

Dear Senators LAKEY, Lee, Burgoyne, and
Representatives CHANEY, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the State Public Defense Commission:

IDAPA 61.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket
No. 61-0000-1900).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 07/18/2019. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 08/15/2019.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Judiciary, Rules & Administration Committee

FROM: Principal Legislative Drafting Attorney - Ryan Bush

DATE: June 27, 2019

SUBJECT: State Public Defense Commission

IDAPA 61.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket No. 61-0000-1900)

The State Public Defense Commission has submitted temporary and proposed rules that reauthorize and re-publish, in full, the following previously approved chapters under IDAPA 61:

61.01.01, Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds

61.01.02, Rules Governing Standards for Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports

61.01.03, Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services

61.01.04, Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants

61.01.06, Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards

61.01.07, Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Delivery System

61.01.08, Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems-Rule Definitions

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. **No substantive changes from the existing rules have been noted.**

cc: State Public Defense Commission
Kathleen J. Elliott

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

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IDAPA 61 – PUBLIC DEFENSE COMMISSION

DOCKET NO. 61-0000-1900

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 19-850(1)(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 61, rules of the Public Defense Commission:

IDAPA 61

- 61.01.01, *Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds*
- 61.01.02, *Rules Governing Standards for Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports*
- 61.01.03, *Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services*
- 61.01.04, *Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants*
- 61.01.06, *Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards*
- 61.01.07, *Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Delivery System*
- 61.01.08, *Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems-Rule Definitions*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. Specifically, the Public Defense Commission's rules govern indigent defense training, funds disbursement to counties, oversight and standards for defending attorneys. The rules are necessary for the continued delivery and improvement of Idaho's indigent defense services.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathleen J. Elliott, (208) 332-1735.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Kathleen J. Elliott, Executive Director
Public Defense Commission
816 W. Bannock Street, Suite 201
Boise, Idaho 83702
Phone: (208) 332-1735
Fax: (208) 364-6147

**IDAPA 61
TITLE 01
CHAPTER 01**

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

**61.01.01 – RULES GOVERNING TRAINING REQUIREMENTS FOR DEFENDING ATTORNEYS
AND THE ADMINISTRATION OF TRAINING FUNDS**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(i), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding the training and continuing legal education requirements for defending attorneys. Further, Section 19-850(2)(d), Idaho Code, gives the PDC the authority to provide training and continuing legal education for indigent defense providers and defending attorneys in order to assist them in satisfying requirements promulgated pursuant to subsection (1)(a)(i) of 19-850, Idaho Code, and use moneys received from a grant or trust or otherwise received and appropriated to provide such training and continuing legal education. (3-29-17)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 01, “Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds.” (3-29-17)

02. Scope. These rules contain the provision for the allocation of funding designated for training of defending attorneys and staff. (3-29-17)

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. (3-29-17)

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to confer training funds is a discretionary exercise of its fiduciary duty to responsibly and prudently manage the funds on behalf of its intended recipients. 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.” (3-29-17)

004. INCORPORATION BY REFERENCE.

Documents that are referred to by these rules are incorporated by reference into these rules, and may be modified or amended as the Commissions deems necessary. (3-29-17)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

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. (3-29-17)

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-29-17)

007. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. 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. (3-29-17)

02. 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 action to remedy specific deficiencies pursuant to section 19-861A (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. (3-29-17)

03. MCLE. Mandatory Continuing Legal Education credit as determined by the Idaho State Bar. (3-29-17)

04. PDC. The State Public Defense Commission. (3-29-17)

05. Scholarship. Any amount of training funds granted by the PDC to be used toward the costs of attending a training program. (3-29-17)

06. Training Program. Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of those engaged in the representation of individuals at public expense. (3-29-17)

07. Training Funds. An amount designated in the annual budget of the PDC designated for the benefit of defending attorneys and those under their employ or supervision. Those funds are dedicated to providing training and education for those servicing indigent clients as designated by law, statute, court rule, or appointment. (3-29-17)

011. -- 019. (RESERVED)

020. RECIPIENTS OF TRAINING FUNDS.

01. Intended Recipients. Training funds shall be used to train defending attorneys, and those under their regular employ or supervision. With the approval of the PDC, non-attorney staff of defending attorneys or other persons engaged in work related to the representation of indigent defendants, may qualify to attend training programs or for scholarships. (3-29-17)

02. Presumptive Qualification. It is presumed that any attorney who is included on the Public Defense Roster maintained by the PDC qualifies as an intended recipient of training funds for the purposes of these rules. (3-29-17)

021. PUBLIC DEFENSE ROSTER.

01. Roster Membership. The PDC will create and maintain a roster of all indigent defense providers, defending attorneys and non-attorney staff under their regular employ or supervision. (3-29-17)

a. Maintenance of Roster. The roster will be updated in May of each year, but may be updated more frequently in order to accurately reflect staff changes at the county level. (3-29-17)

b. Roster Contents. The roster will include the name of each defending attorney or non-attorney staff, along with their professional contact information, including email address, physical address, and telephone number. (3-29-17)

02. Application for Roster Inclusion. Any attorney who is not employed by an indigent defense provider, or who does not work under an existing indigent defense services contract may apply to the PDC for inclusion on the Public Defense Roster. (3-29-17)

a. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. (3-29-17)

022. -- 029. (RESERVED)

030. PDC TRAINING PROGRAMS.

01. Use of Training Funds. The PDC may choose to spend training funds to host its own training programs for the benefit of defending attorneys and their staff. (3-29-17)

a. Equal Access to Training Funds. Where the PDC chooses to host a training program, when determining the allocation of training funds no distinction will be made as to whether the attorney is an employee of an institutional defender, a contract attorney, or an attorney who has qualified for training funds by application. (3-29-17)

i. Registration Fees and Tuition. Where the PDC provides training programs without a registration fee or tuition, the PDC will provide the same discount to all qualifying attendees. (3-29-17)

ii. Travel, Lodging, and Per Diem. Where the PDC agrees to provide travel subsidies to attendees, the PDC will establish a minimum travel distance. All those attendees whose residential or office address is located at a distance over the minimum travel distance from the location of the conference will qualify for the same travel subsidies as set forth in the training program announcement. (3-29-17)

iii. Reimbursement of Expenses. The PDC may determine to provide services, lodging or food in lieu of reimbursement of the same. In the event the PDC determines that any expenses will be provided directly by the PDC, and notifies all registrants at the time of registration, subsequent application of expense reimbursements for the same may be denied. Reimbursement guidelines established by the State of Idaho will apply to all in-state travel. (3-29-17)

02. Types of Training Programs. PDC Training Programs may be designated as (a) open enrollment, (b) restricted enrollment, (c) targeted enrollment, or (d) application enrollment. Notification will be by email for all training programs. (3-29-17)

a. Open Enrollment Training Programs. The PDC may host a training program with an open enrollment. All those who qualify and register in advance will be allowed to attend. (3-29-17)

i. Announcement. The PDC will post available open enrollment training programs on its website, and will notify members of the Public Defense Roster of the training location, dates, and any details regarding the applicability of training funds. (3-29-17)

ii. Registration. The PDC will honor the registration of any qualifying recipient who registers prior to the deadline. The PDC will impose a registration deadline and may require advance registration. Any registration received by the PDC after the deadline may be rejected by the PDC. (3-29-17)

b. Restricted Enrollment. The PDC may host a training program open to all qualifying defending attorney or staff, but impose a registration limit. Targeted invitations may be extended prior to the notification of members of the Public Defense Roster. (3-29-17)

i. Announcement. The PDC will post available restricted enrollment training programs on its website, and will notify members of the Public Defense Roster of the training location, dates, and any details regarding the applicability of training funds. (3-29-17)

ii. Registration. The PDC will impose a registration deadline and may require advance registration. The PDC will honor the registration of any qualifying recipient in the order received until the enrollment limit is reached. Any registration received by the PDC, either after the deadline or after the enrollment limit is reached, may be declined. (3-29-17)

c. Targeted Enrollment. The PDC may host a training program that is open to qualifying recipients by email invitation only. The PDC may identify specific individuals for targeted invitations where the PDC believes that such a training program would be of particular benefit to the individual or where there is a specific desire to obtain broad geographic representation at the training program. (3-29-17)

i. Invitation. The PDC may identify specific individuals for invitation to attend the training program due to the person's length or time of service, experience, the particular area of law or representation to be covered, the

geographic location of the qualifying recipient, or because the individual has been designated as a representative of an institutional defender office. The PDC will inform the invited individual of the time and location of the training program, along with the availability of any training funds. Invitees will be notified of a registration deadline.

