

REACHING THE PROMISE OF QUALITY INDIGENT DEFENSE IN IDAHO

2018 Legislative Session
Informational Presentation



IDAHO STATE
PDC PUBLIC
DEFENSE
COMMISSION



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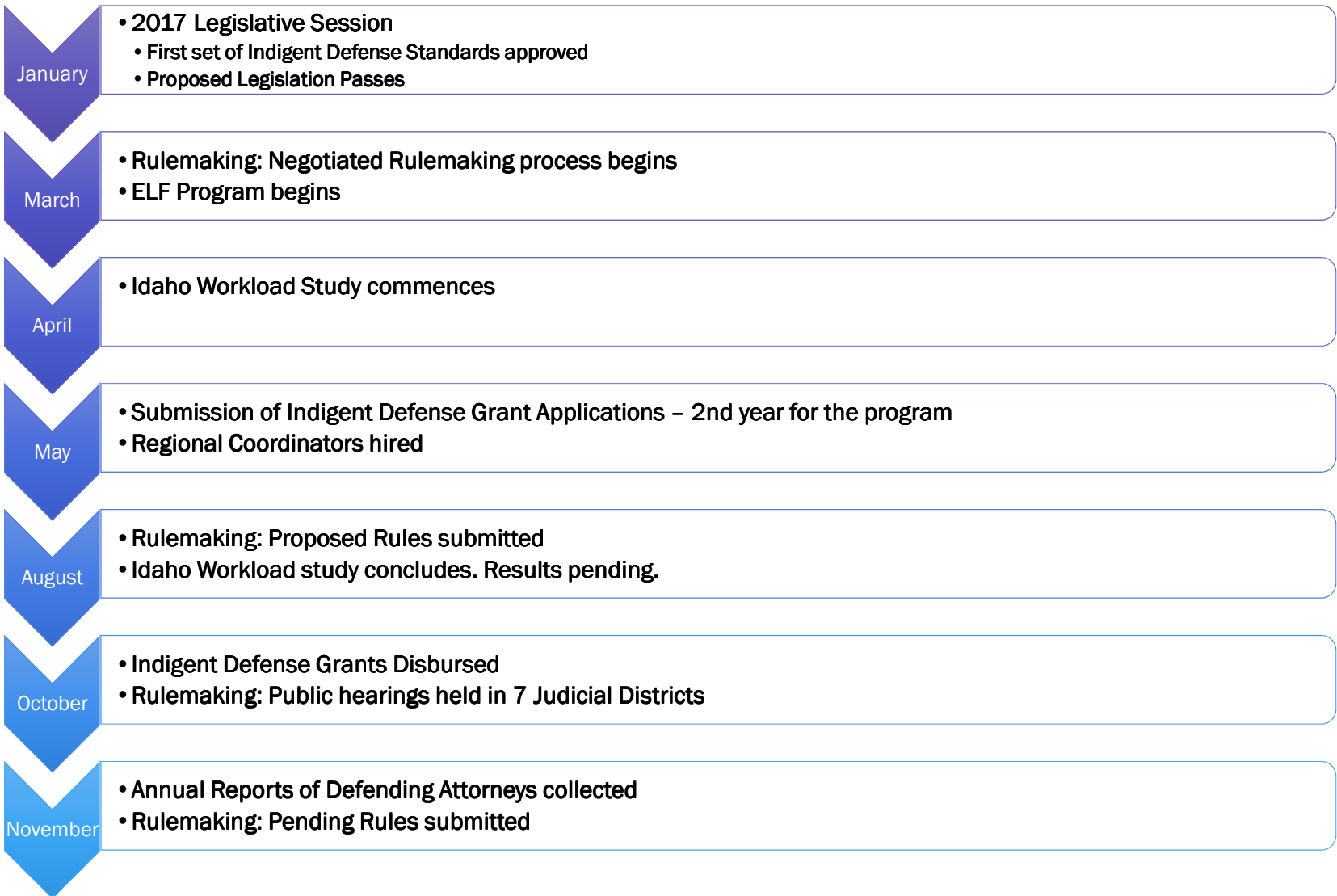
THE PDC IN 2017

Later: The Rules Presentation





- 2017: The Year in Review
- The Cost of Public Defense
 - Indigent Defense Grants
 - The E.L.F.
 - Training for Defending Attorneys
- Collaboration with Counties
 - Regional Coordinators
 - County Concerns
 - County Statistics
- 2018 Proposed Legislation
- Going Forward ...
- 2018 Legislative Recommendations



