

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 61.01.06 - Rules Governing Procedures for the Oversight, Implementation, Enforcement,  
and Modification of Indigent Defense Standards (New Chapter) - Proposed Rule (Docket  
No. 61-0106-1701);

IDAPA 61.01.07 - Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles  
of an Indigent Defense Delivery System - Proposed Rule (Docket No. 61-0107-1701).

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 10/23/2017. 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 11/21/2017.

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 334-4834, 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 Research Analyst - Ryan Bush

**DATE:** October 3, 2017

**SUBJECT:** State Public Defense Commission

IDAPA 61.01.06 - Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards (New Chapter) - Proposed Rule (Docket No. 61-0106-1701)

IDAPA 61.01.07 - Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System - Proposed Rule (Docket No. 61-0107-1701)

#### **(1) 61.01.06 - Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards (New Chapter) - Proposed Rule (Docket No. 61-0106-1701)**

The State Public Defense Commission submits notice of proposed rulemaking at IDAPA 61.01.06 - Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards (New Chapter). The Commission states that this new chapter of rules provides for the oversight and enforcement of indigent defense standards. The oversight program created by this new chapter does the following:

- (1) Lists the participants in the oversight program as the Commission, its staff, indigent defense providers, defending attorneys and the counties and lists their roles;
- (2) Provides for the management of the oversight program that includes ongoing coordination and reporting amongst the participants and reporting to the governor and the Legislature;
- (3) Provides procedures for the oversight program that includes items subject to review and observation, persons subject to interview, items subject to observation and the timing of reports;
- (4) Provides for corrective actions when the Commission designates a county or defending attorney as non-compliant, allows for response from the county and defending attorney and follow-up reviews, and provides for compliance verification by the counties; and
- (5) Provides for enforcement actions when an indigent defense provider, defending attorney or county does not comply with the oversight program.

Mike Nugent, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

The Commission states that negotiated rulemaking was conducted and that Notice of Intent to Promulgate Rules was published in the April edition of the Idaho Administrative Bulletin. The Commission will hold seven public hearings throughout Idaho in October. There is no fiscal impact associated with this rulemaking.

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

**(2) 61.01.07 - Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System - Proposed Rule (Docket No. 61-0107-1701)**

The State Public Defense Commission submits notice of proposed rulemaking at IDAPA 61.01.07 - Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System. The proposed rule eliminates various definitions due to the incorporation by reference of IDAPA 61.01.08 that defines numerous terms relating to indigent defense. The proposed rule also updates how public defense rosters are kept by the Commission, provides for membership benefits and provides for capital counsel rosters.

The Commission states that negotiated rulemaking was conducted and that Notice of Intent to Promulgate Rules was published in the April edition of the Idaho Administrative Bulletin. The Commission will hold seven public hearings throughout Idaho in October. There is no fiscal impact associated with this rulemaking.

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

cc: State Public Defense Commission  
Kimberly Simmons

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

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

**DOCKET NO. 61-0106-1701 (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)(vi).

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

<b>PUBLIC HEARINGS</b>	
<b>Wednesday, October 11, 2017 4:00 p.m. (MDT)</b> <b>The Grove Hotel The Riverfork Room, 3<sup>rd</sup> Floor 245 South Capitol Blvd. Boise, ID 83702</b>	<b>Thursday, October 12, 2017 6:00 p.m. (MDT)</b> <b>Canyon County Administration Building 1st Floor Public Meeting Room 111 N. 11<sup>th</sup> Avenue Caldwell, ID 83605</b>
<b>Tuesday, October 17, 2017 6:00 p.m. (MDT)</b> <b>Residence Inn 635 West Broadway Idaho Falls, ID 83402</b>	<b>Tuesday, October 17, 2017 6:00 p.m. (PDT)</b> <b>Red Lion Hotel Lewiston Port 1 Room 621 21<sup>st</sup> Street Lewiston, ID 83501</b>
<b>Wednesday, October 18, 2017 6:00 p.m. (MDT)</b> <b>Holiday Inn Express &amp; Suites Scout Mountain Room 200 Via Venitio Pocatello, ID 83201</b>	<b>Wednesday, October 18, 2017 6:00 p.m. (PDT)</b> <b>Best Western Plus Idaho Room 506 W. Appelway Coeur d’Alene, ID 83814</b>
<b>Thursday, October 19, 2017 - 6:00 p.m. (MDT)</b> <b>Hilton Garden Inn I.B. Perrine Room 1741 Harrison Street North Twin Falls, ID 83301</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:

The Public Defense Commission has been directed to create procedures for the oversight, implementation, enforcement and modification of indigent defense standards. The PDC intends on focusing on the portion of this rule

that provides for the oversight and enforcement of the standards. The Public Defense Commission must ensure compliance through these two mechanisms so that the representation of indigent persons in Idaho is constitutionally sound.

