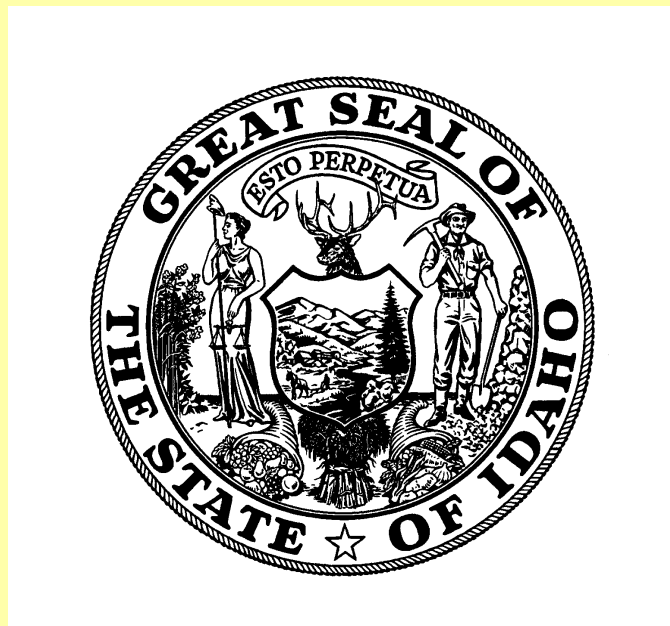


# **PENDING RULES COMMITTEE RULES REVIEW BOOK**

**Submitted for Review Before  
Senate Judiciary & Rules Committee  
65th Idaho Legislature  
First Regular Session – 2019**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2019*

**SENATE JUDICIARY & RULES COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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## **IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

### **61.01.02 – RULES GOVERNING UNIFORM DATA REPORTING REQUIREMENTS AND FORMS FOR DEFENDING ATTORNEY ANNUAL REPORTS**

**DOCKET NO. 61-0102-1801 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective on May 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-850(1)(a)(ii), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Section 19-850(1)(a)(ii), Idaho Code, requires the PDC to promulgate rules related to 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. This rule will be negotiated to fulfill that mandate. The purpose is to support the PDC's mission to improve indigent defense delivery services in Idaho to ensure constitutional representation of Idaho's indigent defendants.

Changes made to the proposed rule reflect concerns defending attorneys raised during the public comment period about submitting information to the PDC that might violate attorney-client confidentiality. The PDC recognizes the importance of this privileged information and agrees it should be protected, as reflected in the changes in Sections 001.02, 021.03, and 021.04. Additional changes include a specific reference to Mandatory Continuing Legal Education in section 021.02 and the addition in Section 024 of an example of a justifiable reason for not tracking data.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 469–474](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There should be no direct impact on the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathleen Elliott at (208) 332-1735.

Dated this 30th day of November, 2018.

Kathleen J. Elliott, Executive Director  
State Public Defense Commission  
816 W. Bannock Street, Suite 201  
Boise, Idaho 83702  
Phone: (208) 332-1735  
Fax: (208) 364-6147

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(ii), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>PUBLIC HEARINGS</b>	
<b>Monday, October 15, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Twin Falls</b>	<b>Tuesday, October 16, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Idaho Falls</b>
<b>Twin Falls County Administration Bldg.</b> <b>Planning and Zoning Conference Room</b> <b>630 Addison Avenue West</b> <b>Twin Falls, ID 83301</b>	<b>Residence Inn Idaho Falls</b> <b>Taylor Crossing West</b> <b>635 West Broadway</b> <b>Idaho Falls, ID 83402</b>
<b>Wednesday, October 17, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Pocatello</b>	<b>Monday, October 22, 2018</b> <b>4:00 p.m. (PDT)</b> <b>Lewiston</b>
<b>Idaho State University</b> <b>Pond Building – Wood River Room</b> <b>921 South 8th Avenue</b> <b>Pocatello, ID 83209</b>	<b>Red Lion Hotel Lewiston</b> <b>Port 3 Room</b> <b>621 21st Street</b> <b>Lewiston, ID 83501</b>
<b>Tuesday, October 23, 2018</b> <b>4:00 p.m. (PDT)</b> <b>Coeur d’Alene</b>	<b>Wednesday, October 24, 2018</b> <b>4:00 p.m. (MDT)</b> <b>Nampa</b>
<b>Red Lion Templin Hotel</b> <b>Redhead Room</b> <b>414 East First Avenue</b> <b>Post Falls, ID 83854</b>	<b>Nampa Civic Center</b> <b>Pacific Source Room</b> <b>311 3rd Street, South</b> <b>Nampa, ID 83651</b>
<b>Thursday, October 25, 2018 - 4:00 p.m. (MDT)</b> <b>Boise</b>	
<b>Water Center Building – 6th Floor</b> <b>Conference Room 602B-D</b> <b>322 E. Front Street</b> <b>Boise, ID 83702</b>	

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Idaho Code 19-850(1)(a)(ii) requires the PDC to promulgate rules related to uniform data reporting requirements and model forms for the annual reports submitted pursuant to Idaho Code 19-864 which shall include, but not be limited to, caseload, workload and expenditures. The purpose is to support the PDC's mission to improve indigent defense delivery services in Idaho to ensure constitutional representation of Idaho's indigent defendants.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There is no fee or charge imposed or increased with this rule.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There should be no direct impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 4, 2018, Idaho Administrative Bulletin, [Vol. 18-4, page 84](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are no documents incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 9, 2018.

DATED this 1st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

*Italicized red text* indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0102-1801

IDAPA 61  
TITLE 01  
CHAPTER 02

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

**61.01.02 – RULES GOVERNING UNIFORM DATA REPORTING REQUIREMENTS AND FORMS FOR  
DEFENDING ATTORNEY ANNUAL REPORTS**

**000. LEGAL AUTHORITY.**

Section 19-850 (1)(a)(ii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing uniform data reporting requirements and model forms for the Annual Reports submitted pursuant to section 19-864, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA, Title 01, Chapter 02, “Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports.” ( )

**02. Scope.** These rules contain the provisions of uniform data collection of Idaho’s defending attorneys and establish the procedures by which defending attorneys shall report data to the PDC. *Data collected by the PDC shall be detailed enough to provide information about Idaho’s public defense system, however, shall be redacted in such a manner so as to protect attorney-client confidentiality.* ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

The PDC’s determination to set standards for defending attorneys is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter. ( )

