

### 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 felony in district court. The SAPD also provides appellate representation to petitioners in state felony post-conviction and habeas corpus cases. In capital cases, where a defendant has been sentenced to death, the SAPD provides district court representation for post-conviction cases, as well as representation on appeal from both the denial of post-conviction relief and the direct appeal from the judgment of conviction.

The State Appellate Public Defender is Sara B. Thomas, who was initially appointed by Governor C.L. “Butch” Otter in January, 2012, and reappointed in August of 2014. As of July 1, 2014, the office has 23 full-time employees, including the agency head. The Capital Litigation Unit includes three attorneys, a mitigation specialist, an investigator, and one assistant. The Appellate Unit has a Chief of the Appellate Unit, eleven staff attorneys, two legal assistants, and one paralegal. There is also an Office Administrator. The office is located at 3050 Lake Harbor Lane, Suite 100, 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:

The right of a defendant to representation by an attorney in a felony criminal case is a core value in Idaho, dating back to the days of the Idaho Territory. The Revised Statutes of Idaho, dated 1884, stated that if a defendant “desires and is unable to employ counsel, the court must assign counsel to defend him.” Years later, the United States Supreme Court recognized, in *Alabama v. Powell*, 287 U.S. 45, 68-69 (1932), that the basic fairness required by the United States Constitution meant that indigent defendants facing capital charges had the right to assistance of counsel. More than thirty years later, 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 trial counsel to non-capital indigent defendants facing a loss of liberty. Finally, in *Douglas v. California*, 372 U.S. 353 (1963), the Court found that an indigent defendant is entitled to the assistance of counsel in a first appeal granted as a matter of right from a criminal conviction.

Even absent the constitutional requirements for counsel, Idaho continues to adhere to the core value of ensuring that criminal defendants facing a loss of liberty are represented by counsel “to the same extent as a person having his own counsel is so entitled.” I.C. § 19-852. Similarly, in accordance with Idaho Criminal Rule 44.2, immediately after the imposition of the death penalty, the court must appoint at least one lawyer to represent the defendant for purposes of seeking post-conviction relief pursuant to Idaho Code §19-2719.

The legislature recognized that the cost of providing appellate representation was an extraordinary burden on the counties of Idaho. “In order to reduce this burden, provide competent counsel but avoid paying high hourly rates to independent counsel to represent indigent defendants in appellate proceedings,” the legislature created the SAPD. See I.C. § 19-868. The duties of the office are enumerated in I.C. §19-868 through §19-872.

#### Appropriation and Expenditures:

Appropriation	FY 2012	FY 2013	FY2014	FY2015
General Fund	\$1,995,100.00	\$2,057,800.00	\$2,103,600.00	\$2,238,600.00
<b>Total</b>	<b>\$1,995,100.00</b>	<b>\$2,057,800.00</b>	<b>\$2,103,600.00</b>	<b>\$2,238,600.00</b>
Expenditure	FY 2012	FY 2013		
Personnel Costs	\$1,514,300.00	\$1,573,000.00	\$1,623,400.00	
Operating Expenditures	\$479,400.00	\$474,000.00	\$458,900.00	
Capital Outlay	\$0	10,800.00	\$0	
Trustee/Benefit Payments	\$0	\$0	\$0	
<b>Total</b>	<b>\$1,993,700.00</b>	<b>\$2,057,800.00</b>	<b>\$2,082,300.00</b>	

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

Cases Managed and/or Key Services Provided	FY 2011	FY 2012	FY 2013	FY2014
Capital Cases Managed	5	6	6	6
Non-Capital Cases Opened	602	664	675	641

## Performance Highlights:

The SAPD continues to provide consistent, high-quality work, though not in as timely a fashion as it should. As a result of the high quality of service, not only are the individual clients' rights protected, but the rights of all of Idaho's citizens. For example, in *State v. Easley*, 156 Idaho 214 (2014), the Idaho Supreme Court recognized a post-judgment prosecutorial veto on a defendant's entry into a specialty court violates Idaho's Separation of Powers doctrine, and that it is the courts that have sentencing authority, which cannot be contracted away. In *Hall v. State*, 155 Idaho 610 (2013), the Idaho Supreme Court recognized that post-conviction petitioners in capital cases have a right to conflict-free counsel.

