



Elko County
Manager's Office
Delivering Indigent Defense Services (DIDS) Plan
540 Court Street, Elko, NV 89801



DELIVERING INDIGENT DEFENSE SERVICES

Elko County Alternate Public Defender Plan

MARCH 1, 2023
ELKO COUNTY
540 Court Street, Suite 101
Elko, NV 89801



Elko County Delivering Indigent Defense Services Plan

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2 HISTORY OF REVISIONS

Date	Version	Comments
7/1/2021	2021	Approved and Accepted by BOCC
3/1/2023	2023	Approved and Accepted by BOCC

3 CONTACTS

Administrator	Elko County Manager Amanda Osborne aosborne@elkocountynv.net (775) 748-0204
Procedures Manager:	Elko County Fiscal Affairs
File Name:	Elko County Delivering Indigent Defense Services (DIDS)
Direct Inquires:	Elko County Comptroller Susan Paprocki (775) 748-0221 Or Elko County Grants and Contract Manager Abigail Wheeler (775) 748-0359
Requirement for document acceptance and changes:	This document must be reviewed annually and approved by the Elko County Manager. The Elko Board of County Commissioners must approve changes.



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4 CERTIFICATION OF DELIVERING INDIGENT DEFENSE SERVICES

This is to certify that I have reviewed the Delivering Indigent Defense Services (DIDS) submitted herewith and to the best of my knowledge and belief:

This document is the County's application to the Nevada Department of Indigent Defense Services (NV DIDS)'s requirements that each county has a DIDS Plan. Generally, this plan is governed by Elko County, Nevada Department Indigent Defense Services, Nevada Revised Statutes, and Nevada Supreme Court Rules (specifically 250), as these various rules uphold the constitutional right of all persons accused of a crime under the law.

As the Authorized Representative of Elko County, a political subdivision of the State of Nevada, I hereby certify that this Delivering Indigent Defense Services Plan is compliant with the overall structure of the Federal and State regulations upholding the right of a person accused of a crime to have access to affordable defense.

I declare that the foregoing is true and correct.

Governmental Unit: Elko County

Signature: _____

Date of Execution: _____

Name of Official: Amanda Osborne

Title of Official: Elko County Manager

Effective Date: Beginning at the date of execution above and for one year. Delivering Indigent Defense Plan will be reviewed and certified annually. The document will be taken to the BOCC for approval if changes are required.



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5 INTRODUCTION

The purpose of the Delivering Indigent Defense Services (DIDS) Plan (hereinafter referred to as “DIDS Plan” or “the Plan”) is to achieve equality for all persons before the law. Elko County shall collaborate with the Nevada Department of Indigent Defense Services (hereinafter referred to as “NV DIDS”) to execute this plan. The plan enables eligible clients to receive an array of constitutional defense services from appointed counsel without wasting public resources. The Elko County Manager Office's goals, in cooperation with the Judicial system, are:

- Meet the constitutional requirements of providing appointed counsel while not creating any economic disincentive or impairing the ability of appointed counsel to provide effective representation
- Promote the integrity of the relationship between an appointed attorney and a client
- Supply the necessary resources for reunifying families
- Rehabilitate people to promote community safety and personal responsibility
- Divert defendants from incarceration and minors from the adult criminal system

Elko County shall administer this plan to ensure the Elko County Public Defender (ECPD)'s Office and other appointed counsel are free from political and undue budgetary influence and are subject to judicial supervision only in the same manner and to the same extent as a retained counsel or a prosecuting attorney.

Elko County shall manage this plan with consistency and fiscal responsibility, holding Contractors responsible for carrying out the job they were hired to do with zeal and competence.

