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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 CHAPTER 8, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SEC-  
7 TION 19-862B, IDAHO CODE, ; AMENDING SECTION 19-864, IDAHO CODE, ; AND  
8 DECLARING AN EMERGENCY.

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

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

12 19-850. POWERS AND DUTIES OF THE STATE PUBLIC DEFENSE COMMISSION. (1)  
13 The state public defense commission shall:

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

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

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

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

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

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

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

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

- 1                    2. Indigent defense services provided by defending attor-
- 2                    neys should be supplemented with the active participation of
- 3                    the private bar when caseloads are sufficiently high.
- 4                    3. Defending attorneys should be provided with sufficient
- 5                    time and private space so that attorney-client confiden-
- 6                    tiality is safeguarded during meetings with clients.
- 7                    4. Defending attorneys' workloads should be controlled to
- 8                    permit effective representation, taking into considera-
- 9                    tion factors such as case complexity, support services, and
- 10                   travel.
- 11                   5. Economic disincentives or incentives that impair defend-
- 12                   ing attorneys' ability to provide effective representation
- 13                   should be avoided.
- 14                   6. Defending attorneys' abilities, training and experience
- 15                   should match the nature and complexity of the cases in which
- 16                   they provide services including, but not limited to, cases
- 17                   involving complex felonies, juveniles or child protection.
- 18                   7. The same defending attorney assigned to a particular case
- 19                   should, to the extent reasonably practicable, continuously
- 20                   oversee the representation of that case and personally ap-
- 21                   pear at every substantive court hearing.
- 22                   8. There should be reasonable equity between defending
- 23                   attorneys and prosecuting attorneys with respect to re-
- 24                   sources, staff and facilities.
- 25                   9. Defending attorneys should obtain continuing legal edu-
- 26                   cation relevant to their indigent defense cases.
- 27                   10. Defending attorneys should be regularly reviewed and
- 28                   supervised by their superiors for conformance with indigent
- 29                   defense standards.
- 30                   11. Defending attorneys should identify and resolve con-
- 31                   licts of interest in conformance with the Idaho rules of
- 32                   professional conduct and other applicable constitutional
- 33                   standards.

(vii) Procedures by which regional public defenders shall perform their duties as prescribed in section 19-862B, Idaho Code.

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

- (i) ~~Core requirements for contracts between counties and private attorneys for the provision of indigent defense services and proposed model contracts for counties to use;~~
- (ii) ~~Qualifications and experience standards for the public defender and defending attorneys;~~
- (iii) ~~Enforcement mechanisms; and~~
- (iv) Funding issues including, but not limited to, formulas for the calculation of local shares and state indigent defense grants

~~1. Training and continuing legal education for defending attorneys;~~

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

2                   3. ~~Conflict cases.~~

3                   (c) Develop and oversee the implementation, enforcement and modifica-  
4 tion of indigent defense standards, in conjunction with the regional  
5 public defenders pursuant to section 19-862B, Idaho Code, to ensure  
6 that the right to counsel of indigent persons, as provided in section  
7 19-852, Idaho Code, is consistently delivered to all indigent persons  
8 in this state.

9                   (d) Investigate and review the operations of indigent defense  
10 providers and defending attorneys, in conjunction with the regional  
11 public defenders pursuant to section 19-862B, Idaho Code, to ensure  
12 compliance with indigent defense standards and the terms of state indi-  
13 gent defense grants.

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

15                   (f) Hire seven (7) regional public defenders who shall be responsible  
16 for the duties prescribed in section 19-862B, Idaho Code.

17                   (2) The state public defense commission may:

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

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

31                   (c) Provide an office, office equipment and facilities as may be rea-  
32 sonably necessary for the proper performance of its duties or the duties  
33 of the executive director, regional public defenders and other person-  
34 nel.

35                   (d) Provide training and continuing legal education for indigent de-  
36 fense providers and defending attorneys, in conjunction with the re-  
37 gional public defenders pursuant to section 19-862B, Idaho Code, in or-  
38 der to assist them in satisfying requirements promulgated pursuant to  
39 subparagraph (1) (a) (i) of this section, and use monies received from  
40 a grant or trust or otherwise received or appropriated to provide such  
41 training and continuing legal education.

