

Agency Summary And Certification

FY 2026 Request

Agency: Office of the State Appellate Public Defender

443

In accordance with 67-3502 Idaho Code, I certify the included budget properly states the receipts and expenditures of the departments (agency, office, or institution) for the fiscal years indicated.

Signature of Department Director:

ERIK LEHTINEN

Date: 08/29/2024

| | FY 2024 Total Appropriation | FY 2024 Total Expenditures | FY 2025 Original Appropriation | FY 2025 Estimated Expenditures | FY 2026 Total Request |
|---|--|---------------------------------------|---|---|----------------------------------|
| Appropriation Unit | | | | | |
| Capital and Conflict Representation | 1,570,200 | 172,500 | 302,400 | 1,601,100 | 302,400 |
| Office of the State Appellate Public Defender | 3,690,200 | 3,228,400 | 3,779,300 | 3,779,300 | 3,990,000 |
| Total | 5,260,400 | 3,400,900 | 4,081,700 | 5,380,400 | 4,292,400 |
| By Fund Source | | | | | |
| G 10000 General | 5,260,400 | 3,400,900 | 4,081,700 | 5,380,400 | 4,292,400 |
| Total | 5,260,400 | 3,400,900 | 4,081,700 | 5,380,400 | 4,292,400 |
| By Account Category | | | | | |
| Personnel Cost | 3,313,600 | 2,898,900 | 3,398,000 | 3,398,000 | 3,592,100 |
| Operating Expense | 1,934,500 | 485,300 | 683,700 | 1,982,400 | 698,200 |
| Capital Outlay | 12,300 | 16,700 | 0 | 0 | 2,100 |
| Total | 5,260,400 | 3,400,900 | 4,081,700 | 5,380,400 | 4,292,400 |
| FTP Positions | 26.00 | 26.00 | 26.00 | 26.00 | 27.00 |
| Total | 26.00 | 26.00 | 26.00 | 26.00 | 27.00 |

Division Description

Request for Fiscal Year: 2026

Agency: Office of the State Appellate Public Defender

443

Division: Office of the State Appellate Public Defender

SD1

Statutory Authority:

Pursuant to Section 19 5905(1), Idaho Code, the State Appellate Public Defender provides legal representation to indigent persons in the following areas:

- 1) Appeals from convictions or post-judgment orders in district court
- 2) Interlocutory criminal appeals from the district court
- 3) Appeals from the district court in misdemeanor cases
- 4) Appeals from the district court of orders or final judgments affecting juvenile offenders under the Juvenile Corrections Act
- 5) Appeals from the district court in post-conviction relief proceedings brought pursuant to the Uniform Post-Conviction Procedure Act
- 6) Appeals from the district court in habeas corpus proceedings; and
- 7) Post-conviction relief proceedings in the district court in capital cases.

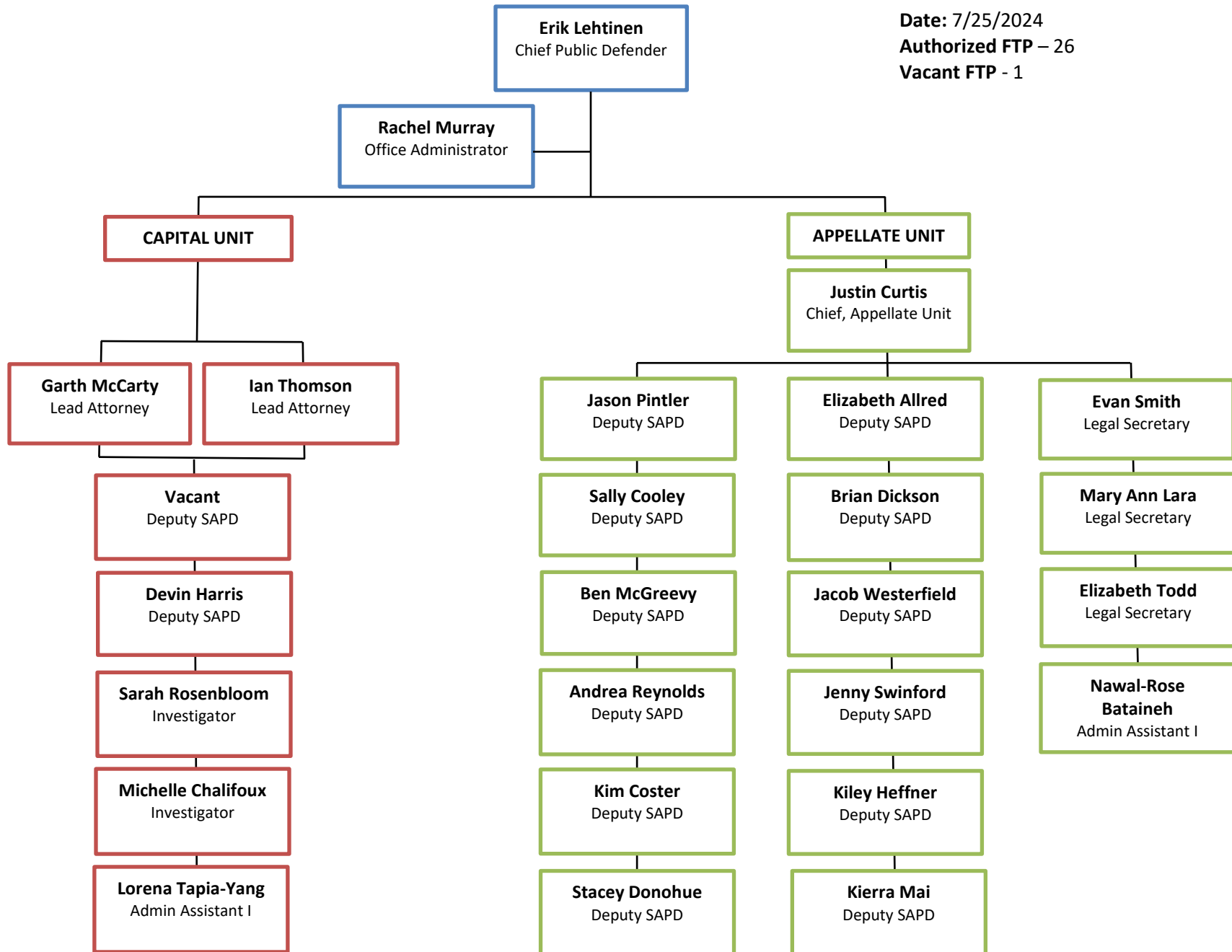
There are two budgeted programs within this division:

The Office of the State Appellate Public Defender Program accounts for the general operating, personnel, and capital outlay costs of the office.