The Year in Review

2016 Looking Ahead ...

- Idaho Workload Study
- Prioritize and establish standards
 - *Enforcement and oversight*
 - *IDG procedures*
 - *Standards for Defending Attorneys*
- Educating stakeholders
- Training Defending Attorneys
- Extraordinary Litigation Fund Policy

2017 Actions

- ☑ Workload study completed; just awaiting results
- ☑ 5-year plan for rule promulgation and several rules promulgated

- ☑ Meetings held with each BOCC and several defending attorneys
- ☑ 4 training programs held and several scholarships granted
- ☑ ELF policy created and several ELF applications reviewed and monies disbursed

The Cost of Public Defense

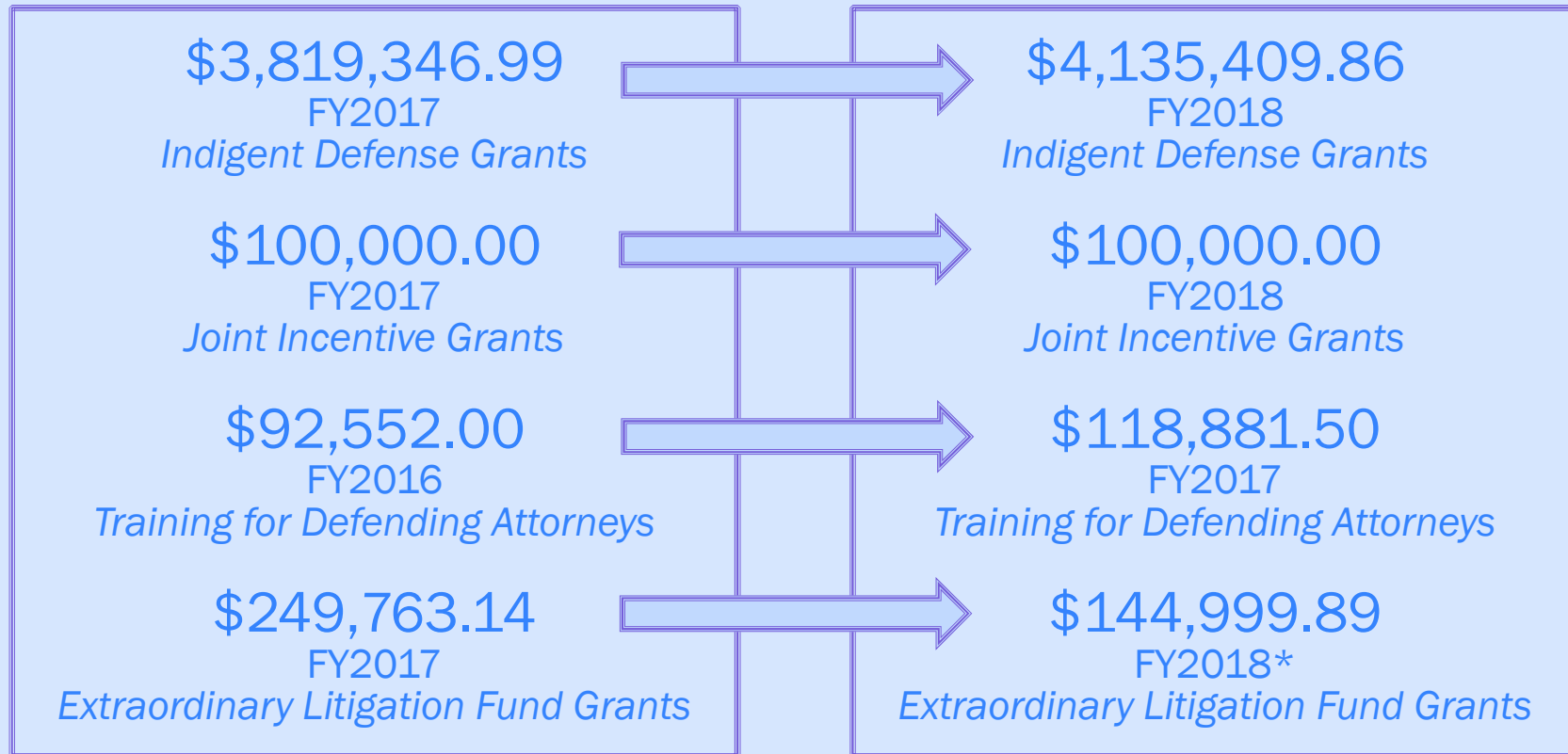
A system that ensures constitutional representation must be well-funded. The State may delegate the authority but cannot abdicate its responsibility to provide constitutional representation to its people.

