

**Idaho Criminal Justice Commission**  
**Regular Meeting**  
July 28, 2023

**Location: In Person – 3100 S. Vista Ave. Ste. 200 Boise, ID**

**Time: 9 a.m.–12 p.m.**

**Idaho Criminal Justice Commission Members Present:**

Eric Fredericksen, Chair, SAPD  
Tracy Basterrechea, Chiefs of Police Association  
Melissa Wintrow, Senate Judiciary & Rules  
Daniel Chadwick, Vice Chair, Public Member  
Ashley Dowell, Comm of Pardons & Parole  
Thomas Sullivan, Judge, Magistrate Court  
Jonathon Brody, Judge, District Court

Jeff Nye, Idaho Attorney General's Office  
Darren Simpson, Judge, District Court  
Bruce Skaug, House Jud & Rules Admin  
Jared Larsen, Office of the Governor  
Denton Darrington, Public Member  
Marianne King, Office of Drug Policy

Monty Prow, IDJC  
Josh Tewalt, Department of Correction  
Kathleen Elliott, Public Defense Commission  
Grant Loeb, Prosecuting Attorneys Assoc.  
Seth Grigg, Idaho Association of Counties

Comprising a quorum of Idaho Criminal Justice Commission (Commission)

**Idaho Criminal Justice Commission Members Absent:**

Joshua Hurwit, U.S. Attorney, District of Idaho  
Bernadette LaSarte, Public Member  
Sara Omundson, Idaho Supreme Court

Todd Lakey, Senate Judiciary & Rules Chairman  
Kedrick Wills, Idaho State Police  
Greg Wilson, Department of Education

Dave Jeppesen, Health & Welfare  
Kieran Donahue, Idaho Sheriffs Association  
Chris Mathias, House Jud, Rules & Admin.

**Others Present:**

Kevin Maloney, US Attorney Office  
Jason Spillman, Idaho Supreme Court  
Russ Wheely  
Shannon Romero  
Bruce Livingston  
Melanie Fillmore  
Andrew Barnes  
Tai Simpson

<b>Agenda</b> <i>Who's Responsible</i>		<b>Meeting Outcomes/Decisions Reached</b>	<b>Due Date</b>
9:00 am (5 min)	Call to Order– <i>Chair Eric Fredericksen</i> <ul style="list-style-type: none"> <li>• Welcome and Roll Call— <i>Chair Eric Fredericksen</i></li> <li>• Review Commission's Vision and Mission Statement and Values—<i>Commission Members</i></li> </ul>		
<b>Commission Management</b>			
9:05 am (10 min)	<u>Subcommittee Reports</u> <ul style="list-style-type: none"> <li>• Human Trafficking</li> <li>• Sex Offense</li> <li>• MMIP</li> </ul>		
<b>Promote Well-Informed Policy Decisions</b>			
9:20 am (30 min)	Anatomy of a Capital Case from the Defense Perspective – <i>Bruce Livingston, Federal Defender Services; Andrew Parnes, Idaho Defense Attorney</i>	<p><u>History:</u> The 1972 Supreme Court briefly overturned the death penalty. It came back after a few short years. Each case needs individualized consideration. A few other landmark cases changed the way these cases are handled. They required consideration of certain factors in these cases, such as the life history of the defendant. Mitigating evidence doesn't have to be directly tied to the crime but needs to be provided.</p> <p>There were a lot of reversals. How do we work these cases, so we don't have these reversals? Some of the early reversals were probably due to evidence being new. Since then, attorneys knew it was needed and worked harder to get it. Since Furman (when the death penalty was briefly removed), Idaho has sentenced a few people to the death penalty. We have only executed 3 people. When cases are reversed, it is hard on everyone, and it is very expensive. It is very important that education continue for defenders and all resources are utilized so these cases are done correctly from the beginning.</p> <p><u>Defense attorney first gets a case:</u> The attorney doesn't know initially if it is a capital case or not. They need to look at two parts of a case (guilt and sentencing). A jury will decide on these two items. Could potentially have two jury trials. Trust becomes essential in these cases. It is very important to build relationships with the clients and their families.</p>	

