

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

MEETING NOTICE AND AGENDA

**Indigent Defense Commission (IDC)
VIDEOCONFERENCE**

Date and Time of Meeting: Tuesday, December 11, 2018 @ 1:30 p.m.

Place of Meeting:

Carson City	Las Vegas	Washoe	Ely	Elko
Supreme Court Library Room 107 201 S. Carson Street Carson City, Nevada	Nevada Supreme Court Building Conference Room A/B 408 E. Clark Avenue Las Vegas, NV	Second Judicial District Court Room 214 75 Court Street Reno, NV	Seventh Judicial District Court 801 Clark Street Ely, NV	Fourth Judicial District Court 571 Idaho Street Elko, NV
Teleconference Access: Dial-In # 1-408-740-7256 Meeting ID 1110011234				

All participants attending via teleconference should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.

AGENDA

- I. Call to Order
 - a. Call of Roll
 - b. Determination of a Quorum
- II. Public Comment
Because of time considerations, the period for public comment by each speaker may be limited. Speakers are urged to avoid repetition of comments already made by previous speakers.
- III. Review and Approval of the October 30, 2018 Meeting Summary*
- IV. NRTCC BDR (AB 81) Update/Discussion
- V. Clark County Arraignment Process Update - *Mr. Drew Christensen*
- VI. Discussion on Role of the IDC in Submitted Indigent Defense Plans Review Process - *Ms. Franny Forsman*

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- VII. Indigent Defense Screening Tool and Checklist - *Mr. John McCormick*
- VIII. Caseload Standards Discussion/Update
 - A. Discussion on NACO's Rural County PD Reporting Tool
- IX. Status Update on ACLU of Nevada - *Ms. Amy Rose*
- X. Status Update on Indigent Defense Clark County - *Mr. Drew Christensen, Mr. Phil Kohn, Ms. JoNell Thomas*
- XI. Status Update on Indigent Defense in Washoe County - *Mr. John Arrascada, Mr. Bob Bell, Mr. Marc Picker*
- XII. Status Update on the State Public Defender's Office - *Ms. Karin Kreizenbeck*
- XIII. Status Update on the Federal Public Defender's Office - *Ms. Megan Hoffman*
- XIV. Update on Eighth Judicial District Court Homicide Case Pilot Project - *Mr. Chris Lalli*
- XV. Other Business
- XVI. Adjournment

- Action items are noted by * and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited to five minutes per person at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Jamie Gradick, (775) 687-9808 - email: jgradick@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030 (4)(a))
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations:** Nevada Supreme Court website: www.nevadajudiciary.us; Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: 408 East Clark Avenue.

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Indigent Defense Commission
Summary Prepared by Jamie Gradick
October 30, 2018
1:30 p.m.

<p><u>Attendees Present</u> Justice Michael A. Cherry, Chair John Arrascada Patrick Caddick Russell Carr David Carroll Drew Christensen Joni Eastley Judge Gary Fairman Franny Forsman Christopher Hicks Judge Kevin Higgins Dana Hlavac Judge Al Kacin Philip Kohn Karin Kreizenbeck</p>	<p>Chris Lalli John Lambrose Mark Picker Amy Rose Judge John Schlegelmilch Judge Mason Simons Dagny Stapleton JoNell Thomas Jeff Wells Judge Nathan Tod Young</p> <p><u>AOC Staff</u> Jamie Gradick Hans Jessup</p>
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- I. Call to order
 - Call of Roll and Determination of a Quorum
 - Ms. Jamie Gradick called roll; a quorum was present.
- II. Public Comment
 - There was no public comment.
- III. Review and Approval of the September 25, 2018 Meeting Summary
 - The summary was approved.
- IV. Clark County Arraignment Process Discussion (*Portions of this discussion were inaudible*)
 - Mr. Drew Christensen informed attendees that he has spoken with Chief Judge Bell regarding this issue.
 - Chief Judge Bell understands and shares the concerns and is hoping the issue can be resolved if the 8th Judicial District Court is successful in its legislative efforts to get additional judges.

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- Timing and caseload expansion issues limit current solutions.
- Ms. Forsman commented that performance standards are not being followed; an increasing number of attorneys are seeing clients for the first, and maybe only, time at the court and these conversations are being held in public.
 - Mr. Phil Kohn commented that the defendants have met with the lawyers prior to this; the issue is that they have not had the plea agreement.
 - Ms. Forsman commented that the disconnect is that it is usually a different lawyer present at the arraignment.
 - Attendees discussed the lack of time and resources in both the public defender office and on the 8th judicial district bench.
 - Several attendees expressed concern regarding a two-year wait to implement a solution.
- Attendees discussed the power of the chief judge; concern was expressed the limitation of what the chief judge can and cannot do to change the system and the procedures.
- Attendees discussed possible legislative solutions.
 - A bill to create separate civil and criminal departments.
 - A bill/rule that limits the judges' power to delegate to magistrate.
- Ms. Forsman suggested that the IDC write a letter outlining its concerns, particularly regarding the performance standard violations.
 - Attendees discussed the effectiveness of this.
 - Justice Cherry commented that he has already had conversations with Chief Judge Bell regarding this. Judge Young commented that "leaning" on Chief Judge Bell is not necessary; she is aware of the issue.
- Mr. Chris Lalli commented that this practice is not new; arraignment court did not change what was already happening. The district attorney wants a valid plea as well; attendees discussed turn-around time and resource limitations.
- Mr. John Lambrose commented that the entire 8th judicial district bench needs to be involved in a conversation; the judges are not doing their jobs. Judge Young supported this and commented that this is part of the job as a judge; non-constitutional tasks can be "passed off" to a master but not taking the plea.
- Justice Cherry thanked the rural district court judges for supporting the IDC and ADKT 411 and commented that there has been little participation from the 8th judicial district bench over the past 10 years. Justice Cherry and Phil Kohn will reach out to Chief Judge Bell once more.

V. Review Process for Submitted Indigent Defense Plans

A. Henderson Municipal Court's Indigent Defense Administrative Plan Discussion

- Ms. Forsman requested that this be tabled until the December 11, 2018 meeting and asked that members consider what the IDC's role will be in the plan review process.

VI. Caseload Standards Discussion/Update

- Mr. David Carroll referred attendees to the memo in the materials and commented that the NRTCC is undertaking so much right now that adding caseload standards to the discussion would be ineffective and divisive. The focus now should be on establishing

the permanent board with the ability and infrastructure to address the standards at the right board.

- Mr. Lambrose clarified that capturing caseload numbers would be useful; the focus may not be on caseload standards but there should be some protocol for gathering numbers.
- Mr. Hans Jessup commented that the issue lies in determining who is responsible for capturing that data. If it is the courts, there are significant challenges with resources and making the necessary changes to the case management systems, etc.
- Mr. Kohn commented that, statutorily, he is required to keep those numbers and suggested that this be added as a requirement to attorney contracts.
 - Judge Schlegelmilch commented that everyone tracks different data and follows different definitions; standards need to be based on real numbers and not “perception”.
 - Attendees discussed the different tracking methods and the need for a uniform way for tracking or else an agreement to uniformly follow the USJR.
- Caseload standards and caseload data can help “fund the system” when the courts need to seek funding from the counties.
- Attendees discussed the difference between the USJR and the IDC’s dictionary.
 - Mr. Hans Jessup explained that the primary difference between the USJR and what the Commission is looking for lies in timing of appointment. There are different measures for when the case becomes a “case.” Additionally, the USJR does not track at the same level as what many jurisdictions use.
 - Mr. Jessup commented that there are private case inclusion discrepancies that make it impossible to ensure accuracy of reporting.
 - Justice Cherry asked Mr. Jessup and Ms. Gradick to reach out to the rural district court judges on how to count cases.

VII. Status Update on ACLU of Nevada

- Ms. Amy Rose informed attendees that the ACLU just filed an amended complaint, based on the efforts of the NRTCC, and is restarting some of the process.

VIII. Status Update on Indigent Defense in Clark County

- Ms. Thomas informed attendees that her office recently conducted a self-assessment based on ADKT 411 and was happy with the results.
- Mr. Kohn expressed concern regarding an upcoming ADKT 0499 discussion.
 - This office is happy to provide trainings but if it is required to fund training under this ADKT, it will be limited in what it can offer moving forward.
 - Ms. Thomas shared these concerns.
 - Attendees discussed the wide-ranging opposition to this and the detrimental impact this measure could have.

IX. Status Update on Indigent Defense in Washoe County

- Mr. Mark Picker echoed the concerns regarding ADKT 0499 expressed by Mr. Kohn and Ms. Thomas. The ADKT would make it impossible to continue providing criminal CLE in Washoe County.

- X. Status Update from the State Public Defender's Office
 - Ms. Karin Kreizenbeck briefly discussed upcoming training opportunities for her staff.
- XI. Status Update on the Federal Public Defender's Office
 - Tabled for the next meeting.
- XII. Update on the Eighth Judicial District Court Homicide Case Pilot Project
 - Mr. Lalli provided an update on the program.
 - Since it began, 159 homicides have been resolved.
 - 11 cases dismissed this year
 - 26 tried this year
 - 60 currently pending rendition of sentence
 - 226 cases pending trial in district court; 51 are capital cases
 - Attendees discussed the ever-increasing homicide rate in Clark County; Mr. Lalli commented that, had this program not been implemented, the situation would be much worse.
- XIII. Other Business
 - Mr. Dana Hlavac provided attendees with a brief update on Las Vegas Municipal Court security and privacy concerns.
 - Jail is in the process of constructing privacy areas.
 - Working on procuring more secure phones that are "jail-appropriate" and hope to have this resolved by mid-November.
- XIV. Adjournment
 - Justice Cherry adjourned the meeting at 2:35 pm.

SUMMARY—Makes various changes relating to the oversight and provision of legal representation of indigent defendants in criminal cases. (BDR 14-436)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Yes.

