

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 147

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO EXAMINATION OF CASE AND DISCHARGE OR COMMITMENT OF ACCUSED;  
AMENDING SECTION 19-851, IDAHO CODE, TO DEFINE A TERM, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-852, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-853, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-854, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO A DETERMINATION OF INDIGENCY, TO REVISE TERMINOLOGY, TO PROHIBIT THE USE OF CERTAIN INFORMATION FOR CERTAIN PURPOSES WITH EXCEPTIONS, TO REVISE PROVISIONS RELATING TO REIMBURSEMENT FOR CERTAIN COSTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-855, IDAHO CODE, TO REVISE TERMINOLOGY; REPEALING SECTION 19-856, IDAHO CODE, RELATING TO THE APPOINTMENT OF A SUBSTITUTE ATTORNEY; AMENDING SECTION 19-857, IDAHO CODE, TO REMOVE A REQUIREMENT THAT A CERTAIN WAIVER BE IN WRITING OR OTHER RECORD AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 19-858, IDAHO CODE, TO REVISE PROVISIONS RELATING TO REIMBURSEMENT TO A COUNTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-859, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A CERTAIN DUTY OF THE BOARD OF COUNTY COMMISSIONERS OF EACH COUNTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-860, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-863, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-864, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE PROVISIONS RELATING TO CERTAIN RECORDS AND A REPORT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 19-865, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 19-851, Idaho Code, be, and the same is hereby amended to read as follows:

19-851. RIGHT TO REPRESENTATION BY COUNSEL -- DEFINITIONS. In this act, the term:

(1) "Defending attorney" means any attorney employed by the office of public defender, contracted by the county or otherwise assigned to represent adults or juveniles at public expense;

(a2) "Detain" means to have in custody or otherwise deprive of freedom of action;

(b3) "Expenses," when used with reference to representation under this act, includes the expenses of investigation, other preparation, and trial;

(e4) "Needy Indigent person" means a person who, at the time his need is determined pursuant to section 19-854, Idaho Code, is unable to provide for

the full payment of an attorney and all other necessary expenses of representation;

(d5) "Serious crime" includes:

~~(1) a felony;~~

~~(2) any misdemeanor or offense the penalty for which, excluding imprisonment for nonpayment of a fine, includes the possibility of confinement~~ means any offense the penalty for which includes the possibility of confinement, incarceration, imprisonment or detention in a correctional facility, regardless of whether actually imposed.

SECTION 2. That Section 19-852, Idaho Code, be, and the same is hereby amended to read as follows:

19-852. RIGHT TO COUNSEL OF ~~NEEDY~~ INDIGENT PERSON -- REPRESENTATION AT ALL STAGES OF CRIMINAL AND COMMITMENT PROCEEDINGS -- PAYMENT. (a1) An ~~needy~~ indigent person who is being detained by a law enforcement officer, who is confined or is the subject of hospitalization proceedings pursuant to sections 18-212, ~~18-214~~, 66-322, 66-326, 66-329, ~~or 66-4094~~ or 66-406, Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is entitled:

(1a) ~~to~~ To be represented by an attorney to the same extent as a person having his own counsel is so entitled; and

(2b) ~~to~~ To be provided with the necessary services and facilities of representation ~~(including investigation and other preparation)~~. The attorney, services, and facilities and the court costs shall be provided at public expense to the extent that the person is, at the time the court determines ~~need~~ indigency pursuant to section 19-854, Idaho Code, unable to provide for their payment.

(b2) An ~~needy~~ indigent person who is entitled to be represented by an attorney under subsection (a1) of this section is entitled:

(1a) ~~to~~ To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney and including revocation of probation;

(2b) ~~to~~ To be represented in any appeal;

(3c) ~~to~~ To be represented in any other post-conviction or post-commitment proceeding that the attorney or the ~~needy~~ indigent person considers appropriate, unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense and is therefore a frivolous proceeding.

(e3) An ~~needy~~ indigent person's right to a benefit under subsection (a1) or (b2) of this section is unaffected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.