(3-29-17)

ii. Registration. Where an individual accepts an invitation to attend and registration materials are received by the registration deadline, that individual will be guaranteed a place in the training program. (3-29-17)

iii. Announcement. If the registration deadline passes and the PDC determines that there is additional space, the PDC will treat the training program as a restricted enrollment program under Subsection 030.02.b.

(3-29-17)

d. Application Enrollment. The PDC may host a training program that is open only to those selected by the PDC after application materials are submitted. (3-29-17)

i. Announcement. Where applications are sought for qualifying recipients, the PDC will post the training program on its website and will notify members of the Public Defense Roster of the training subject, location and dates, and the availability of any training funds. The PDC will also make available the application materials, establish an application deadline, decision deadline and notify applicants of how many places are available and whether non-attorney staff will be considered. (3-29-17)

ii. Decisions. The PDC will evaluate all completed applications that are received by the deadline. The PDC will notify all applicants within fourteen (14) days of the application deadline as to its decision. The PDC will fill all available training program places as long as a sufficient number of completed applications are received.

(3-29-17)

iii. Registration. Where an individual accepts an invitation to attend and registration materials are received by the registration deadline, that individual will be guaranteed a place in the training program. (3-29-17)

iv. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. (3-29-17)

03. Non-Attorney Staff. Staff and others employed or supervised by a defending attorney may qualify as a recipient of a scholarship. Where a person is not on the Public Defense Roster, that person may still either be identified as a targeted recipient of training funds or apply to attend a training program. (3-29-17)

a. Application Necessary. If training funds are desired, the non-attorney individual must make an application to the PDC for a scholarship, in addition to other enrollment requirements in Subsection 030.03.b. (3-29-17)

b. Application criteria. The PDC will consider (1) whether the individual is full-time staff, (2) the position they hold and the type of assistance they provide in the representation of indigent clients, and (3) the relevance of the materials presented at the training program to their ability to fulfill their duties. (3-29-17)

i. Open Enrollment. Where a non-attorney's application for a scholarship is approved by the PDC in advance of the registration deadline, a completed registration will be treated if the registration was for an attorney. (3-29-17)

ii. Restricted Enrollment. Where a non-attorney's application for a scholarship is approved by the PDC in advance of the registration deadline, a completed registration of an attorney will be given priority over a non-attorney. (3-29-17)

iii. Targeted Enrollment. Where a non-attorney has been identified by the PDC as an individual to be invited to a specific training, their acceptance of the invitation will be honored. (3-29-17)

iv. Application Enrollment. Where applications from non-attorneys is permitted by the PDC, and an application is received by the deadline, the PDC will consider the individual's position in determining whether to

accept the application. (3-29-17)

c. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. (3-29-17)

031. JOINT TRAINING PROGRAMS.

01. Joint Training Programs Permitted. The PDC may choose to partner with other organizations or agencies (hereinafter referred to as “partner”) in hosting and providing training programs to qualifying individuals. The nature of these designated training programs may result in non-qualifying individuals being in attendance. (3-29-17)

a. Qualifying Individuals. In determining whether training funds can be used, the qualification for receipt of benefits will be the same as established in Sections 020 and 021. (3-29-17)

b. Application of training funds. Qualified recipients will be treated in accordance with Subsection 030.01. (3-29-17)

02. Exclusive Use of Training Funds. Where non-qualifying individuals register to attend a Joint Training Program, the PDC shall not use training funds to subsidize the cost of registration, travel, lodging or per diem, other than unavoidable costs of operation. (3-29-17)

a. Training Program Fees and Costs. The PDC will negotiate a reasonable approximate cost per individual of the training program with the partner and agree to pay that cost for all qualifying individuals to attend. If the PDC is responsible for collecting registration fees, each non-qualifying individual will be assessed the negotiated cost of attendance at the time of registration. If the partner is responsible for collecting registration fees, the partner organization may set the cost of attendance for non-qualifying individuals. (3-29-17)

03. Registration. No priority will be given to defending attorneys over non-qualifying individuals in determining which registrants fill the spaces available. (3-29-17)

032. SCHOLARSHIPS.

01. Availability. The PDC may expend training funds on qualifying individuals to pay the cost to attend non-PDC training programs, in whole or in part. (3-29-17)

a. Contingent on Funds. Scholarships in any given fiscal year will depend on the availability of training funds allocated outside of existing training programs. (3-29-17)

b. Effect of scholarship. Any individual who receives a scholarship will not be eligible to receive a PDC scholarship in the same fiscal year. Preference given to applicants not receiving PDC scholarship in previous fiscal year. (3-29-17)

02. Application. The PDC will post on its website an application for scholarship funding. (3-29-17)

a. Deadline. All applications must be received by the PDC thirty (30) days before the end of the fiscal year in which funding is sought. All other scholarships will be considered in the following fiscal year. (3-29-17)

b. Notification. All applications for scholarships will be reviewed by the PDC according to available funding. The PDC will notify applicants of any scholarship reward at least sixty (60) days before the date of the training program. In the event an application is submitted less than sixty (60) days prior to the training program, the PDC will notify the applicant within ten (10) days of the final application submission. (3-29-17)

c. Non-Attorney Persons. Applications for scholarship will be accepted for non-attorneys in accordance with Subsections 030.03.a. and b. (3-29-17)

d. Delegation of Review and Approval. The PDC may delegate review and approval of applications to

PDC staff.

(3-29-17)

033. – 999. (RESERVED)

**IDAPA 61
TITLE 01
CHAPTER 02**

**61.01.02 – RULES GOVERNING UNIFORM DATA REPORTING REQUIREMENTS AND
FORMS FOR DEFENDING ATTORNEY ANNUAL REPORTS**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(ii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing uniform data reporting requirements and model forms for the Annual Reports submitted pursuant to section 19-864, Idaho Code. (5-1-19)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA, Title 01, Chapter 02, “Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports.” (5-1-19)

02. Scope. These rules contain the provisions of uniform data collection of Idaho’s defending attorneys and establish the procedures by which defending attorneys shall report data to the PDC. Data collected by the PDC shall be detailed enough to provide information about Idaho’s public defense system, however, shall be redacted in such a manner so as to protect attorney-client confidentiality. (5-1-19)

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. (5-1-19)

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to set standards for defending attorneys 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.” (5-1-19)

004. INCORPORATION BY REFERENCE.

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter. (5-1-19)

005. OFFICE – OFFICE HOURS – MAILING 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 operation. 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>. (5-1-19)

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-1-19)

007. – 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” for definitions of the terms and abbreviations used in this Rule. (5-1-19)

011 – 019. (RESERVED)

020. APPLICATION OF REPORTING REQUIREMENTS.

In accordance with section 19-864, Idaho Code, Indigent Defense Providers and any defending attorney whose information is not otherwise included in a report from an Indigent Service Provider shall submit an Annual Report to the PDC, the board of county commissioners, and the appropriate administrative district judge in conformance with

the rules promulgated pursuant to section 19-850(1)(a)(ii), Idaho Code. (5-1-19)

