

## **ESMERALDA COUNTY AMENDED INDIGENT DEFENSE SERVICES PLAN**

### I. STATEMENT OF POLICY

#### A. Objectives

1. Achieving equality before the law for all persons. Esmeralda County shall administer this Plan so those eligible for services of appointed counsel receive counsel and any other services necessary for adequate representation without waste of public resources.

2. Supplying the necessary resources for reunifying families; rehabilitating people to promote community safety, personal responsibility, and county fiscal accountability; diverting defendants from incarceration; and diverting minors away from the adult criminal justice system.

3. Meeting the constitutional requirements of providing appointed counsel while not creating any economic disincentive or impairing the ability of appointed counsel to provide effective representation.

4. Promoting the integrity of the relationship between an appointed attorney and a client. Esmeralda County shall administer this plan in a manner that ensures the Esmeralda County Public Defender and other appointed counsel are free from political and undue budgetary influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

5. Implementing the requirements of appointed counsel deriving from the U.S. and Nevada Constitutions, Nevada Revised Statutes, Nevada and 5th Judicial District Court Rules, Nevada Rules of Criminal Procedure, and any regulations promulgated by the Nevada Department of Indigent Defense Services.

### II. DEFINITIONS

A. "Appointed Attorney/Counsel" includes the Esmeralda County Public Defender and staff attorneys of the Esmeralda County Public Defender office and appointed private attorneys, both contracted and hourly.

B. "Ancillary Services" are defense services paid for in addition to attorney's fees: (1) investigator services, (2) expert services, (3) and any other expenses that appointed attorney can reasonably justify as needed for effective

assistance of counsel.

C. "Department" is The Nevada Department of Indigent Defense Services.

D. "Eligible Client" is an indigent person whom an Appointing Authority has determined to be eligible for the services of a public defender.

E. "Expert Witness" is a person qualified by knowledge, skill, experience, training, or education to render and opinion on scientific, technical, or other specialized matters.

F. "Fiscal Year" is July 1st through June 30th.

G. "Indigent" means a person who is unable, without substantial hardship to himself/herself or his/her dependents, to obtain competent, qualified legal counsel on his or her own.

H. "Investigator" is a person licensed by the State of Nevada who is qualified to secure evidence and subpoena witnesses.

I. "Qualified Attorney" is an attorney approved by the Department to provide indigent defense services within certain categories of cases as set forth in the Regulations.

J. "Representation" includes counsel, investigative, expert, and other services that appointed attorney can reasonably justify as needed for effective assistance of counsel.

### III. PROVISIONS OF REPRESENTATION

A. Mandatory: Esmeralda County shall provide representation for any financially eligible person who:

1. is confined and entitled to a prompt, counseled, adversarial bail hearing;

2. is charged with a felony or gross misdemeanor;

3. is charged with a misdemeanor with a minimum jail sentence;

4. is charged with a misdemeanor where the prosecution is seeking jail time (incarceration);

5. is alleged to have violated probation or other court

supervision and jail time or a sentence of confinement may be imposed;

6. is a juvenile alleged to have committed an act of juvenile delinquency or alleged to be a child in need of supervision;

7. is party to a dependency case where termination of rights is a possibility.

8. is subject to commitment per NRS 433A.310 and NRS 433A.270;

9. is in custody as a material witness;

10. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or when due process requires the appointment of counsel, or the judge is likely to impose jail time;

11. faces loss of liberty in a case and Nevada law requires the appointment of counsel;

12. faces loss of liberty for criminal contempt;

13. has received notice that a grand jury is considering charges against him or her and requests appointment of counsel.

B. Discretionary: Whenever a court determines that the interests of justice so require, Esmeralda County may provide representation for any financially eligible person who:

1. is charged with a misdemeanor, infraction, or code violation that a sentence of confinement is authorized;

2. has been called as a witness before a grand jury, a court, or any agency that has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a criminal contempt proceeding, or faces a potential loss of liberty;

3. faces any other case where the interest of justice requires appointment of counsel.

