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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 capital, abuse and neglect, post-conviction, civil commitment,
18 ~~capital~~ and ~~civil~~ criminal 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;

33 (vi) Procedures for the oversight, implementation, enforcement
34 and modification of indigent defense standards so that the right
35 to counsel of indigent persons, as provided in section 19-852,
36 Idaho Code, is constitutionally delivered to all indigent persons
37 in this state; and

38 (vii) Standards for defending attorneys that utilize to the extent
39 reasonably practicable, taking into consideration factors such
40 as case complexity, support services, and travel, the following
41 principles:

- 1 1. The delivery of indigent defense services should be inde-
2 pendent of political and judicial influence, though the ju-
3 diiciary is encouraged to contribute information and advice
4 concerning the delivery of indigent defense services.
- 5 2. Defending attorneys should have sufficient time and pri-
6 ivate physical space so that attorney-client confidentiality
7 is safeguarded during meetings with clients.
- 8 3. Defending attorneys' workloads should permit effective
9 representation.
- 10 4. Economic disincentives or incentives that impair defend-
11 ing attorneys' ability to provide effective representation
12 should be avoided.
- 13 5. Defending attorneys' abilities, training and experience
14 should match the nature and complexity of the cases in which
15 they provide services including, but not limited to, cases
16 involving complex felonies, juveniles or child protection.
- 17 6. The defending attorney assigned to a particular case
18 should, to the extent reasonably practicable, continuously
19 oversee the representation of that case and personally ap-
20 pear at every substantive court hearing.
- 21 7. There should be reasonable equity between defending
22 attorneys and prosecuting attorneys with respect to re-
23 sources, staff and facilities.
- 24 8. Defending attorneys should obtain continuing legal edu-
25 cation relevant to their indigent defense cases.
- 26 9. Defending attorneys should be regularly reviewed and
27 supervised for conformance with indigent defense standards
28 and, if applicable, compliance with indigent defense stan-
29 dards as set forth in contractual provisions.
- 30 10. 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.

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

- 38 ~~(i) Core requirements for contracts between counties and private~~
39 ~~attorneys for the provision of indigent defense services and pro-~~
40 ~~posed model contracts for counties to use;~~
- 41 ~~(ii) Qualifications and experience standards for the public de-~~
42 ~~fender and defending attorneys;~~
- 43 ~~(iii) Enforcement mechanisms; and~~
- 44 ~~(iv) Funding issues including, but not limited to, formulas~~
45 ~~for the calculation of local shares and state indigent defense~~
46 ~~grants~~
 - 47 1. Training and continuing legal education for defending
48 attorneys;
 - 49 2. Data collection and reporting efforts; and
 - 50 3. Conflict cases.

1 (c) Review the operations of indigent defense providers and defending
2 attorneys to evaluate compliance with indigent defense standards and
3 the terms of state indigent defense grants.

4 (d) Hold at least one (1) meeting in each calendar quarter.

5 (2) The state public defense commission may:

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

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

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

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

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

32 (f) File a civil action against a county to:

33 (i) Recoup the costs incurred by the commission, as billed pur-
34 suant to section 19-862A(10), Idaho Code, in providing indigent
35 defense services in lieu of the county; and

36 (ii) Enforce the standards promulgated pursuant to subparagraph
37 (1) (a) of this section.

38 (3) Violation of or non-compliance with standards promulgated pursuant
39 to subparagraph (1) (a) of this section does not constitute ineffective as-
40 sistance of counsel under the constitutions of the United States or the state
41 of Idaho and does not otherwise constitute grounds for post-conviction re-
42 lief.

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

45 19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In this
46 act, the term:

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

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

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

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

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

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

17 (7) "Local share" means the benchmark figure used to calculate the
18 minimum amount of county funding that shall be maintained by a county and
19 to calculate the award amount of state indigent defense grants for which
20 a county may be eligible pursuant to section 19-862A, Idaho Code. For any
21 given county fiscal year, a county's local share shall be the median of the
22 annual amount in county funds expended by that county for indigent defense
23 during each of the first three (3) of the most recently completed five (5)
24 county fiscal years, as certified by the county treasurer. In calculating
25 this amount, county indigent defense expenditures shall not include:

26 (a) Amounts received from the public defense commission; and

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

31 (8) "Indigent defense provider" means any agency, entity, organization
32 or person selected by a board of county commissioners in accordance with sec-
33 tion 19-859, Idaho Code, or the commission when it has undertaken the provi-
34 sion of indigent defense services pursuant to section 19-862A(9) (b), Idaho
35 Code, as a means to provide for the representation of indigent persons and
36 other individuals who are entitled to be represented by an attorney at public
37 expense.