**005. OFFICE—OFFICE HOURS—MAILING AND STREET ADDRESS—TELEPHONE—INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS AND ABBREVIATIONS.**

Refer to IDAPA 61.01.08, "Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems – Rule Definitions." for definitions of the terms and abbreviations used in this Rule. ( )

**011 – 019. (RESERVED)**

**020. APPLICATION OF REPORTING REQUIREMENTS.**

In accordance with section 19-864, Idaho Code, Indigent Defense Providers and any defending attorney whose information is not otherwise included in a report from an Indigent Service Provider shall submit an Annual Report to the PDC, the board of county commissioners, and the appropriate administrative district judge in conformance with the rules promulgated pursuant to section 19-850(1)(a)(ii), Idaho Code. ( )

**01. Entities Required to Report.** All Indigent Defense Providers and defending attorneys shall be included in an Annual Report, but not all defending attorneys must submit a report. The following entities or individuals must submit an Annual Report: ( )

- a. Each Chief Defender for an institutional public defense office. ( )
- b. Each Chief Defender for a joint institutional public defense office. ( )
- c. Each Indigent Defense Provider under contract to provide indigent defense services. ( )
- d. Each attorney appointed at public expense to represent an indigent person. ( )

**02. Exceptions to Reporting Requirements.** The following are exceptions to the entities required to report: ( )

a. If an Indigent Defense Provider is a law firm, only one Annual Report is required for the firm. ( )

b. An attorney, appointed at public expense by the court and not under contract to provide indigent defense services for the county in which she was appointed, who handles fewer than ten (10) indigent defense cases in a fiscal year, may receive an exception to the reporting requirement. The attorney must contact the PDC, who may waive the reporting requirement if an alternative method of fulfilling the reporting requirements can be established. ( )

**021. REPORTING REQUIREMENTS.**

Information to be included in the Annual Report. ( )

**01. Case Information.** Each Annual Report for the previous fiscal year shall include for each defending attorney the following: ( )

- a. The number of cases handled; ( )
- b. The types of cases handled; ( )
- c. The method of resolution of each case handled (i.e., plea, dismissal, found guilty at trial, etc.); and ( )
- d. Case outcomes. ( )

**02. Continuing Legal Education Information.** Each Annual Report shall contain each defending attorney's *Mandatory* Continuing Legal Education (*MCLE*) hours as reported to the Idaho State Bar (ISB) for the previous fiscal year. The Annual Report shall be accompanied by one MCLE report from the ISB for each defending attorney. If the reporting period began during the previous fiscal year, an MCLE report for the entirety of the previous fiscal year must be sent. An attorney may have to request this information from the ISB. ( )

**03. Expenditure Information.** *Being mindful of attorney-client confidentiality, each Annual Report shall contain expenditures related to indigent defense services. The reports shall not contain expenditure information related to specific cases.* Expenditures related to indigent defense services include, but are not limited to: ( )

- a. Investigations; ( )
- b. Expert witnesses; ( )
- c. Interpreters; ( )
- d. Mental and physical health examinations; ( )
- e. Medical records; ( )
- f. Polygraph examinations; ( )
- g. Exhibits for trial demonstrations; ( )
- h. Scientific tests; ( )
- i. Extraordinary travel expenses; ( )
- j. Transcripts; ( )
- k. Discovery costs; *and* ( )
- l. *Costs related to compliance with this rule.* ( )

**04. Support Staff.** Each Annual Report shall contain a comprehensive listing of support staff, including investigators, employed by an Indigent *Defense* Provider or a *Defending Attorney*. *Only staff who provide services related to indigent defense services must be included in the report.* ( )

**05. Method of Data Collection.** Each Annual Report shall contain the method of data collection utilized by the Reporter to obtain the requested information, such as the name of a Case Management System or software program. ( )

**06. Attorney Experience.** Each Annual Report shall contain a brief description of each defending attorney's experience, including years of experience. ( )

**022. REPORTING CYCLE.**

The PDC shall conduct the reporting cycle in accordance with Section 19-864, Idaho Code, and the following schedule so far as it does not conflict with Idaho Code: ( )

**01. Form Availability.** The PDC shall make the Annual Report form available by July 1 each year for the subsequent fiscal year (i.e., July 1, 2019 for the Annual Report due November 1, 2020). ( )

**02. Purpose.** The data collected will inform the PDC on how to improve client representation, justify budget and resources, and recommend changes to indigent defense system practices and policies. ( )

**03. Reporting Period.** The Annual Report shall reflect the fiscal year immediately prior to the due date. ( )

**023. REPORTING PROCEDURE.**

The Annual Report shall be completed and submitted according to these rules. ( )

- 01. Forms.** A Reporter shall file the appropriate fiscal year form supplied by the PDC and any other



requested documents, both of which shall have original or digital signatures. ( )

**02. Method of Delivery.** The Annual Report shall be submitted to the PDC via mail, email, or facsimile. ( )

**03. Review.** A Reporter may review the Annual Report with PDC staff prior to submitting the Annual Report to ensure it meets the PDC's criteria. ( )

**04. Incomplete Annual Report.** Incomplete Annual Reports will be rejected by the PDC unless the Reporter can provide a reasonable explanation as to why the Annual Report is incomplete. Incomplete reports will be considered not submitted to the satisfaction of the Commission, which could prohibit the disbursement of the county's Indigent Defense Grant Funds. ( )

**05. Due Date.** The Annual Report shall be delivered to the PDC on or before November 1 of each year. ( )

**024. EXPLANATION OF DATA NOT TRACKED.**

Any data which should be included in the Annual Report but was not tracked during the fiscal year must be reported to the PDC along with an explanation addressing why the data was not tracked. If the PDC determines a failure to track data is justifiable (i.e. non-willful), the disbursement of the county's Indigent Defense Grant Funds will not necessarily be prohibited. *Examples of a justifiable reason include, but are not limited to, the data would violate attorney-client confidentiality, or the data is/was too cumbersome to track. A satisfactory explanation must be provided to support the inability to track such data.* ( )

**025. FAILURE TO SUBMIT AN ANNUAL REPORT.**

Any defending attorney who fails to submit an Annual Report or fails to be included in an Annual Report may be removed from the public defense roster, as outlined in IDAPA 61.01.06.026. ( )

**026. FRAUDULENT INFORMATION.**

Any Reporter who includes fraudulent information in the Annual Report is subject to enforcement as outlined in IDAPA 61.01.06.026. ( )

**027. – 999. (RESERVED)**

## **IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

### **61.01.03 – RULES GOVERNING CONTRACTS AND CORE REQUIREMENTS FOR CONTRACTS BETWEEN COUNTIES AND PRIVATE ATTORNEYS FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

**DOCKET NO. 61-0103-1801 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective May 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-850(1)(a)(iii), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Section 19-850(1)(a)(iii), Idaho Code, requires the PDC to promulgate rules related to 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. This rule will be negotiated to fulfill that mandate. The purpose is to support the PDC's mission to improve indigent defense delivery services in Idaho to ensure constitutional representation of Idaho's indigent defendants.

