

Tucker v. Idaho

Looking towards the seventh birthday of the challenge to the system of public defense in Idaho

Background

- Filed June 2015
- Dismissed and Appealed - January 2016
- Reversed and Remanded - April 2017
- Class certified January 2018
- Interlocutory appeal - March 2019
- Remanded - April 2021
- House Bill 735
- Trial set for October 2023



Public Defense in Idaho

Path to Public Defense Reform

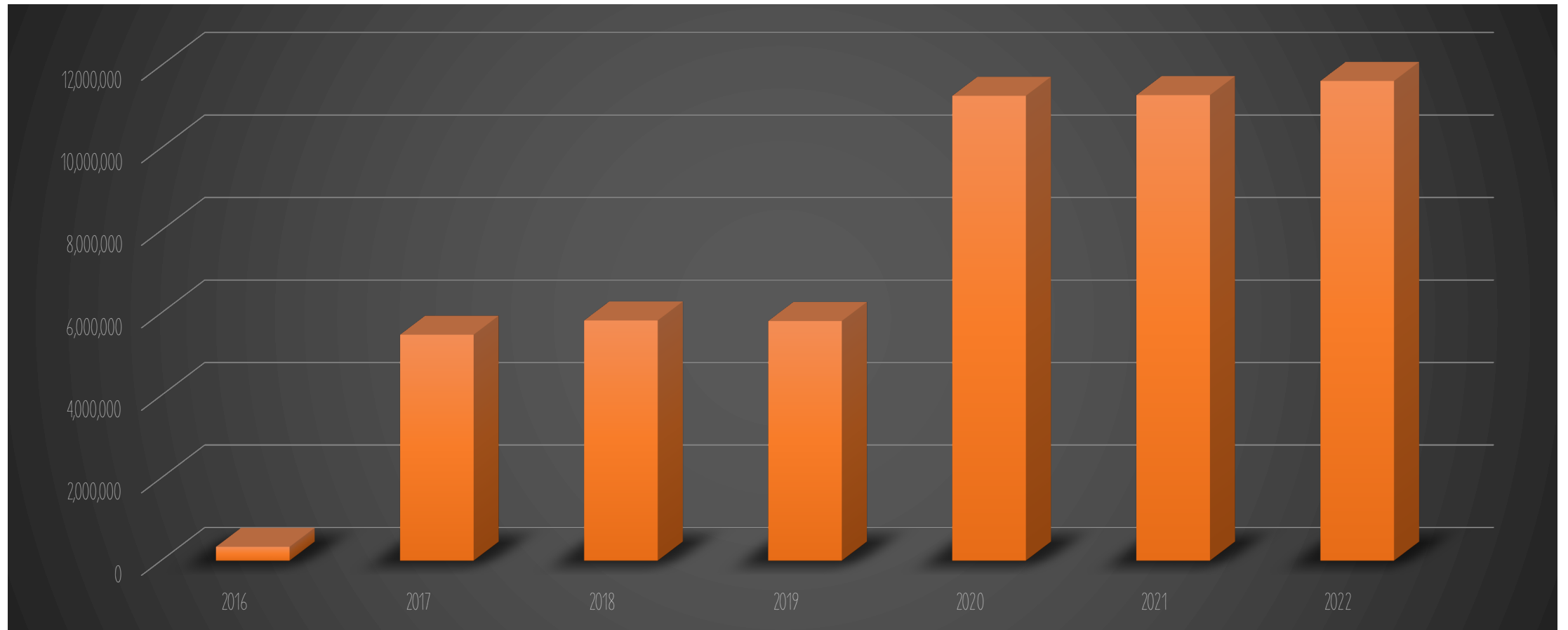
- 2007 - NLADA Study Requested
- 2010 - NLADA Report
- Interim Committee on Public Defense
- 2014 - Public Defense Commission created
- 2015 - Lawsuit filed
- 2016 - Public Defense Commission granted rulemaking authority
- 2017 - State funding to counties established
- Now - Indigent Defense Financial Assistance is nearly \$12,000,000

