



Department of Indigent Defense Services

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**SMALL BUSINESS IMPACT STATEMENT REGARDING PROPOSED
REPEAL, AMENDMENT, AND PROMULGATION OF NAC 180
REGULATIONS**

1. A description of the manner in which comment was solicited from affected small business, a summary of their responses, and explanation of the manner in which other interested persons may obtain a copy of the summary:

The Department of Indigent Defense Services requested input from private attorneys, law firms, and related businesses via an e-mailed survey link.

The survey asked for input on economic effects on small businesses with space to elaborate on responses.

The Department received six (6) completed surveys.

2. The manner in which the analysis was conducted:

The Department has reviewed the six (6) responses, the narrative responses to the question: "In what way would the repeal of regulations or promulgation of proposed regulations as outlined above affect your small business?" are provided in full as follows:

1. "They would improve the economic climate for small businesses, including mine. Specifically, the reimbursement rate for contract public defense work in Nevada is only \$100 at present, which is lower than the federal rate (approximately \$150, automatically adjusted for inflation) and much lower than a private paying client. A lot of other lawyers I speak with don't take contract defense work from the State for this reason. Increasing the reimbursement rate would directly benefit the lawyers who do this work, and would also encourage a greater pool of lawyers to get involved, thereby improving the quality of representation for post-conviction/rural defendants."
2. "I think over all it would assist my business [sic] as any reduction of regulation and ability to obtain a better rate to be functional in doing the job would be a benefit to my office."
3. "They would not."
4. "The regulations, as is, is just fine for my business. Changing them would have unknown externalities, though the services I provide to Douglas County are a

who would be your local and easily accessible expert at DIDS. This may well affect my business, but how, I have no idea.”

5. “In the event that COLA increases greater than 5%, this statute apparently caps any requested increase in compensation that would match COLA to 5%.”
6. “A change in regulations that increased the ‘overhead’ costs of rural indigent defense, absent an increase in compensation, would cause my business to accept fewer such cases because more lucrative opportunities exist.

A change in regulations that reduced the resources allocated to BIDS would likely cause my business to accept fewer rural indigent defense cases because the reduced efficiency of, and availability of support from, BIDS would make such cases less attractive.

A change in regulations that increased compensation for rural indigent defense would likely cause my business to accept more rural indigent defense cases because it would improve the value proposition of such cases relative to other privately retained or appointed cases.

A change in regulations that increased support for virtual appearances in rural indigent defense cases would cause my business to accept more such cases because it would reduce the overhead cost of such representation.”

The Department considered the narrative responses to the survey and utilized logical reasoning to analyze an estimated economic effect of the proposed regulatory changes. The Department has not received enough data to determine in a statistically significant way whether a direct or significant economic burden would be imposed upon small businesses.

3. The estimated economic effect of the proposed regulation on the small business which it is to regulate, including, without limitation both adverse and beneficial effects; and both direct and indirect effects.

There are no reasonably foreseen potential adverse economic impacts to small business.

The provisions sought to be repealed do not affect small businesses directly, rather, the statute that supersedes the regulation has set limits on how much a county’s maximum contribution amount may increase each year (5% or inflation, whichever is less). The State continues to bear the responsibility to reimburse counties for expenditures on indigent defense above their maximum contribution.

A provision to have the Board on Indigent Defense Services set an hourly rate for rural county appointed counsel and post-conviction appointed counsel is expected to increase the rate currently in statute, last increased in 2003, from \$100 to a to-be-determined amount. The increased hourly rate would cause small businesses

currently providing these services to obtain more compensation for each hour of work done when appointed to these types of cases, which would be a net-positive impact on such businesses.

With regard to promulgating workload/caseload standards, which would require each county to retain a particular minimum number of full time-equivalent (FTE) attorneys to practice indigent defense, it is unclear what the impact would be on small businesses. There is a dearth of practicing attorneys in Nevada's rural counties (i.e., very few attorneys per capita) when compared with Washoe and Clark counties. Such a scarcity may be compensated for with increased spending to bring additional small business attorneys to practice in counties where more attorneys will be needed to comply with the minimums. This may lead to a positive benefit to small businesses who are able to utilize the scarcity to increase their rates and a benefit to small businesses not currently in the rural county markets who would not participate unless and until the rates increased to market levels.

4. A description of the methods that the agency considered to reduce the impact of the proposed regulations on small businesses and a statement regarding whether the agency actually used any of those methods.

The agency has not utilized any impact-reduction methods due to the likelihood of positive impacts and the lack of knowledge of negative impacts.

5. The estimated cost to the agency for the enforcement of the proposed regulation.

The estimated cost to the agency is unknown at this time.

The cost to the agency in reimbursing counties who spend more than their annual maximum contribution on indigent defense services may increase due to an increased hourly rate, which has not been increased since 2003. The amount of the increased cost would depend on the rate selected, and whether the counties choose to enter into more, or fewer, fixed-rate contracts in the future.

The cost to the agency in reimbursing counties who spend more than their annual maximum contribution on indigent defense services may increase due to promulgating workload/caseload standards, which would require each county to retain a particular minimum number of full time-equivalent (FTE) attorneys to practice indigent defense. The Department has estimated costs of approximately \$5.7 million in the first year after standards are promulgated and \$5.9 million in the following year. Assembly Bill 518 (82nd Session, 2023) set aside funds for the Interim Finance Committee to provide to the department explicitly for this purpose.

The cost to the agency for paying attorneys appointed to represent indigent persons in post-conviction habeas corpus proceedings will likely increase by an

unknown amount. The Nevada State Public Defender's Office (a subordinate agency of the Department) maintains an account funded by the general fund for the payment of costs for representation in postconviction cases. The amount spent varies from year to year based on the number of active petitions and the amount of time spent by the appointed attorneys. An increase from the \$100 per hour statutory rate would proportionally increase the cost to the account.

6. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect, and the manner in which the money will be used.

The proposed regulatory amendments does not involve an increase to existing fees or create any new fees.

7. If the Proposed Regulation Included Provisions Which Duplicate or Are More Stringent Than Federal, State or Local Standards Regulating the Same Activity, an Explanation of Why Such Duplicative or More Stringent Provisions Are Necessary.

N/A.

8. The Reasons For the Conclusions of the Agency Regarding the Impact of a Regulation on Small Businesses.

The principal assumptions for the impacts of the regulations is that the hourly rate for appointed attorneys will increase from the statutory rate of \$100 (which was contemplated at prior Board on Indigent Defense Services meetings), that the workload/caseload standards will increase the need for attorneys in the rural counties, and the observation that there are very few attorneys per capita in Nevada's rural counties.

a. Does the Proposed Regulation Impose a Direct and Significant Economic Burden Upon Small Businesses?

The proposed regulatory changes does not impose a direct or significant economic burden upon small businesses.

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b. Will the Proposed Regulation Directly Restrict the Formation, Operation or Expansion of a Small Business?

The proposed regulatory changes will not directly restrict the formation, operation, or expansion of a small business.

Signed and effective this 17 day of July, 2023.

"I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and the information contained in this statement was prepared properly and is accurate."



Marcie Ryba, Executive Director
Nevada State Department of Indigent Defense Services