

Updated Plans by County

Carson City

Consolidated Municipality of Carson City

Plan for Indigent Defense Services

Eff. November 4, 2021

Revised June 1, 2023



CARSON CITY INDIGENT DEFENSE SERVICES PLAN

The Indigent Defense Services Plan (“Plan”) of the Consolidated Municipality of Carson City (“Carson City”) provides a plan for when counsel is required to be appointed for persons to whom indigent defense services may be provided under section 180.004 of the Nevada Revised Statutes (“NRS”). This Plan is designed to meet the requirements of NRS 260.070(2) placed on Carson City, and to comply with the Nevada Supreme Court’s orders in Administrative Docket (“ADKT”) 411.

1. RECITALS

- a. Carson City is committed to indigent defense. Carson City and the Courts have previously established an indigent defense system providing a high level of indigent defense to the people of Carson City. This system, a partnership between Carson City and the Courts, functioned well and was not in need of fixing. In the history of Carson City and Ormsby County, Carson City is not aware of any person who has ever been adjudged to have received ineffective assistance of counsel. Carson City was not part of the rural counties that were named in *Davis v. Nevada*, Case No. 17 OC 00227 1B (1st Judicial Dist. Ct. Nev. Aug. 11, 2020).
- b. Nevertheless, the regulations of the Board of Indigent Defense Services require Carson City to discard most of its successful indigent defense program and reestablish a new one. The objective of this Plan, therefore, is to comply with the obligations placed on Carson City under NRS Chapters 7 and 180, NRS 260.070(2), and the regulations of the Board of Indigent Defense Services.
- c. Carson City also has significant concerns about a state agency having the power to authorize the expenditure of county funds or dictate or override the autonomy of the elected or appointed officials of a Nevada County. As such, this plan is not intended to authorize any expenditures of county funds that are not authorized by elected or appointed persons in Carson City. It is not the desire or purpose of the Carson City Board of Supervisors to authorize a state agency to expend county monies.
- d. The functioning of the broader representation and defense services in Carson City relies upon the Carson City Public Defender representing parents in NRS Chapter 432B actions.
- e. Portions of this plan are contingent upon the State of Nevada paying for the increases in the budgetary amounts caused by the adoption of this Plan. In the event that the State of Nevada does not authorize the increase in expenditures, portions of this Plan may be eliminated and the provision of services undertaken without such funds.

2. OBJECTIVES AND APPLICABILITY

- a. This Plan is intended to continue to provide a system of selection and appointment of counsel that provides indigent defendants accused of a crime or a delinquent act with an adequate defense and effective assistance of counsel to protect his or her constitutional rights; and to provide for the appointment and compensation of qualified counsel, without waste of public resources.
- b. This Plan is designed to be fully compliant with the Nevada Supreme Court’s Orders in ADKT 411, NRS Chapters 7 and 180, NRS 260.070(2), and the regulations of the Board of Indigent Defense Services.

- c. This Plan covers appointment of counsel for “indigent defense services,” as that term is defined in NRS 180.004. This covers legal representation and services for a person under the Sixth Amendment to the United States Constitution, NRS 7.115, NRS 62D.030, NRS 171.180, and for any law imposing criminal liability on a person that requires or permits the appointment of counsel for an indigent person. This plan does not address NRS 34.750, NRS 62D.100, NRS 128.100, NRS 432B.420, and NRS 433A.270, or any other law not included in NRS 180.004 where the appointment of counsel is required for a juvenile, an indigent person, or any other person. This Plan does not cover NRS Chapters 159, 159A, or 253.

3. DEFINITIONS

- a. “CCJMC” means the Carson City Justice/Municipal Court.
- b. “CCPD” means the Carson City Office of the Public Defender.
- c. “Conflict Counsel” means a DIDS qualified attorney who has entered into a contract with Carson City to represent indigent persons when the Carson City Public Defender has a conflict and is disqualified from representing an indigent person.
- d. “Counsel” means the Carson City Public Defender, conflict counsel, and a private attorney.
- e. “Counsel Assistant” means a legal assistant for the Conflict Counsel.
- f. “Court” means a department of the FJDC or the CCJMC, and “Courts” means the FJDC and the CCJMC collectively.
- g. “DIDS” means the Nevada Department of Indigent Defense Services.
- h. “DIDS qualified” means DIDS’ placement of an attorney on the list of attorneys who are qualified to represent indigent persons in Carson City.
- i. “FJDC” means the First Judicial District Court.
- j. “Indigent Defense Coordinator” means an independent contractor qualifying as a “designee” of DIDS. An Indigent Defense Coordinator shall have the duties specified in this Plan.
- k. “Indigent Person” means an individual deemed indigent under this Plan.
- l. “Private Attorney” means a DIDS qualified attorney other than the Carson City Public Defender or Conflict Counsel.
- m. “Represent” or “Representation” means legal representation of an indigent person by appointed counsel.
- n. “Services” means services provided to an indigent person during appointed counsel’s representation of that person, and includes investigative, expert, and other services.
- o. “State Public Defender” means the Nevada State Public Defender’s Office established under NRS Chapter 180.

4. CASES IN WHICH COUNSEL MUST OR MAY BE APPOINTED

- a. Mandatory Appointment. Representation must be provided for any indigent person:
 - 1. who is charged with a felony or gross misdemeanor;
 - 2. who is charged with a misdemeanor in which jail time is mandatory or the prosecution is seeking jail time (incarceration);
 - 3. who is alleged to have violated probation or other supervision and a jail or prison sentence of confinement may be imposed;
 - 4. who is a minor alleged to have committed an act of juvenile delinquency, under NRS 62D.030;

5. who is in custody as a material witness;
 6. who is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution;
 7. who is entitled to appointment of counsel because due process requires the appointment of counsel;
 8. who is likely to face Court imposed jail or prison time;
 9. who faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 10. who faces loss of liberty for criminal contempt;
 11. who has received notice that a grand jury is considering a charge against him/her and has requested counsel; or
 12. where Nevada or Federal law otherwise requires the appointment of counsel for a person meeting the requirements of NRS 180.004.
- b. Discretionary Appointment. When a court determines that the interests of justice so require, representation may be provided for any indigent person:
1. who is charged with civil contempt and faces loss of liberty; or called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, if there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty; or
 2. in any other case meeting the requirements of NRS 180.004 in which the court determines in the interests of justice appointment of counsel is appropriate.

5. DETERMINATION OF INDIGENCY

- a. A person must be deemed indigent, and is eligible for appointment of counsel to represent the person, if the person is unable, without substantial hardship to himself or herself or his or her dependents, to obtain competent and qualified legal counsel on his or her own.
- b. “Substantial hardship” is presumed for a person who:
1. receives public assistance, including food stamps, temporary assistance for needy families, Medicaid, or disability insurance;
 2. resides in public housing;
 3. earns less than 200 percent of the Federal Poverty Guidelines;
 4. is currently serving a sentence in a correctional institution;
 5. is housed in a mental health facility, or
 6. is a minor.
- c. If substantial hardship is not presumed for a person, a Court may deem a person to have a substantial hardship based upon the person’s particular circumstances, including:
1. the nature, extent, and liquidity of the person’s assets;
 2. the person’s disposable income from all sources;
 3. the person’s monthly expenses;
 4. the seriousness of the charges that the person is facing;
 5. whether the person is able to comprehend the proceedings and the charges that the person is facing;
 6. the effort and skill required to gather pertinent information about the case;
 7. the length and complexity of the proceedings;

8. local private counsel rates;
 9. whether discovery is needed in post-conviction proceedings; or
 10. any other consideration that bears upon the person's ability to retain and pay an attorney.
- d. The Court may determine that a person is partially indigent if the Court finds that a person can afford private counsel or has retained counsel, but the person cannot be effectively represented due to the person's inability to pay for necessary services.

6. SCREENING FOR INDIGENCY

- a. Screening for indigency and substantial hardship will be conducted by the Carson City Alternative Sentencing Department, the Carson City Sheriff's Office, or other court or law enforcement personnel within 48 hours for a person who is booked into the Carson City Jail or a juvenile detention facility and not released; at the initial appearance for a person who appears before a Court and requests or is required to be appointed counsel; or sooner as required by applicable law.
- b. The screening results must be provided to the Court as soon as possible after completion.

7. TIME FOR APPOINTMENT OF COUNSEL

- a. The Court will review the screening results and, if a person has requested representation, determine whether the appointment of counsel is mandatory or the interests of justice require the discretionary appointment of counsel and whether the person is indigent or partially indigent.
- b. An attorney must be appointed for any eligible indigent person as soon as feasible after formal charges being filed against a person held in custody or a person's first appearance before a judge; as required by any other applicable provision of law; or when a Court otherwise considers appointment of counsel appropriate.
- c. An eligible indigent person must be appointed one attorney, except in a capital case, or two attorneys in a capital case in which a person is reasonably believed to face capital punishment. At least one of the two attorneys appointed in a capital case must meet the minimum standard for lead counsel pursuant to Rule 250 of the Nevada Supreme Court Rules and both attorneys appointed must conform to the performance guidelines or standards for capital cases as adopted by the Nevada Supreme Court.

8. INITIAL APPEARANCES

- a. Unless counsel has already been assigned to a person, the CCPD will appear at all in custody pretrial release hearings, initial appearances, or arraignments. The CCPD may provide limited representation to an indigent person, discussing only matters pertaining to the initial appearance or arraignment to avoid creating conflicts of interest.
- b. If the CCPD determines that it cannot provide limited representation of a person at the initial hearing or arraignment in a manner consistent with the Nevada Rules of Professional Conduct, the CCPD shall immediately notify the Court so that the Court may consider whether indigent defense counsel should be appointed.
- c. If counsel other than the CCPD has been assigned as an indigent person's counsel before the initial appearance, the assigned counsel must appear at the initial appearance.
- d. At an initial appearance, Counsel must be prepared to address appropriate release conditions.

- e. A timely initial appearance or arraignment should not be delayed pending a determination of indigency.

9. SELECTION, ASSIGNMENT, AND APPOINTMENT OF COUNSEL

a. Court Assignment of the CCPD

- 1. Unless a Court is aware of a conflict for the CCPD or any other reason specified in this Plan why the CCPD should not be appointed as counsel, the Court must first appoint the CCPD to represent an eligible indigent person.
- 2. The assignment to a case of a specific attorney, or attorneys, working for the CCPD rests solely within the discretion of the CCPD.

b. Assignment of Conflict Counsel

- 1. If the CCPD cannot be appointed, the Court or the CCPD shall notify the counsel assistant.
- 2. Unless the counsel assistant is aware of a conflict for the conflict counsel or any other reason why a conflict counsel should not be assigned as counsel, the counsel assistant must assign a conflict counsel to represent an eligible indigent person.

c. Assignment of a Private Attorney

- 1. If no conflict counsel can be assigned, the counsel assistant shall assign the next private attorney on the DIDS list, unless the counsel assistant is aware of a conflict or any other reason why a specific private attorney should not be assigned as counsel.
- 2. The counsel assistant must assign the next private attorney on the list in the following order:
 - i. Private attorneys having an office in Carson City.
 - ii. Private attorneys having an office in Churchill, Douglas, Lyon, Storey, or Washoe Counties.
 - iii. Private attorneys having offices in counties other than those listed above.

d. The State Public Defender

- 1. Carson City may contract with the State Public Defender for the State Public Defender to provide representation to indigent persons when the CCPD is disqualified.
- 2. If Carson City has contracted with the State Public Defender, the counsel assistant may, either in lieu of appointing a private attorney or after attempting to assign a private attorney, contact the State Public Defender to determine if the State Public Defender has the ability to represent an indigent defendant in Carson City.

e. Appointment of Counsel When No DIDS Qualified Counsel is Available

If the counsel assistant is unable to assign any conflict counsel, private attorney or State Public Defender to represent an indigent person, the counsel assistant must notify DIDS and the Court of the failure to assign counsel.

f. General Procedures for the Assignment of Counsel

- 1. Counsel assigned for co-defendants may not be from the same law firm.
- 2. The counsel assistant may assign counsel that has been previously appointed for an indigent defendant in a different action for the indigent person if it would be in the indigent person's best interests to have the same counsel and would facilitate the indigent person's defense.

3. Counsel must comply with section 14(c) in order to be assigned as counsel for an indigent person. Counsel who refuses to comply with section 14(c) will be deemed ineligible to be assigned as indigent defense counsel in Carson City.
 4. The counsel assistant must use his or her best efforts to fairly rotate the assignment of counsel among conflict counsel or private attorneys on any legitimate basis, taking into consideration conflicts, workloads, availability, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from clients, and feedback from Carson City officials.
 5. An assigned or appointed counsel must conduct a conflict check within 1 day of being assigned to determine whether any conflict of interest exists which would prevent his or her representation of the indigent person. If a conflict is determined to exist, counsel must notify the Court, if appointed by the Court, and the counsel assistant.
 6. The judges of the Courts will have no input regarding the assignment of counsel by the counsel assistant in a particular case.
- g. Notice to Court
1. When the counsel assistant assigns counsel to the case, the counsel assistant will notify the Court of the assigned counsel.
 2. The assigned attorney must file a notice of appearance indicating that he has been assigned to the case.
10. **APPEALS, PARDONS BOARD AND PAROLE REVOCATION**
The CCPD will provide indigent defense services in appeals, in parole hearings, and in meetings of the Nevada Board of Pardons Commissioners.
11. **CHANGE IN ELIGIBILITY**
An appointed counsel must advise the Court if, or when, an indigent person has a change in his or her financial condition that may make him or her ineligible for public payment for indigent representation. Such information is not protected as a privileged attorney-client communication.
12. **COMPENSATION**
- a. Carson City will compensate the Carson City Public Defender and the employees of the CCPD in parity with the Criminal Division of the Carson City District Attorney's Office. Carson City will compensate conflict counsel as provided in the applicable contract with Carson City. Carson City will compensate private attorneys under this Plan or other applicable law for time that is reasonable and necessary for representation of an indigent person. In the event that Carson City contract with the State Public Defender for indigent defense services and the State Public Defender is assigned to provide indigent defense services, the State Public Defender will be compensated as provided in the contract between Carson City and the State Public Defender.
 - b. Unless otherwise provided in a policy, contract, statute or regulation, counsel may seek compensation for representation of an indigent person through the following procedure.
 1. Counsel must submit a request for compensation to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator, to Didspayments@carson.org.

2. The request must be supported by a sworn statement specifying time entries rounded to the nearest one-tenth of an hour, a detailed description of the work performed for the representation, a description of the compensation rate applicable to counsel, a statement of any compensation already received from any source for representation in the case, and any other material supporting the request for compensation. The invoice must comply with the requirements of section 14.
3. Counsel should submit a request for compensation at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after the representation is terminated will be denied.
4. The indigent defense coordinator will approve, modify, or deny the request for compensation.
5. If the request for compensation is approved, the indigent defense coordinator will send the request to the designated accounting personnel for entry into the City's payment system.
6. If the request for compensation is denied, the indigent defense coordinator will notify counsel and DIDS that his or her request was denied.
7. If the request is denied, counsel may file a motion for compensation with the trial court. A motion for compensation must contain the request for compensation, any information accompanying the request, the denial of the request for compensation, and a proposed order.

13. EXPENSES

- a. Carson City will reimburse counsel for services that are reasonable and necessary for the indigent person's defense.
- b. Carson City will provide funds to the CCPD to establish a budget for the representation of indigent persons. Carson City will pay expenses of conflict counsel as provided in the applicable contract with Carson City and as further provided in this Plan.
- c. Unless otherwise provided in a policy or contract, counsel may incur expenses for services costing \$2,500 or less, but must obtain pre-authorization for expenses for services costing more than \$2,500. All expenses must be reasonable and necessary for the representation of the indigent person, and reimbursement for expenses for services costing \$1,000 or less may be denied if it is determined that the services were not reasonable and necessary for representation of the indigent person.
- d. Counsel may seek reimbursement or pre-authorization for expenses through the following procedure.
 1. Counsel must submit a request for reimbursement or pre-authorization of expenses to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator, to Didspayments@carson.org.
 2. The request must be supported by a sworn statement specifying the services rendered or requested, the cost of the services, why the cost of the services are reasonable, and why the services are necessary for the representation, any compensation already received from any source for the services, and any other material supporting the request for expenses. The invoice accompanying the request must comply with the requirements of section 14.
 3. Counsel should submit a request for reimbursement or expenses at least quarterly, but in any event within 60 days after the date that the representation is terminated.

Requests submitted more than 60 days after the representation is terminated will be denied.

4. The indigent defense coordinator will approve, modify, or deny the request for reimbursement or expenses.
5. If the request for reimbursement or expenses is approved, the indigent defense coordinator will send the request to the designated accounting personnel for entry into the City's payment system.
6. If the request for reimbursement or expenses is denied, the indigent defense coordinator will notify counsel and DIDS that his or her request was denied.
7. If the request is denied, counsel may file a motion for expenses with the trial court. A motion for expenses must contain the request for expenses, any information accompanying the request, the denial of the request for expenses, and a proposed order.

14. PAYMENT FOR COMPENSATION AND EXPENSES

- a. Requests for compensation and expenses or for reconsideration will be denied if not timely submitted. Approved requests will be paid in a timely manner.
- b. Invoices for representation or services provided to an inmate of the Nevada State Prison system, or any person acting in concert with the inmate, for an escape, an attempted escape, or a crime committed while incarcerated, which are considered a state expense pursuant to NRS 212.070, must state on the invoices that the services are provided to such an inmate of the Nevada State Prison system and be submitted to DIDS at didscontact@dids.nv.gov with "Prison Expense" in the subject line.
- c. Unless a person is a member of the CCPD, any person requesting payment from Carson City must be registered with Carson City as a vendor and have a 1099 tax form and a business license on file with Carson City. Any person requesting payment from the State of Nevada must be a registered vendor with the State of Nevada Controller's Office.
- d. Counsel may request that Carson City pay the vendor directly if the vendor complies with this section.
- e. Counsel must enter the time spent for the payment period into the case management system provided by DIDS in order to be paid by Carson City.