The Capital and Conflict Representation Program accounts for (a) the cost of outside counsel for noncapital appeals in which a conflict of interest is identified; and (b) litigation costs directly related to the provision of representation in capital cases including, but not limited to, consultation with experts, travel, lodging, and per diem for expert and lay witnesses; depositions; investigation; employee travel associated with witness interviews; court reporting and transcription services; expert witness fees; outside counsel in the event of a conflict of interest; and preparation of trial exhibits. Any remaining unexpended and unencumbered amounts not used in this program revert to the General Fund.

443 – STATE APPELLATE PUBLIC DEFENDER

Date: 7/25/2024
Authorized FTP – 26
Vacant FTP - 1



| | | FTP | Personnel Costs | Operating Expense | Capital Outlay | Trustee Benefit | Total |
|---------------------------------------|---|-------|-----------------|-------------------|----------------|-----------------|-----------|
| Agency | Office of the State Appellate Public Defender | | | | | | 443 |
| Division | Office of the State Appellate Public Defender | | | | | | SD1 |
| Appropriation Unit | Office of the State Appellate Public Defender | | | | | | SGDA |
| FY 2024 Total Appropriation | | | | | | | |
| 1.00 | FY 2024 Total Appropriation | | | | | | SGDA |
| | 10000 General | 26.00 | 3,313,600 | 364,300 | 12,300 | 0 | 3,690,200 |
| | | 26.00 | 3,313,600 | 364,300 | 12,300 | 0 | 3,690,200 |
| 1.21 | Account Transfers | | | | | | SGDA |
| | 10000 General | 0.00 | 0 | (4,600) | 4,600 | 0 | 0 |
| | | 0.00 | 0 | (4,600) | 4,600 | 0 | 0 |
| 1.61 | Reverted Appropriation Balances | | | | | | SGDA |
| | 10000 General | 0.00 | (414,700) | (46,900) | (200) | 0 | (461,800) |
| | | 0.00 | (414,700) | (46,900) | (200) | 0 | (461,800) |
| FY 2024 Actual Expenditures | | | | | | | |
| 2.00 | FY 2024 Actual Expenditures | | | | | | SGDA |
| | 10000 General | 26.00 | 2,898,900 | 312,800 | 16,700 | 0 | 3,228,400 |
| | | 26.00 | 2,898,900 | 312,800 | 16,700 | 0 | 3,228,400 |
| FY 2025 Original Appropriation | | | | | | | |
| 3.00 | FY 2025 Original Appropriation | | | | | | SGDA |
| | 10000 General | 26.00 | 3,398,000 | 381,300 | 0 | 0 | 3,779,300 |
| | | 26.00 | 3,398,000 | 381,300 | 0 | 0 | 3,779,300 |
| FY 2025 Total Appropriation | | | | | | | |
| 5.00 | FY 2025 Total Appropriation | | | | | | SGDA |
| | 10000 General | 26.00 | 3,398,000 | 381,300 | 0 | 0 | 3,779,300 |
| | | 26.00 | 3,398,000 | 381,300 | 0 | 0 | 3,779,300 |
| FY 2025 Estimated Expenditures | | | | | | | |
| 7.00 | FY 2025 Estimated Expenditures | | | | | | SGDA |
| | 10000 General | 26.00 | 3,398,000 | 381,300 | 0 | 0 | 3,779,300 |
| | | 26.00 | 3,398,000 | 381,300 | 0 | 0 | 3,779,300 |
| FY 2026 Base | | | | | | | |
| 9.00 | FY 2026 Base | | | | | | SGDA |
| | 10000 General | 26.00 | 3,398,000 | 381,300 | 0 | 0 | 3,779,300 |
| | | 26.00 | 3,398,000 | 381,300 | 0 | 0 | 3,779,300 |
| Program Maintenance | | | | | | | |
| 10.11 | Change in Health Benefit Costs | | | | | | SGDA |

| | | FTP | Personnel Costs | Operating Expense | Capital Outlay | Trustee Benefit | Total |
|--|---------------------------------------|-------|-----------------|-------------------|----------------|-----------------|-----------|
| This decision unit reflects a change in the employer health benefit costs. | | | | | | | |
| 10000 | General | 0.00 | 34,000 | 0 | 0 | 0 | 34,000 |
| | | 0.00 | 34,000 | 0 | 0 | 0 | 34,000 |
| 10.23 | Contract Inflation Adjustments | | | | | | SGDA |
| 10000 | General | 0.00 | 0 | 6,300 | 0 | 0 | 6,300 |
| | | 0.00 | 0 | 6,300 | 0 | 0 | 6,300 |
| 10.61 | Salary Multiplier - Regular Employees | | | | | | SGDA |
| This decision unit reflects a 1% salary multiplier for Regular Employees. | | | | | | | |
| 10000 | General | 0.00 | 30,400 | 0 | 0 | 0 | 30,400 |
| | | 0.00 | 30,400 | 0 | 0 | 0 | 30,400 |
| FY 2026 Total Maintenance | | | | | | | |
| 11.00 | FY 2026 Total Maintenance | | | | | | SGDA |
| 10000 | General | 26.00 | 3,462,400 | 387,600 | 0 | 0 | 3,850,000 |
| | | 26.00 | 3,462,400 | 387,600 | 0 | 0 | 3,850,000 |
| Line Items | | | | | | | |
| 12.01 | 1 FTP - Deputy SAPD | | | | | | SGDA |
| 1 FTP DEPUTY SAPD | | | | | | | |
| 10000 | General | 1.00 | 129,700 | 4,500 | 0 | 0 | 134,200 |
| OT 10000 | General | 0.00 | 0 | 3,700 | 2,100 | 0 | 5,800 |
| | | 1.00 | 129,700 | 8,200 | 2,100 | 0 | 140,000 |
| FY 2026 Total | | | | | | | |
| 13.00 | FY 2026 Total | | | | | | SGDA |
| 10000 | General | 27.00 | 3,592,100 | 392,100 | 0 | 0 | 3,984,200 |
| OT 10000 | General | 0.00 | 0 | 3,700 | 2,100 | 0 | 5,800 |
| | | 27.00 | 3,592,100 | 395,800 | 2,100 | 0 | 3,990,000 |

