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LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature

Second Regular Session - 2016

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 123

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO THE PUBLIC DEFENSE ACT; AMENDING SECTION 19-850, IDAHO CODE; AMENDING SECTION 19-851, IDAHO CODE; AMENDING SECTION 19-853, IDAHO CODE; AMENDING SECTION 19-862, IDAHO CODE; AMENDING CHAPTER 8, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-862A, IDAHO CODE; AMENDING CHAPTER 8, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-862B, IDAHO CODE; AND AMENDING SECTION 19-864, IDAHO CODE.

Be It Enacted by the Legislature of the state of Idaho:

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

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

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

(i) Training and continuing legal education requirements for indigent defense providers and defending attorneys, which shall promote competency and consistency in case types including, but not limited to, criminal, juvenile, abuse and neglect, post-conviction, civil commitment, capital and civil contempt; and

(ii) Uniform data reporting requirements for the annual reports submitted pursuant to section 19-864, Idaho Code. The data reported shall include, but not be limited to, caseload, workload and expenditures;

(iii) Proposed model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services, which shall include, but not be limited to, mandatory compliance with indigent defense standards;

(iv) Procedures under which indigent defense providers or counties may apply to the commission, pursuant to section 19-862A, Idaho Code, for funds to be used to bring their delivery of indigent defense services into compliance with indigent defense standards; and

(v) Standards for indigent defense providers ~~the public defender~~ and defending attorneys that adhere to the following principles:

1. The delivery of indigent defense services shall be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent defense services.

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1 2. If the caseload is sufficiently high, indigent defense  
2 services may consist of both defending attorneys and the  
3 active participation of other members of the state bar.

4 3. Trial courts shall assure that each criminal defendant  
5 is advised of his or her right to counsel. All persons,  
6 except those appearing with retained counsel or those who  
7 have made an informed waiver of counsel, shall be screened  
8 for eligibility under this act, and counsel shall be  
9 assigned as soon as a person is determined to be an  
10 indigent person.

11 4. Defending attorneys are provided sufficient time and a  
12 space where attorney-client confidentiality is safeguarded  
13 for meetings with clients.

14 5. Defending attorneys' workloads are controlled to permit  
15 effective representation. Economic disincentives or  
16 incentives that impair defending attorneys' ability to  
17 provide effective representation shall be avoided.

18 6. Defending attorneys' abilities, training, and experience  
19 match the nature and complexity of the cases in which they  
20 provide services.

21 7. The same defending attorney continuously represents and  
22 personally appears at every court appearance throughout the  
23 pendency of the case. However, indigent defense providers  
24 may exempt ministerial, nonsubstantive tasks, and hearings  
25 from this prescription.

26 8. There is parity between defending attorneys and the  
27 prosecution with respect to resources and defending  
28 attorneys are included as equal partners in the justice  
29 system.

30 9. Defending attorneys are required to attend continuing  
31 legal education relevant to their indigent defense clients.

32 10. Defending attorneys are systematically reviewed at the  
33 local level for efficiency and for representation in  
34 conformance with indigent defense standards.

35 11. Juveniles have a due process right to the assistance  
36 of counsel but are developmentally different than adults  
37 and require different treatment. Indigent defense  
38 standards should emphasize the importance of providing  
39 indigent defense services to juveniles.

40 12. Defending attorneys identify and resolve conflicts of  
41 interest in conformance with the Idaho Rules of  
42 Professional Conduct.

43 (b) On or before January 20, 2015, and by January 20 of each  
44 year thereafter as deemed necessary by the commission, make  
45 recommendations to the Idaho legislature for legislation on public  
46 defense system issues including, but not limited to:

47 ~~(i) Core requirements for contracts between counties and private~~  
48 ~~attorneys for the provision of indigent defense services and~~  
49 ~~proposed model contracts for counties to use;~~

50 ~~(ii) Qualifications and experience standards for the public~~  
51 ~~defender and defending attorneys;~~

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



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1           (~~iv~~ii) Funding issues including, but not limited to, <sup>+</sup>

2           ~~1. Training and continuing legal education for defending~~  
3           ~~attorneys~~ Formulas for the calculation of local shares and  
4           state share awards.

