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LEGISLATURE OF THE STATE OF IDAHO  
Sixty-third Legislature Second Regular Session - 2016  
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1 AN ACT  
2 RELATING TO PUBLIC DEFENSE; AMENDING SECTION 19-850, IDAHO CODE, ; AMENDING  
3 SECTION 19-851, IDAHO CODE, ; AMENDING SECTION 19-853, IDAHO CODE, ;  
4 AMENDING SECTION 19-862, IDAHO CODE, ; AMENDING CHAPTER 8, TITLE 19,  
5 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-862A, IDAHO CODE, ;  
6 AMENDING SECTION 19-864, IDAHO CODE, AND DECLARING AN EMERGENCY.

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

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

10 19-850. POWERS AND DUTIES OF THE STATE PUBLIC DEFENSE COMMISSION. (1)  
11 The state public defense commission shall:

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

14 (i) Training and continuing legal education requirements for de-  
15 fending attorneys, which shall promote competency and consistency  
16 in case types including, but not limited to, criminal, juvenile,  
17 abuse and neglect, post-conviction, civil commitment, capital and  
18 civil contempt; and

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

23 (iii) Model contracts and core requirements for contracts between  
24 counties and private attorneys for the provision of indigent de-  
25 defense services, that shall include, but not be limited to, manda-  
26 tory compliance with indigent defense standards;

27 (iv) Procedures and forms by which counties may apply to the com-  
28 mission, pursuant to section 19-862A, Idaho Code, for funds to be  
29 used to bring their delivery of indigent defense services into  
30 compliance with applicable indigent defense standards;

31 (v) Procedures for administrative review and fair hearings in ac-  
32 cordance with the Idaho administrative procedures act; and

33 (vi) Standards for defending attorneys that adhere to the extent  
34 reasonably practicable to the following principles:

35 1. The delivery of indigent defense services should be inde-  
36 pendent of political and judicial influence, though the ju-  
37 diiciary is encouraged to contribute information and advice  
38 concerning the delivery of indigent defense services.

39 2. Indigent defense services provided by defending attor-  
40 neys should be supplemented with the active participation of  
41 the private bar when caseloads are sufficiently high.

- 1                    3. Defending attorneys should be provided with sufficient
- 2                    time and private space so that attorney-client confiden-
- 3                    tiality is safeguarded during meetings with clients.
- 4                    4. Defending attorneys' workloads should be controlled to
- 5                    permit effective representation, taking into considera-
- 6                    tion factors such as case complexity, support services, and
- 7                    travel.
- 8                    5. Economic disincentives or incentives that impair defend-
- 9                    ing attorneys' ability to provide effective representation
- 10                   should be avoided.
- 11                   6. Defending attorneys' abilities, training and experience
- 12                   should match the nature and complexity of the cases in which
- 13                   they provide services including, but not limited to, cases
- 14                   involving complex felonies, juveniles or child protection.
- 15                   7. The same defending attorney assigned to a particular case
- 16                   should, to the extent reasonably practicable, continuously
- 17                   oversee the representation of that case and personally ap-
- 18                   pear at every substantive court hearing.
- 19                   8. There should be reasonable equity between defending
- 20                   attorneys and prosecuting attorneys with respect to re-
- 21                   sources, staff and facilities.
- 22                   9. Defending attorneys should obtain continuing legal edu-
- 23                   cation relevant to their indigent defense cases.
- 24                   10. Defending attorneys should be regularly reviewed and
- 25                   supervised by their superiors for conformance with indigent
- 26                   defense standards.
- 27                   11. Defending attorneys should identify and resolve con-
- 28                   licts of interest in conformance with the Idaho rules of
- 29                   professional conduct and other applicable constitutional
- 30                   standards.
- 31                   (b) On or before January 20, 2015, and by January 20 of each year there-
- 32                   after as deemed necessary by the commission, make recommendations to
- 33                   the Idaho legislature for legislation on public defense system issues
- 34                   including, but not limited to:
  - 35                   (i) ~~Core requirements for contracts between counties and private~~
  - 36                   ~~attorneys for the provision of indigent defense services and pro-~~
  - 37                   ~~posed model contracts for counties to use;~~
  - 38                   ~~(ii) Qualifications and experience standards for the public de-~~
  - 39                   ~~fender and defending attorneys;~~
  - 40                   ~~(iii) Enforcement mechanisms; and~~
  - 41                   ~~(iv) Funding issues including, but not limited to, formulas~~
  - 42                   ~~for the calculation of local shares and state indigent defense~~
  - 43                   ~~grants~~
    - 44                   1. ~~Training and continuing legal education for defending~~
    - 45                   ~~attorneys;~~
    - 46                   2. ~~Data collection and reporting efforts; and~~
    - 47                   3. ~~Conflict cases.~~
- 48                   (c) Develop and oversee the implementation, enforcement and modifica-
- 49                   tion of indigent defense standards to ensure that the right to counsel

1 of indigent persons, as provided in section 19-852, Idaho Code, is con-  
2 sistently delivered to all indigent persons in this state.