| | | FTP | Personnel Costs | Operating Expense | Capital Outlay | Trustee Benefit | Total |
|---------------------------------------|---|------|-----------------|-------------------|----------------|-----------------|-------------|
| Agency | Office of the State Appellate Public Defender | | | | | | 443 |
| Division | Office of the State Appellate Public Defender | | | | | | SD1 |
| Appropriation Unit | Capital and Conflict Representation | | | | | | SGDB |
| FY 2024 Total Appropriation | | | | | | | |
| 1.00 | FY 2024 Total Appropriation | | | | | | SGDB |
| | 10000 General | 0.00 | 0 | 1,570,200 | 0 | 0 | 1,570,200 |
| | | 0.00 | 0 | 1,570,200 | 0 | 0 | 1,570,200 |
| 1.61 | Reverted Appropriation Balances | | | | | | SGDB |
| | 10000 General | 0.00 | 0 | (99,000) | 0 | 0 | (99,000) |
| | | 0.00 | 0 | (99,000) | 0 | 0 | (99,000) |
| 1.71 | Legislative Reappropriation | | | | | | SGDB |
| | 10000 General | 0.00 | 0 | (1,298,700) | 0 | 0 | (1,298,700) |
| | | 0.00 | 0 | (1,298,700) | 0 | 0 | (1,298,700) |
| FY 2024 Actual Expenditures | | | | | | | |
| 2.00 | FY 2024 Actual Expenditures | | | | | | SGDB |
| | 10000 General | 0.00 | 0 | 172,500 | 0 | 0 | 172,500 |
| | | 0.00 | 0 | 172,500 | 0 | 0 | 172,500 |
| FY 2025 Original Appropriation | | | | | | | |
| 3.00 | FY 2025 Original Appropriation | | | | | | SGDB |
| | 10000 General | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| | | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| Appropriation Adjustment | | | | | | | |
| 4.11 | Legislative Reappropriation | | | | | | SGDB |
| | This decision unit reflects reappropriation authority granted by SB 1425. | | | | | | |
| | OT 10000 General | 0.00 | 0 | 1,298,700 | 0 | 0 | 1,298,700 |
| | | 0.00 | 0 | 1,298,700 | 0 | 0 | 1,298,700 |
| FY 2025 Total Appropriation | | | | | | | |
| 5.00 | FY 2025 Total Appropriation | | | | | | SGDB |
| | 10000 General | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| | OT 10000 General | 0.00 | 0 | 1,298,700 | 0 | 0 | 1,298,700 |
| | | 0.00 | 0 | 1,601,100 | 0 | 0 | 1,601,100 |
| FY 2025 Estimated Expenditures | | | | | | | |
| 7.00 | FY 2025 Estimated Expenditures | | | | | | SGDB |
| | 10000 General | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| | OT 10000 General | 0.00 | 0 | 1,298,700 | 0 | 0 | 1,298,700 |
| | | 0.00 | 0 | 1,601,100 | 0 | 0 | 1,601,100 |

| | | FTP | Personnel Costs | Operating Expense | Capital Outlay | Trustee Benefit | Total |
|--|---|------|-----------------|-------------------|----------------|-----------------|-------------|
| Base Adjustments | | | | | | | |
| 8.41 | Removal of One-Time Expenditures | | | | | | SGDB |
| This decision unit removes one-time appropriation for FY 2025. | | | | | | | |
| OT 10000 | General | 0.00 | 0 | (1,298,700) | 0 | 0 | (1,298,700) |
| | | 0.00 | 0 | (1,298,700) | 0 | 0 | (1,298,700) |
| FY 2026 Base | | | | | | | |
| 9.00 | FY 2026 Base | | | | | | SGDB |
| 10000 | General | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| OT 10000 | General | 0.00 | 0 | 0 | 0 | 0 | 0 |
| | | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| FY 2026 Total Maintenance | | | | | | | |
| 11.00 | FY 2026 Total Maintenance | | | | | | SGDB |
| 10000 | General | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| OT 10000 | General | 0.00 | 0 | 0 | 0 | 0 | 0 |
| | | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| Line Items | | | | | | | |
| 12.91 | Budget Law Exemptions/Other Adjustments | | | | | | SGDB |
| Through a supplemental appropriation for FY 2023 (2023 SB 1115), the Idaho Legislature appropriated \$1,309,400 for extraordinary litigation costs in the SAPD's capital, i.e., death penalty, cases. For FY 2024 (2023 SB 1199) the Legislature reappropriated the unexpended and unencumbered balances of the appropriation. In FY 2025 (2024 SB 1425) the Legislature reappropriated the unexpended and unencumbered balances of the appropriation for capital cases (Sec. 2) and \$100,000 for outside counsel for noncapital appeals (Sec. 3). The SAPD now seeks reappropriation authority for FY 2026 for any unexpended and unencumbered funds capital cases and outside counsel for noncapital appeals. | | | | | | | |
| 10000 | General | 0.00 | 0 | 0 | 0 | 0 | 0 |
| | | 0.00 | 0 | 0 | 0 | 0 | 0 |
| FY 2026 Total | | | | | | | |
| 13.00 | FY 2026 Total | | | | | | SGDB |
| 10000 | General | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |
| OT 10000 | General | 0.00 | 0 | 0 | 0 | 0 | 0 |
| | | 0.00 | 0 | 302,400 | 0 | 0 | 302,400 |

Agency: Office of the State Appellate Public Defender

443

Decision Unit Number 12.01 Descriptive Title 1 FTP - Deputy SAPD

| | General | Dedicated | Federal | Total |
|------------------------|---------|-----------|---------|---------|
| Request Totals | | | | |
| 50 - Personnel Cost | 129,700 | 0 | 0 | 129,700 |
| 55 - Operating Expense | 8,200 | 0 | 0 | 8,200 |
| 70 - Capital Outlay | 2,100 | 0 | 0 | 2,100 |
| 80 - Trustee/Benefit | 0 | 0 | 0 | 0 |
| Totals | 140,000 | 0 | 0 | 140,000 |
| Full Time Positions | 1.00 | 0.00 | 0.00 | 1.00 |

Appropriation Unit: Office of the State Appellate Public Defender SGDA

Personnel Cost

| | | | | |
|-----------------------|---------|---|---|---------|
| 500 Employees | 95,022 | 0 | 0 | 95,022 |
| 512 Employee Benefits | 20,378 | 0 | 0 | 20,378 |
| 513 Health Benefits | 14,300 | 0 | 0 | 14,300 |
| Personnel Cost Total | 129,700 | 0 | 0 | 129,700 |

Operating Expense

| | | | | |
|-----------------------------|-------|---|---|-------|
| 570 Professional Services | 600 | 0 | 0 | 600 |
| 590 Computer Services | 2,100 | 0 | 0 | 2,100 |
| 613 Administrative Supplies | 3,700 | 0 | 0 | 3,700 |
| 664 Rental Costs | 1,800 | 0 | 0 | 1,800 |
| Operating Expense Total | 8,200 | 0 | 0 | 8,200 |

Capital Outlay

| | | | | |
|----------------------|-------|---|---|-------|
| 764 Office Equipment | 2,100 | 0 | 0 | 2,100 |
| Capital Outlay Total | 2,100 | 0 | 0 | 2,100 |

Full Time Positions

| | | | | |
|---------------------------|----------------|----------|----------|----------------|
| FTP - Permanent | 1.00 | 0.00 | 0.00 | 1.00 |
| Full Time Positions Total | 0 | 0 | 0 | 0 |
| | 140,000 | 0 | 0 | 140,000 |

Explain the request and provide justification for the need.

The Office of the State Appellate Public Defender (“SAPD”) seeks an additional FTP to hire a new staff attorney for its Appellate Unit (“AU”). This is necessary to allow the SAPD to keep up with its growing caseload.

