative may be to remove the backstop. He voiced his suggestion that instead of the commission taking over the situation if standards are not being met, allowing the county to do so. Representative Luker emphasized that the backstop would only take place if the county willfully refuses and materially fails to comply with the standards; it would be a last resort. Senator Mortimer stated that there is a financial concern that he believes the committee has not addressed. Co-chair Lakey responded that he believes the financial concerns are being addressed in the grant process and the additional funding that will be required once the standards are developed. He stated his agreement that finances will be the driving factor in many of these cases. Senator Mortimer stated his concerns regarding a lack of precedent for demonstrating what "willful" disregard would be and the lack of precedent for this backstop.

Co-chair Perry expressed how vital she believes the backstop to be. She gave the example of a county who is having citizens go into court without representation and waiting until the judge appoints representation to them. She stated that this county has been informed that this is illegal and it still continues this practice. Co-chair Perry emphasized that at this time there is no enforcement to make this county discontinue this unconstitutional practice. She stated her belief that this draft is designed to encourage finding the root of the problem and addressing the issue. If the commission is going to be in charge of this process, she said, there has to be a mechanism at the end of this process to provide enforcement. Co-chair Perry provided an example of precedence using an example of county assessors and reappraisals, although a significant difference in this draft legislation is that not all funds would be withheld - only a portion. Co-chair Lakey stated that their first responsibility is to ensure that our citizens that are indigent have adequate constitutional representation, and although he believes that the counties will comply and the backstop will not be needed, he would like to keep the backstop option available.

Co-chair Perry asked the committee if they felt that having standards would provide a layer of protection for the counties if they were to be sued, provided that they can demonstrate that they have been abiding by the standards. Co-chair Lakey responded that in his discussion with some of the county commissioners he found that the counties want to comply with standards that are proposed, and this can provide some help to the counties.

Senator Guthrie stated his concern regarding the backstop and potentially withholding funds from the county if it does not comply with the standards correctly. Representative Luker gave an example of remediation with school safety in buildings to illustrate that this process would not be without precedent. He stated that while he was reluctant to add the backstop into the draft, he believes that there is value to this backstop and it is his hope that it never has to be used. Representative McDonald stated that the committee and counties have compromised on many items, but the committee would be negligent if there was no backstop added to this draft. Senator Mortimer clarified he does agree with the addition of a backstop, but does not agree that the state should take over the process instead of the counties following through with the findings in the case of a backstop. He said that while the commission has the right to state what the county needs to do in order to comply, the county should be following through with the commission's findings.

Senator Guthrie voiced his concern about the potential cost for the counties. He stated that while the counties have been given levying authority to raise enough funds to provide adequate public defense, the state is only contributing just over 15 percent. He shared his concern regarding the commission potentially taking over the process and that the counties will still be liable to their public defense contracts.

Representative Luker pointed to a sunset clause that the committee should potentially discuss on page 6, line 24 regarding grant funding. Co-chair Lakey responded that the sunset clause was added with the understanding that the \$5 million was only a bridge and should be revisited at a later date

once the standards have been put in place. Representative Luker suggested additional language to clarify that the funding will not cease, but will be revisited to see if additional funds will be needed.

LSO staff member Jared Hoskins suggested additional language on page 6, line 33, paragraph b, requiring the application be approved if it is necessary to provide constitutional defense standards. Senator Luker agreed with changing the word to "meet" regarding indigent defense standards.

Co-chair Lakey reiterated the concepts discussed during the meeting and had consensus from the committee. The co-chairs requested a revised draft be sent to the committee on Friday to be reviewed over the weekend for any potential modifications. The committee scheduled a final meeting for Monday, February 8, 2016, at 4 p.m. The committee meeting adjourned at 6:02 p.m.