

Recommendations Pursuant to Executive Order 2023-003 for Possible Removal

Executive Order 2023-003 requires every department to provide a list to the Governor of not less than 10 regulations recommended for removal, ranking them in descending order of priority. Agenda Item 6 of the February 2, 2023, meeting calls for a workshop pursuant to this Executive Order.

The Department of Indigent Defense Services makes the following recommendations for removal which are to be discussed during the workshop:

Recommendation 1: Remove section 5, “Expert Witness” definition. Unnecessary as defined in NRS 50.275.

- **Sec. 5.** "Expert witness" means a person who is qualified by knowledge, skill, experience, training or education to render an opinion on scientific, technical or other specialized matters.

Recommendation 2: Remove section 7, “Investigator” definition. Unnecessary as investigators regulated by NAC 648 and NRS 648.

- **Sec. 7.** "Investigator" means a person who is qualified to secure evidence and subpoena witnesses to be used in the preparation and trial of criminal cases and who is: 1. Licensed by the Private Investigator's Licensing Board; 2. An employee of a person who is licensed by the Private Investigator's Licensing Board; or 3. An employee of an attorney or an office of public defender.

Recommendation 3: Remove section 8, “Plan” definition. Unnecessary as covered in Sections 20-27.

- **Sec. 8.** "Plan for the provision of indigent defense services" or "plan" means the processes established by a county for the provision of indigent defense services and the estimated cost to carry out the provision of indigent defense services in accordance with sections 2 to 45, inclusive, of this regulation and any applicable laws.

Recommendation 4: Remove section 28, “CLE” definition. Unnecessary as superfluous definition.

- **Sec. 28.** As used in sections 28 to 37, inclusive, of this regulation, unless the context otherwise requires, "CLE" means continuing legal education as discussed in Nevada Supreme Court Rules 205 to 215, inclusive.

Recommendation 5: Remove section 34, death penalty qualification. Unnecessary as already required in Supreme Court Rule 250.

- **Sec. 34.** An attorney who seeks to provide indigent defense services to a person charged with or convicted of a category A felony in which the death penalty is or may be sought or has been imposed must meet the criteria set forth in Supreme Court Rule 250.

Recommendation 6: Remove section 35, appeal qualification. Unnecessary as do not need a separate approval to take appeals.

- **Sec. 35.** An attorney who seeks to represent a person in a direct appeal of a non-capital felony must:
 1. Be licensed to practice law in the State of Nevada; and
 2. Have sufficient training or experience to provide competent representation.

Recommendation 7: Remove section 18. Unnecessary and creates confusion.

- **Sec. 18.**
 1. If a county reaches its maximum contribution for the provision of indigent defense services as determined in accordance with section 16 of this regulation, state contributions for the provision of indigent defense services will be provided to the county treasury by reimbursement, up to the amount approved by the Board and the Legislature in the county's plan for indigent defense services, upon the quarterly submission of the financial status report of the county in accordance with subsection 3 of section 17 of this regulation any state contributions for the provision of indigent defense services must be provided for:
 - (a) One fiscal year; and
 - (b) The express purpose of complying with applicable indigent defense standards and regulations and improving the provision of indigent defense services in a county.
 2. If a county reaches its maximum contribution for the provision of indigent defense services as determined in accordance with section 16 of this regulation, state contributions for the provision of indigent defense services will be provided to the county treasury by reimbursement, up to the amount approved by the Board and the Legislature in the county's plan for indigent defense services, upon the quarterly submission of the financial status report of the county in accordance with subsection 3 of section 17 of this regulation.
 3. If a county reaches the maximum state contributions approved by the Board in accordance with section 17 of this regulation, any additional state contributions necessary for the provision of indigent defense services must, in accordance with NRS 180.450, as amended by section 14 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2268, be sought by a corrective action plan pursuant to a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266.
 4. Any unencumbered or unexpended balance of state contributions remaining at the end of the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.
 5. As used in this section, "fiscal year" means the period beginning on July 1 of a given year and ending on June 30 of the following year.

Recommendations 8-12: NRS 233B.100(1) requires each agency to prescribe by regulation the form and process for petitions for adopting, filing, amending, or repealing a regulation. The process may be as simple as writing a letter. Sections 10-15 provide a

process; however, the Department recommends simplifying this process to writing a letter.