NLADA: Funding and Standards

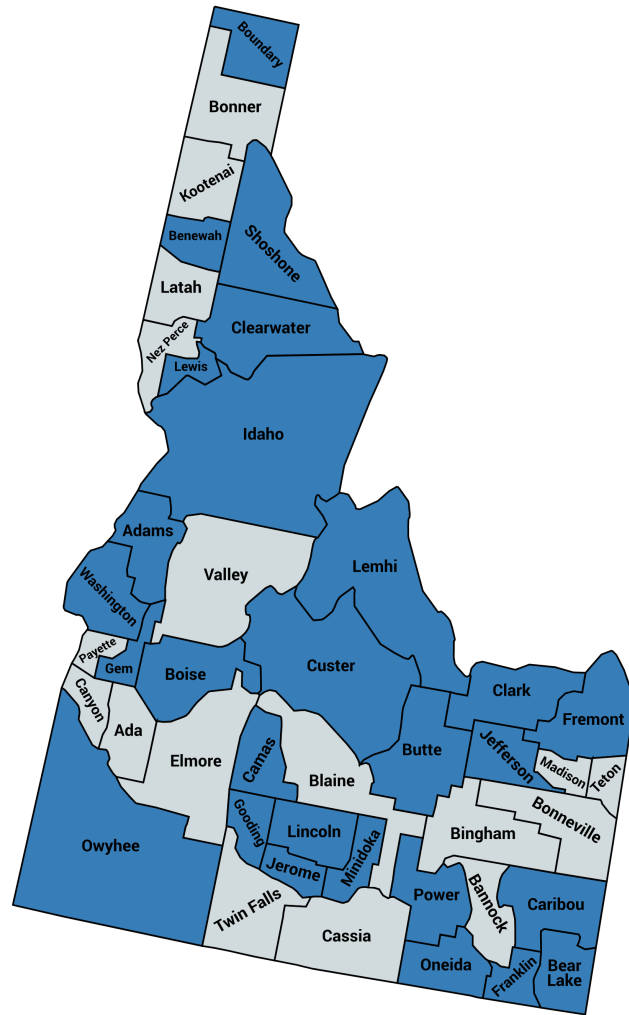
"[T]here are two primary factors that determine the adequacy of the indigent defense services provided: (a) the degree and sufficiency of state funding and structure, and (b) compliance with nationally recognized standards of justice. So long as these two goals are met, Idaho policy-makers will have remedied the crisis."

– 2010 NLADA Report, p. 89

PDC Appropriations: FY2016-FY2022



Systems of Public Defense in Idaho



- Institutional Offices
- Joint Institutional Offices
- Contract Counties

Tucker Complaint

Issues From Allegations

Lack of representation at initial appearance

Excessive caseloads and workloads

Lack of meaningful communication with client

Lack of investigation and expert analysis/testimony

Use of fixed fee contracts

Lack of independence

Lack of supervision and evaluation

Allegations – Tucker

Not represented at initial appearance

Substitute sent for arraignment

Met with attorney only 3 times

No investigation

No motions filed

No review of discovery

No explanation of preparation for sentencing

Allegations - Sharp

Not represented at initial appearance

Public defender had a fixed fee contract

Caseload exceeded NAC standards

Argued for own bond reduction

Only met with PD prior to court appearances

No review of discovery

No investigation

Evidence went missing from evidence storage room - did not inspect evidence in Sharp's case

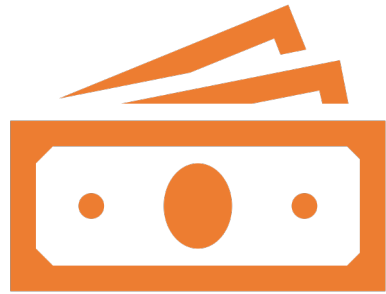
Allegations - Morley

- Assigned a public defender at initial appearance, but was unable to speak to him/her prior to bond setting
- Public defender was conflicted and assigned new counsel
- Unable to investigate
- Attorney refused to hire an expert
- Attorney had an unmanageable workload

Allegations – Chappell

- Assigned an attorney at initial appearance, but only 30 seconds to discuss prior to proceedings
- Attorney assigned did not contact for 2 months, which may have resulted in exculpatory evidence being lost
- Excessive workload
- Frequently rescheduled meetings
- No investigator assigned
- No review of discovery materials

Relief Requested



Deadlines for the State to modify structure to include adequate oversight and funding



Injunction with Court monitoring, including implementation schedule for State oversight and funding

