



1. STATEMENT OF POLICY

Objective:

- i.) 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.
- ii.) The further objective of this Plan is to implement the requirements set forth in the Order entered by the Supreme Court of Nevada on January 4, 2008 in ADKT 411: "In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases."

2. PROVISIONS OF REPRESENTATION

- A. **Mandatory:** Lincoln County shall provide representation for any financially eligible person who:
 - i.) Is charged with a felony or gross misdemeanor;
 - ii.) is charged with a misdemeanor where jail time is mandatory or the prosecutor is seeking jail time;
 - iii.) is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
 - iv.) is a juvenile alleged to have committed an act of delinquency or alleged to be a child in need of supervision;
 - v.) is in custody as a material witness;
 - vi.) 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, or the judge is likely to impose jail time;
 - vii.) faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 - viii.) faces loss of liberty for criminal contempt;



- ix.) has received notice that a grand jury is considering charges against him or her and requests appointment of counsel.
- B. Discretionary: Whenever a court determines that the interests of justice so require, representation may be provided for financially eligible persons who are charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized or any other case in which the court determines in the interest of justice appointment of counsel is appropriate.
- C. Timing of Appointment of Counsel: Counsel shall be provided to eligible persons:
- i.) within 48 hours of formal charges being filed against the person held in custody or as soon as feasible;
 - ii.) when they appear before a judge;
 - iii.) when they are formally charged or notified of charges, if formal charges are sealed; or
 - iv.) when a District Judge or Justice of the Peace otherwise considers appointment of counsel appropriate;
- D. Number and Qualifications of Appointed Counsel:
- i.) one attorney shall be appointed consistent with Section 4 and 5 herein, except Capital Cases;
 - ii.) two attorneys shall be appointed consistent with Section 4 and 5 herein, as soon as possible in all open murder cases which are reasonably believed to result in a Capital Case;
 - iii.) 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.
- E. Eligibility for Appointed Representation:
- i.) Financial Eligibility:
 - a. 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;



- b. "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;
 - 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 for indigency will be subject to a more rigorous screening process to determine if his or her particular circumstances, including seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a "substantial hardship" were they required to retain private counsel.
- ii.) Screening for Eligibility: Defendants shall have immediate access to applications for indigent defense services. No later than 48 hours after arrest, The Court will screen individuals for financial eligibility and provide defendants with a financial affidavit. Upon review of the financial affidavit, and if the defendant meets the criteria listed above, the Court will promptly appoint the contract attorney to represent the defendant.
 - iii.) The contract attorney will provide representation to an indigent defendant at the initial appearance or arraignment, but such attorney should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest.
 - iv.) 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.
 - v.) Indigent Defense Providers must be present at initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with relevant statute, rule of criminal procedure, and caselaw. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. This Plan also ensures the presence of counsel at all other critical stages, whether in or out of court.



3. HIRING PROCESS

- A. Lincoln County will contract with one (1) attorney (hereinafter "Contract Attorney") and one (1) conflict attorney to provide indigent defense services for Lincoln County. The contract will be negotiated between the County and the Attorney. However, any contract entered between the County and Attorney will comply with all requirements of the Nevada Department of Indigent Defense Services.
- B. Appointment of Counsel. Contract Attorney shall then perform a conflict check to determine if any conflict of interest exists that would prevent representation of the defendant. If the Contract Attorney determines that a conflict exists, s/he will notify the Court and the case will be transferred to the Contract Conflict Public Defender. If the contract Conflict Public Defender determines that a conflict exists with his/her office, s/he will notify the Court and transfer the case in LegalServer to the Department of Indigent Defense Services for selection of new counsel. The Court will request the Nevada Department of Indigent Defense Services to select counsel. Counsel shall be selected in the following manner:
- i.) Upon receipt of the above notification, the Department shall select new counsel for assignment from among the panel of attorneys that are located within 3 hours drive time of Lincoln County (In Nevada: Clark County, White Pine County, and in Utah: Iron County and Washington County). Such attorney may accept or reject the assignment of the case. A case shall be deemed rejected if the department does not receive a response within 24 hours.
 - ii.) If attorneys described above are unavailable to take the case, the Department shall select new counsel from the remainder of the panel of attorneys on the Department's list pursuant to NRS 180.430.
 - iii.) The department shall use a rotation system insofar as practicable, but shall ultimately 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 Lincoln County officials, and capacity to take on work.
 - iv.) Upon confirmation of acceptance of assignment by the attorney, 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.



