

State Appellate Public Defender

Analyst: Hoskins

Historical Summary

OPERATING BUDGET	FY 2020 Total App	FY 2020 Actual	FY 2021 Approp	FY 2022 Request	FY 2022 Gov Rec
BY PROGRAM					
State Appellate Public Defender	2,717,100	2,653,300	2,922,600	2,945,700	2,929,500
Capital and Conflict Representation	412,200	227,100	242,100	242,100	242,100
Total:	3,129,300	2,880,400	3,164,700	3,187,800	3,171,600
BY FUND CATEGORY					
General	3,129,300	2,880,400	3,164,700	3,187,800	3,171,600
Percent Change:		(8.0%)	9.9%	0.7%	0.2%
BY OBJECT OF EXPENDITURE					
Personnel Costs	2,458,700	2,368,800	2,572,500	2,667,900	2,651,700
Operating Expenditures	661,300	492,200	521,200	519,900	519,900
Capital Outlay	9,300	19,400	71,000	0	0
Total:	3,129,300	2,880,400	3,164,700	3,187,800	3,171,600
Full-Time Positions (FTP)	24.00	24.00	25.00	25.00	25.00

Division Description

Pursuant to Section 19-870(1), Idaho Code, the State Appellate Public Defender provides legal representation to indigent persons in the following areas:

- 1) Appeals from convictions or post-judgment orders in district court;
- 2) Interlocutory criminal appeals from the district court;
- 3) Appeals from the district court in misdemeanor cases;
- 4) Appeals from the district court of orders or final judgments affecting juvenile offenders under the Juvenile Corrections Act;
- 5) Appeals from the district court in post-conviction relief proceedings brought pursuant to the Uniform Post-Conviction Procedure Act;
- 6) Appeals from the district court in habeas corpus proceedings; and
- 7) Post-conviction relief proceedings in the district court in capital cases.

The services of the State Appellate Public Defender are only available to those counties participating in the Capital Crimes Defense Fund (CCDF) established pursuant to Section 19-863A, Idaho Code. Currently, all 44 counties participate in the CCDF.

There are two budgeted programs within this division:

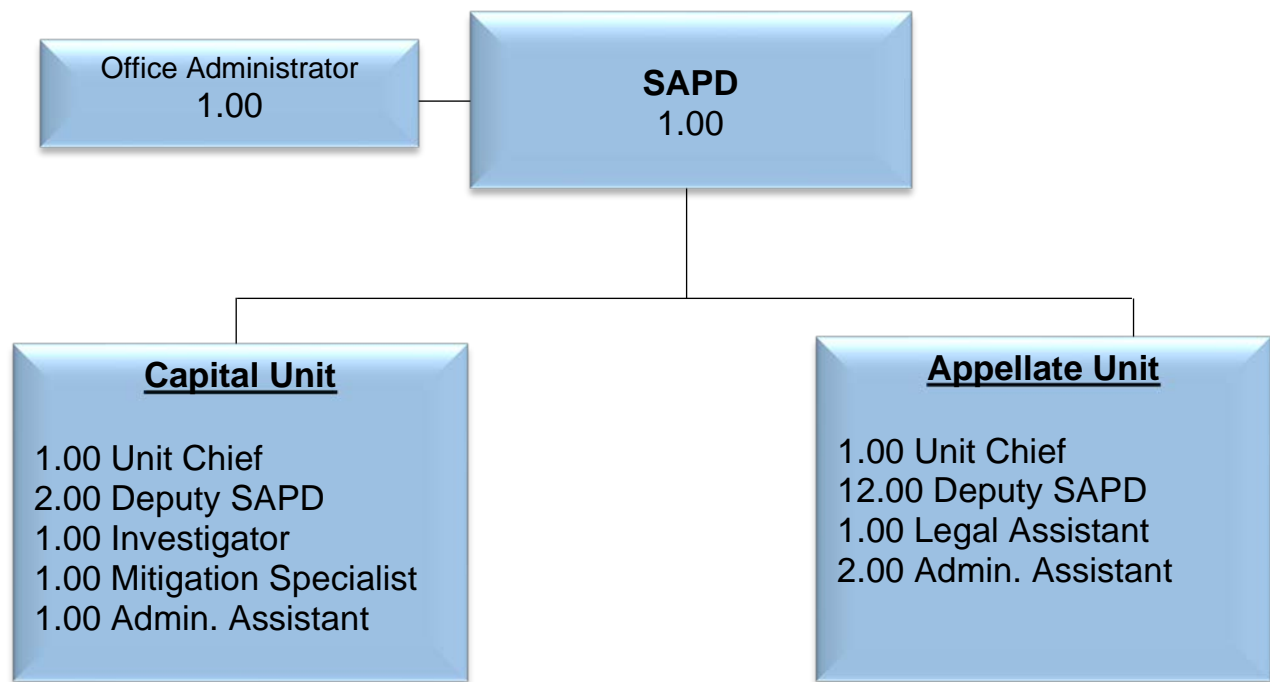
The Office of the State Appellate Public Defender Program accounts for the general operating, personnel, and capital outlay costs of the office.

