
MINUTES

Idaho State Public Defense Commission Meeting

Attendance via Zoom meeting was encouraged

Masks and social distancing were encouraged at meeting site

Public Defense Commission Conference Room

816 W. Bannock Street, Boise, Idaho 83702

March 21, 2023 at 10:00 am

Commission Members Present (via Zoom):

Darrell Bolz, Chair, Eric Fredericksen, Vice Chair, Ben Andersen, Angie Barkell, Dan Dinning, Linda Trout

Commission Members Absent: David Cannon, Melissa Wintrow

PDC Staff Members Present at Meeting Site: Kathleen Elliott and Jennifer Cichocki

PDC Staff Members Present (via Zoom):

Jared Ricks, Tammy Zokan

Members of the Public Present (via Zoom): Special Deputy Attorney General Joe Aldridge; Kristi Rist

Welcome and Call to Order – Chair Bolz

The meeting was called to order at 10:00 am

Consent Agenda

(Items on the Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless a Commissioner so requests, in which case the item will be removed from the Consent Agenda and placed on the regular agenda.)

FY2023 Actual and Budget Report February

FY2023 Office Budget February

Approval of February 21, 2023 Meeting Minutes

Commissioner Trout moved to approve the Consent Agenda. Commissioner Dinning seconded.

And the roll call vote to do so was as follows:

Ben Andersen, Member	Yes
Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes

Melissa Wintrow, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

Executive Director Report:

Ms. Elliott reported that JFAC passed the PDC budget as recommended, it then passed the House with one nay vote, and it is on the Senate agenda today. She referred to the Defending Attorney Annual Reports (DAARs) and the number that remain outstanding. She said the number of counties and attorneys with missing reports and their names are included in the meeting packet. She said in summary at least 27 counties still have all or portions of DAARs that have not been submitted and this includes 44 attorneys that have not submitted a DAAR and 73 DAARs that have not been submitted.

Ms. Elliott said the PDC has received a lot of inquiries about the new legislation and she will report on it from PDC staff's vantage point. She thanked the Commissioners for their work, support and dedication, and for their kind words this Session. She reflected on the events leading to the creation of the Commission and referred to the 2010 NLADA Report on Indigent Defense in Idaho that focused on 7 counties and found that Idaho was not providing Constitutional representation at the trial level. The report made 3 recommendations: Funding/Standards/Oversight. She summarized what the PDC has accomplished as it approaches its seventh year with the authority to effect those changes:

- For funding, between FY2017-2023 that State paid more than \$50M to supplement indigent defense needs and as of FY 2023, the State is now paying for indigent defense in the amount reported by the counties.
- For Standards, between FY2017-2023, Idaho became one of the very few states to pass standards as law.
- For oversight, the PDC has collected data from the counties managing indigent defense and for the first time, knows how many public defense and juvenile cases are handled through defending attorneys as well as the handling attorneys' caseloads and workloads and how county and state indigent defense funds have been expended. Under this Commission, courthouses and jails include confidential meeting spaces, and defending attorneys are closer to resource equity.

Ms. Elliott reported that it appears H0236 will pass. She said the H0236 funding amount is based on counties' reported expenditures. She said the Bill's sponsor, Representative Webber, was quoted by Lee Enterprises saying "If it does cost more than (\$50 million), we will address it at that time and see what the number is." She reported there was testimony before the Committees that the funding is inadequate. She said as the new system develops, the PDC will continue to collect expenditures and needs from the counties and defending attorneys.

Ms. Elliott said under H0236 the current public defense standards in rule are in effect until October 2024. At that time, the State Public Defender has the authority but is not required to implement the ABA standards or any standards. She noted at this point, the ABA standards for indigent defense and capital representations, which predate the PDC, are considered by many to be aspirational. Through June 30, 2024, the PDC will continue to implement the standards and offer education about their

benefits. As part of that, the PDC is continuing its work with NACDL and the technical assistance grant to determine how to measure vertical representation and how to implement vertical representation throughout the state.

Ms. Elliott reported as far as oversight, the PDC will have one more cycle of DAARs, Financial Assistance, Expenditure Reports and Annual Reviews. She said between now and October 1, 2024, there will be more than 110,000 cases in which defending attorneys will represent indigent or juvenile clients in Idaho. It is critical that the PDC continues to do its work and report the data and support defending attorneys and their clients.