Changes made to the proposed rule reflect comments made during the public comment period. Stakeholders felt that many of the requirements for the contracts should not be enforced by the contracting authority, but by the PDC. Changes were made to address those concerns by striking Paragraphs 020.09.c., 020.09.d., 020.09.e., and 020.09.f., and by striking Subsections 022.01 through 022.05. Section 20 was changed to state that contracts should be in writing and that some contract terms will be discretionary rather than mandatory to allow counties to negotiate contracts with their contractors. Finally, at the request of stakeholders, Subsection 022.07, renumbered to Subsection 022.02, now describes that materials will only be provided to counties if requested.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-9, pages 475-479](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rule will not have any direct impact on the general fund, however, there is the possibility of a future indirect impact as follows: changes to county contracts as a result of this rulemaking may require additional monies in order to comply. Due to the PDC's duty to distribute funding to assist the counties with compliance, the PDC may seek additional appropriations to cover these increases.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathleen Elliott at (208) 332-1735.

Dated this 30th day of November, 2018.

Kathleen J. Elliott, Executive Director  
State Public Defense Commission  
816 W. Bannock Street, Suite 201  
Boise, Idaho 83702  
Phone: (208) 332-1735  
Fax: (208) 364-6147

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(iii), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>PUBLIC HEARINGS</b>	
<b>Monday, October 15, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Twin Falls</b>	<b>Tuesday, October 16, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Idaho Falls</b>
<b>Twin Falls County Administration Bldg.</b> <b>Planning and Zoning Conference Room</b> <b>630 Addison Avenue West</b> <b>Twin Falls, ID 83301</b>	<b>Residence Inn Idaho Falls</b> <b>Taylor Crossing West</b> <b>635 West Broadway</b> <b>Idaho Falls, ID 83402</b>
<b>Wednesday, October 17, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Pocatello</b>	<b>Monday, October 22, 2018</b> <b>4:00 p.m. (PDT)</b> <b>Lewiston</b>
<b>Idaho State University</b> <b>Pond Building – Wood River Room</b> <b>921 South 8th Avenue</b> <b>Pocatello, ID 83209</b>	<b>Red Lion Hotel Lewiston</b> <b>Port 3 Room</b> <b>621 21st Street</b> <b>Lewiston, ID 83501</b>
<b>Tuesday, October 23, 2018</b> <b>4:00 p.m. (PDT)</b> <b>Coeur d’Alene</b>	<b>Wednesday, October 24, 2018</b> <b>4:00 p.m. (MDT)</b> <b>Nampa</b>
<b>Red Lion Templin Hotel</b> <b>Redhead Room</b> <b>414 East First Avenue</b> <b>Post Falls, ID 83854</b>	<b>Nampa Civic Center</b> <b>Pacific Source Room</b> <b>311 3rd Street, South</b> <b>Nampa, ID 83651</b>
<b>Thursday, October 25, 2018 - 4:00 p.m. (MDT)</b> <b>Boise</b>	
<b>Water Center Building – 6th Floor</b> <b>Conference Room 602B-D</b> <b>322 E. Front Street</b> <b>Boise, ID 83702</b>	

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Section 19-850(1)(a)(iii), Idaho Code, requires the PDC to promulgate rules related to model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services. These services include, but not be limited to, compliance with indigent defense standards. The purpose is to support the PDC's mission to improve indigent defense delivery services in Idaho to ensure constitutional representation of Idaho's indigent defendants.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There is no fee or charge imposed or increased with this rule.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rule will not have any direct impact on the general fund, however, there is the possibility of a future indirect impact as follows: changes to county contracts as a result of this rulemaking may require additional monies in order to comply. Due to the PDC's duty to distribute funding to assist the counties with compliance, the PDC may seek additional appropriations to cover these increases.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 4, 2018, Idaho Administrative Bulletin, [Vol. 18-4, page 85](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are no documents incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 9, 2018.

DATED this 1st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

*Italicized red text* indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0103-1801

**IDAPA 61**  
**TITLE 01**  
**CHAPTER 03**

**61.01.03 – RULES GOVERNING CONTRACTS AND CORE REQUIREMENTS  
FOR CONTRACTS BETWEEN COUNTIES AND PRIVATE ATTORNEYS  
FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

**000. LEGAL AUTHORITY.**

Section 19-850(1)(a)(iii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 61, Title 01, Chapter 03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services.” ( )

**02. Scope.** These rules establish the standards and guidelines for contracts between counties and private attorneys for the provision of indigent defense services. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

The PDC’s determination to create rules governing contracts and core requirements for contracts between counties and private attorneys for the provision of indigent services is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions,” is incorporated into this Chapter. ( )

**005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESSES – TELEPHONE – INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The PDC operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS AND ABBREVIATIONS.**

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems —

Rule Definitions” for definitions of the terms and abbreviations used in this Rule. ( )

**011. – 019. (RESERVED)**

**020. CORE TERMS.**

If a Contracting Authority elects to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense by contracting with a defending attorney, as provided under Section 19-859(4), Idaho Code, each contract between the parties shall *be in writing and* include *Subsections 01, 02, 03, and 04. Each contract should also include Subsections 05 through 10.* ( )

**01. Underlying Bases.** The contract shall include a term explaining: ( )

**a.** The Contracting Authority’s statutorily mandated responsibility to provide public defender services; *and* ( )

**b.** The Contracting Authority’s desire to have legal services performed for individuals entitled to representation at public expense, provided by the Contractor. ( )

**02. Parties.** The contract shall identify the Contracting Authority and the Contractor. ( )

**03. Term of the Contract.** The contract shall specify the term of the contract, including a provision for renewal and for termination by either party. The contract should have a clear start date and end date. ( )

**04. Compensation.** The contract shall have a term setting the monetary rate at which the Contractor will be compensated for legal services rendered. ( )

**05. Independent Contractor.** The contract shall have a term explaining that the Contractor is an independent contractor for all services rendered pursuant to the contract. ( )

