

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

### **61.01.06 – Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards**

#### **Who does this rule apply to?**

- Counties
- Defending Attorneys

#### **What is the purpose of this rule?**

*This rule governs procedures for oversight, implementation, enforcement and modification of indigent defense standards.*

#### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

Criminal Procedure -

Examination of Case and Discharge or Commitment of Accused:

- [19-850\(1\)\(a\)\(vi\), Idaho Code](#) – Powers and Duties of the State Public Defense Commission

#### **Who do I contact for more information on this rule?**

Public Defense Commission

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**61.01.06 – RULES GOVERNING PROCEDURES FOR THE OVERSIGHT, IMPLEMENTATION, ENFORCEMENT, AND MODIFICATION OF INDIGENT DEFENSE STANDARDS**

**000. LEGAL AUTHORITY.**

Section 19-850(1)(a)(vi), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding procedures for the oversight, implementation, enforcement and modification of indigent defense standards so that the right to counsel of indigent persons is constitutionally delivered to all indigent persons in Idaho. Additionally, Section 19-850(1)(c), Idaho Code, directs the PDC to review indigent defense providers and defending attorneys to evaluate compliance with indigent defense standards and the terms of state indigent defense financial assistance. (5-1-18)

**001. TITLE AND SCOPE.**

**01. Title.** These rules are titled IDAPA 61, Title 01, Chapter 06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards.” (5-1-18)

**02. Scope.** These rules establish the procedures by which the PDC will oversee, implement, enforce and modify indigent defense standards. (5-1-18)

**002. – 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. (5-1-18)

**011. – 019. (RESERVED)**

**020. OVERSIGHT PROGRAM.**

The PDC shall oversee compliance with Indigent Defense Standards by Idaho’s counties and defending attorneys. PDC staff shall act as advisors to the PDC, to oversee and monitor the public defense delivery systems provided by the counties to assure compliance with Indigent Defense Standards. (5-1-18)

**021. PARTICIPANTS AND ROLES.**

**01. The PDC.** It is the responsibility of the PDC to oversee compliance with Indigent Defense Standards. The PDC is required to develop and adopt such standards to establish an indigent defense delivery system in Idaho that ensures constitutional representation. Other responsibilities of the PDC include, but are not limited to the following: (5-1-18)

- a. Assess county and defending attorney compliance with Indigent Defense Standards; and (5-1-18)
- b. File compliance report with state. (5-1-18)

**02. PDC Staff.** PDC staff shall: (5-1-18)

- a. Review Indigent Defense Providers, defending attorneys and counties for compliance with Indigent Defense Standards; (5-1-18)
- b. Identify and investigate reports of non-compliance; (5-1-18)
- c. Prepare and assist in the implementation of corrective action plans; (5-1-18)
- d. Report to the PDC with respect to oversight activities; (5-1-18)
- e. Review Indigent Defense Financial Assistance Applications and prepare recommendations for PDC; (5-1-18)
- f. Review Defending Attorney Annual Reports and prepare recommendations for PDC; (5-1-18)
- g. At the request of county commissioners or indigent defense providers, review and assist with the creation of county indigent defense budgets; and (5-1-18)

- h.** Prepare recommendations to the PDC based upon review of the above. (5-1-18)

**03. Indigent Defense Providers and Defending Attorneys.** Indigent Defense Providers and defending attorneys are subject to the oversight program described herein. It is the responsibility of indigent defense providers and defending attorneys to cooperate and participate in compliance review. See Section 19-862A(1), Idaho Code. Other responsibilities of indigent defense providers and defending attorneys include but are not limited to the following: (5-1-18)

- a.** Participate meaningfully in the PDC oversight review process; (5-1-18)
- b.** Report to the PDC all compliance issues as soon as reasonably practicable and without violating any attorney-client privilege; (5-1-18)
- c.** Report to the PDC all barriers to compliance despite efforts to comply; and (5-1-18)
- d.** Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. (5-1-18)

