

**REVISED PROPOSED REGULATION OF THE
BOARD ON INDIGENT DEFENSE SERVICES**

LCB File No. R042-20

August 13, 2021

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §§ 1-45, NRS 180.320.

A REGULATION relating to indigent defense services; establishing provisions concerning petitions for the adoption, filing, amendment or repeal of a regulation of the Board on Indigent Defense Services and the issuance of certain declaratory orders and advisory opinions by the Department of Indigent Defense Services; establishing provisions relating to the funding for indigent defense services and the plans of counties for the provision of indigent defense services; establishing provisions relating to the training, education, qualification, compensation and workload of attorneys who provide indigent defense services; establishing requirements relating to the reporting of certain information by providers of indigent defense services; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Board on Indigent Defense Services to adopt any regulations it deems necessary or convenient to carry out the duties of the Board and the provisions of law governing indigent defense services. (NRS 180.320) **Section 10** of this regulation establishes the procedure for a person to file a petition for the adoption, filing, amendment or repeal of a regulation of the Board with the Department of Indigent Defense Services. **Section 11** of this regulation provides that the Board or Department may review such a petition and requires the Department to notify the petitioner of the decision of the Board or Department not later than 90 days after the petition is filed. **Section 12** of this regulation generally authorizes a person to petition the Executive Director of the Department to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department and establishes requirements relating to such a petition. **Section 13** of this regulation authorizes the Executive Director to take certain actions relating to the review of a petition and issuance of a declaratory order or advisory opinion or to designate a deputy director to do the same. **Section 13** also requires the Executive Director or deputy director to mail a copy of the declaratory order or advisory opinion to the petitioner within a certain number of days. **Section 14** of this regulation provides that if a petitioner receives a declaratory order or advisory opinion from a deputy director, the petitioner is authorized to request that the Executive Director review the decision. **Section 15** of this regulation prohibits the Executive Director, a deputy director or any

other staff member of the Department from rendering an oral response to a request for an advisory opinion.

Existing law requires the Board to adopt regulations establishing a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services. (NRS 180.320) **Section 16** of this regulation establishes such a formula. **Section 17** of this regulation establishes the methods by which a county may seek state contributions for indigent defense services in excess of the maximum county contribution and requires a county seeking such state contributions to submit a financial status report to the Department not later than 15 days after the end of each quarter. **Section 18** of this regulation provides that state contributions for indigent defense services are provided for a period of 1 fiscal year and any unencumbered or unexpended balance remaining at the end of the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.

Section 19 of this regulation authorizes the State Public Defender, upon request of a county whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties), to handle for the county all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction. **Section 19** also provides that after the responsibility for handling such cases is transferred, such responsibility cannot be transferred back to the county unless the county receives the approval of the Executive Director of the Department.

Sections 20-27 of this regulation establish various provisions relating to the plans of counties for the provision of indigent defense services. **Section 20** of this regulation requires a county to provide its initial plan for the provision of indigent defense services to the Department within a certain period after this regulation becomes effective and each subsequent plan as part of an annual report the county is required to submit to the Department. **Section 21** of this regulation requires that a plan be designed to promote the integrity of the relationship between an attorney and a client. **Section 22** of this regulation requires that a plan provide the process a county will use for hiring attorneys who are independent contractors and panels of appointed attorneys. **Section 23** of this regulation provides that a plan must set forth the process of screening for indigency necessary for the judicial determination of eligibility for an appointed counsel. **Section 25** of this regulation requires that a plan ensure an attorney has the resources to perform certain actions. **Section 25** also provides that it is recommended that plans provide for the payment of trial-related expenses in a certain manner. **Section 27** of this regulation provides that a plan must require representation to be provided in a professional, skilled manner and impose certain duties on attorneys.

Existing law requires the Board to adopt regulations requiring the Department 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. (NRS 180.320) **Section 26** of this regulation imposes such a requirement.

Existing law requires the Board to adopt regulations establishing requirements for specific continuing education and experience for attorneys who provide indigent defense

services. (NRS 180.320) **Sections 30-38** of this regulation establish provisions relating to the training, education and qualification of such attorneys. **Section 30** of this regulation establishes provisions relating to the application of an attorney who wishes to provide indigent defense services in a county whose population is less than 100,000 and: (1) requires the Department to review an application and provide written notice of its determination to the attorney not later than 30 days after receiving the application; and (2) if the Department determines that an attorney is qualified to provide indigent defense services, place the name of the attorney and his or her areas of qualification on a roster of attorneys who are eligible to provide indigent defense services. **Section 30** also authorizes an attorney who disagrees with the determination of the Department to submit a request for reconsideration. **Sections 31-36** of this regulation establish the qualifications that an attorney must have to provide indigent defense services to various persons in a county whose population is less than 100,000. **Section 37** of this regulation establishes additional qualifications that attorneys who provide indigent defense services are required to possess in a county whose population is less than 100,000 and requires such attorneys to: (1) complete annually a minimum of 5 hours of continuing legal education courses relevant to indigent defense services; and (2) submit proof of compliance to the Department unless an attorney satisfies the continuing legal education requirement through courses offered by the Department. **Section 38** of this regulation requires the Department to monitor and regularly assess whether: (1) counties and attorneys who provide indigent defense services meet the requirements established by this regulation; and (2) indigent defense services are being provided in a constitutional manner.

