

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

LCB FILE NO. R042-201

**The following document is the initial draft regulation proposed
by the agency submitted on 04/02/2020**

Chapter _____ of NAC is hereby amended by adding thereto the provisions set forth as sections _____ to _____, inclusive of this regulation.

Department of Indigent Defense Services

General Provisions

NAC _____ Definitions. (NRS 180.320) As used in this chapter, unless the context otherwise requires, the words and terms defined in **NAC _____ to NAC _____**, inclusive, have the meanings ascribed to them in those sections.

NAC _____. **“CLE” defined. (NRS 180.320)** “CLE” means continuing legal education as discussed in SCR 205-215.

NAC _____. **“Delivery system” defined. (NRS 180.320)** “Delivery system” means and includes all persons involved in providing indigent defense services and representation. It may include county defender offices, appointed counsel programs, contract-for-service programs and the lawyers and support staff therein.

NAC _____. **“Expert witness” defined. (NRS 180.320)** “Expert witness” is a person qualified by knowledge, skill, experience, training, or education to render an opinion on scientific, technical, or other specialized matters.

NAC _____. **“Indigent Defense Services” defined. (NRS 180.004, 180.320)**

1. “Indigent defense services” has the meaning ascribed to it in NRS 180.004.
2. “Indigent defense services” also includes the provision of legal representation to an indigent person:
 - a. alleged to have violated probation or other supervision and incarceration may be imposed;
 - b. subject to commitment pursuant to NRS 433A.310;
 - c. seeking relief from a sentence of death pursuant to NRS 34.724;
 - d. who is in-custody as a material witness;
 - e. who has received notice that a grand jury is considering charges against him/her and request for counsel has been made, and approved, by the Court;
 - f. charged with criminal contempt and faces loss of liberty;
 - g. who faces loss of liberty in a case and Nevada law requires the appointment of counsel; or
 - h. is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution, or when due process requires the appointment, or the judge is likely to impose incarceration
3. “Indigent defense services” may also include the provision of legal representation to an indigent person:

- a. charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;
- b. seeking post-conviction relief, other than from a death sentence, pursuant to NRS 34.724(1);
- c. charged with civil contempt who faces loss of liberty;
- d. who is a party to a dependency case in which termination of parental rights is a possibility;
- e. called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty; or
- f. any other case in which the interest of justice requires appointment of counsel.

NAC _____. “Investigator” defined. (NRS 180.320, 648.018, 648.060)

“Investigator” is a person licensed by the Nevada Private Investigator’s Licensing Board, an employee of a person licensed by the Nevada Private Investigator’s Licensing Board, or an employee of an attorney or office of a public defender, and who is qualified to secure evidence and/or subpoena witnesses to be used in the preparation and trial of criminal cases.

NAC _____. “Mitigation specialist” defined. (NRS 180.320) “Mitigation specialist” is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate and present psychosocial and other mitigation evidence in cases where the state is seeking the death penalty.

NAC _____. Scope of rules. The provisions of this chapter govern the provision of indigent defense services.

Petitions for Regulation, Advisory Opinions and Declaratory Orders

NAC _____. Petition for action on regulation: Filing; contents.

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 authorized to adopt, file, amend or repeal the regulation.

NAC _____. Petition for action on regulation: Review; notice of decision.

1. The Board may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if:
 - a. the original petition is not accompanied by one copy of the petition; or
 - b. the petition does not contain the information required by NAC _____.
2. The Board may require the Department to review the petition and issue a decision.
3. The Department, pursuant to subsection 2 will notify the petitioner in writing of the decision within 30 days after the petition is filed.

NAC _____. Petition for declaratory order or advisory opinion: Authorization; filing; contents.

1. Except as otherwise provided in subsection 4, an interested person may petition the 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 who is authorized to administer or enforce the statute or regulation or to issue the decision; or
 - b. the Director, if the statute, regulation or decision is administered or enforced by the Director.
3. The petition must include:
 - a. the name and address of the petitioner;
 - b. the reason for requesting the order or opinion;
 - c. a statement of facts that support the petition; and
 - d. a clear and concise statement of the question to be decided by the 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.

NAC _____. Petition for declaratory order or advisory opinion: Action by Department; record and notice of order or opinion.

