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**Testimony of Kathy Griesmyer  
 HB 504 – Public Defense Reform  
 Before Senate Judiciary & Rules Committee  
 March 09, 2016**

The ACLU of Idaho stands before you today in support of HB 504 which creates a system of foundational reforms aimed at addressing Idaho’s broken public defense system.

In 1963, the United States Supreme Court in *Gideon v. Wainwright* established that the Sixth Amendment requires states to provide effective representation for criminal defendants who are unable to afford an attorney. The Court eloquently stated “[i]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him,” adding that “lawyers in criminal courts are necessities, not luxuries.”<sup>1</sup>

Since that monumental court decision, and despite Idaho’s early support for the Supreme Court’s ruling, Idaho has developed a patchwork quilt of underfunded and inconsistent systems that vary greatly across the state, which has resulted in a public defender delivery system that is likely unconstitutional. In 2008, the National Legal Aid and Defender Association was brought to Idaho at the request of the State’s Criminal Justice Commission to assess the status of indigent defense services throughout the state. Over the next two years, the NLADA studied seven counties and determined that the “state of Idaho fails to provide the level of representation required by our Constitution for those who cannot afford counsel in its criminal and juvenile courts.”<sup>2</sup>

Since the publication of the NLADA study in 2010, the Idaho Legislature has grappled with how to address its broken public defense system and provide relief for Idaho counties who have been tasked with overseeing the state’s constitutional responsibility. From the establishment of the Public Defense Interim Committee, the prohibition on flat fee contracts, to the creation of the Public Defense Commission, this committee has moved forward symbolic, yet non-substantive legislation to address this constitutional crisis.

However, the introduction of HB 504 represents the first substantial piece of legislation aimed at addressing the serious failings of our public defense system—legislation that we hope will provide the long-sought after relief that public defenders and indigent defendants have been seeking for over five years.

Our support of this legislation rests on three important factors.

<sup>1</sup> *Gideon v. Wainwright*. 372 U.S. 335. Supreme Court of the United States. 1963. *Supreme Court Collection*. Legal Information Inst., Cornell U. Law School. Web. 25 Feb. 2016.

<sup>2</sup> *THE GUARANTEE OF COUNSEL Advocacy & Due Process in Idaho’s Trial Courts - Evaluation of Trial-Level Indigent Defense Systems in Idaho*. Rep. N.p.: National Legal Aid & Defender Association, 2010. Print.

1. Section 19-850 (vii) outlines rules to be promulgated by the Public Defense Commission that set standards for public defenders to utilize. These standards are drawn from the American Bar Association's Ten Principles of a Public Defense Delivery System, which "constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney."<sup>3</sup> Standards such as maintaining a public defense system independent from political and judicial influence, providing defending attorneys sufficient time to meet with their clients prior to trial, opportunities for continuing legal education, and supervision of defending attorneys to ensure compliance with standards are critical components of a constitutionally-sound public defense system.
2. The creation of §19-862A (2) establishes the process by which counties can apply for a state indigent defense grant, supplementing their current budgets with additional dollars awarded by the Public Defense Commission, in exchange for compliance with the indigent defense standards. These grants are crucial in providing the monetary relief counties across the state have been seeking. Many counties are nearing the maximum level of their justice levy funds and with growing costs for providing defense, along with increases in prosecution rates, they are finding themselves unable to afford a public defense system that meets constitutional requirements.
3. Part (11-14) of §19-862A outlines the enforcement mechanism crucially needed in ensuring compliance with the Public Defense Commission's standards, as provided in §19-850 (vii). The mediation process outlined in these subsections provides for adequate notice for non-compliant counties to address their deficiencies, establishes sufficient due process for aggrieved counties, and ultimately grants the Commission authority to intervene and provide public defense services if needed, ensuring further protection of indigent defendants' Sixth Amendment rights.

While the ACLU maintains its support for HB 504, it serves *only* as a critical first step in providing relief to counties, public defenders, and most importantly, indigent clients. We recognize, for instance, that a roughly \$5.48 million allocation of funds is far below where funding levels should be to ensure actual compliance with basic standards.

Throughout the interim committee meetings, the Sixth Amendment Center was brought in to provide expert testimony and estimated that the state's funding responsibility would be \$20-30 million, above the current \$24-26 million paid by the counties, to meet constitutional standards at the current level that prosecutors are charging crimes. Although this legislation marks the first time state dollars have been allocated to fund trial-court-level public defense across the state, we expect that this financial allotment will do little in assisting the counties and public defenders in meeting the newly outlined

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<sup>3</sup> *ABA Ten Principles Of a Public Defense Delivery System*. Rep. American Bar Association, Feb. 2002. Web. 25 Feb. 2016.

<[http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ten\\_principlesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ten_principlesbooklet.authcheckdam.pdf)>.



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standards. We also echo the concerns that the Idaho Association of Counties have expressed: without substantial additional funding, and further work by the Public Defense Commission and this legislature, this bill imposes an unrealistic burden on local jurisdictions and simply will not fix Idaho's system.

Upon passage of this legislation, the Public Defense Commission will be tasked with full oversight and enforcement power of public defense delivery systems in the state – from creating standards, to providing ongoing training for attorneys, to issuing funding grants to counties, and ultimately serving as administrator for compliance. So far, as the courts have already observed, the Commission has failed to comply with its legislative mandates. Accordingly, the actual implementation of this bill will be crucial. Throughout this implementation process, the ACLU will remain vigilant, both in court and in our work with lawmakers, and will be closely monitoring each subsequent step outlined in HB 504.

Since 2010 and the release of the NLADA study, the ACLU of Idaho has diligently stood before this committee, the Public Defense Interim Committee, and the Public Defense Commission asking for an end to this crisis for Idaho families, communities, and economies. For too long, indigent Idahoans have gone to trial without an adequate defense in place—or plead guilty and not gone to trial at all—because their public defender was over-worked, under-paid, and left with inadequate resources to contend with the prosecutors, police, sheriffs, investigators, witness coordinators, experts, laboratories, and support staff on the government's side. HB 504 begins to shift this imbalance and provide public defenders with the standards, funds, and ongoing training necessary to adequately defend their clients in Idaho courtrooms. This bill is long overdue and we welcome its passage. Make no mistake though: if this is all that Idaho does to address the ongoing crisis, it will fall far short. Not only must the Public Defense Commission vigorously tackle the tasks set out in this bill, this legislature and the counties will both also have to vigorously continue to solve the problems we have long documented and that the underfunding of this bill will itself create.

With those important caveats, we respectfully ask that you vote yes and move HB 504 out of committee with a do pass recommendation.