-*Claremont School Dist. v. Governor*, 147 N.H. 499 (2002)



2016 Annual Report

2017 Annual Report



Indigent Defense Grants

Idaho Code § 19-862A:

...[E]ach county may submit to the commission an application for a state indigent defense grant that shall include a plan that specifically addresses how indigent defense standards shall be met ...[and] a cost analysis that shall specifically identify the amount of funding...necessary to allow the county to successfully execute its plan...[A]n application submitted pursuant to this section may request funding to be used for other improvements to its delivery of indigent defense services.

- Complying with the promulgated standard that requires a defending attorney be available at initial appearances;
- Increasing the number of defending attorneys in an office to reduce crushing workloads;
- Remodeling space in the courthouse, jail or public defender office to ensure that attorneys have a private space to meet with their clients;
- Hiring a full-time social worker for an institutional office;
- Increasing the indigent defense budget for evaluations of defendants, investigators, experts and interpreters;
- Increasing the pay rate in order to be competitive and retain qualified attorneys;
- Sending defending attorneys to national criminal defense seminars;
- Upgrading technology for defending attorneys;
- Purchasing a case management system for defending attorneys; and
- Purchasing office equipment for defending attorneys.

The E.L.F.



Idaho Code § 19-850(2)(e):

(e) Establish procedures by which indigent defense providers may apply to the commission for funds to be used for extraordinary litigation costs including, but not limited to, expert witnesses, evidence testing and investigation, but not including expenses associated with capital crimes.

Extraordinary Litigation Fund Policy and Procedures - Policy Number 600

Extraordinary Litigation Costs:

Costs associated with handling a case that due to the complexity or particularity of the issue(s), the circumstances of the case or locality, or other unforeseen event, requires an exceptional amount of time or resources to litigate. Factors to be considered include the amount and type of services provided by the indigent defense provider, the time expended, the character and importance of the litigation, the legal skills and experience required for the particular case, the ratio of out-of-court preparation time to in-court time, the proximity of the client to attorney defense services, and the necessity of any special resources required such as scientific evidence analysis or extensive investigation. In general, fees for attorney services do not qualify as extraordinary litigation costs. However, in special circumstances, the Commission may consider an application for attorney's fees if those fees were beyond the usual costs a county may expend for indigent defense services in any given fiscal year.

The E.L.F.



Idaho Code § 19-850(2)(e):

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“Having a team of experts ready to go helped make a difference in this case. I am really grateful that the ELF funds were available.”

-Idaho Defending Attorney who was able to resolve a case prior to trial, saving the county substantial money.

- Forensic testing of evidence
- Use of specialized expert
- Investigation in unusual cases

Training for Defending Attorneys

- Child Protection Training, Boise – Jan. 2017
 - 40 defending attorneys
 - 6.5 CLE hours per attorney
- Joint IACDL Sun Valley Annual Winter Seminar, March 2017
 - 134 defending attorneys
 - 9.5 CLE hours plus 1.0 ethics' credit per attorney
- Defending DUI's, Coeur D'Alene, June 2017
 - 65 defending attorneys
 - 6.0 CLE hours plus 1.0 ethics' credit per attorney
- Annual Western All-Star Conference and Confabulation, Sept. 2017
 - 74 defending attorneys
 - 11.75 CLE hours plus 1.25 ethics credits per attorney

Training for Defending Attorneys

- Juvenile Defending Attorney Training – March 2018
 - *Two Days*
 - *Partnering with Western Juvenile Defender Center*
- Joint IACDL Sun Valley Annual Winter Seminar, April 2018
 - *1.5 days*
- Forensic Evidence for Defending Attorneys, June 2018
 - *1.5 days*
- Public Defender Summit, August 2018
 - *3 days*
 - *Partnering with National Association of Criminal Defense Lawyers*

