



LOUISIANA PUBLIC DEFENDER BOARD

April 4, 2018
Bluebonnet Regional Library
9200 Bluebonnet Boulevard
1:30 p.m.

Minutes

1. Call to Order and Comments by Chairman. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was called to order by its Chairman Frank Holthaus on Wednesday, April 4, 2018, at Bluebonnet Regional Library, Baton Rouge, at 1:40 p.m.

The following Board members were present for roll call:

Zita Andrus	Chris Bowman	Flozell Daniels
Patrick Fanning	Frank Holthaus	W. Ross Foote
Mike Ginart	Donald North	Ami Stearns
Moses Williams		

The following Board members were absent for roll call but arrived after commencement of the meeting.

Katherine Gilmer

The following members of the Board's staff were present:

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Budget Officer
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Richard Pittman, Deputy Public Defender, Dir. of Juvenile Defender Services
Tiffany Simpson, Juvenile Compliance Officer, Legislative Affairs Director
Erik Stilling, Information and Technology Director

2. Adoption of the Agenda. Professor North moved to adopt the agenda as attached which was seconded by Mr. Ginart and passed unopposed.
3. Call for Public Comment. No one presented for public comment.
4. Adoption the Minutes, March 7, 2018 Meeting. Mr. Patrick Fanning moved to adopt the Minutes of the March 7, 2018 meeting which was seconded by Professor North and passed unopposed.

5. HB167. For informational purposes, Mr. Dixon reported that HB167 passed unanimously in Committee today. The bill, if passed, will amend the statute to require the Board to disburse 65% of the entirety of its annual budget to the districts in the first 45 days of the fiscal year based on an objective plan published by the Board no later than April 30th of each calendar year with an additional 5% of the entirety of the Board's annual budget to be reserved only for the districts as part of the DAF and designated as for contingencies that may arise in the districts. Mr. Dixon informed the Board that the additional 5% of the LPDB's annual budget is approximately 1.7 million dollars and that the Board will have to determine where that increase to be reserved for the districts will come from. Mr. Flozell Daniels inquired of General Counsel Barbara Baier and Legislative Director Dr. Tiffany Simpson if there are prohibitions against Board members issuing a statement to the legislature addressing the bill. After discussion, Ms. Baier was tasked with providing a memo to all Board members on their limitations in the legislative process.

Discussion continued on the origin of the bill with which the Board had not been provided prior to it being presented to the legislative committee. Mr. Mitchell, District Defender of the 19th, stated that the bill was not backed by the Public Defender Association of Louisiana. After discussion, Dr. Simpson was instructed to provide all Board members in the future with continued updates via email regarding all bills affecting public defense. Additionally, the development of a policy on legislative actions and protocols in an effort to help unify the Board and the districts on the process for presenting pertinent issues regarding public defense issues to the Legislature was discussed.

6. Budget Committee Report and Recommendations

a. Financial Report as of February 28, 2018. Budget Administrator Natasha Carter reported \$31,923,323 expended or encumbered to date, \$2,181,571 projected to be spent by the end of the fiscal year and zero funds available for reallocation. Mr. Dixon indicated that the Budget Committee is recommending adoption of the report as submitted. Mr. Fanning seconded the recommendation which passed unopposed.

i. Solvency Projections. For informational purposes Mr. Dixon stated that solvency projections compiled by staff for the districts through the end of FY18 are available in the materials. He further reported that several districts are being closely monitored for shortfall and that the interim district defender in District 16 has indicated the need for approximately \$120,000 to make it through FY18. Mr. Pat Fanning asked Mr. Dixon to send the Board email notification of any district's request for financial assistance.

b. District Assistance Fund Formula. Mr. Dixon gave a brief summary of the three plans presented for discussion: the Public Defender Association of Louisiana (PDAL); Postlethwaite and Netterville (P&N); and, the Hybrid. Professor North stated that the Budget Committee voted four to one in favor of the Hybrid Plan and opened the floor for public comment. The Board heard from the following districts on the plans: Mark Plaisance (District 17); Paul Fleming (District 24); Alan Robert (District 23); G. Paul Marx (District 15) and Harry Fontenot (Districts 14/38). State Public Defender Dixon then provided the pros and cons of each plan referencing the comparison of the three plans found on page 177 of the materials.

