

Dear Senators LODGE, Lee, Burgoyne, and
Representatives LUKER, Malek, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the State Public Defense Commission:

IDAPA 61.01.08 - Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems
- Rule Definitions - Proposed Rule (Docket No. 61-0108-1801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/24/2018. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/23/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Judiciary, Rules & Administration Committee

FROM: Principal Legislative Research Analyst - Ryan Bush

DATE: September 6, 2018

SUBJECT: State Public Defense Commission

IDAPA 61.01.08 - Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems - Rule Definitions - Proposed Rule (Docket No. 61-0108-1801)

Summary and Stated Reasons for the Rule

The State Public Defense Commission submits notice of proposed rulemaking at IDAPA 61.01.08 - Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems - Rule Definitions. This proposed rule provides that the definitions contained therein apply to IDAPA 61.01.02 and 61.01.03, updates the incorporation by reference of the Standards for Defending Attorneys to the 2018 edition, and defines the terms "contracting attorney" and "reporter."

Negotiated Rulemaking / Fiscal Impact

The Commission states that negotiated rulemaking was conducted and that notice was published in the April and May editions of the Idaho Administrative Bulletin. Six public hearings are scheduled throughout Idaho in October. There is no fiscal impact associated with this rulemaking.

Statutory Authority

The proposed rule appears to be within the statutory authority granted to the Commission in Section 19-850, Idaho Code.

cc: State Public Defense Commission
Kimberly Simmons

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

**61.01.08 – RULES GOVERNING THE ADMINISTRATION OF IDAHO’S
INDIGENT DEFENSE DELIVERY SYSTEMS – RULE DEFINITIONS**

DOCKET NO. 61-0108-1801

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(vii), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

PUBLIC HEARINGS	
Monday, October 15, 2018 5:00 p.m. (MDT) Twin Falls	Tuesday, October 16, 2018 5:00 p.m. (MDT) Idaho Falls
Twin Falls County Administration Bldg. Planning and Zoning Conference Room 630 Addison Avenue West Twin Falls, ID 83301	Residence Inn Idaho Falls Taylor Crossing West 635 West Broadway Idaho Falls, ID 83402
Wednesday, October 17, 2018 5:00 p.m. (MDT) Pocatello	Monday, October 22, 2018 4:00 p.m. (PDT) Lewiston
Idaho State University Pond Building – Wood River Room 921 South 8th Avenue Pocatello, ID 83209	Red Lion Hotel Lewiston Port 3 Room 621 21st Street Lewiston, ID 83501
Tuesday, October 23, 2018 4:00 p.m. (PDT) Coeur d’Alene	Wednesday, October 24, 2018 4:00 p.m. (MDT) Nampa
Red Lion Templin Hotel Redhead Room 414 East First Avenue Post Falls, ID 83854	Nampa Civic Center Pacific Source Room 311 3rd Street, South Nampa, ID 83651
Thursday, October 25, 2018 - 4:00 p.m. (MDT) Boise	
Water Center Building – 6th Floor Conference Room 602B-D 322 E. Front Street Boise, ID 83702	

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule will amend standards for defending attorneys and provide a workload standard to ensure that defending attorneys are handling an appropriate workload. The standard will, in part, be based upon data collected in Idaho

during a workload study in 2017. This amendment will ensure that representation of Idaho's indigent defendants meets constitutional scrutiny.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There should be no direct impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 4, 2018, Idaho Administrative Bulletin, **Vol. 18-4, page 86** and the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, page 162**.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The incorporated documents are the primary reference for defending attorneys and other stakeholders regarding the standards for defending attorneys established by the PDC based upon nationally recognized guidelines. A separate document is necessary for ease of reference, analysis and accessibility. Further, this document will be amended to include additional standards as created and established, increasing the length substantially. The republication of the text would be unduly cumbersome and expensive.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 9, 2018.

Dated this 1st day of August, 2018.