Sections 39-41 of this regulation establish provisions relating to the compensation of attorneys who provide indigent defense services and contracts between a county and an attorney who provides indigent defense services and is an independent contractor. **Section 39** of this regulation provides that an attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources that are in parity with the corresponding prosecutor's office that appears adverse to the office of public defender in criminal proceedings. **Section 40** of this regulation establishes requirements of the terms of any contract between a county and an attorney who is an independent contractor. **Section 41** of this regulation requires that an attorney who is selected to provide indigent defense services when a public defender is disqualified receive prompt compensation.

Existing law requires the Board to adopt regulations establishing guidelines to be used to determine the maximum caseloads for attorneys who provide indigent defense services. (NRS 180.320) **Section 42** of this regulation provides that the workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation and prohibits any office, organization or attorney who provides indigent defense services from accepting a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence or representation of clients under the Nevada Rules of Professional Conduct. **Section 42** also requires the Department to conduct certain workload studies at the direction of the Board and provides that the results of a study must include a recommendation to the Board for determining the maximum workloads for attorneys who provide indigent defense services.

Existing law requires the Board to adopt regulations: (1) requiring attorneys who provide indigent defense services to track their time and provide reports; and (2) establishing standards to

ensure that attorneys who provide indigent defense services track and report information in a uniform manner. (NRS 180.320) **Section 43** of this regulation provides that in a county whose population is less than 100,000, each plan must require annual caseload reporting by providers of indigent defense services, and **section 44** of this regulation provides that each plan in such a county must require annual time reporting by attorneys who provide indigent defense services. **Section 45** of this regulation requires providers of indigent defense services in a county whose population is less than 100,000 to use the data collection and case management system provided by the Department for the purposes of caseload and time reporting required by **sections 43 and 44**.

Section 1. Chapter 180 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 45, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Attorney” means an attorney who provides indigent defense services.*

Sec. 4. *“Case” means:*

1. A single adult defendant on a single charging document, regardless of the number of counts alleged, in a felony, gross misdemeanor or misdemeanor matter; or

2. A single juvenile defendant on a single petition, regardless of the number of counts alleged, in a matter concerning a child who is alleged to be delinquent or in need of supervision pursuant to title 5 of NRS.

↪ For a case in which multiple charges are involved, the case is classified by the highest offense charged at the time counsel is appointed.

Sec. 5. *“Expert witness” means a person who is qualified by knowledge, skill, experience, training or education to render an opinion on scientific, technical or other specialized matters.*

Sec. 6. *“Indigency” means the inability of a defendant, without causing the defendant or any of his or her dependents to have substantial hardship, to obtain competent, qualified legal*

counsel on his or her own. As used in this section, a defendant is presumed to have substantial hardship if:

1. The defendant:

(a) Receives public assistance, as that term is defined in NRS 422A.065;

(b) Resides in public housing, as that term is defined in NRS 315.021;

(c) Has a household income that is less than 200 percent of the federally designated level signifying poverty;

(d) Is serving a sentence in a correctional institution; or

(e) Is housed in a mental health facility; or

2. Despite not meeting any of the requirements set forth in subsection 1, because of his or her particular circumstances, including, without limitation, the seriousness of the charges being faced, monthly expenses and local rates for private counsel, it is determined, after a more rigorous screening process, that substantial hardship would result if the defendant were to seek to retain private counsel.

Sec. 7. "Investigator" means a person who is qualified to secure evidence and subpoena witnesses to be used in the preparation and trial of criminal cases and who is:

1. Licensed by the Private Investigator's Licensing Board;

2. An employee of a person who is licensed by the Private Investigator's Licensing Board;

or

3. An employee of an attorney or an office of public defender.

Sec. 8. "Plan for the provision of indigent defense services" or "plan" means the processes established by a county for the provision of indigent defense services and the

estimated cost to carry out the provision of indigent defense services in accordance with sections 2 to 45, inclusive, of this regulation and any applicable laws.

