

WHITE PINE COUNTY PLAN
PROVISION OF INDIGENT SERVICES
NAC-180 §§ 2-50

This plan meets or exceeds the requirements for the provision of Indigent Defense Services, established by Nevada statutes, court judgments, and Nevada Court rules.

This plan addresses those factors in NAC-180; §§2-50 that relate to the proper provision of indigent defense services.

SECTION 1. DEFINITIONS. The definitions provided in NAC-180 §§3-10 are incorporated in this Plan.

“Firm” Definition:

“indigent services counsel”

Qualified attorney

SECTION 2. JURISDICTIONS. White Pine County, Lincoln County and Eureka County are companion counties included within the jurisdiction of the Seventh Judicial District Court, State of Nevada. This plan is intended to satisfy the requirements for White Pine County, Nevada even though the local judicial jurisdiction includes counties who have developed their own plans. This plan may be modified to include or exclude companion counties at the request of a county so long as the modification is approved by the county commissions and each modifying county certifies the modification will not result in diminished services as a result of the modification.

SECTION 3. HIRING PLAN. Hiring attorneys to provide Indigent Defense Services will follow this procedure. White Pine County will contract with qualified attorneys as public defenders. All contracts will be consistent with this plan and NAC 180 §§ 2-50, Nevada case law, and will be approved by the White Pine County Board of Commissioners. Qualified defense counsel will be selected by the White Pine County Board of Commissioners.

Proposals for the provision of services with specifications that meet or exceed NAC 180 §§ 2-50 will be sought by November 1 of a) prior to any biennium fiscal year when indigent services are being sought; or, b) any year prior to the termination or expiration of a currently existing system for indigent defense services.

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

Proposals may include applications by multiple legal counsel so long as the proposals meet Nevada’s legal requirements then in effect.

Proposals will meet the timeline set for provision of services sought by each participating county.

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

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.

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.

The County may seek references and consult references in the hiring process.

SECTION 4. INDIGENCY SCREENING PROCESS AND APPOINTMENT OF COUNSEL. County, or its designee (excluding law enforcement officials), will screen criminal detainees not later than within 48 hours of arrest, to determine whether they are eligible for defense services. County will appoint non-judicial designees to screen the detainee's financial affidavit within the time period. The County designees will complete a written certification that the detainee qualifies as indigent and will notify the Indigent Services Provider of its determination promptly. County designee will use the screening form prescribed by the Department, attached as Exhibit A.

If a judicial officer determines that the criminal detainee is qualified to receive indigent services, indigent services counsel will be notified by the judicial officer's court clerk. *Description of how cases will be assigned within the Firm – will it be rotation? If there is a conflict, will another attorney within the Firm be assigned or will it go to DIDS for outside counsel?*

In the event of a dispute as to a criminal detainee's eligibility for services, the Indigent Services Provider will continue to provide representation until the matter is resolved between the county screening services and the judicial officer in accordance with Nevada law.

The Firm shall serve as White Pine County's primary public defender and shall be assigned to represent all Eligible Clients except:

In the event the Firm has a conflict of interest or otherwise cannot represent all parties in a matter in accordance with the Nevada Rules of Professional Conduct; or

As lead counsel in a capital case.

In the event the Firm has a conflict of interest or otherwise cannot represent all parties in a matter, a separate Qualified Attorney from the DIDS List shall be assigned. The procedure for assignment is set forth below:

The Firm shall provide immediate notice of its inability to represent Eligible Client(s) to the Department by email at didscontact@dids.nv.gov. The Firm shall make this notification as soon as it determines that it intends to file a notice of conflict or a motion to withdraw, as applicable. The Firm shall include in the notification the following information (if available): charging document, probable cause sheet or declaration, and the date, time and location of the next scheduled court appearance.

Upon receipt of the above notification, the Department shall select other Qualified Attorney(s) for assignment from among the panel of Qualified Attorneys. 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 White Pine County officials, and capacity to take on work.

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.

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.

In the event of a capital case, White Pine 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 Firm and/or other Qualified Attorneys may be assigned as co-counsel consistent with the terms of their approved contracts. (Isn't this amount outside of the contract??)

In the event of an ethical or other professional conflict, another indigent services provider will be appointed by a designee of the Department of Indigent Defense (DIDS). Alternate appointees may be chosen who have been determined eligible to provide services from the DIDS list of qualified providers.

