

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 59
STATE APPELLATE PUBLIC DEFENDER ACT

19-5901. SHORT TITLE. This chapter shall be known and may be cited as the "State Appellate Public Defender Act."

[19-5901, added 2021, ch. 164, sec. 2, p. 466.]

19-5902. LEGISLATIVE INTENT. The legislature recognizes that the cost of legal representation of indigent defendants upon the appeal of their criminal convictions, particularly convictions for first-degree murder, is an extraordinary burden on the counties of this state. In order to reduce this burden and provide competent counsel, but avoid paying high hourly rates to independent counsel to represent indigent defendants in appellate proceedings, the legislature finds it necessary to create the office of the state appellate public defender.

[19-5902, added 2021, ch. 164, sec. 2, p. 466.]

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

[19-5903, added 2021, ch. 164, sec. 2, p. 466; am. 2023, ch. 220, sec. 18, p. 675.]

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

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

- (a) Be at least thirty (30) years of age;
- (b) Be a citizen of the United States;
- (c) Have held a license to practice law or a judicial office in one (1) or more jurisdictions of the United States for at least five (5) continuous years immediately preceding such appointment;
- (d) Be or become an active member of the Idaho state bar within one (1) year of appointment and remain an active member in good standing thereafter; and
- (e) Have at least five (5) years of criminal defense or appellate experience, or a combination thereof.

(3) The state appellate public defender shall not:

- (a) Engage in the practice of law outside his role in the office of the state appellate public defender, except for the practice of law that is permitted for a judge by the Idaho code of judicial conduct;
- (b) Hold or be a candidate for any federal, state, county, municipal, judicial, district, or other elective office; provided, however, this section shall not be interpreted to prohibit the state appellate public

defender from seeking appointment to another office, including state or federal judicial office;

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

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

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

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

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

[19-5904, added 2023, ch. 220, sec. 20, p. 675.]

19-5905. POWERS AND DUTIES. (1) Subject to the provisions of subsection (2) of this section, the state appellate public defender, upon appointment by the court, shall provide representation for indigent defendants in the following cases:

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

(b) Interlocutory criminal appeals from district court;

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

(d) Appeals from the district court of orders or final judgments affecting a juvenile offender under the juvenile corrections act, [chapter 5, title 20](#), Idaho Code;

(e) Appeals from the district court in post-conviction relief proceedings brought pursuant to the uniform post-conviction procedure act, [chapter 49, title 19](#), Idaho Code;

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

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

(2) The services of the state appellate public defender shall be available only to those counties participating in the capital crimes defense fund established pursuant to section [19-5908](#), Idaho Code.

(3) The state appellate public defender may employ deputy state appellate public defenders and other employees necessary to carry out the responsibilities of the office. A deputy state appellate public defender must be licensed to practice law in the state of Idaho and possess any other qualifications required by the state appellate public defender. The state appellate public defender shall fix the compensation of all employees of the office and they shall serve at his pleasure.

(4) The state appellate public defender, deputy state appellate public defenders, and all employees of the office of the state appellate public defender shall be nonclassified employees pursuant to section [67-5303](#), Idaho Code.

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

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

[19-5905, added 2021, ch. 164, sec. 2, p. 466; am. 2023, ch. 220, sec. 21, p. 676.]

19-5906. APPOINTMENT OF ADDITIONAL COUNSEL. Should the state appellate public defender be unable to carry out the duties required in this chapter because of a conflict of interest or any other reason, the state appellate public defender shall arrange for counsel for indigent defendants to be compensated out of the budget of the state appellate public defender.

[19-5906, added 2021, ch. 164, sec. 2, p. 467.]

19-5907. ANNUAL REPORT. The state appellate public defender shall make an annual report to the state board of examiners, the supreme court, the legislature, and all counties for which the office has provided services concerning the cases handled by the office during the preceding year.

[19-5907, added 2021, ch. 164, sec. 2, p. 467.]

19-5908. CAPITAL CRIMES DEFENSE FUND AUTHORIZED. (1) The establishment of a capital crimes defense fund by the counties of the state for purposes of funding the costs of criminal defense in cases where the penalty of death is a legal possibility is hereby authorized. The fund shall be organized and operated in accordance with a joint powers agreement, as authorized by [chapter 23, title 67](#), Idaho Code, executed by the participating counties. Membership in the fund shall be voluntary, as determined by resolution of the board of county commissioners of the respective counties of the state.

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

(3) The fund shall be operated and administered by a board of representatives to be selected as provided in the joint powers agreement. If moneys are appropriated to the fund by the legislature, the governor shall appoint a representative of the executive branch of state government to serve as a voting member of the governing board, and if court fees are designated for deposit in the fund, the Idaho supreme court shall appoint a representative of the judicial branch of state government to serve as a voting member of the board.

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

(5) Beginning October 1, 2022, the state appellate public defender assumes all responsibility for providing representation for indigent defendants in the cases described in section [19-5905](#), Idaho Code; provided, however, that all counties participating in the capital crimes defense fund on January 1, 2022, shall be required to continue participation until October 1, 2024. At an appropriate time after October 1, 2024, participating counties are authorized to dissolve the fund.

[(19-5908) 19-863A, added 1998, ch. 389, sec. 1, p. 1190; am. 2021, ch. 164, sec. 3, p. 467; am. 2022, ch. 318, sec. 57, p. 1030; am. and redesiɡ. 2023, ch. 220, sec. 22, p. 677.]