Relief Requested

- Appoint an external monitor to supervise public defense system to determine:
 - Whether public defenders are present to meaningfully assist and represent indigent defendants at initial appearance
 - Whether public defenders are actually absent at any other court appearances after appointment
 - Whether public defenders have the time and resources needed to meaningfully seek pre-trial release of their clients, including investigation to prepare for bond setting or bond reduction hearing

Relief Requested

- Appoint an external monitor to supervise public defense system to determine:
 - Whether public defenders are able to promptly and meaningfully respond to client contacts and complaints
 - Whether public defenders are fully explaining plea offers
 - Whether public defenders are able to adequately fulfill their role as advocate before the court on their client's behalf
 - Whether public defenders experience any undue pressure from county commissioners, judicial officers, PDC members or staff, to limit the time and resources committed to indigent defense caseload

Appeals and Discovery

And the Supreme Court Says . . .

- The State and the PDC have 'ultimate responsibility to ensure that the public defense system passes constitutional muster'
 - While delegated to the Counties, "the ultimate responsibility for fulfilling the . . . Constitutional duty cannot be delegated."
- Counties are not "third parties acting independently of the State with respect to public defense."
- "[T]he counties have no practical ability to effect statewide change, [therefore,] the State must implement the remedy."

Discovery 2017-2019

Written discovery -
218,571 documents
(792,759 pages)

4 plaintiff depositions

11 PDC depositions

17 public defender
depositions

14 County depositions

3 expert depositions

And the Supreme Court Says . . .

- The Plaintiffs "insist that the view from 30,000 feet is sufficient, while [the State] demand[s] that the district court examine this issue from three feet away."
- "[W]e hold that both views are necessary."
- "[W]e hold that structural evidence, such as statistics and national standards, can also be probative of the existence of systemic denials of counsel . . ."

Discovery

2021-2023

Discovery Hypothesis

- PDC depositions
- More documents
- More data
- More experts
- More public defender depositions?
- More county depositions?



Current PDC Rules

County Responsibilities

- Ensure effective representation
 - Appropriate sufficient funds
 - Provide resources
 - Comply with contracting requirements
 - Communication re compliance with PDC rules, including workloads and vertical representation

Defending Attorney Responsibilities

- Licensed and member of the Defending Attorney Roster
 - Apply laws and rules through legal research
 - Protect client confidentiality
 - Ensure vertical representation
 - Dedicate sufficient time
 - Investigate case, including requesting funds
 - Consider necessity of an expert
 - Presence at initial appearance, including Rule 46 information
 - Comply with workload limits
 - Identify private meeting space
 - Identify conflicts of interest
 - Be familiar with criminal law and strategies to employ in defense

Idaho's "New Model"
of Public Defense

House Bill 735



Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. The Legislature finds that an important objective of this act is to provide property tax relief to Idahoans by repealing certain county levies and replacing the amount that counties would have levied for two years with state funds. Additionally, this act establishes a dedicated funding source for the provision of public defense in this state and, on and after October 1, 2024, relieves counties of the statutory responsibility to fund and operate indigent public defense. Consequently, this act creates a window of opportunity to determine a new model by which the State of Idaho will fulfill its constitutional obligation to provide adequate indigent public defense after that date. Therefore, it is the intent of the Legislature that, before the adjournment sine die of the next regular session of the Idaho Legislature, a state indigent public defense system be enacted using the dedicated fund created in this act. It is also the intent of the Legislature that all administrative rules promulgated by the State Public Defense Commission shall expire on and after October 1, 2024, after the transition to the new model.

Examples of Other Systems of Public Defense

- Statewide Public Defender
 - Fix salaries
 - Establish Regional Offices
 - Reporting requirements
- Conflict Public Defender Office
- Public Defender Commission
 - Sole authority of the Commission is to
 - Appoint the Public Defender
 - Discharged the Public Defender for cause

