

## Part 1 – Agency Profile

### Agency Overview:

The Office of the Idaho State Appellate Public Defender was created in 1998 in conjunction with the Capital Crimes Defense Fund. 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 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 appointed by Governor C.L. “Butch” Otter in January, 2012. The office has 22 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, ten staff attorneys, two legal assistants, and one paralegal. There is also an Office Administrator. The office is located at 3050 Lake Harbor Lane, Ste. 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, that dates back to the days of the Idaho Territory. The Revised Statutes of Idaho, dated 1887, stated that if a defendant “desires and is unable to employ counsel, the court must assign counsel to defend him.”

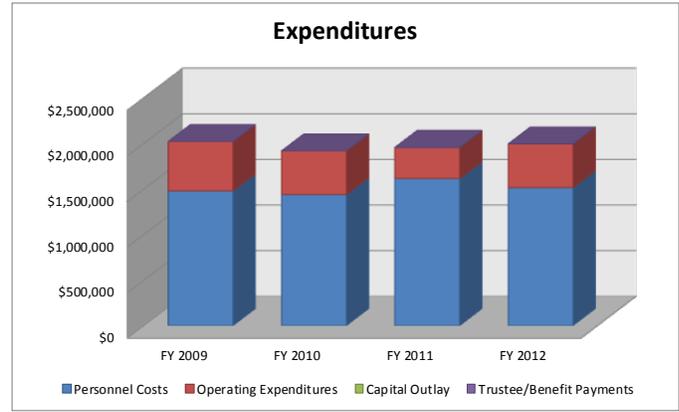
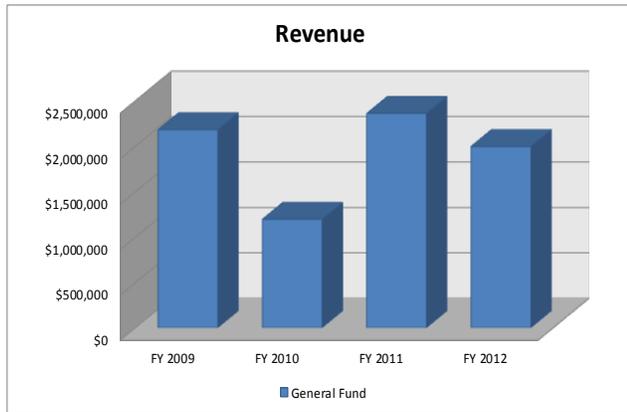
Years later, the United States Supreme Court recognized, in *Alabama v. Powell*, 287 U.S. 45, 68-69 (1932), that the basic fairness required by the United States Constitution meant that indigent defendants facing capital charges had the right to assistance of counsel. More than thirty years later, in *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 section 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.

### Revenue and Expenditures:

Revenue	FY 2010	FY 2011	FY2012	FY 2013
General Fund	\$1,193,000.00	\$2,357,800.00	\$1,995,100.00	\$2,053,300.00
<b>Total</b>	<b>\$1,913,100.00</b>	<b>\$2,357,800.00</b>	<b>\$1,995,100.00</b>	<b>\$2,053,300.00</b>
Expenditure	FY 2010	FY 2011	FY2012	FY 2013
Personnel Costs	\$1,438,000.00	\$1,613,700.00	\$1,514,300.00	
Operating Expenditures	\$478,300.00	\$341,100.00	\$479,400.00	
Capital Outlay	\$0.	\$0	\$0	
Trustee/Benefit Payments	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$1,913,100.00</b>	<b>\$1,954,800.00</b>	<b>\$1,993,700.00</b>	



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

Cases Managed and/or Key Services Provided	FY 2009	FY 2010	FY 2011	FY 2012
Capital	4	4	5	6
Non-Capital	619	571	602	664

### 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. Koivu*, 152 Idaho 511 (2012), the SAPD's office successfully argued that Article I, §17 of the Idaho Constitution provides more protection than the 4<sup>th</sup> Amendment. This ensures Idahoan's whose constitutional rights are violated by the government have a remedy for that violation that is consistent with Idaho's unique and rich history. In *State v. Hansen*, 152 Idaho 314 (2012), the SAPD's office successfully argued that a person may waive their 5<sup>th</sup> Amendment right to silence and provide a sentencing court with a psychological evaluation without also being forced to waive their 5<sup>th</sup> Amendment right to silence and be interrogated by an employee of the Department of Correction for a separate Presentence Investigation Report.

