REV 12-6-2012

INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS MEETING

Culver Cove
319 E. Jefferson St.
Culver, IN 46511

September 29, 2012
9:00 a.m.

Minutes

A meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 9 a.m. on September 29, 2012, in the conference room of Culver Cove Resorts, 319 E. Jefferson St., Culver, IN, by Board Chairperson David Cook.

Board members present were: David Cook (Chairperson), Michelle Kraus (Vice Chairperson), Lorinda Youngcourt (Secretary), David Hennessy, Robert Hill, Gojko Kasich, Michael McDaniel, Steve Owens, Neil Weisman, and Joel Wieneke.

Board members participating via teleconference were: none

Board members absent were: Sonya Scott

IPDC Staff present were: Larry Landis, Paula Sites, Don Murphy, Teresa Campbell, and Andrew Cullen.

I. APPROVAL OF MINUTES FROM LAST MEETING

Robert Hill moved that two changes be made to the minutes of the June 28, 2012 meeting:

1. Page 3, paragraph 4, line 8, add "unanimous" between "by" and "voice".
2. Page 3, paragraph 5, line 5, change "asked" to "directed".

Lorinda Youngcourt seconded the motion. The minutes were approved as amended by unanimous voice vote.

II. REVIEW AND APPROVE AGENDA

David Hennessy moved to approve the tentative as submitted by Larry Landis. Lorinda Youngcourt seconded the motion. The agenda was approved by unanimous voice vote.

III. EXECUTIVE DIRECTOR'S REPORT

A. FINANCIAL REPORT

Larry Landis reviewed the financial reports contained in the binder distributed to Board members, which included the historical funding for the Council, the current budget, and the amount allocated to contracts. Robert Hill asked whether the revenue accounts were reverting or non-reverting. Larry Landis indicated the two revenue accounts (publications and training) were non-reverting. There was general discussion about the expense involved with the Trial Practice Institute (TPI). Joel Wieneke inquired about the number of non-IPDC members attending TPI.

B. ADMINISTRATION

Larry Landis distributed an updated copy of the personnel manual as well as an updated copy of the IPDC Organization Chart. Lorinda Youngcourt questioned whether the mission statement should be revised to indicate that IPDC's mission should include basic training in addition to "improvement" of public defense services. Larry responded with an explanation that although the Council has always provided training, it is not one of the mandated statutory duties. In addition, when the Board adopted the mission statement it was decided that the mission statement should be a broad statement of the purpose or goal of the Council. Training is not the goal. It is one of the means of achieving our goal.

C. PUBLIC DEFENDER INFORMATION SYSTEM (PDIS)

Larry Landis gave a general update on the current status of the PDIS System. He explained that the original contractor is no longer working on the project. Crowe Horwath, LLP, is currently providing project management and technical services on the project. Larry explained that the original PDIS system was created without appropriate testing or documentation. Crowe Horwath is in the process of addressing those deficiencies. Lorinda Youngcourt pointed out that Crowe was involved in the original Odyssey Program.

Larry explained that Crowe is currently focused on working out "bugs" with the system, including time-outs. The next step will be to focus on continuing code development to finish the build-out of the system. He indicated that this project has been a significant expense and distributed a document with the estimated 2013-2016 Crowe Horwath PDIS expenditures.

Larry explained that PDIS is currently housed at the Indiana Office of Technology (IOT) with JTAC's Odyssey system. Although an interface with Odyssey is essential, the current dependence of the Odyssey cache has proven problematic. He would like to eventually separate the two systems and have a separate file server for PDIS hosted by IPDC

Michelle Kraus asked about how much information has been provided to the Chief Public Defenders about this program and whether there is appropriate "buy in" from them. Larry

Landis indicated that the matter is routinely discussed at the Chief Public Defender meetings. Lorinda indicated that counties will need to use the system because it will provide them with information they might not otherwise have access to. Robert Hill agreed. There was general discussion about how the program will operate. Larry Landis indicated that Crowe has estimated that it will be an expense of approximately $336,000 per year for IPDC to host the system. A budget request for FY 2013-15 will be submitted requesting funding to maintain the PDIS system.

D. STRATEGIC DIRECTIONS FOR 2012-2017

Larry Landis reported that he, Paula, Jack, Stacy, Don, Kent, and Andrew Cullen had held several meeting to update the strategic directions for IPDC for the next five years. There were several suggestions to the strategic directions that came from those discussions that Larry Landis explained to the board.