15. APPOINTMENT OF THE CARSON CITY PUBLIC DEFENDER

- a. The Carson City Board of Supervisors will appoint the Carson City Public Defender at a publicly held meeting. The Board of Supervisors will consider any criteria that bears upon the selection of the Carson City Public Defender, consistent with applicable statutes and regulations.
- b. The judges of the Courts, DIDS or any other interested person or entity may submit public comment regarding the appointment of the Carson City Public Defender. Judicial input will not be the sole basis for the selection of the Carson City Public Defender.
- c. The Carson City Public Defender must be, or must have the ability to become, a DIDS qualified attorney.

16. CONTRACTS FOR CONFLICT COUNSEL

- a. Carson City may, in its sole discretion, contract with attorneys for conflict counsel services on an hourly basis, a flat fee basis, or any other basis complying with NRS Chapter 180, NAC Chapter 180, and ADKT 411.
- b. Carson City will solicit letters of interest through a solicitation released to the public and any DIDS qualified attorneys in Carson City.
- c. At a regularly scheduled public meeting, the Carson City Board of Supervisors may enter into a contract for conflict counsel services with none or any or all of the attorneys submitting letters of interest.
- d. The judges of the Courts, DIDS, or any other interested person or entity may submit public comment regarding the selection of conflict counsel.
- e. When selecting conflict counsel, Carson City will consider:
 - 1. the experience and qualifications of an applicant;
 - 2. applicant's past representation of indigent persons;
 - 3. applicant's ability to comply with DIDS regulations;
 - 4. the cost of applicant's proposed services;
 - 5. whether the applicant resides in or has an office in Carson City; and
 - 6. any other criteria that bears upon a conflict counsel contract.
- f. Judicial input should not be the sole basis for the selection of conflict counsel.
- g. Contracted conflict counsel must be a DIDS qualified attorney.
- h. Conflict counsel contracts must comply with all applicable DIDS requirements.

17. REQUIRED DUTIES OF COUNSEL

- a. Counsel must comply with the caseload and time reporting requirements for DIDS.
- b. Counsel must comply with the workload standards specified by DIDS.
- c. Jail and courthouse facilities for attorneys' use for discussions with witnesses or clients are generally available to counsel representing indigent persons for attorney/client meetings to the same extent that they are available to other counsel. Such facilities include the attorney meeting rooms outside of each courtroom, and private meeting space within the jail. Counsel who are not familiar with the accommodations at the Courts or the Carson City Jail may ask the Court Clerk's Office or jail personnel for assistance in speaking privately with the indigent person.
- d. Counsel or the Courts must provide client surveys authorized by the Nevada Board on Indigent Defense Services to an indigent person appointed counsel under this Plan.
- e. Complaints about counsel or attorneys must be forwarded to the DIDS.
- f. If counsel becomes aware of a complaint concerning representation of an indigent person that rises to the level of interfering with the representation of the indigent person, counsel must timely notify the Court.
- g. Counsel must comply with all applicable law concerning representation of an indigent person, including, but not limited to: the U.S. and Nevada Constitutions, the Nevada Revised Statutes, the Nevada Administrative Code, the Nevada Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance implemented by the Nevada Supreme Court.
- h. Counsel and attorneys must comply with all court rules.
- i. Counsel appointed to represent an indigent person is expected to represent that person through every stage of the case, at every hearing, and at trial, unless a court order is entered

substituting another attorney in place of the original attorney or otherwise relieving the original attorney of the responsibility of representing the indigent person. This provision does not prohibit another attorney from appearing at a hearing for the appointed counsel to represent the indigent person if the appointed attorney has an unavoidable scheduling conflict, provided that the appointed attorney has sufficiently appraised the other attorney about the case to enable the other attorney to provide effective assistance of counsel.

- j. Counsel appointed to represent an indigent person is expected to provide effective assistance of counsel to the indigent person. This includes: meeting with the indigent person before the first appearance after counsel is appointed; updating the indigent person on his or her case at least every 30 days, unless, in counsel's professional opinion, there are no significant updates in the indigent person's case; and advising the indigent person not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is, in counsel's professional judgment, in the client's best interest.
- k. Appointed counsel shall not request, require or accept any payment or promise to pay or any other valuable consideration for representation under the appointment unless such payment is approved by order of the Court.

Churchill County



Churchill County Agenda Report

LSO COPY
TO: Jacob
Joi + Shannon

Date Submitted: May 9, 2023

Agenda Item #: Old Business - A
Meeting Date Requested: May 17, 2023

To: Board of Churchill County Commissioners
From: Jacob Sommer, Esq., Churchill County Public Defender
Subject Title: Consideration and possible action re: Approval of the Churchill County Indigent Defense Plan for FY24.

Type of Action Requested: Accept

Does this action require a Business Impact Statement? No

Recommend Board Action: motion to approve the Churchill County Indigent Defense Plan for FY24.

Discussion: NRS 260.010(7)(b) & NRS 260.070(2) requires that the Board of County Commissioners provide an annual report to the Department of Indigent Defense Services. The report must include any information requested by the department concerning the provision of indigent defense services in the county and must include the plan for the provision of indigent defense services for the next fiscal year. The plan, as proposed here, was developed in cooperation with the Department of Indigent Defense Services and the Churchill County Public Defender. It reflects the requirements as outlined in the Indigent Defense Regulations recently enacted by the Nevada Board of Indigent Defense Services. The plan, as proposed, will meet the annual reporting obligations of Churchill County. The plan may be changed from time to time as desired and approved by the Board of County Commissioners. The Churchill County Plan is due for submission to the Indigent Defense Commission upon approval (but no later than July 1st).

Alternatives: N/A

Fiscal Impact: N/A

Explanation of Impact: N/A

Funding Source: General Fund.

Prepared By: Julie Guerrero, Executive Assistant

Reviewed By:

Date: May 11, 2023

The submission of this agenda report by county officials is not intended, necessarily, to reflect agreement as to a particular course of action to be taken by the board; rather, the submission hereof is intended, merely, to signify completion of all appropriate review processes in readiness of the matter for consideration and action by the board.




Churchill County Agenda Report

Jim R. Barbee, County Manager



Joseph Sanford, Deputy District Attorney

Date: May 11, 2023



Sherry Wideman, Comptroller

Date: May 12, 2023

Board Action Taken:

Motion: Approve

1) Justin Heath

Aye: 3

2) Myles Getto

Nay: 0



(Vote Recorded By)

The submission of this agenda report by county officials is not intended, necessarily, to reflect agreement as to a particular course of action to be taken by the board; rather, the submission hereof is intended, merely, to signify completion of all appropriate review processes in readiness of the matter for consideration and action by the board.



CHURCHILL COUNTY INDIGENT DEFENSE PLAN

2023-2024

155 NORTH TAYLOR STREET, FALLON, NEVADA, 89406

Churchill County Indigent Defense Plan

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Churchill County Indigent Defense Plan

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Attachments

(If Any)

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Churchill County Indigent Defense Plan

Purpose & Overview

[T]he true measure of our commitment to justice, the character of our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned.

~ Bryan Stevenson

The plan which follows is intended to provide an overview of the processes, procedures, policies, and goals in place that relate to the provision of indigent defense services within Churchill County, Nevada. In short, it is a confirmation of the principles which are now implemented to foster kindness and compassion to the disadvantaged and accused.

Indigent defense in Churchill County was historically and professionally accomplished by contract attorneys who lived in the community. After a careful evaluation of the current and future needs of the community, in November of 2020 the Churchill County Board of Commissioners created a new county department - Office of the Public Defender. Just more than one year later the Board created the Office of Alternate Public Defender to help limit the conflict caseloads anticipated for current needs and future growth. These important steps were a clear declaration that Churchill County is dedicated to continuing a long tradition of indigent defense which meets, and exceeds, the laws of Nevada and the United States Constitution.

The Office of the Public Defender and the Office of Alternate Public Defender are professional law firms, staffed with qualified and experienced attorneys and staff focused on the diligent, honest, and responsible representation of indigent defendants. Contract attorneys and other attorneys approved to handle representation of indigent defense are no less professional. Indigent Defendants are treated with respect and kindness. Attorneys and the staff who support them take a genuine interest in those they represent.

Churchill County Indigent Defense Plan

This summary is not intended to be comprehensive but to provide the general details of how Churchill County is now providing indigent defendants with the effective representation to which they are entitled, and how the County will continue to provide such service. We anticipate that as indigent defense stakeholders regularly counsel together there will be constant adjustments to upgrade the plans outlined below. Hence, this document should be viewed as a snapshot within a continually improving process and it may be changed by the Board of County Commissioners on a frequency that prudence dictates. In addition to the purposes outlined above, the objective of this plan is to comply with the statutory requirement outlined in the Nevada Revised Statutes (NRS 260.070) respecting annual reports by the Churchill County Public Defender, and the Board of County Commissioners.

Nothing in this plan shall be intended or construed to limit the professional judgment of the licensed attorneys representing clients within Churchill County, nor to impinge upon (or limit) such representation or duties owed to indigent defendants as contemplated by the applicable rules of professional responsibility. To the extent this plan does not specifically state processes, procedures, intentions, or plans for the numerous aspects of indigent defense that are otherwise required by the regulations imposed by the Nevada Indigent Defense Commission, such compliance is nevertheless intended and any processes which are not already in place shall be, after identification, implemented or established.

Churchill County Indigent Defense Plan

Definitions

- A. “**Appointed Attorney**” or “**Attorney**” includes all attorneys employed with the Churchill County Office of the Public Defender, Office of Alternate Public Defender, as well as those contracted to provide indigent defense and appointed counsel otherwise paid as “hourly” pursuant to NRS 7.125.
- B. “**Appointed Counsel Program Coordinator**” performs such duties and responsibilities as assigned (directly or by contract) by the Board of Commissioners; subject to the desire of the County Commissioners, it is expected that the coordinator will report to and be supervised by the County Manager; the coordinator’s duties include but are not limited to assigning conflict cases on a rotating basis among hourly attorneys (and contract attorneys where needed); monitoring case reporting requirements, and; all other duties reasonably necessary to oversee the program.

Providing Representation Consistent with the 6th Amendment

- A. **Mandatory Representation.** Churchill County shall provide representation to indigent defendants consistent with the requirements of the Sixth Amendment of the United States Constitution and the Nevada State Constitution. Typically, that includes individuals who are deemed to be indigent, and:
1. Is charged with a felony or gross-misdemeanor;
 2. Is charged with a misdemeanor where jail time is mandatory, or the prosecutor is actually seeking jail time;
 3. Is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
 4. Is a juvenile alleged to have committed an act of delinquency or is alleged to be a child in need of supervision;
 5. Is in custody as a material witness;
 6. Is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution, or when due process requires the appointment, or the judge is likely to impose jail time;

Churchill County Indigent Defense Plan

7. Faces a loss of liberty in a case and Nevada Law requires the appointment of counsel
8. Faces a loss of liberty for criminal contempt;
9. Has received notice that a grand jury is considering charges against him or her and requests the appointment of counsel.

B. Discretionary Representation. Courts of Churchill County *may* provide counsel to indigent individuals on a discretionary basis in other circumstances whenever that court determines that the interests of justice so require or where the facts of the instant case would make such appointment prudent and where the law, due process and fundamental fairness would dictate.

Initiation of Cases & Prompt Magistration

A. Timing of the Appointment of Counsel for Indigent Defendants

1. Counsel shall be provided to eligible individuals:
 1. Within 48 hours
 2. At their first appearance before a judge
 3. When they are formally charged or notified of charges, or
 4. When a Justice of the Peace or a District Judge otherwise considers appointment of counsel appropriate
2. Automatic Appointment & Eligibility. A minor alleged to have committed a crime, an act of juvenile delinquency, or alleged to be a child in need of supervision is automatically eligible for appointed counsel because of the presumption of indigency which always accompanies allegations filed against a minor. In such cases, counsel will be appointed upon notice of a filed petition.

B. Number and Qualifications of Appointed Counsel

1. The Office of Public Defender – or if a conflict exists – one attorney, shall be appointed consistent with the related provisions of this plan, except in Capital cases.
2. In Capital cases or in cases where open murder is charged as an offense (which may result in a Capital case), two attorneys shall be appointed consistent with the

Churchill County Indigent Defense Plan

requirements of Nevada Law, and the related provisions of this plan as soon as is reasonably possible. In such situations one of the two attorneys appointed to represent indigent defendants under this section must meet the minimum standard for lead counsel pursuant to Nevada Supreme Court Rule 250 and both attorneys appointed must conform to the performance guidelines and standards as adopted by the Nevada Supreme Court for such cases. If representation in Capital Cases has been delegated to the Office of the State Public Defender, such office will be notified of appointment in advance or as soon as possible given the circumstances.

3. The Office of Public Defender, Office of Alternate Public Defender or each individual Attorney appointed to represent indigent defendants shall be duly qualified to practice law pursuant to the requirements of the State of Nevada, and shall have such experience and/or supervision as is required to discharge his or her duty for effective representation.

C. Eligibility for Appointed Representation

1. Financial Eligibility

- i. Indigency Screening. Court Services personnel (or other designated individual as hereafter designated) may conduct indigency screening no later than 48 hours after arrest to make an initial determination of financial eligibility and provide a recommendation to the Court with respect to the eligibility of that defendant for services of appointed counsel. After this screening process and upon a Judge or Justice of the Peace finding that a defendant is eligible for appointed counsel in accordance with NRS 171.188, counsel will be appointed promptly. The form which shall be used for screening purposes by Court Services form satisfies the provisions of NRS 171.188. In some cases where individuals are incapable of reviewing/completing the indigency forms at the time of Court Services screening (such as in cases of alcohol/drug intoxication) will be seen as soon as it is responsible do so.
- ii. A person shall be deemed “indigent” if such person is unable without substantial hardship to himself or his dependents, to obtain competent,

Churchill County Indigent Defense Plan

qualified legal counsel on his or her own; “Substantial Hardship” is presumed where a defendant is a recipient of public assistance (such as Food Stamps, TANF, Medicaid, Disability Insurance, resides in public housing), or has income which does not exceed 200% of the Federal Poverty Guidelines. Defendants who are minors, or who are currently serving a sentence in a correctional institution or who are housed in a mental health facility are also presumed to meet the standards for “substantial hardship.”

iii. Defendants who do not meet the presumption standard for “substantial hardship” will be subjected to a more rigorous screening process to determine if his or her particular circumstance would result in a “substantial hardship.” After the Court receives the screening information gathered by Court Services, regardless of the initial recommendation, the presiding judicial officer may gather additional information for the purpose of determining indigence through the additional declaration of a defendant, as well as through oral examination. Factors for consideration by the Justice of the Peace may include:

- a. Net household income.
- b. Household size.
- c. Cost of obtaining competent legal representation.
- d. Whether the Defendant or dependent receives food stamps, Medicaid,
- e. TANF, or public housing.
- f. Property/Assets
- g. Etc.

System of Appointment of Counsel & Appointed Counsel Program

A. Office of Public Defender

Churchill County has established the Office of Public Defender as the initial and primary provider of indigent defense. That office is staffed with experienced and

Churchill County Indigent Defense Plan

qualified attorneys who meet and exceed the applicable standards. Division of and equalizing caseloads in the county where no conflict exists will be handled at the discretion of the Churchill County Public Defender. Regular meetings with all county indigent defense providers will permit regular verbal reports of caseloads to assist the Public Defender in making a division and assignment of cases for representation. Where a conflict exists and alternate representation is required, the Alternate Public Defender will be assigned, or after consultation where a known conflict exists, one of the County contracted attorneys will be assigned to represent such individuals. Where the contracted attorney or attorneys have a conflict in representation, the Appointed Counsel Program Coordinator (as detailed further below) shall make assignment of counsel as provided for in this plan.

The Office of Public Defender (OPD) in Churchill County is currently staffed with one attorney and one professional legal secretary. Additional staff may be hired as necessary. Attorneys employed with the Office of Public Defender maintain a professional office space with a client conference area and meeting space. A newly remodeled office suite consisting of a waiting room and two offices house the current Office of Public Defender. These offices are located in the County Administration building at 155 North Taylor Street, Suite 161, Fallon, Nevada 89406.

The Public Defender in Churchill County is **Jacob N. Sommer, Esq.**



- Admitted to practice law in Utah (2006) (not active)

Churchill County Indigent Defense Plan

- Admitted to practice law in Nevada (2007) (active)
- Graduate of the William S. Boyd School of Law (Juris Doctorate, UNLV)
- Graduate & Valedictorian of Utah Valley University (A.S. & B.A.)

After clerking for the Honorable David A. Huff (Nevada District Court), Jacob has engaged full time in the practice of criminal defense in Nevada since 2007. He has represented a broad range of clients and cases. He has extensive jury trial experience from serious felony offenses to misdemeanor matters. After working as a contracted public defender for Churchill County for 7 years, he was hired in November 2020 as the Churchill County Public Defender. He is the department head and manages all staff within that organization.

B. Office of Alternate Public Defender

Churchill County has established the Office of Alternate Public Defender as a second tier provider of indigent defense. That office is staffed with an experienced and qualified attorney who meets and exceeds the applicable standards. The case load of the Alternate Public Defender is assigned by the Churchill County Public Defender to equalize case loads as much as is possible, or in cases of first level conflicts. If a conflict is identified by the Alternate Public Defender, the Office of Public Defender is notified and one of the County contracted attorneys will be assigned to represent such individuals. Where the contracted attorney or attorneys have a conflict in representation, the Appointed Counsel Program Coordinator (as detailed further below) shall make assignment of counsel as provided for in this plan.