If two or more contracting attorneys are providing indigent defense services, a contracting attorney who has no conflict will provide defense services after notice to the court.

DIDS or its designee will appoint qualified counsel for Complex Litigation cases in conformance with the contract then in effect in White Pine County with indigent public defenders. If the county establishes an office of County Public Defenders, complex litigation cases will be assigned by DIDS to qualified counsel.

SECTION 5. INITIAL APPEARANCES AFTER ARREST OR SUMMONS. The provider of indigent defense services will be at all appearances after arrest or summons including: in Justice Court, first appearances, arraignments, justice court appearances for bail and release matters, waiver matters, hearing settings; in District Court, initial hearings for juvenile cases, ~~432(B)-emergency shelter care~~, and probation revocation cases as agreed to by written county contract if the scope of the contract exceed the DIDS definition of indigent services. Criminal detainees may refuse counsel, when fully informed of their rights, in accordance with NRS 171.188(1). Upon appointment, counsel will provide written information to all detainees containing contact information and appointment information to ensure prompt client contact after appointment. *Attorneys must be prepared to address appropriate release conditions in accordance with relevant statute, rule of criminal procedure, and caselaw. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of the defendant. Counsel must be present at all other critical stages, whether in or out of court.*

SECTION 6. 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 clients and legal counsel. Within the White Pine County Detention Center, Room ____ will be set aside for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege. The White Pine County Courthouse will provide Room ____ for attorney-client privilege meetings. Facilities for unrecorded and unmonitored audio and video communications will be provided for those situations where face to face communications are unavailable.

In the event other counties adopt this Plan, each county will attach an Exhibit to this plan detailing the locations for attorney-client privileged meetings.

SECTION 7. COLLATERAL INDIGENT DEFENSE SERVICES. Upon Notice of Appearance by Indigent Defense counsel, the courts and the prosecutor will provide copies of all available reports and things in a fashion designed to ensure rapid and accurate transmission.

COUNTY OFFICE OF PUBLIC DEFENDER. County will provide a budget of at least, \$300,000 per year for the retention of investigator services who will assist in the preparation of cases when reasonably necessary. County will provide a budget of at least \$200,000 per year for the retention of experts reasonably necessary for trial preparation and for trial. County will not reduce these

budgeted expenditures because the full budget available was not expended in any fiscal year, but will ensure the amount is restored at the cessation of a fiscal year.

INDEPENDENT CONTRACTORS. County will budget at least, \$300,000 per year for private investigation services to be administered by the Department of Indigent Defense Services or its designee. County will budget at least, \$200,000 per year for experts reasonably necessary for trial preparation and for trial to be administered by the Department of Indigent Defense Services or its designee. County will not reduce these budgeted expenditures because the full budget available was not expended in any fiscal year, but will ensure the amount is restored at the cessation of a fiscal year.

CONFLICT COUNSEL. County will budget at least, \$100,000 per year for private investigation services to be administered by the Department of Indigent Defense Services or its designee. County will budget at least, \$50,000 per year for experts reasonably necessary for trial preparation and for trial to be administered by the Department of Indigent Defense Services or its designee. County will not reduce these budgeted expenditures because the full budget available was not expended in any fiscal year, but will ensure the amount is restored at the cessation of a fiscal year. In the event reasonably necessary expenses are unavailable or will exceed budgeted amounts, Conflict Counsel may seek additional sums as required. If the county is unwilling or unable to provide necessary funds, Conflict Counsel may seek supplemental funds by Motion to the District Court or Justice Court, as the case may be.

SECTION 8. WARRANTY OF CONSISTENT REPRESENTATION. Indigent clients will be entitled to consistency of counsel throughout their cases. An individual defendant facing either repeat or multiple charges due to a course of conduct can expect to be represented by the same defense counsel throughout each stage of the case in each case. When an initial appearance is within 48 hours of arrest and before defense counsel can be formally appointed to a matter, counsel may be delegated to serve who may not be assigned to a particular client.

SECTION 9. WARRANTY OF PROFESSIONAL SERVICES. All Services provided by Indigent Defense counsel must meet or exceed the requirements of the Nevada Rules of Professional Conduct, the Nevada Indigent Defense Standards of Performance adopted October 16, 2008 by the Nevada Supreme Court Adopted in Administrative Docket 411 or as subsequently amended.

