

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 504

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO PUBLIC DEFENSE; AMENDING SECTION 19-850, IDAHO CODE, TO REVISE
2 POWERS AND DUTIES OF THE PUBLIC DEFENSE COMMISSION, TO PROVIDE THAT THE
3 COMMISSION SHALL HAVE CERTAIN DUTIES AND TO PROVIDE THAT THE COMMISSION
4 SHALL HAVE CERTAIN POWERS; AMENDING SECTION 19-851, IDAHO CODE, TO DE-
5 FINE TERMS; AMENDING SECTION 19-853, IDAHO CODE, TO REVISE TERMINOLOGY;
6 AMENDING SECTION 19-862, IDAHO CODE, TO REVISE A PROVISION REGARDING
7 APPROPRIATION FOR INDIGENT DEFENSE PROVIDERS AND TO PROVIDE THAT THE
8 BOARD OF COUNTY COMMISSIONERS IS NOT REQUIRED TO EXPEND ITS FULL LOCAL
9 SHARE UNDER CERTAIN CONDITIONS; AMENDING CHAPTER 8, TITLE 19, IDAHO
10 CODE, BY THE ADDITION OF A NEW SECTION 19-862A, IDAHO CODE, TO REQUIRE
11 COMPLIANCE WITH INDIGENT DEFENSE STANDARDS, TO PROVIDE FOR INDIGENT
12 DEFENSE GRANTS, TO PROVIDE APPLICATION PROCEDURES FOR INDIGENT DEFENSE
13 GRANTS AND TO PROVIDE PROCEDURES FOR NONCOMPLIANCE WITH INDIGENT DE-
14 FENSE STANDARDS; AND AMENDING SECTION 19-864, IDAHO CODE, TO REVISE
15 REPORTING REQUIREMENTS.
16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Section 19-850, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 19-850. POWERS AND DUTIES OF THE STATE PUBLIC DEFENSE COMMISSION. (1)
21 The state public defense commission shall:
22 (a) Promulgate rules in accordance with the provisions of chapter 52,
23 title 67, Idaho Code, establishing the following:
24 (i) Training and continuing legal education requirements for de-
25 fending attorneys, which shall promote competency and consistency
26 in case types including, but not limited to, criminal, juvenile,
27 capital, abuse and neglect, post-conviction, civil commitment,
28 ~~capital~~ and civil criminal contempt; and
29 (ii) Uniform data reporting requirements and model forms for the
30 annual reports submitted pursuant to section 19-864, Idaho Code.
31 ~~The data reported, which shall include, but not be limited to,~~
32 caseload, workload and expenditures;
33 (iii) Model contracts and core requirements for contracts between
34 counties and private attorneys for the provision of indigent de-
35 defense services, which shall include, but not be limited to, com-
36 pliance with indigent defense standards;
37 (iv) Procedures and forms by which counties may apply to the com-
38 mission, pursuant to section 19-862A, Idaho Code, for funds to be
39 used to bring their delivery of indigent defense services into
40 compliance with applicable indigent defense standards;
41 (v) Procedures for administrative review and fair hearings in ac-
42 cordance with the Idaho administrative procedure act, which shall

1 include, but not be limited to, providing for a neutral hearing of-
2 ficer in such hearings;

3 (vi) Procedures for the oversight, implementation, enforcement
4 and modification of indigent defense standards so that the right
5 to counsel of indigent persons, as provided in section 19-852,
6 Idaho Code, is constitutionally delivered to all indigent persons
7 in this state; and

8 (vii) Standards for defending attorneys that utilize, to the ex-
9 tent reasonably practicable taking into consideration factors
10 such as case complexity, support services and travel, the follow-
11 ing principles:

12 1. The delivery of indigent defense services should be inde-
13 pendent of political and judicial influence, though the ju-
14 diiciary is encouraged to contribute information and advice
15 concerning the delivery of indigent defense services.