**06. Scope of the Contract.** The contract shall establish the case types to be handled pursuant to the contract. ( )

**07. Conflicts of Interest.** The contract shall include a provision ensuring the contractor does not provide representation to defendants when doing so would involve a conflict of interest. ( )

**08. Training Requirements.** The contract shall require each defending attorney providing services pursuant to the contract to participate in regular training programs on criminal defense law, including a minimum of seven (7) hours of continuing legal education annually in areas relating to their public defense practice, as required by the most recent edition of “Standards for Defending Attorneys.” ( )

**09. Experience Requirements.** Each Defending Attorney providing services pursuant to the contract shall: ( )

**a.** Meet the qualification and training requirements set forth in the most recent edition of “Standards for Defending Attorneys” incorporated by reference in IDAPA 61.01.08; and ( )

**b.** Satisfy the minimum requirements for practicing law in Idaho as determined by the Idaho Supreme Court. ( )

**10. Performance Requirements.** The contract shall require the contractor to do the following: ( )

**a.** Make reasonable efforts to provide the services and comply with the requirements of the Contract; ( )

**b.** Utilize adequate support staff to render the necessary competent assistance of counsel required under the contract; ( )

**c.** Contact all clients within a specified amount of time from notification of case assignment. The amount of time should take into account the requirements of providing constitutional representation and the ability of the contractor to meet such requirement considering factors like travel time and the ability to engage in such communication; *and* ( )

**d.** Abide by PDC standards as set forth in the most recent edition of “Standards for Defending Attorneys.” ( )

**021. ESTABLISHMENT AND MAINTENANCE OF RECORDS.**

**01. Costs of Services Records.** The contract shall require the Contractor to maintain records, including personnel, property, financial, and programmatic records, which reflect costs of services performed under the contract. ( )

**02. Costs of Subcontract and Personal Service Contract Records.** *The* contract shall require the Contractor to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. ( )

**03. Duration of Record Keeping.** *The* contract shall require the Contractor to maintain records for a specified period of time after termination of the contract, unless permission to destroy records before that time period is granted by the Contracting Authority. ( )

**04. Copies.** A copy of every signed contract between a Contracting Authority and an Indigent Defense Provider shall be sent to the PDC by the Contracting Authority within thirty (30) days of ratification. ( )

**022. REPORTS AND INSPECTIONS.**

Each contract shall require the Contractor to submit to the Contracting Authority the following: ( )

**01. Written Notification.** Immediate written notification in the case that a complaint is lodged with the Idaho State Bar, which has resulted in reprimand, suspension, or disbarment of the Indigent Defense Provider, or any attorney who is a member of the Indigent Defense Provider’s staff or working for the Indigent Defense Provider. ( )

**02. Materials.** *If requested, materials* necessary to verify compliance with all terms of the contract. ( )

**023. – 999. (RESERVED)**

## **IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

### **61.01.04 – RULES GOVERNING PROCEDURES AND FORMS FOR THE APPLICATION AND DISBURSEMENT OF INDIGENT DEFENSE GRANTS**

**DOCKET NO. 61-0104-1801 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-850(1)(a)(iv), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule.

The PDC has been directed to disburse indigent defense grants to the counties who are in need of funds to comply with indigent defense standards or otherwise to improve their delivery of indigent defense. The state has already appropriated funds to the PDC and if unused, will revert to the general fund. This rule establishes the original procedures and forms for the application and disbursement of indigent defense grants.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 3, 2018, Idaho Administrative Bulletin, [Vol. 18-10, pages 572 through 577](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The funds for the indigent defense grants have been appropriated by the State legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathleen Elliott at (208) 332-1735.

Dated this 30th day of November, 2018.

Kathleen J. Elliott, Executive Director  
State Public Defense Commission  
816 W. Bannock Street, Suite 201  
Boise, Idaho 83702  
Phone: (208) 332-1735  
Fax: (208) 364-6147



**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(iv), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The PDC has been appropriated funds to disburse to the counties for compliance with Indigent Defense Standards. Idaho Code provides that the Counties must apply for these grants and mandates the PDC to promulgate a rule for that process. This rule sets forth the process and requirements for counties to apply for these funds.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There is no fee being imposed.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There will be no negative fiscal impact on the state general fund as the funds have already been appropriated.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because Idaho Code provided the PDC with the authority to create temporary procedures for this process so that the funds could be disbursed immediately.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are no documents incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 31st day of August, 2018.

[LINK: LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0104-1801**

**IDAPA 61**  
**TITLE 01**  
**CHAPTER 04**

**61.01.04 – RULES GOVERNING PROCEDURES AND FORMS FOR THE APPLICATION  
AND DISBURSEMENT OF INDIGENT DEFENSE GRANTS**

**000. LEGAL AUTHORITY.**

Section 19-850 (1)(a)(iv), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding 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. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 61, Title 01, Chapter 04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants.” ( )

**02. Scope.** These rules establish the procedures by which counties may apply for Indigent Defense Grants to improve the delivery of indigent defense services and come into compliance with Indigent Defense Standards. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

The PDC’s determination to create procedures for the application and disbursement of Indigent Defense Grants is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter. ( )

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS – TELEPHONE – INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The records relative to any IDG application are public records and are controlled pursuant to the Idaho Public

Records Act, Title 74, Chapter 1, Idaho Code. ( )

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” for definitions of the terms and abbreviations used in this Rule. ( )

**011. ABBREVIATIONS.**

**01. PDC.** The State Public Defense Commission. ( )

**02. IPIDDS.** Idaho’s Principles of an Indigent Defense Delivery System. ( )

**03. IDG.** Indigent Defense Grant. ( )

**012. -- 019. (RESERVED)**

**020. GENERAL PROVISIONS OF THE INDIGENT DEFENSE GRANT PROGRAM.**

It is the intent of the PDC, through the Indigent Defense Grant Program, to provide funds and planning assistance to counties of Idaho for the improvement of their trial-level indigent defense delivery systems to promote and meet the mandates of the Sixth Amendment to the U.S. Constitution and Article I, sec. 13 of the Idaho Constitution. Indigent Defense Grant funds are subject to availability, as appropriated by the Idaho Legislature. ( )

**021. APPLICATION OF INDIGENT DEFENSE STANDARDS.**

The established standards shall apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who represents at least one indigent defendant or an adult or juvenile at public expense in state courts in a fiscal year. Additionally, as section 19-859, Idaho Code, establishes that 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, these standards also apply to the delivery of such services by the county, Section 19-862A(9), Idaho Code. ( )

