

Indiana Public Defender Council
Meeting of Board of Directors - December 16, 1985

MINUTES

I. CALL TO ORDER

The meeting of the Board of Directors of the Indiana Public Defender Council was called to order by Terry Richmond, Chairman, at 4:15 p.m. on December 16, 1985, at the Marriott East Hotel, Riley meeting room, in Indianapolis, Indiana. Council Board members present: Terry Richmond, Dan Weber, Mark McNeely, David Hennessy, Sandy Bryant, David Keckley and Susan Carpenter. Also attending the meeting: Larry Landis, Mary Sinnock, Monica Foster and Kit Keller of the IPDC staff; and the following members of the Indiana Public Defender Association: Michael Hunt, Jim Fleming, John Sorensen, Linda Wagoner and Jim Johnson.

II. APPROVAL OF MINUTES

The minutes of the previous IPDC Board meeting held July 13, 1985 were submitted for approval. Item 1 under section VIII (Defender Delivery Systems) was amended by the addition of "The clause on the handling of appeals shall remain as written in the original legislation." Mark McNeely moved that the minutes be approved as amended. The motion was seconded by David Hennessy and unanimously approved.

III. NEW BUSINESS

1. Sentencing Alternatives/Client Specific Planning Grant

Larry Landis requested approval from the Board to submit a grant application under the 1984 Justice Assistance Act for funding of a client specific planning program. Larry briefly summarized the proposal which had been sent to Board members prior to the meeting. Kit Keller reported on the sentencing alternative project done in 1984-85 in Lake and St. Joseph counties. Discussion was held on proposed sites for the 1986 project. Susan Carpenter made the following motion: "The grant proposal should list Marion County and four other target counties (Wayne, Tippecanoe, Monroe and St. Joseph) for pilot sentencing alternative programs during the first year of the grant. A committee should be appointed to consider other counties as sites for projects in the second grant year." This motion was seconded by David Keckley and unanimously approved.

2. Defender Management Information System (DMIS)

Larry Landis reported to the Board that a complete and comprehensive survey of defender delivery systems and costs throughout the state is critically needed to assess the present system and to continue working effectively toward improvement. He currently hopes to combine funds available through the Criminal Justice Institute and IPDC's 1984 juvenile grant to contract for such a survey. The work would also include putting into place a reporting system in each county so the needed information can be accurately kept in the future.

3. Juvenile Justice Grant - 1986 (1985 funds)

Larry Landis announced that funds are available through the Criminal Justice Institute for juvenile justice grants in 1986. \$25,000 is available to the IPDC. He asked Board members to consider possible uses for these funds and call him with suggestions.



IV. PUBLIC DEFENDER LEGISLATION

Terry Richmond gave a brief summary of the background of the statewide public defender bill and the legislative interim study committee which was appointed to review the legislation this past summer. Larry Landis informed the Board that he did not recommend filing the bill in the 1986 session of the General Assembly for the following reasons:

- a) A sponsor for the bill has not been secured.
- b) Bills which have substantial fiscal impact are not encouraged during short sessions.
- c) We do not have the accurate and complete fiscal impact data this year which the legislature will need to seriously consider the bill.
- d) The issue of the handling of direct appeals has not been resolved and could greatly diminish the chance of successful passage as it stands in the current draft.
- e) More groundwork with county officials, defense lawyers, and judges needs to be done.

For these reasons Larry recommended that the bill not be filed this year; that the above problems be worked on in 1986; and that the bill be filed in the 1987 long session. Dave Hennessy expressed concern about the loss of exposure by holding back this year and urged all Board members to continue lobbying their local representatives as much as possible.

Gene Hollander moved that the IPDC/IPDA's Defender Delivery Systems Committee be reactivated in early 1986 specifically to take action to keep the issues before the public and legislators and avoid "losing ground" in 1986. The motion was seconded by Mark McNeely and unanimously passed.

V. ADJOURNMENT

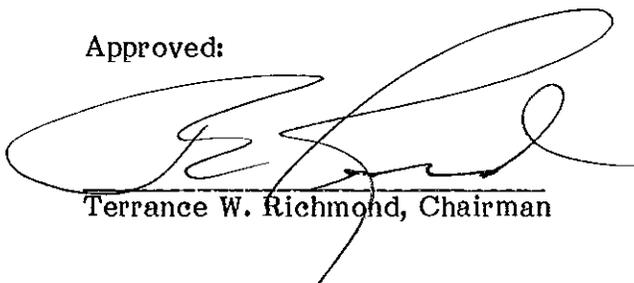
David Hennessy moved to adjourn the meeting. This was seconded by Susan Carpenter and unanimously passed.