SECTION 3. That Section 19-853, Idaho Code, be, and the same is hereby amended to read as follows:

19-853. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL -- APPOINTMENT OF COUNSEL. (a1) If a person who is being detained by a law enforcement officer, or who is confined or who is the subject of hospitaliza-

tion proceedings pursuant to sections 66-322, 66-326, 66-329, ~~or 66-4094 or~~  
 66-406, Idaho Code, or who is under formal charge of having committed, or is  
 being detained under a conviction of, a serious crime, is not represented by  
 an attorney under conditions in which a person having his own counsel would  
 be entitled to be so represented, the law enforcement officers concerned,  
 upon commencement of detention, or the court, upon formal charge or hearing,  
 as the case may be, shall:

(1a) ~~e~~Clearly inform him of his right to counsel and of the right of  
 an needy indigent person to be represented by an attorney at public ex-  
 pense; and

(2b) ~~±~~If the person detained or charged does not have an attorney, no-  
 tify the ~~public defender~~ defending attorney or trial court concerned,  
 as the case may be, that he is not so represented. As used in this sub-  
 section, the term "commencement of detention" includes the taking into  
 custody of a probationer.

(b2) Upon commencement of any later judicial proceeding relating to the  
 same matter, including, but not limited to, preliminary hearing, arraign-  
 ment, trial, any post-conviction proceeding, or post-commitment proceed-  
 ing, the presiding officer shall clearly inform the person so detained or  
 charged of his right to counsel and of the right of an needy indigent person  
 to be represented by an attorney at public expense. Provided, the appoint-  
 ment of an attorney at public expense in uniform post-conviction procedure  
 act proceedings shall be in accordance with section 19-4904, Idaho Code.

(e3) If a court determines that the person is entitled to be represented  
 by an attorney at public expense, it shall promptly notify the ~~public de-~~  
~~fender~~ defending attorney or assign an attorney, as the case may be.

(d4) Upon notification by the court or assignment under this section,  
 the ~~public defender or assigned attorney, as the case may be,~~ defending at-  
torney shall represent the person with respect to whom the notification or  
 assignment is made.

SECTION 4. That Section 19-854, Idaho Code, be, and the same is hereby  
 amended to read as follows:

19-854. DETERMINATION OF ~~NEED~~ INDIGENCY -- FACTORS CONSIDERED -- PAR-  
 TIAL PAYMENT BY ACCUSED -- REIMBURSEMENT. (a1) The determination of whether  
 a person covered ~~by~~ under section 19-852, Idaho Code, is an needy indigent  
 person shall be deferred until his first appearance in court or in a suit for  
 payment or reimbursement under section 19-858, Idaho Code, whichever occurs  
 earlier. Thereafter, the court concerned shall determine, with respect to  
 each proceeding, whether he is an needy indigent person.

(2) The court concerned shall presume that the following persons are  
indigent persons unless such a determination is contrary to the interests of  
justice:

(a) Persons whose current monthly income does not exceed one hundred  
eighty-seven percent (187%) of the federal poverty guidelines issued  
annually by the federal department of health and human services;

(b) Persons who receive, or whose dependents receive, public assis-  
tance pursuant to title 56, Idaho Code, in the form of food assistance,  
health coverage, cash assistance or child care assistance; or

(c) Persons who are currently serving a sentence in a correctional facility or are being housed in a mental health facility.

~~(b3)~~ The court concerned may determine that persons other than those described in subsection (2) of this section are indigent persons. In determining whether a person is an ~~needy~~ indigent person and in determining the extent of his inability to pay, the court concerned may consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents and the cost of bail.

(4) Release on bail does not necessarily prevent ~~him~~ a person from being an ~~needy~~ indigent person.

(5) In each case, the person shall, subject to the penalties for perjury, certify in writing or by other record such material factors relating to his ability to pay as the court prescribes by rule. No information provided by a person pursuant to this subsection may be used as substantive evidence in any criminal or civil proceeding against the person except:

(a) For impeachment purposes;

(b) In a prosecution for perjury or contempt committed in providing the information; or

(c) In an attempt to enforce an obligation to reimburse the state for the cost of counsel.

(e6) To the extent that a person covered ~~by~~ under section 19-852, Idaho Code, is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court may order him to provide for their payment.

(d7) ~~A needy~~ Upon conviction, notwithstanding the form of judgment or withheld judgment, plea of guilty or finding of guilt for any crime regardless of the original crime or number of counts, an indigent person who receives the services of an attorney provided by the county may be required by the court to reimburse the county for all or a portion of the cost of those services related to the conviction, plea of guilty or finding of guilt, unless the requirement would impose a manifest hardship on the indigent person. The ~~immediate~~ current inability of the ~~needy~~ indigent person to pay the reimbursement shall not, in and of itself, restrict the court from ordering reimbursement.

