

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 542

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO PUBLIC DEFENSE ACT; AMENDING CHAPTER 8, TITLE 19, IDAHO  
2 CODE, BY THE ADDITION OF A NEW SECTION 19-848, IDAHO CODE, TO PROVIDE  
3 A SHORT TITLE; AMENDING CHAPTER 8, TITLE 19, IDAHO CODE, BY THE ADDI-  
4 TION OF A NEW SECTION 19-849, IDAHO CODE, TO ESTABLISH THE STATE PUBLIC  
5 DEFENSE COMMISSION; AMENDING CHAPTER 8, TITLE 19, IDAHO CODE, BY THE  
6 ADDITION OF A NEW SECTION 19-850, IDAHO CODE, TO PROVIDE FOR THE POWERS  
7 AND DUTIES OF THE STATE PUBLIC DEFENSE COMMISSION; AMENDING SECTION  
8 19-853, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO THE APPOINTMENT  
9 AND ASSIGNMENT OF CERTAIN COUNSEL AND TO MAKE A TECHNICAL CORRECTION;  
10 AMENDING SECTION 19-859, IDAHO CODE, TO REVISE PROVISIONS RELATING TO  
11 THE DUTY OF THE BOARDS OF COUNTY COMMISSIONERS TO PROVIDE FOR THE REP-  
12 REPRESENTATION OF INDIGENT PERSONS AND OTHER INDIVIDUALS WHO ARE ENTITLED  
13 TO BE REPRESENTED BY AN ATTORNEY AT PUBLIC EXPENSE AND TO MAKE TECHNICAL  
14 CORRECTIONS; AMENDING SECTION 19-860, IDAHO CODE, TO SPECIFY THAT CER-  
15 TAIN PROVISIONS RELATING TO THE PUBLIC DEFENDER APPLY TO A JOINT OFFICE  
16 OF PUBLIC DEFENDER, TO REMOVE PROVISIONS RELATING TO THE TERM OF OF-  
17 FICE OF A PUBLIC DEFENDER, TO REMOVE CERTAIN PROVISIONS RELATING TO THE  
18 SCOPE OF PRACTICE OF A PUBLIC DEFENDER, TO REMOVE PROVISIONS RELATING  
19 TO THE COMPENSATION OF A COURT-ASSIGNED ATTORNEY OTHER THAN THE PUBLIC  
20 DEFENDER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-861,  
21 IDAHO CODE, TO CLARIFY THAT CERTAIN PROVISIONS APPLY TO A JOINT OFFICE  
22 OF PUBLIC DEFENDER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
23 19-862, IDAHO CODE, TO PROVIDE THAT CERTAIN PROVISIONS APPLY TO A JOINT  
24 OFFICE OF PUBLIC DEFENDER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
25 SECTION 67-2601, IDAHO CODE, TO ESTABLISH THE STATE PUBLIC DEFENSE COM-  
26 MISSION IN THE DEPARTMENT OF SELF-GOVERNING AGENCIES; AND DECLARING AN  
27 EMERGENCY.  
28

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

30 SECTION 1. That Chapter 8, Title 19, Idaho Code, be, and the same is  
31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
32 ignated as Section 19-848, Idaho Code, and to read as follows:

33 19-848. SHORT TITLE. Sections 19-848 through 19-866, Idaho Code,  
34 shall be known as the "Idaho Public Defense Act."

35 SECTION 2. That Chapter 8, Title 19, Idaho Code, be, and the same is  
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
37 ignated as Section 19-849, Idaho Code, and to read as follows:

38 19-849. STATE PUBLIC DEFENSE COMMISSION. (1) There is hereby created  
39 in the department of self-governing agencies the state public defense com-  
40 mission. The commission shall consist of seven (7) members as follows:

1 (a) Two (2) representatives from the state legislature that shall in-  
 2 clude one (1) member from the senate and one (1) member from the house of  
 3 representatives;

4 (b) One (1) representative appointed by the chief justice of the Idaho  
 5 supreme court; and

6 (c) Four (4) representatives appointed by the governor and confirmed by  
 7 the senate as follows:

8 (i) One (1) representative from the Idaho association of coun-  
 9 ties;

10 (ii) One (1) representative who has experience as a defending at-  
 11 torney;

12 (iii) One (1) representative from the office of the state appel-  
 13 late public defender; and

14 (iv) One (1) representative from the Idaho juvenile justice com-  
 15 mission.