**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 as a result of this rulemaking: N/A

**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 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, page 52](#).

**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: N/A

**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 or [Kimberly.Simmons@pdc.idaho.gov](mailto:Kimberly.Simmons@pdc.idaho.gov).

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 3, 2017. Written comments will also be accepted during the scheduled public hearings.

DATED this 1st day of September, 2017.

Kimberly J. Simmons, Executive Director  
State Public Defense Commission  
816 West Bannock St., Suite 201  
Boise, ID 83702  
Phone: (208) 332-1735  
Fax: (208) 364-6147  
[Kimberly.Simmons@pdc.idaho.gov](mailto:Kimberly.Simmons@pdc.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 61-0106-1701  
(New Chapter)**

**IDAPA 61  
TITLE 01  
CHAPTER 06**

**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 grants. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 61, Title 01, Chapter 06, “Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards.” ( )

**02. Scope.** These rules establish the procedures by which the PDC will oversee, implement, enforce and modify 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 oversight, implementation, enforcement, and modification of Indigent Defense Standards 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. 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. 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. ( )

**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 meets constitutional requirements. Other responsibilities of the PDC include, but are not limited to the

following: ( )

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

**02. PDC Staff.** PDC staff shall: ( )

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

**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: ( )

- a. Participate meaningfully in the PDC review process; ( )
- b. Report to the PDC all deficiencies with compliance as soon as reasonably practicable; ( )
- c. Report to the PDC all barriers to compliance despite efforts to comply; and ( )
- d. Assist PDC staff with the collection of records, documents, and data related to the provision of indigent defense. ( )

**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: ( )

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

**022. MINIMUM STANDARDS.**

The minimum standards for review are contained in IDAPA 61.01.01 through IDAPA 61.01.08 and all documents incorporated by reference. ( )

**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. ( )

**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. ( )

**a.** The PDC delegates such duty and authority to PDC staff, however, the ultimate assessment of compliance is the responsibility of the PDC. ( )

**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. ( )

**a.** 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. ( )

**b.** 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 meet constitutional requirements. ( )

**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 provision of the state of Idaho’s Indigent Defense Delivery Systems. ( )

**a. Periodic Reviews.** ( )

**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: ( )

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



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 deficiency or of request and must include: ( )

- (1) Date the PDC became aware of the deficiency, or date request was made by the PDC for the review; ( )
- (2) Parties contacted during the review; ( )
- (3) Reason the review was conducted; ( )
- (4) Steps taken to resolve the issue; ( )
- (5) The Corrective Action Plan, if one was created; ( )
- (6) Date of next review or follow-up. ( )

b. Annual Reviews. Before April 15 of each year, PDC staff must submit to the PDC a report for each county that must include: ( )

- i. A summary of oversight activities for the immediately preceding compliance period, including a description of the provision of indigent defense services; ( )
- ii. A summary of compliance successes, deficiencies and issues; ( )
- iii. Review of implementation of prior year's Compliance Proposal; and ( )
- iv. Any changes to the provision of indigent defense services during the immediately preceding compliance period. ( )

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. ( )

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. ( )

**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. ( )

**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 shall also be issued to an authorized official of the county that is the subject of the report. ( )

**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. ( )

**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 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, indigent defense providers and defending attorneys shall follow requirements of Section 025: Corrective Actions and Compliance Verification. ( )

**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 Actions and Compliance Verification. ( )

**09. Other Stakeholders Reporting to PDC Staff.** The PDC and PDC staff will seek and accept reports of compliance issues or observed deficiencies 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. ( )

**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: ( )

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

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

**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. ( )

**04. Items Subject to Review.** PDC staff will request and review the most recent Compliance Proposals, Indigent Defense Grant 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. ( )

**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. ( )

**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. ( )

**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. ( )

**025. CORRECTIVE ACTIONS 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. ( )

**01. Corrective Action Plans.** Upon report of non-compliance by PDC staff or PDC designation 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. ( )

**a. County Response.** Within sixty (60) days of the date of a report issued by PDC staff, 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. ( )

**b. Indigent Defense Provider and Defending Attorney Response.** Within sixty (60) days of the date of a report issued by a PDC Staff member, the subject 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. ( )