Sec. 9. *The provisions of this chapter and chapter 180 of NRS govern the provision of indigent defense services.*

Sec. 10. 1. *An interested person who wishes to petition the Board for the adoption, filing, amendment or repeal of a regulation of the Board must file with the Department the original and one copy of the petition.*

2. The petition must include:

(a) The name and address of the petitioner;

(b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;

(c) The reason for the adoption, filing, amendment or repeal of the regulation;

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation;

and

(e) The name of the Board.

Sec. 11. 1. *The Board may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if the requirements set forth in section 10 of this regulation are not met.*

2. The Board may require the Department to review a petition filed pursuant to section 10 of this regulation.

3. The Department shall notify the petitioner in writing of the decision of the Board or Department, as applicable, not later than 90 days after a petition is filed.

Sec. 12. 1. *Except as otherwise provided in subsection 4, an interested person may petition the Executive Director to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department.*

2. *The original and one copy of the petition must be filed with:*

(a) *The deputy director selected by the Executive Director pursuant to NRS 180.420 who is authorized to administer or enforce the statute or regulation or to issue the decision; or*

(b) *The Executive Director, if the statute, regulation or decision is administered or enforced by the Executive Director.*

3. *The petition must include:*

(a) *The name and address of the petitioner;*

(b) *The reason for requesting the declaratory order or advisory opinion;*

(c) *A statement of the facts that support the petition; and*

(d) *A clear and concise statement of the question to be decided by the Executive Director or deputy director and the relief sought by the petitioner.*

4. *An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.*

Sec. 13. 1. *The Executive Director may refuse to review a petition filed pursuant to section 12 of this regulation that requests the issuance of a declaratory order or advisory opinion if the requirements set forth in that section are not met.*

2. *The Executive Director may, or may designate a deputy director to:*

(a) *Conduct an informal hearing to determine issues of fact or hear arguments relating to a petition and enter reasonable orders that govern the conduct of such a hearing;*

(b) Request a petitioner to provide additional information or arguments relating to a petition;

(c) Issue a declaratory order or an advisory opinion based upon the contents of a petition and any materials submitted with the petition;

(d) Consider relevant decisions that have been issued by the Department that apply or interpret the statute, regulation or decision in question; and

(e) Enter any reasonable order to assist his or her review of a petition.

3. The Executive Director or deputy director shall:

(a) Mail a copy of any declaratory order or advisory opinion that is issued to a petitioner not later than 90 days after whichever of the following events is the last to occur:

(1) The petition is filed;

(2) The petition is referred to the Executive Director for a decision;

(3) An informal hearing is conducted; or

(4) The Executive Director or deputy director receives any additional information or written arguments; and

(b) Maintain a record of each declaratory order and advisory opinion that is issued and index such records by subject matter.

Sec. 14. 1. *After receiving a declaratory order or advisory opinion from a deputy director concerning the applicability or interpretation of a statute, regulation or decision of the Department, the petitioner may request that the Executive Director review the decision.*

2. A request made pursuant to subsection 1 must:

(a) Be in writing;

(b) Contain the information required by subsection 3 of section 12 of this regulation; and

(c) Be filed with the Executive Director not later than 30 days after the date the declaratory order or advisory opinion is issued.

3. The Executive Director shall review any request made pursuant to subsection 1 in accordance with the provisions of section 13 of this regulation.

Sec. 15. *The Executive Director, a deputy director or any other staff member of the Department shall not render an oral response, including, without limitation, a response over the telephone, to a request for an advisory opinion. Any oral response is not a decision or an advisory opinion of the Department.*

Sec. 16. *1. The maximum amount that a county is required to pay for the provision of indigent defense services during a fiscal year must not exceed the sum of:*

(a) In a county whose population is less than 100,000:

(1) The actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(I) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(II) The lowest union-negotiated cost of living increase for employees for that county.

(b) In a county whose population is 100,000 or more:

(1) The actual costs to the county for providing indigent defense services, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(I) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(II) The lowest union-negotiated cost of living increase for employees for that county.

2. If a county whose population is less than 100,000 chooses, pursuant to section 19 of this regulation, to transfer to the State Public Defender the responsibility of providing representation in:

(a) Direct appeals to the appellate court of competent jurisdiction, the cost of providing representation in those cases is a charge against the State and is excluded from the required maximum contribution of the county.

(b) Death penalty cases, the State Public Defender shall submit to the county an estimate for the representation. The county is responsible for paying 25 percent of the estimate and shall make such a payment in accordance with NRS 180.110. Such payments count towards the maximum contribution of the county.

3. If a county, in its plan for the provision of indigent defense services, follows the recommendations set forth in section 25 of this regulation pertaining to the payment of case-

related expenses, such expenses may be a charge against the State and reimbursed to the county in accordance with sections 17 and 18 of this regulation.