16 2. Defending attorneys should have sufficient time and pri-
17 vate physical space so that attorney-client confidentiality
18 is safeguarded during meetings with clients.

19 3. Defending attorneys' workloads should permit effective
20 representation.

21 4. Economic disincentives or incentives that impair defend-
22 ing attorneys' ability to provide effective representation
23 should be avoided.

24 5. Defending attorneys' abilities, training and experience
25 should match the nature and complexity of the cases in which
26 they provide services including, but not limited to, cases
27 involving complex felonies, juveniles and child protection.

28 6. The defending attorney assigned to a particular case
29 should, to the extent reasonably practicable, continuously
30 oversee the representation of that case and personally ap-
31 pear at every substantive court hearing.

32 7. There should be reasonable equity between defending
33 attorneys and prosecuting attorneys with respect to re-
34 sources, staff and facilities.

35 8. Defending attorneys should obtain continuing legal edu-
36 cation relevant to their indigent defense cases.

37 9. Defending attorneys should be regularly reviewed and
38 supervised for compliance with indigent defense standards
39 and, if applicable, compliance with indigent defense stan-
40 dards as set forth in contractual provisions.

41 10. Defending attorneys should identify and resolve con-
42 licts of interest in conformance with the Idaho rules of
43 professional conduct and other applicable constitutional
44 standards.

45 Violation of or noncompliance with the principles listed in this
46 subparagraph does not constitute ineffective assistance of coun-
47 sel under the constitutions of the United States or the state of
48 Idaho and does not otherwise constitute grounds for post-convic-
49 tion relief.

1 (b) On or before January 20, 2015, and by January 20 of each year there-
 2 after as deemed necessary by the commission, make recommendations to
 3 the Idaho legislature for legislation on public defense system issues
 4 including, but not limited to:

5 ~~(i) Core requirements for contracts between counties and private~~
 6 ~~attorneys for the provision of indigent defense services and pro-~~
 7 ~~posed model contracts for counties to use;~~

8 ~~(ii) Qualifications and experience standards for the public de-~~
 9 ~~fender and defending attorneys;~~

10 ~~(iii) Enforcement mechanisms; and~~

11 ~~(iv) Funding issues including, but not limited to, formulas~~
 12 ~~for the calculation of local shares and state indigent defense~~
 13 ~~grants~~

14 ~~1. Training and continuing legal education for defending~~
 15 ~~attorneys;~~

16 ~~2. Data collection and reporting efforts; and~~

17 ~~3. Conflict cases.~~

18 (c) Review indigent defense providers and defending attorneys to eval-
 19 uate compliance with indigent defense standards and the terms of state
 20 indigent defense grants.

21 (d) Notwithstanding the provisions of paragraph (a) (iv) of this sub-
 22 section, establish temporary procedures and model forms by which coun-
 23 ties may apply to the commission for state indigent defense grants pur-
 24 suant to section 19-862A, Idaho Code, to be utilized until rules promul-
 25 gated pursuant to paragraph (a) (iv) of this subsection are in full force
 26 and effect. Such temporary procedures shall not be subject to adminis-
 27 trative or judicial review.

28 (e) Hold at least one (1) meeting in each calendar quarter.

29 (2) The state public defense commission may:

30 (a) Hire an executive director who shall be responsible for the per-
 31 formance of the regular administrative functions of the commission and
 32 other duties as the commission may direct. The executive director shall
 33 be a nonclassified state employee and shall be compensated as deter-
 34 mined by the commission.

35 (b) Employ persons in addition to the executive director in other po-
 36 sitions or capacities as it deems necessary to the proper conduct of
 37 commission business and to the fulfillment of the commission's respon-
 38 sibilities. The employees of the commission other than the executive
 39 director shall be classified employees and shall receive as compen-
 40 sation an annual salary payable on regular pay periods, the amount of
 41 which shall be determined by the commission.