- C. The Department of Indigent Defense Services will maintain a list of attorneys qualified to provide indigent defense services.
- D. 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.

4. TRAINING

Any attorneys contracting with Lincoln County shall meet all requirements for training and experience as directed by the Nevada Department of Indigent Defense Services.

5. 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. Additionally, Appointed Counsel must advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest. Appointed Counsel must make all reasonable efforts to meet with the client within seven days following the assignment of the case and every thirty days thereafter unless there are no significant updates in the client's case.
- B. **Continuity of Representation:** Lincoln County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same Appointed Counsel 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.
- C. **Workload Standard:** The workload of an Appointed Counsel must allow the Appointed Counsel to give each client the time and effort necessary to ensure effective representation. Any Appointed Counsel who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the Appointed Counsel's competence, diligence, or representation of clients.



- D. **No Receipt of Other Payment:** Appointed counsel 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. Attorneys who contract to provide public defense work may engage in the private practice of law that does not conflict with the Attorney's professional services required pursuant to the public defense contract.
- E. **Use of Client Surveys:** Appointed Counsel shall maintain a system for providing Client Surveys to their clients. Appointed Counsel shall make publicly available the policy and procedure for providing surveys. This system shall not interfere with a person's ability to avail themselves of the Client Survey form provided by the Department of Indigent Defense Services (DIDS).

6. 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.

7. PAYMENT OF FEES AND EXPENSES RELATED TO REPRESENTATION

- A. Lincoln County's Plan for the provision of indigent defense services ensures that an attorney has the resources to:
 - i.) Conduct an independent investigation of the charges filed against the client as promptly as practicable and, if appropriate, retain an investigator to assist with the defense of the client; and
 - ii.) Request the assistance of experts when such assistance is reasonably necessary to prepare the defense of an indigent defendant.
- B. Lincoln County will create a line item in its annual budget for one (1) contract public defender and one (1) contract conflict public defender and will ensure that during its annual budget preparation sufficient funds are budgeted for the contract amounts.
- C. Lincoln County will create a line item in its annual budget for the costs of Investigators and Experts and will budget \$30,000.00 annually. Expenditures will be based on the sole discretion of the Public Defender and will be approved through normal budget of the Lincoln County Board of Commissioners.



- D. Lincoln County will create a line item in its annual budget for additional conflict public defenders and will budget \$20,000.00 annually.
- E. Lincoln County will create a line item in its annual budget for the costs of Investigators and Experts for Conflict Public Defender and will budget \$10,000.00 annually.
- F. Disbursements from line items 7(d) and 7(e) will be made by application to the Nevada Department of Indigent Defense Services as set forth in the Selection and Payment Procedures, Attachment A.

8. Data Collection

Providers of indigent defense services in Lincoln County shall use the data collection and case management system provided by the Department at State expense for caseload and time reporting. Such reporting must be kept as set forth by the Temporary Regulations of the Board on Indigent Defense Services.

9. Billing and Reporting

- A. Billing by the Contract Public Defender and the Contract Conflict Public Defender shall be in accordance with their individual contracts. All other billing shall be submitted to the Department of Indigent Defense Services at the conclusion of the case or as interim billing on a monthly basis as set forth in the Selection and Payment Procedures, Attachment A.
- B. Quarterly reporting the Nevada Department of Indigent Defense Services will be completed by the Lincoln County Recorder’s Office with the assistance of the Contract Public Defender.

Approved this 7th day of February, 2022



Chairman
Lincoln County Board of Commissioners