

Board of Indigent Defense Services

Approved 10/06/2021



# The Douglas County Plan for the Provision of Indigent Defense Services

Adopted 9/16/2021

## I. STATEMENT OF POLICY

### A. Authorities:

1. NRS 180.320(2)
2. Nevada Department of Indigent Defense Temporary Regulation Section 23
3. In the matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT No. 411

### B. Objectives

1. The objective of this Plan is to provide for equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services of appointed counsel, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense. The plan and any attorneys providing indigent defense services pursuant to this plan must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

## II. DEFINITIONS

- A. "Appointed Attorney" includes private attorneys, both contracted and hourly.
- B. "Appointed Counsel Program Coordinator" performs such duties and responsibilities as assigned by the County Manager as are reasonably necessary to oversee the program including assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; monitoring case reporting requirements from attorneys; approving of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. As the Department of Indigent Defense's designee, this position will work in coordination with the Department of Indigent Defense Services to ensure requested data is provided to the Department.
- C. "Representation" includes counsel and investigative, expert and other services.

## III. PROVISIONS OF REPRESENTATION

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

1. Is charged with a felony or gross misdemeanor;
  2. is charged with a misdemeanor where jail time is mandatory or the prosecutor is seeking jail time;
  3. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
  4. is a juvenile alleged to have committed an act of delinquency or alleged to be a child in need of supervision;
  5. is party to a dependency case where termination of rights is a possibility;
  6. is subject to commitment pursuant to NRS 433A.310;
  7. is in custody as a material witness;
  8. 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, or the judge is likely to impose jail time;
  9. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
  10. faces loss of liberty for criminal contempt;
  11. 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, representation may be provided for any financially eligible person who:
1. Is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;
  2. is a party to a dependency case in which termination of parental rights is a possibility;
  3. is or has been called as a witness before a grand jury, a court, or any agency which 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 civil or criminal contempt proceeding, or face loss of liberty;
  4. any other case in which the court determines in the interest of justice appointment of counsel is appropriate.

C. Timing of Appointment of Counsel: Counsel shall be provided to eligible persons:

1. within 72 hours as soon as feasible after their first appearance before a judge;
2. when they are formally charged or notified of charges if formal charges are sealed; or
3. when a Justice of the Peace or District Judge otherwise considers appointment of counsel appropriate

D. Number and Qualifications of Appointed Counsel:

1. one attorney shall be appointed consistent with Section 4 and 5 herein, except Capital Cases;
2. two attorneys shall be appointed consistent with Section 4 and 5 herein, as soon as possible in all open murder cases which are reasonably believed to result in a Capital Case;
3. at least one of the two attorneys appointed to represent defendants charged in Capital Cases must meet the minimum standard for lead counsel pursuant to Nevada Supreme Court Rule 250 and both attorneys appointed must conform to the performance guidelines or standards as adopted by the Nevada Supreme Court for Capital Cases.

E. Eligibility for Appointed Representation:

1. Financial Eligibility:

- (a) a person shall be deemed “indigent” who is unable, without “substantial hardship” to himself or his dependents, to obtain competent, qualified legal counsel on his or her own;
- (b) “substantial hardship” is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline;
- (c) a defendant is presumed to have a “substantial hardship” if he or she is currently service a sentence in a correctional institution or housed in a mental health facility or is a minor;
- (d) defendants not falling below the presumptive threshold for indigency will be subject to a more rigorous screening process to determine if his or her particular circumstances, including seriousness of charges being faced, monthly expenses,

and local private counsel rates, would result in a “substantial hardship” were they required to retain private counsel.

2. Screening for Eligibility: Within 48 hours, the Court Administration, through Pretrial Services, or Appointed Counsel Coordinator, shall conduct screening for financial eligibility and provide a recommendation to the court with regard to eligibility of the defendant for the services of appointed counsel based upon the provisions set forth above. Appointed Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.
3. Automatic Eligibility: A minor alleged to have committed 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 PRIVATE ATTORNEYS