1. The Director may refuse to review a petition which requests him or her to issue a declaratory order or advisory opinion if:
 - a. The original petition is not accompanied by one copy of the petition; or
 - b. The petition does not contain the information required by NRS ____.
2. The Director may, or designate a Deputy Director to:
 - a. Conduct an informal hearing to determine issues of fact or to hear argument related to the petition and may enter reasonable orders that govern the conduct of such a hearing.
 - b. Request the petitioner to provide additional information or arguments relating to the petition.
 - c. Issue a declaratory order or an advisory opinion based upon the contents of the petition and any material submitted with the petition.
 - d. Consider relevant decisions that have been issued by the Department which apply or interpret the statute, regulation or decision in question.
 - e. Enter any reasonable order to assist his or her review of the petition.
3. The Director or Deputy Director will maintain a record of the order or opinion that is indexed by subject matter and mail a copy of the order or opinion to the petitioner within 60 days after:
 - a. the petition is filed;
 - b. the petition is referred to the Director for decision;
 - c. an informal hearing is conducted; or
 - d. any additional information or written argument is received by the Director or the Deputy Director, whichever occurs later.

NAC _____. Petition for declaratory order or advisory opinion: Request for Director to review decision of Deputy Director.

1. After receipt of a decision from a Deputy Director concerning the applicability or interpretation of a statute, regulation or decision of the division, a petitioner may request the Director to review the decision.
2. A request made pursuant to subsection 1 must:
 - a. be in writing;
 - b. contain the information required pursuant to NAC ____; and
 - c. be filed with the Director within 30 days after the date of the decision.
3. The Director will review the request in accordance with the provisions of subsections 2 and 3 of NAC _____.

NAC _____ Advisory opinion: Oral response prohibited. The Director or a Deputy Director will not render an oral advisory opinion or respond over the telephone to a request for an advisory opinion. An oral response or a response given over the telephone by a member of the staff of the Department is not a decision or an advisory opinion of the Department.

Indigent Defense Services Funding

NAC _____ Maximum amount of county contribution for indigent defense services (NRS 180.320)

1. The maximum amount that a county will be required to pay for the provision of indigent defense services shall not exceed that county's actual costs of indigent defense services for the average of fiscal year 2018 and fiscal year 2019 minus any expenses related to capital and murder cases for those years plus, for each subsequent year, the percentage equal to the lesser of:
 - a. The cost of inflation, measured by the West Region Consumer Price Index, and/or
 - b. The union negotiated cost of living increase for employees for that county.

NAC _____ Supplemental state funding for indigent defense services. (NRS 180.320, 180.450)

1. The Department may award supplemental state funding to counties for indigent defense services over the maximum amount a county is required to pay pursuant to NAC _____.
2. Counties may apply for supplemental state funding for the following expenses:
 - a. plans to provide indigent defense services that meet or improve upon the Board's minimum standards as provided in NAC _____ to NAC _____;
 - b. the establishment and maintenance of indigent defense data collection systems; and
 - c. the establishment of independent budgets for trial-related expenses, such as investigators and expert witnesses, or payment of trial-related expenses exceeding existing budgets under the maximum county contribution as provided in NAC _____.

NAC _____ General requirements for supplemental state funding for indigent defense services. (NRS 180.320, 180.450)

1. To receive supplemental state funding for indigent defense services, the county must demonstrate, to the Department's satisfaction, the following:
 - a. The county has incurred and/or reasonably anticipates incurring expenses for indigent defense services in addition to the maximum amount of county contribution for indigent defense services as provided in NAC _____; and
 - b. The supplemental state funding is necessary for the county to meet or exceed the Board's minimum standards for indigent defense services.
2. Supplemental state funding for indigent defense services are awarded for one fiscal year, or July 1st through June 30th of a given year.

3. Counties shall apply for supplemental state funds on the form and by a date to be determined by the Board.
4. Applications submitted after the deadline may only be considered if funds are available upon processing timely submitted applications.
5. Applicants must agree to use any supplemental state funds for the express purpose of compliance with applicable indigent defense standards and/or improvement of the applicant's indigent defense delivery system.

NAC _____ Eligibility for supplemental state funds. (NRS 180.320, 180.450)

To be eligible for any supplemental state funding for indigent defense services, a county must comply with the Board's minimum standards or provide a plan to comply with the Board's minimum standards in its application.

NAC _____ Priorities of supplemental state funds. (NRS 180.320, 180.450)

1. If funds are not available to fund all approved applications, the Department shall prioritize distribution of funds as follows:
 - a. Eligible applicants not in compliance with any of the Board's minimum standards for indigent defense services, or eligible applicants that submit plans where multiple counties work together pursuant to NRS 260.020 to establish regional defender offices that meet the Board's minimum standards for indigent defense services;
 - b. Eligible applicants in compliance with some of the Board's minimum standards for indigent defense services; then
 - c. Eligible applicants in compliance with the Board's minimum standards for indigent defense services but seek to improve or provide additional indigent defense services.

