

**INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS MEETING
Spring Hill Suites by Marriott
Carmel, IN**

**June 7, 2018
7 p.m.**

Minutes

I. Call to Order

A meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 7:00 p.m. EST on June 7, 2018, in the Board Room of the Spring Hill Suites by Marriott Carmel, IN, by Board Chairperson Neil Weisman.

Board members present were: Neil Weisman (Chairperson), David Shircliff (Vice Chairperson), Mark Nicholson (Secretary), Chris Shema, David Hennessy, Gojko Kasich, Ashley Spolarich, Steve Owens, Jennifer Sturges and Micki Kraus. Bob Hill was not in attendance. Also in attendance were Council staff: Bernice Corley, Larry Landis, and Toni Schaney.

II. Approval of Minutes from Last Meeting

The minutes of the Board meeting on April 19, 2018, were reviewed and unanimously approved on the motion of Jennifer Sturges and second by Mark Nicholson.

III. Review and Approve Agenda

The agenda was unanimously approved on the motion of David Hennessy and second by Steve Owens.

IV. Executive Director Report

Larry Landis stated that in addition to his last day being 7/2/18, Don Murphy was retiring 6/30/18 and Kristin Casper was leaving the Council effective 7/2/18. Kent Zepick has announced that he will be taking a new position with the Court of Appeals at the end of August.

Larry provided an update on EBDM, including a copy of the memo he prepared on the O'Donnell case (due process/equal protection). The Council needs people to start litigating because the rollout is turning out to be a mess. It is not going as well as envisioned and there are judges who are doing defacto preventative detention because they claim offenders are a threat to the public. There is a need for public defenders to challenge the process instead of just accepting it and to get test cases started in the pilot counties. There might also be a need to create a strike force to deal with it. Mark Nicholson suggested that Diane Black train counties to deal with EDBM. David Shircliff stated that training needs to address/train judges so that they understand how the process should work. There is a fear that counties will lose money because some are the defacto bail bondsmen currently.

There has been a determination that 1/1/2020 date for implementation will not be enforced since the pilots are not going well. There has not been a decision yet for how to proceed. David Shircliff stated that one thing that is working seems to be the use of email and texts to notify defendants of court dates.

Neil Weisman asked if this EBDM discussion be on the agenda for the Board retreat. Larry stated that it is really getting frustrating being on the EBDM task force because of what is happening now.

David Hennessy suggested that the PD Commission send out the appropriate section of the PDC Performance Guidelines to chief public defenders for reference. This can be done, but the Commission really doesn't have an enforcement mechanism.

Larry stated that no one is challenging IRAS scoring and information, high bond, bail schedules. Neil asked if the Council should send out guidelines for what should be done, sample motions, etc. Larry stated that this is all good, but a county that is willing to make a stand is needed. Micki Kraus stated that she will make her current appeal a test case to see what can be done.

V. Assistant Executive Director Report

A. Budget Priority Update

Bernice Corley asked that the Board finalize prioritization for new or additional funding in the FY 2019-20 biennium budget request. She provided an updated copy of her suggested budget proposals. Discussion and decisions on the items are:

- David Hennessy questioned the costs for staffing the mentoring program. Bernice explained the calculations. David would like to discuss the training philosophy at the retreat.
- Bernice noted that the Council has 3 main areas for consideration for the budget – juvenile project, training and social worker
- Neil Weisman asked when the priorities need to be set and when will the Council know how much will be appropriated. The response is that the priorities need to be set immediately.
- The Council has looked at various potential sources of funding for this initiative with no luck, despite the phenomenal success of the program. The Council is working with the State Public Defender Office, but that help is limited. The Council does have a commitment from Justice Rush to help carry the program through to July 2019 when the new appropriation would be available. Bernice was asked what happens if the Council doesn't get enough money and how does the legislature know that the appropriated money is spent properly. The bottom line is without the money, the program can't continue and if only part of the money is appropriated then the program will have to be assessed again to determine what can be done with the funds made available.
- There were many questions about the proposed salary levels and how many staff could be added. It was explained that the amounts proposed would include salaries, benefits and overhead (rent, etc.).
- David Hennessy suggested that training and the juvenile project be the top priorities, in that order. The social worker is the bottom of the list because maybe a retired

person willing to work parttime could be hired. Micki Kraus suggested that the priorities be juvenile and then the social worker because it ties in with juvenile. Mentoring and training initiatives would be last. David Hennessy asked if there were Recovery Works, Dept. of Corrections or ICJI funds. According to Larry and David Shircliff these funds are drying up.