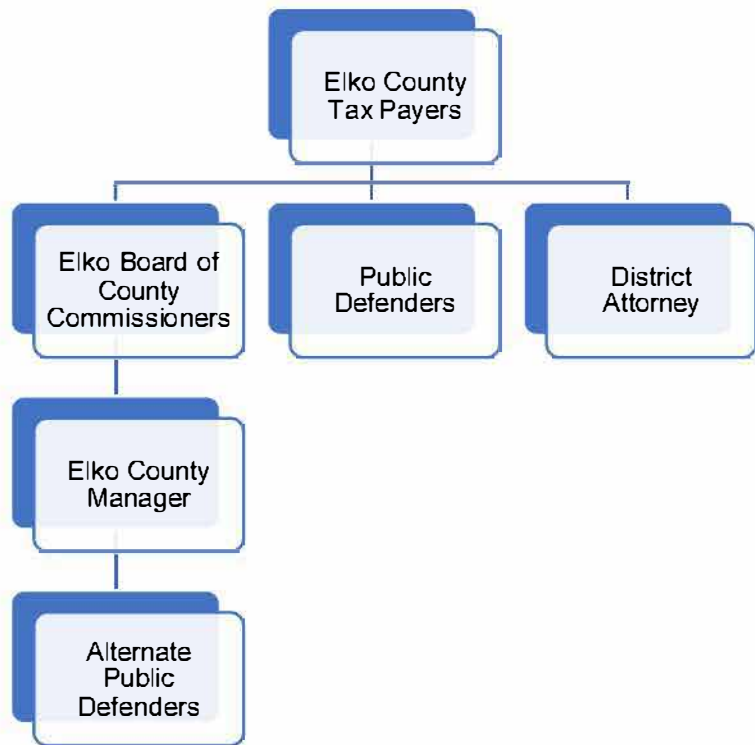
Elko County's DIDS Plan is based on the requirements of appointed counsel deriving from the U.S. and Nevada State Constitutions, the Nevada Revised Statutes, the Nevada Administrative Code (NAC), Nevada and Fourth Judicial District County Rules, Nevada Supreme Court Rules of Criminal Procedure, the NV DIDS Regulations (hereinafter referred to as the “Regulation” or “Regs”).



6 ORGANIZATION

The chart to the right shows how the Elko County Manager's Office participates in the alternate public defender contracts. The U.S. Justice System is based on autonomous legal departments and courts. They must not unduly influence one another in carrying out their constitutional duties.

Therefore, the Elko County Manager's Office must participate in contracting for Alternate Public Defenders to safeguard the legal departments' independence.



7 APPLICABILITY

This plan is in effect when the court(s) determines that a defendant is an indigent, or eligible client, according to Section 6 of the Reg. In some cases, the ECPD will represent the eligible defendant. Suppose the Public Defender determines a conflict of interest during the Conflict-of-Interest Analysis. In that case, they will report it to the relevant court and Elko County Managers Office and refer it to NV DIDS to appoint an alternate public defender.

8 DEFINITIONS

As used in this Agreement, the underlined words below shall have the following meanings:

1. **Appointed Counsel:** Includes the Elko County Public Defender (ECPD) and staff attorneys, and appointed private attorneys, both contracted and hourly.
2. **Appointed Counsel Program Coordinator (ACPC) (or designee):** The Nevada Department of Indigent Services (NV DIDS) will act as the ACPC, overseeing the Indigent Defense Services, including assigning cases among qualified attorneys ensuring equitable distribution. ACPC will monitor case reporting requirements from Contractors, approval, oversight of the use of substitute attorneys, and other related matters.
3. **Ancillary Services:** Defense services paid for in addition to attorney's fees: (1) investigator services, (2) expert services, (3) and any other expenses that the appointed



attorney can reasonably justify as needed for effective assistance of counsel. Also known as Case-Related Expenses.

4. **Case:** A "Case" shall have the meaning prescribed in Sec. 4 of the Regulations.
 - a. **Misdemeanor Case:** A Case in which the highest charge is a Misdemeanor.
 - b. **Category B, C, or E Felony or Gross Misdemeanor Case:** A Case in which the highest charge is a gross misdemeanor or a Category B, C, D, or E Felony for which the maximum penalty is less than ten (10) years imprisonment.
 - c. **Category B Felony (10+ year maximum):** A Case in which the highest charge is a Category B felony for which the maximum penalty is greater than ten (10) years imprisonment.
 - d. **Non-Capital Category A Case:** A Case in which the highest charge is a non-capital Category A felony.
 - e. **Capital Case:** A case with the highest charge is a Capital A felony.
 - f. **Juvenile Proceedings:** A Case arising under NRS 432B and/or a Case in which a juvenile is alleged to be delinquent or in need of supervision.
 - g. **Appeal:** Any appeal of interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
5. **Case-Related Expenses:** Expenses necessary to provide an appropriate defense other than attorneys' fees. Such expenses may include, without limitation, fees for investigators, expert witnesses, forensic services, photocopying, and transcription. Contractor travel expenses may be considered a case-related expense if the Contractor must travel one hundred (100) miles or more from the Elko County Courthouse. Case-Related expenses are defined in the Alternate Public Defender Services Agreement. Also known as "Ancillary Services."
6. **Case Acceptance Rate:** Acceptance of at least seventy-five percent (75%) of total cases offered to the Qualified Attorney over a calendar year. The Case Acceptance Rate will be calculated at the beginning of the year following the close of the prior year by March 30th. The rate will be extrapolated from the quarterly reports. See 12.7 (Reporting).
7. **Department:** The Nevada Department of Indigent Defense Services.
8. **ECPD:** Elko County Public Defender, including the Chief and staff.
9. **Eligible Client:** An indigent person whom a Reviewing Authority has determined to be eligible for a court-appointed attorney pursuant to Section 6 of the Permanent Regulations of the Board of Indigent Defense Services in a Case arising in a court of law within Elko County.
10. **Elko County Delivering Indigent Defense Services (DIDS) Plan (AKA the "Plan"):** A written document outlining the plan for Elko County providing indigent defense services (This Plan).



