

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, January 14, 2019

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Grow, Cheatham, Burgoyne, and Nye

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** Chairman Lakey called the Senate Judiciary and Rules Committee (Committee) meeting to order at 1:30 p.m.

**INTRODUCTION:** **Chairman Lakey** introduced Committee Page **Chase Knott**, who gave an overview of his school accomplishments, interests, family, and future plans, including his hobby as a beekeeper.

**PASSED THE GAVEL:** Chairman Lakey passed the gavel to Vice Chairman Lee.

**DOCKET NO. 61-0102-1801** **Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports.** **Kathleen Elliott**, Executive Director, Idaho State Public Defense Commission (ISPDC), explained that ISPDC recognized the importance of confidentiality between attorneys and clients which resulted in the proposed docket. One of ISPDC's missions is to protect and collect data responsibly and to use it as mandated.

**DISCUSSION:** **Chairman Lakey** expressed concern with the cumbersome nature of the application process and asked if counties expressed concern with the difficulty of tracking data. **Ms. Elliott** responded that counties had expressed concerns regarding data tracking. ISPDC was actively helping them formulate annual reports and reviews. The concern was that they may not be able to track that data under current accounting systems. The State has 44 accounting systems and consistency was a concern. She commented that the ISPDC encouraged people to participate and tried to provide the needed tools. **Chairman Lakey** stated that he had heard similar concerns from the counties. **Senator Burgoyne** asked when to anticipate further rule amendments pertaining to reporting requirements and when they could expect data needed for guidance in setting standards. **Ms. Elliott** stated if the case load standards were adopted, they anticipate it could take up to three years. Determining what counties and defending attorneys need is their mission. They requested, with the Governor's approval, a data analyst position for the commission. ISPDC worked to simplify forms and receive relevant data from commissioners and defense attorneys. It is still early in their process, and they plan to improve the system and gather more data.

**MOTION:** **Senator Burgoyne** moved to approve **Docket No. 61-0102-1801** with the exception of Subsection 010.37. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

- DOCKET NO. 61-0103-1801**      **Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services.** **Ms. Elliott** explained that ISPDC was mandated to provide rules for contracts between counties and public defense attorneys. Changes made to the rule reflected concerns that contracts should be enforced by ISPDC and not the contracting authority. She said ISPDC struck sections and certain terms were made discretionary to allow for negotiation. Another change was made at the request of stakeholders, requiring materials be provided by defending attorneys upon request.
- DISCUSSION:**      **Senator Burgoyne** asked if there might be a beneficial effect in setting out the workload standards in the contracts. **Ms. Elliott** said each defending attorney was required to comply with the standards and there are consequences for noncompliance. She thought setting the standards in the contracts would bring clarity.
- TESTIMONY:**      **Tom Arkoosh**, Idaho Association of Criminal Defense Lawyers, supported the notion of standards. Managing the standards was the next step.
- MOTION:**      **Senator Anthon** moved to approve **Docket No. 61-0103-1801**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 61-0104-1801**      **Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants.** **Ms. Elliott** explained that the ISPDC has appropriated funds to disburse among counties for compliance with indigent defense standards. Idaho Code mandated that counties apply for indigent defense grants and that the ISPDC must promulgate rules for the process. She said this rule sets forth the process and requirements for counties to apply for funds.
- DISCUSSION:**      **Chairman Lakey** inquired further about the process. **Ms. Elliott** explained that they began to revamp grant applications and reached out for a representative group of clerks across the state to advise them. They needed to learn, be aware, and listen to what the 44 counties were dealing with; what they could provide the ISPDC and how to better obtain the information. They recognized the need for the information, however she believed there was a collaborative way to go about that.
- MOTION:**      **Senator Thayn** moved to approve **Docket No. 61-0104-1801**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 61-0108-1801**      **Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems - Rule Definitions.** **Ms. Elliott** said the rule intends to amend the standards for defending attorneys, provide work load standards, and ensure that defending attorneys are handling appropriate workloads. Multiple sections were revised which pertained to case load standards, including sections on how to calculate a case load for defending attorneys handling multiple types of cases. They made adjustments for more complex case loads and balanced them for the year.
- DISCUSSION:**      **Senator Burgoyne** inquired if Ms. Elliott knew if the case load standards included in the 2018 version of Standards for Defending Attorneys would be constitutionally adequate. **Ms. Elliott** commented that she had spent more than 25 years as a criminal defense attorney and in her perspective she believed these were constitutionally sound and reasoned numeric case numbers. **Senator Anthon** asked if these guidelines would be restrictive to certain counties. **Ms. Elliott** indicated she heard and recognized potential impacts in rural and urban counties. Many were presently complying with the standards. Certain smaller counties expressed concern in obtaining defending attorneys and some urban counties would have trouble as well. Their goal was to use additional funds so that counties could comply with these standards. Compliance was dependent on State funding. **Senator Anthon** asked how the standards would adjust to rural areas so defenders

could take on diverse case loads. **Ms. Elliott** said they were testing a calculator to diversify workloads appropriately. Their intent was to recognize the limits and provide appropriate time to represent everyone. **Chairman Lakey** expressed concern with adopting the American Bar Association's (ABA) standards into Idaho Code. He asked if the guidelines come into play if numerical standards are not present. **Ms. Elliott** confirmed this and reported that Idaho was in the 200-case load range with no standards, similar to 30 other states. Six states use a weighted standard, and five others have standards near the 150 felony case load range.

