

IN THE SENATE

SENATE BILL NO. 1035

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE STATE APPELLATE PUBLIC DEFENDER ACT; REPEALING SECTIONS 19-867 THROUGH 19-872, IDAHO CODE, RELATING TO THE STATE APPELLATE PUBLIC DEFENDER ACT; AMENDING TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 59, TITLE 19, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE FOR THE CREATION OF THE OFFICE OF STATE APPELLATE PUBLIC DEFENDER, TO PROVIDE FOR THE APPOINTMENT, QUALIFICATIONS, TERM, AND COMPENSATION OF THE STATE APPELLATE PUBLIC DEFENDER, TO PROVIDE FOR POWERS AND DUTIES, TO AUTHORIZE APPOINTMENT OF ADDITIONAL COUNSEL IN CERTAIN INSTANCES, AND TO PROVIDE FOR AN ANNUAL REPORT; AND AMENDING SECTION 19-863A, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections 19-867 through 19-872, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 59, Title 19, Idaho Code, and to read as follows:

CHAPTER 59
STATE APPELLATE PUBLIC DEFENDER ACT

19-5901. SHORT TITLE. This chapter shall be known and may be cited as the "State Appellate Public Defender Act."

19-5902. LEGISLATIVE INTENT. The legislature recognizes that the cost of legal representation of indigent defendants upon the appeal of their criminal convictions, particularly convictions for first-degree murder, is an extraordinary burden on the counties of this state. In order to reduce this burden and provide competent counsel, but avoid paying high hourly rates to independent counsel to represent indigent defendants in appellate proceedings, the legislature finds it necessary to create the office of the state appellate public defender.

19-5903. CREATION OF OFFICE. The office of state appellate public defender is hereby created in the department of self-governing agencies.

19-5904. APPOINTMENT -- QUALIFICATIONS -- TERM -- COMPENSATION. (1) The state appellate public defender shall be appointed by the governor, with the advice and consent of the senate.

(2) The state appellate public defender shall be an attorney licensed to practice law in the state of Idaho and shall have a minimum of five (5)

1 years' experience as a practicing attorney. The governor may prescribe such
2 further qualifications as he deems necessary for the position.

3 (3) The state appellate public defender shall serve for a term of four
4 (4) years, during which term he may be removed only for good cause, and shall
5 be compensated in an amount determined by the governor.

6 (4) The state appellate public defender may adopt policies or rules
7 necessary to give effect to the purposes of this chapter.

8 19-5905. POWERS AND DUTIES. (1) Subject to the provisions of subsec-
9 tion (2) of this section, the state appellate public defender, upon appoint-
10 ment by the court, shall provide representation for indigent defendants in
11 the following cases:

12 (a) Appeals from convictions or post-judgment orders in district
13 court;

14 (b) Interlocutory criminal appeals from district court;

15 (c) Appeals from the district court of misdemeanor cases where the no-
16 tice of appeal was filed on or after October 1, 2020;

17 (d) Appeals from the district court of orders or final judgments af-
18 fecting a juvenile offender under the juvenile corrections act, chapter
19 5, title 20, Idaho Code, where the order or final judgment was entered on
20 or after October 1, 2020;

21 (e) Appeals from the district court in post-conviction relief proceed-
22 ings brought pursuant to the uniform post-conviction procedure act,
23 chapter 49, title 19, Idaho Code;

24 (f) Appeals from the district court in habeas corpus proceedings
25 brought pursuant to chapter 42, title 19, Idaho Code; and

26 (g) Post-conviction relief proceedings in district court in capital
27 cases.

28 (2) The services of the state appellate public defender shall be avail-
29 able only to those counties participating in the capital crimes defense fund
30 established pursuant to section 19-863A, Idaho Code.

31 (3) The state appellate public defender may employ deputy state appel-
32 late public defenders and other employees necessary to carry out the respon-
33 sibilities of the office. A deputy state appellate public defender must be
34 licensed to practice law in the state of Idaho and possess any other quali-
35 fications required by the state appellate public defender. The state appel-
36 late public defender shall fix the compensation of all employees of the of-
37 fice and they shall serve at his pleasure.

38 (4) The state appellate public defender, deputy state appellate public
39 defenders, and all employees of the office of the state appellate public de-
40 fender shall be nonclassified employees pursuant to section 67-5303, Idaho
41 Code.

42 (5) The state appellate public defender, in his discretion, may con-
43 tract with private attorneys to provide representation on a case-by-case ba-
44 sis when such contracts would conserve budgetary resources.

45 (6) The state appellate public defender shall have any and all other
46 powers and duties necessary to carry out the purposes of this chapter, in-
47 cluding the authority to promulgate rules in accordance with the provisions
48 of chapter 52, title 67, Idaho Code.

1 19-5906. APPOINTMENT OF ADDITIONAL COUNSEL. Should the state appel-
2 late public defender be unable to carry out the duties required in this chap-
3 ter because of a conflict of interest or any other reason, the state appel-
4 late public defender shall arrange for counsel for indigent defendants to be
5 compensated out of the budget of the state appellate public defender.

6 19-5907. ANNUAL REPORT. The state appellate public defender shall
7 make an annual report to the state board of examiners, the supreme court,
8 the legislature, and all counties for which the office has provided services
9 concerning the cases handled by the office during the preceding year.

10 SECTION 3. That Section 19-863A, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 19-863A. CAPITAL CRIMES DEFENSE FUND AUTHORIZED. (1) The establish-
13 ment of a capital crimes defense fund by the counties of the state for
14 purposes of funding the costs of criminal defense in cases where the penalty
15 of death is a legal possibility is hereby authorized. The fund shall be
16 organized and operated in accordance with a joint powers agreement, as au-
17 thorized by chapter 23, title 67, Idaho Code, executed by the participating
18 counties. Membership in the fund shall be voluntary, as determined by reso-
19 lution of the board of county commissioners of the respective counties of the
20 state.

21 (2) The fund may be comprised of contributions from participating coun-
22 ties and any court fees or other funds designated or appropriated for deposit
23 in the fund by the legislature.

24 (3) The fund shall be operated and administered by a board of represen-
25 tatives to be selected as provided in the joint powers agreement. If moneys
26 are appropriated to the fund by the legislature, the governor shall appoint
27 a representative of the executive branch of state government to serve as a
28 voting member of the governing board, and if court fees are designated for
29 deposit in the fund, the Idaho supreme court shall appoint a representative
30 of the judicial branch of state government to serve as a voting member of the
31 board.

32 (4) The governing board of the fund shall have full authority to employ
33 personnel and contract for personal and professional services as necessary
34 and may take all other steps necessary or proper to determine the manner in
35 which the fund shall be utilized to assist participating counties in meeting
36 defense costs associated with representation of indigent defendants charged
37 with crimes for which the penalty of death is a legal possibility.

38 (5) The services of the state appellate public defender as provided in
39 ~~section 19-870~~ chapter 59, title 19, Idaho Code, shall be available only to
40 those counties participating in the fund.