OPTION 1

STRUCTURE

PRIMARY

Public Defender Commission

State Public Defender

Anytown Branch
Defender Office

Anyothertown Branch
Defender Office

Everytown
Branch Office

CONFLICT

Conflict Defense Commission

Conflict Defense Counsel

Private Attorney

Private Attorney

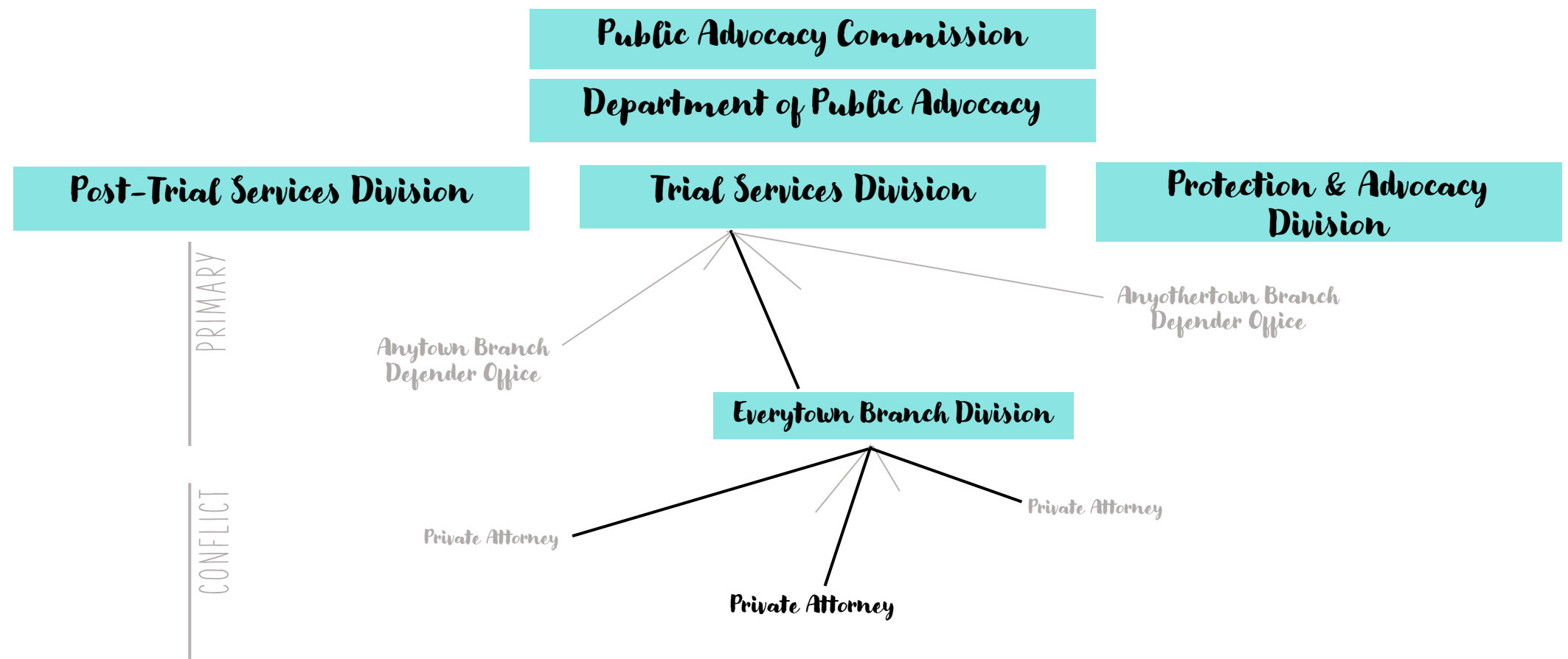
Private Attorney

Another Example

- Defender's Office divided into multiple Departments
 - Public Advocacy
 - Trial Division
 - Appellate Division
 - Administrative Support
 - Lobbying Division
- Public Advocacy Commission
 - Recommends the Public Defender - Head of Public Advocacy Division
- Number and Location of Offices based on number of judges in the circuit
- If no office, appointed by contract or can establish an office

OPTION 2

STRUCTURE



Final Example

- State Public Defender
 - Appointed by the governor with advice and consent of Senate
 - Statutory qualifications
 - Statutory term
 - Removal for good cause
- Statutory powers/duties
 - Adopt policies and rules necessary to fulfill constitutional requirements
 - Employ deputies as necessary
 - Contract for conflicts as necessary
 - Authority to promulgate rules to fulfill constitutional requirements

OPTION 3

State Public Defender

Deputy Public Defenders

Conflict Public Defenders

Private Attorney

Questions?



Future Questions . . .

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