

THE IDAHO SUPREME COURT'S BUDGET AND LEGISLATIVE PRIORITIES FOR THE 2012 LEGISLATIVE SESSION



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Budget and Legislative Priorities

The following have been identified as the Court's budget and legislative priorities for the 2012 legislative session:

1. Provide access to justice through the timely, fair, and impartial resolution of cases. Keeping the courthouse doors open and providing access to justice, in all counties, continues to be our number one priority. In these times of continuing economic challenge, the Courts have been able to discharge this constitutional responsibility with the help of the emergency surcharge, effective April 13, 2010. Anticipating that these economic challenges will persist into the foreseeable future, the Court may well need to ask the Legislature to lift the June 30, 2013 sunset provision contained in the surcharge legislation in order to adequately meet the ongoing needs of the judiciary.

In addition, the Court continues to monitor the emergency surcharge revenues very closely to compare them to their projected levels of financing at the time the surcharge was enacted, and to evaluate whether any changes in the emergency surcharge may be warranted. There are currently four magistrate judge positions vacant and 15 court employee positions vacant statewide. Significant reductions have been made in all court operations. On a positive note, however, the Court has been able to continue such beneficial programs as drug courts, mental health courts, and family court services. Further, the use of technology continues to be maximized in all courthouses to achieve efficiencies.

The need for additional judicial resources continues to increase. The Court is deferring requests made this year for **9 new judgeships** to FY14 or beyond.

2. Address compensation for court employees, justices, and judges. The recruitment and retention of highly qualified judges, as well as persons who can fill the other critical positions in the Judicial Branch, is essential to the Court's constitutional mission to provide timely, fair, and impartial justice. As economic conditions permit, and in order to attract and retain well qualified personnel, the Judiciary must address compensation by seeking an increase in employee compensation at the same percentage level as other state employees may receive. The Court has included a 1% salary increase in its budget, pursuant to the statewide budget instructions from the Division of Financial Management, and lends its full support to the other branches of government to begin to address adequate compensation increases for state employees, and a commensurate increase for justices and judges.

3. Introduce legislation to ensure the long-term stability of the Judges' Retirement Fund (JRF). Efforts continue to ensure the stability of the JRF, which plays a critical role in the effort to recruit and retain highly qualified judges and to provide adequate resources to deal with Idaho's growing caseload through the availability of senior judges. A study team that included legislators as well as justices and judges met in 2009 to attempt to craft an effective approach. The study team also supported the transfer of the administration of the JRF to the PERSI Board. Discussions with members

of the Legislature are continuing in an effort to arrive at a solution that will guarantee the long-term stability of the JRF. The Court remains fully committed to developing a workable solution to stabilize the fund.

4. ***Consider legislation to defer filling certain judgeships to meet changing needs.*** Particularly in times of fiscal crisis, it is necessary to hold open judicial positions to deal with demographic changes and to meet the challenging responsibilities of the Judicial Branch. This can be accomplished through legislation providing that when emergency conditions exist, the Supreme Court may order that specified district judge and magistrate judge positions be left vacant.
5. ***Consider amending I.C. § 19-2524 to help judges better address cases involving defendants with mental health and substance abuse issues.*** In 2007, the Legislature enacted I.C. § 19-2524 to ensure that courts could obtain accurate, comprehensive assessments and then order plans of treatment for defendants who appear to have mental health or substance abuse problems. In light of the experience thus far with the statute, it may be appropriate to consider amendments that will accommodate recent changes in appropriations for assessments and treatment, and ensure consistency between this statute and the provisions of I.C. §§ 19-2522 and 19-2523, which address the consideration of mental health issues in sentencing.
6. ***Consider extending the two-year limit on misdemeanor probation to allow completion of problem-solving court programs.*** Currently, a defendant may be placed on probation for a misdemeanor offense for no more than two years. I.C. §§ 19-2601(7), 19-3921. This can make it difficult or impossible for a misdemeanor offender to complete a problem-solving court program within the period of probation. Legislation to allow the probationary period to be extended to accommodate the completion of a problem-solving court program would help to address this issue and provide a better chance of rehabilitation for these offenders, and thereby reduce recidivism.
7. ***Address legislation to ensure the right to counsel for children in Child Protective Act (CPA) cases and effective assistance from Guardians ad Litem (GAL).*** The Court's Child Protection Committee consisting of representatives from the courts, Department of Health and Welfare, prosecuting attorneys, public defenders and Guardian ad Litem has recommended legislation regarding the appointment of a guardian ad litem and representation by an attorney for the Guardian ad Litem and/or the child. This legislative proposal has been crafted to address two issues. First, it is intended to eliminate the ethical conflict that can arise when an attorney is given the powers and duties of a guardian ad litem. The roles of an attorney and of a guardian ad litem are fundamentally different. Appointing one person to fill both roles can create an ethical dilemma. Second, the amendments will help to ensure the appointment of an attorney for the child in appropriate circumstances.

The recommendation is to amend I.C. §16-1614 to provide that for children under 12, the court shall appoint a GAL in all cases and shall appoint an attorney for the GAL. For children over 12, the court shall appoint an attorney for the child but if for any reason this is not practicable or is inappropriate, the court shall appoint a GAL with counsel.