Larry Landis discussed ensuring that the time of the members of the legal team is used wisely, and he suggested that, going forward, their time should be focused as much as possible on impact issues and more system research projects and less on providing routine legal research based on calls. Robert Hill pointed out that answering research calls was a very valuable service and he didn't want to see it curtailed significantly. Larry responded by giving examples of member requests that assume that our staff attorneys are their law clerks.

E. GOALS FOR 2013-1015

Larry Landis discussed the budget plans for the next biennium, including requesting funding for a new position of Training Director as a salaried position and discussed the possibility of requesting an additional $1 fee being added to the Public Defense Administration Fee to assist in funding PDIS.

He also mentioned that he and Mark Rutherford, Public Defender Commission Chairman, meet with Chief Justice Dickson about the Commission and requested approximately $3 million additional funding to reimburse CHINS and TPR cases.

David Hennessy suggested that IPDC distribute the performance guidelines to the Office of the State Public Defender and other relevant offices so they can be cited in briefs.

IV. PUBLICATIONS, TECHNICAL ASSISTANCE, WEBSITE, etc.

Paula Sites presented an updated IPDC Publications Schedule. She mentioned that she was particularly pleased that the CHINS/TPR manual was completed and printed. She mentioned that, in addition to her usual duties, she has been working to update our webpage and the online databases.

Paula discussed the PD News Blog and informed the board that, beginning in 2013, several changes were planned for the distribution of The Defender newsletter. It will become a weekly, electronic-only publication instead of a monthly, printed publication. She indicated that this decision was based partially on the results of a survey conducted by IPDC to determine user patterns of the publication.

Paula raised the issue of converting the Casebank into a database and asked for feedback. While this would provide for easier searching capabilities, the linking function would likely be lost. Michelle Kraus, Lorinda Youngcourt, and Michael McDaniel expressed reservations about losing the linking function, with David Hennessy indicated his preference for the search functions.

Paula mentioned that Dawn Nolan has created a focus group to provide feedback on the functioning of the website. David Hennessy moved that both Mickey and Lorinda be placed on the focus group. Robert Hill seconded the motion. The motion passed by unanimous voice vote.

V. TRAINING

Larry Landis distributed a listing of the remaining seminars for the year. He mentioned that the committee consisting of himself, Lorinda Youngcourt, David Hennessy, Michael McDaniel, and Stacy Uliana will meet to discuss the Forensics Seminar to be held December 7.

Don Murphy reviewed his work in arranging case review sessions with Ernie Lewis in several counties and the efforts in Madison and Tippecanoe Counties to develop some in-house training.

Larry indicated that the plan adopted by the Board for the past couple years was to decrease the number of statewide seminars and increase county and regional training with the larger county public defender offices serving as the hubs. He said he and Don have not been as successful as they had hoped in generating the interest for in-house training in the county public defender offices. Larry concluded by saying that although there has been support for the case reviews, the interest and commitment of resources for local training by the counties has been disappointing.

Larry asked for suggestions about training for the upcoming year.

Mike McDaniel suggested expanding the opportunities for training on forensics, including general topics and then specific breakout session on specific crimes such as arson. He also suggested that the seminar could be held in both the Northern and Southern sections of the state.

Both Robert Hill and Mike McDaniel stated that they believe IPDC should expand the number of seminars offered. Neil Weisman expressed his belief that more regional trainings should take place.

David Hennessy requested that the Council establish ½ day "Newbie" seminar and a ½ day seminar on sentencing. He volunteered to manage the Newbie seminar. A general discussion was then held about training opportunities for new public defenders.

Lorinda suggested that we send a packet of information in all the non-Public Defender Commission counties to advocate for the use of the resources IPDC offers. Larry Landis indicated that this has been done in the past in an effort to determine who judges are appointing as public defenders. It will be done after the newly elected judges take office on January 1, 2013.

Robert Hill said he believes practically-oriented seminars are most helpful. He indicated he believes IPDC should be aggressive in adding additional topics, such as jury selection, the four defenses, evidence, and forensics.

Lorinda Youngcourt suggested conducting annual seminars on drugs and evidence. She also suggested that the 'Newbie' Seminar should have a section covering mental health issues

Joel Wieneke recommended a seminar of sex offenders, particularly in light of several new Court of Appeals cases.

Neil Weisman suggested that competency and insanity should be included. Lorinda suggested that this be incorporated into the "Newbie" seminar that had been discussed earlier.

Robert Hill suggested an immigration seminar.

Chairperson David Cook directed that this list be referred to the Training Committee, who should conduct a survey of the membership and report back to the board.

David Hennessy indicated that he is opposed to breaking TPI into two, 2-day sessions and requested that his objection be noted by the training committee.