Sec. 17. 1. *A county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution, as calculated pursuant to section 16 of this regulation, through:*

(a) The submission of the annual report containing the plan for the provision of indigent defense services for the county for the next fiscal year as required pursuant to subsection 2 of NRS 260.070; or

(b) Pursuant to NRS 180.450, a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to address immediate needs in a corrective action plan.

2. *In accordance with the duty of the Board to review and approve the budget for the Department pursuant to paragraph (f) of subsection 1 of NRS 180.320, any state contribution requested by a county is subject to the approval of the Board. Any disagreement with respect to a plan for the provision of indigent defense services or state contributions necessary to comply with sections 2 to 45, inclusive, of this regulation will be resolved by the Board.*

3. *A county seeking state contributions pursuant to subsection 1 must submit to the Department a financial status report, certified by the board of county commissioners or its designee and in a form approved by the Department, not later than 15 days after the end of each calendar quarter.*

Sec. 18. 1. *Any state contributions for the provision of indigent defense services must be provided for:*

(a) One fiscal year; and

(b) The express purpose of complying with applicable indigent defense standards and regulations and improving the provision of indigent defense services in a county.

2. If a county reaches its maximum contribution for the provision of indigent defense services as determined in accordance with section 16 of this regulation, state contributions for the provision of indigent defense services will be provided to the county treasury by reimbursement, up to the amount approved by the Board and the Legislature in the county's plan for indigent defense services, upon the quarterly submission of the financial status report of the county in accordance with subsection 3 of section 17 of this regulation.

3. If a county reaches the maximum state contributions approved by the Board in accordance with section 17 of this regulation, any additional state contributions necessary for the provision of indigent defense services must, in accordance with NRS 180.450, be sought by a corrective action plan pursuant to a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266.

4. Any unencumbered or unexpended balance of state contributions remaining at the end of the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.

5. As used in this section, "fiscal year" means the period beginning on July 1 of a given year and ending on June 30 of the following year.

Sec. 19. 1. *Upon the request of a county whose population is less than 100,000, the State Public Defender may handle for the county all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction.*

2. If a county wishes to have the State Public Defender handle all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction, as applicable, the board of county commissioners for the county shall notify the State Public Defender, and such responsibility must be transferred, in accordance with the procedure set forth in subsection 6 of NRS 180.450, as amended by section 14 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2268.

3. After the responsibility of handling all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction for a county, as applicable, is transferred to the State Public Defender, such responsibility must not be transferred back to the county unless the county receives the approval of the Executive Director of the Department in accordance with NRS 180.460.

Sec. 20. *1. A plan for the provision of indigent defense services must include, without limitation, the processes for providing indigent defense services in a manner consistent with sections 2 to 45, inclusive, of this regulation and any applicable laws.*

2. Each county shall provide its initial plan for the provision of indigent defense services to the Department not later than 180 days after the date on which this section becomes effective or on the next occurring May 1, as determined by the Department.

3. If a county elects to receive assistance from a deputy director of the Department in the development of its plan for the provision of indigent defense services pursuant to subsection 4 of NRS 180.430, the county must notify the Department at least 90 days before the plan is due.

4. *For the purpose of assessing local needs, a county should consult with local providers of indigent defense services when formulating its plan for the provision of indigent defense services.*

5. *If a county joins with one or more other counties to establish one office of public defender to serve those counties in accordance with NRS 260.020, the joining counties may submit a single, joint plan for the provision of indigent defense services.*

6. *After a county provides its initial plan for the provision of indigent defense services, the county shall submit each subsequent plan in accordance with subsection 2 of NRS 260.070.*

7. *A plan for the provision of indigent defense services that is approved pursuant to ADKT No. 411 of the Nevada Supreme Court is deemed to satisfy the requirements of this section.*

Sec. 21. *A plan for the provision of indigent defense services must be designed to promote the integrity of the relationship between an attorney and a client. The plan and any attorneys providing indigent defense services pursuant to the plan must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.*

Sec. 22. 1. *A plan for the provision of indigent defense services must provide the process a county will use to hire attorneys who are independent contractors to provide indigent defense services and panels of appointed attorneys. The process must be designed to provide notice of the opportunity to apply and a reasonable opportunity for interested parties to respond.*

2. *Consistent with the provisions of section 21 of this regulation, the process should exclude prosecuting and law enforcement officials. The creation of a selection committee that*

utilizes stakeholders concerned with the integrity of indigent defense services, which may include the Department, is recommended. Judicial input in the hiring process may be considered but should not be the sole basis for selection.

3. For the purposes of evaluating an application, the process must require, without limitation:

(a) In a county whose population is less than 100,000, verification that the applicant is included on the roster of attorneys who are eligible to provide indigent defense services that the Department compiles pursuant to section 30 of this regulation; and

(b) The consideration of the following factors:

(1) The experience and qualifications of the applicant;

(2) The past performance of the applicant in representing defendants in criminal cases;

(3) The ability of the applicant to comply with sections 2 to 45, inclusive, of this regulation, and the terms of a contract; and

(4) If the applicant is an independent contractor, the cost of the service under the contract.

