

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 236

BY WAYS AND MEANS COMMITTEE

AN ACT

1
2 RELATING TO PUBLIC DEFENSE; AMENDING TITLE 19, IDAHO CODE, BY THE ADDITION OF
3 A NEW CHAPTER 60, TITLE 19, IDAHO CODE, TO ESTABLISH PROVISIONS REGARD-
4 ING THE STATE PUBLIC DEFENDER ACT, TO PROVIDE A SHORT TITLE, TO DEFINE
5 TERMS, TO CREATE THE OFFICE OF THE STATE PUBLIC DEFENDER, TO PROVIDE FOR
6 THE APPOINTMENT OF THE STATE PUBLIC DEFENDER, TO PROVIDE FOR THE POWERS
7 AND DUTIES OF THE STATE PUBLIC DEFENDER, TO PROVIDE FOR THE APPOINTMENT
8 OF DISTRICT PUBLIC DEFENDERS, TO PROVIDE FOR THE POWERS AND DUTIES OF
9 DISTRICT PUBLIC DEFENDERS, TO PROVIDE FOR THE HIRING OF A DISTRICT PUB-
10 LIC DEFENDER, AND TO PROVIDE FOR INDIGENT PUBLIC DEFENSE, THE ROLE OF
11 COUNTIES, PUBLIC DEFENSE COMMISSION RULES, AND TRANSITION; AMENDING
12 SECTION 1-2205, IDAHO CODE, TO AUTHORIZE THE DISTRICT MAGISTRATES COM-
13 MISSION TO RECRUIT AND NOMINATE CANDIDATES FOR THE POSITION OF DISTRICT
14 PUBLIC DEFENDER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
15 19-847, IDAHO CODE, TO REVISE PROVISIONS REGARDING INDIGENT PUBLIC
16 DEFENSE, TO PROVIDE FOR THE ROLE OF COUNTIES, TO PROVIDE FOR PUBLIC
17 DEFENSE COMMISSION RULES, AND TO PROVIDE FOR TRANSITION; REPEALING SEC-
18 TION 19-847, IDAHO CODE, RELATING TO INDIGENT PUBLIC DEFENSE, THE ROLE
19 OF COUNTIES, PUBLIC DEFENSE COMMISSION RULES, AND TRANSITION; AMENDING
20 SECTION 19-852, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO
21 REDESIGNATE THE SECTION; AMENDING SECTION 19-853, IDAHO CODE, TO REVISE
22 PROVISIONS REGARDING THE DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT
23 TO COUNSEL AND TO REDESIGNATE THE SECTION; AMENDING SECTION 19-854,
24 IDAHO CODE, TO REVISE PROVISIONS REGARDING REIMBURSEMENT, TO PROVIDE
25 CORRECT CODE REFERENCES, AND TO REDESIGNATE THE SECTION; AMENDING SEC-
26 TION 19-855, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION
27 19-857, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL
28 CORRECTION; AMENDING SECTION 19-861, IDAHO CODE, TO REDESIGNATE THE
29 SECTION, TO REMOVE OBSOLETE LANGUAGE REGARDING PUBLIC DEFENDER FACILI-
30 TIES, AND TO REVISE A PROVISION REGARDING FACILITIES; AMENDING SECTION
31 19-858, IDAHO CODE, AS AMENDED BY SECTION 56, CHAPTER 318, LAWS OF 2022,
32 TO PROVIDE FOR COUNTY PROSECUTORS, TO REVISE A PROVISION REGARDING RE-
33 IMBURSEMENT, TO PROVIDE CORRECT CODE REFERENCES, AND TO REDESIGNATE
34 THE SECTION; AMENDING SECTION 19-864, IDAHO CODE, TO REMOVE PROVISIONS
35 REGARDING DEFENDING ATTORNEYS AND TO REDESIGNATE THE SECTION; AMENDING
36 SECTION 19-865, IDAHO CODE, TO REVISE PROVISIONS REGARDING APPLICATION
37 OF THE CHAPTER AND TO REDESIGNATE THE SECTION; AMENDING SECTION 19-866,
38 IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORREC-
39 TION; AMENDING CHAPTER 60, TITLE 19, IDAHO CODE, BY THE ADDITION OF A
40 NEW SECTION 19-6019, IDAHO CODE, TO PROVIDE CERTAIN REQUIREMENTS WHEN
41 THE OFFICE OF THE STATE PUBLIC DEFENDER CONTRACTS WITH DEFENDING ATTOR-
42 NEYS; AMENDING CHAPTER 8, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW
43 SECTION 19-850A, IDAHO CODE, TO CREATE THE POSITION OF THE STATE PUBLIC
44 DEFENDER IN THE PUBLIC DEFENSE COMMISSION AND TO ABOLISH THE PUBLIC
45 DEFENSE COMMISSION; REPEALING SECTION 19-850A, IDAHO CODE, RELATING

1 TO THE STATE PUBLIC DEFENDER AND THE ABOLISHMENT OF THE PUBLIC DEFENSE
2 COMMISSION; AMENDING SECTION 19-5903, IDAHO CODE, TO PROVIDE FOR THE
3 CREATION OF THE OFFICE OF THE STATE APPELLATE PUBLIC DEFENDER; REPEAL-
4 ING SECTION 19-5904, IDAHO CODE, RELATING TO THE APPOINTMENT OF THE
5 STATE APPELLATE PUBLIC DEFENDER; AMENDING CHAPTER 59, TITLE 19, IDAHO
6 CODE, BY THE ADDITION OF A NEW SECTION 19-5904, IDAHO CODE, TO PROVIDE
7 FOR THE APPOINTMENT OF THE STATE APPELLATE PUBLIC DEFENDER; AMENDING
8 SECTION 19-5905, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE POWERS
9 AND DUTIES OF THE STATE APPELLATE PUBLIC DEFENDER; AMENDING SECTION
10 19-863A, IDAHO CODE, TO REDESIGNATE THE SECTION; REPEALING SECTIONS
11 19-848, 19-849, 19-850, AND 19-851, IDAHO CODE, RELATING TO THE STATE
12 PUBLIC DEFENSE COMMISSION; REPEALING SECTIONS 19-859 AND 19-860, IDAHO
13 CODE, RELATING TO COUNTY PUBLIC DEFENDERS; REPEALING SECTION 19-862,
14 IDAHO CODE, RELATING TO APPROPRIATIONS FOR PUBLIC DEFENDERS; REPEALING
15 SECTION 19-862A, IDAHO CODE, RELATING TO INDIGENT DEFENSE FINANCIAL
16 ASSISTANCE; REPEALING SECTION 19-863, IDAHO CODE, RELATING TO DEFENSE
17 EXPENSES; AMENDING SECTION 67-1406, IDAHO CODE, TO PROVIDE A CODE REF-
18ERENCE; AMENDING SECTION 67-2601, IDAHO CODE, TO REMOVE A PROVISION
19REGARDING THE STATE PUBLIC DEFENSE COMMISSION AND TO PROVIDE FOR THE OF-
20FICE OF THE STATE APPELLATE PUBLIC DEFENDER AND THE OFFICE OF THE STATE
21PUBLIC DEFENDER; AMENDING SECTION 67-5303, IDAHO CODE, TO REVISE A PRO-
22VISION REGARDING NONCLASSIFIED STATE EMPLOYEES AND TO REMOVE SURPLUS
23VERBIAGE; AMENDING SECTION 19-625, IDAHO CODE, TO PROVIDE A CORRECT
24CODE REFERENCE; AMENDING SECTION 20-514, IDAHO CODE, TO PROVIDE CORRECT
25CODE REFERENCES; AMENDING SECTION 31-3201I, IDAHO CODE, TO PROVIDE A
26CORRECT CODE REFERENCE; AMENDING SECTION 57-827, IDAHO CODE, TO PROVIDE
27CORRECT CODE REFERENCES; AMENDING SECTION 74-105, IDAHO CODE, TO RE-
28VISE A PROVISION REGARDING RECORDS EXEMPT FROM DISCLOSURE AND TO MAKE A
29CODIFIER'S CORRECTION; PROVIDING LEGISLATIVE INTENT; AND DECLARING AN
30EMERGENCY AND PROVIDING EFFECTIVE DATES.

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

32 SECTION 1. That Title 19, Idaho Code, be, and the same is hereby amended
33 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
34 ter 60, Title 19, Idaho Code, and to read as follows:

35 CHAPTER 60
36 STATE PUBLIC DEFENDER ACT

37 19-6001. SHORT TITLE. This chapter shall be known and may be cited as
38 the "State Public Defender Act."

39 19-6002. DEFINITIONS. As used in this chapter:

40 (1) "Defending attorney" means any attorney employed by an indigent de-
41 fense provider or otherwise under contract to represent adults or juveniles
42 at public expense, consistent with the provisions of this chapter.

43 (2) "Detain" means to have in custody or otherwise deprive of freedom of
44 action.

45 (3) "Expenses," when used with reference to representation pursuant
46 to this chapter, includes the expenses of investigation, experts, testing,

1 and other pretrial preparation, trials, post-verdict motions, and post-con-
2 viction relief proceedings brought pursuant to the uniform post-conviction
3 procedure act, chapter 49, title 19, Idaho Code.

4 (4) "Indigent defense provider" means the office of the state public
5 defender or any agency, entity, organization, or person selected by the of-
6 fice for the direct provision of indigent defense services as a means to pro-
7 vide for the representation of indigent persons and other individuals who
8 are entitled to be represented by an attorney at public expense.

9 (5) "Indigent person" means a person who, at the time his need is deter-
10 mined pursuant to section 19-6009, Idaho Code, is unable to provide for the
11 full payment of an attorney and all other necessary expenses of representa-
12 tion.

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

16 19-6003. OFFICE OF THE STATE PUBLIC DEFENDER CREATED. The office of
17 the state public defender is hereby created in the department of self-gov-
18 erning agencies.

19 19-6004. STATE PUBLIC DEFENDER -- APPOINTMENT -- TERM -- PROHIBITED
20 CONDUCT -- REMOVAL -- VACANCIES -- REAPPOINTMENT -- COMPENSATION. (1) The
21 state public defender shall reside in the office of the state public defender
22 and shall be appointed by the governor, in a manner consistent with subsec-
23 tion (6) of this section, to serve a four (4) year term.

24 (2) The state public defender must meet the following qualifications on
25 the effective date of appointment:

26 (a) Be at least thirty (30) years of age;

27 (b) Be a citizen of the United States;

28 (c) Have held a license to practice law or a judicial office in one (1)
29 or more jurisdictions of the United States for at least five (5) contin-
30 uous years immediately preceding the appointment;

31 (d) Be or become an active member of the Idaho state bar within one (1)
32 year of appointment and remain an active member in good standing there-
33 after; and

34 (e) Have at least five (5) years of criminal defense experience.

35 (3) The state public defender shall not:

36 (a) Engage in the practice of law outside his role in the office of the
37 state public defender, except for the practice of law that is permitted
38 for a judge by the Idaho code of judicial conduct;

39 (b) Hold or be a candidate for any federal, state, county, municipal,
40 judicial, district, or other elective office; provided, however, this
41 paragraph does not prohibit the state public defender from seeking ap-
42 pointment to another office, including state or federal judicial of-
43 fice;

44 (c) Serve as the agent, representative, officer, political treasurer,
45 or employee, whether for profit or otherwise, of any political party,
46 political committee, or candidate, as such terms are defined in chapter
47 1, title 34, Idaho Code, and chapter 66, title 67, Idaho Code; or

1 (d) Hold any other public or private sector position, for profit or oth-
2 erwise, except for volunteer positions that are not inconsistent with
3 the duties of the state public defender.