3 (d) Investigate and review the operations of indigent defense  
4 providers and defending attorneys to ensure compliance with indigent  
5 defense standards and the terms of state indigent defense grants.

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

7 (2) The state public defense commission may:

8 (a) Hire an executive director who shall be responsible for the per-  
9 formance of the regular administrative functions of the commission and  
10 other duties as the commission may direct. The executive director shall  
11 be a nonclassified state employee and shall be compensated as deter-  
12 mined by the commission.

13 (b) Employ persons in addition to the executive director in other po-  
14 sitions or capacities as it deems necessary to the proper conduct of  
15 commission business and to the fulfillment of the commission's respon-  
16 sibilities. The employees of the commission other than the executive  
17 director shall be classified employees and shall receive as compen-  
18 sation an annual salary payable on regular pay periods, the amount of  
19 which shall be determined by the commission.

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

23 (d) Provide training and continuing legal education for indigent de-  
24 fense providers and defending attorneys in order to assist them in sat-  
25 isfying requirements promulgated pursuant to subparagraph (1) (a) (i) of  
26 this section, and use monies received from a grant or trust or otherwise  
27 received or appropriated to provide such training and continuing legal  
28 education.

29 (e) Establish procedures under which indigent defense providers may  
30 apply to the commission for funds to be used for extraordinary litiga-  
31 tion costs including, but not limited to, expert witnesses and investi-  
32 gation, but not including expenses associated with capital crimes.

33 (3) Violation of or non-compliance with standards promulgated pursuant  
34 to subparagraph (1) (a) (vi) of this section does not, in and of itself, con-  
35 stitute ineffective assistance of counsel under the constitutions of the  
36 United States or the state of Idaho and does not otherwise constitute grounds  
37 for post-conviction relief, though evidence of such violation or non-com-  
38 pliance may be relevant to such a determination.

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

41 19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In this  
42 act, the term:

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

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

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

3 (4) "Indigent person" means a person who, at the time his need is deter-  
4 mined pursuant to section 19-854, Idaho Code, is unable to provide for the  
5 full payment of an attorney and all other necessary expenses of representa-  
6 tion;

7 (5) "Serious crime" means any offense the penalty for which includes  
8 the possibility of confinement, incarceration, imprisonment or detention in  
9 a correctional facility, regardless of whether actually imposed.

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

12 (7) "Local share" means the benchmark figure used to calculate the min-  
13 imum amount of county funding that shall be maintained by a county and the  
14 award amount of state indigent defense grants for which a county may be eli-  
15 gible pursuant to section 19-862A, Idaho Code. For any given county fiscal  
16 year, a county's local share shall be calculated by averaging the total an-  
17 ual amount in county funds expended by that county for indigent defense dur-  
18 ing the first three (3) of the most recently completed five (5) county fis-  
19 cal years, as certified by the county treasurer. In calculating this amount,  
20 county indigent defense expenditures shall not include:

21 (a) Amounts derived from state indigent defense grants; and

22 (b) Amounts expended for capital cases by those counties participat-  
23 ing in the capital crimes defense program in excess of premiums and de-  
24 ductibles required by guidelines approved by the Idaho capital crimes  
25 defense fund board of directors.

26 (8) "Indigent defense provider" means any agency, entity, organization  
27 or person selected by a board of county commissioners in accordance with sec-  
28 tion 19-859, Idaho Code, or the commission when it has undertaken the provi-  
29 sion of indigent defense services pursuant to section 19-862A(7) (b), Idaho  
30 Code, as a means to provide for the representation of indigent persons and  
31 other individuals who are entitled to be represented by an attorney at public  
32 expense.

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

35 (10) "State indigent defense grant" means the state funding a county may  
36 be awarded pursuant to section 19-862A, Idaho Code. Until June 30, 2019, a  
37 county may not receive a state indigent defense grant in any given county  
38 fiscal year that exceeds fifteen percent (15%) of the county's local share  
39 for said county fiscal year or twenty-five thousand dollars (\$25,000),  
40 whichever is greater. In the event a county elects to join with the board of  
41 county commissioners of one (1) or more other counties within the same ju-  
42 dicial district to establish and maintain a joint office of public defender  
43 pursuant to section 19-859(2), Idaho Code, each participating county shall  
44 be eligible for an additional twenty-five thousand dollars (\$25,000) per  
45 year.

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

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

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

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

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

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

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

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

33 19-862. APPROPRIATION FOR PUBLIC DEFENDER -- PRIVATE CONTRIBU-  
34 TIONS. (1) The board of county commissioners of each county shall annually  
35 appropriate enough money to administer fund the program of representation  
36 indigent defense provider that it has ~~elected~~ selected under section 19-859,  
37 Idaho Code, and, except as provided in subsection (2) of this section, shall  
38 maintain not less than its local share.