The PDAL Plan

Pros

- Small districts end up in FY19 with a fund balance equal or in excess of at least 44% of their CY17 expenses, strengthening their fiscal security
- None of the small districts will go into ROS
- All 24 of the smaller districts (out of 42) get an increase in DAF
- This plan has the support of most districts

Cons

- Smaller district disbursal is not a formula which is hard to defend in litigation
- Six of the smaller district get no funding at all (2, 3, 6, 30, 38 and 42)
- Four districts experience shortfall for a total amount of \$725,850 (1, 16, 19 and 41)
- The \$800,000 in reserve to cover the \$725,850 shortfalls leave a balance of only \$75,000 to cover exigency issues statewide

P & N Plan

Pros

- The plan is entirely objective
- All shortfalls are covered with a \$478,000 balance for exigency
- Justifiable to the legislature and in courts
- Backed by data

Cons

- Plan favors the larger districts
- Local variances are not accounted for
- July 2019 will be difficult for some districts

Hybrid

Pros

- Every district ends FY19 with a fund balance
- Smaller districts end with fund balances equal to or in excess of 21% of their annual expenses
- A larger number of districts get an increase of their present DAF
- 85% of the plan is objective

Cons

- District 15 is negatively impacted
- Not supported by the majority of the districts
- Plan is not entirely objective
- Five districts are left at the end of FY19 with less than 1 month's reserve, 1st, 15th, 16th, 19th, and 41st

After the presentation, Mr. Chris Bowman moved to adopt, *for Fiscal Year 2019 only*, the Hybrid Plan as presented in the materials on page 177, column 9, with a 95% disbursal to the districts and 5% reserved for exigency. Judge Foote seconded the motion. Upon vote, the motion passed with nine in favor and two opposed. Clarification was made that the amounts shown in column 9 do not include the 5% of DAF funds that is reserved for exigency.

c. FY19 Contract Amounts

i. 501c3 Programs. Mr. Dixon reported that the Budget Committee is recommending the adoption of standstill contract amounts from FY18 for the contract programs for FY19. Mr. Bowman inquired if the programs would be handling the same number of cases in FY19 to justify the same funding. Mr. Moses Williams stated that the contracts have been changed in order to review their work for accountability on a regular basis. Prof. North moved to adopt the Budget Committee's recommendation and Mr. Williams seconded the motion. Upon a vote, the motion passed with eight in favor, two opposed, and one abstention.

ii. Consulting and Professional Services. Mr. Dixon gave a brief description of the professional and consulting contracts to be renewed for FY19. Mr. Bowman inquired of the need to contract with Mr. John Holdridge to provide the same type of services that are being performed by the Capital Case Coordinator. Ms. Faria stated that Mr. Holdridge provides an expertise to the capital certification process and site visits with the capital programs and assists with the mandatory capital training. Mr. Bowman asked to review Mr. Holdridge's timesheets and invoices. Professor North reported that the Budget Committee is recommending adoption of the standstill amounts for FY19 for these contacts. Judge Foote seconded the recommendation. Upon a vote the recommendation passed ten in favor and one against.

iii. Districts. Mr. Dixon indicated that the District Defender salaries were provided to the Board as information and that District 14 has submitted a request for a salary increase. He reported that staff will following protocols and come back to the Board with a recommendation. Mr. Bowman asked for clarification on the salary chart presented on page 196. Dr. Stilling explained the levels of District Defenders from DD1 to DD4 based on district size and the salary ranges. He further clarified that those marked with an asterisk are "grandfathered" defenders. Mr. Moses Williams asked staff to provide the Board with information on which District Defenders are full time, and which of them are supposedly full time but also maintain a private practice.

d. Needs Based Budgets*. Mr. Dixon reported that staff is recommending that the districts submit Needs Based Budgets to be included in the FY20 LPDB budget request submittal. The districts need to provide information on what they really need to provide public defense services. Professor North reported that the Budget Committee is recommending that the State Public Defender be authorized to request the data from the districts. Mr. Bowman seconded the recommendation. Ms. Faria clarified that the deadline to submit is August 15, 2018 and not September 15, 2018 as originally requested. Upon a vote the motion passed as amended to include the deadline of August 15, 2018.