- Steve Owens suggested that from a budget perspective, the juvenile program is a “new program” and, as such, it can and should be a separate budget request from the request for additional monies for program operation. He also suggested some phrasing for the program description.
- Chris Shema asked for clarification of what the juvenile monies would support – 2 trainers? Bernice explained that they would do everything that the full team is currently doing.
- Neil Weisman suggested that the juvenile project be the top priority and that training be a close priority 1a, with the social worker being the full 2nd priority.
- In order to resolve some of the questions a flow chart of the juvenile project activities and initiatives was requested.
- Mark Nicholson stated that he feels strongly that we need to emphasize training and that this can ultimately alleviate the problems related to juvenile cases. Training is the Council’s mission. There was a great deal of additional discussion surrounding how the juvenile work merges with other training, but that to merge it now would lessen the impact of the help from the Supreme Court and the emphasis the State puts on continuing this program
- David Shircliff moved and Micki Kraus seconded a motion to accept Neil’s prioritization suggestion shown above. The motion passed with Mark Nicholson, David Hennessy and Gojko Kasich opposed. Micki followed up with the statement that training and juvenile monies should be separate requests. Bernice will have Amy provide the requested information about the juvenile project.

VI. Commission Task Force Updates

A. General Information

- Larry Landis shared 3 handouts that were not in the Board packet: judges salary levels for 2019, a list of the Board committees to work with the Commission task force and a State funding report for potential additional funds needed for the Commission.
- Larry has been asked by Judge Tinder to recommend representatives from the 3 types of public defender delivery systems (PD office/assigned counsel/contract) to work with the task force. This will be used for a report he is providing in July, based on discussion of what recommendation should be made by the Commission task force.
- Larry is proposing a joint effort with David Powell of IN Prosecuting Attorneys Council (IPAC) to set county public defender salaries at parity with county prosecutors. His board has approved pursuing this activity.
- Larry stated that during the listening tours the southern counties indicated they want a State office to handle appeals. Most attorneys don’t want them and they don’t want to have to answer to the local officials.

- The CHINS/TPR report prepared will be released on 6/20. There is an outside office studying/evaluating DCS. The Commission wants to wait until the Governor's office has seen the report and the initiative is publicized before taking action.

B. Additional Explanation of the Commission Task Force Proposed Changes

- Create a system for measuring and assessing quality of services, which is one of the reasons Larry went to West Bank and he has been working with national programs to establish this.
- Every county has to have a chief public defender, or lacking that, counties must enter into MOUs so that there is 1 person accountable for quality. This would be an administrator position, not someone carrying a caseload.
- Need statute stating that the State is obligated to assign counsel - there is a guaranteed right to counsel.
- All counties must comply with mandatory Commission standards.
- Counties such as Marion County can set up quality programs if they have the interest and are in a position to set up and maintain it.
- Look at county board structures and their role. Chris Shema asked that the Council's previous Board motion be included here. The Commission did not want to include this at this time.
- What to do with inadequate budgets. The Commission won't approve inadequate budgets. Could look at caseload cutoff mechanisms, which supports the position that the public defenders should be Commission employees. Alternative could be to chargeback to the State or have judges appoint and mandate and pay \$90/hr, both of which would help them change their minds about the State taking over.
- Funding for the Commission has to be increased for running the program and also to cover the counties currently not in the program.
- If there are training requirements they should be done by the Council, supporting the Council's request for more money.
- Looking at a 5+ year phase-in. Commission looking at a great deal of new money in the next biennium, depending on what initiatives are chosen.
- The task force wants to meet with public defenders to obtain feedback and suggestions. Now would be the time to take advantage of the opportunity to voice concerns. It would be best to provide broad representation.
- David Shircliff suggested that one of the biggest hurdles is how to get attorneys to move to remote counties and that a primary goal should be to encourage and support career public defenders. If this is to be implemented it will have some fiscal impact and there may be a need to ask for State funding, at least initially, to offset the higher costs for counties. This could be an opportunity for Bernice to set up a committee to work on this.
- The task force will produce a final report with recommendations in August 2018. Bernice would like to have a Board meeting to address the final report, perhaps on September 20, 2018. Neither Jennifer Sturges nor David Shircliff will be available at that time.

ADJOURNMENT

An Executive Session was held prior to adjournment. At 9:01 pm EST Neil Weisman moved for adjournment and Jennifer Sturges seconded. The motion passed unanimously

The next Board meeting will be set at a later time.

Minutes prepared by Toni Schaney and Larry Landis.

Submitted by:

Approved by:

Mark Nicholson, Secretary

Neil Weisman, Chairperson

Date

Date