The Capital and Conflict Representation Program accounts solely for (a) the cost of outside counsel for noncapital appeals in which a conflict of interest is identified; and (b) extraordinary litigation costs directly related to the provision of representation in capital cases including, but not limited to, consultation with experts; travel, lodging, and per diem for expert and lay witnesses; depositions; investigation; employee travel associated with witness interviews; court reporting and transcription services; expert witness fees; outside counsel in the event of a conflict of interest; and preparation of trial exhibits. Any remaining unexpended and unencumbered amounts not used in this program revert to the General Fund.

State Appellate Public Defender Agency Profile

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Organizational Chart



24.00 FTP

1.00 Vacant as of December 1, 2020

Part I – Agency Profile

Agency Overview

The Office of the State Appellate Public Defender (SAPD) provides appellate representation to indigent persons who have been convicted of a felony in Idaho’s district courts. The SAPD also provides appellate representation to petitioners in state felony post-conviction and habeas corpus cases. In capital cases, where a defendant has been sentenced to death, the SAPD provides district court representation for post-conviction cases, as well as representation on appeal in both the direct appeal from the judgment of conviction and the appeal from the denial of the post-conviction petition.

On November 22, 2016, Governor Otter appointed Eric D. Fredericksen to the position of State Appellate Public Defender. Mr. Fredericksen was reappointed to the position of State Appellate Public Defender on August 1, 2018. As of October 1, 2020, the office will have 25 full-time employees, including the agency head. The Capital Litigation Unit includes three attorneys, a mitigation specialist, an investigator, and one administrative assistant. The Appellate Unit has thirteen staff attorneys and three legal assistants. There is also an office administrator and receptionist. The office is located at 322 East Front Street, Suite 570, Boise, Idaho.

The SAPD must provide effective assistance of counsel to its clients and timely process appeals, as mandated by both the United States and Idaho Constitutions, as well as by Idaho statutes and court rules. Ethically, in its casework the SAPD must serve, first and foremost, the best interests of its clients. The SAPD is also mindful of relevant constituent groups and the legislative goal of reducing the financial burden on Idaho counties previously caused by the extraordinary cost of legal representation of indigent defendants on appeal. The SAPD is additionally committed to strengthening Idaho’s criminal justice system to ensure it is both efficient and effective for SAPD clients.

The SAPD’s Mission: Defending zealously, advancing fairness, and advocating with integrity.

The SAPD’s Vision: A better Idaho where the legal system treats each person with fairness and dignity.