AN ACT relating to criminal defense; creating the Office of Indigent Defense Services within the Office of the Governor to oversee criminal defense services provided to indigent persons in this State; creating the Board on Indigent Defense Services consisting of various appointed persons to oversee the Executive Director of the Office and to establish certain policies; requiring the Board on Indigent Defense Services to establish the maximum amount a county may be required to pay for the provision of indigent defense services; authorizing the Board to adopt regulations governing indigent defense services; providing for the transfer of responsibility for the provision of indigent defense services from a county to the State Public Defender in certain circumstances; allowing such services to be transferred back to the county in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Senate Bill No. 377 of the 2017 Legislative Session created the Nevada Right to Counsel Commission consisting of 13 voting members appointed by the Governor, the Legislature and



the Nevada Supreme Court. The Chief Justice of the Supreme Court or his or her designee was to serve as an ex officio nonvoting member of the Commission. The Commission was charged with conducting a study during the 2017-2019 interim concerning issues relating to the provision of legal representation of indigent persons in criminal cases in this State. (Chapter 460, Statutes of Nevada 2017, p. 2940) The Commission is set to expire on July 1, 2019. In its place, **section 6** of this bill creates a Board on Indigent Defense Services with members appointed in the same manner as the Commission, except that: (1) no member may be a Legislator or other state officer or employee; and (2) the Governor may appoint up to two additional nonvoting members. Members of the Board serve without compensation, except for per diem allowance and travel expenses. **Section 7** of this bill provides for the organization of the Board, whose voting members will serve for terms of 2 years and may be reappointed. Voting members may be removed by the Governor for incompetence, neglect of duty and certain acts. **Section 8** of this bill sets forth the duties of the Board, which include overseeing the Executive Director of the Office of Indigent Defense Services, which is created in **section 9** of this bill within the Office of the Governor. The Executive Director of the Office serves at the pleasure of the Board. The Board is required to review information concerning indigent defense services in the State and establish: (1) minimum standards for the delivery of indigent defense services; and (2) procedures for receiving and resolving complaints concerning the provision of indigent defense services. The Board is further required to establish standards for providing indigent defense services, which include continuing education requirements for attorneys who provide indigent defense services, uniform tracking of information by such attorneys and guidelines for maximum



caseloads of such attorneys. **Section 8** further requires the Board to work with the Dean of the William S. Boyd School of Law of the University of Nevada, Las Vegas, to determine incentives to recommend offering law students and attorneys to encourage them to provide indigent defense services, especially in rural areas of the State.

Section 10 of this bill establishes the duties of the Executive Director of the Office of Indigent Defense Services, which include overseeing the functions of the Office, serving as Secretary of the Board, reporting to the Board regarding the work of the Office, developing the budget for the Office and preparing an annual report for submission to the Nevada Supreme Court, the Legislature and the Governor.

Section 11 of this bill requires the Executive Director to select two deputy directors. **Section 12** of this bill makes one deputy director responsible for overseeing the provision of indigent defense services in certain smaller counties. This includes having oversight of the State Public Defender, who is moved from the Department of Health and Human Services to the Office of Indigent Defense Services in **sections 17-19, 21 and 24-26** of this bill. In addition, **section 12** charges this deputy director with determining whether attorneys are eligible to provide indigent defense services in accordance with the requirements established by the Board. This deputy director will also develop and provide continuing legal education programs for attorneys who provide indigent defense services and identify and encourage best practices for delivering effective indigent defense services.

Section 13 of this bill makes the second deputy director responsible for reviewing the manner in which indigent defense services are provided throughout the State. This deputy director will



collect information from attorneys about caseloads, salaries and other information and will conduct on-site visits to determine whether indigent defense services are being provided in the most efficient and constitutional manner. If the deputy director determines that a county is not providing such services in a manner which satisfies minimum standards that are established by the Board, **section 13** requires the deputy director to establish a corrective action plan with the board of county commissioners for the county. **Section 14** of this bill requires such a plan to be agreed to by the board of county commissioners and the deputy director and submitted to and approved by the Board. If the board of county commissioners will have to spend more money than was budgeted to comply with the plan, **section 14** requires the Executive Director to include the additional amount in the budget for the Office to help support the county in providing indigent defense services. If additional money is needed before the next budget cycle, the Executive Director is required to submit a request to the Interim Finance Committee for money from the Contingency Account. If the budget is not approved with the additional amount for the county, the county has the option to continue providing indigent defense services or transfer responsibility for providing such services to the State Public Defender. In addition, if the county fails to meet the minimum standards for the provision of indigent defense services within the time set in the corrective action plan, **section 14** requires the deputy director to inform the Executive Director, who may then recommend establishing another corrective action plan or recommend requiring the county to transfer responsibility for provision of indigent defense services to the State Public Defender. Any recommendation of the Executive Director is required to be submitted to and approved by the Board. Once approved, the county is required to comply



with the decision of the Board. In addition, **section 8** requires the Board to establish a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services. This cap also applies when determining the county responsibility in **sections 14 and 23** of this bill.

Sections 20 and 28 of this bill remove obsolete language which requires the State Public Defender and the county public defender to provide indigent defense services within the limits of available money to conform with the provisions of this bill that require appropriate representation be provided to indigent defendants in every case. Existing law provides for a State Public Defender and requires certain large counties to establish an office of public defender. (NRS 180.010, 260.010) Smaller counties are authorized, but not required, to establish an office of public defender. (NRS 260.010) **Sections 22 and 27** of this bill revise these provisions to address their applicability when a county is required to transfer responsibility for the provision of indigent defense services to the State Public Defender. (NRS 180.090, 260.010) **Section 27** further requires each board of county commissioners to cooperate with the Board on Indigent Defense Services and the Office of Indigent Defense Services.

Existing law requires the public defender for a county to make an annual report to the board of county commissioners. (NRS 260.070) **Section 29** of this bill also requires the public defender to make an annual report to the Office of Indigent Defense Services and further requires the board of county commissioners of a county that has a public defender or which contracts for indigent defense services to provide an annual report to the Office with such information as requested by the Office.



Sections 17, 18 and 30 of this bill remove the State Public Defender and employees of the State Public Defender from the classified or unclassified service of the State. **Section 31** of this bill continues certain definitions applicable to the chapter governing the State Public Defender that were set to expire.

WHEREAS, Section 1 of Article 1 of the Nevada Constitution recognizes the inalienable right of persons to defend life and liberty; and

WHEREAS, The State is committed to protecting the individual liberties of persons in this State; and

WHEREAS, Section 2 of Article 1 of the Nevada Constitution acknowledges that the paramount allegiance of every citizen is due to the Federal Government in the exercise of all its constitutional powers as have been or may be defined by the Supreme Court of the United States; and

WHEREAS, Under the Sixth and Fourteenth Amendments to the Constitution of the United States, the obligation to provide effective representation to accused indigent persons at each critical stage of criminal and delinquency proceedings rests with the states; and

WHEREAS, Accordingly, it is the obligation of the Legislature to provide the general framework and resources necessary for the provision of indigent defense services in this State; and



WHEREAS, Although various counties in the State have accepted a large part of the responsibility for the provision of indigent defense, the State remains ultimately responsible for ensuring that such indigent defense services are properly funded and carried out; and

WHEREAS, The Legislature must ensure that adequate public funding is made available so that indigent defense services are provided by qualified and competent counsel in a manner that is fair and consistent throughout the State and at all critical stages of a criminal proceeding; and

WHEREAS, The Legislature must further ensure proper oversight of the provision of defense to indigent persons in this State and respond quickly, effectively and adequately to guarantee that the constitutional mandate of effective assistance of counsel is met; now, therefore

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 171.188 is hereby amended to read as follows:

171.188 1. Any defendant charged with a public offense who is an indigent may, by oral statement to the district judge, justice of the peace, municipal judge or master, request the appointment of an attorney to represent the defendant. *The record in each such case must indicate that the defendant was provided an opportunity to make an oral statement and whether the defendant made such a statement or declined to request the appointment of an attorney.*

2. The request must be accompanied by the defendant's affidavit, which must state:



- (a) That the defendant is without means of employing an attorney; and
- (b) Facts with some particularity, definiteness and certainty concerning the defendant's financial disability.

3. The district judge, justice of the peace, municipal judge or master shall forthwith consider the application and shall make such further inquiry as he or she considers necessary. If the district judge, justice of the peace, municipal judge or master:

- (a) Finds that the defendant is without means of employing an attorney; and
 - (b) Otherwise determines that representation is required,
- ↳ the judge, justice or master shall designate the public defender of the county or the State Public Defender, as appropriate, to represent the defendant. If the appropriate public defender is unable to represent the defendant, or other good cause appears, another attorney must be appointed.

4. The county or State Public Defender must be reimbursed by the city for costs incurred in appearing in municipal court. The county shall reimburse the State Public Defender for costs incurred in appearing in Justice Court **H**, *unless the county has transferred the responsibility to provide all indigent defense services for the county to the State Public Defender pursuant to section 14 of this act.* If a private attorney is appointed as provided in this section, the private attorney must be reimbursed by the county for appearance in Justice Court or the city for appearance in municipal court in an amount not to exceed \$75 per case.

Sec. 2. Chapter 180 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 15, inclusive of this act.



Sec. 3. *“Board” means the Board on Indigent Defense Services created by section 6 of this act.*

Sec. 4. *“Executive Director” means the Executive Director of the Office.*

Sec. 5. *“Office” means the Office of Indigent Defense Services created by section 9 of this act.*

Sec. 6. *1. There is hereby created a Board on Indigent Defense Services within the Office of Indigent Defense Services, consisting of:*

(a) Thirteen voting members appointed as follows:

(1) One member who is a member in good standing of the State Bar of Nevada, appointed by the Majority Leader of the Senate.

(2) One member who has expertise in the finances of State Government, appointed by the Speaker of the Assembly.

(3) One member appointed by the Chief Justice of the Nevada Supreme Court who:

(I) Is a retired judge or justice who no longer serves as a judge or justice in any capacity; or

(II) Has expertise in juvenile justice and criminal law.

(4) Two members appointed by the Governor from among six nominees selected by the Board of Governors of the State Bar of Nevada. Three of the nominees must be members in good standing of the State Bar of Nevada who reside in a county whose population is less than 100,000, and three must be members in good standing of the State Bar of Nevada who reside in a county whose population is 100,000 or more. The Governor must appoint one member



who resides in a county whose population is less than 100,000 and one member who resides in a county whose population is 100,000 or more.

(5) Four members from among six nominees selected by the Nevada Association of Counties who reside in a county whose population is less than 100,000, appointed by the Governor. One member must have expertise in the finances of local government.

