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December 15, 2023

Ms. Marcie Ryba
Director
Department of Indigent Defense Services
896 West Nye Lane, Suite 202
Carson City, NV 89703

Re: LCB File No. R033-23

Dear Ms. Ryba,

A regulation adopted by the Board on Indigent Defense Services has been filed today with the Secretary of State pursuant to NRS 233B.067 or 233B.0675 as appropriate. As provided in NRS 233B.070, this regulation becomes effective upon filing, unless otherwise indicated.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 6 of NRS 233B.070.

Sincerely,

Asher A. Killian
Legislative Counsel

Melissa N. Mundy
Principal Deputy Legislative Counsel

Bradley A. Wilkinson
Chief Deputy Legislative Counsel

AAK/amh
Enclosure

SECRETARY OF STATE
FILING DATA

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**Form For Filing
Administrative Regulations**

**Agency: Department of
Indigent Defense Services and the
Board on Indigent Defense Services**

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: These Regulations are added to the Nevada Administrative Code (NAC) Chapter 180, which regulate indigent defense services in the State of Nevada.

Authority citation other than 233B NRS 180, NRS 260, AB454(2023)

Notice date September 26, 2023

Date of Adoption by Agency

Hearing date November 2, 2023

November 2, 2023

**APPROVED REGULATION OF THE
BOARD ON INDIGENT DEFENSE SERVICES**

LCB File No. R033-23

Filed December 15, 2023

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: § 1, NRS 180.320, as amended by section 2 of Assembly Bill No. 454, chapter 285, Statutes of Nevada 2023, at page 1888; §§ 2-11, NRS 180.320; § 12, NRS 180.320, as amended by section 5 of Assembly Bill No. 518, chapter 497, Statutes of Nevada 2023, at page 3060.

A REGULATION relating to indigent defense services; establishing provisions concerning hourly rates of compensation for certain attorneys who provide indigent defense services; requiring that plans for the provision of indigent defense services provide the processes that counties will use to hire certain attorneys and select and assign additional or alternate attorneys to provide indigent defense services in certain circumstances; requiring that plans provide for a first tier and second tier of indigent defense representation and set forth the process for assigning or determining the attorneys who will be present at pretrial release hearings, initial appearances and arraignments; providing that plans must require indigent defense representation to be provided consistent with the American Bar Association's Criminal Justice Standards for the Defense Function; revising provisions relating to the qualifications of attorneys who provide indigent defense services or represent juveniles alleged to be delinquent or in need of supervision; requiring an attorney to notify the Department of Indigent Defense Services or its designee and each county within which the attorney provides indigent defense services if the attorney accepts employment as a prosecuting attorney or judge or is sanctioned by a court or the State Bar of Nevada; requiring that a contract between a county and an attorney who provides indigent defense services as an independent contractor identify any attorney providing representation as a subcontractor; requiring that contracts for the provision of indigent defense services be approved by the Department before being executed; removing provisions requiring the Department to conduct separate workload studies for counties; requiring that plans provide details regarding how a county will comply with any guidelines adopted by the Board on Indigent Defense Services which set forth maximum workloads for attorneys who provide indigent defense services; repealing provisions relating to the establishment of a formula for determining the maximum amount a county may be required to pay for

the provision of indigent defense services and the seeking of state contributions for the provision of indigent defense services in excess of the maximum amount; repealing provisions authorizing the State Public Defender to handle certain cases for certain counties upon request; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Board on Indigent Defense Services to adopt any regulations it deems necessary or convenient to carry out the duties of the Board and the provisions of law governing indigent defense services. (NRS 180.320) Existing law also requires the Board to adopt regulations establishing hourly rates of compensation for: (1) in counties whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties), an attorney, other than a public defender, who is selected to provide indigent defense services; and (2) in all counties, an attorney who is appointed to represent a petitioner who files a postconviction petition for habeas corpus. (NRS 180.320, as amended by section 2 of Assembly Bill No. 454, chapter 285, Statutes of Nevada 2023, at page 1888) **Section 1** of this regulation provides that such hourly compensation must be equal to the prevailing hourly compensation rate for attorneys appointed to the Criminal Justice Act (CJA) Panel.

Existing regulations require that a plan for the provision of indigent defense services (hereinafter “plan”) provide the process a county will use to hire attorneys who are independent contractors to provide indigent defense services and panels of appointed attorneys. (Section 22 of LCB File No. R042-20) **Section 2** of this regulation also requires a plan to provide the process a county will use to hire attorneys who serve as county public defenders and chief county public defenders. **Section 2** additionally requires that a plan provide the process a county will use to select and assign an additional or alternate attorney to provide indigent defense services if the attorney who would otherwise be assigned to the case is not sufficiently qualified to do so because of the complexity of the case.