SECTION 5. That Section 19-855, Idaho Code, be, and the same is hereby amended to read as follows:

19-855. QUALIFICATIONS OF COUNSEL. No person may be given the primary responsibility of representing an ~~needy~~ indigent person unless he is licensed to practice law in this state and is otherwise competent to counsel and defend a person charged with a crime.

SECTION 6. That Section 19-856, Idaho Code, be, and the same is hereby repealed.

SECTION 7. That Section 19-857, Idaho Code, be, and the same is hereby amended to read as follows:

19-857. WAIVER OF COUNSEL -- CONSIDERATION BY COURT. A person who has been appropriately informed of his right to counsel may waive ~~in writing,~~

1 ~~or by other record,~~ any right provided by this act, if the court concerned,  
 2 at the time of or after waiver, finds of record that he has acted with full  
 3 awareness of his rights and of the consequences of a waiver and if the waiver  
 4 is otherwise according to law. The court shall consider such factors as the  
 5 person's age, education, and familiarity with the English language and the  
 6 complexity of the crime involved.

7 SECTION 8. That Section 19-858, Idaho Code, be, and the same is hereby  
 8 amended to read as follows:

9 19-858. REIMBURSEMENT TO COUNTY -- WHEN AUTHORIZED. (a~~1~~) The prose-  
 10 cuting attorney of each county may, on behalf of the county, recover payment  
 11 or reimbursement, as the case may be, from each person who has received legal  
 12 assistance or another benefit under this act:

13 (1a) ~~to~~ To which he was not entitled;

14 (2b) ~~With~~ With respect to which he was not an needy indigent person when he  
 15 received it; or

16 (3c) ~~With~~ With respect to which he has failed to make the certification re-  
 17 quired ~~by~~ under section 19-854, Idaho Code, and for which he refuses to  
 18 pay or reimburse. Suit must be brought within five (5) years after the  
 19 date on which the aid was received.

20 (b~~2~~) The prosecuting attorney of each county may, on behalf of the  
 21 county, recover payment or reimbursement, as the case may be, from each  
 22 person other than a person covered ~~by~~ under subsection (a~~1~~) above, of this  
 23 section who has received legal assistance under this act and who, on the date  
 24 on which suit is brought, is financially able to pay or reimburse the county  
 25 for it without manifest hardship according to the standards of ability to pay  
 26 applicable under sections 19-851, 19-852 and 19-854, Idaho Code, but refuses  
 27 to do so. Suit must be brought within three (3) years after the date on which  
 28 the benefit was received.

29 (e3) Amounts recovered under this section shall be paid into the county  
 30 general fund.

31 SECTION 9. That Section 19-859, Idaho Code, be, and the same is hereby  
 32 amended to read as follows:

33 19-859. PUBLIC DEFENDER AUTHORIZED -- COURT APPOINTED ATTORNEYS --  
 34 JOINT COUNTY PUBLIC DEFENDERS. (a~~1~~) The board of county commissioners of  
 35 each county shall provide for the representation of needy indigent persons  
 36 and other individuals who with respect to serious crimes are subject to  
 37 proceedings in the county or are detained in the county by law enforcement  
 38 officers are entitled to be represented by an attorney at public expense.  
 39 They shall provide this representation by:

40 (1a) ~~e~~ Establishing and maintaining an office of public defender;

41 (2b) ~~a~~ Arranging with the courts of criminal jurisdiction in the county  
 42 to assign attorneys on an equitable basis through a systematic, coordi-  
 43 nated plan; or

44 (3c) ~~a~~ Adopting a combination of these alternatives.

45 Until the board elects an alternative, it shall be considered as having  
 46 elected the alternative provided in subsection (a~~1~~) (2b) of this section.

1       (b2) If it elects to establish and maintain an office of public de-  
 2 fender, the board of county commissioners of a county may join with the board  
 3 of county commissioners of one (1) or more other counties to establish and  
 4 maintain a joint office of public defender. In that case, the participating  
 5 counties shall be treated for the purposes of this act as if they were one (1)  
 6 county.

7       (e3) If the board of county commissioners of a county elects to arrange  
 8 with the courts of ~~criminal jurisdiction~~ in the county to assign attorneys, a  
 9 court of the county may provide for advance assignment of attorneys, subject  
 10 to later approval by it, to facilitate representation of matters arising be-  
 11 fore appearance in court.

