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Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators LODGE, Lee, Burgoyne and,
Representatives LUKER, Malek, Gannon

FROM: Ryan Bush - Principal Legislative Research Analyst

DATE: April 04, 2017

SUBJECT: Temporary Rule

IDAPA 61.01.04 - Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants (New Chapter) - Adoption of Temporary Rule - Docket No. 61-0104-1701

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Ryan Bush at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

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IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

**61.01.04 – RULES GOVERNING PROCEDURES AND FORMS FOR THE APPLICATION
AND DISBURSEMENT OF INDIGENT DEFENSE GRANTS**

DOCKET NO. 61-0104-1701 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 3, 2017.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 19-850(1)(a)(iv).

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The PDC has been appropriated over 4.2 million dollars to disburse to the counties to assist with compliance of indigent defense standards and for the improvement of indigent defense delivery systems. The agency must have a mechanism with which to disburse these funds upon application to the counties. The PDC desires to implement a rule immediately that will provide the procedure and forms for the application and disbursement of these indigent defense grants. Additionally, though Idaho Code provides authority for the PDC to create temporary procedures for this process, those temporary procedures are not subject to administrative or judicial review. This temporary rule allows for such review to be available to applicants and recipients of the grants. See Section 19-850(1)(d), Idaho Code.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Adoption of this temporary rule will provide the PDC a mechanism to disburse the appropriated funds upon application by the counties thus conferring a benefit to indigent defense recipients.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There will be no negative fiscal impact on the state general fund as the funds have already been appropriated.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Kimberly Simmons at (208) 332-1735.

DATED this 1st day of March, 2017.

Kimberly Simmons, Executive Director
State Public Defense Commission
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Boise, Idaho 83702
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 61-0104-1701
(New Chapter)**

IDAPA 61
TITLE 01
CHAPTER 014

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

**61.01.04 – RULES GOVERNING PROCEDURES AND FORMS FOR THE APPLICATION
AND DISBURSEMENT OF INDIGENT DEFENSE GRANTS**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(iv), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding procedures and forms by which 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 applicable indigent defense standards. (3-3-17)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants.” (3-3-17)T

02. Scope. These rules establish the procedures by which counties may apply for Indigent Defense Grants to improve the delivery of indigent defense services and come into compliance with Indigent Defense Standards. (3-3-17)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. (3-3-17)T

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to create procedures for the application and disbursement of Indigent Defense Grants is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” (3-3-17)T

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-3-17)T

01. Standards For Defending Attorneys. “Standards For Defending Attorneys,” edition 2016, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <http://pdc.idaho.gov/wp-content/uploads/sites/11/2017/01/Standards-for-Defending-Attorneys-FINAL.pdf>. (3-3-17)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. (3-3-17)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The records relative to any IDG application are public records and are controlled pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-3-17)T

007 -- 009. (RESERVED)

010. DEFINITIONS.

As used in this chapter: (3-3-17)T

01. Applicant. A County that identifies a need for an Indigent Defense Grant by submission of a compliance proposal, and applies for a grant through the PDC. (3-3-17)T

02. Approval. An IDG application shall be approved if the applicant meets the requirements for eligibility under this chapter. An approval does not guarantee the amount or disbursement of an IDG award. The PDC retains the ability to determine the amount of an IDG award based upon the components listed in this chapter. Disbursement of funds is subject to availability as appropriated by the State Legislature each year. (3-3-17)T

03. Case. (3-3-17)T

a. A case consists of all related charges from a single incident, transaction or occurrence filed within a single case number, handled by one defending attorney. A probation violation or motion for contempt is counted as a separate case. (3-3-17)T

b. A felony case is counted as follows: (3-3-17)T

i. A case filed as a felony is counted as one felony, whether it is dismissed, remanded, pleaded, or tried to completion. (3-3-17)T

ii. A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. (3-3-17)T

iii. A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. (3-3-17)T

c. Post-judgment motions, such as those requesting early termination of probation or a reduction in sentence pursuant to Idaho Criminal Rule 35, are not counted as a case. (3-3-17)T

d. If two or more cases are consolidated prior to significant representation being undertaken on each individual case, then the consolidated case is counted as one case. If significant representation has occurred prior to consolidation, the cases in which such representation has occurred shall be counted as separate cases. (3-3-17)T

