

## ***Part I – Agency Profile***

### **Agency Overview**

The Office of the State Appellate Public Defender (SAPD) provides appellate representation to indigent persons who have been convicted of a felony in Idaho's district courts. 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 in both the direct appeal from the judgment of conviction and the appeal from the denial of the post-conviction petition.

On November 22, 2016, Governor Otter appointed Mr. Fredericksen to the position of State Appellate Public Defender. Mr. Fredericksen was reappointed to the position of State Appellate Public Defender on August 1, 2018. As of July 1, 2019, 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 administrative assistant. The Appellate Unit has twelve staff attorneys and three legal assistants. There is also an office administrator and receptionist. The office is located at 322 East Front Street, Suite 570, Boise, Idaho.

The SAPD must provide effective assistance of counsel to its clients and timely process appeals, as mandated by both the United States and Idaho Constitutions, as well as by Idaho statutes and court rules. Ethically, in its casework the SAPD must serve, first and foremost, the best interests of its clients. The SAPD is also mindful of relevant constituent groups and the legislative goal of reducing the financial burden on Idaho counties previously caused by the extraordinary cost of legal representation of indigent defendants on appeal. The SAPD is additionally committed to strengthening Idaho's criminal justice system to ensure it is both efficient and effective for SAPD clients.

The SAPD's Mission: Defending zealously, advancing fairness, and advocating with integrity.

The SAPD's Vision: A better Idaho where the legal system treats each person with fairness and dignity.

### **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 SAPD are enumerated in I.C. §19-868 through §19-872.

**Revenue and Expenditures**

Revenue	FY 2016	FY 2017	FY 2018	FY 2019
General Fund	\$2,451,300	\$2,636,600	\$2,889,200	\$2,948,100
Dedicated	\$25,000	\$25,000	\$0	\$0
<b>Total</b>	<b>\$2,476,300</b>	<b>\$2,661,600</b>	<b>\$2,889,200</b>	<b>\$2,948,100</b>
Expenditures	FY 2016	FY 2017	FY 2018	FY 2019
Personnel Costs	\$1,887,600	\$2,111,500	\$2,153,663	\$2,303,900
Operating Expenditures	\$350,800	\$550,100	\$322,589	\$405,100
Capital Outlay	\$9,600	\$0	\$12,511	\$17,100
Trustee/Benefit Payments	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$2,248,000</b>	<b>\$2,661,600</b>	<b>\$2,488,763</b>	<b>\$2,726,100</b>

**Profile of Cases Managed and/or Key Services Provided**

Cases Managed and/or Key Services Provided	FY 2016	FY 2017	FY 2018	FY 2019
Capital Cases Managed	4	3	4	3
Non-Capital Cases Opened	568	537	604	600

**Red Tape Reduction Act**

Each agency shall incorporate into its strategic plan a summary of how it will implement the Red Tape Reduction Act, including any associated goals, objectives, tasks, or performance targets. This information may be included as an addendum.

	As of July 1, 2019
Number of Chapters	N/A
Number of Words	N/A
Number of Restrictions	N/A

The SAPD does not have any administrative rules.

**FY 2019 Performance Highlights**

In FY2019, the United States Supreme Court granted a Writ of Certiorari in *Garza v. State of Idaho*. This is the first time the State Appellate Public Defender has had a Petition for Writ of Certiorari granted in an appeal handled by the office. On Certiorari, the United States Supreme Court reversed the district court’s order denying Mr. Garza post-conviction relief. The United States Supreme Court’s decision in *Garza* held that a defense attorney is required to file a Notice of Appeal, if requested to do so by his client, regardless of the circumstances of the plea of guilty.

