

Plan for the Provision of Indigent Defense Services Template

I. STATEMENT OF POLICY

Instructions. Provide the objective of the county’s plan for the provision of indigent defense services.

Applicable Statute(s): NRS 180.320(2)

Applicable Regulation(s): Sec. 23.

Other Guidance: In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT No. 411 (Model Plan for the Provision of Appointed Counsel For Urban Courts, filed June 24, 2008) (hereinafter “ADKT No. 411 (Model Plan)”).

II. DEFINITIONS

III. PROVISIONS OF REPRESENTATION

Instructions. This section should describe:

- A. The types of cases in which appointment of indigent defense providers is required.
- B. The types of cases in which appointment is discretionary.
- C. When appointed counsel shall be provided.
- D. The financial eligibility requirements for representation at public expense.
- E. How persons are screened for indigency.

Applicable Statute(s): NRS 178.397, NRS 178.3971, NRS 180.060, NRS 260.030, NRS 260.050.

Applicable Regulation(s): Sec. 8, Sec. 25.

Other Guidance: ADKT No. 411 (Model Plan); ADKT No. 411 (Order, January 4, 2008) (providing the standard for determining indigency); SCR 250 (number and qualification of counsel in capital cases); *Valdez-Jimenez v. Dist. Ct.*, 136 Nev. 155, 460 P.3d 976 (2020) (incarcerated defendant right to prompt, counseled, adversarial bail hearing); *Fairchild v. Warden*, 89 Nev. 524, 516 P.2d 106 (1973) (right to counsel at probation revocation); Stipulated Consent Judgment at 8, *Davis v. State*, No. 170C02271B (Nev. 1st J. Dist. Ct. Aug. 20, 2020).

IV. APPOINTMENT OF PUBLIC DEFENDER

Instructions. If the county utilizes an institutional public defender office or offices, this section should be used. Otherwise, it may be omitted. Provisions within this section should include:

- A. A requirement that the office(s) conduct a timely conflict of interest check upon appointment and the procedure for apprising the court and re-assigning the case.
- B. A description of how cases are assigned within the public defender office(s).
- C. A description of how the public defender office's case-related expenses are provided.
- D. A description of resources and accommodations for confidential client communications.
- E. This section should also include an explanation for how the Department of Indigent Defense Services Complaint and Recommendation process made available to clients and the office's internal procedures for receipt and review of complaints, if any.

OPTIONAL: If a county chooses to use the State Public Defender for a limited service, such as death penalty cases and/or direct appeals, this section should also include a provision that elects the specified service(s) and the procedure for transferring the matter.

Applicable statute(s): NRS 7.115; NRS 171.188(3)
Applicable regulation(s): Sec. 21, Sec. 23, Sec. 25, Sec. 26, Sec. 27
Other Guidance: ADKT No. 411 (Model Plan)

V. APPOINTMENT OF PRIVATE ATTORNEYS

Instructions: Where a county uses independent contractor attorneys and/or panels of private attorneys to provide indigent defense services, this section will be used. This section should include:

- A. The county's process for hiring independent contractor attorneys and/or panels of appointed attorneys. If selection committees are used, this section should include the composition of the committee.
- B. A description of how cases are assigned to independent contractor and/or panel attorneys with matching qualifications. A county may require that the attorney(s) be qualified for all case types or may choose to create specific lists by case type.
- C. Where appropriate, a section describing the compensation of independent contractor attorneys.

D. A requirement that the assigned attorney conduct a timely conflict of interest check upon assignment. The procedure should also include the process by which the court is notified of any conflict and the case re-assigned to conflict free counsel.

E. A section describing how the independent contractor and/or panel attorney's case-related expenses are provided.

F. A description of resources and accommodations for confidential client communications.

G. A section describing how the Department of Indigent Defense Service's Complaint and Recommendation process will be utilized and made available to indigent defendants represented by the county's indigent defense providers.