Sec. 23. 1. A plan for the provision of indigent defense services must set forth the process of screening for indigency that is necessary for the judicial determination of eligibility for appointed counsel. The process of screening for indigency must:

(a) Occur before the initial arraignment or appearance and not later than 48 hours after the arrest of the defendant;

(b) Exclude the judiciary; and

(c) Describe the person or agency responsible for the screening.

2. *After such screening and upon a judge, justice of the peace or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, the plan must provide for the prompt appointment of counsel. If a public defender is disqualified from providing representation, a plan must provide for the selection of another attorney in accordance with NRS 7.115 and 171.188.*

3. *If a county uses attorneys who are independent contractors in lieu of an office of public defender or if the public defender is disqualified, a plan must describe how attorneys are assigned cases. The distribution of cases may be made on a rotational basis or in accordance with another method that ensures the fair distribution of cases.*

4. *A plan for indigent defense services must require that an attorney be present at initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with all relevant laws, rules of criminal procedure and caselaw. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. A plan should ensure the presence of counsel at all other critical stages, whether in court or out of court.*

5. *This section must not be construed to preclude a defendant from waiving the appointment of an attorney in accordance with subsection 1 of NRS 171.188.*

Sec. 24. *A plan must:*

1. *Seek to provide, through cooperation with local agencies, necessary resources and accommodations for private discussions between an attorney and a client in courthouses, jails, prisons, detention centers and other places where a client must confer with an attorney; and*

2. *Provide a description of such resources and accommodations.*

Sec. 25. 1. A plan for the provision of indigent defense services must ensure that an attorney has the resources to:

(a) Conduct an independent investigation of the charges filed against a client as promptly as practicable and, if appropriate, retain an investigator to assist with the defense of the client; and

(b) Request the assistance of experts when such assistance is reasonably necessary to prepare the defense of a client.

2. In accordance with paragraph (e) of subsection 2 of NRS 180.320, it is recommended that a plan provide for the payment of expenses related to trial, including, without limitation, expenses for expert witnesses and investigators, in the following manner:

(a) In a county whose population is less than 100,000:

(1) By excluding the judiciary from the payment of reasonably necessary investigative, expert or other case-related expenses for providers of indigent defense services.

(2) If the office of public defender is created pursuant to chapter 260 of NRS, by providing a budget for investigative, expert and other case-related expenses that is administered by the public defender.

(3) If public defense services are provided by independent contractors, by providing a budget for case-related expenses that is administered by the Department or its designee and that includes a mechanism for judicial review of any modified or denied requests.

(4) If the public defender has been disqualified, by providing a budget for case-related expenses that is administered by the Department or its designee and that includes a mechanism for judicial review. A budget provided pursuant to this subparagraph and subparagraph (3) may be the same budget.

(5) To ensure the prompt approval of frequent and necessary case-related expenses, by providing for the automatic approval of case-related expenses up to \$2,500.

(b) In a county whose population is 100,000 or more, in accordance with the determination of the county.

Sec. 26. 1. A plan for the provision of indigent defense services must 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.

2. The provisions of subsection 1 do not preclude a county from using a single attorney or rotation of attorneys to provide representation to an indigent defendant at an initial appearance or arraignment, but any such attorney should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest.

Sec. 27. 1. A plan for the provision of indigent defense services must require that representation be provided in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court.

2. Any plan or contract for the provision of indigent defense services must require the attorney representing the defendant to:

(a) Advise each client not to waive any substantive rights or plead guilty at the initial appearance unless doing otherwise is in the best interest of the client; and

(b) Make all reasonable efforts to meet with each client within the first 7 days following the assignment of the case and, unless there are no significant updates in the client’s case, every 30 days thereafter.

3. A plan for the provision of indigent defense services in a county whose population is less than 100,000 must ensure that any client surveys authorized by the Board are provided to a client at the conclusion of his or her representation by an attorney.

Sec. 28. As used in sections 28 to 37, inclusive, of this regulation, unless the context otherwise requires, “CLE” means continuing legal education as discussed in Nevada Supreme Court Rules 205 to 215, inclusive.

Sec. 29. The provisions of sections 28 to 37, inclusive, of this regulation apply only to the provision of indigent defense services in counties whose population is less than 100,000.

Sec. 30. 1. To ensure that the ability, training and experience of an attorney in a criminal matter matches the complexity of a case, the attorney must demonstrate compliance with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department on a form approved by the Department. The application must be submitted:

(a) By mail; or

(b) Electronically, as provided on the website of the Department.