4 (4) The state public defender may be removed from office by the gover-
5 nor for failing to retain the qualifications of his office provided in sub-
6 section (2) of this section, for engaging in prohibited conduct set forth in
7 subsection (3) of this section, or for good cause shown. If the state pub-
8 lic defender is removed from office, the governor shall provide the house of
9 representatives and the senate written notice of the removal, the effective
10 date of removal, and the reason or reasons therefor.

11 (5) If the state public defender resigns, dies, or is removed from of-
12 fice as provided by law, the governor shall appoint a person who meets the
13 qualifications established in this section, in a manner consistent with sub-
14 section (6) of this section, to fill the unexpired term.

15 (6) The governor shall appoint a state public defender in the following
16 manner:

17 (a) Whenever a vacancy arises in the position of state public defender,
18 the governor shall appoint a panel with seven (7) members, with one
19 (1) panel member appointed from the membership of each of the seven (7)
20 district magistrates commissions. Not less than two (2) but not more
21 than (3) panel members shall be attorneys, not more than two (2) but not
22 less than one (1) panel member shall be a county commissioner, and one
23 (1) member shall be a mayor. The governor shall not appoint to the panel
24 any member of a district magistrates commission who is a judge, who is
25 employed as a criminal prosecutor, or who otherwise prosecutes or aids
26 in the prosecution of criminal cases, or any person employed in a law
27 enforcement agency. The governor shall select a member of the panel to
28 serve as chairman. The provisions of section 1-2203B(4), Idaho Code,
29 regarding current or former law partners shall apply to any attorney
30 serving on the panel. Members of the panel shall be compensated by the
31 office of the state public defender as provided in section 59-509(b),
32 Idaho Code.

33 (b) It shall be the duty of the panel to recruit applicants, review candi-
34 dates, and submit to the governor a list of not less than three (3),
35 but not more than five (5), attorneys who meet the qualifications es-
36 tablished in this chapter, and the governor shall appoint the state pub-
37 lic defender from the list, with the advice and consent of the senate.
38 If three (3) qualified candidates or fewer apply, the panel shall sub-
39 mit all applicants to the governor and may communicate to the governor
40 or the governor's representative, in executive session pursuant to sec-
41 tion 74-206(1) (a), Idaho Code, a ranking of the applicants, and the gov-
42 ernor shall appoint the state public defender from the list, with the
43 advice and consent of the senate. The governor and the office of the
44 state public defender may assist the panel in drawing the largest pool
45 of qualified applicants.

46 (c) Once the governor appoints the state public defender, the panel
47 shall disband until reconstituted by the governor consistent with this
48 section.

49 (7) When the state public defender's term expires under the law, the
50 governor may reappoint the state public defender to subsequent four (4) year

1 terms, with the advice and consent of the senate, or the governor may con-
2 stitute a panel consistent with subsection (6) of this section to nominate
3 candidates and appoint a state public defender from the list produced by the
4 panel, with the advice and consent of the senate.

5 (8) The state public defender shall be compensated in an amount deter-
6 mined by the governor.

7 19-6005. POWERS AND DUTIES OF THE STATE PUBLIC DEFENDER. Consistent
8 with the state of Idaho's obligation to provide indigent public defense pur-
9 suant to the sixth amendment to the United States constitution; section 13,
10 article I of the constitution of the state of Idaho; and this chapter, the
11 state public defender shall have the power to:

12 (1) Ensure that qualified defending attorneys, experts, investiga-
13 tors, mitigation specialists, stenographers, paralegals, or other support
14 staff and assistants are employed or contracted as necessary to carry out the
15 purposes of this chapter, that the same deliver indigent defense services in
16 compliance with applicable indigent defense standards, and that any persons
17 hired or contracted to provided indigent individuals charged with an offense
18 or offenses punishable by a sentence of death be qualified to provide team
19 representation. Provided, however, the terms of any contract with a defend-
20 ing attorney shall not include any pricing structure that charges or pays a
21 single fixed fee for the services of the defending attorney and client-re-
22 lated expenses;

23 (2) Provide appropriate facilities, including office space, furni-
24 ture, equipment, books and other legal research tools, postage, supplies,
25 and secure information and communication technology equipment that is rea-
26 sonably necessary for the proper performance of the state public defender;

27 (3) Implement procedures for the oversight, implementation, enforce-
28 ment, and improvement of indigent defense standards so that the right to
29 counsel of indigent persons is constitutionally delivered to all indigent
30 persons in this state;

31 (4) Implement the most current American bar association standards for
32 defending attorneys delivering indigent defense pursuant to this chapter,
33 including caseload standards;

34 (5) Provide training and continuing legal education approved by the
35 Idaho state bar for defending attorneys and employees that promotes compe-
36 tency and consistency in case types defended by the state public defender;

37 (6) Require defending attorneys, contractors, and employees to keep
38 appropriate records, consistent with uniform data reporting requirements,
39 respecting each person to whom the state public defender is responsible for
40 providing defense, including but not limited to caseload, workload, and ex-
41 penditures;

42 (7) Establish uniform contracts both for contract defending attorneys,
43 where utilized throughout the state or when caseload volumes require their
44 use, and for conflict defending attorneys, when carrying out the purposes
45 of this chapter. Contract pay rates shall be informed by the prevailing
46 statewide market rate;

47 (8) Establish a uniform system for contracting with qualified attor-
48 neys to carry out the purposes of this chapter, including a system for appli-
49 cation, payment for services, and reimbursement; and

1 (9) Collaborate with district public defenders on the policies of
2 the office and in the formation of a budget request sufficient to meet the
3 state's constitutional obligation to provide indigent services, which the
4 state public defender shall submit to the division of financial management
5 as required by law.

6 19-6006. DISTRICT PUBLIC DEFENDER. (1) In each judicial district de-
7 scribed in chapter 8, title 1, Idaho Code, the state public defender shall
8 employ a district public defender. The district public defender must be an
9 employee of the office of the state public defender, meet and maintain the
10 qualifications set forth in section 19-6004(2), Idaho Code, and not engage
11 in any conduct prohibited by section 19-6004(3), Idaho Code, while employed
12 as district public defender. The district public defender may be removed by
13 the state public defender for failing to maintain the qualifications of the
14 position established in this section, for engaging in conduct prohibited by
15 this section, or for good cause shown. The duty station of each district pub-
16 lic defender must be within the judicial district that the district public
17 defender oversees.

18 (2) Under the direction and supervision of the state public defender,
19 each district public defender shall carry out the purposes of this chapter in
20 the judicial district, including supervising the defending attorneys hired
21 or contracted to work in that judicial district, assuring compliance with
22 the provisions of section 19-6005, Idaho Code, as well as other duties as-
23 signed by the state public defender.

24 (3) The district public defender shall be the principal liaison with
25 the administrative district judge, the trial court administrator, the
26 boards of county commissioners, county clerks, and county prosecutors on
27 administrative matters concerning the provision of public defense in the ju-
28 dicial district. Upon invitation, but not less than annually, the district
29 public defender shall report to each board of county commissioners within
30 the judicial district concerning public defense in the respective county.

31 19-6007. HIRING THE DISTRICT PUBLIC DEFENDER. (1) Whenever a vacancy
32 arises in the position of district public defender, it shall be the duty
33 of the district magistrates commission to recruit applicants, review candi-
34 dates, and hire a district public defender who meets the qualifications
35 established in this chapter. The office of the state public defender may
36 assist the district magistrates commission in drawing the largest pool of
37 qualified applicants.

38 (2) In addition to the provisions of sections 1-2203, 1-2203A, 1-2203B,
39 1-2204, and 1-2205, Idaho Code, when a district magistrates commission is
40 carrying out the purposes of this section:

41 (a) The administrative district judge or district judge designated by
42 the administrative district judge shall not participate in any proceed-
43 ings of the district magistrates commission pursuant to the provisions
44 of this section. The county commissioner on the district magistrates
45 commission from the county that operated an office of public defender by
46 January 1, 2023, shall chair the district magistrates commission. If
47 there is more than one (1) county in the judicial district that oper-
48 ated an office of public defender or that was part of a joint office of

1 public defender by January 1, 2023, the county commissioner on the dis-
2 trict magistrates commission from such a county with the longest con-
3 tinuous service as county commissioner shall chair the district magis-
4 trates commission. If no county in the judicial district operated an
5 office of public defender or was part of a joint office of public de-
6 fender by January 1, 2023, the county commissioner on the district mag-
7 istrates commission with the longest continuous service as county com-
8 missioner shall chair the district magistrates commission.

9 (b) The state public defender shall appoint two (2) attorneys who
10 practice in the judicial district and whose practice as certified by
11 each attorney at the time of his appointment is predominantly criminal
12 defense, one (1) of whom must be a defending attorney employed or con-
13 tracted by an indigent defense provider, to temporarily serve on the
14 district magistrates commission; provided, however, the provision of
15 section 1-2203B(4), Idaho Code, regarding current or former law part-
16 ners shall apply to any attorney appointed by the state public defender.

17 (c) No person employed as a criminal prosecutor or who otherwise pros-
18 ecutes or aids in the prosecution of criminal cases may participate on
19 the district magistrates commission, nor shall any person employed in
20 a law enforcement agency participate on the district magistrates com-
21 mission. A temporary vacancy, pursuant to section 1-2203B, Idaho Code,
22 shall occur for any commission member prohibited from participating by
23 this paragraph.

24 19-6008. INDIGENT PUBLIC DEFENSE -- ROLE OF COUNTIES -- PUBLIC DEFENSE
25 COMMISSION RULES -- TRANSITION. (1) Notwithstanding any provision of law to
26 the contrary, on and after October 1, 2024:

27 (a) All counties are released from any further financial or legal obli-
28 gation to provide indigent public defense. On and after such date, the
29 state assumes the full financial and legal obligation to provide indi-
30 gent public defense pursuant to the sixth amendment to the United States
31 constitution and section 13, article I of the constitution of the state
32 of Idaho.

33 (b) This release of financial and legal obligation to provide indigent
34 public defense includes the release of any requirement for counties:
35 to employ or contract with defending attorneys, investigators, social
36 workers, legal assistants, or other personnel necessary to provide
37 indigent public defense; to provide office furnishings, equipment, of-
38 fice materials, or office supplies; to provide information technology
39 equipment, information technology software, communication equipment,
40 communication software, equipment, or software licenses or subscrip-
41 tions; to provide general office technology or equipment; or to assume
42 any other expense necessary for indigent defense services on and after
43 October 1, 2024.

44 (c) Notwithstanding the provisions of this section, any county provid-
45 ing office space to a county office of public defense or a joint county
46 office of public defense as of January 1, 2023, shall continue to make
47 available the same or substantially similar office space for the use
48 of the office of the state public defender until July 1, 2029, provided
49 that:

1 (i) Not later than January 1, 2027, the state public defender must
2 provide to the board of county commissioners of any county provid-
3 ing office space to the office of the state public defender a fa-
4 cility transition plan outlining the state public defender's in-
5 tent to either procure other office space to house defending at-
6 torneys or enter into a contract with the board of county commis-
7 sioners to lease office space from the board of county commis-
8 sioners necessary to house defending attorneys;

9 (ii) Nothing in this section shall be construed to obligate a
10 board of county commissioners to provide office space to the of-
11 fice of the state public defender on and after July 1, 2029;

12 (iii) Nothing in this section shall prohibit the state public
13 defender from notifying a board of county commissioners that pro-
14 vides office space to the office of the state public defender that
15 the state public defender no longer needs part or all of the space
16 obligated by this section prior to July 1, 2029. Such notice shall
17 relieve the county board of commissioners of the obligation to
18 provide office space to the office of the state public defender;
19 and

20 (iv) Notwithstanding the provisions of this section, each county
21 must continue providing interviewing facilities in the county
22 jail necessary for carrying out the state public defender's re-
23 sponsibilities in law.

