

Mineral 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 regulations implemented by the Board of Indigent Defense Services. This is accomplished in large part by providing a system of appointed counsel that provides competent representation of individuals charged with a crime or a delinquent act.
2. It should be noted that both the ss and conflict public defenders have moderate or small caseloads and can devote the time to make sure their cases are fully satisfied. The public defenders are employed under a contract to devote sufficient time to fulfill his caseload in Mineral County. As stated herein, neither the public defenders nor the conflict public defender will be appointed more than 1392 case hours per year.

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.

III. DEFINITIONS

- A. "APPOINTED ATTORNEY" means and includes private attorneys, the public defenders, and the conflict public defender.
- B. "CONFLICT PUBLIC DEFENDER" means the attorneys contracted with Mineral County to provide conflict defense of indigent defendants. Conflict public defenders should be appointed any time the public defenders are required to withdraw from the case or have a conflict of interest that prevents the appointment of the public defenders. 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. "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).
- D. "JUDGE" means the judge or justice of the court as defined above.
- E. "PRIVATE ATTORNEY" means an attorney appointed from a panel of attorneys that has contracts with Mineral 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.
- F. "PUBLIC DEFENDER" means the attorneys contracted to serve as a public defender. The public defenders 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 defenders 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 Mineral County Law Enforcement Center;
 - 3. Is alleged to have committed a delinquent act;
 - 4. Is in custody as a material witness;
 - 5. Is entitled to appointment of counsel under the Sixth Amendment of the United States Constitution or any provision of the Nevada Constitution; and
 - 6. 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 charged with civil contempt that may result in a loss of liberty; and
3. 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 appearance 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 Justice of the Peace shall conduct the screening for financial eligibility for the services of appointed counsel based upon the provisions set forth in subsection (1) above. This screening will occur at the as set forth in subsection 4 below. The Justice of the Peace shall provide oral notification to the defendant of the right to have counsel appointed. The Justice of the Peace shall discuss the right to have counsel appointed. The Justice of the Peace shall ensure that the defendant is provided with a financial affidavit for appointment of

counsel that shall be signed. If the affidavit is not executed, the Justice of the Peace may canvas the defendant, take other appropriate action, and make a determination.

3. *Appointment of Counsel:* In making the determination to appoint counsel, the Justice of the Peace shall make appropriate findings as to why certain counsel is appointed, and shall be governed, as follows:

- a. Unless a conflict exists, the Mineral County Public Defenders shall be appointed;
- b. If one of the Mineral County Public Defenders determines there is a conflict or that there are two or more defendants charged with a crime due to a mutual course of conduct, the other Mineral County Public Defender shall be appointed. If both Mineral County Public Defenders determine that there is a conflict or due to a mutual course of conduct, there is a need for additional counsel, the Mineral County Conflict Public Defender shall be appointed; and
- c. If the Mineral County Public Defenders and the Mineral County Conflict Public Defender determine there is a conflict or 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.

4. *Time for Eligibility Determinations*

- a. In-Custody Defendants: Defendants will be provided an application for public defender and financial eligibility paperwork on booking in the Mineral County Jail. If an individual remains in a custodial status, the eligibility screening by the Justice of the Peace shall occur within 48 hours from the individual's arrest. If a defendant bails out of jail or is otherwise released 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 Justices Court for counsel at the time of the first hearing.

5. *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 Defenders, contract, or appointed counsel (NRS 62E.300) based on the parent's ability to pay. The appointment of counsel or conflict counsel in Juvenile Delinquency matters shall be handled in the same manner as set forth in Sections V through VIII.

E. Appointment of Counsel: The judge shall determine if the defendant is eligible and make an appointment accordingly in accordance with NRS 171.188. The appointment of counsel or conflict counsel in shall be handled in the same manner as set forth in Sections V through VIII. If the judge determines that the defendant is not eligible, the judge shall deny appointment or may set the matter for a hearing to clarify any concerns that the judge has as to eligibility.

F. NUMBER AND QUALIFICATIONS OF COUNSEL: The Justice of the Peace shall 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.
4. All attorneys assigned shall have the adequate qualifications, as set forth in the Regulations of the Board of Indigent Defense, including 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.