11. **Expert Witness:** A person qualified by knowledge, skill, experience, training, or education to render an opinion on scientific, technical, or other specialized matters.
12. **Indigent:** A person who is unable, without substantial hardship to themselves or their dependents, to obtain competent, qualified legal counsel on their own.
13. **Investigator:** A person licensed by the state of Nevada who is qualified to secure evidence and subpoena witnesses.
14. **Final Adjudication:** "Final Adjudication" shall have the meaning prescribed to it in Section 43(4)(d) of the Regulations.
15. **Qualified Attorney:** An attorney approved by the Department to provide indigent defense services within specific categories of cases as outlined in the Regulations.
16. **Regulations or Reg.:** The Permanent Regulations of the Board of the Indigent Defense Services, as amended.
17. **Representational Services:** All services, part and parcel of the Contractor's delivery of competent, zealous legal representation to Eligible Clients under this Agreement. Such services may include, without limitation: investigation; interviews of clients and potential witnesses; review of physical evidence; legal research; preparation of pleadings, briefs, correspondence, exhibits, or other documents; preparation for and attendance at hearings and conferences; expert witness selection, discovery, and preparation; pretrial advocacy; trial advocacy; sentencing advocacy; appellate advocacy; plea bargaining; and any and all other services needed to provide competent, zealous legal representation from the beginning of a Case through Final Adjudication and, if applicable, through Appeal.
18. **Reviewing Authority:** The judge, justice, or master presiding over a Case arising in a court of law within Elko County, determining the need for indigent services.

9 PROVISIONS OF REPRESENTATION

9.1 MANDATORY:

Elko County shall provide representation for any financially eligible person who:

- A. Is confined and entitled to prompt, counseled, adversarial bail hearing
- B. Is charged with a:
 1. felony or gross misdemeanor
 2. misdemeanor with a minimum jail sentence
 3. misdemeanor where the prosecution is seeking jail time (incarceration)
- C. Is alleged to have violated probation or other court supervision, and jail time or a sentence of confinement may be imposed
- D. Is a juvenile alleged to have committed an act of juvenile delinquency or alleged to be a child in need of supervision
- E. Is a party to a dependency case where termination of rights is a possibility



- F. Is subject to commitment per NRS 433.310 and NRS 433.270
- G. Is in custody as a material witness
- H. Is entitled to appointment of counsel, or the judge is likely to impose jail time
- I. Faces the loss of liberty in a case, and Nevada law requires the appointment of counsel
- J. Faces the loss of liberty for criminal intent
- K. Has received notices that a grand jury is considering charges against them and requests an appointment of counsel

9.2 DISCRETIONARY:

Whenever a court determines that the interests of justice so require, Elko County may provide representation for any financially eligible person who:

- A. Is charged with a misdemeanor, infraction, or code violation that a sentence of confinement is authorized
- B. Has been called as a witness before a grand jury, a court, or any agency that has the power to compel testimony, and there is reason to believe, either before or during testimony, that the witness could be subject to criminal prosecution, a criminal contempt proceeding, or faces a potential loss of liberty
- C. Faces any other case where the interest of justice requires the appointment of counsel

9.3 TIMING OF APPOINTMENT OF COUNSEL:

- A. When Elko County shall provide counsel:
 - 1. Elko County shall provide an appointed attorney at an indigent person's first appearance before a judge or at least within forty-eight (48) hours after being confined when:
 - a. They are formally charged or notified of charges if formal charges are sealed; or
 - b. A Justice of the Peace or District Court Judge otherwise considers the appointment of counsel appropriate

9.4 NUMBER AND QUALIFICATIONS OF COUNSEL:

- A. **All Non-Capital Charges:** One (1) attorney shall be appointed consistent with Section 10 (Appointment of Elko County Public Defender) of this Plan; if no attorneys are death penalty qualified, then appointment consistent with Section 11 (Appointment of Private Attorneys) of this Plan applies.
- B. **Open Murder and Potential Capital Charges:** Two (2) attorneys shall be appointed consistent with Section 10 (Appointment of Elko County Public Defender) of this Plan; if no attorneys are death penalty qualified, then appointments pursuant to Section 10 (Appointment of Private Attorneys) of this Plan applies.
 - a. **Lead and Co-Counsel:** 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.