**04. Counties.** Counties, through each board of county commissioners, and other county staff necessary for the administration of indigent defense services, including but not limited to elected county clerks, are subject to the oversight program described herein. It is the responsibility of counties to cooperate and participate in compliance review. See Section 19-862A(1), Idaho Code. Other responsibilities of the counties include but are not limited to: (5-1-18)

- a.** Anticipate review and be prepared to enable reviewer to issue a report within thirty (30) days of the review date; (5-1-18)
- b.** Report to the PDC all compliance issues as soon as reasonably practicable; (5-1-18)
- c.** Report to the PDC all barriers to compliance despite efforts to comply; and (5-1-18)
- d.** Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. (5-1-18)

**022. MINIMUM STANDARDS.**

The minimum standards for review are Indigent Defense Standards, promulgated pursuant to Section 19-850(1)(a), Idaho Code, and contained in IDAPA 61.01.01 through IDAPA 61.01.08 and all documents incorporated by reference. The PDC does not have the authority to enforce compliance with any standard other than current Indigent Defense Standards. (5-1-18)

**023. OVERSIGHT PROGRAM MANAGEMENT.**

At a minimum, the oversight program must determine if Indigent Defense Standards are being met, determine if deficiencies are being identified in a timely manner, and determine if deficiencies are being cured in a timely manner or by a schedule implemented by the PDC. (5-1-18)

**01. Applicability of Oversight Program.** The PDC shall monitor the provision of indigent defense services in Idaho. Pursuant to Section 19-850(1)(a), Idaho Code, the PDC has the duty and authority to monitor the following entities: counties, indigent defense providers and defending attorneys, and other stakeholders, as allowed by law. Such monitoring shall include, but is not limited to a review of indigent defense contracts, Compliance Proposals, indigent defense budgets, annual reports of defending attorneys, court proceedings, court and defending attorney meeting facilities, defending attorney compliance with membership in the Idaho State Bar and “Standards for Defending Attorneys,” current edition, to ensure compliance with Indigent Defense Standards. (5-1-18)

- a.** The PDC delegates such duty and authority to PDC staff, however, the ultimate determination of compliance is solely the responsibility of the PDC. (5-1-18)

**02. Ongoing Coordination with Counties, Indigent Defense Providers, and Defending Attorneys.**

PDC staff will conduct meetings and correspond with counties, indigent defense providers, defending attorneys and other indigent defense stakeholders as needed. PDC staff will conduct formal status meetings with counties once each quarter (every three months) and defending attorneys once a year (every twelve months). More frequent meetings may be conducted if needed. (5-1-18)

**a.** Institutional Public Defender Office meetings: If a defending attorney is an employee of an institutional public defender office, a formal status meeting with the chief public defender of that office satisfies the formal status meeting requirement as to that defending attorney. (5-1-18)

**b.** Contract Public Defender meetings: If a county contracts with a law firm or more than one defending attorney on a single contract, a formal status meeting with one of the defending attorneys working under that contract satisfies the formal status meeting requirement as to every defending attorney working under that contract. (5-1-18)

**c.** Meetings and correspondence are intended to ensure ongoing communications between the PDC and Stakeholders to ensure the best possible Indigent Defense Delivery System is in place to ensure constitutional representation. (5-1-18)

**03. PDC Staff Reporting to PDC.** PDC staff must make regular reports to the PDC. All reports must be submitted electronically using a reporting system specified by the executive director, as approved by the PDC. The objective of these reporting requirements is to provide the PDC with information regarding the compliance status of each of Idaho's Indigent Defense Delivery Systems. (5-1-18)

**a.** Periodic Reviews. (5-1-18)

**i.** Initial Review. PDC staff shall conduct an initial review of each Indigent Defense Delivery System. Subsequent initial reviews shall occur upon a policy change that modifies the method of delivery in a county. An initial review should be submitted to the PDC within ninety (90) days of the implementation of this rule or when a change in delivery method is instituted, and must include: (5-1-18)

- (1) A description of the review process; (5-1-18)
- (2) A list of documents reviewed; (5-1-18)
- (3) Persons interviewed, observations made, and facilities inspected; (5-1-18)
- (4) Completed compliance checklists; (5-1-18)
- (5) Findings of Non-compliance if any; and (5-1-18)
- (6) Findings of Compliance with Recommendations, if any. (5-1-18)