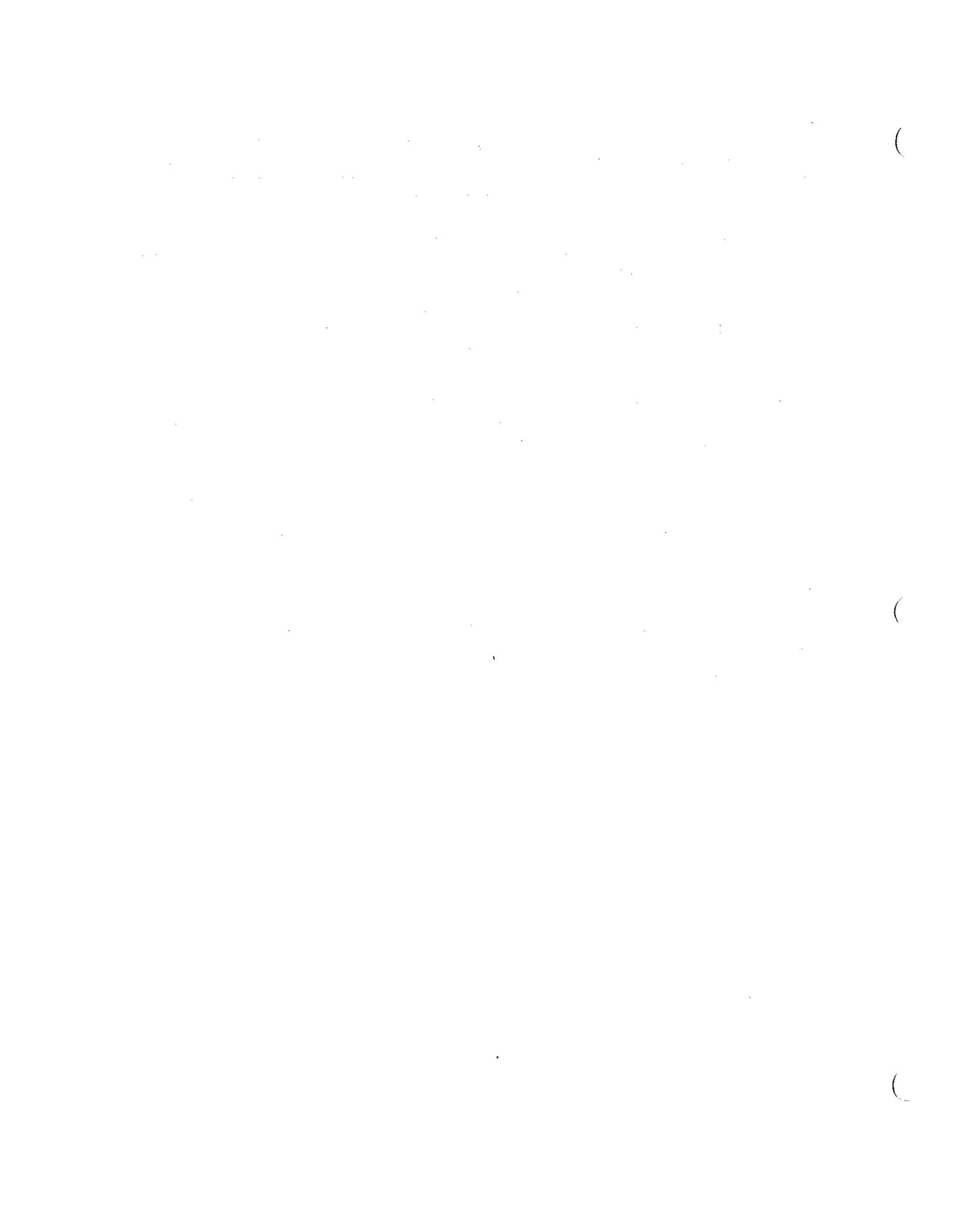
Minutes prepared by Mary Sinnock, IPDC staff.

Respectfully submitted:


Eugene C. Hollander, Secretary

Approved:


Terrance W. Richmond, Chairman



**31-6-11-3 - Report of victim of child abuse;
requirement; notice to individual in charge**

Sec. 3. (a) In addition to any other duty to report arising under other sections contained in this chapter, any individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this chapter. **This section does not apply when the communication was made by a person seeking treatment from a medical practitioner concerning an incident or pattern of child abuse or neglect and the medical practitioner does not believe that there is a substantial likelihood of injury to a third person as a result of non-disclosure.**

(b) If an individual is required to make a report under this chapter in his capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, he shall immediately notify the individual in charge of the institution, school, facility, or agency, or his designated agent, who also becomes responsible to report or cause a report to be made. Nothing in this section is intended to relieve individuals of their obligation to report on their own behalf, unless a report has already been made to the best of the individual's belief.

