

DRAFT MINUTES	
Committee	UTAH INDIGENT DEFENSE COMMISSION
Date, Time	Thursday, March 21, 2024, 2 PM – 4 PM
Location	370 E South Temple, Suite 500, Salt Lake City, UT 84111. Also, virtually via Zoom.
Members Present	Chair Lorene Miner Kamalu, Pam Vickrey, Richard Mauro, Michael Drechsel, Casey Hopes, Michael Zimmerman, Margaret Lindsay, Tom Ross, Tyler Clancy, Aaron McKnight.
Members Excused	Sen. Todd Weiler, Mary Corporon, Wally Bugden, Ryan Loose, John Kwarm
Staff	Matthew Barraza, executive director; Katriina Adair, grant manager; Debra Nelson, Chief Appellate Officer.
Guests	
Agenda Item	Welcome & Introductions
	Chair Kamalu opened the meeting and listed the attendees. New Commissioners Tyler Clancy and Aaron McKnight introduced themselves.
Agenda Item	Approval of Minutes
	Chair Kamalu put forward a motion to approve meeting minutes for IDC Commission meetings held on 6/8/2023, 7/20/2023, 8/31/23, and 1/18/2024. Commissioner Ross seconded the motion. The motion was passed unanimously.
Agenda Item	IADD Update
	Debra Nelson started the update with statistics from 2023 and the impact that IADD has had on the state. She stated that before IADD was established, 3 rd -6 th class counties had 46 appeals on average; now 115 appeals came out of those 3 rd -6 th class counties on average. IADD oversaw 427 appeals and had significant reversals in rural counties. Of those reversals many were regarding Waiver of Counsel issues where rural counties did not go through their required colloquy to ensure the litigant truly did not want to proceed with counsel. Debra mentioned that she spoke with a rural judge who has read the reversal opinions on IADD appeals regarding Waiver of Counsel issues and had since made himself a cheat

sheet to ensure he covered all the necessary points around Waiver of Counsel correctly. Debra finished discussing Criminal Appeals by mentioning that all those reversals could be attributed to IADD's section head of Criminal Appeals, Wendy Brown.

Debra started discussing IADD's Child Welfare section. She stated that from 2008 to 2020 there was a 3% reversal rate for Child Welfare cases; since IADD was established in 2021 the reversal rate for Child Welfare cases had increased to 36.5%. Debra stated that Adam Trupp had helped IADD to change appellate rules and make them more favorable for indigent defendants.

Debra read a statement written by IADD's Child Welfare section head Alexa Mareschal, which stated that the statutes and rules she and Adam worked on required qualified appellate counsel rather than trial counsel, which had significantly contributed to the increase in Child Welfare case decision reversals. Alexa's statement also noted that she and Adam were working on several other rule changes but that they had encountered difficulty in finding consensus with the other side.

Debra continued that IADD was helping with petitions in the Appellate Rules Committee. She stated that when IADD was established she had been told they would get 10 Child Welfare appeals a year, but that IADD received 5 or more Child Welfare appeals a month. Debra continued that when IADD was funded for PCRAs in 2023 the legislature estimated the Division would receive one to three PCRAs annually, but that IADD received 30 PCRAs in the last 9 months and was struggling to handle that caseload with one part-time attorney assigned to them.

Debra finished by emphasizing how important it was to have such supportive leadership in the Indigent Defense Commission and in Matthew Barraza and Adam Trupp. She thanked the attendees and stated without support from leadership IADD couldn't have accomplished the work they had or have had as significant an impact for the citizens of Utah.

