

INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS MEETING
Conference Room, 4th Floor
Indianapolis, IN

January 24, 2019
6:00 pm

Minutes

I. Call to Order

A meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 6:00 pm EST on January 24, 2019, in the conference room of the Indiana Public Defender Council, Indianapolis, IN, by Chair David Shircliff.

Board Members present were: David Shircliff (Chair), Mark Nicholson (Vice Chair, via web-conferencing arrived at 6:45 pm), David Hennessy (Secretary), Jennifer Culotta, Robert Hill, Gojko Kasich (via web-conferencing), Deana Martin, Steve Owens, Christopher Shema, Jennifer Sturges (via web-conferencing), Ashley Spolarich arrived at 6:20 pm. Council Staff present were: Bernice Corley, Michael Moore, Diane Black, Amy Karozos, Suzan Ristich, Mark Carnell, Juli Byrne and Commission Staff: Derrick Mason.

Introduction of Board members and staff.

II. Review and Approve Agenda

David Hennessy made a motion to approve agenda, seconded by Jennifer Culotta. Unanimously approved.

Approval of Minutes from Last 3 Meetings

Deana Martin made a motion to approve the minutes for meetings held on October 10, 2018 and December 12, 2018, along with the minutes from the Board retreat held on October 27, 2018. This motion was seconded by Steve Owens. Minutes approved. David Hennessy abstained because he had not read the minutes from the board retreat.

Motion made by Chris Shema to go out of order from the agenda and receive the Commission report first, seconded by Robert Hill. Motion unanimously passed.

Derrick Mason from the Indiana Public Defender Commission spoke. Derrick provided a letter explaining the history and purpose of a request made by the Commission to counties regarding private practice numbers for attorneys working under a .75 FTE caseload. Derrick explained the request stemmed from the Sixth Amendment report. The Commission is asking

certain identified counties to report whether the counties have a policy on the monitoring of private caseloads; and, if the county does have a policy, to share the policy with the Commission. For any counties without a policy, the Commission will request those counties to obtain from attorneys the percentage of work being done in non-commissioned counties.

Derrick Mason stated that the Commission needs to revise their compensation standards and that they have raised the hourly rate substantially, but they have done nothing with the flat rate for contracts and salaries when there is no comparable prosecutor. See attached Commission report.

David Hennessy wanted to know why the Commission declined to put a conflict of interest position into the legislative changes to PD boards. Derrick Mason stated it wasn't a declination as much as it was a problem finding a bill to add the language to and the Commission feels that it can add conflict of interest language to the Commission's standards.

David Hennessy wanted to know if there was anyone on the Council working with the Commission on getting a workable solution for data collection. Bernice Corley stated that at the last Commission meeting the matter was tabled so that the Chiefs and Stakeholders can come together and work together. David Hennessy wanted to designate Robert Hill to work on a workable solution on gathering information for the Commission.

Chris Shema inquired about a rule that was adopted by the Commission which was supposed to take affect January 1, 2019 requiring counties to submit data related to the number of private cases being handled by public defenders. Chris further explained that he has received feedback from chiefs who stated that they did not see this requirement coming, and Chris wanted to know how this rule came about. He wanted to know if the Commission consulted with any of the Chiefs before the rule was passed. Derrick stated that it wasn't a rule it was just a request for the counties to provide additional information similar to what counties are required to report for reimbursement purposes. There was no contemplation of sanction for non-compliance. He stated that the letter was never sent to the counties. He acknowledged that some chiefs were probably confused because at a Commission training in October, public defender chiefs and staff were told to expect something on this requirement in January.

Chris Shema inquired about public defender attorneys reporting either using their FTE (Full Time Equivalency) number or their actual case load numbers. Derrick Mason responded the intent was to focus on counties that have attorneys approved to handle at least a .75 FTE regardless of their actual caseloads. Caseloads fluctuate so the Commission intended to focus solely on counties that have contracts for .75 FTE. Derrick explained that the intent is to gather information on what counties have a policy and what the policy is so that these policies can be shared.

Jennifer Culotta asked whether, in a county that has a monitoring (private work) policy, the attorneys would have to disclose their private work. Likewise, in county without a monitoring policy, are the attorneys required to self-report private case information. Derrick Mason

responded that in a county with a policy, the Commission's intent was to obtain the results of the county's monitoring of the policy. Jennifer felt that if private caseloads are impacting the quality of representation, then address the problem if it exists.

