

## IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

### 61.01.03 – Records, Reporting, and Review

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

- Counties
- Defending Attorneys

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

*This rule governs the following:*

- County and Defending Attorney Recordkeeping and Reporting;
- Compliance Review and Procedures

#### **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\(1\)\(a\)\(i\)-\(vii\), Idaho Code](#) – Powers and Duties of the State Public Defense Commission

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

Public Defense Commission

Monday – Friday, 8:30 am – 5:00 pm

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Boise, Idaho 83702

Phone: (208) 332-1735

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## 61.01.03 – RECORDS, REPORTING, AND REVIEW

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. (11-17-21)

### 001. SCOPE.

This chapter contains minimum public defense recordkeeping and reporting requirements and PDC's review of this information. (11-17-21)

### 002. – 009. (RESERVED)

### 010. DEFINITIONS.

For the purposes of this chapter, the definitions in IDAPA 61.01.01, "General Provisions and Definitions," apply. (11-17-21)

### 011. – 019. (RESERVED)

### 020. ROSTER MEMBER INFORMATION RETENTION AND REPORTING.

Roster members must keep and report information about representation of Indigent Persons and their eligibility to remain on the roster as provided in Sections 19-850(1)(c) and 19-862A(1), Idaho Code. (11-17-21)

#### 01. Compliance. (11-17-21)

a. All information regarding compliance with Public Defense Rules; (11-17-21)

b. Annual Report; (11-17-21)

c. Public defense contracts; (11-17-21)

d. Line item public defense expenditures of county funds and Financial Assistance; and (11-17-21)

e. Resource and Financial Assistance needs; (11-17-21)

02. **Changes to Information.** Notify the PDC of any change in address, employer or county contracts for public defense services within thirty (30) days of the change. (11-17-21)

#### 03. Confidential Information. (11-17-21)

a. Information reported to the PDC, the county, or administrative district judge must not include any records containing information protected or exempted from disclosure under the rules adopted by the Idaho Supreme Court, attorney work product, attorney-client privileged communication, or other confidential information. (11-17-21)

b. Requests for and expenditures of Extraordinary Litigation Fund shall only be disclosed to the PDC. (11-17-21)

### 021. – 029. (RESERVED)

### 030. COUNTY INFORMATION RETENTION AND REPORTING.

Counties must keep and report information about how the county provides public defense as provided in Sections 19-850(1)(c), 19-851(8), 19-862(1), 19-862A(1)–(2) and (6)(c), Idaho Code. (11-17-21)

#### 01. Compliance. (11-17-21)

a. All information regarding a county's compliance with Public Defense Rules; (11-17-21)

b. Public defense contracts; (11-17-21)

02. **Changes to Public Defense Model or Defending Attorneys.** Notify the PDC of any change to the county's public defense model or the attorneys employed or contracted by the county within thirty (30) days of the change. (11-17-21)

03. **Financial Information.** (11-17-21)

- a. Line item budgets and expenditures of county funds and all Financial Assistance for Public Defense. (11-17-21)
- b. Extraordinary Litigation Fund reimbursements. (11-17-21)
- c. Annual financial reporting to the Commission. (11-17-21)
- i. Appropriation, budget, and expenditures for the immediately preceding county fiscal year identifying county funds, Financial Assistance, and other funds used or available to be used for public defense. (11-17-21)
- ii. The County's annual financial report to the PDC is due by December 31 each year. (11-17-21)

**031. – 039. (RESERVED)**

**040. DETERMINATION OF COMPLIANCE.**

PDC staff may request, review, and audit county the following records to determine compliance with Public Defense Rules and Financial Assistance as provided in Sections 19-850(1)(c), 19-851(8), 19-862(1), 19-862A(1)–(2) and (6)(c), Idaho Code. (11-17-21)

- 01. Financial.** County budget and expenditures related to Public Defense Rules or Financial Assistance. (11-17-21)
- 02. Contracts.** Public defense contracts. (11-17-21)
- 03. Records.** Public defense records including Case names and numbers. (11-17-21)
- 04. Annual Reports.** Information reported in Annual Reports. (11-17-21)
- 05. Other.** Other information requested by PDC Staff or the Commission related to Public Defense Rules or Financial Assistance. (11-17-21)

**041. – 049. (RESERVED)**

**050. DEFICIENCY REPORTING, REVIEW, AND RESPONSE AS PROVIDED IN SECTIONS 19-850(1)(C), 19-862A(1, (11)–(12) AND 19-850(1)(A)(VI), IDAHO CODE.**

