

Storey County Plan for Indigent Defense Services

Est. _____, 2021



STOREY COUNTY INDIGENT DEFENSE SERVICES PLAN

The Indigent Defense Services Plan (“Plan”) of Storey County (“Storey County”) is intended for situations in which counsel is required to be appointed for persons under section 180.004 of the Nevada Revised Statutes (“NRS”). This Plan is designed to meet the requirements of NRS 260.070(2) placed on Storey County, and to comply with the Nevada Supreme Court’s orders in Administrative Docket (“ADKT”) 411.

1. RECITALS

- a. Storey County is committed to indigent defense. Storey County and the Courts have previously established an indigent defense system providing a high level of indigent defense to the people of Storey County. This system, a partnership between Storey County and the Courts, functioned well and was not in need of fixing. In the history of Storey County, Storey County is not aware of any person who has ever been adjudged to have received ineffective assistance of counsel. Storey County was not part of the rural counties that were named in *Davis v. Nevada*, Case No. 17 OC 00227 1B (1st Judicial Dist. Ct. Nev. Aug. 11, 2020).
- b. Nevertheless, the regulations of the Board of Indigent Defense Services require Storey County to discard most of its successful indigent defense program and reestablish a new one. The objective of this Plan, therefore, is to comply with the obligations placed on Storey County under NRS Chapters 7 and 180, NRS 260.070(2), and the regulations of the Board of Indigent Defense Services.
- c. Storey County also has significant concerns about a state agency having the power to authorize the expenditure of county funds or dictate or override the autonomy of the elected or appointed officials of a Nevada County. As such, this plan is not intended to authorize any expenditures of county funds that are not authorized by elected or appointed persons in Storey County. It is not the desire or purpose of the Storey County Board of County Commissioners to authorize a state agency to expend county monies. Through this Plan, Storey County elects to have its own independent contractors provide the services herein.
- d. The functioning of the broader representation and defense services in Storey County relies upon the State Public Defender representing parents in NRS Chapter 432B actions.
- e. Portions of this plan are contingent upon the State of Nevada paying for the increases in the budgetary amounts caused by the adoption of this Plan. In the event that the State of Nevada does not authorize the increase in expenditures, portions of this Plan may be eliminated and the provision of services undertaken without such funds.

2. OBJECTIVES AND APPLICABILITY

- a. This Plan is intended to continue to provide a system of selection and appointment of counsel that provides indigent defendants accused of a crime or a delinquent act with an adequate defense and effective assistance of counsel to protect his or her constitutional rights; and to provide for the appointment and compensation of qualified counsel, without waste of public resources.
- b. This Plan is designed to be fully compliant with the Nevada Supreme Court’s Orders in ADKT 411, NRS Chapters 7 and 180, NRS 260.070(2), and the regulations of the Board of Indigent Defense Services.

- c. This Plan covers appointment of counsel for “indigent defense services,” as that term is defined in NRS 180.004. This covers legal representation and services for a person under the Sixth Amendment to the United States Constitution, NRS 7.115, NRS 62D.030, NRS 171.180, and for any law imposing criminal liability on a person that requires or permits the appointment of counsel for an indigent person. This plan does not address NRS 34.750, NRS 62D.100, NRS 128.100, NRS 432B.420, and NRS 433A.270, or any other law not included in NRS 180.004 where the appointment of counsel is required for a juvenile, an indigent person, or any other person. This Plan does not cover NRS Chapters 159, 159A, or 253.

