

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 60
STATE PUBLIC DEFENDER ACT

19-6001. SHORT TITLE. This chapter shall be known and may be cited as the "State Public Defender Act."

[19-6001, added 2023, ch. 220, sec. 1, p. 661.]

19-6002. DEFINITIONS. As used in this chapter:

(1) "Defending attorney" means any attorney employed by an indigent defense provider or otherwise under contract to represent adults or juveniles at public expense, consistent with the provisions of this chapter.

(2) "Detain" means to have in custody or otherwise deprive of freedom of action.

(3) "Expenses," when used with reference to representation pursuant to this chapter, includes the expenses of investigation, experts, testing, and other pretrial preparation, trials, post-verdict motions, and post-conviction relief proceedings brought pursuant to the uniform post-conviction procedure act, [chapter 49, title 19](#), Idaho Code.

(4) "Indigent defense provider" means the office of the state public defender or any agency, entity, organization, or person selected by the office for 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) "Indigent person" means a person who, at the time his need is determined pursuant to section [19-6009](#), Idaho Code, is unable to provide for the full payment of an attorney and all other necessary expenses of representation.

(6) "Serious crime" means any offense for which the penalty includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility, regardless of whether actually imposed.

[19-6002, added 2023, ch. 220, sec. 1, p. 661.]

19-6003. OFFICE OF THE STATE PUBLIC DEFENDER CREATED. The office of the state public defender is hereby created in the department of self-governing agencies.

[19-6003, added 2023, ch. 220, sec. 1, p. 662.]

19-6004. STATE PUBLIC DEFENDER -- APPOINTMENT -- TERM -- PROHIBITED CONDUCT -- REMOVAL -- VACANCIES -- REAPPOINTMENT -- COMPENSATION. (1) The state public defender shall reside in the office of the state public defender and shall be appointed by the governor, in a manner consistent with subsection (6) of this section, to serve a four (4) year term.

(2) The state public defender must meet the following qualifications on the effective date of appointment:

- (a) Be at least thirty (30) years of age;
- (b) Be a citizen of the United States;

(c) Have held a license to practice law or a judicial office in one (1) or more jurisdictions of the United States for at least five (5) continuous years immediately preceding the appointment;

(d) Be or become an active member of the Idaho state bar within one (1) year of appointment and remain an active member in good standing thereafter; and

(e) Have at least five (5) years of criminal defense experience.

(3) The state public defender shall not:

(a) Engage in the practice of law outside his role in the office of the state public defender, except for the practice of law that is permitted for a judge by the Idaho code of judicial conduct;

(b) Hold or be a candidate for any federal, state, county, municipal, judicial, district, or other elective office; provided, however, this paragraph does not prohibit the state public defender from seeking appointment to another office, including state or federal judicial office;

(c) Serve as the agent, representative, officer, political treasurer, or employee, whether for profit or otherwise, of any political party, political committee, or candidate, as such terms are defined in [chapter 1, title 34](#), Idaho Code, and [chapter 66, title 67](#), Idaho Code; or

(d) Hold any other public or private sector position, for profit or otherwise, except for volunteer positions that are not inconsistent with the duties of the state public defender.

(4) The state public defender may be removed from office by the governor for failing to retain the qualifications of his office provided in subsection (2) of this section, for engaging in prohibited conduct set forth in subsection (3) of this section, or for good cause shown. If the state public defender is removed from office, the governor shall provide the house of representatives and the senate written notice of the removal, the effective date of removal, and the reason or reasons therefor.

(5) If the state public defender resigns, dies, or is removed from office as provided by law, the governor shall appoint a person who meets the qualifications established in this section, in a manner consistent with subsection (6) of this section, to fill the unexpired term.