24 (d) The state public defender shall reimburse a board of county com-
25 missioners for any expenses incurred in providing such office space,
26 including but not limited to office furnishings, equipment, office
27 materials, or office supplies; information technology equipment, in-
28 formation technology software, communication equipment, communication
29 software, equipment, or software licenses or subscriptions; or general
30 office technology or equipment or related expenses.

31 (e) All administrative rules promulgated by the state public defense
32 commission shall be repealed in accordance with the provisions of chap-
33 ter 52, title 67, Idaho Code.

34 (2) To effectuate an orderly transition to the office of the state pub-
35 lic defender without unnecessary disruption of indigent defense services,
36 counties and defending attorneys shall not prohibit access by the state
37 public defender, or his designee, to information and data, including case
38 files, that are necessary to establish a statewide case management system or
39 for other administrative purposes in establishing the office of the state
40 public defender. The state public defender and any designee shall have the
41 ethical duty and legal obligation to maintain confidentiality and privacy
42 of any information learned or obtained during the course of transition to
43 the office of the state public defender while counties continue to provide
44 indigent defense services. The state public defender at his discretion may
45 require defending attorneys to use a case management system procured by the
46 state public defender at no expense to counties or defending attorneys.

47 (3) Upon termination of the public defense commission on July 1, 2024,
48 all property and full-time positions at the commission shall transfer to the
49 office of the state public defender.

1 (4) All administrative rules promulgated by the public defense commis-
 2 sion shall remain in effect while counties continue to provide indigent de-
 3 fense until October 1, 2024, when that obligation ends pursuant to this sec-
 4 tion.

5 (5) To the greatest extent possible, the state public defender and dis-
 6 trict public defenders shall provide the option to defending attorneys em-
 7 ployed by a county office of public defender or joint office of public de-
 8 fender on September 30, 2024, who meet the requirements and standards for de-
 9 fending attorneys, as well as support staff, the opportunity to continue em-
 10 ployment with the office of the state public defender working in the county
 11 that previously employed them.

12 (6) District magistrates commissions shall coordinate with the state
 13 public defender and begin the process of recruiting applicants, reviewing
 14 candidates, and selecting each district public defender as soon as practica-
 15 ble after July 1, 2024.

16 (7) In order to advise the state public defender and provide input from
 17 counties and defending attorneys during the transition, the state public de-
 18 fender shall appoint a volunteer transition advisory board to advise on mat-
 19 ters related to the transition of public defense through October 1, 2024.
 20 Board members shall be compensated as provided in section 59-509(a), Idaho
 21 Code. The board shall be composed of:

- 22 (a) Two (2) representatives from the Idaho association of counties; and
 23 (b) Seven (7) attorneys, with one (1) attorney from each judicial
 24 district, whose practice, as certified by them at the time of their ap-
 25 pointment, is predominately criminal defense, among whom not less than
 26 three (3) must be defending attorneys who are employed by a county or
 27 joint office of public defense, and not less than two (2) must be de-
 28 fending attorneys who contract with counties to provide public defense
 29 services.

30 SECTION 2. That Section 1-2205, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 1-2205. DISTRICT MAGISTRATES COMMISSION -- POWERS AND DUTIES. (1) The
 33 district magistrates commission shall have the following powers and duties:

34 (a) To determine the number and location of magistrate judges to be
 35 appointed within the judicial district, subject to appropriations by
 36 the legislature, pursuant to section 1-2215, Idaho Code; provided, that
 37 there shall be at least one (1) resident magistrate judge appointed
 38 in each county, except for those counties in which the board of county
 39 commissioners, at any time, has adopted by majority vote, without
 40 subsequent rescission, a resolution waiving the right to a resident
 41 magistrate judge, pursuant to section 31-879, Idaho Code;

42 (b) To appoint the magistrate judges within the district on a nonparti-
 43 san merit basis, except as provided in section 1-2220, Idaho Code;

44 (c) To conduct studies for the improvement of the administration of
 45 justice within the district and to make recommendations for improve-
 46 ments therein to the legislature, the supreme court, the district court
 47 and such other governmental agencies as may be interested in or affected
 48 by such recommendations; and

1 (d) To carry out the provisions of chapter 60, title 19, Idaho Code, as-
2 signed to the district magistrates commission.

3 (2) The actions of the commission pursuant to subsections (1)(a) and
4 (b) of this section shall be subject to disapproval by a majority of the dis-
5 trict judges in the district within thirty (30) days after written notice
6 to the district judges of the commission's actions, unless such time be ex-
7 tended for good cause by order of the supreme court.

8 SECTION 3. That Section 19-847, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 19-847. INDIGENT PUBLIC DEFENSE -- FINANCIAL OBLIGATIONS ROLE OF
11 COUNTIES -- PUBLIC DEFENSE COMMISSION RULES -- TRANSITION. (1) Notwith-
12 standing any provision of law to the contrary, on and after October 1, 2024:

13 ~~(1)~~ (a) All counties are released from any further financial or legal
14 obligation to provide indigent public defense. On and after such date,
15 the state assumes the full financial and legal obligation to provide
16 indigent public defense pursuant to the sixth amendment of the United
17 States constitution and section 13, article I of the constitution of the
18 state of Idaho; and.

19 (b) Such release of financial and legal obligation to provide indigent
20 public defense includes the release of any requirement for counties:
21 to employ or contract with defending attorneys, investigators, social
22 workers, legal assistants, or other personnel necessary to provide
23 indigent public defense; to provide office furnishings, equipment, of-
24 fice materials, or office supplies; to provide information technology
25 equipment, information technology software, communication equipment,
26 communication software, equipment, or software licenses or subscrip-
27 tions; to provide general office technology or equipment; or to assume
28 any other expense necessary for indigent defense services on and after
29 October 1, 2024.

30 (c) Notwithstanding the provisions of this section, any county provid-
31 ing office space to a county office of public defense or a joint county
32 office of public defense as of January 1, 2023, shall continue to make
33 available the same or substantially similar office space for the use
34 of the office of the state public defender until July 1, 2029, provided
35 that:

36 (i) Not later than January 1, 2027, the state public defender must
37 provide to the board of county commissioners of any county provid-
38 ing office space to the office of the state public defender a fa-
39 ility transition plan outlining the state public defender's in-
40 tent to either procure other office space to house defending at-
41 torneys or enter into a contract with the board of county commis-
42 sioners to lease office space from the board of county commis-
43 ioners necessary to house defending attorneys;

44 (ii) Nothing in this section shall be construed to obligate a
45 board of county commissioners to provide office space to the of-
46 fice of the state public defender on and after July 1, 2029;

47 (iii) Nothing in this section shall prohibit the state public
48 defender from notifying a board of county commissioners that pro-
49 vides office space to the office of the state public defender that

1 the state public defender no longer needs part or all of the space
2 obligated by this section prior to July 1, 2029. Such notice shall
3 relieve the county board of commissioners of the obligation to
4 provide office space to the office of the state public defender;
5 and

6 (iv) Notwithstanding the provisions of this section, each county
7 must continue providing interviewing facilities in the county
8 jail necessary for carrying out the state public defender's re-
9 sponsibilities in law.

10 (d) The state public defender shall reimburse a board of county com-
11 missioners for any expenses incurred in providing such office space,
12 including but not limited to office furnishings, equipment, office
13 materials, or office supplies; information technology equipment, in-
14 formation technology software, communication equipment, communication
15 software, equipment, or software licenses or subscriptions; or general
16 office technology or equipment or related expenses.

17 ~~(2) (e) All administrative rules promulgated by the state public de-~~
18 ~~fense commission shall be repealed in accordance with the provisions of~~
19 ~~chapter 52, title 67, Idaho Code.~~

20 (2) To effectuate an orderly transition to the office of the state pub-
21 lic defender without unnecessary disruption of indigent defense services,
22 counties and defending attorneys shall not prohibit access by the state
23 public defender, or his designee, to information and data, including case
24 files, that are necessary to establish a statewide case management system or
25 for other administrative purposes in establishing the office of the state
26 public defender. The state public defender and any designee shall have the
27 ethical duty and legal obligation to maintain confidentiality and privacy
28 of any information learned or obtained during the course of transition to
29 the office of the state public defender while counties continue to provide
30 indigent defense services. The state public defender at his discretion may
31 require defending attorneys to use a case management system procured by the
32 state public defender at no expense to counties or defending attorneys.

33 (3) Upon termination of the public defense commission on July 1, 2024,
34 all employees and property of the commission shall transfer to the office of
35 the state public defender. The state public defender position created in the
36 public defense commission shall assume the position of state public defender
37 created in chapter 60, title 19, Idaho Code, and shall thereafter be governed
38 by the provisions of that chapter.

39 (4) All administrative rules promulgated by the public defense commis-
40 sion shall remain in effect while counties continue to provide indigent de-
41 fense until October 1, 2024, when that obligation ends pursuant to this sec-
42 tion.

43 (5) To the greatest extent possible, the state public defender and dis-
44 trict public defenders shall provide the option to defending attorneys em-
45 ployed by a county office of public defender or joint office of public de-
46 fender on September 30, 2024, who meet the requirements and standards for de-
47 fending attorneys, as well as support staff, the opportunity to continue em-
48 ployment with the office of the state public defender working in the county
49 that previously employed them.

1 (6) District magistrates commissions shall coordinate with the state
2 public defender and begin the process of recruiting applicants, reviewing
3 candidates, and selecting the district public defender as soon as practica-
4 ble after July 1, 2024.

5 (7) To advise the state public defender and provide input from counties
6 and defending attorneys during the transition, the state public defender
7 shall appoint a volunteer transition advisory board to advise on matters
8 related to the transition of public defense through October 1, 2024. Board
9 members shall be compensated as provided in section 59-509(a), Idaho Code.
10 The board shall be composed of:

- 11 (a) Two (2) representatives from the Idaho association of counties; and
12 (b) Seven (7) attorneys, with one (1) attorney from each judicial
13 district, whose practice, as certified by them at the time of their ap-
14 pointment, is predominately criminal defense, among whom not less than
15 three (3) must be defending attorneys who are employed by a county or
16 joint office of public defense, and not less than two (2) must be de-
17 fending attorneys who contract with counties to provide public defense
18 services.

19 SECTION 4. That Section [19-847](#), Idaho Code, be, and the same is hereby
20 repealed.

21 SECTION 5. That Section 19-852, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 ~~19-852~~6009. RIGHT TO COUNSEL OF INDIGENT PERSON -- REPRESENTATION AT
24 ALL STAGES OF CRIMINAL AND COMMITMENT PROCEEDINGS -- PAYMENT. (1) An indi-
25 gent person who is being detained by a law enforcement officer, who is con-
26 fined or is the subject of hospitalization proceedings pursuant to section
27 18-212, 66-322, 66-326, 66-329, 66-404 or 66-406, Idaho Code, or who is under
28 formal charge of having committed, or is being detained under a conviction
29 of, a serious crime, is entitled:

30 (a) To be represented by an attorney to the same extent as a person hav-
31 ing his own counsel is so entitled; and

32 (b) To be provided with the necessary services and facilities of rep-
33 resentation including investigation and other preparation. The attor-
34 ney, services and facilities and the court costs shall be provided at
35 public expense to the extent that the person is, at the time the court
36 determines indigency pursuant to section ~~19-854~~6011, Idaho Code, un-
37 able to provide for their payment.

38 (2) An indigent person who is entitled to be represented by an attorney
39 under subsection (1) of this section is entitled:

40 (a) To be counseled and defended at all stages of the matter beginning
41 with the earliest time when a person providing his own counsel would be
42 entitled to be represented by an attorney and including revocation of
43 probation;

44 (b) To be represented in any appeal;

45 (c) To be represented in any other post-conviction or post-commitment
46 proceeding that the attorney or the indigent person considers appro-
47 priate, unless the court in which the proceeding is brought determines
48 that it is not a proceeding that a reasonable person with adequate means

1 would be willing to bring at his own expense and is therefore a frivolous
2 proceeding.