The Office of Alternate Public Defender (OAPD) in Churchill County is currently staffed with one attorney and one professional legal secretary. Additional staff may be hired as necessary. Attorneys employed with the Office of Alternate Public Defender maintain a professional office space with a client conference area and meeting space. These offices are located in the Historic Old Post Office at 90 North Maine Street, Suite 202, Fallon, Nevada 89406.

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The Alternate Public Defender is **Wright Noel, Esq.**



- Admitted to practice law in Washington (2019)
- Admitted to practice law in Nevada (2020)

Wright has represented indigent clients since his admission to the Nevada Bar in October 2020. He attended BYU Law School on a full tuition scholarship where he graduated in 2019. Wright then clerked for the Honorable Judge Thomas L. Stockard here in the Tenth Judicial District Court. During his clerkship Wright studied for and passed the Nevada bar exam. In November 2020, Wright began working as the deputy public defender. He has vigorously defended indigent clients here in Churchill County. Wright has appeared in the District Court hundreds of times in his years as a deputy public defender and now Alternate Public Defender. His vigorous defense has resulted in the dismissal of multiple cases against indigent defendants who otherwise would have suffered unjust criminal convictions and he has already impressed the local bar with his understanding of and ability to navigate the law.

C. Contract Attorneys & Qualifications

Because it has been necessary for the efficient administration of cases where multiple attorneys are required (such as for multi-defendant criminal matters, or for NRS 432B cases), Churchill County has contracted with other Attorneys for this purpose.

Churchill County Indigent Defense Plan

Attorneys functioning currently within Churchill County as contract counsel for representation of indigent individuals that cannot be handled by the Office of Public Defender or Alternate Public Defender include:

Charles B. Woodman, Esq.
Law Offices of Charles B. Woodman
548 West Plumb Lane, Suite B
Reno, NV 89509

Kaitlyn Miller, Esq.
Kaitlyn Miller Law
226 Hill Street
Reno, NV 89501

Selection of Contract Attorneys and Conflict Counsel will be accomplished in accordance with the Appointed Counsel Program provisions as outlined herein and consistent with the regulations of the Department of Indigent Defense, Section 24 (January 28, 2021). The process for selection has included and will continue to include consideration of (1) whether the proposed attorney is on the approved list of eligible providers, (2) the experience and qualifications of the applicant, (3) the applicant's past performance in representing indigent individuals, (4) the applicant's ability to comply with the applicable regulations and terms of the contract, and (5) the relative cost of the contractor in relation to services contemplated.

Mr. Charles B. Woodman is contracted to handle second level conflicts in criminal cases, as well as in representation of one of the natural parents within the NRS 432B cases. Ms. Kaitlyn Miller is contracted for the specific purpose of representing all minor children within NRS 432B cases.

D. Appointed Counsel Program & Coordinator.

Churchill County has contracted with Sue Sevón, an individual designated as the Appointed Counsel Program Coordinator. The Coordinator has all the duties and responsibilities outlined in this plan or as adjusted from time to time. To ensure no

Churchill County Indigent Defense Plan

conflict of interest is created, in no event will the Coordinator be directly involved in actual representation or case management of clients in appointed counsel cases.

The Program Coordinator maintains a list of all attorneys approved by the Committee (discussed below) for new contracted attorneys, for hourly conflict attorneys, and capital case attorneys. The Coordinator maintains appropriate records to reflect the cases and dates to which each attorney assigned through the Coordinator has been appointed.

If the Churchill County Office of Public Defender, Office of Alternate Public Defender and contracted counsel cannot handle a particular case, the notices are sent to the Court and the Program Coordinator as soon as is reasonably possible. The Coordinator then makes assignment of alternative counsel which will be selected by the Appointed Counsel Program Coordinator as follows:

- (1) The Appointed Counsel Program Coordinator shall select the alternative appointed counsel, in consecutive order, from the hourly list.
- (2) If the case is Capital in nature, the Coordinator may select from those qualified on a Capital Case list, or where representation for capital cases has been delegated to the State of Nevada, shall notify such office of that appointment.

The Coordinator provides prompt notice and a proposed order confirming selection of counsel to the Appointing Authority (Judge, Justice of the Peace) presiding over the court in which the subject charges are pending.

The Coordinator may establish an Appointed Counsel Selection Committee to review, from time to time or as need dictates, the qualifications of applicants for contract or hourly appointments, to review the list of attorneys from which appointments are made in hourly cases, and to determine which attorneys shall be recommended for appointments.

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The Appointed Counsel Program Committee may be made up of five (5) members who:

- 1) Have no pecuniary interest in the outcome of the attorney selection or performance evaluation process;
- 2) Have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;
- 3) Are not directly related to a member of the local judiciary or any local prosecution function; and
- 4) Have an interest in the variety of types of cases that are represented by the appointed counsel lists to be selected by the Committee.

As the Program Coordinator directs, or as need dictates, the Committee may: (1) meet once each year and solicit input from judges and others familiar with the practice of criminal defenses, juvenile and family law where appointed counsel are utilized; (2) review any complaints from indigent clients; (3) review the history of participation in training of each applicant and each contract/hourly attorney receiving appointments; and (4) determine eligibility and recommendation of appointed counsel for new and continued participation in accordance with applicable regulations and standards.

The Coordinator shall be responsible for reviewing for approval the claim for payment of each attorney and any expert or other service fees at the conclusion of appointed counsel's representation or, if appropriate, periodically during appointed counsel's representation. Such claims and invoices shall be submitted in a standard form as hereafter established by the Coordinator. The Coordinator shall approve for payment all reasonable attorney's fees reflected on the designated form. The Coordinator may request additional information or explanation where necessary in evaluation of such requests. In the event the Coordinator denies or modifies a Request for Fees, it shall provide an explanation to the submitting attorney with a copy of the same to the Churchill County Manager as to why the denied portion was not reasonable. Such denials are subject to judicial review pursuant to NRS 7.135.

Churchill County Indigent Defense Plan

Case-related expenses expected to exceed two thousand five hundred dollars (\$2,500) shall be submitted to the Coordinator for pre-authorization before they are incurred. The attorney shall submit the request for pre-authorization to the coordinator via email at sevonconsulting@gmail.com. Without disclosing confidential information the request shall include an explanation of why the expense is reasonably necessary to provide representation. Such request and the reasons therefor shall be kept strictly confidential by the Coordinator. All case-related expenses, whether or not they are subject to pre-authorization, are subject to the Coordinator's review for reasonableness. Invoices for case-related expenses shall be submitted to the Coordinator within a reasonable time of termination of representation. Any requests for expenses not submitted within 90 days following termination of representation shall be deemed waived.

Upon approval of fees and/or case-related expenses, the Coordinator shall notify the Comptroller's Office of all approved requests, attaching a copy of the invoice, and the Comptroller's office shall issue prompt payment for the same.

Standards of Representation & Duties of Appointed Counsel

Attorneys will be responsible for the performance of all the obligations and duties as dictated in the Nevada Rules of Professional Conduct and must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services.

Appointed counsel is assigned specific cases upon notice of appointment by the Court, as assigned by the Churchill County Public Defender or by the Appointed Counsel Program Coordinator. Attorneys are expected to ensure that, to the greatest extent possible, the same attorney represents a defendant through every substantive portion of the case without delegation to others. There are times and circumstances where there are prudent and acceptable exceptions to this practice, but the expectation in place provides each client with a consistent attorney representation throughout the case.

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The Justice Court shall provide reasonable advance notice of all arraignment proceedings to the Coordinator or Attorneys who are or who may be appointed to represent defendants to ensure an attorney can appear for such hearing. The Coordinator or Appointed Attorneys are required to be present at such hearings. At the initial arraignment, the Coordinator or Appointed Attorney will be prepared to address the issue of pre-trial release and if an own recognizance release is not granted, the adjustment of bail in accordance with applicable case law. See Valdez-Jimenez v. Eighth Judicial Dist. Court of Nev., 163 Nev. Adv. Op. 20 (2020). These hearings and appearances are conducted either in person or via Zoom. If an individual is released or if bail is set, the defendant is informed about conditions that will be imposed, if any.

A. Initial Contact with Clients

Attorneys are expected to implement processes and procedures to ensure represented individuals receive prompt attention to their cases, have contact information for the appointed attorney, and so that information pertinent to the resolution of the case is received and addressed. It is expected that these processes continue to evolve as attorneys and staff at respective offices consistently evaluate best practices, requirements imposed by the Court, and the needs of indigent defendants.

The purpose of the initial client interview is to inform the client of the charges/penalties and to acquire information from the client concerning pretrial release. If the defendant is in custody the assigned attorney will make contact as soon as is practicable, but in no case later than 72 hours. If a client is not in custody and contact information for the client is available, attempt to contact the client commences as soon as is practicable, but in no case later than 72 hours, and a similar process of providing an overview and information is completed.

Attorneys who conduct an initial client interview are expected to:

1. Be familiar with the elements of each offense charged and the potential punishment.

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2. Review relevant documents then available – including any reports made by agencies concerning pretrial release, and law enforcement reports.
3. Be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions.
4. Be familiar with different types of pretrial release conditions the court may set and be familiar with any procedures available for reviewing the judge's setting of bail.

Attorneys assigned to represent indigent individuals will be familiar with and guided by the Rules of Professional Conduct, the Nevada Indigent Defense Standards of Performance adopted by the Nevada Supreme Court (October 16, 2008), and changes to such standards as they are made or adopted from time to time.

B. Workload Standard

The workload of Appointed Counsel must allow counsel to give each client the time and effort necessary to ensure effective representation. Attorneys should be aware of and continually evaluate their workload such that it does not interfere with the Attorney's competence or diligence. When the data becomes available Churchill County will provide attorneys with workload guidelines as determined by the Board of Indigent Defense.

C. Case Management Software & Case Load Reporting

The Office of Public Defender opened in November 2020 and began use of a top-shelf professional case management software that assists office staff and attorneys to efficiently represent clients. This software has features that promotes efficient client contact and electronic file management. Churchill County also reports case numbers and attorney work hours on cases via the alternate software provided by the office of indigent defense services. No sensitive or confidential client information is conveyed via those reporting obligations. Attorneys always comply with the applicable regulations as promulgated by the Nevada Department of Indigent Defense Services provided they are not in conflict with rules of ethical obligations to clients represented.

Churchill County Indigent Defense Plan

In order to comply with additional administrative regulations that are imposed, Attorneys will spend time tracking the number of cases, and other details of cases so the information can be provided annually (at a time designated) to the Indigent Defense Commission with data related to caseloads which include:

1. Beginning pending cases
2. New appointments
3. Cases returned from warrant or re-activated
4. Cases adjudicated, disposed or closed (and manner of closure)
5. Warrant or placed on inactive status cases
6. Cases set for review
7. End pending cases
8. Number of Motions to Suppress filed, and number litigated
9. Number of trials

In order to comply with additional administrative regulations that are imposed, Attorneys will spend time tracking the metrics required, including time each staff member spends on cases, attorney hours per case, investigator hours per case, staff hours per case, expert hours per case and private workload, if any, measured in attorney hours.

D. Continuing Legal Education

Churchill County provides funds for, and requires attorneys employed with the OPD and all other indigent defense providers to comply with the professional obligations for Continuing Legal Education (CLE). Consistent with recently enacted regulations of the Indigent Defense Commission, attorneys providing indigent defense will be required to complete at least 5 of those CLE hours in topics related to indigent defense.

E. Juvenile Delinquency Cases

While there exist alternative regulations and standards involving allegations of Juvenile Delinquency, such cases are handled in a similar manner to those discussed above for

Churchill County Indigent Defense Plan

ordinary criminal proceedings. Juvenile clients in these cases are informed of their rights, appointed counsel if the same is requested and hearings are promptly scheduled.

F. Communication & Council Among All Stakeholders

Churchill County is unique among all other areas of practice in the legal community. Due to the continuing efforts of Judges, attorneys, and court staff, all participants remain professional and friendly even where there may be a typical tendency for strong conflict. The bar and bench within this community does not permit a culture of conflict or gamesmanship. On a regular basis the defense bar and the judiciary meet for a bench-bar meeting – typically during a lunch hour. Meetings are attended by members of the District Attorney’s office, the Office of the Public Defender, court staff, and Judges. These meetings permit open discussion about concerns that need to be addressed regarding the initial stages of a criminal case (or other indigent client proceeding) and with a view toward meeting and exceeding the standards applicable to such cases. Participants regularly discuss ideas for adjustment to procedures, and items for general coordination. The meetings are productive, well attended and result in a continual effort toward improvement. Where items of importance arise that need to be discussed prior to the next meeting, these are frequently handled by email discussion where all parties have the chance to provide input and present information or solution options.

Provision of Resources and Confidential Communications

It is the specific and declared intent of Churchill County that the Office of the Public Defender (OPD), the Office of Alternate Public Defender (OAPD) and all indigent defense attorneys be provided sufficient resources to afford competent representation of all clients and independent investigation of cases handled. During each budgeting cycle the Office of Public Defender, Office of Alternate Public Defender and Board of County Commissioners will continue to evaluate the overall budget needs and specific line-items for adjustment during subsequent years as prudence dictates. The resources available to indigent service providers are numerous, but some of the most significant are listed here below.

Churchill County Indigent Defense Plan

A. Confidential Meeting Space

County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense clients and appointed counsel. These resources include the provision of accommodations for private discussions between each attorney and a client in the Justice Court (where there are four specifically designated attorney meeting rooms), the District Court (where there are three attorney meeting rooms), jails (where there are two specifically designated attorney meeting rooms), and at the Office of the Public Defender and Office of Alternate Public Defender (where there is sufficient and appropriate meeting space in the form of one or more conference rooms which can be used by contract or hourly attorneys).

B. Non-English Speaking Resources

When defendants are non-English speaking, an interpreter is provided by the Court for purposes of hearings. For purposes of client communication such interpreters are regularly engaged by the Office of the Public Defender and Office of Alternate Public Defender to assist in translating letters and other written communications to clients, and in scheduling private attorney-client meetings for interpretation assistance.

C. Court Services

Additional resources provided by Churchill County includes Court Services. Among other things this office will conduct initial indigency screening and is charged with supervising pretrial defendants who have been granted a release from custody on their own recognizance. Initial interview reports and thereafter regular update reports are generated from this office and provided to defense counsel (among others). All such reports assist defense counsel in assessing whether there are ongoing concerns with substance abuse.

D. FASTT

One of the more valuable assets provided by the County is a group of employees titled Forensic Assessment Services Triage Team (or, "FASTT"). This is an office employing several full-time resource liaisons within the Department of Social Services. Each of

Churchill County Indigent Defense Plan

whom are certified Community Health Workers and trained in Crisis Intervention. At the request of defense counsel, and often independently at the request of individual defendants by a separate referral process, this office provides extremely valuable assistance with the following:

1. Helping coordinate, schedule & secure substance abuse or mental health evaluations
2. Helping defendants obtain and complete applications for various treatment programs throughout Nevada
3. Providing defendants with information and resources related to housing subsidies and solutions
4. Providing other social services support resources that help defendants to maintain stable living conditions and comply with obligations imposed by the Court
5. Connecting defendants with applications and assisting in the process of obtaining public assistance where appropriate
6. Reviewing with defendants the resources available for mental health counseling and treatment
7. Assisting defendants find employment opportunities
8. Disability services
9. Senior services
10. Family support

The FASTT team facilitates a warm hand off to community supports such as the New Frontier treatment center, Churchill County Social Services and other such supports. The FASTT Liaisons meet in the jail daily to conduct assessments and identify resources the incarcerated individual may need for re-entry into the community. The mission statement of FASTT is “To increase community safety and awareness by promoting engagement in treatment, improve quality of life, and decrease recidivism for mentally ill and substance dependent individuals involved within the criminal justice system.”

Churchill County Indigent Defense Plan

E. Fiscal Resources

Churchill County has provided and will continue to provide sufficient funds to enable attorneys to conduct independent investigation of charges filed and if necessary to retain an investigator, as well as for the retention of experts when such are needed. The budget and expenses for such needs will be built into the budget of the Office of Public Defender and Office of Alternate Public Defender administered by the respective department heads. For such expenses requested by contract or hourly conflict attorneys, the Appointed Counsel Program Coordinator will implement the approval process discussed above. This process excludes evaluation by the judiciary and requests for \$2,500 or less will generally be automatically approved.

Conclusion

Regarding indigent defense within Churchill County, it is our aim to make certain that we provide indigent defendants with competent, diligent, kind and professional advocates who are supported appropriately in terms of funding and facilities. These goals are and will continue to be guided by the provisions of the United States Constitution, State Law, and applicable regulations. If this plan has omitted any reference, process or procedure otherwise required by the regulations of the Indigent Defense Commission or the Department of Indigent Defense Services, such references are nevertheless intended and shall be deemed included as if set forth fully herein. Nothing in this plan is intended to diminish the ability of all indigent defense providers in their efforts to comply with the rules of professional responsibility and represent clients in a manner consistent with applicable law.

Elko County



Elko County
Manager's Office
Delivering Indigent Defense Services (DIDS) Plan
540 Court Street, Elko, NV 89801



DELIVERING INDIGENT DEFENSE SERVICES

Elko County Alternate Public Defender Plan

MARCH 1, 2023
ELKO COUNTY
540 Court Street, Suite 101
Elko, NV 89801



Elko County Delivering Indigent Defense Services Plan

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2 HISTORY OF REVISIONS

Date	Version	Comments
7/1/2021	2021	Approved and Accepted by BOCC
3/1/2023	2023	Approved and Accepted by BOCC

3 CONTACTS

Administrator	Elko County Manager Amanda Osborne aosborne@elkocountynv.net (775) 748-0204
Procedures Manager:	Elko County Fiscal Affairs
File Name:	Elko County Delivering Indigent Defense Services (DIDS)
Direct Inquires:	Elko County Comptroller Susan Paprocki (775) 748-0221 Or Elko County Grants and Contract Manager Abigail Wheeler (775) 748-0359
Requirement for document acceptance and changes:	This document must be reviewed annually and approved by the Elko County Manager. The Elko Board of County Commissioners must approve changes.