Existing regulations require that a plan describe how attorneys are assigned to cases if a county uses attorneys who are independent contractors in lieu of an office of public defender or if the public defender is disqualified. (Section 23 of LCB File No. R042-20) **Section 3** of this regulation requires that a plan provide for a first tier and second tier of indigent defense representation and describe how attorneys will be assigned to cases in each tier. Existing regulations also provide that a plan must require an attorney to be present at initial appearances and arraignments. (Section 23 of LCB File No. R042-20) **Section 3** additionally provides that a plan must require an attorney to be present at pretrial release hearings and set forth the process for assigning or determining the attorney who will be present at pretrial release hearings, initial appearances and arraignments.

Existing regulations provide that a plan must require that indigent defense representation be provided in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court. (Section 27 of LCB File No. R042-20) **Section 4** of this regulation additionally provides that a plan must require that indigent defense

representation be provided consistent with the American Bar Association's Criminal Justice Standards for the Defense Function.

Existing regulations require that an attorney in a criminal matter who is providing indigent defense services in a county whose population is less than 100,000 must demonstrate compliance with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department of Indigent Defense Services for the purpose of ensuring that the ability, training and experience of the attorney matches the complexity of the case. (Sections 29 and 30 of LCB File No R042-20) **Section 5** of this regulation specifies that such a requirement applies to all attorneys who provide indigent defense services in a county whose population is less than 100,000, including those who are employed by an office of public defender. **Section 5** provides that if an attorney with whom a county has contracted does not have the qualifications necessary to handle the full range of cases required for the contract, the attorney must not be assigned to any cases that exceed his or her level of qualification unless another attorney who is qualified to handle the case is also assigned in the case to act as the first chair. **Section 5** provides that the assignment of such an additional attorney is at the expense of the county and requires the plan of the county to set forth the procedure for the assignment.

Existing regulations establish the requirements that an attorney must satisfy if the attorney seeks to provide indigent defense services to a person charged with a misdemeanor in a county whose population is less than 100,000, including having sufficient training or experience to provide competent representation. (Sections 29 and 31 of LCB File No. R042-20) **Section 6** of this regulation provides that proof of completion of 6 hours of continuing legal education related to indigent defense services, or full attendance at the annual conference of the Department, during the 12 months immediately preceding the provision of such indigent defense services constitutes sufficient training or experience to provide competent representation.

Existing regulations establish the requirements that an attorney must satisfy if the attorney seeks to provide indigent defense services to a person charged with certain category B felonies, a category C, D or E felony or a gross misdemeanor in a county whose population is less than 100,000, including having been trial counsel in two or more bench or jury trials that were tried to completion. (Sections 29 and 32 of LCB File No. R042-20) **Section 7** of this regulation specifies that such bench or jury trials must have been criminal trials.

Existing regulations establish the requirements that an attorney must satisfy if the attorney seeks to represent a juvenile who is alleged to be delinquent or in need of supervision in a county whose population is less than 100,000. (Sections 29 and 36 of LCB File No. R042-20) **Section 8** of this regulation also requires such an attorney to be skilled in juvenile defense and provides that proof of completion of 2 hours of continuing legal education related to juvenile defense services within the 12 months immediately preceding such representation constitutes sufficient skill in juvenile defense. **Section 8** additionally requires such an attorney to be knowledgeable about adolescent development and the special status of youth in the legal system. Existing regulations also provide that an attorney who seeks to represent a child in a proceeding in which the child may be certified for criminal proceedings as an adult in a county whose population is less than 100,000 must have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience. (Sections 29 and 36 of LCB File No. R042-20)

Section 8 authorizes an attorney to submit a request pursuant to the plan of a county pursuant to **section 2** to obtain the assistance of such other counsel.

Existing regulations impose certain additional requirements on attorneys who provide indigent defense services in a county whose population is less than 100,000. (Sections 29 and 37 of LCB File No. R042-20) **Section 9** of this regulation requires an attorney to notify the Department or its designee and each county within which the attorney provides indigent defense services if the attorney accepts employment as a prosecuting attorney or judge or is sanctioned by a court or the State Bar of Nevada. The attorney is required to provide such notification not later than 72 hours after he or she accepts such employment or is sanctioned.

