

**Proposed Temporary Regulation of the Board on Indigent Defense Services.**

**December 16, 2020**

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AUTHORITY: §§1 – 47, NRS 180.320

**Section 1.**

Chapter 180 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 50, inclusive, of this regulation.

**Sec. 2.**

As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.

**Sec. 3.**

“Attorney” means an attorney who provides indigent defense services as defined by NRS 180.004.

**Sec. 4.**

“Board” means the Board of Indigent Defense Services.

**Sec. 5.**

“Case” means:

1. A single adult defendant on a single charging document, regardless of the number of counts alleged, in a felony, gross misdemeanor or misdemeanor matter; or
2. A single juvenile defendant on a single petition, regardless of the number of counts alleged, in a juvenile delinquency or in need of supervision matter.

For a case in which multiple charges are involved, the case is classified by the highest offense charged at the time of the appointment.

**Sec. 6.**

“Department” means the Department of Indigent Defense Services.

**Sec. 7.**

“Expert witness” means a person who is qualified by knowledge, skill, experience, training or education to render an opinion on scientific, technical or other specialized matters.

**Sec. 8.**

“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. As used in this section, a defendant is presumed to have “substantial hardship” if the defendant:

1. Receives public assistance, as that term is defined in NRS 422A.065;
2. Resides in public housing, as that term is defined in NRS 315.021;
3. Has a household income that is less than 200 percent of the federally designated level signifying poverty;
4. Is serving a sentence in a correctional institution; or
5. Is housed in a mental health facility.

Defendants not falling below the presumptive threshold will be subject to a more rigorous screening process to determine if their particular circumstances, including seriousness of

charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship were they to seek to retain private counsel.

**Sec. 9.**

“Investigator” means a person who is qualified to secure evidence and subpoena witnesses to be used in the preparation and trial of criminal cases and who is:

1. Licensed by the Private Investigator’s Licensing Board;
2. An employee of a person who is licensed by the Private Investigator’s Licensing Board; or
3. An employee of an attorney or an office of public defender.

**Sec. 10.**

“Plan for the provision of indigent defense services” or “plan” means the processes established by a county for the provision of indigent defense service in accordance with these regulations and applicable laws.

**Sec. 11.**

The provisions of this chapter govern the provision of indigent defense services as defined by NRS 180.004.

**Sec. 12.**

1. An interested person who wishes to petition the Board for the adoption, filing, amendment or repeal of a regulation of the Board must file with the Department the original and one copy of the petition.
2. The petition must include:
  - (a) The name and address of the petitioner;
  - (b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;
  - (c) The reason for the adoption, filing, amendment or repeal of the regulation;
  - (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation; and
  - (e) The name of the Board.

**Sec. 13.**

1. The Board may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if the requirements set forth in Section 12 of this regulation are not met.
2. The Board may require the Department to review a petition filed pursuant to Section 12 of this regulation.
3. The Department shall notify the petitioner in writing of the decision of the Board or Department, as applicable, not later than 30 days after a petition is filed.

**Sec. 14.**

1. Except as otherwise provided in subsection 4, an interested person may petition the Executive Director to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department.
2. The original and one copy of the petition must be filed with:

(a) The deputy director selected by the Executive Director pursuant to NRS180.420 who is authorized to administer or enforce the statute or regulation or to issue the decision; or

(b) The Executive Director, if the statute, regulation or decision is administered or enforced by the Executive Director.

3. The petition must include:

(a) The name and address of the petitioner;

(b) The reason for requesting the declaratory order or advisory opinion;

(c) A statement of the facts that support the petition; and

(d) A clear and concise statement of the question to be decided by the Executive Director or deputy director and the relief sought by the petitioner.

4. An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.

### **Sec. 15.**

1. The Executive Director may refuse to review a petition filed pursuant to Section 14 of this regulation that requests the issuance of a declaratory order or advisory opinion if the requirements set forth in that section are not met.