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

40 (10) "State indigent defense grant" means the state funding a county may
41 be awarded pursuant to section 19-862A, Idaho Code. From the effective date
42 of this act until June 30, 2019, a county may receive a state indigent defense
43 grant in any given county fiscal year, and such a grant shall not exceed fif-
44 teen percent (15%) of the county's local share for said county fiscal year or
45 twenty-five thousand dollars (\$25,000), whichever is greater. If a county
46 elects to join with the board of county commissioners of one (1) or more other
47 counties within the same judicial district to establish and maintain a joint
48 office of public defender pursuant to section 19-859(2), Idaho Code, each
49 participating county shall be eligible for an additional twenty-five thou-
50 sand dollars (\$25,000) per year.

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

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

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

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

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

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

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

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

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

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

44 (3) If the board of county commissioners of a county elects to estab-
45 lish and maintain an office of public defender or a joint office of public
46 defender, the county may accept private contributions toward the support of
47 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. COMPLIANCE -- INDIGENT DEFENSE GRANTS. (1) All counties, in-
5 digent defense providers and defending attorneys shall cooperate and par-
6 ticipate with the commission in the review of their indigent defense ser-
7 vices.

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 (9) (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 the approved state indigent defense grant to
36 a 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 all counties shall comply with indigent defense standards.

12 (8) Each application submitted pursuant to subsection (2) of this sec-
13 tion that is submitted after April 30, 2017, shall contain an attestation
14 stating whether the county has complied with indigent defense standards as
15 required by this subsection and, if not, a specific explanation for its fail-
16 ure to do so.

17 (9) In the event the commission determines that any county has failed to
18 materially comply with indigent defense standards, the commission shall:

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

23 (b) If any county has willfully and materially failed to comply with in-
24 digent defense standards, undertake the provision of indigent defense
25 services in lieu of the county as provided in subsection (10) of this
26 section; or

27 (c) If any county has willfully and materially failed to comply with
28 indigent defense standards, file a civil action for injunctive relief
29 to enforce the standards promulgated pursuant to section 19-850(1) (a),
30 Idaho Code.

31 (10) If the commission undertakes the provision of indigent defense
32 services in lieu of the county, as provided in subsection (9) (b) of this sec-
33 tion, the county shall pay to the commission, notwithstanding the county's
34 applicable local share, an amount up to the full cost of compliance with
35 indigent defense standards incurred by the commission in providing indigent
36 defense services, as billed by the commission on an annual basis coinciding
37 with the county fiscal year. Such amount shall be paid to the commission
38 within sixty (60) days of receipt of the billing by the county.

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

44 (12) Failure to comply with the standards promulgated pursuant to sec-
45 tion 19-850(1) (a), Idaho Code, or the terms of a state indigent defense grant
46 does not constitute ineffective assistance of counsel under the constitu-
47 tions of the United States or the state of Idaho and does not otherwise con-
48 stitute grounds for post-conviction relief.

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

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

7 (2) On or before November 1 of each year, indigent defense providers
8 and any dDefending attorneys whose information is not otherwise included in
9 a report from an indigent defense provider shall submit an annual report to
10 the board of county commissioners ~~and,~~ the appropriate administrative dis-
11 trict judge ~~showing~~ and the commission in conformance with the rules promul-
12 gated pursuant to section 19-850(1)(a)(ii), Idaho Code, to include, but not
13 be limited to, the number of persons represented under this act, the crimes
14 and charges involved, disposition of the cases and the expenditures, totaled
15 by kind case type, made in carrying out the responsibilities imposed by this
16 act.

17 SECTION 7. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after its
19 passage and approval.