

ACLU of Idaho's Guide to Understanding the Idaho Public Defense Commission's Summer 2018 Negotiated Rulemaking Process

What is this about?

The Idaho Public Defense Commission is a state agency. It writes the rules about how the public defense system works. The process of writing rules is called “negotiated rulemaking”. This is a process open to the public. The ACLU of Idaho hopes this document will provide the public with a clear explanation of the rules being negotiated and how to get involved.

Which rules are the focus for this summer's negotiated rulemaking?

1. One new rule is about the data the Idaho Public Defense Commission collects. That data comes from public defenders.
2. A second new rule is about the contracts between counties and public defenders. Contracts include certain agreements between counties and public defenders, and this rule will say what those agreements should be.
3. Finally, this summer's negotiated rulemaking will also focus on the standards for public defenders. Standards are the minimum requirements of what a public defender needs to do in each case.

What data should the government collect about the public defense system?

Official rule name: 61.01.02 Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports

The Idaho Public Defense Commission tracks what is happening in the public defense system. However, it needs to track this information better. The Idaho Public Defense Commission also needs to gather more information than it already is. This rule will say what types of information public defenders will have to report to the government so that it will have truthful information about the public defense system. (This rule is not about the government tracking you or the comments you make about the public defense system.)

What information do you think public defenders should have to share with the government?

- The number of cases handled by each public defender?
- How many hours public defenders spend on each case?
- How many felony cases public defenders handle at any given time?
- How many misdemeanor cases public defenders handle?
- Whether public defenders conduct investigations?
- Whether public defenders are meeting with their clients before court appearances?

What terms should contracts include between counties and public defenders?

Official rule name: 61.01.03 Rules Governing Contracts and Core Requirements for Contracts between Counties and Private Attorneys for the Provision of Indigent Defense Service

In Idaho, counties are in charge of giving people a public defender when they do not have enough money to hire a private attorney. In hiring public defenders, the counties enter into agreements, called contracts, with public defenders. Those agreements can, and should, include rules public defenders must follow.

What terms should be included in the agreements between counties and public defenders?

- What training do public defenders need before they can take felony cases? Sex offense cases? Homicide cases? Other serious charge?
- Should a public defender have to prove they have the ability to identify and advise clients about how a criminal conviction can hurt their immigration status, or access to housing or public assistance?
- If a public defender is a newer attorney, less than 3 years of experience for instance, should they have to have an experienced mentor or some other oversight?

The Idaho Public Defense Commission has a website with suggestions about what rules counties should include in their contracts with public defenders:

<https://pdc.idaho.gov/wp-content/uploads/sites/11/2016/06/SuggestedModelContractTermsFinal.pdf>.

What do public defenders need to do for their clients?

Official rule name: Standards for Defending Attorneys (incorporated by reference in IDAPA 61.01.008)

The Idaho Public Defense Commission is creating standards that public defenders must follow. These standards will tell the public defenders what they must do for their clients. Standards are minimum requirements, which means public defenders can do more than what the standards require, but they must at least follow the standards. The Idaho Public Defense Commission already has list of standards, but additional standards can be added to the list through negotiated rulemaking.

What standards should the Idaho Public Defense Commission include?

- How often should a public defender speak to their client?
- Should a public defender have to sit down with their client and go through the evidence?
- Should a public defender have to notify their client when they will not be in court?
- What should a public defender office do when there is a public defender with too many cases? Should there be an internal process to redistribute cases and hire more public defenders?

The current standards are on this website:

<https://pdc.idaho.gov/wpcontent/uploads/sites/11/2018/05/Standards-for-Defending-Attorneys-edition-2017-1.pdf>.

Where can I find what the three rules already say?

Two of the rules are brand new (61.01.02 and 61.01.03). Because they are new, the Idaho Public Defense Commission does not have any written document with what the rule might eventually say. However, the Standards for Defending Attorneys already exists. That means there is a document you can read to see what it says.

(If you receive this document in the mail, we will mail a copy of the standards. If you are reading this online, you can find the standards here: <https://pdc.idaho.gov/wpcontent/uploads/sites/11/2018/05/Standards-for-Defending-Attorneys-edition-2017-1.pdf>.)

How do I get involved in the negotiated rulemaking?

The Idaho Public Defense Commission is traveling around Idaho in June to put on public meetings about the rules explained above. The public may go to any of the 7 public meetings in June:

June 11, 5:00pm: Kootenai Recovery Community Center, 1111 Ironwood Drive, Suite B, Coeur d'Alene

June 12, 4:00pm: Red Lion Hotel Lewiston, Port 3 Room, 621 21st Street, Lewiston

June 18, 5:00pm: Idaho Falls Public Library, 457 W Broadway Street, Idaho Falls

June 19, 4:00pm: Idaho State University, Pond Building – North Fork Room, 921 South 8th Avenue, Pocatello

June 20, 4:00pm: Water Center Building – 6th Floor, Conference Room 602C, Boise

June 21, 4:00pm: Red Lion Hotel Twin Falls, Cedar/Juniper Room, 1357 Blue Lakes Blvd. N, Twin Falls

June 26, 4:00pm: Canyon County Administration Building, First Floor, Public Meeting Room, 111 North 11th Ave., Caldwell

What if I cannot go to the meetings?

For people who cannot go to the meetings, and even if you do go to the meetings, the Idaho Public Defense Commission is accepting comments about the rules until August 15, 2018. Contact the Idaho Public Defense Commission at:

Email: Kimberly.Simmons@pdc.idaho.gov

Call: 208-332-1735

Write: Kimberly Simmons

State Public Defense Commission

816 W. Bannock St, Suite 201

Boise, ID 83702

Where can I find information about the public defense lawsuit?

To find up-to-date information about the ACLU of Idaho's class action lawsuit against the State of Idaho and the Public Defense Commission, go to <https://www.acluidaho.org/en/cases/tucker-v-state-idaho>.

Where can I find definitions of certain abbreviations and words?

Some words are abbreviated and some words are not words we use in everyday life. The Public Defense Commission has a rule with many definitions that you can find here: https://pdc.idaho.gov/wp-content/uploads/sites/11/2018/05/IDAPA-61_01_08.pdf. Below are some additional definitions.

BOCC: board of county commissioners. Idaho currently has a public defense system funded by counties. The BOCC of each county determines how much money each public defender office receives each year to finance their various duties and responsibilities in defending their clients. However, the PDC also gives additional money to counties to fund public defense services.

IDAPA: Idaho Administrative Code. These are the laws that govern the administrative agencies in Idaho. Examples of those agencies are the Department of Agriculture, the Department of Health and Welfare, the Department of Corrections, and the Public Defense Commission, to name only a few. Each agency creates rules (laws).

PDC: Idaho Public Defense Commission. The Legislature created the PDC in 2014. The PDC creates administrative rules about Idaho's public defense system. These rules explain what is required of public defenders in their jobs—these requirements are often called “standards”. The PDC also collects data from public defenders, provides training to public defenders, and gives counties additional money to fund the public defense system in each county.

Incorporation by reference: When a document created later in time says that a document created earlier in time is “incorporated by reference”, that means the earlier-created document becomes part of the later-created document.

For more information:

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