##### A. System of Selection for Court Appointed Counsel Attorneys

1. Annually, Douglas County will recruit attorneys to provide indigent defense services on a contract basis.
2. Recruitment will take place during the spring of each year, with annual contracts beginning July 1st of each fiscal year.
3. Attorneys interested in providing indigent defense services on a contract basis will provide Letters of Interest for consideration.
4. Attorneys must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services pertaining to training, education, and qualifications by submitting an application to the Department of Indigent Defense Services.
5. The Appointed Counsel Coordinator shall establish an Appointed Counsel Selection Committee (ACSC) to review the qualifications of applicants for contract or hourly appointments, to review the list of attorneys from which appointments are made in hourly cases, to determine which attorneys shall be recommended for appointments.
6. The committee shall be made up of five (5) members who:
  - (a) have no pecuniary interest in the outcome of the attorney selection or performance evaluation process;

- (b) have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;
  - (c) are not directly related to the judiciary or any prosecution function; and
  - (d) have an interest in the variety of types of cases that are represented by the appointed counsel lists to be selected by the Committee.
7. On an ongoing basis, the Committee shall:
- (a) meet at least once a year and shall solicit input from judges, and others familiar with the practice of criminal defense, juvenile law and family where appointed counsel are utilized;
  - (b) review any complaints from clients;
  - (c) review the history of participation in training of each applicant and each contract or hourly attorney receiving appointments; and
  - (d) determine eligibility and recommendation of appointed counsel for new and continued participation.
8. While appointed counsel may receive assistance from associate attorney's, participants in a mentorship program, or other attorneys deemed qualified by the ACSC, in carrying out his/her responsibilities, appointed counsel cannot delegate responsibilities for representation to another attorney. All substantive court appearances must be made by an attorney who has been determined to be qualified by the ACSC.
9. Complaints from clients, judges or the public about representation by appointed counsel shall be transmitted to the Coordinator for consideration by the ACSC in evaluation of appointed counsel.

**B. Contract Attorneys**

- 1. Douglas County shall contract for appointment of counsel;
- 2. Douglas County contract attorney compensation may be based on a flat fee, an hourly basis, or a combination of both. If the contract is based on a flat fee, the contract should consider, but not be limited to, the following factors:
  - (a) the average overhead for criminal defense practitioners in the locality;

- (b) the number of assignments expected under the contract;
  - (c) the hourly rate paid for all appointed counsel; and
  - (d) the ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court.
3. Douglas County shall contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by the ACSC; and
  4. The contract must be subject to termination annually or sooner, if determined by the ACSC that a contract attorney is not abiding by the standard guidelines for qualification of appointed counsel; and
  5. The payment of fees and expenses of contracted appointed counsel by Douglas County shall be governed by contract between counsel and Douglas County.
  6. The contract shall exclude appointment in cases with the potential of a life sentence and capital cases.

C. Hourly and Capital Case Attorneys:

1. If contract counsel cannot handle the case; or the Appointed Counsel Program Coordinator determines the case is not appropriate for contract counsel to handle, alternative counsel will be selected by the Appointed Counsel Program Coordinator as follows:
  - (a) The Appointed Counsel Program Coordinator shall select this alternative appointed counsel, in consecutive order, from the hourly list, except
  - (b) If the nature of the case requires lead counsel be selected from the Capital Case list, the Appointed Counsel Program Coordinator, in consecutive order, shall select from the Capital Case list;
  - (c) The Appointed Counsel Program Coordinator shall select Second Chair counsel for a capital case: counsel may be selected next in order from the Hourly list, if the attorney qualifies under Supreme Court Rule 250 for second chair selection, or the Capital Case list.
2. The payment of fees and expenses of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Counsel Program Coordinator.

- (a) Such invoices shall be submitted no later than ten days after the end of the month in which the services were rendered.
  - (b) The Coordinator shall approve for payment all reasonable attorney's fees requested. In reviewing for reasonableness, the Coordinator may consider factors such as: the average case times as determined by workload analysis, time and skill required, complexity of the case, and experience and ability of the Qualified Attorney(s). The Coordinator may request additional information where necessary. In the event the Coordinator denies or modifies the request, an explanation shall be provided to the Qualified Attorney, with a copy to the County Manager and the Department of Indigent Defense Services, as to why the denied portion was not reasonable. Such denials shall be subject to judicial review pursuant to NRS 7.135.
- D. Compensation of Court Appointed Counsel: Douglas County agrees to pay contract attorneys and/or panels of private attorneys up to the sum of One Hundred Ninety-Five Thousand Three Hundred and thirty-three Dollars and thirty-three Cents (\$195,833.33) per year. The County will make the payment to contract attorneys and/or panels of private attorneys on a quarterly basis on the first day of the first month of the quarter.
- E. 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 no instance, shall a single attorney or law firm be appointed to represent co-defendants in a case. The Douglas County District Attorney's office shall have no authority to determine or recommend whether or not the appointed counsel has a conflict of interest.
- F. Payment of Fees and Expenses of Appointed Counsel: Douglas County agrees to budget for case-related expenses in the amount of \$100,000. Attorneys may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services. Any payment for extraordinary costs or fees shall be paid only when submitted and approved by the Appointed Counsel Program Coordinator.
  - 1. Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:
    - (a) Pre-authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars shall be submitted to the Coordinator for pre-authorization. The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services