COUNTY OUTREACH & COLLABORATION



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Regional Coordinators



**Aaron
Freudenthal**

Northern Region

IAC Districts 1 & 2

Judicial Districts 1 & 2



**Brianne
McCoy**

Central Region

IAC Districts 3 & 4

Judicial Districts 3, 4 & 5



**Jared
Ricks**

Eastern Region

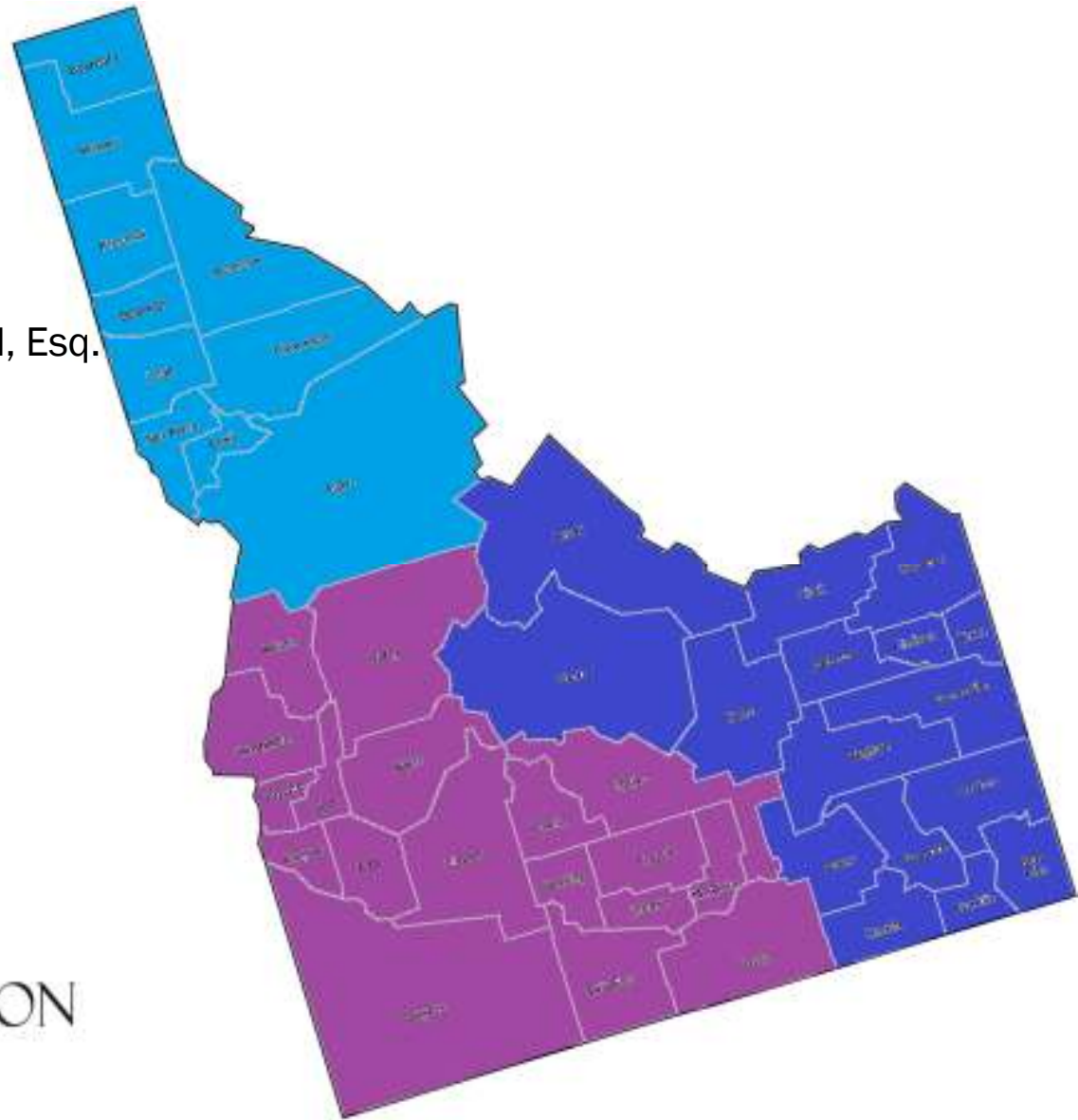
IAC Districts 5 & 6

Judicial Districts 6 & 7

- Northern Region – Aaron Freudenthal, Esq.
- Central Region – Brianne McCoy, Esq.
- Eastern Region – Jared Ricks, Esq.