Core Functions/Idaho Code

The right of a defendant to representation by an attorney in a felony criminal case is a core value in Idaho, dating back to the days of the Idaho Territory. The Revised Statutes of Idaho, dated 1884, stated that if a defendant “desires and is unable to employ counsel, the court must assign counsel to defend him.” Years later, the United States Supreme Court recognized, in *Alabama v. Powell*, 287 U.S. 45, 68-69 (1932), that the basic fairness required by the United States Constitution meant that indigent defendants facing capital charges had the right to assistance of counsel. More than thirty years later, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court ruled that states have a constitutional obligation under the Sixth and Fourteenth Amendments to the U.S. Constitution to provide trial counsel to non-capital indigent defendants facing a loss of liberty. Finally, in *Douglas v. California*, 372 U.S. 353 (1963), the Court found that an indigent defendant is entitled to the assistance of counsel in a first appeal granted as a matter of right from a criminal conviction.

Even absent the constitutional requirements for counsel, Idaho continues to adhere to the core value of ensuring that criminal defendants facing a loss of liberty are represented by counsel “to the same extent as a person having his own counsel is so entitled.” I.C. § 19-852. Similarly, in accordance with Idaho Criminal Rule 44.2, immediately after the imposition of the death penalty, the court must appoint at least one lawyer to represent the defendant for purposes of seeking post-conviction relief pursuant to Idaho Code §19-2719.

The legislature recognized that the cost of providing appellate representation was an extraordinary burden on the counties of Idaho. “In order to reduce this burden, provide competent counsel but avoid paying high hourly rates to independent counsel to represent indigent defendants in appellate proceedings,” the legislature created the SAPD. See I.C. § 19-868. The duties of the SAPD are enumerated in I.C. §19-868 through §19-872.

Revenue and Expenditures

Revenue	FY 2017	FY 2018	FY 2019	FY 2020
General Fund	\$2,636,600	\$2,889,200	\$2,948,100	\$3,099,100
Dedicated	\$25,000	\$0	\$0	\$0
Total	\$2,661,600	\$2,889,200	\$2,948,100	\$3,099,100
Expenditures	FY 2017	FY 2018	FY 2019	FY 2020
Personnel Costs	\$2,111,500	\$2,153,663	\$2,303,900	\$2,368,800
Operating Expenditures	\$550,100	\$322,589	\$405,100	\$407,500
Capital Outlay	\$0	\$12,511	\$17,100	\$19,400
Trustee/Benefit Payments	\$0	\$0	\$0	\$0
Total	\$2,661,600	\$2,488,763	\$2,726,100	\$2,795,700

Profile of Cases Managed and/or Key Services Provided

Cases Managed and/or Key Services Provided	FY 2017	FY 2018	FY 2019	FY 2020
Capital Cases Managed	3	4	3	3
Non-Capital Cases Opened	537	604	600	618

Red Tape Reduction Act

Each agency shall incorporate into its strategic plan a summary of how it will implement the Red Tape Reduction Act, including any associated goals, objectives, tasks, or performance targets. This information may be included as an addendum.

	As of July 1, 2019	As of July 1, 2020
Number of Chapters	N/A	N/A
Number of Words	N/A	N/A
Number of Restrictions	N/A	N/A

The SAPD does not have any administrative rules.

FY 2020 Performance Highlights

In FY2020, the SAPD was able to obtain relief for a higher percentage of clients in the Idaho Supreme Court, than in previous years despite not being fully staffed for much of the fiscal year. Additionally, when Governor Little issued the mandatory Stay at Home Order on March 25, 2020, as an essential business, the SAPD was able to quickly pivot its business model to move to operating entirely remotely, having little disruption in the SAPD’s ability to meet its constitutional obligation to provide effective assistance of counsel for Idaho’s indigent defendants on direct appeal in felony cases and under a sentence of death.