3 (3) An indigent person's right to a benefit under subsection (1) or (2)
4 of this section is unaffected by his having provided a similar benefit at his
5 own expense, or by his having waived it, at an earlier stage.

6 SECTION 6. That Section 19-853, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 ~~19-853~~6010. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUN-
9 SEL. (1) If a person who is being detained by a law enforcement officer, or
10 who is confined or who is the subject of hospitalization proceedings pur-
11 suant to section 66-322, 66-326, 66-329, 66-404 or 66-406, Idaho Code, or
12 who is under formal charge of having committed, or is being detained under
13 a conviction of, a serious crime, is not represented by an attorney under
14 conditions in which a person having his own counsel would be entitled to be so
15 represented, the law enforcement officers concerned, upon commencement of
16 detention, or the court, upon formal charge or hearing, as the case may be,
17 shall:

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

20 (b) If the person detained or charged does not have an attorney, notify
21 the indigent defense provider or trial court concerned, as the case may
22 be, that he is not so represented. As used in this subsection, the term
23 "commencement of detention" includes the taking into custody of a pro-
24 bationer.

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

33 (3) If a court determines that the person is entitled to be represented
34 by an attorney at public expense, it shall promptly notify the ~~indigent de-~~
35 ~~fense provider~~ state public defender.

36 (4) Upon notification by the court, the ~~indigent defense provider~~ state
37 public defender shall represent the person with respect to whom the notifi-
38 cation is made.

39 SECTION 7. That Section 19-854, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 ~~19-854~~6011. DETERMINATION OF INDIGENCY -- FACTORS CONSIDERED -- PAR-
42 TIAL PAYMENT BY ACCUSED -- REIMBURSEMENT. (1) The determination of whether a
43 person covered under section 19-~~852~~6009, Idaho Code, is an indigent person
44 shall be deferred until his first appearance in court or in a suit for pay-
45 ment or reimbursement under section 19-~~858~~6015, Idaho Code, whichever oc-
46 curs earlier. Thereafter, the court concerned shall determine, with respect
47 to each proceeding, whether he is an indigent person.

1 (2) The court concerned shall presume that the following persons are
2 indigent persons unless such a determination is contrary to the interests of
3 justice:

4 (a) Persons whose current monthly income does not exceed one hundred
5 eighty-seven percent (187%) of the federal poverty guidelines issued
6 annually by the federal department of health and human services;

7 (b) Persons who receive, or whose dependents receive, public assis-
8 tance pursuant to title 56, Idaho Code, in the form of food assistance,
9 health coverage, cash assistance or child care assistance; or

10 (c) Persons who are currently serving a sentence in a correctional fa-
11 cility or are being housed in a mental health facility.

12 (3) The court concerned may determine that persons other than those de-
13 scribed in subsection (2) of this section are indigent persons. In deter-
14 mining whether a person is an indigent person and in determining the extent
15 of his inability to pay, the court concerned may consider such factors as in-
16 come, property owned, outstanding obligations, the number and ages of his
17 dependents and the cost of bail. Participation in the Idaho health insurance
18 exchange shall not result in the presumption of indigency.

19 (4) Release on bail does not necessarily prevent a person from being an
20 indigent person.

21 (5) In each case, the person shall, subject to the penalties for per-
22 jury, certify in writing or by other record such material factors relating to
23 his ability to pay as the court prescribes by rule. No information provided
24 by a person pursuant to this subsection may be used as substantive evidence
25 in any criminal or civil proceeding against the person except:

26 (a) For impeachment purposes;

27 (b) In a prosecution for perjury or contempt committed in providing the
28 information; or

29 (c) In an attempt to enforce an obligation to reimburse the state for
30 the cost of counsel.

31 (6) To the extent that a person covered under section 19-8526009, Idaho
32 Code, is able to provide for an attorney, the other necessary services and
33 facilities of representation, and court costs, the court may order him to
34 provide for their payment.

35 (7) Upon conviction, notwithstanding the form of judgment or withheld
36 judgment, plea of guilty or finding of guilt for any crime regardless of the
37 original crime or number of counts, an indigent person who receives the ser-
38 vices of ~~an a defending attorney provided by the county~~ may be required by
39 the court to reimburse the ~~county~~ state public defense fund for all or a por-
40 tion of the cost of those services related to the conviction, plea of guilty
41 or finding of guilt, unless the requirement would impose a manifest hardship
42 on the indigent person. Any funds received due to an existing or future or-
43 der for reimbursement for the services of a defending attorney shall be de-
44 posited into the state public defense fund. The current inability of the in-
45 digent person to pay the reimbursement shall not, in and of itself, restrict
46 the court from ordering reimbursement.

47 SECTION 8. That Section 19-855, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 19-~~855~~6012. QUALIFICATIONS OF COUNSEL. No person may be given the pri-
2 mary responsibility of representing an indigent person unless he is licensed
3 to practice law in this state and is otherwise competent to counsel and de-
4 fend a person charged with a crime.

5 SECTION 9. That Section 19-857, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 19-~~857~~6013. WAIVER OF COUNSEL -- CONSIDERATION BY COURT. A person who
8 has been appropriately informed of his right to counsel may waive any right
9 provided by this ~~act~~, chapter if the court concerned, at the time of or after
10 waiver, finds of record that he has acted with full awareness of his rights
11 and of the consequences of a waiver and if the waiver is otherwise according
12 to law. The court shall consider such factors as the person's age, education
13 and familiarity with the English language and the complexity of the crime in-
14 volved.

15 SECTION 10. That Section 19-861, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 19-~~861~~6014. ~~PUBLIC DEFENDER'S OFFICE -- EMPLOYEES -- COMPENSATION --~~
18 ~~FACILITIES. (1) If an office of public defender or a joint office of public~~
19 ~~defender has been established, the public defender may employ, in the manner~~
20 ~~and at the compensation prescribed by the board of county commissioners, as~~
21 ~~many assistant public defenders, clerks, investigators, stenographers, and~~
22 ~~other persons as the board considers necessary for carrying out his respon-~~
23 ~~sibilities under this act. A person employed under this section serves at~~
24 ~~the pleasure of the public defender.~~

25 ~~(2) If an office of public defender or a joint office of public defender~~
26 ~~has been established, the board of county commissioners shall:~~

27 ~~(a) Provide appropriate facilities including office space, furniture,~~
28 ~~equipment, books, postage, supplies and interviewing facilities in the~~
29 ~~jail, necessary for carrying out the public defender's responsibili-~~
30 ~~ties under this act; or~~

31 ~~(b) Grant the public defender an allowance in place of those facili-~~
32 ~~ties.~~

33 ~~(3) A defending attorney is entitled to use the same state facilities~~
34 ~~for the evaluation of evidence as are available to the county prosecutor. If~~
35 ~~he considers their use impractical, the court concerned may authorize the~~
36 ~~use of private facilities to be paid for on court order by the county board of~~
37 ~~commissioners. If the defending attorney considers the use of the state fa-~~
38 ~~ilities impractical, the court concerned may authorize the use of private~~
39 ~~facilities, to be paid for by the state public defender.~~

40 SECTION 11. That Section 19-858, Idaho Code, as amended by Section 56,
41 Chapter 318, Laws of 2022, be, and the same is hereby amended to read as fol-
42 lows:

43 19-~~858~~6015. REIMBURSEMENT -- WHEN AUTHORIZED. (1) The attorney gen-
44 eral or the appropriate county prosecutor may, on behalf of the state, re-

1 cover payment or reimbursement, as the case may be, from each person who has
2 received legal assistance or another benefit under this chapter:

3 (a) To which he was not entitled;

4 (b) With respect to which he was not an indigent person when he received
5 it; or

6 (c) With respect to which he has failed to make the certification re-
7 quired under section 19-~~854~~6011, Idaho Code, and for which he refuses to
8 pay or reimburse. Suit must be brought within five (5) years after the
9 date on which the aid was received.

10 (2) The attorney general or the appropriate county prosecutor may, on
11 behalf of the state, recover payment or reimbursement, as the case may be,
12 from each person other than a person covered under subsection (1) of this
13 section who has received legal assistance under this chapter and who, on the
14 date on which suit is brought, is financially able to pay or reimburse ~~the~~
15 county for it for legal assistance without manifest hardship according to
16 the standards of ability to pay applicable under sections 19-~~851~~, 19-~~852~~6009
17 and 19-~~854~~6011, Idaho Code, but refuses to do so. Suit must be brought within
18 three (3) years after the date on which the benefit was received.

19 (3) Amounts recovered under this section shall be paid into the state
20 public defense fund pursuant to section 57-827, Idaho Code.

21 SECTION 12. That Section 19-864, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 19-~~864~~6016. RECORDS OF DEFENDING ATTORNEYS ~~--- ANNUAL REPORT OF DE-~~
24 ~~FENDING ATTORNEYS.~~ (1) Indigent defense providers and defending attorneys
25 shall keep appropriate records respecting each person whom they represent
26 under this ~~act~~ chapter.

27 ~~(2) On or before November 1 of each year, indigent defense providers~~
28 ~~and any defending attorney whose information is not otherwise included in~~
29 ~~a report from an indigent defense provider shall submit an annual report to~~
30 ~~the board of county commissioners, the appropriate administrative district~~
31 ~~judge and the commission in conformance with the rules promulgated pursuant~~
32 ~~to section 19-850(1)(a)(ii), Idaho Code.~~

33 SECTION 13. That Section 19-865, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 19-~~865~~6017. APPLICATION OF ACT CHAPTER -- STATE COURTS -- FEDERAL
36 COURTS. This ~~act~~ chapter applies only to representation in the courts of this
37 state, except that it does not prohibit a defending attorney from represent-
38 ing an indigent person in a federal court of the United States, if:

39 (1) The matter arises out of or is related to an action pending or re-
40 cently pending in a court of criminal jurisdiction of the state; or

41 (2) Representation is under a plan of the United States district court
42 as required by the criminal justice act of 1964, 18 U.S.C. 3006A, and is ap-
43 proved by the ~~board of county commissioners~~ state public defender.

44 SECTION 14. That Section 19-866, Idaho Code, be, and the same is hereby
45 amended to read as follows:

1 19-~~8666018~~. PROVISIONS NOT EXCLUSIVE. The protections provided by
2 this ~~act~~ chapter do not exclude any protection or sanction that the law oth-
3 erwise provides.

4 SECTION 15. That Chapter 60, Title 19, Idaho Code, be, and the same is
5 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
6 ignated as Section 19-6019, Idaho Code, and to read as follows:

7 19-6019. CONTRACTING WITH DEFENDING ATTORNEYS. (1) When contracting
8 with defending attorneys to provide primary or conflict indigent defense
9 services, to the greatest extent that is practicable, the office of the state
10 public defender shall contract with local defending attorneys who practice
11 in the county. If no qualified attorneys who practice in the county are
12 available, the office of the state public defender shall contract with local
13 defending attorneys who practice within the judicial district.

14 (2) In counties that did not operate an office of public defender or
15 joint office of public defender by January 1, 2023, the office of the state
16 public defender shall continue to provide primary indigent defense services
17 by contract through July 1, 2029, unless the board of county commissioners,
18 at the request of the office of the state public defender, votes to allow the
19 office to transition from primary contract indigent defense providers. No-
20 tice of no less than six (6) months is required in advance of any change in de-
21 livery of public defense from primary contract indigent defense providers in
22 a county pursuant to this subsection.

23 (3) Nothing in this section:

24 (a) Prohibits the office of the state public defender from continuing
25 to contract with defending attorneys to provide indigent defense ser-
26 vices in any county after July 1, 2029;

27 (b) Requires the office of the state public defender to contract with
28 defending attorneys who do not meet the requirements and standards for
29 defending attorneys; or

30 (c) Restricts the office of the state public defender from using de-
31 fending attorneys employed by the office of the state public defender to
32 represent indigent defendants in any capital case.

