

IN THE SENATE

SENATE BILL NO. 1367

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PUBLIC DEFENSE; AMENDING SECTION 16-1614, IDAHO CODE, TO REVISE  
2 A PROVISION REGARDING COUNSEL APPOINTED FOR A CHILD AND TO ESTABLISH  
3 PROVISIONS REGARDING COUNSEL FOR A GUARDIAN AD LITEM; AMENDING SECTION  
4 19-5905, IDAHO CODE, TO REVISE A PROVISION REGARDING REPRESENTATION BY  
5 THE STATE APPELLATE PUBLIC DEFENDER AND TO REMOVE A PROVISION REGARDING  
6 SERVICES OF THE STATE APPELLATE PUBLIC DEFENDER AVAILABLE TO COUNTIES;  
7 AMENDING SECTION 19-6005, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER  
8 220, LAWS OF 2023, TO PROVIDE FOR A POWER AND DUTY OF THE STATE PUBLIC  
9 DEFENDER AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 19-852,  
10 IDAHO CODE, AS AMENDED BY SECTION 5, CHAPTER 220, LAWS OF 2023, TO PRO-  
11 VIDE FOR CASES WHERE AN ATTORNEY SHALL PROVIDE REPRESENTATION AND TO  
12 MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 60, TITLE 19, IDAHO CODE,  
13 BY THE ADDITION OF A NEW SECTION 19-6020, IDAHO CODE, TO PROVIDE FOR  
14 THE APPOINTMENT OF ADDITIONAL COUNSEL AND PRO BONO PROGRAMS; AMENDING  
15 CHAPTER 8, TITLE 57, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 57-828,  
16 IDAHO CODE, TO ESTABLISH THE ATTORNEY COSTS FOR GUARDIAN AD LITEM AC-  
17 COUNT; AMENDING SECTION 67-5303, IDAHO CODE, TO REVISE A PROVISION  
18 REGARDING NONCLASSIFIED EMPLOYEES; AND DECLARING AN EMERGENCY AND PRO-  
19 VIDING EFFECTIVE DATES.  
20

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

22 SECTION 1. That Section 16-1614, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 16-1614. APPOINTMENT OF GUARDIAN AD LITEM, COUNSEL FOR GUARDIAN AD  
25 LITEM, COUNSEL FOR CHILD. (1) In any proceeding under this chapter for a  
26 child under the age of twelve (12) years, the court shall appoint a guardian  
27 ad litem for the child or children and shall appoint counsel to represent the  
28 guardian ad litem, unless the guardian ad litem is already represented by  
29 counsel. If a court does not have available to it a guardian ad litem program  
30 or a sufficient number of guardians ad litem, the court shall appoint counsel  
31 for the child. In appropriate cases, the court may appoint a guardian ad  
32 litem for the child and counsel to represent the guardian ad litem and may, in  
33 addition, appoint counsel to represent the child.

34 (2) In any proceeding under this chapter for a child twelve (12) years  
35 of age or older, the court:

36 (a) Shall appoint counsel to represent the child and may, in addition,  
37 appoint a guardian ad litem; or

38 (b) Where appointment of counsel is not practicable or not appropriate,  
39 may appoint a guardian ad litem for the child and shall appoint counsel  
40 to represent the guardian ad litem, unless the guardian ad litem is al-  
41 ready represented by counsel.

1 (3) Counsel appointed for the child under the provisions of this sec-  
 2 tion shall be paid for by the county office of the state public defender un-  
 3 less the party for whom counsel is appointed has an independent estate suffi-  
 4 cient to pay such costs.

5 (4) (a) The legislature finds that guardian ad litem representation  
 6 has been addressed differently throughout the state, with some coun-  
 7 ties providing representation through their public defense office or  
 8 public defense contracts, or in other areas of the state with pro bono  
 9 representation. The legislature finds that providing guardian ad litem  
 10 representation through the office of the state public defender would  
 11 create numerous costly conflicts of interest that would detract from  
 12 the office's mission. Therefore, it is the intent of the legislature  
 13 to keep guardian ad litem representation administered locally with re-  
 14 imbursement provided by state funds when needed. It is not the intent  
 15 of the legislature to disrupt, terminate, or otherwise inhibit any pro  
 16 bono programs that now exist or may hereinafter be created to provide  
 17 counsel for guardians ad litem.

18 (b) Counsel appointed for a guardian ad litem shall first come from  
 19 volunteer attorneys willing to represent the guardian ad litem pro bono  
 20 unless the party for whom counsel is appointed has an independent estate  
 21 sufficient to pay such costs. Absent available volunteer pro bono coun-  
 22 sel, attorneys for the guardian ad litem shall be paid by the county,  
 23 and the county shall be reimbursed for the actual, verified costs of  
 24 guardian ad litem representation the county incurred from the attorney  
 25 costs for guardian ad litem account, as established in section 57-828,  
 26 Idaho Code, by submitting a request to the office of the state public  
 27 defender.