Ms. Elliott thanked the PDC team and the Commission. She noted that beginning with the Legislative session in 2021, this Commission and staff have often been treated unprofessionally. It is because of this Commission and staff that Idaho has made more progress than any state before us. However, this cannot be the end to reform. Much as we would not tolerate a physician who treated us with outdated knowledge, we cannot expect to run a system that does not improve and keep up with national standards.

Commissioner Trout said the PDC has done a tremendous job and the progress made would not have occurred without Ms. Elliott, the team she assembled and her leadership. Commissioner Trout said we do not know what will happen in the future but that does not change the work and credit for the work the PDC has accomplished.

Chair Bolz said he is not opposed to a statewide system but he is disappointed about how it came about. He referred to some of the comments made during Committee hearings and the lack of questions based on those comments. For example, when attorneys commented that the system is not broken and is doing well - why didn't a Legislator ask, "then why are we trying to change it?" He referred to other comments about funding not being enough and said these were misleading because they represented things the Bill does not say. He referred to other misleading comments about the Bill doing away with a state agency when that is not the case, the result is one agency being replaced with another and with many employees being added to the new agency. He said he was surprised there were no questions about all the employees that will be added to the State payroll and that no one asked how many. He said these and other things should have been brought out more. He said he was also surprised to hear how the Bill came about. He said the lobbyist representing some defending attorneys described three meetings about the Bill, and he is surprised there were not more. He said the process was not out where it should have been, the Commission should have been involved, should have been asked for the Commission's thoughts, and about what the Commission has done and is doing. He said he understands the PDC is at the mercy of the Legislature and the PDC will do what they say. He echoed Commissioner Trout's remarks that Ms. Elliott has done a fantastic job of putting together a fantastic team and done considerable good work that could have and should continue.

Joint Regional Coordinator Report:

Mr. Ricks said he did not have additional information to add to the Regional Coordinators' written report.

Report on Missing Defending Attorney Annual Reports: Ms. Elliott referred to her report in which she summarized the number of missing DAARs and the breakdown detailing this information by attorney and by county in the meeting packet. She said she is happy to answer any questions.

2023 Legislature:

Chair Bolz reported the Legislature remains behind compared to where they were last year. He said they are still taking bills for printing and he does not see how they are going to complete the Session by this Friday but they might.

Chair Bolz referred to an Idaho Reports broadcast this weekend that included Seth Grigg of the IAC and Ritchie Eppink of the ACLU. He said Mr. Eppink reported the ACLU will continue their lawsuit even if H0236 passes.

Chair Bolz reported a Trailer Bill is anticipated to provide additional funding for H0236.

Tucker – Public Report:

Special Deputy Attorney General Joe Aldridge said Chair Bolz covered much of what Mr. Aldridge intended to cover. He said the ACLU has publicly stated H0236 does not go far enough and they expect to go to trial. He reported there is a status conference on May 5, 2023 and that ACLU is aggressively seeking discovery prior to the deadline. He said he expects the next fight in the lawsuit will be whether it makes sense to continue to march toward a February 2024 trial date given the changing system.

Executive Session:

Commissioner Trout moved to, pursuant to Idaho Code 74-206, convene in executive session under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation, and under Idaho Code 74-206(1)(b) and (d) to discuss employee evaluations and information exempt from disclosure under Idaho Code 74-106(1). Vice Chair Fredericksen seconded.

And the roll call vote to do so was as follows:

Ben Andersen, Member	Yes
Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Melissa Wintrow, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

The Commission went into executive session at 10:21 am

10:22 am – Discussion under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation; Special Deputy Attorney General Joe Aldridge was present

10:28 am -- Discussion under Idaho Code 74-206(1)(b) and (d) to discuss employee evaluations and information exempt from disclosure under Idaho Code 74-106(1); Ms. Elliott was the only PDC staff member present

Chair Bolz called the meeting back to order at 10:44 am.

Future Meeting Dates:

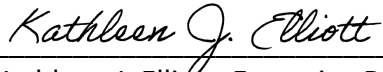
The Commission discussed timing for the next meeting and the upcoming sunset date for maximum caseloads in the Rules. If no action is taken by the Commission by April 30 2023, the National Advisory Commission (NAC) caseload limits will take effect. The Commission also needs to do temporary rules as it has in years past years and do these as close to sine die as possible. The Commission decided to set a meeting date recognizing it may have to have a special meeting to address these items.