01. Entities Required to Report. All Indigent Defense Providers and defending attorneys shall be included in an Annual Report, but not all defending attorneys must submit a report. The following entities or individuals must submit an Annual Report: (5-1-19)

- a. Each Chief Defender for an institutional public defense office. (5-1-19)
- b. Each Chief Defender for a joint institutional public defense office. (5-1-19)
- c. Each Indigent Defense Provider under contract to provide indigent defense services. (5-1-19)
- d. Each attorney appointed at public expense to represent an indigent person. (5-1-19)

02. Exceptions to Reporting Requirements. The following are exceptions to the entities required to report: (5-1-19)

- a. If an Indigent Defense Provider is a law firm, only one Annual Report is required for the firm. (5-1-19)
- b. An attorney, appointed at public expense by the court and not under contract to provide indigent defense services for the county in which she was appointed, who handles fewer than ten (10) indigent defense cases in a fiscal year, may receive an exception to the reporting requirement. The attorney must contact the PDC, who may waive the reporting requirement if an alternative method of fulfilling the reporting requirements can be established. (5-1-19)

021. REPORTING REQUIREMENTS.

Information to be included in the Annual Report. (5-1-19)

01. Case Information. Each Annual Report for the previous fiscal year shall include for each defending attorney the following: (5-1-19)

- a. The number of cases handled; (5-1-19)
- b. The types of cases handled; (5-1-19)
- c. The method of resolution of each case handled (i.e., plea, dismissal, found guilty at trial, etc.); and (5-1-19)
- d. Case outcomes. (5-1-19)

02. Continuing Legal Education Information. Each Annual Report shall contain each defending attorney's Mandatory Continuing Legal Education (MCLE) hours as reported to the Idaho State Bar (ISB) for the previous fiscal year. The Annual Report shall be accompanied by one MCLE report from the ISB for each defending attorney. If the reporting period began during the previous fiscal year, an MCLE report for the entirety of the previous fiscal year must be sent. An attorney may have to request this information from the ISB. (5-1-19)

03. Expenditure Information. Being mindful of attorney-client confidentiality, each Annual Report shall contain expenditures related to indigent defense services. The reports shall not contain expenditure information related to specific cases. Expenditures related to indigent defense services include, but are not limited to: (5-1-19)

- a. Investigations; (5-1-19)
- b. Expert witnesses; (5-1-19)
- c. Interpreters; (5-1-19)

- d. Mental and physical health examinations; (5-1-19)
- e. Medical records; (5-1-19)
- f. Polygraph examinations; (5-1-19)
- g. Exhibits for trial demonstrations; (5-1-19)
- h. Scientific tests; (5-1-19)
- i. Extraordinary travel expenses; (5-1-19)
- j. Transcripts; (5-1-19)
- k. Discovery costs; and (5-1-19)
- l. Costs related to compliance with this rule. (5-1-19)

04. Support Staff. Each Annual Report shall contain a comprehensive listing of support staff, including investigators, employed by an Indigent Defense Provider or a Defending Attorney. Only staff who provide services related to indigent defense services must be included in the report. (5-1-19)

05. Method of Data Collection. Each Annual Report shall contain the method of data collection utilized by the Reporter to obtain the requested information, such as the name of a Case Management System or software program. (5-1-19)

06. Attorney Experience. Each Annual Report shall contain a brief description of each defending attorney's experience, including years of experience. (5-1-19)

022. REPORTING CYCLE.

The PDC shall conduct the reporting cycle in accordance with Section 19-864, Idaho Code, and the following schedule so far as it does not conflict with Idaho Code: (5-1-19)

01. Form Availability. The PDC shall make the Annual Report form available by July 1 each year for the subsequent fiscal year (i.e., July 1, 2019 for the Annual Report due November 1, 2020). (5-1-19)

02. Purpose. The data collected will inform the PDC on how to improve client representation, justify budget and resources, and recommend changes to indigent defense system practices and policies. (5-1-19)

03. Reporting Period. The Annual Report shall reflect the fiscal year immediately prior to the due date. (5-1-19)

023. REPORTING PROCEDURE.

The Annual Report shall be completed and submitted according to these rules. (5-1-19)

01. Forms. A Reporter shall file the appropriate fiscal year form supplied by the PDC and any other requested documents, both of which shall have original or digital signatures. (5-1-19)

02. Method of Delivery. The Annual Report shall be submitted to the PDC via mail, email, or facsimile. (5-1-19)

03. Review. A Reporter may review the Annual Report with PDC staff prior to submitting the Annual Report to ensure it meets the PDC's criteria. (5-1-19)

04. Incomplete Annual Report. Incomplete Annual Reports will be rejected by the PDC unless the Reporter can provide a reasonable explanation as to why the Annual Report is incomplete. Incomplete reports will be considered not submitted to the satisfaction of the Commission, which could prohibit the disbursement of the

county's Indigent Defense Grant Funds. (5-1-19)

05. Due Date. The Annual Report shall be delivered to the PDC on or before November 1 of each year. (5-1-19)

024. EXPLANATION OF DATA NOT TRACKED.

Any data which should be included in the Annual Report but was not tracked during the fiscal year must be reported to the PDC along with an explanation addressing why the data was not tracked. If the PDC determines a failure to track data is justifiable (i.e. non-willful), the disbursement of the county's Indigent Defense Grant Funds will not necessarily be prohibited. Examples of a justifiable reason include, but are not limited to, the data would violate attorney-client confidentiality, or the data is/was too cumbersome to track. A satisfactory explanation must be provided to support the inability to track such data. (5-1-19)

025. FAILURE TO SUBMIT AN ANNUAL REPORT.

Any defending attorney who fails to submit an Annual Report or fails to be included in an Annual Report may be removed from the public defense roster, as outlined in IDAPA 61.01.06.026. (5-1-19)

026. FRAUDULENT INFORMATION.

Any Reporter who includes fraudulent information in the Annual Report is subject to enforcement as outlined in IDAPA 61.01.06.026. (5-1-19)

027. – 999. (RESERVED)

**IDAPA 61
TITLE 01
CHAPTER 03**

**61.01.03 – RULES GOVERNING CONTRACTS AND CORE REQUIREMENTS
FOR CONTRACTS BETWEEN COUNTIES AND PRIVATE ATTORNEYS
FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

000. LEGAL AUTHORITY.

Section 19-850(1)(a)(iii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services. (5-1-19)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services.” (5-1-19)

02. Scope. These rules establish the standards and guidelines for contracts between counties and private attorneys for the provision of indigent defense services. (5-1-19)

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. (5-1-19)

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to create rules governing contracts and core requirements for contracts between counties and private attorneys for the provision of indigent services 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.” (5-1-19)

004. INCORPORATION BY REFERENCE.

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions,” is incorporated into this Chapter. (5-1-19)

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESSES – 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 operation. 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>. (5-1-19)

006. PUBLIC RECORDS ACT COMPLIANCE.

The PDC operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-1-19)

007. – 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems — Rule Definitions” for definitions of the terms and abbreviations used in this Rule. (5-1-19)

011. – 019. (RESERVED)

020. CORE TERMS.

If a Contracting Authority elects to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense by contracting with a defending attorney, as provided

under Section 19-859(4), Idaho Code, each contract between the parties shall be in writing and include Subsections 01, 02, 03, and 04. Each contract should also include Subsections 05 through 10. (5-1-19)

- 01. Underlying Bases.** The contract shall include a term explaining: (5-1-19)