42 (c) Provide an office, office equipment and facilities as may be rea-
 43 sonably necessary for the proper performance of its duties or the duties
 44 of the executive director and other personnel.

45 (d) Provide training and continuing legal education for indigent de-
 46 fense providers and defending attorneys in order to assist them in sat-
 47 isfying requirements promulgated pursuant to subsection (1) (a) (i) of
 48 this section, and use moneys received from a grant or trust or otherwise
 49 received and appropriated to provide such training and continuing legal
 50 education.

1 (e) Establish procedures by which indigent defense providers may ap-
 2 ply to the commission for funds to be used for extraordinary litigation
 3 costs including, but not limited to, expert witnesses, evidence testing
 4 and investigation, but not including expenses associated with capital
 5 crimes.

6 (f) Hire private counsel to represent the commission in hearings held
 7 in accordance with the Idaho administrative procedure act and the rules
 8 promulgated pursuant to subsection (1) (a) (v) of this section.

9 SECTION 2. That Section 19-851, Idaho Code, be, and the same is hereby
 10 amended to read as follows:

11 19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In this
 12 act, the term:

13 (1) "Commission" means the state public defense commission as created
 14 pursuant to section 19-849, Idaho Code;

15 (2) "Defending attorney" means any attorney employed by the office of
 16 public defender, contracted by the county an indigent defense provider or
 17 otherwise assigned to represent adults or juveniles at public expense;

18 (23) "Detain" means to have in custody or otherwise deprive of freedom
 19 of action;

20 (34) "Expenses," when used with reference to representation under this
 21 act, includes the expenses of investigation, other preparation and trial;

22 (5) "Indigent defense provider" means any agency, entity, organization
 23 or person selected by a board of county commissioners in accordance with sec-
 24 tion 19-859, Idaho Code, or a designee of the commission if the commission's
 25 actions to remedy specific deficiencies pursuant to section 19-862A(11) (b),
 26 Idaho Code, involve the direct provision of indigent defense services, as a
 27 means to provide for the representation of indigent persons and other indi-
 28 viduals who are entitled to be represented by an attorney at public expense;

29 (6) "Indigent defense standard" means any rule promulgated by the com-
 30 mission pursuant to section 19-850(1) (a), Idaho Code;

31 (47) "Indigent person" means a person who, at the time his need is de-
 32 termined pursuant to section 19-854, Idaho Code, is unable to provide for the
 33 full payment of an attorney and all other necessary expenses of representa-
 34 tion;

35 (8) "Local share" means the benchmark figure calculated by the commis-
 36 sion to determine the minimum amount of county funding that shall be main-
 37 tained by a county and to determine the award amount of state indigent de-
 38 fense grants for which a county may be eligible pursuant to section 19-862A,
 39 Idaho Code. For any given county fiscal year, a county's local share shall
 40 be the median of the annual amount in county funds expended by that county for
 41 indigent defense during each of the first three (3) of the preceding five (5)
 42 county fiscal years, as certified by the county clerk. In calculating this
 43 amount, county indigent defense expenditures shall not include:

44 (a) Amounts received from the public defense commission; and

45 (b) Amounts expended for capital cases by those counties participat-
 46 ing in the capital crimes defense program in excess of premiums and de-
 47 ductibles required by guidelines approved by the Idaho capital crimes
 48 defense fund board of directors;

1 (59) "Serious crime" means any offense the penalty for which includes
2 the possibility of confinement, incarceration, imprisonment or detention in
3 a correctional facility, regardless of whether actually imposed;

4 (10) "State indigent defense grant" means the state funding a county may
5 be awarded pursuant to section 19-862A, Idaho Code.