The AU handles all noncapital felony, misdemeanor, and juvenile direct and post-conviction appeals to which the SAPD is appointed. In FY 2023 and FY 2024, the SAPD saw an explosion in the number of such appeals. While the SAPD’s historical average is approximately 600 new noncapital appeals per year, in FY 2023, the SAPD was appointed in 718 new cases, setting an all-time high. In FY 2024, the SAPD was appointed in 674 new cases.

The number of noncapital appeals to which the SAPD is now being appointed each year far exceeds the AU’s current capacity. Assuming no attorney turnover, the AU is at full capacity at its historical average of 600 cases per year (approximately 50 cases per attorney per year). Thus, FY 2024’s total of 674 new cases—74 cases above capacity—represents more than a full attorney’s workload beyond what the AU can reasonably handle. Given that a caseload in this range is the new post-pandemic normal, the SAPD needs an additional attorney to cover that caseload and meet its constitutional obligations.

Additionally, the AU has seen its case mix shift toward more time-consuming “substantive” (as opposed to sentencing-related) cases in recent years. Over the SAPD’s 25-year history, even as the number of cases to which it was appointed has changed, the percentage of its noncapital caseload considered substantive has remained remarkably consistent. The median percentage of substantive cases is 38%. However, in FY 2022 and FY 2023 (the most recent years for which data is available), the AU’s caseload was 41.3% and 41.1% substantive, respectively. These are the two highest percentages of substantive cases in the SAPD’s history. Although a rate cannot yet be calculated for FY 2024, anecdotally, it appears this higher rate of substantive cases has held throughout FY 2024. Thus, while the AU’s total caseload has surged, it has also skewed toward more time-consuming cases.

The SAPD lacks any practical “shock absorber” that would allow it to manage caseloads in excess of its historical average. Over the years, the only option has been to request extensions of time from the Idaho Supreme Court. While the Supreme Court has been understanding of the SAPD’s plight and grants extensions to a point, it will not delay cases indefinitely. Thus, extensions of time do not solve the problem; they merely delay it. In

FY 2024, the SAPD had to seek an excessive number (three or more) of extensions in 44.6% of its cases, and it was not uncommon for the SAPD to seek five or six extensions for a single brief. The frequency with which the SAPD now seeks an excessive number of extensions in a given case, and the aggregate length of the extensions in each case, are unprecedented in the SAPD's history. They also far exceed the SAPD's goal of seeking three or more extensions in no more than 10% of its cases.

If a supplemental, what emergency is being addressed?

N/A

Specify the authority in statute or rule that supports this request.

- The Fourteenth Amendment to the United States Constitution,
- Article I, Section 13 of the Idaho Constitution, and
- Idaho Code §§ 19-5905 & 19-6009.

Indicate existing base of PC, OE, and/or CO by source for this request.

The PC General Fund appropriation for FY 2025 (SB 1270 & SB 1425) is \$3,398,000. This covers 26 existing FTPs:

- Eighteen attorneys (including the director),
- One investigator,
- One mitigation specialist,
- One office administrator, and
- Five legal assistants.

What resources are necessary to implement this request?

See B8 attachment

List positions, pay grades, full/part-time status, benefits, terms of service.

Deputy SAPD, Appellate Unit (Full Time) – Non-Classified (Pay Grade N)

Salary: \$45.68/hr. (\$95,014.40/year)

Variable benefits: \$20,381.54

Health Benefits: \$14,300.00

Will staff be re-directed? If so, describe impact and show changes on org chart.

No

Detail any current one-time or ongoing OE or CO and any other future costs.

Ongoing operating expenses (\$4,500) include Idaho State Bar licensing dues, software licensing, court rule books, and a parking pass.

One-time operating expenses (\$3,700) includes office furniture, office chairs, office phone, and office supplies.

One-time capital outlay expenses (\$2,100) include a laptop computer, docketing station, and monitors.

Describe method of calculation (RFI, market cost, etc.) and contingencies.

The SAPD anticipates having to pay \$45.68/hour (\$95,014.40/year) to hire a qualified attorney for the Appellate Unit. That salary would exceed 80% of DHR's policy salary for this pay grade (approximately \$76,000/year). The SAPD had a very difficult time hiring attorneys in FY 2024 and does not believe it could hire anyone—not even a new attorney straight out of law school, much less an attorney with some experience—at 80% of Policy. The SAPD was only recently able to fill two Appellate Unit attorney positions that sat vacant for 10-11 months. The starting salaries for these two positions range from \$82,500 to \$87,000. Meanwhile, the SAPD's counterparts in the Criminal Division at the Office of the Attorney General, who do the same work that the SAPD's Appellate Unit attorneys do, currently start at \$90,000 per year (and go up from there, presumably based on experience). Additionally, because one of the American Bar Association's Ten Principles of Public Defense (the most relied upon source for public defense standards) states that "Full-time public defender salaries and benefits should be no less than the salaries and benefits for full-time prosecutors," salary parity is often viewed as a bellwether of an adequate indigent defense system.

Other costs associated with this position are based on the rates established under applicable state contracts.

Provide detail about the revenue assumptions supporting this request.

See above

Who is being served by this request and what is the impact if not funded?

The requested FTP would most directly serve the SAPD's clients—individuals charged with or convicted of criminal or juvenile offenses within the

State of Idaho. But it would also serve the rest of Idaho's citizenry, all of whom have an interest in seeing Idaho's criminal justice system administered fairly and in a manner that is consistent with constitutional standards. If the SAPD lacks enough attorneys to effectively handle the appeals to which it is appointed, the constitutional and statutory guarantees of the right to effective counsel on appeal become an empty promise, the rule of law is thereby diminished, and our democracy suffers.

The most obvious and immediate consequence of failing to provide the needed FTP is that individual attorneys' caseloads will continue to rise well beyond what those attorneys can reasonably or ethically handle. While it is a supervising attorney's ethical duty to try to keep subordinates' caseloads at a reasonable level, there is little that the SAPD Director can do to shield individual attorneys from excessive caseloads. Under Idaho law, the SAPD has no option to decline case appointments by the various district court judges. And any motion filed with the Supreme Court seeking leave to withdraw from scores of cases (leaving affected defendants unrepresented) is unlikely to be granted. Thus, the cases will continue to pile up and individual attorneys will need to decide how to proceed. Do they violate ethical standards by carrying excessive caseloads and cutting corners in ways that may violate their clients' constitutional rights to the effective assistance of counsel? Or do they change careers? Given the premium placed on ethics at the SAPD, it is expected that many attorneys would feel they had no choice but to change careers. Of course, that would create vacancies that would exacerbate the SAPD's caseload crisis.

Any remaining attorneys would be at grave risk of providing ineffective assistance of counsel, i.e., making mistakes that prejudice their clients. As a result, constitutional (and other legal) violations may go unremedied, wrongful convictions may be allowed to stand, and people may remain incarcerated unlawfully or for unnecessarily long periods of time. Additionally, in failing to provide the effective assistance of counsel that is required under Article I, Section 13 of the Idaho Constitution and the Fourteenth Amendment to the United States Constitution, the State of Idaho may face liability.