**022. GRANT CYCLE.**

The PDC shall conduct the grant process in accordance with Section 19-862A, Idaho Code and the following schedule so far as it does not conflict with Idaho Code: ( )

**01. Application Availability.** The PDC shall make an application and guidance available no later than February 28 of each year, which shall initiate the grant cycle. ( )

**02. Application Purpose.** The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. The PDC may review prior grant applications submitted by the County, as well as other relevant information related to the provision of indigent defense services. The PDC may also review reports of county indigent defense services provided by staff, including a county’s assigned Regional Coordinator. ( )

**03. Application Period.** The applicant shall have through May 1 of that grant cycle to complete and submit the application to the PDC. ( )

**04. Award Notification.** The PDC shall issue notification to every applicant regarding the disposition of their grant request within sixty (60) days of submission. ( )

**05. Grant Approval.** Grant disbursement shall occur on or about October 1 of that grant cycle. ( )

**06. Grant Disapproval.** If the PDC disapproves an application, the county shall consult with the PDC and submit a revised application within thirty (30) days of the mailing date of the official notification of the PDC’s disapproval. A county may submit two (2) revisions. ( )

**a.** If after two (2) revisions, an application is not approved by the PDC, a resolution shall be pursued through the Idaho Administrative Procedure Act, pursuant to Section 67-5201 et seq., Idaho Code. ( )

**b.** The PDC will review and issue notification of the disposition of a revised application within thirty (30) days of submission. ( )

**07. Award Amount.** Based upon the criteria in Section 026 of this chapter, the PDC shall determine the amount that is needed by the Applicant to meet or improve upon indigent defense standards. The PDC shall award that amount to an eligible Applicant, subject to the availability of funds and the priority rating of the Applicant. ( )

**08. Priority Rating.** If funds are not available to fund all of the approved applications, the PDC shall prioritize the disbursement of funds to: ( )

**a.** Eligible Applicants not in compliance with any indigent defense standards; ( )

**b.** Eligible Applicants in compliance with some indigent defense standards; then ( )

**c.** Eligible Applicants in compliance who submit a compliance proposal with a plan to use their IDG award to improve its indigent defense delivery system in other ways pursuant to Section 19-862A, Idaho Code. ( )

**023. APPLICATION PROCEDURE.**

All forms and documents required by these rules and the PDC shall be completed and submitted according to these rules in order for an IDG application to be considered for approval. ( )

**01. Forms.** To be considered for a grant, an applicant must file with the PDC a completed IDG application form, compliance checklist and other documentation requested in the application, all of which shall have original or digital signatures. An applicant must file with the PDC a completed grant agreement form, with original or digital signatures, within sixty (60) days of written notification of grant approval. The application and grant agreement forms shall be provided to the applicant by the PDC. ( )

**02. Review.** The applicant or applicant's representative may review the compliance proposal and all associated documentation with the PDC staff prior to submitting the application to ensure it meets the criteria for the Indigent Defense Grant program. When possible, PDC staff may perform an on-site visit to the county for preliminary fact finding regarding compliance with indigent defense standards. ( )

**03. Incomplete Application.** An application which is missing required information shall be excluded from consideration for an award. ( )

**04. Deadline.** The deadline for grant applications shall be established pursuant to Section 19-862A, Idaho Code. Applications for the upcoming fiscal year are due by May 1. The PDC shall announce the availability of funds to potential applicants as soon as practically reasonable after appropriated by the Idaho Legislature. ( )

**024. AWARD ELIGIBILITY REQUIREMENTS.**

To be considered for an award, an Applicant must meet all of the following requirements: ( )

**01. Compliance with Indigent Defense Standards.** To be eligible for any grant award from the PDC, a county must comply with indigent defense standards or provide a suitable plan to comply in their IDG application. Pursuant to Section 19-862A, Idaho Code, compliance must occur by March 31 of each year for any standards in place by May 1 of the prior year. ( )

**02. Annual Report(s) Submitted.** Each defending attorney within an applicant's county must have submitted an annual report pursuant to Section 19-864, Idaho Code, in order for a county to be eligible to receive any grant award from the PDC. ( )

**03. Completed Application.** To be eligible, the county must file, to the satisfaction of the PDC, a

completed application for an Indigent Defense Grant. ( )

**04. Curing of Deficiencies.** To be eligible, the Applicant must have cured, to the satisfaction of the PDC, any material breach of the terms of a previously approved state IDG. The PDC may approve an application for an IDG, even if deficiencies have not been cured, if the application includes a compliance proposal showing how an IDG is necessary to meet or improve upon indigent defense standards and that the requested amount is imperative to such compliance proposal. ( )

**05. Use of Funds.** The Applicant must agree to use any grant funds towards compliance with the applicable indigent defense standards and/or for the improvement of the Applicant indigent defense delivery system pursuant to Section 19-862A, Idaho Code. ( )

**025. AWARD RECOMMENDATION.**

If the PDC uses a grant subcommittee, the PDC shall request a recommendation from the grant subcommittee regarding the distribution of grant funds. ( )

**01. Assessment and Validation of Need.** The grant subcommittee, if used, shall review grant applications prior to making a recommendation about awards. The subcommittee shall carefully review the compliance proposal and cost analysis to determine eligibility and the amount needed for the applicant to meet the plan contained within the compliance proposal. ( )

**02. Commission Approval.** Whether or not a grant subcommittee is used, all awards must be approved by the PDC. If no grant subcommittee is used, the PDC shall review the applications as set forth above. ( )

**026. CRITERIA.**

The following criteria shall be used to evaluate applications for IDG awards: ( )

**01. IDG Award Eligibility.** The PDC shall review the information provided in the application to determine the maximum allowable IDG award pursuant to Section 19-862A(3), Idaho Code. ( )

**02. Compliance Proposal Provided.** The PDC shall approve an application if it includes a plan that is necessary to meet or improve upon indigent defense standards. ( )

**03. Cost Analysis Provided.** The PDC shall approve an application if it demonstrates that the amount of the requested state indigent defense grant is necessary to meet or improve upon indigent defense standards. ( )

**04. Annual Report(s) Submitted.** Disbursement of IDG award funds will occur if each defending attorney has submitted, to the satisfaction of the PDC, an annual report pursuant to Section 19-864, Idaho Code. ( )