Existing regulations require that a contract between a county and an attorney who provides indigent defense services as an independent contractor include certain information, including the identification of each attorney who will provide legal representation in each category of cases covered by the contract. (Section 40 of LCB File No. R042-20) **Section 10** of this regulation specifies that such a requirement includes the identification of any attorney providing representation as a subcontractor. **Section 10** also requires that every contract for the provision of indigent defense services, including any subcontract, be approved by the Department before the contract is executed.

Existing law requires the Board to adopt regulations establishing guidelines to be used to determine the maximum caseloads for attorneys who provide indigent defense services. (NRS 180.320) Existing regulations require the Department to conduct separate, specific workload studies for counties whose population is less than 100,000 and counties whose population is 100,000 or more (currently Clark and Washoe Counties) to determine workload guidelines and requirements for attorneys and include a recommendation to the Board for the purpose of establishing guidelines to be used to determine maximum workloads for attorneys providing indigent defense services. (Section 42 of LCB File No. R042-20) Pursuant to the *Davis v. State* consent judgment, the State of Nevada is required to: (1) commission a Delphi study to establish indigent defense workload standards for Churchill, Douglas, Esmerelda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye and White Pine Counties; and (2) require compliance with the workload standards established under the study within 12 months after the study is completed. (*Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B at 17 (Aug. 11, 2020)) consent judgment) **Section 11** of this regulation removes the provisions requiring the Department to conduct separate, specific workload studies for counties and requires that each plan provide details regarding how a county will comply with any guidelines adopted by the Board which set forth the maximum workloads for attorneys providing indigent defense services.

Nevada law previously required the Board to adopt regulations establishing a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services. (NRS 180.320) Existing regulations establish such a formula and set forth provisions relating to a county seeking state contributions for the provision of indigent defense services in excess of the maximum county contribution. (Sections 16-18 of LCB File No. R042-20) Assembly Bill No. 518 of the 2023 Legislative Session: (1) removes the provision of law requiring the Board to adopt regulations for establishing such a formula and instead establishes a statutory formula for the maximum amount that a county may be required to pay for the provision of indigent defense services; and (2) provides that a county may seek state

contributions for the provision of indigent defense services in excess of the maximum county contribution. (NRS 180.320, as amended by section 5 of Assembly Bill No. 518, chapter 497, Statutes of Nevada 2023, at page 3060) **Section 12** of this regulation accordingly repeals the provisions of existing regulations that establish the formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services and the provisions relating to state contributions in excess of the maximum county contribution. **Section 12** additionally repeals the provisions of existing regulations that authorize the State Public Defender to handle certain cases for counties whose population is less than 100,000 upon the request of a county.

Section 1. Chapter 180 of NAC is hereby amended by adding thereto a new section to read as follows:

1. An attorney who provides indigent defense services is entitled to receive hourly compensation for court appearances and other time reasonably spent on indigent defense services or representation at a rate equal to the prevailing hourly compensation rate for attorneys appointed to the Criminal Justice Act (CJA) Panel at the time such services or representation is provided. The Executive Director may increase such an hourly rate for good cause and as deemed reasonable and necessary, including, without limitation, because of the complexity of a case or the scarcity of available qualified attorneys to provide indigent defense services.

2. As used in subsection 1, “attorney who provides indigent defense services” means:

(a) In a county whose population is less than 100,000, an attorney, other than a public defender, who is selected pursuant to NRS 7.115 to provide indigent defense services; or

(b) In all counties, an attorney who is appointed pursuant to NRS 34.750 to represent a petitioner who files a postconviction petition for habeas corpus.

Sec. 2. Section 22 of LCB File No. R042-20 is hereby amended to read as follows:

Sec. 22. 1. A plan for the provision of indigent defense services must provide the process a county will use to hire attorneys who *serve as county public defenders or chief county public defenders or who* are independent contractors to provide indigent defense services and panels of appointed attorneys. The process must be designed to provide notice of the opportunity to apply and a reasonable opportunity for interested parties to respond.

2. Consistent with the provisions of section 21 of ~~[this regulation,]~~ *LCB File No. R042-20*, the process ~~[should]~~ *used pursuant to subsection 1 must* exclude prosecuting and law enforcement officials. The creation of a selection committee that utilizes stakeholders concerned with the integrity of indigent defense services, which may include the Department, is recommended. Judicial input in the hiring process may be considered but ~~[should]~~ *must* not be the sole basis for selection.