**Part II – Performance Measures:**

Performance Measure	<b>Comply with National Workload Standards including 22 work units per attorney, per year</b> (For an explanation of the measurement of workload units see Explanatory Notes below)	
Benchmark 1	100% Compliance	
	2008	AU attorney Average: 58.1 units; 509 new cases opened 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.
	2009	AU Attorney Average: 50.93 units; 625 new cases opened
	2010	AU Attorney Average: 50.25 units; 571 new cases opened
	2011	AU Attorney Average: 47.20 units; 602 new cases opened
	2012	AU Attorney Average: 50.0 units; 664 new cases opened
Benchmark 1 (a)	Create legislation that would allow the SAPD to withdraw from cases	
	2008	New Measure: Have bill drafted and considered for 2009 Legislative session
	2009	Instead of legislation, the SAPD talked with the constituent groups about other options to achieve this goal. Will renew the legislative idea with the relevant constituent groups in 2010.
	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 legislature.) Regardless, both groups wanted to think about the practical implications. Will renew discussions in FY11.
	2011	On-going discussions with the Supreme Court about caseload. Have not pursued the legislative idea because of difficulties in practical application. Have looked at other methods for managing caseload. Caseload is decreasing, although at a very slow rate. The addition of another attorney would help significantly.
	2012	Because the SAPD cannot withdraw from cases, when there is not a Deputy SAPD available to handle a case, outside contract counsel has been hired to handle the cases. Contract counsel is paid \$125.00 and hour, while the average cost of an in-house deputy attorney is \$42.72 per hour. Although this has proven effective at controlling the workload of the deputy SAPDs, it is not cost-effective. Thus, this is not a viable long-term solution. Instead, the SAPD will request an additional Appellate Unit attorney to reduce the cost of handling the workload.

<b>Benchmark 1 (b)</b>	Work with the Supreme Court to create mechanism by which cases can be suspended for designated periods of time.	
	2008	New Measure: Meet with Chief Justice, file motions by November, 2008 to allow cases to be suspended for 60 – 120 days.
	2009	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, mooting the need for the motion. 100% achieved.
	2010	Filed motion to suspend a group of approximately 30 cases in April, 2010 for 90 days. The motion was granted. Need to seek a more stable and permanent solution to caseload issues.
	2011	The Supreme Court is still willing to work with the SAPD on this issue. The suspension of cases was not the best solution, as all the cases came off suspension at the same time, essentially creating a wave of an additional 90 cases that had to be managed. On-going discussions about caseload.
	2012	Having tried this approach to managing the workload, and having found that it created serious problems and did not resolve the on-going excessive workloads, the SAPD has rejected this as a possible solution and will not attempt this again.
<b>Benchmark 1 (c)</b>	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.	
	2009	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
	2010	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 continue to negotiate this change.
	2011	On-going discussions. The same practical applications arise and this does not appear to be a viable option at this time.
	2012	Because this was not a viable option, it has been abandoned. Instead, the SAPD is seeking an additional Appellate Unit attorney.
<b>Benchmark 1 (d)</b>	Implement different method for assigning “staple” briefs to determine if that allows for a more efficient managing of the caseload.	

	2009	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.
	2010	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.
	2011	Have resolved this issue. All cases are now assigned during the objection period. This has given the attorneys greater flexibility in managing their caseload and we can set new goals to get cases assigned within a set number of days after being opened.
	2012	The SAPD was short-staffed for half of 2012. Two attorneys, including the former SAPD, left the SAPD's office. As a result, the assignment of cases was not always completed during the objection to the record period. However, as the SAPD becomes, once again, fully staffed, cases should again be assigned during the objection to the record period.
<b>Performance Measure</b>	<b>Study the indigent defense delivery system, including felonies and misdemeanors, adult and juvenile cases and use the information gathered to improve the system.</b>	
<b>Benchmark 1</b>	Have a study of Idaho's Indigent Defense Delivery System completed.	
	2008	Working with the Governor's Criminal Justice Commission, the SAPD identified a group to conduct the study, The National Legal Aid and Defender's Association. The study was fully funded by a grant from the Open Society Institute. The CJC selected seven counties to be studied. The study has covered six of the seven judicial districts with a preliminary report due in December, 2008.
	2009	The study has been completed and submitted to the CJC, to be finalized by December 2009.
	2010	The NLADA's final report was released in January of 2010. The Criminal Justice Commission has formed a subcommittee to review the delivery of indigent defense in Idaho and to make recommendations to the CJC of any needed legislation or changes. This Benchmark is now 100% completed.
<b>Benchmark 2</b>	Report recommended changes to the CJC through the subcommittee and seek the CJC's support of any needed legislation	
	2009	New Measure: The subcommittee reviewed the NLADA report.
	2010	Identify the performance guidelines / standards, job descriptions, model to be adopted, funding stream

2011	The recommendations of the ICJC subcommittee may have some legislation for the 2012 session. Any changes to the model of delivery will be discussed during calendar year 2012 and forwarded to the ICJC for its consideration and legislative recommendations.
2012	The subcommittee has approved proposed legislation and reported that legislation to the CJC. The CJC has asked the subcommittee to review five issues and report back at the September 2012 meeting. At that same meeting, the CJC will vote on whether to recommend the proposed legislation to the Governor.

### Explanatory Note:

The State Appellate Public Defender has adopted a workload unit measurement to assess the workloads of the Deputy SAPDs. The standards adopted are a slightly modified version of the standards adopted by the National Legal Aid and Defender’s Association. This workload assessment system assesses workload instead of caseload in order to better account for the differences among cases. Thus, a case in which a person has entered a guilty plea and only challenges the length of their sentence is worth an initial .5 unit. In contrast a case in which there is a trial will initially be assessed a point for each portion of 500 pages of record, transcript, or exhibit. In addition, if a reply brief or a petition for review brief are filed in a case, an additional .25 work unit is assessed. Although still an imperfect measurement, this system provides for a more accurate assessment of the amount of work each attorney is performing than does simply counting the number of cases that are processed in a given year.

#### For More Information Contact

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