Part II – Performance Measures

Performance Measure		FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Goal 1						
<i>Provide Competent, Constitutionally Sufficient Representation to All SAPD Clients</i>						
1. No affirmed reprimands from the Office of Bar Counsel or the Idaho Supreme Court.	actual	0	0	0	0	-----
	target	No Affirmed Reprimands	No Affirmed Reprimands	No Affirmed Reprimands	No Affirmed Reprimands	
2. No affirmed findings of ineffective assistance of counsel against an SAPD attorney.	actual	0	0	0	0	-----
	target	No Affirmed Findings	No Affirmed Findings	No Affirmed Findings	No Affirmed Findings	

Performance Measure		FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
3. Continuing legal education credits for renewal of licenses to practice law.	actual	100%	100%	100%	100%	-----
	target	100% License Renewal	100% License Renewal	100% License Renewal	100% License Renewal	
Goal 2 <i>Provide Services In An Efficient Manner</i>						
4. New contract cases assigned by fiscal year.	actual	0	0	8	0	-----
	target	0 Cases	0 Cases	0 Cases	0 Cases	
5. All cases assigned within 21 days of receipt of the transcript and record such that objections to the record can be filed in the district court.	actual	100%	100%	100%	100%	-----
	target	100%	100%	100%	100%	
6. Reduce the number of initial appellant's briefs filed on more than two extensions as identified each fiscal year	actual	455/33	491/43	521/57	559/110	-----
	target	50% Reduction of Briefs filed on >2 Ext. from previous FY	25% Reduction of Briefs filed on >2 Ext. from previous FY	25% Reduction of Briefs filed on >2 Ext. from previous FY	10% Reduction of Briefs Filed on >2 Ext. from previous FY	
7. Reduce the average Appellant Unit attorneys' caseloads to an appropriate level of no more than 35 units per year.	actual	42.00 units	53.30 units	51.81 units	58.08 units	-----
	target	35.00 Unit Average	35.00 Unit Average	35.00 Unit Average	35.00 Unit Average	
Goal 3 <i>Collaborate With Other Entities To Improve Idaho's Criminal Justice System</i>						
8. Clarify or modify the jurisdiction of the SAPD to handle identified indigent defense representation needs each fiscal year.	actual	N/A*	N/A*	N/A*	100%	-----
	target				Amend Idaho Code § 19-840 to expand jurisdiction of the SAPD to handle juvenile and misdemeanor appeals from the district court	
9. Collaborate with other entities to improve Idaho's criminal justice system.	actual	100%	100%	100%	100%	-----
	target	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD	
10. Implement the first five (5) Center for Internet Security Critical Security Controls (CIS Controls) by June 30, 2018.	actual	N/A**	Incomplete	Incomplete	Incomplete	-----
	target	N/A	Compliance with Executive Order 2017-02	Compliance with Executive Order 2017-02	Compliance with Executive Order 2017-02	

* This Performance measure was completed in FY2017 and has been replaced with a new performance measure for FY2020.

**New Performance measure for FY 2018.

Performance Measure Explanatory Notes

In FY2020, the SAPD was appointed to 618 criminal appeals from the district court, which is a bit of a workload increase from FY2019 (600). The SAPD's numbers are consistent with the number of felony criminal appeals filed in the Idaho Supreme Court. The average deputy's workload this past year was 58.08 units, which marks an increase from the past 3 years. The increase is largely attributed to having two vacancies to fill within the appellate unit and having two additional appellate attorneys take extended personal leave. As a result, the remaining attorneys within the appellate unit had to take on an additional workload. While 58.08 units exceeds the SAPD's goal to average 35 workload units per attorney, SAPD attorneys are given a weekly opportunity to refuse new cases if they believe their current workload is too high. SAPD attorneys will routinely refuse to accept new cases until they believe they are able to meet their constitutional obligations to their individual clients. Additionally, attorneys were permitted to obtain additional extensions from the Idaho Supreme Court in filing the briefs on appeal.

In the past, SAPD attorneys were able to file the initial Appellant's brief on appeal over 90% of the time without having to obtain more than a second extension from the Idaho Supreme Court. This is a marked decrease from FY2015 and FY2016 where SAPD attorneys obtained more than a second extension from the Court in 20% of the cases handled by the office. As to the CIS Controls, due to the nature of its work, the SAPD cannot be on the State server or behind the State's firewall and is legally required to contract with an agency independent from the State of Idaho for its IT services. The SAPD is diligently working with its IT provider to meet its cybersecurity obligations.

