



The Douglas County Plan for the Provision of Indigent Defense Services

Updated 10/03/2024

The Indigent Defense Services Plan (“Plan”) of Douglas County provides a plan for when counsel is required to be appointed for persons to whom indigent defense services may be provided under section 180.004 of the Nevada Revised Statutes (“NRS”). This Plan is designed to meet the requirements of NRS 260.070(2) and to comply with the Nevada Supreme Court Rule Change (“ADKT”) No. 411, dated October 15, 2008.

I. RECITALS

- A. The Board of Indigent Defense Services (“BIDS”) requires Douglas County (the “County”) to amend its adopted Plan for Indigent Defense Services to include a plan for how the County intends to comply with BIDS’ National Center for State Courts (“NCSC”) Workload Study by November 1, 2024. Douglas County has significant concerns regarding the methodology used and the conclusions reached in the NCSC Workload Study. Rather than basing the adopted standards on an independent review and evaluation of the quality of legal services provided in each jurisdiction, the BIDS instead chose to adopt a maximum workload standard of 1,392 hours per full time equivalent (FTE) contract attorney and to set a minimum number of FTE units for each county.
- B. Douglas County also has significant concerns about a state agency having the power to authorize the expenditure of county funds or dictate or override the autonomy of the elected or appointed officials of a Nevada county. As such, this plan is not intended to authorize any expenditures of county funds that are not authorized by elected or appointed persons in Douglas County. It is not the desire or purpose of the Douglas County Board of County Commissioners to authorize a state agency to expend county monies.
- C. The functioning of the broader representation and defense services in Douglas County relies upon Appointed Attorney representing parents in NRS Chapter 432B (Child Abuse and Neglect) actions. Portions of this Plan are contingent upon the State of Nevada paying for the increases in the budgetary amounts caused by the adoption of this Plan. In the event that the State of Nevada does not authorize the increase in expenditures, portions of this Plan may be eliminated.

II. STATEMENT OF POLICY

A. Authorities:

- 1. NRS 7.125.
- 2. NRS 180.320(2).
- 3. Nevada Department of Indigent Defense Temporary Regulation Section 23.

4. *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411.

B. Objectives

The objective of this Plan is to continue to provide for 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 Attorney, will not be deprived of any element of representation necessary to an adequate defense because the accused are financially unable to pay for adequate representation. The Plan, and any attorneys providing indigent defense services pursuant to this Plan, must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

III. DEFINITIONS

- A. "Appointed Attorney" includes private attorneys, both contracted and hourly.
- B. "Appointed Attorney Program Coordinator" or "Coordinator" performs such duties and responsibilities as assigned by the County Manager as are reasonably necessary to oversee Douglas County's indigent defense program including assigning cases on a rotating basis among the contract Appointed Attorneys to ensure competent legal representation; monitoring case reporting requirements from attorneys; approving of and overseeing the use of substitute attorneys for the contract Appointed Attorneys; and all other properly related matters. As the Department of Indigent Defense Services' ("DIDS") designee, this position will work in coordination with DIDS to ensure requested data is provided to DIDS.
- C. "Representation" includes counsel and investigative, expert, and other services.

IV. PROVISIONS OF REPRESENTATION

- A. Mandatory: Douglas County shall provide representation for any financially eligible person who:
 1. is charged with a felony or gross misdemeanor;
 2. is charged with a misdemeanor where jail time is mandatory or the prosecutor is seeking jail time;
 3. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;

4. is a juvenile alleged to have committed an act of delinquency or alleged to be a child in need of supervision;
5. is party to a dependency case where termination of rights is a possibility;
6. is subject to commitment pursuant to NRS 433A.310;
7. is in custody as a material witness;
8. 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;
9. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
10. faces loss of liberty for criminal contempt;
11. 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 any financially eligible person who:

1. is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;
2. is a party to a dependency case in which termination of parental rights is a possibility;
3. is or has been called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
4. any other case in which the court determines in the interest of justice appointment of counsel is appropriate.

C. Timing of Appointment of Counsel: An Appointed Attorney shall be provided to eligible persons:

1. within 72 hours as soon as feasible after the individual's first appearance before a judge; or
2. when they are formally charged or notified of charges if formal charges are sealed; or

3. when a Justice of the Peace or District Judge otherwise considers appointment of counsel appropriate.