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

6           ~~3. Conflict cases.~~

7           (c) Develop and oversee the implementation, enforcement, and  
8 modification of indigent defense standards to ensure that the right to  
9 counsel of indigent persons, as provided in section 19-852, Idaho  
10 Code, is consistently delivered to all indigent persons in this state.

11           (d) Investigate, audit, and review the operations of indigent  
12 defense providers and defending attorneys to assure compliance with  
13 indigent defense standards.

14           (e) 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  
17 performance of the regular administrative functions of the commission  
18 and other duties as the commission may direct. The executive director  
19 shall be a nonclassified state employee and shall be compensated as  
20 determined by the commission.

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

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

31  
32           SECTION 2. That Section 19-851, Idaho Code, be, and the same is  
33 hereby amended to read as follows:

34  
35           19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In  
36 this act, the term:

37           (1) "Defending attorney" means any attorney employed by ~~the~~  
38 ~~office of public defender, contracted by the county~~ an indigent  
39 defense provider or otherwise assigned to represent adults or  
40 juveniles at public expense;

41           (2) "Detain" means to have in custody or otherwise deprive of  
42 freedom of action;

43           (3) "Expenses," when used with reference to representation under  
44 this act, includes the expenses of investigation, other preparation  
45 and trial;

46           (4) "Indigent person" means a person who, at the time his need  
47 is determined pursuant to section 19-854, Idaho Code, is unable to  
48 provide for the full payment of an attorney and all other necessary  
49 expenses of representation;

50           (5) "Serious crime" means any offense the penalty for which  
51 includes the possibility of confinement, incarceration, imprisonment

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1 or detention in a correctional facility, regardless of whether  
2 actually imposed.

3 (6) "Commission" means the state public defense commission as  
4 created pursuant to section 19-849, Idaho Code.

5 (7) "Local share" means the benchmark figure used to calculate  
6 the minimum amount of county funding which shall be maintained by a  
7 county and the amount of state funding a county may be awarded  
8 pursuant to section 19-862A, Idaho Code. For any given county fiscal  
9 year, a county's local share shall be calculated by averaging the  
10 total annual amount in county funds expended by that county for  
11 indigent defense during the first three (3) of the most recently  
12 completed five (5) county fiscal years.

13 (8) "Indigent defense provider" means any agency, entity,  
14 organization, or person selected by a board of county commissioners in  
15 accordance with section 19-859, Idaho Code, as a means to provide for  
16 the representation of indigent persons and other individuals who are  
17 entitled to be represented by an attorney at public expense.

18 (9) "Indigent defense standard" means any rule promulgated by the  
19 commission pursuant to section 19-850(1)(a), Idaho Code.

20 (10) "State share award" means the state funding a county may be  
21 awarded pursuant to section 19-862A, Idaho Code. Until June 30, 2019,  
22 a county may not receive a state share award in any given county  
23 fiscal year that exceeds fifteen percent (15%) of the county's local  
24 share for said county fiscal year. A state share award may also  
25 include access to in-kind services and support from the commission  
26 such as training, co-counsel, support for data reporting, or other  
27 technical support.

28  
29 SECTION 3. That Section 19-853, Idaho Code, be, and the same is  
30 hereby amended to read as follows:

31  
32 19-853. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL.

33 (1) If a person who is being detained by a law enforcement  
34 officer, or who is confined or who is the subject of hospitalization  
35 proceedings pursuant to section 66-322, 66-326, 66-329, 66-404 or 66-  
36 406, Idaho Code, or who is under formal charge of having committed, or  
37 is being detained under a conviction of, a serious crime, is not  
38 represented by an attorney under conditions in which a person having  
39 his own counsel would be entitled to be so represented, the law  
40 enforcement officers concerned, upon commencement of detention, or the  
41 court, upon formal charge or hearing, as the case may be, shall:

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

45 (b) If the person detained or charged does not have an attorney,  
46 notify the ~~defending attorney~~ indigent defense provider or trial court  
47 concerned, as the case may be, that he is not so represented. As used  
48 in this subsection, the term "commencement of detention" includes the  
49 taking into custody of a probationer.

50 (2) Upon commencement of any later judicial proceeding relating  
51 to the same matter including, but not limited to, preliminary hearing,  
52 arraignment, trial, any post-conviction proceeding or post-commitment



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1 proceeding, the presiding officer shall clearly inform the person so  
2 detained or charged of his right to counsel and of the right of an  
3 indigent person to be represented by an attorney at public expense.  
4 Provided, the appointment of an attorney at public expense in uniform  
5 post-conviction procedure act proceedings shall be in accordance with  
6 section 19-4904, Idaho Code.