3. DEFINITIONS

- a. “JCVT” means the Justice Court of Virginia Township in and for the County of Storey, State of Nevada.
- b. “Counsel” means the State Public Defender and a private attorney.
- c. “Court” means a department of the FJDC or the JCVT, and “Courts” means the FJDC and the JCVT collectively.
- d. “DIDS” means the Nevada Department of Indigent Defense Services.
- e. “DIDS qualified” means DIDS’ placement of an attorney on the list of attorneys who are qualified to represent indigent persons in Storey County.
- f. “FJDC” means the First Judicial District Court.
- g. “Indigent Defense Coordinator” means an independent contractor qualifying as a “designee” of DIDS. An indigent defense coordinator shall have the duties specified in this Plan.
- h. “Indigent Person” means an individual deemed indigent under this Plan.
- i. “Private Attorney” means a DIDS qualified attorney other than the State Public Defender.
- j. “Represent” or “Representation” means legal representation of an indigent person by appointed counsel.
- k. “Services” means services provided to an indigent person during appointed counsel’s representation of that person, and includes investigative, expert, and other services.
- l. “State Public Defender” means the Nevada State Public Defender’s Office established under NRS Chapter 180 with whom Storey County has contracted with to provide representation and services to an indigent person.

4. CASES IN WHICH COUNSEL MUST OR MAY BE APPOINTED

- a. Mandatory Appointment. Representation must be provided for any indigent person:
 - 1. who is charged with a felony or gross misdemeanor;
 - 2. who is charged with a misdemeanor in which jail time is mandatory or the prosecution is seeking jail time (incarceration);
 - 3. who is alleged to have violated probation or other supervision and a jail or prison sentence of confinement may be imposed;
 - 4. who is a minor alleged to have committed an act of juvenile delinquency, under NRS 62D.030;

5. who is in custody as a material witness;
 6. who is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution;
 7. who is entitled to appointment of counsel because due process requires the appointment of counsel;
 8. who is likely to face Court imposed jail or prison time;
 9. who faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 10. who faces loss of liberty for criminal contempt;
 11. who has received notice that a grand jury is considering a charge against him/her and has requested counsel; or
 12. where Nevada or Federal law otherwise requires the appointment of counsel for a person meeting the requirements of NRS 180.004.
- b. Discretionary Appointment. When a court determines that the interests of justice so require, representation may be provided for any indigent person:
1. who is charged with civil contempt and faces loss of liberty; or called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, if 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; or
 2. in any other case meeting the requirements of NRS 180.004 in which the court determines in the interests of justice appointment of counsel is appropriate.

5. DETERMINATION OF INDIGENCY

- a. A person must be deemed indigent, and is eligible for appointment of counsel to represent the person, if the person is unable, without substantial hardship to himself or herself or his or her dependents, to obtain competent and qualified legal counsel on his or her own.
- b. "Substantial hardship" is presumed for a person who:
1. receives public assistance, including food stamps, temporary assistance for needy families, Medicaid, or disability insurance;
 2. resides in public housing;
 3. earns less than 200 percent of the Federal Poverty Guidelines;
 4. is currently serving a sentence in a correctional institution;
 5. is housed in a mental health facility, or
 6. is a minor.
- c. If substantial hardship is not presumed for a person, a Court may deem a person to have a substantial hardship based upon the person's particular circumstances, including:
1. the nature, extent, and liquidity of the person's assets;
 2. the person's disposable income from all sources;
 3. the person's monthly expenses;
 4. the seriousness of the charges that the person is facing;
 5. whether the person is able to comprehend the proceedings and the charges that the person is facing;
 6. the effort and skill required to gather pertinent information about the case;
 7. the length and complexity of the proceedings;

8. local private counsel rates;
 9. whether discovery is needed in post-conviction proceedings; or
 10. any other consideration that bears upon the person's ability to retain and pay an attorney.
- d. The Court may determine that a person is partially indigent if the Court finds that a person can afford private counsel or has retained counsel, but the person cannot be effectively represented due to the person's inability to pay for necessary services.

6. SCREENING FOR INDIGENCY

- a. Screening for indigency and substantial hardship will be conducted by the Storey County Sheriff's Office, or other court or law enforcement personnel within 48 hours for a person who is booked into the Storey County Jail or a juvenile detention facility and not released; at the initial appearance for a person who appears before a Court and requests or is required to be appointed counsel; or sooner as required by applicable law.
- b. The screening results must be provided to the Court as soon as possible after completion.