6 SECTION 3. That Section 19-853, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 19-853. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL. (1) If
9 a person who is being detained by a law enforcement officer, or who is con-
10 fined or who is the subject of hospitalization proceedings pursuant to sec-
11 tion 66-322, 66-326, 66-329, 66-404 or 66-406, Idaho Code, or who is under
12 formal charge of having committed, or is being detained under a conviction
13 of, a serious crime, is not represented by an attorney under conditions in
14 which a person having his own counsel would be entitled to be so represented,
15 the law enforcement officers concerned, upon commencement of detention, or
16 the court, upon formal charge or hearing, as the case may be, shall:

17 (a) Clearly inform him of his right to counsel and of the right of an
18 indigent person to be represented by an attorney at public expense; and

19 (b) If the person detained or charged does not have an attorney, no-
20 tify the ~~defending attorney~~ indigent defense provider or trial court
21 concerned, as the case may be, that he is not so represented. As used
22 in this subsection, the term "commencement of detention" includes the
23 taking into custody of a probationer.

24 (2) Upon commencement of any later judicial proceeding relating to the
25 same matter including, but not limited to, preliminary hearing, arraign-
26 ment, trial, any post-conviction proceeding or post-commitment proceeding,
27 the presiding officer shall clearly inform the person so detained or charged
28 of his right to counsel and of the right of an indigent person to be repre-
29 sented by an attorney at public expense. Provided, the appointment of an
30 attorney at public expense in uniform post-conviction procedure act pro-
31 ceedings shall be in accordance with section 19-4904, Idaho Code.

32 (3) If a court determines that the person is entitled to be represented
33 by an attorney at public expense, it shall promptly notify the ~~defending at-~~
34 ~~torney~~ indigent defense provider.

35 (4) Upon notification by the court or assignment under this section,
36 the ~~defending attorney~~ indigent defense provider shall represent the person
37 with respect to whom the notification is made.

38 SECTION 4. That Section 19-862, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 19-862. APPROPRIATION FOR PUBLIC DEFENDER -- PRIVATE CONTRIBU-
41 TIONS. (1) The board of county commissioners of each county shall annually
42 appropriate enough money to administer fund the program of representation
43 indigent defense provider that it has ~~elected~~ selected under section 19-859,
44 Idaho Code, and, except as provided in subsection (2) of this section, shall
45 maintain not less than its local share.

1 (2) The board of county commissioners is not required to expend its full
2 local share if it can comply with indigent defense standards for less than
3 that share.

4 (3) If the board of county commissioners of a county elects to estab-
5 lish and maintain an office of public defender or a joint office of public
6 defender, the county may accept private contributions toward the support of
7 the office.

8 SECTION 5. That Chapter 8, Title 19, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 19-862A, Idaho Code, and to read as follows:

11 19-862A. COMPLIANCE -- INDIGENT DEFENSE GRANTS. (1) All counties, in-
12 digent defense providers and defending attorneys shall cooperate and par-
13 ticipate with the commission in the review of their indigent defense ser-
14 vices.

15 (2) On or before August 1, 2016, and by May 1 of each year thereafter,
16 each county may submit to the commission an application for a state indigent
17 defense grant that shall include a plan that specifically addresses how in-
18 digent defense standards shall be met and, if applicable under subsection
19 (11) (a) of this section, how any deficiencies previously identified by the
20 commission will be cured in the upcoming county fiscal year. The applica-
21 tion shall also include a cost analysis that shall specifically identify the
22 amount of funding in excess of the applicable local share, if any, necessary
23 to allow the county to successfully execute its plan. In the event the com-
24 mission has not yet promulgated any indigent defense standards, or the com-
25 mission determines that the county can successfully execute its plan without
26 exhausting the entirety of the grant for which it may be eligible, an appli-
27 cation submitted pursuant to this section may request funding to be used for
28 other improvements to its delivery of indigent defense services. Such other
29 improvements may include, but are not limited to, funding for investigation
30 costs, witness expenses and other extraordinary litigation costs.