33 SECTION 16. That Chapter 8, Title 19, Idaho Code, be, and the same is
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
35 ignated as Section 19-850A, Idaho Code, and to read as follows:

36 19-850A. STATE PUBLIC DEFENDER -- PUBLIC DEFENSE COMMISSION ABOL-
37 ISHED. (1) The position of state public defender is hereby created within the
38 public defense commission. The state public defender shall be appointed by
39 the governor, following the process established in the state public defender
40 act, with the advice and consent of the senate. The position of state public
41 defender is a separate position from the executive director of the public
42 defense commission.

43 (2) The state public defender must meet the following qualifications on
44 the effective date of appointment:

45 (a) Be at least thirty (30) years of age;

46 (b) Be a citizen of the United States;

1 (c) Have held a license to practice law or a judicial office in one (1)
2 or more jurisdictions of the United States for at least five (5) years
3 continuously immediately preceding the appointment;

4 (d) Be or become an active member of the Idaho state bar within one (1)
5 year of appointment and remain an active member in good standing there-
6 after; and

7 (e) Have at least five (5) years of criminal defense experience.

8 (3) The state public defender shall prepare for the creation of the of-
9 fice of the state public defender. The state public defender shall have the
10 authority to:

11 (a) Develop uniform contracts for defending attorneys, experts, in-
12 vestigators, stenographers, paralegals, assistants, and other support
13 staff;

14 (b) Procure office facilities;

15 (c) Identify and procure a statewide case management system;

16 (d) As resources are available to the state public defender, aid coun-
17 ties in providing indigent defense services in capital cases or other
18 complex cases;

19 (e) Take steps to hire personnel for the office of the state public de-
20 fender; and

21 (f) Establish policies and procedures for the operation of the office
22 of the state public defender.

23 (4) The public defense commission shall be abolished on July 1, 2024.
24 The administrative rules of the public defense commission shall not expire
25 through the transition until October 1, 2024.

26 SECTION 17. That Section 19-850A, Idaho Code, be, and the same is hereby
27 repealed.

28 SECTION 18. That Section 19-5903, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 19-5903. CREATION OF OFFICE OF THE STATE APPELLATE PUBLIC DE-
31 FENDER. The office of the state appellate public defender is hereby created
32 in the department of self-governing agencies.

33 SECTION 19. That Section [19-5904](#), Idaho Code, be, and the same is hereby
34 repealed.

35 SECTION 20. That Chapter 59, Title 19, Idaho Code, be, and the same is
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
37 ignated as Section 19-5904, Idaho Code, and to read as follows:

38 19-5904. STATE APPELLATE PUBLIC DEFENDER -- APPOINTMENT -- TERM --
39 QUALIFICATIONS -- PROHIBITED CONDUCT -- REMOVAL -- VACANCIES -- COMPEN-
40 SATION. (1) The state appellate public defender shall be appointed by the
41 governor, with the advice and consent of the senate, to serve a four (4) year
42 term and may be reappointed to subsequent terms in the same manner.

43 (2) The state appellate public defender must meet the following quali-
44 fications on the effective date of his appointment:

45 (a) Be at least thirty (30) years of age;

1 (b) Be a citizen of the United States;

2 (c) Have held a license to practice law or a judicial office in one (1)
3 or more jurisdictions of the United States for at least five (5) contin-
4 uous years immediately preceding such appointment;

5 (d) Be or become an active member of the Idaho state bar within one (1)
6 year of appointment and remain an active member in good standing there-
7 after; and

8 (e) Have at least five (5) years of criminal defense or appellate expe-
9 rience, or a combination thereof.

10 (3) The state appellate public defender shall not:

11 (a) Engage in the practice of law outside his role in the office of the
12 state appellate public defender, except for the practice of law that is
13 permitted for a judge by the Idaho code of judicial conduct;

14 (b) Hold or be a candidate for any federal, state, county, municipal,
15 judicial, district, or other elective office; provided, however, this
16 section shall not be interpreted to prohibit the state appellate public
17 defender from seeking appointment to another office, including state or
18 federal judicial office;

19 (c) Serve as the agent, representative, officer, political treasurer,
20 or employee, for profit or otherwise, of any political party, political
21 committee, or candidate, as such terms are defined in chapter 66, title
22 67, Idaho Code; or

23 (d) Hold any other public or private sector position, for profit or oth-
24 erwise, except for volunteer positions that are not inconsistent with
25 the duties of the state appellate public defender.

26 (4) The state appellate public defender may be removed from office by
27 the governor for failing to retain the qualifications of his office estab-
28 lished in subsection (2) of this section, for engaging in prohibited conduct
29 set forth in subsection (3) of this section, or for good cause shown. If the
30 state appellate public defender is removed from office, the governor shall
31 provide the house of representatives and the senate written notice of the re-
32 moval, the effective date of removal, and the reason or reasons therefor.

33 (5) If the state appellate public defender resigns, dies, or is removed
34 from office as provided by law, the governor shall appoint a person who meets
35 the qualifications established in this section, subject to the advice and
36 consent of the senate, to fill the remainder of the unexpired term.

37 (6) The state appellate public defender shall be compensated in an
38 amount determined by the governor.

39 SECTION 21. That Section 19-5905, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 19-5905. POWERS AND DUTIES. (1) Subject to the provisions of subsec-
42 tion (2) of this section, the state appellate public defender, upon appoint-
43 ment by the court, shall provide representation for indigent defendants in
44 the following cases:

45 (a) Appeals from convictions or post-judgment orders in district
46 court;

47 (b) Interlocutory criminal appeals from district court;

48 (c) Appeals from the district court of misdemeanor cases ~~where the no-~~
49 ~~tice of appeal was filed on or after October 1, 2020;~~

1 (d) Appeals from the district court of orders or final judgments af-
2 fecting a juvenile offender under the juvenile corrections act, chapter
3 5, title 20, Idaho Code, ~~where the order or final judgment was entered on~~
4 ~~or after October 1, 2020;~~

5 (e) Appeals from the district court in post-conviction relief proceed-
6 ings brought pursuant to the uniform post-conviction procedure act,
7 chapter 49, title 19, Idaho Code;

8 (f) Appeals from the district court in habeas corpus proceedings
9 brought pursuant to chapter 42, title 19, Idaho Code; and

10 (g) Post-conviction relief proceedings in district court in capital
11 cases.

12 (2) The services of the state appellate public defender shall be avail-
13 able only to those counties participating in the capital crimes defense fund
14 established pursuant to section ~~19-863A~~5908, Idaho Code.

15 (3) The state appellate public defender may employ deputy state appel-
16 late public defenders and other employees necessary to carry out the respon-
17 sibilities of the office. A deputy state appellate public defender must be
18 licensed to practice law in the state of Idaho and possess any other quali-
19 fications required by the state appellate public defender. The state appel-
20 late public defender shall fix the compensation of all employees of the of-
21 fice and they shall serve at his pleasure.

22 (4) The state appellate public defender, deputy state appellate public
23 defenders, and all employees of the office of the state appellate public de-
24 fender shall be nonclassified employees pursuant to section 67-5303, Idaho
25 Code.

26 (5) The state appellate public defender, in his discretion, may con-
27 tract with private attorneys to provide representation on a case-by-case ba-
28 sis when such contracts would conserve budgetary resources.

29 (6) The state appellate public defender shall have any and all other
30 powers and duties necessary to carry out the purposes of this chapter, ~~in-~~
31 ~~cluding the authority to promulgate rules in accordance with the provisions~~
32 ~~of chapter 52, title 67, Idaho Code.~~

33 SECTION 22. That Section 19-863A, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 ~~19-863A~~5908. CAPITAL CRIMES DEFENSE FUND AUTHORIZED. (1) The estab-
36 lishment of a capital crimes defense fund by the counties of the state for
37 purposes of funding the costs of criminal defense in cases where the penalty
38 of death is a legal possibility is hereby authorized. The fund shall be
39 organized and operated in accordance with a joint powers agreement, as au-
40 thorized by chapter 23, title 67, Idaho Code, executed by the participating
41 counties. Membership in the fund shall be voluntary, as determined by reso-
42 lution of the board of county commissioners of the respective counties of the
43 state.

44 (2) The fund may be comprised of contributions from participating coun-
45 ties and any court fees or other funds designated or appropriated for deposit
46 in the fund by the legislature.

47 (3) The fund shall be operated and administered by a board of represen-
48 tatives to be selected as provided in the joint powers agreement. If moneys
49 are appropriated to the fund by the legislature, the governor shall appoint

1 a representative of the executive branch of state government to serve as a
2 voting member of the governing board, and if court fees are designated for
3 deposit in the fund, the Idaho supreme court shall appoint a representative
4 of the judicial branch of state government to serve as a voting member of the
5 board.

6 (4) The governing board of the fund shall have full authority to employ
7 personnel and contract for personal and professional services as necessary
8 and may take all other steps necessary or proper to determine the manner in
9 which the fund shall be utilized to assist participating counties in meeting
10 defense costs associated with representation of indigent defendants charged
11 with crimes for which the penalty of death is a legal possibility.

12 (5) Beginning October 1, 2022, the state appellate public defender as-
13 sumes all responsibility for providing representation for indigent defen-
14 dants in the cases described in section 19-5905, Idaho Code; provided, how-
15 ever, that all counties participating in the capital crimes defense fund on
16 January 1, 2022, shall be required to continue participation until October
17 1, 2024. At an appropriate time after October 1, 2024, participating coun-
18 ties are authorized to dissolve the fund.

19 SECTION 23. That Section [19-848](#), Idaho Code, be, and the same is hereby
20 repealed.

21 SECTION 24. That Section [19-849](#), Idaho Code, be, and the same is hereby
22 repealed.

23 SECTION 25. That Section [19-850](#), Idaho Code, be, and the same is hereby
24 repealed.

25 SECTION 26. That Section [19-851](#), Idaho Code, be, and the same is hereby
26 repealed.

27 SECTION 27. That Section [19-859](#), Idaho Code, be, and the same is hereby
28 repealed.

29 SECTION 28. That Section [19-860](#), Idaho Code, be, and the same is hereby
30 repealed.

31 SECTION 29. That Section [19-862](#), Idaho Code, be, and the same is hereby
32 repealed.

33 SECTION 30. That Section [19-862A](#), Idaho Code, be, and the same is hereby
34 repealed.

35 SECTION 31. That Section [19-863](#), Idaho Code, be, and the same is hereby
36 repealed.

37 SECTION 32. That Section 67-1406, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 67-1406. EMPLOYMENT OF ATTORNEYS RESTRICTED -- EXEMPTIONS. Notwith-
40 standing any other provision of law to the contrary, no department, agency,
41 office, officers, board, commission, institution or other state entity

1 shall be represented by or obtain its legal advice from an attorney at law
2 other than the attorney general except as follows:

3 (1) The legislative and judicial branches of government and the gover-
4 nor may employ attorneys other than those under the supervision of the attor-
5 ney general, and such attorneys may appear in any court. However, such enti-
6 ties may, upon request, utilize the attorney general's legal services.

7 (2) Those state entities within the department of self-governing agen-
8 cies which are enumerated in section 67-2601(2) (a), (b), (g), and (h), Idaho
9 Code, and colleges and universities may employ private counsel to advise
10 them and represent them before courts of the state of Idaho. Such entities
11 may also obtain legal services from the attorney general on such terms as the
12 parties may agree.

13 (3) Whenever the attorney general determines that it is necessary or
14 appropriate in the public interest, the attorney general may authorize con-
15 tracts for legal services pursuant to the provisions of section 67-1409,
16 Idaho Code.