Elko County
Manager's Office
Delivering Indigent Defense Services (DIDS) Plan
540 Court Street, Elko, NV 89801

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4 CERTIFICATION OF DELIVERING INDIGENT DEFENSE SERVICES

This is to certify that I have reviewed the Delivering Indigent Defense Services (DIDS) submitted herewith and to the best of my knowledge and belief:

This document is the County's application to the Nevada Department of Indigent Defense Services (NV DIDS)'s requirements that each county has a DIDS Plan. Generally, this plan is governed by Elko County, Nevada Department Indigent Defense Services, Nevada Revised Statutes, and Nevada Supreme Court Rules (specifically 250), as these various rules uphold the constitutional right of all persons accused of a crime under the law.

As the Authorized Representative of Elko County, a political subdivision of the State of Nevada, I hereby certify that this Delivering Indigent Defense Services Plan is compliant with the overall structure of the Federal and State regulations upholding the right of a person accused of a crime to have access to affordable defense.

I declare that the foregoing is true and correct.

Governmental Unit: Elko County

Signature: _____

Date of Execution: _____

Name of Official: Amanda Osborne

Title of Official: Elko County Manager

Effective Date: Beginning at the date of execution above and for one year. Delivering Indigent Defense Plan will be reviewed and certified annually. The document will be taken to the BOCC for approval if changes are required.



Elko County
Manager's Office
Delivering Indigent Defense Services (DIDS) Plan
540 Court Street, Elko, NV 89801

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5 INTRODUCTION

The purpose of the Delivering Indigent Defense Services (DIDS) Plan (hereinafter referred to as "DIDS Plan" or "the Plan") is to achieve equality for all persons before the law. Elko County shall collaborate with the Nevada Department of Indigent Defense Services (hereinafter referred to as "NV DIDS") to execute this plan. The plan enables eligible clients to receive an array of constitutional defense services from appointed counsel without wasting public resources. The Elko County Manager Office's goals, in cooperation with the Judicial system, are:

- Meet the constitutional requirements of providing appointed counsel while not creating any economic disincentive or impairing the ability of appointed counsel to provide effective representation
- Promote the integrity of the relationship between an appointed attorney and a client
- Supply the necessary resources for reunifying families
- Rehabilitate people to promote community safety and personal responsibility
- Divert defendants from incarceration and minors from the adult criminal system

Elko County shall administer this plan to ensure the Elko County Public Defender (ECPD)'s Office and other appointed counsel are free from political and undue budgetary influence and are subject to judicial supervision only in the same manner and to the same extent as a retained counsel or a prosecuting attorney.

Elko County shall manage this plan with consistency and fiscal responsibility, holding Contractors responsible for carrying out the job they were hired to do with zeal and competence.

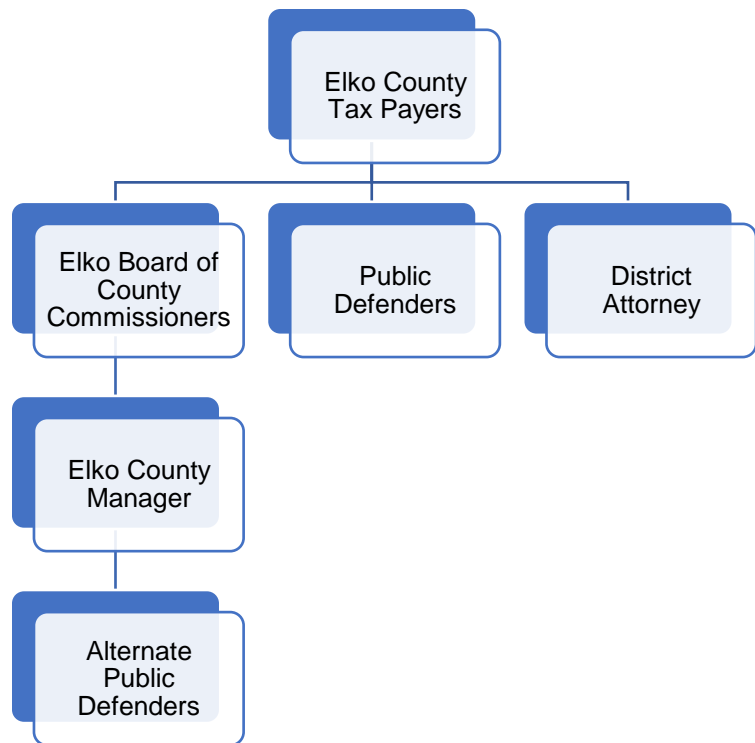
Elko County's DIDS Plan is based on the requirements of appointed counsel deriving from the U.S. and Nevada State Constitutions, the Nevada Revised Statutes, the Nevada Administrative Code (NAC), Nevada and Fourth Judicial District County Rules, Nevada Supreme Court Rules of Criminal Procedure, the NV DIDS Regulations (hereinafter referred to as the "Regulation" or "Regs").



6 ORGANIZATION

The chart to the right shows how the Elko County Manager's Office participates in the alternate public defender contracts. The U.S. Justice System is based on autonomous legal departments and courts. They must not unduly influence one another in carrying out their constitutional duties.

Therefore, the Elko County Manager's Office must participate in contracting for Alternate Public Defenders to safeguard the legal departments' independence.



7 APPLICABILITY

This plan is in effect when the court(s) determines that a defendant is an indigent, or eligible client, according to Section 6 of the Reg. In some cases, the ECPD will represent the eligible defendant. Suppose the Public Defender determines a conflict of interest during the Conflict-of-Interest Analysis. In that case, they will report it to the relevant court and Elko County Managers Office and refer it to NV DIDS to appoint an alternate public defender.

8 DEFINITIONS

As used in this Agreement, the underlined words below shall have the following meanings:

1. **Appointed Counsel:** Includes the Elko County Public Defender (ECPD) and staff attorneys, and appointed private attorneys, both contracted and hourly.
2. **Appointed Counsel Program Coordinator (ACPC) (or designee):** The Nevada Department of Indigent Services (NV DIDS) will act as the ACPC, overseeing the Indigent Defense Services, including assigning cases among qualified attorneys ensuring equitable distribution. ACPC will monitor case reporting requirements from Contractors, approval, oversight of the use of substitute attorneys, and other related matters.
3. **Ancillary Services:** Defense services paid for in addition to attorney's fees: (1) investigator services, (2) expert services, (3) and any other expenses that the appointed



attorney can reasonably justify as needed for effective assistance of counsel. Also known as Case-Related Expenses.

4. **Case:** A "Case" shall have the meaning prescribed in Sec. 4 of the Regulations.
 - a. **Misdemeanor Case:** A Case in which the highest charge is a Misdemeanor.
 - b. **Category B, C, or E Felony or Gross Misdemeanor Case:** A Case in which the highest charge is a gross misdemeanor or a Category B, C, D, or E Felony for which the maximum penalty is less than ten (10) years imprisonment.
 - c. **Category B Felony (10+ year maximum):** A Case in which the highest charge is a Category B felony for which the maximum penalty is greater than ten (10) years imprisonment.
 - d. **Non-Capital Category A Case:** A Case in which the highest charge is a non-capital Category A felony.
 - e. **Capital Case:** A case with the highest charge is a Capital A felony.
 - f. **Juvenile Proceedings:** A Case arising under NRS 432B and/or a Case in which a juvenile is alleged to be delinquent or in need of supervision.
 - g. **Appeal:** Any appeal of interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
5. **Case-Related Expenses:** Expenses necessary to provide an appropriate defense other than attorneys' fees. Such expenses may include, without limitation, fees for investigators, expert witnesses, forensic services, photocopying, and transcription. Contractor travel expenses may be considered a case-related expense if the Contractor must travel one hundred (100) miles or more from the Elko County Courthouse. Case-Related expenses are defined in the Alternate Public Defender Services Agreement. Also known as "Ancillary Services."
6. **Case Acceptance Rate:** Acceptance of at least seventy-five percent (75%) of total cases offered to the Qualified Attorney over a calendar year. The Case Acceptance Rate will be calculated at the beginning of the year following the close of the prior year by March 30th. The rate will be extrapolated from the quarterly reports. See 12.7 (Reporting).
7. **Department:** The Nevada Department of Indigent Defense Services.
8. **ECPD:** Elko County Public Defender, including the Chief and staff.
9. **Eligible Client:** An indigent person whom a Reviewing Authority has determined to be eligible for a court-appointed attorney pursuant to Section 6 of the Permanent Regulations of the Board of Indigent Defense Services in a Case arising in a court of law within Elko County.
10. **Elko County Delivering Indigent Defense Services (DIDS) Plan (AKA the "Plan"):** A written document outlining the plan for Elko County providing indigent defense services (This Plan).



11. **Expert Witness:** A person qualified by knowledge, skill, experience, training, or education to render an opinion on scientific, technical, or other specialized matters.
12. **Indigent:** A person who is unable, without substantial hardship to themselves or their dependents, to obtain competent, qualified legal counsel on their own.
13. **Investigator:** A person licensed by the state of Nevada who is qualified to secure evidence and subpoena witnesses.
14. **Final Adjudication:** "Final Adjudication" shall have the meaning prescribed to it in Section 43(4)(d) of the Regulations.
15. **Qualified Attorney:** An attorney approved by the Department to provide indigent defense services within specific categories of cases as outlined in the Regulations.
16. **Regulations or Reg.:** The Permanent Regulations of the Board of the Indigent Defense Services, as amended.
17. **Representational Services:** All services, part and parcel of the Contractor's delivery of competent, zealous legal representation to Eligible Clients under this Agreement. Such services may include, without limitation: investigation; interviews of clients and potential witnesses; review of physical evidence; legal research; preparation of pleadings, briefs, correspondence, exhibits, or other documents; preparation for and attendance at hearings and conferences; expert witness selection, discovery, and preparation; pretrial advocacy; trial advocacy; sentencing advocacy; appellate advocacy; plea bargaining; and any and all other services needed to provide competent, zealous legal representation from the beginning of a Case through Final Adjudication and, if applicable, through Appeal.
18. **Reviewing Authority:** The judge, justice, or master presiding over a Case arising in a court of law within Elko County, determining the need for indigent services.

9 PROVISIONS OF REPRESENTATION

9.1 MANDATORY:

Elko County shall provide representation for any financially eligible person who:

- A. Is confined and entitled to prompt, counseled, adversarial bail hearing
- B. Is charged with a:
 1. felony or gross misdemeanor
 2. misdemeanor with a minimum jail sentence
 3. misdemeanor where the prosecution is seeking jail time (incarceration)
- C. Is alleged to have violated probation or other court supervision, and jail time or a sentence of confinement may be imposed
- D. Is a juvenile alleged to have committed an act of juvenile delinquency or alleged to be a child in need of supervision
- E. Is a party to a dependency case where termination of rights is a possibility



- F. Is subject to commitment per NRS 433.310 and NRS 433.270
- G. Is in custody as a material witness
- H. Is entitled to appointment of counsel, or the judge is likely to impose jail time
- I. Faces the loss of liberty in a case, and Nevada law requires the appointment of counsel
- J. Faces the loss of liberty for criminal intent
- K. Has received notices that a grand jury is considering charges against them and requests an appointment of counsel

9.2 DISCRETIONARY:

Whenever a court determines that the interests of justice so require, Elko County may provide representation for any financially eligible person who:

- A. Is charged with a misdemeanor, infraction, or code violation that a sentence of confinement is authorized
- B. 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 before or during testimony, that the witness could be subject to criminal prosecution, a criminal contempt proceeding, or faces a potential loss of liberty
- C. Faces any other case where the interest of justice requires the appointment of counsel

9.3 TIMING OF APPOINTMENT OF COUNSEL:

- A. When Elko County shall provide counsel:
 - 1. Elko County shall provide an appointed attorney at an indigent person's first appearance before a judge or at least within forty-eight (48) hours after being confined when:
 - a. They are formally charged or notified of charges if formal charges are sealed; or
 - b. A Justice of the Peace or District Court Judge otherwise considers the appointment of counsel appropriate

9.4 NUMBER AND QUALIFICATIONS OF COUNSEL:

- A. **All Non-Capital Charges:** One (1) attorney shall be appointed consistent with Section 10 (Appointment of Elko County Public Defender) of this Plan; if no attorneys are death penalty qualified, then appointment consistent with Section 11 (Appointment of Private Attorneys) of this Plan applies.
- B. **Open Murder and Potential Capital Charges:** Two (2) attorneys shall be appointed consistent with Section 10 (Appointment of Elko County Public Defender) of this Plan; if no attorneys are death penalty qualified, then appointments pursuant to Section 10 (Appointment of Private Attorneys) of this Plan applies.
 - a. **Lead and Co-Counsel:** At least one of the two attorneys appointed to represent defendants charged in Capital cases must meet the minimum standard for lead counsel pursuant to Nevada Supreme Court Rule 250, and both attorneys appointed must conform to the performance guidelines or standards as adopted by the Nevada Supreme Court for Capital Cases.



9.5 FINANCIAL ELIGIBILITY FOR REPRESENTATION:

- A. Indigency Determination: An indigent person is entitled to appointed counsel. "Indigency" means a defendant's inability, without causing the defendant or any of their dependents to have substantial hardship, to obtain competent, qualified legal counsel.
- B. "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 Federal Poverty Guideline.
- C. A defendant is presumed to have a substantial hardship if they are currently serving a sentence in a correctional institution, housed in a mental institution, or is a minor.
- D. Defendants not falling below the presumptive threshold are subject to a more rigorous screening process to decide if their circumstances would result in a substantial hardship if they sought to retain private counsel. Those circumstances include the seriousness of charges, monthly expenses, and local private counsel rates.

9.6 SCREENING FOR ELIGIBILITY:

The Elko County Sheriff's Office or any other law enforcement officer responsible for booking a criminal defendant shall provide an initial screening within forty-eight (48) hours for financial eligibility. The law enforcement agency will provide a recommendation to the court regarding the eligibility of the defendant for appointed counsel based on the provisions contained in this Plan. This initial screening is forwarded to 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 an attorney and refer to the NV DIDS to appoint an appointed counsel based on the criteria in Section 9.5(A) (Indigent Determination) of this Plan and otherwise by law. Reviewing Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.

9.7 PARTIAL ELIGIBILITY:

Suppose the court determines that a defendant can afford counsel but cannot be effectively represented due to the inability to pay for appropriate services such as investigators, experts, or other services. In that case, the court shall order reasonably necessary services to be provided at no cost to the defendant, subject to the procedures established in each jurisdiction to approve and pay fees and expenses.

9.8 DISCLOSURE OF CHANGE IN ELIGIBILITY:

If at any time after the appointment, counsel obtains the information that a client is financially able to make payment, in whole or part, for legal and/or other services in connection with their representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court. The court shall order the person who received appointed counsel to reimburse the services provided.



9.9 AUTOMATIC ELIGIBILITY:

A minor alleged to have committed an act of juvenile delinquency or alleged to be a child in need of supervision is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.

10 APPOINTMENT OF ELKO COUNTY PUBLIC DEFENDER

10.1 LOCAL CONTROL:

Elko County gives no authority to the State Public Defender to deliver indigent defense services for death penalty cases, direct appeals, or any other matter. Therefore, the ECPD's office will handle all cases where a court appoints an indigent person legal representation unless the ECPD's office has a conflict of interest.

10.2 TRAINING:

- A. **Elko County Public Defender:** The ECPD shall use the following tiered training program to provide competent counsel for eligible clients.
 - 1. Priority 1 – In House Training: The ECPD's office shall develop and maintain a training program for new attorneys and continuing training for all staff. This training program will provide benchmarks for Elko County's yearly employee performance appraisals.
 - 2. Priority 2 – Free or Low-Cost Training: The ECPD's office shall use the services of NV DIDS, Nevada State Bar, Washoe County Public Defender, Clark County Public Defender, and NV State Public Defender to obtain free or low-cost training opportunities for both attorneys and staff.
 - 3. Priority 3 – Specialized Training: The ECPD'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 NV State Bar, NV Rules of Professional Conduct, and any other NV law governing the training, experience, or qualification of an attorney.

10.3 CAPITAL CASE:

In a capital case, the ECPD shall be appointed unless the ECPD cannot take the case. In such a situation, ECPD shall request NV DIDS, to appoint a Qualified Attorney authorized to serve as a lead counsel under Supreme Court Rule 250 and shall pay reasonable compensation for such services. The ECPD's Office and/or other Qualified Attorneys may be assigned as co-counsel, as determined by NV DIDS.

10.4 COUNSEL AT INITIAL APPEARANCE/ARRAIGNMENT:

- A. The public defender will provide counsel at the first appearance and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of



criminal procedure, and case law. The Public Defender shall be present at all other critical stages, whether in or out of court.

- B. If it has been determined that there is a conflict of interest for the Public Defender to appear at the initial arraignment, the case shall be promptly referred to NV DIDS to appoint a Qualified Attorney in a manner allowing the qualified attorney to appear at the first appearance.

10.5 CONFLICT OF INTEREST ANALYSIS:

Nothing in this plan, nor in this section, shall be construed to, in any way, to force an attorney to violate the Nevada Rule of Professional Office. Therefore, it is in the ECPD's procedure to, as soon as practicable, upon appointment, conduct a conflict-of-interest analysis, known as a conflict check, to determine if any conflict of interest exists that would prevent the representation of the defendant.