For More Information Contact

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FY 2020 Actual Expenditures by Division

		FTP	PC	OE	CO	T/B	LS	Total
0.30	FY 2020 Original Appropriation							
0001-00	Gen	24.00	2,463,600	551,500	9,300	0	0	3,024,400
Totals:		24.00	2,463,600	551,500	9,300	0	0	3,024,400
0.43	Supplementals							
0001-00	Gen	0.00	0	140,000	0	0	0	140,000
Totals:		0.00	0	140,000	0	0	0	140,000
0.44	Rescissions							
0001-00	Gen	0.00	(4,900)	0	0	0	0	(4,900)
Totals:		0.00	(4,900)	0	0	0	0	(4,900)
0.45	Omnibus Decisions							
0001-00	Gen	0.00	0	(30,200)	0	0	0	(30,200)
Totals:		0.00	0	(30,200)	0	0	0	(30,200)
1.00	FY 2020 Total Appropriation							
0001-00	Gen	24.00	2,458,700	661,300	9,300	0	0	3,129,300
Totals:		24.00	2,458,700	661,300	9,300	0	0	3,129,300
1.21	Net Object Transfer							
0001-00	Gen	0.00	(27,000)	16,900	10,100	0	0	0
Totals:		0.00	(27,000)	16,900	10,100	0	0	0
1.61	Reverted Appropriation							
0001-00	Gen	0.00	(62,900)	(186,000)	0	0	0	(248,900)
Totals:		0.00	(62,900)	(186,000)	0	0	0	(248,900)
2.00	FY 2020 Actual Expenditures							
0001-00	Gen	24.00	2,368,800	492,200	19,400	0	0	2,880,400
	General		2,368,800	492,200	19,400	0	0	2,880,400
Totals:		24.00	2,368,800	492,200	19,400	0	0	2,880,400

Difference: Actual Expenditures minus Total Appropriation

0001-00	Gen		(89,900)	(169,100)	10,100	0	0	(248,900)
	General		(3.7%)	(25.6%)	108.6%	N/A	N/A	(8.0%)
Difference From Total Approp			(89,900)	(169,100)	10,100	0	0	(248,900)
Percent Diff From Total Approp			(3.7%)	(25.6%)	108.6%	N/A	N/A	(8.0%)

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Comparative Summary

Decision Unit	Agency Request			Governor's Rec		
	FTP	General	Total	FTP	General	Total
FY 2021 Original Appropriation	25.00	3,164,700	3,164,700	25.00	3,164,700	3,164,700
Executive Holdback	0.00	(158,200)	(158,200)	0.00	(158,200)	(158,200)
FY 2021 Estimated Expenditures	25.00	3,006,500	3,006,500	25.00	3,006,500	3,006,500
Removal of Onetime Expenditures	0.00	(72,500)	(72,500)	0.00	(72,500)	(72,500)
Restore Rescissions	0.00	158,200	158,200	0.00	158,200	158,200
FY 2022 Base	25.00	3,092,200	3,092,200	25.00	3,092,200	3,092,200
Benefit Costs	0.00	46,400	46,400	0.00	7,900	7,900
Statewide Cost Allocation	0.00	200	200	0.00	200	200
Annualizations	0.00	26,000	26,000	0.00	25,900	25,900
Change in Employee Compensation	0.00	23,000	23,000	0.00	45,400	45,400
FY 2022 Total	25.00	3,187,800	3,187,800	25.00	3,171,600	3,171,600
Change from Original Appropriation	0.00	23,100	23,100	0.00	6,900	6,900
% Change from Original Appropriation		0.7%	0.7%		0.2%	0.2%