**Chairman Lakey** asked about further research and the collection of the data. **Ms. Elliott** responded that the data tracking system was a voluntary effort. More than 150 Idaho attorneys voluntarily participated in the study, which included nine case types and 17 case tasks with no support staff. Tracking time took place over 12 weeks and was completed by Idaho public defense attorneys. Public defense attorneys had a 34 percent response rate to their study, with an average of 12 years of practice and 93 percent workload dedicated to indigent defense. The third part of the study was developed by the RAND Corporation, and one quarter of the attorneys participated in that three-part study. She said they would refine the data and evaluate the study further during the next three years.

**Senator Burgoyne** asked whether they had access to the necessary data that would allow them to improve, with respect to the study. He asked about follow up on the study's sustainability and if thought was given to the periodic nature of future studies. **Ms. Elliott** responded that they could provide counties with what they need. She thought their process would evolve into a very effective system of data collection. She could not say what future guidelines or designs would be, but the ISPDC would create a formulated response. The Idaho Policy Institute completed a study, and she thought it was comprehensive and impressive. **Senator Burgoyne** commented regarding a process of creating consistent data gathering systems.

**Chairman Lakey** asked if the budget request related to an increased grant funding level and if it was related to the standards. **Ms. Elliott** said that their request covered those costs and was recognized by both the Governor's office, the Department of Financial Management, and the Legislative Services Office. She said their request was adequate for now.

**TESTIMONY:**

**Kathy Griesmyer**, Policy Director, American Civil Liberties Union (ACLU) of Idaho, asked the Committee to reject subsection C of the Standards for Defending Attorneys - 2018 edition incorporated by reference in rule docket 61.01.08 - Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems - Rules Definitions. She stated the ACLU believes that the current workload standard is ineffective and will continue to perpetuate excessively high case loads for defending attorneys, especially for indigents. She stated that since it was unknown how the Idaho Public Defense Commission weighed/prioritized the information used to create the proposed numerical standards, the recommendation was to remove the current workload standards under subsection C and rely on subsection B to utilize the previously established National Advisory Committee standards as a baseline. It is unclear how a defending attorney should make appropriate adjustments regarding their workloads if they are reaching the maximum. The process should be better defined. It has been suggested that attorneys decline or withdraw from cases when nearing the maximum standard. This would not solve the problem for indigent defendants. There was also a concern that the proposed workload standard is further complicated by an unclear funding structure for the PDC as outlined by the Governor's budget recommendation for the Commission. **Ms. Griesmyer** requested the Legislature to commit to taking the necessary steps to collect whatever additional data is needed for the creation of a sound Idaho

specific standard and to set a deadline by which such data will be collected and a viable workload standard published.

**TESTIMONY:** **Kelly Jennings**, Owyhee County Commissioner, expressed concern with the cost for public defenders and said there was a lack of consistency in the hiring process.

**TESTIMONY:** **Seth Grigg**, Executive Director of the Idaho Association of Counties (IAC), testified on initial standards adopted by ISPDC and its fiscal impact. He advocated for available funding to all counties to meet standards for employing additional attorneys. He noted that the State was responsible for funding public defense. He raised concerns over funding through tax levies to pay for public defenders. Counties would have to hire additional public defenders in order to be compliant with the standards.

**Chairman Lakey** asked Mr. Grigg how the implementation of caseload standards applies to the Capital Crimes Defense Fund. **Mr. Grigg** explained the purpose of the fund was to assist monetarily with capital crimes cases. Counties are provided funding if there's a capital case within their boundaries and for which hiring a second public defender is necessary.

**MOTION:** **Senator Burgoyne** moved to approve **Docket No. 61-0108-1801** with exception of Rule 004.02. The motion failed due to lack of a second.

**MOTION:** **Chairman Lakey** moved to approve **Docket No. 61-0108-1801**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DISCUSSION:** **Chairman Lakey** agreed with Ms. Elliott and appreciated her work. He believed they were headed in the right direction and urged the committee to support counties with State funding.

**Senator Burgoyne** thanked the presenters and proclaimed his nay vote was not adamant but a concern towards how much is spent on litigation and the litigation's obscure consequences.

**PASSED THE GAVEL:** Vice Chairman Lee passed the gavel back to Chairman Lakey.

**ADJOURNED:** There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:59 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary

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Bryce DeLay  
Assistant to the Secretary