

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

LCB File No. R042-20

October 5, 2020

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

AUTHORITY: §§1-52, 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 and compensation of attorneys who provide indigent defense services; establishing requirements relating to the reporting of certain information by certain attorneys who provide 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 12** 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 13** 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 30 days after the petition is filed. **Section 14** 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 15** of this regulation authorizes the Executive Director to take certain actions for 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 15** 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 16** 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 17** 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 18** of this regulation establishes such a formula. **Section 19** of this regulation establishes: (1) the methods by which a county may seek state contributions for indigent defense services in excess of the maximum county contribution; and (2) the expenses for which a county may seek state contributions. **Section 20** 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 21 of this regulation authorizes the State Public Defender, upon request of a county whose population is less than 100,000, to handle for the county all trial-level death penalty cases and direct appeals to the appellate court of competent jurisdiction. **Section 21** 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 Board.

Sections 22-26 of this regulation establish various provisions relating to the plans of counties for the provision of indigent defense services. **Section 22** 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 all subsequent plans for indigent defense services as part of an annual report the county is required to submit to the Department. **Section 24** provides that a plan for the provision of indigent defense services for a county must require that a defendant be screened for indigency not later than 48 hours after his or her arrest. **Section 25** provides that plans and contracts for indigent defense services must require that, unless a client has already been interviewed by the attorney as authorized by law, an attorney conduct an initial interview with a client as soon as practicable after being assigned to represent the client. **Sections 25 and 26** also establish various duties of attorneys who provide indigent defense services.

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 30-39** of this regulation establish provisions relating to the training, education and qualification of such attorneys. **Section 30** requires that the ability, training and experience of an attorney who provides indigent defense services in a criminal matter match the complexity of the case and imposes certain requirements on attorneys who provide indigent defense services in a county whose population is less than 100,000. **Section 30** also authorizes the Department to temporarily waive such requirements for good cause. **Section 31** 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. **Section 31** also: (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 an application; and (2) if the Department determines that an attorney is qualified to provide indigent defense services in one or more areas of law, 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 32** authorizes an attorney who

disagrees with the determination of the Department to submit a request for reconsideration by the Board. **Sections 33-38** establish the qualifications that an attorney must have to provide indigent defense services to various persons. **Section 39** requires: (1) the Department to develop and provide programs for continuing legal education for attorneys who provide indigent defense services; and (2) such attorneys to complete annually a minimum of 5 hours of continuing legal education courses relevant to the areas of indigent defense services in which the attorney practices and submit proof of compliance to the Department. **Section 40** requires the Department to monitor and regularly assess the quality of representation provided by such 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 41** of this regulation imposes such a requirement. Existing law also requires that a provision be included in each employment or other contract of an attorney providing indigent defense services to require compliance with regulations. (NRS 180.320) **Section 42** of this regulation requires that a contract for providing indigent defense services: (1) include a provision requiring an attorney to comply with the minimum standards and regulations of the Board; and (2) meet certain other requirements.

Sections 42-47 of this regulation establish provisions relating to the compensation of attorneys who provide indigent defense services and the payment of expenses. **Section 42** provides that an attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources. **Section 43** requires that an attorney who is appointed to provide indigent defense services when a public defender is disqualified receive prompt compensation. **Section 44** provides that any payments made to an attorney who is identified as having a conflict of interest in providing indigent defense services to a client must not be deducted from the line item or contract negotiated with the office of public defender or appointed counsel. **Section 45** requires that an attorney generally be reimbursed for any reasonable out-of-pocket expenses he or she incurs as a result of providing indigent defense services. **Section 46** requires that invoices submitted by an attorney be approved in a timely manner unless there is cause to believe that the amount claimed in the invoice is unwarranted and provides that periodic billing and payment must be permitted during the course of representation by an attorney in a lengthy case. **Section 47** establishes requirements concerning the expenditure of public dollars relating to the provision of indigent defense services.

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 48** of this regulation provides that a caseload 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 caseload that, by reason of its excessive size, interferes with the rendering of quality representation. **Section 48** also requires the Department to conduct a state-specific caseload study to determine the caseload guidelines and requirements for attorneys who provide indigent defense services and to conduct subsequent caseload studies at least once every 5 years. **Section 48** additionally provides that the Board will adopt regulations to implement caseload guidelines and requirements 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 49** of this regulation requires each attorney who provides indigent defense services in a county whose population is less than 100,000 to submit to the Department a monthly report that details his or her current appointments, arranged by certain categories. **Section 50** of this regulation requires such an attorney to submit to the Department a monthly report that details: (1) the total time the attorney spent providing indigent defense services in various categories during that month; and (2) the workload of expert witnesses, investigators and staff and the private workload of the attorney during that month. **Sections 49 and 50** require that the respective reports be submitted to the Department not later than 7 calendar days after the end of the reporting month.

