

**Indigent Legal Services Task Force Meeting (HB 1064)**  
**Sixth Meeting**  
**September 25, 2023**  
**10-10:50 a.m. CDT**  
**Virtually via Zoom**

**PRESENT:**

Co-Chair Dean Neil Fulton, USD Knudson School of Law  
Co-Chair Circuit Court Judge Michael Day  
Thomas Cogley, Attorney  
Arthur Hopkins, Oglala Lakota County Commission  
Wendy Kloepfner, Lake County State's Attorney  
Sen. Jim Mehlhaff  
Rep. Will Mortenson  
Traci Smith, Minnehaha County Public Defender's Office  
Lori Stanford, Attorney  
Eric Witcher, Pennington County Public Defender's Office

**TASK FORCE STAFF:**

Greg Sattizahn, State Court Administrator  
Aaron Olson, UJS Director of Budget and Finance  
Jeff Tronvold, UJS Legal Counsel

**NOT PRESENT:**

Randy Brown, Hughes County Commission  
Brent Kempema, Assistant Attorney General  
Circuit Court Judge Christina Klinger

**OTHERS PRESENT:**

Hailey Baker  
David Carroll  
Eric Erickson  
Aditi Goel  
John Hult  
Kris Jacobsen  
Merrilee Moore  
Jach Nelson, KCCR  
Carrie Srstka  
South Dakota Public Broadcasting  
Alan Vester

**CALL TO ORDER:**

Dean Fulton called the meeting to order and declared a quorum. He suggested discussing and acting on each of the three recommendations in the task force's draft final report.

**RECOMMENDATION ONE: Statutorily create a statewide indigent defense commission and state public defender office.**

Judge Day made a motion to approve recommendation one, and Traci Smith second the motion.

Thomas Cogley asked about wording of the types of cases for which indigent legal defense will be provided. The recommendation states that the initial caseload of the state public defender office should include criminal appellate work and abuse and neglect and habeas appeals from counties statewide. The work of the office could later be expanded to include felony trial level appointments through a structure to be determined by a combination of staff attorneys and contract lawyers.

Lori Stanford said defendants typically are facing more than one offense, such as a felony and misdemeanors. Under this recommendation, she questioned if a defendant would have one court-appointed attorney for the felony and another attorney for the misdemeanors. Greg Sattizahn said that in other states, the highest offense qualifies them for indigent legal defense for all the charges they are facing. It would need to be determined how this will work in South Dakota.

Cogley and Stanford both said they were comfortable with the recommendation.

No one on the task force voiced an objection to the motion to approve recommendation one. Motion carried.

**RECOMMENDATION TWO: Evaluate alternatives for funding and cost-containment in indigent defense.**

Sen. Jim Mehlhaff, who is also a member of the County Funding and Services Task Force, said the group is considering several ideas, one of which is to reallocate revenue from the alcohol excise tax. Currently, 25% of this tax revenue goes to municipalities, 25% to counties and 50% to the state. Mehlhaff said the County Funding and Services Task Force is considering a proposal to flip the state and counties' shares to 50% for the counties and 25% for the state, which he said should generate an extra \$9 million for the counties. Mehlhaff suggested that both task forces endorse this idea.

Judge Day made a motion to approve recommendation two, and Thomas Cogley second the motion.

Rep. Will Mortenson asked if the Indigent Legal Services Task Force's final report would include Mehlhaff's proposal.

Traci Smith asked about parity in funding for indigent legal defense and prosecution when it comes to federal funding, such as the Byrne Justice Assistance Grant (JAG) program.

David Carroll said using federal funding for indigent legal defense is allowable, and many states

utilize this funding source.

Dean Fulton said the final report could be reworded to include Mehlhaff's alcohol excise tax funding proposal and exploring federal funding such as Byrne JAG grants.

Eric Witcher suggested asking the South Dakota State Bar to explore and encourage attorneys to accept pro bono work and appointments to provide indigent legal defense as suggested in Rule 6.2 of the South Dakota Rules of Professional Conduct.

Rep. Will Mortenson agreed with Witcher's suggestion but thinks it should be a separate recommendation as it doesn't fit as a funding option.

Sen. Jim Mehlhaff, regarding cities contributing to indigent defense expenses, asked if there are any city offenses that could require indigent legal defense. Wendy Kloeppner said there are city offenses such as disorderly conduct and littering. Eric Witcher said the city of Rapid City has offenses which would pertain, such as being in a city park after hours or possession of knives over a certain length.

Judge Day amended the motion to approve recommendation two with the inclusion of three bullets on the proposal of increased county funding from the alcohol excise tax, the exploration of expanded federal funding, and exploring and encouraging attorneys to perform pro bono work. Mehlhaff seconded the motion.

No one on the task force voiced an objection to the motion. Motion carried.

**RECOMMENDATION THREE: Contract with Sixth Amendment Center to perform a thorough review of representative counties to gather further information to inform the work of the commission.**

Judge Day moved and Traci Smith seconded a motion to approve recommendation three. No one on the task force voiced an objection to the motion. Motion carried.

Dean Fulton asked if the task force wanted to approve the entire final report with the addition of three bullets to recommendation two.

Wendy Kloeppner asked when the County Funding and Services Task Force would be done with its final report and suggested possibly waiting to see if there would be anything in it that the Indigent Legal Service Task Force would want to add to its final report.

Sen. Jim Mehlhaff said the County Funding and Services Task Force has completed its meetings, has several recommendations to explore and will draft legislation. He thinks the group will draft legislation in the next month or so. The only other thing the group is considering which would pertain to this task force is a possible \$10,000 cap on what the county would be responsible for covering per indigent defense case. Mehlhaff suggested the Indigent Legal Services Task Force proceed with its final report.

Wendy Kloeppner suggested the two task forces should bolster each other's reports if they can and not make recommendations that contradict each other.

Traci Smith suggested adding to the appendix the new national standards for public defender caseloads from RAND Corporation's National Public Defense Workload Study, which she said have been accepted by the National Association of Public Defense.

David Carroll said the American Bar Association references the new standards in its 10 principles but has not formally adopted them as national standards.

Wendy Kloeppner asked if they could still be referenced as a resource by including a website to the new standards in the appendix of the task force's final report.

Rep. Will Mortenson said he is comfortable moving forward with the final report as is. He thinks State Court Administrator Greg Sattizahn has put together a document that has been well reviewed and will be helpful to the county task force.

Judge Day moved to adopt the final report as amended, seconded by Rep Will Mortenson. No one on the task force voiced an objection to the motion. Motion carried.

Greg Sattizahn said that once he has finalized the final report, he will share it with members of the Legislature and Chief Justice. The final report meets the goals set out at the beginning of the task force, and task force members have completed their jobs. He may reach out to task force members with draft legislation to review or if he needs answers to any questions.

Dean Fulton opened the floor to public comment. Hailey Baker from Pierre asked for clarification on the possible \$10,000 cap per case that counties would be responsible for covering for indigent legal defense.

Dean Fulton thanked Greg Sattizahn and UJS for a remarkable job in managing the substance of this task force. He also thanked task force members for the perspectives that they shared. He said it was fun to see order and process in this task force. He said the task force's work is an opportunity to do something significant for South Dakota, and the group should be proud of its work in starting to get the ball rolling.

**ADJOURNMENT:**

Dean Fulton adjourned the meeting at 10:50 a.m. CDT.