

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 8
EXAMINATION OF CASE AND DISCHARGE OR COMMITMENT OF ACCUSED

19-801. ACCUSED TO BE INFORMED OF CHARGE -- RIGHT TO COUNSEL. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

[(19-801) Cr. Prac. 1864, sec. 143, p. 230; R.S., R.C., & C.L., sec. 7565; C.S., sec. 8743; I.C.A., sec. 19-701.]

19-802. SENDING FOR COUNSEL. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must upon the request of the defendant, require a peace officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty.

[(19-802) Cr. Prac. 1864, sec. 144, p. 230; R.S., R.C., & C.L., sec. 7566; C.S., sec. 8744; I.C.A., sec. 19-702.]

19-804. PRELIMINARY EXAMINATION. The magistrate shall conduct a preliminary examination unless the same is waived by the defendant. At such preliminary examination, the magistrate shall first read the complaint to the defendant unless the defendant waives such reading, and it shall be the duty of the magistrate at such examination to determine whether or not a public offense has been committed and whether or not there is probable or sufficient cause to believe that the defendant committed such public offense. Once commenced, the examination must be completed at one (1) session unless the magistrate for good cause shown by court order postpones it, or unless the parties stipulate in writing or upon the court record to a continuance to a date certain. If the defendant is incarcerated, the postponement or continuance cannot be for more than six (6) days or, if the defendant is not incarcerated, for more than twenty (20) days, unless on motion by or with the consent of the defendant the court orders a longer continuance or postponement.

[(19-804) Cr. Prac. 1864, sec. 146, p. 230; R.S., R.C., & C.L., sec. 7568; C.S., sec. 8746; I.C.A., sec. 19-704; am. 1969, ch. 467, sec. 1, p. 1339; am. 1976, ch. 282, sec. 1, p. 967.]

19-805. COMMITMENT OR BAIL ON POSTPONEMENT. If a postponement is had the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is postponed.

[(19-805) Cr. Prac. 1864, sec. 147, p. 230; R.S., R.C., & C.L., sec. 7569; C.S., sec. 8747; I.C.A., sec. 19-705.]

19-806. FORM OF COMMITMENT. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect:

"The within named A.B. having been brought before me under this warrant, is committed for examination to the sheriff of"

If the sheriff is not present, the defendant may be committed to the custody of a peace officer.

[(19-806) Cr. Prac. 1864, sec. 148, p. 231; R.S., R.C., & C.L., sec. 7570; C.S., sec. 8748; I.C.A., sec. 19-706.]

19-807. ISSUANCE OF SUBPOENAS FOR WITNESSES. The magistrate shall, prior to the preliminary examination, issue subpoenas, subscribed by him, for witnesses required by the prosecution who are in the state, and for witnesses required by the defendant who are in the state.

[(19-807) Cr. Prac. 1864, sec. 149, p. 231; R.S., R.C., & C.L., sec. 7571; C.S., sec. 8749; I.C.A., sec. 19-707; am. 1969, ch. 467, sec. 2, p. 1339.]

19-808. EXAMINATION OF WITNESSES FOR STATE. The witnesses for the prosecution must be examined under oath in the presence of the defendant, and may be cross-examined in his behalf.

[(19-808) Cr. Prac. 1864, sec. 150, p. 231; R.S., R.C., & C.L., sec. 7572; C.S., sec. 8750; I.C.A., sec. 19-708; am. 1969, ch. 467, sec. 3, p. 1339.]

19-809. EXAMINATION OF WITNESSES FOR DEFENDANT. When the examination of witnesses on the part of the people is closed, the defendant may produce any material witnesses, which witnesses must be sworn, examined and cross-examined in the presence of the defendant.

[(19-809) R.S., R.C., & C.L., sec. 7573; C.S., sec. 8751; I.C.A., sec. 19-709; am. 1969, ch. 467, sec. 4, p. 1339.]

19-809A. CHILD'S OUT OF COURT STATEMENTS ADMISSIBLE IN PRELIMINARY EXAMINATIONS. Notwithstanding the provisions of sections [19-808](#) and [19-809](#), Idaho Code, and any rules promulgated by the Idaho supreme court, in any preliminary examination, the magistrate shall receive into evidence any out-of-court statement of a child under the age of ten (10) years provided the magistrate finds the source of the evidence credible.

[19-809A, added 1986, ch. 195, sec. 1, p. 493.]

19-810. EXCLUSION OF WITNESSES. While a witness is under examination the magistrate must, upon motion of either of the parties, exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until all witnesses have been examined.

[(19-810) Cr. Prac. 1864, sec. 157, p. 232; R.S., R.C., & C.L., sec. 7574; C.S., sec. 8752; I.C.A., sec. 19-710; am. 1969, ch. 467, sec. 5, p. 1339.]

19-811. EXCLUSION OF OTHER PERSONS. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney general, the prosecuting attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

[(19-811) Cr. Prac. 1864, sec. 158, p. 232; R.S., R.C., & C.L., sec. 7575; C.S., sec. 8753; I.C.A., sec. 19-711.]

19-812. TRANSCRIPT OF PRELIMINARY EXAMINATION. In all cases which must afterward be investigated by the grand jury, or prosecuted by information, the preliminary examination must be taken and as ordered by the district court duly transcribed, unless the person charged with the offense shall waive his right to such examination, and the same can not be unreasonably delayed by either party.