Identify the measure/goal/priority this will improve in the strat plan or PMR.

What is the anticipated measured outcome if this request is funded?

AGENCY: 443

Approp Unit:
SGDA

Decision Unit No: 12.01

Title: Deputy
Attorney

| | General | Dedicated | Federal | Other | Total |
|------------------------------|------------------|------------------|----------------|--------------|--------------|
| FULL-TIME POSITIONS (FTP) | | | | | |
| PERSONNEL COSTS | | | | | |
| 1. Salaries | \$95,000 | | | | |
| 2. Benefits | \$34,700 | | | | |
| 3. Group Position Funding | | | | | |
| TOTAL PERSONNEL COSTS | \$129,700 | | | | |
| OPERATING EXPENSES | \$8,200 | | | | |
| TOTAL OPERATING EXPENDITURES | \$8,200 | | | | |
| CAPITAL OUTLAY | \$2,100 | | | | |
| TOTAL CAPITAL OUTLAY | \$2,100 | | | | |
| T/B PAYMENTS | | | | | |
| GRAND TOTAL | \$140,000 | | | | |

Explain the request and provide justification for the need.

The Office of the State Appellate Public Defender (“SAPD”) seeks an additional FTP to hire a new staff attorney for its Appellate Unit (“AU”). This is necessary to allow the SAPD to keep up with its growing caseload.

The AU handles all noncapital felony, misdemeanor, and juvenile direct and post-conviction appeals to which the SAPD is appointed. In FY 2023 and FY 2024, the SAPD saw an explosion in the number of such appeals. While the SAPD’s historical average is approximately 600 new noncapital appeals per year, in FY 2023, the SAPD was appointed in 718 new cases, setting an all-time high. In FY 2024, the SAPD was appointed in 674 new cases.

The number of noncapital appeals to which the SAPD is now being appointed each year far exceeds the AU’s current capacity. Assuming no attorney turnover, the AU is at full capacity at its historical average of 600 cases per year (approximately 50 cases per attorney per year). Thus, FY 2024’s total of 674 new cases—74 cases above capacity—represents more than a full attorney’s workload beyond what the AU can reasonably handle. Given that a caseload in this range is the new post-pandemic normal, the SAPD needs an additional attorney to cover that caseload and meet its constitutional obligations.

Additionally, the AU has seen its case mix shift toward more time-consuming “substantive” (as opposed to sentencing-related) cases in recent years. Over the SAPD’s 25-year history, even as the number of cases to which it was appointed has changed, the percentage of its noncapital caseload considered substantive has remained remarkably consistent. The median percentage of substantive cases is 38%. However, in FY 2022 and FY 2023 (the most recent years for which data is available), the AU’s caseload was 41.3% and 41.1% substantive, respectively. These are the two highest percentages of substantive cases in the SAPD’s history. Although a rate cannot yet be calculated for FY 2024, anecdotally, it appears this higher rate of substantive cases has held throughout FY 2024. Thus, while the AU’s total caseload has surged, it has also skewed toward more time-consuming cases.

The SAPD lacks any practical “shock absorber” that would allow it to manage caseloads in excess of its historical average. Over the years, the only option has been to request extensions of time from the Idaho Supreme Court. While the Supreme Court has been understanding of the SAPD’s plight and grants extensions to a point, it will not delay cases indefinitely. Thus, extensions of time do not solve the problem; they merely delay it. In FY 2024, the SAPD had to seek an excessive number (three or more) of extensions in 44.6% of its cases, and it was not uncommon for the SAPD to seek five or six extensions for a single brief. The frequency with which the SAPD now seeks an excessive number of extensions in a given case, and the aggregate length of the extensions in each case, are unprecedented in the SAPD’s history. They also far exceed the SAPD’s goal of seeking three or more extensions in no more than 10% of its cases.

If a supplemental, what emergency is being addressed?

Not applicable.

Specify the authority in statute or rule that supports this request.

- The Fourteenth Amendment to the United States Constitution,
- Article I, Section 13 of the Idaho Constitution, and
- Idaho Code §§ 19-5905 & 19-6009.

Indicate existing base of PC, OE, and/or CO by source for this request.

The PC General Fund appropriation for FY 2025 (SB 1270 & SB 1425) is \$3,398,000. This covers 26 existing FTPs:

- Eighteen attorneys (including the director),
- One investigator,
- One mitigation specialist,
- One office administrator, and
- Five legal assistants.

What resources are necessary to implement this request?

| | |
|------------------------------------|-----------------|
| Ongoing salary and benefits: | \$ 129,696 |
| <u>Ongoing operating expenses:</u> | <u>\$ 4,437</u> |
| Total ongoing | \$ 134,133 |
| | |
| One-time operating expenses: | \$ 1,450 |
| <u>One-time capital outlay:</u> | <u>\$ 4,348</u> |
| Total one-time | \$ 5,798 |

List positions, pay grades, full/part-time status, benefits, terms of service.

Deputy SAPD, Appellate Unit (Full Time) – Non-Classified (Pay Grade N)
Salary: \$45.68/hr. (\$95,014.40/year)
Variable benefits: \$20,381.54
Health Benefits: \$14,300.00

Will staff be re-directed? If so, describe impact and show changes on org chart.

No.

Detail any current one-time or ongoing OE or CO and any other future costs.

Ongoing operating expenses (\$4,437) include Idaho State Bar dues, software licenses, court rules books, and a parking pass.

One-time operating expenses (\$1,450) include office chairs, a phone, and office supplies.

One-time capital outlay costs (\$4,348) include office furniture, a computer, monitors, etc.

Describe method of calculation (RFI, market cost, etc.) and contingencies.

The SAPD anticipates having to pay \$45.68/hour (\$95,014.40/year) to hire a qualified attorney for the Appellate Unit. That salary would exceed 80% of DHR's policy salary for this pay grade (approximately \$76,000/year). The SAPD had a very difficult time hiring attorneys in FY 2024 and does not believe it could hire anyone—not even a new attorney straight out of law school, much less an attorney with some experience—at 80% of Policy. The SAPD was only recently able to fill two Appellate Unit attorney positions that sat vacant for 10-11 months. The starting salaries for these two positions range from \$82,500 to \$87,000. Meanwhile, the SAPD's counterparts in the Criminal Division at the Office of the Attorney General, who do the same work that the SAPD's Appellate Unit attorneys do, currently *start* at \$90,000 per year (and go up from there, presumably based on experience). Additionally, because one of the American Bar Association's Ten Principles of Public Defense (the most relied upon source for public defense standards) states that "Full-time public defender salaries and benefits should be no less than the salaries and benefits for full-time prosecutors," salary parity is often viewed as a bellwether of an adequate indigent defense system.