(6) Two members from among four nominees selected by the Board of County Commissioners of Clark County, appointed by the Governor.

(7) One member from among two nominees selected by the Board of County Commissioners of Washoe County, appointed by the Governor.

(8) One member from among three nominees selected jointly by the associations of the State Bar of Nevada who represent members of racial or ethnic minorities, appointed by the Governor.

(b) The Chief Justice of the Nevada Supreme Court or his or her designee, who shall serve as an ex officio, nonvoting member.

2. In addition to the members appointed pursuant to subsection 1, the Governor may appoint up to two additional nonvoting members.

3. Each person appointed to the Board must have:

(a) Significant experience providing legal representation to indigent persons who are charged with public offenses or to children who are alleged to be delinquent or in need of supervision;



(b) A demonstrated commitment to providing effective legal representation to such indigent persons; or

(c) Expertise or experience, as determined by the appointing authority, which qualifies the person to contribute to the purpose of the Board or to carrying out any of its functions.

4. A person must not be appointed to the Board if he or she is:

(a) A current judge, justice or judicial officer;

(b) A Legislator or other state officer or employee;

(c) A prosecuting attorney or an employee thereof;

(d) A law enforcement officer or employee of a law enforcement agency; or

(e) An attorney who in his or her current position may obtain any financial benefit from the policies adopted by the Board.

5. Each member of the Board:

(a) Serves without compensation; and

(b) While engaged in the business of the Board, is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

6. Each member of the Board who is an officer or employee of a local government must be relieved from his or her duties without loss of his or her regular compensation so that the member may prepare for and attend meetings of the Board and perform any work necessary to carry out the duties of the Board in the most timely manner practicable. A local government shall not require an officer or employee who is a member of the Board to make up the time the



member is absent from work to carry out his or her duties as a member, and shall not require the member to take annual vacation or compensatory time for the absence.

Sec. 7. 1. *Except as otherwise provided in this subsection, the voting members of the Board on Indigent Defense Services are appointed for a term of 2 years and may be reappointed. The initial voting members of the Board shall select six initial voting members by lot to serve an initial term of 1 year.*

2. The Chair of the Board must be selected at the first meeting and serves until July 1 of the next year. The Chair for the following year must be selected before the expiration of the current term of the sitting Chair. The Chair may be selected to serve another term as Chair.

3. The Governor may remove a voting member of the Board for incompetence, neglect of duty, committing any act that constitutes moral turpitude, misfeasance, malfeasance or nonfeasance in office or for any other good cause.

4. A vacancy on the Board must be filled in the same manner as the original appointment by the appointing authority for the remainder of the unexpired term.

5. The Board shall meet regularly upon a call of the Chair. Any seven voting members of the Board shall constitute a quorum for the purpose of voting. A majority vote of the quorum is required to take any action.

Sec. 8. 1. *The Board on Indigent Defense Services shall oversee the Executive Director and provide recommendations and advice concerning the administration of the Office. The Board shall:*



(a) Receive reports from the Executive Director and provide direction to the Executive Director concerning measures to be taken by the Office to ensure that indigent defense services are provided in an effective manner throughout this State.

(b) Review information from the Office regarding caseloads of attorneys who provide indigent defense services.

(c) Direct the Executive Director to conduct any additional audit, investigation or review the Board deems necessary to determine whether minimum standards in the provision of indigent defense services are being followed and provided in compliance with constitutional requirements.

(d) Work with the Executive Director to develop procedures for the mandatory collection of data concerning the provision of indigent defense services, including the manner in which such services are provided.

(e) Provide direction to the Executive Director concerning annual reports and review drafts of such reports.

(f) Review and approve the budget for the Office.

(g) Review any recommendations of the Executive Director concerning improvements to the criminal justice system and legislation to improve the provision of indigent defense services in this State.

(h) Provide advice and recommendations to the Executive Director on any other matter.

2. In addition to the duties set forth in subsection 1, the Board shall:



(a) Establish minimum standards for the delivery of indigent defense services to ensure that such services meet the constitutional requirements and do not create any type of economic disincentive or impair the ability of the defense attorney to provide effective representation.

(b) Establish a procedure to receive complaints and recommendations concerning the provision of indigent defense services from any interested person including, without limitation, judges, defendants, attorneys and members of the public.

(c) Work with the Office to develop resolutions to complaints or to carry out recommendations.

(d) Adopt regulations establishing standards for the provision of indigent defense services including, without limitation:

(1) Establishing requirements for specific continuing education and experience for attorneys who provide indigent defense services.

(2) Requiring attorneys who provide indigent defense services to track their time and provide reports, and requiring the State Public Defender and counties that employ attorneys or otherwise contract for the provision of indigent defense services to require or include a provision in the employment or other contract requiring compliance with the regulations.

(3) Establishing standards to ensure that attorneys who provide indigent defense services track and report information in a uniform manner.

(4) Establishing guidelines to be used to determine the maximum caseloads for attorneys who provide indigent defense services.



(5) Requiring the Office of Indigent Defense Services and each county that employs or contracts for the provision of indigent defense services to ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative and other tasks which do not affect the rights of the defendant may be delegated. A provision must be included in each employment or other contract of an attorney providing indigent defense services to require compliance with the regulations.

(e) Establish recommendations for the manner in which an attorney who is appointed to provide indigent defense services may request and receive reimbursement for expenses related to trial, including, without limitation, expenses for expert witnesses and investigators.

(f) Work with the Executive Director and the Dean of the William S. Boyd School of Law of the University of Nevada, Las Vegas, or his or her designee, to determine incentives to recommend offering to law students and attorneys to encourage them to provide indigent defense services, especially in rural areas of the State.

(g) Review laws and recommend legislation to ensure indigent criminal defendants are represented in the most effective and constitutional manner.

3. The Board shall adopt regulations to establish a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services.

4. The Board shall adopt any additional regulations it deems necessary or convenient to carry out the duties of the Board and the provisions of this chapter.



Sec. 9. 1. *The Office of Indigent Defense Services is hereby created within the Office of the Governor.*

2. The Executive Director of the Office must be appointed by the Governor from a list of three persons recommended by the Board.

3. The Executive Director:

(a) Is not in the classified or unclassified service of this State;

(b) Serves at the pleasure of the Board on Indigent Defense Services, except that the Executive Director may only be removed upon a finding of incompetence, neglect of duty, commission of an act that constitutes moral turpitude, misfeasance, malfeasance or nonfeasance in office or for any other good cause;

(c) Must be an attorney licensed to practice law in the State of Nevada; and

(d) Must devote his or her entire time to his or her duties and shall not engage in any other gainful employment or occupation.

Sec. 10. 1. *The Executive Director shall:*

(a) Oversee all of the functions of the Office of Indigent Defense Services;

(b) Serve as the Secretary of the Board without additional compensation;

(c) Report to the Board on Indigent Defense Services regarding the work of the Office and provide such information to the Board as directed by the Board;

(d) Assist the Board in determining necessary and appropriate regulations to assist in carrying out the responsibilities of the Office;



(e) Establish the proposed budget for the Office and submit the proposed budget for approval of the Board;

(f) Prepare an annual report concerning indigent defense services in this State which includes information collected by the Office and such other information as requested by the Board; and

(g) Take any other actions necessary to ensure that adequate and appropriate indigent defense services are provided in this State.

2. The report prepared pursuant to paragraph (f) of subsection 1 must be submitted for approval of the Board. The final report must be submitted on or before July 1 of each year to the Nevada Supreme Court, the Legislature and the Office of the Governor. The report may include any recommendations for legislation to improve indigent defense services in this State.

Sec. 11. 1. *In addition to the Executive Director, the Office must include not fewer than two deputy directors selected by the Executive Director who serve at the pleasure of the Executive Director.*

2. The deputy directors:

(a) Must be attorneys licensed to practice law in the State of Nevada;

(b) Are not in the classified or unclassified service of this State; and

(c) Shall devote their entire time to their duties and shall not engage in any other gainful employment or occupation.

Sec. 12. *One deputy director selected pursuant to section 11 of this act must be responsible for:*

1. Overseeing the provision of indigent defense services in counties whose population is less than 100,000. Such oversight must include, without limitation:

(a) Oversight of the State Public Defender; and

(b) Determining whether attorneys meet the requirements established by the Board on Indigent Defense Services to be eligible to provide indigent defense services and maintaining a list of such attorneys.

2. Developing and providing continuing legal education programs for attorneys who provide indigent criminal defense services.

3. Identifying and encouraging best practices for delivering the most effective indigent defense services.

Sec. 13. *One deputy director selected pursuant to section 11 of this act must be responsible for reviewing the manner in which indigent defense services are provided throughout the State. To carry out this responsibility, the deputy director shall:*

1. Obtain information from attorneys relating to caseloads, salaries paid to criminal defense attorneys and the manner in which indigent defense services are provided.

2. Conduct on-site visits of court proceedings throughout the State to determine the manner in which indigent defense services are provided, including, without limitation, whether:

(a) Minimum standards for the provision of indigent defense services established by the Board on Indigent Defense Services are being followed;

(b) Court rules regarding the provision of indigent defense services are being followed;



(c) Indigent defendants are being asked to provide reimbursement for their representation or to take any other actions that violate the constitution, any law, a court rule or a regulation of the Board; and

(d) Representation of indigent criminal defendants is being provided in an effective manner.

3. Report to the other deputy director upon a determination that any person is providing indigent defense services in an ineffective or otherwise inappropriate manner.

4. Recommend entering into a corrective action plan with any board of county commissioners of a county which is not meeting the minimum standards for the provision of indigent defense services or is in any other manner deficient in the provision of such services.

Sec. 14. 1. *If a corrective action plan is recommended pursuant to section 13 of this act, the deputy director and the board of county commissioners must agree on the manner in which the county will meet the minimum standards for the provision of indigent defense services and the time by which the county must meet those minimum standards. Any disagreement must be resolved by the Board. Each corrective action plan must be submitted to and approved by the Board.*

2. If the plan established pursuant to subsection 1 will cause the county to expend more money than budgeted by the county for the provision of indigent defense services, the Executive Director shall include the additional amount needed by the county in the next budget for the Office of Indigent Defense Services to help support the indigent defense services provided by the county. If additional money is needed to carry out the plan before the

next budget cycle, the Executive Director shall submit a request to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to cover the additional costs.