Section 51 of this regulation provides that certain documents obtained by the Board are generally confidential.

Sections 1-11, 27-29 and 32 define terms and make conforming changes.

Section 1. Chapter 180 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 51, 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 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Appointment” means the assignment by a judicial officer of an attorney to act on behalf of a person in a criminal or juvenile matter.*

Sec. 4. *“Attorney” means an attorney who provides indigent defense services.*

Sec. 5. *“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 juvenile delinquency matter.

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

Sec. 6. *“Delivery system” means all persons involved in providing indigent defense services or representation in a county. The term includes, without limitation, offices of county public defenders, appointed counsel programs, contract-for-service programs and the attorneys and support staff thereof.*

Sec. 7. *“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. 8. *“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 the defendant:*

- 1. Receives public assistance, as that term is defined in NRS 422A.065;*
- 2. Resides in public housing, as that term is defined in NRS 315.021;*
- 3. Has a household income that is less than 200 percent of the federally designated level signifying poverty;*
- 4. Is serving a sentence in a correctional institution; or*
- 5. Is housed in a mental health facility.*

Sec. 9. *“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. 10. *“Plan for the provision of indigent defense services” or “plan” means the processes established by a county for the:*

1. *Hiring, appointment and selection of trial and appellate attorneys;*

2. *Approval of attorney’s fees, investigative fees and expert witness fees; and*

3. *Screening of the following persons for indigency:*

(a) *A person alleged to have committed a public offense; or*

(b) *A child alleged to have committed a delinquent act or to be in need of supervision.*

Sec. 11. *The provisions of this chapter govern the provision of indigent defense services.*

Sec. 12. 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. 13. 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 12 of this regulation are not met.*

2. *The Board may require the Department to review a petition filed pursuant to section 12 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 30 days after a petition is filed.*

Sec. 14. 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. 15. 1. *The Executive Director may refuse to review a petition filed pursuant to section 14 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 60 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. 16. 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 14 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 15 of this regulation.

Sec. 17. *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. 18. 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) The actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases and, if the population of the county is less than 100,000, any case-related expenses, calculated as the average of the total of such costs for Fiscal Year 2018-2019 and Fiscal Year 2019-2020; and

(b) The percentage equal to the lesser of:

(1) 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

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

2. Any case-related expenses of a county whose population is less than 100,000 must be a charge against the State, budgeted to the Department and, pursuant to a plan for the provision of indigent defense services for the county, administered by the Department or the designee of the Department.

3. If a county chooses, pursuant to section 21 of this regulation, to transfer to the State Public Defender the responsibility for trial-level death penalty cases and direct appeals to the appellate court of competent jurisdiction, the costs of providing indigent defense services in those cases must be a charge against the State and excluded from the required contribution of the county.

Sec. 19. *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 18 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) In accordance with 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.

2. A county may seek state contributions in excess of the maximum county contribution, as calculated pursuant to section 18 of this regulation, for the following expenses:

(a) Ensuring that the indigent defense services provided by the county comply with the standards and regulations of the Board in accordance with this chapter;

(b) Establishing and maintaining indigent defense data collection systems; and

(c) Establishing independent budgets for trial-related expenses, including, without limitation, expenses relating to investigators and expert witnesses and trial-related expenses that exceed existing budgets under the maximum county contribution as provided in paragraph (c) of subsection 1 of section 23 of this regulation.

3. 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.

Sec. 20. *1. Any state contributions for the provision of indigent defense services are provided for:*

(a) One fiscal year; and

(b) The express purpose of complying with applicable indigent defense standards or regulations or improving the delivery system of a county.

2. 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.

3. 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. 21. 1. *Upon request of a county whose population is less than 100,000, the State Public Defender may handle for the county all trial-level 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 trial-level death penalty cases and direct appeals to the appellate court of competent jurisdiction, 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.

3. After the responsibility of handling all trial-level death penalty cases and direct appeals to the appellate court of competent jurisdiction for a county is transferred to the State Public Defender, such responsibility cannot be transferred back to the county unless the county receives the approval of the Board.