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

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

13  
14 SECTION 4. That Section 19-862, Idaho Code, be, and the same is  
15 hereby amended to read as follows:

16  
17 19-862. APPROPRIATION FOR PUBLIC DEFENDER -- PRIVATE  
18 CONTRIBUTIONS. (1) The board of county commissioners of each county  
19 shall annually appropriate enough money to administer the ~~program of~~  
20 ~~representation~~ indigent defense provider that it has elected under  
21 section 19-859, Idaho Code, and, except as provided in subsection  
22 (2), shall maintain not less than its local share.

23 (2) The board of county commissioners is not required to expend  
24 its full local share if an indigent defense provider can successfully  
25 execute its approved compliance plan, in accordance with section 19-  
26 862A(2), Idaho Code, for less than that share.

27 (3) If the board of county commissioners of a county elects to  
28 establish and maintain an office of public defender or a joint office  
29 of public defender, the county may accept private contributions toward  
30 the support of the office.

31  
32 SECTION 5. That Chapter 8, Title 19, Idaho Code, be, and the same  
33 is hereby amended by the addition thereto of a NEW SECTION, to be  
34 known and designated as Section 19-862A, Idaho Code, and to read as  
35 follows:

36  
37 19-862A. FILING OF COMPLIANCE PLANS AND COST ANALYSES - STATE  
38 SHARE AWARDS. (1) All counties, indigent defense providers, and  
39 defending attorneys shall cooperate and participate with the  
40 commission in the investigation, audit, and review of their indigent  
41 defense services.

42 (2) On or before June 1, 2016, and by June 1 of each year  
43 thereafter, each indigent defense provider shall submit to the  
44 commission a compliance plan, which shall specifically address how  
45 indigent defense standards shall be met and, if applicable under  
46 subsection (7)(d), how any deficiencies previously identified by the  
47 commission shall be cured in the upcoming county fiscal year. The  
48 compliance plan shall also include a cost analysis, which shall  
49 specifically identify the amount of funding in excess of the  
50 applicable local share, if any, necessary to allow the indigent  
51 defense provider to successfully execute its compliance plan. In the  
52 event the commission has not yet promulgated any indigent defense



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1 standards, or the commission determines that an indigent defense  
2 provider can successfully execute its compliance plan without  
3 exhausting the entirety of the state share award for which it may be  
4 eligible, a compliance plan and cost analysis submitted pursuant to  
5 this section may request a state share award to be used for other  
6 improvements to its delivery of indigent defense services. Such other  
7 improvements may include, but are not limited to, funding for  
8 investigation costs, witness expenses, and other extraordinary  
9 litigation costs.

10 (3) The commission shall approve or disapprove a compliance plan  
11 or cost analysis, or both, submitted under subsection (2), and shall  
12 do so within sixty (60) calendar days of the submission of the  
13 compliance plan and cost analysis. If the commission disapproves the  
14 compliance plan, the cost analysis, or both, the indigent defense  
15 provider shall consult with the commission and submit a revised  
16 compliance plan, a revised cost analysis, or both within thirty (30)  
17 calendar days of the mailing date of the official notification of the  
18 commission's disapproval. If after two (2) revisions a compromise is  
19 not reached, the dispute shall be resolved as provided in section 19-  
20 862B, Idaho Code.

21 (4) On October 1, 2016, or as soon thereafter as is practicable,  
22 and on October 1 of each year thereafter, or as soon thereafter as is  
23 practicable, the commission shall distribute a one-time state share  
24 award to an indigent defense provider if:

25 (a) The indigent defense provider has filed, to the satisfaction  
26 of the commission, its most recent annual report required by  
27 section 19-864, Idaho Code;

28 (b) The indigent defense provider has filed, to the satisfaction  
29 of the commission, its most recent compliance plan and cost  
30 analysis required by subsection (2);

31 (c) The indigent defense provider has cured, to the satisfaction  
32 of the commission, any material breach of any approved compliance  
33 plan identified by the commission; and

34 (d) The commission determines that funding in excess of the  
35 indigent defense provider's local share is necessary to  
36 successfully execute its compliance plan, or the commission  
37 determines that the indigent defense provider can successfully  
38 execute its compliance plan without exhausting the entirety of  
39 the state share award for which it may be eligible but could make  
40 other improvements to its indigent defense services with  
41 additional funding.