Indigent Defense counsel will counsel clients to avoid uninformed waivers of substantive or procedural rights or uninformed guilty pleas *or waivers* unless done after consulting with counsel. In aid of this requirement, counsel will ensure contact with clients occur within 7 days of appointment or assignment to the case. Counsel will maintain consistent contact with clients thereafter. Consistent contact means at least every thirty days unless there are no significant developments in the case.

Surveys provided by the Board of Indigent Services will be provided to indigent clients at the conclusion of representation.

SECTION 10. INVOICING AND PAYMENT

A. Conflict Counsel Fees

Qualified Attorneys providing services to Eligible Clients within White Pine 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 Exhibit 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 the work performed and identifying the attorney who performed it.¹

The Department will approve for payment 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 will provide an explanation to the Qualified Attorney, with a copy to the White Pine County Comptroller, as to why the denied portion was not reasonable. Such denials shall be subject judicial review pursuant to NRS 7.135.

Payment for all approved attorneys' fees will be issued by the White Pine County Comptroller's Office. The Department shall notify the Comptroller's Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. The Comptroller's Office shall issue payment within ten (10) days of receipt.

B. Case-Related Expenses

Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:

1. Pre-Authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars (\$2,500) will 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. The request will include an explanation of why the expense is reasonably necessary to provide Representational Services.
2. 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 will 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 will notify the White Pine County Comptroller's Office of all approved expenses and provide a copy of the invoice.

¹ For invoicing purposes, Qualified Attorneys are encouraged to use LegalServer for invoice backup. An example of a time slip generated through LegalServer with sufficient detail is included with Appendix B. If a Qualified Attorney does not wish to use LegalServer, the Qualified Attorney may submit an alternative form of backup provided it contains a breakdown of services rendered in comparable detail.

3. Payment: The White Pine County Comptroller's Office will issue payment for all approved Case-Related Expenses within ten (10) days of receipt of notice of the Department's approval and a copy of the invoice.

SECTION 11. 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 White Pine County must pay for Fiscal Year 2021-2022 is \$452,400.00.

Pursuant to Section 19 of the Regulations, White Pine 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. White Pine 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 White Pine County Board of Commissioners hereby designates the White Pine County Comptroller 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, White Pine County shall receive reimbursement up to a limit of \$518,066.95². In the event reimbursable costs exceed this amount, nothing herein shall be construed to preclude White Pine County from seeking additional reimbursement pursuant to NRS 353.266, NRS 180.450, or as otherwise permitted by law..

SECTION 12. WORKLOAD STANDARD: The workload of each Qualified Attorney providing services to Eligible Clients within Lyon County 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, and/or representation of clients. The maximum workload guidelines as determined by the Department are incorporated herein by reference and shall be followed to the greatest extent practicable. To the extent required by the Department's Board, Qualified Attorneys providing indigent defense services under this plan shall maintain caseload data and track time spent providing indigent defense services in accordance with Regulations of the Board on Indigent Defense Services.

SECTION 13: EFFECTIVE DATE; MODIFICATION

This plan is effective ~~September~~ October 1, 2021 and shall remain in effect through the end of the current contract year, i.e., until June 30, 2023. (Will Plan need to be modified to discuss coverage of 48 hour arraignment hearings effective July 1, 2021) This plan may be modified by formal action of the Board of County Commissioners.

SECTION 13. PLAN ADMINISTERATOR AND CONTACTS

² White Pine County's flat fee agreement with Eberhardy, Pickering and Sears law offices, will alone exceed its maximum contribution amount by \$40,890.00. In addition, White Pine County estimates incurring \$500,000.00 in Case-Related Expenses, as well as \$??? in fees for conflict counsel (i.e., Qualified Attorneys who are assigned when Eberhardy, Pickering and Sears law offices have a conflict of interest), as well as \$150,000.00 for conflict investigators and experts.

The County Comptroller shall be the administrator of this plan and the contracts for the provision of indigent defense services. The County Comptroller will report material breaches or other significant matters to the Board of County Commissioners. The Board of County Commissioners may take any lawful, situationally-appropriate action with respect to any contract.

Questions about the administration of this plan may be directed to the White Pine County Comptroller, Elizabeth Francis.