(6) The governor shall appoint a state public defender in the following manner:

(a) Whenever a vacancy arises in the position of state public defender, the governor shall appoint a panel with seven (7) members, with one (1) panel member appointed from the membership of each of the seven (7) district magistrates commissions. Not less than two (2) but not more than (3) panel members shall be attorneys, not more than two (2) but not less than one (1) panel member shall be a county commissioner, and one (1) member shall be a mayor. The governor shall not appoint to the panel any member of a district magistrates commission who is a judge, who is employed as a criminal prosecutor, or who otherwise prosecutes or aids in the prosecution of criminal cases, or any person employed in a law enforcement agency. The governor shall select a member of the panel to serve as chairman. The provisions of section [1-2203B\(4\)](#), Idaho Code, regarding current or former law partners shall apply to any attorney serving on the panel. Members of the panel shall be compensated by the office of the state public defender as provided in section [59-509\(b\)](#), Idaho Code.

(b) It shall be the duty of the panel to recruit applicants, review candidates, and submit to the governor a list of not less than three (3), but not more than five (5), attorneys who meet the qualifications established in this chapter, and the governor shall appoint the state public defender from the list, with the advice and consent of the senate. If three (3) qualified candidates or fewer apply, the panel shall submit all applicants to the governor and may communicate to the governor or the governor's representative, in executive session pursuant to section [74-206](#)(1) (a), Idaho Code, a ranking of the applicants, and the governor shall appoint the state public defender from the list, with the advice and consent of the senate. The governor and the office of the state public defender may assist the panel in drawing the largest pool of qualified applicants.

(c) Once the governor appoints the state public defender, the panel shall disband until reconstituted by the governor consistent with this section.

(7) When the state public defender's term expires under the law, the governor may reappoint the state public defender to subsequent four (4) year terms, with the advice and consent of the senate, or the governor may constitute a panel consistent with subsection (6) of this section to nominate candidates and appoint a state public defender from the list produced by the panel, with the advice and consent of the senate.

(8) The state public defender shall be compensated in an amount determined by the governor.

[19-6004, added 2023, ch. 220, sec. 1, p. 662.]

19-6005. POWERS AND DUTIES OF THE STATE PUBLIC DEFENDER. [EFFECTIVE UNTIL OCTOBER 1, 2024] Consistent with the state of Idaho's obligation to provide indigent public defense pursuant to the sixth amendment to the United States constitution; section 13, article I of the constitution of the state of Idaho; and this chapter, the state public defender shall have the power to:

(1) Ensure that qualified defending attorneys, experts, investigators, mitigation specialists, stenographers, paralegals, or other support staff and assistants are employed or contracted as necessary to carry out the purposes of this chapter, that the same deliver indigent defense services in compliance with applicable indigent defense standards, and that any persons hired or contracted to provide indigent individuals charged with an offense or offenses punishable by a sentence of death be qualified to provide team representation. Provided, however, the terms of any contract with a defending attorney shall not include any pricing structure that charges or pays a single fixed fee for the services of the defending attorney and client-related expenses;

(2) Provide appropriate facilities, including office space, furniture, equipment, books and other legal research tools, postage, supplies, and secure information and communication technology equipment that is reasonably necessary for the proper performance of the state public defender;

(3) Implement procedures for the oversight, implementation, enforcement, and improvement of indigent defense standards so that the right to counsel of indigent persons is constitutionally delivered to all indigent persons in this state;

(4) Implement the most current American bar association standards for defending attorneys delivering indigent defense pursuant to this chapter, including caseload standards;

(5) Provide training and continuing legal education approved by the Idaho state bar for defending attorneys and employees that promotes competency and consistency in case types defended by the state public defender;

(6) Require defending attorneys, contractors, and employees to keep appropriate records, consistent with uniform data reporting requirements, respecting each person to whom the state public defender is responsible for providing defense, including but not limited to caseload, workload, and expenditures;

(7) Establish uniform contracts both for contract defending attorneys, where utilized throughout the state or when caseload volumes require their use, and for conflict defending attorneys, when carrying out the purposes of this chapter. Contract pay rates shall be informed by the prevailing statewide market rate;

(8) Establish a uniform system for contracting with qualified attorneys to carry out the purposes of this chapter, including a system for application, payment for services, and reimbursement; and

(9) Collaborate with district public defenders on the policies of the office and in the formation of a budget request sufficient to meet the state's constitutional obligation to provide indigent services, which the state public defender shall submit to the division of financial management as required by law.