04. Caseload. The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. (3-3-17)T

05. Compliance Checklist. A document provided by the PDC each grant cycle to assistant an Applicant to determine eligibility for an IDG. The checklist will be updated each year and is required to be submitted as a part of an IDG application. (3-3-17)T

06. Compliance Proposal. A plan that specifically addresses how indigent defense standards shall be met and how any deficiencies previously identified by the PDC will be cured in the upcoming county fiscal year. The plan shall include a cost analysis that specifically identifies the amount of funding in excess of the applicable local share necessary to allow the county to successfully execute the compliance proposal. If the county can execute its plan without exhausting the entirety of the grant for which it may be eligible, the plan may include a request for funding for other improvements to its delivery of indigent defense services, pursuant to section 19-862A(2), Idaho Code. (3-3-17)T

07. Defending Attorney. Defined in Section 19-851, Idaho Code, as any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense in state courts. (3-3-17)T

08. Fiscal Year. As referred to in this chapter, fiscal year refers to a county fiscal year beginning on October 1 and ending on September 30 of the following calendar year. (3-3-17)T

09. Indigent Defense Expenditures. Any monies expended for indigent defense services within a county that does not include amounts received from the public defense commission or amounts expended for capital cases by those counties participating in the capital crimes defense program in excess of premiums and deductibles required by guidelines approved by the Idaho capital crimes defense fund board of directors. (3-3-17)T

10. Indigent Defense Grant. Pursuant to section 19-862A, Idaho Code, any sum of money awarded by the PDC to a county to support compliance with Indigent Defense Standards or for other improvements to its delivery of indigent defense services if compliance can be achieved with county monies. (3-3-17)T

11. Indigent Defense Grant Application. An application created by the PDC each year requesting information related to the provision of indigent defense services in an Applicant's county. This application will be updated each year and be provided by February 28, initiating the grant cycle. Counties are required to use this application when requesting an IDG award. (3-3-17)T

12. Indigent Defense Provider. Any agency, entity, organization or person selected by a board of county commissioners in accordance with section 19-859, Idaho Code, or designee of the commission if the commission's actions to remedy specific deficiencies pursuant to section 19-862A(11)(b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. (3-3-17)T

13. Indigent Defense Services. County services provided to indigent persons and other individuals who are entitled to be represented by an attorney at public expense pursuant to section 19-859, Idaho Code. (3-3-17)T

14. Indigent Defense Standard. Defined in section 19-851, Idaho Code, as any rule promulgated by the commission pursuant to section 19-850(1)(a), Idaho Code, that was in place by May 1 of the prior year. These standards are outlined in the incorporated document, "Standards for Defending Attorneys, edition 2016." (3-3-17)T

15. Joint Incentive Indigent Defense Grant. Pursuant to section 19-862A, Idaho Code, a sum of money awarded by the PDC to counties who join together to establish and maintain a joint office of public defender pursuant to section 19-859(2), Idaho Code. (3-3-17)T

16. Local Share. Defined in section 19-851, Idaho Code, as the benchmark figure calculated by the commission to determine the minimum amount of funding that shall be maintained by a county and to determine the award amount of state indigent defense grants for which a county may be eligible pursuant to section 19-862A, Idaho Code. For any given county fiscal year, a county's local share shall be the median of the annual amount in county funds expended by that county for indigent defense during each of the first three (3) of the preceding five (5) county fiscal years, as certified by the county clerk. (3-3-17)T

17. Staff. Any individual employed by the PDC. (3-3-17)T

18. Submission. The date upon which an Applicant mails or digitally submits an IDG application to the PDC. (3-3-17)T

19. Workload. The term workload recognizes that a caseload generally consists of a mix of case types that require differing amounts of time and resources. As used in this section, workload takes that fact into consideration. (3-3-17)T

011. ABBREVIATIONS.

01. PDC. The State Public Defense Commission. (3-3-17)T

02. IPIDDS. Idaho's Principles of an Indigent Defense Delivery System. (3-3-17)T

03. IDG. Indigent Defense Grant. (3-3-17)T

012. -- 019. (RESERVED)

020. GENERAL PROVISIONS OF THE INDIGENT DEFENSE GRANT PROGRAM.

It is the intent of the PDC, through the Indigent Defense Grant Program, to provide funds and planning assistance to counties of Idaho for the improvement of their trial-level indigent defense delivery systems to promote and meet the mandates of the Sixth Amendment to the U.S. Constitution and Article I, sec. 13 of the Idaho Constitution. Indigent Defense Grant funds are subject to availability, as appropriated by the Idaho Legislature. (3-3-17)T