Sec. 22. 1. *A plan for the provision of indigent defense services must be submitted in a form approved by the Board, follow the model plan approved by the Board and include, without limitation, the processes for:*

- (a) Hiring, appointing and selecting trial and appellate counsel;*
- (b) Approving attorney's fees, investigative fees and expert witness fees; and*
- (c) Screening to determine the indigency of a defendant.*

2. A 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 June 15, whichever is earlier. After a county provides its initial plan for the provision of indigent defense services to the Department, the county shall provide all

subsequent plans for indigent defense services to the Department as part of the annual report required pursuant to subsection 2 of NRS 260.070.

Sec. 23. 1. A plan for the provision of indigent defense services must:

(a) Be designed to guarantee 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.

(b) Exclude the judiciary from the screening of a defendant for indigency in accordance with section 24 of this regulation. After such screening and upon a judge, justice or master finding that a defendant is eligible for an appointed attorney in accordance with subsection 3 of NRS 171.188, an attorney must be selected in accordance with the plan for the provision of indigent defense services for the county. If a public defender is disqualified from providing representation, a plan must provide for the appointment of another attorney in accordance with NRS 7.115 and 171.188.

(c) Exclude the judiciary from the payment of attorney's fees, investigative fees, expert fees and other case-related expenses for public defenders who receive a salary and public defenders who are independent contractors. If a county uses public defenders who receive a salary, the county shall create a budget for such expenses within the office of county public defender that is subject to administration by the county public defender. If a county uses public defenders who are independent contractors, the county shall create a budget independent of the judiciary to be administered by the Department or the designee of the Department and include a mechanism for judicial review of any modified or denied requests.

If a public defender is disqualified from providing representation, a county must follow the procedure for the payment of such expenses in accordance with NRS 7.115 to 7.175, inclusive.

2. Judges are encouraged, if appropriate, to contribute information and feedback to the Board and the Department or the designee of the Department concerning the provision of indigent defense services, including, without limitation, their opinions regarding the competence and performance of any attorneys.

Sec. 24. *1. A plan for the provision of indigent defense services must require that a defendant be screened for indigency not later than 48 hours after his or her arrest. To ensure prompt screening, delivery systems shall make reasonable efforts to ensure that notices and applications for indigent defense services are promptly provided to persons seeking such services by cooperating with arresting agencies, county jails and local courts. This subsection must not be construed to preclude a defendant from declining to request the appointment of an attorney in accordance with subsection 1 of NRS 171.188.*

2. Plans and contracts for indigent defense services must require that an attorney be present at initial appearances and arraignments and be prepared to address appropriate bail and release conditions if the release of a defendant on his or her own recognizance is denied. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant.

3. Any person who is determined to be eligible to receive indigent defense services must have an appointed attorney with him or her during any pretrial proceeding, plea negotiation or other critical stage, whether in court or outside of court.

Sec. 25. *1. Plans and contracts for indigent defense services must require that, unless an attorney has already interviewed a client in accordance with NRS 260.050, an attorney*

conduct an initial interview with the client as soon as practicable after being assigned to represent the client to obtain the information necessary to provide quality representation. The attorney shall conduct the initial interview with the client sufficiently before any subsequent court proceeding so that the attorney is prepared for that proceeding. If the client is:

(a) In custody, the attorney shall conduct an initial interview with the client not later than 7 days after being assigned to represent the client; or

(b) Not in custody, the attorney shall promptly deliver an introductory communication to the client to enable the client to follow up and schedule a meeting with the attorney.

2. The purposes of an initial interview include, without limitation, to allow the attorney to:

(a) Establish the best possible relationship with the client;

(b) Review the charges against the client;

(c) Determine whether a motion for pretrial release is appropriate;

(d) Determine whether there is a need to begin any immediate investigations;

(e) Determine whether there are any immediate physical or mental health needs of the client or any need for assistance from a foreign language interpreter; and

(f) Advise the client that he or she should not discuss the circumstances of his or her arrest or the allegations made against him or her with any other person, including, without limitation, any cellmate, law enforcement officer or family member without the attorney being present.

3. After the initial interview between an attorney and a client, the attorney shall conduct subsequent interviews with the client as necessary.