**05. Deficiencies Cured.** The PDC shall determine whether the Applicant has cured, to the satisfaction of the PDC, any material breach of the terms of a previously approved IDG. In the event the PDC determines that a county has failed to materially comply with indigent defense standards, the PDC shall require that the application specifically address how the noncompliance will be cured in the upcoming fiscal year with the IDG award. In these cases, the PDC may approve an application for an IDG award if, to the satisfaction of the PDC, the application compliance proposal includes a plan to cure such deficiencies. ( )

**06. IDG Funds Accounting.** The PDC may review the use, misuse or non-use of prior IDG awards by an Applicant and consider such use when determining how much an eligible applicant should receive upon approval of an IDG application. ( )

**027. UNUSED IDG FUNDS.**

All funds not expended for costs associated with the applicant's award shall be maintained in the Applicant's fund for indigent defense and be specifically earmarked to meet or improve upon indigent defense standards that are in place or might be in place in the future. Unused grant funds may be taken into consideration by the PDC in future IDG award requests by the applicant. ( )

**028. WITHDRAWAL OF GRANT APPLICATION.**

**01. Withdrawal.** Any applicant may withdraw or forfeit an application at any time. ( )

**02. Ability to Apply.** The withdrawal of an application does not affect the applicant's ability to reapply in a subsequent grant cycle. ( )

**029. FRAUDULENT INFORMATION ON GRANT APPLICATION.**

Providing false information on any application or document submitted under these rules is grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the PDC. ( )

**030. -- 999. (RESERVED)**

## IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

### 61.01.08 – RULES GOVERNING THE ADMINISTRATION OF IDAHO’S INDIGENT DEFENSE DELIVERY SYSTEMS – RULE DEFINITIONS

DOCKET NO. 61-0108-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. The pending rule becomes final and effective May 1, 2019, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-850(1)(a)(vii)(3), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule will amend standards for defending attorneys and provide a workload standard to ensure that defending attorneys are handling an appropriate workload. The standard will, in part, be based upon data collected in Idaho during a workload study in 2017. This amendment will ensure that representation of Idaho's indigent defendants meets constitutional scrutiny.

Three changes were made to the proposed rule itself. The date of the document incorporated by reference in Subsection 004.02 was changed to reflect the date the PDC finalized the document at their regularly scheduled meeting on November 14, 2018. In Section 010 the definition of “Contractor” was inserted as Subsection 010.12, and the subsequent definitions in Section 010 were renumbered accordingly. The phrase “if compliance can be achieved with county monies” was deleted from the definition of “Indigent Defense Grant” in renumbered Subsection 010.27 to correct a typographic error and clarify the uses of Indigent Defense Grant funds.

Other changes to the proposed rule are within the document incorporated by reference, *Standards for Defending Attorneys, edition 2018*, dated 11/14/18. In section III, subsection B was revised to outline a caseload standard if the Idaho numerical caseload set forth in subsection C sunsets with no replacement. In section III, subsection C was edited to state the annual numerical maximum caseload for specific case types and sets a sunset date. These changes were made based upon comments of defending attorneys regarding the numerical caseload standard. Subsection C also reflects the fiscal responsibility of the State in supporting the numerical caseload standards and outlines the process for defending attorneys to document justifiable deviations from the numerical standard. In section III, subsections D, E and F were inserted to explain the method to calculate caseload for defending attorneys carrying multiple case types, to establish parameters to adjust caseloads for cases not of average complexity, and describing the need to balance caseload throughout the year. The subsequent subsections in section III were renumbered to reflect the additions.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 5, 2018, Idaho Administrative Bulletin, [Vol. 18-09, pages 480 through 486](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There will be no direct impact to the state general fund as funds are already appropriated to support standards promulgated by the PDC, however, there is the possibility of a future indirect impact as follows: a workload standard may require counties to expend additional monies in order to comply (i.e. hire additional attorneys for indigent defense). Due to the PDC's duty to distribute funding to assist the counties to comply with standards it has created, the PDC will seek additional appropriations to cover those increases. Currently, the PDC is appropriated approximately \$4.5 million. The PDC will seek a total of approximately \$10 million to support compliance.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathleen Elliott at (208) 332-1735.

Dated this 30th day of November, 2018.

Kathleen J. Elliott, Executive Director  
State Public Defense Commission  
816 W. Bannock Street, Suite 201  
Boise, Idaho 83702  
Phone: (208) 332-1735  
Fax: (208) 364-6147

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(vii), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>PUBLIC HEARINGS</b>	
<b>Monday, October 15, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Twin Falls</b>	<b>Tuesday, October 16, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Idaho Falls</b>
<b>Twin Falls County Administration Bldg.</b> <b>Planning and Zoning Conference Room</b> <b>630 Addison Avenue West</b> <b>Twin Falls, ID 83301</b>	<b>Residence Inn Idaho Falls</b> <b>Taylor Crossing West</b> <b>635 West Broadway</b> <b>Idaho Falls, ID 83402</b>
<b>Wednesday, October 17, 2018</b> <b>5:00 p.m. (MDT)</b> <b>Pocatello</b>	<b>Monday, October 22, 2018</b> <b>4:00 p.m. (PDT)</b> <b>Lewiston</b>
<b>Idaho State University</b> <b>Pond Building – Wood River Room</b> <b>921 South 8th Avenue</b> <b>Pocatello, ID 83209</b>	<b>Red Lion Hotel Lewiston</b> <b>Port 3 Room</b> <b>621 21st Street</b> <b>Lewiston, ID 83501</b>
<b>Tuesday, October 23, 2018</b> <b>4:00 p.m. (PDT)</b> <b>Coeur d'Alene</b>	<b>Wednesday, October 24, 2018</b> <b>4:00 p.m. (MDT)</b> <b>Nampa</b>



<b>Red Lion Templin Hotel Redhead Room 414 East First Avenue Post Falls, ID 83854</b>	<b>Nampa Civic Center Pacific Source Room 311 3rd Street, South Nampa, ID 83651</b>
<b>Thursday, October 25, 2018 - 4:00 p.m. (MDT) Boise</b>	
<b>Water Center Building – 6th Floor Conference Room 602B-D 322 E. Front Street Boise, ID 83702</b>	

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule will amend standards for defending attorneys and provide a workload standard to ensure that defending attorneys are handling an appropriate workload. The standard will, in part, be based upon data collected in Idaho during a workload study in 2017. This amendment will ensure that representation of Idaho's indigent defendants meets constitutional scrutiny.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There should be no direct impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 4, 2018, Idaho Administrative Bulletin, [Vol. 18-4, page 86](#) and the May 2, 2018, Idaho Administrative Bulletin, [Vol. 18-5, page 162](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The incorporated documents are the primary reference for defending attorneys and other stakeholders regarding the standards for defending attorneys established by the PDC based upon nationally recognized guidelines. A separate document is necessary for ease of reference, analysis and accessibility. Further, this document will be amended to include additional standards as created and established, increasing the length substantially. The republication of the text would be unduly cumbersome and expensive.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director at (208) 332-1735.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 9, 2018.