David Hennessy felt that data is needed and that the attorneys not only should report their pd cases but they should also report their private cases as well. David Hennessy explained that the original premise was to determine caseload standards for contract part-time public defenders. David Hennessy believes this data is important in order to develop metrics to gauge performance. Data is needed to further this caseload standards development.

Chris Shema felt that it was the wrong focus and shared an example of an attorney within his county who is also a physician. Shema feels the better way to find this data is to do county level work by interviewing judges, clients and other stakeholders to determine whether a problem exists. Shema felt that there are objective metrics already available and there doesn't appear to be a problem that needs to be addressed by collecting private practice data. Derrick explained that baseline caseloads are the national norm and the premise for determining caseload standards. Qualitative standards are important as well. The council has published qualitative standards and those should be part of the discussion as well. Chris feels that, to some people, there is a hypothesis about public defenders with private caseloads and the data request is really an effort to prove the hypothesis. Chris also pointed out that this concern was only minimally mentioned in the Sixth Amendment report. Chris pointed out that the lack of representation at initial hearings was a larger concern in the Sixth Amendment report and that was not included in the Commission's legislative work. Derrick reported that the Commission is assisting the Council's work on this legislation by helping develop the fiscal note for the Council's bill on this topic. Chris Shema inquired about the Delphi group. He wanted to know if we were ever going to get feed-back from that survey. He stated that some people had problems with the structure of that survey. Derrick Mason stated that they have not concluded the survey. David Shircliff stated that was something that we needed to have responded to; however, the meeting needed to move on. David Shircliff wanted the Delphi study, what had it produced and where was it going, put on the next meeting's agenda. Derrick Mason stated that any specific questions about the study needs to be given to Bernice Corley.

III. Executive Director's Report

Bernice Corley explained that a table, created after the retreat, was provided in the board's materials. David Hennessy inquired about the item, "Chris Lenn's mentoring report." Bernice Corley responded that Diane Black had been reaching out to Chris Lenn; however, she has not received anything back from him at this time.

David Hennessy inquired about the EBDM for the 11 pilot county. Was that the pretrial release evidence based decision? Bernice Corley stated that the pre-trial program is under that umbrella, but there are more parts to it: i.e. behavioral modification, how to handle people who violate terms of probation/parole and not just send them back to prison. Bernice Corley took the response that she received to the EBDM data committee. The Committee

was upset because we were not receiving the data. Court Services stated that they don't have the staff, money, or resources to do the analysis however the data was being collected at the county level.

Case reviews and office resources: Bernice Corley stated that we were trying to reach out to people in regions who could spearhead that. Diane Black and Mike Moore have been working on a structure so that it is not just dependent on the staff in this office and that we are all supporting each other regionally. Ashley Spolarich stated that she would be able to help with the case reviews at this time. Diane Black stated that in order to develop these case review mentors she has been reaching out to many different people for help. She did hear back from Ernie Lewis formally with the Kentucky DPA, and, on May 17, 2019, he will be coming to provide a four hour training, here in our offices, with people who will then be the lead in their particular county or region. Response has been good.

Ashely Spolarich inquired about the letters to the Commission in regards to conflicts of interest to the county boards? Bernice Corley stated that she sent a letter and in the second part of the letter was prospectively considered amending the relevant statute please consider adding a conflict of interest analysis when people are appointed. At the December Commission meeting, and after they considered the letter, they learned more about the Allen County situation. Judge Hanlon didn't feel prepared to make a decision about the matter and moved to table action until the March meeting. Bernice Corley stated that they did have legislation to change the county boards and that we felt that it would be valuable to add the conflict analysis when someone had been chosen, it was not moved upon. At this point the legislation was moving without any conflict of interest. Chris Shema wanted more clarification from Derrick Mason in regards to the conflict of interest. Derrick Mason believed that is was true.

Bernice Corley then talked about the joint Council/Commission Friday legislative update where people could call in like a Web-Ex meeting if they had questions and we were getting no participation. The people who were calling in were people who already attended our meetings. She stated that the Commission was going to proceed with a pre-recorded message. Derrick Mason stated that they were going to but due to staff changes this has been put on hold at this time. He stated that he will work with the Council on that. Bernice felt that it was valuable to offer those opportunities, maybe a mid-point phone call opportunity with a little summary telling what was going on. People could call in for more details.