2. The Executive Director may, or may designate a deputy director to:

(a) Conduct an informal hearing to determine issues of fact or hear arguments relating to a petition and enter reasonable orders that govern the conduct of such a hearing;

(b) Request a petitioner to provide additional information or arguments relating to a petition;

(c) Issue a declaratory order or an advisory opinion based upon the contents of a petition and any materials submitted with the petition;

(d) Consider relevant decisions that have been issued by the Department that apply or interpret the statute, regulation or decision in question; and

(e) Enter any reasonable order to assist his or her review of a petition.

3. The Executive Director or deputy director shall:

(a) Mail a copy of any declaratory order or advisory opinion that is issued to a petitioner not later than 60 days after whichever of the following events is the last to occur:

(1) The petition is filed;

(2) The petition is referred to the Executive Director for a decision;

(3) An informal hearing is conducted; or

(4) The Executive Director or deputy director receives any additional information or written arguments; and

(b) Maintain a record of each declaratory order and advisory opinion that is issued and index such records by subject matter.

### **Sec. 16.**

1. After receiving a declaratory order or advisory opinion from a deputy director concerning the applicability or interpretation of a statute, regulation or decision of the Department, the petitioner may request that the Executive Director review the decision.

2. A request made pursuant to subsection 1 must:

- (a) Be in writing;
  - (b) Contain the information required by subsection 3 of Section 14 of this regulation; and
  - (c) Be filed with the Executive Director not later than 30 days after the date the declaratory order or advisory opinion is issued.
3. The Executive Director shall review any request made pursuant to subsection 1 in accordance with the provisions of Section 15 of this regulation.

**Sec. 17.**

The Executive Director, a deputy director or any other staff member of the Department shall not render an oral response, including, without limitation, a response over the telephone, to a request for an advisory opinion. Any oral response is not a decision or an advisory opinion of the Department.

**Sec. 18.**

1. The maximum amount that a county is required to pay for the provision of indigent defense services during a fiscal year must not exceed the sum of:

(a) In counties whose population is less than 100,000:

(1) The actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(i) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(ii) The lowest union-negotiated cost of living increase for employees for that county.

(3) If a county, in its plan for the provision of indigent defense services, follows the recommendation of Section 27 pertaining to the payment of case-related expenses, such expenses must be a charge against the State and reimbursed to the county pursuant to Section 19.

(4) If a county chooses, pursuant to Section 21 of this regulation, to transfer to the State Public Defender the responsibility of representation in direct appeals to the appellate court of competent jurisdiction, the costs of providing the appellate representation in those cases is a charge against the State and excluded from the required maximum contribution of the county.

(5) If a county chooses, pursuant to Section 21 of this regulation, to transfer to the State Public Defender the responsibility for representation in death penalty cases, the State Public Defender shall submit to the county an estimate for the representation. The county shall be required to pay 25% (twenty-five percent) of the estimate and payment will be collected pursuant to NRS 180.110. Such payments to the Nevada State Public Defender which are paid by the county will

count towards the maximum contribution a county may be required to pay during a fiscal year.

(b) In counties whose population is more than 100,000:

(1) The actual costs to the county for providing indigent defense services calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(i) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(ii) The lowest union-negotiated cost of living increase for employees for that county.

### **Sec. 19.**

1. A county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution, as calculated pursuant to Section 18 of this regulation, through:

(a) The submission of the annual report containing the plan for the provision of indigent defense services for the county for the next fiscal year as required pursuant to subsection 2 of NRS 260.070; or

(b) In accordance with NRS 180.450, a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to address immediate needs in a corrective action plan.

2. In accordance with the duty of the Board to review and approve the budget for the Department pursuant to paragraph (f) of subsection 1 of NRS 180.320, any state contribution requested by a county is subject to the approval of the Board. Disagreements with respect to plans for the provision of indigent defense services and/or state contributions necessary to comply with these regulations will be resolved by the Board.

3. A county seeking reimbursement pursuant to Section 19(1) must submit to the Department a financial status report certified by the board of county commissioners or its designee no later than 15 days after the end of each quarter. The financial status report shall be in the form approved by the Department.

