

HUMBOLDT COUNTY PLAN DELIVERING INDIGENT DEFENSE SERVICES

I. STATEMENT OF POLICY

A. Objectives

1. Achieving equality before the law for all persons.
2. 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.
3. Promoting the integrity of the relationship between an appointed attorney and a client. Humboldt County shall administer this plan in a manner that ensures the Humboldt County Public Defender's Office, the Humboldt County Alternate Public Defender's Office 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.
4. Implementing the requirements of appointed counsel deriving from the U.S. and Nevada Constitutions, Nevada Revised Statutes, Nevada and 6th 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 Humboldt County Public Defender and Deputy Public Defenders, the Humboldt County Alternate Public Defender and Deputy Alternate Public Defenders 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. "Expert Witness" is a person qualified by knowledge, skill, experience, training, or education to render an opinion on scientific, technical, or other specialized matters.
- D. "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.
- E. "Investigator" is a person licensed by the State of Nevada who is qualified to secure evidence and subpoena witnesses or an employee of the Humboldt County Public Defender or Alternate Public Defender employed in connection of the affairs of either office for the purposes of securing evidence and serving witness subpoenas.
- F. "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: Humboldt 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 where the prosecution is seeking jail time (incarceration);
4. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
5. is a juvenile alleged to have committed an act of juvenile delinquency, other than minor traffic offense, or alleged to be a child in need of supervision;
6. is in custody as a material witness;
7. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or the judge is likely to impose jail time;
8. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
9. faces loss of liberty for criminal contempt;
10. faces parole revocation for a judgment of conviction entered in the Sixth Judicial District Court.
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, Humboldt County may provide representation for any financially eligible person who:

1. 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;

C. Timing of Appointment of Counsel: Humboldt County shall provide an appointed attorney to an indigent at the person's first appearance before a judge or at least within 48 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 person charged with an open murder case that is reasonably believed to result in a capital charge shall be represented by two attorneys.
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.
 - "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.
 - 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.
 - 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 Office of Pretrial Services shall provide an initial screening of financial eligibility of an incarcerated individual within 48 hours of incarceration and provide a recommendation to the court with regard to the eligibility of the incarcerated individual for appointed counsel based upon the provisions herein. The initial screening shall be forwarded to the Humboldt County Alternate Public Defender and 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, other than a minor traffic offense, an act of juvenile delinquency, other than a minor traffic offense, or alleged to be a child in need of supervision, as set forth in a juvenile delinquency or child in need of supervision, or is in custody, is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.

IV. PRETRIAL RELEASE

- A. Risk Assessments: The Office of Pretrial Services will meet with an incarcerated individual within 48 hours of booking, for purposes of conducting a risk assessment for pretrial release. Copies of the risk assessment will be forwarded to the Humboldt County Alternate Public Defender, and the relevant court. The Office of Pretrial Services will forward to the Humboldt County Alternate Public Defender any other documents obtained by Pretrial Services relevant to release, such as charging documents, criminal histories, or probable cause affidavits. Delivery of the risk assessments and relevant documents will be provided to the Humboldt County Alternate Public Defender in sufficient time for the Humboldt County Alternate Public Defender to meaningfully dialogue with the indigent concerning pretrial release.
- B. Valdez-Jimenez Hearings: Valdez-Jimenez, or detention hearings, will take place within 48 hours of booking. The Humboldt County Alternate Public Defender and the Office of Pretrial Services will attend the hearings.
- C. Release: The Office of Pretrial Services will provide supervision and services to any released indigent as ordered by the relevant court as a necessary condition of pretrial release. The Office of Pretrial Services will provide diligent assistance to the indigent to assist the indigent in complying with the conditions of pretrial release. Including appearing at all future proceedings, if any. The Office of Pretrial Services will provide prompt notice to the indigent's attorney of any difficulties the indigent may have in complying with the conditions of release.
- D. Conflict of Interest: If it has been determined that there is a conflict for the Humboldt County Alternate Public Defender to appear at the Valdez-Jimenez, or detention hearing, or the Humboldt County Alternate Public Defender is unable to appear due to scheduling conflict, written notice shall be provided to the Humboldt County Public Defender and Pretrial Services that the Humboldt County Public Defender shall appear at the Valdez-Jimenez or detention hearing.