12       SECTION 10. That Section 19-860, Idaho Code, be, and the same is hereby  
 13 amended to read as follows:

14       19-860. PUBLIC DEFENDER -- TERM -- COMPENSATION -- APPOINTMENT --  
 15 QUALIFICATIONS -- COURT APPOINTED ATTORNEYS -- COMPENSATION. (a1) If the  
 16 board of county commissioners of a county elects to establish and maintain an  
 17 office of public defender and/or juvenile public defender, the board shall:

18       (1a) Prescribe the qualifications of such public defender, his term of  
 19 office, ~~which may not be less than two (2) years~~, and his rate of an-  
 20 nual compensation, and, if so desired by the board, a rate of compen-  
 21 sation for extraordinary services not recurring on a regular basis. So  
 22 far as is possible, the compensation paid to such public defender shall  
 23 not be less than the compensation paid to the county prosecutor for that  
 24 portion of his practice devoted to criminal law.

25       (2b) Provide for the establishment, maintenance and support of his of-  
 26 fice. The board of county commissioners shall appoint a public defender  
 27 and/or juvenile public defender from a panel of not more than five (5)  
 28 and not fewer than three (3) persons, ~~if that many are available~~, des-  
 29 ignated by a committee of lawyers appointed by the administrative judge  
 30 of the judicial district encompassing the county or his designee. To be  
 31 a candidate, a person must be licensed to practice law in this state and  
 32 must be competent to counsel and defend a person charged with a crime.  
 33 During his incumbency, such public defender may engage in the practice  
 34 of civil law and criminal law other than in the discharge of the duties  
 35 of his office, unless he is prohibited from doing so by the board of  
 36 county commissioners.

37       (b2) If a court before whom a person appears upon a formal charge as-  
 38 signs an attorney other than a public defender to represent an needy indigent  
 39 person, the appropriate district court, upon application, shall prescribe a  
 40 reasonable rate of compensation for his services and shall determine the di-  
 41 rect expenses necessary to representation for which he should be reimbursed.  
 42 The county shall pay the attorney the amounts so prescribed. The attorney  
 43 shall be compensated for his services with regard to the complexity of the  
 44 issues, the time involved, and other relevant considerations.

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

1 19-863. DEFENSE EXPENSES -- ALLOCATION IN JOINTLY ESTABLISHED OF-  
 2 FICES. (a1) Subject to section 19-861, Idaho Code, any direct expense,  
 3 including the cost of a transcript that is necessarily incurred in repre-  
 4 senting an needy indigent person under this act, is a county charge against  
 5 the county on behalf of which the service is performed.

6 (b2) If two (2) or more counties jointly establish an office of pub-  
 7 lic defender, the expenses not otherwise allocable among the participating  
 8 counties under subsection (a1) of this section shall be allocated, unless  
 9 the counties otherwise agree, on the basis of population according to the  
 10 most recent decennial census.

11 SECTION 12. That Section 19-864, Idaho Code, be, and the same is hereby  
 12 amended to read as follows:

13 19-864. RECORDS OF ~~DEFENSE~~ DEFENDING ATTORNEYS -- ANNUAL REPORT OF  
 14 ~~PUBLIC DEFENDER'S OFFICE~~ DEFENDING ATTORNEYS. (a1) A defending attorney  
 15 shall keep appropriate records respecting each needy person whom he repre-  
 16 sents under this act.

17 (b2) ~~The public defender in those counties electing to establish and~~  
 18 ~~maintain such an office,~~ Defending attorneys shall submit an annual report  
 19 to the board of county commissioners and the appropriate administrative dis-  
 20 trict judge showing the number of persons represented under this act, the  
 21 crimes involved, ~~the outcome of each case,~~ and the expenditures, ~~(totalled~~  
 22 ~~totalled~~ by kind), made in carrying out the responsibilities imposed by this  
 23 act. ~~A copy of the report shall also be submitted to each court having crimi-~~  
 24 ~~nal jurisdiction in the counties that the program serves.~~

25 SECTION 13. That Section 19-865, Idaho Code, be, and the same is hereby  
 26 amended to read as follows:

27 19-865. APPLICATION OF ACT -- STATE COURTS -- FEDERAL COURTS. This act  
 28 applies only to representation in the courts of this state, except that it  
 29 does not prohibit a ~~public defender~~ defending attorney from representing an  
 30 needy indigent person in a federal court of the United States, if:

31 (a1) The matter arises out of or is related to an action pending or re-  
 32 cently pending in a court of criminal jurisdiction of the state; or

33 (b2) Representation is under a plan of the United States District Court  
 34 as required by the ~~Criminal Justice Act~~ Act of 1964, ~~(18 U.S.C. 3006A),~~  
 35 and is approved by the board of county commissioners.