EBDM – Criminal Rule 26. Bernice Corley stated that the rule language was going to stay the same and that it was still going to go into effect January 1, 2020. Court Services was going to undertake the development of a pretrial certification program for counties, so when you read the rule it is not required, it is a "should". Court services is looking to create a certification program similar to the problem solving court model. David Hennessy wanted someone to approach the Supreme Court about making the Judges set bails based on offender data and not severity. Bernice Corley brought up bail schedules and both David Hennessy and David Shircliff stated that bail schedules should not be in existence. Jennifer Culotta suggested that if there was not a schedule then maybe some uniform guidelines especially for the smaller

counties. Bernice Corley asked about maybe a model on something that would be appropriate that can go along with the certification program, rather than a bail schedule. Mark Nicholson stated that there is no standard and having a standard will give the judges an out.

Chris Shema wanted for the next board meeting an update on an idea about having some targeted litigation assistance to people who want to take this on to get some of these unrealistic bails overturned. Bernice Corley stated that she cannot say for certain that she would have a report in time for the April board meeting because the legislative session is very demanding and does not end until April 29th.

The HEA 1006 Annual report was a study that had to happen annually around HEA 1006. It was a 200 page report and the highlights are listed in the Executive Director's report attached. IPAC shows that the population in the jails were steadily going up. David Shircliff stated that he can tell due to his counties case-loads were going up.

Bernice Corley went through the financials provided by Suzan Ristich. See attached spreadsheets. Diane Black stated that we were breaking even in most seminars, but earning some revenue on others. TPI is always a loss. Because Brown County State Park is a state agency, we have lowered expenses with TPI. This year TPI will be at the Government center, cutting costs even more. She stated that she hoped to rotate between the Government Center, Brown County State Park, and other state parks. She felt using state facilities is a great way to continue to keep doing TPI. TPI will continue to lose money; however, with doing regionals and other seminars, Diane feels that TPI expenses will be mitigated.

Diane reminded the Board that the largest costs associated with IPDC trainings is the food budget. As has been discussed previously, eliminating meals is one way to reduce costs associated with trainings is to either not provide food or only provide food for TPI and Annual. Most CLE providing entities, like ICLEF, generally do not provide food during trainings. Chris Shema asked, during the last TPR seminar, what was the ratio between newer attorneys vs. older experienced attorneys. Diane Black stated, the majority of attorneys were newer, less than a year or two; however, there were a few that were there that had 10, 15, or 20 years, of experience who were coming there to work out a case or just refresh their skills. Chris Shema also wanted to know if the experienced attorneys were PDs (Public Defenders) or were they Private CDLs (Criminal Defense Lawyers) thinking that this was a great opportunity to be able to work out a case. Diane Black felt that most of the people that participate in TPI were PDs. Diane Black will get Chris Shema the stats. Chris Shema felt that Private CDLs should be paying more for TPI.

Diane Black discussed the case reviews and that they were free for PDs but private CDLs are charged. Ashley Spolarich inquired about the cost of the case reviews which Diane Black responded that they are \$200.00. Jennifer Culotta stated that we should be charging \$300.00 for case reviews for private CDLs. Jennifer Culotta explained that case review experience was wonderful and it would be well worth it to pay the higher fee. Jennifer Culotta felt that

\$100.00 per hour is a fair and reasonable price. Mike Moore would like to have a schedule determined and that the schedule be adhered to without frequent changes. He thought that it should be put on our website and not continually changed. He would like to look at our fees all across the board and then leave it that way for at least a year. Jennifer Culotta made a motion based on general private vs. general CLE, one on one workshop is worth more and that it should be \$100.00/hour at least preliminarily for private attorneys, motion seconded by Chris Shema. Chris Shema showed concern about demand exceeding supply, to which Diane Black assured him at this time that was not happening. She was also hopeful that that would be fixed once we had the regional facilitators in place. David Hennessy wanted an amendment that there would be an application process in the event that it is a private lawyer where the case is pro-bono or at a reduced fee, they could lie, but he wanted on that application that we would verify it with the client. Ashley Spolarich seconded the amendment to the motion. Motion passed unanimously.

Bernice Corley shared that the training budget sitting at: \$19,370.00 of profit at this time.

IV. Moved on to Legislation with Mark Carnell.

121st General Assembly

- January 10, 2019 was the bill filing deadline
- 3rd reading deadline for the 1st house is the 25th / 26th of February (if a bill does not make it out of the first house it is dead)
- 3rd reading deadline for the 2nd house is April 15th (if there are differences in the bills that would trigger the conference committee.) If any bill that doesn't make it through the 2nd house can still show up in the conference report.
- Sonny Die trying to be completed on Friday the 26th of April

Budget – This is a budget year.