 - a.** The Contracting Authority’s statutorily mandated responsibility to provide public defender services; and (5-1-19)
 - b.** The Contracting Authority’s desire to have legal services performed for individuals entitled to representation at public expense, provided by the Contractor. (5-1-19)
- 02. Parties.** The contract shall identify the Contracting Authority and the Contractor. (5-1-19)
- 03. Term of the Contract.** The contract shall specify the term of the contract, including a provision for renewal and for termination by either party. The contract should have a clear start date and end date. (5-1-19)
- 04. Compensation.** The contract shall have a term setting the monetary rate at which the Contractor will be compensated for legal services rendered. (5-1-19)
- 05. Independent Contractor.** The contract shall have a term explaining that the Contractor is an independent contractor for all services rendered pursuant to the contract. (5-1-19)
- 06. Scope of the Contract.** The contract shall establish the case types to be handled pursuant to the contract. (5-1-19)
- 07. Conflicts of Interest.** The contract shall include a provision ensuring the contractor does not provide representation to defendants when doing so would involve a conflict of interest. (5-1-19)
- 08. Training Requirements.** The contract shall require each defending attorney providing services pursuant to the contract to participate in regular training programs on criminal defense law, including a minimum of seven (7) hours of continuing legal education annually in areas relating to their public defense practice, as required by the most recent edition of “Standards for Defending Attorneys.” (5-1-19)
- 09. Experience Requirements.** Each Defending Attorney providing services pursuant to the contract shall: (5-1-19)

 - a.** Meet the qualification and training requirements set forth in the most recent edition of “Standards for Defending Attorneys” incorporated by reference in IDAPA 61.01.08; and (5-1-19)
 - b.** Satisfy the minimum requirements for practicing law in Idaho as determined by the Idaho Supreme Court. (5-1-19)
- 10. Performance Requirements.** The contract shall require the contractor to do the following: (5-1-19)

 - a.** Make reasonable efforts to provide the services and comply with the requirements of the Contract; (5-1-19)
 - b.** Utilize adequate support staff to render the necessary competent assistance of counsel required under the contract; (5-1-19)
 - c.** Contact all clients within a specified amount of time from notification of case assignment. The amount of time should take into account the requirements of providing constitutional representation and the ability of the contractor to meet such requirement considering factors like travel time and the ability to engage in such communication; and (5-1-19)
 - d.** Abide by PDC standards as set forth in the most recent edition of “Standards for Defending

Attorneys.” (5-1-19)

021. ESTABLISHMENT AND MAINTENANCE OF RECORDS.

01. Costs of Services Records. The contract shall require the Contractor to maintain records, including personnel, property, financial, and programmatic records, which reflect costs of services performed under the contract. (5-1-19)

02. Costs of Subcontract and Personal Service Contract Records. The contract shall require the Contractor to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. (5-1-19)

03. Duration of Record Keeping. The contract shall require the Contractor to maintain records for a specified period of time after termination of the contract, unless permission to destroy records before that time period is granted by the Contracting Authority. (5-1-19)

04. Copies. A copy of every signed contract between a Contracting Authority and an Indigent Defense Provider shall be sent to the PDC by the Contracting Authority within thirty (30) days of ratification. (5-1-19)

022. REPORTS AND INSPECTIONS.

Each contract shall require the Contractor to submit to the Contracting Authority the following: (5-1-19)

01. Written Notification. Immediate written notification in the case that a complaint is lodged with the Idaho State Bar, which has resulted in reprimand, suspension, or disbarment of the Indigent Defense Provider, or any attorney who is a member of the Indigent Defense Provider’s staff or working for the Indigent Defense Provider. (5-1-19)

02. Materials. If requested, materials necessary to verify compliance with all terms of the contract. (5-1-19)

023. – 999. (RESERVED)

**IDAPA 61
TITLE 01
CHAPTER 04**

**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. (4-11-19)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants.” (4-11-19)

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. (4-11-19)

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. (4-11-19)

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.” (4-11-19)

004. INCORPORATION BY REFERENCE.

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter. (4-11-19)

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 operation. 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>. (4-11-19)

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. (4-11-19)

007. -- 009. (RESERVED)

010. DEFINITIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” for definitions of the terms and abbreviations used in this Rule. (4-11-19)

011. ABBREVIATIONS.

01. PDC. The State Public Defense Commission. (4-11-19)

02. IPIDDS. Idaho’s Principles of an Indigent Defense Delivery System. (4-11-19)

03. IDG. Indigent Defense Grant. (4-11-19)

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. (4-11-19)

021. APPLICATION OF INDIGENT DEFENSE STANDARDS.

The established standards 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. (4-11-19)

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: (4-11-19)

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. (4-11-19)

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. (4-11-19)

03. Application Period. The applicant shall have through May 1 of that grant cycle to complete and submit the application to the PDC. (4-11-19)

04. Award Notification. The PDC shall issue notification to every applicant regarding the disposition of their grant request within sixty (60) days of submission. (4-11-19)

05. Grant Approval. Grant disbursement shall occur on or about October 1 of that grant cycle. (4-11-19)

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 (2) revisions. (4-11-19)

a. If after two (2) 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. (4-11-19)

b. The PDC will review and issue notification of the disposition of a revised application within thirty (30) days of submission. (4-11-19)

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. (4-11-19)

08. Priority Rating. If funds are not available to fund all of the approved applications, the PDC shall prioritize the disbursement of funds to: (4-11-19)

- a. Eligible Applicants not in compliance with any indigent defense standards; (4-11-19)
- b. Eligible Applicants in compliance with some indigent defense standards; then (4-11-19)
- 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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

03. Incomplete Application. An application which is missing required information shall be excluded from consideration for an award. (4-11-19)

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. (4-11-19)

024. AWARD ELIGIBILITY REQUIREMENTS.

To be considered for an award, an Applicant must meet all of the following requirements: (4-11-19)

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. (4-11-19)

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. (4-11-19)

03. Completed Application. To be eligible, the county must file, to the satisfaction of the PDC, a completed application for an Indigent Defense Grant. (4-11-19)

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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

026. CRITERIA.

The following criteria shall be used to evaluate applications for IDG awards: (4-11-19)

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), Idaho Code. (4-11-19)

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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

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. (4-11-19)

027. UNUSED IDG 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. (4-11-19)

028. WITHDRAWAL OF GRANT APPLICATION.

01. Withdrawal. Any applicant may withdraw or forfeit an application at any time. (4-11-19)

02. Ability to Apply. The withdrawal of an application does not affect the applicant's ability to reapply in a subsequent grant cycle. (4-11-19)

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. (4-11-19)

030. -- 999. (RESERVED)

**IDAPA 61
TITLE 01
CHAPTER 06**

**61.01.06 – RULES GOVERNING PROCEDURES FOR THE OVERSIGHT, IMPLEMENTATION,
ENFORCEMENT, AND MODIFICATION OF INDIGENT DEFENSE STANDARDS**

000. LEGAL AUTHORITY.

Section 19-850(1)(a)(vi), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding procedures for the oversight, implementation, enforcement and modification of indigent defense standards so that the right to counsel of indigent persons is constitutionally delivered to all indigent persons in Idaho. Additionally, Section 19-850(1)(c), Idaho Code, directs the PDC to review indigent defense providers and defending attorneys to evaluate compliance with indigent defense standards and the terms of state indigent defense grants.

(5-1-18)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards.”

(5-1-18)

02. Scope. These rules establish the procedures by which the PDC will oversee, implement, enforce and modify indigent defense standards.

(5-1-18)

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.

(5-1-18)

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to create procedures for the oversight, implementation, enforcement, and modification of Indigent Defense Standards 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.”

(5-1-18)

004. INCORPORATION BY REFERENCE.

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter.

(5-1-18)

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESSES – 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 operation. 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>.

(5-1-18)

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code.

(5-1-18)

007 – 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” for definitions of the terms and abbreviations used in this Rule.