4. *All interviews between an attorney and a client must be conducted in a private and confidential setting to the extent reasonably practicable. A delivery system shall, through cooperation with local agencies, ensure that necessary accommodations are available 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.*

5. *In preparation for an initial interview, an attorney shall use reasonable efforts to obtain copies of any available relevant documents, including, without limitation, copies of any charging documents, recommendations and reports concerning pretrial release and discoverable material, but an initial interview must not be delayed because the attorney is unable to obtain any such relevant documents.*

6. *An attorney shall evaluate whether a client is capable of participating in his or her representation, understands the charges against him or her and has some basic comprehension of criminal procedure. An attorney has a continuing responsibility to evaluate and, if appropriate, raise as an issue for the court pursuant to NRS 178.405 the capacity of a client to stand trial or enter a plea. If any questions arise as to the competency of a client, the attorney shall take any necessary appropriate action.*

7. *If an attorney is unable to communicate with a client because of language or communication differences, the attorney shall take any necessary steps to fully explain the proceedings in a language or form of communication that the client can understand, including, without limitation, seeking the services of a court interpreter who is certified or registered in accordance with NRS 1.510 to assist with pretrial preparation, interviews, investigation, in-court proceedings and other accommodations.*

Sec. 26. 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 and the alleged offense committed by the 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 or rebut the prosecution's case.

2. *A delivery system shall provide the funding for retaining an investigator or expert if an attorney requests such funding and the request is reasonable.*

3. *An attorney:*

(a) Has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance; and

(b) Must ensure that the criminal investigation training and experience of an investigator whose services the attorney is seeking match the nature and complexity of the case for which the services of the investigator are being sought.

4. *An attorney must take into consideration the wishes of a client and the version of facts presented by the client before the attorney makes any decision to limit an investigation.*

Sec. 27. *As used in sections 27 to 40, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 28 and 29 of this regulation have the meanings ascribed to them in those sections.*

Sec. 28. *“Basic requirements” means:*

1. Being admitted to practice law in this State; and

2. Satisfying the annual CLE requirements set forth in section 39 of this regulation.

Sec. 29. *“CLE” means continuing legal education as discussed in Nevada Supreme Court Rules 205 to 215, inclusive.*

Sec. 30. 1. *The ability, training and experience of an attorney in a criminal matter must match the complexity of the case.*

2. An attorney in a county whose population is less than 100,000 shall:

(a) Demonstrate compliance with the minimum standards and regulations of the Board in accordance with this chapter;

(b) Provide proof of compliance with the annual CLE requirements set forth in section 39 of this regulation before January 1 of each year;

(c) Practice the areas of law for which he or she is qualified by the Department pursuant to section 31 of this regulation; and

(d) Track his or her workload and time spent providing indigent defense services and provide monthly reports as required by sections 49 and 50 of this regulation.

3. If an attorney fails to comply with the requirements of this section:

(a) The designated deputy director of the Department may recommend a corrective action plan pursuant to NRS 180.440; and

(b) The Department may remove the attorney from the roster of attorneys who are eligible to provide indigent defense services that the Department compiles pursuant to section 31 of this regulation.

4. The Department may temporarily waive the requirements set forth in this section for good cause.

Sec. 31. 1. *An attorney who seeks to provide indigent defense services in a county whose population is less than 100,000 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 area of indigent defense services for 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 in one or more areas of law, 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. The Department shall update the roster whenever there is a change requiring an update, but not less than once each year.

Sec. 32. *If an attorney disagrees with the determination of the Department regarding the areas of law for 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.

Sec. 33. 1. *An attorney who seeks to provide indigent defense services to a person charged with a misdemeanor must:*

(a) Satisfy basic requirements; 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.*

Sec. 34. *An attorney who seeks to provide indigent defense services to a person charged with a category B felony for which the maximum penalty is less than 10 years, a category C, D or E felony or a gross misdemeanor must:*

1. *Meet the following requirements:*

(a) Satisfy basic requirements; 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. 35. *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 10 years or more must:*

1. Meet the following requirements:

(a) Satisfy basic requirements;

(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 criminal 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. 36. *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 established in Supreme Court Rule 250.*

Sec. 37. *An attorney who seeks to represent a person in a direct or post-conviction appeal of a non-capital felony must:*

1. Satisfy basic requirements; and

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

Sec. 38. *1. An attorney who seeks to represent a person in a juvenile delinquency proceeding must:*

(a) Satisfy basic requirements;

(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 is beginning to provide indigent defense services in juvenile delinquency proceedings is encouraged to consider working with an attorney who is experienced in juvenile delinquency as a mentor and, if applicable, make a motion for the appointment of such an additional attorney pursuant to NRS 260.060.

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

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

Sec. 39. 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. The Department shall develop and provide CLE programs for attorneys, including, without limitation, regular CLE courses and annual training programs that include topics relevant to indigent defense services.