16 (2) No individual who is currently employed as a prosecuting attorney  
 17 or who is a current employee of a law enforcement agency may be a member of the  
 18 commission.

19 (3) The members of the commission shall serve the following terms:

20 (a) The gubernatorial appointees shall serve terms of three (3) years.

21 (b) The representative appointed by the chief justice of the Idaho  
 22 supreme court shall serve a term of two (2) years.

23 (c) The representatives from the state legislature shall serve terms of  
 24 two (2) years as appointed by the president pro tempore of the senate and  
 25 speaker of the house of representatives during their legislative terms  
 26 of office.

27 (4) A vacancy on the commission shall be filled in the same manner as the  
 28 original appointment and for the balance of the unexpired term.

29 (5) The commission shall appoint a chairman and a vice chairman from  
 30 among its members for a term certain.

31 (6) The members of the commission shall be compensated as provided for  
 32 in section 59-509(b), Idaho Code.

33 SECTION 3. That Chapter 8, Title 19, Idaho Code, be, and the same is  
 34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 35 ignated as Section 19-850, Idaho Code, and to read as follows:

36 19-850. POWERS AND DUTIES OF THE STATE PUBLIC DEFENSE COMMISSION. (1)  
 37 The state public defense commission shall:

38 (a) Promulgate rules in accordance with the provisions of chapter 52,  
 39 title 67, Idaho Code, establishing the following:

40 (i) Training and continuing legal education requirements for de-  
 41 fending attorneys, which shall promote competency and consistency  
 42 in case types including, but not limited to, criminal, juvenile,  
 43 abuse and neglect, post-conviction, civil commitment, capital and  
 44 civil contempt; and

45 (ii) Uniform data reporting requirements for the annual reports  
 46 submitted pursuant to section 19-864, Idaho Code. The data re-  
 47 ported shall include caseload, workload and expenditures.

48 (b) On or before January 20, 2015, and by January 20 of each year there-  
 49 after as deemed necessary by the commission, make recommendations to

1 the Idaho legislature for legislation on public defense system issues  
2 including, but not limited to:

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

6 (ii) Qualifications and experience standards for the public de-  
7 fender and defending attorneys;

8 (iii) Enforcement mechanisms; and

9 (iv) Funding issues including, but not limited to:

10 1. Training and continuing legal education for defending  
11 attorneys;

12 2. Data collection and reporting efforts; and

13 3. Conflict cases.

14 (c) Hold at least one (1) meeting in each calendar quarter.

15 (2) The state public defense commission may:

16 (a) Hire an executive director who shall be responsible for the per-  
17 formance of the regular administrative functions of the commission and  
18 other duties as the commission may direct. The executive director shall  
19 be a nonclassified state employee and shall be compensated as deter-  
20 mined by the commission.

21 (b) Employ persons in addition to the executive director in other po-  
22 sitions or capacities as it deems necessary to the proper conduct of  
23 commission business and to the fulfillment of the commission's respon-  
24 sibilities. The employees of the commission other than the executive  
25 director shall be classified employees and shall receive as compen-  
26 sation an annual salary payable on regular pay periods, the amount of  
27 which shall be determined by the commission.

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

31 SECTION 4. That Section 19-853, Idaho Code, be, and the same is hereby  
32 amended to read as follows:

33 19-853. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL ~~--- AP-~~  
34 ~~POINTMENT OF COUNSEL.~~ (1) If a person who is being detained by a law enforce-  
35 ment officer, or who is confined or who is the subject of hospitalization  
36 proceedings pursuant to section 66-322, 66-326, 66-329, 66-404 or 66-406,  
37 Idaho Code, or who is under formal charge of having committed, or is being  
38 detained under a conviction of, a serious crime, is not represented by an at-  
39 torney under conditions in which a person having his own counsel would be en-  
40 titled to be so represented, the law enforcement officers concerned, upon  
41 commencement of detention, or the court, upon formal charge or hearing, as  
42 the case may be, shall:

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

45 (b) If the person detained or charged does not have an attorney, no-  
46 tify the defending attorney or trial court concerned, as the case may  
47 be, that he is not so represented. As used in this subsection, the term  
48 "commencement of detention" includes the taking into custody of a pro-  
49 bationer.