31 (3) The amount of a state indigent defense grant shall not exceed fif-
32 teen percent (15%) of the county's local share for said county fiscal year or
33 twenty-five thousand dollars (\$25,000), whichever is greater. If a county
34 elects to join with the board of county commissioners of one (1) or more other
35 counties within the same judicial district to establish and maintain a joint
36 office of public defender pursuant to section 19-859(2), Idaho Code, each
37 participating county shall be eligible for an additional twenty-five thou-
38 sand dollars (\$25,000) per year. The maximum amount of a state indigent de-
39 fense grant shall remain in effect until July 1, 2019, unless otherwise ad-
40 dressed by the legislature prior to that date.

41 (4) The commission shall approve an application submitted under sub-
42 section (2) of this section, in an amount deemed appropriate by the commis-
43 sion, if the application:

44 (a) Includes a plan that is necessary to meet or improve upon indigent
45 defense standards; and

46 (b) Demonstrates that the amount of the requested state indigent de-
47 fense grant is necessary to meet or improve upon indigent defense stan-
48 dards.

1 (5) The commission shall approve or disapprove the application submit-
2 ted under subsection (2) of this section within sixty (60) days of the sub-
3 mission of the application. If the commission disapproves the application,
4 the county shall consult with the commission and submit a revised applica-
5 tion within thirty (30) days of the mailing date of the official notification
6 of the commission's disapproval. If after two (2) revisions a resolution is
7 not reached, any dispute shall be resolved in accordance with the Idaho ad-
8 ministrative procedure act and rules promulgated by the commission pursuant
9 to section 19-850(1)(a)(v), Idaho Code.

10 (6) On October 1, 2016, or as soon thereafter as is practicable, and on
11 October 1 of each year thereafter, or as soon thereafter as is practicable,
12 the commission shall distribute the approved state indigent defense grant to
13 a county if:

14 (a) The most recent annual report required by section 19-864, Idaho
15 Code, has been filed, to the satisfaction of the commission;

16 (b) The county has filed, to the satisfaction of the commission, its
17 most recent application for a state indigent defense grant required by
18 subsection (2) of this section; and

19 (c) The county has cured, to the satisfaction of the commission, any ma-
20 terial breach of the terms of a previously approved state indigent de-
21 fense grant.

22 (7) On or before September 1, 2016, and by September 1 of each year
23 thereafter, the commission shall submit a report with its annual budget
24 request to the office of the administrator of the division of financial man-
25 agement and the legislative services office requesting the appropriation
26 of funds necessary to provide state indigent defense grants to counties as
27 approved by the commission. The information used to create this report shall
28 be made available to the administrator of the division of financial manage-
29 ment and the legislative services office.

30 (8) A county may be required to provide indigent defense funds in excess
31 of its local share in the event the cost of successfully executing its plan
32 submitted pursuant to subsection (2) exceeds the sum of its local share and
33 the maximum state indigent defense grant for which it may be eligible in a
34 given county fiscal year.

35 (9) By March 31 of each year, all counties shall be in compliance with
36 indigent defense standards that were in full force and effect as of May 1 of
37 the prior year.

38 (10) Each application submitted pursuant to subsection (2) of this sec-
39 tion after March 31, 2017, shall contain an attestation stating whether the
40 county has complied with indigent defense standards as required by subsec-
41 tion (9) of this section and, if not, a specific explanation for its failure
42 to do so.

43 (11) In the event the commission determines that any county has failed
44 to materially comply with indigent defense standards, the commission shall:

45 (a) Require the county's upcoming state indigent defense grant appli-
46 cation to specifically address how the noncompliance will be cured in
47 the upcoming county fiscal year as provided in subsection (2) of this
48 section; or

49 (b) If any county has willfully and materially failed to comply with
50 indigent defense standards, notify the county in writing of its de-