19-6005. POWERS AND DUTIES OF THE STATE PUBLIC DEFENDER. [EFFECTIVE OCTOBER 1, 2024] Consistent with the state of Idaho's obligation to provide indigent public defense pursuant to the sixth amendment to the United States constitution; section 13, article I of the constitution of the state of Idaho; and this chapter, the state public defender shall have the power to:

(1) Ensure that qualified defending attorneys, experts, investigators, mitigation specialists, stenographers, paralegals, or other support staff and assistants are employed or contracted as necessary to carry out the purposes of this chapter, that the same deliver indigent defense services in compliance with applicable indigent defense standards, and that any persons hired or contracted to provide indigent individuals charged with an offense or offenses punishable by a sentence of death be qualified to provide team representation. Provided, however, the terms of any contract with a defending attorney shall not include any pricing structure that charges or pays a single fixed fee for the services of the defending attorney and client-related expenses;

(2) Provide appropriate facilities, including office space, furniture, equipment, books and other legal research tools, postage, supplies, and secure information and communication technology equipment that is reasonably necessary for the proper performance of the state public defender;

(3) Implement procedures for the oversight, implementation, enforcement, and improvement of indigent defense standards so that the right to counsel of indigent persons is constitutionally delivered to all indigent persons in this state;

(4) Implement the most current American bar association standards for defending attorneys delivering indigent defense pursuant to this chapter, including caseload standards;

(5) Provide training and continuing legal education approved by the Idaho state bar for defending attorneys and employees that promotes competency and consistency in case types defended by the state public defender;

(6) Require defending attorneys, contractors, and employees to keep appropriate records, consistent with uniform data-reporting requirements, respecting each person to whom the state public defender is responsible for providing defense, including but not limited to caseload, workload, and expenditures;

(7) Establish uniform contracts both for contract defending attorneys, where utilized throughout the state or when caseload volumes require their use, and for conflict defending attorneys, when carrying out the purposes of this chapter. Contract pay rates shall be informed by the prevailing statewide market rate;

(8) Establish a uniform system for contracting with qualified attorneys to carry out the purposes of this chapter, including a system for application, payment for services, and reimbursement; and

(9) Collaborate with district public defenders on the policies of the office and in the formation of a budget request sufficient to meet the state's constitutional obligation to provide indigent services, which the state public defender shall submit to the division of financial management as required by law.

(10) Seek reimbursement from any applicable federal funds at the department of health and welfare for any allowable costs of representation or administrative costs for any representation authorized by this chapter, whether provided by employees of the office of the state public defender or by contract.

[19-6005, added 2023, ch. 220, sec. 1, p. 663; am. 2024, ch. 270, sec. 3, p. 938.]

19-6006. DISTRICT PUBLIC DEFENDER. (1) In each judicial district described in [chapter 8, title 1](#), Idaho Code, the state public defender shall employ a district public defender. The district public defender must be an employee of the office of the state public defender, meet and maintain the qualifications set forth in section [19-6004](#)(2), Idaho Code, and not engage in any conduct prohibited by section [19-6004](#)(3), Idaho Code, while employed as district public defender. The district public defender may be removed by the state public defender for failing to maintain the qualifications of the position established in this section, for engaging in conduct prohibited by this section, or for good cause shown. The duty station of each district public defender must be within the judicial district that the district public defender oversees.

(2) Under the direction and supervision of the state public defender, each district public defender shall carry out the purposes of this chapter in the judicial district, including supervising the defending attorneys hired or contracted to work in that judicial district, assuring compliance with the provisions of section [19-6005](#), Idaho Code, as well as other duties assigned by the state public defender.

