

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 43

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO PUBLIC DEFENSE; AMENDING SECTION 19-850, IDAHO CODE, TO REVISE  
2 TERMINOLOGY; AMENDING SECTION 19-851, IDAHO CODE, TO REVISE TERMINOL-  
3 OGY AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 19-862A,  
4 IDAHO CODE, TO REMOVE OUTDATED PROVISIONS, TO REVISE THE DATE FOR SUB-  
5 MISSION OF A COMPLIANCE PROPOSAL, TO REVISE TERMINOLOGY, TO PROVIDE FOR  
6 COMPLIANCE PROPOSALS, AND TO MAKE A TECHNICAL CORRECTION.  
7

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

9 SECTION 1. That Section 19-850, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 19-850. POWERS AND DUTIES OF THE STATE PUBLIC DEFENSE COMMISSION. (1)  
12 The state public defense commission shall:

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

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

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

24 (iii) Model contracts and core requirements for contracts between  
25 counties and private attorneys for the provision of indigent de-  
26 fense services, which shall include, but not be limited to, com-  
27 pliance with indigent defense standards;

28 (iv) Procedures and forms by which counties may apply to the com-  
29 mission, pursuant to section 19-862A, Idaho Code, for funds to be  
30 used to bring their delivery of indigent defense services into  
31 compliance with applicable indigent defense standards;

32 (v) Procedures for administrative review and fair hearings in ac-  
33 cordance with the Idaho administrative procedure act, which shall  
34 include, but not be limited to, providing for a neutral hearing of-  
35 ficer in such hearings;

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

41 (vii) Standards for defending attorneys that utilize, to the ex-  
42 tent reasonably practicable taking into consideration factors

1 such as case complexity, support services and travel, the follow-  
2 ing principles:

3 1. The delivery of indigent defense services should be inde-  
4 pendent of political and judicial influence, though the ju-  
5 diciary is encouraged to contribute information and advice  
6 concerning the delivery of indigent defense services.

7 2. Defending attorneys should have sufficient time and pri-  
8 vate physical space so that attorney-client confidentiality  
9 is safeguarded during meetings with clients.

10 3. Defending attorneys' workloads should permit effective  
11 representation.

12 4. Economic disincentives or incentives that impair defend-  
13 ing attorneys' ability to provide effective representation  
14 should be avoided.

15 5. Defending attorneys' abilities, training and experience  
16 should match the nature and complexity of the cases in which  
17 they provide services including, but not limited to, cases  
18 involving complex felonies, juveniles and child protection.

19 6. The defending attorney assigned to a particular case  
20 should, to the extent reasonably practicable, continuously  
21 oversee the representation of that case and personally ap-  
22 pear at every substantive court hearing.

23 7. There should be reasonable equity between defending  
24 attorneys and prosecuting attorneys with respect to re-  
25 sources, staff and facilities.

26 8. Defending attorneys should obtain continuing legal edu-  
27 cation relevant to their indigent defense cases.

28 9. Defending attorneys should be regularly reviewed and  
29 supervised for compliance with indigent defense standards  
30 and, if applicable, compliance with indigent defense stan-  
31 dards as set forth in contractual provisions.

32 10. Defending attorneys should identify and resolve con-  
33 flicts of interest in conformance with the Idaho rules of  
34 professional conduct and other applicable constitutional  
35 standards.

36 Violation of or noncompliance with the principles listed in this  
37 subparagraph does not constitute ineffective assistance of coun-  
38 sel under the constitution of the United States or the state of  
39 Idaho and does not otherwise constitute grounds for post-convic-  
40 tion relief.

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

45 (i) Enforcement mechanisms; and

46 (ii) Funding issues including, but not limited to, formulas for  
47 the calculation of local shares and state indigent defense ~~grants~~  
48 financial assistance.

1 (c) Review indigent defense providers and defending attorneys to eval-  
 2 uate compliance with indigent defense standards and the terms of state  
 3 indigent defense ~~grants~~ financial assistance.

4 (d) Notwithstanding the provisions of paragraph (a) (iv) of this sub-  
 5 section, establish temporary procedures and model forms by which  
 6 counties may apply to the commission for state indigent defense ~~grants~~  
 7 financial assistance pursuant to section 19-862A, Idaho Code, to be  
 8 utilized until rules promulgated pursuant to paragraph (a) (iv) of this  
 9 subsection are in full force and effect. Such temporary procedures  
 10 shall not be subject to administrative or judicial review.

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

12 (2) The state public defense commission may:

13 (a) Hire an executive director, who shall be responsible for the per-  
 14 formance of the regular administrative functions of the commission and  
 15 other duties as the commission may direct. The executive director shall  
 16 be a nonclassified state employee and shall be compensated as deter-  
 17 mined by the commission.

18 (b) Employ persons in addition to the executive director in other po-  
 19 sitions or capacities as it deems necessary to the proper conduct of  
 20 commission business and to the fulfillment of the commission's respon-  
 21 sibilities. The employees of the commission other than the executive  
 22 director shall be classified employees and shall receive as compen-  
 23 sation an annual salary payable on regular pay periods, the amount of  
 24 which shall be determined by the commission.