1 (2) Upon commencement of any later judicial proceeding relating to the  
 2 same matter, including, but not limited to, preliminary hearing, arraign-  
 3 ment, trial, any post-conviction proceeding or post-commitment proceeding,  
 4 the presiding officer shall clearly inform the person so detained or charged  
 5 of his right to counsel and of the right of an indigent person to be repre-  
 6 sented by an attorney at public expense. Provided, the appointment of an at-  
 7 torney at public expense in uniform post-conviction procedure act proceed-  
 8 ings shall be in accordance with section 19-4904, Idaho Code.

9 (3) If a court determines that the person is entitled to be represented  
 10 by an attorney at public expense, it shall promptly notify the defending at-  
 11 torney ~~or assign an attorney, as the case may be.~~

12 (4) Upon notification by the court, the defending attorney shall repre-  
 13 sent the person with respect to whom the notification ~~or assignment~~ is made.

14 SECTION 5. That Section 19-859, Idaho Code, be, and the same is hereby  
 15 amended to read as follows:

16 19-859. PUBLIC DEFENDER AUTHORIZED ~~--- COURT APPOINTED ATTORNEYS ---~~  
 17 JOINT COUNTY PUBLIC DEFENDERS. ~~(1)~~ The board of county commissioners of each  
 18 county shall provide for the representation of indigent persons and other  
 19 individuals who are entitled to be represented by an attorney at public ex-  
 20 pense. ~~They~~ The board of county commissioners of each county shall provide  
 21 this representation by one (1) of the following:

22 (a1) Establishing and maintaining an office of public defender;

23 ~~(b2) Arranging with the courts in the county to assign attorneys on~~  
 24 ~~an equitable basis through a systematic, coordinated plan~~ Joining with the  
 25 board of county commissioners of one (1) or more other counties within the  
 26 same judicial district to establish and maintain a joint office of public  
 27 defender pursuant to an agreement authorized under section 67-2328, Idaho  
 28 Code; ~~or~~

29 ~~(e3) Adopting a combination of these alternatives~~ Contracting with an  
 30 existing office of public defender; or

31 (4) Contracting with a defending attorney, provided that the terms of  
 32 the contract shall not include any pricing structure that charges or pays a  
 33 single fixed fee for the services and expenses of the attorney. The contract  
 34 provisions of this subsection shall apply to all contracts entered into or  
 35 renewed on or after the effective date of this act.

36 ~~Until the board elects an alternative, it shall be considered as having~~  
 37 ~~elected the alternative provided in subsection (1) (b) of this section.~~

38 ~~(2) If it elects to establish and maintain an office of public defender,~~  
 39 ~~the board of county commissioners of a county may join with the board of~~  
 40 ~~county commissioners of one (1) or more other counties to establish and~~  
 41 ~~maintain a joint office of public defender. In that case, the participating~~  
 42 ~~counties shall be treated for the purposes of this act as if they were one (1)~~  
 43 ~~county.~~

44 ~~(3) If the board of county commissioners of a county elects to arrange~~  
 45 ~~with the courts in the county to assign attorneys, a court of the county may~~  
 46 ~~provide for advance assignment of attorneys, subject to later approval by~~  
 47 ~~it, to facilitate representation of matters arising before appearance in~~  
 48 ~~court.~~

1 SECTION 6. That Section 19-860, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 19-860. PUBLIC DEFENDER -- TERM -- COMPENSATION -- APPOINTMENT --  
4 QUALIFICATIONS ~~--- COURT APPOINTED ATTORNEYS --- COMPENSATION.~~ (1) If the  
5 board of county commissioners of a county elects to establish and maintain an  
6 office of public defender and/or juvenile public defender or a joint office  
7 of public defender, the board shall:

8 (a~~1~~) Prescribe the qualifications of such public defender, ~~his term of~~  
9 ~~office, which may not be less than two (2) years,~~ and his rate of annual com-  
10 pensation, and, if so desired by the board, a rate of compensation for extra-  
11 ordinary services not recurring on a regular basis. So far as is possible,  
12 the compensation paid to such public defender shall not be less than the com-  
13 pensation paid to the county prosecutor for that portion of his practice de-  
14 voted to criminal law.