A verbatim record of the proceedings and evidence at the preliminary examination before a magistrate shall be maintained either by electrical devices or by stenographic means as the magistrate may direct, but if any party to the action requests stenographic reporting of the proceedings, the reporting shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings.

The opening statements and closing argument of counsel for the parties need not be transcribed and made a part of the transcript unless the transcription of the same is requested in advance by either of such parties.

The transcript of the proceedings and evidence at the preliminary examination shall be certified to as true and correct by the stenographer or by the person designated to transcribe the proceedings from the electrical devices.

[(19-812) R.S., sec. 7576; am. 1905, p. 376; reen. R.C., sec. 7576; compiled and reen. C.L., sec. 7576; C.S., sec. 8754; I.C.A., sec. 19-712; am. 1969, ch. 467, sec. 6, p. 1339; am. 1971, ch. 73, sec. 1, p. 167; am. 1979, ch. 206, sec. 1, p. 589.]

19-813. CUSTODY OF TRANSCRIPT OF PRELIMINARY EXAMINATION. The magistrate must keep the depositions of witnesses or transcript of preliminary examination taken at such preliminary examination until the same is returned to the proper court; and such magistrate must not permit the same to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney-general, prosecuting attorney, or other prosecuting attorney, and the defendant and his counsel.

[(19-813) R.S., R.C., & C.L., sec. 7577; C.S., sec. 8755; I.C.A., sec. 19-713; am. 1969, ch. 467, sec. 7, p. 1339.]

19-814. DISCHARGE OF DEFENDANT. If, after hearing the evidence adduced at the preliminary examination, the magistrate finds either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must dismiss the complaint and order the defendant to be discharged.

[(19-814) Cr. Prac. 1864, sec. 159, p. 232; R.S., R.C., & C.L., sec. 7578; C.S., sec. 8756; I.C.A., sec. 19-714; am. 1969, ch. 467, sec. 8, p. 1339.]

19-815. HOLDING DEFENDANT TO ANSWER. If, after hearing the evidence adduced at the preliminary examination, the magistrate finds that a public offense has been committed, and that there is probable or sufficient cause to believe the defendant guilty thereof, the magistrate shall enter an order holding the defendant to answer to said public offense, which order shall be substantially as follows: "It appearing to me that the offense set forth in the complaint (or any offense, according to the evidence presented at the preliminary examination, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A.B. guilty thereof, I order that he be held to answer the same."

[(19-815) Cr. Prac. 1864, sec. 160; R.S., R.C., & C.L., sec. 7579; C.S., sec. 8757; I.C.A., sec. 19-715; am. 1969, ch. 467, sec. 9, p. 1339.]

19-815A. CHALLENGING SUFFICIENCY OF EVIDENCE OF PRELIMINARY EXAMINATION. A defendant once held to answer to a criminal charge under this chapter may challenge the sufficiency of evidence educed at the preliminary examination by a motion to dismiss the commitment, signed by the magistrate, or the information filed by the prosecuting attorney. Such motion to dismiss shall be heard by a district judge.

If the district judge finds that the magistrate has held the defendant to answer without reasonable or probable cause to believe that the defendant has committed the crime for which he was held to answer, or finds that no public offense has been committed, he shall dismiss the complaint, commitment or information and order the defendant discharged.

[I.C., sec. 19-815A, as added by S.L. 1971, ch. 250, sec. 1, p. 1005.]

19-816. OFFENSES NOT BAILABLE -- ENDORSEMENT ON COMMITMENT. If the offense is not bailable the following words must be added to the commitment required by section [19-818](#): "and he is hereby committed to the sheriff of the county of"

[(19-816) Cr. Prac. 1864, sec. 161, p. 232; R.S., R.C., & C.L., sec. 7580; C.S., sec. 8758; I.C.A., sec. 19-716; am. 1969, ch. 467, sec. 10, p. 1339.]

19-817. BAILABLE OFFENSES -- ORDER ADMITTING TO BAIL. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to commitment required by section [19-818](#): "And that he is admitted to bail in the sum of dollars, and is committed to the sheriff of the county of until he gives such bail."

[(19-817) Cr. Prac. 1864, sec. 163, p. 232; R.S., R.C., & C.L., sec. 7581; C.S., sec. 8759; I.C.A., sec. 19-717; am. 1969, ch. 467, sec. 11, p. 1339.]

19-818. ORDER OF COMMITMENT. If the magistrate order the defendant to be committed he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is com-

mitted, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

[(19-818) Cr. Prac. 1864, sec. 164, p. 233; R.S., R.C., & C.L., sec. 7582; C.S., sec. 8760; I.C.A., sec. 19-718.]

19-819. FORM OF COMMITMENT. The commitment must be to the following effect:

County of (as the case may be). The state of Idaho to the sheriff of the county of:

An order having been this day made by me, that A.B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this day of,

[(19-819) Cr. Prac. 1864, sec. 165, p. 233; R.S., R.C., & C.L., sec. 7583; C.S., sec. 8761; I.C.A., sec. 19-719; am. 2007, ch. 90, sec. 9, p. 250.]