Chair Kamalu thanked Debra for her update. Commissioner Ross commented that IADD's accomplishments were very impressive and that balancing defense and prosecution was the only way to achieve justice. He asked if the results Debra had mentioned would continue or if they would decrease again once a new equilibrium between prosecution and defense was reached. Debra stated that regarding Child Welfare, the numbers presented hadn't included stipulations from prosecution agreeing they had

	<p>made an error and so were just court reversals. Commissioner Ross thanked Debra for her answer and for the work IADD was doing.</p> <p>Commissioner Zimmerman said he was encouraged by IADD's impact, noting that when a task force studied the Utah legal system it found that trial lawyers weren't willing to file an appeal potentially criticizing their own performance in court for the fixed \$700 they would receive for filing. He stated he thought the structural change wasn't due to prosecution performing worse but due to the increased oversight IADD has been able to provide.</p> <p>Commissioner Lindsay stated that when she started at the Public Defender Association about a year after its founding and then-Chief Justice Michael Zimmerman directed the PDA to hire an appellate attorney that Child Welfare reversals in Utah County increased to percentages comparable to those reported by IADD. She stated she agreed with Commissioner Zimmerman's posit that the increase in reversals was due to a lack of any previous check on what was going on in courts from an appellate perspective.</p> <p>Commissioner Drechsel asked Debra if IADD was experiencing any resource constraints around funding or staffing that was limiting their ability to take on additional appeals. Debra stated that IADD was suffering terribly with resource constraints around funding but that she and Matthew Barraza were working together to make the best of the situation. She stated that IADD needed two or three full time attorneys working PCRAAs as at the time IADD was having to send out letters stating they would be unable to take up new PCRA cases for over a year, which puts them at a significant disadvantage. Debra stated that IADD had 4 full-time attorneys assigned to Criminal Appeals but still had to ask for 120 days upfront and multiple extensions just to get to the cases they already had. Commissioner Drechsel asked if IADD needed an additional attorney for PCRAAs how many more would they need for Criminal Defense Appeals and Child Welfare Appeals to deal with the quantity of cases. Debra stated that IADD could use one additional Child Welfare Appellate Attorney, one to two additional Criminal Appeal Appellate Attorneys and three full-time Post Conviction Appellate Attorneys.</p>
Agenda Item	<p>FY25 Grant Budget Discussion</p> <p>Chair Kamalu passed the floor to Matthew Barraza to discuss the 2025 Financial Year Grant Budget.</p>

Matthew Barraza started the discussion by stating that in Financial Year 2023 the legislature had granted the IDC \$700,000 in new one-time funding for the grant program. He stated that in Financial Year 2024 the IDC asked for that \$700,000 to be renewed and asked the Governor's Office to include a significant increase in one-time funding as well. He stated that the Governor's Office did not include any new money in their budget and that after proceeding through the session neither the \$700,000 renewal nor the additional increase in one-time funding were granted. Matthew Barraza stated that the IDC had been hoping to implement a pilot project to address compensation issues across Utah and had \$500,000 in non-appropriated funds earmarked for that project, but that it didn't make sense to try to increase compensation while also terminating contracts. He stated the IDC staff's recommendation was to shelve the Compensation Pilot Project to be able to use the \$500,000 in non-appropriated funds to mitigate the loss of the previous year's \$700,000 in lost funding down to a \$200,000 deficit.

Matthew Barraza said that IDC Staff had already reached out to Managing Defenders across the state and informed them of the funding situation and scheduled meetings with them to see what contracts may be underutilized and could be renegotiated or terminated to further lower the funding deficit. He continued that the IDC Staff wanted to create a working group to meet and discuss strategy and messaging. Matthew Barraza noted that he did not believe that the IDC had been singled out on funding and that it was a tough funding year state-wide.

Commissioner Ross stated that everyone he had conversations with during the session agreed that it was a difficult session. He stated that at the beginning of the session, both he and Matthew Barraza felt they had support and assurances from the Governor's Office for the IDC's funding request and that they were not the only groups under the Governor's Office surprised by the budget numbers. Commissioner Ross stated that it had been the most challenging budget year he had experienced in 9 years of service. He also mentioned that he had heard someone in a significant funding role ask how long the IDC's funding should need to increase for it to achieve their goals and stated that point was something the IDC should develop messaging around.

Matthew Barraza stated he and Chair Kamalu discussed using the April commission meeting to brainstorm and discuss how to develop messaging around funding. He stated it is hard to get people excited about grants and what grants can do; he continued that breaking down the grants awarded by the IDC and discussing the core function of Indigent Defense, what it does, and why it was needed would be useful.