## Part II – Performance Measures:

<b>Performance Measure</b>	<b>The attorneys of the State Appellate Public Defender's office will have no reprimands from the Office of Bar counsel or the Idaho Supreme Court. (New Performance Measure)</b>	
Benchmark 1	100% Compliance	
	FY2014	No attorney from the Office of the State Appellate Public Defender was reprimanded by the Office of Bar Counsel or the Idaho Supreme Court during FY2014.
<b>Performance Measure</b>	<b>There will be no affirmed findings of ineffective assistance of counsel against an attorney of the Office of the State Appellate Public Defender. (New Performance Measure)</b>	
Benchmark 1	100% Compliance	
	FY2014	There were no affirmed findings of ineffective assistance of counsel against an attorney of the Office of the State Appellate Public Defender in FY2014.
<b>Performance Measure</b>	<b>Each attorney will have sufficient continuing legal education credits for renewal of their license to practice law. (New Performance Measure)</b>	
Benchmark 1	Each fiscal year, each attorney of the Office of the State Appellate Public Defender will attend training relevant to their position.	
	FY2014	<p>During FY2014, each attorney of the SAPD attended at least one continuing legal education program relevant to their position. This was made possible, in part, through the generosity of the Federal Defenders of Idaho, who allowed the attorneys from the SAPD to attend their two-day annual training on full-scholarship. In addition, the Idaho Association of Criminal Defense Lawyers provided a scholarship for an attorney of the SAPD to attend their two and one-half day training. Finally, three attorneys from the SAPD presented continuing legal education lectures at various programs such that they received continuing legal education credit free of charge.</p> <p>It must be noted that attorneys in the SAPD's capital unit are having difficulty obtaining sufficient credits to maintain their eligibility for the Idaho Supreme Court's capital-qualified attorney roster. All attorneys handling capital cases are required to have 12 credits of continuing legal education relevant specifically to capital representation. However, there is little, and</p>

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		some years no, such programs offered in Idaho. Neither does the SAPD have sufficient operating funds to pay for travel to out-of-state programs. During FY2014, one capital attorney at the SAPD personally paid for his travel and registration expenses to attend a capital representation program out of state.
Benchmark 2		Each attorney required to report their attendance of continuing legal education during the fiscal year will have sufficient credits to meet licensing requirements.
	FY2014	During FY2014, two attorneys from the Office of the State Appellate Public Defender were required to report their attendance at continuing legal education programs. Both were able to report that they had attended sufficient CLEs to maintain their license to practice law.
<b>Performance Measure</b>		<b>Workloads will be controlled, in a financially responsible manner, to ensure that sufficient time is available for both legal services and client communication.</b>
Benchmark 1 (New for FY2014)		Implement new appellate unit attorney position approved for FY14 and hire counsel.
	FY2014	An additional attorney was hired in July of 2014 and began work in August.
Benchmark 2 (New for FY2014)		Gather data to identify the number of contract cases for FY12, FY13, FY14 and determine whether the SAPD is sufficiently staffed.
		The number of contract cases by fiscal year were: FY12 – 21, FY13 – 48, FY14 – 0. At this time the SAPD is able to handle its workload without additional staff.
Benchmark 3 (New For FY2014)		All cases assigned within 21 days of receipt of the transcript and record such that objections to the record can be filed in the district court.
	FY2014	In FY14, two senior attorneys were assigned the task of assigning cases. During that year, all cases at the SAPD were assigned within 21 days of receipt of the transcript and record such that objections to the record could be filed. In addition, amended notices of appeal were filed to reduce the number of objections to the record necessary.
Benchmark 4 (New for 2014)		Reduce the number of initial appellant's brief filed on any more than two extensions in FY14 by 50% from FY13 levels. In FY15, file all initial appellant's briefs on no more than two extensions.
	FY2014	In 2013, the SAPD filed 520 initial appellant's briefs, with 166 of them filed on greater than two extensions. In 2014, the SAPD also filed 520 initial appellant's briefs, with 205 being filed on greater than two extensions. The increase was due, in part, to a change in procedure at the Idaho Supreme Court. Previously, the Court considered motions to augment or motions to suspend a case while proceedings concluded in the district court separately from motions for an extension of time. However, the Court is now treating all motions which delay the appellate proceedings as extensions. Thus, a case which previously would have been determined to be filed on a second extension may now be determined to be filed on a greater extension. The SAPD will continue to monitor the number of cases filed on greater than a second extension and the reasons for that to determine whether additional staff is necessary.