- A. **Conflict Exists:** If the Public Defender determines that such a conflict exists, the Public Defender shall notify, as soon as possible, to the relevant court and refer the case to NV DIDS or designee for appointment of counsel.
 - 1. The appointed counsel will accept or reject the assignment following the outline in Section 11 (Appointment of Private Attorney).
 - 2. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the NV DIDS or designee shall provide prompt notice and a proposed order confirming the selection of counsel to the appointing authority, such as the Judge, Justice, or Courtmaster presiding over the court in which the eligible client's charges are pending.
 - 3. The Public Defender will remain the counsel of record until the relevant court enters an Order granting withdrawal.
- B. **Conflict Does Not Exist:** If a conflict of interest does not exist, the Public Defender shall be appointed to represent the defendant(s) in a case.
- C. The Elko County District Attorney's Office shall have no authority to determine or recommend whether or not the ECPD's office has a conflict of interest.

10.6 ELKO COUNTY PUBLIC DEFENDER ASSIGNMENTS

Assigning Attorneys and Elko County Chief Deputy Public Defenders shall have exclusive control in assigning an attorney within the office to any case the Elko County Defender's office is appointed to.

10.7 CASE RELATED EXPENSES:

Elko County shall maintain a budget within the Public Defender's Office to pay the investigator and expert witness fees.

10.8 CLIENT COMPLAINTS:

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.

- https://dids.nv.gov/Complaints/Complaints_or_Recommendations
- <https://nvbar.org/file-a-complaint-2/>

11 APPOINTMENT AND COMPENSATION OF PRIVATE ATTORNEYS

11.1 APPOINTMENT OF PRIVATE COUNSEL:

Elko County shall not appoint any private attorney to represent an indigent person unless either:

- A. the ECPD's Office has a conflict of interest that requires withdrawal from representation; or
- B. NSCR 250 requires appointing counsel outside the ECPD's Office.

11.2 ASSIGNING PRIVATE COUNSEL VIA NVDIDS:

If the Public Defender has a conflict of interest and withdraws or NSCR 250 requires appointing counsel outside ECPD's Office, the following general steps will occur.

- A. Upon notice of a conflict, the ECPD's Office shall refer the case to NV DIDS or designee to select counsel from the appropriate panel list to assume representation. Cases shall be distributed to appointed counsel using a rotation system insofar as practicable. Still, the NV DIDS or designee shall ultimately have the discretion to make assignments on any legitimate basis, including, without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Elko County officials, and capacity to take on work.
- B. The appointed counsel shall have twenty-four (24) hours from such notification to accept the case assignment. If the appointed counsel does not accept the case assignment within twenty-four (24) hours, its right of first refusal shall be waived, and the case may be assigned to another conflict attorney. Such a waiver shall not preclude subsequent assignment of the case to the appointed counsel in the event of the unavailability of other conflict attorneys or for any other reason consistent with this Plan. The Appointed shall accept enough Case assignments to meet the Case Acceptance Rate.
- C. The Contractor shall not accept assignments to provide the Representational Services to the extent that doing so would violate any provision of the Nevada Rules of Professional Conduct, including but not limited to the provisions concerning conflicts of interest. The Contractor will refer to the Nevada Rules of Professional Conduct, as interpreted by the State Bar of Nevada and/or opinions of the State judiciary, and to the American Bar Association Standards for Criminal Justice to determine the existence and appropriate resolution of conflicts of interest. If a conflict of interest exists, the Contractor will promptly file an appropriate motion or follow the procedure for handling conflicts of interest provided in the Contracting Authority's DIDS Plan.



- D. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the ECPD or designee shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority—i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client's charges are pending.
- E. The Appointed Counsel will remain the counsel of record until the relevant court enters an Order granting withdrawal.

11.3 ATTORNEY QUALIFICATIONS, TRAINING, AND PERFORMANCE STANDARD

Elko County shall negotiate contracts with private attorneys to act as Public Defenders when the ECPD's Office cannot. Private attorney contracts will be listed with NV DIDS, which shall be referenced to appoint Alternate Public Defenders per NRS 180.430.

- A. Attorneys must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services for training, education, and qualifications by applying to the NV DIDS, which will review and determine eligibility.
- C. **Attorneys:** NV DIDS shall maintain a list of all attorneys who will perform Representational Services under this Agreement. The list shall specify, for each attorney, the category(ies) of Case(s) in which the attorney is qualified to provide Representational Services. The Contractor shall provide a copy of this list to the Contracting Authority within thirty (30) days of the Effective Date and in the event of any subsequent change to the list.
- D. **Attorney Qualifications:** It shall be the sole responsibility of the Contractor to ensure all attorneys providing Representational Services to Eligible Clients under this Agreement maintain all requisite qualifications for the category(ies) of Case(s) in which they are providing Representational Services. To ensure the ability, training, and experience of an attorney match the complexity of a given case, the Contractor shall demonstrate compliance with the standards and regulations of the Department by providing training, education, and qualifications documentation. The Contractor shall further ensure attorneys performing Representation Services in a particular category of Case under this Agreement are qualified by the Department to perform such services in that category of Case.
- E. **Performance Standards:** It shall be the sole responsibility of the Contractor to ensure the attorneys whom it employs or with whom it contracts to perform its obligations under this Agreement:
 - 1. Provide zealous, competent Representational Services in all Cases;
 - 2. Comply with the requirements of the Department and the Nevada Indigent Defense Standards of Performance;
 - 3. Comply with all applicable laws and regulations (including the Reg., as may be amended);
 - 4. Comply with the Nevada Rules of Professional Conduct; and
 - 5. Comply with the Contracting Authority's DIDS Plan.
 - 6. Training: Ongoing professional training is necessary for an attorney to keep abreast of changes and developments in the law and ensure the continued rendering of competent assistance of counsel.



7. Offer the eligible client continuity in representation.

11.4 COMPENSATION:

Elko 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).

- A. Attorney's Fees: All compensation and fees must be filed with the NV DIDS Administrator. A separate budget has been developed by Elko County and is administered by the Administrator of NV DIDS for payment of compensation and expenses.
 1. The fee schedule is negotiated and confirmed in the Alternate Public Defender Agreement.
 2. Appointed counsel must receive prompt compensation. Reasonable activities outside of court appearances, including, but not limited to, directing the investigation, negotiating, or tactical planning, are equally important to quality representation and shall be included in appointed counsel's compensation.
 3. Qualified Attorneys providing services to eligible clients within Elko County in exchange for an hourly rate shall submit monthly invoices to NV DIDS Administrator. Such invoices shall be submitted on an invoice form issued by NV DIDS or Elko County, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered. The backup shall contain time entries rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.¹
 4. NV DIDS Administrator shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. In reviewing for reasonableness, the NV DIDS Administrator may consider factors such as (i) average case times as determined by workload analysis; (ii) time and skill required; (iii) complexity of the case; and (iv) experience and ability of the Qualified Attorney(s). The NV DIDS Administrator may request additional information or explanation where necessary. Suppose the NV DIDS Administrator denies or modifies a Request for Attorneys' Fees. In that case, it shall explain to the Qualified Attorney, with a copy to the Elko County Manager and the Department of Indigent Defense Services, why the denied portion was not reasonable. Such denials shall be subject to judicial review under NRS 7.135.
 5. The Elko County Fiscal Affairs Office shall issue payment for all approved attorneys' fees. The NV DIDS Administrator shall notify the Fiscal Affairs Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. Payment shall be issued within thirty (30) days of receipt of an approved invoice with proper back up documentation to the Elko CountyAccounts Payable office.

¹ For invoicing purposes, Qualified Attorneys are required to use LegalServer, or whatever database NV DIDS houses, for invoice backup. An example of a time slip generated through LegalServer with sufficient detail is included with Appendix B. If a Qualified Attorney cannot use LegalServer, the Qualified Attorney may submit an alternative form of backup provided it contains a breakdown of services rendered in comparable detail.



6. Capped hourly rates and flat fee payment schemes are prohibited unless carefully designed to minimize disincentives and provide compensation reasonably expected to yield an hourly compensation rate equivalent to the required minimum rate.
7. At a minimum, hourly rates should be used in capital cases, cases in which the penalty may be life imprisonment, and cases in which a notice pursuant to NRS 207.010 is filed. Complex or voluminous financial fraud cases should also be considered for hourly rates. Contracts with private attorneys for highly specialized cases will be negotiated separately from the standard alternate Public Defender contract on an as-needed basis.

B. Case-Related Expenses:

1. Appointed counsel should be promptly reimbursed for their reasonable out-of-pocket, case-related expenses such as the use of investigators and expert witness fees.
2. Elko County shall establish a case-related expense budget independent of the judiciary for its counsel appointed on an individual case basis administrated by the NV DIDS Administrator. They may likewise designate an independent administrator. Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:
 - a. **Pre-Authorization:** Case-Related Expenses expected to exceed two thousand five hundred dollars (\$2,500) shall be submitted to the Appointed Counsel Program Administrator for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization by email. The request shall explain why the expense is reasonably necessary to provide Representational Services.
 - b. **Reasonableness Review:** All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the NV DIDS Administrator's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the NV DIDS Administrator for review no later than thirty (30) days following the termination of the representation. Any requests for expenses not timely submitted shall be waived. The NV DIDS Administrator shall approve all reasonable and necessary Case-Related Expenses, notify the Elko County Fiscal Affairs Office of all approved expenses, and provide a copy of the invoice.
 - c. **Payment:** The Elko County Fiscal Affairs Office shall issue payment for all approved Case-Related Expenses within thirty (30) days of receipt (to the Accounts Payable Office) of notice of the NV DIDS Administrator's approval and a copy of the invoice.

11.5 CONFLICT OF INTERESTS ANALYSIS:

Appointed 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 the appointed counsel determines that such a conflict exists, the appointed counsel shall 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, unless co-defendants provide informed consent. The Elko County District Attorney's office shall have no authority to determine or recommend whether or not the appointed counsel has a conflict of interest.

A. Contract Attorneys:

1. Elko County may contract for the appointment of counsel.



2. Elko County contract attorney's compensation may be based on an hourly basis, a flat fee basis, or a combination of both.
3. If the contract is based on a flat fee basis, the contract should consider, but not be limited to, the following factors:
 - a. the average overhead for criminal defense practitioners in the locality.
 - b. the number of assignments expected under the contract.
 - c. the hourly rate paid for all appointed counsel; and
 - d. the ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court
4. Elko County may contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by with NV DIDS.
5. The contract must be subject to termination annually or sooner. If determined by the Department of Indigent Defense that a contract attorney is not abiding by the standard guidelines for qualifications of appointed counsel; and
6. The payment of fees and expenses of contracted appointed counsel by Elko County shall be governed by a contract between counsel and Elko County.
7. The contract shall exclude appointment in cases with the potential of capital cases unless qualified.

11.6 COMPLAINTS BY CLIENTS:

Appointed Counsel, including Private Attorneys, 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.

- https://dids.nv.gov/Complaints/Complaints_or_Recommendations
- <https://nvbar.org/file-a-complaint-2/>

12 DUTIES OF INDIGENT DEFENSE COUNSEL

12.1 STANDARDS OF PERFORMANCE

Services rendered by appointed counsel shall be commensurate with those rendered if a person privately employed counsel. Representation shall be provided in a professional, skilled manner guided by applicable regulations, laws, NV Rules of Professional Conduct, and the NV DIDS Standard of Performance adopted by October 16, 2008, NV Supreme Court Order in Administrative Docket 411, or the same as may be amended. Additionally, the attorney must advise all clients not to waive any substantive rights or plead guilty at the initial appearance unless doing so is in the client's best interest. Attorneys must make all reasonable efforts to meet with the client within seven (7) days following the assignment of the case and every thirty (30) days thereafter unless there are no significant updates in the client's case.



12.2 CONTINUITY IN REPRESENTATION

Elko County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants to 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.

12.3 WORKLOAD STANDARD

The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure adequate representation. Any attorney who provides indigent defense services shall not accept a workload that, because of its size, interferes with the attorney's competence, diligence, or representation of clients.

Elko County will provide maximum workload guidelines to attorneys who provide indigent defense services as determined by the NV DIDS and the data collection responsibilities of the attorney.

Additionally, ECPD shall ensure that ECPD's office is staffed with an adequate number of attorneys and support staff to deliver indigent defense services that meet the Standards of Performance detailed in this Plan. Elko County shall use the data and recommendations from the National Center for State Courts' Nevada Indigent Defense Weighted Workload Study and the Board on Indigent Defense's workload standard to determine adequate numbers of attorneys and support staff.

To the extent required by the Department's board, attorneys providing indigent defense services under this plan shall maintain caseload data and track the time spent providing indigent defense services in accordance with the Regulations of the NV DIDS Board.

12.4 NOR RECEIPT OF OTHER PAYMENT

Appointed counsel may not require, request, or accept any payment, the promise of the payment, or any other valuable consideration for representation under the appointment unless such payment is approved by order of the court.

12.5 PRIVATE PRACTICE OF LAW

The ECPD and any staff attorney with that office is prohibited from simultaneously engaging in the private practice of law. This Section does not eliminate private employment outside the practice of law, so allowed by the Collective Bargaining Agreements of the Elko County Public Attorney's Association or the Chief Deputy Public Attorney's Association. Interpreting any conflict to ambiguity between this Plan and those Collective bargaining Agreements shall be construed in a manner that gives effect to the Collective Bargaining Agreements' provisions.

12.6 USE OF CLIENT SURVEYS

The ECPD and appointed counsel shall ensure that any client surveys authorized by NV DIDS' Board are provided to clients after their representation by an attorney.



12.7 REPORTING

Contracted Appointed Counsel is required to submit case data through an NV DIDS case database, currently LegalServ. The case details shall be kept up in the database, followed by a quarterly report to the Elko County Manager's Office. The report includes the number of cases accepted and rejected.

13 PRIVILEGED COMMUNICATIONS

County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or privileged communications between indigent criminal defense clients and appointed counsel.

14 APPOINTED COUNSEL PROGRAM COORDINATOR (ACPC)

- A. **Selection:** Nevada Department of Indigent Defense will serve as Elko County's Appointed Counsel Program Coordinator (ACPC). Elko County reserves the right to hire an employee or contract with an independent contractor to serve as the ACPC. This Plan will determine employees' job duties or the contract terms. The ACPC, if licensed to practice law in the State of Nevada, shall not be directly involved in the direct representation of eligible clients.
- B. **Duties:** The ACPC shall have all the duties and responsibilities stated in the various sections of this plan. The ACPC shall, at a minimum:
 - 1. Maintain the master list and a copy of the contract for the qualified attorneys approved by NV DIDS.
 - 2. Maintain appropriate records to reflect the cases, case assignments, and dates to which each attorney has been appointed.
 - 3. When notified of the need for representation, the ACPC shall select the next available attorney from the list of those qualified to provide representation as approved by the careening committee.
 - 4. The ACPC shall be responsible for approving the claim for payment of each attorney and any expert or other service fees after the appointed counsel's representation or periodic invoices, depending on the length of the case.

15 PLAN ADMINISTRATOR AND CONTACT

The County Manager shall administer this plan and the contract for indigent defense services. The County Manager shall report material breaches or other significant matters to the Board of County Commissioners. The Board of County Commissioners may take any lawful, appropriate action concerning any contract.



Questions about the Administration of this Plan may be directed to Elko County Manager, Elko County Comptroller, or Elko County Grants and Contracts Manager. Contact information is listed in the "Revisions" Section of this Plan.

16 EFFECTIVE DATE

The Elko County Plan for the Provision of Indigent Defense Services is approved and effective on this, the 1st day of March 2023.

17 APPENDIX A – CLIENT COMPLAINT PROCEDURE

The Elko County Public Defender's Office is committed to ensuring that no person is excluded from participation in or denied the benefits of its services based on race, color, or national origin, as protected by Title VI, as well as other protected persons under the Civil Rights Act of 1964, as amended. The protected classes include: age, ancestry, color, disability, ethnicity, gender, gender identity or expression, genetic information, HIV/AIDS status, military status, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran status, or any other bases under the law. The County has established a discrimination complaint procedure and will take prompt and reasonable action to investigate and eliminate discrimination when found.

Elko County will investigate civil rights complaints. This does not limit persons submitting complaints to Nevada Defense for Indigent Services.

Elko County will not investigate complaints against the Assigned Legal Representatives. Please contact Nevada Defense for Indigent Services at the contact information below. If you submit a complaint with Elko County for any reason other than discrimination, it will be turned over to Nevada Defense for Indigent Services.

If you feel you are being denied services provided by the Elko County, Public Defenders Office, or otherwise being discriminated against because you belong to a protected class, please follow [Elko County's Title VI Plan](#), which includes a Limited English Proficiency (LEP) and Language Access Plan (LAP).

For more information, contact the Title VI Coordinator below:

Title VI Coordinator
Abigail Wheeler
540 Court Street, Elko NV 89801
(775) 748-0359

To make a complaint regarding the Appointed Legal Representative(s), please contact Nevada DIDS directly:

- https://dids.nv.gov/Complaints/Complaints_or_Recommendations
- <https://nvbar.org/file-a-complaint-2/>

Eureka County

EUREKA COUNTY PLAN FOR PROVISION OF INDIGENT DEFENSE SERVICES

Plan Contact: Jackie Berg
Deputy Clerk Recorder II
Board of Eureka County Commissioners
P.O. Box 540
Eureka County, Nevada 89316
Phone: (775)237-7211
Email: jberg@eurekacountynv.gov

Financial Contact: Kim Todd
Eureka County Comptroller
P.O. Box 852
Eureka, Nevada 89316
Phone: (775)237-6128
Email: ktodd@eurekacountynv.gov

Eureka Justice Court Contact: Amy Jensen Court Manager OR
Lindsay Stith, Deputy Clerk
Email: EuJCAdmin@eurekacountynv.gov
Telephone: (775) 237-5540
Fax: (775) 237-6016

I. STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services of appointed counsel, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
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. Eureka County shall administer this plan in a manner that ensures the Contract Eureka County Public Defender 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 7th Judicial District Court Rules, Nevada Rules of Criminal Procedure, and any regulations promulgated by the Board on Indigent Defense Services.