C. Timing of Appointment of Counsel; Esmeralda County shall provide an appointed attorney at an indigent person's first appearance before a judge or at least within 72 hours after being

confined, when they are formally charged or notified of charges if formal charges are sealed, or when a Justice of the Peace, Municipal Judge, or District Judge otherwise considers appointment of counsel appropriate.

D. Number and Qualifications of Counsel in Capital Cases:

1. Number: A relevant court must appoint two (2) lawyers as soon as possible in all open murder cases that are reasonably believed to result in a capital charge.

2. Qualifications: Appointing of attorneys representing defendants charged in capital cases shall comport with NSCR 250.

E. Financial Eligibility for Representation:

1. Indigency Determination: An indigent person is entitled to appointed counsel. "Indigency" means the inability of a defendant, without causing the defendant or any of his or her dependents to have substantial hardship, to obtain competent, qualified legal counsel on his or her own.

a. "Substantial hardship" is presumptively determined to include all defendants who receive public assistance, as that term is defined in NRS 422A.065; reside in-public housing, as the term is defined in NRS 315.021; has a household income that is less than 200 percent of the Federal Poverty Guideline.

b. A defendant is presumed to have a substantial hardship if he or she is currently serving a sentence in a correctional institution or housed in a mental health facility or is a minor.

c. Defendants not falling below the presumptive threshold are subject to a more rigorous screening process to decide if his/her circumstances would result in a substantial hardship if he/she sought retaining private counsel. Those circumstances include the seriousness of charges being faced, monthly expenses, and local private counsel rates.

2. Screening for Eligibility: The Esmeralda County Sheriff's Office or any other law enforcement officer responsible for booking a criminal defendant and shall provide an initial screening within 48 hours for financial eligibility and provide a recommendation to the court with regard to the eligibility of the defendant for appointed counsel based upon the provisions herein.

This initial screening is forwarded to the applicable Justice, Municipal, or District Court before the person booked is seen by a judge. A court receiving the initial screening shall further investigate the application for attorney and appoint or not appoint based on the criteria in section (E)(1) of this plan and as otherwise required by law. Appointed Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.

3. Partial Eligibility: If the court determines that a defendant is able to afford counsel but cannot be effectively represented due to inability to pay for appropriate services such as investigators, experts or other services, the court shall order reasonably necessary services be provided at no cost to the defendant, subject to the procedures established in each jurisdiction for the approval and payment of fees and expenses.

4. Automatic Eligibility: A minor alleged to have committed a crime, an act of juvenile delinquency, or alleged to be a child in need of supervision is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.

#### IV. APPOINTMENT OF ESMERALDA COUNTY PUBLIC DEFENDER.

A. Hiring Contracted Esmeralda County Public Defender. In April of every even numbered year, the Board will advertise for bids for the contracted Esmeralda County Public Defender.

1. Proposals will set forth the qualifications and legal experience of the applicant.

2. Proposals will include the applicant's past performance in representing persons in the criminal justice system.

3. Proposals will include the applicant's ability to comply with current regulations then in effect for the provision of indigent defense services and/or the terms of the contract.

4. Proposals will only be accepted from attorneys on the Department of Indigent Defense roster of eligible providers.

5. Proposals will include the cost of services under the contract including the cost for services, if any, that must be provided in addition to criminal defense services.

6. The County may seek references and consult references, including the Department, in the hiring process.

7. Proposals will be evaluated by the Board of County Commissioners and its designees but shall not include any members of law enforcement or prosecution. Judicial input may be considered but may not be the sole basis for selection. Contracts will be awarded based on the merits of the proposals.

8. At a May Board meeting, the County will open bids and make the decision who to hire among the qualified bidders, and prepare and sign a contract for 2 years with that person or entity.

B. Local Control: Esmeralda County gives no authority to the State Public Defender to deliver indigent defense services for death penalty cases, direct appeals, or any other matter. Therefore, the Esmeralda County Public Defender will handle all cases where a court appoints an indigent person an attorney unless the Esmeralda County Public Defender has a conflict of interest in the case.

C. Conflict of Interest Checks: The Esmeralda County Public Defender shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant.