19-820. UNDERTAKING OF WITNESSES TO APPEAR. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of \$500.00.

[(19-820) Cr. Prac. 1864, sec. 166, p. 233; R.S., R.C., & C.L., sec. 7584; C.S., sec. 8762; I.C.A., sec. 19-720.]

19-821. SECURITY FOR APPEARANCE. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

[(19-821) Cr. Prac. 1864, sec. 167, p. 233; R.S., R.C., & C.L., sec. 7585; C.S., sec. 8763; I.C.A., sec. 19-721.]

19-822. SECURITY FOR APPEARANCE -- INFANTS AND MARRIED WOMEN. Infants and married women who are material witnesses against the defendant may be required to procure sureties for their appearance, as provided in the last section.

[(19-822) Cr. Prac. 1864, sec. 168, p. 233; R.S., R.C., & C.L., sec. 7586; C.S., sec. 8764; I.C.A., sec. 19-722.]

19-823. COMMITMENT FOR FAILURE TO GIVE SECURITY. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

[(19-823) Cr. Prac. 1864, sec. 169, p. 233; R.S., R.C., & C.L., sec. 7587; C.S., sec. 8765; I.C.A., sec. 19-723.]

19-824. CONDITIONAL EXAMINATION. When, however, it satisfactorily appears by examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this chapter to be conducted, and the witness thereupon be discharged; but this section does not apply to an accomplice in the commission of the offense charged.

[(19-824) Cr. Prac. 1864, sec. 170, p. 233; R.S., R.C., & C.L., sec. 7588; C.S., sec. 8766; I.C.A., sec. 19-724.]

19-825. RETURN OF PAPERS TO DISTRICT COURT. When a magistrate has held a defendant to answer for the commission of a public offense, he must, without unnecessary delay and after the transcript of preliminary examination has been transcribed or the depositions of witnesses have been reduced to writing in compliance with section [19-812](#), Idaho Code, return to the clerk of the district court to which the defendant has been held to answer, the complaint, the warrant, if any, the transcript of preliminary examination or depositions of witnesses testifying at the preliminary examination, a certified copy of the transcript of his docket, the order holding defendant to answer, all undertakings of bail or for the appearance of witnesses taken by him, together with any other written documents on file which the magistrate is required by law to transmit to said district court.

[(19-825) Cr. Prac. 1864, sec. 172, p. 234; R.S., R.C., & C.L., sec. 7589; C.S., sec. 8767; I.C.A., sec. 19-725; am. 1969, ch. 467, sec. 12, p. 1339.]

19-848. SHORT TITLE. Sections [19-848](#) through [19-866](#), Idaho Code, shall be known as the "Idaho Public Defense Act."

[19-848, added 2014, ch. 247, sec. 1, p. 617.]

19-849. STATE PUBLIC DEFENSE COMMISSION. (1) There is hereby created in the department of self-governing agencies the state public defense commission. The commission shall consist of nine (9) members as follows:

- (a) Two (2) representatives from the state legislature that shall include one (1) member from the senate and one (1) member from the house of representatives;
- (b) One (1) representative appointed by the chief justice of the Idaho supreme court; and
- (c) Six (6) representatives appointed by the governor and confirmed by the senate as follows:
 - (i) Two (2) representatives from the Idaho association of counties;
 - (ii) Two (2) representatives who have experience as a defending attorney;
 - (iii) One (1) representative from the office of the state appellate public defender; and
 - (iv) One (1) representative from the Idaho juvenile justice commission.

(2) No individual who is currently employed as a prosecuting attorney or who is a current employee of a law enforcement agency may be a member of the commission.

(3) The members of the commission shall serve the following terms:

(a) The gubernatorial appointees shall serve terms of three (3) years.

(b) The representative appointed by the chief justice of the Idaho supreme court shall serve a term of two (2) years.

(c) The representatives from the state legislature shall serve terms of two (2) years as appointed by the president pro tempore of the senate and speaker of the house of representatives during their legislative terms of office.

(4) A vacancy on the commission shall be filled in the same manner as the original appointment and for the balance of the unexpired term.

(5) The commission shall appoint a chairman and a vice chairman from among its members for a term certain.

(6) The members of the commission shall be compensated as provided for in section [59-509](#)(b), Idaho Code.

[19-849, added 2014, ch. 247, sec. 2, p. 617; am. 2018, ch. 161, sec. 1, p. 318.]

19-850. POWERS AND DUTIES OF THE STATE PUBLIC DEFENSE COMMISSION. (1) The state public defense commission shall:

(a) Promulgate rules in accordance with the provisions of [chapter 52, title 67](#), Idaho Code, establishing the following:

(i) Training and continuing legal education requirements for defending attorneys, which shall promote competency and consistency in case types including, but not limited to, criminal, juvenile, capital, abuse and neglect, post-conviction, civil commitment and criminal contempt;

(ii) Uniform data reporting requirements and model forms for the annual reports submitted pursuant to section [19-864](#), Idaho Code, which shall include, but not be limited to, caseload, workload and expenditures;

(iii) Model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services, which shall include, but not be limited to, compliance with indigent defense standards;

(iv) Procedures and forms by which counties may apply to the commission, pursuant to section [19-862A](#), Idaho Code, for funds to be used to bring their delivery of indigent defense services into compliance with applicable indigent defense standards;

