

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Monday, January 23, 2017

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Luker, Vice Chairman Malek, Representatives Dayley, Trujillo, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Gannon, McCrostie, Wintrow

**ABSENT/
EXCUSED:** Representative Perry

GUESTS: Jarod Cash, Idaho Commission of Pardons and Parole; Victor McCraw, Idaho POST; Mary Schoeler, Idaho Commission of Pardons and Parole; Kelly Jennings, Idaho Public Defense Commission; Teresa Baker, IAC; Kathy Griesmyer, ACLU; Kimberly Simmons, Idaho Public Defense Commission; Andrew Masser, PDC; E. Fredrickson, SAPN; Holly Koole Rebholtz, IPAA; Sandy Jones, Parole Commission; Nicole LeFavour.

Chairman Luker called the meeting to order at 1:30 P.M.

Chairman Luker introduced the committee's Intern for the session **J.J. Watkins**.

Chairman Luker turned the gavel over to **Vice Chairman Malek**.

VOTE ON MOTION: **Vice Chairman Malek** called for a vote on the motion to approve **Docket No. 11-1104-1601**. **Motion carried by voice vote.**

DOCKET NO. 50-0101-1602: **Jarod Cash**, Deputy Director for Idaho Commission of Pardons and Parole, presented **Docket No. 50-0101-1602**. The proposed rule is an extension of changes made in previous rules.

In response to questions from the committee, **Mr. Cash** clarified there are no new changes, all strike outs remain the same. The only request is for another two year extension of previous changes.

MOTION: **Rep. Cheatham** made a motion to approve **Docket No. 50-0101-1602**. **Motion carried by voice vote.**

DOCKET NO. 61-0101-1601: **Kelly Jennings**, Deputy Director, Idaho Public Defense Commission, (PDC) presented **Docket No. 61-0101-1601**. The proposed rule focuses primarily on the administration of training funds. This rule guides the agency internally and provides transparency to stakeholders. The new addition contains a Pending Rule Governing Training Requirements for Defending Attorneys and the Administration of Training Funds.

MOTION: **Rep. Trujillo** made a motion to approve **Docket No. 61-0101-1601**. **Motion carried by voice vote.**

DOCKET NO. 61-0107-1601: **Kelly Jennings**, Deputy Director, Idaho Public Defense Commission, presented **Docket No. 61-0107-1601**. This rule provides guidance for the PDC internally and defines defense attorney case loads and the standards for recipients of training funds for defending attorneys that utilize Idaho's principals of an indigent defense system. PDC believes rolling out standards over time allows the counties to develop robust infrastructure for supporting indigent defense delivery systems.

In response to questions from the committee, **Ms. Jennings** clarified there were some standards and definitions mulled over during the several discussions and meetings. Many of these questions will be answered following the case study over the next few months with funding PDC already has acquired to determine accurate numbers for defense attorney's case loads in Idaho's counties.

Teresa Baker, Idaho Association of Counties, testified **in support** of **Docket No. 61-0107-1601**. After surveying all 44 counties with positive feedback concerning the first round of standards, they look forward to the actual survey and numbers for Idaho's case load standards.

Kathy Griesmyer, Policy Director, American Civil Liberties Union, testified **in opposition** to **Docket No. 61-0107-1601** due to concerns over using the word "should" and the removal of case standards until Idaho case study has been completed.

In response to questions, **Ms. Griesmyer** stated the ACLU believes there should be stricter terminology and actual case load numbers and details to pass the rule. Currently there are not enough details to pass the rule.

Kimberly Simmons, Deputy Director, Idaho Public Defense Commission explained the end goal for all ACLU and PDC is the same, to improve the public defense system in Idaho. Originally used Federal statistics, in the end pulled the numbers due to the high need to obtain Idaho figures for felony, mental health, and misdemeanor offenses. This workload research will provide the unique numbers to Idaho and reform to our needs.

In response to questions, **Ms. Simmons** stated this is not to provide a court challenge or an argument for mistrial of ineffective counsel.

MOTION:

Rep. Trujillo made a motion to approve **Docket No. 61-0107-1601**.

SUBSTITUTE MOTION:

Rep. Wintrow made a substitute motion to reject **Docket No. 61-0107-1601**.

AMENDED SUBSTITUTE MOTION:

Rep. Kerby made an amended substitute motion to approve **Docket No. 61-0107-1601** with the exception of **Section III(b)**.

Vice Chairman Malek ruled the amended substitute motion out of order for the following reason; authority to approve cannot change the incorporated standards that are already adopted by the Public Defense Commission. As a legislature we are unable to add language to a rule.

AMENDED SUBSTITUTE MOTION:

Rep. Gannon made an amended substitute motion to approve **Docket No. 61-0107-1601** with the exception of **Rule 004.02** standards for defending attorneys.

Vice Chairman Malek clarified if this reference to also intend page 45 to include **Subsection .021** that also makes reference to the standards for defending attorneys.

Rep. Gannon responded by saying there is a need to reject **Rule 004.02** and **Subsection 021**.

ROLE CALL VOTE ON AMENDED SUBSTITUTE MOTION:

Rep. Trujillo requested a role call vote. **Motion failed by a vote of 3 AYE and 12 NAY. Voting in favor** of the motion: **Reps. Gannon, McCrostie, and Wintrow. Voting in opposition** to the motion: **Reps. Luker, Malek, Dayley, Trujillo, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, and Zollinger.**

Vice Chairman Malek clarified with **Ms. Simmons** this is a new rule, the amendments were changes made during rule making, and if this is rejected there will be no rule.

**UNANIMOUS
CONSENT
REQUEST:**

Rep. Wintrow made a unanimous consent request to withdraw her substitute motion.

**VOTE ON
ORIGINAL
MOTION:**

Vice Chairman Malek called for a vote on the original motion to approve **Docket No. 61-0107-1601. Motion carried by voice vote.**

**DOCKET NO.
05-0103-1601:**

Sharon Harrigfeld, Director Idaho Department of Juvenile Corrections presented **Docket No. 50-0103-1601**. The proposed rule focuses primarily on juveniles in state custody as they turn 19 years of age. The changes to the docket to correct the Code will change and remove unnecessary examples. It will correct the citation powers and duties under the general provision, adding testimony to make it clear that testimony is made on all matters and correcting another citations. There are Title changes, which will change Powers and Duties to Placement for clarification to the board.

MOTION:

Rep. Dayley made a motion to approve **Docket No. 05-0103-1601. Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:13 P.M.

Representative Luker
Chair

Heidi McKay
Secretary