- **Recommendation 8:** Revise Sec. 10 and Simplify Process to Write a Letter.
 - **Sec 10:** 1. An interested person who wishes to petition the Board for the adoption, filing, amendment or repeal of a regulation of the Board must file with the Department the original and one copy of the petition. The petition must include:
 - (a) The name and address of the petitioner;
 - (b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;
 - (c) The reason for the adoption, filing, amendment or repeal of the regulation;
 - (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation; and
 - (e) The name of the Board.
- **Recommendation 9:** Revise section 10 as above and remove section 11.
 - **Sec. 11.**
 1. The Board may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if the requirements set forth in section 10 of this regulation are not met.
 2. The Board may require the Department to review a petition filed pursuant to section 10 of this regulation.
 3. The Department shall notify the petitioner in writing of the decision of the Board or Department, as applicable, not later than 90 days after a petition is filed.
- **Recommendation 10:** Revise section 10 as above and remove section 12.
 - **Sec. 12.**
 1. Except as otherwise provided in subsection 4, an interested person may petition the Executive Director to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department.
 2. The original and one copy of the petition must be filed with: (a) The deputy director selected by the Executive Director pursuant to NRS 180.420 who is authorized to administer or enforce the statute or regulation or to issue the decision; or (b) The Executive Director, if the statute, regulation or decision is administered or enforced by the Executive Director.
 3. The petition must include: (a) The name and address of the petitioner; (b) The reason for requesting the declaratory order or advisory opinion; (c) A statement of the facts that support the petition; and (d) A clear and concise statement of the question to be decided by the Executive Director

or deputy director and the relief sought by the petitioner.

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

- **Recommendation 11:** Revise section 10 as above and remove section 13.
 - **Sec. 13.**
 1. The Executive Director may refuse to review a petition filed pursuant to section 12 of this regulation that requests the issuance of a declaratory order or advisory opinion if the requirements set forth in it at section are not met.
 2. The Executive Director may, or may designate a deputy director to: (a) Conduct an informal hearing to determine issues of fact or hear arguments relating to a petition and enter reasonable orders that govern the conduct of such a hearing; (b) Request a petitioner to provide additional information or arguments relating to a petition; (c) Issue a declaratory order or an advisory opinion based upon the contents of a petition and any materials submitted with the petition; (d) Consider relevant decisions that have been issued by the Department that apply or interpret the statute, regulation or decision in question; and (e) Enter any reasonable order to assist his or her review of a petition.
 3. The Executive Director or deputy director shall: (a) Mail a copy of any declaratory order or advisory opinion that is issued to a petitioner not later than 90 days after whichever of the following events is the last to occur: (1) The petition is filed; (2) The petition is referred to the Executive Director for a decision; (3) An informal hearing is conducted; or (4) The Executive Director or deputy director receives any additional information or written arguments; and (b) Maintain a record of each declaratory order and advisory opinion that is issued and index such records by subject matter.
- **Recommendation 12:** Revise section 10 as above and remove section 14.
 - **Sec. 14.** (Repeal upon revision of Section 10.)
 1. After receiving a declaratory order or advisory opinion from a deputy director concerning the applicability or interpretation of a statute, regulation or decision of the Department, the petitioner may request that the Executive Director review the decision.
 2. A request made pursuant to subsection 1 must: (a) Be in writing; (b) Contain the information required by subsection 3 of section 12 of this regulation; and (c) Be filed with the Executive Director not later than 30 days after the date the declaratory order or advisory opinion is issued.
 3. The Executive Director shall review any request made pursuant to subsection I in accordance with the provisions of section 13 of this regulation.

Recommendation 13. Explore whether section 6, “Indigency” definition is necessary. Indigency is defined “In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases,” ADKT No. 411 (Order, January 4, 2008).

- **Sec. 6.** "Indigency" means the inability of a defendant, without causing the defendant or any of his or her dependents to have substantial hardship, to obtain competent, qualified legal counsel on his or her own. As used in this section, a defendant is presumed to have substantial hardship if:
 1. The defendant: (a) Receives public assistance, as that term is defined in NRS 422A.065; (b) Resides in public housing, as that term is defined in NRS 315.021; (c) Has a household income that is less than 200 percent of the federally designated level signifying poverty; (d) Is serving a sentence in a correctional institution; or (e) Is housed in a mental health facility; or
 2. Despite not meeting any of the requirements set forth in subsection 1, because of his or her particular circumstances, including, without limitation, the seriousness of the charges being faced, monthly expenses and local rates for private counsel, it is determined, after a more rigorous screening process, that substantial hardship would result if the defendant were to seek to retain private counsel.