3. For the purposes of evaluating an application, the process *used pursuant to subsection 1* must require, without limitation:

(a) In a county whose population is less than 100,000, verification that the applicant is included on the roster of attorneys who are eligible to provide indigent defense services that the Department compiles pursuant to section 30 of *LCB File No. R042-20, as amended by section 5 of* this regulation; and

(b) The consideration of the following factors:

- (1) The experience and qualifications of the applicant;
- (2) The past performance of the applicant in representing defendants in criminal cases;
- (3) The ability of the applicant to comply with ~~[sections 2 to 45, inclusive, of this~~

~~regulation,]~~ *this chapter* and the terms of a contract; and

(4) If the applicant is an independent contractor, the cost of the service under the contract.

4. A plan for the provision of indigent defense services must also provide the process a county will use to select and assign, at the expense of the county, an additional or alternate attorney to provide indigent defense services in a case if an attorney with whom the county has contracted to provide indigent defense services, and who would otherwise be assigned to the case pursuant to the plan, does not have sufficient qualifications to provide indigent defense services because of the complexity of the case.

Sec. 3. Section 23 of LCB File No. R042-20 is hereby amended as follows:

Sec. 23. 1. A plan for the provision of indigent defense services must set forth the process of screening for indigency that is necessary for the judicial determination of eligibility for appointed counsel. The process of screening for indigency must:

(a) Occur prior to, or at the earlier of, the initial arraignment or appearance and not later than 48 hours after the arrest of the defendant; and

(b) Describe the person or agency responsible for the screening.

2. After such screening and upon a judge, justice of the peace, ***municipal judge*** or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, the plan must provide for the prompt appointment of counsel. If a public defender is disqualified from providing representation, a plan must provide for the selection of another attorney in accordance with NRS 7.115 and ~~NRS~~ 171.188.

3. ***Each plan for the provision of indigent defense services must provide for a first tier and second tier of indigent defense representation.*** If a county uses ***multiple*** attorneys who are independent contractors ***for first tier representation*** in lieu of an office of public defender ~~(or if)~~

, the plan must describe how the attorneys will be assigned to cases in the first tier. A first tier consisting of multiple independent attorneys or offices may constitute a first tier and second tier, as determined by the Department. If a plan provides that an office of public defender will provide first tier representation but the public defender is disqualified, a plan must describe the second tier and how attorneys in that tier are assigned cases. The distribution of cases within the first tier and second tier may be made on a rotational basis or in accordance with another method that ensures the fair distribution of cases. Unless an exception is requested from and granted by the Department, a county may not provide in its plan that it will rely upon the roster of attorneys compiled by the Department pursuant to section 30 of LCB File No. R042-20, as amended by section 5 of this regulation, to provide first tier and second tier representation.

4. A plan for *the provision of* indigent defense services must require that an attorney be present at *pretrial release hearings*, initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with all relevant laws, rules of criminal procedure and caselaw ~~{}~~ *and set forth the process for assigning or determining the attorney who will be present. A plan must provide that a* timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. ~~{A plan should ensure the presence of counsel at all other critical stages, whether in court or out of court.}~~

5. This section must not be construed to preclude a defendant from waiving the appointment of an attorney in accordance with subsection 1 of NRS 171.488.

Sec. 4. Section 27 of LCB File No. R042-20 is hereby amended as follows:

Sec. 27. 1. A plan for the provision of indigent defense services must require that representation be provided in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct, ~~and~~ the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court ~~and~~ *and the American Bar Association's Criminal Justice Standards for the Defense Function.*

2. Any plan or contract for the provision of indigent defense services must require the attorney representing the defendant to:

(a) Advise each client not to waive any substantive rights or plead guilty at the initial appearance unless doing otherwise is in the best interest of the client; and

(b) Make all reasonable efforts to meet with each client within the first 7 days following the assignment of the case and, unless there are no significant updates in the client's case, every 30 days thereafter.

3. A plan for the provision of indigent defense services in a county whose population is less than 100,000 must ensure that any client surveys authorized by the Board are provided to a client at the conclusion of his or her representation by an attorney.

Sec. 5. Section 30 of LCB File No. R042-20 is hereby amended as follows:

Sec. 30. 1. To ensure that the ability, training and experience of an attorney in a criminal matter matches the complexity of a case, ~~the attorney~~ *attorneys who provide indigent defense services, including, without limitation, those who are employed by an office of public defender*, must demonstrate compliance with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department on a form approved by the Department. The application must be submitted:

(a) By mail; or

(b) Electronically, as provided on the website of the Department.

2. The Department shall, not later than 30 days after receiving an application:

(a) Review the application and determine the areas of indigent defense services in which the attorney is qualified; and

(b) Provide written notice of the determination of the Department to the attorney.

3. After an attorney submits an application pursuant to this section, the attorney may continue practicing in the areas of indigent defense for which the attorney is seeking the determination of the Department until the attorney receives written notice of the determination.