28 SECTION 2. That Section 19-5905, Idaho Code, be, and the same is hereby  
 29 amended to read as follows:

30 19-5905. POWERS AND DUTIES. (1) ~~Subject to the provisions of subsec-~~  
 31 ~~tion (2) of this section~~ Consistent with the state of Idaho's obligation to  
 32 provide indigent public defense pursuant to the sixth amendment to the con-  
 33 stitution of the United States, section 13, article I of the constitution of  
 34 the state of Idaho, and the provisions of this chapter, the state appellate  
 35 public defender, upon appointment by the court, shall provide representa-  
 36 tion for indigent defendants in the following cases:

37 (a) Appeals from convictions or post-judgment orders in district  
 38 court;

39 (b) Interlocutory criminal appeals from district court;

40 (c) Appeals from the district court of misdemeanor cases;

41 (d) Appeals from the district court of orders or final judgments af-  
 42 fecting a juvenile offender under the juvenile corrections act, chapter  
 43 5, title 20, Idaho Code;

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

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

1 (g) Post-conviction relief proceedings in district court in capital  
2 cases.

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

6 ~~(3)~~ (2) The state appellate public defender may employ deputy state ap-  
7 pellate public defenders and other employees necessary to carry out the re-  
8 sponsibilities of the office. A deputy state appellate public defender must  
9 be licensed to practice law in the state of Idaho and possess any other quali-  
10 fications required by the state appellate public defender. The state appel-  
11 late public defender shall fix the compensation of all employees of the of-  
12 fice and they shall serve at his pleasure.

13 ~~(4)~~ (3) The state appellate public defender, deputy state appellate  
14 public defenders, and all employees of the office of the state appellate pub-  
15 lic defender shall be nonclassified employees pursuant to section 67-5303,  
16 Idaho Code.

17 ~~(5)~~ (4) The state appellate public defender, in his discretion, may  
18 contract with private attorneys to provide representation on a case-by-case  
19 basis when such contracts would conserve budgetary resources.

20 ~~(6)~~ (5) The state appellate public defender shall have any and all other  
21 powers and duties necessary to carry out the purposes of this chapter.

22 SECTION 3. That Section 19-6005, Idaho Code, as enacted by Section 1,  
23 Chapter 220, Laws of 2023, be, and the same is hereby amended to read as fol-  
24 lows:

25 19-6005. POWERS AND DUTIES OF THE STATE PUBLIC DEFENDER. Consistent  
26 with the state of Idaho's obligation to provide indigent public defense pur-  
27 suant to the sixth amendment to the United States constitution; section 13,  
28 article I of the constitution of the state of Idaho; and this chapter, the  
29 state public defender shall have the power to:

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

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

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

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

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

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

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

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

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

25 (10) Seek reimbursement from any applicable federal funds at the de-  
 26 partment of health and welfare for any allowable costs of representation  
 27 or administrative costs for any representation authorized by this chapter,  
 28 whether provided by employees of the office of the state public defender or  
 29 by contract.

30 SECTION 4. That Section 19-852, Idaho Code, as amended by Section 5,  
 31 Chapter 220, Laws of 2023, be, and the same is hereby amended to read as fol-  
 32 lows:

33 19-6009. RIGHT TO COUNSEL OF INDIGENT PERSON -- REPRESENTATION AT ALL  
 34 STAGES OF CRIMINAL AND COMMITMENT PROCEEDINGS -- PAYMENT. (1) An indigent  
 35 person who is being detained by a law enforcement officer, who is confined  
 36 or is the subject of hospitalization proceedings pursuant to section 18-212,  
 37 66-322, 66-326, 66-329, 66-404 or 66-406, Idaho Code, or who is under formal  
 38 charge of having committed, or is being detained under a conviction of, a se-  
 39 rious crime, is entitled:

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

42 (b) To be provided with the necessary services and facilities of repre-  
 43 sentation, including investigation and other preparation. The attor-  
 44 ney, services and facilities, and the court costs shall be provided at  
 45 public expense to the extent that the person is, at the time the court  
 46 determines indigency pursuant to section 19-6011, Idaho Code, unable to  
 47 provide for their payment.

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

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

5 (b) To be represented in any appeal;

6 (c) To be represented in any other post-conviction or post-commitment  
 7 proceeding that the attorney or the indigent person considers appro-  
 8 priate, unless the court in which the proceeding is brought determines  
 9 that it is not a proceeding that a reasonable person with adequate means  
 10 would be willing to bring at his own expense and is therefore a frivolous  
 11 proceeding.