Agenda Item	Legislative Recap
	<p>Chair Kamalu passed the floor to Matthew Barraza, Adam Trupp, and Pam Vickrey to start their recap of the Defense-related bills in the latest legislative session.</p> <p>Matthew Barraza stated that it had been clear that pushing back some of the JRI reforms would be an uphill battle, but that with the help of the Commissioners and others that pushback was mitigated. He continued that despite discussions before the session, simple possession was not upgraded in severity back up to a felony and that mandatory minimum sentencing for people with multiple felonies in a time frame being upgraded to prison time was reduced in both scope and severity. He stated the most important bill for the IDC was SB160, which passed and would result in the transition of the Aggravated Murder Fund from management by the Division of Finance to management directly by the IDC. He briefly discussed how management of the fund by the IDC would result in more effective defense due to additional communication and resources, as well as by avoiding the conflict of interest arising from a Defense Attorney having to request approval of defense resources from the judge. Matthew Barraza continued that there was an appropriation made for that which would enable the IDC to have extra staffing resources to manage the fund and the attorneys contracted with it. Matthew Barraza finished by stating that the IDC will need to address changes to the makeup of the Sentencing Commission and CCJJ due to a language change around requirements to be a representative. He thanked Commissioner Zimmerman for being the representative for the past year with CCJJ.</p> <p>Adam Trupp stated that there were a few bills related to Child Welfare but nothing that made any significant changes. He also stated there was no indication that the Child Welfare system was pushed in one way or the other. Adam continued that the IDC did work with some legislators on a few bills that they thought would be significant but that there was insufficient support from system partners due to some valid issues with the bills and that more discussion would occur in the coming year to work out those issues.</p> <p>Commissioner Vickrey stated that on the Juvenile Justice end there were not many massive changes to the system. She continued that truancy came back up, that there were some tweaks to offenses that will affect young people, and some tweaks to juvenile interrogation. Commissioner Vickrey stated that she was encouraged to see that there were many bills that</p>

	<p>increased penalties for adults but not for juvenile defendants. However, she continued that there was some movement in the opposite direction regarding a change that would make a young person encouraging another young person to be charged more severely than an adult doing the same. Commissioner Vickrey stated that there was a lot of discussion about the struggle schools are having with young people that will result in significant push out issues resulting from an increase of expulsions from schools. She expressed frustration with language being used in discussions around difficulties with young people in schools focusing exclusively on how to make schools safer by restricting access to weapons and not by supporting either teachers or the students themselves.</p> <p>Commissioner Drechsel elaborated that HB418 was the bill changing disciplinary requirements for students with certain charges to suspension or expulsion that Commissioner Vickrey had previously mentioned. He continued that with the bill when a child does something that is delinquent, if the victim is at a school, then the offending student will be prohibited from being reintegrated into the school if the victim gets a protective order and yet often there's not defense counsel involved in the child's protective order process. He stated some attention will need to be paid to the interplay between when a youth commits a delinquent act at school where the victim is at that school and a protective order is issued. Commissioner Vickrey stated that an issue with that process is that in rural areas of Utah there's often not a different school to move a student to and that when that issue was raised the legislators just said the child would be moved to online schooling. She continued that push out and removing youths from pro-social activities increased the criminogenic risk factors for that youth substantially. She finished by saying that the Criminal Justice Advisory Board from Salt Lake County was looking to reopen the subcommittee to get feedback from schools regarding Bill HB418.</p>
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Agenda Item	Closed Session to Discuss Pending Litigation/Personnel Matters
	Chair Kamalu moved to go to a closed session, which was seconded by Commissioner Hopes. The motion was passed unanimously.
Agenda Item	Other Business/Public Comment
	Chair Kamalu returned the meeting to open session. No other business.
Adjourn	Chair Kamalu adjourned the meeting.
Next Meeting	April 18 th , 2024.
	Meeting adjourned.