**ii.** Other periodic reviews. If significant compliance issues arise within a county or upon request of the PDC, PDC staff shall conduct a review. A periodic review report should be submitted to the PDC within thirty (30) days of notice of the compliance issue or of request and must include: (5-1-18)

- review;
- (1) Date the PDC became aware of the compliance issue, or date request was made by the PDC for the review; (5-1-18)
  - (2) Parties contacted during the review; (5-1-18)
  - (3) Reason the review was conducted; (5-1-18)
  - (4) Steps taken to resolve the issue; (5-1-18)
  - (5) The corrective action plan, if one was created; (5-1-18)

- (6) Date of next review or follow-up. (5-1-18)
- b.** Annual Reviews. On or before April 15 of each year, PDC staff must submit to the PDC a report for each county that must include: (5-1-18)
- i. A summary of oversight activities for the immediately preceding compliance period, including a description of the provision of indigent defense services; (5-1-18)
- ii. A summary of compliance successes, deficiencies and issues; (5-1-18)
- iii. Review of implementation of prior year's Compliance Proposal; and (5-1-18)
- iv. Any changes to the provision of indigent defense services during the immediately preceding compliance period. (5-1-18)
- c.** Ongoing Consultation with the PDC. PDC staff shall consult with the PDC regarding appropriate handling of issues within counties that have remained unresolved after the review process or with counties which have not complied with or have disregarded Indigent Defense Standards. At a minimum, PDC staff shall notify the PDC within ten (10) business days of compliance issues that affect the provision of indigent defense services. (5-1-18)
- i. PDC staff must ensure that an effective process is in place to identify and record compliance issues. PDC staff should assess the implementation of this identification in an ongoing manner and during oversight review. The executive director will informally assess this identification in the ongoing review of reports provided to the PDC. (5-1-18)

**04. PDC Reporting to Executive and Legislative Branches.** PDC provides annual reports to the governor of the state of Idaho and the Idaho Legislature. These presentations include updates on the provision of indigent defense delivery in Idaho and makes recommendations for legislation on indigent defense system issues. See Section 19-850(1)(b), Idaho Code. (5-1-18)

**05. PDC Reporting to Counties.** The PDC will provide ongoing feedback to counties through PDC staff regarding information collected during reviews, compliance issues or concerns discussed by the PDC, or other relevant items related to county provision of indigent defense services. All reports created by PDC staff and submitted as the result of a review of the county or a defending attorney providing services within that county, shall also be issued to an authorized official of the county that is the subject of the report. (5-1-18)

**06. PDC Reporting to Indigent Defense Providers and Defending Attorneys.** The PDC will provide ongoing feedback to indigent defense providers and defending attorneys individually or through communication via the public defense roster. Such feedback could include, but is not limited to, information collected during reviews, compliance issues or concerns discussed by the PDC, or other relevant items related to the provision of indigent defense services. All reports created by PDC staff and submitted as the result of a review shall also be issued to the subject(s) of the report. (5-1-18)

**07. Indigent Defense Providers and Defending Attorneys Reporting to PDC Staff.** On an ongoing basis, indigent defense providers and defending attorneys shall report to PDC staff any compliance issues that relate to Indigent Defense Standards. PDC staff shall review such reports and may forward such reports to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. Additionally, indigent defense providers and defending attorneys shall follow requirements of Section 025: Corrective Action Plans and Compliance Verification. (5-1-18)

**08. Counties Reporting to PDC Staff.** On an ongoing basis, counties shall report to PDC staff any compliance issues or observed deficiencies that relate to indigent defense standards. PDC staff shall review such reports and may forward such reports to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. Additionally, counties shall follow requirements of Section 025: Corrective Action Plans and Compliance Verification. (5-1-18)

**09. Other Stakeholders Reporting to PDC Staff.** The PDC and PDC staff will seek and accept reports of compliance issues from stakeholders, though the PDC has no authority to mandate such reporting. Stakeholders may report whether or not a county, indigent defense provider or defending attorney are in compliance with Indigent Defense Standards. PDC staff shall review such reports and may pass such reports on to the PDC. The ultimate assessment of compliance is the responsibility of the PDC. (5-1-18)

