

PDC 2021 Negotiated Rulemaking, May 5, 2021

IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61.01.01 – GENERAL PROVISIONS AND DEFINITIONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. ()

001. TITLE AND SCOPE.

This chapter is titled “General Provisions and Definitions,” and contains general provisions and definitions applicable to IDAPA 61. ()

002. ADMINISTRATIVE APPEALS.

01. Intermediate Administrative Appeal Procedure. Except as set forth herein, IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” shall apply to IDAPA 61. ()

02. Confidential Information Exempt From Public Records. Documents containing confidential information and submitted in any administrative proceeding must be redacted or filed under seal. ()

003. FILING OF DOCUMENTS.

Unless otherwise set forth in a Notice of Rulemaking or Order of the Commission or Executive Director, all written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case must be filed with the Executive Director. No copies in addition to the original document need be filed with the agency unless requested by the Executive Director or Commission. ()

004. – 009. (RESERVED)

010. DEFINITIONS.

01. Active Case. A Capital Case is active when it is not stayed. All other Cases are active when there is an appointment, appearance, filing or investigation in the reporting period or it is not stayed. ()

02. Annual Report. The Defending Attorney report required by Section 19-864, Idaho Code, including CLEs, Caseloads, Workloads and other information requested for the October 1 through September 30 reporting period to complete the Annual Report form provided by PDC Staff. ()

03. Capital Case. A case in which the state has given notice it will seek the death penalty or is legally entitled to seek the death penalty under Section 18-4004A, Idaho Code. ()

04. Capital Defending Attorney. A Defending Attorney who meets the qualifications for and is on the Capital Defending Attorney Roster. ()

05. Capital Defending Attorney Roster. The PDC’s list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a Capital Case. ()

06. Case. All related charges against an individual from a single incident, transaction or occurrence filed within a single case number. A probation violation or motion for contempt is counted as a separate Case. ()

07. Caseload. A Defending Attorney’s total number of Active Cases during the applicable reporting period as counted under IDAPA 61.01.02, “Requirements and Procedures for Representing Indigent Persons,” Paragraph 060.05.c. A county’s total Caseload to determine compliance with Workload rules is calculated as the mean of the Felony Case Equivalent calculation for each of the preceding three (3) years. ()

08. Compliance Plan. A county's plan for meeting Public Defense Rules and curing any Deficiencies including detailed action items and completion dates. ()

09. Cost Analysis. A detailed explanation of the expected expenses for the county to complete its Compliance Plan and how the county is proposing to pay for those expenses. ()

10. Defending Attorney. Any attorney employed by a county or under contract with a county as an institutional Defending Attorney or a contract Defending Attorney or otherwise appointed by a Court to represent adults or juveniles at public expense. ()

11. Defending Attorney Roster. The PDC's list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a non-capital Case. ()

12. Deficiency. The noncompliance with any Public Defense Rule by a county, Defending Attorney, employee, contractor, representative or other agent. ()

13. Executive Director. PDC employee appointed by the Commission under Section 19-850(2)(a), Idaho Code. ()

14. Felony Case Equivalent (FCE). The calculation after all Case types are converted to their felony equivalent to determine compliance with Caseload rules. ()

15. Financial Assistance. The state funding a county may request and may be awarded under Section 19-862A, Idaho Code. ()

16. Indigent Person. A person who, at the time his need is determined under Section 19-854, Idaho Code, is unable to provide for the full payment of a Defending Attorney and all other necessary expenses of representation. ()

17. Initial Appearance. The first appearance of the defendant before any judge. In the event a defendant appears before more than one judge, the first appearance before the first judge constitutes the Initial Appearance. ()

18. Material. An action or failure to act that could have an immediate and significant negative impact on the effective representation of Indigent Persons or result in the misuse of state funds. ()

19. PDC. The Idaho State Public Defense Commission including PDC Staff and the Commission. Information reported to the PDC will be reported using available PDC forms. ()

20. PDC Staff. Employees of the Commission who report to the Executive Director. References to PDC Staff include the Executive Director unless otherwise specified. ()

21. Public Defense Rules. Any rule promulgated by the Commission under Section 19- 850(1)(a), Idaho Code. ()

22. Vertical Representation. A Defending Attorney ~~appointed to represent~~ **is responsible for the continuous and personal representation and oversight of** an Indigent Person's case ~~shall~~, to the extent reasonably practicable, ~~continuously and personally oversee the representation of the client's case~~ through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make ~~all~~ efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, ~~including but not limited to advising the Court of any conflict at the time of setting~~, providing ~~accurate~~ unavailable dates ~~at the time of setting~~ and ~~seek continuances~~ in the case of unforeseen absences, ~~filing a motion or stipulation to continue~~. The Indigent Person may consent to have another Defending Attorney appear at a hearing. Each county is responsible to support and provide resources as necessary to ensure Vertical Representation. ()

23. **Willful.** An action or failure to act that is deliberate and with knowledge. ()

24. **Workload.** A Defending Attorney's Caseload adjusted to account for available support staff, Case complexity, and distribution through the reporting year and other duties such as supervision. ()

011. – 999. (RESERVED)