9.5 FINANCIAL ELIGIBILITY FOR REPRESENTATION:

- A. Indigency Determination: An indigent person is entitled to appointed counsel. "Indigency" means a defendant's inability, without causing the defendant or any of their dependents to have substantial hardship, to obtain competent, qualified legal counsel.
- B. "Substantial hardship" is presumptively determined to include all defendants who receive public assistance, as that term is defined in NRS 422A.065; reside in public housing, as the term is defined in NRS 315.021; has a household income that is less than 200 percent of Federal Poverty Guideline.
- C. A defendant is presumed to have a substantial hardship if they are currently serving a sentence in a correctional institution, housed in a mental institution, or is a minor.
- D. Defendants not falling below the presumptive threshold are subject to a more rigorous screening process to decide if their circumstances would result in a substantial hardship if they sought to retain private counsel. Those circumstances include the seriousness of charges, monthly expenses, and local private counsel rates.

9.6 SCREENING FOR ELIGIBILITY:

The Elko County Sheriff's Office or any other law enforcement officer responsible for booking a criminal defendant shall provide an initial screening within forty-eight (48) hours for financial eligibility. The law enforcement agency will provide a recommendation to the court regarding the eligibility of the defendant for appointed counsel based on the provisions contained in this Plan. This initial screening is forwarded to the applicable Justice, Municipal, or District Court before the person booked is seen by a judge. A court receiving the initial screening shall further investigate the application for an attorney and refer to the NV DIDS to appoint an appointed counsel based on the criteria in Section 9.5(A) (Indigent Determination) of this Plan and otherwise by law. Reviewing Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.

9.7 PARTIAL ELIGIBILITY:

Suppose the court determines that a defendant can afford counsel but cannot be effectively represented due to the inability to pay for appropriate services such as investigators, experts, or other services. In that case, the court shall order reasonably necessary services to be provided at no cost to the defendant, subject to the procedures established in each jurisdiction to approve and pay fees and expenses.

9.8 DISCLOSURE OF CHANGE IN ELIGIBILITY:

If at any time after the appointment, counsel obtains the information that a client is financially able to make payment, in whole or part, for legal and/or other services in connection with their representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court. The court shall order the person who received appointed counsel to reimburse the services provided.



9.9 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 appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.

10 APPOINTMENT OF ELKO COUNTY PUBLIC DEFENDER

10.1 LOCAL CONTROL:

Elko County gives no authority to the State Public Defender to deliver indigent defense services for death penalty cases, direct appeals, or any other matter. Therefore, the ECPD's office will handle all cases where a court appoints an indigent person legal representation unless the ECPD's office has a conflict of interest.

10.2 TRAINING:

- A. **Elko County Public Defender:** The ECPD shall use the following tiered training program to provide competent counsel for eligible clients.
1. Priority 1 – In House Training: The ECPD's office shall develop and maintain a training program for new attorneys and continuing training for all staff. This training program will provide benchmarks for Elko County's yearly employee performance appraisals.
 2. Priority 2 – Free or Low-Cost Training: The ECPD's office shall use the services of NV DIDS, Nevada State Bar, Washoe County Public Defender, Clark County Public Defender, and NV State Public Defender to obtain free or low-cost training opportunities for both attorneys and staff.
 3. Priority 3 – Specialized Training: The ECPD's office shall use the training opportunities of the National Criminal Defense College, National Association of Public Defense, National Association of Criminal Defense Lawyers, or any other reputable training organization to provide specialized training as required by the NV State Bar, NV Rules of Professional Conduct, and any other NV law governing the training, experience, or qualification of an attorney.

10.3 CAPITAL CASE:

In a capital case, the ECPD shall be appointed unless the ECPD cannot take the case. In such a situation, ECPD shall request NV DIDS, to appoint a Qualified Attorney authorized to serve as a lead counsel under Supreme Court Rule 250 and shall pay reasonable compensation for such services. The ECPD's Office and/or other Qualified Attorneys may be assigned as co-counsel, as determined by NV DIDS.

10.4 COUNSEL AT INITIAL APPEARANCE/ARRAIGNMENT:

- A. The public defender will provide counsel at the first appearance and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of



criminal procedure, and case law. The Public Defender shall be present at all other critical stages, whether in or out of court.