25 (c) Provide an office, office equipment and facilities as may be rea-  
 26 sonably necessary for the proper performance of its duties or the duties  
 27 of the executive director and other personnel.

28 (d) Provide training and continuing legal education for indigent de-  
 29 fense providers and defending attorneys in order to assist them in sat-  
 30 isfying requirements promulgated pursuant to subsection (1) (a) (i) of  
 31 this section, and use moneys received from a grant or trust or otherwise  
 32 received and appropriated to provide such training and continuing legal  
 33 education.

34 (e) Establish procedures by which indigent defense providers or a  
 35 county, through its board of county commissioners, may apply to the com-  
 36 mission for funds to be used for extraordinary litigation costs includ-  
 37 ing, but not limited to, expert witnesses, evidence testing and inves-  
 38 tigation, but not including expenses associated with capital crimes.

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

42 SECTION 2. That Section 19-851, Idaho Code, be, and the same is hereby  
 43 amended to read as follows:

44 19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In this  
 45 act, the term:

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

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

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

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

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

15 (6) "Indigent defense standard" means any rule promulgated by the com-  
16 mission pursuant to section 19-850(1) (a), Idaho Code;

17 (7) "Indigent person" means a person who, at the time his need is deter-  
18 mined pursuant to section 19-854, Idaho Code, is unable to provide for the  
19 full payment of an attorney and all other necessary expenses of representa-  
20 tion;

21 (8) "Local share" means the benchmark figure calculated by the com-  
22 mission to determine the minimum amount of county funding that shall be  
23 maintained by a county and to determine the award amount of state indigent  
24 defense ~~grants~~ financial assistance for which a county may be eligible pur-  
25 suant to section 19-862A, Idaho Code. For any given county fiscal year, a  
26 county's local share shall be the median of the annual amount in county funds  
27 expended by that county for indigent defense during each of the first three  
28 (3) of the preceding five (5) county fiscal years, as certified by the county  
29 clerk. In calculating this amount, county indigent defense expenditures  
30 shall not include:

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

32 (b) Amounts expended for capital cases by those counties participat-  
33 ing in the capital crimes defense program in excess of premiums and de-  
34 ductibles required by guidelines approved by the Idaho capital crimes  
35 defense fund board of directors;

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

39 (10) "State indigent defense ~~grant~~ financial assistance" means the  
40 state funding a county may be awarded pursuant to section 19-862A, Idaho  
41 Code.

42 SECTION 3. That Section 19-862A, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 19-862A. COMPLIANCE -- INDIGENT DEFENSE ~~GRANTS~~ FINANCIAL ASSIS-  
45 TANCE. (1) All counties, indigent defense providers and defending attorneys  
46 shall cooperate and participate with the commission in the review of their  
47 indigent defense services.

48 (2) ~~On or before August 1, 2016, and by~~ By May 15 of each year thereafter,  
49 each county may submit to the commission ~~an application~~ a compliance pro-

1 posal, which shall be an essential requirement in order to be considered for  
 2 a state indigent defense ~~grant that~~ financial assistance. The compliance  
 3 proposal shall include a plan that specifically addresses how indigent de-  
 4 fense standards shall be met and, if applicable under subsection (11) (a) of  
 5 this section, how any deficiencies previously identified by the commission  
 6 will be cured in the upcoming county fiscal year. The application proposal  
 7 shall also include a cost analysis that shall specifically identify the  
 8 amount of funding in excess of the applicable local share, if any, neces-  
 9 sary to allow the county to successfully execute its plan. In the event the  
 10 commission ~~has not yet promulgated any indigent defense standards, or the~~  
 11 ~~commission~~ determines that the county can successfully execute its plan  
 12 without exhausting the entirety of the grant financial assistance for which  
 13 it may be eligible, ~~an application a~~ proposal submitted pursuant to this  
 14 section may request funding to be used for other improvements to its delivery  
 15 of indigent defense services. Such other improvements may include, but are  
 16 not limited to, funding for investigation costs, witness expenses and other  
 17 extraordinary litigation costs.

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

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

32 (a) Includes a plan that is necessary to meet or improve upon indigent  
 33 defense standards; and

34 (b) Demonstrates that the amount of the requested state indigent de-  
 35 fense ~~grant~~ financial assistance is necessary to meet or improve upon  
 36 indigent defense standards.

37 (5) The commission shall ~~approve~~ accept or ~~disapprove the application~~  
 38 reject a compliance proposal submitted under subsection (2) of this section  
 39 within sixty (60) days of the submission of the application compliance pro-  
 40 posal. If the commission ~~disapproves~~ rejects the application proposal, the  
 41 county shall consult with the commission and submit a revised application  
 42 proposal within thirty (30) days of the mailing date of the official noti-  
 43 fication of the commission's ~~disapproval~~ rejection. If after two (2) revi-  
 44 sions a resolution is not reached, any dispute shall be resolved in accor-  
 45 dance with the Idaho administrative procedure act and rules promulgated by  
 46 the commission pursuant to section 19-850(1) (a) (v), Idaho Code.