1. If the Public Defender determines that such a conflict exists, the Public Defender shall bring this information as soon as possible to the relevant court for the appointment of counsel. In addition, the Public Defender shall inform the Department by email at [didscontact@dids.nv.gov](mailto:didscontact@dids.nv.gov). The Public Defender shall include in the notification the following information (if available): charging document, probable cause sheet or declaration, and the date and location of the next scheduled court appearance.

2. Upon receipt of the above notification, the Department shall select other Qualified Attorney(s) for assignment from among the panel of Qualified Attorneys with whom Esmeralda County has an approved contract. The Department shall use a rotation system insofar as practicable, but shall ultimately have discretion to make assignments on any legitimate basis, including, without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Esmeralda County officials, and capacity to take on work.

3. A Qualified Attorney contacted by the Department for an assignment may accept or reject the assignment. If the Qualified Attorney (or staff duly authorized to accept assignments on the

Qualified Attorney's behalf) is not available during normal business hours when contacted by the Department, the assignment shall be deemed rejected. The Department shall contact other Qualified Attorneys until it obtains acceptance from a sufficient number of Qualified Attorneys to represent all Eligible Clients.

4. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Department shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority-i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client's charges are pending.

5. In the event of a capital case, Esmeralda County shall retain a Qualified Attorney authorized to serve as lead counsel under Supreme Court Rule 250 and shall pay reasonable compensation for such services. The Public Defender and/or other Qualified Attorneys may be assigned as co-counsel consistent with the terms of their approved contracts.

6. The Public Defender will remain counsel of record until such time as the relevant court enters an Order granting withdrawal.

7. In no instance, shall the Public Defender be appointed to represent co-defendants in a case.

8. The Esmeralda County District Attorney's office shall have no authority to determine or recommend whether or not the Esmeralda County Public Defender has a conflict of interest.

D. Counsel at Initial Appearance/Arrest

1. The Public Defender will provide counsel at first appearance and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of criminal procedure, and case law. The Public Defender shall be present at all other critical stages, whether in or out of court.

E. Assigning Attorneys: The Esmeralda County Public Defender shall have exclusive control in assigning an attorney within the office to any case the Esmeralda County Public Defender is appointed to.

F. Case Related Expenses: Esmeralda County shall maintain a budget within the Office of the Public Defender for payment of investigator and expert witness fees. (If cost effective, to hire an investigator in house.)

G. Complaints by Clients: The Public Defender shall maintain a system for receipt and review of written complaints made by clients. The Esmeralda County Public Defender shall make publicly available the policy and procedure for receiving and reviewing written complaints. This system shall not interfere with a person's ability to avail themselves of the complaint process provided by the Nevada Department of Indigent Defense Services (DIDS) or Nevada State Bar.

- [https://dids.nv.gov/Complaints/Complaints\\_or\\_Recommendations](https://dids.nv.gov/Complaints/Complaints_or_Recommendations)
- <https://nvbar.org/file-a-complaint-2/>

#### V. APPOINTMENT OF PRIVATE ATTORNEYS

A. Appointment of Private Counsel: The Department shall not appoint any private attorney to represent an indigent person unless either:

1. the Esmeralda County Public Defender has a conflict of interest that requires withdraw from representation; or

2. the requirements of NSCR 250 require appointing counsel outside the Esmeralda County Public Defender.

B. Qualifications: The Department shall only appoint private counsel listed within the Nevada Department of Indigent Defense Services (DIDS) List of Qualified Appointed Counsel it maintains per NRS 180.430, who have agreed to represent clients in Esmeralda County.

C. Compensation: Esmeralda County shall compensate private attorneys appointed to represent indigent clients in a manner consistent with the Stipulated Consent Judgment from Davis v. State, No. 170C02271B (Nev. 1st J. Dist. Ct. Aug. 20, 2020).