V. APPOINTMENT OF HUMBOLDT COUNTY PUBLIC DEFENDER OR HUMBOLDT COUNTY ALTERNATE PUBLIC DEFENDER OR PRIVATE ATTORNEYS.

- A. Local Control: Humboldt County assumes responsibility for all defense services discussed here-below until such time as the State Public Defender is authorized, at no cost to the county, to assume responsibility for any open murder case that is reasonably believed to result in a capital charge and all appeals from the District Court to the Nevada Supreme Court. At which time the State Public Defender will assume responsibility for any open murder that is reasonably believed to result in a capital charge and all appeals from the District Court to the Nevada Supreme Court.
- B. Humboldt County Public Defender and Humboldt County Alternate Public Defender: The Humboldt County Public Defender shall represent all indigent adults charged with a felony or gross misdemeanor and will be limited appearance counsel for adult specialty courts. The Humboldt County Alternate Public Defender shall represent all indigent adults charged with a misdemeanor where jail time is presumed to be a potential penalty, all eligible juveniles, and indigent adult parolees facing revocation. The Humboldt County Alternate Public Defender shall be limited appearance counsel for Valdez-Jimenez hearings, first appearances, 48-hour hearings, and 72-hour hearings.
- C. Conflict of Interest Checks: The Humboldt County Public Defender's Office and the Humboldt County Alternate Public Defender's Office, and private 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.
1. If the Humboldt County Public Defender or the Humboldt County Alternate Public Defender determine that such a conflict exists, they shall provide written notice of the conflict as soon as possible to the relevant court for the appointment of counsel.
 2. Upon receiving written notice of the conflict, the Humboldt County Alternate Public Defender will replace the Humboldt County Public Defender and vis-a-versa.
 3. In no instance, shall counsel be appointed to represent co-defendants in a case.
 4. The Humboldt County District Attorney's office shall have no authority to determine whether or not the Humboldt County Public Defender's office or the Humboldt County Alternate Public Defender's office have a conflict of interest.

D. Counsel at Initial Appearance/Arrestment

1. The Humboldt County Alternate Public Defender shall be present at the Initial Appearance/Arrestment and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of criminal procedure, and caselaw.
2. Thereafter, counsel for the indigent shall be present at all other critical stages, whether in or out of court.
3. If it has been determined that there is a conflict for the Humboldt County Alternate Public Defender to appear at the Initial Appearance/Arrestment, written notice shall be provided to the Humboldt County Public Defender promptly in a manner which allows the Humboldt County Public Defender to appear at the first appearance. A timely initial appearance or arrestment must not be delayed pending a determination of the indigency of a defendant.

E. Assigning Attorneys: The Humboldt County Public Defender and Humboldt County Alternate Public Defender shall have exclusive control in assigning an attorney within their offices to any case either the Humboldt County Public Defender's office or Humboldt County Alternate Public Defender's office is appointed to.

F. Case Related Expenses: Humboldt County shall maintain a budget within the Public Defender's office and the Alternate Public Defender's office for expert witness fees, witness fees, witness travel costs, and investigation costs whether incurred by licensed private investigators or by employment of an investigator within the Humboldt County Public Defender or Alternate Public Defender Offices.

G. Complaints by Clients: The Humboldt County Public Defender and Humboldt County Alternate Public Defender shall maintain a system for receipt and review of written complaints made by clients. The Humboldt County Public Defender's office and Humboldt County Alternate Public Defender's office 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 State Bar of Nevada.

VI. APPOINTMENT OF PRIVATE ATTORNEYS

A. Notice to Department of Indigent Defense Services: When it is determined that both Humboldt County's Public Defender and Alternate Public Defender are conflicted out of representing an indigent, or ineligible to represent an indigent pursuant to NSCR 250, the latter of the two offices conflicted out or ineligible, shall provide written notice of the conflict to the relevant court and the Department of Indigent Defense Services.