8. ***Consider legislation to remove the prohibition on the payment of retainers to parenting coordinators.*** The Children and Families in the Courts Committee has recommended consideration of an amendment to I.C. §32-717D to remove the provision which states that parenting coordinators must agree to appointment without payment of a retainer by the parties. It is believed that this amendment will help to insure payment and may help to recruit and retain more parenting coordinators

Other Matters of Interest for the 2012 Legislative Session

While the following policy objectives are not specific legislative proposals of the Court, the Judiciary does express its willingness to work with others in the upcoming legislative session to address:

1. *Improve the collection of court fees, fines, and other obligations.* The Judiciary proposes a study be conducted by the Criminal Justice Commission to help inform the legislature when it considers proposals to add new fees, fines, and other obligations. The study could examine the existing statutory scheme relating to the collection of fees in criminal cases to clarify:

(a) whether each of the current fees is to be assessed for each case or for each count or charge within a case;

(b) the priority of how payments are to be applied to the various fees, fines and restitution when the payment received is insufficient to pay the entirety of the court ordered obligations; and,

(c) best practices for the collection of fees, including a clearer definition of the role of probation officers in these collections.

2. *Effective administration of substance use disorder funds.* The Court wishes to thank the Legislature for its wisdom last session in reallocating the previous level of substance abuse treatment funds to multiple entities including the Department of Correction, Department of Juvenile Corrections and the Idaho Supreme Court, in addition to the traditional recipient, the Department of Health and Welfare.

Significant work has been accomplished to ensure the courts administer these funds for drug courts and mental health courts efficiently and effectively, pursuant to evidence-based standards adopted by the Drug Court and Mental Health Court Coordinating Committee, established by I.C. § 19-5606. The Court looks forward to reporting to the Legislature on its significant accomplishments and expected outcomes.

The Court also wishes to express its willingness to administer funds for misdemeanor offenders, if the Legislature wishes to reallocate existing dollars from the Department of Health and Welfare to the Court for treatment of these offenders under the supervision of misdemeanor DUI and drug courts. The dollars are being held in reserve by the Department of Health and Welfare this year and could be readily administered by drug courts in FY13 to reduce recidivism and most effectively rehabilitate these offenders.

3. *Address public financing of Idaho Legal Aid Services (ILAS).* Since December 2006, the Idaho Supreme Court has supported the concept of public financing of ILAS to better allow ILAS to provide legal representation in specified state court case types, and to provide meaningful access to the state courts, particularly in these economically challenging times.

More recently, and since the last legislative session, representatives from the Bar, the courts, the counties, and ILAS have been meeting in an attempt to arrive at a proposal that will provide public financing of ILAS to assist that organization in its efforts. Many approaches to this public financing goal have been discussed, including:

(1) a voluntary attorney licensing fee; (2) an adjustment to the fees directed to the Domestic Violence Project Account to provide financing for ILAS; (3) repeal of the provisions relating to the

Displaced Homemaker Account and redirection of the fees currently deposited in that account; (4) a fee on foreclosures on real property; (5) involvement of ILAS in monitoring guardianships and conservatorships, and in family court or court assistance services; (6) diverting some portion of state revenues; and (7) a tax return check-off.

ILAS recommends an adjustment of the fees directed to the Domestic Violence Project account as its priority. The Court believes this is workable solution to achieve the broader public financing goal, and can be achieved by amending I.C. §39-5213 to provide for an additional \$20.00 fee for each divorce action, each divorce modification, and for each appearance in such actions. This would provide an additional income stream to the Idaho Domestic Violence Project Grant Account created in I.C. §39-5212. The Supreme Court also hopes to enter into two pilot projects with ILAS to serve as a Guardian ad Litem in certain guardianship and conservatorship cases, and to provide assistance to low income individuals as a court assistance officer.

- 4. Clarify the intent of the Legislature regarding cost of supervision fees.** Clarify what fees, if any, can be assessed to probationers in addition to the probation supervision fees established by I.C. §20-225 and 31-3201D. Arguments have been advanced that: 1) the payment for tests ordered as a condition of probation under I.C. §19-2608 cannot be assessed to a defendant in addition to the probation supervision fee, and 2) that I.C. §19-2608 is not applicable to proceedings in the magistrate division. Legislation would clarify the intent and could resolve these issues for state and county probation officers and others.
- 5. Support the Department of Administration's FY13 Capitol Budget request to the Permanent Building Fund.** The Court continues to support efforts to renovate the Capitol Annex, and to refurbish the building's infrastructure to make occupancy of the historic building possible for the Idaho Law Learning Center. The primary purposes of the Idaho Law Learning Center are to provide a location in Boise for legal education and programs of the College of Law, for continuing judicial education, a permanent home for the State Law Library, and a distinctive venue for law-related public education and outreach.



The Commitment of the Idaho Judiciary

As the Third Branch of Government, the Idaho Judiciary is committed to providing access to justice through the timely, fair, and impartial resolution of cases.

The Idaho Courts stand for:
Integrity
Fairness
Independence
Respect
Excellence
Innovation

The Idaho Courts strive to:

**Provide Timely, Fair,
Impartial Case
Resolution**

Ensure Access to Justice

**Promote Effective,
Innovative Services**

**Increase Public Trust
and Confidence in
Idaho Courts**

Approved by the
Supreme Court
October 31, 2011