15 (b~~2~~) Provide for the establishment, maintenance and support of his  
16 office. The board of county commissioners shall appoint a public defender  
17 and/or juvenile public defender from a panel of not more than five (5) and  
18 not fewer than three (3) persons, if that many are available, designated by  
19 a committee of lawyers appointed by the administrative judge of the judi-  
20 cial district encompassing the county or his designee. To be a candidate, a  
21 person must be licensed to practice law in this state and must be competent  
22 to counsel and defend a person charged with a crime. ~~During his incumbency,~~  
23 ~~such public defender may engage in the practice of civil law and criminal law~~  
24 ~~other than in the discharge of the duties of his office, unless he is prohib-~~  
25 ~~ited from doing so by the board of county commissioners.~~

26 (2) ~~If a court before whom a person appears upon a formal charge assigns~~  
27 ~~an attorney other than a public defender to represent an indigent person,~~  
28 ~~the appropriate district court, upon application, shall prescribe a reason-~~  
29 ~~able rate of compensation for his services and shall determine the direct ex-~~  
30 ~~penses necessary to representation for which he should be reimbursed. The~~  
31 ~~county shall pay the attorney the amounts so prescribed. The attorney shall~~  
32 ~~be compensated for his services with regard to the complexity of the issues,~~  
33 ~~the time involved and other relevant considerations.~~

34 SECTION 7. That Section 19-861, Idaho Code, be, and the same is hereby  
35 amended to read as follows:

36 19-861. PUBLIC DEFENDER'S OFFICE -- EMPLOYEES -- COMPENSATION -- FA-  
37 CILITIES. (a~~1~~) If an office of public defender or a joint office of public  
38 defender has been established, the public defender may employ, in the manner  
39 and at the compensation prescribed by the board of county commissioners, as  
40 many assistant public defenders, clerks, investigators, stenographers, and  
41 other persons as the board considers necessary for carrying out his respon-  
42 sibilities under this act. A person employed under this section serves at  
43 the pleasure of the public defender.

44 (b~~2~~) If an office of public defender or a joint office of public de-  
45 fender has been established, the board of county commissioners shall:

46 (1a) ~~Provide~~ appropriate facilities ~~(including office space, furni-~~  
47 ~~ture, equipment, books, postage, supplies, and interviewing facilities~~

1 in the jail), necessary for carrying out the public defender's respon-  
2 sibilities under this act; or

3 (~~2~~b) ~~g~~Grant the public defender an allowance in place of those facili-  
4 ties.

5 (~~e~~3) A defending attorney is entitled to use the same state facilities  
6 for the evaluation of evidence as are available to the county prosecutor. If  
7 he considers their use impractical, the court concerned may authorize the  
8 use of private facilities to be paid for on court order by the county board of  
9 commissioners.

10 SECTION 8. That Section 19-862, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 19-862. APPROPRIATION FOR PUBLIC DEFENDER -- PRIVATE CONTRIBU-  
13 TIONS. (~~a~~1) The board of county commissioners of each county shall annually  
14 appropriate enough money to administer the program of representation that it  
15 has elected under section 19-859, Idaho Code.

16 (~~b~~2) If the board of county commissioners of a county elects to estab-  
17 lish and maintain an office of public defender or a joint office of public  
18 defender, the county may accept private contributions toward the support of  
19 ~~his~~ the office.

20 SECTION 9. That Section 67-2601, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF  
23 OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of  
24 self-governing agencies. The department shall, for the purposes of section  
25 20, article IV of the constitution of the state of Idaho, be an executive de-  
26 partment of the state government.

27 (2) The department shall consist of the following:

28 (a) Agricultural commodity commissions: Idaho apple commission, as  
29 provided by chapter 36, title 22, Idaho Code; Idaho bean commission,  
30 as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as  
31 provided by chapter 29, title 25, Idaho Code; Idaho cherry commission,  
32 as provided by chapter 37, title 22, Idaho Code; Idaho dairy products  
33 commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea  
34 and lentil commission, as provided by chapter 35, title 22, Idaho Code;  
35 Idaho potato commission, as provided by chapter 12, title 22, Idaho  
36 Code; the Idaho wheat commission, as provided by chapter 33, title 22,  
37 Idaho Code; the Idaho aquaculture commission, as provided by chapter  
38 44, title 22, Idaho Code; and the Idaho alfalfa and clover seed commis-  
39 sion, as provided in chapter 42, title 22, Idaho Code.