### **Sec. 20.**

1. Any state contributions for the provision of indigent defense services are provided for:

(a) One fiscal year; and

(b) The express purpose of complying with applicable indigent defense standards or regulations or improving the provision of indigent defense services in a county.

2. Once a county reaches its maximum contribution for the provision of indigent defense services determined in accordance with Section 18, state contributions for the provision of indigent defense services will be provided to the county treasury by reimbursement upon the quarterly submission of a county's financial status report up to the amount approved by the Board and Legislature in the county's plan for indigent defense services.

3. If a county exceeds the Board approved state contribution as provided in Section 19, any additional state contribution necessary for the provision of indigent defense services must be sought by corrective action plan in accordance with NRS 180.450, by a request from the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266.

4. Any unencumbered or unexpended balance of state contributions remaining at the end of the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.

5. As used in this section, “fiscal year” means the period beginning on July 1 of a given year and ending on June 30 of the following year.

### **Sec. 21.**

1. Upon request of a county whose population is less than 100,000, the State Public Defender may handle for the county all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction.

2. If a county wishes to have the State Public Defender handle all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction, the board of county commissioners for the county shall notify the State Public Defender, and such responsibility must be transferred, in accordance with the procedure set forth in subsection 6 of NRS 180.450.

3. After the responsibility of handling all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction for a county is transferred to the State Public Defender, such responsibility shall not be transferred back to the county unless the county receives the approval of the Executive Director of the Department pursuant to NRS 180.460.

### **Sec. 22.**

1. A plan for the provision of indigent defense services must include, without limitation, the processes for providing indigent defense services consistent with these regulations and applicable law.

2. A county shall provide its initial plan for the provision of indigent defense services to the Department not later than 180 days after the date on which this section becomes effective or on the next occurring May 1, as determined by the Department.

(a) If a county elects to receive assistance from the Department in creation of its plan pursuant to NRS 180.430(4), the county must notify the Department at least 90 days before the plan is due.

(b) To assess local needs, counties should consult with local providers of indigent defense services in formulating its plan.

(c) If a county joins with one or more other counties to establish an office of the public defender to serve those counties in accordance with NRS 260.020, the joining counties may submit a single, joint plan for the provision of indigent defense services.

3. Plans for the provision of indigent defense services approved pursuant to the Nevada Supreme Court Administrative Docket 411 will satisfy the requirements of this section.

### **Sec. 23.**

1. A plan for the provision of indigent defense services must be designed to promote the integrity of the relationship between an attorney and a client. The plan and any attorneys

providing indigent defense services pursuant to the 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.

**Sec. 24.**

1. A plan for the provision of indigent defense services must provide a county's process for hiring independent contractor attorneys and panels of appointed attorneys.

(a) The process must be designed to provide notice of the opportunity to apply and provide interested parties with a reasonable opportunity to respond.

(b) Consistent with Section 23 of these regulations, the process should exclude the prosecution and law enforcement officials. The Board recommends creation of a selection committee that utilizes stakeholders concerned with the integrity of indigent defense services, which may include the Department. Judicial input in the hiring process may be considered but should not be the sole basis for selection.

(c) The process shall include, without limitation, the following factors when evaluating applications:

(i) In counties whose population is less than 100,000, ensuring that the applicant is on the Department's roster of eligible providers;

(ii) Experience and qualifications of the applicant;

(iii) Applicant's past performance in representing defendants in criminal cases;

(iv) Applicant's ability to comply with these regulations and/or terms of a contract; and

(v) If an independent contractor, the cost of the service under the contract.

**Sec. 25.**

1. A plan for the provision of indigent defense services must provide the indigency screening process necessary for the judicial determination of eligibility for an appointed counsel. The process of screening for indigency must occur not later than 48 hours after arrest, exclude the judiciary, and describe the person(s) or agency responsible.

2. After such screening and upon a judge, justice or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, the plan must provide for prompt appointment of counsel. If a public defender is disqualified from providing representation, a plan must provide for the appointment of another attorney in accordance with NRS 7.115 and 171.188.