7. 501c3 Contracts – FY19. General Counsel Barbara Baier reported that the contract program contracts have been amended to reflect each program's individual scope of work. However, pursuant to board policy, with the exception of LAP, IPNO, and LCCR, the capital trial and post-conviction contracts reflect required reporting of information on the status of each case, financials, quantum of work, and fund balances. She also reported that they have been formatted to conform with the state Office of Contractual Review's rules. After a brief discussion, staff was instructed to provide to the Board members before the next meeting an outline with the newly formatted/amended contracts explaining the changes for each. Mr. Chris

Bowman then moved to defer the discussion to the next meeting to give members a chance to review the contracts. Professor North seconded the motion which passed unopposed.

8. Legislative Update. Legislative Director, Dr. Tiffany Simpson, gave a brief summary of some of the bills that will be coming up in various committees including those addressing pretrial fees, elimination of the death penalty, the justice reinforcement task force, and juvenile shackles. Additionally, Senator Dan Claitor has authored a bill that adds two additional members to the Board to be appointed by the Chairmen of the Senate Judiciary Committee C and House Administration of Criminal Justice. That bill also clarifies language in the existing statute regarding Board member attendance requirements. Dr. Tiffany Simpson, Legislative Director, was asked to provide the Board with updates on the current bills regarding health benefits to the district offices and the options that may be available.

Mr. Flozell Daniels inquired what the Board's options are for finding 1.7 million dollars should HB 167¹ pass. Mr. Dixon responded that options include a pro rata cut of administrative funds and contracts, cutting all capital programs which would result in wait listing or cutting just one contract program completely. Mr. Daniels urged the Board to consider providing a statement on how the passage of HB167 could negatively impact services to public defense and the Board's ability to perform mandated responsibilities.

9. Division Reports. Mr. Dixon reported that the Capital and Juvenile divisional reports are in the materials for review.

10. Other Business. Mr. Dixon reported that Capital Case Coordinator Jean Faria has been invited to attend the Indigent Defense Symposium in Chicago on April 24 – 25, 2018 and that her tuition is paid but that her other expense would be approximately \$1300. He reminded the Board of their policy freezing out of state travel. Ms. Faria reported that the symposium would be addressing national issues in public defense such as workloads, fines and fees. Professor North moved to approve travel expense up to \$1300. Mr. Daniels seconded the motion which passed unopposed.

11. Next Meeting: The Board has already schedule the next meeting date of Tuesday, May 22, 2018, at the Bluebonnet Regional Library in Baton Rouge at 1:30. They set another date of Tuesday, July 17, 2018 at 1:30 with the location to be announced once confirmed.

12. Adjournment. Mr. Chris Bowman moved to adjourn. Ms. Zita Andrus seconded the motion which passed unopposed. The meeting adjourned at approximately 3:55 p.m.

Guests:

Deirdre Fuller
Derwyn Bunton
John W. Lindner
Ella Kliebert
Harry Fontenot
Thomas Gernhauser
Paul Fleming
Gary Clements

John Albert Ellis
Mike Courteau
Michael A. Mitchell
Steve Thomas
Jim Looney
Richard Tompson
Paul Marx
Natasha George

Bob Noel
David E. Marcantel
Tony Champagne
Alan Robert
Lindsay Blouin
Renee Bourg
Kerry Cuccia
Carla Edmonson

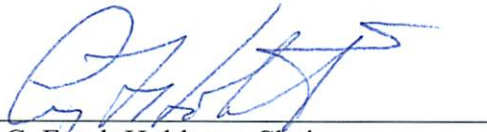
¹ See item 5, this document, for summary of HB167.
5-LPDB Minutes_Apr 4 2018

Brian McRae
Mark Plaisance
Herman Castete

Richard Stricks
John Burkhart
Aaron Clark-Rizzio

Emily Maw
Keith Gates

I HEREBY CERTIFY that the foregoing is a full, true, and correct account of the proceedings of the Louisiana Public Defender Board meeting held on the 4th day of April, 2018, as approved by the Board on the 22nd day of May, 2018, at Baton Rouge, Louisiana.



C. Frank Holthaus, Chairman