**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. ( )

**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. ( )

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

**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. ( )

**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: ( )

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

**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. ( )

**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, then a certified letter will be sent to the subject of the report designating a deficiency. Such deficiency will be deemed a finding of non-compliance and the PDC may take action under Section 19-862A, Idaho Code, as allowed by law. ( )

**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, Idaho Code, as allowed by law. ( )

**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: ( )

**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. ( )

**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. ( )

**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. ( )

**05. Designation of a Deficiency.** The designation of a deficiency is a formal designation made by the PDC indicating a county or defending attorney's unwillingness to comply with these rules as required by law. 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 IDG application process without a compliance proposal that sufficiently addresses such deficiency, the party responsible for the deficiency will be determined to have willfully and materially failed to comply. The PDC will take action under Section 19-862A, Idaho Code. ( )

**06. 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, Idaho Code, the PDC may upon review of PDC staff reports, stakeholder reports, Indigent Defense Grant 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 under Section 19-862A, Idaho Code, as allowed by law. ( )

**027 – 999. (RESERVED)**

**IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

**61.01.07 – RULES GOVERNING STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE IDAHO’S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM**

**DOCKET NO. 61-0107-1701**

**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)(vii).

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

<b>PUBLIC HEARINGS</b>	
<b>Wednesday, October 11, 2017 4:00 p.m. (MDT)</b>  <b>The Grove Hotel The Riverfork Room, 3<sup>rd</sup> Floor 245 South Capitol Blvd. Boise, ID 83702</b>	<b>Thursday, October 12, 2017 6:00 p.m. (MDT)</b>  <b>Canyon County Administration Building 1st Floor Public Meeting Room 111 N. 11<sup>th</sup> Avenue Caldwell, ID 83605</b>
<b>Tuesday, October 17, 2017 6:00 p.m. (MDT)</b>  <b>Residence Inn 635 West Broadway Idaho Falls, ID 83402</b>	<b>Tuesday, October 17, 2017 6:00 p.m. (PDT)</b>  <b>Red Lion Hotel Lewiston Port 1 Room 621 21<sup>st</sup> Street Lewiston, ID 83501</b>
<b>Wednesday, October 18, 2017 6:00 p.m. (MDT)</b>  <b>Holiday Inn Express &amp; Suites Scout Mountain Room 200 Via Venitio Pocatello, ID 83201</b>	<b>Wednesday, October 18, 2017 6:00 p.m. (PDT)</b>  <b>Best Western Plus Idaho Room 506 W. Appelway Coeur d’Alene, ID 83814</b>
<b>Thursday, October 19, 2017 - 6:00 p.m. (MDT)</b>  <b>Hilton Garden Inn I.B. Perrine Room 1741 Harrison Street North Twin Falls, ID 83301</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:

The amendment to this rule will create standards for defending attorneys who represent indigent defendants in capital cases and standards related to investigation and the use of experts. Standards related to capital counsel will be derived from Idaho’s Principles of an Indigent Defense Delivery System (IPIDDS) principle number 5, Idaho Code

19-850(1)(a)(vii)(5), and take into account ABA's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, revised edition, February 2003. Defending attorneys will be required to conform to such performance standards if handling capital cases. Standards related to investigation and the use of experts are supported by IPIDDS as a whole, Idaho Code 19-850(1)(a). All defending attorneys will be required to conform to investigation standards.

**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 as a result of this rulemaking: N/A

**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 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, page 53](#).

**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 (incorporated into Chapter 61.01.08, a rule in negotiation scheduled for publication on September 6, 2017) 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 or [Kimberly.Simmons@pdc.idaho.gov](mailto:Kimberly.Simmons@pdc.idaho.gov).

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 3, 2017. Written comments will also be accepted during the scheduled public hearings.

DATED this 1st day of September, 2017.