3. If a county uses independent contractor attorneys in lieu of an office of the public defender or where the public defender is disqualified, the plan must describe how attorneys are assigned cases. Distribution of cases may be on a rotational basis or other method that ensures fair distribution of cases.

4. Plans for indigent defense services must require that an attorney be present at initial appearances and arraignments and 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 a defendant. Plans should ensure the presence of counsel at all other critical stages, whether in or out of court.

5. This section must not be construed to preclude a defendant from waiving the appointment of an attorney in accordance with subsection 1 of NRS 171.188.

**Sec. 26.**

1. A plan shall, through cooperation with local agencies, seek to provide necessary resources and accommodations for private discussions between an attorney and a client in courthouses, jails, prisons, detention centers and other places where a client must confer with an attorney, and provide a description of such resources and accommodations.

**Sec. 27.**

1. A plan for the provision of indigent defense services must ensure that an attorney has the resources to:

(a) Conduct an independent investigation of the charges filed against the client as promptly as practicable and, if appropriate, retain an investigator to assist with the defense of the client; and

(b) Request the assistance of experts when such assistance is reasonably necessary to prepare the defense of an indigent defendant.

2. Pursuant to NRS 180.320(2)(e), the Board recommends that plans provide for the payment of expenses related to trial, including, without limitation, expenses for expert witnesses and investigators, in the following manner:

(a) In counties with a population less than 100,000,

(1) Exclude the judiciary from the payment of reasonably necessary investigative, expert, or other case-related expenses for indigent defense providers.

(i) Where the office of the public defender is created pursuant to NRS Chapter 180 or 260, the county shall provide a budget for investigative, expert, and other case-related expenses that is administered by the public defender.

(ii) Where public defense services are provided by independent contractor, the county shall provide a budget for case-related expenses that is administered by the Department or its designee and include a mechanism for judicial review of any modified or denied requests.

(iii) Where the public defender has been disqualified, the county shall provide a budget for case-related expenses that is administered by the Department or its designee and include a mechanism for judicial review. Budgets pursuant to paragraphs (2)(a)(1)(ii) and (2)(a)(1)(iii) may be the same budget.

(2) To ensure prompt approval of frequent, necessary case-related expenses, the Board recommends provisions for automatic approval of case-related expenses up to \$2,500.00.

(b) In counties with a population more than 100,000, pursuant to the county's plan for the provision of indigent defense services.

**Sec. 28.**

1. A county's plan for the provision of indigent defense services shall ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative and other tasks which do not affect the rights of the defendant may be delegated.

2. The provisions of subsection 1 do not preclude a county from using a single attorney or rotation of attorneys to provide representation to an indigent defendant at an initial appearance or arraignment, but any such attorney should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest.

**Sec. 29.**

1. Plans for the provision of indigent defense services must require that representation be provided in a professional, skilled manner guided by applicable regulations; laws; 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.

2. Plans and/or contracts must require attorneys to advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is in the client's best interest and require indigent defense providers to make all reasonable efforts to meet with each client within the first seven days following the assignment of the case, as well as every 30 days thereafter, unless there are no significant updates in the client's case.

3. Plans for the provision of indigent defense services in counties whose population is less than 100,000 must ensure that any client surveys authorized by the Board are provided to a client at the conclusion of his or her representation by an attorney.

**Sec. 30.**

1. As used in Sections 32 to 39, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in Section 31 of this regulation have the meanings ascribed to them in those sections.

2. Sections 32 to 39, inclusive, of this regulation apply only to counties whose population is less than 100,000.

**Sec. 31.**

"CLE" means continuing legal education as discussed in Nevada Supreme Court Rules 205 to 215, inclusive.

**Sec. 32.**

1. To ensure that the ability, training, and experience of an attorney in a criminal matter matches the complexity of a case, an attorney must demonstrate compliance with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department on a form approved by the Department. The application must be submitted:

(a) By mail; or

(b) Electronically, as provided on the website of the Department.