(3) The district public defender shall be the principal liaison with the administrative district judge, the trial court administrator, the boards of county commissioners, county clerks, and county prosecutors on administrative matters concerning the provision of public defense in the judicial district. Upon invitation, but not less than annually, the district

public defender shall report to each board of county commissioners within the judicial district concerning public defense in the respective county.

[19-6006, added 2023, ch. 220, sec. 1, p. 664.]

19-6007. **HIRING THE DISTRICT PUBLIC DEFENDER.** (1) Whenever a vacancy arises in the position of district public defender, it shall be the duty of the district magistrates commission to recruit applicants, review candidates, and hire a district public defender who meets the qualifications established in this chapter. The office of the state public defender may assist the district magistrates commission in drawing the largest pool of qualified applicants.

(2) In addition to the provisions of sections [1-2203](#), [1-2203A](#), [1-2203B](#), [1-2204](#), and [1-2205](#), Idaho Code, when a district magistrates commission is carrying out the purposes of this section:

(a) The administrative district judge or district judge designated by the administrative district judge shall not participate in any proceedings of the district magistrates commission pursuant to the provisions of this section. The county commissioner on the district magistrates commission from the county that operated an office of public defender by January 1, 2023, shall chair the district magistrates commission. If there is more than one (1) county in the judicial district that operated an office of public defender or that was part of a joint office of public defender by January 1, 2023, the county commissioner on the district magistrates commission from such a county with the longest continuous service as county commissioner shall chair the district magistrates commission. If no county in the judicial district operated an office of public defender or was part of a joint office of public defender by January 1, 2023, the county commissioner on the district magistrates commission with the longest continuous service as county commissioner shall chair the district magistrates commission.

(b) The state public defender shall appoint two (2) attorneys who practice in the judicial district and whose practice as certified by each attorney at the time of his appointment is predominantly criminal defense, one (1) of whom must be a defending attorney employed or contracted by an indigent defense provider, to temporarily serve on the district magistrates commission; provided, however, the provision of section [1-2203B](#)(4), Idaho Code, regarding current or former law partners shall apply to any attorney appointed by the state public defender.

(c) No person employed as a criminal prosecutor or who otherwise prosecutes or aids in the prosecution of criminal cases may participate on the district magistrates commission, nor shall any person employed in a law enforcement agency participate on the district magistrates commission. A temporary vacancy, pursuant to section [1-2203B](#), Idaho Code, shall occur for any commission member prohibited from participating by this paragraph.

[19-6007, added 2023, ch. 220, sec. 1, p. 664.]

19-6008. **INDIGENT PUBLIC DEFENSE -- ROLE OF COUNTIES -- PUBLIC DEFENSE COMMISSION RULES -- TRANSITION.** (1) Notwithstanding any provision of law to the contrary, on and after October 1, 2024:

(a) All counties are released from any further financial or legal obligation to provide indigent public defense. On and after such date, the

state assumes the full financial and legal obligation to provide indigent public defense pursuant to the sixth amendment to the United States constitution and section 13, article I of the constitution of the state of Idaho.

(b) This release of financial and legal obligation to provide indigent public defense includes the release of any requirement for counties: to employ or contract with defending attorneys, investigators, social workers, legal assistants, or other personnel necessary to provide indigent public defense; to provide office furnishings, equipment, office materials, or office supplies; to provide information technology equipment, information technology software, communication equipment, communication software, equipment, or software licenses or subscriptions; to provide general office technology or equipment; or to assume any other expense necessary for indigent defense services on and after October 1, 2024.