021. APPLICATION OF INDIGENT DEFENSE STANDARDS.

The established standards, detailed in the incorporated document, "Standards for Defending Attorneys, edition 2016," shall apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who represents at least one indigent defendant or an adult or juvenile at public expense in state courts in a fiscal year. Additionally, as section 19-859, Idaho Code, establishes that the board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney, these standards also apply to the delivery of such services by the county, section 19-862A(9), Idaho Code. (3-3-17)T

022. GRANT CYCLE.

The PDC shall conduct the grant process in accordance to section 19-862A, Idaho Code and the following schedule so far as it does not conflict with Idaho Code: (3-3-17)T

01. Application Availability. The PDC shall make an application and guidance available no later than February 28 of each year, which shall initiate the grant cycle. (3-3-17)T

02. Application Purpose. The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. The PDC may review prior grant applications submitted by the County, as well as other relevant information related to the provision of indigent defense services. The PDC may also review reports of county indigent defense services provided by staff, including a county's assigned Regional Coordinator. (3-3-17)T

03. Application Period. The applicant shall have through May 1 of that grant cycle to complete and submit the application to the PDC. (3-3-17)T

04. Award Notification. The PDC shall issue notification to every applicant regarding the disposition of their grant request within sixty (60) days of submission. (3-3-17)T

05. Grant Approval. Grant disbursement shall occur on or about October 1 of that grant cycle. (3-3-17)T

06. Grant Disapproval. If the PDC disapproves an application, the county shall consult with the PDC and submit a revised application within thirty (30) days of the mailing date of the official notification of the PDC's disapproval. A county may submit two revisions. (3-3-17)T

a. If after two revisions, an application is not approved by the PDC, a resolution shall be pursued through the Idaho Administrative Procedure Act, pursuant to section 67-5201 et seq., Idaho Code. (3-3-17)T

b. The PDC will review and issue notification of the disposition of a revised application within thirty (30) days of submission. (3-3-17)T

07. Award Amount. Based upon the criteria in section 026 of this chapter, the PDC shall determine the amount that is needed by the Applicant to meet or improve upon indigent defense standards. The PDC shall award that amount to an eligible Applicant, subject to the availability of funds and the priority rating of the Applicant. (3-3-17)T

08. Priority Rating. If funds are not available to fund all of the approved applications, the PDC shall

- prioritize the disbursement of funds to: (3-3-17)T
- a. Eligible Applicants not in compliance with any indigent defense standards; (3-3-17)T
 - b. Eligible Applicants in compliance with some indigent defense standards; then (3-3-17)T
 - c. Eligible Applicants in compliance who submit a compliance proposal with a plan to use their IDG award to improve its indigent defense delivery system in other ways pursuant to section 19-862A, Idaho Code. (3-3-17)T

023. APPLICATION PROCEDURE.

All forms and documents required by these rules and the PDC shall be completed and submitted according to these rules in order for an IDG application to be considered for approval. (3-3-17)T

01. Forms. To be considered for a grant, an applicant must file with the PDC a completed IDG application form, compliance checklist and other documentation requested in the application, all of which shall have original or digital signatures. An applicant must file with the PDC a completed grant agreement form, with original or digital signatures, within sixty (60) days of written notification of grant approval. The application and grant agreement forms shall be provided to the applicant by the PDC. (3-3-17)T

02. Review. The applicant or applicant's representative may review the compliance proposal and all associated documentation with the PDC staff prior to submitting the application to ensure it meets the criteria for the Indigent Defense Grant program. When possible, PDC staff may perform an on-site visit to the county for preliminary fact finding regarding compliance with indigent defense standards. (3-3-17)T

03. Incomplete Application. An application which is missing required information shall be excluded from consideration for an award. (3-3-17)T

04. Deadline. The deadline for grant applications shall be established pursuant to section 19-862A, Idaho Code. Applications for the upcoming fiscal year are due by May 1. The PDC shall announce the availability of funds to potential applicants as soon as practically reasonable after appropriated by the Idaho Legislature. (3-3-17)T

024. AWARD ELIGIBILITY REQUIREMENTS.

To be considered for an award, an Applicant must meet all of the following requirements: (3-3-17)T