7. TIME FOR APPOINTMENT OF COUNSEL

- a. The Court will review the screening results and, if a person has requested representation, determine whether the appointment of counsel is mandatory or the interests of justice require the discretionary appointment of counsel; and whether the person is indigent or partially indigent.
- b. An attorney must be appointed for any eligible indigent person as soon as feasible after formal charges being filed against a person held in custody or a person's first appearance before a judge; as required by any other applicable provision of law; or when a Court otherwise considers appointment of counsel appropriate.
- c. An eligible indigent person must be appointed one attorney, except in a capital case, or two attorneys in a capital case in which a person is reasonably believed to face capital punishment. At least one of the two attorneys appointed in a capital case must meet the minimum standard for lead counsel pursuant to Rule 250 of the Nevada Supreme Court Rules and both attorneys appointed must conform to the performance guidelines or standards for capital cases as adopted by the Nevada Supreme Court.

8. INITIAL APPEARANCES

- a. Unless counsel has already been assigned to a person, the State Public Defender will appear at all in custody pretrial release hearings, initial appearances, or arraignments. The State Public Defender may provide limited representation to an indigent person, discussing only matters pertaining to the initial appearance or arraignment to avoid creating conflicts of interest.
- b. If the State Public Defender determines that it cannot provide limited representation of a person at the initial hearing or arraignment in a manner consistent with the Nevada Rules of Professional Conduct, the State Public Defender shall immediately notify the Court so that the Court may consider whether indigent defense counsel should be appointed.
- c. If counsel other than the State Public Defender has been assigned as an indigent person's counsel before the initial appearance, the assigned counsel must appear at the initial appearance.

- d. At an initial appearance, Counsel must be prepared to address appropriate release conditions.
- e. A timely initial appearance or arraignment should not be delayed pending a determination of indigency.

9. SELECTION, ASSIGNMENT, AND APPOINTMENT OF COUNSEL

- a. Court Assignment of the State Public Defender
 - 1. Unless a Court is aware of a conflict for the State Public Defender or any other reason specified in this Plan why the State Public Defender should not be appointed as counsel, the Court must first appoint the State Public Defender to represent an eligible indigent person.
 - 2. The assignment to a case of a specific attorney, or attorneys, working for the State Public Defender rests solely within the discretion of the State Public Defender.
- b. Assignment of Private Attorney
 - 1. If the State Public Defender cannot be appointed, the Court shall notify the indigent defense coordinator.
 - 2. The indigent defense coordinator shall assign the next private attorney on the DIDS list, unless the indigent defense coordinator is aware of a conflict or any other reason why a specific private attorney should not be assigned as counsel.
 - 3. The indigent defense coordinator must assign the next private attorney on the list in the following order:
 - i. Private attorneys having an office in Storey County.
 - ii. Private attorneys having an office in Churchill, Douglas, Lyon, Storey, or Washoe Counties.
 - iii. Private attorneys having offices in other counties are deemed to be too remote to Storey County to provide effective assistance of counsel.
- c. Appointment of Counsel When No DIDS Qualified Counsel is Available.

If the indigent defense coordinator is unable to assign a private attorney to represent an indigent person, the indigent defense coordinator must notify DIDS and the Court of the failure to assign counsel.
- d. General Procedures for the Assignment of Counsel
 - 1. Counsel assigned for co-defendants may not be from the same law firm.
 - 2. The indigent defense coordinator may assign counsel that has been previously appointed for an indigent defendant in a different action for the indigent person if it would be in the indigent person's best interests to have the same counsel and would facilitate the indigent person's defense.
 - 3. Counsel must comply with section 13(d) in order to be assigned as counsel for an indigent person. Counsel who refuses to comply with section 13(d) will be deemed ineligible to be assigned as indigent defense counsel in Storey County.