3. If the additional amount included in the budget of the Office pursuant to subsection 2 is not approved, the board of county commissioners for the county to which the amount applies may determine whether to continue providing indigent defense services for the county or enter into an agreement with the Executive Director to transfer responsibility for the provision of such services to the State Public Defender.

4. If a county does not meet the minimum standards for the provision of indigent defense services within the period established in the corrective action plan for the county, the deputy director shall inform the Executive Director.

5. Upon being informed by the deputy director pursuant to subsection 4 that a county has not complied with a corrective action plan, the Executive Director must review information regarding the provision of indigent defense services in the county and determine whether to recommend establishing another corrective action plan with the board of county commissioners of the county or to require the board of county commissioners to transfer responsibility for the provision of all indigent defense services for the county to the State Public Defender. The recommendation of the Executive Director must be submitted to and approved by the Board. Once approved, the board of county commissioners shall comply with the decision of the Board.

6. If a county is required to transfer or voluntarily transfers responsibility for the provision of all indigent defense services for the county to the State Public Defender:

(a) The board of county commissioners for the county shall notify the State Public Defender in writing on or before March 1 of the next odd-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the same year in which the notice was given, as determined by the Executive Director.

(b) The board of county commissioners for the county shall pay the State Public Defender in the same manner and in an amount determined in the same manner as other counties for which the State Public Defender has responsibility for the provision of indigent defense services. The amount that a county may be required to pay must not exceed the maximum amount determined using the formula established by the Board pursuant to section 8 of this act.

Sec. 15. 1. A county that transfers responsibility for the provision of indigent defense services to the State Public Defender pursuant to section 14 of this act may seek to have the responsibility transferred back to the county by submitting a request to the Executive Director in writing on or before December 31 of an even-numbered year.

2. Upon finding that the county is able to meet minimum standards for the provision of indigent defense services, the Executive Director shall approve transferring the responsibility for the provision of indigent defense services to the county.

3. If the Executive Director denies a request to transfer responsibility for the provision of indigent defense services to a county, the Executive Director must inform the board of county



commissioners for the county of the reasons for the denial and the issues that must be resolved before the responsibility for the provision of indigent defense services will be transferred to the county.

4. If the Executive Director approves a request to transfer responsibility for the provision of indigent defense services to the county, the board of county commissioners for the county shall notify the State Public Defender in writing on or before March 1 of the next odd-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the same year in which the notice was given, as determined by the Executive Director.

Sec. 16. NRS 180.002 is hereby amended to read as follows:

180.002 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 180.003 and 180.004 *and sections 3, 4 and 5 of this act* have the meanings ascribed to them in those sections.

Sec. 17. NRS 180.010 is hereby amended to read as follows:

180.010 1. ~~The Office of State Public Defender is hereby created within the Department of Health and Human Services.~~

~~2. The~~ *There shall be a State Public Defender within the Office of Indigent Defense Services who must be appointed by the* Governor ~~[shall appoint the State Public Defender]~~ for a term of 4 years, and until a successor is appointed and qualified.

~~3. The State Public Defender is responsible to the Executive Director.~~ The State Public Defender:

(a) Must be an attorney licensed to practice law in the State of Nevada.



(b) Is *not* in the *classified or* unclassified service of the State ~~[]~~ *and serves at the pleasure of the Executive Director.*

(c) Except as otherwise provided in NRS 7.065, shall not engage in the private practice of law.

~~[4.]~~ 2. No officer or agency of the State, other than the ~~[Governor and the Director of the Department of Health and Human Services,]~~ *Executive Director and the deputy director selected by the Executive Director pursuant to section 11 of this act who is responsible for carrying out the duties provided in section 12 of this act* may supervise the State Public Defender. No officer or agency of the State, other than the ~~[Governor,]~~ *Executive Director or deputy director selected by the Executive Director pursuant to section 11 of this act who is responsible for carrying out the duties provided in section 12 of this act* may assign the State Public Defender duties in addition to those prescribed by this chapter.

Sec. 18. NRS 180.030 is hereby amended to read as follows:

180.030 1. The State Public Defender may employ:

(a) Deputy state public defenders *who are not* in the *classified or* unclassified service of the State.

(b) Clerical, investigative and other necessary staff *who are not* in the *classified or unclassified* service of the State.

2. Each deputy state public defender must be an attorney licensed to practice law in the State of Nevada, and shall not engage in the practice of law, except in performing the duties of office and as otherwise provided in NRS 7.065.



Sec. 19. NRS 180.040 is hereby amended to read as follows:

180.040 1. The ~~[Office of the]~~ State Public Defender shall be *located* in Carson City, Nevada, and the Buildings and Grounds Section of the State Public Works Division of the Department of Administration shall provide necessary office space.

2. The State Public Defender may establish branch offices necessary to perform the State Public Defender's duties. The State Public Defender shall designate a deputy state public defender to supervise each such office.

Sec. 20. NRS 180.060 is hereby amended to read as follows:

180.060 1. The State Public Defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when the indigent person has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.

2. The State Public Defender shall, when designated pursuant to NRS 62D.030, 62D.100, 171.188 or 432B.420, ~~[and within the limits of available money,]~~ represent without charge each indigent person for whom the State Public Defender is appointed.

3. When representing an indigent person, the State Public Defender shall:

(a) Counsel and defend the indigent person at every stage of the proceedings, including revocation of probation or parole; and

(b) Prosecute any appeals or other remedies before or after conviction that the State Public Defender considers to be in the interests of justice.



4. In cases of postconviction proceedings and appeals arising in counties in which the office of public defender has been created pursuant to the provisions of chapter 260 of NRS, where the matter is to be presented to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, the State Public Defender shall prepare and present the case and the public defender of the county shall assist and cooperate with the State Public Defender.

5. The State Public Defender may contract with any county in which the office of public defender has been created to provide representation for indigent persons when the court, for cause, disqualifies the county public defender or when the county public defender is otherwise unable to provide representation.

Sec. 21. NRS 180.080 is hereby amended to read as follows:

180.080 1. The State Public Defender shall submit:

(a) A report on or before December 1 of each year to the ~~Governor~~ *Executive Director* and to each participating county containing a statement of:

- (1) The number of cases that are pending in each participating county;
- (2) The number of cases in each participating county that were closed in the previous fiscal year;
- (3) The total number of criminal defendants represented in each participating county with separate categories specifying the crimes charged and whether the defendant was less than 18 years of age or an adult;



(4) The total number of working hours spent by the State Public Defender and the State Public Defender's staff on work for each participating county; ~~and~~

(5) The amount and categories of the expenditures made by the State Public Defender's office ~~and~~; *and*

(6) Such other information as requested by the Executive Director of the Office of Indigent Defense Services or the Board on Indigent Defense Services.

(b) To each participating county, on or before December 1 of each even-numbered year, the total proposed budget of the State Public Defender for that county, including the projected number of cases and the projected cost of services attributed to the county for the next biennium.

(c) Such reports to the Legislative Commission as the regulations of the Commission require.

2. As used in this section, "participating county" means each county in which the ~~office of public defender has not been created pursuant to NRS 260.010.~~ *State Public Defender acts as the public defender for the county.*

Sec. 22. NRS 180.090 is hereby amended to read as follows:

180.090 Except as provided in subsections 4 and 5 of NRS 180.060, the provisions of ~~this chapter~~ *NRS 180.010 to 180.100, inclusive*, apply only to counties in which the office of public defender has not been created pursuant to the provisions of chapter 260 of NRS.

Sec. 23. NRS 180.110 is hereby amended to read as follows:

180.110 1. Each fiscal year the State Public Defender may collect from the counties amounts which do not exceed those authorized by the Legislature for use of the State Public Defender's services during that year. *The amount that a county may be required to pay must*



not exceed the maximum amount determined using the formula established by the Board pursuant to section 8 of this act.

2. The State Public Defender shall submit to the county an estimate on or before the first day of May and that estimate becomes the final bill unless the county is notified of a change within 2 weeks after the date on which the county contribution is approved by the Legislature. The county shall pay the bill:

(a) In full within 30 days after the estimate becomes the final bill or the county receives the revised estimate; or

(b) In equal quarterly installments on or before the 1st day of July, October, January and April, respectively.

↪ The counties shall pay their respective amounts to the State Public Defender who shall deposit the amounts with the Treasurer of the State of Nevada and shall expend the money in accordance with the State Public Defender's approved budget.

Sec. 24. NRS 7.155 is hereby amended to read as follows:

7.155 The compensation and expenses of an attorney appointed to represent a defendant must be paid from the county treasury unless the proceedings are based upon a postconviction petition for habeas corpus, in which case the compensation and expenses must be paid from money appropriated to the ~~Office of~~ State Public Defender, but after the appropriation for such expenses is exhausted, money must be allocated to the ~~Office of~~ State Public Defender from the reserve for statutory contingency account for the payment of such compensation and expenses.

Sec. 25. NRS 7.165 is hereby amended to read as follows:



7.165 If at any time after the appointment of an attorney or attorneys the magistrate or the district court finds that money is available for payment from or on behalf of the defendant so that the defendant is financially able to obtain private counsel or to make partial payment for such representation, the magistrate or the district court may:

1. Terminate the appointment of such attorney or attorneys; or
2. Direct that such money be paid to:

(a) The appointed attorney or attorneys, in which event any compensation provided for in NRS 7.125 shall be reduced by the amount of the money so paid, and no such attorney may otherwise request or accept any payment or promise of payment for representing such defendant; or

(b) The clerk of the district court for deposit in the county treasury, if all of the compensation and expenses in connection with the representation of such defendant were paid from the county treasury, and remittance to the ~~{Office of}~~ State Public Defender, if such compensation and expenses were paid partly from moneys appropriated to the ~~{Office of}~~ State Public Defender and the money received exceeds the amount of compensation and expenses paid from the county treasury.

Sec. 26. NRS 232.320 is hereby amended to read as follows:

232.320 1. The Director:

(a) Shall appoint, with the consent of the Governor, administrators of the divisions of the Department, who are respectively designated as follows:

- (1) The Administrator of the Aging and Disability Services Division;



- (2) The Administrator of the Division of Welfare and Supportive Services;
- (3) The Administrator of the Division of Child and Family Services;
- (4) The Administrator of the Division of Health Care Financing and Policy; and
- (5) The Administrator of the Division of Public and Behavioral Health.