NAC _____ Accounting. (NRS 180.320, 180.450)

1. The Department may review the use, mis-use, or non-use of prior supplemental state funds for indigent defense services by a county and consider such use when determining how much an eligible applicant should receive upon approval.
2. Any unencumbered or unexpended balance remaining at the end of the fiscal year shall lapse and shall revert to the available balance of the fund from which appropriated.

Minimum Standards

NAC _____ Minimum standards for provision of indigent defense services. (NRS 180.320, 180.430, 180.440, NRS 260.010)

1. EDUCATION AND TRAINING OF INDIGENT DEFENSE PROVIDERS.
 - a. Knowledge of the law. Counsel shall have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, civil procedure applicable to abuse and neglect and termination of parental rights, ethical rules and local practices. Counsel has a continuing obligation to have reasonable knowledge of changes and developments in the law. “Reasonable knowledge” as used in this standard means knowledge of which a lawyer competent under NRPC 1.1 would be aware.
 - b. Knowledge of scientific evidence and applicable defenses. Counsel shall have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case, the legal issues concerning defenses to a crime, and be reasonably able to effectively litigate those issues.
 - c. Knowledge of technology. Counsel shall be reasonably able to use office technology commonly used in the legal community and technology used within the applicable court system. Counsel shall be reasonably able to thoroughly review materials that are provided in an electronic format.
 - d. Department will provide training opportunities. Consistent with its statutory obligation, the Department will develop and provide CLE programs for attorneys who provide indigent defense services. This may include, but is not limited to, regular CLE courses and/or annual training programs that include topics tailored to the needs of indigent defense services.
2. QUALIFICATION AND REVIEW OF INDIGENT DEFENSE PROVIDERS.
 - a. Attorney experience. Prior to handling a criminal matter, defense counsel’s ability, training and experience shall match the complexity of the case.
 - b. Review. The quality of the representation provided by indigent defense providers must be monitored and regularly assessed. In conducting the review, the Department may obtain information from a variety of sources including client feedback, client surveys, other providers of indigent defense services, office staff, judicial personnel, observation of a deputy director of the Department, and statistical data provided to the Department pertaining to attorney workload. Delivery systems will ensure that any client-surveys authorized by the Board are provided to clients at the conclusion of the representation.

3. **COUNSEL AT FIRST APPEARANCE AND CRITICAL STAGES.**

- a. **Prompt eligibility determination.** Counsel should be assigned as soon as the defendant is determined to be eligible for indigent defense services. The indigency determination should be made as soon as the defendant's liberty is subject to restriction by a magistrate or judge, but not later than 48 hours, excluding non-judicial hours, after arrest. To ensure prompt indigency determinations, delivery systems shall make reasonable efforts to ensure notices for indigent defense services and applications for eligibility are promptly provided to those seeking such services through cooperation of arresting agencies, county jails and local courts.
- b. **Counsel at first appearances.** Counsel shall be present at initial appearances/arraignments. Counsel should be prepared to address appropriate bail and release conditions where release on a person's own recognizance is denied. A timely initial appearance/arraignment should not be delayed pending a determination of indigency.
- c. **Counsel at critical stages.** All persons determined to be eligible for indigent defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations, and at other critical stages, whether in court or out of court.

4. **INITIAL INTERVIEW.**

- a. **Timing and Purpose of the Interview:** Counsel shall conduct a client interview as soon as practicable after appointment to obtain information necessary to provide quality representation. The purpose of the initial interview includes, but is not limited, to:
 1. Establish the best possible relationship with the indigent client;
 2. Review charges;
 3. Determine whether a motion for pretrial release is appropriate;
 4. Determine the need to start any immediate investigations;
 5. Determine any immediate mental or physical health needs or need for foreign language interpreter assistance; and
 6. Advise that clients should not discuss the circumstances of arrest or allegations with cellmates, law enforcement, family or anybody else without counsel present.

Counsel shall conduct subsequent client interviews as needed. Following appointment, counsel shall conduct the initial interview with the client sufficiently before any subsequent court proceeding so as to be prepared for that proceeding. When a client is in local custody, counsel shall conduct an initial client intake interview within seven (7) days after appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow up and schedule a meeting. If confidential videoconference facilities are made available for trial attorneys, visits should be scheduled within three business days. If an

indigent defendant is in the custody of the Nevada Department of Corrections (NDOC) or detained in a different county from where the defendant is charged, counsel should arrange for a confidential client visit in advance of the first pretrial hearing.