- B. If it has been determined that there is a conflict of interest for the Public Defender to appear at the initial arraignment, the case shall be promptly referred to NV DIDS to appoint a Qualified Attorney in a manner allowing the qualified attorney to appear at the first appearance.

10.5 CONFLICT OF INTEREST ANALYSIS:

Nothing in this plan, nor in this section, shall be construed to, in any way, to force an attorney to violate the Nevada Rule of Professional Office. Therefore, it is in the ECPD's procedure to, as soon as practicable, upon appointment, conduct a conflict-of-interest analysis, known as a conflict check, to determine if any conflict of interest exists that would prevent the representation of the defendant.

- A. **Conflict Exists:** If the Public Defender determines that such a conflict exists, the Public Defender shall notify, as soon as possible, to the relevant court and refer the case to NV DIDS or designee for appointment of counsel.
 1. The appointed counsel will accept or reject the assignment following the outline in Section 11 (Appointment of Private Attorney).
 2. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the NV DIDS or designee shall provide prompt notice and a proposed order confirming the selection of counsel to the appointing authority, such as the Judge, Justice, or Courtmaster presiding over the court in which the eligible client's charges are pending.
 3. The Public Defender will remain the counsel of record until the relevant court enters an Order granting withdrawal.
- B. **Conflict Does Not Exist:** If a conflict of interest does not exist, the Public Defender shall be appointed to represent the defendant(s) in a case.
- C. The Elko County District Attorney's Office shall have no authority to determine or recommend whether or not the ECPD's office has a conflict of interest.

10.6 ELKO COUNTY PUBLIC DEFENDER ASSIGNMENTS

Assigning Attorneys and Elko County Chief Deputy Public Defenders shall have exclusive control in assigning an attorney within the office to any case the Elko County Defender's office is appointed to.

10.7 CASE RELATED EXPENSES:

Elko County shall maintain a budget within the Public Defender's Office to pay the investigator and expert witness fees.

10.8 CLIENT COMPLAINTS:

Appointed Counsel, shall maintain a system for receipt and review of written complaints made by clients. Appointed Counsel 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 the Nevada Department of Indigent Defense Services (DIDS) or Nevada State Bar.

- <https://dids.nv.gov/Complaints/Complaints or Recommendations>
- <https://nvbar.org/file-a-complaint-2/>

11 APPOINTMENT AND COMPENSATION OF PRIVATE ATTORNEYS

11.1 APPOINTMENT OF PRIVATE COUNSEL:

Elko County shall not appoint any private attorney to represent an indigent person unless either:

- A. the ECPD's Office has a conflict of interest that requires withdrawal from representation; or
- B. NCSR 250 requires appointing counsel outside the ECPD's Office.

11.2 ASSIGNING PRIVATE COUNSEL VIA NVDIDS:

If the Public Defender has a conflict of interest and withdraws or NCSR 250 requires appointing counsel outside ECPD's Office, the following general steps will occur.

- A. Upon notice of a conflict, the ECPD's Office shall refer the case to NV DIDS or designee to select counsel from the appropriate panel list to assume representation. Cases shall be distributed to appointed counsel using a rotation system insofar as practicable. Still, the NV DIDS or designee shall ultimately have the 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 Elko County officials, and capacity to take on work.
- B. The appointed counsel shall have twenty-four (24) hours from such notification to accept the case assignment. If the appointed counsel does not accept the case assignment within twenty-four (24) hours, its right of first refusal shall be waived, and the case may be assigned to another conflict attorney. Such a waiver shall not preclude subsequent assignment of the case to the appointed counsel in the event of the unavailability of other conflict attorneys or for any other reason consistent with this Plan. The Appointed shall accept enough Case assignments to meet the Case Acceptance Rate.
- C. The Contractor shall not accept assignments to provide the Representational Services to the extent that doing so would violate any provision of the Nevada Rules of Professional Conduct, including but not limited to the provisions concerning conflicts of interest. The Contractor will refer to the Nevada Rules of Professional Conduct, as interpreted by the State Bar of Nevada and/or opinions of the State judiciary, and to the American Bar Association Standards for Criminal Justice to determine the existence and appropriate resolution of conflicts of interest. If a conflict of interest exists, the Contractor will promptly file an appropriate motion or follow the procedure for handling conflicts of interest provided in the Contracting Authority's DIDS Plan.



- D. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the ECPD or designee 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.
- E. The Appointed Counsel will remain the counsel of record until the relevant court enters an Order granting withdrawal.

11.3 ATTORNEY QUALIFICATIONS, TRAINING, AND PERFORMANCE STANDARD

Elko County shall negotiate contracts with private attorneys to act as Public Defenders when the ECPD's Office cannot. Private attorney contracts will be listed with NV DIDS, which shall be referenced to appoint Alternate Public Defenders per NRS 180.430.

