

**Indiana Task Force on Public Defense**  
**October 27, 2017**  
**1:00 – 3:00**  
**309 W. Washington Street, 5<sup>th</sup> Floor Conference Room**  
**Indianapolis, Indiana**

**Meeting agenda**

**1) Meeting Chair – TBD (in the absence of Judge John Tinder)**

- a) Proposed Task Force Rules – Action needed
- b) Meeting times confirmed
- c) Approval of minutes of September 8, 2017 meeting – Action needed

**2) Primary Topic Area: Access to Counsel, Timely Appointment, and Waiver – PPT presentation – Kim Tandy**

- A) Constitutional Basis for Right to Counsel, Early Appointment and Waiver of Counsel
- B) What does that data show about who is appointed lawyers?  
Where are discrepancies by case type and county?  
How do misdemeanors figure into this?  
Pauper appointments by county by Major felony, F6, CHINS, TPR, juvenile, status, other
- C) What factors encourage or otherwise result in waiver of counsel as identified in 6<sup>th</sup> Amendment report, OJJDP report, and through observations?
- D) Importance of Appointment at First Appearances – Larry Landis  
How does this factor in with pre-trial release? How will lawyers make a difference?
- E) Impact on local jails  
Steve Luce – Executive Director, Indiana Sheriff’s Association

**3) Subcommittees reports:**

- a) Juvenile defense
- b) CHINS/TPR –Dr. Jeff Papa, Chair
- c) Appellate and Post-Conviction – Joel Schumm, Chair

**4) Discussion on stakeholder involvement: Joel Schumm**

**5) New Business?**

**Adjourn**  
**Next Meeting: Friday, November 10**  
**10:00 – 12:00**

Meeting #3 Issues: Quality of Representation, Workloads, Compensation and Resources

## MINUTES

### INDIANA TASK FORCE ON PUBLIC DEFENSE

SEPTEMBER 8, 2017

10:00 A.M. – 12:00 P.M.

309 West Washington Street, Suite 501

Task Force members present for the meeting were: Greg Porter, State Representative; Jeff Papa, partner at Barnes and Thornburg; Dean Andrea Lyon, Valparaiso Law School; Roderick Bohannon, Project Director, Indiana Legal Services; Steve Luce, Executive Director of the Indiana Sheriff's Association; Larry Landis, Executive Director of the Public Defender Council; Hon. Vicki Carmichael, Judge in Clark Circuit Court; Joe Heerens, General Counsel for the Governor; Senator Rod Bray; Chief Federal Public Defender Monica Foster, David Bottorff, Executive Director of the Indiana Association of Counties; Hon. Mary Diekhoff, Indiana Public Defender Commission; Justice Christopher Goff, Indiana Supreme Court; Joel Schumm, Clinical Professor and Director of Experiential Learning, IU School of Law; Hon. Mary Willis, Chief Administrative Officer, Indiana Supreme Court; Advisor to the Task Force, Dean Emeritus Norm Lefstein was also present.

Staff attorney Kathleen Casey and Technical Assistance Provider Kim Tandy were also present.

Present in the audience were: Derrick Mason, Senior Staff attorney for the Public Defender Commission; Bernice Corley, Assistant Executive Director of the Indiana Public Defender Commission, Kristen Casper, legislative liaison for the Public Defender Council.

#### 1. Welcome and Introductions

The Task Force members introduced themselves and each indicated why they are interested in the subject of public defense. Chair Judge Larry McKinney was unable to attend, and sent his apologies. Larry Landis distributed proposed rules for the Task Force, but no action was taken at this meeting.

#### 2. Presentation: An Examination of Indiana's Current Public Defense System

Staff attorney Kathleen Casey and Technical Assistance Provider Kim Tandy presented an overview of public defense to the Task Force. The PowerPoint presentation and other materials were made available on the Indiana Public Defender Commission website page on Task Force activities and information.

Kim Tandy reviewed the national reports that have been written about Indiana pointing to issues with public defense at both the juvenile and adult criminal court areas. Additionally, she noted that there are multiple lawsuits regarding public defense and the right to counsel that have been filed in Indiana. Further, she noted rising costs in the area of Termination of Parental Rights and Child in Need of Services.

Kathleen Casey reviewed that Indiana is a county-based, county funded system with optional state support. She reviewed the state resources available from the Indiana Public Defender Commission, which reimburses counties for a portion of their expenses, the Public Defender Council, which provides support and training for individual public defenders, and the Public Defender of Indiana, which represents persons in Post-Conviction Relief Proceedings.