(b) Shall administer, through the divisions of the Department, the provisions of chapters 63, 424, 425, 427A, 432A to 442, inclusive, 446 to 450, inclusive, 458A and 656A of NRS, NRS 127.220 to 127.310, inclusive, 422.001 to 422.410, inclusive, 422.580, 432.010 to 432.133, inclusive, 432B.621 to 432B.626, inclusive, 444.002 to 444.430, inclusive, and 445A.010 to 445A.055, inclusive, and all other provisions of law relating to the functions of the divisions of the Department, but is not responsible for the clinical activities of the Division of Public and Behavioral Health or the professional line activities of the other divisions.

(c) Shall administer any state program for persons with developmental disabilities established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq.

(d) Shall, after considering advice from agencies of local governments and nonprofit organizations which provide social services, adopt a master plan for the provision of human services in this State. The Director shall revise the plan biennially and deliver a copy of the plan to the Governor and the Legislature at the beginning of each regular session. The plan must:

- (1) Identify and assess the plans and programs of the Department for the provision of human services, and any duplication of those services by federal, state and local agencies;
- (2) Set forth priorities for the provision of those services;



(3) Provide for communication and the coordination of those services among nonprofit organizations, agencies of local government, the State and the Federal Government;

(4) Identify the sources of funding for services provided by the Department and the allocation of that funding;

(5) Set forth sufficient information to assist the Department in providing those services and in the planning and budgeting for the future provision of those services; and

(6) Contain any other information necessary for the Department to communicate effectively with the Federal Government concerning demographic trends, formulas for the distribution of federal money and any need for the modification of programs administered by the Department.

(e) May, by regulation, require nonprofit organizations and state and local governmental agencies to provide information regarding the programs of those organizations and agencies, excluding detailed information relating to their budgets and payrolls, which the Director deems necessary for the performance of the duties imposed upon him or her pursuant to this section.

(f) Has such other powers and duties as are provided by law.

2. Notwithstanding any other provision of law, the Director, or the Director's designee, is responsible for appointing and removing subordinate officers and employees of the Department .

~~[, other than the State Public Defender of the Office of State Public Defender who is appointed pursuant to NRS 180.010.]~~

Sec. 27. NRS 260.010 is hereby amended to read as follows:



260.010 1. ~~Ha~~ *Except if the county voluntarily transfers or has been required to transfer responsibility for the provision of indigent defense services to the State Public Defender pursuant to section 14 of this act, in* counties whose population is 100,000 or more, the boards of county commissioners shall ~~create~~ *provide* by ordinance *for* the office of public defender.

2. Except as otherwise provided by subsection 4 ~~and~~ *and except if the county voluntarily transfers or has been required to transfer responsibility for the provision of indigent defense services to the State Public Defender pursuant to section 14 of this act,* in counties whose population is less than 100,000, boards of county commissioners may in their respective counties ~~create~~ *provide* by ordinance, at the beginning of a fiscal year, *for* the office of public defender.

3. Except as otherwise provided in subsection 4, if a board of county commissioners intends to ~~create~~ *provide by ordinance for* the office of county public defender, the board shall notify the State Public Defender in writing on or before March 1 of any odd-numbered year and the office may not be created before July 1 of the same year in which the notice was given.

4. If the county contribution approved by the Legislature exceeds the estimate provided to the county on December 1 by more than 10 percent for either year of the biennium, the board of county commissioners may ~~create~~ *provide for* the office of county public defender on July 1 of the next even-numbered year if the board notifies the State Public Defender on or before March 1 of the same year in which the office is to be created.

5. The office of public defender when created must be filled by appointment by the board of county commissioners.



6. The public defender serves at the pleasure of the board of county commissioners.

7. Each board of county commissioners shall cooperate with the Board on Indigent Defense Services created by section 6 of this act and the Office of Indigent Defense Services created by section 9 of this act. The board of county commissioners shall:

(a) Ensure that data and information requested by the Board or Office is collected and maintained; and

(b) Provide such information and reports concerning the provision of indigent defense services as requested by the Board or the Office.

8. As used in this section, "indigent defense services" has the meaning ascribed to it in NRS 180.004.

Sec. 28. NRS 260.050 is hereby amended to read as follows:

260.050 1. The public defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when he or she has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.

2. The public defender shall, when designated pursuant to NRS 62D.030, 171.188 or 432B.420, ~~[and within the limits of available money,]~~ represent without charge each indigent person for whom he or she is appointed.

3. When representing an indigent person, the public defender shall:

(a) Counsel and defend the person at every stage of the proceedings, including revocation of probation or parole; and



(b) Prosecute, subject to the provisions of subsection 4 of NRS 180.060, any appeals or other remedies before or after conviction that he or she considers to be in the interests of justice.

Sec. 29. NRS 260.070 is hereby amended to read as follows:

260.070 *1.* The public defender shall make an annual report to ~~the~~:

(a) The board of county commissioners covering all cases handled by his or her office during the preceding year.

(b) The Office of Indigent Defense Services created by section 9 of this act which includes any information required by the Office.

2. The board of county commissioners of each county with a public defender or which contracts for indigent defense services shall provide an annual report to the Office on or before May 1 of each year. The report must include any information requested by the Office concerning the provision of indigent defense services in the county and must include, without limitation, the plan for the provision of indigent defense services for the county for the next fiscal year.

3. As used in this section, "indigent defense services" has the meaning ascribed to it in NRS 180.004.

Sec. 30. NRS 284.140 is hereby amended to read as follows:

284.140 The unclassified service of the State consists of the following state officers or employees in the Executive Department of the State Government who receive annual salaries for their services:



1. Members of boards and commissions, and heads of departments, agencies and institutions required by law to be appointed.

2. Except as otherwise provided in NRS 223.085, 223.600 and 232.461 *and section 9 of this act*, all persons required by law to be appointed by the Governor or heads of departments or agencies appointed by the Governor or by boards.

3. All employees other than clerical in the Office of the Attorney General ~~[and the State Public Defender]~~ required by law to be appointed by the Attorney General . ~~[or the State Public Defender.]~~

4. Except as otherwise provided by the Board of Regents of the University of Nevada pursuant to NRS 396.251, officers and members of the teaching staff and the staffs of the Agricultural Extension Department and Experiment Station of the Nevada System of Higher Education, or any other state institution of learning, and student employees of these institutions. Custodial, clerical or maintenance employees of these institutions are in the classified service. The Board of Regents of the University of Nevada shall assist the Administrator in carrying out the provisions of this chapter applicable to the Nevada System of Higher Education.

5. All other officers and employees authorized by law to be employed in the unclassified service.

Sec. 31. Section 35 of chapter 460, Statutes of Nevada 2017, at page 2943, is hereby amended to read as follows:

Sec. 35. *1.* This act becomes effective on July 1, 2017 . ~~[, and expires]~~



2. *Sections 1, 3, 5, 6 and 8 to 34 inclusive, of this act expire* by limitation on June 30, 2019.

Sec. 32. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 33. This act becomes effective:

1. Upon passage and approval for the purpose of establishing the Office of Indigent Defense Services created by section 9 of this act, including appointing the Executive Director of the Office, and performing any other preliminary administrative tasks that are necessary to carry out the provisions of this act.

2. Upon passage and approval for the purpose of appointing members to the Board on Indigent Defense Services created by section 6 of this act. Members must be appointed by the Governor, the Majority Leader of the Senate, the Speaker of the Assembly and the Chief Justice of the Supreme Court, as applicable, as soon as practicable and assume their positions on July 1, 2019.

3. On October 1, 2019, for all other purposes.



Subject: Explanation of Assembly Bill No. 81

Justice Cherry forwarded your request for a summary of Assembly Bill No. 81, which was prefiled on November 21, 2018. AB 81 was prepared on behalf of the Nevada Right to Counsel Commission. The Commission was created by Senate Bill No. 377 during the 2017 Legislative Session to study issues related to the provision of indigent criminal defense in this State. To conduct the study, the Commission engaged the services of the Sixth Amendment Center, which was charged with conducting on-site visits and providing a comprehensive analysis of the indigent defense system in this State. Even before the study began, however, the ACLU along with some others, filed a lawsuit against the State alleging that the State of Nevada is failing to meet its obligation to provide adequate defense services to indigent persons who have been charged with crimes. The Nevada Right to Counsel Commission met every month from January through August, and again in November. The final report that was received from the consultant outlined many deficiencies in the provision of indigent defense services in Nevada, especially in rural counties, and substantiated the need for additional protections to ensure indigent defendants receive adequate and effective representation.

The members of the Nevada Right to Counsel Commission engaged in extensive debate regarding the manner in which to address the issues identified by the consultant. The members representing local governments expressed their desire to retain control over the provision of indigent defense services. They also expressed concern about additional costs of providing indigent defense services being passed down to the local governments. The bill, as drafted, attempts to address many of the concerns outlined by the members of the Nevada Right to Counsel Commission as well as the concerns and recommendations outlined in the final report of the consultant.

AB 81 establishes a Board on Indigent Defense Services and an Office of Indigent Defense Services. The Office is established within the Office of the Governor, similar to some other Offices such as the Office of Economic Development. The Executive Director of the Office is selected by the Governor from a list of three recommendations provided by the Board and is responsible to the Board once selected. The intent was to provide some independence in the oversight of indigent defense in this State. The Board is made up of members who serve without compensation, except they may receive reimbursement for per diem expenses and travel costs. The membership of the Board is very similar to the Nevada Right to Counsel Commission, except without any legislators or state officers. The Board on Indigent Defense Services acts as the policymaker and the Office carries out the day-to-day responsibility for overseeing the provision of indigent defense services in this State. The Board has authority to adopt regulations and is required to establish a system to receive and address complaints relating to indigent defense services and to establish minimum standards for the delivery of indigent defense services.