D. Number and Qualifications of Appointed Attorney:

1. Appointment: One attorney shall be appointed consistent with Section 4 and 5 herein, except Capital Cases;
2. Notice to DIDS: The Appointed Attorney Coordinator shall, as soon as possible, refer all open murder cases which are reasonably believed to result in a Capital Case to the State Office of the Public Defender for representation in accordance with Nevada Supreme Court Rule 250;
3. Notice to DIDS: The Appointed Attorney Coordinator shall also refer all appellate and parole violation cases to the State Office of the Public Defender for representation as soon as possible.

E. Eligibility for Appointed Representation:

1. 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 service 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 the accused’s 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.
2. Screening for Eligibility: Within 48 hours, the Court Administration, through Pretrial Services, or Appointed Attorney Coordinator, shall conduct screening for financial

eligibility and provide a recommendation to the court with regard to eligibility of the defendant for the services of an Appointed Attorney based upon the provisions set forth above. An Appointed Attorney may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.

3. Automatic Eligibility: A minor alleged to have committed an act of juvenile delinquency, or alleged to be a child in need of supervision is automatically eligible for an Appointed Attorney because the presumption of indigency always accompanies any charges filed against a minor.

V. APPOINTMENT OF PRIVATE ATTORNEYS

A. System of Selection for Court Appointed Attorneys

1. As required, but not less than every three (3) years, Douglas County will recruit qualified attorneys, that meet the standards of BIDS, to provide indigent defense services on a contract basis.
2. Recruitment will take place during the spring or as required, with annual contracts beginning July 1st of each fiscal year.
3. Attorneys interested in providing indigent defense services on a contract basis will provide Letters of Interest to the Douglas County Manager's Office and complete the Rural County Application for List of Qualified and Appointed Attorney maintained by DIDS for consideration.
4. Attorneys must demonstrate compliance with the standards and regulations of BIDS pertaining to training, education, and qualifications by submitting an application to DIDS.
5. The Appointed Attorney Selection Committee ("AASC") will consist of the Appointed Attorney Coordinator, the County Manager, and no less than three members selected by the County Manager. The AASC shall review the qualifications of applicants for contract or hourly appointments, review the list of attorneys from which appointments are made in hourly cases, and determine which attorneys shall be recommended to the Douglas County Board of Commissioners for appointments.
6. The AASC shall be made up of no less than three (3) members who:
 - (a) have no pecuniary interest in the outcome of the attorney selection or performance evaluation process;

- (b) have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;
 - (c) are not directly related to the judiciary or any prosecution function; and
 - (d) have an interest in the variety of types of cases that are represented by the appointed counsel lists to be selected by the AASC.
7. On an ongoing basis, the AASC shall:
- (a) meet at least once a year and shall solicit input from judges, and others familiar with the practice of criminal defense, juvenile law and family law where appointed counsel are utilized;
 - (b) review any complaints from clients;
 - (c) review the history of participation in training of each applicant and each contract or hourly attorney receiving appointments;
 - (d) determine eligibility and recommendation of appointed counsel for new and continued participation; and
 - (e) bring forward recommendations to the Board of County Commissioners regarding the need for additional Appointed Attorney Contracts and possible changes to the Douglas County Plan for the Provision of Indigent Defense Services as necessary.
8. While an Appointed Attorney may receive assistance from associate attorneys, participants in a mentorship program, or other attorneys deemed qualified by the AASC, in carrying out his/her responsibilities, Appointed Attorneys cannot delegate responsibilities for representation to another attorney. All substantive court appearances must be made by an attorney who has been determined to be qualified by the AASC.
9. Complaints from clients, judges or the public about representation by an Appointed Attorney shall be transmitted to the Coordinator for consideration by the AASC in evaluation of Appointed Attorney.