Kathleen reviewed the structure of Commission counties and responsibilities of the Public Defender Commission. She then reviewed how the Task Force came to exist, as a result of the 6<sup>th</sup> Amendment Center. The Public Defender Commission recognized the issues and authorized the Task Force to begin to take further steps and investigate changes that may be need to address the issues in the report.

Kim Tandy then identified the main topics to be studied by the Task Force: Access to Counsel, Quality of Representation, and Structure Barriers to effective representation. She noted the incredible work of public defenders working in Indiana, who are committed to helping people every day. She explained that the Task Force process was in no way meant to malign practicing public defenders. Rather, she hoped to focus on the issues preventing them from becoming more effective. She then spent the remainder of her presentation outlining greater detail in each area. Facts and figures from her presentation are available in the accompanying PowerPoint.

### **3. Scope of Work**

Kim Tandy explained that there would be three phases to the Task Force Process. First, a fact finding phase that would last from September to March of 2018. Second, an analysis of information, from April through June of 2018; and finally, recommendations and a report, which will be published in August of 2018. The Task Force also discussed a number of resources they wished to investigate, including listening to public defenders from well-respected organizations, investigating a uniform standard of indigency, looking at the historical perspective of the development of public defender agencies, and remaining mindful of looking at models from states with similar populations.

### **4. Facilitated Discussion**

Dean Emeritus Norman Lefstein and Monica Foster lead a discussion on principles related to the implementation of the right to counsel in juvenile cases. The Dean Emeritus noted the ABA Ten Principles of a Public Defense Delivery System, and other standards and principles that relate to what is required to defense counsel. Specifically, he noted the ABA Defense Function standards that have been noted by the United States Supreme Court as reasonable conduct for the defense function.

Dean Emeritus Lefstein noted that the Ten Principles were the most cited source of what should be the guiding principles when setting up a defense system, though he said that improvements could be made. One of the principles that would not change would be the importance of independence from the judiciary in selection and payment of public defenders. He noted that many states now have oversight boards that are independent, and that the Public Defender Commission of Indiana, while under the judicial branch, considers itself to be independent, because it does not receive instruction from any appointing authority. This ensures the independence of the defense function.

Monica Foster also stated that independence is an important aspect of a public defense system. She noted the difficulty of obtaining expert witnesses in capital cases, and also recounted the political considerations that may interfere in relations between judges and public defenders. She noted that if the judge holds the purse strings for the lawyer hired to serve as public defender, it will interfere with the quality of representation.

Professor Lefstein added that independence was the first principle of the ABA Ten Principles by design. He also noted the need for the private bar in public defense, as many private lawyers provided a public function, and that there must be oversight in that area as well.

Monica Foster asked whether the Task Force was willing to adopt independence as something to be adopted by the Task Force. Mr. Bohannon inquired into the different funding structures of local county public defense, specifically related to budgets for investigation. Dean Emeritus Lefstein noted the difficulty of having public defense agencies answerable to a county council, as they are laypersons who may not understand the true cost of defense services.

#### **5. Next Meeting Dates**

Tentative dates were proposed for upcoming meetings, with an understanding that dates further out may be changed. The next meeting date was set for October 27, 2017 at 1:00 p.m.

Approved: \_\_\_\_\_

Meeting Chair: \_\_\_\_\_

## **Indiana Task Force on Public Defense Proposed Rules**

Meetings will operate in accordance with any requirements imposed by the Indiana Public Defender Commission and general parliamentary procedures.

1. Judge John D. Tinder (Ret.) shall serve as chairperson of the Task Force.
2. These Rules may be amended by affirmative vote of a majority of members, but at least one day's notice shall be given in writing to each task force member prior to a vote on a Rules change. (Email satisfies the writing requirement.)
3. No seconds are required to support a motion.
4. A majority of the members of the task force constitutes a quorum for the transaction of business. Members may participate in meetings by telephone, if unable to attend in person. Members participating by telephone are counted in determining a quorum. In the absence of a quorum, the Chair may assign fewer members to receive public testimony.
5. The chairperson shall call meetings, set agendas and cause notice of the time and place of meetings.
6. At the discretion of the Task Force or the chairperson, persons other than Task Force members may attend all or part of any meeting, except deliberations.
7. Upon request of one member, a roll call vote shall be taken and recorded on any question placed before the task force.
8. Official action by the task force requires approval by a majority of the members of the task force.
9. Votes will be allowed from members attending a meeting via phone.

Voted on and approved this \_\_\_\_\_ day of October, 2017.

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