4. The indigent defense coordinator must use his or her best efforts to fairly rotate the assignment of private attorneys on any legitimate basis, taking into consideration conflicts, workloads, availability, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from clients, feedback from Storey County officials.
 5. An assigned or appointed counsel must conduct a conflict check to determine whether any conflict of interest exists which would prevent his or her representation of the indigent person. If a conflict is determined to exist, counsel must notify the Court (for the State Public Defender) or the indigent defense coordinator (for private attorneys). Counsel must conduct the conflict checks and notify the indigent defense coordinator within 1 day of being assigned or appointed.
 6. The judges of the Courts will have no input regarding the assignment of counsel by the indigent defense coordinator in a particular case.
- e. Court Appointment of Counsel
1. When the indigent defense coordinator assigns counsel to the case, the indigent defense coordinator will notify the Court of the assigned counsel.
 2. The assigned attorney must file a notice of appearance indicating that he has been assigned to the case.
 3. The Court may enter an order appointing the assigned counsel to represent the indigent person, according to its rules and procedure.

10. CHANGE IN ELIGIBILITY

An appointed counsel must advise the Court if, or when, an indigent person has a change in his or her financial condition that may make him or her ineligible for public payment for indigent representation. Such information is not protected as a privileged attorney-client communication.

11. COMPENSATION

- a. Storey County will compensate the State Public Defender as provided by NRS Chapter 180 for representation of indigent persons. Storey County will compensate private attorneys under this Plan or other applicable law for time that is reasonable and necessary for representation of an indigent person.
- b. Unless otherwise provided in a contract, statute, or regulation, counsel may seek compensation for representation of an indigent person through the following procedure.
 1. Counsel must submit a request for compensation to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator.
 2. The request must be supported by a sworn statement specifying time entries rounded to the nearest one-tenth of an hour, a detailed description of the work performed for the representation, a description of the compensation rate applicable to counsel, a statement of any compensation already received from any source for representation in the case, and any other material supporting the request for compensation. The invoice must comply with the requirements of section 13.
 3. Counsel should submit a request for compensation at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after the representation is terminated will be denied.

4. The indigent defense coordinator will approve, modify, or deny the request for compensation.
5. No hearing will be held regarding the request for compensation.
6. If the request for compensation is approved, the indigent defense coordinator will send the request to the designated accounting personnel for entry into the County's payment system.
7. If the request for compensation is denied, the indigent defense coordinator will notify counsel that his or her request was denied.
8. If the request is denied, counsel may file a motion for compensation with the trial court. A motion for compensation must contain the request for compensation, any information accompanying the request, the denial of the request for compensation, and a proposed order.

12. EXPENSES

- a. Storey County will reimburse counsel for services that are reasonable and necessary for the indigent person's defense.
- b. Storey County will pay expenses of the State Public Defender for representation of indigent persons as provided by NRS Chapter 180 if the expenses are included in the budget of the State Public Defender. Storey County will pay expenses of private counsel as further provided in this Plan.
- c. Unless otherwise provided in a contract, counsel may incur expenses for services costing \$1,000 or less, but must obtain pre-authorization for expenses for services costing more than \$1,000. All expenses must be reasonable and necessary for the representation of the indigent person, and reimbursement for expenses for services costing \$1,000 or less may be denied if it is determined that the services were not reasonable and necessary for representation of the indigent person.
- d. Counsel may seek reimbursement or pre-authorization for expenses through the following procedure.
 1. Counsel must submit a request for reimbursement or pre-authorization of expenses to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator.
 2. The request must be supported by a sworn statement specifying the services rendered or requested, the cost of the services, why the cost of the services are reasonable, and why the services are necessary for the representation, any compensation already received from any source for the services, and any other material supporting the request for expenses. The invoice accompanying the request must comply with the requirements of section 13.
 3. Counsel should submit a request for reimbursement or expenses at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after the representation is terminated will be denied.
 4. The indigent defense coordinator will approve, modify, or deny the request for reimbursement or expenses.
 5. No hearing will be held regarding the request for reimbursement or expenses.