The next meeting is April 14, 2023 at 9:30 am

Adjournment – Chair Bolz:

Chair Bolz adjourned the meeting at 10:53 am

Minutes approved by the Commission on April 14, 2023


Kathleen J. Elliott, Executive Director

FY2022DAAR_NoReportList_20230315

ID ProviderType	DA Name	County
No Report	Aaron Freudenthal	Benewah Latah Nez Perce Shoshone
	Adam Ondo	Jerome Twin Falls
	Angela Jensen	Bear Lake
	Bethany Harder	Canyon
	Brendan Ash	Gooding Lincoln Twin Falls
	Brendon Taylor	Power
	Brian Tanner	Jerome Twin Falls
	Clayne Zollinger	Cassia Minidoka

Dan Brown	Twin Falls Cassia Jerome Minidoka Twin Falls
Daniel Taylor	Bannock Twin Falls
Eric Anderson	Boundary
Erin Tomlin	Latah
Hayes Hartman	Shoshone
Jared Coburn	Bear Lake Caribou Franklin
Jay Northam	Benewah Latah Nez Perce Shoshone
Jeremy Pittard	Cassia Minidoka
Jeremy Stafford	Butte
Joanna McFarland	Benewah Clearwater Latah Nez Perce Shoshone
John Kormanik	Ada
John Redal	Shoshone
Joseph Miller	Elmore
Kirk Melton	Twin Falls
Leticia Lopez	Jerome
Mark Monson	Latah
Mary Shea	Bannock Bear Lake
Matthew Thompson	Payette
Michael Wood	Twin Falls
Parker Papworth	Nez Perce
Patrick Davis	Bannock Bonneville Power
Paul Thomas	Nez Perce
Paul Ziel	Clark
Peter Wells	Cassia Minidoka
Preston Rutter	Bear Lake

Rebecca J. Vaage	Clearwater
Reed Brevig	Latah
Samuel Lovely	Boundary
Scott Chapman	Nez Perce
Shawn Anderson	Bannock
Steven McRae	Jerome
	Twin Falls
Tom Monaghan	Elmore
Tyler Rands	Twin Falls
Tyler Salvesen	Custer
Virginia Bond	Adams
	Washington
Warren Webber	Bannock

FY2022DAAR_NoReportList_20230315

ID	ProviderType	County	DA Name
No Report		Ada	John Kormanik
		Adams	Virginia Bond
		Bannock	Daniel Taylor
			Mary Shea
			Patrick Davis
			Shawn Anderson
			Warren Webber
		Bear Lake	Angela Jensen
			Jared Coburn
			Mary Shea
			Preston Rutter
		Benewah	Aaron Freudenthal
			Jay Northam
			Joanna McFarland
		Bonneville	Patrick Davis
		Boundary	Eric Anderson
			Samuel Lovely
		Butte	Jeremy Stafford
		Canyon	Bethany Harder
		Caribou	Jared Coburn
		Cassia	Clayne Zollinger
			Dan Brown
			Jeremy Pittard
			Peter Wells
		Clark	Paul Ziel
		Clearwater	Joanna McFarland
			Rebecca J. Vaage
		Custer	Tyler Salvesen

Elmore	Joseph Miller Tom Monaghan
Franklin	Jared Coburn
Gooding	Brendan Ash
Jerome	Adam Ondo Brian Tanner Dan Brown Leticia Lopez Steven McRae
Latah	Aaron Freudenthal Erin Tomlin Jay Northam Joanna McFarland Mark Monson Reed Brevig
Lincoln	Brendan Ash
Minidoka	Clayne Zollinger Dan Brown Jeremy Pittard Peter Wells
Nez Perce	Aaron Freudenthal Jay Northam Joanna McFarland Parker Papworth Paul Thomas Scott Chapman
Payette	Matthew Thompson
Power	Brendon Taylor Patrick Davis
Shoshone	Aaron Freudenthal Hayes Hartman Jay Northam Joanna McFarland John Redal
Twin Falls	Adam Ondo Brendan Ash Brian Tanner Clayne Zollinger Dan Brown Daniel Taylor Kirk Melton Michael Wood Steven McRae Tyler Rands

Washington

Virginia Bond