1 termination and intent to remedy specific deficiencies at the expense
2 of the county to the extent necessary to comply with indigent defense
3 standards. Within thirty (30) days of the date of said notice, the
4 commission and the county or their designees shall attempt to meet at
5 least once to resolve the issues of the noncompliance. If the com-
6 mission and the county are unable to resolve the matter through this
7 meeting process, the commission and county shall mutually set a date
8 for mediation within forty-five (45) days, with the cost of mediation
9 to be paid equally by the parties. If after mediation the commission
10 and the county are unable to come to a resolution, the commission shall
11 provide written notice to the county of its decision to remedy specific
12 deficiencies at the expense of the county to the extent necessary to
13 comply with indigent defense standards. This decision is subject to
14 administrative review as provided in subsection (13) of this section.
15 If the county does not timely request administrative review or if the
16 administrative review process affirms the commission's determination,
17 the commission shall remedy specific deficiencies at the expense of the
18 county to the extent necessary to comply with indigent defense stan-
19 dards.

20 (12) If the commission acts to remedy specific deficiencies as pro-
21 vided in subsection (11) (b) of this section, the county shall pay to the
22 commission, notwithstanding the county's applicable local share, the amount
23 incurred by the commission in remedying specific deficiencies as billed by
24 the commission on a semiannual basis coinciding with the county fiscal year.
25 Such amount shall be paid to the commission within sixty (60) days of the date
26 of the billing. If the county fails to provide the commission with the funds
27 billed pursuant to this subsection within sixty (60) days of the date of
28 the commission's billing, the state treasurer shall immediately intercept
29 any payments from sales tax moneys that would be distributed to the county
30 pursuant to section 63-3638, Idaho Code, and apply the intercepted payments
31 to reimburse the commission for the costs incurred in remedying specific
32 deficiencies as billed pursuant to this subsection. The foregoing intercept
33 and transfer provisions shall operate by force of law and no consent thereto
34 is required of the county in order to be enforceable. The commission and the
35 state have no obligation to the county or to any person or entity to replace
36 any moneys intercepted under the authority of this subsection.

37 (13) A county aggrieved by a decision made by the commission pursuant to
38 subsection (11) (b) of this section shall be afforded reasonable notice and
39 opportunity for a fair hearing in accordance with the Idaho administrative
40 procedure act and rules promulgated by the commission pursuant to section
41 19-850(1) (a) (v), Idaho Code.

42 (14) If the commission's actions to remedy specific deficiencies, pur-
43 suant to subsection (11) (b) of this section, involve providing indigent de-
44 fense services on behalf of a county, the county may submit an application
45 for a state indigent defense grant in accordance with subsection (2) of this
46 section and request to resume providing indigent defense services. The com-
47 mission may approve the application and permit the county to resume provid-
48 ing indigent defense services in the event the county has demonstrated that
49 it has cured or will cure any material noncompliance with indigent defense
50 standards to the satisfaction of the commission.

1 (15) Failure to comply with the standards promulgated pursuant to sec-
2 tion 19-850(1) (a), Idaho Code, or the terms of a state indigent defense grant
3 does not constitute ineffective assistance of counsel under the constitu-
4 tions of the United States or the state of Idaho.

5 SECTION 6. That Section 19-864, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 19-864. RECORDS OF DEFENDING ATTORNEYS -- ANNUAL REPORT OF DEFENDING
8 ATTORNEYS. (1) A indigent defense providers and defending attorneys shall
9 keep appropriate records respecting each person whom ~~he~~ they represents un-
10 der this act.

11 (2) On or before November 1 of each year, indigent defense providers and
12 any dDefending attorneys whose information is not otherwise included in a
13 report from an indigent defense provider shall submit an annual report to the
14 board of county commissioners ~~and,~~ the appropriate administrative district
15 judge ~~showing the number of persons represented under this act, the crimes~~
16 ~~involved and the expenditures, totaled by kind, made in carrying out the re-~~
17 ~~sponsibilities imposed by this act and the commission in conformance with~~
18 the rules promulgated pursuant to section 19-850(1) (a) (ii), Idaho Code.