2. Reasonableness Review: All Case-Related Expenses are subject to the Coordinator's review for reasonableness. Invoices shall be submitted for such review no later than thirty days following the termination of the representation. Any requests for expenses not timely submitted shall be waived.

G. Privileged Communications: County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense client and appointed counsel.

1. Within the Judicial Law Enforcement Center (JLEC) in Minden, private meeting rooms are available for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.

2. Within the Tahoe Township Justice Court in Stateline, private meeting rooms are available for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.

H. 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 Department of Indigent Defense Services (DIDS) or Nevada State Bar.

## V. TRAINING

A. Appointed Counsel must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services regulations.

## VI. 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, Appointed Counsel 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. Appointed Counsel 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 of Representation: Douglas County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same Appointed Counsel 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 Appointed Counsel must allow the Appointed Counsel to give each client the time and effort necessary to ensure effective representation. Any Appointed Counsel who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the Appointed Counsel's competence, diligence, or representation of clients. Douglas County will provide the maximum workload guidelines as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.
- D. In Custody Arraignments: The Appointed Counsel Program Coordinator shall ensure the provision of Representational Services for all Eligible Clients who are in custody and require a bail hearing. If the Coordinator is unable to assign an attorney to be present at initial appearances and arraignments, the Coordinator may be present. Either the assigned attorney or Coordinator must be prepared to address appropriate release conditions in accordance with relevant statute, rules of criminal procedure and caselaw. If the Coordinator provides these services, they should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of the defendant. This plan ensures the presence of counsel at all other critical stages, whether in or out of court.
- E. 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.
- F. Private Practice of Law: Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to the contract.
- G. Use of Client Surveys: Appointed Counsel shall maintain a system for providing Client Surveys to their clients. Appointed Counsel shall make publicly available the policy and procedure for providing surveys. This system shall not interfere with a person's ability to avail themselves of the Client Survey form provided by the Department of Indigent Defense Services (DIDS).

- H. Caseload Reporting: Appointed Counsel shall report caseload data and times as promulgated in the Nevada Department of Indigent Defense Services regulations.

## VII. APPOINTED COUNSEL PROGRAM COORDINATOR

- A. Selection: Douglas County will contract with a lawyer to serve as the Appointed Counsel Program Coordinator. The terms of this contract will be determined by this plan, Douglas County, and the Appointed Counsel Program Coordinator, but in no event will this Appointed Counsel Program Coordinator be directly involved in direct representation in appointed counsel cases.

### B. Duties:

1. The Appointed Counsel Program Coordinator shall have all the duties and responsibilities stated in the various sections of this plan.
2. The Appointed Counsel Program Coordinator shall maintain the list of all attorneys approved by the ACSC for contract, hourly, and capital case appointment. In addition, the Appointed Counsel Program Coordinator shall maintain appropriate records to reflect the cases and dates to which each attorney has been appointed.
3. When notified of the need for representation, the Appointed Counsel Program Coordinator, shall select, in order and as more fully described herein, the next available attorney from the list of those attorneys qualified to provide representation as approved by the Committee in accordance with Section 4 of this Plan. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Coordinator 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.
4. The Appointed Counsel Program Coordinator shall be responsible for approving the claim for payment of each attorney and any expert or other service fees at the conclusion of appointed counsel’s representation or, if appropriate, periodically during appointed counsel’s representation, as specifically discussed herein.
5. The Appointed Counsel Program Coordinator will work with the Department of Indigent Defense Services to provide any information requested.

## VIII. EFFECTIVE DATE

- A. The Douglas County Plan for the Provision of Indigent Defense Services is approved on this the 16th day of September, 2021.