- b. Setting of the interview: All client interviews shall be conducted in a private and confidential setting to the extent reasonably possible. The delivery system should, through cooperation with local agencies, ensure the necessary accommodations for private discussions between counsel and clients in courthouses, jails, prisons, detention centers, and other places where clients must confer with counsel.
 - c. Preparation: Counsel shall obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports concerning pretrial release, and discoverable material.
 - d. Client status:
 - 1. Counsel shall evaluate whether the client is capable of participation in his/her representation, understands the charges, and has some basic comprehension of criminal procedure. Counsel has a continuing responsibility to evaluate and, where appropriate, raise as an issue for the court the client's capacity to stand trial or to enter a plea pursuant to NRS 178.405. Counsel shall take appropriate action where there are any questions about a client's competency.
 - 2. Where counsel is unable to communicate with the client because of language or communication differences, counsel shall take whatever steps are necessary to fully explain the proceedings in a language or form of communication the client can understand. Steps include seeking the provision of an interpreter to assist with pretrial preparation, interviews, investigation, and in court proceedings or other accommodations pursuant to NRS 1.510.
5. INVESTIGATION AND EXPERTS.
- a. Reasonable investigation. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable. When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense. Reasonable requests shall be funded by the delivery system. Decisions to limit investigation must take into consideration the client's wishes and the client's version of the facts.
 - 1. Counsel should ensure that an investigator's criminal investigation training and experience match the nature and complexity of the case for which the investigator is sought.

- b. Experts. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and/or rebut the prosecution's case. Reasonable requests shall be funded by the delivery system.
 - c. Continuing duty. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance.
6. INDEPENDENCE FROM JUDICIARY.
- a. Selection and payment of attorneys and trial expenses. The indigent defense delivery system shall be designed to guarantee the integrity of the relationship between lawyer and client. The system and lawyers serving under it should be free from political and undue budgetary influence. Both should be subject to judicial supervision only in the same manner and to the same extent as retained counsel or the prosecution. The selection of lawyers and the payment for their services shall not be made by the judiciary. Similarly, the selection, approval and payment for investigative, expert and other trial-related expenses necessary for providing effective assistance of defense counsel shall not be made by the judiciary.
 - b. Role of the judiciary. The court's role should be limited to: informing defendants of the right to counsel; making a determination of entitlement to appointment; and, if deemed eligible for counsel and absent a valid waiver, referring the defendant to the appropriate agency/administrator/program. Judges are encouraged to contribute information and advice to the Board and Department concerning the delivery of indigent defense services, including their opinions regarding the competence and performance of attorneys providing such services.
7. INDIGENT DEFENSE WORKLOADS.
- a. The workload of indigent defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. Workloads will be determined through Nevada specific weighted caseload studies.
8. ATTORNEY COMPENSATION (ECONOMIC DISINCENTIVES OR INCENTIVES).
- a. Rates of Payment for Salaried Public Defenders. Reasonable salaries, benefits, and resources should be provided to indigent defense counsel. The rates paid by the county district attorneys, the Nevada Attorney General, and/or other state offices serve as guidance for reasonable compensation.
 - b. Compensation and Expenses for Assigned Counsel.
 - 1. Assigned counsel should receive prompt compensation at a reasonable rate and should be reimbursed for their reasonable out-of-pocket, case-related expenses. Activities outside of court

appearances, such as directing an investigation, negotiating, or tactical planning, etc., require no less legal skill and expertise than in-court appearances and are equally important to quality representation. Assigned counsel should be compensated for all work necessary to provide quality legal representation.

2. Capped hourly rates and flat fee payment schemes are discouraged unless carefully designed to minimize disincentives and provide compensation reasonably expected to yield an hourly rate of compensation equivalent to the required minimum rate.
- c. Contracting for Indigent Defense Services. The terms of any indigent defense contract should avoid any actual or apparent financial disincentives to the attorney's obligation to provide clients with competent legal services. Contracts-for-service should implement statutory hourly rates or demonstrate that that compensation is at least equivalent to those rates, and provide a mechanism to seek reimbursement for case-related expenses. Each board of county commissioners shall cooperate with the Board and Department in the posting of an opening for, deliberation of, and selection of contract-for-service-attorneys.

Training, education and qualification of attorneys providing indigent defense services.

NAC _____ Definitions. (NRS 180.320) As used in this section, unless the context otherwise requires, the words and terms defined in **NAC _____ to NAC _____**, inclusive, have the meanings ascribed to them in those sections.

NAC _____. **“Basic requirements” defined. (NRS 180.320)** “Basic requirements” means being admitted to practice law with the State of Nevada and satisfaction of annual CLE requirements set forth in **NAC _____**.