(5-1-18)

011. – 019. (RESERVED)

020. OVERSIGHT PROGRAM.

The PDC shall oversee compliance with Indigent Defense Standards by Idaho's counties and defending attorneys. PDC staff shall act as advisors to the PDC, to oversee and monitor the public defense delivery systems provided by the counties to assure compliance with Indigent Defense Standards. (5-1-18)

021. PARTICIPANTS AND ROLES.

01. The PDC. It is the responsibility of the PDC to oversee compliance with Indigent Defense Standards. The PDC is required to develop and adopt such standards to establish an indigent defense delivery system in Idaho that ensures constitutional representation. Other responsibilities of the PDC include, but are not limited to the following: (5-1-18)

- a. Assess county and defending attorney compliance with Indigent Defense Standards; and (5-1-18)
- b. File compliance report with state. (5-1-18)

02. PDC Staff. PDC staff shall: (5-1-18)

- a. Review Indigent Defense Providers, defending attorneys and counties for compliance with Indigent Defense Standards; (5-1-18)
- b. Identify and investigate reports of non-compliance; (5-1-18)
- c. Prepare and assist in the implementation of corrective action plans; (5-1-18)
- d. Report to the PDC with respect to oversight activities; (5-1-18)
- e. Review Indigent Defense Grant Applications and prepare recommendations for PDC; (5-1-18)
- f. Review Defending Attorney Annual Reports and prepare recommendations for PDC; (5-1-18)
- g. At the request of county commissioners or indigent defense providers, review and assist with the creation of county indigent defense budgets; and (5-1-18)
- h. Prepare recommendations to the PDC based upon review of the above. (5-1-18)

03. Indigent Defense Providers and Defending Attorneys. Indigent Defense Providers and defending attorneys are subject to the oversight program described herein. It is the responsibility of indigent defense providers and defending attorneys to cooperate and participate in compliance review. See Section 19-862A(1), Idaho Code. Other responsibilities of indigent defense providers and defending attorneys include but are not limited to the following: (5-1-18)

- a. Participate meaningfully in the PDC oversight review process; (5-1-18)
- b. Report to the PDC all compliance issues as soon as reasonably practicable and without violating any attorney-client privilege; (5-1-18)
- c. Report to the PDC all barriers to compliance despite efforts to comply; and (5-1-18)
- d. Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. (5-1-18)

04. Counties. Counties, through each board of county commissioners, and other county staff necessary for the administration of indigent defense services, including but not limited to elected county clerks, are subject to the oversight program described herein. It is the responsibility of counties to cooperate and participate in compliance review. See Section 19-862A(1), Idaho Code. Other responsibilities of the counties include but are not limited to: (5-1-18)

- a.** Anticipate review and be prepared to enable reviewer to issue a report within thirty (30) days of the review date; (5-1-18)
- b.** Report to the PDC all compliance issues as soon as reasonably practicable; (5-1-18)
- c.** Report to the PDC all barriers to compliance despite efforts to comply; and (5-1-18)
- d.** Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. (5-1-18)

022. MINIMUM STANDARDS.

The minimum standards for review are Indigent Defense Standards, promulgated pursuant to Section 19-850(1)(a), Idaho Code, and contained in IDAPA 61.01.01 through IDAPA 61.01.08 and all documents incorporated by reference. The PDC does not have the authority to enforce compliance with any standard other than current Indigent Defense Standards. (5-1-18)

023. OVERSIGHT PROGRAM MANAGEMENT.

At a minimum, the oversight program must determine if Indigent Defense Standards are being met, determine if deficiencies are being identified in a timely manner, and determine if deficiencies are being cured in a timely manner or by a schedule implemented by the PDC. (5-1-18)

01. Applicability of Oversight Program. The PDC shall monitor the provision of indigent defense services in Idaho. Pursuant to Section 19-850(1)(a), Idaho Code, the PDC has the duty and authority to monitor the following entities: counties, indigent defense providers and defending attorneys, and other stakeholders, as allowed by law. Such monitoring shall include, but is not limited to a review of indigent defense contracts, Compliance Proposals, indigent defense budgets, annual reports of defending attorneys, court proceedings, court and defending attorney meeting facilities, defending attorney compliance with membership in the Idaho State Bar and “Standards for Defending Attorneys,” current edition, to ensure compliance with Indigent Defense Standards. (5-1-18)

a. The PDC delegates such duty and authority to PDC staff, however, the ultimate determination of compliance is solely the responsibility of the PDC. (5-1-18)

02. Ongoing Coordination with Counties, Indigent Defense Providers, and Defending Attorneys. PDC staff will conduct meetings and correspond with counties, indigent defense providers, defending attorneys and other indigent defense stakeholders as needed. PDC staff will conduct formal status meetings with counties once each quarter (every three months) and defending attorneys once a year (every twelve months). More frequent meetings may be conducted if needed. (5-1-18)

a. Institutional Public Defender Office meetings: If a defending attorney is an employee of an institutional public defender office, a formal status meeting with the chief public defender of that office satisfies the formal status meeting requirement as to that defending attorney. (5-1-18)

b. Contract Public Defender meetings: If a county contracts with a law firm or more than one defending attorney on a single contract, a formal status meeting with one of the defending attorneys working under that contract satisfies the formal status meeting requirement as to every defending attorney working under that contract. (5-1-18)

c. Meetings and correspondence are intended to ensure ongoing communications between the PDC and Stakeholders to ensure the best possible Indigent Defense Delivery System is in place to ensure constitutional representation. (5-1-18)

03. PDC Staff Reporting to PDC. PDC staff must make regular reports to the PDC. All reports must be submitted electronically using a reporting system specified by the executive director, as approved by the PDC. The objective of these reporting requirements is to provide the PDC with information regarding the compliance status of each of Idaho’s Indigent Defense Delivery Systems. (5-1-18)

a. Periodic Reviews. (5-1-18)

i. Initial Review. PDC staff shall conduct an initial review of each Indigent Defense Delivery System. Subsequent initial reviews shall occur upon a policy change that modifies the method of delivery in a county. An initial review should be submitted to the PDC within ninety (90) days of the implementation of this rule or when a change in delivery method is instituted, and must include: (5-1-18)

- (1) A description of the review process; (5-1-18)
- (2) A list of documents reviewed; (5-1-18)
- (3) Persons interviewed, observations made, and facilities inspected; (5-1-18)
- (4) Completed compliance checklists; (5-1-18)
- (5) Findings of Non-compliance if any; and (5-1-18)
- (6) Findings of Compliance with Recommendations, if any. (5-1-18)

ii. Other periodic reviews. If significant compliance issues arise within a county or upon request of the PDC, PDC staff shall conduct a review. A periodic review report should be submitted to the PDC within thirty (30) days of notice of the compliance issue or of request and must include: (5-1-18)

- (1) Date the PDC became aware of the compliance issue, or date request was made by the PDC for the review; (5-1-18)
- (2) Parties contacted during the review; (5-1-18)
- (3) Reason the review was conducted; (5-1-18)
- (4) Steps taken to resolve the issue; (5-1-18)
- (5) The corrective action plan, if one was created; (5-1-18)
- (6) Date of next review or follow-up. (5-1-18)

b. Annual Reviews. On or before April 15 of each year, PDC staff must submit to the PDC a report for each county that must include: (5-1-18)

- i. A summary of oversight activities for the immediately preceding compliance period, including a description of the provision of indigent defense services; (5-1-18)
- ii. A summary of compliance successes, deficiencies and issues; (5-1-18)
- iii. Review of implementation of prior year's Compliance Proposal; and (5-1-18)
- iv. Any changes to the provision of indigent defense services during the immediately preceding compliance period. (5-1-18)

c. Ongoing Consultation with the PDC. PDC staff shall consult with the PDC regarding appropriate handling of issues within counties that have remained unresolved after the review process or with counties which have not complied with or have disregarded Indigent Defense Standards. At a minimum, PDC staff shall notify the PDC within ten (10) business days of compliance issues that affect the provision of indigent defense services. (5-1-18)

i. PDC staff must ensure that an effective process is in place to identify and record compliance issues. PDC staff should assess the implementation of this identification in an ongoing manner and during oversight review. The executive director will informally assess this identification in the ongoing review of reports provided to the PDC.