2. The Department shall, not later than 30 days after receiving an application:

(a) Review the application and determine the areas of indigent defense services in which the attorney is qualified; and

(b) Provide written notice of the determination of the Department to the attorney.

3. *After an attorney submits an application pursuant to this section, the attorney may continue practicing in the areas of indigent defense for which the attorney is seeking the determination of the Department until the attorney receives written notice of the determination.*

4. *If the Department determines that an attorney is qualified to provide indigent defense services, the Department shall place the name of the attorney and his or her areas of qualification on a roster of attorneys who are eligible to provide indigent defense services that will be used by boards of county commissioners to select the attorneys who will provide indigent defense services for a county. An attorney may, at any time, seek qualification for different or other areas of indigent defense by submitting another application pursuant to this section that demonstrates the additional qualifications.*

5. *If an attorney disagrees with the determination of the Department regarding the areas in which the attorney is qualified to provide indigent defense services, the attorney may submit a request for reconsideration to the Department not later than 30 days after receiving the determination of the Department. The Board will review any request for reconsideration that is submitted to the Department.*

6. *The failure of an attorney to submit an application before providing indigent defense services for a county or to practice only within the areas in which the attorney is qualified may result in the exclusion or removal of the attorney, as applicable, from the roster of attorneys who are eligible to provide indigent defense services established pursuant to subsection 4.*

Sec. 31. 1. *An attorney who seeks to provide indigent defense services to a person charged with a misdemeanor must:*

(a) Be licensed to practice law in the State of Nevada; and

(b) Have sufficient training or experience to provide competent representation.

2. An attorney who is beginning to provide indigent defense services in misdemeanor matters is encouraged to consider seeking the participation of a supervising or more experienced attorney before undertaking representation in a jury trial involving a misdemeanor offense or a misdemeanor offense for which the penalty can be enhanced and, if applicable, make a motion for the appointment of such an additional attorney pursuant to NRS 260.060, as amended by section 17 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2270.

Sec. 32. An attorney who seeks to provide indigent defense services to a person charged with a category B felony for which the maximum penalty is 10 years or less, a category C, D or E felony or a gross misdemeanor must:

1. Meet the following requirements:

(a) Be licensed to practice law in the State of Nevada; and

(b) Have been trial counsel, alone or with other trial counsel, in two or more bench or jury trials that were tried to completion; or

2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1.

Sec. 33. An attorney who seeks to provide indigent defense services to a person charged with a non-capital category A felony or a category B felony for which the maximum penalty is more than 10 years must:

1. Meet the following requirements:

(a) Be licensed to practice law in the State of Nevada;

(b) Have practiced criminal law for 3 full years, either as a prosecutor, provider of indigent defense services or retained counsel; and

(c) Have been trial counsel, alone or with other trial counsel, and handled a significant portion of three felony jury trials that were tried to completion; or

2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1, have a significant record of quality representation in criminal trials and have the ability to handle complex felony matters.

Sec. 34. An attorney who seeks to provide indigent defense services to a person charged with or convicted of a category A felony in which the death penalty is or may be sought or has been imposed must meet the criteria set forth in Supreme Court Rule 250.

Sec. 35. An attorney who seeks to represent a person in a direct appeal of a non-capital felony must:

1. Be licensed to practice law in the State of Nevada; and

2. Have sufficient training or experience to provide competent representation.

Sec. 36. 1. An attorney who seeks to represent a juvenile who is alleged to be delinquent or in need of supervision must:

(a) Be licensed to practice law in the State of Nevada;

(b) Have the knowledge and skills necessary to represent a child diligently and effectively;
and

(c) Be familiar with:

(1) The department of juvenile justice services in the county and other relevant state and local programs;

(2) Issues concerning competency and child development;

(3) Issues concerning the interaction between an attorney and a client; and

(4) Issues concerning school-related conduct and zero-tolerance policies specific to juvenile representation.

2. An attorney who seeks to represent a child in a certification proceeding pursuant to NRS 62B.390 additionally must have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience.

3. As used in this section, “department of juvenile justice services” has the meaning ascribed to it in NRS 201.555.

Sec. 37. 1. *In addition to any other requirements provided by law or this chapter, an attorney must:*

(a) Have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law and criminal procedure, the rules of evidence, the rules of appellate procedure, ethical rules, local rules and practices and changes and developments in the law. As used in this paragraph, “reasonable knowledge” means knowledge possessed by an attorney who provides competent representation to a client in accordance with Rule 1.1 of the Nevada Rules of Professional Conduct;

(b) Have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case and the legal issues concerning defenses to a crime and be reasonably able to litigate such issues effectively; and

(c) Be reasonably able to use the office technology that is commonly used in the legal community and the technology that is used within the applicable court system and thoroughly review materials that are provided in an electronic format.