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Regional Coordinator Roles

- Meet with County Elected Officials and other county personnel involved in the provision of indigent defense services
 - *Education related to PDC standards and resources*
 - *Gather feedback related to county needs*
 - *Feedback and assistance related to indigent defense contracts*
 - *Assist with completion of Indigent Defense Grant Applications*
- Meet with Defending Attorneys
 - *Education related to PDC standards and resources*
 - *Gather feedback related to defending attorney needs*
 - *Assist with ELF applications, if necessary*
 - *Assist with completion of Annual Reports*
- Meet with court officials and other stakeholders

Regional Coordinator Roles

- Oversight Program and Enforcement of Standards
 - *Monitor compliance throughout the year*
 - *Assist with compliance issues if they arise*
 - *Assess a county's ability to comply with current funding levels*
- Regularly report to the PDC
- Assist with special projects for the PDC
 - *Coordinating and organizing training programs*
 - *Research topics related to indigent defense*
 - *Research possible grant opportunities*

County Concerns

2016 Annual Report

- Concerns surrounding the ever-increasing costs for providing indigent defense services
- The feasibility of having defending attorneys at initial appearances
- Concerns about the permanence of Indigent Defense Grant funding
- Desire to have “extraordinary litigation costs” defined



2017 Annual Report

- Concerns surrounding the ever-increasing costs for providing indigent defense services
- The feasibility of having defending attorneys at initial appearances
- Concerns about the permanence of Indigent Defense Grant funding
- Prosecutor involvement in the administration of indigent defense
- Not enough attorneys
- Who’s going to monitor compliance?

County Concerns: The Top Two



■ Unfunded Mandate

- *Indigent Defense Grants*
- *Forward looking: could be an underfunded mandate*
- *PDC continues to assess funding and how much will be needed to assist counties with compliance. Idaho Code § 19-862A*

■ County-run vs. Statewide system

- *Not enough data to determine what's best for Idaho*

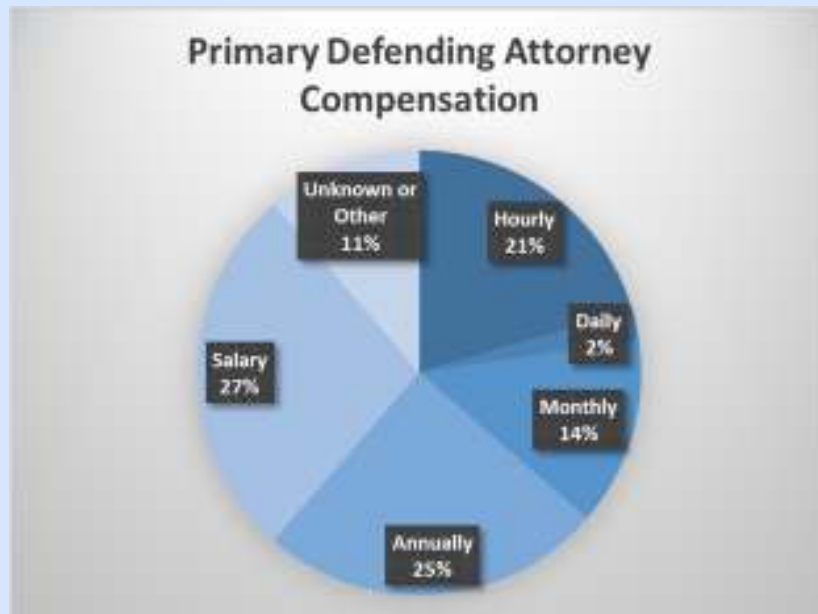
Other PDC Meetings, Hearings and Presentations in 2017

- **February:** A Day in the Life of a Public Defender, Presentation to Idaho Association of County Commissioners and Clerks
- **March/April:** Negotiated Rulemaking meetings in every Judicial District
- **June:** Presentation to and attendance at Idaho Association of Counties Annual Conference
- **August:** Presentation to Idaho Association of County Recorders and Clerks
- **September:** Staffed an informational booth at Idaho Association of Counties Annual Conference
- **October:** Public Hearings on Proposed Rules in every Judicial District

County Indigent Defense Systems FY2017 Statistics

- 12 counties have established institutional offices
- Approximately 380 attorneys handled at least one indigent defense case
 - *146 of 230 primary defending attorneys were employed at an institutional office*
 - *84 primary defending attorneys work under a written contract*
 - 19 are paid hourly
 - *150 defending attorneys provide conflict indigent defense services*
- 33 counties experienced an increase in indigent defense expenditures from FY2015 to FY2016