1. Fees: Temporary Regulation Section 44 requires appointed counsel to receive prompt compensation. Reasonable activities outside of court appearances including, but not limited to, directing investigation, negotiating, or tactical planning are equally important to quality representation and shall be included in appointed counsel's compensation. Unless otherwise contracted, these counsel will receive the hourly rate set forth in NRS 7.125.

a. Qualified Attorneys providing services to Eligible Clients within Esmeralda County in exchange for an hourly rate shall submit monthly invoices to the Department. Such invoices shall be submitted on the Requests for Attorneys



Fees form attached hereto as Appendix B, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered. The backup shall contain time entries rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.

b. The Department shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. In reviewing for reasonableness, the Department may consider factors such as: (i) average case times as determined by workload analysis; (ii) time and skill required; (iii) complexity of the case; and (iv) experience and ability of the Qualified Attorney(s). The Department may request additional information or explanation where necessary. In the event the Department denies or modifies a Request for Attorneys' Fees, it shall provide an explanation to the Qualified Attorney, with a copy to the Esmeralda Treasurer, as to why the denied portion was not reasonable. Such denials shall be subject to judicial review pursuant to NRS 7.135.

c. The approved voucher for Payment for all approved attorneys' fees shall then be promptly brought before the Auditor, and voted upon by the Board of Commissioners. Upon approval, payment shall be promptly issued by the County Auditor's Office. The Department shall notify the Auditor's Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup.

2. Fees: Temporary Regulation Section 44 requires appointed counsel to receive prompt services to Eligible Clients, the following procedures shall apply:

a. Pre-Authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars (\$2,500) shall be submitted to the Department for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization to the Department by email at [didscontact@dids.nv.gov](mailto:didscontact@dids.nv.gov). The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services.

b. Reasonableness Review: All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the Department's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the Department for such review no later than thirty (30) days

following the termination of the representation. Any requests for expenses not timely submitted shall be waived. The Department shall approve all reasonable and necessary Case-Related Expenses, and shall notify the Esmeralda County Auditor's Office of all approved expenses and provide a copy of the invoice.

c. The approved voucher for Payment for all approved expenses shall then be promptly brought before the Auditor, and voted upon by the Board of Commissioners. Upon approval, payment shall be promptly issued by the County Treasurer's Office. The Department shall notify the Esmeralda Treasurer of all approved Requests for expenses, attaching a copy of the invoice and backup.

3. Esmeralda County shall establish a case-related expense budget independent of the judiciary for its counsel appointed on an individual case basis.

4. The Esmeralda Sheriff's Office, Sgt. Matt Kirkland, 775-485-6370 (or designee) will make arrangements for visits with in custody clients at its private meeting room in the jail, and or at a private room in the Courthouse.

D. Conflict of Interest Checks: Appointed Counsel shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant. If appointed counsel determines that such a conflict exists, the appointed counsel shall bring this information as soon as possible to the relevant court. In addition, the Public Defender shall inform the Department by email at [didscontact@dids.nv.gov](mailto:didscontact@dids.nv.gov). The Public Defender shall include in the notification the following information (if available): charging document, probable cause sheet or declaration, and the date and location of the next scheduled court appearance.

1. Upon receipt of the above notification, the Department shall select other Qualified Attorney(s) for assignment from among the panel of Qualified Attorneys with whom Esmeralda County has an approved contract. The Department shall use a rotation system insofar as practicable, but shall ultimately have discretion to make assignments on any legitimate basis, including, without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Esmeralda County officials, and capacity to take on work.

E. Complaints by Clients: Appointed Counsel shall maintain a system for receipt and review of written complaints made by clients. Appointed Counsel shall make publicly available the policy and procedure for receiving and reviewing written complaints. This system shall not interfere with a person's ability to avail themselves of the complaint process provided by the Nevada Department of Indigent Defense Services (DIDS) or Nevada State Bar.

- [https://dids.nv.gov/Complaints/Complaints\\_or\\_Recommendations](https://dids.nv.gov/Complaints/Complaints_or_Recommendations)
- <https://nvbar.org/file-a-complaint-2/>

## VI. TRAINING

A. Esmeralda County Public Defender: The Esmeralda County Public Defender's office shall use the services of the Nevada Department of Indigent Defense Services (DIDS), Nevada State Bar, Washoe County Public Defender, Clark County Public Defender, and Nevada State Public Defender to obtain free or low-cost training opportunities for both attorneys and support staff.

