

### Part 1 – Agency Profile

#### Agency Overview:

The Office of the Idaho State Appellate Public Defender was created in 1998. The SAPD provides appellate representation to indigent defendants who have been convicted of a non-capital or capital felony in district court. The SAPD also provides appellate representation in dismissals or denials of non-capital state habeas proceedings and state post conviction petitions. The SAPD provides district court representation for capital defendants during the post conviction phase, as well as the appeal following the denial of the post conviction petition and the direct appeal from the judgment of conviction.

The State Appellate Public Defender is Molly J. Huskey, who was re-appointed by Governor C.L. “Butch” Otter in January, 2007. The office has 22 full-time employees, including the agency head. There are three (3) attorneys in the Capital Litigation Unit, a mitigation specialist, an investigator and a support staff. The Appellate Unit has ten (10) attorneys, including the Chief of the Appellate Unit, two support staff and a paralegal. There is also an Office Administrator. The office is located at 3647 Lake Harbor Lane, Boise, Idaho. The mission of the SAPD is to provide quality legal representation to its clients in an effective and efficient manner.

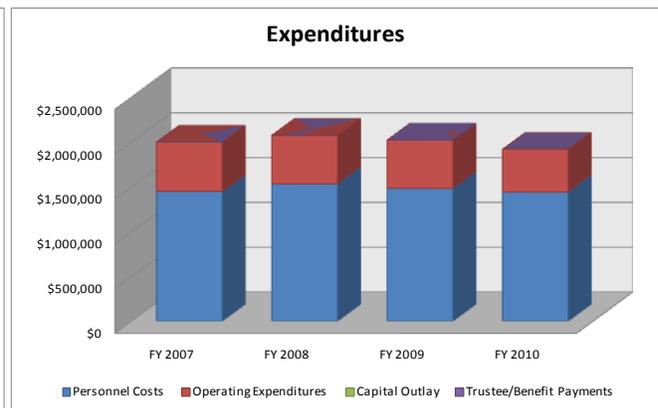
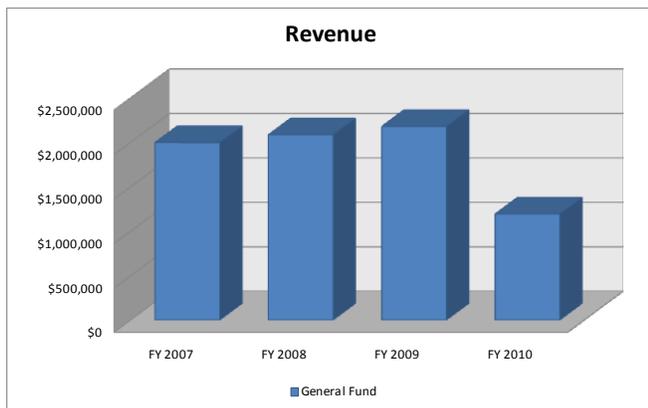
#### Core Functions/Idaho Code:

In *Alabama v. Powell*, 287 U.S. 45, 68-69 (1932), the United States Supreme Court held that basic fairness required that indigent defendants facing capital charges had the constitutional right to assistance of counsel. In *Gideon v. Wainwright*, 372 U.S. 335 (1963) the Supreme Court ruled that states have a constitutional obligation under the Sixth and Fourteenth Amendments to the U.S. Constitution to provide counsel to non-capital indigent defendants. The Idaho Appellate Courts have extended the right to counsel to direct appeals. *Banuelos v. State*, 127 Idaho 860, 908 P.2d 162 (Idaho App.,1995)

As a result of these cases, and recognizing the cost of specialized appellate counsel, the legislature created the SAPD by enacting Idaho Code §19-867. The additional duties of the office are enumerated in I.C. §19-868 through §19-872.

#### Revenue and Expenditures:

Revenue	FY 2007	FY 2008	FY 2009	FY 2010
General Fund	\$1,996,600.00	\$2,084,200.00	\$2,178,000.00	\$1,193,000.00
<b>Total</b>	<b>\$1,996,600.00</b>	<b>\$2,084,200.00</b>	<b>\$2,178,000.00</b>	<b>\$1,913,100.00</b>
Expenditure	FY 2007	FY 2008	FY 2009	FY 2010
Personnel Costs	\$1,448,300.00	\$1,529,073.00	\$1,479,132.00	\$1,438,000.00
Operating Expenditures	\$548,300.00	\$543,577.00	\$540,577.00	\$478,300.00
Capital Outlay	\$0.	\$0.	\$0.	\$0.
Trustee/Benefit Payments	\$0.	\$0.	\$0.	\$0.
<b>Total</b>	<b>\$1,996,600.00</b>	<b>\$2,072,650.00</b>	<b>\$2,019,709.00</b>	<b>\$1,913,100.00</b>



### Profile of Cases Managed and/or Key Services Provided:

Cases Managed and/or Key Services Provided	FY 2007	FY 2008	FY 2009	FY 2010
Capital	5	6	4	4
Non-Capital	584	601	619	

### Performance Highlights:

The SAPD continues to provide consistent, high quality work and create relevant and new caselaw in cases such as State v. Pina, State v. Perry and \_\_\_\_.