2. The Department shall, not later than 30 days after receiving an application:

(a) Review the application and determine the area of indigent defense services for which the attorney is qualified; and

(b) Provide written notice of the determination of the Department to the attorney.

3. After an attorney submits an application pursuant to this section, the attorney may continue practicing in the areas of indigent defense for which the attorney is seeking the

determination of the Department until the attorney receives written notice of the determination.

4. If the Department determines that an attorney is qualified to provide indigent defense services, the Department shall place the name of the attorney and areas of qualification on a roster of attorneys who are eligible to provide indigent defense services that will be used by boards of county commissioners to select the attorneys who will provide indigent defense services for a county. An attorney may seek qualification for different or other areas of indigent defense services by further application demonstrating the additional qualifications at any time.

5. If an attorney disagrees with the determination of the Department regarding the areas for which the attorney is qualified to provide indigent defense services, the attorney may submit a request for reconsideration to the Department not later than 30 days after receiving the determination of the Department. The Board will review any request for reconsideration that is submitted to the Department.

6. Failure to provide the application or failure to practice within a classification in which the attorney is qualified may result in exclusion or removal from the list of eligible providers.

### **Sec. 33.**

1. An attorney who seeks to provide indigent defense services to a person charged with a misdemeanor must:

(a) Be licensed to practice law in the State of Nevada; and

(b) Have sufficient training or experience to provide competent representation.

2. An attorney who is beginning to provide indigent defense services in misdemeanor matters is encouraged to consider seeking the participation of a supervising or more experienced attorney before undertaking representation in a jury trial involving a misdemeanor offense or a misdemeanor offense for which the penalty can be enhanced and, if applicable, make a motion for the appointment of such an additional attorney pursuant to NRS 260.060.

### **Sec. 34.**

An attorney who seeks to provide indigent defense services to a person charged with a category B felony for which the maximum penalty is less than 10 years, a category C, D or E felony or a gross misdemeanor must:

1. Meet the following requirements:

(a) Be licensed to practice law in the State of Nevada; and

(b) Have been trial counsel, alone or with other trial counsel, in two or more bench or jury trials that were tried to completion; or

2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1.

### **Sec. 35.**

An attorney who seeks to provide indigent defense services to a person charged with a non-capital category A felony or a category B felony for which the maximum penalty is 10 years or more must:

1. Meet the following requirements:

(a) Be licensed to practice law in the State of Nevada;

(b) Have practiced criminal law for 3 full years, either as a prosecutor, provider of indigent defense services or retained counsel; and

(c) Have been trial counsel, alone or with other trial counsel, and handled a significant portion of three felony jury trials that were tried to completion; or

2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1, have a significant record of quality representation in criminal trials and have the ability to handle complex felony matters.

**Sec. 36.**

An attorney who seeks to provide indigent defense services to a person charged with or convicted of a category A felony in which the death penalty is or may be sought or has been imposed must meet the criteria established in Supreme Court Rule 250.

**Sec. 37.**

An attorney who seeks to represent a person in a direct appeal of a non-capital felony must:

1. Be licensed to practice law in the State of Nevada; and
2. Have sufficient training or experience to provide competent representation.

**Sec. 38.**

1. An attorney who seeks to represent a juvenile alleged to be delinquent or in need of supervision must:

(a) Be licensed to practice law in the State of Nevada;

(b) Have the knowledge and skills necessary to represent a child diligently and effectively; and

(c) Be familiar with:

(i) The department of juvenile justice services in the county and other relevant state and local programs;

(ii) Issues concerning competency and child development;

(iii) Issues concerning the interaction between an attorney and a client; and

(iv) Issues concerning school-related conduct and zero-tolerance policies specific to juvenile representation.

2. An attorney who seeks to represent a child in a certification proceeding in accordance with NRS 62B.390 must additionally have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience.