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	<p>Sometimes you have a client that states they didn't commit the crime and there are others that state they did in fact commit the crime, but they don't want to spend their life in prison.</p> <p>The primary thing that has been learned is that you need a team to represent defendants. With this team you have plenty of people to have experts in different areas. This shows when you have some an attorney focus on guilt and another focus on sentencing.</p> <p><u>Investigation:</u> Attorneys need to look at what evidence you need and what witnesses you need to prove innocence. We also need to make sure the prosecutors prove their case. When the prosecution files for murder, they have already assembled their team. Investigators are very important. The attorney can't interview the witnesses. If the attorney does the interview, they become a witness themselves. Investigators are often retired law enforcement because they have the background and experience for these types of cases. Cases usually need two investigators (one to determine what happened at the crime scene and one to review what happened after the crime). Investigators don't interview the family.</p> <p><u>Mitigation:</u> Mitigation does not come naturally to most defense attorneys. These are the people that meet with the family and dig out all the records and history of the defendant. This part of the cases is where any abuse, and/or any other factors, may be found.</p> <p><u>Experts:</u> Some cases may need mental health experts. This could counter the intent to commit crime from the prosecution. Accident reconstruction, computer evidence, phone evidence, video/audio evidence, chemists, toxicologist, gangs, mental health. These are all areas where there may be a need for an expert.</p>	

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		<p><u>Resources:</u> It is expensive. Back in the 80s, there was not enough funding put into the defense. This led to some reversals and developing a pool for mitigation specialist for Idaho. Some attorneys have turned cases down because they can't afford them, even though they believe in the cause of the public defender system.</p> <p><u>Federal Trial level cases:</u> Provider costs are about \$150,000/case if they settle before the trial otherwise it is closer to \$400,000. Attorney time that pled is about 1,000 hrs. and if it went to trial it was about 3,000 attorney hours. If there is a capital cases that is going to be tried in the federal system, there has to be approval from the DOJ.</p> <p>Are there qualifications to be a capital case attorney? Yes, for public defenders appointed by a judge but defendants have the ability to hire private counsel and they don't have to adhere to the same qualifications.</p> <p>It is important to do mitigation early because there are some timelines that have to be followed. You need as much information as early as possible to make the decision as to whether or not the case is truly a death penalty case.</p> <p>There may be a need for additional time to determine whether or not a case should be a death penalty case. More time would allow for more mitigation.</p> <p>Are mitigation standards statutes different than other states? Not really as we can use mitigation for almost all evidence. Death penalty requirement, are we different from other states? There are subtle differences, but we are generally the same.</p>	
9:50 am <i>(30 min)</i>	Public Defense, How Far We've Come – <i>Kathleen Elliott, PDC</i>	<p><u>Timeline</u> 2007 – NLADA started an audit of public defense. The study was completed in 2010, which found that Idaho failed to meet the level of representation required the U.S. Constitution for indigent persons. The public defense subcommittee was developed in 2009 to develop recommendations for improving public defense in Idaho. There was legislation later in 2013. This led to an interim</p>	

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	<p>committee and the task was to study potential approaches to reform. This was the first time we really know about what public defense was really like in Idaho.</p> <p>The PDC was created in 2014. They were initially given a \$300,000 budget for training but there was no oversight authority or rulemaking.</p> <p><u>Tucker v Idaho</u> The lawsuit was filed in 2015 and is against the Governor, the state of Idaho, and the PDC. Reasons for case: lack of representation, excessive caseloads and workloads, lack of meaningful communication with clients, plus more.</p> <p><u>2016 Legislation</u> Legislation gave the PDC rulemaking authority and the statutory mandate to implement standards. The PDCs budget also increased this year to \$5.8M</p> <p><u>2016-2021</u> Public defense standards became law.</p> <p><u>Vertical representation</u> When the standards were implemented, not all counties were providing attorneys for initial appearance. Today all 44 counties have attorneys for initial appearance.</p> <p><u>Workload/Caseload Limits</u> Workload is caseload plus all other work. Caseload is just the number of cases. The legislature gave additional \$5.6M to meet workload standards. With this funding, the PDC has provided for 43 full time attorneys and 14.5 staff. There has also been a retention of 26 attorneys and 3 staff.</p>	

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		<p><u>Continued Education:</u> There are many education/training opportunities available through the PDC. Colorado received over 500 applications for their availabilities even though they don't have that many positions open. People want to go there because of their amazing training. It is a great place to start, and Idaho needs to strive to become want/where people want to be.</p> <p><u>Resource equity:</u> Stated that there should be equity between the prosecution and public defense, but no one wanted to talk about salaries. There has been an increase almost every year. Now funding has been taken over by the state.</p> <p><u>Where are we now:</u> There has been over 76,000 public defense cases. Idaho has over 430 defending attorneys. There are 12 institutional offices that cover 14 counties (joint offices). There are 210+ institutional attorneys and hundreds of primary/conflict attorneys.</p> <p><u>Where We're going:</u> H0236 created the state public defender. There will be 7 regional offices with primary and conflict attorneys.</p> <p><u>It is time:</u> Time for consistent management, a statewide case management system, benefit from economies of scale (recruiting, training, and operating costs), and effective, holistic representation.</p> <p>Mentorship doesn't really exist anymore. We need to get back to that.</p> <p>How is the transition going to go with child protection cases? Right now, public defenders are by default used in these cases. It appears to still be in the air. They aren't necessarily part of the sixth amendment, and this still needs work.</p>	
10:20 am (10 min)	Break		