(v) Procedures for administrative review and fair hearings in accordance with the Idaho administrative procedure act, which shall include, but not be limited to, providing for a neutral hearing officer in such hearings;

(vi) Procedures for the oversight, implementation, enforcement and modification of indigent defense standards so that the right to counsel of indigent persons, as provided in section [19-852](#), Idaho Code, is constitutionally delivered to all indigent persons in this state; and

(vii) Standards for defending attorneys that utilize, to the extent reasonably practicable taking into consideration factors

such as case complexity, support services and travel, the following principles:

1. The delivery of indigent defense services should be independent of political and judicial influence, though the judiciary is encouraged to contribute information and advice concerning the delivery of indigent defense services.
2. Defending attorneys should have sufficient time and private physical space so that attorney-client confidentiality is safeguarded during meetings with clients.
3. Defending attorneys' workloads should permit effective representation.
4. Economic disincentives or incentives that impair defending attorneys' ability to provide effective representation should be avoided.
5. Defending attorneys' abilities, training and experience should match the nature and complexity of the cases in which they provide services including, but not limited to, cases involving complex felonies, juveniles and child protection.
6. The defending attorney assigned to a particular case should, to the extent reasonably practicable, continuously oversee the representation of that case and personally appear at every substantive court hearing.
7. There should be reasonable equity between defending attorneys and prosecuting attorneys with respect to resources, staff and facilities.
8. Defending attorneys should obtain continuing legal education relevant to their indigent defense cases.
9. Defending attorneys should be regularly reviewed and supervised for compliance with indigent defense standards and, if applicable, compliance with indigent defense standards as set forth in contractual provisions.
10. Defending attorneys should identify and resolve conflicts of interest in conformance with the Idaho rules of professional conduct and other applicable constitutional standards.

Violation of or noncompliance with the principles listed in this subparagraph does not constitute ineffective assistance of counsel under the constitution of the United States or the state of Idaho and does not otherwise constitute grounds for post-conviction relief.

(b) On or before January 20, 2015, and by January 20 of each year thereafter as deemed necessary by the commission, make recommendations to the Idaho legislature for legislation on public defense system issues including, but not limited to:

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

(c) Review indigent defense providers and defending attorneys to evaluate compliance with indigent defense standards and the terms of state indigent defense financial assistance.

(d) Notwithstanding the provisions of paragraph (a) (iv) of this subsection, establish temporary procedures and model forms by which coun-

ties may apply to the commission for state indigent defense financial assistance pursuant to section [19-862A](#), Idaho Code, to be utilized until rules promulgated pursuant to paragraph (a) (iv) of this subsection are in full force and effect. Such temporary procedures shall not be subject to administrative or judicial review.

(e) Hold at least one (1) meeting in each calendar quarter.

(2) The state public defense commission may:

(a) Hire an executive director, who shall be responsible for the performance of the regular administrative functions of the commission and other duties as the commission may direct. The executive director shall be a nonclassified state employee and shall be compensated as determined by the commission.

(b) Employ persons in addition to the executive director in other positions or capacities as it deems necessary to the proper conduct of commission business and to the fulfillment of the commission's responsibilities. The employees of the commission other than the executive director shall be classified employees and shall receive as compensation an annual salary payable on regular pay periods, the amount of which shall be determined by the commission.

(c) Provide an office, office equipment and facilities as may be reasonably necessary for the proper performance of its duties or the duties of the executive director and other personnel.

(d) Provide training and continuing legal education for indigent defense providers and defending attorneys in order to assist them in satisfying requirements promulgated pursuant to subsection (1) (a) (i) of this section, and use moneys received from a grant or trust or otherwise received and appropriated to provide such training and continuing legal education.

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

(f) Hire private counsel to represent the commission in hearings held in accordance with the Idaho administrative procedure act and the rules promulgated pursuant to subsection (1) (a) (v) of this section.

[19-850, added 2014, ch. 247, sec. 3, p. 618; am. 2016, ch. 195, sec. 1, p. 544; am. 2018, ch. 162, sec. 1, p. 319; am. 2019, ch. 35, sec. 1, p. 97.]

19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In this act, the term:

(1) "Commission" means the state public defense commission as created pursuant to section [19-849](#), Idaho Code;

(2) "Defending attorney" means any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense;

(3) "Detain" means to have in custody or otherwise deprive of freedom of action;

(4) "Expenses," when used with reference to representation under this act, includes the expenses of investigation, other preparation and trial;

(5) "Indigent defense provider" means any agency, entity, organization or person selected by a board of county commissioners in accordance with section [19-859](#), Idaho Code, or a designee of the commission if the commission's actions to remedy specific deficiencies pursuant to section [19-862A](#) (11) (b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense;

(6) "Indigent defense standard" means any rule promulgated by the commission pursuant to section [19-850](#) (1) (a), Idaho Code;

(7) "Indigent person" means a person who, at the time his need is determined pursuant to section [19-854](#), Idaho Code, is unable to provide for the full payment of an attorney and all other necessary expenses of representation;

(8) "Local share" means the benchmark figure calculated by the commission to determine the minimum amount of county funding that shall be maintained by a county and to determine the award amount of state indigent defense financial assistance for which a county may be eligible pursuant to section [19-862A](#), Idaho Code. For any given county fiscal year, a county's local share shall be the median of the annual amount in county funds expended by that county for indigent defense during each of the first three (3) of the preceding five (5) county fiscal years, as certified by the county clerk. In calculating this amount, county indigent defense expenditures shall not include:

(a) Amounts received from the public defense commission; and

(b) Amounts expended for capital cases by those counties participating in the capital crimes defense program in excess of premiums and deductibles required by guidelines approved by the Idaho capital crimes defense fund board of directors;

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

(10) "State indigent defense financial assistance" means the state funding a county may be awarded pursuant to section [19-862A](#), Idaho Code.

