MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Friday, March 21, 2025
TIME:	1:00 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lakey, Vice Chairman Shippy, Senators Ricks, Foreman, Lent, Lenney, Keyser, and Wintrow
ABSENT/ EXCUSED:	Senator Ruchti
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 meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.
PASSED THE GAVEL:	Chairman Lakey passed the gavel to Vice Chairman Shippy.

S 1181 **PUBLIC DEFENSE - Amends existing law to revise provisions regarding the Office of the State Public Defender and indigent public defense in this state**. **Chairman Lakey** explained that the legislation had provided updates and clarity regarding the State Public Defender (SPD). He noted that the legislation had been a collaborative process involving the Governor's Office, the Idaho State Public Defender, the Counties, other legislators, and defending attorneys. The system had been taken over by the State. The legislation had contained intent language for the development and implementation of a transition plan pertaining to the use of county facilities. It had reflected current case law specifying that the SPD paid for transcripts they requested. The bill had provided for the development of workload standards in accordance with certain principles to ensure constitutional and efficient representation. This had further clarified the key role of the District Public Defenders (DPD) and their leadership responsibilities in managing public defense services in their districts, promoting efficiency and responsiveness at a more localized level. The legislation had provided for compensation that was more aligned with the local market and case complexity. It had specified that certain office building expenses were the responsibility of the counties and had specified the types of cases covered by the SPD.

Chairman Lakey had pointed out a typographical error and had wanted the bill to be sent to the 14th Order of Business for possible amendment of a code section. He had stated he would address that near the end of his presentation. He had outlined the changes in the bill. He had reported that existing county facilities, such as the portion of the Ada County Courthouse that had previously been used for the Ada County Public Defender, had been provided free of cost to the SPD. However, the SPD had been responsible for some of those office expenses to help ease that relationship. The legislative intent had stated that with the budget submitted by the SPD in 2027, they must submit a transition plan for relocation with a deadline of 2029.

Chairman Lakey had stated that the Supreme Court had indicated the SPD was responsible for the cost of transcripts if requested, and this was reflected in the code. The bill had clarified that an attorney would only be appointed if constitutionally required when a parent or guardian was financially unable to employ

counsel. The American Bar Association (ABA) standards had been removed and replaced with criteria previously developed by the Public Defense Commission to gradually improve Idaho's defense system.

Chairman Lakey had also stated that the bill had enabled the SPD to establish workload standards based on criteria from both public defenders' contracts and in-house standards. The bill had emphasized the importance of working with District Public Defenders. Workload standards had been developed cooperatively, considering the education, training, abilities, and experience of defending attorneys, as well as the complexity and number of cases assigned. Contract rates had been based on local market conditions, varying across the State. The bill had clarified the responsibilities of Idaho district defending attorneys and had included provisions for investigators, administrative staff, and other personnel in the judicial district, whether hired or contracted, to coordinate litigation efforts.

The State had paid for office space, equipment, technology, and software expenses, while counties had been responsible for utilities, building maintenance, snow removal, repair, and replacement of office equipment. **Chairman Lakey** had remarked that the legislation had removed a large portion of the implementation language, as those sections were no longer needed.

Chairman Lakey pointed out that the provisions of Subsection 3 should be amended on page 8. The code reference cited § 161620 and it should be § 162001 which related to private terminations.

DISCUSSION: **Senator Wintrow** had queried how the standards would be appropriate if the ABA was not used. **Chairman Lakey** had explained that this was part of a request from defending attorneys to incorporate these principles back into the legislation. He had noted that the ABA standards were generic and national, but the concepts paralleled the ABA, allowing the SPDs and RPDs to develop standards that were appropriate for Idaho.

Senator Wintrow and **Chairman Lakey** had discussed negotiated rulemaking, appropriate workload standards, and how these were worked out. They had discussed that standards were being developed by the SPD, but **Chairman Lakey** had stated he was unsure if the standards would be put into rule. He had noted that the types of cases were included and agreed that the goal was to ensure the system was constitutional and to avoid litigation. They had also discussed who paid for what and the impact of focusing on the local market on fiscal discussions. **Chairman Lakey** had noted that the legislation provided the framework.

Senator Lenney had queried the catalyst for the bill. **Chairman Lakey** had remarked that the catalyst was seeing opportunities to improve relationships, clarify the role of the DPDs, and ensure their involvement in local decisions. Clarity was necessary for who paid for some expenses, focusing on the Sixth Amendment, and termination cases. In response to a question from **Senator Lenney**, **Chairman Lakey** had noted that, to his knowledge, the stakeholders were very supportive and he was not aware of any opposition.

TESTIMONY: **Amy Smith**, Public Defender, Ada County, had stated that she had been practicing for over eight years, primarily handling complex litigation cases, including homicides, and was qualified for capital cases. She had noted that she was testifying in support of the bill and was representing herself. She had spoken about the caseload standards, expressing concerns about the lack of an enforcement mechanism, which seemed largely discretionary. This discretion applied not only to the limits but also to how to enforce them if an attorney felt their caseload prevented them from providing adequate and constitutionally mandated public defense.