(c) Notwithstanding the provisions of this section, any county providing office space to a county office of public defense or a joint county office of public defense as of January 1, 2023, shall continue to make available the same or substantially similar office space for the use of the office of the state public defender until July 1, 2029, provided that:

(i) Not later than January 1, 2027, the state public defender must provide to the board of county commissioners of any county providing office space to the office of the state public defender a facility transition plan outlining the state public defender's intent to either procure other office space to house defending attorneys or enter into a contract with the board of county commissioners to lease office space from the board of county commissioners necessary to house defending attorneys;

(ii) Nothing in this section shall be construed to obligate a board of county commissioners to provide office space to the office of the state public defender on and after July 1, 2029;

(iii) Nothing in this section shall prohibit the state public defender from notifying a board of county commissioners that provides office space to the office of the state public defender that the state public defender no longer needs part or all of the space obligated by this section prior to July 1, 2029. Such notice shall relieve the county board of commissioners of the obligation to provide office space to the office of the state public defender; and

(iv) Notwithstanding the provisions of this section, each county must continue providing interviewing facilities in the county jail necessary for carrying out the state public defender's responsibilities in law.

(d) The state public defender shall reimburse a board of county commissioners for any expenses incurred in providing such office space, including but not limited to office furnishings, equipment, office materials, or office supplies; information technology equipment, information technology software, communication equipment, communication software, equipment, or software licenses or subscriptions; or general office technology or equipment or related expenses.

(e) All administrative rules promulgated by the state public defense commission shall be repealed in accordance with the provisions of [chapter 52, title 67](#), Idaho Code.

(2) To effectuate an orderly transition to the office of the state public defender without unnecessary disruption of indigent defense services, counties and defending attorneys shall not prohibit access by the state public defender, or his designee, to information and data, including case files, that are necessary to establish a statewide case management system or for other administrative purposes in establishing the office of the state public defender. The state public defender and any designee shall have the ethical duty and legal obligation to maintain confidentiality and privacy of any information learned or obtained during the course of transition to the office of the state public defender while counties continue to provide indigent defense services. The state public defender at his discretion may require defending attorneys to use a case management system procured by the state public defender at no expense to counties or defending attorneys.

(3) Upon termination of the public defense commission on July 1, 2024, all property and full-time positions at the commission shall transfer to the office of the state public defender.

(4) All administrative rules promulgated by the public defense commission shall remain in effect while counties continue to provide indigent defense until October 1, 2024, when that obligation ends pursuant to this section.

(5) To the greatest extent possible, the state public defender and district public defenders shall provide the option to defending attorneys employed by a county office of public defender or joint office of public defender on September 30, 2024, who meet the requirements and standards for defending attorneys, as well as support staff, the opportunity to continue employment with the office of the state public defender working in the county that previously employed them.

(6) District magistrates commissions shall coordinate with the state public defender and begin the process of recruiting applicants, reviewing candidates, and selecting each district public defender as soon as practicable after July 1, 2024.

(7) In order to advise the state public defender and provide input from counties and defending attorneys during the transition, the state public defender shall appoint a volunteer transition advisory board to advise on matters related to the transition of public defense through October 1, 2024. Board members shall be compensated as provided in section [59-509](#)(a), Idaho Code. The board shall be composed of:

- (a) Two (2) representatives from the Idaho association of counties; and
- (b) Seven (7) attorneys, with one (1) attorney from each judicial district, whose practice, as certified by them at the time of their appointment, is predominately criminal defense, among whom not less than three (3) must be defending attorneys who are employed by a county or joint office of public defense, and not less than two (2) must be defending attorneys who contract with counties to provide public defense services.

[19-6008, added 2023, ch. 220, sec. 1, p. 665.]

19-6009. RIGHT TO COUNSEL OF INDIGENT PERSON -- REPRESENTATION AT ALL STAGES OF CRIMINAL AND COMMITMENT PROCEEDINGS -- PAYMENT. [EFFECTIVE UNTIL OCTOBER 1, 2024] (1) An indigent person who is being detained by a law

enforcement officer, who is confined or is the subject of hospitalization proceedings pursuant to section [18-212](#), [66-322](#), [66-326](#), [66-329](#), [66-404](#) 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:

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

(b) 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 indigency pursuant to section [19-6011](#), Idaho Code, unable to provide for their payment.