40 (b) Professional and occupational licensing boards: Idaho state board  
41 of certified public accountancy, as provided by chapter 2, title 54,  
42 Idaho Code; board of acupuncture, as provided by chapter 47, title 54,  
43 Idaho Code; board of architectural examiners, as provided by chapter  
44 3, title 54, Idaho Code; office of the state athletic director, as pro-  
45 vided by chapter 4, title 54, Idaho Code; board of barber examiners, as  
46 provided by chapter 5, title 54, Idaho Code; board of commissioners of  
47 the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board

1 of chiropractic physicians, as provided by chapter 7, title 54, Idaho  
2 Code; Idaho board of cosmetology, as provided by chapter 8, title 54,  
3 Idaho Code; Idaho counselor licensing board, as provided by chapter 34,  
4 title 54, Idaho Code; state board of dentistry, as provided by chapter  
5 9, title 54, Idaho Code; state board of denturistry, as provided by chap-  
6 ter 33, title 54, Idaho Code; Idaho board of licensure of professional  
7 engineers and professional land surveyors, as provided by chapter 12,  
8 title 54, Idaho Code; state board for registration of professional  
9 geologists, as provided by chapter 28, title 54, Idaho Code; speech  
10 and hearing services licensure board, as provided by chapter 29, title  
11 54, Idaho Code; Idaho physical therapy licensure board, as provided by  
12 chapter 22, title 54, Idaho Code; Idaho state board of landscape ar-  
13 chitects, as provided by chapter 30, title 54, Idaho Code; liquefied  
14 petroleum gas safety board, as provided by chapter 53, title 54, Idaho  
15 Code; state board of medicine, as provided by chapter 18, title 54,  
16 Idaho Code; state board of morticians, as provided by chapter 11, title  
17 54, Idaho Code; board of naturopathic medical examiners, as provided  
18 by chapter 51, title 54, Idaho Code; board of nurses, as provided by  
19 chapter 14, title 54, Idaho Code; board of examiners of nursing home  
20 administrators, as provided by chapter 16, title 54, Idaho Code; state  
21 board of optometry, as provided by chapter 15, title 54, Idaho Code;  
22 Idaho outfitters and guides board, as provided by chapter 21, title  
23 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54,  
24 Idaho Code; state board of podiatry, as provided by chapter 6, title 54,  
25 Idaho Code; Idaho state board of psychologist examiners, as provided by  
26 chapter 23, title 54, Idaho Code; Idaho real estate commission, as pro-  
27 vided by chapter 20, title 54, Idaho Code; real estate appraiser board,  
28 as provided by chapter 41, title 54, Idaho Code; board of social work  
29 examiners, as provided by chapter 32, title 54, Idaho Code; the board of  
30 veterinary medicine, as provided by chapter 21, title 54, Idaho Code;  
31 the board of examiners of residential care facility administrators, as  
32 provided by chapter 42, title 54, Idaho Code; the certified shorthand  
33 reporters board, as provided by chapter 31, title 54, Idaho Code; the  
34 driving businesses licensure board, as provided by chapter 54, title  
35 54, Idaho Code; the board of drinking water and wastewater profession-  
36 als, as provided by chapter 24, title 54, Idaho Code; and the board of  
37 midwifery, as provided by chapter 55, title 54, Idaho Code.

38 (c) The board of examiners, pursuant to section 67-2001, Idaho Code.

39 (d) The division of building safety: building code board, chapter 41,  
40 title 39, Idaho Code; manufactured housing board, chapter 21, title  
41 44, Idaho Code; electrical board, chapter 10, title 54, Idaho Code;  
42 public works contractors license board, chapter 19, title 54, Idaho  
43 Code; plumbing board, chapter 26, title 54, Idaho Code; public works  
44 construction management, chapter 45, title 54, Idaho Code; the heating,  
45 ventilation and air conditioning board, chapter 50, title 54, Idaho  
46 Code; and modular building advisory board, chapter 43, title 39, Idaho  
47 Code.

48 (e) The division of veterans services to be headed by a division ad-  
49 ministrator who shall be a nonclassified employee exempt from the pro-  
50 visions of chapter 53, title 67, Idaho Code. The administrator of the

1 division shall administer the provisions of chapter 2, title 65, Idaho  
2 Code, and chapter 9, title 66, Idaho Code, with the advice of the vet-  
3 erans affairs commission established under chapter 2, title 65, Idaho  
4 Code, and shall perform such additional duties as are imposed upon him  
5 by law.

6 (f) The board of library commissioners, pursuant to section 33-2502,  
7 Idaho Code.

8 (g) The Idaho state historical society, pursuant to section 67-4123,  
9 Idaho Code.

10 (h) The state public defense commission, pursuant to section 19-849,  
11 Idaho Code.

12 (3) The bureau of occupational licenses is hereby created within the  
13 department of self-governing agencies.

14 SECTION 10. An emergency existing therefor, which emergency is hereby  
15 declared to exist, this act shall be in full force and effect on and after its  
16 passage and approval.