

IN THE SENATE

SENATE BILL NO. 1258

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PUBLIC DEFENSE; AMENDING SECTION 19-850, IDAHO CODE, TO PROVIDE  
2 THAT A BOARD OF COUNTY COMMISSIONERS MAY APPLY FOR FUNDS FOR EXTRAORDI-  
3 NARY LITIGATION COSTS AND TO MAKE TECHNICAL CORRECTIONS.  
4

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

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

8 19-850. POWERS AND DUTIES OF THE STATE PUBLIC DEFENSE COMMISSION. (1)  
9 The state public defense commission shall:

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

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

17 (ii) Uniform data reporting requirements and model forms for the  
18 annual reports submitted pursuant to section 19-864, Idaho Code,  
19 which shall include, but not be limited to, caseload, workload and  
20 expenditures;

21 (iii) Model contracts and core requirements for contracts between  
22 counties and private attorneys for the provision of indigent de-  
23 fense services, which shall include, but not be limited to, com-  
24 pliance with indigent defense standards;

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

29 (v) Procedures for administrative review and fair hearings in ac-  
30 cordance with the Idaho administrative procedure act, which shall  
31 include, but not be limited to, providing for a neutral hearing of-  
32 ficer in such hearings;

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 ex-  
39 tent reasonably practicable taking into consideration factors  
40 such as case complexity, support services and travel, the follow-  
41 ing principles:

- 1 1. The delivery of indigent defense services should be inde-  
2 pendent of political and judicial influence, though the ju-  
3 diciary 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 vate 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 and 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 compliance 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 flicts of interest in conformance with the Idaho rules of  
32 professional conduct and other applicable constitutional  
33 standards.

34 Violation of or noncompliance with the principles listed in this  
35 subparagraph does not constitute ineffective assistance of coun-  
36 sel under the constitutions of the United States or the state of  
37 Idaho and does not otherwise constitute grounds for post-convic-  
38 tion relief.

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

43 (i) Enforcement mechanisms; and

44 (ii) Funding issues including, but not limited to, formulas for  
45 the calculation of local shares and state indigent defense grants.

46 (c) Review indigent defense providers and defending attorneys to eval-  
47 uate compliance with indigent defense standards and the terms of state  
48 indigent defense grants.

49 (d) Notwithstanding the provisions of paragraph (a) (iv) of this sub-  
50 section, establish temporary procedures and model forms by which coun-

1 ties may apply to the commission for state indigent defense grants pur-  
2 suant to section 19-862A, Idaho Code, to be utilized until rules promul-  
3 gated pursuant to paragraph (a) (iv) of this subsection are in full force  
4 and effect. Such temporary procedures shall not be subject to adminis-  
5 trative or judicial review.

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 subsection (1) (a) (i) of  
26 this section, and use moneys received from a grant or trust or otherwise  
27 received and appropriated to provide such training and continuing legal  
28 education.

29 (e) Establish procedures by which indigent defense providers or a  
30 county, through its board of county commissioners, may apply to the com-  
31 mission for funds to be used for extraordinary litigation costs includ-  
32 ing, but not limited to, expert witnesses, evidence testing and inves-  
33 tigation, but not including expenses associated with capital crimes.

34 (f) Hire private counsel to represent the commission in hearings held  
35 in accordance with the Idaho administrative procedure act and the rules  
36 promulgated pursuant to subsection (1) (a) (v) of this section.