[19-851, added 1967, ch. 181, sec. 1, p. 599; am. 1968 (2nd E.S.), ch. 10, sec. 1, p. 20; am. 1972, ch. 27, sec. 1, p. 39; am. 1972, ch. 385, sec. 1, p. 1117; am. 1995, ch. 59, sec. 1, p. 132; am. 2005, ch. 93, sec. 1, p. 313; am. 2013, ch. 220, sec. 1, p. 515; am. 2016, ch. 195, sec. 2, p. 547; am. 2019, ch. 35, sec. 2, p. 99.]

19-852. RIGHT TO COUNSEL OF INDIGENT PERSON -- REPRESENTATION AT ALL STAGES OF CRIMINAL AND COMMITMENT PROCEEDINGS -- PAYMENT. (1) An indigent person who is being detained by a law enforcement officer, who is confined or is the subject of hospitalization proceedings pursuant to section [18-212](#), [66-322](#), [66-326](#), [66-329](#), [66-404](#) or [66-406](#), Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is entitled:

(a) To be represented by an attorney to the same extent as a person having his own counsel is so entitled; and

(b) To be provided with the necessary services and facilities of representation including investigation and other preparation. The attorney, services and facilities and the court costs shall be provided at public expense to the extent that the person is, at the time the court

determines indigency pursuant to section [19-854](#), Idaho Code, unable to provide for their payment.

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

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

(b) To be represented in any appeal;

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

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

[19-852, added 1967, ch. 181, sec. 2, p. 599; am. 1969 (2nd E.S.), ch. 10, sec. 2, p. 20; am. 1981, ch. 114, sec. 3, p. 171; am. 1982, ch. 59, sec. 3, p. 92; am. 2013, ch. 220, sec. 2, p. 516.]

19-853. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL. (1) If a person who is being detained by a law enforcement officer, or who is confined or who is the subject of hospitalization proceedings pursuant to section [66-322](#), [66-326](#), [66-329](#), [66-404](#) or [66-406](#), Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is not represented by an attorney under conditions in which a person having his own counsel would be entitled to be so represented, the law enforcement officers concerned, upon commencement of detention, or the court, upon formal charge or hearing, as the case may be, shall:

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

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

(2) Upon commencement of any later judicial proceeding relating to the same matter including, but not limited to, preliminary hearing, arraignment, trial, any post-conviction proceeding or post-commitment proceeding, the presiding officer shall clearly inform the person so detained or charged of his right to counsel and of the right of an indigent person to be represented by an attorney at public expense. Provided, the appointment of an attorney at public expense in uniform post-conviction procedure act proceedings shall be in accordance with section [19-4904](#), Idaho Code.

(3) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the indigent defense provider.

(4) Upon notification by the court, the indigent defense provider shall represent the person with respect to whom the notification is made.

[19-853, added 1967, ch. 181, sec. 3, p. 599; 1968 (2nd E.S.), ch. 10, sec. 3, p. 20; am. 1981, ch. 114, sec. 4, p. 172; am. 1982, ch. 59, sec. 4, p. 93; am. 1984, ch. 229, sec. 1, p. 548; am. 2001, ch. 160, sec. 1, p. 568; am. 2013, ch. 220, sec. 3, p. 516; am. 2014, ch. 247, sec. 4, p. 619; am. 2015, ch. 244, sec. 2, p. 1009; am. 2016, ch. 47, sec. 1, p. 98; am. 2016, ch. 195, sec. 3, p. 547.]

19-854. DETERMINATION OF INDIGENCY -- FACTORS CONSIDERED -- PARTIAL PAYMENT BY ACCUSED -- REIMBURSEMENT. (1) The determination of whether a person covered under section [19-852](#), Idaho Code, is an indigent person shall be deferred until his first appearance in court or in a suit for payment or reimbursement under section [19-858](#), Idaho Code, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each proceeding, whether he is an indigent person.

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

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

(b) Persons who receive, or whose dependents receive, public assistance pursuant to [title 56](#), Idaho Code, in the form of food assistance, health coverage, cash assistance or child care assistance; or

(c) Persons who are currently serving a sentence in a correctional facility or are being housed in a mental health facility.

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

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

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

(a) For impeachment purposes;

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

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

(6) To the extent that a person covered under section [19-852](#), Idaho Code, is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court may order him to provide for their payment.

(7) Upon conviction, notwithstanding the form of judgment or withheld judgment, plea of guilty or finding of guilt for any crime regardless of the original crime or number of counts, an indigent person who receives the services of an attorney provided by the county may be required by the court to reimburse the county for all or a portion of the cost of those services re-

lated to the conviction, plea of guilty or finding of guilt, unless the requirement would impose a manifest hardship on the indigent person. The current inability of the indigent person to pay the reimbursement shall not, in and of itself, restrict the court from ordering reimbursement.