12 (3) Upon a finding of indigency, representation by an attorney under  
 13 subsection (1) of this section shall include the following cases, excluding  
 14 those cases where the state appellate public defender has jurisdiction pur-  
 15 suant to section 19-5905, Idaho Code, and excluding those cases of guardian  
 16 ad litem representation pursuant to section 16-1614(4), Idaho Code:

17 (a) Felony and misdemeanor cases;

18 (b) Actions arising under the Idaho juvenile corrections act, chapter  
 19 5, title 20, Idaho Code;

20 (c) Proceedings under the uniform post-conviction procedure act, chap-  
 21 ter 49, title 19, Idaho Code;

22 (d) Civil contempt proceedings where incarceration is sought;

23 (e) Actions arising under the child protective act, chapter 16, title  
 24 16, Idaho Code; and

25 (f) Appeals from adjudicatory decrees or orders under section 16-1625,  
 26 Idaho Code.

27 ~~(3)~~ (4) An indigent person's right to a benefit under subsection (1) or  
 28 (2) of this section is unaffected by his having provided a similar benefit at  
 29 his own expense, or by his having waived it, at an earlier stage.

30 SECTION 5. That Chapter 60, Title 19, Idaho Code, be, and the same is  
 31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 32 ignated as Section 19-6020, Idaho Code, and to read as follows:

33 19-6020. APPOINTMENT OF ADDITIONAL COUNSEL -- PRO BONO PROGRAMS. (1)  
 34 Should the office of the state public defender be unable to carry out the du-  
 35 ties required in this chapter because of a conflict of interest, or any other  
 36 reason, the state public defender or his designee shall arrange for counsel  
 37 for indigent defendants to be compensated out of the budget of the office of  
 38 the state public defender. The state public defender, in his discretion, may  
 39 also contract with private attorneys to provide representation pursuant to  
 40 this chapter on a case-by-case basis when such contracts would conserve bud-  
 41 getary resources.

42 (2) The state public defender is authorized to facilitate and develop  
 43 with the judicial branch, the Idaho state bar, law schools, and private  
 44 attorneys and law offices pro bono opportunities to take cases pursuant to  
 45 this chapter; however, nothing in this subsection requires the office of the  
 46 state public defender to assign pro bono cases to attorneys who do not meet  
 47 the requirements and standards for defending attorneys.

1 SECTION 6. That Chapter 8, Title 57, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 57-828, Idaho Code, and to read as follows:

4 57-828. ATTORNEY COSTS FOR GUARDIAN AD LITEM ACCOUNT. (1) There is  
5 hereby created in the state treasury the attorney costs for guardian ad litem  
6 account. The account shall be used solely to reimburse counties for repre-  
7 sentation of a guardian ad litem pursuant to section 16-1614(4), Idaho Code.

8 (2) For fiscal year 2025 and each fiscal year thereafter, immediately  
9 after the transfer made pursuant to section 57-811(3), Idaho Code, the state  
10 controller shall transfer the amount required for the account to have a be-  
11 ginning fiscal year balance of five hundred thousand dollars (\$500,000) from  
12 the state public defense fund established pursuant to section 57-827, Idaho  
13 Code.

14 (3) All moneys placed in the account are hereby perpetually appropri-  
15 ated for reimbursing counties for representation of guardians ad litem pur-  
16 suant to section 16-1614(4), Idaho Code. All expenditures from the account  
17 shall be paid out in warrants drawn by the state controller upon presenta-  
18 tion of proper vouchers from the office of the state public defender. Pend-  
19 ing use, surplus moneys in the account shall be invested by the state trea-  
20 surer in the same manner as prescribed in section 67-1210, Idaho Code, with  
21 respect to surplus or idle moneys in the state treasury. Interest earned on  
22 the investments shall be returned to the account.

23 SECTION 7. That Section 67-5303, Idaho Code, be, and the same is hereby  
24 amended to read as follows:

25 67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state  
26 of Idaho and all employees in such departments, except those employees  
27 specifically defined as nonclassified, shall be classified employees who  
28 are subject to this chapter and to the system of personnel administration  
29 it prescribes. All nonclassified employees are subject to conformity with  
30 classified positions as set forth in section 59-1603, Idaho Code. Nonclas-  
31 sified employees shall be:

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

35 (b) Members of statutory boards and commissions and heads of depart-  
36 ments appointed by and serving at the pleasure of the governor, deputy di-  
37 rectors appointed by the director of a department, and members of advisory  
38 boards and councils appointed by the departments.

39 (c) All employees and officers in the office, and at the residence, of  
40 the governor; and all employees and officers in the offices of the lieutenant  
41 governor, secretary of state, attorney general, state treasurer, state con-  
42 troller, and state superintendent of public instruction.