II. DEFINITIONS

- A. "Appointed Attorney/Counsel" includes the Eureka Contract County Public Defender 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, interview and/or subpoena witnesses.
- 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: Eureka 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 with a minimum jail sentence;
 4. is charged with a misdemeanor where the prosecution is seeking jail time (incarceration);
 5. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
 6. is a juvenile alleged to have committed an act of juvenile delinquency or alleged to be a child in need of supervision;
 7. is in custody as a material witness;
 8. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 9. has received notice that a grand jury is considering charges against him or her and requests appointment of counsel;
 10. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or when due

- process requires the appointment of counsel, or the judge is likely to impose jail time.
- B. Discretionary: Whenever a court determines that the interests of justice so require representation Eureka County may provide representation for any financially eligible person who:
1. is charged with a misdemeanor, infraction, or code violation that a sentence of confinement is authorized;
 2. 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;
 3. faces any other case where the interest of justice requires appointment of counsel.
- C. Timing of Appointment of Counsel; When Eureka County Shall Provide Counsel: Eureka County shall provide an appointed attorney at an indigent 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, or District Judge otherwise considers appointment of counsel appropriate.
- D. Number and Qualifications of Counsel in Capital Cases:
1. Number: A relevant court must appoint two (2) lawyers as soon as possible in all open murder cases that are reasonably believed to result in a capital charge.
 2. Qualifications: Appointing of attorneys representing defendants charged in capital cases shall comport with NSCR 250.
- E. Financial Eligibility for Representation:
1. Indigency Determination Financial Eligibility: An indigent person is entitled to appointed counsel.
 - a) "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.
 - b) "Substantial hardship" is presumptively determined to include all defendants who receive public assistance, as that term is defined in NRS 422A.065; such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in-public housing, as the term is defined in NRS 315.021; or has a household income that is earn less than 200 percent of the Federal Poverty Guideline.
 - c) 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.
 - d) 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 and availability.

2. Automatic Eligibility: A minor alleged to have committed a crime, an act of juvenile delinquency, or alleged to be a child in need of supervision is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.
3. Screening for Eligibility: When a person is taken into custody the Pre and Post Trial Supervision Officer or the Eureka County Sheriff's Office will provide them, prior to their first appearance, a Financial Declaration and Order form. See Appendix A. The Financial Declaration and Order form will be filled out and provided to the Pre and Post Trial Supervision Officer who will review the form to ensure all necessary information is included prior to the first appearance. The Financial Declaration and Order will be provided to the judge for review and determination of eligibility. The decision to appoint or not appoint an attorney will be based on the criteria in section III(E)(1) of this plan and as otherwise required by law. The eligibility determination will be made within 72 hours of the time the person is taken into custody. Appointed Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.

IV. APPOINTMENT OF CONTRACT EUREKA COUNTY PUBLIC DEFENDER

- A. Process for hiring Contract Eureka County Public Defender.
 1. Proposals for the provision of services with specifications that meet or exceed regulations of the Board on Indigent Defense Services will be sought by November 1 of a) prior to any biennium fiscal year when indigent services are being sought; or, b) any year prior to the termination or expiration of a currently existing system for indigent defense services.
 2. Proposals will set forth the qualifications and legal experience of the applicant.
 3. Proposals will include the applicant's past performance in representing persons in the criminal justice system.
 4. Proposals will include the applicant's ability to comply with current regulations then in effect for the provision of indigent defense services and/or the terms of the contract. Proposals will only be accepted from attorneys on the Department of Indigent Defense roster of eligible providers.
 5. Proposals will include the cost of services under the contract including the cost for services, if any, that must be provided in addition to criminal defense services.
 6. The County may seek references and consult references in the hiring process, including the Department, in the hiring process.
 7. Proposals will be evaluated by the Board of County Commissioners and its designees but shall not include any members of law enforcement or prosecution. Judicial input may be considered but may not be the sole basis for selection. Contracts will be awarded based on the merits of the proposals.
- B. How Cases Are Assigned. The Contract Eureka County Public Defender will be appointed to represent all defendants at their initial detention hearing and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of criminal procedure, and caselaw. If there are one or more co-

defendants in a case the relevant court will notify the Department of Indigent Defense Services immediately following the initial detention hearing. The Contract Eureka Public Defender will represent co-defendants only for the initial detention hearing. If the Contract Eureka Public Defender is unavailable for the initial detention hearing, the Justice Court will appoint other counsel for the initial detention hearing only.

- C. Conflict of Interest Checks in Indigent Defense Cases: The Contract Eureka County Public Defender 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. When the Contract Eureka County Public Defender determines that a conflict exists requiring disqualification, a Motion to Withdraw will be filed with the Court.
 2. The Motion to Withdraw will be reviewed by the Judge as soon as possible. Upon approval, the Judge will sign an ORDER FOR APPOINTMENT AND REFERRING FOR SELECTION OF CONFLICT COUNSEL.
 3. The Court Clerk will file the order and email the Order, with a copy of the Probable Cause Declaration and next set court dates, to the Department of Indigent Defense Services for selection of conflict counsel.
 4. Upon notice of the conflict, the Department of Indigent Defense Services shall appoint conflict counsel Pursuant to the Selection of Counsel and Payment Procedures. See Appendix B.
 5. Eureka County will Budget Ten Thousand Dollars (\$10,000.00) for conflict counsel.
 6. Compensation of Court Appointed Conflict Counsel Pursuant to NRS 7.125, attorneys will be compensated at the following hourly rates for court appearances and other time reasonably spent on the matter to which the appointment is made:
 - a) \$125.00/hour in cases in which the death penalty is sought,
 - b) \$100.00/hour in all other cases, or
 - c) The rate specified in an agreement between an attorney and county.
 - d) Travel is reimbursed at the hourly rate plus mileage at the current State Mileage Reimbursement Rate or pursuant to the rate specified in an agreement between and attorney and county. Attorney travel outside the State must be submitted to the Department of Indigent Defense Services for prior authorization.
 7. Appointed Attorneys, other than the Eureka County Public Defender, shall submit monthly invoices to the Department. Such invoices shall be submitted on the Requests for Attorney's Fees form, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered. The backup shall contain time entries rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.
 8. The Department shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. In reviewing for reasonableness, the Department may consider factors such as: (i) average case times as determined by workload analysis; (ii) time and skill required;

- (iii) complexity of the case; and (iv) experience and ability of the Appointed Attorney(s). The Department may request additional information or explanation where necessary. In the event the Department denies or modifies a Request for Attorneys' Fees, it shall provide an explanation to the Appointed Attorney as to why the denied portion was not reasonable. Such denials shall be subject judicial review pursuant to NRS 7.135.
9. Payment for all approved attorneys' fees shall be issued by the Eureka County Comptroller's Office. The Department shall notify the Comptroller's Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. The Comptroller's Office shall issue payment within thirty (30) days of receipt.
 10. The Contract Eureka County Public Defender will remain counsel of record until such time as the relevant court enters an Order granting withdrawal.
 11. The Eureka County District Attorney's office shall have no authority to determine or recommend whether or not the Contract Eureka County Public Defender has a conflict of interest.
- D. Case Related Expenses: Eureka County shall maintain a budget of Fifty Thousand Dollars (\$50,000.00) for payment of investigator and expert witness fees. The Contract Eureka Public Defender or conflict counsel will have discretion to hire investigators, Experts and incur other expenses necessary to provide defendants with a competent defense.
1. Expenditures of up to Three Thousand Five Hundred Dollars can be made without prior approval and will be billed to Eureka County.
 2. Expenditures over Three Thousand Five Hundred Dollars will require prior approval of the Department of Indigent Defense Services as provided for in the Selection of Counsel and Payment Procedures. See Appendix B. The Attorney shall submit the request for pre-authorization to the Department by email at didscontact@dids.nv.gov. The request shall include an explanation of why the expense is reasonably necessary. Any modification or denial of expenditures for investigators or experts is subject to judicial review by the appropriate court.
 3. Reasonableness Review: All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the Department's review for reasonableness. Invoices and W-9's for Case-Related Expenses shall be submitted to the Department for such review no later than thirty (30) days following the termination of the representation. The Department shall approve all reasonable and necessary Case-Related Expenses and shall notify the Eureka County Comptroller's Office of all approved expenses and provide a copy of the invoice and W-9.
- E. Privileged Communications: County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense client and appointed counsel. Attorneys will meet with clients in the justice court pretrial and posttrial supervision officer's office, the district court jury room or the room designated "justice court" at the sheriff's office. If any of these rooms are not available, Eureka County will provide another location suitable for private conversations between defendants and their counsel.

- F. Complaints by Clients: The Contract Eureka County Public Defender will notify all clients at the initial interview of their ability to file a complaint with the Nevada State Bar or the Department of Indigent Defense Services should they be dissatisfied with the services provided by counsel. At the conclusion of every case the Contract Eureka Public Defender will provide the client with the following links to provide complaints to the Nevada State Bar and complaints or recommendations to the Department of Indigent Defense services:
- [https://dids.nv.gov/Complaints/Complaints or Recommendations](https://dids.nv.gov/Complaints/Complaints%20or%20Recommendations)
<https://nvbar.org/file-a-complaint-2/>

V. TRAINING

The Contract Eureka County Public Defender 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. Training will meet or exceed the requirements of the Nevada Department of Indigent Defense Services, the Nevada State Bar, Nevada Rules of Professional Conduct, and any other Nevada law or regulation governing the training, experience, or qualification of an attorney. Counsel must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services (DIDS) regulations.

VI. 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.
1. The Appointed Attorney will provide counsel at first appearance and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of criminal procedure, and caselaw. The Contract Eureka Public Defender shall be present at all other critical stages, whether in or out of court.
 2. The Appointed Attorney will 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.
 3. The Appointed Attorney will make all reasonable efforts to meet with each client within the first seven days following assignment of the case, and every thirty days thereafter, unless there are no significant updates in the client's case.
- B. Continuity in Representation: Eureka 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 stage of the case without

delegating the representation to others, except administrative and other tasks that do not affect the rights of the defendant.

- C. Workload Standard: The workload of Appointed Attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any Appointed 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. Eureka 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.
- D. No Receipt of Other Payment: Appointed Attorney 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: Appointed Attorneys may engage in the private practice of law so long as such practice does not adversely impact representation of the indigent client.
- F. Use of Client Surveys: Appointed Attorney 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.

VII. DATA COLLECTION

- A. The Contract Eureka County Public Defender shall use the data collection and case management system provided by the Department of Indigent Defense Services at State expense for caseload and time reporting. Caseload reporting will be done by the Contract Eureka Public Defender. The Contract Eureka Public Defender shall report on an annual basis as required by the Regulations of the Board on Indigent Defense.

VIII. EFFECTIVE DATE

- A. The provisions of this Eureka County Indigent Defense Plan become effective on July 1, 2023.

Appendix A.

Appendix B.

Lander County

Lander County Plan for the Provision of Indigent Defense Services

I. STATEMENT OF POLICY

A. OBJECTIVES

1. The objective of this Plan is to implement the model plan required by the Regulations implemented by the Board of Indigent Defense Services. The Plan is proposed and submitted in protest because the Board did not consider the actual needs of Lander County in relation to the criminal justice system. The Board enacted regulations without taking into consideration the needs of the indigent defendants that come before the Courts in Lander County. The Board essentially created solutions for areas where there were no problems. The Board failed to recognize the real needs in Lander County do not center on a deficiency in the conduct of attorneys providing services to indigent defendants or the methodology of Judges appointing counsel. Rather, the primary problem centers on services following a defendant's conviction for crimes that they have admitted to committing. Such a dearth of services includes the lack of mental health counseling, substance abuse counseling, job skills enhancements, and other necessary services (including a more robust and fully staffed Parole and Probation).
2. The County has significant concerns if a State Agency maintains the power to authorize the expenditure of county funds or dictate or override the autonomy of the elected or appointed officials in Lander County. As such, this plan is not intended to authorize any expenditures of county funds that are not authorized by elected or appointed persons in Lander County.
3. Ultimately, the other objective of this plan is to continue to provide a system of appointment and selection of counsel that provides competent representation of individuals charged with a crime or a delinquent act.
4. It should be noted that both the public defender and conflict public defenders have moderate or small caseloads and can devote the time to make sure their cases are fully satisfied. The public defender is employed under a contract to devote sufficient time to fulfill his caseload in the County.

II. SCOPE OF RULES

A. PAYMENT OF NEW OR ADDITIONAL COSTS CAUSED BY PLAN:

Portions of this plan are contingent upon the State of Nevada paying for the increases in the budgetary amounts caused by the adoption of this plan. In the event that the State of Nevada by and through the Board of Indigent Defense Services does not authorize the increase in expenditures, the portion of the plan identified as requiring additional funds will be eliminated and the provision of services shall continue as currently existing.

B. PRIOR TO FUNDING

The County is electing to have its own Counsel Administrator to select counsel for appointment and to authorize expenditures by non-Public Defender positions.

III. DEFINITIONS

A. **“APPOINTED ATTORNEY”** means and includes private Attorneys, the public defender, and the conflict public defender.

B. **“CONFLICT PUBLIC DEFENDER”** means the attorney contracted with Lander County to provide conflict defense of indigent defendants. The conflict public defender should be appointed any time the public defender is required to withdraw from the case or has a conflict of interest that prevents the appointment of the public defender. The attorney may be a first or second tier appointment. The selection of Conflict Public Defender to the position of Conflict Public Defender shall require that the attorney meet the standards set forth by DIDS.

C. **“COUNSEL ADMINISTRATOR”** means the individual who provides services to make recommendations to the court who should be appointed if a panel attorney is needed. The position is contingent upon BIDS providing funding to hire the individual who would provide the service to individuals charged with criminal or juvenile acts within Lander County.

D. **“COURT”** means the court that is presiding over the case (i.e. the justices court presides over misdemeanors and over felonies and gross misdemeanors prior to the completion of the preliminary hearing; the District Court presides over all felonies and gross misdemeanors after the “bind over” and all juvenile cases).

E. **“JUDGE”** means the judge of the court as defined above.

F. **“PRIVATE ATTORNEY”** means an attorney appointed from a panel of attorneys that has contracts with Lander County to provide services. The selection of a private attorney to the panel of Private Attorneys shall require that the attorney meet the standards set forth by DIDS.

G. **“PUBLIC DEFENDER”** means an attorney employed to serve as the public defender in a county office as a public defender. The public defender should be the first appointed counsel on a criminal case unless there is a conflict or other impediment to the appointment. The selection of the public defender shall require that the attorney meet the standards set forth by DIDS.

IV. PROVISIONS OF REPRESENTATION

A. **Mandatory:** Representation shall be provided for any financially eligible person who:

1. Is charged with a felony or gross misdemeanor crime;
2. Is charged with a misdemeanor that requires incarceration or which the prosecution is likely to seek incarceration in the Lander County Law Enforcement Center;
3. Is alleged to have committed a delinquent act;
4. Is subject to commitment pursuant to NRS 433A.310;
5. Is in custody as a material witness;
6. Is seeking a post-conviction habeas corpus writ involving an underlying death penalty;
7. **Juvenile Cases;**
8. Is entitled to appointment of counsel under the Sixth Amendment of the United States Constitution or any provision of the Nevada Constitution; and
9. Nevada law requires appointment of counsel.

B. Discretionary: Whenever a court determines that the interests of justice so require, representation may be provided for any financially eligible person who:

1. Is charged with a misdemeanor and the Court determines that appointment is in the interests of justice;
2. Is seeking a post-conviction habeas corpus writ and the Court determines that there is good cause for the appointment;
3. Is charged with civil contempt that may result in a loss of liberty; and
4. Is a witness and there is reason to believe that the testimony given by the person may subject the person to criminal prosecution.

C. When counsel shall be provided: Counsel shall be appointed at the first appearance¹ after the Defendant has made an application for the services of counsel and has been properly screened for financial eligibility.

D. Financial Eligibility Requirements

1. *Financial Eligibility:* Financial Eligibility: A person shall be deemed "indigent" who is unable, without substantial hardship to himself or his dependents, to obtain competent, qualified legal counsel on his or her own. "Substantial hardship" is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn 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 will be subjected 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.
2. *Screening for Eligibility:* The Court shall conduct the screening for financial eligibility at the first appearance with regard to eligibility of the

¹ In the urban model plan, it provides that "Counsel shall be provided to eligible persons within 72 hours or as soon as feasible after their first appearance before a judge, 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."

defendant for the services of appointed counsel based upon the provisions set forth in subsection (1) above. The Court shall ensure that the defendant is provided with a financial affidavit for appointment of counsel that shall be signed.

3. *Recommendation Regarding Appointment of Counsel:* If the Court determines that a defendant is eligible for appointment of legal counsel, the Court shall submit a written recommendation to appoint or not appoint counsel. In submitting the recommendation, the Court shall include the executed financial affidavit submitted by the defendant. The Court shall indicate the basis for the appointment within the Recommendation (i.e. 200% of federal poverty guideline, some other presumptive guideline, or the finding after a vigorous screening). In making the recommendation to appoint counsel, the recommendation to appoint counsel shall make appropriate findings as to why certain counsel is appointed, and shall be governed, as follows:
 - a. Unless a conflict exists, the Lander County Public Defender shall be recommended for appointment;
 - b. If the Lander County Public Defender determines there is a conflict or the Court determines there are two or more defendants charged with a crime due to a mutual course of conduct, the Lander County First Tier Conflict Public Defender shall be recommended for appointment;
 - c. If the Lander County Public Defender and the Lander County First Tier Conflict Public Defender determines there is a conflict or the Court determines there are three or more defendants charged with a crime due to a mutual course of conduct, The Lander County Second Tier Conflict Public Defender shall be recommended for appointment; and
 - d. If the Lander County Public Defender, the Lander County First Tier Conflict Public Defender, and Lander County Second Tier Conflict Public Defender determines there is a conflict or the Court determines that there are four defendants charged with a crime due to a mutual course of conduct, the appointment shall be governed by section VII below by the Court Administrator.