3. As used in this section, “department of juvenile justice services” has the meaning ascribed to it in NRS 201.555.

**Sec. 39.**

1. In addition to any other requirements provided by law or this chapter, an attorney must:

(a) Have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law and criminal procedure, the rules of evidence, the rules of appellate procedure, ethical rules, local rules and practices and changes and developments in the law. As used in this paragraph, “reasonable knowledge” means

knowledge possessed by an attorney who provides competent representation to a client in accordance with Rule 1.1 of the Nevada Rules of Professional Conduct;

(b) Have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case and the legal issues concerning defenses to a crime and be reasonably able to litigate such issues effectively; and

(c) Be reasonably able to use the office technology that is commonly used in the legal community and the technology that is used within the applicable court system and thoroughly review materials that are provided in an electronic format.

2. An attorney shall:

(a) Complete on an annual basis a minimum of 5 hours of CLE courses relevant to indigent defense services;

(b) Submit proof of compliance with such CLE requirements to the Department before January 1 each year by submitting a copy of the annual transcript from the State of Nevada Board of Continuing Legal Education:

(1) By mail; or

(2) Electronically, as provided on the website of the Department; and

(c) Follow the minimum standards of the Board in determining CLE courses relevant to the provision of indigent defense services.

(d) Any CLE credit(s) offered by the Department will count toward satisfaction of the annual requirements. If an attorney satisfies the annual CLE requirement through CLE provided by the Department, the annual submission of proof of CLE compliance is waived.

#### **Sec. 40.**

1. The Department shall monitor and regularly assess whether counties and attorneys meet these regulations and whether indigent defense services are being provided in a constitutional manner. In conducting an assessment, the Department may obtain information from a variety of sources, including, without limitation:

(a) Client feedback;

(b) Client surveys;

(c) Other providers of indigent defense services;

(d) Office staff;

(e) Judicial personnel;

(f) Observations of a deputy director of the Department;

(g) Data provided to the Department pertaining to attorney workload;

(h) Attorney contracts;

(i) Financial information pertaining to the provision of indigent defense services;

and

(j) Information obtained through the Complaint and Recommendation process.

2. Pursuant to NRS 180.440, the Department must review the manner in which indigent defense services is provided throughout the State.

(a) Prior to an on-site review, the Department will contact the county, court, and/or attorney(s) to identify a convenient time and/or location for which the review will take place and identify any information necessary to the review.

(b) Once a convenient time and/or location is selected, or in the event that no agreement can be reached, the Department will notify the subject of the review at least 10 days before the review.

(c) The Department will issue a report within 30 days of the review detailing its findings.

(1) If a county is not in compliance with these regulations or deficient in the provision of indigent defense services in any other manner, the report will recommend a corrective action plan for the county.

(i) No later than 30 days after recommending a corrective action plan, the Department will seek to identify a convenient time for which to collaborate on the manner in which the county will meet these regulations and the time by which the corrective action plan must be executed.

(ii) Upon agreement as to the contents of a corrective action plan and time in which it must be executed, the corrective action plan will be submitted to the Board for approval at the next scheduled Board meeting. Disputes as to the contents of the plan or the time in which it must be executed will be submitted to the Board for resolution at the next scheduled Board meeting.

(2) In counties less than 100,000, if the Department determines that any person is providing indigent defense services in an ineffective or otherwise inappropriate manner, the report will be issued to the person; entity that employs or contracts with the person; and the other deputy director of the Department pursuant to NRS 180.430.

(i) The other deputy director of the Department will collaborate with the person to provide training and/or educational opportunities consistent with Section 39 and best practices for delivering effective indigent defense services.

(ii) Upon completion of, or refusal to participate in, training and/or educational opportunities, the deputy director will provide notice to the entity that employs or otherwise contracts with the person. Refusal to participate in training or educational opportunities may result in the recommendation of a corrective action plan to a county.

3. Pursuant to NRS 180.320(1)(c), the Board may direct the Executive Director to perform any additional audit, investigation, or review the Board deems necessary to determine whether its regulations are being followed and indigent defense services are being provided in a constitutional manner.