4. If the Department determines that an attorney is qualified to provide indigent defense services, the Department shall place the name of the attorney and his or her areas of qualification on a roster of attorneys who are eligible to provide indigent defense services that will be used by boards of county commissioners to select the attorneys who will provide indigent defense services for a county. An attorney may, at any time, seek qualification for different or other areas of indigent defense by submitting another application pursuant to this section that demonstrates the additional qualifications.

5. If an attorney disagrees with the determination of the Department regarding the areas in which the attorney is qualified to provide indigent defense services, the attorney may submit a request for reconsideration to the Department not later than 30 days after receiving the determination of the Department. The Board will review any request for reconsideration that is submitted to the Department.

6. ~~{The}~~ *Except as otherwise provided in subsection 7, the* failure of an attorney to submit an application before providing indigent defense services for a county *or municipality* or to practice only within the areas in which the attorney is qualified may result in the exclusion or removal of the attorney, as applicable, from the roster of attorneys who are eligible to provide indigent defense services established pursuant to subsection 4.

7. If an attorney with whom a county has contracted does not have the qualifications necessary to handle the full range of cases required for the contract, the attorney must not be assigned to any case that exceeds his or her level of qualification unless an attorney who is qualified to handle the case is, at the expense of the county, also assigned in the case to act as the first chair. The plan of a county must set forth the procedure for selecting and assigning such an additional attorney in accordance with subsection 4 of section 22 of LCB File No. R042-20, as amended by section 2 of this regulation.

Sec. 6. Section 31 of LCB File No. R042-20 is hereby amended as follows:

Sec. 31. 1. An attorney who seeks to provide indigent defense services to a person charged with a misdemeanor must:

- (a) Be licensed to practice law in the State of Nevada; and
- (b) Have sufficient training or experience to provide competent representation. *For purposes of this paragraph, proof of completion of 6 hours of CLE related to indigent defense services, or full attendance at the annual conference of the Department, during the 12 months immediately preceding the provision of such indigent defense services constitutes sufficient training or experience to provide competent representation*

2. An attorney who is beginning to provide indigent defense services in misdemeanor matters is encouraged to consider seeking the participation of a supervising or more experienced attorney before undertaking representation in a jury trial involving a misdemeanor offense or a misdemeanor offense for which the penalty can be enhanced ~~and,~~ *in accordance with*, if applicable, ~~make a motion for the appointment of such an additional attorney pursuant to NRS 260.060,~~ *the process set forth in the plan for the provision of indigent defense services.*

Sec. 7. Section 32 of LCB File No. R042-20 is hereby amended as follows:

Sec. 32. An attorney who seeks to provide indigent defense services to a person charged with a category B felony for which the maximum penalty is 10 years or less, a category C, D or E felony or a gross misdemeanor must:

1. Meet the following requirements:

(a) Be licensed to practice law in the State of Nevada; and

(b) Have been trial counsel, alone or with other trial counsel, in two or more *criminal* bench or jury trials that were tried to completion; or

2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1.

Sec. 8. Section 36 of LCB File No. R042-20 is hereby amended as follows:

Sec. 36. 1. An attorney who seeks to represent a juvenile who is alleged to be delinquent or in need of supervision must:

(a) Be licensed to practice law in the State of Nevada ~~and~~

(b) Have the knowledge and skills necessary to represent a child diligently and effectively. ~~and~~

~~and~~

(c) ***Be skilled in juvenile defense. For purposes of this paragraph, proof of completion of 2 hours of CLE related to juvenile defense services within the 12 months immediately preceding such representation constitutes sufficient skill in juvenile defense.***

(d) Be familiar with:

(1) The department of juvenile justice services in the county and other relevant state and local programs;

(2) Issues concerning competency and child development;

(3) Issues concerning the interaction between an attorney and a client; and

(4) Issues concerning school-related conduct and zero-tolerance policies specific to juvenile representation.

(e) ***Be knowledgeable about adolescent development and the special status of youth in the legal system.***

2. An attorney who seeks to represent a child in a certification proceeding pursuant to NRS 62B.390, additionally must have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience. ***To obtain the assistance of other counsel with requisite experience, the attorney may submit a request pursuant to a plan for the selection and assignment of an additional attorney in accordance with subsection 4 of section 22 of LCB File No. R042-20, as amended by section 2 of this regulation.***

3. As used in this section, “department of juvenile justice services” has the meaning ascribed to it in NRS 201.555.

Sec. 9. Section 37 of LCB File No. R042-20 is hereby amended as follows:

Sec. 37. 1. In addition to any other requirements provided by law or this chapter, an attorney must:

(a) Have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law and criminal procedure, the rules of evidence, the rules of appellate procedure, ethical rules, local rules and practices and changes and developments in the law. As used in this paragraph, “reasonable knowledge” means knowledge possessed by an attorney who provides competent representation to a client in accordance with Rule 1.d of the Nevada Rules of Professional Conduct;

(b) Have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case and the legal issues concerning defenses to a crime and be reasonably able to litigate such issues effectively; and

(c) Be reasonably able to use the office technology that is commonly used in the legal community and the technology that is used within the applicable court system and thoroughly review materials that are provided in an electronic format.