### Part II – Performance Measures:

Performance Measure	2007	2008	2009	2010	Benchmark
1. Comply with National Standards (22 work units per attorney)	AU attorney average:  48.53 points	AU attorney Average: 58.1 points  The achievement of this goal is beyond the ability of the SAPD because the SAPD cannot presently control how many cases it receives from the district courts. Because there is no mechanism by which the SAPD can decline cases, it has no ability to control the caseload of each attorney. As such, sub- performance measures will be created to achieve this.	AU Attorney Average: 50.93 points	AU Attorney Average: 50.25	100% Compliance by FY08
1a. Create legislation that would allow the SAPD to withdraw from cases		New Measure Have bill drafted and considered for 2009 Legislative session.	Instead of legislation, I talked with the constituent groups about other options to achieve this goal. Will renew the legislative idea with the relevant constituent groups in 2010.	Discussed the option with the Idaho Supreme Court and relevant legislators. It is not clear whether this would be a procedural decision (and therefore within the scope of authority of the Supreme Court) or a legislative decision (and, therefore, within the purview of the	Have all discussions with relevant constituent groups by December, 2009, including IPAA, Senate Judiciary and Rules, House Judiciary and Rules, Supreme Court and the Governor's Office.  Renew above discussions

				legislature.) Regardless, both groups wanted to think about the practical implications. Will renew discussions in FY11.	with the above-identified stakeholders during 2011.
1b. Work with the Supreme Court to create mechanism by which cases can be suspended for designated periods of time		<p>New Measure</p> <p>Meet with Chief Justice, file motions by November, 2008 to allow cases to be suspended for 60 – 120 days.</p>	<p>The Motion was drafted and ready for filing in November 2008. However, following a meeting with the Chief Justice, it was determined that the Court would continue to allow extensions, mooted the need for the motion.</p> <p>100% achieved.</p>	<p>Filed motion to suspend a group of approximately 30 cases in April, 2010 for 90 days. The motion was granted.</p> <p>Need to seek a more stable and permanent solution to caseload issues.</p>	100% by FY11
1c. Work with the Supreme Court and the Idaho State Bar to create a mechanism by which, once statutory authority is granted, the SAPD can withdraw from cases.		<p>New Measure</p>	<p>In 2009, the Criminal Justice Commission created a subcommittee to address deficiencies in the public defense system. This group will be able to advance goals such as this. With this subcommittee, we are still on target for completing our goal.</p>	<p>This is an on-going discussion with the Idaho Supreme Court and the Office of the Governor. The biggest hurdle is determining who would provide the service if the SAPD is permitted to withdraw and what entity would pay for that service. The Subcommittee has not addressed this issue, focusing more on trial level concerns, thus, the SAPD will</p>	<p>Negotiations 100% complete by FY11</p> <p>Mechanism in place for designated number of cases for FY12</p>

				continue to negotiate this change.	
1d. Implement different method for assigning "staple" briefs to determine if that allows for a more efficient managing of the caseload.			New Measure: Create new system for assigning cases that would assign "staple" cases earlier in the process, allowing attorneys to better manage the briefing dates.	On 4/1/10, the SAPD no longer filed Amended Notices of Appeal, but instead, filed Objections to the Record and assigned the Staple brief cases at that time. This worked until July 1, 2010, when caseload became too great to handle. Currently, trying to catch up on cases so that assignment can be during the objection to the record stage.	100% complete by FY2011.  Develop the new system in FY10. Assign the cases and measure whether the cases are getting submitted sooner, with fewer extensions.
2. Study the indigent defense delivery system, including felonies and misdemeanors, adult and juvenile cases.	This goal was met with the study beginning in April, 2007.	The study has covered six of the seven judicial districts with a preliminary report due in December, 2008.	100% achieved. The study has been completed and submitted to the CJC, to be finalized by December 2009.		100% complete by FY2010
2a. Implement recommendation from the report through the ICJC subcommittee			New Measure: The subcommittee reviewed the NLADA report.	Identify the performance guidelines / standards, job descriptions, model to be adopted, funding stream.	Some legislative recommendations by for 2011 session. Model recommendation by 2012 session.

In order to achieve 100% compliance with national standards on staff attorney workload, the SAPD will be required to request additional FTP's for the Appellate Unit.

### **For More Information Contact**

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