(5-1-18)

04. PDC Reporting to Executive and Legislative Branches. PDC provides annual reports to the governor of the state of Idaho and the Idaho Legislature. These presentations include updates on the provision of indigent defense delivery in Idaho and makes recommendations for legislation on indigent defense system issues. See Section 19-850(1)(b), Idaho Code. (5-1-18)

05. PDC Reporting to Counties. The PDC will provide ongoing feedback to counties through PDC staff regarding information collected during reviews, compliance issues or concerns discussed by the PDC, or other relevant items related to county provision of indigent defense services. All reports created by PDC staff and submitted as the result of a review of the county or a defending attorney providing services within that county, shall also be issued to an authorized official of the county that is the subject of the report. (5-1-18)

06. PDC Reporting to Indigent Defense Providers and Defending Attorneys. The PDC will provide ongoing feedback to indigent defense providers and defending attorneys individually or through communication via the public defense roster. Such feedback could include, but is not limited to, information collected during reviews, compliance issues or concerns discussed by the PDC, or other relevant items related to the provision of indigent defense services. All reports created by PDC staff and submitted as the result of a review shall also be issued to the subject(s) of the report. (5-1-18)

07. Indigent Defense Providers and Defending Attorneys Reporting to PDC Staff. On an ongoing basis, indigent defense providers and defending attorneys shall report to PDC staff any compliance issues that relate to Indigent Defense Standards. PDC staff shall review such reports and may forward such reports to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. Additionally, indigent defense providers and defending attorneys shall follow requirements of Section 025: Corrective Action Plans and Compliance Verification. (5-1-18)

08. Counties Reporting to PDC Staff. On an ongoing basis, counties shall report to PDC staff any compliance issues or observed deficiencies that relate to indigent defense standards. PDC staff shall review such reports and may forward such reports to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. Additionally, counties shall follow requirements of Section 025: Corrective Action Plans and Compliance Verification. (5-1-18)

09. Other Stakeholders Reporting to PDC Staff. The PDC and PDC staff will seek and accept reports of compliance issues from stakeholders, though the PDC has no authority to mandate such reporting. Stakeholders may report whether or not a county, indigent defense provider or defending attorney are in compliance with Indigent Defense Standards. PDC staff shall review such reports and may pass such reports on to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. (5-1-18)

024. PROCEDURES FOR OVERSIGHT PROGRAM.

The procedure outlined below applies to all oversight activities performed by PDC staff. On-site review will generally be structured as follows: (5-1-18)

01. Time and Place. PDC staff will work with stakeholders to identify a convenient period of time for on-site oversight activities. (5-1-18)

02. Notification. PDC staff will notify the subject of a review at least thirty (30) days before the review is to take place. (5-1-18)

03. Extension. PDC staff may grant an extension for the conduct of a review, provided the PDC is notified by the party being reviewed within fifteen (15) days of the original notification date of the compliance review. (5-1-18)

04. Items Subject to Review. PDC staff will request and review the most recent Compliance Proposals, Indigent Defense Grant applications, indigent defense contracts, indigent defense budgets, annual reports, and other items relevant to the provision of indigent defense and compliance with indigent defense standards. (5-1-18)

05. Items Subject to Observation. PDC staff will conduct field observation of courtroom activities and facilities available to and used by indigent defense providers, defending attorneys, and their staff in the course of the representation of indigent defendants. In this section, “staff” refers to non-attorneys employed or contracted by an indigent defense provider or defending attorney as such employment or contract relates to the provision of indigent defense services. (5-1-18)

06. Persons Subject to Interview. PDC staff will interview county officials, indigent defense providers, defending attorneys and other stakeholders who are involved in the administration of Indigent Defense Services or could be in positions to observe compliance with Indigent Defense Standards. (5-1-18)

07. Timing of Report. PDC staff will issue a report within thirty (30) days of completion of oversight review or by April 15 of each year if an annual review. (5-1-18)

025. CORRECTIVE ACTION PLANS AND COMPLIANCE VERIFICATION.

Corrective Action Plans and Compliance Verification forms are to address how Indigent Defense Standards are to be met and how any deficiencies will be cured. (5-1-18)

01. Corrective Action Plans. Upon report of compliance issue by PDC staff or PDC finding of non-compliance, a county or defending attorney shall describe a proposed corrective action to be taken. The plan shall be submitted to the PDC electronically using a reporting system specified by the executive director, as approved by the PDC. (5-1-18)

a. County Response. Within sixty (60) days of the date of a report issued by PDC staff in which the county is the subject, the county shall respond in writing to each finding of non-compliance or finding of compliance with recommendation. The county shall describe a corrective action to be taken by the county. The county may request from the PDC an extension of up to sixty (60) days in which to describe a corrective action and submit it to the PDC. (5-1-18)

b. Indigent Defense Provider and Defending Attorney Response. Within sixty (60) days of the date of a report issued by a PDC Staff in which an attorney is the subject, the indigent defense provider or defending attorney shall respond in writing to each finding of non-compliance or finding of compliance with recommendation. The attorney shall describe a corrective action to be taken. The attorney may request from the PDC an extension of up to sixty (60) days in which to describe a corrective action and submit it to the PDC. (5-1-18)

c. Follow-up Reviews. PDC staff shall conduct follow-up reviews of counties, indigent defense providers and defending attorneys when a report included findings of non-compliance. The follow-up review shall occur within a reasonable time, but not more than sixty (60) days following receipt of a response to the report. Such reviews shall occur monthly until complete implementation of the corrective action has occurred. PDC staff shall provide monthly updates to the PDC regarding the subject of the report. Monthly updates by PDC staff to the PDC must include all issues that have not yet been corrected. (5-1-18)

d. Annual Follow-up Review. If implementation of a Corrective Action Plan will take longer than three hundred sixty-five (365) days, PDC staff shall provide a formal yearly report regarding the status of the corrective actions to the PDC and the subject of the report. Within thirty (30) days of the date of the annual follow-up review, the subject of the report shall respond in writing to each continued finding of non-compliance and describe the proposed corrective action to be taken. (5-1-18)

02. Compliance Verification. If in any given fiscal year, a county does not apply for an Indigent Defense Grant, the county shall submit a compliance verification form. See IDAPA 61.01.04 for further guidance. (5-1-18)

026. ENFORCEMENT.

Pursuant to Section 19-862A(1), Idaho Code, all counties, indigent defense providers and defending attorneys shall cooperate and participate with the PDC in the review of their indigent defense services. (5-1-18)

01. Failure to Submit to a Review. If a county, indigent defense provider or defending attorney fails to

cooperate with a review by PDC staff, the following actions will be taken: (5-1-18)

a. Review by the PDC executive director as described in Subsection 023.03.a. and Section 024 of this chapter. (5-1-18)

b. Continued failure to submit to a review will result in a certified letter designating a deficiency and the PDC may take action under Section 19-862A, Idaho Code, as allowed by law. (5-1-18)

02. Failure to Respond to Report. If a county, indigent defense provider, or defending attorney fails to respond to a report within the required time, the PDC will be notified. If the PDC finds no just cause for the failure to respond to the report, a certified letter will be sent to the subject of the report indicating the subject has failed to comply. The PDC may then take action pursuant to Section 19-862A(11), Idaho Code. (5-1-18)

03. County Non-compliance. If a county fails to take steps to correct a finding of non-compliance, the PDC may act pursuant to Section 19-862A(11), Idaho Code. (5-1-18)