County Indigent Defense Systems FY2017 Statistics

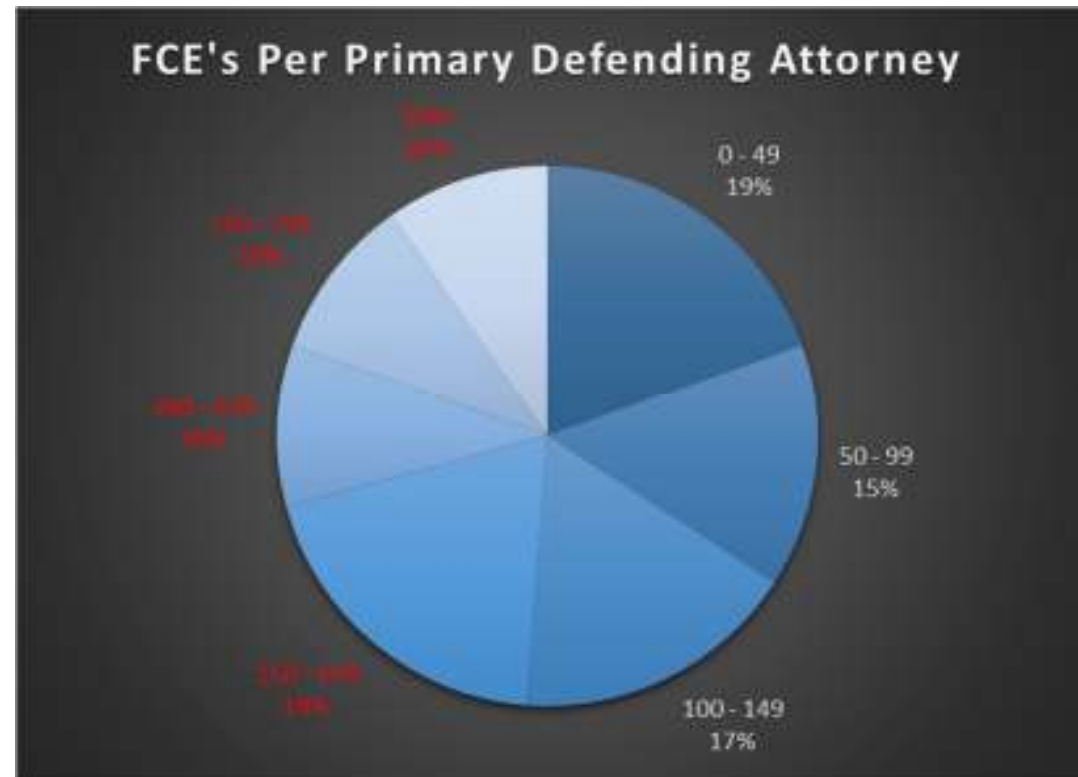


County Indigent Defense Systems FY2017 Statistics

Caseload: The number of cases a defending attorney handles in a year

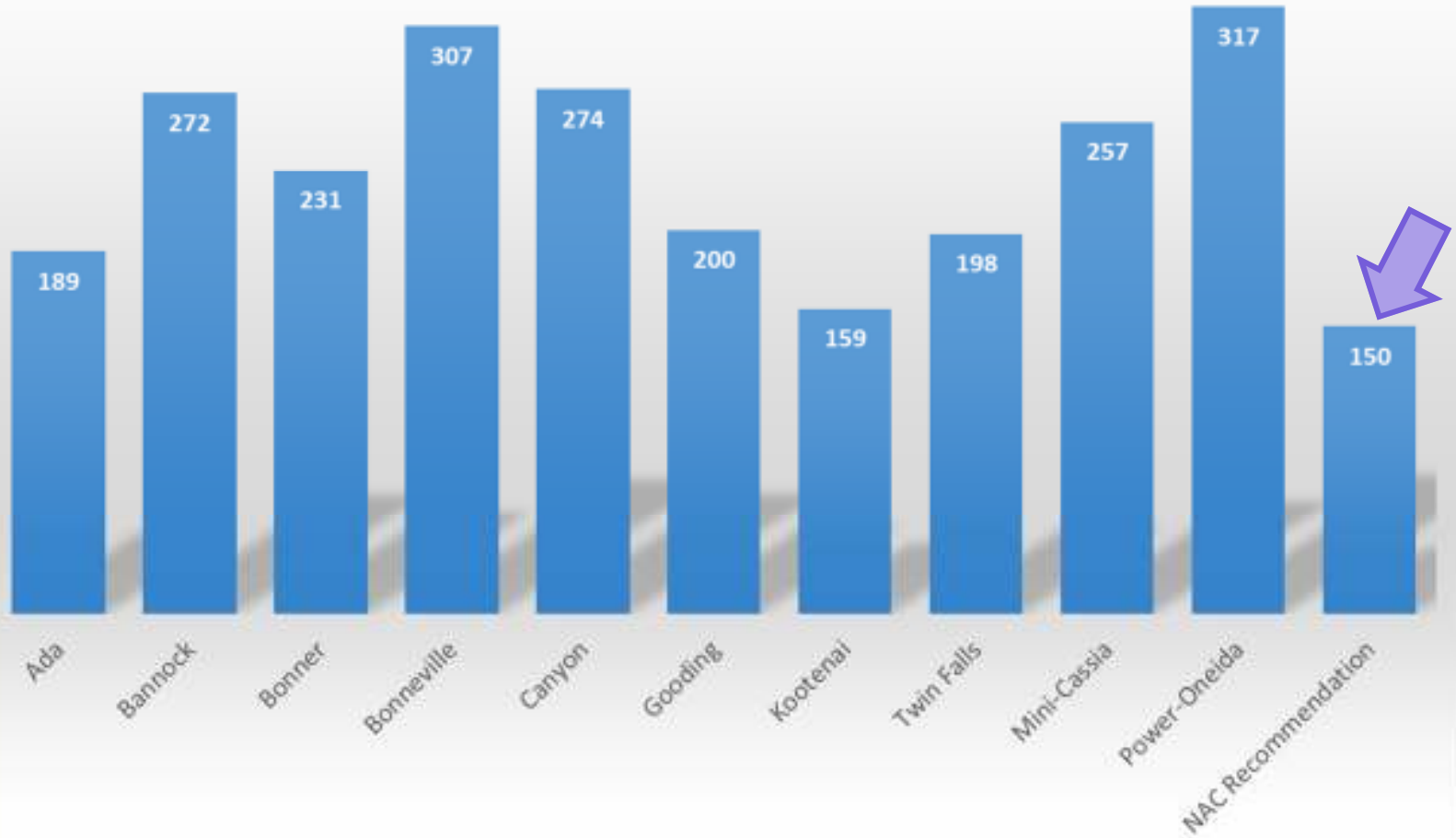
FCE: Felony Case Equivalent

National Advisory Commission on Criminal Justice Standards (**for informational purposes only**): Attorneys should handle no more than
150 Felonies; or
400 Misdemeanors; or
200 Juvenile cases; or
200 Mental Health cases per year.