2. An attorney shall:

(a) Complete, on an annual basis, a minimum of 5 hours of CLE courses relevant to indigent defense services †;

~~(b) Except as otherwise provided in subsection 3,~~ *and* submit proof of compliance with ~~the~~ *such* CLE requirements ~~in paragraph (a)~~ to the Department before January 1 each year by submitting a copy of the annual transcript for the attorney from the ~~State of Nevada~~ Board of Continuing Legal Education †;

~~(1) By~~ *of the State Bar of Nevada by* mail †; or

~~{(2) Electronically,}~~ **electronically**, as provided on the website of the Departmenta ~~{; and~~
~~—(c) Follow the minimum standards of the Board in determining which CLE courses are relevant to the provision of indigent defense services.~~

~~—3.}~~ Any CLE courses provided by the Department count toward satisfaction of the annual CLE requirementa ~~{set forth in subsection 2. If an attorney satisfies the annual CLE requirement through CLE courses provided by the Department, the annual submission of proof of compliance with the CLE requirements required by paragraph (b) of subsection 2 is waived.}~~

(b) Notify the Department or its designee and each county within which the attorney provides indigent defense services if the attorney accepts employment as a prosecuting attorney or judge or is sanctioned by a court or the State Bar of Nevada. An attorney shall provide such notification not later than 72 hours after he or she accepts such employment or is sanctioned.

Sec. 10. Section 40 of LCB File No. R042-20 is hereby amended as follows:

Sec. 40. **1.** The terms of any contract between a county and an attorney who provides indigent defense services as an independent contractor ***in any court within a county*** must avoid any actual or apparent financial disincentives to the obligation of the attorney to provide clients with competent legal services. Such a contract must include, without limitation, the following:

~~{1.}~~ **(a)** The identification of the contracting authority and each attorney subject to the contract.

~~{2.}~~ **(b)** The terms of the contract, including, without limitation, the duration of the contract, any provision for renewal and any provision for terminating the contract by a party.

~~3.~~ (c) The category of cases in which each attorney subject to the contract is to provide services.

~~4.~~ (d) The minimum qualifications for each attorney subject to the contract, which must be equal to or exceed the qualifications required by ~~sections 2 to 45, inclusive, of this regulation,~~ **this chapter**, and a requirement that each attorney maintain the applicable qualifications during the entire term of the contract. If a contract covers services provided by more than one attorney, the qualifications may be graduated according to the seriousness of offense, and each attorney must be required to maintain only those qualifications established for the offense levels for which the attorney is approved to provide indigent defense services.

~~5.~~ (e) The identification of each attorney who will provide legal representation in each category of case covered by the contract , **including, without limitation, any attorney providing such representation as a subcontractor**, and a provision that ensures consistency in representation in accordance with section 26 of ~~this regulation.~~

~~6.~~ **LCB File No. R042-20.**

(f) A provision establishing the maximum workload that each attorney may be required to handle pursuant to the contract based upon the applicable guidelines established by the Board pursuant to section 42 **of LCB File No. R042-20, as amended by section 11** of this regulation , and a provision requiring the reporting of indigent defense data in accordance with sections 43 and 44 of ~~this regulation.~~

~~7.~~ **LCB File No. R042-20.**

(g) In accordance with section 27 **of LCB File No. R042-20, as amended by section 4** of this regulation, a requirement that each attorney provide legal representation to all clients in a

professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court.

~~{8.}~~ (h) The statement of a policy that ensures that an attorney does not provide representation to a defendant when doing so would involve a conflict of interest.

~~{9.}~~ (i) A provision regarding how investigative services, expert witnesses and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with all applicable laws and regulations.

~~{10.}~~ (j) A provision requiring compensation to be provided at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and that is determined after taking into consideration comparable workload, overhead costs, expenses and costs relating to significant attorney travel.

2. Every contract for the provision of indigent defense services, including, without limitation, any subcontract, must be approved by the Department before the contract is executed.