3. An attorney shall:

(a) Complete on an annual basis a minimum of 5 hours of CLE courses relevant to the areas of indigent defense services in which he or she practices;

(b) Submit proof of compliance with such CLE requirements to the Department before January 1 each year, as required by section 30 of this regulation, by submitting a copy of the annual transcript 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 CLE courses relevant to the provision of indigent defense services.

Sec. 40. 1. *The Department shall monitor and regularly assess the quality of representation provided by an attorney. In conducting an assessment, the Department may obtain information from a variety of sources, including, without limitation:*

- (a) Client feedback;*
- (b) Client surveys;*
- (c) Other providers of indigent defense services;*
- (d) Office staff;*
- (e) Judicial personnel;*
- (f) Observations of a deputy director of the Department; and*
- (g) Statistical data provided to the Department pertaining to attorney workload.*

2. *Delivery systems shall 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. 41. 1. *The Department and each county that employs or enters into contracts with attorneys 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 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. 42. 1. *An attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources. The rates of compensation paid by district attorneys, the Nevada Attorney General and other state offices must serve as guidance for reasonable compensation.*

2. The terms of any contract for providing indigent defense services must avoid any actual or apparent financial disincentives to the obligation of an attorney to provide clients with competent legal services.

3. A contract for providing indigent defense services must:

(a) Be awarded on a competitive basis;

(b) Provide compensation at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and takes into account overhead, expenses and costs relating to significant attorney travel;

(c) Include a separate funding mechanism for excess, extraordinary or complex cases and reasonably necessary trial-related expenses;

(d) Include a provision that requires an attorney to comply with the minimum standards and regulations of the Board in accordance with this chapter; and

(e) Be in the form of a model contract approved by the Board.

4. Each board of county commissioners shall cooperate with the Board and the Department in the posting of an opening for and the deliberation and selection of any attorney with whom the county will contract for the provision of indigent defense services.

Sec. 43. *If a public defender is disqualified from providing indigent defense services and another attorney is appointed in accordance with NRS 7.115:*

1. The appointed attorney must receive prompt compensation in accordance with NRS 7.125. Activities outside of court appearances, including, without limitation, directing investigations, negotiating or tactical planning are equally important to quality representation and must be included in the compensation of the appointed attorney, subject to the limitations set forth in subsection 2 of NRS 7.125.

2. A plan for the provision of indigent defense services must provide for the payment of reasonably necessary extraordinary fees, investigative fees, expert fees and other case-related expenses necessary for an adequate defense in accordance with NRS 7.125 to 7.145, inclusive.

Sec. 44. If an office of public defender or appointed attorney identifies any conflict of interest in providing indigent defense services to a client, the case must be returned to the designating authority for reassignment. Any payments made to an attorney who has a conflict of interest, including, without limitation, the reimbursement of any fees or other expenses incurred during the course of the attorney's representation, must not be deducted from the line item or contract negotiated with the office of public defender or appointed counsel.

Sec. 45. Subject to any limitations provided by law, an attorney must be reimbursed for any reasonable out-of-pocket expenses he or she incurs as a result of providing indigent defense services, including, without limitation, investigative fees and expert fees. Mileage pertaining to the provision of indigent defense services that is outside of the normal commute of an attorney must be reimbursed based on prevailing local norms and must not be less than the rate published by the United States General Services Administration.

Sec. 46. 1. Any invoice submitted by an attorney must be reviewed in accordance with the plan for the provision of indigent defense services for the county. Unless there is cause to

believe that the amount claimed in an invoice is unwarranted, an invoice must be approved in a timely manner.

2. In a lengthy case, periodic billing and payment during the course of representation by an attorney must be permitted.

Sec. 47. *1. The expenditure of public dollars must be subject to control mechanisms and audits that verify the accuracy of any such expenditures, which may be accomplished by:*

(a) Following generally accepted procedures that separate staff duties and establish billing policies; and

(b) Ensuring thorough review of invoices, including, without limitation, setting benchmarks and conducting investigations if necessary.

2. The approval process for the expenditure of public dollars must be supported by an efficient dispute resolution procedure.

Sec. 48. *1. The caseload 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 caseload that, by reason of its excessive size, interferes with the rendering of quality representation.*

2. The Department shall conduct a state-specific caseload study to determine the caseload guidelines and requirements for attorneys and, upon completion of such a study, the Board will adopt regulations to implement such guidelines and requirements. Before such regulations are adopted, an attorney shall comply with the caseload guidelines and requirements determined by the Board.