**024. PROCEDURES FOR OVERSIGHT PROGRAM.**

The procedure outlined below applies to all oversight activities performed by PDC staff. On-site review will generally be structured as follows: (5-1-18)

**01. Time and Place.** PDC staff will work with stakeholders to identify a convenient period of time for on-site oversight activities. (5-1-18)

**02. Notification.** PDC staff will notify the subject of a review at least thirty (30) days before the review is to take place. (5-1-18)

**03. Extension.** PDC staff may grant an extension for the conduct of a review, provided the PDC is notified by the party being reviewed within fifteen (15) days of the original notification date of the compliance review. (5-1-18)

**04. Items Subject to Review.** PDC staff will request and review the most recent Compliance Proposals, Indigent Defense Financial Assistance applications, indigent defense contracts, indigent defense budgets, annual reports, and other items relevant to the provision of indigent defense and compliance with indigent defense standards. (5-1-18)

**05. Items Subject to Observation.** PDC staff will conduct field observation of courtroom activities and facilities available to and used by indigent defense providers, defending attorneys, and their staff in the course of the representation of indigent defendants. In this section, “staff” refers to non-attorneys employed or contracted by an indigent defense provider or defending attorney as such employment or contract relates to the provision of indigent defense services. (5-1-18)

**06. Persons Subject to Interview.** PDC staff will interview county officials, indigent defense providers, defending attorneys and other stakeholders who are involved in the administration of Indigent Defense Services or could be in positions to observe compliance with Indigent Defense Standards. (5-1-18)

**07. Timing of Report.** PDC staff will issue a report within thirty (30) days of completion of oversight review or by April 15 of each year if an annual review. (5-1-18)

**025. CORRECTIVE ACTION PLANS AND COMPLIANCE VERIFICATION.**

Corrective Action Plans and Compliance Verification forms are to address how Indigent Defense Standards are to be met and how any deficiencies will be cured. (5-1-18)

**01. Corrective Action Plans.** Upon report of compliance issue by PDC staff or PDC finding of non-compliance, a county or defending attorney shall describe a proposed corrective action to be taken. The plan shall be submitted to the PDC electronically using a reporting system specified by the executive director, as approved by the PDC. (5-1-18)

**a. County Response.** Within sixty (60) days of the date of a report issued by PDC staff in which the county is the subject, the county shall respond in writing to each finding of non-compliance or finding of compliance with recommendation. The county shall describe a corrective action to be taken by the county. The county may request from the PDC an extension of up to sixty (60) days in which to describe a corrective action and submit it to the PDC. (5-1-18)

**b. Indigent Defense Provider and Defending Attorney Response.** Within sixty (60) days of the date of a report issued by a PDC Staff in which an attorney is the subject, the indigent defense provider or defending attorney shall respond in writing to each finding of non-compliance or finding of compliance with recommendation. The attorney shall describe a corrective action to be taken. The attorney may request from the PDC an extension of up to

sixty (60) days in which to describe a corrective action and submit it to the PDC. (5-1-18)

**c.** Follow-up Reviews. PDC staff shall conduct follow-up reviews of counties, indigent defense providers and defending attorneys when a report included findings of non-compliance. The follow-up review shall occur within a reasonable time, but not more than sixty (60) days following receipt of a response to the report. Such reviews shall occur monthly until complete implementation of the corrective action has occurred. PDC staff shall provide monthly updates to the PDC regarding the subject of the report. Monthly updates by PDC staff to the PDC must include all issues that have not yet been corrected. (5-1-18)

**d.** Annual Follow-up Review. If implementation of a Corrective Action Plan will take longer than three hundred sixty-five (365) days, PDC staff shall provide a formal yearly report regarding the status of the corrective actions to the PDC and the subject of the report. Within thirty (30) days of the date of the annual follow-up review, the subject of the report shall respond in writing to each continued finding of non-compliance and describe the proposed corrective action to be taken. (5-1-18)