Dated this 1st day of August, 2018.

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

Italicized red text that is *double underscored* indicates amendments to the proposed text in the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 61-0108-1801

IDAPA 61  
TITLE 01  
CHAPTER 08

61.01.08 – RULES GOVERNING THE ADMINISTRATION OF IDAHO'S  
INDIGENT DEFENSE DELIVERY SYSTEMS – RULE DEFINITIONS

001. TITLE AND SCOPE.

01. **Title.** These rules shall be cited as IDAPA 61, Title 01, Chapter 08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions.” (5-1-18) ( )

02. **Scope.** These rules contain the definitions used throughout the Indigent Defense Delivery System chapters of rules adopted by the PDC. Those chapters include: (5-1-18)

a. IDAPA 61.01.01, “Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds”; (5-1-18)

*b.* *IDAPA 61.01.02, “Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports”;* ( )

*c.* *IDAPA 61.01.03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services”;* ( )

*bd.* IDAPA 61.01.04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants”; (5-1-18)

*ee.* IDAPA 61.01.06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards”; (5-1-18)

*ff.* IDAPA 61.01.07, “Rules Governing the Standards for Defending Attorneys that Utilize Idaho’s Principles of an Indigent Defense Delivery System.” (5-1-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

The PDC's determination to ~~promulgate rules~~ set standards for defending attorneys is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (5-1-18)(    )

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules: (5-1-18)

**01. Idaho's Principles of an Indigent Defense Delivery System.** "Idaho's Principles of an Indigent Defense Delivery System, edition 2016," revised as of January 25, 2017, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov/wp-content/uploads/sites/11/2017/01/Idahos-Principles-of-PD-System.pdf>. (5-1-18)

**02. Standards for Defending Attorneys.** "Standards for Defending Attorneys, edition 2017~~8~~," revised as of November 27~~14~~, 2017~~8~~, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-18)(    )

**03. Application for Capital Defense Roster.** "Application for Capital Defense Roster, edition 2017," revised as of November 27, 2017, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov/rules>. (5-1-18)

**005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS – TELEPHONE – INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC's telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC's official website is: <https://pdc.idaho.gov>. (5-1-18)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

For the purposes of the Indigent Defense Delivery System chapters of rules, the following definitions apply: (5-1-18)

**01. Annual Report.** A report submitted to the appropriate Board of County Commissioners, Administrative District Judge and the PDC by a defending attorney pursuant to Section 19-864, Idaho Code, on an annual reporting form created by the PDC. The annual reporting form is available on the PDC website: <https://pdc.idaho.gov/forms/>. (5-1-18)

**02. Applicant – Indigent Defense Grant.** A County that identifies a need for an Indigent Defense Grant by submission of a compliance proposal, and applies for a grant through the PDC. (5-1-18)

**03. Approval – IDG Application.** An IDG application shall be approved if the applicant meets the requirements for eligibility. An approval does not guarantee the amount or disbursement of an IDG award. The PDC retains the ability to determine the amount of an IDG award based upon the components listed in IDAPA 61.01.04. Disbursement of funds is subject to availability as appropriated by the State Legislature each year. (5-1-18)

**04. Capital Counsel Roster.** A roster of defending attorneys who may be appointed to represent an indigent defendant in a case in which the death penalty may be imposed. Defending attorneys not on this roster may not represent indigent defendants in such cases. (5-1-18)

**05. Case.** (5-1-18)

**a.** A case consists of all related charges from a single incident, transaction or occurrence filed within a

single case number, handled by one defending attorney. A probation violation or motion for contempt is counted as a separate case. (5-1-18)

- b.** A felony case is counted as follows: (5-1-18)
  - i.** A case filed as a felony is counted as one felony, whether it is dismissed, remanded, pled, or tried to completion. (5-1-18)
  - ii.** A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. (5-1-18)
  - iii.** A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. (5-1-18)
- c.** Post-judgment motions, such as those requesting early termination of probation or a reduction in sentence pursuant to Idaho Criminal Rule 35, are not counted as a case. (5-1-18)
- d.** If two or more cases are consolidated prior to significant representation being undertaken on each individual case, then the consolidated case is counted as one case. If significant representation has occurred prior to consolidation, the cases in which such representation has occurred shall be counted as separate cases. (5-1-18)

**06. Caseload.** The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. (5-1-18)

**07. Compliance Checklist.** A document provided by the PDC each grant cycle to assist an Applicant determine eligibility for an IDG. The checklist will be updated each year and is required as a part of an IDG application. (5-1-18)

**08. Compliance Period.** The compliance period runs from May 1 through March 31. Indigent defense standards that are in place by May 1 of a given year must be complied with by March 31 of the following year. (5-1-18)

**09. Compliance Proposal.** A plan that specifically addresses how indigent defense standards shall be met and how any deficiencies previously identified by the PDC will be cured in the upcoming county fiscal year. The plan shall include a cost analysis that specifically identifies the amount of funding in excess of the applicable local share necessary to allow the county to successfully execute the compliance proposal. If the county can execute its plan without exhausting the entirety of the grant for which it may be eligible, the plan may include a request for funding for other improvements to its delivery of indigent defense services, pursuant to Section 19-862A(2), Idaho Code. (5-1-18)

**10. Compliance Verification.** A form that must be completed and submitted to the PDC by a county that chooses not to file an Indigent Defense Grant Application. This verification requires the county to describe how IDG funds have been used in the prior year (if applicable) and an explanation as to how the county will fund their indigent defense delivery system in compliance with established standards. (5-1-18)

**11. Contracting Authority.** The board of county commissioners or its designated agent who enters into a contract with a defending attorney for the provision of representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. ( )

**12. Contractor.** A defending attorney, law firm or office of public defender that enters into a contract with a Contracting Authority for the provision of representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. ( )

**13. Corrective Action Plan.** A plan developed by a county or defending attorney with the assistance of PDC staff that addresses any reported violation of established standards and how those violations will be corrected. (5-1-18)