G. First Appearance: The public defender shall provide representation to an unrepresented indigent defendant at the first appearance. If the public defender is not available for any reason then the conflict public defenders shall provide representation to an unrepresented indigent defendant at the first appearance. To avoid a protentional 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 DEFENDER

A. Appointment

The Public Defenders shall be appointed to criminal cases for which they are qualified, pursuant to Section IV(F), and up to a maximum of 1392 case hours per year. At the end of each quarter, the Public Defenders will report to the court their hours for the previous quarter to ensure that cases are not being assigned over the maximum case hours per year.

B. Determination Of Conflict Of Interest

The Public Defenders 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 Defenders to exist, such 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 other Public Defender. If there is a conflict with the other Public Defender, the Court shall then appoint the 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 Defenders 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 the jury room and commissioner rooms that are available to any attorney who has an ongoing case and needs to meet with a client. The jail will allow visits between counsel and their clients in the meeting room in the jail and/or the jury room depending on availability. The Hawthorne Justice Court also provides meeting rooms for attorneys to meet with their clients. The County will identify further resources to provide for confidential spaces for attorneys to meet with their clients.

E. Payment Of Public Defenders

The Public Defenders are compensated through the County's accounts receivable process pursuant to the terms of their contracts. The Public Defenders will submit invoices to the Comptroller for payment on a monthly basis.

F. Payment Of Expert and Investigative Fees

The Public Defenders have a line item within the public defender budget for expert and investigative fees. The Public Defenders may authorize expert or investigative fees up to \$2,500 per case and that expenditure follows the normal vouchering process for departments within county government. Expenditures above \$2,500 will be submitted to DIDS for authorization and the Mineral County Comptroller. DIDS will authorize or deny the expense.

G. Assignment Of Cases to Public Defender

Currently the Public Defenders consists of two attorney spots. Assignment of all eligible clients would be to those attorneys on a rotating basis. If on the rotation, an attorney is to be appointed but does not possess the necessary qualifications, as set by DIDS, the case will be assigned to the other attorney in the rotation that has the qualifications.

Efforts will be made to ensure that regardless of qualifications, each attorney receives an equal appointment of cases or case hours equivalent.

H. Selection Of Public Defender

The person who will fill the position of Public Defender shall be a qualified attorney selected by the County Commissioners. The County Commissioners shall consider relevant factors including experience, workload capacity, location, and the factors set forth in NAC 180, Sec. 22(3). The appointment may be for a term of years and may be renewed from time to time.

VI. APPOINTMENT OF CONFLICT PUBLIC DEFENDER

A. Appointment Of Conflict Public Defender

Upon determination by the Public Defenders of a conflict, where three individuals are alleged to have acted in concert in a criminal action, or where the Public Defenders has exceeded their maximum allowed case hours, the Conflict Public Defender shall be appointed. The Conflict Public Defender will be appointed to criminal cases for which they are qualified, pursuant to Section IV(F), and up to a maximum of 1392 case hours per year. At the end of each quarter, the Conflict Public Defender will report to the court their hours for the previous quarter to ensure that cases are not being assigned over the maximum case hours per year.

B. Determination Of Conflict Of Interest

The 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 Conflict Public Defender to exist, such 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 refer the case to DIDS for appointment of a pool attorney. In no instance, shall the 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 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 the jury room and commissioner rooms that are available to any attorney who has an ongoing case and needs to meet with a client. The jail will allow visits between counsel and their clients in the meeting room in the jail and/or the jury room depending on availability. The Hawthorne Justice Court also provides meeting rooms for attorneys to meet with their clients. The County will identify further resources to provide for confidential spaces for attorneys to meet with their clients.

E. Payment Of Conflict Public Defender

The Conflict Public Defender is compensated at the rate set by contract between the County and the attorney. The Conflict Public Defender will submit the request for reimbursement on a monthly basis to DIDS. Such invoices shall be submitted with appropriate backup within a reasonable amount of time. DIDS shall submit all approved invoices to the Mineral County Comptroller.