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

46                   (3) Violation of or non-compliance with standards promulgated pursuant  
47 to subparagraph (1) (a) (vi) of this section does not, in and of itself, con-  
48 stitute ineffective assistance of counsel under the constitutions of the  
49 United States or the state of Idaho and does not otherwise constitute grounds

1 for post-conviction relief, though evidence of such violation or non-com-  
2 pliance may be relevant to such a determination.

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

5 19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In this  
6 act, the term:

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

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

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

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

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

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

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

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

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

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

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

46 (10) "Regional public defender" means a person, located within one of  
47 the seven (7) judicial districts in the this state, appointed by the commis-  
48 sion to perform the duties prescribed in section 19-862B, Idaho Code.

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

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

14        19-853. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL. (1) If  
15 a person who is being detained by a law enforcement officer, or who is con-  
16 fined or who is the subject of hospitalization proceedings pursuant to sec-  
17 tion 66-322, 66-326, 66-329, 66-404 or 66-406, Idaho Code, or who is under  
18 formal charge of having committed, or is being detained under a conviction  
19 of, a serious crime, is not represented by an attorney under conditions in  
20 which a person having his own counsel would be entitled to be so represented,  
21 the law enforcement officers concerned, upon commencement of detention, or  
22 the court, upon formal charge or hearing, as the case may be, shall:

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

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

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

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

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

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

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

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

10 (3) If the board of county commissioners of a county elects to estab-  
11 lish and maintain an office of public defender or a joint office of public  
12 defender, the county may accept private contributions toward the support of  
13 the office.

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

17 19-862A. FILING OF GRANT APPLICATIONS - INDIGENT DEFENSE GRANTS -  
18 GRANT COMPLIANCE. (1) All counties, indigent defense providers and defend-  
19 ing attorneys shall cooperate and participate with the commission in the  
20 investigation and review of their indigent defense services.

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

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

46 (4) On October 1, 2016, or as soon thereafter as is practicable, and on  
47 October 1 of each year thereafter, or as soon thereafter as is practicable,

1 the commission shall distribute a one-time state indigent defense grant to a  
2 county if:

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

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

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

12 (5) On or before September 1, 2016, and by September 1 of each year  
13 thereafter, the commission shall submit a report with its annual budget  
14 request to the office of the administrator of the division of financial man-  
15 agement and the legislative services office requesting the appropriation  
16 of funds necessary to provide state indigent defense grants to counties as  
17 approved by the commission. The information used to create this report shall  
18 be made available to the administrator of the division of financial manage-  
19 ment and the legislative services office.

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

25 (7) On or before April 30, 2017, and by April 30 of each year thereafter,  
26 counties shall comply with indigent defense standards. Each application re-  
27 quired by subsection (2) of this section that is submitted after April 30,  
28 2017, shall contain an attestation stating whether the county has complied  
29 with indigent defense standards as required by this subsection and, if not,  
30 a specific explanation for its failure to do so. In the event the commission  
31 determines that any county has failed to materially comply with indigent de-  
32 fense standards, the commission shall, as the case may be:

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

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

39 (8) If the commission undertakes the provision of indigent defense ser-  
40 vices in lieu of the county, as provided in subsection (7) (b) of this sec-  
41 tion, the county shall pay to the commission, notwithstanding the county's  
42 applicable local share, an amount up to the full cost of compliance with in-  
43 digent defense standards incurred by the commission in providing indigent  
44 defense services, as billed by the commission on an annual basis coincid-  
45 ing with the county fiscal year. If the county fails to provide the com-  
46 mission with the funds necessary to implement this subsection within thirty  
47 (30) days of the date of the commission's billing, the state tax commission  
48 shall withhold the county's annual share of sales tax revenue due to it pur-  
49 suant to section 63-3638(10), Idaho Code, in the amount billed to the county  
50 by the commission, and provide the withheld funds to the commission.

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

6 (10) Failure to comply with the terms of a state indigent defense grant  
7 does not, in and of itself, constitute ineffective assistance of counsel un-  
8 der the constitutions of the United States or the state of Idaho and does not  
9 otherwise constitute grounds for post-conviction relief, though evidence of  
10 such violation or non-compliance may be relevant to such a determination.