[19-854, added 1967, ch. 181, sec. 4, p. 599; am. 2001, ch. 287, sec. 1, p. 1023; am. 2013, ch. 220, sec. 4, p. 517; am. 2014, ch. 243, sec. 1, p. 612.]

19-855. QUALIFICATIONS OF COUNSEL. No person may be given the primary responsibility of representing an indigent person unless he is licensed to practice law in this state and is otherwise competent to counsel and defend a person charged with a crime.

[19-855, added 1967, ch. 181, sec. 5, p. 599; am. 2013, ch. 220, sec. 5, p. 518.]

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

[19-857, added 1967, ch. 181, sec. 7, p. 599; am. 2013, ch. 220, sec. 7, p. 518.]

19-858. REIMBURSEMENT TO COUNTY -- WHEN AUTHORIZED. (1) The prosecuting attorney of each county may, on behalf of the county, recover payment or reimbursement, as the case may be, from each person who has received legal assistance or another benefit under this act:

- (a) To which he was not entitled;
- (b) With respect to which he was not an indigent person when he received it; or
- (c) With respect to which he has failed to make the certification required under section [19-854](#), Idaho Code, and for which he refuses to pay or reimburse. Suit must be brought within five (5) years after the date on which the aid was received.

(2) The prosecuting attorney of each county may, on behalf of the county, recover payment or reimbursement, as the case may be, from each person other than a person covered under subsection (1) of this section who has received legal assistance under this act and who, on the date on which suit is brought, is financially able to pay or reimburse the county for it without manifest hardship according to the standards of ability to pay applicable under sections [19-851](#), [19-852](#) and [19-854](#), Idaho Code, but refuses to do so. Suit must be brought within three (3) years after the date on which the benefit was received.

(3) Amounts recovered under this section shall be paid into the county general fund.

[19-858, added 1967, ch. 181, sec. 8, p. 599; am. 2013, ch. 220, sec. 8, p. 518.]

19-859. PUBLIC DEFENDER AUTHORIZED -- JOINT COUNTY PUBLIC DEFENDERS. The board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. The board of county commissioners of each county shall provide this representation by one (1) of the following:

- (1) Establishing and maintaining an office of public defender;
- (2) Joining with the board of county commissioners of one (1) or more other counties within the same judicial district to establish and maintain a joint office of public defender pursuant to an agreement authorized under section [67-2328](#), Idaho Code;
- (3) Contracting with an existing office of public defender; or
- (4) Contracting with a defending attorney, provided that the terms of the contract shall not include any pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney. The contract provisions of this subsection shall apply to all contracts entered into or renewed on or after the effective date of this act.

[19-859, added 1967, ch. 181, sec. 9, p. 599; am. 2013, ch. 220, sec. 9, p. 519; am. 2014, ch. 247, sec. 5, p. 619.]

19-860. PUBLIC DEFENDER -- COMPENSATION -- APPOINTMENT -- QUALIFICATIONS. If the board of county commissioners of a county elects to establish and maintain an office of public defender and/or juvenile public defender or a joint office of public defender, the board shall:

- (1) Prescribe the qualifications of such public defender and his rate of annual compensation, and, if so desired by the board, a rate of compensation for extraordinary services not recurring on a regular basis. So far as is possible, the compensation paid to such public defender shall not be less than the compensation paid to the county prosecutor for that portion of his practice devoted to criminal law.
- (2) Provide for the establishment, maintenance and support of his office. The board of county commissioners shall appoint a public defender and/or juvenile public defender from a panel of not more than five (5) and not fewer than three (3) persons, if that many are available, designated by a committee of lawyers appointed by the administrative judge of the judicial district encompassing the county or his designee. To be a candidate, a person must be licensed to practice law in this state and must be competent to counsel and defend a person charged with a crime.

[19-860, added 1967, ch. 181, sec. 10, p. 599; am. 1968 (2nd E.S.), ch. 23, sec. 1, p. 45; am. 1988, ch. 342, sec. 1, p. 1019; am. 1998, ch. 72, sec. 1, p. 266; am. 2013, ch. 220, sec. 10, p. 519; am. 2014, ch. 247, sec. 6, p. 620; am. 2016, ch. 47, sec. 2, p. 99.]

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

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

(a) Provide appropriate facilities including office space, furniture, equipment, books, postage, supplies and interviewing facilities in the jail, necessary for carrying out the public defender's responsibilities under this act; or

(b) Grant the public defender an allowance in place of those facilities.

(3) A defending attorney is entitled to use the same state facilities for the evaluation of evidence as are available to the county prosecutor. If he considers their use impractical, the court concerned may authorize the use of private facilities to be paid for on court order by the county board of commissioners.

[19-861, added 1967, ch. 181, sec. 11, p. 599; am. 2014, ch. 247, sec. 7, p. 620.]