- A. Attorneys must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services for training, education, and qualifications by applying to the NV DIDS, which will review and determine eligibility.
- C. **Attorneys:** NV DIDS shall maintain a list of all attorneys who will perform Representational Services under this Agreement. The list shall specify, for each attorney, the category(ies) of Case(s) in which the attorney is qualified to provide Representational Services. The Contractor shall provide a copy of this list to the Contracting Authority within thirty (30) days of the Effective Date and in the event of any subsequent change to the list.
- D. **Attorney Qualifications:** It shall be the sole responsibility of the Contractor to ensure all attorneys providing Representational Services to Eligible Clients under this Agreement maintain all requisite qualifications for the category(ies) of Case(s) in which they are providing Representational Services. To ensure the ability, training, and experience of an attorney match the complexity of a given case, the Contractor shall demonstrate compliance with the standards and regulations of the Department by providing training, education, and qualifications documentation. The Contractor shall further ensure attorneys performing Representation Services in a particular category of Case under this Agreement are qualified by the Department to perform such services in that category of Case.
- E. **Performance Standards:** It shall be the sole responsibility of the Contractor to ensure the attorneys whom it employs or with whom it contracts to perform its obligations under this Agreement:
 - 1. Provide zealous, competent Representational Services in all Cases;
 - 2. Comply with the requirements of the Department and the Nevada Indigent Defense Standards of Performance;
 - 3. Comply with all applicable laws and regulations (including the Reg., as may be amended);
 - 4. Comply with the Nevada Rules of Professional Conduct; and
 - 5. Comply with the Contracting Authority's DIDS Plan.
 - 6. Training: Ongoing professional training is necessary for an attorney to keep abreast of changes and developments in the law and ensure the continued rendering of competent assistance of counsel.



7. Offer the eligible client continuity in representation.

11.4 COMPENSATION:

Elko County shall compensate private attorneys appointed to represent indigent clients in a manner consistent with the Stipulated Consent Judgment from Davis v. State, No. 170C02271B (Nev. 1st J. Dist. Ct. Aug. 20, 2020).

- A. Attorney's Fees: All compensation and fees must be filed with the NV DIDS Administrator. A separate budget has been developed by Elko County and is administered by the Administrator of NV DIDS for payment of compensation and expenses.
 1. The fee schedule is negotiated and confirmed in the Alternate Public Defender Agreement.
 2. Appointed counsel must receive prompt compensation. Reasonable activities outside of court appearances, including, but not limited to, directing the investigation, negotiating, or tactical planning, are equally important to quality representation and shall be included in appointed counsel's compensation.
 3. Qualified Attorneys providing services to eligible clients within Elko County in exchange for an hourly rate shall submit monthly invoices to NV DIDS Administrator. Such invoices shall be submitted on an invoice form issued by NV DIDS or Elko County, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered. The backup shall contain time entries rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.¹
 4. NV DIDS Administrator shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. In reviewing for reasonableness, the NV DIDS Administrator may consider factors such as (i) average case times as determined by workload analysis; (ii) time and skill required; (iii) complexity of the case; and (iv) experience and ability of the Qualified Attorney(s). The NV DIDS Administrator may request additional information or explanation where necessary. Suppose the NV DIDS Administrator denies or modifies a Request for Attorneys' Fees. In that case, it shall explain to the Qualified Attorney, with a copy to the Elko County Manager and the Department of Indigent Defense Services, why the denied portion was not reasonable. Such denials shall be subject to judicial review under NRS 7.135.
 5. The Elko County Fiscal Affairs Office shall issue payment for all approved attorneys' fees. The NV DIDS Administrator shall notify the Fiscal Affairs Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. Payment shall be issued within thirty (30) days of receipt of an approved invoice with proper back up documentation to the Elko CountyAccounts Payable office.

¹ For invoicing purposes, Qualified Attorneys are required to use LegalServer, or whatever database NV DIDS houses, for invoice backup. An example of a time slip generated through LegalServer with sufficient detail is included with Appendix B. If a Qualified Attorney cannot use LegalServer, the Qualified Attorney may submit an alternative form of backup provided it contains a breakdown of services rendered in comparable detail.