42 (5) On or before September 1, 2016, and by September 1 of each  
43 year thereafter, the commission shall submit a report with its annual  
44 budget request to the office of the administrator of the division of  
45 financial management and the legislative services office requesting  
46 the appropriation of funds necessary to provide, as trustee and  
47 benefit payments, state share awards to indigent defense providers as  
48 approved by the commission. The information used to create this report  
49 shall be made available to the administrator of the division of  
50 financial management and the legislative services office.

51 (6) An indigent defense provider and/or county may be required to  
52 provide funds in excess of its local share in the event the cost of



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1 successfully executing its approved compliance plan exceeds the sum of  
2 its local share and the maximum state share award for which it may be  
3 eligible in a given county fiscal year.

4 (7) On or before April 30, 2017, and by April 30 of each year  
5 thereafter, an indigent defense provider shall successfully execute  
6 its most recently approved compliance plan. Each compliance plan  
7 required by subsection (2) that is submitted after April 30, 2017,  
8 shall contain an attestation stating whether the indigent defense  
9 provider has successfully executed its approved compliance plan as  
10 required by this subsection and, if not, a specific explanation for  
11 its failure to do so. In the event the commission determines that an  
12 indigent defense provider has materially breached the terms of its  
13 approved compliance plan, the commission shall, as the case may be:

14 (a) Request mediation pursuant to section 19-862B(1), Idaho Code,  
15 if the breach arises from a compliance plan approved under  
16 subsection (3) of this section;

17 (b) Bring a court action seeking equitable relief pursuant to  
18 section 19-862B(3), Idaho Code, if the breach arises from a  
19 compliance plan approved under sections 19-862B(1) or (2), Idaho  
20 Code;

21 (c) Notify the court if the breach arises from a compliance plan  
22 approved under section 19-862B(4), Idaho Code; or

23 (d) Require the breach to be cured in the indigent defense  
24 provider's upcoming compliance plan as provided in subsection (2)  
25 of this section.

26 (8) The commission may apply for and obtain grants from any  
27 source to carry out the purposes of this act. All funds received by  
28 commission, from any source, are state funds and shall be appropriated  
29 as provided by law.

30  
31 SECTION 6. That Chapter 8, Title 19, Idaho Code, be, and the same  
32 is hereby amended by the addition thereto of a NEW SECTION, to be  
33 known and designated as Section 19-862B, Idaho Code, and to read as  
34 follows:

35  
36 19-862B. DISPUTES - NON-COMPLIANCE. (1) If a dispute arises  
37 between the commission and an indigent defense provider concerning the  
38 requirements of this act, including a dispute concerning the approval  
39 of a compliance plan, cost analysis, or execution of an approved  
40 compliance plan, the parties shall attempt to resolve the dispute by  
41 mediation. The administrative director of the courts, as authorized by  
42 the supreme court, shall appoint a mediator agreed to by the parties,  
43 within thirty (30) calendar days of the mailing date of the official  
44 notification of the third disapproval by the commission under section  
45 19-862A(3), Idaho Code, to mediate the dispute and shall facilitate  
46 the mediation process. The commission shall immediately send the  
47 administrative director of the courts a copy of the official notice of  
48 said third disapproval. If the parties do not agree on the selection  
49 of the mediator, the administrative director of the courts, as  
50 authorized by the supreme court, shall appoint a mediator of his or  
51 her choosing. Mediation shall commence within thirty (30) calendar  
52 days after the mediator is appointed and terminate within sixty (60)



1 calendar days of its commencement. Mediation costs associated with  
2 mediation of the dispute shall be paid equally by the parties.

3 (2) If the parties do not come to a resolution of the dispute  
4 during mediation under subsection (1), all of the following apply:

5 (a) The mediator may submit his or her recommendation of how the  
6 dispute should be resolved to the commission within thirty (30)  
7 calendar days of the conclusion of mediation for the commission's  
8 consideration.