19-862. APPROPRIATION FOR PUBLIC DEFENDER -- PRIVATE CONTRIBUTIONS. (1) The board of county commissioners of each county shall annually appropriate enough money to fund the indigent defense provider that it has selected under section [19-859](#), Idaho Code, and, except as provided in subsection (2) of this section, shall maintain not less than its local share. The board of county commissioners of each county may appropriate such money from the justice fund as provided in section [31-4602](#), Idaho Code, the current expense fund as provided in section [63-805](#), Idaho Code, and as a means of providing nonmedical indigent assistance in accordance with [chapter 34, title 31](#), Idaho Code.

(2) The board of county commissioners is not required to expend its full local share if it can comply with indigent defense standards for less than that share.

(3) If the board of county commissioners of a county elects to establish and maintain an office of public defender or a joint office of public defender, the county may accept private contributions toward the support of the office.

[19-862, added 1967, ch. 181, sec. 12, p. 599; am. 2014, ch. 247, sec. 8, p. 621; am. 2016, ch. 195, sec. 4, p. 548; am. 2016, ch. 214, sec. 1, p. 600; am. 2017, ch. 58, sec. 8, p. 105.]

19-862A. COMPLIANCE -- INDIGENT DEFENSE FINANCIAL ASSISTANCE. (1) All counties, indigent defense providers and defending attorneys shall cooperate and participate with the commission in the review of their indigent defense services.

(2) By May 15 of each year, each county may submit to the commission a compliance proposal, which shall be an essential requirement in order to be considered for state indigent defense financial assistance. The compliance proposal shall include a plan that specifically addresses how indigent defense standards shall be met and, if applicable under subsection (11) (a) of this section, how any deficiencies previously identified by the commission will be cured in the upcoming county fiscal year. The proposal shall also include a cost analysis that shall specifically identify the amount of funding in excess of the applicable local share, if any, necessary to allow the county to successfully execute its plan. In the event the commission determines that the county can successfully execute its plan without exhausting

the entirety of the financial assistance for which it may be eligible, a proposal submitted pursuant to this section may request funding to be used for other improvements to its delivery of indigent defense services. Such other improvements may include, but are not limited to, funding for investigation costs, witness expenses and other extraordinary litigation costs.

(3) The amount of state indigent defense financial assistance shall not exceed fifteen percent (15%) of the county's local share for said county fiscal year or twenty-five thousand dollars (\$25,000), whichever is greater. If a county elects to join with the board of county commissioners of one (1) or more other counties within the same judicial district to establish and maintain a joint office of public defender pursuant to section [19-859](#)(2), Idaho Code, each participating county shall be eligible for an additional twenty-five thousand dollars (\$25,000) per year. The maximum amount of state indigent defense financial assistance shall remain in effect until July 1, 2019, unless otherwise addressed by the legislature prior to that date.

(4) The commission shall accept a compliance proposal submitted under subsection (2) of this section, in an amount deemed appropriate by the commission, if the proposal:

- (a) Includes a plan that is necessary to meet or improve upon indigent defense standards; and
- (b) Demonstrates that the amount of the requested state indigent defense financial assistance is necessary to meet or improve upon indigent defense standards.

(5) The commission shall accept or reject a compliance proposal submitted under subsection (2) of this section within sixty (60) days of the submission of the compliance proposal. If the commission rejects the proposal, the county shall consult with the commission and submit a revised proposal within thirty (30) days of the mailing date of the official notification of the commission's rejection. If after two (2) revisions a resolution is not reached, any dispute shall be resolved in accordance with the Idaho administrative procedure act and rules promulgated by the commission pursuant to section [19-850](#)(1) (a) (v), Idaho Code.

(6) On October 1, 2016, or as soon thereafter as is practicable, and on October 1 of each year thereafter, or as soon thereafter as is practicable, the commission shall distribute the approved state indigent defense financial assistance to a county if:

- (a) The most recent annual report required by section [19-864](#), Idaho Code, has been filed, to the satisfaction of the commission;
- (b) The county has filed, to the satisfaction of the commission, its most recent proposal for state indigent defense financial assistance required by subsection (2) of this section; and
- (c) The county has cured, to the satisfaction of the commission, any material breach of the terms of previously approved state indigent defense financial assistance.

(7) On or before September 1, 2016, and by September 1 of each year thereafter, the commission shall submit a report with its annual budget request to the office of the administrator of the division of financial management and the legislative services office requesting the appropriation of funds necessary to provide state indigent defense financial assistance to counties as approved by the commission. The information used to create this report shall be made available to the administrator of the division of financial management and the legislative services office.

(8) A county may be required to provide indigent defense funds in excess of its local share in the event the cost of successfully executing its plan submitted pursuant to subsection (2) of this section exceeds the sum of its local share and the maximum state indigent defense financial assistance for which it may be eligible in a given county fiscal year.

(9) By March 31 of each year, all counties shall be in compliance with indigent defense standards that were in full force and effect as of May 1 of the prior year.

(10) Each proposal submitted pursuant to subsection (2) of this section after March 31, 2017, shall contain an attestation stating whether the county has complied with indigent defense standards as required by subsection (9) of this section and, if not, a specific explanation for its failure to do so.