F. Payment Of Expert and Investigative Fees

The Conflict Public Defender has a line item within the public defender budget for expert and investigative fees. The Conflict Public Defender may authorize expert or investigative fees up to \$2,500 per case and that expenditure follows the normal vouchering process for departments within county government. Expenditures above \$2,500 will be submitted to DIDS for authorization and the Mineral County Comptroller. DIDS will authorize or deny the expense.

G. Assignment Of Cases Within Conflict Public Defender

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

H. Selection Of Conflict Public Defender

The person who will fill the position of Public Defender be a qualified attorney selected by the County Commissioners. The County Commissioners shall consider relevant factors including experience,

workload capacity, location, and the factors set forth in NAC 180, Sec. 22(3). The appointment may be for a term of years and may be renewed from time to time.

VII. APPOINTMENT OF PANEL ATTORNEYS

A. Appointment of Counsel

A panel attorney shall be appointed when the Public Defenders and the Conflict Public Defender are conflicted, where three individuals are alleged to have acted in concert in a criminal action, where they have exceeded their maximum allowed case hours, or they are not qualified.

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 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 notify DIDS who will select a Panel Attorney for the Court to appoint. 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 the jury room and commissioner rooms that are available to any attorney who has an ongoing case and needs to meet with a client. The jail will allow visits between counsel and their clients in the meeting room in the jail and/or the jury room depending on availability. The Hawthorne Justice Court also provides meeting rooms for attorneys to meet with their clients. The County will identify further resources to provide for confidential spaces for attorneys to meet with their clients.

E. Payment Of Panel Attorney

The panel attorney is compensated at the rate set by DIDS through the County's standard vouchering process. The Attorney will submit the request for reimbursement on a monthly basis to DIDS. Such invoices shall be submitted with appropriate backup within a reasonable amount of time. DIDS shall submit all approved invoices to the Mineral County Comptroller.

F. Payment Of Expert and Investigative Fees

The panel attorney has a line item within the public defender budget for expert and investigative fees. The panel attorney may authorize expert or investigative fees up to \$2,500 per case and that expenditure follows the normal vouchering process for departments within county government. Expenditures above \$2,500 will be submitted to DIDS for authorization and the Mineral County Comptroller. DIDS will authorize or deny the expense.

G. Assignment Of Cases Within Panel Attorneys

Cases shall be assigned to panel attorneys by DIDS under their regulations.

H. Selection Of Panel Attorneys

The person who will fill the position of Panel Attorney for a specific case shall be selected by DIDS and appointed by the Court.

VIII. TRAINING AND MENTORING

- A. Mentoring Programs: If an attorney wishes to become qualified for one of the categories of cases, the attorney 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.

IX. DUTIES OF INDIGENT DEFENSE COUNSEL

A. Standards Of Performance

Services rendered to an indigent defendant by appointed counsel shall be commensurate with those rendered if were counsel 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 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 Mineral County is currently premised on continuity of representation by a single attorney at all stages of the representation.

C. 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.

D. Private Practice Of Law:

Unless otherwise prohibited by law, private practice of law is expected.

E. Use Of Client Surveys:

At the conclusion of representation, counsel may provide the client with a copy of the client survey authorized by BIDS. 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.

F. Reporting

Appointed counsel shall keep records in accordance with the section XII Records of this Plan.

X. BAIL HEARINGS

The Justice of the Peace shall make arrangements to include counsel at the first appearance for purposes of bail determinations. 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 using audiovisual communications to allow counsel to appear.

XI. 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. 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 Regulations the DIDS.

XII. POINT OF CONTACT

The point of contact for this plan shall be the Clerk of the Board of Mineral County Commissioners.

XIII. 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 the Public Defenders and the Conflict Public defender/Panel Attorneys; and
3. The County has created a budget for investigators and experts for the public defender and appointed counsel. Expenditures shall be handled in accordance with the provisions of this Plan.

XIV. EFFECTIVE DATE

This plan shall be effective on October 2, 2024. The County may review the plan annually and the annual plan, if changed, shall be submitted by May 1 of each year.

XV. COSTS

The projected costs for Indigent Defense in Mineral County for FY24-25, as budgeted in early 2024:

Public Defenders	
Contracts	180,000
1st Alternate PD Hrly Est	30,000
Experts/Investigators	30,000
	240,000