4. *Time for Eligibility Recommendations*

- a. In-Custody Defendants: If an individual remains in a custodial status, the eligibility screening shall occur within 48 hours from the individual's arrest. If a defendant bails out within 48 hours of jail or is otherwise released within 48 hours before filling out the paperwork to request counsel, there is no requirement to make an eligibility determination.
 - b. Out-Of-Custody Defendants: If an individual is discharged from custody prior to the 48 hours and/or the Defendant has not applied for counsel, the individual may apply to the Court for counsel at the time of the first hearing.²
5. *Disclosure of Change in Eligibility*: If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as privileged communication, counsel shall advise the court.
6. *Appointment of Counsel in Juvenile Matters*: In Juvenile Delinquency matters filed with the court, the juvenile should be presumed to be indigent. The court may order the parents of the juvenile to reimburse the county for the reasonable attorney fees, whether Public Defender, contract, or appointed counsel (NRS 62E.300) based on the parent's ability to pay.

E. Appointment of Counsel: The Court shall determine if the defendant is eligible and make an appointment accordingly in accordance with NRS 171.188. If the Court determines that the defendant is not eligible, the Court shall deny appointment or may set the matter for a hearing to clarify any concerns that the Court has as to eligibility. If the Court determines that the private attorney recommended to be appointed is not suitable for the particular case, the Court may contact the Counsel Administrator and determine which attorney would be next in the rotation of the attorneys on the panel. The Court may then appoint that next-in-rotation private attorney to the case. The Counsel Administrator will ensure

² The "48 hours" is contingent upon the BIDS approving funding for the Counsel Administrator position. If the funding is not allocated by BIDS, the process will revert to the judges having authority to screen in a manner to comply with the remainder of the rule.

that the individual that was not appointed is moved in order to be appointed next.

F. NUMBER AND QUALIFICATIONS OF COUNSEL:

The Counsel Administrator shall recommend appointment as follows:

1. One attorney shall be recommended for appointment except in Capital Cases;
2. Two attorneys shall be appointed in Open Murder cases which are reasonably believed to result in a Capital Case; and
3. At least two attorneys should be appointed to represent a defendant charged in a Capital Case in accordance with Nevada Supreme Court Rule 250.

G. First Appearance: The public defender shall provide representation to an unrepresented indigent defendant at the first appearance. To avoid a potential conflict of interest, the attorney should provide, to the extent possible, representation that does not pertain to matters beyond the First Appearance. The counsel appearing with the Defendant at the First Appearance must be prepared to address appropriate conditions of release in accordance with relevant legal precedence. Courts should be circumspect about any delays caused by the determination of indigence of the defendant.

H. Vertical Representation: Other than having the public defender at the First Appearance, representation should be vertical.

V. APPOINTMENT OF PUBLIC DEFENDER³

A. Appointment

The Public Defender shall be appointed to criminal cases.

B. Determination of Conflict Of Interest

The Public Defender shall, as soon as practicable, upon appointment, conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the defendant. If such a conflict is determined by the Public Defender to exist, such a fact shall be brought to the attention of the court as soon as possible by a written motion. If the Court determines the Motion has merit, the Court shall then appoint the First Tier Conflict Public Defender. In no instance, shall the Public Defender be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

C. Complaints by Clients

The public defender will track complaints by clients and document the resolution of the complaints.

D. Description of Resources and Accommodations for Confidential Client Communications

The courthouse has two meeting rooms by the District Court and two by the Justice's Court that are available to any attorney who has an ongoing case. The Jail has a meeting room. The Courthouse has a meeting room for people in jail. In no event shall these rooms be monitored by audio or video equipment which would serve to reduce or eliminate the confidential nature of those rooms.

E. DIDS Complaint and Recommendation Process Made Available

An application for court appointed counsel will be given to the Defendant at the first appearance before the Justice Court to determine eligibility. This is the form used by our Justice of the Peace and is attached to this plan.

F. Payment of Public Defender

The Public Defender is compensated through the County's payment process.

³ Lander County only has one public defender in its public defender office.

G. Payment of Expert and Investigative Fees

The Public Defender has a line item within his Budget for the fees that follows the normal vouchering process for departments within county government.

H. Assignment of Cases within Office of Public Defender

Currently the Office of Public Defender has one attorney. Assignment would be to that attorney. If the Office has an increase in cases that merit the hiring of another attorney for the office, the Office shall develop procedures for assigning cases.

I. Selection of Public Defender

The person who will fill the position of Public Defender shall be selected by the County Commissioners in consultation with the County Manager and the Counsel Administrator.

VI. APPOINTMENT OF FIRST TIER CONFLICT PUBLIC DEFENDER

A. Appointment of First Tier Conflict Public Defender

Upon determination by the Public Defender of a conflict or where two individuals are alleged to have acted in concert in a criminal action, the Conflict Public Defender shall be appointed.

B. Determination of Conflict Of Interest

The First Tier Conflict Public Defender shall, as soon as practicable, upon appointment, conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the defendant. If such a conflict is determined by the First Tier Conflict Public Defender to exist, such a fact shall be brought to the attention of the court as soon as possible through a written motion. If the Court determines the Motion has merit and the Court will appoint the Second Tier Conflict Public Defender.

In no instance, shall the First Tier Conflict Public Defender be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

C. Complaints by Clients

The First Tier Conflict Public Defender will track complaints by clients and document the resolution of the complaints.

D. Description of Resources and Accommodations for Confidential Client Communications

The courthouse has two meeting rooms by the District Court and two by the Justice's Court that are available to any attorney who has an ongoing case. The Jail has a meeting room. The Courthouse has a meeting room for people in jail. In no event shall these rooms be monitored by audio or video equipment which would serve to reduce or eliminate the confidential nature of those rooms.

E. DIDS Complaint and Recommendation Process Made Available

An application for court appointed counsel will be given to the Defendant at the first appearance before the Justice Court to determine eligibility. This is the form used by our Justice of the Peace and is attached to this plan.

F. Payment of Conflict Public Defender

The First Tier Conflict Public Defender is compensated through a rate set by the County Commissioners.

G. Payment of Expert and Investigative Fees

The first tier conflict Public Defender will submit a request for payment to the Counsel Administrator who will then recommend approval, modification or denial of the request. Upon approval of a claim, the Counsel Administrator will process a voucher. The Counsel

Administrator will then submit the voucher for payment. If the Counsel Administrator modifies or denies the request, the Attorney may appeal any modification to the Court for resolution. The Court may determine to pay the voucher and will order the County to pay the voucher.

H. Assignment of Cases within First Tier Office of Conflict Public Defender

Currently the Office of First Tier Conflict Public Defender has one attorney. Assignment would be to that attorney. If the Office has an increase in cases that merit the hiring of another attorney for the office or a new Conflict Public Defender is employed, the Office shall develop written procedures for assigning cases.

I. Selection of First Tier Conflict Public Defender

The selection of a conflict public defender shall be by the Board of County Commissioners. The appointment may be for a term of years and may be renewed from time to time.

VII. APPOINTMENT OF SECOND TIER CONFLICT PUBLIC DEFENDER

A. Appointment of Second Tier Conflict Public Defender

Upon determination by the Public Defender and First Tier Public Defender of a conflict or where three individuals are alleged to have acted in concert in a criminal action, the Second Tier Conflict Public Defender shall be appointed.

B. Determination of Conflict Of Interest

The Second Tier Conflict Public Defender shall, as soon as practicable, upon appointment, conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the defendant. If such a conflict is determined by the Second Tier Conflict Public Defender to exist, such a fact shall be brought to the attention of the court as soon as possible by filing a written Motion. If the Court determines the Motion has merit, the Court shall have authority to contact the Counsel Administrator for a recommendation and shall have authority to appoint conflict counsel. In no instance, shall the Second Tier Conflict Public Defender be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

C. Complaints by Clients

The Second Tier Conflict Public Defender will track complaints by clients and document the resolution of the complaints.

D. Description of Resources and Accommodations for Confidential Client Communications

The courthouse has two meeting rooms by the District Court and two by the Justice's Court that are available to any attorney who has an ongoing case. The Jail has a meeting room. The Courthouse has a meeting room for people in jail. In no event shall these rooms be monitored by audio or video equipment which would serve to reduce or eliminate the confidential nature of those rooms.

E. DIDS Complaint and Recommendation Process Made Available

An application for court appointed counsel will be given to the Defendant at the first appearance before the Justice Court to determine eligibility. This is the form used by our Justice of the Peace and is attached to this plan.

F. Payment of Second Tier Conflict Public Defender

The Second Tier Conflict Public Defender is compensated through a rate set by the County Commissioners.

G. Payment of Expert and Investigative Fees

The second-tier conflict Public Defender will submit a request for payment to the Counsel Administrator who will then recommend approval, modification or denial of the request. Upon approval of a claim, the Counsel Administrator will process a voucher. The Counsel Administrator will then submit the voucher for payment. If the Counsel Administrator modifies or denies the request, the Attorney may appeal any modification to the Court for resolution. The Court may determine to pay the voucher and will order the County to pay the voucher.

H. Assignment of Cases within Office of Second Tier Conflict Public Defender

Currently the Office of Conflict Public Defender has one attorney. Assignment would be to that attorney. If the Office has an increase in cases that merit the hiring of another attorney for the office or a new Second Tier Conflict Public Defender is employed, the Office shall develop written procedures for assigning cases.

I. Selection of Second Tier Conflict Public Defender

The selection of a conflict public defender shall be by the Board of County Commissioners. The appointment may be for a term of years and may be renewed from time to time.

VIII. APPOINTMENT OF PANEL ATTORNEYS

A. Appointment of Counsel

A panel attorney shall be appointed when the Public Defender, the First Tier Conflict Public Defender, and the Second Tier Conflict Public Defender are conflicted off a case or there are multiple defendants requiring the appointment of a panel attorney.

B. Determination of Conflict Of Interest

The Panel Attorney assigned and appointed to a case shall, as soon as practicable, upon appointment, conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the defendant. If such a conflict is determined by the Panel Attorney to exist, such a fact shall be brought to the attention of the court as soon as possible through a written motion. If the Court determines the Motion has merit, the Court shall have authority to contact the Counsel Administrator for a recommendation and shall have authority to appoint conflict counsel selected by the Counsel Administrator. In no instance, shall a Panel Attorney be appointed to represent co-defendants in a case unless such appointment comports with the Rules of Professional Conduct (RPC 1.7).

C. Complaints by Clients

The panel attorney will track all complaints by clients regarding the panel attorney's representation and document the resolution of each complaint.

D. Description of Resources and Accommodations for Confidential Client Communications

The courthouse has two meeting rooms by the District Court and two by the Justice's Court that are available to any attorney who has an ongoing case. The Jail has a meeting room. The Courthouse has a meeting room for people in jail. In no event shall these rooms be monitored by audio or video equipment which would serve to reduce or eliminate the confidential nature of those rooms.

E. DIDS Complaint and Recommendation Process Made Available

An application for court appointed counsel will be given to the Defendant at the first appearance before the Justice Court to determine eligibility. This is the form used by our Justice of the Peace and is attached to this plan.

J. Payment of Panel Attorney

The panel attorney is compensated at the statutory rate, **or a rate approved by the County Manager or County Commissioners**, through the County's standard vouchering process. The Attorney will submit the request for reimbursement on a monthly basis to the Counsel Administrator. The Counsel Administrator will then approve or deny the request. If there is a dispute, the Court will determine if the voucher should be paid.

K. Rate of Pay of Panel Attorneys

Panel Attorneys shall be paid at the statutory rate, **or a rate approved by the County Manager or County Commissioners**.

L. Payment of Expert and Investigative Fees

The panel attorney will submit a request for payment to the Counsel Administrator who will then approve, modify or deny the request. The Counsel Administrator will then pay the voucher for payment. If the Counsel Administrator modifies or denies the recommendation, the Attorney may appeal the modification to the Court for resolution. The Court may determine to pay the voucher and will order the County to pay the voucher.

M. Assignment of Cases within Office of Panel Attorney

If the panel attorney has more than one attorney, the Office shall develop written procedures for assigning cases.

N. Selection of Panel Attorneys

The selection of a conflict public defender shall be by the Board of County Commissioners. The appointment may be for a term of years and may be renewed from time to time.

IX. TRAINING AND MENTORING

- A. Mentoring Programs: If an attorney wishes to become qualified for one of the categories of cases, the Counsel Administrator shall contact DIDS for suggestions as to possible mentors for the attorney.
- B. Annual Training: The attorneys working as indigent defense counsel shall receive the recommended amount of indigent defense training by DIDS. Such training shall be tracked by DIDS.

X. DUTIES OF INDIGENT DEFENSE COUNSEL

- A. Standards of Performance Services rendered to an indigent defendant by appointed counsel shall be commensurate with those rendered as if counsel were employed privately. Representation shall be provided in a professional skilled manner in accordance with Strickland. Attorneys are required to comply with the Rules of Professional Conduct. To the extent governed by a statute, Attorneys must conform their conduct to the requirements of the statute. An attorney should follow appropriate regulations and ADKT 411's performance standards to the extent that the standards do not conflict with the aforementioned provisions. An attorney should refrain from recommending that a client waive a substantial right unless the attorney believes that the client's interests are served by the waiver. Attorneys should make efforts to meet with a client within seven (7) days after appointment to a case unless no formal criminal complaint has been filed and should make efforts to meet with the client at a minimum every thirty (30) days thereafter unless there are no significant updates in the client's matter. The meeting can be in person or through other telephonic/audio means.
- B. Continuity in Representation: The system designed in Lander County is currently premised on continuity of representation by a single attorney at all stages of the representation.
- C. Workload Standards: The County recognizes that DIDS is studying the caseload standards in the rural counties. In the absence of hard numbers, the County encourages and requires that appointed counsel ensure that they have sufficient time to give to each client the time and effort necessary to ensure effective representation. Any attorney shall decline representation of a client if the attorney believes the attorney's caseload would interfere with the attorney's competence, diligence

and/or representation of the client. The County finds and determines that current caseloads for the Public Defender and Conflict Public Defender are not excessive as set forth above. Historically, the Nevada State Public Defender only assigned a part-time person (2-3 days per week) to the caseload in Battle Mountain. Currently the Lander County Public Defender is employed full-time. Furthermore, the Lander County Conflict Public Defender has a small caseload. Furthermore, the caseload placed upon Panel Attorneys by the appointments in Lander County should not in and of itself cause an attorney to violate any portion of this rule. This section cannot be used as a basis to allege a claim for ineffective assistance of counsel.

D. No Receipt of Other Payment: Appointed counsel shall not request, require or accept any payment or promise to pay or any other valuable consideration for representation under the appointment unless such payment is approved by order of the Court. No appointed counsel shall engage in sexual conduct with any client.

E. Private Practice of Law: For the Lander County Public Defender, this topic is governed by contract, the Lander County Code in addition to statutory permissions. For all other counsel, unless otherwise prohibited by law, private practice of law is expected.

F. Use of Client Surveys: At the conclusion of representation, counsel will provide the client with a copy of the client survey authorized by DIDS. The client will be provided the address of DIDS and encouraged to send the survey to DIDS or the attorney may assist with the survey being sent.

XI. APPOINTED COUNSEL ADMINISTRATOR⁴

- A. System of Counsel Administrator: A system consisting of one counsel administrator shall be created. The counsel administrator will be overseen by the Lander County Manager. The Counsel Administrator shall be employed to appoint particular attorneys in conjunction with hierarchy of appointments (i.e. 1. Public Defender; 2. Conflict Tier 1 & Tier 2 Attorney's; and 3. Panel Attorney (based upon a rotation of attorneys down the list of panel attorneys)) and expenses.

⁴ These provisions are contingent upon the DIDS approving funding for the service. If DIDS does not approve funding for the service, the County will take interim steps to ameliorate any shortfalls in funding.

B. Selection of Counsel Administrators: The Counsel Administrator shall be selected by the County Manager.

C. The Specific Duties: The duties would be the following:

Appointment of Counsel:

- i. Maintain a list of panel attorneys who could serve on certain types of cases;
- ii. Appoint counsel after the Public Defender, 1st tier attorney, and 2nd tier attorney have all conflicted out
- iii. Determining which attorney should be appointed in accordance with the hierarchy of appointment and type of case; and
- iv. Recommend the Appointment of Counsel to the Court.

Approval of Expert Witness Fees

- i. Received the request for costs for an expert witness (including initial costs and additional costs);
- ii. Determination if the attorney has provided sufficient basis for the appointment of the particular expert (This may require an evaluation of the type of expert witness and if the expert witness is appropriate based upon the facts of the case);
- iii. Recommend approval of a sum certain cost for the expert witness; and
- iv. Submit the Recommendation to the County for payment.
- v. If the Counsel Administrator denies the request, the request can be submitted to the trial court for approval.

Approval of Investigative Fees

- i. Received the request for costs for an expert witness (including initial costs and additional costs);
- ii. Determination if the attorney has provided sufficient justification for the investigator;
- iii. Recommend approval of a sum certain cost for the expert witness; and
- iv. Submit the Recommendation to the County for payment.
- v. If the Counsel Administrator denies the request, the request can be submitted to the trial court for approval.