(2) An indigent person who is entitled to be represented by an attorney under subsection (1) of this section is entitled:

(a) 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;

(b) To be represented in any appeal;

(c) To be represented in any other post-conviction or post-commitment proceeding that the attorney or the 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.

(3) An indigent person's right to a benefit under subsection (1) or (2) 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.

19-6009. RIGHT TO COUNSEL OF INDIGENT PERSON -- REPRESENTATION AT ALL STAGES OF CRIMINAL AND COMMITMENT PROCEEDINGS -- PAYMENT. [EFFECTIVE OCTOBER 1, 2024] (1) An indigent person who is being detained by a law enforcement officer, who is confined or is the subject of hospitalization proceedings pursuant to section [18-212](#), [66-322](#), [66-326](#), [66-329](#), [66-404](#) 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:

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

(b) 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 indigency pursuant to section [19-6011](#), Idaho Code, unable to provide for their payment.

(2) An indigent person who is entitled to be represented by an attorney under subsection (1) of this section is entitled:

(a) 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;

(b) To be represented in any appeal;

(c) To be represented in any other post-conviction or post-commitment proceeding that the attorney or the indigent person considers appro-

priate, 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.

(3) Upon a finding of indigency, representation by an attorney under subsection (1) of this section shall include the following cases, excluding those cases where the state appellate public defender has jurisdiction pursuant to section [19-5905](#), Idaho Code, and excluding those cases of guardian ad litem representation pursuant to section [16-1614](#)(4), Idaho Code:

- (a) Felony and misdemeanor cases;
- (b) Actions arising under the Idaho juvenile corrections act, [chapter 5, title 20](#), Idaho Code;
- (c) Proceedings under the uniform post-conviction procedure act, [chapter 49, title 19](#), Idaho Code;
- (d) Civil contempt proceedings where incarceration is sought;
- (e) Actions arising under the child protective act, [chapter 16, title 16](#), Idaho Code; and
- (f) Appeals from adjudicatory decrees or orders under section [16-1625](#), Idaho Code.

(4) An indigent person's right to a benefit under subsection (1) or (2) 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.

[(19-6009) 19-852, added 1967, ch. 181, sec. 2, p. 599; am. 1969 (2nd E.S.), ch. 10, sec. 2, p. 20; am. 1981, ch. 114, sec. 3, p. 171; am. 1982, ch. 59, sec. 3, p. 92; am. 2013, ch. 220, sec. 2, p. 516; am. and redesign. 2023, ch. 220, sec. 5, p. 670; am. 2024, ch. 270, sec. 4, p. 939.]

19-6010. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL. (1) If a person who is being detained by a law enforcement officer, or who is confined or who is the subject of hospitalization proceedings pursuant to section [66-322](#), [66-326](#), [66-329](#), [66-404](#) 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:

- (a) Clearly inform him of his right to counsel and of the right of an indigent person to be represented by an attorney at public expense; and
- (b) If the person detained or charged does not have an attorney, notify the indigent defense provider or trial court concerned, as the case may be, that he is not so represented. As used in this subsection, the term "commencement of detention" includes the taking into custody of a probationer.

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

(3) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the state public defender.

(4) Upon notification by the court, the state public defender shall represent the person with respect to whom the notification is made.

[(19-6010) 19-853, added 1967, ch. 181, sec. 3, p. 599; 1968 (2nd E.S.), ch. 10, sec. 3, p. 20; am. 1981, ch. 114, sec. 4, p. 172; am. 1982, ch. 59, sec. 4, p. 93; am. 1984, ch. 229, sec. 1, p. 548; am. 2001, ch. 160, sec. 1, p. 568; am. 2013, ch. 220, sec. 3, p. 516; am. 2014, ch. 247, sec. 4, p. 619; am. 2015, ch. 244, sec. 2, p. 1009; am. 2016, ch. 47, sec. 1, p. 98; am. 2016, ch. 195, sec. 3, p. 547; am. and redesign. 2023, ch. 220, sec. 6, p. 670.]