She had mentioned that in Ada County, they operated under the 1973 National Advisory Committee standards for indigent defense, which limited caseloads to 150 felonies and 400 misdemeanors per year. She had stated that this was more than enough time. Currently, she had a caseload of over 80 felonies and was unable to operate at the same capacity. She had emphasized the absolute necessity of implementing caseload standards.

DISCUSSION: **Senator Wintrow** had asked about best practices for felony case numbers. **Ms. Smith** had reiterated that a specific figure should be considered, noting that each client was different. She had emphasized the need to account for the complexity of charges and individual circumstances, such as mental health issues, language barriers, developmental delays, and substance abuse, as these factors could affect the time required. Only the attorney could determine if they were able to continue providing the adequately mandated constitutional defense. Currently, there were no upper limits on caseload standards.

She had explained that if she determined her caseload was too large, she had to discuss it with a supervising attorney and move up the chain of command to explain why she could not perform her duties effectively. **Senator Wintrow** had stated that it would be helpful to ask the bill sponsor or the SPD how these concerns could be addressed.

TESTIMONY: **Eric Frederickson, SPD**, had testified in support of the bill. He had explained that the State was always bound by the ABA standards, and the work of an attorney was guided by the defense function principles in those standards. These ten principles had been articulated in the legislation, although they were not in statute but had been in policy. A stopgap had been assumed when the PDC created the standards for the 210 number per caseload. He had noted that caseloads did not provide much information, citing an example of how one Driving Under the Influence (DUI) case could be fundamentally different from another.

The case management system had allowed attorneys to track time and enabled the SPD to run up-to-the-minute reports on how busy each attorney was daily. He had explained that developing workload standards, which differed from caseload standards, took into consideration the amount of work an attorney was doing on the cases. He had remarked that if an attorney's workload was too high and they could not take any more cases, they were ethically required to inform the SPD. He was then required to evaluate the workload and decide whether the attorney could take on more cases.

Mr. Frederickson had stated that the case management system provided the necessary data to develop standards. While the SPD was working on developing those workload standards, they were currently relying on the previously approved Idaho Public Defense Commission (PDC) standards.

DISCUSSION: **Senator Wintrow** had remarked that she thought the PDC had already been working with attorneys across the State to collect information. **Mr. Frederickson** had addressed her concerns, stating that attorneys could reach out to a managing attorney, district defender, or to him for help. Regular meetings and communications had taken place with all of the SPDs, managing attorneys, and district defenders throughout the State. He had expressed hope that the workload standards would be put into place soon.

Senator Wintrow and **Mr. Frederickson** had discussed the collection of data and how reports could be run in a matter of minutes. **Senator Wintrow** had asked for clarification about a report that incorporated data. **Mr. Frederickson** had explained that not everyone across the State was collecting or keeping track of their time, and he had stated that he needed data to help the agency.

TESTIMONY: **Seth Grigg**, Executive Director, Idaho Association of Counties, had testified in support of the bill. He had outlined several issues. One concern had been the desire to expedite the transition from county facilities to State facilities. Another issue had been the private termination of rights, with counties not wanting this to lead to courts directing counties, the SPD, or others to represent people when there was no requirement. Additionally, institutional counties had wanted clarifying language in the bill regarding the responsibilities of the district defender to ensure they were overseeing public defense within the judicial district and coordinating litigation. He had noted that the bill, as crafted, largely addressed many needs.

DISCUSSION: **Senator Wintrow** had asked for confirmation that the RPD reported to the SPD, communicated with them, and that the direct contact with attorneys was through the regional person supervised by the SPD. **Mr. Griggs** had confirmed this was correct.

TESTIMONY: **Anna Bose**, Compass Public Defender, Bonner and Boundary Counties, had testified in opposition to the bill. She had noted that one of her biggest concerns was that her caseload prior to the State takeover had been upwards of 120. She had stated there was a week-long delay in people obtaining representation. When there were mass appointments to the northern counties, which were literally on the Canadian border, limited funding had made it prohibitive to visit there often. She had wanted the community to be aware of how much the legislation left out and the costs for the northern counties.

DISCUSSION: **Chairman Lakey** had concluded his presentation by noting that funding was a Joint-Finance and Appropriations Committee (JFAC) issue and that the bill provided guidance. He had stated that he believed there was a significant request coming from the SPD's office. The legislation had laid out principles, and the implementation of the RPD in all processes had made caseload assignments for conflict cases more efficient. He had stated that he thought there would be benefits at the regional level along with the development of standards.

MOTION: **Senator Keyser** moved to send **S 1181** to the 14th Order of Business for possible amendment. **Senator Foreman** seconded the motion.

DISCUSSION: **Senator Wintrow** had stated that she was in support of the motion and appreciated all the hard work done on the legislation. She had noted that it was important for the Committee to advocate for proper resources for public defense as they moved forward.

VOICE VOTE: The motion to send **S 1181** to the 14th Order of Business for possible amendment carried by **voice vote**.

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

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:50 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Linda Kambeitz
Assistant Secretary