Approval of Attorney Fees

- i. Received the request for a conflict or panel attorney, which sets for the basis for the attorney fees (with six minute increments) through an affidavit signed by counsel setting forth the hours worked;
- ii. Determination if the fees are necessary and reasonable ~~and if the fees exceed statutory amounts for the case type~~;
- iii. Recommend approval of a sum certain cost for the attorney fees; and
- iv. Submit the recommendation to the County for payment.
- v. If the Counsel Administrator denies or modifies the request, the request can be submitted to the trial court for approval.

Maintain a record of activities.

The Counsel Administrator shall maintain a record of the activities listed above and provide the Department of Indigents Defense records that are requested.

Use Standardized Forms.

The Counsel Administrator shall use the established forms for the action taken.

XII. BAIL HEARINGS

Counsel will be required to clear calendars to appear before the Justice of the Peace. Weekend Appearances may be required. The bail hearing aspect of the First Appearance may be held telephonically to allow counsel to appear. The Public Defender shall make himself or an associate available for these services.

XIII. RECORDS

Providers of indigent services shall maintain data through the data collection and case management services provided by the Department at State expense for caseload and time reporting, even though the system is antiquated and difficult to manage. Costs for keeping such records shall also be kept by the

providers to seek reimbursement from the State. Such reporting shall be kept in accordance with the Temporary Regulations of the DIDS.

XIV. POINT OF CONTACT

The point of contact for this plan shall be the Counsel Administrator.

XV. GOALS AND HOPES

Although the County has a current system that meets the goals and hopes of the Plan, the Plan is being adopted. The following will be the goals for the Plan:

1. The County's Plan for the provision of indigent defense services ensures that an indigent defense attorney has the resources to conduct an independent investigation and retain an investigator if one is needed, and, if needed, request the assistance of experts to assist with preparation of a defense;
2. The County has created in its annual budget a line item for the public defender and the Conflict public defenders/panel attorneys;
3. Beginning in 2021, the County has created a budget for investigators and experts for the public defender. Expenditures shall be at the sole discretion of the public defender;
4. In 2021, the County has created an additional budget line item for the other attorneys for the same expenditures that will be for the other attorneys; and
5. Disbursements shall be made by the Counsel Administrator

XVI. EFFECTIVE DATE

This plan shall become effective when approved. The plan shall be submitted by May 1 of each year.

XVII. COSTS

The projected costs for Indigent Defense in Lander County:

Public Defender's Office	\$130,000.00.
Conflict Public Defender's Office	\$50,000.00
Second Tier Conflict Public Defenders	\$25,000.00
Panel Attorneys	\$5,000.00
Counsel Administrator/Records	\$5,000.00/\$20,000.00
Expenses	\$20,000.00

\$235,000.00/\$250,000.00

Lyon County



PLAN FOR THE PROVISION OF INDIGENT DEFENSE SERVICES

Fiscal Year 2023-2024

I. PLAN OBJECTIVE

The objective of this plan is to ensure competent, zealous legal representation for indigent persons eligible for the services of court-appointed counsel. To that end, this plan establishes guidelines and procedures for, among other things, the appointment, duties, compensation, and oversight of the attorneys with whom Lyon County contracts to serve as its public defenders.

II. DEFINITIONS

- A. Appointing Authority: The Judge, Justice, or Master presiding over a case arising in a court of law within Lyon County.
- B. Case-Related Expenses: Expenses, other than attorneys' fees, reasonably necessary to provide an appropriate defense. Such expenses may include, without limitation, fees for investigators, expert witnesses, forensic services, photocopying, and transcription.
- C. Department: The Nevada Department of Indigent Defense Services.
- D. Eligible Client: An indigent person whom an Appointing Authority has determined to be eligible for the services of a public defender.
- E. Fiscal Year: July 1st through June 30th.
- F. Qualified Attorney: An attorney approved by the Department to provide indigent defense services within certain categories of cases as set forth in the Regulations.
- G. Regulations: The Permanent Regulations of the Board of Indigent Defense Services.

III. APPOINTMENT OF PUBLIC DEFENDERS

Lyon County shall appoint only Qualified Attorneys as public defenders. Lyon County may contract with as many Qualified Attorneys as necessary to ensure adequate representation for all Eligible Clients. All contracts with Qualified Attorneys shall be consistent with this plan and the Regulations, and shall be approved by the Lyon County Board of Commissioners.

A. Selection Process

In seeking out Qualified Attorneys to serve as public defenders, Lyon County shall use a selection committee composed of the County Manager, the Comptroller, and the Human Resources Director. The selection committee may, through a formal request for proposals or through other



means, request information from Qualified Attorneys regarding their experience, workload capacity, fee structure, and any other material information. The selection committee shall weigh these and other relevant factors (including those set forth under Sec. 22(3) of the Regulations) in identifying the Qualified Attorneys with whom it would be in Lyon County's best interest to contract, and the terms of such contracts. The selection committee may utilize outside counsel for assistance during any portion of the selection process, and during the drafting and negotiation of contracts with Qualified Attorneys. In addition, the selection committee may seek input from the Department. The selection committee shall present all proposed contracts to the Board of County Commissioners for approval. No contract shall be effective unless and until it is approved by the Board of County Commissioners.

Any Qualified Attorneys interested in consideration by the selection committee are encouraged to contact the Lyon County Manager.

B. Compensation

The terms of compensation shall be set forth in each Qualified Attorney's approved contract. The compensation shall reflect the Qualified Attorneys' experience, competency, credentials, and amount of work performed. Compensation may be in the form of flat fees, piece rates, hourly rates, or any combination thereof, provided that the compensation is ultimately reasonable and consistent with the Regulations.

C. Independent Contractors; Private Practice of Law

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be independent contractors, not employees of Lyon County. Qualified Attorneys may engage in the private practice of law outside the scope of their approved contracts provided that: (i) such practice does not conflict with obligations to Lyon County under the Qualified Attorney's approved contract; (ii) such practice does not conflict with the Qualified Attorney's ability to provide zealous, competent representation to Eligible Clients; and (iii) the Qualified Attorney agrees not to represent clients in any lawsuits against Lyon County, its officers, employees, or agents, or entities in which the Board of County Commissioners act as a governing body.

IV. ELIGIBLE CLIENTS

Consistent with the Regulations and applicable law, the Appointing Authority shall be responsible for determining whether a person is indigent and is eligible for the services of a public defender in the following categories of cases:

1. Misdemeanor Cases: A case in which the highest charge is a misdemeanor.



2. Category B, C, D, or E Felony or Gross Misdemeanor Cases: A case in which the highest charge is a gross misdemeanor or a Category B, C, D, or E felony for which the maximum penalty is ten (10) or fewer years imprisonment.
3. Category B Felony Cases (10+ year maximum): A case in which the highest charge is a Category B felony for which the maximum penalty is greater than ten (10) years imprisonment.
4. Non-Capital Category A Cases: A case in which the highest charge is a non-capital Category A felony.
5. Capital Cases: A case in which the highest charge is a capital Category A felony.
6. Juvenile Proceedings: A case in which a juvenile is alleged to be delinquent or need of supervision.
7. Appeals: Any appeal of an interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
8. Other Cases: Any other case in which the assignment of court-appointed counsel is required or permitted by law.

The Appointing Authority shall make indigence determinations in the above categories of cases in accordance with applicable law. A Pretrial Services Officer may be utilized to assist with screening for indigence. The Pretrial Services Officer shall use the approved screening form. Such screening shall occur within forty eight (48) hours of arrest. Indigence determinations are ultimately the responsibility of the Appointing Authority.

V. ASSIGNMENT OF QUALIFIED ATTORNEYS TO ELIGIBLE CLIENTS

Walther Law Offices, PLLC shall serve as Lyon County's primary public defender and shall be assigned to represent all Eligible Clients in cases arising in all municipal, justice, and district courts within Lyon County except:

1. In the event Walther Law Offices, PLLC has a conflict of interest or otherwise cannot represent all parties in a matter in accordance with the Nevada Rules of Professional Conduct; or
2. As lead counsel in a capital case.

In the event Walther Law Offices, PLLC has a conflict of interest or otherwise cannot represent all parties in a matter, a separate Qualified Attorney with whom Lyon County has an approved contract shall be assigned. The procedure for assignment is set forth below:



1. Walther Law Offices, PLLC shall provide immediate notice of its inability to represent Eligible Client(s) to the Department by email at didscontact@dids.nv.gov. Walther Law Offices, PLLC shall make this notification as soon as it determines that it intends to file a notice of conflict or a motion to withdraw, as applicable. Walther Law Offices, PLLC shall include in the notification the following information (if available): charging document, probable cause sheet or declaration, and the date and location of the next scheduled court appearance.
2. Upon receipt of the above notification, the Department shall select other Qualified Attorney(s) for assignment from among the panel of Qualified Attorneys with whom Lyon County has an approved contract, giving, respectively, rights of first and second refusal to Silver State Law and Edgerton Legal in accordance with those firms' contracts. The Department shall otherwise have discretion to make assignments on any legitimate basis, including, without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Lyon County officials, and capacity to take on work.
3. A Qualified Attorney contacted by the Department for an assignment may accept or reject the assignment. If the Qualified Attorney (or staff duly authorized to accept assignments on the Qualified Attorney's behalf) is not available during normal business hours when contacted by the Department, the assignment shall be deemed rejected. The Department shall contact other Qualified Attorneys until it obtains acceptance from a sufficient number of Qualified Attorneys to represent all Eligible Clients.¹
4. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Department shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority—i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client's charges are pending.

In the event of a capital case, Lyon County shall retain a Qualified Attorney authorized to serve as lead counsel under Supreme Court Rule 250 and shall pay reasonable compensation for such services. Walther Law Offices, PLLC and/or other Qualified Attorneys may be assigned as co-counsel consistent with the terms of their approved contracts.

¹ Nothing herein shall preclude Lyon County from entering into additional contracts to add more Qualified Attorneys to the panel after the effective date of this plan. In addition, nothing herein shall preclude the Department from exercising its authority to appoint counsel outside the panel pursuant to NRS 7.115 et seq. in the event there are not a sufficient number of Qualified Attorneys on the panel to accept assignments to represent all Eligible Clients.





VI. DUTIES OF QUALIFIED ATTORNEYS

A. Standards of Performance

Qualified Attorneys providing services to Eligible Clients within Lyon County shall be responsible for providing such services in a professional, skilled manner. They shall comply with all applicable laws, regulations, 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.

B. Continuity in Representation

Qualified Attorneys providing services to Eligible Clients within Lyon County shall ensure, to the extent practicable, consistency in representation such that the same attorney represents a defendant through every stage of the case; provided, however, that attorneys may delegate appropriate administrative tasks to support staff, or may assign more than one (1) attorney to represent an Eligible Client as necessary provided it would not prejudice the rights or defense of the Eligible Client.

C. Workload Standard

The workload of each Qualified Attorney providing services to Eligible Clients within Lyon County 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. The maximum workload guidelines as determined by the Department are incorporated herein by reference and shall be followed to the greatest extent practicable. To the extent required by the Department's Board, Qualified Attorneys providing indigent defense services under this plan shall maintain caseload data and track time spent providing indigent defense services in accordance with Sections 44 and 45 of the Regulations.

D. Conflicts of Interest

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be required to timely screen all case assignments for conflicts of interest. In the event of a conflict of interest, the Qualified Attorney shall file an appropriate motion or, as applicable, a notice of conflict with the Appointing Authority. Unless leave to withdraw is withheld by the Appointing Authority, the Qualified Attorney shall ensure prompt transfer of the Eligible Client's file to the Eligible Client's new attorney.



E. Training

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be required to comply with the training and continuing education requirements of the Department.

F. Other Responsibilities

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be responsible for ensuring:

1. Clients do not waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest.
2. Clients receive adequate and frequent communication from their attorney. As a guideline, Qualified Attorneys shall, where practicable, communicate with clients seven (7) days following the assignment of the case and every thirty (30) days thereafter unless there are no significant updates in the client's matter.
3. Clients are notified of and encouraged to participate in client surveys authorized by the Department.
4. Clients are appropriately notified of their right to utilize the Department's Complaint and Recommendation process.
5. Attorney-client privilege and client confidentiality are maintained.

G. Initial In-Custody Appearances

Walther Law Offices, PLLC shall provide Representational Services for all Eligible Clients who are in custody and require a bail hearing. Insofar as Walther Law Offices, PLLC has a conflict of interest precluding the firm from continuing to provide Representational Services in connection with a substantive defense of the charges, Walther Law Offices, PLLC shall limit the scope of its representation. It shall only advocate for the Eligible Client's best interests at the bail hearing and shall advise the Eligible Client of the limited scope of such representation.

Notwithstanding any other provision herein, nothing shall preclude Walther Law Offices, PLLC from declining to represent an Eligible Client, even for the limited purpose described in the preceding paragraph, if it determines it cannot do so in a manner consistent with the Nevada Rules of Professional Conduct. In the event this occurs, Walther Law Offices, PLLC shall immediately notify the Department so the Department can assign alternative counsel from among the panel of Qualified Attorneys with whom Lyon County has an approved contract.



In accordance with NRS 178, all bail hearings shall occur within forty eight (48) hours after the Eligible Client has been taken into custody, unless continued for good cause.

VII. ACCOMMODATIONS FOR CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATIONS

The Lyon County Sheriff's Office offers the opportunity for Qualified Attorneys to meet confidentially with Eligible Clients in person or via video conference. Qualified Attorneys seeking a confidential meeting are encouraged to contact Lyon County Sheriff's Office staff at 775-463-6600 at least twenty four (24) hours in advance. The Lyon County Sheriff's Office will make every reasonable effort to ensure a Qualified Attorney is able to meet with an Eligible Client at the desired time. Absent twenty four (24) hours' notice, the Lyon County Sheriff's Office will still make every reasonable effort to arrange a meeting as requested by the Qualified Attorney, but Qualified Attorneys shall, for their part, demonstrate reasonable flexibility and mutual cooperation in such instances. Qualified Attorneys shall be responsible for compliance with all safety protocols and all reasonable instructions of jail personnel.

Questions or concerns with respect to accommodations for confidential meetings with Eligible Clients may, if not satisfactorily addressed by staff, be directed to Lieutenant Chris Bixby (cbixby@lyon-county.org).

VIII. INVOICING AND PAYMENT

A. Attorneys' Fees

Qualified Attorneys providing services to Eligible Clients within Lyon County in exchange for an hourly rate shall submit monthly invoices to the Department. Such invoices shall be submitted via LegalServer (or any other platform the Department may subsequently choose to utilize) no later than ten (10) days after the end of the month in which the services were rendered. Time entries shall be rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.

The Department shall approve for payment all reasonable attorney's fees. In reviewing for reasonableness, the Department may consider factors such as: (i) average case times as determined by workload analysis; (ii) time and skill required; (iii) complexity of the case; and (iv) experience and ability of the Qualified Attorney(s). The Department may request additional information or explanation where necessary. In the event the Department denies or modifies a request for attorneys' fees, it shall provide an explanation to the Qualified Attorney, with a copy to the Lyon County Manager, as to why the denied portion was not reasonable. Such denials shall be subject judicial review pursuant to NRS 7.135.

Payment for all approved attorneys' fees shall be issued by the Lyon County Comptroller's Office. The Department shall notify the Comptroller's Office of all approved requests for



attorneys' fees, attaching a copy of the invoice and any backup. The Comptroller's Office shall issue payment within ten (10) days of receipt.

B. Case-Related Expenses

Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:

1. Pre-Authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars (\$2,500) shall be submitted to the Department for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization to the Department by email at didscontact@dids.nv.gov. The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services.
2. Reasonableness Review: All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the Department's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the Department no later than sixty (60) days following the termination of the representation. Any requests not timely submitted shall be waived. The Department shall approve all reasonable and necessary Requests for Case-Related Expenses, and shall notify the Lyon County Comptroller's Office of all approved expenses and provide a copy of the invoice.
3. Payment: The Lyon County Comptroller's Office shall issue payment for all approved Case-Related Expenses within ten (10) days of receipt of notice of the Department's approval and a copy of the invoice.

IX. REIMBURSEMENT FOR PAYMENTS EXCEEDING THE MAXIMUM COUNTY CONTRIBUTION

Pursuant to NRS 180.320(3), the Department's Board has promulgated under Section 16 of its Regulations a formula for establishing the maximum amount a county is required to pay for the provision of indigent defense services in a Fiscal Year. Lyon County shall not pay any amount in excess of that formula in any Fiscal Year.

Pursuant to Sections 16 - 19 of the Regulations, Lyon County shall be permitted to obtain reimbursement for costs associated with the provision of indigent defense services under this plan to the extent they exceed the maximum contribution in the preceding paragraph. Lyon County shall file financial status reports with the Department in a manner consistent with the Regulations, using the forms prescribed by the Department. The Lyon County Board of Commissioners hereby designates the Lyon County Comptroller as its designee to submit such reports to the Department. To the extent the financial status reports reflect costs in excess of the maximum contribution for Fiscal Year 2022-2023. In the event reimbursable costs exceed this amount, nothing herein shall



be construed to preclude Lyon County from seeking additional reimbursement pursuant to NRS 353.266, NRS 180.450, or as otherwise permitted by law.

X. EFFECTIVE DATE; MODIFICATION

This plan is effective July 1, 2023 and shall remain in effect until June 30, 2024. This plan may be modified by formal action of the Board of County Commissioners.

XI. PLAN ADMINISTERATOR AND CONTACTS

The County Manager shall be the administrator of this plan and the contracts for the provision of indigent defense services. The County Manager shall report material breaches or other significant matters to the Board of County Commissioners. The Board of County Commissioners may take any lawful, situationally-appropriate action with respect to any contract.

Questions about the administration of this plan may be directed to the Lyon County Manager.