04. Defending Attorney Non-compliance. If a defending attorney fails to take steps to correct a Finding of Non-compliance, the following actions will be taken: (5-1-18)

a. The county or counties for which the defending attorney provides indigent defense services will be notified via certified letter as to the non-compliance. (5-1-18)

b. The defending attorney will be removed from the Public Defense Roster. The defending attorney may re-apply for inclusion on the public defense roster after the finding of non-compliance is corrected. The defending attorney may still provide indigent defense services during this time. (5-1-18)

c. If the defending attorney continues to be deemed non-compliant after a period of six (6) months, the defending attorney will be prohibited from accepting any additional indigent defense cases in any county in which said attorney has been deemed non-compliant. Such prohibition shall remain in place until the PDC makes a finding that the defending attorney is compliant. (5-1-18)

05. Designation of a Deficiency. The designation of a deficiency is a formal finding made by the PDC that a county or defending attorney has failed to comply with Indigent Defense Standards within the timeline as required by Section 19-862A(9), Idaho Code. The PDC will maintain a list of designated deficiencies that will be made available upon request. When a deficiency exists for a period of more than six (6) months or persists through the IDG application process without a compliance proposal that sufficiently addresses such deficiency, the PDC will assess whether the party responsible has willfully and materially failed to comply. Upon such a finding, the PDC will take action pursuant to Section 19-862A(11), Idaho Code, which may include the withholding of Indigent Defense Grant funds or the PDC takeover of an indigent defense delivery system. (5-1-18)

06. Material Non-compliance. Established standards are deemed crucial to the constitutional representation of indigent defendants and the effective provision of indigent defense services. A violation of an established standard is material non-compliance. (5-1-18)

07. Willful Non-compliance. The violation of an established standard that is done voluntarily with either an intentional disregard of, or indifference to, the requirements of these rules will be deemed willful non-compliance. (5-1-18)

08. Final Determination of Non-compliance. The PDC is ultimately responsible for the determination that a county or defending attorney has willfully and materially failed to comply with Indigent Defense Standards. Pursuant to Section 19-862A(11), Idaho Code, the PDC may upon review of PDC staff reports, stakeholder reports, Indigent Defense Grant applications, Compliance Verification reports, information received relevant to the provision of indigent defense services, or observation by PDC staff or the PDC, deem a county or defending attorney has willfully and materially failed to comply. Upon such determination, the PDC will take action pursuant to Section 19-862A, Idaho Code, as allowed by law. (5-1-18)

027 – 999. (RESERVED)

**IDAPA 61
TITLE 01
CHAPTER 07**

**61.01.07 – RULES GOVERNING STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE
IDAHO’S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(vii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing the standards for defending attorneys that utilize, to the extent reasonably practicable taking into consideration factors such as case complexity, support services and travel, Idaho’s Principles of an Indigent Defense Delivery System (IPIDDS) as referenced in the same section. (5-1-17)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 07, “Rules Governing Standards for Defending Attorneys That Utilize Idaho’s Principles of an Indigent Defense Delivery System.” (5-1-17)

02. Scope. These rules establish the standards and guidelines for Indigent Defense Providers and defending attorneys practicing in the State of Idaho. 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 rules also apply to the delivery of such services by the county, section 19-862A(9), Idaho Code. (5-1-17)

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. (5-1-17)

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to set standards for defending attorneys 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.” (5-1-17)

004. INCORPORATION BY REFERENCE.

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter. (5-1-18)

005. OFFICE – OFFICE HOURS – MAILING 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 operation. 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>. (5-1-18)

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-1-17)

007 -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” for definitions of the terms and abbreviations used in this Rule. (5-1-18)

011. – 019. (RESERVED)

020. PUBLIC DEFENSE ROSTERS.

01. Public Defense Roster Membership. The PDC will create and maintain a roster of all indigent defense providers, defending attorneys and non-attorney staff under their regular employ or supervision who are compliant with current Indigent Defense Standards. (5-1-18)

a. Maintenance of Public Defense Roster. The public defense roster will be updated in November of each year or whenever there is a change requiring an update. (5-1-18)

b. Public Defense Roster Contents. The public defense roster will include the name of each compliant defending attorney or non-attorney staff, their Idaho State Bar Number, and professional contact information, including email address, physical address, and telephone number. The roster will also indicate the county or counties within which the defending attorney provides indigent defense services. (5-1-18)

c. Secondary Roster. The PDC will create and maintain a secondary roster of all non-compliant indigent defense providers and defending attorneys who continue to provide indigent defense services. The contents of the secondary roster will be the same as the Public Defense Roster but will include information as to how the attorney is not meeting established standards and the date on which the attorney was removed from the Public Defense Roster for such non-compliance. (5-1-18)

d. Availability of Public Defense Roster. The rosters are available from the PDC office upon request. (5-1-18)

02. Application for Public Defense Roster Inclusion. Any attorney who is not employed by an indigent defense provider, who does not work under an existing indigent defense services contract, or who has become compliant after a period of non-compliance with Indigent Defense Standards, may apply to the PDC for inclusion on the Public Defense Roster. The application is available on the PDC website: <https://pdc.idaho.gov/forms>. (5-1-18)

a. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. (5-1-17)

03. Membership Benefits. Membership on the public defense roster ensures access to PDC trainings and scholarships as outlined in IDAPA 61.01.01. (5-1-18)

04. Capital Counsel Roster Membership. The PDC will create and maintain a roster of all qualified capital defending attorneys. Inclusion on the capital counsel roster requires compliance with Standards for Defending Attorneys and current Indigent Defense Standards. (5-1-18)

a. Maintenance of Capital Counsel Roster. The capital counsel roster will be updated in November of each year, but may be updated more frequently in order to accurately reflect changes made throughout the year. (5-1-18)

b. Capital Counsel Roster Contents. The capital counsel roster will include the name of each qualified capital counsel who meets the Standards for Defending Attorneys: Capital Counsel Qualifications and Roster, their Idaho State Bar number and professional contact information including email address, physical address, and telephone number. (5-1-18)

05. Application for Capital Counsel Roster Inclusion. Any defending attorney who represents indigent defendants at public expense in defense of a capital crime shall apply for inclusion on the capital counsel roster. The application is available on the PDC website: <https://pdc.idaho.gov/forms>. (5-1-18)

a. Approval. The PDC must approve inclusion on the capital counsel roster. (5-1-18)

021. APPLICATION OF ESTABLISHED STANDARDS.

The established standards detailed in the incorporated document, “Standards for Defending Attorneys,” shall apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who is assigned to represent at least one indigent defendant or is otherwise assigned to represent 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. (5-1-17)

022. – 999. (RESERVED)

**IDAPA 61
TITLE 01
CHAPTER 08**

**61.01.08 – RULES GOVERNING THE ADMINISTRATION OF IDAHO’S
INDIGENT DEFENSE DELIVERY SYSTEM – RULE DEFINITIONS**

000. LEGAL AUTHORITY.

Sections 19-849 through 19-866, Idaho Code, give the State Public Defense Commission (PDC) authority to adopt rules and standards to improve the delivery of trial-level indigent defense services in Idaho. The PDC is authorized under Sections 19-850(1)(a) and 19-862A, Idaho Code, to supervise and administer the indigent defense delivery system. (5-1-18)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 61, Title 01, Chapter 08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery System – Rule Definitions.” (5-1-19)

02. Scope. These rules contain the definitions used throughout the Indigent Defense Delivery System chapters of rules adopted by the PDC. Those chapters include: (5-1-18)

a. IDAPA 61.01.01, “Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds”; (5-1-18)

b. IDAPA 61.01.02, “Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports”; (5-1-19)

c. IDAPA 61.01.03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services”; (5-1-19)

d. IDAPA 61.01.04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants”; (5-1-18)

e. IDAPA 61.01.06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards”; (5-1-18)

f. IDAPA 61.01.07, “Rules Governing the Standards for Defending Attorneys that Utilize Idaho’s Principles of an Indigent Defense Delivery System.” (5-1-18)

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. (5-1-18)

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to set standards for defending attorneys 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.” (5-1-19)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (5-1-18)