Benchmark 5	Reduce the time it takes to have an initial appellant's brief filed by reducing the attorneys' caseloads to an appropriate level of no more than 33 points per year.	
	2011	<p>AU attorney Average: 47.20 units; 602 new cases opened</p> <p>The achievement of this goal is currently 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.</p>
	2012	AU Attorney Average: 50.00 units; 664 new cases opened
	2013	<p>AU Attorney Average: 64.77 units; 675 new cases opened</p> <p>The high workload during FY2013 was based, in part, upon an on-going legal question of the scope of review in cases that would normally be only sentence reviews. A sentence review would normally count as .5 work units. However, because of the on-going question of the scope of review, many of these cases became substantive briefs, counted as 1.0 work units.</p>
	2014	<p>AU Attorney Average: 56.29 units; 641 new cases opened</p> <p>Although the average workload declined in FY14, it remained high, in part because the SAPD did not send cases out on a contract basis. However, Deputy SAPDs are trained on the ethical obligations to provide competent representation and the duty to report to a supervisor if their workload is excessive such that they cannot meet that obligation. During FY14, some attorneys, at times, declined to take new cases in an effort to control their workload. Cases were also sometimes reassigned to ensure adequate time to complete necessary case work. Through this process the workload was managed such that no attorney reported having to maintain a caseload that would prevent competent representation.</p>
<b>Performance Measure</b>	<b>The SAPD will work with the Idaho Supreme Court to implement an efficient and cost-saving case management system. (New Performance Measure)</b>	
	2014	The SAPD participated in the Idaho Supreme Court's Court Technology Committee to identify and prepare to implement a new court case management system. The add-on software (Attorney Manager) will not be operational until FY2016.
<b>Performance Measure</b>	<b>Collaborate with other entities to improve Idaho's criminal justice system.</b>	
Benchmark 1	Participation with the Idaho Criminal Justice Commission.	
	2014	Sara Thomas, the State Appellate Public Defender, was Chair of the Commission during FY2014. She also actively participated in the ICJC's Research Alliance and Misdemeanor Reclassification subcommittees. Additionally, Deputy SAPDs provided the Commission with presentations on recent appellate opinions, collateral consequences, and expungement statutes.

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	<b>2013</b>	In June of 2013, Governor Otter appointed Sara Thomas, the State Appellate Public Defender, as the Chair of the Criminal Justice Commission.
<b>Benchmark 2 (New for 2014)</b>		Partner with the Idaho Association of Criminal Defense Lawyers and the Idaho State Bar Association to offer educational opportunities to improve the practice of public defense, thereby streamlining the time and cost necessary to appeals.
	<b>2014</b>	During FY14 members of the SAPD's office presented programs during the Idaho Association of Criminal Defense Lawyer's regional seminars, doing presentations in Boise and Coeur d'Alene. In addition, Deputy SAPDs worked with members of the IACDL to plan and present a three day trial school in Sun Valley.
<b>Benchmark 3 (New for 2014)</b>		Participation in legal and court committees which provide policy determination and implementation which affects indigent representation.
	<b>2014</b>	During FY14 the SAPD participated in the following committees: Idaho Criminal Justice Commission, Idaho Supreme Court Technology Committee, Idaho Supreme Court Criminal Rules Committee, Idaho Supreme Court Appellate Rules Committee. In addition, Governor Otter appointed the SAPD to his Zero Tolerance task force, which is addressing Idaho's approach to eliminating sexual assaults in Idaho's facilities for incarceration.
<b>Benchmark 4 (New for 2014)</b>		Encourage and support legislative efforts to review and reform Idaho's indigent defense delivery system to ensure that any changes result in more effective and efficient delivery of services.
	<b>2014</b>	During FY14, the SAPD gave presentations to the Idaho legislature's Public Defense Interim Committee, as well as provided relevant research and information to committee members.

## For More Information Contact

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