Other costs associated with this position are based on the rates established under applicable state contracts.

Provide detail about the revenue assumptions supporting this request.

See above.

Who is being served by this request and what is the impact if not funded?

The requested FTP would most directly serve the SAPD's clients—individuals charged with or convicted of criminal or juvenile offenses within the State of Idaho. But it would also serve the rest of Idaho's citizenry, all of whom have an interest in seeing Idaho's criminal justice system administered fairly and in a manner that is consistent with constitutional standards. If the SAPD lacks enough attorneys to effectively handle the appeals to which it is appointed, the constitutional and statutory guarantees of the right to effective counsel on appeal become an empty promise, the rule of law is thereby diminished, and our democracy suffers.

The most obvious and immediate consequence of failing to provide the needed FTP is that individual attorneys' caseloads will continue to rise well beyond what those attorneys can reasonably or ethically handle. While it is a supervising attorney's ethical duty to try to keep subordinates' caseloads at a reasonable level, there is little that the SAPD Director can do to shield individual attorneys from excessive caseloads. Under Idaho law, the SAPD has no option to decline case appointments by the various district court judges. And any motion filed with the Supreme Court seeking leave to withdraw from scores of cases (leaving affected defendants unrepresented) is unlikely to be granted. Thus, the cases will continue to pile up and individual attorneys will need to decide how to proceed. Do they violate ethical standards by carrying excessive caseloads and cutting corners in ways that may violate their clients' constitutional rights to the effective assistance of counsel? Or do they change careers? Given the premium placed on ethics at the SAPD, it is expected that many attorneys would feel they had no choice but to change careers. Of course, that would create vacancies that would exacerbate the SAPD's caseload crisis.

Any remaining attorneys would be at grave risk of providing ineffective assistance of counsel, i.e., making mistakes that prejudice their clients. As a result, constitutional (and other legal) violations may go unremedied, wrongful convictions may be allowed to stand, and people may remain incarcerated unlawfully or for unnecessarily long periods of time. Additionally, in failing to provide the effective assistance of counsel that is required under Article I, Section 13 of the Idaho Constitution and the Fourteenth Amendment to the United States Constitution, the State of Idaho may face liability.

AGENCY: State Appellate Public Defender

Approp Unit: SGDB

Decision Unit No: 12.91

Title: General Fund Reappropriation Authority

| | General | Dedicated | Federal | Other | Total |
|------------------------------|----------------|------------------|----------------|--------------|--------------|
| FULL-TIME POSITIONS (FTP) | 26 | | | | 26 |
| PERSONNEL COSTS | | | | | |
| 1. Salaries | | | | | |
| 2. Benefits | | | | | |
| 3. Group Position Funding | | | | | |
| TOTAL PERSONNEL COSTS | | | | | |
| OPERATING EXPENSES | | | | | |
| | \$0 | | | | |
| TOTAL OPERATING EXPENDITURES | | | | | |
| CAPITAL OUTLAY | | | | | |
| TOTAL CAPITAL OUTLAY | | | | | |
| T/B PAYMENTS | | | | | |
| GRAND TOTAL | \$0 | | | | |

Explain the request and provide justification for the need.

The Office of the State Appellate Public Defender (“SAPD”) requests reappropriation authority for Capital and Conflict Representation funds originally appropriated in FY 2023, the unspent and unencumbered portion of which has been reappropriated each fiscal year since.

Through a supplemental appropriation for FY 2023 (2023 SB 1115), the Idaho Legislature appropriated \$1,309,400 for extraordinary litigation costs in the SAPD’s capital, i.e., death penalty, cases. For FY 2024 (2023 SB 1199) the Legislature reappropriated the unexpended and unencumbered balances of the appropriation. In FY 2025 (2024 SB 1425) the Legislature reappropriated the unexpended and unencumbered balances of the appropriation for capital cases (Sec. 2) and \$100,000 for outside counsel for noncapital appeals (Sec. 3). The SAPD now seeks reappropriation authority for FY 2026 for any unexpended and unencumbered funds capital cases and outside counsel for noncapital appeals.

In July 2022, the SAPD was appointed in four new capital post-conviction cases following the United States Supreme Court’s decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022): *Hairston v. State*, *Abdullah v. State*, *Creech v. State*, and *Row v. State*. The SAPD knew it would have to contract out one of those four cases (*Abdullah*) owing to a conflict of interest. Contract cases are generally more expensive than cases handled in-house. Regardless of the relative cost though, there were no funds earmarked to cover attorney fees for a conflict capital case. Additionally, it was anticipated that the three remaining cases could result in evidentiary hearings, which would cause the SAPD to incur travel, investigation, and expert costs.

In addition, the SAPD anticipated being appointed to two additional capital cases in FY 2023: *State v. Daybell* and *State v. Vallow*. At that time, those cases were set to go to trial in January 2023. They involved two co-defendants, which promised to create a conflict of interest for the SAPD, requiring one of those two cases to be contracted outside of the office. The original appropriation included funds necessary to pay for a team of two conflict capital attorneys, a mitigation expert, and an investigator, and expert fees and costs for the case conflicted out of the office, as well as expert fees and costs for the case retained by the SAPD.

Finally, a portion of the appropriation was earmarked for costs associated with the evidentiary hearing in a capital case to which the SAPD had already been appointed, *Renfro v. State*.

In total, the SAPD obtained a \$1,309,410 supplemental appropriation in FY 2023, to be placed in the Capital/Conflict Budget. As noted, the unused portions of those funds were reappropriated in FY 2024 and FY 2025. In FY 2025, the Legislature also gave the SAPD the flexibility to utilize up to up to \$100,000 of the reappropriated funds for outside counsel costs in *noncapital* cases. This was a response to an explosion of noncapital case assignments, which far outstripped the SAPD’s capacity.

The ongoing nature of the reappropriation has been necessitated by delays in the cases for which the funds were originally intended. For example, the trial in *Daybell* was delayed until late-spring 2024 and the SAPD was only recently appointed in that case. Evidentiary hearings have yet to occur in *Row*, *Hairston*, or *Renfro*. And the *Vallow* and *Abdullah* cases, where the SAPD is paying for conflict counsel, are both ongoing. Additionally, the SAPD was recently appointed in two new capital post-conviction cases—*Dunlap v. State* and *Creech v. State*—and may be appointed in a number of other death-noticed cases currently

scheduled to go to trial in FY 2025 or early FY 2026: *State v. Mount* (trial scheduled for January 13, 2025), *State v. Kohberger* (trial scheduled for June 2, 2025), and *State v. Best* (trial scheduled for September 15, 2025).

If a supplemental, what emergency is being addressed?

N/A

Specify the authority in statute or rule that supports this request.

Article I, Section 13 of the Idaho Constitution. The Sixth and Fourteenth Amendments to the United States Constitution. Idaho Code §§ 19-5905(1)(a), (e) & (g), and 19-5905(4).