- 01. Reporting.** (11-17-21)
  - a. Counties and Defending Attorneys have a duty to report Deficiencies to PDC Staff. (11-17-21)
  - b. Deficiencies may be reported by Indigent Persons, PDC Staff, or others. (11-17-21)
- 02. Review and Response.** PDC Staff will review reported Deficiencies and may work directly with a county and Defending Attorney to resolve, make a report to the Commission, or both. (11-17-21)
- 03. Non-Material Deficiencies.** If a Deficiency may be readily resolved with the assistance of PDC Staff, the Executive Director may ask the county to submit a plan to cure the Deficiency with proposed detailed action items and completion dates. If the plan is not submitted or not completed, or the Deficiency not cured according to the deadlines set by the Executive Director, the Non-Material Deficiency will be deemed Material. (11-17-21)
- 04. Material but Non-Willful Deficiencies.** If the Commission determines a Deficiency is Material following review by PDC Staff and recommendation of the Executive Director or if a non-material Deficiency is not cured by the set deadline: (11-17-21)
  - a. The county must consult with PDC Staff on a Compliance Plan and timely apply for Financial

Assistance, if necessary; (11-17-21)

**b.** The Compliance Plan must include timeframe to become compliant and progress reports from the county to PDC Staff; (11-17-21)

**c.** If compliance is not achieved by the deadline set by the Executive Director, the Commission may designate the Material Deficiency as Willful. (11-17-21)

**05. Material and Willful Non-Compliance.** (11-17-21)

**a.** If the Commission determines a Deficiency is Material and Willful following review by PDC Staff and recommendation of the Executive Director, and (11-17-21)

**b.** The Commission gives notice of its intent to remedy specific Deficiencies to the extent necessary to comply with Public Defense Rules at the county's expense: (11-17-21)

**i.** Within fourteen (14) days of the date of said notice, the Commission and the county or their designees shall meet to attempt resolve the issues of the Material and Willful Deficiency or agree on a schedule for further meetings; (11-17-21)

**ii.** If the Commission and the county are unable to resolve the Deficiency by meeting, and (11-17-21)

**iii.** The Commission determines it must take immediate action under Subsection 060.01 of these rules, the Commission may contract with contract Defending Attorneys or other resources as deemed appropriate to remediate at the county's expense; or (11-17-21)

**iv.** If the Commission does not proceed under Subsection 060.01 of these rules, the Commission and the county or their designees must agree on a mediator and a date for mediation within twenty-eight (28) days, with the cost of mediation to be paid equally by the parties; (11-17-21)

**v.** If after mediation the Commission and the county are unable to come to a resolution, the Commission shall provide written notice of its decision to remedy specific Deficiencies and may contract with Defending Attorneys or other resources as deemed appropriate to remediate at the county's expense; (11-17-21)

**06. Application to Resume Public Defense.** If the Commission remedies specific Deficiencies to the extent necessary to comply with Public Defense Rules at the county's expense, the county may make application to resume public defense upon showing the county is able to do so in compliance with Public Defense Rules. (11-17-21)

**051. – 059. (RESERVED)**

**060. REVIEW OF WILLFUL AND MATERIAL DEFICIENCY DECISIONS.**

**01. Emergency Action.** The Commission will take immediate action and contract with appropriate resources to remedy Willful and Material Deficiencies to avoid immediate danger and may act through an emergency proceeding under Section 67-5247, Idaho Code, when: (11-17-21)

**a.** A county is using a Defending Attorney who has been removed from the applicable PDC Roster for the reasons set forth in IDAPA 61.01.02, "Requirements and Procedures for Representing Indigent Persons," Subsection 080.03; or (11-17-21)

**b.** A county has not complied with or responded to a notice of Deficiency within thirty (30) days of the date of such notice; (11-17-21)

**c.** If the Commission issues an emergency order to remedy Willful and Material Deficiencies, the Commission will notify the county of its order. The Commission's order will include a statement of the immediate danger and is effective immediately; (11-17-21)

**d.** A county may challenge the Commission's emergency order to remedy Willful and Material Deficiencies hereunder by submitting a notice of appeal and all supporting documentation within fourteen (14) days of the date of the Commission's order; (11-17-21)

**e.** The Commission will review any timely challenge and issue an emergency decision within twenty-eight (28) days of receipt of timely filed notice and materials. The Commission may base its decision on a written record or elect to hold a hearing. (11-17-21)

**02. Action for Other Reasons.** (11-17-21)

**a.** If the county is subject to a Commission order to remedy Willful and Material Deficiencies for reasons other than set forth in Subsection 060.01 of these rules, the county may appeal the order by submitting a notice of appeal and all supporting documentation within twenty-one (21) days of the Commission's order. (11-17-21)

**b.** A hearing officer appointed by the Commission will review a timely appeal and issue a recommended order to the Commission. (11-17-21)

**c.** The Commission will issue a final agency order adopting or rejecting the recommended order, or take other action deemed appropriate by the Commission. (11-17-21)

**061. – 999. (RESERVED)**

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