11 SECTION 6. That Chapter 8, Title 19, Idaho Code, be, and the same is  
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
13 ignated as Section 19-862B, Idaho Code, and to read as follows:

14 19-862B. REGIONAL PUBLIC DEFENDERS -- CREATION -- APPOINTMENT --  
15 QUALIFICATIONS -- TERM -- DUTIES -- REPORTING. (1) There are hereby created  
16 in the public defense commission seven (7) offices of regional public de-  
17 fense, one (1) of which shall be located within each of the seven (7) judicial  
18 districts in this state as described in chapter 8, title 1, Idaho Code.

19 (2) Each office of regional public defense shall be headed by a regional  
20 public defender who shall:

- 21 (a) Be appointed by the commission;
- 22 (b) Be an attorney licensed to practice law in the state of Idaho and  
23 shall have a minimum of five (5) years' experience as a defending attor-  
24 ney;
- 25 (c) Serve for a term of four (4) years, during which term he may be re-  
26 moved only for good cause;
- 27 (d) Be compensated in an amount determined by the commission; and
- 28 (e) Be subject to such further qualifications that the commission deems  
29 necessary for the position.

30 (3) Each regional public defender shall, within his respective judi-  
31 cial district:

32 (a) Assist indigent defense providers and defending attorneys with the  
33 filing of grant applications made pursuant to section 19-862A, Idaho  
34 Code, and with identifying any deficiencies in meeting the standards  
35 promulgated by the commission pursuant to section 19-850(1) (a) (vi),  
36 Idaho Code;

37 (b) Assist indigent defense providers and defending attorneys with the  
38 implementation of indigent defense standards to ensure that the right  
39 to counsel of indigent persons, as provided in section 19-852, Idaho  
40 Code, is consistently delivered to all indigent persons in the judicial  
41 district;

42 (c) Investigate and review the operations of indigent defense  
43 providers and defending attorneys in the judicial district to ensure  
44 compliance with indigent defense standards and the terms of state indi-  
45 gent defense grants;

46 (d) Assist in providing training and continuing legal education for  
47 indigent defense providers and defending attorneys in the judicial dis-

1           trict in order to assist them in satisfying requirements promulgated  
2           pursuant to section 19-850(1)(a)(i), Idaho Code; and  
3           (e) Ensure accurate and timely reporting by indigent defense providers  
4           and defending attorneys in the judicial district as required by section  
5           19-864, Idaho Code.  
6           (4) On or before September 1, 2016, and by September 1 of each year  
7           thereafter, and on or before March 1, 2017, and by March 1 of each year  
8           thereafter, each regional public defender shall submit a report to the com-  
9           mission, with respect to the duties prescribed in subsection (3) of this  
10          section, detailing whether indigent defense providers and defending attor-  
11          neys in the judicial district are:  
12          (a) Complying with the indigent defense standards as provided in sec-  
13          tion 19-850(1)(a)(vi), Idaho Code;  
14          (b) Complying with the terms of state indigent defense grants as pro-  
15          vided in section 19-862A(7), Idaho Code;  
16          (c) Satisfying training and continuing legal education requirements  
17          promulgated pursuant to section 19-850(1)(a)(i), Idaho Code; and  
18          (d) Accurately and timely submitting reports as provided in section  
19          19-864, Idaho Code.

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

22           19-864. RECORDS OF DEFENDING ATTORNEYS -- ANNUAL REPORT OF DEFENDING  
23           ATTORNEYS. (1) A Indigent defense providers and defending attorneys shall  
24           keep appropriate records respecting each person whom ~~he~~ they represents un-  
25           der this act.  
26           (2) On or before November 1, 2016, and by November 1 of each year there-  
27           after, indigent defense providers and dDefending attorneys shall submit an  
28           annual report to the board of county commissioners and, the appropriate ad-  
29           ministrative district judge showing, the commission and the appropriate re-  
30           gional public defender in conformance with the rules promulgated pursuant  
31           to section 19-850(1)(a)(ii), Idaho Code, to include, but not be limited to,  
32           the number of persons represented under this act, the crimes and charges in-  
33           volved, disposition of the cases and the expenditures, totaled by kind case  
34           type, made in carrying out the responsibilities imposed by this act.

35           SECTION 8. An emergency existing therefor, which emergency is hereby  
36           declared to exist, this act shall be in full force and effect on and after its  
37           passage and approval.