Applicable Statute(s): NRS 7.115 – 7.145, NRS 171.188(3)
Applicable Regulation(s): Sec. 23 – 27; Sec. 33 – 38; Sec. 42 – 43.
Other Guidance: ADKT No. 411 (Model Plan)

VI. TRAINING

Instructions. This section should include the county's training requirements for indigent defense providers to ensure that counsel has reasonable knowledge of applicable law and rules, forensic and scientific issues, and technology commonly used in the legal community. This section may require participation in CLE and training programs or resources provided by the Department of Indigent Defense Services.

Applicable Regulation(s): Sec. 39; Sec. 42
Other Guidance: ADKT No. 411 (Model Plan); ADKT No. 411 (Nevada Indigent Defense Standards of Performance, Order Oct. 16, 2008).

VII. DUTIES OF INDIGENT DEFENSE COUNSEL

Instructions. This section will include:

A. Standards of Performance. The services to be rendered a person represented 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; 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 30 days thereafter unless there are no significant updates in the client's matter.

B. Continuity in Representation. The provider must 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.

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, and/or representation of clients. This section will also provide the maximum workload guidelines as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.

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 order of the court.

E. Private Practice of Law. This section should also provide whether the county public defender, independent contract attorney, and/or panel of appointed attorneys may also engage in the private practice of law.

F. Use of Client Surveys. This section should also provide how client surveys authorized by the Board are provided to clients at the conclusion of his or her representation by an attorney and returned to the Department.

Applicable Statutes: NRS 180.010, NRS 260.040

Applicable Regulation(s): Sec. 28 – 29; Sec. 42; Sec. 44 - 47

Other Guidance: ADKT No. 411 (Model Plan); ADKT No. 411 (Nevada Indigent Defense Standards of Performance, Order October 16, 2008); Stipulated Consent Judgment at 14, 16-17, *Davis v. State*, No. 170C02271B (Nev. 1st J. Dist. Ct. Aug. 20, 2020).

VIII. APPOINTED COUNSEL ADMINISTRATOR

Instructions: If a county chooses to utilize an appointed counsel administrator to administer contract or panels of appointed attorneys, this section should be included to describe how the administrator is selected in accordance with the regulations. Additionally, the section should describe the specific duties of the position.

Applicable Regulation(s): Sec. 24 – 25, 27.

Other Guidance: ADKT No. 411 (Model Plan); ADKT No. 411 (Clark County Administrative Plan for Appointment of Counsel, filed April 30, 2008); ADKT No. 411 (The Second Judicial District Court – Indigent Defense Report, filed May 5, 2008).

IX. EFFECTIVE DATE

Instructions: Include the effective date of the county plan for the provision of indigent defense services. A county's plan is due May 1 of each year and is for the next fiscal year. NRS 260.070(2).

OTHER CONSIDERATIONS

1. The Department of Indigent Defense Services will assist counties in creating plans for the provision of indigent defense services. Although the Department will conduct individual outreach to county leadership, please do not hesitate to call, write, or email to schedule assistance.

Department of Indigent Defense Services
896 West Nye Lane, Suite 202
Carson City, Nevada 89703
(775) 687-8490

didscontact@dids.nv.gov

Marcie Ryba, Executive Director: mryba@dids.nv.gov
Jarrod Hickman, Deputy Director: jarrod.hickman@dids.nv.gov
Patrick McGinnis, Deputy Director: pmcginnis@dids.nv.gov

2. Attached as **Appendix A** are copies of the Ninth Circuit's *Model Plan for Implementation and Administration of the Criminal Justice Act* and the *Nevada Supreme Court Model Plan for the Provision of Appointed Counsel for Urban Courts in Nevada*. Both are intended to be guides only. Based upon existing temporary regulations, the content of one or both examples will be different from each county's plan for the provision of indigent defense services. As counties develop their plans, the contents of Appendix A will be updated to reflect plans specific to non-urban counties.