

MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 15, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative Troy

GUESTS: Charlie Spencer, ISP; Jesse Taylor, IAIL; Amaia Griggs, ASUI; Kathleen Elliott, Darrell Bolz, Nichole Devaney, Brianne McCoy, PDC; Kelly R Aberasturi, Owyhee County; Eric Fredericksen, SAPD; Jared Larsen, Governor's Office; Jay Shaw, Admin. Rules; Kathy Griesmyer, ACLU; Andrew Masser, IACDL

Chairman Dayley called the meeting to order at 1:31 p.m.

MOTION: **Rep. McCrostie** made a motion to approve the minutes of the January 9, 2019 meeting. **Motion carried by voice vote.**

Chairman Dayley turned the gavel over to **Vice Chairman Chaney** for presentation of administrative rules.

DOCKET NO. 11-0301-1801: **Major Charles Spencer**, Idaho State Police (ISP) presented the docket. This temporary rule change updates the incorporation by reference to the newest NHTSA conforming products list (CPL) posted in the federal register. The November 2017 revision of the CPL shows all the evidentiary breath testing instruments in Idaho are approved for use on the NHTSA conforming products list. Because this temporary rule change was necessary during the legislative moratorium period, ISP will go through the proposed rule making process after the end of this legislative session and come back next year to complete the process.

MOTION: **Rep. Amador** made a motion to approve **Docket No. 11-0301-1801. Motion carried by voice vote.**

Kathleen Elliott, Executive Director, State Public Defense Commission (PDC) presented an overview of the Commission. The purpose of the PDC is to administer funds to the counties, who provide indigent defense services; improve the level of indigent defense services; and improve the standards for defense attorneys statewide. In 2017, the PDC was asked by legislators and stakeholders to gather Idaho specific data on defense attorney workloads across the state. This work was done by BSU's Idaho Policy Institute and included review of other such studies, interviews with experts, and quantitative and qualitative data gathered through actual time tracking of defending attorneys. It also gathered data on their perceptions of whether they had adequate time to serve clients. According to Ms. Elliott, more than 10,000 cases were tracked. Input was also gathered from experienced public and private Idaho defense attorneys. The culmination of that work resulted in the 2018 Idaho Public Defense Workload Study (See Attachment).

Based on questions from the Committee, **Ms. Elliott** stated there has been robust discussion about whether indigent defense should be handled at the state or local jurisdiction levels. The goal of the PDC is to collect relevant data that isn't a burden to attorneys and counties. The Commission is not currently looking at data around individuals receiving indigent defense assistance, but have the assets to support their own defense. She also explained the workload study only includes the hours for defenders. The pending rule incorporating the workload standards also provides a relief clause for attorneys and counties who exceed the workload standards for justifiable cause. She emphasized the Standards for Defending Attorneys and the maximum caseloads are a starting place and it will be continuously looked at and revised as necessary, but it takes into account the Idaho-specific legal environment.

DOCKET NO. 61-0102-1801: **Kathleen Elliott**, Executive Director, State Public Defense Commission presented the docket, which makes technical changes, addresses mandatory continuing education, and clarifies reporting procedures particularly as they relate to protecting attorney-client confidentiality.

MOTION: **Rep. Zollinger** made a motion to approve **Docket No. 61-0102-1801. Motion carried by voice vote.**

DOCKET NO. 61-0103-1801: **Kathleen Elliott**, Executive Director, State Public Defense Commission presented the docket. This section of rule pertains to model contracts and core requirements for contracts between counties and private attorneys for providing indigent defense services. In answer to a question from the Committee, Ms. Elliott explained the rule requires that contracts be in writing, but allows counties the right to build their own contracts if they choose to do so.

MOTION: **Rep. McCrostie** made a motion to approve **Docket No. 61-0103-1801. Motion carried by voice vote.**

DOCKET NO. 61-0104-1801: **Kathleen Elliott**, Executive Director, State Public Defense Commission presented the docket. This rule establishes the original procedures and forms for the application and disbursement of indigent defense grants. There are no changes to the pending rule and it is being adopted as originally proposed.