01. Compliance with Indigent Defense Standards. To be eligible for any grant award from the PDC, a county must comply with indigent defense standards or provide a suitable plan to comply in their IDG application. Pursuant to section 19-862A, Idaho Code, compliance must occur by March 31 of each year for any standards in place by May 1 of the prior year. (3-3-17)T

02. Annual Report(s) Submitted. Each defending attorney within an applicant's county must have submitted an annual report pursuant to section 19-864, Idaho Code, in order for a county to be eligible to receive any grant award from the PDC. (3-3-17)T

03. Completed Application. To be eligible, the county must file, to the satisfaction of the PDC, a completed application for an Indigent Defense Grant. (3-3-17)T

04. Curing of Deficiencies. To be eligible, the Applicant must have cured, to the satisfaction of the PDC, any material breach of the terms of a previously approved state IDG. The PDC may approve an application for an IDG, even if deficiencies have not been cured, if the application includes a compliance proposal showing how an IDG is necessary to meet or improve upon indigent defense standards and that the requested amount is imperative to such compliance proposal. (3-3-17)T

05. Use of Funds. The Applicant must agree to use any grant funds towards compliance with the applicable indigent defense standards and/or for the improvement of the Applicant indigent defense delivery system pursuant to section 19-862A, Idaho Code. (3-3-17)T

025. AWARD RECOMMENDATION.

If the PDC uses a grant subcommittee, the PDC shall request a recommendation from the grant subcommittee regarding the distribution of grant funds. (3-3-17)T

01. Assessment and Validation of Need. The grant subcommittee, if used, shall review grant applications prior to making a recommendation about awards. The subcommittee shall carefully review the compliance proposal and cost analysis to determine eligibility and the amount needed for the applicant to meet the plan contained within the compliance proposal. (3-3-17)T

02. Commission Approval. Whether or not a grant subcommittee is used, all awards must be approved by the PDC. If no grant subcommittee is used, the PDC shall review the applications as set forth above. (3-3-17)T

026. CRITERIA.

The following criteria shall be used to evaluate applications for IDG awards: (3-3-17)T

01. IDG Award Eligibility. The PDC shall review the information provided in the application to determine the maximum allowable IDG award pursuant to section 19-862A(3). (3-3-17)T

02. Compliance Proposal Provided. The PDC shall approve an application if it includes a plan that is necessary to meet or improve upon indigent defense standards. (3-3-17)T

03. Cost Analysis Provided. The PDC shall approve an application if it demonstrates that the amount of the requested state indigent defense grant is necessary to meet or improve upon indigent defense standards. (3-3-17)T

04. Annual Report(s) Submitted. Disbursement of IDG award funds will occur if each defending attorney has submitted, to the satisfaction of the PDC, an annual report pursuant to section 19-864, Idaho Code. (3-3-17)T

05. Deficiencies Cured. The PDC shall determine whether the Applicant has cured, to the satisfaction of the PDC, any material breach of the terms of a previously approved IDG. In the event the PDC determines that a county has failed to materially comply with indigent defense standards, the PDC shall require that the application specifically address how the noncompliance will be cured in the upcoming fiscal year with the IDG award. In these cases, the PDC may approve an application for an IDG award if, to the satisfaction of the PDC, the application compliance proposal includes a plan to cure such deficiencies. (3-3-17)T

06. IDG Funds Accounting. The PDC may review the use, misuse or non-use of prior IDG awards by an Applicant and consider such use when determining how much an eligible applicant should receive upon approval of an IDG application. (3-3-17)T

027. UNUSED IDFG FUNDS.

All funds not expended for costs associated with the applicant's award shall be maintained in the Applicant's fund for indigent defense and be specifically earmarked to meet or improve upon indigent defense standards that are in place or might be in place in the future. Unused grant funds may be taken into consideration by the PDC in future IDG award requests by the applicant. (3-3-17)T

028. WITHDRAWAL OF GRANT APPLICATION.

01. Withdrawal. Any applicant may withdraw or forfeit an application at any time. (3-3-17)T

02. Ability to Apply. The withdrawal of an application does not affect the applicant's ability to reapply in a subsequent grant cycle. (3-3-17)T

029. FRAUDULENT INFORMATION ON GRANT APPLICATION.

Providing false information on any application or document submitted under these rules is grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the PDC. (3-3-17)T

030 -- 099. (RESERVED)