1. Priority 3-Specialized training: The Esmeralda County Public Defender's office shall use the training opportunities of the National Criminal Defense College, National Association of Public Defense, National Association of Criminal Defense Lawyers, or any other reputable training organization to provide specialized training as required by the Nevada State Bar, Nevada Rules of Professional Conduct, and any other Nevada law governing the training, experience, or qualification of an attorney.

B. Private Counsel: Private must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services (DIDS) regulations.

## VII. DUTIES OF INDIGENT DEFENSE COUNSEL

A. Standards of Performance: Services rendered by appointed counsel shall be commensurate with those rendered if counsel privately employed by a person. Representation shall be provided in a professional, skilled manner guided by applicable regulations; laws; Nevada Rules of Professional Conduct; and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada Supreme Court Order in Administrative Docket 411, or the same as may be amended. Additionally, attorneys must advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest. Attorneys must make all reasonable efforts to meet with the client within seven

days following the assignment of the case and every thirty days thereafter unless there are no significant updates in the client's case.

B. Continuity in Representation: Esmeralda County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same attorney represents a defendant through every state of the case without delegating the representation to others, except that administrative and other tasks that do not affect the rights of the defendant.

C. Workload Standard: The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence, or representation of clients.

1. Esmeralda County will provide maximum workload guidelines to attorneys who provide indigent defense services as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.

2. Additionally, Esmeralda County shall ensure that the Esmeralda County Public Defender's office is staffed with adequate numbers of attorneys and support staff to deliver indigent defense services that meet the Standards of Performance detailed in this plan. Esmeralda County shall use the data and recommendations from National Center for State Courts' Nevada Indigent Defense Weighted Workload Study to determine adequate numbers of attorneys and support staff.

D. No Receipt of Other Payment: Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment unless such payment is approved by order of the court.

E. Private Practice of Law. The Esmeralda County Public Defender and any staff attorney with that office may maintain the private practice of law, within the above DIDS guidelines.

F. Use of Client Surveys. The Esmeralda County Public Defender and appointed counsel shall ensure that any client surveys authorized by the Board of Indigent Defense Services are provided to clients at the conclusion of his or her representation by an attorney.

G. The Contract Esmeralda County Public Defender shall use the data collection and case management system provided by the Department of Indigent Defense Services at State expense for caseload and time reporting. Caseload reporting will be done by the Contract Esmeralda Public Defender. The Contract Esmeralda Public Defender shall report on an annual basis as required by Regulations of the Board on Indigent Defense Services.

#### VIII. REIMBURSEMENT FOR PAYMENTS EXCEEDING THE MAXIMUM COUNTY CONTRIBUTION

Pursuant to NRS 180.320(3), the Department's Board has promulgated under Section 18 of its Regulations a formula for establishing the maximum amount a county is required to pay for the provision of indigent defense services in a Fiscal Year. Under that formula, the maximum amount Esmeralda County must pay for Fiscal Year 2021-2022 is \$91,052.63.

Pursuant to Section 19 of the Regulations, Esmeralda County shall be permitted to obtain reimbursement for costs associated with the provision of indigent defense services under this plan to the extent they exceed the maximum contribution in the preceding paragraph. Esmeralda County shall file financial status reports with the Department in a manner consistent with Section 19 of the Regulations, using the form attached as Appendix C. The Esmeralda County Board of Commissioners hereby designates the Esmeralda County Auditor as its designee to submit such reports to the Department. To the extent the financial status reports reflect costs in excess of the maximum contribution for Fiscal Year 2021-2022, Esmeralda County shall receive reimbursement up to a limit of \$14,147.38. In the event reimbursable costs exceed this amount, nothing herein shall be construed to preclude Esmeralda County from seeking additional reimbursement pursuant to NRS 353.266, NRS 180.450, or as otherwise permitted by law.

#### IX. EFFECTIVE DATE; MODIFICATION

This plan is effective September 21, 2021 and shall remain in effect through the end of the current fiscal year, i.e., until June 30, 2022. This plan may be modified by formal action of the Board of County Commissioners.