

## **BDR Subcommittee Recommendations**

The Subcommittee met on August 8, 2022 and discussed two Bill Draft Requests.

First, to define “public defender” for purposes of Chapter 7 and modify NRS 7.125 and NRS 180.320 to allow the Board to set the hourly rate in counties with a population of under 100,000. This proposal has two versions which the subcommittee would like to leave to the Board to determine the final version. Version 1 leaves in the current hourly rates for indigent defense providers and Version 2 takes them out.

Second, the Subcommittee recommends modifying NRS 7.155, 212.070, and 353.264 to codify the funding source for the maximum contribution formula.

### **Recommendation 1: Defined Public Defender and Modify NRS 7.125 and NRS 180.320**

*NRS 7.XXX. “Public Defender” defined: “Public Defender” means an office created pursuant to Chapter 180 or Chapter 260, or an attorney or group of attorneys contracted to provide indigent defense services as defined by NRS 180.004.*

#### **(Version 1) NRS 7.125 Fees of attorney other than public defender.**

1. An attorney, other than a public defender, who is selected pursuant to NRS 7.115 to *provide indigent defense services as defined by NRS 180.004 or representation pursuant to a postconviction petition for habeas corpus under NRS 34.750, [~~represent or defend an indigent defendant at any stage of the criminal proceedings from the defendant’s initial appearance before the magistrate or the district court through the appeal, if any,~~]* is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made [~~of~~] *at the higher of the amount set by the Board on Indigent Defense Services under NRS 180.320(4) or \$125 per hour in cases in which the death penalty is sought and \$100 per hour in all other criminal cases. [~~Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, this section does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.~~]*
2. *An attorney, other than a public defender, who is selected pursuant to NRS 7.115 to provide representation other than indigent defense services as defined by NRS 180.004 or postconviction petition for habeas corpus pursuant to NRS 34.750, is entitled to receive a fee of \$100 per hour for court appearances and other time reasonably spent on the matter to which the appointment is made.*

**(Version 2) NRS 7.125 Fees of attorney other than public defender.**

1. *In a county with a population of less than 100,000, An attorney, other than a public defender, who is selected pursuant to NRS 7.115 to provide indigent defense services as defined by NRS 180.004 or representation pursuant to a postconviction petition for habeas corpus under NRS 34.750 ~~[represent or defend an indigent defendant at any stage of the criminal proceedings from the defendant's initial appearance before the magistrate or the district court though the appeal, if any,]~~ is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made ~~[of]~~ in the amount set by the Board on Indigent Defense Services under NRS 180.320(4). ~~[\$125 per hour in cases in which the death penalty is sought and \$100 per hour in all other criminal cases. Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, this section does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.]~~*
2. *An attorney, other than a public defender, who is selected pursuant to NRS 7.115 to provide representation other than indigent defense services as defined by NRS 180.004 or postconviction petition for habeas corpus pursuant to NRS 34.750, is entitled to receive a fee of \$100 per hour for court appearances and other time reasonably spent on the matter to which the appointment is made.*

**NRS 180.320 Duties of Board; adoption of regulations.**

1. (No change)
2. (No change)
3. (No change)
4.
  - a. *For counties with a population of less than 100,000, the Board shall adopt regulations to establish appointed indigent defense hourly rates pursuant to NRS 7.125(1).*
  - b. *For all counties, the Board shall adopt regulations to establish hourly rates for appointed representation in postconviction petition for habeas corpus matters pursuant to NRS 7.125(1).*
5. The Board shall adopt any additional regulations it deems necessary or convenient to carry out the duties of the Board and the provisions of this chapter.

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## **Recommendation 2: Codify the Maximum Contribution Formula Funding**

### **7.155. Payment of compensation and expenses from county treasury or money appropriated to State Public Defender *and the Department of Indigent Defense Services***

1. The compensation and expenses of an attorney appointed to represent a defendant must be paid from the county treasury unless the proceedings are based upon a postconviction petition for habeas corpus, in which case the compensation and expenses must be paid from money appropriated to the Office of State Public Defender, but after the appropriation for such expenses is exhausted, money must be allocated to the Office of State Public Defender from the reserve for statutory contingency account for the payment of such compensation and expenses.