2. An attorney shall:

(a) Complete, on an annual basis, a minimum of 5 hours of CLE courses relevant to indigent defense services;

(b) Except as otherwise provided in subsection 3, submit proof of compliance with the CLE requirements in paragraph (a) to the Department before January 1 each year by submitting a copy of the annual transcript for the attorney from the State of Nevada Board of Continuing Legal Education:

(1) By mail; or

(2) Electronically, as provided on the website of the Department; and

(c) Follow the minimum standards of the Board in determining which CLE courses are relevant to the provision of indigent defense services.

3. Any CLE courses provided by the Department count toward satisfaction of the annual CLE requirement set forth in subsection 2. If an attorney satisfies the annual CLE requirement through CLE courses provided by the Department, the annual submission of proof of compliance with the CLE requirements required by paragraph (b) of subsection 2 is waived.

Sec. 38. The Department shall monitor and regularly assess whether counties and attorneys meet the requirements set forth in sections 2 to 45, inclusive, of this regulation and whether indigent defense services are being provided in a constitutional manner. In conducting an assessment, the Department may obtain information from a variety of sources, including, without limitation:

1. Client feedback;

2. Client surveys;

3. Other providers of indigent defense services;

4. *Office staff;*
5. *Judicial personnel;*
6. *Observations of a deputy director of the Department;*
7. *Data provided to the Department pertaining to attorney workload;*
8. *Contracts for the provision of indigent defense services;*
9. *Financial information pertaining to the provision of indigent defense services; and*
10. *Information obtained through the procedure for receiving complaints and recommendations concerning the provision of indigent defense services established by the Board pursuant to paragraph (b) of subsection 2 of NRS 180.320.*

Sec. 39. An attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources that are in parity with the corresponding prosecutor's office that appears adverse to the office of public defender in criminal proceedings.

Sec. 40. The terms of any contract between a county and an attorney who provides indigent defense services as an independent contractor must avoid any actual or apparent financial disincentives to the obligation of the attorney to provide clients with competent legal services. Such a contract must include, without limitation, the following:

1. *The identification of the contracting authority and each attorney subject to the contract.*
2. *The terms of the contract, including, without limitation, the duration of the contract, any provision for renewal and any provision for terminating the contract by a party.*
3. *The category of cases in which each attorney subject to the contract is to provide services.*

4. The minimum qualifications for each attorney subject to the contract, which must be equal to or exceed the qualifications required by sections 2 to 45, inclusive, of this regulation, and a requirement that each attorney maintain the applicable qualifications during the entire term of the contract. If a contract covers services provided by more than one attorney, the qualifications may be graduated according to the seriousness of offense, and each attorney must be required to maintain only those qualifications established for the offense levels for which the attorney is approved to provide indigent defense services.

5. The identification of each attorney who will provide legal representation in each category of case covered by the contract and a provision that ensures consistency in representation in accordance with section 26 of this regulation.

6. A provision establishing the maximum workload that each attorney may be required to handle pursuant to the contract based upon the applicable guidelines established by the Board pursuant to section 42 of this regulation and a provision requiring the reporting of indigent defense data in accordance with sections 43 and 44 of this regulation.

7. In accordance with section 27 of this regulation, a requirement that each attorney provide legal representation to all clients in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court.

8. The statement of a policy that ensures that an attorney does not provide representation to a defendant when doing so would involve a conflict of interest.

9. A provision regarding how investigative services, expert witnesses and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with all applicable laws and regulations.

10. A provision requiring compensation to be provided at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and that is determined after taking into consideration overhead costs, expenses and costs relating to significant attorney travel.

Sec. 41. If a public defender is disqualified from providing indigent defense services and another attorney is selected in accordance with NRS 7.115, as amended by section 5 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2263:

1. The selected attorney must receive prompt compensation in accordance with NRS 7.125, as amended by section 6 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2263. Activities outside of court appearances, including, without limitation, directing investigations, negotiating or tactical planning are to be considered equally important to effective representation and must be included in the compensation of the selected attorney.

2. A plan for the provision of indigent defense services must include the process of the county for the payment of counsel selected pursuant to NRS 7.115, as amended by section 5 of Assembly Bill No. 480, chapter 380, Statutes of Nevada 2021, at page 2263.

Sec. 42. 1. The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any office, organization or attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence or representation of clients under the Nevada Rules of Professional Conduct.

2. At the direction of the Board, the Department shall conduct separate, specific workload studies for counties whose population is less than 100,000 and counties whose population is

100,000 or more to determine workload guidelines and requirements for attorneys. Counties shall ensure that all attorneys providing indigent defense services participate in such workload studies. The results of each study must include a recommendation to the Board for the purpose of establishing guidelines to be used to determine maximum workloads for attorneys providing indigent defense services pursuant to subparagraph (4) of paragraph (d) of subsection 2 of NRS 180.320.