**Part II – Performance Measures**

Performance Measure		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>Goal 1</b>						
<i>Provide Competent, Constitutionally Sufficient Representation to All SAPD Clients</i>						
1. No affirmed reprimands from the Office of Bar Counsel or the Idaho Supreme Court.	actual	0	0	0	0	-----
	target	No Affirmed Reprimands	No Affirmed Reprimands	No Affirmed Reprimands	No Affirmed Reprimands	No Affirmed Reprimands
2. No affirmed findings of ineffective assistance of counsel against an SAPD attorney.	actual	0	0	0	0	-----
	target	No Affirmed Findings	No Affirmed Findings	No Affirmed Findings	No Affirmed Findings	No Affirmed Findings
3. Continuing legal education credits for renewal of licenses to practice law.	actual	100%	100%	100%	100%	-----
	target	100% License Renewal	100% License Renewal	100% License Renewal	100% License Renewal	100% License Renewal

Performance Measure		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>Goal 2</b>						
<i>Provide Services In An Efficient Manner</i>						
4. New contract cases assigned by fiscal year.	actual	2	0	0	8	-----
	target	0 Cases	0 Cases	0 Cases	0 Cases	0 Cases
5. 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.	actual	92%	100%	100%	100%	-----
	target	100%	100%	100%	100%	100%
6. In FY2018, reduce the number of initial appellant's briefs filed on more than two extensions by 50% from FY 2017 levels.	actual	617/122	455/33	491/43	521/57	-----
	target	50% Reduction of Briefs filed on >2 Ext. from previous FY	50% Reduction of Briefs filed on >2 Ext. from previous FY	25% Reduction of Briefs filed on >2 Ext. from previous FY	25% Reduction of Briefs filed on >2 Ext. from previous FY	10% Reduction of Briefs Filed on >2 Ext. from previous FY
7. Reduce the average Appellant Unit attorneys' caseloads to an appropriate level of no more than 35 units per year.	actual	52.80 units	42.00 units	53.30 units	51.81 units	-----
	target	35.00 Unit Average	35.00 Unit Average	35.00 Unit Average	35.00 Unit Average	35.00 Unit Average
<b>Goal 3</b>						
<i>Collaborate With Other Entities To Improve Idaho's Criminal Justice System</i>						
8. Clarify the jurisdiction of the SAPD to handle post-conviction and habeas cases in which relief is granted, as well as representing indigent defendants in interlocutory appeals in felony cases.	actual	100%	N/A*	N/A*	N/A*	-----
	target	Amend Idaho Code § 19-870 to clarify jurisdiction of the SAPD				Amend Idaho Code § 19-840 to expand jurisdiction of the SAPD to handle juvenile and misdemeanor appeals from the district court
9. Collaborate with other entities to improve Idaho's criminal justice system.	actual	100%	100%	100%	100%	-----
	target	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD	Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD
10. Implement the first five (5) Center for Internet Security Critical Security Controls (CIS Controls) by June 30, 2018.	actual	N/A**	N/A**	Incomplete	Incomplete	-----
	target	N/A	N/A	Compliance with Executive Order 2017-02	Compliance with Executive Order 2017-02	Compliance with Executive Order 2017-02

\* This Performance measure was completed in FY2017 and will be replaced with a new Performance Measure for FY2021.

\*\*New Performance measure for FY 2018.

**Performance Measure Explanatory Notes**

In FY2019, the SAPD was appointed to 600 criminal appeals from the district court, which is about the same number of cases as in FY2018 (604). The SAPD's numbers are consistent with the number of felony criminal appeals filed in the Idaho Supreme Court. The average deputy's workload this past year was 51 units, which marks a decrease from this past fiscal year. The decrease is largely attributed to our ability to assign a portion of the direct appeals to a capital attorney for training purposes, and the complexity of the cases we received. While 51 units still exceeds the SAPD's goal to average 35 workload units per attorney, SAPD attorneys are given a weekly opportunity to refuse new cases if they believe their current workload is too high. SAPD attorneys will routinely refuse to accept new cases until they believe they are able to meet their constitutional obligations to their individual clients.

Over the past two years, SAPD attorneys were able to file the initial Appellant's brief on appeal over 90% of the time without having to obtain more than a second extension from the Idaho Supreme Court. This is a marked decrease from FY2015 and FY2016 where SAPD attorneys obtained more than a second extension from the Court in 20% of the cases handled by the office. As to the CIS Controls, due to the nature of its work, the SAPD cannot be on the State server or behind the State's firewall and is legally required to contract with an agency independent from the State of Idaho for its IT services. The SAPD is diligently working with its IT provider to meet its cybersecurity obligations.

**For More Information Contact**

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