Indicate existing base of PC, OE, and/or CO by source for this request.

The OE General Fund appropriation from SB 1115 (FY 2023) was \$1,309,400.

What resources are necessary to implement this request?

Reappropriation an FY 2023 general fund appropriation of \$1,309,410.00, less previously expended and encumbered amounts.

List positions, pay grades, full/part-time status, benefits, terms of service.

N/A

Will staff be re-directed? If so, describe impact and show changes on org chart.

No.

Detail any current one-time or ongoing OE or CO and any other future costs.

The SAPD is requesting reappropriation of unexpended and unencumbered funds from a one-time supplemental appropriation in FY 2023 and reappropriated each year thereafter (originally \$1,309,410) for extraordinary litigation costs in its capital cases. These funds are to be used primarily for nonrecurring expenditures, such as: travel costs for case investigation, depositions, and/or hearings; deposition transcript fees; expert witness fees and costs; and conflict attorney fees. Additionally, up to \$100,000 may be used for “overflow” contract attorney fees in non-capital cases.

Describe method of calculation (RFI, market cost, etc.) and contingencies.

The SAPD contracts with private attorneys for “overflow” and conflict cases at different rates, depending on whether the cases are capital or non-capital. The SAPD currently pays \$175/hour for capital cases and \$145/hour for non-capital cases. The SAPD sets its contract rates with an eye toward trying to stay competitive with the contract rates paid by the federal public defenders for similar work in federal court.

Currently, the federal public defenders pay contract attorneys \$220/hour for capital cases and \$172/hour for non-capital cases.

Expert witness fees vary depending on the expert's field of expertise and experience.

Provide detail about the revenue assumptions supporting this request.

This is a reappropriation request.

Who is being served by this request and what is the impact if not funded?

The requested reappropriation not only serves individuals charged with or convicted of criminal offenses within the State of Idaho, but all of Idaho's citizens, as all have an interest in seeing the criminal justice system administered fairly. If this reappropriation is not funded, the SAPD will not have the resources to meet its constitutional obligation to effectively represent its death-sentenced clients. This will cause a myriad of problems. First, SAPD clients may be at risk of wrongful executions. Second, the deprivation of meaningful and fair post-conviction processes for those sentenced to the ultimate punishment risks a crisis of faith in the criminal justice system by the public. Third, the SAPD may run afoul of its obligations under Article I, Section 13 of the Idaho Constitution and the Fourteenth Amendment to the United States Constitution, thereby risking liability for the State of Idaho. Fourth, SAPD attorneys may risk sanctions by the Idaho State Bar.

PCF Detail Report

Request for Fiscal Year: 2026

Agency: Office of the State Appellate Public Defender
Appropriation Unit: Office of the State Appellate Public Defender
Fund: General Fund

443
 SGDA
 10000

| PCN | Class | Description | FTP | Salary | Health | Variable Benefits | Total |
|--|-------|---|--------------|------------------|----------------|-------------------|------------------|
| Totals from Personnel Cost Forecast (PCF) | | | | | | | |
| | | Permanent Positions | 24.00 | 2,235,831 | 312,000 | 479,610 | 3,027,441 |
| | | Total from PCF | 24.00 | 2,235,831 | 312,000 | 479,610 | 3,027,441 |
| | | FY 2025 ORIGINAL APPROPRIATION | 26.00 | 2,509,205 | 338,000 | 550,795 | 3,398,000 |
| | | Unadjusted Over or (Under) Funded: | 2.00 | 273,374 | 26,000 | 71,185 | 370,559 |
| Adjustments to Wage and Salary | | | | | | | |
| 443001 | 2563N | Deputy SAPD | 1.00 | 138,008 | 13,000 | 29,604 | 180,612 |
| 7556 | R90 | | | | | | |
| 443001 | 2561N | Lead Attorney SAPD | 1.00 | 120,016 | 13,000 | 25,745 | 158,761 |
| 7559 | R90 | | | | | | |
| Estimated Salary Needs | | | | | | | |
| | | Permanent Positions | 26.00 | 2,493,855 | 338,000 | 534,959 | 3,366,814 |
| | | Estimated Salary and Benefits | 26.00 | 2,493,855 | 338,000 | 534,959 | 3,366,814 |
| Adjusted Over or (Under) Funding | | | | | | | |
| | | Original Appropriation | .00 | 15,350 | 0 | 15,836 | 31,186 |
| | | Estimated Expenditures | .00 | 15,350 | 0 | 15,836 | 31,186 |
| | | Base | .00 | 15,350 | 0 | 15,836 | 31,186 |

PCF Summary Report

Request for Fiscal Year: 2026

Agency: Office of the State Appellate Public Defender
Appropriation Unit: Office of the State Appellate Public Defender
Fund: General Fund

443
 SGDA
 10000

| DU | | FTP | Salary | Health | Variable Benefits | Total |
|--------------|---------------------------------------|--------------|------------------|----------------|-------------------|------------------|
| 3.00 | FY 2025 ORIGINAL APPROPRIATION | 26.00 | 2,509,205 | 338,000 | 550,795 | 3,398,000 |
| 5.00 | FY 2025 TOTAL APPROPRIATION | 26.00 | 2,509,205 | 338,000 | 550,795 | 3,398,000 |
| 7.00 | FY 2025 ESTIMATED EXPENDITURES | 26.00 | 2,509,205 | 338,000 | 550,795 | 3,398,000 |
| 9.00 | FY 2026 BASE | 26.00 | 2,509,205 | 338,000 | 550,795 | 3,398,000 |
| 10.11 | Change in Health Benefit Costs | 0.00 | 0 | 34,000 | 0 | 34,000 |
| 10.61 | Salary Multiplier - Regular Employees | 0.00 | 25,000 | 0 | 5,400 | 30,400 |
| 11.00 | FY 2026 PROGRAM MAINTENANCE | 26.00 | 2,534,205 | 372,000 | 556,195 | 3,462,400 |
| 12.01 | 1 FTP - Deputy SAPD | 1.00 | 95,022 | 14,300 | 20,378 | 129,700 |
| 13.00 | FY 2026 TOTAL REQUEST | 27.00 | 2,629,227 | 386,300 | 576,573 | 3,592,100 |

Contract Inflation

Request for Fiscal Year: 2026

Agency: Office of the State Appellate Public Defender

443

Office of the State Appellate Public Defender

SGDA

Appropriation Unit:

| | FY 2021 Actual | FY 2022 Actual | FY 2023 Actual | FY 2024 Actual | FY 2025 Estimated Expenditures | Contract Dates | FY 2026 Contractual % Change | FY 2026 Total |
|--|----------------|----------------|----------------|----------------|--------------------------------|-----------------------|------------------------------|---------------|
| Contract | | | | | | | | |
| Department of Water Resources | 121,688 | 123,338 | 124,988 | 126,638 | 128,288 | 10/01/2016-09/30/2025 | 0 | 1,700 |
| Thomson Reuters West ProFlex Licensing | 0 | 0 | 10,372 | 10,835 | 11,317 | 07/01/2023-6/30/24 | 5 | 4,600 |
| Total | 121,688 | 123,338 | 135,360 | 137,473 | 139,605 | | | 6,300 |
| Fund Source | | | | | | | | |
| General | 121,688 | 123,338 | 135,360 | 137,473 | 139,605 | | | 6,300 |
| Total | 121,688 | 123,338 | 135,360 | 137,473 | 139,605 | | | 6,300 |