The meeting recessed for lunch at Noon and returned at 1:10 p.m.

VI. PUBLIC DEFENDER SYSTEMS

A. PUBLIC DEFENDER COMMISSION FUNDING

Larry Landis reported that the Commission decided to increase the hourly rate for PDs from $60 to $70 effective January 1, 2013. He explained that there was some discussion about future raises and there appeared to be a consensus that future raises should be based on the percentage of increase in the hourly rate in Criminal Rule 24.

B. PLAN FOR 100% STATE FUNDING

Andrew Cullen discussed his efforts to gather the budgetary and employee information of the prosecutor offices throughout the state. IPDC law clerks have been attempting to gather employee data from the various offices with various degrees of success. There was general discussion about how to analyze the data in order to arrive at the average hourly wages paid to prosecuting attorneys. Additional work will be done on the project and it will be distributed for discussion at the next meeting.

VII. CRIMINAL JUSTICE POLICY & LEGISLATION

A. CRIMINAL CODE EVALUATION COMMISSION

Andrew Cullen and Larry Landis distributed the staff workgroup report of the Criminal Code Evaluation Commission. The board reviewed the report and endorsed the report with the following changes:

35-42-1-1 FELONY MURDER: Page 13
Felony-murder should be abolished. The proper penalty for causing death while committing a crime should be Level 1, as has been recommended throughout the report for various crimes. At minimum, drug dealing offenses should be removed from the felony murder statute.

35-42-2-1 BATTERY: Page 25
Battery should not be enhanced to a felony unless it results in serious bodily injury. In the alternative, if battery resulting in bodily injury is increased to a felony, the definition of bodily injury should be changed to require more than "physical pain".

35-42-2-1.3 DOMESTIC BATTERY: Page 32
The statute should read: "(b)(1)(B)(2) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and ~~might be able to see or hear~~ is aware of the offense.

35-42-2-4 OBSTRUCTION OF TRAFFIC: Page 38
The statute should read: "(b)(2) Level 6 felony if the offense results in serious bodily injury or death to another person."

35-42-2-9 STRANGULATION: Page 45
This crime should be eliminated as duplicative of aggravated battery.

35-42-4-3 CHILD MOLESTING: Page 56
The crime of child molesting (fondling or touching) should not be enhanced from a C Felony (Level 5) to a Level 4 Felony. This would place the crime two levels above sexual battery. The crimes are similar. Since child molesting (fondling or touching) involves a child, a one class increase is proportional.

35-43-4-2.3 DEALING IN ALTERED PROPERTY: Page 101
For the purposes of enhancement from an A Misdemeanor to a Level 6 Felony, a person should have a prior conviction AND the fair market value of the property should be at least $750. (Current statute allows for the enhancement if there is a prior conviction OR the fair market value is at least $1000.)

35-44.1-3-1 RESISTING LAW ENFORCEMENT: Page 169
The offense of fleeing from a law enforcement officer in a vehicle after the officer has activated a siren or emergency lights was elevated from an A misdemeanor to a D felony in 1998 by HEA 1201, PL 13-1998. This offense should not be felony unless the operation of the vehicle creates a risk of bodily injury to another person.

35-45-4-1 PUBLIC INDECENCY: Page 190
The enhancement from an A Misdemeanor to a Level 6 Felony for a prior conviction should either be eliminated or two (2) prior convictions should be required.

35-45-4-2 PROSTITUTION & 35-45-4-3 PATRONIZING A PROSTITUTE: Pages 194 & 195
The enhancements from an A Misdemeanor to a Level 6 Felony should be eliminated.

35-45-9-3, 4, 5 CRIMINAL GANG ACTIVITY, INTIMIDATION, RECRUITMENT:
35-50-2-15 CRIMINAL GANG SENTENCING ENHANCEMENT Page 211
The proposed revision for both "criminal gang activity" and the corresponding definition proposed in the "criminal gang enhancement" is too vague. The revision should not be adopted and the enhancement should be eliminated. Instead, IC 35-38-1-7.1(a) should be amended to include participation in criminal gang activity as an aggravating factor for consideration at sentencing.

35-46-3-10 ATTENDANCE AT ANIMAL FIGHTING CONTEST: Page 249
This penalty should be reduced for a first-time offense from an A Misdemeanor to a C Misdemeanor.

35-47-10-5 DANGEROUS POSSESSION OF A FIREARM (BY A CHILD): Page 282
The enhancement for a prior conviction should be eliminated.