* * *

31-6-11-8 - Privileged communications; abrogation

Sec. 8. The privileged quality of communication between a husband and wife, or between a medical practitioner and his patient, is not a ground for:

(1) excluding evidence in any judicial proceeding resulting from a report of a child who may be a victim of child abuse or neglect, or relating to the subject matter of such a report; **unless the communication was made by a person seeking treatment from a medical practitioner concerning an incident or pattern of child abuse or neglect; or**

(2) failing to report as required by this chapter.

INDIANA CRIMINAL LAW STUDY COMMISSION

Meeting again on December 17, 1985.

To date:

JUVENILE - Recommendations

1. Alcoholic beverage code violations (I.C. 7.1-5-7) by minor be returned to jurisdiction of juvenile court
2. Alcohol-related traffic cases in jurisdiction of juvenile court if:
 - (a) notice to BMV and adjudication accorded same status as adult conviction for recidivism and permanent driving record purposes
 - (b) mandatory one (1) year license suspension
 - (c) presumptive waiver statute amended to include second offense DUI, DUI causing injury and DUI causing death, if committed by person 16 or older
 - (d) streamlined procedures for DUI first offender processing (similar to adult processing), and
 - (e) more resources for dealing with first offender DUI provided to courts
3. Place of detention
 - (a) if recommendation #1 is not adopted, juveniles arrested for alcohol-related offenses should be housed in juvenile facility, but court has discretion to order confinement in adult facility
 - (b) juvenile who is waived to be housed in adult facility, but court has discretion to order confinement in juvenile facility (juvenile court jurisdiction)
 - (c) automatic waiver offenders to be housed in adult facilities unless court orders otherwise (adult court jurisdiction)

(d) juvenile arrested for traffic misdemeanor which is in adult court should be housed in juvenile facility; court has discretion to order housing in adult facility

4. Clarification of fact that in "regular" commitment of juvenile (on adjudication of non-status offense) Department of Correction is releasing authority and in repeat status offender cases court is releasing authority
5. Amend I.C. 35-50-2-2.1 (non-suspendible sentences for defendants with juvenile adjudications) to provide that it applies to persons under 18 years of age being sentenced as adults (waived or automatic waiver)
6. Juvenile court authorized to recover costs of foster care from parents (to be assessed as all other costs)

5. Oppose
Motion:
L. Wagoner
Second:
L. Landis
Passed!

Still discussing: Automatic waiver if child has been waived before.

CORRECTIONS - Recommendations

1. Repeal of 35-38-1-17, (b) (all of portion of statute permitting modification more than one hundred and eighty (180) days after begins service of sentence) -- alternatively, if not repealed, delete Department of Correction and provide for summary denial and modification without hearing if prosecutor files written approval and defendant waives right to be present
2. Amend 35-50-6-5.5 - (re: appeals of assignment to lower time-earning class) by substituting "may appeal" for "is entitled to a review of".
3. Amend and escalate penalties for escape --
 - (a) escape automatically a Class C felony
 - (b) Class B if while armed or inflict injury
 - (c) Failure to return to lawful detention following "temporary leave granted for a specified purpose or limited period" is "failure to return to lawful detention", a Class D felony; a Class C (or B) if armed or inflict injury (new section 5.1)

1. Adopt position
to delete the
Dept. of
Correction.
Motion:
L. Landis
Second:
J. Sorensen
Passed.

3. Oppose
Motion:
Mike Hunt
Second:
Jim Johnson
Passed.

4. Add a new sub (F) to battery statute, 35-42-2-1, to provide it is a Class D felony if results in bodily injury to "an employee of the DOC while the employee is engaged in the execution of his official duty"
5. Add to 9-4-1-2 (emergency vehicles) DOC vehicles responding to an emergency

CRIMINAL CODE - Recommendations

1. Unlawful access to computers --
Class A misdemeanor tampering for knowing or intentional use of system or part thereof without owner's consent; Class D felony for knowing or intentional alteration or destruction of programs or data without owner's consent; language not yet final
2. Child victim hearsay: 35-37-4-6(a) amended to apply in all felonies against the person under I.C. 35-42 rather than 6 enumerated felonies
3. Authorize prosecutors in misdemeanor cases to issue a summons in lieu of an arrest warrant
4. New statute requiring fingerprinting at time of sentencing (habitual and repeat offender DUI proof)
5. Add life without possibility of parole as alternative in capital cases only.

IPDA positions on above Criminal Code Recommendations:

1. No position.
2. Oppose the concept. Motion: Larry Landis; second: Jim Johnson. Passed.
3. Oppose. Motion: John Sorensen; second: Mike Hunt. Passed.
4. No position.
5. Motion to refer this proposal to the IPDA Legislation Committee for their review and recommendation. Motion: Jim Johnson; second: Mike Hunt. Passed.

Indiana Public Defender Association
Board of Directors Meeting - December 16, 1985

AGENDA

1. Call to Order
2. Approval of Minutes
3. Reorganization
 Amendments to Articles of Incorporation
4. Public Defender Legislation
5. Legislation
6. New Business