6. If the request for reimbursement or expenses is approved, the indigent defense coordinator will send the request to the designated accounting personnel for entry into the City's payment system.
7. If the request for reimbursement or expenses is denied, the indigent defense coordinator will notify counsel that his or her request was denied.
8. If the request is denied, counsel may file a motion for expenses with the trial court. A motion for expenses must contain the request for expenses, any information accompanying the request, the denial of the request for expenses, and a proposed order.

13. PAYMENT FOR COMPENSATION AND EXPENSES

- a. Requests for compensation and expenses or for reconsideration will be denied if not timely submitted. Approved requests will be paid reasonably promptly.
- b. Invoices for requests for compensation and expenses under sections 11 and 12 must conform to government accounting standards.
- c. Invoices for representation or services provided to an inmate of the Nevada State Prison system, or any person acting in concert with the inmate, for an escape, an attempted escape, or a crime committed while incarcerated, which are considered a state expense pursuant to NRS 212.070, must state on the invoices that the services are provided to such an inmate of the Nevada State Prison system. If approved, Storey County accounting personnel will submit the request for payment to DIDS at didscontact@dids.nv.gov with "Prison Expense" in the subject line.
- d. Any person requesting payment from Storey County must be registered with Storey County as a vendor and have a 1099 tax form and a business license on file with Storey County. Any person requesting payment from the State of Nevada must be a registered vendor with the State of Nevada Controller's Office.
- e. Counsel may request that Storey County pay the vendor directly if the vendor complies with this section.

14. REQUIRED DUTIES OF COUNSEL

- a. Counsel must comply with the caseload and time reporting requirements for DIDS.
- b. Counsel must comply with the workload standards specified by DIDS.
- c. Jail and courthouse facilities for attorneys' use for discussions with witnesses or clients are generally available to counsel representing indigent persons for attorney/client meetings to the same extent that they are available to other counsel. Such facilities include the attorney meeting rooms outside of each courtroom, and private meeting space within the jail. Counsel who are not familiar with the accommodations at the Courts or the Storey County Jail may ask the Court Clerk's Office or jail personnel for assistance in speaking privately with the indigent person.
- d. Counsel or the Courts must provide client surveys authorized by the Nevada Board on Indigent Defense Services to an indigent person appointed counsel under this Plan.
- e. Complaints about counsel or attorneys must be forwarded to the DIDS.
- f. If counsel becomes aware of a complaint concerning representation of an indigent person that rises to the level of interfering with the representation of the indigent person, counsel must timely notify the Court.

- g. Counsel must comply with all applicable law concerning representation of an indigent person, including, but not limited to: the U.S. and Nevada Constitutions, the Nevada Revised Statutes, the Nevada Administrative Code, the Nevada Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance implemented by the Nevada Supreme Court.
- h. Counsel and attorneys must comply with all court rules.
- i. Counsel appointed to represent an indigent person is expected to represent that person through every stage of the case, at every hearing, and at trial, unless a court order is entered substituting another attorney in place of the original attorney or otherwise relieving the original attorney of the responsibility of representing the indigent person. This provision does not prohibit another attorney from appearing at a hearing for the appointed counsel to represent the indigent person if the appointed attorney has an unavoidable scheduling conflict, provided that the appointed attorney has sufficiently apprised the other attorney about the case to enable the other attorney to provide effective assistance of counsel.
- j. Counsel appointed to represent an indigent person is expected to provide effective assistance of counsel to the indigent person. This includes: meeting with the indigent person before the first appearance after counsel is appointed; updating the indigent person on his or her case at least every 30 days, unless, in counsel's professional opinion, there are no significant updates in the indigent person's case; and advising the indigent person not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is, in counsel's professional judgment, in the client's best interest.
- k. Appointed counsel shall not request, require or accept any payment or promise to pay or any other valuable consideration for representation under the appointment unless such payment is approved by order of the Court.