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

1 (a) The most recent annual report required by section 19-864, Idaho  
2 Code, has been filed, to the satisfaction of the commission;

3 (b) The county has filed, to the satisfaction of the commission, its  
4 most recent application proposal for a state indigent defense ~~grant~~  
5 financial assistance required by subsection (2) of this section; and

6 (c) The county has cured, to the satisfaction of the commission, any ma-  
7 terial breach of the terms of a previously approved state indigent de-  
8 fense ~~grant~~ financial assistance.

9 (7) On or before September 1, 2016, and by September 1 of each year  
10 thereafter, the commission shall submit a report with its annual budget  
11 request to the office of the administrator of the division of financial  
12 management and the legislative services office requesting the appropria-  
13 tion of funds necessary to provide state indigent defense ~~grants~~ financial  
14 assistance to counties as approved by the commission. The information used  
15 to create this report shall be made available to the administrator of the  
16 division of financial management and the legislative services office.

17 (8) A county may be required to provide indigent defense funds in ex-  
18 cess of its local share in the event the cost of successfully executing its  
19 plan submitted pursuant to subsection (2) of this section exceeds the sum of  
20 its local share and the maximum state indigent defense ~~grant~~ financial as-  
21 sistance for which it may be eligible in a given county fiscal year.

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

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

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

32 (a) Require the county's upcoming state indigent defense ~~grant appli-~~  
33 cation compliance proposal to specifically address how the noncompli-  
34 ance will be cured in the upcoming county fiscal year as provided in sub-  
35 section (2) of this section; or

36 (b) If any county has willfully and materially failed to comply with  
37 indigent defense standards, notify the county in writing of its de-  
38 termination and intent to remedy specific deficiencies at the expense  
39 of the county to the extent necessary to comply with indigent defense  
40 standards. Within thirty (30) days of the date of said notice, the  
41 commission and the county or their designees shall attempt to meet at  
42 least once to resolve the issues of the noncompliance. If the com-  
43 mission and the county are unable to resolve the matter through this  
44 meeting process, the commission and county shall mutually set a date  
45 for mediation within forty-five (45) days, with the cost of mediation  
46 to be paid equally by the parties. If after mediation the commission  
47 and the county are unable to come to a resolution, the commission shall  
48 provide written notice to the county of its decision to remedy specific  
49 deficiencies at the expense of the county to the extent necessary to  
50 comply with indigent defense standards. This decision is subject to

1 administrative review as provided in subsection (13) of this section.  
2 If the county does not timely request administrative review or if the  
3 administrative review process affirms the commission's determination,  
4 the commission shall remedy specific deficiencies at the expense of the  
5 county to the extent necessary to comply with indigent defense stan-  
6 dards.

7 (12) If the commission acts to remedy specific deficiencies as pro-  
8 vided in subsection (11) (b) of this section, the county shall pay to the  
9 commission, notwithstanding the county's applicable local share, the amount  
10 incurred by the commission in remedying specific deficiencies as billed by  
11 the commission on a semiannual basis coinciding with the county fiscal year.  
12 Such amount shall be paid to the commission within sixty (60) days of the date  
13 of the billing. If the county fails to provide the commission with the funds  
14 billed pursuant to this subsection within sixty (60) days of the date of  
15 the commission's billing, the state treasurer shall immediately intercept  
16 any payments from sales tax moneys that would be distributed to the county  
17 pursuant to section 63-3638, Idaho Code, and apply the intercepted payments  
18 to reimburse the commission for the costs incurred in remedying specific  
19 deficiencies as billed pursuant to this subsection. The foregoing intercept  
20 and transfer provisions shall operate by force of law and no consent thereto  
21 is required of the county in order to be enforceable. The commission and the  
22 state have no obligation to the county or to any person or entity to replace  
23 any moneys intercepted under the authority of this subsection.

24 (13) A county aggrieved by a decision made by the commission pursuant to  
25 subsection (11) (b) of this section shall be afforded reasonable notice and  
26 opportunity for a fair hearing in accordance with the Idaho administrative  
27 procedure act and rules promulgated by the commission pursuant to section  
28 19-850(1) (a) (v), Idaho Code.

29 (14) If the commission's actions to remedy specific deficiencies, pur-  
30 suant to subsection (11) (b) of this section, involve providing indigent de-  
31 fense services on behalf of a county, the county may submit ~~an application~~  
32 a compliance proposal for a state indigent defense ~~grant~~ financial assis-  
33 tance in accordance with subsection (2) of this section and request to resume  
34 providing indigent defense services. The commission may ~~approve~~ accept the  
35 ~~application proposal~~ and permit the county to resume providing indigent de-  
36 fense services in the event the county has demonstrated that it has cured or  
37 will cure any material noncompliance with indigent defense standards to the  
38 satisfaction of the commission.

39 (15) Failure to comply with the standards promulgated pursuant to sec-  
40 tion 19-850(1) (a), Idaho Code, or the terms of a state indigent defense ~~grant~~  
41 financial assistance does not constitute ineffective assistance of counsel  
42 under the constitutions of the United States or the state of Idaho.