The Office of Indigent Defense Services is established with an Executive Director and two deputy directors. In addition, the Governor's Office included a staff of two additional employees under each deputy director in the budget for the Office. Each deputy director oversees different aspects of the responsibilities of the Office. One deputy director oversees indigent defense services in rural counties, including oversight of the Office of the State Public Defender,

which is moved to the Office from the Department of Health and Human Services. This deputy director also reviews qualifications of attorneys and maintains a list of attorneys who are qualified to provide indigent defense services. The deputy director also develops and provides educational programs relating to indigent defense and identifies and encourages best practices for delivering effective indigent defense services.

The second deputy director is responsible for reviewing the manner in which indigent defense services are provided throughout the State. To carry out that responsibility, the deputy director conducts on-site visits of court proceedings to determine whether indigent defense services meet minimum standards throughout the State. This deputy director also collects significant data about caseloads, salaries and other information from indigent defense attorneys to assist with evaluating the manner in which indigent defense services are provided. If the deputy director determines that indigent defense services do not meet minimum standards in any area of the State, the deputy director is authorized to recommend entering into a corrective action plan with the responsible local government, which must be approved by the Board. If the requirements of a corrective action plan will cause the local government to expend more money than it budgeted for the provision of indigent defense services, the Executive Director of the Office may request money from the Contingency Account to pay for that additional expense and is also required to request additional money in its budget in the next budget cycle to seek monetary assistance for the local government for the additional cost of providing indigent defense services. If the local government does not meet the requirements set out in the corrective action plan within the agreed upon timeframe, the deputy director informs the Executive Director. The Executive Director must determine whether to recommend: (1) entering into another corrective action plan; or (2) transferring all responsibility for the provision of indigent defense in the county to the State Public Defender. The Board makes the final determination. The Board is also authorized to adopt regulations that establish the maximum amount that a county may be required to pay for the provision of indigent defense services. Any amount that exceeds that maximum will need to be paid by the State.

If you have any other questions regarding AB 81 or the Nevada Right to Counsel Commission, please let me know.

Sincerely,
Risa Lang

Risa Lang
Chief Deputy Legislative Counsel
Nevada Legislative Counsel Bureau

MEMORANDUM

To: Indigent Defense Commission, Chair Justice Michael Cherry
From: Franny Forsman
Date: November 8, 2018
Subject: Process for Review of Local Plans

On January 4, 2008, the Nevada Supreme Court, in ADKT 411, ordered that all district and municipal courts submit an administrative plan setting forth the process for appointment of counsel, approval of expert witness fees, investigation fees and attorney fees and the determination of indigency. Additionally, this Commission approved a Model Plan for use of the courts in drafting their plans. Following objections by some stakeholders in the rural counties, that order was stayed indefinitely for all courts except Washoe and Clark.

The courts submitted plans in 2008. Some courts have since amended the plans and most recently, Henderson submitted a plan for review by the Commission. However, there is no clear direction in the previous orders as to the process to be employed in reviewing the plans, the role of the Supreme Court in approving the plans. Additionally, the order does not require any periodic review of existing plans to determine whether updating should be considered.

Accordingly, I am asking that the Commission consider requesting an Order in the ADKT 411 docket that will set forth a process for review of the urban plans.

Some suggested elements of the order might be:

- A provision for review of the plans every two years by all courts.
- A provision for submission of any amendments to the Indigent Defense Commission if the plan is amended and a notification to the IDC if no amendments are made.
- A provision for review by the IDC of the plans (original or amended) and a report to the Nevada Supreme Court.
- A provision that the IDC review the Model Plan every 2 years to determine if amendments should be made and notification of all courts of any amendments adopted.

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy

Director

Information Technology

MEMORANDUM

TO: Indigent Defense Commission

FROM: John McCormick

DATE: December 3, 2018

SUBJECT: Appointment of Counsel Checklist and Indigence Screening Affidavit

At the September 25, 2018, the Indigent Defense Commission (IDC) agreed that I should develop a colloquy, checklist, and/or affidavit for use by trial courts in appointing counsel.

After reviewing tools used in other states, I have developed the attached Appointment of Counsel Checklist and Indigence Screening Affidavit for the review of the IDC.

The Checklist is intended to guide judges in the necessary steps and requirements for appointment of public counsel and it provides additional materials that may be of use. The Screening Affidavit is intended to provide the court with the necessary financial information to determine indigence pursuant to the ADKT 411 Standard.

Both documents reference the existing statutory provision (NRS 178.3975) which allows a court to order a defendant who is represented by public counsel to reimburse the government for part, or all, of the cost of that representation. The Checklist advises that the judge to inform the defendant of this provision as early as possible during the life of the case, and the Affidavit provides this information which the defendant must acknowledge.

The current statutory provision regarding this matter, however, has a provision that allows the court to order such reimbursement based upon the defendant's prospective ability to pay, "The court shall not order a defendant to make such a payment unless the defendant is or will be able to do so." This provision may prove problematic without more specific guidance.

Recommendations:

Supreme Court Building ♦ 201 South Carson Street, Suite 250 ♦ Carson City, Nevada 89701 ♦ (775) 684-1700 • Fax (775) 684-1723

Supreme Court Building ♦ 408 East Clark Avenue ♦ Las Vegas, Nevada 89101

IDC

November 21, 2018

Page 2

1. The IDC approve the draft documents, with any necessary changes, for distribution to Nevada's trial courts for use when appointing counsel.
2. The IDC review the existing language of NRS 178.3975 and either provide additional guidance to the courts to consider when ordering reimbursement, and/or encourage the 2019 Nevada Legislature to make any necessary changes to the statute.

Attachments: NRS 178.3975

Appointment of Counsel Checklist

Indigence Screening Affidavit

Associated Attachments

Appointment of Counsel Checklist

- ✓ An arrestee must appear before a judge within 72 hours and must be informed of the charges against him or her and of his or her rights, including the right to be represented by counsel at all stages of the proceedings if the person faces a possibility of jail time.
- ✓ The person must be informed at the initial appearance that if he or she cannot afford to retain private counsel, and wants representation, the court will appoint an attorney at public expense.
- ✓ If the individual requests counsel, the judge must determine if the person is eligible for public counsel by questioning¹ the person and/or using the affidavit of indigence² to establish the person's ability to pay for representation.
- ✓ A person's ability to pay bail or post bond does not make the individual ineligible for public counsel.
- ✓ The presumptive standard for indigence is iterated in the ADKT 411 Order dated January 4, 2018:

A person will 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 Guidelines³. 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.

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.

- ✓ If the person wishes to waive his or her right to appointed or retained counsel, the judge must conduct a *Faretta* Canvas [*Faretta v. California*, 422 U.S. 806 (1975)] to determine if the waiver is being made voluntarily and intelligently.
- ✓ The judge must appoint the public defender pursuant to NRS 7.115 unless the public defender is disqualified.
- ✓ If the court intends to potentially assess costs to the person for public representation, the court must inform the person as soon as possible during the life of the case that, pursuant to NRS 178.3975, the court may order the person to pay all or part of the costs incurred in providing an attorney at the end of the case if the person is convicted and has the ability, or will have the ability, to make such payment.

¹ A copy of Appendix E of the Limited Jurisdiction Courts Benchbook provides a suggested dialog for appointment of counsel and is attached hereto.

² A copy of the suggested Indigence Screening Affidavit is attached.

³ The current Federal Poverty Guidelines can be obtained at <https://aspe.hhs.gov/poverty-guidelines>, and a copy of the 2018 Guidelines is attached.

Appendix E – Appointment of Counsel in Criminal Cases

Contents

Appendix E – Appointment of Counsel in Criminal Cases	E-1
Dialogue	E-1
Disqualification	E-2

Note: The limited jurisdiction court appoints death penalty qualified counsel in capital cases brought on complaint or information. The District Court appoints counsel in capital cases brought on indictment. Counsel for capital cases must be qualified and appointed pursuant to [SCR 250](#).

Dialogue

The defendant should be sworn under oath:

“You have told me you do not have the money to hire an attorney. I will need to ask you questions to determine whether you qualify for the appointment of an attorney to represent you in this case. Would you please stand?

Do you solemnly swear that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth?”

The court should ask defendant questions such as the following to determine eligibility in accordance with [ADKT 411](#):

- Are you married?
- Do you have any children? How many?
- Do you support your wife and children? Do they live with you?
- Do you support anyone other than your wife and children? If so, who?
- Are you employed? Where? What kind of work do you do? How long have you worked for your present employer?
- How much in salary do you earn per week?
- Do you have any other income?
- Do you own an automobile? If so, how much is it worth?
- Have you fully paid for that automobile? If not, how much do you still owe on it?
- What year is the automobile? What is the condition of the automobile?
- Do you have any money? If so, how much? Where is it?

- Do you have any checking or savings accounts?
- Do you own any savings bonds, stocks or other paper certificates of value?
- Do you own a home or any other real property, such as land, buildings, etc.? If so, how much is it worth?
- Is your real property mortgaged, and if so, how much money do you still owe on the property?
- Do you have any other assets or property?
- Do you have any other debts? If so, describe those debts.

If the court determines at this point that the defendant is financially unable to hire an attorney, the public defender or private counsel should be appointed to represent the defendant.

Disqualification

The public defender must be appointed unless disqualified. [NRS 7.115](#). The court must state the reasons for the disqualification on the record. [NRS 7.115](#). When the public defender is disqualified, the court may appoint any available attorney. Payment of those fees is set forth in [NRS 7.125](#).