17 (4) The provisions of section 67-1401, Idaho Code, shall govern the
18 normal relationship between the attorney general and the state entities in
19 the executive branch of state government. However, if after consultation
20 with the attorney general, the governor determines in his sole judgment,
21 which shall not be subject to judicial review, that counsel assigned to rep-
22 resent or give legal advice to any state entity, other than the lieutenant
23 governor, state controller, state treasurer, secretary of state, attorney
24 general, and the superintendent of public instruction, cannot effectively
25 advocate or pursue the policies of the governor, the governor shall request
26 that other counsel be provided by the attorney general, and the attorney gen-
27 eral shall provide from within the office of the attorney general or obtain
28 from outside the office of the attorney general, depending upon the request
29 of the governor, qualified counsel acceptable to the governor to represent
30 such state entity.

31 (5) Any separate counsel employed pursuant to the foregoing exceptions
32 shall be compensated with funds appropriated to such state entity, unless
33 such separate counsel shall have been employed at the request or convenience
34 of the attorney general or because of a conflict in representation by the at-
35 torney general.

36 SECTION 33. That Section 67-2601, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 67-2601. DEPARTMENT CREATED -- ORGANIZATION. (1) There is hereby cre-
39 ated the department of self-governing agencies. The department shall, for
40 the purposes of section 20, article IV, of the constitution of the state of
41 Idaho, be an executive department of the state government.

42 (2) The department shall consist of the following:

43 (a) Agricultural commodity commissions: Idaho apple commission, as
44 provided by chapter 36, title 22, Idaho Code; Idaho bean commission,
45 as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as
46 provided by chapter 29, title 25, Idaho Code; Idaho cherry commission,
47 as provided by chapter 37, title 22, Idaho Code; Idaho dairy products
48 commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea
49 and lentil commission, as provided by chapter 35, title 22, Idaho Code;

1 Idaho potato commission, as provided by chapter 12, title 22, Idaho
2 Code; the Idaho wheat commission, as provided by chapter 33, title 22,
3 Idaho Code; and the Idaho alfalfa and clover seed commission, as pro-
4 vided in chapter 42, title 22, Idaho Code.

5 (b) The board of commissioners of the Idaho state bar, as provided by
6 chapter 4, title 3, Idaho Code.

7 (c) The board of examiners, pursuant to section 67-2001, Idaho Code.

8 (d) The division of veterans services to be headed by a division ad-
9 ministrator who shall be a nonclassified employee exempt from the pro-
10 visions of chapter 53, title 67, Idaho Code. The administrator of the
11 division shall administer the provisions of chapter 2, title 65, Idaho
12 Code, and chapter 9, title 66, Idaho Code, with the advice of the vet-
13 erans affairs commission established under chapter 2, title 65, Idaho
14 Code, and shall perform such additional duties as are imposed upon him
15 by law.

16 (e) The board of library commissioners, pursuant to section 33-2502,
17 Idaho Code.

18 (f) The Idaho state historical society, pursuant to section 67-4123,
19 Idaho Code.

20 ~~(g) The state public defense commission, pursuant to section 19-849,~~
21 ~~Idaho Code. The office of the state appellate public defender, pursuant~~
22 ~~to chapter 59, title 19, Idaho Code, and the office of the state public~~
23 ~~defender, pursuant to chapter 60, title 19, Idaho Code.~~

24 (h) The division of occupational and professional licenses, which is
25 hereby created.

26 (3) Notwithstanding any other provision of law to the contrary, the
27 governor shall have the authority to assign entities listed in subsection
28 (2) of this section to divisions, sections, or units in such a manner as will
29 tend to provide an orderly arrangement in the administrative organization of
30 state government.

31 SECTION 34. That Section 67-5303, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state
34 of Idaho and all employees in such departments, except those employees
35 specifically defined as nonclassified, shall be classified employees who
36 are subject to this chapter and to the system of personnel administration
37 it prescribes. All nonclassified employees are subject to conformity with
38 classified positions as set forth in section 59-1603, Idaho Code. Nonclas-
39 sified employees shall be:

40 (a) Members of the state legislature and all other officers of the state
41 of Idaho elected by popular vote and persons appointed to fill vacancies in
42 elective offices and employees of the state legislature.

43 (b) Members of statutory boards and commissions and heads of depart-
44 ments appointed by and serving at the pleasure of the governor, deputy direc-
45 tors appointed by the director and members of advisory boards and councils
46 appointed by the departments.

47 (c) All employees and officers in the office, and at the residence, of
48 the governor; and all employees and officers in the offices of the lieutenant
49 governor, secretary of state, attorney general, state treasurer, state con-

1 troller, and state superintendent of public instruction who are appointed on
2 and after the effective date of this chapter.

3 (d) Except as otherwise provided by law, not more than one (1) declared
4 position for each board or commission and/or head of a participating depart-
5 ment, in addition to those declared to be nonclassified by other provisions
6 of law.

7 (e) Part-time professional consultants who are paid on a fee basis for
8 any form of legal, medical or other professional service and who are not en-
9 gaged in the performance of administrative duties for the state.

10 (f) Judges, temporary referees, receivers and jurors.

11 (g) All employees of the Idaho supreme court, Idaho court of appeals and
12 district courts.

13 (h) All employees of the Idaho state bar.

14 (i) Assistant attorneys general attached to the office of the attorney
15 general.

16 (j) Officers, members of the teaching staffs of state higher educa-
17 tional institutions, the professional staffs of the office of the state
18 board of education and the Idaho department of education administered by
19 the board of regents and the board of education, all professional staff of
20 the public charter school commission, and the professional staffs of the
21 Idaho division of career technical education and vocational rehabilitation
22 administered by the state board for career technical education. "Teach-
23 ing staff" includes teachers, coaches, resident directors, librarians and
24 those principally engaged in academic research. The word "officer" means
25 presidents, vice presidents, deans, directors, or employees in positions
26 designated by the state board who receive an annual salary of not less than
27 step "A" of the pay grade equivalent to three hundred fifty-five (355) Hay
28 points in the state compensation schedule. In consultation with the Idaho
29 division of human resources, the state board of education shall implement
30 policies and procedures for nonclassified employees to conform with section
31 59-1603, Idaho Code. ~~{onetime}~~

32 (k) Employees of the military division.

33 (l) Patients, inmates or students employed in a state institution.

34 (m) Temporary employees.

35 (n) All employees and officers of the following named commodity commis-
36 sions, and all employees and officers of any commodity commission created
37 hereafter: the Idaho potato commission, as provided in chapter 12, title 22,
38 Idaho Code; the Idaho honey commission, as provided in chapter 28, title 22,
39 Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22,
40 Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, ti-
41 tle 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33,
42 title 22, Idaho Code; the Idaho pea and lentil commission, as provided in
43 chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in
44 chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in
45 chapter 37, title 22, Idaho Code; the Idaho mint commission, as provided in
46 chapter 38, title 22, Idaho Code; the Idaho sheep and goat health board, as
47 provided in chapter 1, title 25, Idaho Code; the state brand inspector, and
48 all district supervisors, as provided in chapter 11, title 25, Idaho Code;
49 the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and

1 the Idaho dairy products commission, as provided in chapter 31, title 25,
2 Idaho Code.

3 (o) All inspectors of the fresh fruit and vegetable inspection service
4 of the Idaho department of agriculture, except those positions involved in
5 the management of the program.

6 (p) All employees of correctional industries within the department of
7 correction.

8 (q) All deputy administrators and wardens employed by the department of
9 correction. Deputy administrators are defined as only the deputy adminis-
10 trators working directly for the nonclassified division administrators un-
11 der the director of the department of correction.

12 (r) All public information positions, with the exception of secretar-
13 ial positions, in any department.

14 (s) Any division administrator.

15 (t) Any regional administrator or division administrator in the de-
16 partment of environmental quality.

17 (u) All employees of the division of financial management, all employ-
18 ees of the STEM action center, all employees of the office of species conser-
19 vation, all employees of the office of drug policy, and all employees of the
20 office of energy and mineral resources.

21 (v) All employees of the Idaho food quality assurance institute.

22 (w) ~~The state appellate public defender, deputy state appellate public~~
23 ~~defenders and all other employees of the office of the state appellate pub-~~
24 ~~lic defender. All employees of state agencies that provide or fund indigent~~
25 public defense, including the office of the state appellate public defender,
26 pursuant to chapter 59, title 19, Idaho Code, the office of the state pub-
27 lic defender, pursuant to chapter 60, title 19, Idaho Code, when such chapter
28 takes effect, and the state public defense commission, pursuant to section
29 19-849, Idaho Code.

30 (x) All quality assurance specialists or medical investigators of the
31 Idaho board of medicine.

32 (y) All pest survey and detection employees and their supervisors hired
33 specifically to carry out activities under the Idaho plant pest act, chapter
34 20, title 22, Idaho Code, including but not limited to pest survey, detec-
35 tion, and eradication, except those positions involved in the management of
36 the program.

37 (z) All medical directors employed by the department of health and
38 welfare who are engaged in the practice of medicine, as defined by section
39 54-1803, Idaho Code, at a state hospital or other treatment facility managed
40 and operated by the department of health and welfare.

41 SECTION 35. That Section 19-625, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 19-625. DETENTION FOR OBTAINING EVIDENCE OF IDENTIFYING PHYSICAL
44 CHARACTERISTICS. (1) A peace officer who is engaged, within the scope of
45 his authority, in the investigation of an alleged criminal offense which is
46 a felony may make written application upon oath or affirmation to a judge
47 of any district court, or magistrates division thereof, for an order au-
48 thORIZING the temporary detention, for the purpose of obtaining evidence
49 of identifying physical characteristics, of an identified or particularly

1 described individual residing in or found in the jurisdiction over which the
2 judicial officer presides. The order shall require the presence of the iden-
3 tified or particularly described individual at such time and place as the
4 court shall direct for obtaining the identifying physical characteristic
5 evidence. Such order may be issued by the judicial officer upon a showing
6 under oath of all the following:

7 (A) Probable cause for belief that a specifically described criminal
8 offense which is a felony has been committed.

9 (B) Reasonable grounds exist, which may or may not amount to probable
10 cause, to believe that the identified or particularly described indi-
11 vidual committed the criminal offense.

12 (C) Procurement of evidence of identifying physical characteristics
13 from the identified or particularly described individual may con-
14 tribute to the identification of the individual who committed such
15 offense.

16 (D) Such evidence cannot otherwise be obtained by the investigating of-
17 ficer.

18 (2) Any order issued pursuant to the provisions of this section shall
19 specify the following:

20 (A) The alleged criminal offense which is the subject of the applica-
21 tion.

22 (B) The specific type of identifying physical characteristic evidence
23 which is sought.

24 (C) The relevance of such evidence to the particular investigation.

25 (D) The identity or description of the individual who may be detained
26 for obtaining such evidence.

27 (E) The name and official status of the investigative officer autho-
28 rized to effectuate such detention and obtain such evidence.

29 (F) The place at which the obtaining of such evidence shall be effectua-
30 ted.

31 (G) The time that such evidence shall be taken except that no person may
32 be detained for a period of more than three (3) hours for the purpose of
33 taking such evidence.

34 (H) That the individual so identified or described shall have the right
35 to legal counsel during the detention when such evidence is obtained and
36 if he is unable to afford private counsel an attorney shall be provided
37 at public expense as provided by section 19-8526009, Idaho Code.

38 (I) That the individual will be under no legal obligation to submit to
39 any interrogation or to make any statement during the period of his ap-
40 pearance unless sound of voice identification is required.

41 (J) The period of time, not exceeding ten (10) days, during which the
42 order shall continue in force and effect. If the order is not executed
43 within ten (10) days, a new order may be issued, pursuant to the provi-
44 sions of this section.