Kimberly Simmons, Executive Director
State Public Defense Commission
816 W. Bannock Street, Suite 201
Boise, ID 83702
(208) 332-1735

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 61-0108-1801
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” (5-1-18)

02. Scope. These rules contain the definitions used throughout the Indigent Defense Delivery System chapters of rules adopted by the PDC. Those chapters include: (5-1-18)

a. IDAPA 61.01.01, “Rules Governing Training Requirements for Defending Attorneys and the

Administration of Training Funds”; (5-1-18)

b. IDAPA 61.01.02, “Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports”; ()

c. IDAPA 61.01.03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services”; ()

d. IDAPA 61.01.04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants”; (5-1-18)

e. IDAPA 61.01.06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards”; (5-1-18)

f. IDAPA 61.01.07, “Rules Governing the Standards for Defending Attorneys that Utilize Idaho’s Principles of an Indigent Defense Delivery System.” (5-1-18)

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to ~~promulgate rules~~ set standards for defending attorneys is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” (5-1-18)()

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (5-1-18)

01. Idaho’s Principles of an Indigent Defense Delivery System. “Idaho’s Principles of an Indigent Defense Delivery System, edition 2016,” revised as of January 25, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/wp-content/uploads/sites/11/2017/01/Idahos-Principles-of-PD-System.pdf>. (5-1-18)

02. Standards for Defending Attorneys. “Standards for Defending Attorneys, edition 2017,” revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-18)()

03. Application for Capital Defense Roster. “Application for Capital Defense Roster, edition 2017,” revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-18)

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS – TELEPHONE – INTERNET WEBSITE.

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. (5-1-18)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purposes of the Indigent Defense Delivery System chapters of rules, the following definitions apply: (5-1-18)

01. Annual Report. A report submitted to the appropriate Board of County Commissioners, Administrative District Judge and the PDC by a defending attorney pursuant to Section 19-864, Idaho Code, on an annual reporting form created by the PDC. The annual reporting form is available on the PDC website: <https://pdc.idaho.gov/forms/>. (5-1-18)

02. Applicant – Indigent Defense Grant. A County that identifies a need for an Indigent Defense Grant by submission of a compliance proposal, and applies for a grant through the PDC. (5-1-18)

03. Approval – IDG Application. An IDG application shall be approved if the applicant meets the requirements for eligibility. An approval does not guarantee the amount or disbursement of an IDG award. The PDC retains the ability to determine the amount of an IDG award based upon the components listed in IDAPA 61.01.04. Disbursement of funds is subject to availability as appropriated by the State Legislature each year. (5-1-18)

04. Capital Counsel Roster. A roster of defending attorneys who may be appointed to represent an indigent defendant in a case in which the death penalty may be imposed. Defending attorneys not on this roster may not represent indigent defendants in such cases. (5-1-18)

05. Case. (5-1-18)

a. A case consists of all related charges from a single incident, transaction or occurrence filed within a single case number, handled by one defending attorney. A probation violation or motion for contempt is counted as a separate case. (5-1-18)

b. A felony case is counted as follows: (5-1-18)

i. A case filed as a felony is counted as one felony, whether it is dismissed, remanded, pled, or tried to completion. (5-1-18)

ii. A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. (5-1-18)

iii. A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. (5-1-18)

c. Post-judgment motions, such as those requesting early termination of probation or a reduction in sentence pursuant to Idaho Criminal Rule 35, are not counted as a case. (5-1-18)

d. If two or more cases are consolidated prior to significant representation being undertaken on each individual case, then the consolidated case is counted as one case. If significant representation has occurred prior to consolidation, the cases in which such representation has occurred shall be counted as separate cases. (5-1-18)

06. Caseload. The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. (5-1-18)

07. Compliance Checklist. A document provided by the PDC each grant cycle to assist an Applicant determine eligibility for an IDG. The checklist will be updated each year and is required as a part of an IDG application. (5-1-18)

08. Compliance Period. The compliance period runs from May 1 through March 31. Indigent defense standards that are in place by May 1 of a given year must be complied with by March 31 of the following year. (5-1-18)

