

**INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS MEETING**

**Public Defender Council Offices
Indianapolis, IN**

**January 25, 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 7:05 p.m. EST on January 25, 2018, in the Public Defender Council 5th Floor Commission Conference Room, Indianapolis, 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, Jennifer Sturges, Ashley Spolarich, Bob Hill and Micki Kraus. Steve Owens was not in attendance. Also in attendance were Council staff: Bernice Corley, Kristin Casper-Bird, Larry Landis, and Toni Schaney. Special guests were Jim Abbs (Noble PD), Bryan Barrett (Rush PD) and Amy Hutchinson (Tippecanoe PD).

II. Approval of Minutes from Last Meeting

The minutes of the Board meeting on December 7, 2017, were reviewed and amended as follows:

David Hennessy requested that the minutes reflect that he had stated that there had never been a Board decision as to whether to make training functions and funding self-sustaining. David further stated that he believes there should be a policy decision on this point and that it be addressed once the legislative session is complete for 2018. David Hennessy moved to amend the minutes to reflect this information, Mark Nicholson seconded and the motion was passed unanimously.

Mark Nicholson moved that the minutes from December 7 be amended to reflect this and that the amended minutes be approved and Jennifer Sturgis seconded the motion. The motion passed unanimously.

III. Review and Approve Agenda

A request was made to move the Task Force discussion to a position before the Executive Director report. There was unanimous agreement that this be done. The agenda was changed, but no motion was put forth on approval. (4:31 in the tape.)

IV. Task Force on Public Defense

Bob Hill provided an update on the status of the task force and public defender participation. He stated that he believes the lack of participation on the task force is still a problem in that there are no voting members. However, it is the task force's position that voting rights would not be recommended because there is a potential conflict of interest since the PDs have a monetary interest in the outcome. The Board is opposed to this position and pointed out a letter from Mark Rutherford on that issue. Neil Weisman pointed out that Mr. Rutherford appointed Judge Tinder as the chairperson on the task force and then removed himself from the discussion.

Bob stated that the Board adopted a resolution on the issue of public defender representation on the task force and instructed the Executive Director to lobby for the Board's position. He wanted to know where that stood because it was demeaning that there are no voting public defenders on the task force.

Neil then asked Larry Landis to explain what will take place at the 1/26/18 meeting. Larry stated that the task force is interested in knowing what public defenders think are the problems in indigent defense services and recommendations for fixes. Bob asked if Judge Tinder knew the public defender issues put forth by the Board. Larry stated that Judge Tinder did know the IPDC positions, but that he did not advocate for public defender appointments to the task force because the board decision was to have Neil write a letter on behalf of the board. Larry also explained that Judge Tinder's position is that the task force composition was determined by the Commission before he was appointed as chairperson and that he was not going to advocate changing the composition. However, does want to hear what public defenders have to say. Neil stated that it is his understanding that things will not change. Chris stated that public defenders are tired of being treated as second class citizens. Mark Nicholson stated that a small amount of push-back might be good, but that they need to move forward. David Hennessy stated that he feels it is time to move on. Neil asked what the Board's position should be. David stated that the Board should state the issues and then move on.

Jim Abbs stated that the chief public defenders would go first at the task force hearing and present the public defender position as a unified group. How far the IPDC Board wants to pursue the issues beyond that is up to the Board. David Hennessy moved to allow Jim to communicate the IPDC Board's concurrence with the position presented by Jim as the representative of public defenders. Bob Hill seconded the motion which passed unanimously.

Bob Hill stated there are several other issues for the first public hearing, including:

- The Commission never adopted standards or guidelines for chiefs or regional offices;
- There are some counties that cannot afford to put together a full time office, therefore there will be a need for regional office;
- The counties should participate in the costs of the regional office on a pro-rata basis;

- The Commission should adopt a standard on chief public defender caseloads; and
- Chief public defenders should receive a higher reimbursement amount, up to 100%; and all other reimbursements should be 50%.

Neil stated that there are other big picture issues, such as:

- Where are they going with the task force;
- What are they going to look at;
- Quality assurance audits;
- Mandating statewide standards; and
- Grandfathering in current public defenders in counties already in the reimbursement system.

David Hennessy asked if the recommendations in the Board packet were the issues that the Council wants considered. Larry stated that this document includes both old and new recommendations and was prepared for the purpose of discussion.

Bob suggested that perhaps the State should just take over the program for TPR/CHINS, because of conflicts between CHINS 6 cases and juvenile and criminal cases.

Larry stated that the Board needs to decide on the positions and presentation and discussion structure in order to guide the discussion as much as possible. He suggested a need to look at core issues, e.g., mandatory compliance with state standards and how to enforce compliance. He said a couple of the core issues are who appoints the chief public defender and what are the sanctions for non-compliance with the standards. He also said a decision needs to be made whether the Board prefers state run or county run systems. The task force will ask for recommendations as to enforcement sanctions assuming that all counties will be required to comply with state standards and be eligible for state reimbursement counties. One enforcement method would be to withhold reimbursements. Another option would be that the State would take over a county's program, but the county would still need to pay for the services.

David Hennessy stated that Jim Abb's message has to be that small counties need to be part of regions to ensure quality representation, that it is critical to let the counties have a say in their system, and there needs to be enough state staff to audit counties. Bob Hill stated that the first enforcement action should be withholding reimbursement, leading up State take-over at the other end of the spectrum.