19-6011. DETERMINATION OF INDIGENCY -- FACTORS CONSIDERED -- PARTIAL PAYMENT BY ACCUSED -- REIMBURSEMENT. (1) The determination of whether a person covered under section [19-6009](#), Idaho Code, is an indigent person shall be deferred until his first appearance in court or in a suit for payment or reimbursement under section [19-6015](#), Idaho Code, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each proceeding, whether he is an 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 assistance 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.

(3) 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 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, the number and ages of his dependents and the cost of bail. Participation in the Idaho health insurance exchange shall not result in the presumption of indigency.

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

(6) To the extent that a person covered under section [19-6009](#), 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.

(7) 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 a defending attorney may be required by the court to reimburse the state public defense fund 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. Any funds received due to an existing or future order for reimbursement for the services of a defending attorney shall be deposited into the state public defense fund. The current inability of the indigent person to pay the reimbursement shall not, in and of itself, restrict the court from ordering reimbursement.

[(19-6011) 19-854, added 1967, ch. 181, sec. 4, p. 599; am. 2001, ch. 287, sec. 1, p. 1023; am. 2013, ch. 220, sec. 4, p. 517; am. 2014, ch. 243, sec. 1, p. 612; am. and redesisg. 2023, ch. 220, sec. 7, p. 671.]

19-6012. QUALIFICATIONS OF COUNSEL. No person may be given the primary responsibility of representing an 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.

[(19-6012) 19-855, added 1967, ch. 181, sec. 5, p. 599; am. 2013, ch. 220, sec. 5, p. 518; am. and redesisg. 2023, ch. 220, sec. 8, p. 672.]

19-6013. WAIVER OF COUNSEL -- CONSIDERATION BY COURT. A person who has been appropriately informed of his right to counsel may waive any right provided by this chapter if the court concerned, at the time of or after waiver, finds of record that he has acted with full awareness of his rights and of the consequences of a waiver and if the waiver is otherwise according to law. The court shall consider such factors as the person's age, education and familiarity with the English language and the complexity of the crime involved.

[(19-6013) 19-857, added 1967, ch. 181, sec. 7, p. 599; am. 2013, ch. 220, sec. 7, p. 518; am. and redesisg. 2023, ch. 220, sec. 9, p. 672.]

19-6014. FACILITIES. A defending attorney is entitled to use the same state facilities for the evaluation of evidence as are available to the county prosecutor. If the defending attorney considers the use of the state facilities impractical, the court concerned may authorize the use of private facilities, to be paid for by the state public defender.

[(19-6014) 19-861, added 1967, ch. 181, sec. 11, p. 599; am. 2014, ch. 247, sec. 7, p. 620; am. and redesisg. 2023, ch. 220, sec. 10, p. 672.]

19-6015. REIMBURSEMENT -- WHEN AUTHORIZED. [EFFECTIVE OCTOBER 1, 2024] (1) The attorney general or the appropriate county prosecutor may, on behalf of the state, recover payment or reimbursement, as the case may be, from each person who has received legal assistance or another benefit under this chapter:

(a) To which he was not entitled;

(b) With respect to which he was not an indigent person when he received it; or

(c) With respect to which he has failed to make the certification required under section [19-6011](#), Idaho Code, and for which he refuses to pay or reimburse. Suit must be brought within five (5) years after the date on which the aid was received.

(2) The attorney general or the appropriate county prosecutor may, on behalf of the state, recover payment or reimbursement, as the case may be, from each person other than a person covered under subsection (1) of this section who has received legal assistance under this chapter and who, on the date on which suit is brought, is financially able to pay or reimburse for legal assistance without manifest hardship according to the standards of ability to pay applicable under sections [19-6009](#) and [19-6011](#), Idaho Code, but refuses to do so. Suit must be brought within three (3) years after the date on which the benefit was received.

(3) Amounts recovered under this section shall be paid into the state public defense fund pursuant to section [57-827](#), Idaho Code.