NAC _____. **General requirements; waivers. (NRS 180.320, 180.430)**

1. Attorneys who provide indigent defense services in counties whose population is less than 100,000 shall:
 - a. demonstrate compliance with the minimum standards and regulations of the Board pursuant to **NAC _____ to NAC _____**.
 - b. provide proof of compliance with annual CLE requirements pursuant to **NAC _____** by January 1st of each year;
 - c. practice the indigent defense service for which he or she is qualified through the Department; and
 - d. track their time and workload, and provide monthly reports as required by **NAC _____**.
2. The provisions of this section may be temporarily waived by the Department for good cause.
3. Failure to comply may result in a corrective action plan pursuant to NRS 180.540 and/or removal from the list of lawyers eligible to provide indigent defense services.

NAC _____. **Initial application with the Department; roster of eligible providers. (NRS 180.320, 180.430)**

1. Pursuant to NRS 180.430(1)(b), attorneys seeking to provide indigent defense services in counties whose population is less than 100,000 must demonstrate compliance with the Board’s standards and regulations pertaining to training, education and qualifications on the approved form.
2. The form shall be submitted to the Department for review by mail or electronic submission as provided on the Department’s website. Upon receipt of the form, the Department will review and determine the area of indigent defense services for which the attorney is qualified within 30 days. The Department will provide written notice to the attorney of the Department’s determination.
3. Once an application has been submitted, an attorney may continue practicing in the area of indigent defense for which the Department’s determination is sought until receiving written notice of the determination.

4. Upon the Department's determination, the attorney and their areas of qualification will be placed on a roster of attorneys eligible to provide indigent defense services. The roster will be used by boards of county commissioners in selecting a county's indigent defense providers. The roster will be updated yearly or whenever there is a change requiring update.

NAC _____. Challenge of Department Determination. If a lawyer disagrees with the Department's determination of the areas on indigent defense services for which an attorney is qualified, the Request for Reconsideration must be provided to the Department of Indigent Defense within 30 days of receiving the Department's determination. The Request for Reconsideration will be reviewed by the Board of Indigent Defense Services.

NAC _____. Qualifications for misdemeanor proceedings. (NRS 180.320)

1. Prior to undertaking representation in a misdemeanor matter, lawyers shall satisfy basic requirements and have sufficient training or experience to provide competent representation.
2. Attorneys beginning to represent clients in misdemeanor matters, should consider seeking the participation of a supervising or more experienced attorney prior to undertaking representation in an enhanceable misdemeanor or misdemeanor jury trial, pursuant to NRS 260.060 if applicable.

NAC _____. Qualifications for category B offenses for which the maximum penalty is less than 10 years, C, D, E felony or Gross Misdemeanor proceedings. (NRS 180.320)

1. Attorneys seeking to represent individuals charged with category B offenses for which the maximum penalty is less than 10 years, C, D, E felony or Gross Misdemeanor proceedings, must:
 - a. satisfy basic requirements; and
 - b. have been trial counsel, alone or with other counsel, in two bench or jury trials tried to completion; or
 - c. demonstrate equivalent experience and skills as determined by the Department.

NAC _____. Qualifications for non-capital category A offenses or category B offenses for which the maximum penalty is 10 years or more. (NRS 180.320)

1. Attorneys seeking to represent individuals charged with non-capital category A offenses or category B offenses for which the maximum penalty is 10 years or more, must:
 - a. satisfy the basic requirements;
 - b. have practiced criminal law for three 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 the trial in three criminal jury trials tried to completion; or

- d. demonstrate equivalent experience, have a significant record of quality criminal trial court representation, and the ability to handle complex felony matters as determined by the Department.

NAC _____. Qualifications for death penalty cases. (NRS 180.320)
Attorneys seeking to represent individuals charged with category A offenses in which the state seeks death must meet the criteria established pursuant to SCR 250.

NAC _____. Qualifications for direct or post-conviction appeals of felonies other than capital proceedings. (NRS 180.320) Attorneys seeking to represent individuals in direct or post-conviction appeals of felonies other than capital proceedings shall satisfy basic requirements and have sufficient experience or training to undertake the representation.

NAC _____. Qualifications for appellate counsel in capital proceedings. (NRS 180.320)
Attorneys seeking to represent individuals convicted of category A offenses in which the state sought death must meet the established criteria pursuant to SCR 250.