*2. The compensation and expenses of an attorney appointed to represent a defendant pursuant to NRS 212.070(2) must be paid from money appropriated to the Department of Indigent Defense Services, but after the appropriation for such expenses is exhausted, money must be allocated to the Department of Indigent Defense Services from the reserve for statutory contingency account for the payment of such compensation and expenses.*

*3. The amount a county may be required to pay for indigent defense services must not exceed the maximum amount determined using the formula established by the Board on Indigent Defense pursuant to NRS 180.320. All indigent defense services expenses which exceed a county's maximum contribution will be reimbursed from money appropriated to the Department of Indigent Defense Services, but after the appropriation for such expenses is exhausted, money must be allocated to the Department of Indigent Defense Services from the reserve for statutory contingency account for the payment of such compensation and expenses.*

### **NRS 212.070 Expenses of prosecuting *and defending a prisoner and person acting in concert with prisoner who escapes or commits crime while incarcerated.***

1. The expenses and costs of prosecuting any person for escaping from, or breaking out of, the state prison, or attempting so to do, or for the commission of any crime while a prisoner therein, or any person acting in concert with such a prisoner, whether as a principal or accessory, are a charge against the State and must be paid from the Reserve for Statutory Contingency Account upon approval by the State Board of Examiners.

*2. The compensation and expenses of an attorney appointed to represent a defendant are a charge against the State and must be paid from the money appropriated to the Department of Indigent Defense Services pursuant to NRS 7.155, but after the appropriation for such expenses is exhausted, money must be allocated to the Department of Indigent Defense Services from the reserve for statutory contingency account for the payment of such compensation and expenses.*

3. The expenses and costs of prosecuting any person or persons for escaping from, or breaking out of, a jail, branch county jail or other local detention facility or attempting so to do, or for the commission of any crime while a prisoner therein, or any person acting in concert with such a prisoner, whether as a principal or accessory, are a charge against the county, city or other local government responsible for the operation of that facility.

**NRS 353.264 Reserve for Statutory Contingency Account.**

1. The Reserve for Statutory Contingency Account is hereby created in the State General Fund.

2. The State Board of Examiners shall administer the Reserve for Statutory Contingency Account. The money in the Account must be expended only for:

(a) The payment of claims which are obligations of the State pursuant to NRS 41.03435, 41.0347, 62I.025, 176.485, 179.310, 212.040, 212.050, 212.070(1), 281.174, 282.290, 282.315, 293.253, 293.405, 298.710, 304.230, 353.120, 353.262, 412.154 and 475.235;

(b) The payment of claims which are obligations of the State pursuant to:

(1) Chapter 472 of NRS arising from operations of the Division of Forestry of the State Department of Conservation and Natural Resources directly involving the protection of life and property; and

(2) NRS 7.155, 34.750, 176A.640, 179.225, **NRS 180.320, NRS 212.070(2)**, and 213.153,

except that claims may be approved for the respective purposes listed in this paragraph only when the money otherwise appropriated for those purposes has been exhausted;

(c) The payment of claims which are obligations of the State pursuant to NRS 41.0349 and 41.037, but only to the extent that the money in the Fund for Insurance Premiums is insufficient to pay the claims;

(d) The payment of claims which are obligations of the State pursuant to NRS 41.950; and

(e) The payment of claims which are obligations of the State pursuant to NRS 535.030 arising from remedial actions taken by the State Engineer when the condition of a dam becomes dangerous to the safety of life or property.

3. The State Board of Examiners may authorize its Clerk or a person designated by the Clerk, under such circumstances as it deems appropriate, to approve, on behalf of the Board, the payment of claims from the Reserve for Statutory Contingency Account. For the purpose of exercising any authority granted to the Clerk of the State Board of Examiners or to the person designated by the Clerk pursuant to this subsection, any statutory reference to the State Board of Examiners relating to such a claim shall be deemed to refer to the Clerk of the Board or the person designated by the Clerk.