[(19-6015) 19-858, added 1967, ch. 181, sec. 8, p. 599; am. 2013, ch. 220, sec. 8, p. 518; am. 2022, ch. 318, sec. 56, p. 1029; am. and redesign. 2023, ch. 220, sec. 11, p. 673.]

19-6016. RECORDS OF DEFENDING ATTORNEYS. Indigent defense providers and defending attorneys shall keep appropriate records respecting each person whom they represent under this chapter.

[(19-6016) 19-864, added 1967, ch. 181, sec. 14, p. 599; am. 2013, ch. 220, sec. 12, p. 520; am. 2016, ch. 195, sec. 6, p. 551; am. and redesign. 2023, ch. 220, sec. 12, p. 673.]

19-6017. APPLICATION OF CHAPTER -- STATE COURTS -- FEDERAL COURTS. This chapter applies only to representation in the courts of this state, except that it does not prohibit a defending attorney from representing an indigent person in a federal court of the United States, if:

(1) The matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction of the state; or

(2) Representation is under a plan of the United States district court as required by the criminal justice act of 1964, 18 U.S.C. 3006A, and is approved by the state public defender.

[(19-6017) 19-865, added 1967, ch. 181, sec. 15, p. 599; am. 2013, ch. 220, sec. 13, p. 520; am. 2014, ch. 97, sec. 4, p. 269; am. and redesign. 2023, ch. 220, sec. 13, p. 673.]

19-6018. PROVISIONS NOT EXCLUSIVE. The protections provided by this chapter do not exclude any protection or sanction that the law otherwise provides.

[(19-6018) 19-866, added 1967, ch. 181, sec. 17, p. 599; am. and redesign. 2023, ch. 220, sec. 14, p. 673.]

19-6019. CONTRACTING WITH DEFENDING ATTORNEYS. (1) When contracting with defending attorneys to provide primary or conflict indigent defense services, to the greatest extent that is practicable, the office of the state

public defender shall contract with local defending attorneys who practice in the county. If no qualified attorneys who practice in the county are available, the office of the state public defender shall contract with local defending attorneys who practice within the judicial district.

(2) In counties that did not operate an office of public defender or joint office of public defender by January 1, 2023, the office of the state public defender shall continue to provide primary indigent defense services by contract through July 1, 2029, unless the board of county commissioners, at the request of the office of the state public defender, votes to allow the office to transition from primary contract indigent defense providers. Notice of no less than six (6) months is required in advance of any change in delivery of public defense from primary contract indigent defense providers in a county pursuant to this subsection.

(3) Nothing in this section:

(a) Prohibits the office of the state public defender from continuing to contract with defending attorneys to provide indigent defense services in any county after July 1, 2029;

(b) Requires the office of the state public defender to contract with defending attorneys who do not meet the requirements and standards for defending attorneys; or

(c) Restricts the office of the state public defender from using defending attorneys employed by the office of the state public defender to represent indigent defendants in any capital case.

[19-6019, added 2023, ch. 220, sec. 15, p. 674.]

19-6020. APPOINTMENT OF ADDITIONAL COUNSEL -- PRO BONO PROGRAMS. [EFFECTIVE OCTOBER 1, 2024] (1) Should the office of the state public defender be unable to carry out the duties required in this chapter because of a conflict of interest, or any other reason, the state public defender or his designee shall arrange for counsel for indigent defendants to be compensated out of the budget of the office of the state public defender. The state public defender, in his discretion, may also contract with private attorneys to provide representation pursuant to this chapter on a case-by-case basis when such contracts would conserve budgetary resources.

(2) The state public defender is authorized to facilitate and develop with the judicial branch, the Idaho state bar, law schools, and private attorneys and law offices pro bono opportunities to take cases pursuant to this chapter; however, nothing in this subsection requires the office of the state public defender to assign pro bono cases to attorneys who do not meet the requirements and standards for defending attorneys.

[19-6020, added 2024, ch. 270, sec. 5, p. 940.]