2018 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

PERSONS IN FAMILY/HOUSEHOLD	POVERTY GUIDELINE
For families/households with more than 8 persons, add \$4,320 for each additional person.	
1	\$12,140
2	\$16,460
3	\$20,780
4	\$25,100
5	\$29,420
6	\$33,740
7	\$38,060
8	\$42,380

Indigence Screening Affidavit

Public Assistance

Please check any types of public assistance you currently receive:

- Medicaid
- Food Stamps (SNAP)
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Temporary Assistance to Needy Families (TANF)
- Supplemental Security Income (SSI)
- Housing Assistance (e.g., Section 8 – Housing Choice Voucher, Rural Rental Housing, etc.)
- Energy Assistance Program (EAP)

Income and Asset Information

Are you employed? Yes No Monthly Take-Home Pay: \$ _____

Occupation: _____

Employer: _____ Phone: _____

Do you have a spouse or registered domestic partner who lives with you? Yes No

If yes, is he or she employed? Yes No Monthly Take-Home Pay: \$ _____

Employer: _____ Phone: _____

Do you and/or your spouse or registered domestic partner receive unemployment, Social Security, pension/retirement plan, or workers' compensation payments? Yes No

If yes, which type? _____ Monthly Amount: \$ _____

Do receive income from any other source? Yes No

If yes, what is the source? _____ Monthly Amount: \$ _____

Total Monthly Income: \$ _____

Do you have any children living with you? Yes No How Many? _____

Including yourself, what is the total number of people in your household that you support? _____

Do you own your home? Yes No Value: \$ _____ Amount Owed: \$ _____

Do you own a vehicle(s)? Yes No

Year: _____ Make: _____ Model: _____ Amount Owed: \$ _____

Year: _____ Make: _____ Model: _____ Amount Owed: \$ _____

Year: _____ Make: _____ Model: _____ Amount Owed: _____

How much money is available in your checking and/or savings account(s)? \$ _____

How much money do you have in stocks, bonds, and/or other investments? \$ _____

Expenses

Routine monthly living expenses such as housing, food, utilities, and transportation? \$ _____

Other than living expenses do you have other monthly expenses such as child support, alimony, court ordered fines and fees, medical bills, etc.? Yes No

If so, please describe: _____

Monthly Amount: \$ _____

Self-Assessment

Do you believe you have sufficient resources to retain a private attorney? Yes No

Please read the following information and sign:

I understand that the Court may require verification of the information provided in this form. I agree to report any change in financial status to the Court immediately.

I understand that the Court may order me to pay all or part of the expenses incurred in providing me an attorney so long as I am able or will be able to pay pursuant NRS 178.3975.

I certify under penalty of perjury (NRS 199.145) that the foregoing is true and correct.

Signature: _____ Date: _____

Printed Name: _____

Indigent Defense Data Dictionary

The Indigent Defense Commission approved and directed the collection of indigent defense data on October 2010. The objective for gathering indigent defense data is to identify and define basic data elements for counting of cases assigned to appointed or indigent defense counsel. Phase I is expected to define those basic cases assigned and disposed categories necessary to begin understanding the caseload of appointed counsel. Future phases will expand data elements to be captured by counsel.

Indigent Defense Case Type Definitions

Felony Case: A subcategory of criminal cases in which a defendant is charged with the violation of a state law(s) that involves an offense punishable by death, or imprisonment in the state prison for more than 1 year.

Gross Misdemeanor Case: A subcategory of criminal cases in which a defendant is charged with the violation of state laws that involve offenses punishable by imprisonment for up to 1 year and (or) a fine of \$2,000.

Misdemeanor Non-Traffic Case: A criminal subcategory in which a defendant is charged with the violation of state laws and/or local ordinances that involve offenses punishable by fine or incarceration or both, the upper limits of which are prescribed by statute (NRS 193.120, generally set as no more than 6 months incarceration and/or \$1,000 fine).

Misdemeanor Traffic Case: A criminal subcategory for Justice and Municipal Courts in which a defendant is charged with the violation of traffic laws, local ordinances pertaining to traffic, or federal regulations pertaining to traffic.

Juvenile Case: A subcategory of juvenile cases that includes cases involving an act committed by a juvenile, which, if committed by an adult, would result in prosecution in criminal court and over which the juvenile court has been statutorily granted original or concurrent jurisdiction.

Additional Indigent Defense Caseload Statistics

Death Penalty: The number of defendants for which the District Attorney's Office has filed the notice of intent to seek the death penalty, in accordance with Supreme Court Rule 250.

Probation Revocations: The number of defendants for which post-adjudication criminal activity involving a motion to revoke probation due to an alleged violation of one or more conditions of probation (usually from the Department of Parole and Probation) or suspended sentence. The unit of count for revocation hearings is a single defendant, regardless of the number of charges involved. Revocation hearings are counted when the initiating document (e.g., violation report) is received by the court.

Informal Juvenile Hearing (involving a judicial officer): The number of hearings/events involving a juvenile in which no formal charge has been filed with the court. Only record an informal hearing if it is held on a matter that is not a part of an existing case. The court may impose a disposition as a result of the informal hearing.

Juvenile Detention Hearing: The number of hearings requesting a juvenile to be held in detention, or continued to be held in detention, pending further court action(s) within the same jurisdiction or another jurisdiction. Record a detention hearing that is held.

Conflicts: The number of defendants during the reporting period that a lawyer's appointment to case ended because of a conflict that necessitated the transfer of the case to another lawyer.

Specialty Court Cases: A count of cases in which a lawyer represents a defendant in a specialty court program, i.e., drug court or mental health court. This type of case should be counted in this additional category when the defendant appears during a specialty court session within the reporting period or if the indigent defense counsel is assigned to the defendant for specialty court.

Justice Court Felony/Gross Misdemeanor Reductions: A number of defendants for which any felony or gross misdemeanor charge was totally (and only) adjudicated in justice court.

Caseload Inventory

Unit of Count

For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint or information from one or more related incidents on one charging document is one case, regardless of the number of counts)¹. For juvenile cases, the unit of count is a single juvenile defendant on a single petition regardless of the number of counts. For traffic cases, the unit of count is a single case (by defendant) based on an original charging document from a single incident.

For defendants in cases whereby multiple charges are involved, courts will utilize a hierarchy (described below) when classifying the case for statistical purposes. For example, if a defendant is charged on a single charging document with a felony and a gross misdemeanor, for statistical purposes, the case is counted as a felony.

Felony and gross misdemeanor cases in Justice Court are counted when counsel is appointed to the case by the Court.

Misdemeanor and traffic cases in Justice and Municipal Courts are counted when counsel is appointed to the case by the Court.

Additional charges such as failure to appear or habitual criminal are not counted at this time because those are added after the initial charging document.

Appointment: Any time a lawyer is asked or assigned to act on behalf of a person in a criminal or juvenile matter by a judicial officer. An appointment ends when a lawyer is no longer involved in a case

¹ This definition varies from the national standard as promulgated by the National Center for State Courts in that it counts a single defendant on a single charging document, while the national standard counts a single defendant with a single incident/transaction. This means that the Nevada measure herein, will under report caseload at times when one defendant is charged with separate crimes from separate incidents that may necessitate indigent defense counsel to treat the appointment as multiple cases. In the event that the capacity to accurately count cases in line with the national model becomes available in Nevada, the intent of the Subcommittee is that this definition be revisited.

for whatever reason. There can be multiple appointments for a single defendant/case during the duration of the case.

When to Count Filings

Beginning Pending: A count of cases by defendant that, at the start of the reporting period, are awaiting disposition.

New Appointments: A count of cases by defendant that have been assigned counsel for the first time of each new appointment.

Cases filed in district courts where indigent defense counsel continues to represent the defendant on the case after their appointment in justice court, should be counted as new appointments in district court reports.

Warrant (Placed on Inactive Status): A count of cases in which a warrant for failure to appear has been issued, a diversion program has been ordered, or other similar incident that makes the case inactive.

Returned from Warrant (Re-activated): A count of cases in which a defendant has been arrested on a failure to appear warrant and has appeared before the court, returned from diversion program, or other similar occurrence that makes the case active.

Adjudicated/Disposed/Closed Cases: A count of cases by defendant for which an original entry of adjudication has been entered or for which an appointment has ended.

Ending Pending: A count of cases by defendant that, at the end of the reporting period, are awaiting disposition.

Set for Review: A count of cases that, following an initial Entry of Judgment during the reporting period, are awaiting regularly scheduled reviews involving a hearing before a judicial officer. For example, if a status check hearing is ordered to review post adjudication compliance.

Manner of Disposition

Unit of Count

For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint from one or more related incidents is one case, regardless of the number of counts)². A criminal case is considered disposed when final adjudication for that defendant or case occurs. For statistical purposes, final adjudication is defined as the date of sentencing, date of adjudication, or date charges are otherwise disposed, whichever occurs last. A case may be considered closed for an appointed attorney when the appointment ends regardless of adjudicatory status. Counsel should count the case adjudicated or disposed in the same category as it was counted in (felony in, felony out).

² This definition varies from the national standard as promulgated by the National Center for State Courts in that it counts a single defendant on a single charging document, while the national standard counts a single defendant with a single incident/transaction. This means that the Nevada measure herein, will under report caseload at times when one defendant is charged with separate crimes from separate incidents that may necessitate indigent defense counsel to treat the appointment as multiple cases. In the event that the capacity to accurately count cases in line with the national model becomes available in Nevada, the intent of the Subcommittee is that this definition be revisited.

Draft County PD Reporting Tool

Created 10/2018 by the Nevada Association of Counties

- 1 County: _____
- 2 Law Firm: _____
- 3 Attorney Name: _____
- 4 Reporting Quarter: _____ to _____
- 5 Final Day of Last Reporting Period: _____

6 PENDING CASES - on final day of last reporting period

- Death Penalty
- Murder (Non-Death)
- Class A
- Other Felonies - Non-Specialty Courts
- Other Felonies - Specialty Courts
- Gross Misdemeanor
- Misdemeanor (Non-Traffic)
- Misdemeanor (Traffic)
- Delinquency
- Juvenile Status Offense
- Abuse and Neglect (NRS 432B)
- Termination Parental Rights (NRS 128 and NRS 432B)
- Parole/Probation Revocation
- Mental Health Commitment
- Appeal
- Other

SUB-TOTAL

7 **NEW APPOINTMENTS**

Month: Month: Month:

Death Penalty

Murder (Non-Death)

Class A

Other Felonies - Non-Specialty Courts

Other Felonies - Specialty Courts

Gross Misdemeanor

Misdemeanor (Non-Traffic)

Misdemeanor (Traffic)

Delinquency

Juvenile Status Offense

Abuse and Neglect (NRS 432B)

Termination Parental Rights (NRS 128)

Parole/Probation Revocation

Mental Health Commitment

Appeal

Other

SUB-TOTAL

8 DISPOSED CASES

Month: Month: Month:

- Death Penalty
- Murder (Non-Death)
Class A
- Other Felonies - Non-Specialty Courts
- Other Felonies - Special Courts

- Gross Misdemeanor
- Misdemeanor (Non-Traffic)
- Misdemeanor (Traffic)
- Delinquency
- Juvenile Status Offense
- Abuse and Neglect (NRS 432B)
- Termination Parental Rights (NRS 128)
- Parole/Probation Revocation
- Mental Health Commitment
- Appeal
- Other

SUB-TOTAL

9 DISPOSITION DETAIL	Death Penalty	Felony	Gr. Misdr.	Misd. Misdr	Misd. (Traffic)	Delinquency	432B	128	Revocation	Other	Juv. Status	Mental Health	Appeal	Total
Dismissal														
Pleas														
Bench Warrant														
# of Bench Trials														
# of Jury Trials														
# of Civil Hearings														
SUB-TOTAL														

10 Number of hours spent on court appointed representation (from this jurisdiction): _____
 Percentage of total work hours spent on court appointed representation (from this jurisdiction): _____

11 List other counties and municipalities where you were appointed to represent indigent defendants:

12 What other work did you perform for the criminal justice system (e.g., magistrate)?

13 Please list all support personnel by job classification in your firm or public defender office:

Uniform Case Definition: Count the defendant and all charges involved in a single incident as a single case. If the charging document contains multiple defendants involved in a single incident, count each defendant as a single case.