Sec. 11. Section 42 of LCB File No. R042-20 is hereby amended to read as follows:

Sec. 42. 1. The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any office, organization or attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence or representation of clients under the Nevada Rules of Professional Conduct.

2. ~~{At the direction of the Board, the Department shall conduct separate, specific workload studies for counties whose population is less than 100,000 and counties whose population is 100,000 or more to determine workload guidelines and requirements for attorneys. Counties shall ensure that all attorneys providing indigent defense services participate in such workload studies. The results of each study must include a recommendation to the Board for the purpose of establishing}~~ *A plan for the provision of indigent defense services must provide details regarding how the county will comply with any* guidelines ~~{to be used to determine}~~ *adopted by the Board which set forth the* maximum workloads for attorneys providing indigent defense services. ~~{pursuant to subparagraph (4) of paragraph (d) of subsection 2 of NRS 180.320.}~~

Sec. 12. Sections 16, 17, 18 and 19 of LCB File No. R042-20 are hereby repealed.

TEXT OF REPEALED SECTIONS

Sec. 16. 1. The maximum amount that a county is required to pay for the provision of indigent defense services during a fiscal year must not exceed the sum of:

(a) In a county whose population is less than 100,000:

(1) The actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(I) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(II) The lowest union-negotiated cost of living increase for employees for that county.

(b) In a county whose population is 100,000 or more:

(1) The actual costs to the county for providing indigent defense services, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(I) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(II) The lowest union-negotiated cost of living increase for employees for that county.

2. If a county whose population is less than 100,000 chooses, pursuant to section 19 of this regulation, to transfer to the State Public Defender the responsibility of providing representation in:

(a) Direct appeals to the appellate court of competent jurisdiction, the cost of providing representation in those cases is a charge against the State and is excluded from the required maximum contribution of the county.

(b) Death penalty cases, the State Public Defender shall submit to the county an estimate for the representation. The county is responsible for paying 25 percent of the estimate and shall make such a payment in accordance with NRS 180.110. Such payments count towards the maximum contribution of the county.

3. If a county, in its plan for the provision of indigent defense services, follows the recommendations set forth in section 25 of this regulation pertaining to the payment of case-related expenses, such expenses may be a charge against the State and reimbursed to the county in accordance with sections 17 and 18 of this regulation.

Sec. 17. 1. A county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution, as calculated pursuant to section 16 of this regulation, through:

(a) The submission of the annual report containing the plan for the provision of indigent defense services for the county for the next fiscal year as required pursuant to subsection 2 of NRS 260.070; or

(b) Pursuant to NRS 180.450, a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to address immediate needs in a corrective action plan.

2. In accordance with the duty of the Board to review and approve the budget for the Department pursuant to paragraph (f) of subsection 1 of NRS 180.320, any state contribution

requested by a county is subject to the approval of the Board. Any disagreement with respect to a plan for the provision of indigent defense services or state contributions necessary to comply with sections 2 to 45, inclusive, of this regulation will be resolved by the Board.

3.e A county seeking state contributions pursuant to subsection 1 must submit to the Department a financial status report, certified by the board of county commissioners or its designee and in a form approved by the Department, not later than 15 days after the end of each calendar quarter.

Sec. 18. 1. 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.e 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.e 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, 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.a Any unencumbered or unexpended balance of state contributions remaining at the end of a the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.

5.a 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.

Sec. 19. 1. Upon the request of a county whose population is less than 100,000, the State Public Defender may handle for the county all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction.

2. If a county wishes to have the State Public Defender handle all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction, as applicable, the board of county commissioners for the county shall notify the State Public Defender, and such responsibility must be transferred, in accordance with the procedure set forth in subsection 6 of NRS 180.450.

3.a After the responsibility of handling all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction for a county, as applicable, is transferred to the State Public Defender, such responsibility must not be transferred back to the county unless the county receives the approval of the Executive Director of the Department in accordance with NRS 180.460.

Joe Lombardo
Governor



Marcie Ryba
Executive Director

Thomas Qualls
Deputy Director

Peter Handy
Deputy Director

**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8490 | dids.nv.gov

**INFORMATIONAL STATEMENT REQUIRED BY NRS 233B.066
CONCERNING ADOPTED REVISED PROPOSED REGULATION OF THE
BOARD ON INDIGENT DEFENSE SERVICES
LCB FILE NO. R033-23**

The following statement is submitted for the adoption of regulations to Nevada Administrative Code (NAC) Chapter 180.