MOTION: **Rep. Gannon** made a motion to approve **Docket No. 61-0104-1801. Motion carried by voice vote.**

DOCKET NO. 61-0108-1801: **Kathleen Elliott**, Executive Director, State Public Defense Commission presented the docket. This rule amends standards for defending attorneys. The standards include maximum caseloads for defending attorney's, and are based on the 2018 Idaho Public Defense Workload Study. However, if the proposed Idaho standards should sunset in 2020, it refers to the use of national caseload limits from the American Bar Association's National Advisory Committee (NAC).

In answer to questions from the Committee, **Ms. Elliott** stated \$3.6 million is requested to solely support compliance with the standards and is supported by the Governor. Based on comments and questions from several Committee members, Ms. Elliott emphasized the rule has a mechanism for relief if a defender or county nears, or exceeds the maximum caseload requirement and the PDC assist counties with recruitment, funds and training when more defense attorneys are needed. There also are extraordinary litigation funds available for extreme cases. Defenders can attest to the need for providing the level of constitutionally required representation.

ORIGINAL MOTION: **Rep. Amador** made a motion to approve **Docket No. 61-0108-1801.**

Speaking to the motion, **Rep. Amador** stated the Commission did exactly what it was asked to do by developing Idaho-specific standards based on Idaho-specific data and should be allowed to move forward.

The committee recessed at 3:21 p.m. and reconvened at 3:26 p.m.

Kelly Aberasturi, Owyhee County Commissioner spoke as a neutral party, but described the difficult situation his county is in with respect to providing public defense. The Public Defense Commission has supported his county and been responsive to all their requests.

Kathy Griesmyer, Policy Director, ACLU-Idaho spoke **in opposition** to the workload standards stated in section III, subsection C and incorporated by reference in **Docket No. 61-0108-1801**. She said the ACLU supports the idea of workload standards; however, the proposed workload maximums are too high and will perpetuate excessively high caseloads for defending attorneys. She recommended removing the Idaho-based workload standards in subsection C and rely on subsection B, which refers to the use of standards established by the National Advisory Committee (NAC).

Andrew Masser, Idaho Association of Criminal Defense Lawyers spoke **in support** of the pending rule and its standards for defending attorneys. He stated caseload standards are critical and the standards are not just a cookie cutter approach. It is just the beginning of public defense reform in Idaho and this is the first step.

SUBSTITUTE MOTION:

Rep. Marshall made a substitute motion to approve **Docket No. 61-0108-1801**, with the exception of Section III, Subsection B and Subsection C.

Speaking to the motion, **Rep. Marshall** said he didn't want to discount the work of the Commission, but he is concerned about including caseload numbers in the rule.

AMENDED SUBSTITUTE MOTION:

Rep. McCrostie made an amended substitute motion to approve **Docket No. 61-0108-1801**, with the exception of Section III, Subsection C.

Speaking to the amended substitute motion, **Rep. McCrostie** said he is concerned that the caseload standards do not allow for any time off for vacations or personal time, so they may not be an accurate reflection of time needed to manage cases. He supports the removal of Subsection C. However, he is concerned that removing Subsection B removes all references to caseload standards, which should still be included.

Reps. Zollinger, Amador and Hartgen spoke **in opposition** to the amended substitute motion. Rep. Zollinger stated his concern that the NAC standards were developed in the 1970s, and the legal environment has significantly changed with the use of technology for research. All supported the position that the Idaho standards are well researched, and Idaho may lead the country in its effort to establish Idaho-specific data and standards.

VOTE ON AMENDED SUBSTITUTE MOTION:

Vice Chairman Chaney called for a vote on the amended substitute motion to approve **Docket No. 61-0108-1801**, with the exception of Section III, Subsection C. **Motion failed by voice vote.**

VOTE ON SUBSTITUTE MOTION:

Vice Chairman Chaney called for a vote on the substitute motion to approve **Docket No. 61-0108-1801**, with the exception of Section III, Subsection B and Subsection C. **Motion failed by voice vote.**

VOTE ON ORIGINAL MOTION:

Vice Chairman Chaney called for a vote on the original motion to approve **Docket No. 61-0108-1801**. **Motion carried by voice vote.** **Reps. Marshall and Goesling** requested they be recorded as voting **NAY**.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned 4:14 p.m.

Representative Chaney
Vice Chair

Wendy Carver-Herbert
Secretary