- House bill 1001 has been put out as a starting point. We received a little bit more but it was not enough to fund the juvenile project. We are trying to work with the members of the ways and means individually to try to get the last \$157,000 needed to keep the juvenile project alive. These are annual numbers.
- Issues - Bias crimes, Indiana is one of 5 states that doesn't have a distinct and separate bias crime law. There have been at least 15 bills filed that will address bias crimes one way or the other. Should there be an aggravator or should it be an enhancement. Should there be a list of distinctive characteristics that are protected (age, race, sex) or should it be just a more general. The crime is motivated by an actual or perceived characteristic of the victim.
- Felony increases – a number of bills introduced that would increase charges and make more offenses non-suspendable. This will cause more overcrowding and increase need for more jails. Chris Shema wanted some talking points to be able to talk to the legislators now. Mark Carnell brought up that there are a lot of bills that would increase penalties for substances offenses involving methamphetamine, narcotics, opioids, and cocaine. This is the response to the exploding number of

heroin and meth users. Bernice Corley brought up that she and Michael Moore had spoken to Terri Stigdon, head of DCS, in regards to the First Steps Program. Terri Stigdon wants to partner with IPDC to see if there are ways to shave off dollars for public defenders and DCS matters by bringing them in earlier to resolve matters, to reduce filings, and to have better outcomes for families.

- Jail overcrowding level 6 felons. There have been a couple of bills introduced that would change the criteria for placement in DOC for level 6 sentences. We are opposing anything that will put more people into the DOC. David Hennessy wants to find a way to engage our members. Maybe do a blast when a hot point is coming.
- The juvenile waiver bill. IPDC staff have argued against the bill which is a response to a recent event involving a school shooting. It was supposed to go to a 3rd reading in the senate. We are going to continue to watch it to see if it came up again. It also passed unanimously in the committee despite our testimony. We need to fix the expungement and firearms language parts of the bill.
- Decriminalization and legalization of marijuana. 33 states have legalized it in some form of medical and 10 states have gone recreational. Illinois and Ohio both have medical marijuana. Robert Hill made a motion to endorse any decriminalization or reduction of punishment in any way shape or form that we would support that as a legislative measure. Seconded by Chris Shema motion passed unanimously.
- DCS 1006 is a priority bill. Does not affect us directly. DCS has consistently over spent their budget the last several years so this year they decided to give them the extra \$275,000,000.
- Firearms – restricting firearms (due to Noblesville shooting). Most of this was due to new crimes.

Legislative initiatives

- Public Defender Council appointment to the Public Defender Commission. Bill has stalled as of now. David Hennessy wanted to know if we are working with the Commission. Bernice Corley stated that in general “yes”. The biggest issue this session was their budget.
- Questioning students at school – bill 1353. We are working with the author to make it more palatable. The introduced version is not the draft we created. The bill now focuses on SROs and not Law Enforcement in general, or administrators.
- 7 year staleness for sentence enhancements – this one is a hard sale only showing up in one bill (Senator Randolph’s 303).
- Common Nuisance – this one is in 3 different places. It would reduce the penalty.
- Escape from Home Detention – this one has shown up in 2 bills.
- Home detention and credit time – this is a stand alone
- Appointment of council at an initial hearing – this one would make the system work better. The Commission is working to support this.
- Driver’s license and financial responsibility – Proof of financial responsibility. If you borrow someone else’s car, and you are involved in a crash, and you didn’t know that it wasn’t insured the bureau must suspend their license, we are working on this one. The other part of this, reinstatement fees, is getting a lot of traction. This has stalled

however we are working with IPAC on the language and if we can get it done then it will move again. The fees went up massively in 2014, these would reduce it to 10%.

- Marijuana bill –Would make per se offense of driving with marijuana in the blood. Bill would make a base amount needed for the per se: 5 Nano gram – 10 Nano grams.
- Leaving the scene of a motorboat accident – this corrects a problem presented in a case involving a boating accident. This one has passed out of the senate and is in the house, it is moving well. IPDC supports this bill.
- Mental Health Diversion study. – This one too big to try to do in a bill. We want to get people that are mentally ill that are in the system out earlier.

V. Juvenile Defense Project – Amy Karozos

Discussed upcoming trainings (see attachments).

VI. Assistant Executive Director’s Report – Mike Moore

The resilience workshop has been well received. Justice David is actually attending one on February 5th.

All highlights are in attached summary report.

David Hennessy requested that Mike Moore asked those that did a trial prep case review to just do a little summary of the experience for the board. Something quick, any suggestions to help make it better.

Mike Moore stated that the Harris & Falk mooting that we did had completely turned around and over hauled their theory.