NAC _____. Qualifications for juvenile delinquency proceedings. (NRS 180.320)

1. Attorneys seeking to represent individuals in juvenile delinquency proceedings shall:
 - a. satisfy basic requirements and
 - b. have the knowledge and skill necessary to represent a child diligently and effectively.
2. Attorneys seeking to represent individuals in juvenile delinquency proceedings should be familiar with
 - a. the Department of Juvenile Justice Services and other state and local programs;
 - b. competency and developmental issues;
 - c. attorney/client interaction issues;
 - d. school-related conduct and zero tolerance policy issues specific to juvenile representation.
3. Attorneys beginning to represent clients in delinquency proceedings should consider working with an experienced juvenile delinquency practitioner as a mentor, pursuant to NRS 260.060 where applicable.
4. Attorneys representing children in certification proceedings in accordance with NRS Chapter 62B shall have litigated at least two criminal jury trials or be assisted by co-counsel with the requisite experience, pursuant to NRS 260.060 where applicable.

NAC _____. Qualifications for dependency and neglect and termination of parental rights cases. (NRS 180.320)

1. Attorneys seeking to represent individuals in dependency and neglect and termination of parental rights cases, must:
 - a. satisfy basic requirements,
 - b. have a minimum of 20 hours training or equivalent experience in dependency and neglect and/or termination of parental rights proceedings, and
 - c. must be familiar with the relevant areas of law, policy, research and practice, including:
 1. NRS Chapter 128, NRS 432B, Nevada Rules of Civil Procedure, Nevada Rules of Evidence, Nevada Rules of Criminal Procedure, Nevada Rules of Professional Responsibility, and relevant local court rules;
 2. permanency timelines;
 3. federal statutes, regulation, policies, and rules including the Indian Child Welfare Act, the Adoption and Safe Families Act, and the Family First Prevention Services Act;
 4. federal and state child welfare caselaw;
 5. child development principles and research, particularly the importance of attachment and bonding and the harms of parental separation;
 6. child welfare and family preservation services available in the community;
 7. the role and authority of the Department of Child and Family Services (“DCFS”) and any administrative regulations, policies or laws that govern DCFS practices; and
 8. a working knowledge of the types of experts who can consult with attorneys and/or testify on parenting, remedial services and other child welfare issues.

NAC _____. Continuing Legal Education and Training. (NRS 180.320, 180.430)

1. Attorneys providing indigent defense services shall annually complete a minimum of five (5) hours of CLE courses relevant to the areas of indigent defense services in which they practice.
 - a. Proof of compliance with annual CLE requirements shall be submitted to the Department by the first day of January, as required by NAC ____, by submitting a copy of the Nevada Board of Continuing Legal Education’s annual transcript by mail or electronic submission as provided on the Department’s website.
2. Attorneys providing indigent defense services shall be guided by the Board’s minimum standard in determining CLE courses relevant to the areas of indigent defense services.

3. The Department will develop and provide CLE programs for attorneys who provide indigent defense services. These may include, but is not limited to, regular CLE courses and/or annual training programs that include topics relevant to indigent defense services.

Continuity of Representation

NAC _____. Continuity of Representation. (NRS 180.320)

1. Each county that employs or contracts for the provision of indigent defense services shall 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 or other tasks which do not affect the rights of the defendant may be delegated.
2. Nothing in this section shall preclude a county from utilizing a single attorney or rotation of attorneys to provide representation at initial appearance/arraignments; however, care should be taken to discuss only matters pertaining to an initial appearance/arraignment to avoid creating a conflict of interest.

Attorney Compensation and Expenses

NAC _____ Attorney Compensation. (NRS 180.320, 180.440)

1. Rates of Payment for Salaried Public Defenders. Reasonable salaries, benefits, and resources should be provided to indigent defense counsel. The rates paid by the county district attorneys, the Nevada Attorney General, and/or other state offices shall serve as guidance for reasonable compensation.

2. Compensation and Expenses for Assigned Counsel.
 - a. Assigned counsel should receive prompt compensation pursuant to the statutory hourly rate pursuant to NRS 7.125(1). Activities outside of court appearances including, but not limited to, directing investigation, negotiating, or tactical planning are equally important to quality representation and shall be included in assigned counsel's compensation.

 - b. Assigned counsel should be promptly reimbursed for their reasonable out-of-pocket, case-related expenses such as the use of investigators and expert witness fees.

 - c. Capped hourly rates and flat fee payment schemes are prohibited unless carefully designed to minimize disincentives and provide compensation reasonably expected to yield an hourly rate of compensation equivalent to the required minimum rate.

3. Contracting for Indigent Defense Services.
 - a. The terms of any indigent defense contract-for-service shall avoid any actual or apparent financial disincentives to the attorney's obligation to provide clients with competent legal services.

 - b. Contracts-for-service may only be utilized if they are awarded on a competitive basis, implement statutory hourly rates, and provide a mechanism to seek reimbursement for reasonable case-related expenses.

 - c. Contracts-for-service must include a provision that requires the contracting attorney's compliance with the Board's minimum standards and regulations.