B. Contract Attorneys

1. Douglas County shall contract for the appointment of qualified attorneys;

2. Douglas County Appointed Attorney compensation may be based on a flat fee, an hourly basis, or a combination of both. If the contract is based on a flat fee, the contract should consider, but not be limited to, the following factors:
 - (a) the average overhead for criminal defense practitioners in the locality;
 - (b) the number of assignments expected under the contract;
 - (c) the hourly rate paid for all Appointed Attorneys;
 - (d) ensure the Appointed Attorney will comply with the Nevada Rules of Professional Conduct, including the duty of diligence (NRPC Rule 1.3) and competence (NRPC Rule 1.1);
 - (e) allow for the modification of attorney's fees for extraordinary cases;
 - (f) allow for investigative and expert witness fees; and
 - (g) the ability of the Appointed Attorney to comply with the Performance Standards for Appointed Attorney as adopted and amended by the Nevada Supreme Court.
3. Douglas County shall contract with attorneys as an Appointed Attorney only after the attorney has been qualified by the AASC. Because there is currently an urgent need for qualified indigent defense counsel in several rural counties across the state, if the county is unable to recruit sufficient qualified Court Appointed Attorneys, the county will continue to recruit for qualified attorneys until such time a selection can be made;
4. The contract must be subject to termination annually or sooner, if determined by the AASC that an Appointed Attorney is not abiding by the standard guidelines for qualification of appointed counsel;
5. The payment of fees and expenses of contracted an Appointed Attorney by Douglas County shall be governed by contract between counsel and Douglas County.
6. The contract shall exclude appointment in cases with the potential of a life sentence and capital cases.

C. Hourly and Capital Case Attorneys:

1. If an Appointed Attorney cannot handle the case, or the Appointed Attorney Program Coordinator determines the case is not appropriate for an Appointed Attorney to handle, alternative legal representation will be selected by the Appointed Attorney Program Coordinator as follows:

- (a) The Appointed Attorney Program Coordinator shall select an alternative Appointed Attorney, in consecutive order, from the hourly list.
 - (b) However, if the nature of the case requires that lead counsel be selected from a Capital Case qualified list, the Appointed Attorney Program Coordinator shall immediately refer the case to the State Office of the Public Defender for representation in accordance with Nevada Supreme Court Rule 250.
- 2. The payment of fees and expenses of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Attorney Program Coordinator.
 - (a) Such invoices shall be submitted no later than ten days after the end of the month in which the services were rendered.
 - (b) The Coordinator shall approve for payment all reasonable attorney's fees requested. In reviewing for reasonableness, the Coordinator may consider factors such as: the average case times as determined by workload analysis, time and skill required, complexity of the case, and experience and ability of the Appointed Attorney. The Coordinator may request additional information where necessary. In the event the Coordinator denies or modifies the request, an explanation shall be provided to the Appointed Attorney, with a copy to the County Manager and DIDS, explaining why the denied portion of an invoice was not reasonable.
- D. Compensation of Court Appointed Attorney: Douglas County agrees to pay contract attorneys and/or panels of private attorneys at a rate equal to the prevailing hourly compensation rate for attorneys appointed to the Criminal Justice Act Panel at the time such services are provided, or a higher rate as warranted by complexity of a case or scarcity of available qualified attorneys. The County will make the payment to contract attorneys and/or panels of private attorneys on a quarterly basis on the first day of the first month of the quarter.
- E. Conflict of Interest Checks: Appointed Attorney shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant. If appointed, counsel determines that such a conflict exists, the Appointed Attorney shall bring this information as soon as possible to the relevant court. In no instance, shall a single attorney or law firm be appointed to represent co-defendants in a case. The Douglas County District Attorney's office shall have no authority to determine or recommend whether or not the Appointed Attorney has a conflict of interest.
- F. Payment of Fees and Expenses of Appointed Attorney: Douglas County agrees to budget for case-related expenses in the amount of \$100,000. Attorneys may secure

reimbursement for extraordinary investigative costs, expert witness fees or other necessary services. Any payment for extraordinary costs or fees shall be paid only when submitted and approved by the Appointed Attorney Program Coordinator.

1. Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:
 - (a) Pre-authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars shall be submitted to the Coordinator for pre-authorization.
 - (b) The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services
2. Reasonableness Review: All Case-Related Expenses are subject to the Coordinator's review for reasonableness. Invoices shall be submitted for such review no later than thirty days following the termination of the representation. Any requests for expenses not timely submitted shall be waived.