1. A clear and concise explanation of the need for the adopted regulation:

The need for and the purpose of the proposed regulation and amendment are to:

- Repeal the regulatory maximum contribution formula, as it has been superseded by statute (AB 518).
- Require compliance in the county plan with the caseload/workload standards for Nevada's rural counties as they are adopted by the Board on Indigent Defense Services.
- Set an hourly rate in lieu of the \$100 rate in NRS 7.125 for the 15 rural counties, and for representation in post-conviction petitions for habeas corpus across the state (AB 454); and,
- Amend NAC 180 to make the remaining language clearer and more concise to be consistent with the Board's intent.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

A copy of this notice and the regulation to be Adopted, Amended, and Repealed was on file at the State Library, Archives and Public Records, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the Notice and the Regulation to be Adopted, Amended, and Repealed were available at the Department of Indigent Defense Services, 896 W. Nye, Suite 202, Carson City, NV 89703, and our website dids.nv.gov, for inspection and copying by members of the public during business hours.

A workshop was held on August 3, 2023, in conjunction with the Board of Indigent Defense Services ("Board") Meeting to provide an opportunity to comment on the

proposed regulations. The minutes of the meeting, contain a summary of the discussion held at the Workshop regarding the proposed amendments.

Thereafter, on September 26, 2023, the Director of the Department issued a Notice of Intent to Act Upon a Regulation which incorporated in the proposed regulations, the suggestions of the parties attending the August 3rd Workshop, as well as the recommendations of the Board.

A copy of the minutes of the August 3, 2023, Workshop and Board Meeting, which includes a summary of the public response to the proposed regulations, may be obtained by visiting the Department website at <http://dids.nv.gov/> or by contacting:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 89703
Phone: (775) 687-8490 Email: didscontact@dids.nv.gov

The Notice of Intent to Act Upon the Regulation and the regulations were additionally posted on the Internet at dids.nv.gov and notice.nv.gov, the Administrative Regulation Notices Website, <https://www.leg.state.nv.us/App/Notice/A/>, was on file at the State Library, 100 Stewart Street, Carson City, Nevada for inspection, and was posted at the following locations:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 89703
<http://dids.nv.gov/>

Capitol Building
101 North Carson Street,
Carson City, NV 89701

The Public Hearing was held in conjunction with the November Board Meeting on October 3, 2023. Interested persons were invited to comment at the Public Hearing in written form or in oral presentation. The Board received no public comment.

Recordings of the August 3, 2023, Workshop and the November 3, 2023, Public Hearing can be viewed on our YouTube Channel:

<https://www.youtube.com/channel/UCAGEFbVylncGB1z2zaB4uqw/videos>

3. The number persons who:

a. Attended the hearing:

- i. August 3, 2023, Workshop: 42 participants.
- ii. November 3, 2023, Public Hearing: 37 virtual participants and 0 participants at the physical location.

b. Testified at the hearing:

- i. August 3, 2023, Workshop: 4

ii. November 3, 2023, Public Hearing: 0

c. Submitted to the agency written comments:

i. August 3, 2023, Workshop: No written comments received.

ii. November 3, 2023, Public Hearing: No written comments received.

4. A list of names and contact information, including telephone number, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.

August 3, 2023, Workshop: See Exhibit A.

November 3, 2023, Public Hearing: See Exhibit A.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. No comments were received during the August 3 Workshop nor the November 3, 2023, Public Hearing from affected businesses. A copy of the minutes of the workshop and/or the public hearing may be obtained by contacting:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 8903
Phone: (775) 687-8490 Email: didscontact@dids.nv.gov

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulations were adopted without clarifications.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- a. Both adverse and beneficial effects; and**
- b. Both immediate and long-term effects.**

There are no reasonably foreseen potential economic impacts to small business or the public.

8. The estimated cost to the agency for enforcement of the adopted regulation.

The estimated cost to the agency is unknown at this time.

- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

To our knowledge, the proposed regulation does not duplicate any existing federal, state, or local standards regulating the same activity.

- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

To our knowledge, there are no federal regulations that apply.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulation does NOT establish a new fee nor increase an existing fee.

EXHIBIT A

A list of names and contact information, including telephone number, business address, business telephone number, electronic email address, and name of entity or organization represented, for each person identified in #3 of the Informational Statement.

August 3, 2023, Workshop: Public Comment:

Todd Reese
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Carson City Board of Supervisors
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Nancy Paulson
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Carson City, NV 89701
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Josh Foli
Lyon County Comptroller
27 S. Main Street
Yerington, NV 89447
(775) 463-6510
Email: jfoli@lyon-county.org

November 3, 2023, Public Hearing: Public Comment:

None Received