 - d. Any contracts-for-service must utilize the model contract approved by the Board.

 - e. Each board of county commissioners shall cooperate with the Board and Department in the posting of an opening for, deliberation of, and selection of contract-for-service-attorneys.

4. Conflict Counsel. When any conflict of interest is identified by a public defender office or by assigned counsel, that case should be returned for reassignment to the designating authority. Payments to conflict counsel, including fees or other

expenses incurred during the representation, shall not be deducted from the line item or contract negotiated with the primary providers (public defender office, assigned counsel, or contract-for-service).

5. Reimbursements. Attorneys must be reimbursed for any reasonable out-of-pocket expenses they incur as a result of representation. Mileage should be reimbursed based on prevailing local norms and should not be less than the United States General Services Administration published rates.
6. Payments.
 - a. Invoices submitted by assigned counsel and contract defenders should be reviewed by an administrator, who should be empowered to approve or disapprove fees or expenses, in the manner prescribed in NRS 7.145.
 - b. Invoices should be approved in a timely manner unless there is cause to believe the amount claimed is unwarranted.
 - c. In lengthy cases, periodic billing and payment during the course of representation should be allowed.
 - d. Expenditure of public dollars should be subject to control mechanisms and audits that verify expenditure accuracy. This should be accomplished by following generally accepted procedures that separate staff duties; establish billing policies; and ensure thorough review of invoices, including benchmark setting and investigation where necessary. The approval process should be supported by an efficient dispute resolution procedure.

Uniform Reporting of Data

NAC _____ Definitions. (NRS 180.320) As used in this section, unless the context otherwise requires, the words and terms defined in **NAC _____** to **NAC _____**, inclusive, have the meanings ascribed to them in those sections.

NAC _____. **“Adjudicated/Disposed/Closed” defined. (NRS 180.320)**

1. “Adjudicated/Disposed/Closed” means a count of cases by defendant for which an original entry of final adjudication has been entered or for which an appointment has ended.
2. Cases adjudicated/disposed/closed should be counted in the same category of offense as it was counted in.

NAC _____. **“Appointment” defined. (NRS 180.320)** “Appointment” means 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 for whatever reason. There can be multiple “appointments” for a single case during the duration of a case.

NAC _____. **“Beginning pending” defined. (NRS 180.320)** “Beginning pending” means a count of cases by defendant that, at the start of the reporting period, are awaiting disposition.

NAC _____. **“Case” defined. (NRS 180.320)**

1. A “case” means a single defendant on a single charging document, regardless of the number of counts alleged, for felony, gross misdemeanor, and misdemeanor matters.
2. A “case” means a single juvenile defendant on a single petition, regardless of the number of counts alleged, in juvenile delinquency matters.
3. For cases in which multiple charges are involved, the case will be classified by the highest offense charged.
4. Felony, gross misdemeanor, and misdemeanor cases are counted at time of appointment.

NAC _____. **“End pending” defined. (NRS 180.320)** “End pending” means a count of cases by defendant that, at the end of the reporting period, are awaiting disposition.

NAC _____. **“Felony” defined. (NRS 180.320)** “Felony” has the meaning ascribed to it by NRS 193.130.

NAC _____. **“Final adjudication” defined. (NRS 180.320)** “Final adjudication” means an entry of judgment or adjudication, an order of dismissal, or when an appointment ends regardless of adjudicatory status.

NAC _____. **“Gross misdemeanor” defined. (NRS 180.320)** “Gross misdemeanor” has the meaning ascribed to it by NRS 193.140.

NAC _____. **“Inactive status” defined. (NRS 180.320)** “Inactive status” means 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 made a case inactive.

NAC _____. **“Juvenile case” defined. (NRS 180.320)** “Juvenile case” means cases involving 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.

NAC _____. **“Misdemeanor” defined. (NRS 180.320)** “Misdemeanor” has the meaning ascribed to it by NRS 193.150.

NAC _____. **“New appointment” defined. (NRS 180.320)** “New appointment” means a count of cases by defendant that have been assigned counsel for the first time.

NAC _____. **“Returned from warrant” defined. (NRS 180.320)** “Returned from warrant” means 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 a diversion program, or other similar occurrence that re-activates a case.

NAC _____. **“Set for review” defined. (NRS 180.320)** “Set for review” means 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.

NAC _____. **Workloads of attorneys providing indigent defense services. (NRS 180.320)**

1. The workloads of attorneys providing indigent defense services shall allow each attorney to give each client the time and effort necessary to ensure effective representation.
2. Workload requirements will be determined through Nevada-specific weighed caseload studies conducted by the Department and implemented by regulation upon completion.
3. Prior to completion of a workload study and promulgation of the pertinent regulation, providers of indigent defense services shall reasonably comply with workload guidelines as determined by the Board.

