

Recommendation for Corrective Action Plan for Storey County
Regarding Indigent Defense Services

A. Summary

Storey County, like the rest of the state and many parts of the nation, is experiencing challenges in its indigent defense system. Storey County has resolved to take swift and proactive measures to remedy the situation. These measures include reaching out to the Nevada Department of Indigent Defense Services to voluntarily enter into a Corrective Action, pursuant to NRS 180.440-450, which will result in an amendment to its current plan for the provision of indigent defense service.

Storey County's existing Indigent Defense Plan requires the State Public Defender (SPD) to provide primary indigent defense representation. Due to a number of factors outside Storey County's control, which are discussed more fully herein, the SPD has become critically short-staffed and cannot currently provide the level of representation required by the Sixth Amendment.

DIDS recently entered into a corrective action with Carson City involving similar circumstances. The result is that Carson City has created its own Public Defender office (CCPD). Storey County intends to enter into an interlocal agreement with Carson City to have the CCPD provide its primary indigent defense services. It is the understanding of DIDS that Storey County has drafted a budget for these services and will begin the process of county approval as soon as possible. Once the interlocal agreement between Storey County and Carson City is approved, the SPD would then begin to transfer cases to the CCPD and the CCPD would eventually take over primary responsibility for indigent defense representation in Storey County.

The State Public Defender is currently undergoing fundamental changes, including to its budget which will result in reduced staffing and likely a change in the location of its office. This circumstance further underscores the need for corrective action in Storey County at this time.

B. Other Contributing Factors.

The shortage of indigent defense counsel is not unique to the SPD, Storey County, or even Nevada as a whole, but is a significant problem in states around the county. This is due to a number of co-occurring factors, including: the mass retirement of boomer-aged attorneys, the exodus of these same attorneys, as well as others from the profession as a result of the COVID-19 pandemic, the fact that a number of Nevada's long-standing indigent defense attorneys have recently become deceased, law school enrollment is trending down, and significantly fewer law school graduates are choosing to go into public interest work. (Out of over a hundred Boyd School of

Law graduates in 2020, only six elected to go into public service, and it is DIDS's understanding that none of those chose public defense work.)

Ripple effects from other counties: From June 13 to August 31, 2022, due to attorney shortages of their own, the Washoe County Public Defender's Office stopped taking all felony and gross misdemeanor cases. The result was that the excess of cases had to be absorbed by the Washoe County Alternate Public Defender's Office and by the Washoe County appointed counsel list. This also impacted the availability of appointed counsel in other counties, and resulted in rapid increases in hourly rates for appointed counsel and dramatic increases in salaries (as well as signing bonuses) for public defenders in Washoe County.

The Elko County PD followed suit, faced with their own attorney shortages (two of their deputies were hired for greater salaries by the Washoe County PD during their shortage, and one veteran deputy passed away), the office began not accepting felony cases and withdrawing from other high-level felony cases in December 2022.

C. Recommended Steps Toward a Corrective Action

Storey County and DIDS have agreed on the following steps for a Corrective Action Plan:

- (1). In collaboration with DIDS, Storey County has drafted an amended Indigent Defense Plan ("Plan"), as well as an updated indigent defense budget that includes the costs of the CCPD providing primary indigent defense services, and any other expenses, including appointed counsel, investigators, and experts;
- (2). Storey County shall submit a draft of its interlocal agreement with Carson City regarding the CCPD to DIDS;
- (3) Storey County, the CCPD and the SPD will collaborate to establish a process and timeline for transferring existing physical and digital cases from the SPD to the CCPD, including when the CCPD will take over full primary responsibility for indigent defense representation in Storey County;
- (3). Storey County shall include in its amended Plan whether the SPD will provide representation for direct appeals to the Nevada Supreme Court, Pardons Board hearings, and Parole Revocation hearings;
- (4). In creating its amended Plan, Storey County will comply with all relevant regulations of BIDS;
- (5). Storey County will not pay the State of Nevada for public defender services for FY 2024.

D. Interim Steps Toward Corrective Action

(1) The timeline for creating a Corrective Action Plan is as follows:

(a) First draft from Storey County to DIDS by June 27, 2023;

(b) DIDS will provide input to Storey County by July 11, 2023 and the two will finalize the plan;

(c) As DIDS must review all county contracts for indigent defense services, a review of the interlocal agreement between Carson City and Storey County is necessary before final approval of the corrective action;

(c) DIDS will submit the final corrective action plan to the Board on Indigent Defense for approval at its next meeting on August 3, 2023, unless a special meeting becomes necessary and is possible;

(2) During this transition period, the SPD will stop accepting all new Storey County cases, and will focus on preparing for the transfer of existing cases from the SPD to the CCPD.

E. Justifications for Corrective Action

(1) Regulation 42(1) requires: “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 or representation of clients under the Nevada Rules of Professional Conduct.” – As of this writing, all SPD attorneys except one, and the head of the office, have transferred to the CCPD. Further, the head of the office is primarily engaged in establishing an NSPD office in White Pine County. Accordingly, there is not sufficient experienced staff to provide the necessary representation.

(2) The Sixth Amendment, ADKT 411, and the ABA Guidelines all require similar standards of representation which is not possible with such limited staff.

(3) A Plan for Corrective Action is also in accordance with NRS 180.440(4) and NRS 180.450, as the SPD, by no fault of its attorneys nor Storey County, is either not able to “meet[] the minimum standards for the provision of indigent defense services” or is “deficient in the provision of such services,” as it is unable to act as the primary public defender for Storey County due to critical under-staffing circumstances, and will likely be unable to do so at least for the foreseeable future.