

## Part I – Agency Profile

### Agency Overview

The Office of the State Appellate Public Defender (SAPD), located at 322 East Front Street, Suite 570, Boise, Idaho, provides appellate representation in the Idaho Supreme Court and Idaho Court of Appeals to indigent clients in felony, misdemeanor, and juvenile cases. The SAPD also provides appellate representation to indigent clients in state post-conviction and habeas corpus cases. For individuals who have been sentenced to death, the SAPD provides district court representation in any post-conviction cases and appellate representation in any direct or post-conviction appeals.

The SAPD must provide timely, effective assistance of counsel to its clients, as mandated by both the United States and Idaho Constitutions, as well as various Idaho statutes and court rules. Ethically, SAPD attorneys must serve the best interests of their clients first and foremost. However, the SAPD remains 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 also committed to strengthening Idaho's criminal justice system to ensure it: (1) is fair to defendants and crime victims, (2) leads to accurate/reliable case outcomes, and (3) utilizes financial resources responsibly.

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.

After seven years at the helm, Director Eric D. Fredericksen left the SAPD early in FY 2024. Effective September 25, 2023, Governor Little appointed Erik R. Lehtinen as the Interim Director. Governor Little made that appointment permanent on January 7, 2024, and Mr. Lehtinen was confirmed by the Idaho Senate on February 1, 2024.

As of July 1, 2024, the SAPD had 26 FTPs, including Mr. Lehtinen. Other than Mr. Lehtinen and an office administrator, the SAPD's employees are divided between two units. The Capital Litigation Unit consists of four attorneys, a mitigation specialist, an investigator, and one administrative assistant. The Appellate Unit has thirteen staff attorneys and four legal assistants.

### 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. 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 indigent criminal defendants facing a loss of life or liberty are represented by counsel "to the same extent as a person having his own counsel is so entitled." I.C. § 19-6009(a). In capital cases, the need for counsel is particularly acute. In accordance with Idaho Criminal Rule 44.2, immediately after the imposition of a death sentence, 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 Idaho Legislature long ago 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. § 19-5902. The powers and duties of the SAPD are enumerated in I.C. §19-5905.

## Revenue and Expenditures

Revenue	FY 2021	FY 2022	FY 2023	FY 2024
General Fund	\$3,091,200	\$3,312,000	\$3,402,900	\$0
Dedicated	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$3,091,200</b>	<b>\$3,312,000</b>	<b>\$3,402,900</b>	<b>\$0</b>
Expenditures	FY 2021	FY 2022	FY 2023	FY 2024
Personnel Costs	\$2,409,400	\$2,580,600	\$2,826,900	\$2,898,901
Operating Expenditures	\$488,400	\$432,400	\$471,100	\$485,371
Capital Outlay	\$71,300	\$3,700	\$104,900	\$16,719
Trustee/Benefit Payments	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$2,969,100</b>	<b>\$3,016,700</b>	<b>\$3,402,900</b>	<b>\$3,400,991</b>

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

Cases Managed and/or Key Services Provided	FY 2021	FY 2022	FY 2023	FY 2024
Capital Cases* Managed	3	3	7	8
Non-Capital Cases Opened	435	568	718	674

\* For purposes of this measure, a “Capital Case” encompasses all legal proceedings relating to a particular conviction and death sentence for a single capital client even if those proceedings could otherwise be considered separate cases. For example, if the SAPD handles two different post-conviction cases arising out of the same death sentence for the same client, that is considered one “Capital Case” for this measure.

## FY 2024 Performance Highlights

In FY 2024, the SAPD obtained relief for its clients in twenty cases. Those included the following significant wins:

- The SAPD persuaded the United States Supreme Court to deny the State’s petition for a Writ of Certiorari in *State v. Dorff*, 171 Idaho 818 (2022), thereby leaving the decision by the Idaho Supreme Court undisturbed. In *Dorff*, the Idaho Supreme Court had held that a Fourth Amendment search occurs when a police drug-sniffing dog trespasses on the exterior of a vehicle in the process of smelling for controlled substances.
- In *State v. Pendleton*, 172 Idaho 825 (2023), the Idaho Supreme Court held that where the prosecution seeks to use a drug dog’s positive alert to establish probable cause to justify a warrantless search of the defendant’s vehicle, it may be appropriate to require the State to disclose to the defense records of the dog’s field performance, as those records may be material to the dog’s reliability as a drug-detection dog.
- In *State v. Ramos*, 172 Idaho 764 (2023), the Idaho Supreme Court reiterated and emphasized that so-called “inventory searches”—where police impound vehicles as part of their community caretaking function and inventory the contents of those vehicles to protect themselves from dangerous items and safeguard the owners’ property—are not an entitlement to rummage for evidence of a crime.
- In *State v. Parsons*, 173 Idaho 361 (2023), the Idaho Supreme Court reaffirmed that statements made by an alleged victim during a forensic examination were “testimonial.” Therefore, under the Sixth Amendment’s

Confrontation Clause, such out-of-court statements could not be admitted against the defendant at trial absent the alleged victim’s unavailability to testify and the defendant’s prior opportunity to cross-examine the alleged victim.