3. After the Department conducts the initial state-specific caseload study pursuant to subsection 2, the Department shall conduct a state-specific caseload study at least once every 5

years to determine whether the current caseload guidelines and requirements remain appropriate.

Sec. 49. 1. Each attorney in a county whose population is less than 100,000 shall submit to the Department on a monthly basis a report that details his or her current appointments, including, without limitation, the total number of:

(a) Beginning pending cases;

(b) New appointments;

(c) Cases returned from warrant;

(d) Cases adjudicated, disposed or closed and:

(1) The manner in which each case was adjudicated, disposed or closed, including, without limitation, pursuant to a plea, dismissal or resolution at trial; and

(2) The outcome of each case;

(e) Inactive cases;

(f) Cases set for review; and

(g) End pending cases.

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

(a) Death penalty cases;

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

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

(d) Gross misdemeanors;

- (e) Misdemeanor DUIs;*
- (f) Misdemeanor cases involving allegations of domestic violence;*
- (g) Other misdemeanor cases, including, without limitation, misdemeanor appeals;*
- (h) Direct appeals of capital offenses;*
- (i) Direct appeals of non-capital felony convictions;*
- (j) Probation or parole violations;*
- (k) Juvenile cases;*
- (l) Juvenile certification proceedings;*
- (m) Juvenile probation or parole violations; and*
- (n) Specialty court cases.*

3. The report required pursuant to subsection 1 must be provided to the Department in a method approved by the Board and is due not later than 7 calendar days after the end of the reporting month. If an attorney fails to provide the report to the Department within such a period as required pursuant to this section, the designated deputy director of the Department may recommend a corrective action plan pursuant to NRS 180.440.

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) “Inactive” means a case in which 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.

(f) “Juvenile case” means a matter 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.

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

(h) “Returned from warrant” means a case in which 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.

(i) “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.

Sec. 50. 1. Each attorney in a county whose population is less than 100,000 shall submit to the Department on a monthly basis a report that details:

(a) The total time the attorney spent providing indigent defense services in the following categories during that month:

(1) In-court activities, including, without limitation, attending:

(I) General hearings, including, without limitation, initial appearances, pretrial conferences, status conferences, arraignments, revocation hearings and sentencings;

- (II) Bail hearings;*
- (III) Suppression hearings;*
- (IV) Other evidentiary hearings; and*
- (V) Trials.*

(2) Out-of-court activities, including, without limitation:

- (I) Making contact with clients;*
- (II) Consulting with investigators;*
- (III) Consulting with expert witnesses;*
- (IV) Preparing motions to suppress;*
- (V) Traveling;*
- (VI) Waiting; and*

(VII) Any other out-of-court activities, including, without limitation, conducting discovery review, researching, preparing for a case and preparing other pleadings and negotiations.

(b) The workload of expert witnesses, investigators and staff and the private workload of the attorney during that month, including, without limitation:

- (1) The total time that expert witnesses worked on each case;*
- (2) The total time that investigators worked on each case;*
- (3) The total time that the staff of the attorney worked on each case; and*
- (4) If applicable, the total time that the attorney spent providing services other than*

indigent defense services, including, without limitation, providing representation that is mandatory under chapters 180 and 260 of NRS for the appointment of cases arising under chapter 128, 432B or 433A of NRS.

2. The report required pursuant to subsection 1 must be provided to the Department in a method approved by the Board and is due not later than 7 calendar days after the end of the reporting month. If an attorney fails to provide the report to the Department within such a period, the designated deputy director of the Department may recommend a corrective action plan pursuant to NRS 180.440.

Sec. 51. *1. Except as otherwise provided in this section and NRS 239.0115, any complaint, recommendation, record or information obtained by the Board through the procedure for receiving complaints and recommendations concerning the provision of indigent defense services that is established pursuant to paragraph (b) of subsection 2 of NRS 180.320 or the application of an attorney pursuant to section 31 of this regulation and any record of any investigation are confidential.*

2. The Board will, to the extent feasible, communicate and cooperate with and provide any requested documents or other information to another licensing board or any agency that is investigating a person, including, without limitation, a law enforcement agency.

Sec. 52. *1. This section and sections 1 to 17, inclusive, and sections 19 to 51, inclusive, of this regulation become effective on the date on which this regulation is approved by the Legislative Commission and filed with the Secretary of State pursuant to NRS 233B.070.*

2. Section 18 of this regulation becomes effective upon the later of:

(a) July 1, 2021; or

(b) The date on which this regulation is approved by the Legislative Commission and filed with the Secretary of State pursuant to NRS 233B.070.