6. Capped hourly rates and flat fee payment schemes are prohibited unless carefully designed to minimize disincentives and provide compensation reasonably expected to yield an hourly compensation rate equivalent to the required minimum rate.
 7. At a minimum, hourly rates should be used in capital cases, cases in which the penalty may be life imprisonment, and cases in which a notice pursuant to NRS 207.010 is filed. Complex or voluminous financial fraud cases should also be considered for hourly rates. Contracts with private attorneys for highly specialized cases will be negotiated separately from the standard alternate Public Defender contract on an as-needed basis.
- B. Case-Related Expenses:
1. Appointed counsel should be promptly reimbursed for their reasonable out-of-pocket, case-related expenses such as the use of investigators and expert witness fees.
 2. Elko County shall establish a case-related expense budget independent of the judiciary for its counsel appointed on an individual case basis administrated by the NV DIDS Administrator. They may likewise designate an independent administrator. 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 (\$2,500) shall be submitted to the Appointed Counsel Program Administrator for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization by email. The request shall explain why the expense is reasonably necessary to provide Representational Services.
 - b. **Reasonableness Review:** All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the NV DIDS Administrator's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the NV DIDS Administrator for review no later than thirty (30) days following the termination of the representation. Any requests for expenses not timely submitted shall be waived. The NV DIDS Administrator shall approve all reasonable and necessary Case-Related Expenses, notify the Elko County Fiscal Affairs Office of all approved expenses, and provide a copy of the invoice.
 - c. **Payment:** The Elko County Fiscal Affairs Office shall issue payment for all approved Case-Related Expenses within thirty (30) days of receipt (to the Accounts Payable Office) of notice of the NV DIDS Administrator's approval and a copy of the invoice.

11.5 CONFLICT OF INTERESTS ANALYSIS:

Appointed Counsel 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 the appointed counsel determines that such a conflict exists, the appointed counsel 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, unless co-defendants provide informed consent. The Elko County District Attorney's office shall have no authority to determine or recommend whether or not the appointed counsel has a conflict of interest.

A. Contract Attorneys:

1. Elko County may contract for the appointment of counsel.



2. Elko County contract attorney's compensation may be based on an hourly basis, a flat fee basis, or a combination of both.
3. If the contract is based on a flat fee basis, 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 counsel; and
 - d. the ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court
4. Elko County may contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by with NV DIDS.
5. The contract must be subject to termination annually or sooner. If determined by the Department of Indigent Defense that a contract attorney is not abiding by the standard guidelines for qualifications of appointed counsel; and
6. The payment of fees and expenses of contracted appointed counsel by Elko County shall be governed by a contract between counsel and Elko County.
7. The contract shall exclude appointment in cases with the potential of capital cases unless qualified.

11.6 COMPLAINTS BY CLIENTS:

Appointed Counsel, including Private Attorneys, shall maintain a system for receipt and review of written complaints made by clients. Appointed Counsel 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 the Nevada Department of Indigent Defense Services (DIDS) or Nevada State Bar.

- https://dids.nv.gov/Complaints/Complaints_or_Recommendations
- <https://nvbar.org/file-a-complaint-2/>

12 DUTIES OF INDIGENT DEFENSE COUNSEL

12.1 STANDARDS OF PERFORMANCE

Services rendered by appointed counsel shall be commensurate with those rendered if a person privately employed counsel. Representation shall be provided in a professional, skilled manner guided by applicable regulations, laws, NV Rules of Professional Conduct, and the NV DIDS Standard of Performance adopted by October 16, 2008, NV Supreme Court Order in Administrative Docket 411, or the same as may be amended. Additionally, the attorney must advise all clients not to waive any substantive rights or plead guilty at the initial appearance unless doing so is in the client's best interest. Attorneys must make all reasonable efforts to meet with the client within seven (7) days following the assignment of the case and every thirty (30) days thereafter unless there are no significant updates in the client's case.



12.2 CONTINUITY IN REPRESENTATION

Elko County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants to that the same 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.

12.3 WORKLOAD STANDARD

The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure adequate representation. Any attorney who provides indigent defense services shall not accept a workload that, because of its size, interferes with the attorney's competence, diligence, or representation of clients.

Elko County will provide maximum workload guidelines to attorneys who provide indigent defense services as determined by the NV DIDS and the data collection responsibilities of the attorney.

Additionally, ECPD shall ensure that ECPD's office is staffed with an adequate number of attorneys and support staff to deliver indigent defense services that meet the Standards of Performance detailed in this Plan. Elko County shall use the data and recommendations from the National Center for State Courts' Nevada Indigent Defense **Weighted Workload Study** and the Board on Indigent Defense's workload standard to determine adequate numbers of attorneys and support staff.

To the extent required by the Department's board, attorneys providing indigent defense services under this plan shall maintain caseload data and track the time spent providing indigent defense services in accordance with the Regulations of the NV DIDS Board.