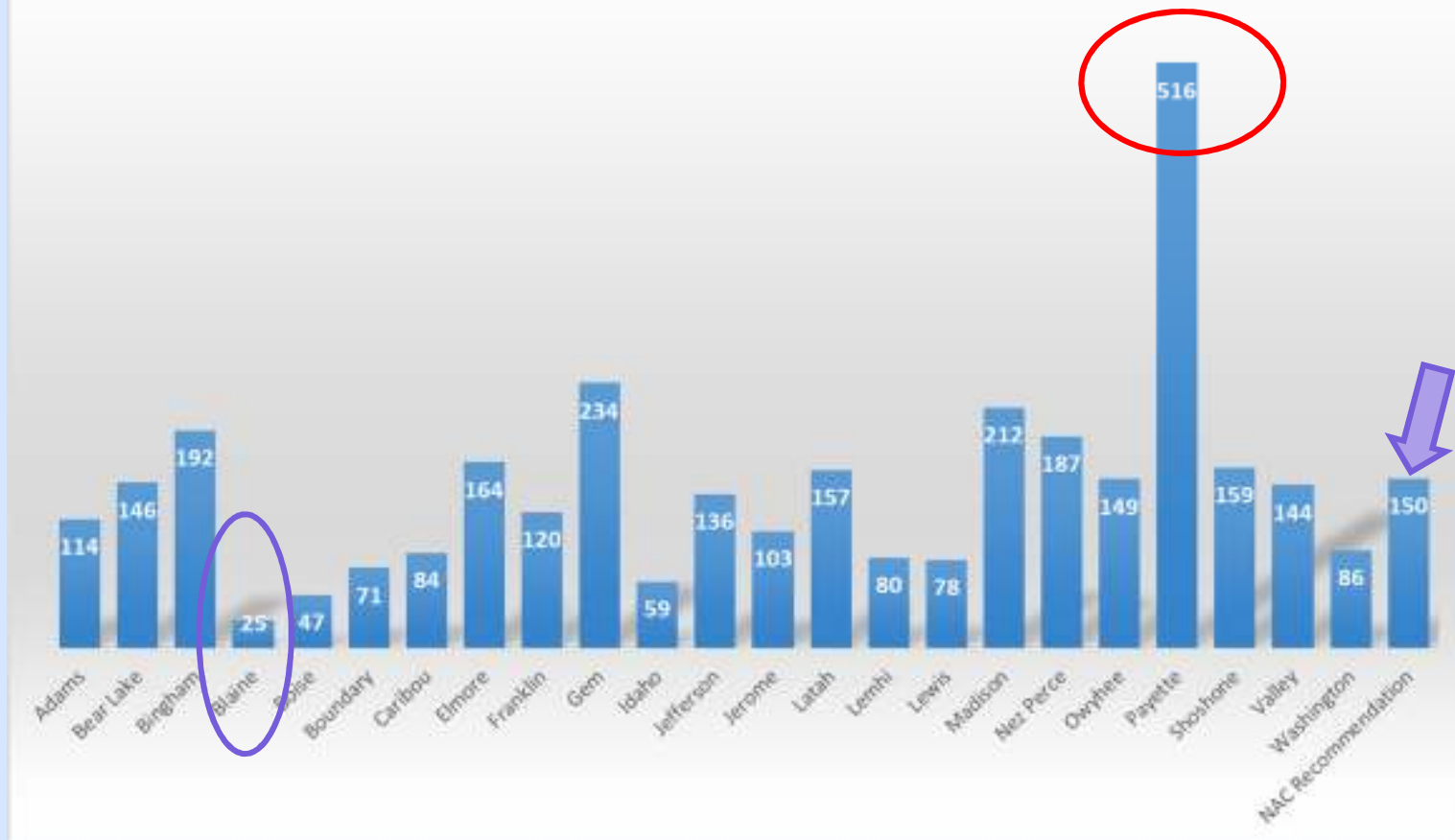


*3 counties not reporting

Institutional Offices - FCE's per Defending Attorney



Primary Contract Services - FCE's Per Defending Attorney



*Counties with more than 150 total cases. 3 counties not reporting.

2018 Proposed Legislation

RS 25617:

Amendment to Idaho
Code § 19-850(2)(e)

Allows counties, through a
Board of County
Commissioners, to apply for
extraordinary litigation
funds

RS 25616:

Amendment to Idaho
Code § 19-849(1)

Provides for 2 (two)
additional commission
members

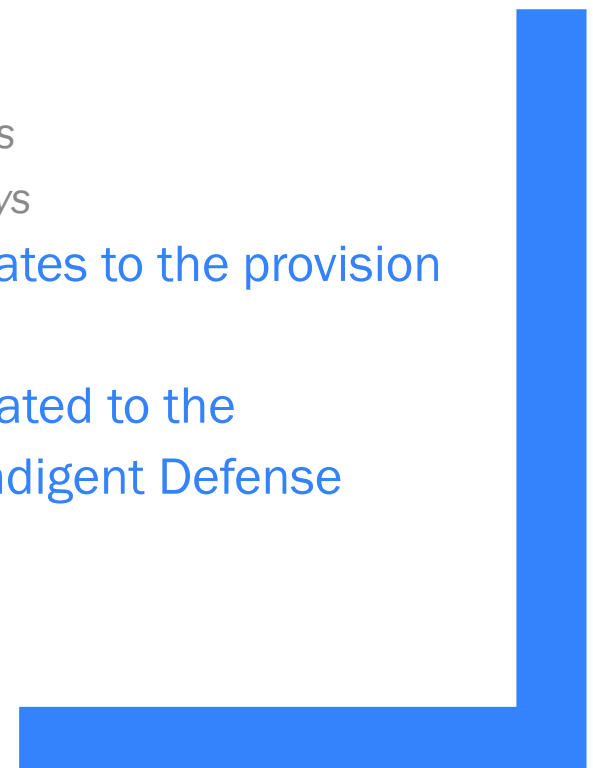
GOING FORWARD ...

- Promulgation of Rules
 - *Workload Standard*
 - *Model Contracts and Core Requirements*
 - *Annual Reporting for Defending Attorneys*
- Explore the Prosecutor's role as it relates to the provision of indigent defense
 - Research possible legislation related to the calculation of Local Share and Indigent Defense



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Grant eligible award amounts



2018 Legislative Recommendations

Idaho Code § 19-850(1)(b):

The PDC shall ... make recommendations to the Idaho legislature for legislation on public defense system issues including, but not limited to:

- (i) Enforcement mechanisms; and
- (ii) Funding issues including, but not limited to, formulas for the calculation of local shares and state indigent defense grants.

- Fully fund Indigent Defense Grants
- Explore possible conflicts of interest regarding the involvement of elected prosecutors in indigent defense matters
- Collect data regarding city prosecution and the level of staff and funding cities contribute to indigent defense services
- Address concerns surrounding the permanence of indigent defense grant funds
- Approve the PDC pending rules and proposed legislation



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