9 (b) The commission shall consider the recommendation of the  
10 mediator, if any, and shall approve a compliance plan or cost  
11 analysis, or both, in the manner the commission considers  
12 appropriate within thirty (30) calendar days, and the indigent  
13 defense provider shall execute the compliance plan as approved by  
14 the commission.

15 (c) The indigent defense provider that is aggrieved by the  
16 compliance plan, cost analysis, or both, approved under this  
17 subsection may bring an action seeking equitable relief as  
18 described in subsection (3).

19 (3) The commission, or an indigent defense provider, may bring an  
20 action seeking equitable relief in the district court. The action  
21 shall be brought in the judicial district where the indigent defense  
22 provider is located. The administrative director of the courts, as  
23 authorized by the supreme court, shall assign a senior judge from a  
24 judicial district other than the judicial district where the action  
25 was filed to hear the case. Costs associated with the assignment of  
26 the senior judge shall be paid equally by the parties. The action  
27 shall not challenge the validity, legality, or appropriateness of  
28 indigent defense standards. The parties may only bring an action as  
29 follows:

30 (a) If brought by the indigent defense provider, within sixty  
31 (60) calendar days after the commission's issuance of a  
32 compliance plan and cost analysis approved under subsection  
33 (2)(b); or

34 (b) If brought by the commission, within sixty (60) calendar days  
35 of the commission providing notice to the indigent defense  
36 provider that it has materially breached the terms of a  
37 compliance plan approved under subsections (1) or (2) of this  
38 section.

39 (4) The court may approve or modify the compliance plan  
40 previously approved under subsections (1) or (2), as the case may be,  
41 or the terms of the state share award up to the maximum amount to  
42 which an indigent defense provider may be eligible, and issue any  
43 orders necessary to obtain compliance with this act.

44 (5) If a party refuses or fails to comply with a previous order  
45 of the court, the court may enforce the previous order through the  
46 court's enforcement remedies, including, but not limited to, its  
47 contempt powers, and may order that the commission undertake the  
48 provision of indigent defense services in lieu of the indigent defense  
49 provider.

50 (6) If the court determines, after notification from the  
51 commission pursuant to section 19-862A(7)(c), Idaho Code, that an  
52 indigent defense provider has materially breached the terms of its



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1 approved compliance plan, the court may order the commission to  
2 provide indigent defense services on behalf of that indigent defense  
3 provider.

4 (7) If the court orders the commission to provide indigent  
5 defense services on behalf of an indigent defense provider, the court  
6 shall order the indigent defense provider and/or county to pay, in  
7 addition to its applicable local share, the full cost of compliance  
8 with indigent defense standards. If the indigent defense provider or  
9 county fails to provide to the commission any funds necessary to  
10 implement this subsection within thirty (30) days of the date of the  
11 court's order, the court may issue an appropriate order to the state  
12 tax commission, requiring the withholding of the county's share of  
13 sales tax revenue due to it pursuant to section 63-3638(10), Idaho  
14 Code, in an amount up to the full cost of compliance with indigent  
15 defense standards.

16 (8) Violation of and/or non-compliance with indigent defense  
17 standards or compliance plans does not, in and of itself, constitute  
18 ineffective assistance of counsel under the constitutions of the  
19 United States or the state of Idaho and does not otherwise constitute  
20 grounds for post-conviction relief, though evidence of such violation  
21 and/or non-compliance may be relevant to such a determination.

22  
23 SECTION 7. That Section 19-864, Idaho Code, be, and the same is  
24 hereby amended to read as follows:

25  
26 19-864. RECORDS OF DEFENDING ATTORNEYS -- ANNUAL REPORT OF  
27 DEFENDING ATTORNEYS. (1) A Indigent defense providers and defending  
28 attorneys shall keep appropriate records respecting each person whom  
29 he they represent under this act.

30 (2) On or before November 1, 2016, and by November 1 of each year  
31 thereafter, indigent defense providers and defending attorneys shall  
32 submit an annual report to the board of county commissioners, and the  
33 appropriate administrative district judge, and the commission in  
34 conformance with the rules promulgated pursuant to section 19-  
35 850(1)(a)(ii), Idaho Code, showing to include, but not be limited to,  
36 the number of persons represented under this act, the crimes involved  
37 and the expenditures, totaled by kind, made in carrying out the  
38 responsibilities imposed by this act.