09. Compliance Proposal. A plan that specifically addresses how indigent defense standards shall be met and how any deficiencies previously identified by the PDC will be cured in the upcoming county fiscal year. The plan shall include a cost analysis that specifically identifies the amount of funding in excess of the applicable local share necessary to allow the county to successfully execute the compliance proposal. If the county can execute its plan without exhausting the entirety of the grant for which it may be eligible, the plan may include a request for

funding for other improvements to its delivery of indigent defense services, pursuant to Section 19-862A(2), Idaho Code. (5-1-18)

10. Compliance Verification. A form that must be completed and submitted to the PDC by a county that chooses not to file an Indigent Defense Grant Application. This verification requires the county to describe how IDG funds have been used in the prior year (if applicable) and an explanation as to how the county will fund their indigent defense delivery system in compliance with established standards. (5-1-18)

11. Contracting Authority. The board of county commissioners or its designated agent who enters into a contract with a defending attorney for the provision of representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. ()

12. Corrective Action Plan. A plan developed by a county or defending attorney with the assistance of PDC staff that addresses any reported violation of established standards and how those violations will be corrected. (5-1-18)

13. Defending Attorney. Defined in Section 19-851, Idaho Code, as any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense in state courts. (5-1-18)

14. Deficiency. The violation of an established standard for which the timeline for compliance has passed pursuant to Section 19-862A(9), Idaho Code. (5-1-18)

15. Eligible Applicant – Indigent Defense Grant. To be considered for an award of an IDG, an applicant must meet the requirements of IDAPA 61.01.04, Section 024, “Award Eligibility Requirements.” (5-1-18)

16. Established Standards. Rules promulgated by the PDC pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)

17. Finding of Compliance with Recommendation. A finding of compliance with recommendation refers to a condition whereby a county or defending attorney may be in compliance with Indigent Defense Standards; however, the provision of indigent defense services could be improved to ensure constitutionally-sound representation or achieve compliance with indigent defense standards yet to be promulgated. This finding is not a PDC determination of deficiency or non-compliance. The PDC does not have the authority to enforce compliance with a recommendation. (5-1-18)

18. Finding of Non-Compliance. A finding of non-compliance refers to an instance where a county or defending attorney is not in compliance with applicable Indigent Defense Standards and may be related to a deficiency in the provision of indigent defense services. This finding is not necessarily a PDC determination of a deficiency and still requires a finding of material and willful non-compliance before the take-over provisions of Section 19-862A, Idaho Code, are invoked. (5-1-18)

19. Fiscal Year. As referred to in this chapter, fiscal year refers to a county fiscal year beginning on October 1 and ending on September 30 of the following calendar year. (5-1-18)

20. Formal Status Meeting. A meeting between PDC staff and a county or defending attorney conducted in accordance with IDAPA 61.01.06, section 023.02. (5-1-18)

21. Indigent Defense Budget. The funds appropriated each fiscal year by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code, that includes the expenses of investigation, other preparation and trial, but does not include amounts received from the Capital Crimes Defense Fund or the Public Defense Commission. The appropriated funds shall not be less than a county's local share for that fiscal year. (5-1-18)

22. Indigent Defense Contract. A written contract between the board of county commissioners and a defending attorney or existing office of public defender that provides representation of indigent persons and other individuals who are entitled to be represented by an attorney at county expense. Such contracts shall not include a

pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney. (5-1-18)

223. Indigent Defense Delivery System. The system created by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code. The system includes the county, indigent defense provider, defending attorneys, and any other county staff necessary for the administration of indigent defense services. (5-1-18)

234. Indigent Defense Expenditures. Any monies expended for indigent defense services within a county that do not include amounts received from the public defense commission or amounts expended for capital cases by those counties participating in the capital crimes defense program in excess of premiums and deductibles required by guidelines approved by the Idaho capital crimes defense fund board of directors. (5-1-18)

245. Indigent Defense Grant. Pursuant to Section 19-862A, Idaho Code, any sum of money awarded by the PDC to a county to support compliance with Indigent Defense Standards or for other improvements to its delivery of indigent defense services if compliance can be achieved with county monies. (5-1-18)