(a) Upon such direction, the Executive Director will work with the subject of the audit, investigation, or review to identify a convenient period for which to conduct the audit, investigation, or review.

(b) Once a convenient time is selected, or in the event that no agreement can be reached, the Executive Director will notify the subject of the audit, investigation, or review at least 10 days before the audit, investigation, or review is to take place.

(c) The Executive Director will issue a report to the subject of the audit, investigation, or review no later than 30 days upon completion of the audit, investigation, or review.

(d) If the Executive Director finds that the subject of the audit, investigation, or review is not in compliance with the regulations for the provision of indigent defense or that indigent defense services are not being provided in a constitutional manner, the subject will have 60 days from the date of the report to respond in writing to each finding of non-compliance and steps taken to remedy such findings. The subject of the audit,

investigation, or review may request additional time to respond to the inquiry, if necessary. Such request must be directed to the Executive Director.

(e) The Executive Director's report and response from the subject of the audit, investigation, or review, if any, shall be provided to the Board at the next scheduled meeting. Failure to respond or to take remedial action may result in a corrective action plan in accordance with NRS 180.450 or removal from the list of eligible indigent defense provider maintained in accordance with NRS 180.430.

**Sec. 41.**

1. An attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources. The rates of compensation paid by county district attorneys, the Nevada Attorney General and other county or state offices must serve as guidance for reasonable compensation.

**Sec. 42.**

1. The terms of any contract between a county and independent contract attorney must avoid any actual or apparent financial disincentives to the obligation of an attorney to provide clients with competent legal services. Such a contract must include, but is not limited to, the following terms:

- (a) Identify the appointing authority, contracting authority, and contractor;
- (b) Specify the terms of the contract, including duration, any provision for renewal, and a provision for terminating the contract by either party;
- (c) Specify the category of cases in which the contractor is to provide services;
- (d) Specify the minimum qualifications for attorneys covered by the contract and require such attorneys to maintain the qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in these regulations. If a contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to maintain only those qualifications established for the offense level(s) for which the attorney is approved to provide indigent defense services;
- (e) Identify the attorney(s) who will perform legal representation in each category of case covered by the contract and include a provision that ensures consistency in representation in accordance with Section 27 of these regulations;
- (f) Set the maximum workload each attorney may be required to handle pursuant to the contract based upon the applicable workload guidelines determined by the Board in accordance with Section 44 and require the reporting of indigent defense data in accordance with Sections 46 and 47;
- (g) In accordance with Section 29, require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable regulations, laws, 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;
- (h) State a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest;
- (i) Specify how investigative services, expert witnesses, and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with applicable regulations and laws; and

(j) Provide compensation at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and considers overhead, expenses, and costs relating to significant attorney travel.

**Sec. 43.**

If a public defender is disqualified from providing indigent defense services and another attorney is appointed in accordance with NRS 7.115:

1. The appointed attorney must receive prompt compensation in accordance with NRS 7.125. Activities outside of court appearances, including, without limitation, directing investigations, negotiating or tactical planning are equally important to quality representation and must be included in the compensation of the appointed attorney, subject to the limitations set forth in subsection 2 of NRS 7.125.
2. A plan for the provision of indigent defense services must provide the county's process for payment of counsel appointed pursuant to NRS 7.115.

**Sec. 44.**

1. The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any office, organization or 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 under the Nevada Rules of Professional Conduct.

2. At the direction of the Board, the Department shall conduct separate, specific workload study for:

- (a) counties whose population is less than 100,000, and
- (b) counties whose population is more than 100,000

to determine workload guidelines and requirements for attorneys. Counties must ensure that all attorneys providing indigent defense services participate in workload studies. Consistent with NRS 180.320(2)(d)(4), results of each study shall constitute the Board's guidelines for determining maximum workloads for attorneys providing indigent defense services.

**Sec. 45.**

In counties whose population is less than 100,000, providers of indigent defense services shall use the data collection and case management system provided by the Department at State expense for caseload and time reporting.