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Budget by Decision Unit	FTP	General	Dedicated	Federal	Total
FY 2021 Original Appropriation					
The Legislature funded two line items for FY 2021: These included \$1,100 for security software; and 1.00 FTP and \$157,400 for a deputy state appellate public defender to handle juvenile and misdemeanor appeals. The personnel costs for the new position were funded for 75% of the fiscal year and the remaining 25% is requested as an annualization, below.					
	25.00	3,164,700	0	0	3,164,700
Executive Holdback					
This adjustment reflects a 5% temporary reduction in General Fund spending authority (holdback) for FY 2021 issued through Executive Order No. 2020-14. This reduction is restored as a base adjustment in FY 2022, below.					
Agency Request	0.00	(158,200)	0	0	(158,200)
<i>Governor's Recommendation</i>	0.00	(158,200)	0	0	(158,200)
FY 2021 Estimated Expenditures					
Agency Request	25.00	3,006,500	0	0	3,006,500
<i>Governor's Recommendation</i>	25.00	3,006,500	0	0	3,006,500
Removal of Onetime Expenditures					
This decision unit removes onetime amounts appropriated in FY 2021 for a new deputy SAPD, including \$1,500 in operating expenditures for software licensing; and \$71,000 in capital outlay for an office buildout.					
Agency Request	0.00	(72,500)	0	0	(72,500)
<i>Governor's Recommendation</i>	0.00	(72,500)	0	0	(72,500)
Restore Rescissions					
This adjustment restores the 5% General Fund holdback removed as a current year expenditure adjustment, above.					
Agency Request	0.00	158,200	0	0	158,200
<i>Governor's Recommendation</i>	0.00	158,200	0	0	158,200
FY 2022 Base					
Agency Request	25.00	3,092,200	0	0	3,092,200
<i>Governor's Recommendation</i>	25.00	3,092,200	0	0	3,092,200
Benefit Costs					
Employer-paid benefit changes include an 11% increase (or \$1,280 per eligible FTP) for health insurance, bringing the total appropriation to \$12,930 per FTP. Also included is a restoration of the unemployment insurance rate, a partial restoration of the unused sick leave rate, and adjustments to workers' compensation that vary by agency.					
Agency Request	0.00	46,400	0	0	46,400
<i>The Governor recommends no increase for health insurance due to fewer claims than expected and a one-year holiday for employers who contribute to the PERSI-managed sick leave plan.</i>					
<i>Governor's Recommendation</i>	0.00	7,900	0	0	7,900
Statewide Cost Allocation					
This request includes adjustments to recover the cost of services provided by other agencies in accordance with federal and state guidelines on cost allocation. State Controller fees will increase by \$200.					
Agency Request	0.00	200	0	0	200
<i>Governor's Recommendation</i>	0.00	200	0	0	200
Annualizations					
This adjustment annualizes the personnel costs associated with the new deputy SAPD, which was partially funded (75%) as a line item in FY 2021.					
Agency Request	0.00	26,000	0	0	26,000
<i>Recommended by the Governor with changes for benefits and compensation.</i>					
<i>Governor's Recommendation</i>	0.00	25,900	0	0	25,900

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Budget by Decision Unit	FTP	General	Dedicated	Federal	Total
Change in Employee Compensation					
For calculation purposes, agencies were directed to include the cost of a 1% salary increase for permanent and temporary employees.					
Agency Request	0.00	23,000	0	0	23,000
<i>The Governor recommends a 2% increase in employee compensation, distributed on merit. He does not recommend a compensation increase for group and temporary positions.</i>					
Governor's Recommendation	0.00	45,400	0	0	45,400
FY 2022 Total					
Agency Request	25.00	3,187,800	0	0	3,187,800
Governor's Recommendation	25.00	3,171,600	0	0	3,171,600
Agency Request					
Change from Original App	0.00	23,100	0	0	23,100
% Change from Original App	0.0%	0.7%			0.7%
<i>Governor's Recommendation</i>					
Change from Original App	0.00	6,900	0	0	6,900
% Change from Original App	0.0%	0.2%			0.2%