**02. Compliance Verification.** If in any given fiscal year, a county does not apply for an Indigent Defense Financial Assistance, the county shall submit a compliance verification form. See IDAPA 61.01.04 for further guidance. (5-1-18)

**026. ENFORCEMENT.**

Pursuant to Section 19-862A(1), Idaho Code, all counties, indigent defense providers and defending attorneys shall cooperate and participate with the PDC in the review of their indigent defense services. (5-1-18)

**01. Failure to Submit to a Review.** If a county, indigent defense provider or defending attorney fails to cooperate with a review by PDC staff, the following actions will be taken: (5-1-18)

**a.** Review by the PDC executive director as described in Subsection 023.03.a. and Section 024 of this chapter. (5-1-18)

**b.** Continued failure to submit to a review will result in a certified letter designating a deficiency and the PDC may take action under Section 19-862A, Idaho Code, as allowed by law. (5-1-18)

**02. Failure to Respond to Report.** If a county, indigent defense provider, or defending attorney fails to respond to a report within the required time, the PDC will be notified. If the PDC finds no just cause for the failure to respond to the report, a certified letter will be sent to the subject of the report indicating the subject has failed to comply. The PDC may then take action pursuant to Section 19-862A(11), Idaho Code. (5-1-18)

**03. County Non-compliance.** If a county fails to take steps to correct a finding of non-compliance, the PDC may act pursuant to Section 19-862A(11), Idaho Code. (5-1-18)

**04. Defending Attorney Non-compliance.** If a defending attorney fails to take steps to correct a Finding of Non-compliance, the following actions will be taken: (5-1-18)

**a.** The county or counties for which the defending attorney provides indigent defense services will be notified via certified letter as to the non-compliance. (5-1-18)

**b.** The defending attorney will be removed from the Public Defense Roster. The defending attorney may re-apply for inclusion on the public defense roster after the finding of non-compliance is corrected. The defending attorney may still provide indigent defense services during this time. (5-1-18)

**c.** If the defending attorney continues to be deemed non-compliant after a period of six (6) months, the defending attorney will be prohibited from accepting any additional indigent defense cases in any county in which said attorney has been deemed non-compliant. Such prohibition shall remain in place until the PDC makes a finding that the defending attorney is compliant. (5-1-18)

**05. Designation of a Deficiency.** The designation of a deficiency is a formal finding made by the PDC that a county or defending attorney has failed to comply with Indigent Defense Standards within the timeline as



required by Section 19-862A(9), Idaho Code. The PDC will maintain a list of designated deficiencies that will be made available upon request. When a deficiency exists for a period of more than six (6) months or persists through the IDFA application process without a compliance proposal that sufficiently addresses such deficiency, the PDC will assess whether the party responsible has willfully and materially failed to comply. Upon such a finding, the PDC will take action pursuant to Section 19-862A(11), Idaho Code, which may include the withholding of Indigent Defense Financial Assistance funds or the PDC takeover of an indigent defense delivery system. (5-1-18)

**06. Material Non-compliance.** Established standards are deemed crucial to the constitutional representation of indigent defendants and the effective provision of indigent defense services. A violation of an established standard is material non-compliance. (5-1-18)

**07. Willful Non-compliance.** The violation of an established standard that is done voluntarily with either an intentional disregard of, or indifference to, the requirements of these rules will be deemed willful non-compliance. (5-1-18)

**08. Final Determination of Non-compliance.** The PDC is ultimately responsible for the determination that a county or defending attorney has willfully and materially failed to comply with Indigent Defense Standards. Pursuant to Section 19-862A(11), Idaho Code, the PDC may upon review of PDC staff reports, stakeholder reports, Indigent Defense Financial Assistance applications, Compliance Verification reports, information received relevant to the provision of indigent defense services, or observation by PDC staff or the PDC, deem a county or defending attorney has willfully and materially failed to comply. Upon such determination, the PDC will take action pursuant to Section 19-862A, Idaho Code, as allowed by law. (5-1-18)

**027 – 999. (RESERVED)**

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