Rural County Public Defender Reporting Tool
Instruction Manual
Created by the Nevada Association of Counties (NACO)
October 2018

Introduction: In 2017, Nevada’s legislature took a preliminary step toward reforming the state’s indigent defense system by establishing the Nevada Right to Counsel Commission (NRTCC). This Commission conducted, with the assistance of the Sixth Amendment Center (6AC), a study of the provision of indigent defense services in Nevada’s rural counties. During the NRTCC’s discussions, as well as through information gathered by the 6AC, the Nevada Association of Counties (NACO) heard from its rural county members about one important challenge they faced. That challenge is, although county commissions and county managers in rural Nevada are tasked with overseeing any contract public defenders they may have hired, they do not have a uniform reporting tool or system through which they could gather information from public defenders on their work. Such a tool could accomplish two things: 1) Help county managers and commissions understand the tasks and challenges rural contract public defenders face; and 2) Help counties ensure public defenders are meeting the terms of their contracts.

In response, NACO convened a working group to create such a tool. The working group included a county commissioner, current or former county or assistant county managers, a prosecutor, and a defense attorney. Rural counties are encouraged use the tool. Please ask your county’s contract public defender(s) to fill it out once every quarter. It is suggested the reports be presented to the county commission. The instructions below provide information on how to use the tool.

Section	Question/Instruction
1	<u>County:</u> Please list the county in which you provide indigent defense services and for which the case load report pertains.
2	<u>Law Firm:</u> Please list the name of the law firm that employs you. If you are self-employed, please list “sole practitioner.”
3	<u>Attorney Name:</u> Please list the first and last name of the attorney. Please note, a separate report must be filled out for each and every attorney in a public defender office or law firm.
4	<u>Reporting Quarter:</u> A county fiscal year begins on July 1 st and ends on June 30 th . Therefore, the four reporting quarters are as follows: Quarter 1: July 1 st through September 30 th . Quarter 2: October 1 st through December 31 st . Quarter 3: January 1 st through March 31 st . Quarter 4: April 1 st through June 30 th . Please indicate the appropriate fiscal quarter that is being reported.
5	<u>Final Day of Last Reporting Period:</u> Please indicate the day on which you last reported your public defender workload. For example, if the current report is for the second quarter of a fiscal year (e.g. October 1 st through December 31 st), then the final day of last reporting period should be marked “September 30 th .”

Caseload Reporting: For all public defense caseload reporting, Sections #6 through #9, please use the following uniform definition of a “case”: Count the defendant and all charges involved in a single incident as a single case. If the charging document contains multiple defendants involved in a single incident, count each defendant as a single case. When cases involve multiple charges arising out of a single incident, please count the case by “top charge” at the time of filing, regardless of the severity of the case when it is disposed. That is, a case filed as a felony but disposed as a misdemeanor through plea negotiations should be counted in caseload reports as a felony.

Explanation: Using a district attorney’s charging instrument to define a “case” does not produce uniform caseload data because different prosecutors have different philosophies on how to charge (as it should be). For example, one prosecutor may want to charge suspected co-conspirators on a single charging document. However, two separate public defense providers must each represent the individual co-defendants. Each right to counsel provider is ethically bound to provide zealous representation to the co-defendant assigned to them, meaning that each defense provider must conduct independent investigations and engage in separate case prep and plea negotiations. They are, in every sense of the word, two separate “cases.”

Similarly, if a defendant is charged with shoplifting in one store on one day and a separate store on another day, and yet a third store on a third day, a prosecutor may want to file a single charging document to show the serial pattern of the accused. But, from the defense perspective, an attorney must interview three potential sets of eyewitnesses, and investigate three different crime scenes. It is quite possible the defendant committed two of the alleged crimes, but not the third. Each one must be treated as its own case.

This differs in kind with the work and effort needed to investigate and defend all of the charges arising from a single incident. Say a defendant is charged with reckless driving and subsequently is alleged to have resisted arrest or to have accosted the arresting officer. All of the work effort of a defense attorney is around the same sets of facts, the same eyewitnesses and the same crime scene.

Similar issue arise when trying to count a “case” by “charge” or by “defendant.” Because defendants are sometimes charged with multiple counts arising out of a single incident, using “charges” as the definition of a “case,” will artificially inflate caseload numbers. The opposite is true when counting cases by “defendant.” Because defendants may be charged in multiple offenses occurring on different days in different places, counting “defendants” will underreport an attorney’s actual workload.

Section	Question/Instruction
6	<p>Pending Cases: Please list all open, pending public defense cases you have as of the date reported in Section #5 (above) by each classification listed. If you have no cases pending under a specific classification please list "0." No line should be left blank. If you list cases under the category "other," please list the case type.</p>
7	<p>New Appointments: Please list the total number of new cases to which you were appointed during the time period listed in Section #4 using the uniform definition of a "case." New appointments shall be broken down by each of the three months contained in the reporting quarter. If you have new assignments under a specific classification please list "0." No line should be left blank. If you list cases under the category "other," please list the case type.</p> <p>Cases in which an indigent defense client absconded and for which a bench warrant was issued in a prior report, and for which a client is returned to court during the current reporting period, should be counted as a new assignment.</p>
8	<p>Disposed Cases: Please list the total number of cases you disposed during the time period listed in Section #4 using the uniform definition of a "case." Dispositions shall be broken down by each of the three months contained in the reporting quarter. If you have no dispositions under a specific classification please list "0." No line should be left blank. If you list cases under the category "other," please list the case type.</p>
9	<p>Disposition Detail: For each classification of case type, please list the number of cases that were dismissed during the reporting period. Similarly, please list the number of cases by case type for which a defendant entered a guilty plea. Also, please list the number of cases for which an indigent defense client absconded and for which a bench warrant was issued. If an indigent defense client is returned on a bench warrant within the same reporting period and the case is disposed within the same reporting time period, count the case under the actual disposition category.</p>
10	<p>Number of Hours spent on court appointed representation (from this jurisdiction): Please indicate the total number of hours spent on all indigent defense cases arising from the county listed in Section #1. Do not count hours spent on indigent defense cases arising out of other counties or municipalities.</p> <p>Percentage of total hours spent on court-appointed representation (from this jurisdiction): Please estimate the percentage of work hours expended on indigent defense cases arising from the county identified in Section #1 as an overall percentage of your total time spent on all public and private cases. If you are a full-time government-employed public defender, you should indicate "100%." If you are a private attorney and take indigent defense cases from outside the county listed in Section #1, please count those other indigent defense cases as part of your "private" caseload for this response.</p>
11	<p>Other jurisdictional indigent defense workload: If you handled indigent defense cases during the reporting period in any other jurisdiction (including municipalities), please list the name of the county or municipality where this work occurred.</p>
12	<p>Other criminal justice work: If you performed any work in a different criminal justice capacity (e.g., magistrate, prosecutor, etc.) in any jurisdiction (including municipalities) other than the county listed in Section #1, please list the name of the county or municipality where this work occurred. Also, please indicate what criminal justice capacity performed.</p>
13	<p>Support personnel: Please list any and all support staff employed by the law firm indicated in Section #2 above. You do not need to list individual names but rather by job classification. For example, if a law firm or public defender office employs two legal secretaries, please indicate this as: "Legal secretaries (2)." If the law firm or public defender employs part-time support staff, please indicate the percentage of a full-time equivalent employee. For example, if a law firm or public defender office employs one full-time legal secretary and one half-time legal secretary, please indicate this as: "Legal secretaries (1.5)."</p>



MEMORANDUM

FROM: Dagny Stapleton, Executive Director, Nevada Association of Counties (NACO)

DATE: December 1, 2018

SUBJECT: Rural County Contract Public Defender Reporting Tool

The Nevada Association of Counties (NACO) recently convened a working group to create a tool for rural counties to use as a reporting mechanism for their contract public defenders. The purpose of this tool is to measure the workload and output of county contract public defenders so that rural county commissions have the information they need to negotiate the terms of those contracts and to understand the work that their contract public defenders do.

NACO heard from its rural county members that, although county commissions and county managers are tasked with overseeing any contract public defenders they may have hired, they do not have a uniform reporting tool or system through which they gather information from public defenders on their work. When the NACO Board directed staff to facilitate the creation of the tool they expressed sincere interest in being able to better monitor and gather information from their contract public defenders, and they were eager to have it at their disposal. It is hoped that such a tool will help counties ensure that contract public defenders are meeting the terms of their contracts.

The tool consists of a spreadsheet containing a series of questions for the attorney(s) to answer. The thought was that any rural county commission could request their contract defender(s) complete the tool and present it before the commission each quarter. The tool is also accompanied by a document containing instructions on how to fill out and use the tool.

The working group that created the tool included a county commissioner, a rural county manager, a prosecutor, a defense attorney and a former rural county commissioner and member of the IDC. David Carroll from the Sixth Amendment Center also reviewed and provided input on a draft of the tool. The tool was completed in October 2018 and shortly thereafter presented to the NACO Board. The tool was distributed to all 15 of Nevada's rural

counties. NACO has also posted the tool on our website and will continue to encourage rural counties who contract with public defenders to use it.