**124. Defending Attorney.** Defined in Section 19-851, Idaho Code, as any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense in state courts. (5-1-18)

**135. Deficiency.** The violation of an established standard for which the timeline for compliance has passed pursuant to Section 19-862A(9), Idaho Code. (5-1-18)

**146. Eligible Applicant – Indigent Defense Grant.** To be considered for an award of an IDG, an applicant must meet the requirements of IDAPA 61.01.04, Section 024, “Award Eligibility Requirements.” (5-1-18)

**157. Established Standards.** Rules promulgated by the PDC pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)

**168. Finding of Compliance with Recommendation.** A finding of compliance with recommendation refers to a condition whereby a county or defending attorney may be in compliance with Indigent Defense Standards; however, the provision of indigent defense services could be improved to ensure constitutionally-sound representation or achieve compliance with indigent defense standards yet to be promulgated. This finding is not a PDC determination of deficiency or non-compliance. The PDC does not have the authority to enforce compliance with a recommendation. (5-1-18)

**179. Finding of Non-Compliance.** A finding of non-compliance refers to an instance where a county or defending attorney is not in compliance with applicable Indigent Defense Standards and may be related to a deficiency in the provision of indigent defense services. This finding is not necessarily a PDC determination of a deficiency and still requires a finding of material and willful non-compliance before the take-over provisions of Section 19-862A, Idaho Code, are invoked. (5-1-18)

**1820. Fiscal Year.** As referred to in this chapter, fiscal year refers to a county fiscal year beginning on October 1 and ending on September 30 of the following calendar year. (5-1-18)

**1921. Formal Status Meeting.** A meeting between PDC staff and a county or defending attorney conducted in accordance with IDAPA 61.01.06, section 023.02. (5-1-18)

**202. Indigent Defense Budget.** The funds appropriated each fiscal year by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code, that includes the expenses of investigation, other preparation and trial, but does not include amounts received from the Capital Crimes Defense Fund or the Public Defense Commission. The appropriated funds shall not be less than a county’s local share for that fiscal year. (5-1-18)

**213. Indigent Defense Contract.** A written contract between the board of county commissioners and a defending attorney or existing office of public defender that provides representation of indigent persons and other individuals who are entitled to be represented by an attorney at ~~county~~ public expense. Such contracts shall not include a pricing structure that charges or pays a single fixed fee for the services and expenses of the attorney. (5-1-18)( )

**224. Indigent Defense Delivery System.** The system created by the board of county commissioners that is used to provide representation under the Idaho Public Defense Act, Sections 19-848 through 19-866, Idaho Code. The system includes the county, indigent defense provider, defending attorneys, and any other county staff necessary for the administration of indigent defense services. (5-1-18)

**235. Indigent Defense Expenditures.** Any monies expended for indigent defense services within a county that do not include amounts received from the public defense commission or 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. (5-1-18)

**246. Indigent Defense Grant.** Pursuant to Section 19-862A, Idaho Code, any sum of money awarded by the PDC to a county to support compliance with Indigent Defense Standards or for other improvements to its delivery of indigent defense services ~~if compliance can be achieved with county monies.~~ (5-1-18)( )

**257.** **Indigent Defense Grant Application.** An application created by the PDC each year requesting information related to the provision of indigent defense services in an Applicant's county. This application will be updated each year and be provided by February 28, initiating the grant cycle. Counties are required to use this application when requesting an IDG award. (5-1-18)

**268.** **Indigent Defense Provider.** Any agency, entity, organization or person selected by a board of county commissioners in accordance with Section 19-859, Idaho Code, or 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. (5-1-18)

**279.** **Indigent Defense Services.** County services provided to indigent persons and other individuals who are entitled to be represented by an attorney at public expense pursuant to Section 19-859, Idaho Code. (5-1-18)

**2830.** **Indigent Defense Stakeholders ("Stakeholders").** A person, agency, entity or other organization with an interest or concern in the delivery of indigent defense in Idaho. (5-1-18)

**2931.** **Indigent Defense Standard.** Defined in Section 19-851, Idaho Code, as any rule promulgated by the commission pursuant to Section 19-850(1)(a), Idaho Code. (5-1-18)

**302.** **Joint Incentive Indigent Defense Grant.** Pursuant to Section 19-862A, Idaho Code, a sum of money awarded by the PDC to counties who join together to establish and maintain a joint office of public defender pursuant to Section 19-859(2), Idaho Code. (5-1-18)

**343.** **Local Share.** Defined in Section 19-851, Idaho Code, as the benchmark figure calculated by the commission to determine the minimum amount of funding that shall be maintained by a county and to determine the award amount of state indigent defense grants 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. (5-1-18)

**324.** **Oversight Review.** An annual or periodic review of a county or defending attorney, completed by PDC staff, that considers whether indigent defense standards are being met and if deficiencies are being identified and cured in a timely fashion. (5-1-18)

**335.** **Public Defense Roster.** A roster of complainant defending attorneys who may be appointed to represent indigent defendants or other persons entitled to be represented by an attorney at public expense. The roster may also include non-attorney staff under the regular employ or supervision of a defending attorney. (5-1-18) ( )

**36.** **Reporter.** An Indigent Defense Provider or defending attorney who submits an Annual Report as required by Section 19-864, Idaho Code, and IDAPA 61.01.02. ( )

**347.** **Scholarship.** Any amount of training funds granted by the PDC to be used toward the costs of attending a training program. (5-1-18)

**358.** **Staff.** Any individual employed by the PDC. (5-1-18)

**369.** **Submission Date.** The date upon which one mails or digitally submits a document, form or application to the PDC. (5-1-18)

**3840.** **Training Funds.** An amount designated in the annual budget of the PDC designated for the benefit of defending attorneys and those under their employ or supervision. These funds are dedicated to provide training and education for persons servicing indigent clients as designated by law, statute, court rule, or appointment. (5-1-18)

**3741.** **Training Program.** Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of persons servicing indigent clients as designated by law, statute, court rule, or

appointment. (5-1-18)

~~39~~42. **Vertical Representation.** Continuous representation by the same attorney from assignment through completion of the case. Assignment shall occur immediately following an initial appearance to ensure that the constitutionally required level of advocacy necessary to mount a meaningful defense commences as soon as possible. (5-1-18)

~~40~~3. **Workload.** The term workload recognizes that a caseload generally consists of a mix of case types that each require differing amounts of time and resources. (5-1-18)