(11) In the event the commission determines that any county has failed to materially comply with indigent defense standards, the commission shall:

(a) Require the county's upcoming state indigent defense compliance proposal to specifically address how the noncompliance will be cured in the upcoming county fiscal year as provided in subsection (2) of this section; or

(b) If any county has willfully and materially failed to comply with indigent defense standards, notify the county in writing of its determination and intent to remedy specific deficiencies at the expense of the county to the extent necessary to comply with indigent defense standards. Within thirty (30) days of the date of said notice, the commission and the county or their designees shall attempt to meet at least once to resolve the issues of the noncompliance. If the commission and the county are unable to resolve the matter through this meeting process, the commission and county shall mutually set a date for mediation within forty-five (45) days, with the cost of mediation to be paid equally by the parties. If after mediation the commission and the county are unable to come to a resolution, the commission shall provide written notice to the county of its decision to remedy specific deficiencies at the expense of the county to the extent necessary to comply with indigent defense standards. This decision is subject to administrative review as provided in subsection (13) of this section. If the county does not timely request administrative review or if the administrative review process affirms the commission's determination, the commission shall remedy specific deficiencies at the expense of the county to the extent necessary to comply with indigent defense standards.

(12) If the commission acts to remedy specific deficiencies as provided in subsection (11)(b) of this section, the county shall pay to the commission, notwithstanding the county's applicable local share, the amount incurred by the commission in remedying specific deficiencies as billed by the commission on a semiannual basis coinciding with the county fiscal year. Such amount shall be paid to the commission within sixty (60) days of the date of the billing. If the county fails to provide the commission with the funds billed pursuant to this subsection within sixty (60) days of the date of the commission's billing, the state treasurer shall immediately intercept any payments from sales tax moneys that would be distributed to the county pursuant to section [63-3638](#), Idaho Code, and apply the intercepted payments to reimburse the commission for the costs incurred in remedying specific deficiencies as billed pursuant to this subsection. The foregoing intercept

and transfer provisions shall operate by force of law and no consent thereto is required of the county in order to be enforceable. The commission and the state have no obligation to the county or to any person or entity to replace any moneys intercepted under the authority of this subsection.

(13) A county aggrieved by a decision made by the commission pursuant to subsection (11) (b) of this section shall be afforded reasonable notice and opportunity for a fair hearing in accordance with the Idaho administrative procedure act and rules promulgated by the commission pursuant to section [19-850](#) (1) (a) (v), Idaho Code.

(14) If the commission's actions to remedy specific deficiencies, pursuant to subsection (11) (b) of this section, involve providing indigent defense services on behalf of a county, the county may submit a compliance proposal for state indigent defense financial assistance in accordance with subsection (2) of this section and request to resume providing indigent defense services. The commission may accept the proposal and permit the county to resume providing indigent defense services in the event the county has demonstrated that it has cured or will cure any material noncompliance with indigent defense standards to the satisfaction of the commission.

(15) Failure to comply with the standards promulgated pursuant to section [19-850](#) (1) (a), Idaho Code, or the terms of state indigent defense financial assistance does not constitute ineffective assistance of counsel under the constitutions of the United States or the state of Idaho.

[19-862A, added 2016, ch. 195, sec. 5, p. 548; am. 2019, ch. 35, sec. 3, p. 100.]

19-863. DEFENSE EXPENSES -- ALLOCATION IN JOINTLY ESTABLISHED OFFICES. (1) Subject to section [19-861](#), Idaho Code, any direct expense, including the cost of a transcript that is necessarily incurred in representing an indigent person under this act, is a county charge against the county on behalf of which the service is performed.

(2) If two (2) or more counties jointly establish an office of public defender, the expenses not otherwise allocable among the participating counties under subsection (1) of this section shall be allocated, unless the counties otherwise agree, on the basis of population according to the most recent decennial census.

[19-863, added 1967, ch. 181, sec. 13, p. 599; am. 2013, ch. 220, sec. 11, p. 520.]

19-863A. 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) The services of the state appellate public defender as provided in [chapter 59, title 19](#), Idaho Code, shall be available only to those counties participating in the fund.

[19-863A, added 1998, ch. 389, sec. 1, p. 1190; am. 2021, ch. 164, sec. 3, p. 467.]

19-864. RECORDS OF DEFENDING ATTORNEYS -- ANNUAL REPORT OF DEFENDING ATTORNEYS. (1) Indigent defense providers and defending attorneys shall keep appropriate records respecting each person whom they represent under this act.

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

[19-864, added 1967, ch. 181, sec. 14, p. 599; am. 2013, ch. 220, sec. 12, p. 520; am. 2016, ch. 195, sec. 6, p. 551.]

19-865. APPLICATION OF ACT -- STATE COURTS -- FEDERAL COURTS. This act applies only to representation in the courts of this state, except that it does not prohibit a defending attorney from representing an indigent person in a federal court of the United States, if:

(1) The matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction of the state; or

(2) Representation is under a plan of the United States district court as required by the criminal justice act of 1964, 18 U.S.C. 3006A, and is approved by the board of county commissioners.

[19-865, added 1967, ch. 181, sec. 15, p. 599; am. 2013, ch. 220, sec. 13, p. 520; am. 2014, ch. 97, sec. 4, p. 269.]

19-866. PROVISIONS NOT EXCLUSIVE. The protections provided by this act do not exclude any protection or sanction that the law otherwise provides.

[19-866, added 1967, ch. 181, sec. 17, p. 599.]