01. Idaho’s Principles of an Indigent Defense Delivery System. “Idaho’s Principles of an Indigent Defense Delivery System, edition 2016,” revised as of January 25, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/wp-content/uploads/sites/11/2017/01/Idahos-Principles-of-PD-System.pdf>. (5-1-18)

02. Standards for Defending Attorneys. “Standards for Defending Attorneys, edition 2018,” revised as of November 14, 2018, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-19)

03. Application for Capital Defense Roster. “Application for Capital Defense Roster, edition 2017,” revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC’s office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-18)

005. OFFICE – OFFICE HOURS – MAILING 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 operation. 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>. (5-1-19)

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-1-18)

007. – 009. (RESERVED)

010. DEFINITIONS.

For the purposes of the Indigent Defense Delivery System chapters of rules, the following definitions apply: (5-1-18)

01. Annual Report. A report submitted to the appropriate Board of County Commissioners, Administrative District Judge and the PDC by a defending attorney pursuant to Section 19-864, Idaho Code, on an annual reporting form created by the PDC. The annual reporting form is available on the PDC website: <https://pdc.idaho.gov/forms/>. (5-1-18)

02. Applicant – Indigent Defense Grant. 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. (5-1-18)

03. Approval – IDG Application. An IDG application shall be approved if the applicant meets the requirements for eligibility. 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 IDAPA 61.01.04. Disbursement of funds is subject to availability as appropriated by the State Legislature each year. (5-1-18)

04. Capital Counsel Roster. A roster of defending attorneys who may be appointed to represent an indigent defendant in a case in which the death penalty may be imposed. Defending attorneys not on this roster may not represent indigent defendants in such cases. (5-1-18)

05. Case. (5-1-18)

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. (5-1-18)

b. A felony case is counted as follows: (5-1-18)

i. A case filed as a felony is counted as one felony, whether it is dismissed, remanded, pled, or tried to completion. (5-1-18)

ii. A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. (5-1-18)

iii. A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. (5-1-18)

- 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. (5-1-18)
- 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. (5-1-18)
- 06. Caseload.** The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. (5-1-18)
- 07. Compliance Checklist.** A document provided by the PDC each grant cycle to assist an Applicant determine eligibility for an IDG. The checklist will be updated each year and is required as a part of an IDG application. (5-1-18)
- 08. Compliance Period.** The compliance period runs from May 1 through March 31. Indigent defense standards that are in place by May 1 of a given year must be complied with by March 31 of the following year. (5-1-18)
- 09. 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. (5-1-18)
- 10. Compliance Verification.** A form that must be completed and submitted to the PDC by a county that chooses not to file an Indigent Defense Grant Application. This verification requires the county to describe how IDG funds have been used in the prior year (if applicable) and an explanation as to how the county will fund their indigent defense delivery system in compliance with established standards. (5-1-18)
- 11. Contracting Authority.** The board of county commissioners or its designated agent who enters into a contract with a defending attorney for the provision of representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. (5-1-19)
- 12. Contractor.** A defending attorney, law firm or office of public defender that enters into a contract with a Contracting Authority for the provision of representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. (5-1-19)
- 13. Corrective Action Plan.** A plan developed by a county or defending attorney with the assistance of PDC staff that addresses any reported violation of established standards and how those violations will be corrected. (5-1-18)
- 14. 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. (5-1-18)
- 15. Deficiency.** The violation of an established standard for which the timeline for compliance has passed pursuant to Section 19-862A(9), Idaho Code. (5-1-18)
- 16. Eligible Applicant – Indigent Defense Grant.** To be considered for an award of an IDG, an applicant must meet the requirements of IDAPA 61.01.04, Section 024, “Award Eligibility Requirements.” (5-1-18)
- 17. Established Standards.** Rules promulgated by the PDC pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)
- 18. Finding of Compliance with Recommendation.** A finding of compliance with recommendation

refers to a condition whereby a county or defending attorney may be in compliance with Indigent Defense Standards; however, the provision of indigent defense services could be improved to ensure constitutionally-sound representation or achieve compliance with indigent defense standards yet to be promulgated. This finding is not a PDC determination of deficiency or non-compliance. The PDC does not have the authority to enforce compliance with a recommendation. (5-1-18)

19. Finding of Non-Compliance. A finding of non-compliance refers to an instance where a county or defending attorney is not in compliance with applicable Indigent Defense Standards and may be related to a deficiency in the provision of indigent defense services. This finding is not necessarily a PDC determination of a deficiency and still requires a finding of material and willful non-compliance before the take-over provisions of Section 19-862A, Idaho Code, are invoked. (5-1-18)

20. 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. (5-1-18)

21. Formal Status Meeting. A meeting between PDC staff and a county or defending attorney conducted in accordance with IDAPA 61.01.06, section 023.02. (5-1-18)

22. Indigent Defense Budget. The funds appropriated each fiscal year by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code, that includes the expenses of investigation, other preparation and trial, but does not include amounts received from the Capital Crimes Defense Fund or the Public Defense Commission. The appropriated funds shall not be less than a county's local share for that fiscal year. (5-1-18)

23. Indigent Defense Contract. A written contract between the board of county commissioners and a defending attorney or existing office of public defender that provides representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. Such contracts shall not include a pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney. (5-1-19)

24. Indigent Defense Delivery System. The system created by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code. The system includes the county, indigent defense provider, defending attorneys, and any other county staff necessary for the administration of indigent defense services. (5-1-18)

25. Indigent Defense Expenditures. Any monies expended for indigent defense services within a county that do 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. (5-1-18)

26. 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 service. (5-1-19)

27. 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. (5-1-18)

28. 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. (5-1-18)

29. 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. (5-1-18)

30. Indigent Defense Stakeholders (“Stakeholders”). A person, agency, entity or other organization with an interest or concern in the delivery of indigent defense in Idaho. (5-1-18)

31. 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. (5-1-18)

32. 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. (5-1-18)

33. 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. (5-1-18)

34. Oversight Review. An annual or periodic review of a county or defending attorney, completed by PDC staff, that considers whether indigent defense standards are being met and if deficiencies are being identified and cured in a timely fashion. (5-1-18)

35. Public Defense Roster. A roster of compliant defending attorneys who may be appointed to represent indigent defendants or other persons entitled to be represented by an attorney at public expense. The roster may also include non-attorney staff under the regular employ or supervision of a defending attorney. (5-1-19)

36. Reporter. An Indigent Defense Provider or defending attorney who submits an Annual Report as required by Section 19-864, Idaho Code, and IDAPA 61.01.02. (5-1-19)

37. Scholarship. Any amount of training funds granted by the PDC to be used toward the costs of attending a training program. (5-1-18)

38. Staff. Any individual employed by the PDC. (5-1-18)

39. Submission Date. The date upon which one mails or digitally submits a document, form or application to the PDC. (5-1-18)

40. Training Funds. An amount designated in the annual budget of the PDC designated for the benefit of defending attorneys and those under their employ or supervision. These funds are dedicated to provide training and education for persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

41. Training Program. Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

42. Vertical Representation. Continuous representation by the same attorney from assignment through completion of the case. Assignment shall occur immediately following an initial appearance to ensure that the constitutionally required level of advocacy necessary to mount a meaningful defense commences as soon as possible. (5-1-18)

43. Workload. The term workload recognizes that a caseload generally consists of a mix of case types that each require differing amounts of time and resources. (5-1-18)

011. ABBREVIATIONS.

01. MCLE. Mandatory Continuing Legal Education credit as determined by the Idaho State Bar. (5-1-18)

- 02.** **PDC.** The State Public Defense Commission. (5-1-18)
- 03.** **IPIDDS.** Idaho’s Principles of an Indigent Defense Delivery System. (5-1-18)
- 04.** **IDG.** Indigent Defense Grant. (5-1-18)
- 012. – 999.** **(RESERVED)**