43 (d) Except as otherwise provided by law, one (1) declared position des-  
44 ignated by the appointing authority of a participating department, in addi-  
45 tion to those declared to be nonclassified by other provisions of law.

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

- 1 (f) Judges, temporary referees, receivers and jurors.  
2 (g) All employees of the Idaho supreme court, Idaho court of appeals and  
3 district courts.  
4 (h) All employees of the Idaho state bar.  
5 (i) Assistant attorneys general attached to the office of the attorney  
6 general.  
7 (j) Officers, members of the teaching staffs of state higher educa-  
8 tional institutions, the professional staffs of the office of the state  
9 board of education and the Idaho department of education administered by the  
10 board of regents and the board of education, all professional staff of the  
11 public charter school commission, and the professional staffs of the Idaho  
12 division of career technical education and vocational rehabilitation admin-  
13 istered by the state board for career technical education. "Teaching staff"  
14 includes teachers, coaches, resident directors, librarians and those prin-  
15 cipally engaged in academic research. The word "officer" means presidents,  
16 vice presidents, deans, directors, or employees in positions designated by  
17 the state board who receive an annual salary of not less than step A of the pay  
18 grade equivalent to three hundred fifty-five (355) Hay points in the state  
19 compensation schedule. In consultation with the Idaho division of human  
20 resources, the state board of education shall implement policies and pro-  
21 cedures for nonclassified employees to conform with section 59-1603, Idaho  
22 Code.  
23 (k) Employees of the military division.  
24 (l) Patients, inmates or students employed in a state institution.  
25 (m) Temporary employees.  
26 (n) All employees and officers of the following named commodity commis-  
27 sions, and all employees and officers of any commodity commission created  
28 hereafter: the Idaho potato commission, as provided in chapter 12, title 22,  
29 Idaho Code; the Idaho honey commission, as provided in chapter 28, title 22,  
30 Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22,  
31 Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, ti-  
32 tle 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33,  
33 title 22, Idaho Code; the Idaho pea and lentil commission, as provided in  
34 chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in  
35 chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in  
36 chapter 37, title 22, Idaho Code; the Idaho mint commission, as provided in  
37 chapter 38, title 22, Idaho Code; the Idaho sheep and goat health board, as  
38 provided in chapter 1, title 25, Idaho Code; the state brand inspector, and  
39 all district supervisors, as provided in chapter 11, title 25, Idaho Code;  
40 the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and  
41 the Idaho dairy products commission, as provided in chapter 31, title 25,  
42 Idaho Code.  
43 (o) All inspectors of the fresh fruit and vegetable inspection service  
44 of the Idaho department of agriculture, except those positions involved in  
45 the management of the program.  
46 (p) All employees of correctional industries within the department of  
47 correction.  
48 (q) All deputy administrators and wardens employed by the department of  
49 correction. Deputy administrators are defined as only the deputy adminis-

1 trators working directly for the nonclassified division administrators un-  
2 der the director of the department of correction.

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

5 (s) Any division administrator.

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

8 (u) All employees of the division of financial management, all employ-  
9 ees of the STEM action center, all employees of the office of species conser-  
10 vation, all employees of the office of drug policy, and all employees of the  
11 office of energy and mineral resources.

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

13 (w) All employees of ~~state agencies that provide or fund indigent pub-~~  
14 ~~lic defense, including~~ the office of the state appellate public defender,  
15 pursuant to chapter 59, title 19, Idaho Code, and the office of the state pub-  
16 lic defender, pursuant to chapter 60, title 19, Idaho Code, ~~when such chapter~~  
17 ~~takes effect, and the state public defense commission, pursuant to section~~  
18 ~~19-849, Idaho Code.~~

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

21 (y) All pest survey and detection employees and their supervisors hired  
22 specifically to carry out activities under the Idaho plant pest act, chapter  
23 20, title 22, Idaho Code, including but not limited to pest survey, detec-  
24 tion, and eradication, except those positions involved in the management of  
25 the program.

26 (z) All medical directors employed by the department of health and  
27 welfare who are engaged in the practice of medicine, as defined by section  
28 54-1803, Idaho Code, at a state hospital or other treatment facility managed  
29 and operated by the department of health and welfare.

30 (aa) All hearing officers and all other employees of the office of ad-  
31 ministrative hearings, as provided for in chapter 52, title 67, Idaho Code.

32 SECTION 8. An emergency existing therefor, which emergency is hereby  
33 declared to exist, Sections 6 and 7 of this act shall be in full force and ef-  
34 fect on and after July 1, 2024. Sections 1 through 5 of this act shall be in  
35 full force and effect on and after October 1, 2024.