Kimberly J. Simmons, Executive Director  
State Public Defense Commission  
816 West Bannock St., Suite 201  
Boise, ID 83702  
Phone: (208) 332-1735  
Fax: (208) 364-6147  
[Kimberly.Simmons@pdc.idaho.gov](mailto:Kimberly.Simmons@pdc.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 61-0107-1701**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

~~The following documents are incorporated by reference into these rules:~~ [IDAPA 61.01.08, "Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems – Rule Definitions"](#) is incorporated into this Chapter. ~~(5-1-17)( )~~

~~01. Idaho's Principles of an Indigent Defense Delivery System. "Idaho's Principles of an Indigent Defense Delivery System," edition 2016, 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>. (5-1-17)~~

~~02. Standards For Defending Attorneys. "Standards For Defending Attorneys," edition 2016, 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/Standards-for-Defending-Attorneys-FINAL.pdf>. (5-1-17)~~

**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>. (5-1-17)(    )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-1-17)

**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. (    )

~~01. Case. (5-1-17)~~

~~a. A case consists of all related charges from a single incident, transaction or occurrence filed within a single case number, handled by one (1) defending attorney. A probation violation or motion for contempt is counted as a separate case. (5-1-17)~~

~~b. A felony case is counted as follows: (5-1-17)~~

~~i. A case filed as a felony is counted as one (1) felony, whether it is dismissed, remanded, pled, or tried to completion. (5-1-17)~~

~~ii. A case filed as a felony that is remanded to magistrate court is counted once as a felony assuming vertical representation occurs. (5-1-17)~~

~~iii. A case filed as a misdemeanor that is subsequently amended to a felony is counted once as a felony, assuming vertical representation occurs. (5-1-17)~~

~~e. 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. (5-1-17)~~

~~d. If two (2) 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. (5-1-17)~~

~~02. Caseload. The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. (5-1-17)~~

~~03. 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. (5-1-17)~~

~~04. **Established Standards.** The “Standards For Defending Attorneys” as referenced in Section 004 of these rules and established pursuant to Section 19-850(1)(a), Idaho Code. (5-1-17)~~

~~05. **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. (5-1-17)~~

~~06. **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 19-861A (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. (5-1-17)~~

~~07. **Workload.** The term workload recognizes that a caseload generally consists of a mix of case types that require differing amounts of time and resources. As used in this section, workload takes that fact into consideration. (5-1-17)~~

~~011. **ABBREVIATIONS:**~~

~~01. **PDC.** The State Public Defense Commission. (5-1-17)~~

~~02. **IPIDDS.** Idaho's Principles of an Indigent Defense Delivery System. (5-1-17)~~

~~012~~1. – 019. (RESERVED)

020. **PUBLIC DEFENSE ROSTERS.**

01. **Public Defense Roster Membership.** The PDC will create and maintain a roster of all institutional defender attorneys, and defending attorneys included in primary or conflict contracts with the counties in the State indigent defense providers, defending attorneys and non-attorney staff under their regular employ or supervision who are compliant with current Indigent Defense Standards. (5-1-17)(    )

a. Maintenance of **Public Defense Roster.** The **public defense** roster will be updated ~~whenever there is a change,~~ in May and may be updated more frequently in order to accurately reflect anytime there are staff changes at the county level November of each year or whenever there is a change requiring an update. (5-1-17)(    )

b. **Public Defense Roster Contents.** The **public defense** roster will include the name of each **compliant** defending attorney or non-attorney staff, their Idaho State Bar Number, and professional contact information, including email address, physical address, and telephone number. (5-1-17)(    )

c. Availability of Public Defense Roster. The roster ~~will be made~~ is available from the PDC office upon request. (5-1-17)(    )

02. **Application for Public Defense Roster Inclusion.** Any attorney who is not employed by an indigent defense provider, ~~or~~ who does not work under an existing indigent defense services contract, or who has become compliant after a period of non-compliance with Indigent Defense Standards, may apply to the PDC for inclusion on the Public Defense Roster. (5-1-17)(    )

~~03~~a. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. (5-1-17)

03. **Membership Benefits.** Membership on the public defense roster ensures access to PDC trainings and scholarships as outlined in IDAPA 61.01.01. (    )

04. **Capital Counsel Roster Membership.** The PDC will create and maintain a roster of all qualified capital defending attorneys. Inclusion on the capital counsel roster requires compliance with Standards for Defending Attorneys and current Indigent Defense Standards. (    )



**a.** Maintenance of Capital Counsel Roster. The capital counsel roster will be updated in November of each year, but may be updated more frequently in order to accurately reflect changes made throughout the year. ( )

**b.** Capital Counsel Roster Contents. The capital counsel roster will include the name of each qualified capital counsel who meets the Standards for Defending Attorneys: Capital Counsel Qualifications and Roster, their Idaho State Bar number and professional contact information including email address, physical address, and telephone number. ( )

**05.** Application for Capital Counsel Roster Inclusion. Any defending attorney who represents indigent defendants at public expense in defense of a capital crime shall apply for inclusion on the capital counsel roster. ( )

**a.** Approval. The PDC must approve inclusion on the capital counsel roster. ( )