35-48 PENALTIES FOR DRUG/CONTROLLED SUBSTANCE OFFENSES: Page 301
All "1000 feet" geographic enhancements should be eliminated. The weight limits for dealing and possession of cocaine/narcotic drugs, methamphetamine, and Schedule 1-5 drugs should be adjusted to mirror the federal weight thresholds: 7 grams, 14 grams, and 28 grams. The threshold amounts were decided by a motion made by Michelle Kraus and seconded my Mike McDaniel. The motion carried by a voice vote. David Hennessy objected and indicated that he preferred the numbers to be 7 grams, 15 grams, and 30 grams.

35-48-4-10, 11 MARIJUANA: Page 322
The definition of "plant" should be drafted to make it clear that a "plant" is capable of producing marijuana . Simple plant materials should not be counted as a "plant".

35-50-2-2 SUSPENSION OF SENTENCES; LIMITATIONS: Page 328
Judges should be allowed to suspend a sentence for a: (1) Level 1 or 2 offense if a person has not had a prior unrelated felony conviction for 15 years, (current proposal has no year limit); (2) Level 3 or 4 offense if a person has not had a prior unrelated felony conviction for 10 years (the current proposal has no year limit); and (3) Level 5 offense if the person has not had a prior unrelated felony conviction for 5 years (the current proposal has a 7-year limit).

35-50-2-8 HABITUAL OFFENDER: Page 335
All drug possession felony convictions from eligibility to be counted as prior unrelated convictions or the triggering offense, and removing drug dealing felony convictions from eligibility to be counted as prior unrelated convictions or the triggering offense unless the offense is a Level 3 or above.

35-47-2-1/35-47-2-23 CARRYING A HANGUN WITHOUT BEING LICENSED: NEW PROPOSAL
The enhancement for "within 1000 feet of a school property" should be eliminated.

35-41-2-4 AIDING, INDUCING, OR CAUSING AN OFFENSE: NEW PROPOSAL
The penalty level should be one level below the underlying offense committed by the principal unless the person has the same state of mind (a/k/a *mens rea* or culpability) as is required for the commission of that offense.

David Hennessy expressed general opposition to all enhanced penalties for prior convictions (recidivist statutes). He asked how many of these existed. Andrew Cullen indicated that he would email a list to the board.

B. SENTENCING POLICY STUDY COMMITTEE

Andrew Cullen and Larry Landis reported that the Criminal Law and Sentencing Policy Study Committee will be spending much of its time addressing issues with the Sex Offender Registry.

C. JUVENILE WAIVER OF COUNSEL

Larry Landis pointed out that the Supreme Court's Rules Committee will be considering an amendment to the Juvenile Waiver of Counsel rule and suggested that letters received by the Committee during the public comment period in December would be helpful.

D. OTHER LEGISLATION

Larry Landis pointed out that the Department of Child Services Study Committee has been active this summer. Andrew Cullen mentioned that the Commission on Mental Health and Addiction has been considering the issue of returning authority to the prosecuting attorney to file CHINS 6 petitions.

VIII. NEW BUSINESS

There was no new business.

IX. ELECTION OF OFFICERS

David Hennessy nominated Michelle Kraus to serve as President of the IPDC Board of Directors for the upcoming 2-year term, effective immediately. Robert Hill seconded the motion. The motion carried by unanimous voice vote.

Robert Hill nominated Lorinda Youngcourt to serve as Vice President of the IPDC Board of Directors for the upcoming 2-year term, effective immediately. David Hennessy seconded the motion. The motion carried by unanimous voice vote.

Steve Owens nominated Neil Weisman to serve as Secretary of the IPDC Board of Directors for the upcoming 2-year term, effective immediately. David Hennessy seconded the motion. The motion carried by unanimous voice vote.

IX. EXECUTIVE SESSION

The board entered Executive Session at 3:30 p.m. and returned at 4:15 p.m.

During the Executive Session, the Board approved the following change to the IPDC Personnel Manual:

5.8 Compensation and Raises

Salaries of employees are established by the executive director ~~in accordance with the salary schedule set by the board of directors~~ consistent with the salaries of employees in other judicial branch agencies.

X. ADJOURN

The next meeting was set for Thursday, December 6, at 6 p.m. at the Wyndham Hotel – Airport Indianapolis West, 2544 Executive Drive, Indianapolis, IN 46241. The meeting was adjourned at 4:15 p.m.

Minutes prepared by Andrew Cullen, IPDC Staff.

Submitted by:

Neil Weisman, Secretary

1/25/13
Date

Approved by:

Michelle Kraus, Chairperson

1-28-13
Date