- B. Appointment of Private Counsel: Upon receipt of notice that the Humboldt County's Public Defender and Alternate Public Defender are conflicted out or ineligible to represent an indigent, the Department of Indigent Defense Services shall select counsel to represent the indigent from their List of Qualified Appointed Counsel it maintains per NRS 180.430.
- C. Compensation: Private Counsel is entitled to compensation for services reasonably provided in representing an indigent. Private Counsel shall submit detailed claims of services provided in representing an indigent to the Department of Indigent Defense Services for review and approval on an interim basis. Upon approval private counsel shall submit a copy of the claim, proof the claim was approved by the Department of Indigent Defense Services and a voucher to the Humboldt County Comptroller. Humboldt 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) and NRS 7.125.
- D. Case Related Expenses: Private Counsel is entitled to reasonable out of pocket, case-related expenses such as the use of investigators, experts, or witness fees. Private Counsel shall submit detailed claims for reasonable out of pocket, case-related expenses such as the use of investigators, experts, witness fees to the Department of Indigent Defense Services on an interim basis. Upon approval private counsel shall submit a copy of the claim for reasonable out of pocket case related expenses, proof the claim was approved by the Department of Indigent Defense Services and a voucher to the Humboldt County Comptroller. Humboldt County shall compensate private attorneys appointed to represent indigent clients in a manner consistent with Davis v. State, No. 170C02271B (Nev. 1st J. Dist. Ct. Aug. 20, 2020) and NRS 7.125 and 7.135. Prior to incurring any case-related expenses in excess of \$ 1,000.00, Private Counsel shall seek authority from the Department of Indigent Defense Services to incur such case-related expenses.
- E. Case Related Expense Budget: Humboldt County shall establish a case-related expense budget independent of the judiciary for its Private Counsel appointed on an individual basis.
- F. Conflict of Interest Checks: Private 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 Private Counsel determines that such a conflict exists, the appointed counsel shall provide written notice to the relevant court and the Nevada Department of Indigent Defense Services. Upon receipt of notice that the Private Counsel is conflicted out or ineligible to represent an indigent, the Department of Indigent Defense Services shall select counsel to represent the indigent from their List of Qualified Appointed Counsel it maintains per NRS 180.430. The Nevada Department of Indigent Defense Services 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 Humboldt County District Attorney's office shall have no authority to determine or recommend whether or not appointed counsel has a conflict of interest.

- G. 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.

VII. TRAINING

- A. Humboldt County Public Defender and Alternate Public Defender: The Humboldt County Public Defender and the Humboldt County Alternate Public Defender shall use the following tiered training program to provide competent counsel for indigent clients.
 - 1. Priority 1—Free or low-cost training: The Humboldt County Public Defender's office and the Humboldt County Alternate 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.
 - 2. Priority 2—Specialized training: The Humboldt County Public Defender's office and the Humboldt County Alternate 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 counsel must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services (DIDS) regulations.

VIII. 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: Humboldt 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. Humboldt 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, Humboldt County shall ensure that the Humboldt County Public Defender's office and the Humboldt County Alternate 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. Humboldt 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 a Request for Attorney's Fees by DIDS and in accordance with this Plan.

- E. Private Practice of Law. The Humboldt County Public Defender and the Humboldt County Alternate Public Defender, and any staff attorney with either office is prohibited from simultaneously engaging in the private practice of law. This Sections does not eliminate the private employment outside the practice of law.

- F. Use of Client Surveys: The Humboldt County Public Defender and the Humboldt County Alternate 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.

IX. CLIENT COMMUNICATION

- A. Confidentiality: Humboldt County shall provide private rooms for the Humboldt County Public Defender, the Humboldt County Alternate Public Defender, and Private Counsel within the courthouse for purposes of private discussions between public defenders and clients as well as a conference room adjacent to the courtrooms reserved for all attorneys representing indigents. The Humboldt County Detention Center and Juvenile Detention Center shall provide space for private discussions between an attorney and a client. The Humboldt County Detention Center and the Juvenile Detention Center shall provide private rooms for telephonic conferences between attorneys and their clients.
- B. Data Collection: Humboldt County will utilize data collection and case management systems provided by the Department of Indigent Defense Services at state expense for case load and time reporting, as specified in the Board on Indigent Defense Services Regulations.