We received a similar grant to the one that we received from CJI that expired at the end of 2018. Details in attached summary report.

David Hennessy wanted to have some input on the Appendix A for the Eye Witness Identification Rule. Ruth Johnson talked about the realistic timeline. The draft that it attached is what was sent to the rules committee last time. Judge Willis at the time was able to say yes or no, and she said no so it never actually got to the rules committee. She felt that setting up meetings with people and getting input along with the Board saying go, there are people on the rules committee that is kind of ready to go. It will kind of depend on when you wanted to set up meetings and get the Board to say yes go ahead and move forward. Bernice Corley stated that we just need direction from the Board. David Hennessy stated that everyone that had concerns can send an e-mail, Mike Moore stated that they could send the e-mails to Ruth Johnson or himself and needed to be received by January 31, 2019.

Technology – We were currently in the process of updating our databases which would tie membership to phone calls and research requests. We were also discussing leasing a server

which we would be able to put on videos and CLEs, and other videos developed per commission requirements. This system would allow us to give CLE credits. May 1st is our goal go-live date.

VII. New Business

There was a juvenile case in Lake County (CHINS/TPR case). The father, who was in DOC, the caseworker called the gentleman at DOC, informed him the case had been filed, there was a letter, and then proceeded with the termination. The father's rights were terminated on appeal. The court of appeals sustained the termination; however, Judge Mathias wrote a scathing dissent on the lack of service that was provided to the father detailing all the problems. The father appeared to request an attorney; however, one was not provided. DCS actually conceded to father's position and agreed that service was improper and insufficient. CASA asked that the case be published. The Court of Appeals granted CASA's request. Now there is a published opinion supporting position that service is sufficient when caseworker testifying that he or she verbally advised him of his rights and that the caseworker provided notice and advisement in a letter, which was not put into evidence. Michael Moore asked for a request to file a petition basically asking for permission to show up as an intervener similar to what is done with amicus, to have this case transferred on this issue on notice. Robert Hill made a motion to approve this petition seconded by Ashley Spolarich. Motion passed with 10, Gojko Kasich not present for roll call.

David Shircliff explained what he wanted to do on committee assignments. He will send an e-mail out to all the members of the board identifying current committee assignments and that will request whether members wish to remain on the committee to which they were previously assigned or if they had a preference to serve on a different committee. He would then send out a list (via e-mail) a final list for approval. He was going discuss with Bernice Corley to reduce the number of committees because they were not all needed.

2019 Board Elections. Bernice Corley stated that the names appeared randomly on the ballot now and she wanted to know if the Board wanted it that way or if they preferred alphabetically. David Shircliff stated that everyone understood that it was random and should remain that way. Elections will be handled mainly electronically; however, faxed ballots could still be accepted. Chris Shema suggested that there should be a window for the faxing. David Shircliff stated that Bernice Corley can decide the window for the faxing.

Timelines are listed in the provided handouts.

Standardized questions for the Gault / Gideon Awards nomination forms to be able to compare candidates to each other. Bernice Corley stated that all the questions for both awards are the same. Ashley Spolarich stated that the questions were fine.

Retreat scheduling during the judicial conferences. David Shircliff chose Marion County for the retreat the Saturday after TPI.

Derrick Mason wanted to know if the Board would like a progress and priorities from the Commission. Robert Hill wanted to include the fiscal impact of the proposals, i.e. what the Commission is recommending to LSA as the fiscal impact and LSA's response. Derrick Mason went on to explain that house bill 1453 is the Commission's fiscal priorities and senate bill 488 is the non-fiscal priorities, which is already on the 2nd reading in the senate and is doing well. The concept was that it would be cost savings if we would be able to regionalize and share services. Commission had a 30 minute presentation on HB 1453 in Ways and Means for the Commission's budget.

Chris Shema asked if the board needed to schedule a conference call or a remote board meeting to decide if there is anything specifically the needs to be done to support specific pieces of legislation. Bernice Corley responded that after the 3rd reading would be a good time, February 25th to the House and February 26th to the Senate. Chris Shema wants some specific direction as to talking points for bills of interest. Bernice Corley responded if it is the will of the Board, staff will organize a conference call. David Shircliff reminded everyone that at least 3 of the board members have to be on-site. Bernice Corley stated that some of the speaking point are in the handouts that Mark Carnell provided but we will also have some speaking points that we can give the board.

Next board meeting is April 25th to develop timelines for the awards and elections.

Ashley Spolarich made a motion to adjourn, seconded by Jennifer Culotta. The meeting concluded at 9:01 pm