

Dear Senators LODGE, Lee, Burgoyne, and
Representatives LUKER, Malek, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the State Public Defense Commission:

IDAPA 61.01.04 - Rules Governing Procedures and Forms for the Application and Disbursement of
Indigent Defense Grants (New Chapter) - Proposed Rule (Docket No. 61-0104-1801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 11/05/2018. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/05/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Judiciary, Rules & Administration Committee

FROM: Principal Legislative Drafting Attorney - Ryan Bush

DATE: October 16, 2018

SUBJECT: State Public Defense Commission

IDAPA 61.01.04 - Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants (New Chapter) - Proposed Rule (Docket No. 61-0104-1801)

Summary and Stated Reasons for the Rule

The State Public Defense Commission submits notice of proposed rulemaking at IDAPA 61.01.04 - Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants (New Chapter). This new chapter of proposed rules establishes the process and requirements for counties to apply for grant funding for indigent defense. Specifically, this rule provides for the grant cycle; provides for the application procedure including forms and the deadline; establishes the requirements and criteria to be considered for a grant; and provides for how to process any unused funds.

Negotiated Rulemaking / Fiscal Impact

The Commission states that negotiated rulemaking was not conducted because Idaho Code grants the Commission authority to create these procedures. There is no fiscal impact associated with this rulemaking.

Statutory Authority

The proposed rulemaking appears to be within the statutory authority granted to the Commission in Section 19-850, Idaho Code.

cc: State Public Defense Commission
Kimberly Simmons

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
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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 – 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.

Kimberly Simmons, Executive Director
State Public Defense Commission
816 W. Bannock St., Suite 201
Boise, Idaho 83702
Phone: (208) 332-1735
Fax: (208) 364-6147

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 61-0104-1801
(New Chapter)

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 to 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 revisions. ()

a. If after two 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). ()

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 IDFG 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)