G. 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 Attorney.

1. Within the Judicial Law Enforcement Center (JLEC) in Minden, private meeting rooms are available for meetings between an Appointed Attorney and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.
2. Within the Tahoe Township Justice Court in Stateline, private meeting rooms are available for meetings between an Appointed Attorney and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.

H. Complaints by Clients: Appointed Attorney shall maintain a system for receipt and review of written complaints made by clients. Appointed Attorney shall make publicly available the policy and procedure for receiving and reviewing written complaints. This system shall not interfere with a person's ability to avail themselves of the complaint process provided by DIDS or the State Bar of Nevada.

VI. TRAINING

- A. Appointed Attorney must meet all requirements for training and experience as promulgated by DIDS regulations.

VII. DUTIES OF INDIGENT DEFENSE COUNSEL

- A. Standards of Performance. Services rendered by Appointed Attorney 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 Attorney 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 Attorney 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: Douglas County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same Appointed Attorney represents a defendant through every state of the case without delegating the representation to others, except that administrative and other tasks that do not affect the rights of the defendant.
- C. Workload Standard: The workload of an Appointed Attorney must allow the Appointed Attorney to give each client the time and effort necessary to ensure effective representation. Any Appointed Attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the Appointed Attorney's competence, diligence, or representation of clients. Douglas County will provide the maximum workload guidelines as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.
- D. In Custody Arraignments: The Appointed Attorney Program Coordinator shall ensure the provision of Representational Services for all Eligible Clients who are in custody and require a bail hearing. If the Coordinator is unable to assign an attorney to be present at initial appearances and arraignments, the Coordinator may be present. Either the assigned Appointed Attorney or Coordinator must be prepared to address appropriate release conditions in accordance with relevant statute, rules of criminal procedure and caselaw. If the Coordinator provides these services, the Coordinator should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of the defendant. This plan ensures the presence of legal counsel at all other critical stages, whether in or out of court.
- E. No Receipt of Other Payment: Appointed Attorney may not require, request, or accept any payment or promise of payment, or any other valuable consideration, for providing legal representation under the appointment unless such payment is approved by order of the court.

- F. Private Practice of Law: An Appointed Attorney may engage in the private practice of law which does not conflict with attorney's professional services required pursuant to the contract.
- G. Use of Client Surveys: Appointed Attorney shall maintain a system for providing Client Surveys to their clients. Appointed Attorney 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 DIDS.
- H. Caseload Reporting: Appointed Attorney shall report caseload data and times as promulgated in DIDS' regulations.

VIII. APPOINTED ATTORNEY PROGRAM COORDINATOR

- A. Selection: Douglas County will contract with a lawyer to serve as the Appointed Attorney Program Coordinator. The terms of this contract will be determined by this plan, Douglas County, and the Appointed Attorney Program Coordinator, but in no event will this Appointed Attorney Program Coordinator be directly involved in direct representation in Appointed Attorney cases.
- B. Duties:
 1. The Appointed Attorney Program Coordinator shall have all the duties and responsibilities stated in the various sections of this plan.
 2. The Appointed Attorney Program Coordinator shall maintain the list of all attorneys approved by the AASC for contract, hourly, and capital case appointment. In addition, the Appointed Attorney Program Coordinator shall maintain appropriate records to reflect the cases and dates to which each attorney has been appointed.
 3. When notified of the need for representation, the Appointed Attorney Program Coordinator, shall select, in order and as more fully described herein, the next available attorney from the list of those attorneys qualified to provide representation as approved by the AASC in accordance with Section 4 of this Plan. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Coordinator 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.
 4. The Appointed Attorney Program Coordinator shall be responsible for approving the claim for payment of each attorney and any expert or other service fees at the

conclusion of Appointed Attorney's representation or, if appropriate, periodically during Appointed Attorney's representation, as specifically discussed herein.

5. The Appointed Attorney Program Coordinator will work with the Department of Indigent Defense Services to provide any information requested.

IX. EFFECTIVE DATE

- A. The Douglas County Plan for the Provision of Indigent Defense Services is approved on October 3, 2024.