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10:30 am <i>(20 min)</i>	Public Defense, Where We're Going – <i>Kathleen Elliott, PDC; Jared Larsen, Governor's office</i>	<p>There were four key pieces of legislation that passed to get us to where we are today. H.B. 735a, H.B. 236, H.B. 367, and H.B. 292 Modeled after how the SAPD is structured. This will be much larger though.</p> <p><u>Governor's office is looking for qualifications (19-6004(2)):</u> We want this person to expand on standards and expectations and brace what we've done for the last few years. Qualifications include age, citizenship, be an attorney, be a member of the state bar, and have at least 5 years of criminal defense experience.</p> <p><u>Prohibitions (19-6004(3)):</u> We have used similar structure from the office of hearings. The SPD shall not: Engage in practice of law outside his role, hold or be a candidate for any federal, state, county, other than a couple of exceptions, serve as the agent or any capacity of any political party, committee, or candidate, and shall not hold any other public or private sector position except for volunteer positions that are not inconsistent with his duties.</p> <p><u>Removal (19-6004(4)):</u> Standard removal is at-will. This states that there is to be good cause.</p> <p><u>Appointment (19-6004(6)):</u> There was a strong desire to keep local input. This creates a panel with seven members. One from each of the magistrate commissions. This panel gives 3-5 recommendations to the governor for consideration. This panel is supposed to meet to interview the candidates on September 7<sup>th</sup>. Hope to have an appointment in September.</p> <p><u>Purpose</u> This office will have independence but there will still be checks and balances. It will be made sure the SPD is qualified, try to minimize the SPDs possible conflicts of interest, preserve decisional independence of the SPD, assure local input, and assure the agency remains accountable.</p>	

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	<p><u>Transition funding:</u> This fiscal year there is \$4.3M from the legislature. This allocates \$1,283,700 for personnel, \$3,047,000 for operating, and \$50,00 for capital outlay.</p> <p><u>Timeline:</u> Based on county fiscal year, counties are budgeting for their final year of public defense. The state is paying for the majority of it, but some counties have additional costs.</p> <p><u>Counties:</u> There will be no fiscal liability for counties in FY25. There is a five-year transition plan that allows for the state to utilize the county institutional offices. Some counties may continue to work with the state on that space after the five years, but other counties need that space for their growing counties.</p> <p><u>District Public Defenders:</u> There will be an office in each judicial district. It will likely be the largest institutional office in the district. There has to be some accountability here.</p> <p><u>Appointment:</u> The magistrate commission in the district will appoint the district defender. The judge will be relieved of this duty though. There will be an additional two attorneys added to the commission for more input in this appointment process.</p> <p><u>Powers and duties of the SPD (19-6005):</u> The SPD will ensure that qualified defending attorneys and others involved in cases are employed or contracted was necessary to carry out the purposes of the position. Please see statute further.</p> <p><u>Contract attorneys (19-6019(1)):</u> There a lot of conflict attorneys and every county uses them. This states that counties that have provided public defense by contract will continue to provide this contract until 2029. This gives a five-year buffer for planning. There is also</p>	

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		<p>a requirement that to the extent possible the contract attorney will come within the county needing services.</p> <p><u>Concerns:</u>  How to address child protection cases? The executive branch and the legislature need to review this.  How is the district defender system going set up? There could be some break down in the system.  Will the counties still be interested in the system once they aren't responsible for any part including the office space?  Will the prosecution costs go up when the county doesn't have to pay for public defense anymore?</p> <p>What about post-conviction? One idea is to have them work directly through the central office. There is also a possibility to have a conflict office.</p> <p>What about the capital roster? The new SPD will put those qualifications/standards as part of matter of employment.</p> <p>What about hiring and paying attorneys? The state is learning more and more how there is differences in each region. This is still a concern and we may look to other states that have done this.</p>	
10:50 am (30 min)	Capital Crimes Defense Fund – <i>Kelli Brassfield, IAC</i>	Next meeting.	
11:20 am	Other ICJC Business –		
12:00 am	Adjournment		

Next regularly scheduled meeting to be held in Boise, Friday, September 29, 2023

## “Collaborating for a Safer Idaho”