12.4 NO RECEIPT OF OTHER PAYMENT

Appointed counsel may not require, request, or accept any payment, the promise of the payment, or any other valuable consideration for representation under the appointment unless such payment is approved by order of the court.

12.5 PRIVATE PRACTICE OF LAW

The ECPD and any staff attorney with that office is prohibited from simultaneously engaging in the private practice of law. This Section does not eliminate private employment outside the practice of law, so allowed by the Collective Bargaining Agreements of the Elko County Public Attorney's Association or the Chief Deputy Public Attorney's Association. Interpreting any conflict to ambiguity between this Plan and those Collective bargaining Agreements shall be construed in a manner that gives effect to the Collective Bargaining Agreements' provisions.

12.6 USE OF CLIENT SURVEYS

The ECPD and appointed counsel shall ensure that any client surveys authorized by NV DIDS' Board are provided to clients after their representation by an attorney.



12.7 REPORTING

Contracted Appointed Counsel is required to submit case data through an NV DIDS case database, currently LegalServ. The case details shall be kept up in the database, followed by a quarterly report to the Elko County Manager's Office. The report includes the number of cases accepted and rejected.

13 PRIVILEGED COMMUNICATIONS

County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or privileged communications between indigent criminal defense clients and appointed counsel.

14 APPOINTED COUNSEL PROGRAM COORDINATOR (ACPC)

- A. **Selection:** Nevada Department of Indigent Defense will serve as Elko County's Appointed Counsel Program Coordinator (ACPC). Elko County reserves the right to hire an employee or contract with an independent contractor to serve as the ACPC. This Plan will determine employees' job duties or the contract terms. The ACPC, if licensed to practice law in the State of Nevada, shall not be directly involved in the direct representation of eligible clients.
- B. **Duties:** The ACPC shall have all the duties and responsibilities stated in the various sections of this plan. The ACPC shall, at a minimum:
 - 1. Maintain the master list and a copy of the contract for the qualified attorneys approved by NV DIDS.
 - 2. Maintain appropriate records to reflect the cases, case assignments, and dates to which each attorney has been appointed.
 - 3. When notified of the need for representation, the ACPC shall select the next available attorney from the list of those qualified to provide representation as approved by the careening committee.
 - 4. The ACPC shall be responsible for approving the claim for payment of each attorney and any expert or other service fees after the appointed counsel's representation or periodic invoices, depending on the length of the case.

15 PLAN ADMINISTRATOR AND CONTACT

The County Manager shall administer this plan and the contract for indigent defense services. The County Manager shall report material breaches or other significant matters to the Board of County Commissioners. The Board of County Commissioners may take any lawful, appropriate action concerning any contract.



Questions about the Administration of this Plan may be directed to Elko County Manager, Elko County Comptroller, or Elko County Grants and Contracts Manager. Contact information is listed in the "Revisions" Section of this Plan.

16 EFFECTIVE DATE

The Elko County Plan for the Provision of Indigent Defense Services is approved and effective on this, the 1st day of March 2023.

17 APPENDIX A – CLIENT COMPLAINT PROCEDURE

The Elko County Public Defender's Office is committed to ensuring that no person is excluded from participation in or denied the benefits of its services based on race, color, or national origin, as protected by Title VI, as well as other protected persons under the Civil Rights Act of 1964, as amended. The protected classes include: age, ancestry, color, disability, ethnicity, gender, gender identity or expression, genetic information, HIV/AIDS status, military status, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran status, or any other bases under the law. The County has established a discrimination complaint procedure and will take prompt and reasonable action to investigate and eliminate discrimination when found.

Elko County will investigate civil rights complaints. This does not limit persons submitting complaints to Nevada Defense for Indigent Services.

Elko County will not investigate complaints against the Assigned Legal Representatives. Please contact Nevada Defense for Indigent Services at the contact information below. If you submit a complaint with Elko County for any reason other than discrimination, it will be turned over to Nevada Defense for Indigent Services.

If you feel you are being denied services provided by the Elko County, Public Defenders Office, or otherwise being discriminated against because you belong to a protected class, please follow [Elko County's Title VI Plan](#), which includes a Limited English Proficiency (LEP) and Language Access Plan (LAP).

For more information, contact the Title VI Coordinator below:

Title VI Coordinator
Abigail Wheeler
540 Court Street, Elko NV 89801
(775) 748-0359

To make a complaint regarding the Appointed Legal Representative(s), please contact Nevada DIDS directly:

- <https://dids.nv.gov/Complaints/Complaints or Recommendations>
- <https://nvbar.org/file-a-complaint-2/>