**Sec. 46.**

1. In counties whose population is less than 100,000, each plan shall require caseload reporting by the county's indigent defense providers. The plan shall specify whether the reporting will be done by attorney or collectively by office of a public defender. The plan shall require such reporting on an annual basis that details, without limitation, the total number of:

- (a) Beginning pending cases;
- (b) New appointments;
- (c) Cases returned from warrant or re-activated;
- (d) Cases adjudicated, disposed or closed and:

- (i) The manner in which each case was adjudicated, disposed or closed, including, pursuant to a plea, dismissal or verdict at trial;
  - (e) Warrant or placed on inactive status cases;
  - (f) Cases set for review;
  - (g) End pending cases.
  - (h) Total number of motions to suppress (i) filed and (ii) litigated; and
  - (e) Number of trials over the reporting period.
2. The cases included in a report required pursuant to subsection 1 must be further arranged by the following case type:
  - (a) Death penalty cases;
  - (b) Non-capital category A felonies and category B felonies for which the maximum penalty is 10 years or more;
  - (c) Category B felonies for which the maximum penalty is less than 10 years and category C, D, E felonies and gross misdemeanors;
  - (d) Misdemeanor driving under the influence and domestic violence cases;
  - (e) Other misdemeanors, including misdemeanor direct appeals;
  - (f) Probation and parole violations;
  - (g) Direct appeals of capital convictions;
  - (h) Direct appeals of non-capital felony and gross misdemeanor convictions;
  - (i) Juvenile cases including delinquency, child in need of supervision, and appeals;
  - (j) Juvenile probation and parole violations, and
  - (k) Specialty court cases.
3. If the independent contractor attorney or office of a public defender provides representation beyond those services provided in NRS 180.004, reports should also include case totals for:
  - (a) NRS Chapter 128 cases;
  - (b) NRS Chapter 432B cases;
  - (c) NRS Chapter 433A cases; and/or
  - (d) NRS Chapter 159 cases.
4. As used in this section:
  - (a) “Adjudicated, disposed or closed” means a case in which an original entry of final adjudication has been entered.
  - (b) “Beginning pending” means a case which, at the start of the reporting period, is awaiting disposition.
  - (c) “End pending” means a case which, at the end of the reporting period, is awaiting disposition.
  - (d) “Final adjudication” means an entry of judgment or adjudication, an order of dismissal or the end of the appointment of an attorney regardless of adjudicatory status.
  - (e) “Juvenile case” means a matter involving an allegation of a juvenile in need of supervision or an act committed by a juvenile which, if committed by an adult, would result in criminal prosecution and over which a juvenile court has statutory original or concurrent jurisdiction.
  - (f) “New appointment” means a case in which a defendant has been assigned counsel for the first time.
  - (g) “Returned from warrant or re-activated” means a case re-opened because a defendant has been arrested on a warrant for failure to appear and has appeared before

the court or has returned from a diversion program or another similar event has occurred that reactivates a case.

(h) “Set for review” means a case that, after an initial entry of judgment during the reporting period, is awaiting regularly scheduled reviews involving a hearing before a judicial officer.

(i) “Warrant or placed on inactive status” means a case closed because a warrant for failure to appear has been issued, the defendant has been ordered to participate in a diversion program or another similar incident has occurred to make the case not active.

**Sec. 47.**

1. Each county whose population is less than 100,000 shall require time reporting by indigent defense attorneys in their plan. The plan shall require reporting on an annual basis that details:

(a) attorney hours per case;

(b) investigator hours per case;

(c) staff hours per case;

(d) expert hours per case; and

(e) private workload, if any, measured in attorney hours.

2. Time entries should be kept as close to contemporaneous as reasonably practicable to ensure accuracy of time reporting and the ability of the Department to generate quarterly reports.

3. As used in this section, “staff” means a paralegal, or similar employee, as defined by the Bylaws of the Paralegal Division of the State Bar of Nevada, adopted on November 11, 1994 or the same as they may be amended.

4. In each county whose population is over 100,000, time records must be kept only during periods in which weighted caseload studies, pursuant to Section 44, are conducted.