Sec. 43. 1. In a county whose population is less than 100,000, a plan must require caseload reporting by providers of indigent defense services in the county. The plan must specify whether such reporting will be done by each attorney or collectively by an office of public defender. The plan must require such reporting to be made on an annual basis and include, without limitation, the total number of:

(a) Beginning pending cases;

(b) New appointments;

(c) Cases returned from warrant or reactivated;

(d) Cases adjudicated, disposed or closed and the manner in which each case was adjudicated, disposed or closed, including, without limitation, pursuant to a plea, dismissal or verdict at trial;

(e) Warrant or placed on inactive status cases;

(f) Cases set for review;

(g) End pending cases;

(h) Motions to suppress:

(1) Filed; and

(2) Litigated; and

(i) Trials completed during the reporting period.

2. The cases included in a report required pursuant to subsection 1 must be further arranged by the following case type:

(a) Death penalty cases;

(b) Non-capital category A felonies and category B felonies for which the maximum penalty is more than 10 years;

(c) Category B felonies for which the maximum penalty is 10 years or less, category C, D and E felonies, and gross misdemeanors;

(d) Misdemeanor cases involving driving under the influence of alcohol or a prohibited substance and misdemeanor cases involving allegations of domestic violence;

(e) Other misdemeanor cases, including, without limitation, misdemeanor direct appeals;

(f) Probation and parole violations;

(g) Direct appeals of capital convictions;

(h) Direct appeals of non-capital felony and gross misdemeanor convictions;

(i) Juvenile cases, including, without limitation, cases involving a child who is alleged to be delinquent or in need of supervision, and appeals;

(j) Juvenile probation and parole violations; and

(k) Specialty court cases.

3. If an attorney who is an independent contractor or an office of public defender provides representation beyond those services set forth in NRS 180.004, the reporting required pursuant to subsection 1 must also include the total number of cases under:

(a) Chapter 128 of NRS for which representation was provided;

(b) Chapter 159 of NRS for which representation was provided;

(c) Chapter 432B of NRS for which representation was provided; and

(d) Chapter 433A of NRS for which representation was provided.

4. As used in this section:

(a) “Adjudicated, disposed or closed” means a case in which an original entry of final adjudication has been entered.

(b) “Beginning pending” means a case which, at the start of the reporting period, is awaiting disposition.

(c) “End pending” means a case which, at the end of the reporting period, is awaiting disposition.

(d) “Final adjudication” means an entry of judgment or adjudication, an order of dismissal or the end of the appointment of an attorney regardless of adjudicatory status.

(e) “Juvenile case” means a matter involving an allegation of a juvenile in need of supervision or an act committed by a juvenile which, if committed by an adult, would result in criminal prosecution and over which a juvenile court has statutory original or concurrent jurisdiction.

(f) “New appointment” means a case in which a defendant has been assigned counsel for the first time.

(g) “Returned from warrant or reactivated” means a case that is reopened because a defendant has been arrested on a warrant for failure to appear and has appeared before the court or has returned from a diversion program or another similar event has occurred that reactivates a case.

(h) “Set for review” means a case that, after an initial entry of judgment during the reporting period, is awaiting regularly scheduled reviews involving a hearing before a judicial officer.

(i) “Warrant or placed on inactive status” means a case closed because a warrant for failure to appear has been issued, the defendant has been ordered to participate in a diversion program or another similar incident has occurred to make the case not active.

Sec. 44. 1. *Each county whose population is less than 100,000 shall include in its plan a requirement for time reporting by attorneys who provide indigent defense services. Such a report must be submitted on an annual basis and provide:*

(a) The total number of hours an attorney spent providing indigent defense services in each case;

(b) The total number of hours that investigators worked on each case;

(c) The total number of hours that staff worked on each case;

(d) The total number of hours that expert witnesses worked on each case; and

(e) The total number of hours an attorney spent on any private workload.

2. *A plan must require that time entries be:*

(a) Kept as close to contemporaneous as reasonably practicable to ensure the accuracy of time reporting and the ability of the Department to generate quarterly reports; and

(b) Recorded in increments of one-tenth of an hour.

3. *As used in this section, “staff” means a paralegal, as that term is defined in the bylaws of the Paralegal Division of the State Bar of Nevada, or a similar employee.*

4. In each county whose population is 100,000 or more, time records must be kept only during the periods in which weighted caseload studies are conducted pursuant to section 42 of this regulation.

Sec. 45. In a county whose population is less than 100,000, providers of indigent defense services shall use the data collection and case management system provided by the Department, at the expense of the State, for the purposes of the caseload and time reporting required by sections 43 and 44 of this regulation.