45 (3) The order issued pursuant to this section shall be returned to the
46 court not later than fifteen (15) days after its date of issuance and shall
47 be accompanied by a sworn statement indicating how and when the evidence was
48 taken and the type of evidence taken. The court shall give to the person from
49 whom such evidence was taken a copy of the order and a copy of the sworn state-
50 ment indicating what type of evidence was taken, if any.

1 (4) For the purposes of this section, "identifying physical character-
2 istics" shall mean the fingerprints, palm prints, footprints, measurements,
3 handwriting, handprinting, sound of voice, blood samples, urine samples,
4 saliva samples, hair samples, comparative personal appearance, or pho-
5 tographs of an individual.

6 SECTION 36. That Section 20-514, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 20-514. REPRESENTATION AT ALL STAGES OF PROCEEDINGS -- APPOINTMENT OF
9 COUNSEL -- WAIVER -- PAYMENT OF COST OF LEGAL SERVICES. (1) A juvenile who
10 is being detained by a law enforcement officer or who is under formal charge
11 of having committed, or who has been adjudicated for commission of, an act,
12 omission or status that brings him under the purview of this act, is enti-
13 tled:

14 (a) To be represented by an attorney to the same extent as an adult hav-
15 ing his own counsel is so entitled pursuant to section 19-~~852~~6009, Idaho
16 Code; and

17 (b) To be provided with the necessary services and facilities of repre-
18 sentation, including investigation and other preparation.

19 (2) A juvenile who is entitled to be represented by an attorney under
20 subsection (1) of this section is entitled:

21 (a) To be counseled and defended at all stages of the matter beginning
22 with the earliest time and including revocation of probation or recom-
23 mitment;

24 (b) To be represented in any appeal; and

25 (c) To be represented in any other post-adjudication or review proceed-
26 ing that the attorney or the juvenile considers appropriate, unless the
27 court in which the proceeding is brought determines that it is not a pro-
28 ceeding that a reasonable person with adequate means would be willing to
29 bring at his own expense and is therefore a frivolous proceeding.

30 (3) A juvenile's right to a benefit under subsection (1) or (2) of this
31 section is unaffected by his having provided a similar benefit at his own ex-
32 pense, or by his having waived it, at an earlier stage.

33 (4) As early as possible in the proceedings, and in any event before
34 the hearing of the petition on the merits, the juvenile and his parents, or
35 guardian, shall be notified of their right to have counsel represent them.
36 When it appears to the court that the juvenile or his parents or guardian
37 desire counsel but are financially unable to pay for such legal services,
38 the court shall appoint counsel to represent the juvenile and his parents
39 or guardian; provided that in the event the court shall find that there is
40 a conflict of interest between the interests of the juvenile and his parents
41 or guardian, then the court shall appoint separate counsel for the juvenile,
42 whether or not he or his parents or guardian are able to afford counsel, un-
43 less there is an intelligent waiver of the right of counsel by the juvenile,
44 except as provided in subsection (6) of this section, and the court further
45 determines that the best interest of the juvenile does not require the ap-
46 pointment of counsel. Counsel appointed under this section shall initially
47 receive reasonable compensation from the county and the county shall have
48 the right to be reimbursed for the cost thereof by the parents or guardian as
49 hereafter provided in this section.

1 (5) Any waiver of the right to counsel by a juvenile under this act shall
2 be made in writing, on the record and upon a finding by the court that:

3 (a) The juvenile has been informed of the right to counsel and the dan-
4 gers and disadvantages of self-representation; and

5 (b) The waiver is intelligently made after consideration of the total-
6 ity of the circumstances including, but not limited to:

7 (i) The age, maturity, intelligence, education, competency and
8 comprehension of the juvenile;

9 (ii) The presence of the juvenile's parents or guardian;

10 (iii) The seriousness of the offense;

11 (iv) The collateral consequences of adjudication of the offense;
12 and

13 (v) Whether the interests of the juvenile and his parents or
14 guardian conflict.

15 (6) A juvenile shall not be permitted to waive the assistance to counsel
16 in any of the following circumstances:

17 (a) If the juvenile is under the age of fourteen (14) years;

18 (b) In sentencing proceedings in which it has been recommended that the
19 juvenile be committed to the legal custody of the department of juvenile
20 corrections;

21 (c) In proceedings in which the juvenile is being adjudicated for com-
22 mission of a crime of a sexual nature;

23 (d) In proceedings in which the juvenile is being adjudicated for com-
24 mission of a felony;

25 (e) In hearings upon a motion to waive jurisdiction under the juvenile
26 corrections act pursuant to section 20-508, Idaho Code;

27 (f) In hearings upon a motion to examine the juvenile to determine if he
28 is competent to proceed pursuant to section 20-519A, Idaho Code; or

29 (g) In recommitment proceedings.

30 (7) Upon the entry of an order finding the juvenile is within the
31 purview of this act, the parents, spouse or other person liable for the sup-
32 port of the juvenile, or the estates of such persons, and the estate of such
33 juvenile, may be required by the court to reimburse the county for all or a
34 portion of the cost of those legal services rendered to the juvenile by coun-
35 sel appointed pursuant to this section that are related to the finding that
36 the juvenile is within the purview of this act, unless the court finds such
37 persons or estate to be indigent as ~~defined~~ described in section ~~19-851(e)-~~
38 19-6011, Idaho Code, and the requirement would impose a manifest hardship
39 on those persons responsible for the juvenile or the estates. The current
40 inability of those persons or entities to pay the reimbursement shall not, in
41 and of itself, restrict the court from ordering reimbursement.

42 (8) The prosecuting attorney of each county may, on behalf of the
43 county, recover payment or reimbursement, as the case may be, from each per-
44 son or estate who is liable for the payment or reimbursement of the cost of
45 court appointed counsel for the juvenile, as provided in subsection (7) of
46 this section. In the event such payment or reimbursement is not made upon
47 demand by the prosecuting attorney, suit may be brought against such persons
48 by the prosecuting attorney within five (5) years after the date on which
49 such counsel was appointed by the court.

1 SECTION 37. That Section 31-3201I, Idaho Code, be, and the same is
2 hereby amended to read as follows:

3 31-3201I. DISTRIBUTION OF PAYMENTS IN CRIMINAL AND INFRACTION CASES.
4 When ordered by the court to make one (1) of the following payments in a crim-
5 inal or infraction case, a defendant shall make the payment to the clerk of
6 the court in which the judgment was entered. The judgment shall be satisfied
7 accordingly by entry in the electronic docket of the court, and the clerk
8 of the court shall remit daily all such payments to the county auditor who
9 shall, at least monthly, distribute the payments received as required by
10 statute. The distributions shall first completely satisfy the amounts due
11 in the following order before distribution of payments for any other amounts
12 owed to the court, and any payment applied to a category below in which more
13 than one (1) payment was ordered shall be distributed in proportion to the
14 relative amounts of such ordered payments:

15 (1) Fees for each felony, misdemeanor, and infraction paid pursuant to
16 section 31-3201A(2) and (3), Idaho Code;

17 (2) Fines or reimbursements paid for the crime victims compensation ac-
18 count pursuant to section 72-1025, Idaho Code;

19 (3) Misdemeanor probation supervision fees, including court-ordered
20 costs and fees, paid pursuant to section 31-3201D, Idaho Code;

21 (4) Pretrial release supervision fees paid pursuant to section
22 31-3201J, Idaho Code;

23 (5) County drug and mental health fund fees paid pursuant to section
24 31-3201E, Idaho Code;

25 (6) Fines paid for the peace officer and detention officer temporary
26 disability fund pursuant to section 72-1105, Idaho Code;

27 (7) Restitution to victims of crime paid and distributed pursuant to
28 section 19-5304, Idaho Code, if paid through the clerk of the court;

29 (8) Fines entered on behalf of victims in cases of crimes of violence
30 paid pursuant to section 19-5307, Idaho Code;

31 (9) Community service fees paid pursuant to section 31-3201C, Idaho
32 Code;

33 (10) Victim notification fund fees paid pursuant to section 31-3204,
34 Idaho Code;

35 (11) Court technology fees paid pursuant to section 31-3201(5), Idaho
36 Code;

37 (12) Surcharge fees paid pursuant to section 31-3201H, Idaho Code;

38 (13) Peace officers standards and training fees paid pursuant to sec-
39 tion 31-3201B, Idaho Code;

40 (14) Domestic violence court fees paid pursuant to section 32-1410,
41 Idaho Code;

42 (15) Criminal and infraction fines;

43 (16) Reimbursement for public defender costs paid pursuant to section
44 19-8546011(7), Idaho Code;

45 (17) Costs of prosecution ordered as a condition of probation and paid
46 pursuant to section 19-2601, Idaho Code, and Idaho criminal rule 33(d) (2);

47 (18) Domestic violence fines for the domestic violence project account
48 paid pursuant to section 39-6312, Idaho Code;

49 (19) Drug hotline fees paid pursuant to section 37-2735A, Idaho Code;

1 (20) Additional fish and game fines for the search and rescue fund paid
2 pursuant to section 36-1405, Idaho Code;

3 (21) County administrative surcharge fees paid pursuant to section
4 31-3201(3), Idaho Code;

5 (22) Motor vehicle violation surcharge fees and ignition interlock and
6 electronic monitoring fees paid pursuant to sections 18-8008 and 18-8010,
7 Idaho Code;

8 (23) Costs for toxicology testing paid pursuant to section 37-2732C(g),
9 Idaho Code;

10 (24) Costs incurred by law enforcement agencies in investigating con-
11 trolled substance violations pursuant to chapter 27, title 37, Idaho Code,
12 violations of the racketeering act pursuant to section 18-7804, Idaho Code,
13 or money laundering and illegal investment provisions of section 18-8201,
14 Idaho Code, paid pursuant to section 37-2732(k), Idaho Code;

15 (25) Restitution for the repair or replacement of simulated wildlife
16 paid pursuant to section 36-1101(b)(8), Idaho Code;

17 (26) Abandoned vehicle fees paid pursuant to section 31-3201F, Idaho
18 Code; and

19 (27) Any other amounts paid pursuant to any statutory section not refer-
20 enced in this section.

21 SECTION 38. That Section 57-827, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 57-827. STATE PUBLIC DEFENSE FUND. (1) There is hereby established in
24 the state treasury the state public defense fund to be managed by the state
25 treasurer. Moneys in the fund shall consist of:

26 (a) Moneys transferred to the fund pursuant to section 63-3638(10),
27 Idaho Code;

28 (b) Legislative appropriations to the fund;

29 (c) On and after October 1, 2024, any fees or reimbursement ordered
30 pursuant to sections ~~19-8546011~~(7) and ~~19-8586015~~, Idaho Code, or dis-
31 tributed pursuant to section 31-3201I(16), Idaho Code;

32 (d) Any bequests or donations to the fund; and

33 (e) Interest earned on idle moneys in the fund.

34 (2) Moneys in the fund shall be used as determined by legislative ap-
35 propriation to fulfill the state's obligation to provide indigent public de-
36 fense pursuant to the sixth amendment of the United States constitution and
37 section 13, article I of the constitution of the state of Idaho.

38 SECTION 39. That Section 74-105, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 74-105. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS,
41 INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS,
42 WORKER'S COMPENSATION. The following records are exempt from disclosure:

43 (1) Investigatory records of a law enforcement agency as defined in
44 section 74-101(7), Idaho Code, under the conditions set forth in section
45 74-124, Idaho Code.

46 (2) Juvenile records of a person maintained pursuant to chapter 5,
47 title 20, Idaho Code, except that facts contained in such records shall be

1 furnished upon request in a manner determined by the court to persons and
2 governmental and private agencies and institutions conducting pertinent
3 research studies or having a legitimate interest in the protection, welfare
4 and treatment of the juvenile who is thirteen (13) years of age or younger.
5 If the juvenile is petitioned or charged with an offense that would be a
6 criminal offense if committed by an adult, the name, offense of which the
7 juvenile was petitioned or charged, and disposition of the court shall be
8 subject to disclosure as provided in section 20-525, Idaho Code. Addi-
9 tionally, facts contained in any records of a juvenile maintained pursuant
10 to chapter 5, title 20, Idaho Code, shall be furnished upon request to any
11 school district where the juvenile is enrolled or is seeking enrollment.