The SAPD was also successful in a case seeking to vindicate its own statutory authority. In *Idaho State Appellate Public Defender v. Fourth Judicial District Court*, 173 Idaho 140 (2023), the Idaho Supreme Court issued a Writ of Mandamus clarifying that it is the SAPD’s statutory duty to arrange for outside counsel for its clients when it identifies conflicts of interest, and ordering a district court to not interfere with the SAPD’s attempts to arrange for conflict counsel in a particular capital case.

Finally, the SAPD began partnering with the University of Idaho College of Law in the creation of an appellate practice clinic. Through the clinic, advanced law students work with law school faculty and SAPD attorneys on a number of SAPD cases, providing assistance to the SAPD while gaining practical legal experience. The SAPD is grateful for the University’s assistance on its cases, and proud to be involved in the training and development of Idaho’s next generation of attorneys.

**Part II – Performance Measures**

Performance Measure		FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
<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
<b>Goal 2</b>						
<i>Provide Services In An Efficient Manner</i>						
4. New contract cases assigned by fiscal year.	actual	0	0	0	11	
	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	100%	100%	100%	90%**	
	target	100%	100%	100%	100%	100%
6. Reduce the number of initial appellant’s briefs filed on more than two extensions as identified each fiscal year.	actual	103/478 (21.5%)	84/425 (19.8%)	137/462 (29.7%)	264/592 (44.6%)	
	target	No more than 10% of Initial Appellant’s Briefs Filed on > 2 Ext.	No more than 10% of Initial Appellant’s Briefs Filed on > 2 Ext.	No more than 10% of Initial Appellant’s Briefs Filed on > 2 Ext.	No more than 10% of Initial Appellant’s Briefs Filed on > 2 Ext.	No more than 10% of Initial Appellant’s Briefs Filed on > 2 Ext.

Performance Measure		FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
7. Reduce the average Appellant Unit attorneys' caseloads to an appropriate level of no more than 35 units per year.	actual	43.30 units	36.56 units	48.30 units	57.52***	
	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 or modify the jurisdiction of the SAPD to handle identified indigent defense representation needs each fiscal year.	actual	100%	100%	100%	100%	
	target	<i>Amend Idaho Code § 19-840 to expand jurisdiction of the SAPD to handle juvenile and misdemeanor appeals from the district court</i>	<i>Amend Idaho Code § 19-840 to expand jurisdiction of the SAPD to handle juvenile and misdemeanor appeals from the district court</i>	<i>Assess SAPD jurisdiction under Idaho Code § 19-5905 to determine whether the SAPD should be appointed to additional appellate cases.</i>	<i>Assess SAPD jurisdiction under Idaho Code § 19-5905 to determine whether the SAPD should be appointed to additional appellate cases.</i>	<i>Assess SAPD jurisdiction under Idaho Code § 19-5905 to determine whether the SAPD should be appointed to additional appellate cases.</i>
9. Collaborate with other entities to improve Idaho's criminal justice system.	actual	100%	100%	100%	100%	
	target	<i>Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD</i>	<i>Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD</i>	<i>Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD</i>	<i>Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD</i>	<i>Participation in the ICJC, IPDC, the Grant Council, the Technology Committee, the Appellate Rules Committee, and the NAPD</i>

\*\* Estimated

\*\*\* Workload data for FY 2024 considers only cases handled by AU attorneys who remained with the SAPD throughout the bulk of the year. It omits a handful of AU cases handled by the Director and various CLU attorneys, as well as the cases handled by an attorney who left the SAPD in the first quarter of the fiscal year.

**Performance Measure Explanatory Notes**

In FY 2023 and FY 2024, the SAPD experienced dramatic growth in its noncapital caseload. In FY 2023 the SAPD was appointed to 718 new noncapital appeals, and in FY 2024 it was appointed to 674 new noncapital appeals. Such caseloads far exceed the SAPD's historical average (approximately 600 cases per year) as well as its capacity. Compounding the challenges associated with an excessive caseload, the SAPD also experienced unprecedented hiring challenges in FY 2024, with multiple attorney positions going unfilled for close to a year. In an effort to ensure clients' needs were met, the SAPD utilized salary savings to contract eleven cases out to private attorneys. (See Performance Measure 4.) While somewhat helpful, this measure was inadequate in and of itself. Thus, the SAPD sought extensions of time from the Idaho Supreme Court, resulting in a massive increase in the number of cases in which the opening brief was filed on three extensions or greater. (See Performance Measure 6.)

The average attorney workload in FY 2024 was 57.52 units per attorney, which represents a dramatic (19.1%) increase from FY 2023 (48.30 units per attorney). Because workload data is a lagging indicator compared to caseload data (because there is typically a significant delay between the time the SAPD is appointed on a case and that case is assigned to a handling attorney), the increased workloads are reflective of the SAPD's extraordinarily

high number of case appointments in FY 2023. They also reflect the SAPD's hiring challenges, as two AU attorney positions remained vacant for most of FY 2024.

Although the AU is anticipated to be fully staffed throughout FY 2025, because the SAPD's case appointments remained extremely high in FY 2024, the SAPD anticipates that AU attorneys' workloads will not drop appreciably in FY 2025.

**For More Information Contact**

Erik R. Lehtinen  
State Appellate Public Defender  
322 East Front Street, Suite 570  
Boise, ID 83702  
Phone: (208) 334-2712  
E-mail: [erik.lehtinen@sapd.idaho.gov](mailto:erik.lehtinen@sapd.idaho.gov)