Neil suggested that the task force would want to look at the big picture at the meeting on 1/26/18. Larry stated that the Task Force is expected to make recommendations and the Commission would vote on those recommendations. (1:04 on tape.)

V. Executive Director Report

A. Administrative - IPDC Recommendations for Improvement

Larry Landis reviewed a list of recommended improvements which have been discussed in the past. There was discussion about how to set minimum hourly/salary rates and the fact that the Commission has not established salary guidelines. Larry asked the Board to discuss and take positions on the following new items:

- 1.b (1.a revised list) – legislation requiring standards and guidelines compliance – Chris Shema moved to support and Ashley Spolarich seconded and the motion passed unanimously.
- 2.b (4.b revised list) – create a state direct appeal office under Commission, etc. – modified to read “create new Statewide Appellate office . . .” and add at the end “unless county has an appellate division and in that case the county can opt out and receive 100% reimbursement.” David Hennessy moved to support with the change and Mark Nicholson seconded. The motion passed with Jennifer Sturges opposed.
- 3.a.i (6.a revised list) – increase reimbursement to 50% for all cases, including misdemeanors, - modified to “for all services the county provides, including misdemeanors (if counties are keeping these cases).” Approved by acclimation.
- 3.b.i and 3.b.ii (6.b revised list) – “increase reimbursement . . .” changed to include chiefs in regional offices at 100%. Approved by acclimation.
- 4.a.iii (8.a.iii revised list) – also includes question about whether the chief public defender needs to be full time. Revised to include caseload caps of both chief public defender and chief deputy based on the number of staff supervised and no death penalty or LWOP assigned. David Shircliff moved to support with the change. Mark Nicholson seconded the motion which passed unanimously.
- 4.c.i (8.b.ii revised list) – “minimum salary schedule . . .” remove “based on % of Judges salary” and add “for full-time and hourly . . .” Bob Hill moved to support after change and Ashley Spolarich seconded and the motion passed unanimously.
- 4.c.ii (8.b.ii revised list) – contracts should require hourly compensation. Bob Hill moved to support. David Shircliff seconded the motion which passed unanimously.
- 4.d.i (8.c.i revised list) – adopt IPDC’s performance standards . . . – Bob Hill moved to support. Mark Nicholson seconded the motion which passed unanimously.
- 4.e.i (8.d.i revised list) – adopt audit guidelines – Dave Shircliff moved to support the motion. Ashley Spolarich seconded the motion which passed unanimously.
- 5.a (7 revised list) – expand and change the composition of the Commission . . . Chris Shema moved to support the motion. Mark Nicholson seconded the motion which passed unanimously.

Other to be decided:

1. If the assumption is that all counties must comply with state standards and are in the reimbursement system, who decides what type of system the county has? County board, regional board, or the Commission?
2. Who should appoint a county chief public defender? County board, regional board, or Commission?
3. With mandatory standards, what are the enforcement mechanisms? Withhold state reimbursement, Commission takes over county system, or some combination?
4. If chief public defender continues to perform inadequately, should Commission be able to remove and replace? There was general agreement on this issue by the Board.

B. Administrative

The State is now offering an optional program that provides paid new parent leave under certain conditions. The Council staff recommends that the Board adopt this policy for employees of the council. Chris Shema moved to support to recommendation. Neil Weisman seconded and the motion passed unanimously.

Larry stated that his opinion was that it was a good decision to hire Bernice Corley as the assistance executive director with a 9 month overlap rather than as executive director upon his retirement so that she has ample time to learn as much as possible about the position, the members, and the various roles the Council has in state government policy-making.

VI. Committee Reports

A. Training

David Shircliff asked that other Board members send him ideas for Annual Update topics. Bob Hill suggested that the Annual Update be just ½ day and that lunch be on your own and then have breakout sessions in the afternoon on various topics. No decision was made on changing the format.

B. Legislation

Larry reported that Kristin Casper-Bird, with the help of several Marion County public defenders was successful in getting SB 402 (3-strikes TPR bill) amended. Bob Hill asked if there could be more advance notice. Larry responded that the Council often only knows 24 hours in advance when a bill is scheduled for a hearing, so advance notice is difficult.

Chris Shema asked for talking points with legislators. Larry Landis stated that this can be done after 1/31 when the number of active bills has been pared down.

The bail bill, HB 1328, will be heard on 1/29.

The maintaining a common nuisance bill will be heard in the Senate. The requested revision to the escape statute for violation of a home detention rule was not filed.

VII. Miscellaneous

Larry Landis reminded the Board that the next seminar is the Appellate Seminar on 4/20/18. It was decided to have the next Board meeting on 4/19/18, the night before in Indianapolis.

Kristin Casper Bird will send a list of all of the bills that are still alive after mid-session to the Board. Bob Hill asked if we still needed to take a position on any of these bills. Kristin didn't think there was anything that would cause controversy.

Larry suggested that Board members might want to remind anxious Council members that the Task Force and Commission members have been consistently saying that changing the public defender system in Indiana is a 5-10 year process and that change will not happen overnight. David Shircliff stated he has been sharing this in his meetings with others.

ADJOURNMENT

The meeting was adjourned at 9:20 pm, EST.

Minutes prepared by Toni Schaney and Larry Landis.

Submitted by:

Approved by:



Mark Nicholson, Secretary

Neil Weisman, Chairperson

4-19-18

4/18/18

Date

Date