

Part I – 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 a post conviction petition 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. As of July 1, 2013, the office has 24 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, twelve 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, that dates 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.

Revenue and Expenditures:

Revenue	FY 2011	FY 2012	FY 2013
General Fund	\$2,357,800.00	\$1,995,100.00	\$2,057,800.00
Total	\$2,357,800.00	\$1,995,100.00	\$2,057,800.00
Expenditure	FY 2011	FY 2012	FY 2013
Personnel Costs	\$1,613,700.00	\$1,514,300.00	\$1,573,000.00
Operating Expenditures	\$341,100.00	\$479,400.00	\$474,000.00
Capital Outlay	\$0	\$0	\$10,800.00
Trustee/Benefit Payments	\$0	\$0	\$0
Total	\$1,954,800.00	\$1,993,700.00	\$2,057,800.00

Profile of Cases Managed and/or Key Services Provided:

Cases Managed and/or Key Services Provided	FY 2010	FY 2011	FY 2012	FY 2013
Capital	4	5	6	6
Non-Capital	571	602	664	675

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. Joy*, the office successfully argued that only evidence relevant to the charged offense should be admitted during a criminal trial, and that evidence of a defendant's prior conduct is not relevant simply because it is similar to the alleged crime. In *State v. Almaraz*, the office successfully argued that the extensive research identifying the causes of eyewitness misidentification is relevant to both a court in determining the admissibility of an identification and to a jury when considering the import of such identifications.

Part II – Performance Measures

Performance Measure	Comply with National Workload Standards including 22 work units per attorney, per year	
Benchmark 1	100% Compliance	
	2008	AU attorney Average: 58.1 units; 509 new cases opened 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.
	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
	2013	AU Attorney Average: 64.77 units; 675 new cases opened 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. The Idaho Supreme Court has heard oral argument on the legal question and is expected to resolve the issue during FY2014, which should lead to a reduction in workload.

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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 an 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.
	2013	During FY2013, due to the continuing high workload, the SAPD successfully sought an additional FTE to add another attorney to the Appellate Unit. The cost of this additional FTE was absorbed by the SAPD by moving operating funds which were previously used to pay contract attorneys into personnel. The additional FTE is expected to reduce the average workload of the Appellate Unit Attorneys, resulting in a reduction in cases which are sent to outside counsel.
Benchmark 1 (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, mooted 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.

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	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.
Benchmark 1 (c)	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.
Benchmark 1 (d)	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.

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	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.
	2013	During FY2013 the SAPD was once again short-staffed as another attorney resigned to take a new position. However, by changing the case assignment method the SAPD continued to assign most cases during the objection to the record period. Due to an on-going issue concerning the scope of review in probation revocation cases, hearings were held in a number of cases at the district court level to determine the number and types of transcripts the SAPD would receive in those cases. Additionally, motions to augment the record on appeal had to be filed with the Idaho Supreme Court, and many of these cases shifted from sentencing review to substantive cases with equal protection and due process issues. Each of these things slowed the process of these cases. In August of 2013, the Idaho Supreme Court heard argument on the issue and clarification is likely forthcoming in the resulting opinion.
Benchmark 1(e)	Seek sufficient additional FTEs to reduce the individual attorney caseloads.	
	2013	During FY2013, through the budgeting process the SAPD sought an additional FTE for an attorney in the Appellate Unit. This request was supported Governor Otter and approved by JFAC. The funding for this new position was offset by the reduced need for services from outside contract counsel, resulting in no increase in the SAPD's actual budget. Rather, funds were simply moved from operating expenses to personnel. The attorney was hired at the beginning of FY2014 and has begun taking on a caseload.
Performance Measure	Study the indigent defense delivery system, including felonies and misdemeanors, adult and juvenile cases and use the information gathered to improve the system.	
Benchmark 1	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.

Benchmark 2	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 Idaho Criminal Justice Commission. 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.
	2013	<p>In late 2012, the Idaho Criminal Justice Commission recommended three pieces of legislation to the Governor. The first, which became HB147, clarified the scope of the right to counsel in Idaho, adopted a standard definition of indigency, and codified protections against the use of information given in order to obtain appointed counsel. The second, which became HB148, revised the provisions relating to the appointment of counsel and Guardians ad Litem in Child Protection Actions to ensure that attorneys did not have a conflict of interest by acting as both in a single proceeding. Finally, the third, which became HB149, ensured that the right to counsel in juvenile proceedings was coextensive with the right to counsel in adult proceedings and defined those situations where juveniles would not be allowed to waive their right to counsel. During the 2012 legislative session, all three of these bills passed and became law as of July 1, 2013.</p> <p>In addition, House Concurrent Resolution 026 was passed. HCR 026 created a legislative interim committee to review the provision of trial-level indigent defense services in Idaho, and to recommend improvements and reforms to that system. Upon the appointment of that committee, the SAPD provided its members with a binder which included background information on indigent defense services in Idaho, national standards for provision of the services, as well as articles on the possible efficiencies that could be found in providing services. The SAPD also coordinated efforts to bring national experts on the provision of indigent services to meet with the committee, at no cost to the state.</p>

Performance Measure	Collaborate with other participants in Idaho's criminal justice system to address important criminal justice issues and challenges by developing and proposing balanced solutions, which are cost-effective and based upon best practices to achieve a safer Idaho.	
Benchmark 1	Active participation in the Idaho Criminal Justice Commission.	
	2013	<p>The SAPD chaired an ICJC subcommittee tasked with reviewing whether Idaho had a Human Trafficking problem, and if so whether any statutory changes were needed to address the issue. The subcommittee reported that Idaho was suffering from instances of human trafficking. The ICJC adopted the subcommittee's recommendation that legislation be brought to ensure that exchanging anything of value for sexual contact with a minor is a felony in Idaho, and that anyone convicted of inducing a minor into prostitution or procuring a prostitute forfeits the profits of that crime. The SAPD presented the legislation, which became Senate Bills 1060 and 1123, and shepherded it through the legislative process. Both bills passed and became law as of July 1, 2013.</p> <p>In addition, in June of 2013, Governor Otter appointed Sara Thomas, the SAPD, as the Chairman of the Idaho Criminal Justice Commission.</p>

For More Information Contact

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