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

42 (3) If the board of county commissioners of a county elects to estab-  
43 lish and maintain an office of public defender or a joint office of public  
44 defender, the county may accept private contributions toward the support of  
45 the office.

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

4 19-862A. FILING OF GRANT APPLICATIONS - INDIGENT DEFENSE GRANTS -  
5 GRANT COMPLIANCE. (1) All counties, indigent defense providers and defend-  
6 ing attorneys shall cooperate and participate with the commission in the  
7 investigation and review of their indigent defense services.

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

24 (3) The commission shall approve or disapprove the application submit-  
25 ted under subsection (2) of this section, and shall do so within sixty (60)  
26 calendar days of the submission of the application. If the commission dis-  
27 approves the application, the county shall consult with the commission and  
28 submit a revised application within thirty (30) calendar days of the mailing  
29 date of the official notification of the commission's disapproval. If after  
30 two (2) revisions a compromise is not reached, any dispute shall be resolved  
31 in accordance with the Idaho administrative procedures act and rules promul-  
32 gated by the commission pursuant to section 19-850(1) (a) (v), Idaho Code.

33 (4) On October 1, 2016, or as soon thereafter as is practicable, and on  
34 October 1 of each year thereafter, or as soon thereafter as is practicable,  
35 the commission shall distribute a one-time state indigent defense grant to a  
36 county if:

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

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

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

46 (5) On or before September 1, 2016, and by September 1 of each year  
47 thereafter, the commission shall submit a report with its annual budget  
48 request to the office of the administrator of the division of financial man-  
49 agement and the legislative services office requesting the appropriation

1 of funds necessary to provide state indigent defense grants to counties as  
2 approved by the commission. The information used to create this report shall  
3 be made available to the administrator of the division of financial manage-  
4 ment and the legislative services office.

5 (6) A county may be required to provide funds in excess of its local  
6 share in the event the cost of successfully executing its plan submitted pur-  
7 suant to subsection (2) exceeds the sum of its local share and the maximum  
8 state indigent defense grant for which it may be eligible in a given county  
9 fiscal year.

10 (7) On or before April 30, 2017, and by April 30 of each year thereafter,  
11 counties shall comply with indigent defense standards. Each application re-  
12 quired by subsection (2) of this section that is submitted after April 30,  
13 2017, shall contain an attestation stating whether the county has complied  
14 with indigent defense standards as required by this subsection and, if not,  
15 a specific explanation for its failure to do so. In the event the commission  
16 determines that any county has failed to materially comply with indigent de-  
17 fense standards, the commission shall, as the case may be:

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

22 (b) Undertake the provision of indigent defense services in lieu of the  
23 county as provided in subsection (8) of this section.

24 (8) If the commission undertakes the provision of indigent defense ser-  
25 vices in lieu of the county, as provided in subsection (7) (b) of this sec-  
26 tion, the county shall pay to the commission, notwithstanding the county's  
27 applicable local share, an amount up to the full cost of compliance with in-  
28 digent defense standards incurred by the commission in providing indigent  
29 defense services, as billed by the commission on an annual basis coincid-  
30 ing with the county fiscal year. If the county fails to provide the com-  
31 mission with the funds necessary to implement this subsection within thirty  
32 (30) days of the date of the commission's billing, the state tax commission  
33 shall withhold the county's annual share of sales tax revenue due to it pur-  
34 suant to section 63-3638(10), Idaho Code, in the amount billed to the county  
35 by the commission, and provide the withheld funds to the commission.

36 (9) A county aggrieved by a decision made by the commission pursuant to  
37 subsections (7) (a) or (7) (b) of this section shall be afforded reasonable  
38 notice and opportunity for a fair hearing in accordance with the Idaho admin-  
39 istrative procedures act and rules promulgated by the commission pursuant to  
40 section 19-850(1) (a) (v), Idaho Code.

41 (10) Failure to comply with the standards promulgated pursuant to sec-  
42 tion 19-850(1) (a) (vi), Idaho Code, or the terms of a state indigent defense  
43 grant does not, in and of itself, constitute ineffective assistance of counsel  
44 under the constitutions of the United States or the state of Idaho and  
45 does not otherwise constitute grounds for post-conviction relief, though  
46 evidence of such violation or non-compliance may be relevant to such a deter-  
47 mination.

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

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

5 (2) On or before November 1, 2016, and by November 1 of each year there-  
6 after, indigent defense providers and dDefending attorneys shall submit an  
7 annual report to the board of county commissioners and, the appropriate ad-  
8 ministrative district judge showing and the commission in conformance with  
9 the rules promulgated pursuant to section 19-850(1) (a) (ii), Idaho Code, to  
10 include, but not be limited to, the number of persons represented under this  
11 act, the crimes and charges involved, disposition of the cases and the expen-  
12 ditures, totaled by kind case type, made in carrying out the responsibili-  
13 ties imposed by this act.

14 SECTION 7. 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.