4. Workloads will be continuously reviewed by performing Nevada-specific workload studies at least once every five years to determine that workload guidelines are appropriate.

NAC _____ . Reporting of workload data. (NRS 180.320)

1. On a monthly basis, attorneys providing indigent defense services in counties whose population is less than 100,000 shall provide to the Department a report detailing his or her current appointments.
2. Each report shall include totals for:
 - a. Beginning pending cases;
 - b. New appointments;
 - c. Cases returned from warrant;
 - d. Cases adjudicated, disposed, or closed including the manner in which the case was adjudicated, disposed, or closed (i.e. plea, dismissal, resolution at trial, etc.) and case outcome;
 - e. Inactive cases;
 - f. Cases set for review; and
 - g. End pending cases.
3. Cases will be arranged by the following offense categories:
 - a. Death penalty;
 - b. Non-capital category A offenses and category B offenses for which the maximum penalty is 10 years or more;
 - c. Category B offenses for which the maximum penalty is less than 10 years, C, D, and E;
 - d. Gross misdemeanor;
 - e. Misdemeanors, including misdemeanor appeals;
 - f. Misdemeanor DUI;
 - g. Misdemeanor cases involving allegations of domestic violence;
 - h. Direct appeals of capital offenses;
 - i. Direct appeals of other felonies convictions;
 - j. Probation and/or parole violations;
 - k. Juvenile offenses;
 - l. Juvenile certification proceedings;
 - m. Juvenile probation and/or parole violations;
 - n. Specialty Court;
 - o. Abuse and neglect proceedings;
 - p. Termination of parental rights; and
 - q. Involuntary commitments.
4. The report shall be provided to the Department in the method approved by the Board and shall be due within seven (7) calendar days from the end of the reporting month. Failure to provide reports may result in a corrective action plan as provided in NRS 180.450.

NAC _____ . Time keeping. (NRS 180.320)

1. On a monthly basis, lawyers providing indigent defense services in counties whose population is less than 100,000 shall provide to the Department a report detailing time spent delivering those services.
2. The report shall include time spent in the following categories:
 - a. In-court activities;
 1. General hearings (initial appearances, pre-trial conferences, status conferences, arraignments, revocation hearings, sentencings, etc.);
 2. Bail hearings;
 3. Suppression hearings;
 4. Other evidentiary hearings; and
 5. Trial.
 - b. Out-of-court activities, including:
 1. Client contact,
 2. Consultation with investigator,
 3. Consultation with expert witnesses,
 4. Preparation of motions to suppress,
 5. Travel,
 6. Waiting, and
 7. All other out-of-court tasks (including discovery review, case preparation, research and preparation of all other pleadings, negotiations, etc.); and
 - c. Expert, investigator, staff, and private workload:
 1. Expert witness hours per case,
 2. Investigator hours per case,
 3. Staff hours per case, and
 4. If applicable, total hours spent in private practice.
3. The report shall be provided to the Department in the method approved by the Board and shall be due within seven (7) calendar days from the end of the reporting month. Failure to provide reports may result in a corrective action plan as provided in NRS 180.450.

Death Penalty Cases and Direct Appeals in Rural Counties

NAC _____ Death Penalty Cases and Direct Appeals in Rural Counties (NRS 180.320)

1. The Office of the State Public Defender may handle all death penalty cases and all direct appeals to the Nevada Appellate Courts in counties whose population is less than 100,000 upon agreement, pursuant to NRS 260.065, with such a county.
2. Attorneys providing indigent defense services in death penalty cases and direct appeals in counties whose population is less than 100,000 shall devote their entire time to those matters and collaboration with the Department for training and/or CLE courses.
3. A county that transfers responsibility for the provision of indigent defense services for death penalty matters and/or direct appeals to the Nevada Appellate Courts to the State Public Defender 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 of the Department.

Confidentiality of Records

NAC _____ Certain records relating to recommendations and complaints to the Board of Indigent Defense Services and application of attorneys deemed confidential; certain records relating to disciplinary action deemed public records; exceptions.

1. Except as otherwise provided in this section and NRS 239.0115, any complaints, recommendations, records or information obtained by the Board through the complaints and recommendations procedure of NRS 180.320(2)(b) or the application of attorneys pursuant to NAC _____ and any record of any investigation are confidential.

2. The Board shall, to the extent feasible, communicate or cooperate with or provide any documents or other information to another licensing board or any agency that is investigating a person, including a law enforcement agency.