FIVE-YEAR FACILITY NEEDS PLAN, pursuant to IC 67-5708B

AGENCY INFORMATION

| | | | |
|-------------------|----------------------------------|------------------|--|
| AGENCY NAME: | Executive Office of the Governor | Division/Bureau: | State Appellate Public Defender |
| Prepared By: | Raquel Ceklovsky | E-mail Address: | raquel.ceklovsky@dfm.idaho.gov |
| Telephone Number: | 208-854-3044 | Fax Number: | 208-555-1213 |
| DFM Analyst: | Adam Jarvis | LSO/BPA Analyst: | Chris Lehosit |
| Date Prepared: | 8/8/2024 | For Fiscal Year: | 2026 |

FACILITY INFORMATION (please list each facility separately by city and street address)

| | | | | | | |
|---|---------------------|-------------------------------------|--------------|--------------------------|----------------|------|
| Facility Name: | Idaho Water Center | | | | | |
| City: | Boise | County: | Ada | Zip Code: | 83702 | |
| Property Address: | 332 E. Front Street | | | Zip Code: | 83702 | |
| Facility Ownership (could be private or state-owned) | Private Lease: | <input checked="" type="checkbox"/> | State Owned: | <input type="checkbox"/> | Lease Expires: | 2026 |

FUNCTION/USE OF FACILITY

Administrative Space, State Appellate Public Defender

COMMENTS

WORK AREAS

| FISCAL YR: | ACTUAL 2024 | REQUEST 2025 | REQUEST 2026 | REQUEST 2027 | REQUEST 2028 | REQUEST 2029 |
|---|-------------|--------------|--------------|--------------|--------------|--------------|
| Total Number of Work Areas: | 25 | 26 | 26 | 26 | 26 | 26 |
| Full-Time Equivalent Positions: | 25 | 26 | 26 | 26 | 26 | 26 |
| Temp. Employees, Contractors, Auditors, etc.: | 0 | 0 | 0 | 0 | 0 | 0 |

SQUARE FEET

| FISCAL YR: | ACTUAL 2024 | REQUEST 2025 | REQUEST 2026 | REQUEST 2027 | REQUEST 2028 | REQUEST 2029 |
|--------------|-------------|--------------|--------------|--------------|--------------|--------------|
| Square Feet: | 6600 | 6600 | 6600 | 6600 | 6600 | 6600 |

FACILITY COST

(Do NOT use your old rate per sq ft; it may not be a realistic figure)

| FISCAL YR: | ACTUAL 2024 | REQUEST 2025 | REQUEST 2026 | REQUEST 2027 | REQUEST 2028 | REQUEST 2029 |
|-------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Total Facility Cost/Yr: | \$128,287.50 | \$131,000.00 | \$133,000.00 | \$134,000.00 | \$135,000.00 | \$136,000.00 |

SURPLUS PROPERTY

| FISCAL YR: | ACTUAL 2024 | REQUEST 2025 | REQUEST 2026 | REQUEST 2027 | REQUEST 2028 | REQUEST 2029 |
|------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

IMPORTANT NOTES:

- Upon completion, please send to Leasing Manager at the State Leasing Program in the Division of Public Works via email to Caitlin.Cox@adm.idaho.gov. Please e-mail or call 208-332-1933 with any questions.
- If you have five or more locations, please summarize the information on the Facility Information Summary Sheet and include this summary sheet with your submittal.
- Attach a hardcopy of this submittal, as well as the Facility Information Summary Sheet, if applicable, with your budget request. **DPW LEASING DOES NOT NEED A COPY OF YOUR BUDGET REQUEST, JUST THIS FORM.**

AGENCY NOTES:

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 |
| Total | \$3,091,200 | \$3,312,000 | \$3,402,900 | \$0 |
| 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 |
| Total | \$2,969,100 | \$3,016,700 | \$3,402,900 | \$3,400,991 |

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 |
|---|--------|--|--|--|--|---------|
| Goal 1 | | | | | | |
| <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 | |
| 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 | |
| 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 | |
| Goal 2 | | | | | | |
| <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 | |
| 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% | |
| 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. | |

| 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 | |
| Goal 3 <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> | |
| 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> | |

** 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



STATE OF IDAHO
OFFICE OF THE STATE APPELLATE PUBLIC DEFENDER
Defending Zealously, Advancing Fairness, and Advocating with Integrity.

August 7, 2024

Delivery Via Email: dhr@dhr.idaho.gov

Janelle White, Administrator
Idaho Division of Human Resources
304 N. 8th Street
Boise, Idaho 83720

Re: FY 2026 Budget Request – Line-Item Request

Dear Ms. White:

Per the FY 2026 Budget Development Manual, I am submitting this letter and the *Classification Review Request Form* for the State Appellate Public Defender's line-item request to include one additional full-time position (FTP) in the agency's FY 2026 budget request. This new FTP will be for a new attorney in the agency's Appellate Unit.

The State Appellate Public Defender currently has one vacant attorney position in its Capital Litigation Unit that we have been actively trying to fill. This vacant FTP cannot be used to cover the request for an additional FTP as the current vacant position is needed in our Capital Litigation Unit to fully staff the unit.

If you have any questions, please do not hesitate to call me at (208) 334-2712.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erik R. Lehtinen".

ERIK R. LEHTINEN
State Appellate Public Defender

encl: Classification Review Request Form



State of Idaho
DIVISION OF HUMAN RESOURCES
Executive Office of the Governor

BRAD LITTLE
Governor
JANELLE WHITE
Administrator

Idaho Personnel Commission
Mike Brassey, Chair
Sarah E. Griffin
Nancy Merrill
Erika Malmen

July 22, 2024

State Appellate Public Defender

Dear Jennifer Pierce:

This letter is in response to your FY 2026 Budget request. Your initial request was received August 7, 2024 and listed the following requested item(s) for your FY 2026 budget:

1. Item 1; Increase FTP by 1.0 Attorney

After review of your request, DHR concurs with the request for the following:

1. Item 1; Increase FTP by 1.0 Attorney

This letter attests that the State Appellate Public Defender item 1 request is in alignment with Division of Human Resources (DHR) policies. Please include this letter with your final budget submission to the Division of Financial Management (DFM).

If you have any questions or concerns about your requests, please do not hesitate to contact me at michael.evans@dhr.idaho.gov or 208-854-3056.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Evans".

Mike Evans
Bureau Chief