12 (3) Records of the custody review board of the Idaho department of ju-
13 venile corrections, including records containing the names, addresses and
14 written statements of victims and family members of juveniles, shall be ex-
15 empt from public disclosure pursuant to section 20-533A, Idaho Code.

16 (4) (a) The following records of the department of correction:

17 (i) Records of which the public interest in confidentiality, pub-
18 lic safety, security and habilitation clearly outweighs the pub-
19 lic interest in disclosure as identified pursuant to the authority
20 of the state board of correction under section 20-212, Idaho Code;

21 (ii) Records that contain any identifying information, or any in-
22 formation that would lead to the identification of any victims or
23 witnesses;

24 (iii) Records that reflect future transportation or movement of a
25 prisoner;

26 (iv) Records gathered during the course of the presentence inves-
27 tigation;

28 (v) Records of a prisoner as defined in section 74-101(10), Idaho
29 Code, or probationer shall not be disclosed to any other prisoner
30 or probationer.

31 (b) Records, other than public expenditure records, related to pro-
32 posed or existing critical infrastructure held by or in the custody
33 of any public agency only when the disclosure of such information is
34 reasonably likely to jeopardize the safety of persons, property or the
35 public safety. Such records may include emergency evacuation, escape
36 or other emergency response plans, vulnerability assessments, oper-
37 ation and security manuals, plans, blueprints or security codes. For
38 purposes of this paragraph, "system" includes electrical, computer
39 and telecommunication systems, electric power (including production,
40 generating, transportation, transmission and distribution), heating,
41 ventilation, and air conditioning. For purposes of this subsection,
42 "critical infrastructure" means any system or asset, whether physical
43 or virtual, so vital to the state of Idaho, including its political sub-
44 divisions, that the incapacity or destruction of such system or asset
45 would have a debilitating impact on state or national economic secu-
46 rity, state or national public health or safety, or any combination of
47 those matters.

48 (c) Records of the Idaho commission of pardons and parole shall be ex-
49 empt from public disclosure pursuant to section 20-1003, Idaho Code,
50 and section 20-1005, Idaho Code. Records exempt from disclosure shall

1 also include those containing the names, addresses and written state-
2 ments of victims.

3 (5) Voting records of the former sexual offender classification board.
4 The written record of the vote to classify an offender as a violent sexual
5 predator by each board member in each case reviewed by that board member
6 shall be exempt from disclosure to the public and shall be made available
7 upon request only to the governor, the chairman of the senate judiciary and
8 rules committee, and the chairman of the house of representatives judiciary,
9 rules and administration committee for all lawful purposes.

10 (6) Records of the sheriff or Idaho state police received or maintained
11 pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating
12 to an applicant or licensee, except that any law enforcement officer and law
13 enforcement agency, whether inside or outside the state of Idaho, may access
14 information maintained in the license record system as set forth in section
15 18-3302K(16), Idaho Code.

16 (7) Records of investigations prepared by the department of health and
17 welfare pursuant to its statutory responsibilities dealing with the protec-
18 tion of children, the rehabilitation of youth, adoptions and the commitment
19 of mentally ill persons. For reasons of health and safety, best interests of
20 the child or public interest, the department of health and welfare may pro-
21 vide for the disclosure of records of investigations associated with actions
22 pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by
23 the department of health and welfare pursuant to its statutory responsibil-
24 ities dealing with the protection of children, except any such records re-
25 garding adoptions shall remain exempt from disclosure.

26 (8) Records, including but not limited to investigative reports, re-
27 sulting from investigations conducted into complaints of discrimination
28 made to the Idaho human rights commission unless the public interest in
29 allowing inspection and copying of such records outweighs the legitimate
30 public or private interest in maintaining confidentiality of such records.
31 A person may inspect and copy documents from an investigative file to which
32 he or she is a named party if such documents are not otherwise prohibited from
33 disclosure by federal law or regulation or state law. The confidentiality of
34 this subsection will no longer apply to any record used in any judicial pro-
35 ceeding brought by a named party to the complaint or investigation, or by the
36 Idaho human rights commission, relating to the complaint of discrimination.

37 (9) Records containing information obtained by the manager of the Idaho
38 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on
39 behalf of employers or employees contained in underwriting and claims for
40 benefits files.

41 (10) The worker's compensation records of the Idaho industrial commis-
42 sion, provided that the industrial commission shall make such records avail-
43 able:

44 (a) To the parties in any worker's compensation claim and to the indus-
45 trial special indemnity fund of the state of Idaho; or

46 (b) To employers and prospective employers subject to the provisions of
47 the Americans with disabilities act, 42 U.S.C. 12112, or other statu-
48 tory limitations, who certify that the information is being requested
49 with respect to a worker to whom the employer has extended an offer of
50 employment and will be used in accordance with the provisions of the

1 Americans with disabilities act, 42 U.S.C. 12112, or other statutory
2 limitations; or

3 (c) To employers and prospective employers not subject to the provi-
4 sions of the Americans with disabilities act, 42 U.S.C. 12112, or other
5 statutory limitations, provided the employer presents a written autho-
6 rization from the person to whom the records pertain; or

7 (d) To others who demonstrate that the public interest in allowing in-
8 spection and copying of such records outweighs the public or private in-
9 terest in maintaining the confidentiality of such records, as deter-
10 mined by a civil court of competent jurisdiction; or

11 (e) Although a claimant's records maintained by the industrial commis-
12 sion, including medical and rehabilitation records, are otherwise ex-
13 empt from public disclosure, the quoting or discussing of medical or re-
14 habilitation records contained in the industrial commission's records
15 during a hearing for compensation or in a written decision issued by the
16 industrial commission shall be permitted; provided further, the true
17 identification of the parties shall not be exempt from public disclo-
18 sure in any written decision issued and released to the public by the in-
19 dustrial commission.

20 (11) Records of investigations compiled by the commission on aging in-
21 volving vulnerable adults as defined in section 18-1505, Idaho Code, alleged
22 to be abused, neglected or exploited.

23 (12) Criminal history records and fingerprints as defined in section
24 67-3001, Idaho Code, and compiled by the Idaho state police. Such records
25 shall be released only in accordance with chapter 30, title 67, Idaho Code.

26 (13) Records furnished or obtained pursuant to section 41-1019, Idaho
27 Code, regarding termination of an appointment, employment, contract or
28 other insurance business relationship between an insurer and a producer.

29 (14) Records of a prisoner or former prisoner in the custody of any state
30 or local correctional facility, when the request is made by another prisoner
31 in the custody of any state or local correctional facility.

32 (15) Except as provided in section 72-1007, Idaho Code, records of the
33 Idaho industrial commission relating to compensation for crime victims pur-
34 suant to chapter 10, title 72, Idaho Code.

35 (16) Records or information identifying a complainant maintained by the
36 department of health and welfare pursuant to section 39-3556, Idaho Code,
37 relating to certified family homes, unless the complainant consents in writ-
38 ing to the disclosure or the disclosure of the complainant's identity is re-
39 quired in any administrative or judicial proceeding.

40 (17) Records of any certification or notification required by federal
41 law to be made in connection with the acquisition or transfer of a firearm,
42 including a firearm as defined in 26 U.S.C. 5845(a).

43 ~~(18) The following records of the state public defense commission:~~

44 ~~(a) Records of the office of the state public defender and the office of~~
45 ~~the state appellate public defender containing information protected~~
46 ~~or exempted from disclosure under the rules adopted by the Idaho supreme~~
47 ~~court, attorney work product, attorney-client privileged communica-~~
48 ~~tion, records containing confidential information from an individual~~
49 ~~about his criminal case or performance of his attorney, or confidential~~

1 information about an inquiry into an attorney's fitness to represent
2 indigent defendants.

3 ~~(b) Records related to the administration of the extraordinary liti-~~
4 ~~gation fund by the state public defense commission pursuant to section~~
5 ~~19-850(2)(e), Idaho Code, to the extent that such records contain in-~~
6 ~~formation protected or exempted from disclosure under rules adopted~~
7 ~~by the Idaho supreme court, attorney work product or attorney-client~~
8 ~~privileged communication. This exemption does not include the amount~~
9 ~~awarded based upon an application for extraordinary litigation funds.~~

10 (19) Records and information received by the office of the state con-
11 troller from any local government, state agency and department, or volunteer
12 nongovernmental entity for purposes of entry into the criminal justice
13 integrated data system pursuant to section 19-4803, Idaho Code, and all
14 records created by persons authorized to research and analyze information
15 entered into the criminal justice integrated data system, regardless of
16 whether such records were previously exempted from disclosure or redacted
17 pursuant to state or federal law or court order. This exemption does not
18 apply to projects, reports, and data analyses approved for release by the
19 data oversight council and issued by persons authorized to conduct research
20 and analysis as set forth in chapter 48, title 19, Idaho Code. Records and
21 information relating to the management of the criminal justice integrated
22 data system shall not be exempt from disclosure except as otherwise provided
23 in law.

24 (20) Records that contain any identifying information or any informa-
25 tion that could lead to the identification of any persons or entities that
26 participate in or assist with an execution of a death sentence as described
27 in section 19-2716A, Idaho Code.

28 ~~(20)~~ (21) Records, other than public expenditure records, relating to
29 the nature, location, or function of cybersecurity devices, programs, or
30 systems designed to protect computer, information technology, or communica-
31 tions systems against terrorist or other attacks.

32 SECTION 40. LEGISLATIVE INTENT. The purpose of this act is to create the
33 new model of indigent defense contemplated in House Bill No. 735, as amended
34 in the Senate, during the Second Regular Session of the Sixty-sixth Idaho
35 Legislature. The Legislature is creating a new model of indigent defense
36 because the Idaho Supreme Court declared in *Tucker v. State of Idaho*, 162
37 Idaho 11 (2017), that the state can be liable for the inadequate provision
38 of public defense, even though since 1967 the Legislature has delegated the
39 responsibility to provide indigent defense services to counties pursuant
40 to Section 19-859, Idaho Code. The Legislature finds that the new model of
41 indigent defense contemplated by the aforementioned bill and this act con-
42 stitute a significant policy change that affects defending attorneys and
43 their support staff across the state, both contractors and those employed by
44 institutional offices, as well as thousands of indigent clients receiving
45 their services. Therefore, it is the intent of the Legislature that the
46 provisions of this act, and any subsequent revisions thereto, be reviewed
47 by the House Judiciary, Rules, and Administration Committee and the Senate
48 Judiciary and Rules Committee before the adjournment sine die of the First
49 Regular Session of the Seventieth Idaho Legislature. In particular, it is
50 the intent of the Legislature that said committees review the continued role

1 of counties in providing indigent defense services, if any, the selection
2 and hiring process for the position of District Public Defender in each
3 judicial district, the appointment process for the State Public Defender,
4 policies developed by the Office of the State Public Defender, and the stan-
5 dards for defending attorneys to determine if further legislative action is
6 needed. Nothing in this bill section precludes earlier review of or amend-
7 ment to any provision of the aforementioned bill or this act.

8 SECTION 41. An emergency existing therefor, which emergency is hereby
9 declared to exist, Sections 3, 16, 18 through 22, 32, 34, and 40 shall be in
10 full force and effect on and after July 1, 2023. Sections 1, 2, 4, 5 through
11 10, 12, 13, 14, 15, 23 through 31, 33, and 35 through 39 shall be in full force
12 and effect on and after July 1, 2024. Section 11 shall be in full force and
13 effect on and after October 1, 2024. Section 17 shall be in full force and
14 effect on and after July 1, 2025.