256. Indigent Defense Grant Application. An application created by the PDC each year requesting information related to the provision of indigent defense services in an Applicant's county. This application will be updated each year and be provided by February 28, initiating the grant cycle. Counties are required to use this application when requesting an IDG award. (5-1-18)

267. Indigent Defense Provider. Any agency, entity, organization or person selected by a board of county commissioners in accordance with Section 19-859, Idaho Code, or designee of the commission if the commission's actions to remedy specific deficiencies pursuant to Section 19-862A(11)(b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. (5-1-18)

278. Indigent Defense Services. County services provided to indigent persons and other individuals who are entitled to be represented by an attorney at public expense pursuant to Section 19-859, Idaho Code. (5-1-18)

289. Indigent Defense Stakeholders ("Stakeholders"). A person, agency, entity or other organization with an interest or concern in the delivery of indigent defense in Idaho. (5-1-18)

2930. Indigent Defense Standard. Defined in Section 19-851, Idaho Code, as any rule promulgated by the commission pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)

301. Joint Incentive Indigent Defense Grant. Pursuant to Section 19-862A, Idaho Code, a sum of money awarded by the PDC to counties who join together to establish and maintain a joint office of public defender pursuant to Section 19-859(2), Idaho Code. (5-1-18)

312. Local Share. Defined in Section 19-851, Idaho Code, as the benchmark figure calculated by the commission to determine the minimum amount of funding that shall be maintained by a county and to determine the award amount of state indigent defense grants for which a county may be eligible pursuant to Section 19-862A, Idaho Code. For any given county fiscal year, a county's local share shall be the median of the annual amount in county funds expended by that county for indigent defense during each of the first three (3) of the preceding five (5) county fiscal years, as certified by the county clerk. (5-1-18)

323. Oversight Review. An annual or periodic review of a county or defending attorney, completed by PDC staff, that considers whether indigent defense standards are being met and if deficiencies are being identified and cured in a timely fashion. (5-1-18)

334. Public Defense Roster. A roster of complaint defending attorneys who may be appointed to represent indigent defendants or other persons entitled to be represented by an attorney at public expense. The roster may also include non-attorney staff under the regular employ or supervision of a defending attorney. (5-1-18)

35. Reporter. An Indigent Defense Provider or defending attorney who submits an Annual Report as required by Section 19-864, Idaho Code, and IDAPA 61.01.02. ()

~~346~~. **Scholarship.** Any amount of training funds granted by the PDC to be used toward the costs of attending a training program. (5-1-18)

~~357~~. **Staff.** Any individual employed by the PDC. (5-1-18)

~~368~~. **Submission Date.** The date upon which one mails or digitally submits a document, form or application to the PDC. (5-1-18)

~~379~~. **Training Program.** Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

~~3840~~. **Training Funds.** An amount designated in the annual budget of the PDC designated for the benefit of defending attorneys and those under their employ or supervision. These funds are dedicated to provide training and education for persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

~~3941~~. **Vertical Representation.** Continuous representation by the same attorney from assignment through completion of the case. Assignment shall occur immediately following an initial appearance to ensure that the constitutionally required level of advocacy necessary to mount a meaningful defense commences as soon as possible. (5-1-18)

~~402~~. **Workload.** The term workload recognizes that a caseload generally consists of a mix of case types that each require differing amounts of time and resources. (5-1-18)

SYNOPSIS FOR INCORPORATION BY REFERENCE

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

STATE PUBLIC DEFENSE COMMISSION

IDAPA 61.01.08 – Rule Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions Proposed Rulemaking - Docket No. 61-0108-1801

The “Standards for Defending Attorneys,” edition 2017, incorporated by reference in IDAPA 61.01.08 will be amended to include a workload standard for Idaho’s defending attorneys. Defending attorneys and counties will be required to conform to the workload standard to ensure that Idaho’s indigent defendants are receiving quality, uncompromised and constitutional representation. A workload standard is supported by Idaho’s Principles of an Indigent Defense Delivery System (IPIDDS) as a whole, Idaho Code 19-850(1)(a)(vii).