

**MOSS ADAMS** LLP

**FINAL REPORT**

**Carson City**  
Public Defender Cost and Utilization Study

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## I. EXECUTIVE SUMMARY

Carson City contracts with the Nevada State Public Defender (NSPD) to provide indigent defense services. The City also contracts with three conflict attorneys, who provide representation in the case of a conflict of interest on the part of the NSPD. Over the past three years, the City has cut costs and staffing in response to the global economic recession, while the cost of indigent defense has risen.

### A. OBJECTIVE AND SCOPE

The objective of this study is to determine the most cost-effective way for Carson City to provide public defense services. The study was conducted with the assumption that any potential change in the service delivery model must preserve the current level and quality of service being provided to indigent defendants.

This study is not an audit of public defender or conflict attorney operations. The study did not base analysis on the comparison of Carson City's costs or level of service to that of other counties.

### B. CURRENT SITUATION

Carson City is the primary customer of the NSPD, with 71.8% of NSPD's total county service budget assigned to Carson City in FY 11-12 (\$978,924 of \$1,363,447). Over the five-year period FY 07-08 through FY 11-12, the NSPD budget for counties increased 3.8% from \$1,313,798 to \$1,363,447, while the NSPD budget for Carson City increased 18.7% from \$824,696 to \$978,924. Over the same timeframe, annual indigent defense hours provided by NSPD to counties excluding Carson City decreased 3.9% from 4,979 to 4,786, while hours to Carson City increased 23.5% from 10,443 to 12,902. In addition, the total number of cases handled by the NSPD for counties decreased 2.2% from 3,259 to 3,187 cases over the five-year period.

Three conflict attorneys are retained by the City on a flat-fee, three-year contract (July 1, 2011 through June 30, 2014) for \$341,985 per year (\$113,995 per attorney). Expenses for experts, investigations, and other items are approved on a case-by-case basis, bringing total compensation for each conflict attorney to approximately \$135,000 per year. There is no comprehensive data on hours or caseload handled by the attorneys. However, for the purposes of this study, each attorney estimated working approximately 32 hours per week on indigent defense.

### C. OPTIONS

There are three options for the provision of indigent defense services in Carson City. They include 1) a combination of NSPD and conflict attorneys (status quo); 2) a combination of a County Public Defender office and conflict attorneys, and 3) contract attorneys only. Advantages and disadvantages to the City of each option based on the study results are summarized below.

<b>NSPD and Conflict Attorneys (Status Quo)</b>		
<b>Advantages</b>	<b>Disadvantages</b>	<b>Costs</b>
Administrative simplicity of an outsourced model	Lack of City control	\$1,392,009
<b>County Public Defender and Conflict Attorneys</b>		
<b>Advantages</b>	<b>Disadvantages</b>	<b>Costs</b>
Increased City control	No cost savings Increased administrative burden on City	\$1,464,949
<b>Contract Attorneys Only</b>		
<b>Advantages</b>	<b>Disadvantages</b>	<b>Costs</b>
Potential cost savings of \$95,000 to \$369,000 Increased City control	Increased administrative burden on City Increased administrative burden on Courts Risk of additional costs (e.g., appeals and capital cases)	\$1,023,000 to \$1,193,500

**D. RECOMMENDATIONS**

Based on the evaluation of alternative indigent defense service delivery models, we recommend that the Carson City:

- Work with the NSPD to determine how to obtain more cost effective services or pursue an all-contract attorney indigent defense model.
- Collect comprehensive case data from conflict/contract attorneys.
- Include performance standards in attorney contracts.
- Gain greater visibility by City administration of indigent defense costs paid directly by the Courts.

It should be noted that Carson City District and Justice/Municipal Court Judges have expressed concern that indigent defense service levels and quality could be negatively impacted if the City moves to a contract attorney only model.

## II. BACKGROUND, OBJECTIVE, AND METHODOLOGY

### A. BACKGROUND

The right to defense counsel in criminal proceedings is guaranteed in the Constitution, and the U.S. Supreme Court has consistently reaffirmed that right and determined that states should bear the burden of the cost of representation for indigent defendants. This right extends to juvenile and mental health cases, as well as cases involving child protection. In Nevada, counties bear the vast majority of the cost of indigent defense, with the State incurring the cost of State Supreme Court appeals.

Since the 1970s, Carson City has contracted with the Nevada State Public Defender (NSPD) to provide indigent defense services. Through its District and Justice/Municipal Courts, the City also contracts with three conflict attorneys, who provide representation in the case of a conflict of interest on the part of the NSPD. Over the past three years, the City has cut costs and staffing in response to the economic pressures, while the cost of providing indigent defense has risen.

### B. OBJECTIVE

The objective of this study is to determine the most cost-effective model for Carson City to provide public defense services. The study was conducted with the assumption that any potential change in the service delivery model must preserve the current level and quality of service provided to indigent defendants.

This study is not an audit of public defender or conflict attorney operations. The study did not base analysis on the comparison of Carson City's costs or level of service to that of other counties.

### C. METHODOLOGY

#### Interviews

Moss Adams conducted a series of interviews and work sessions with City Administration, District Attorney's Office, District and Justice/Municipal Court Judges, and Court Clerk, as well as conflict attorneys and the Nevada State Public Defender, during June through September 2012.

#### Analysis

During the course of the study, Moss Adams reviewed a number of documents in order to understand historical and current budgets, as well as related policies and procedures. In addition, external research was conducted to determine relevant standards and practices for indigent defense in Nevada and nationwide.

### Deliverables

Moss Adams provided a discussion draft report to Carson City and the NSPD to validate facts and verify the practicality of recommendations. It should be noted that District and Justice/Municipal Court Judges and the NSPD have taken exception to how some of the data contained in this report was interpreted.

We based our work upon, and used the practice guidance promulgated by, The Institute of Internal Auditors, Inc. Accordingly, in so doing, we provide no opinion, attestation, or other form of assurance with respect to our work or the information upon which our work is based.

### III. HISTORY OF CARSON CITY INDIGENT DEFENSE

In Nevada, counties pay the vast majority of the cost of public defense. All counties with a population of less than 100,000 are expected to either appoint a County Public Defender or utilize the services of the Nevada State Public Defender, pursuant to NRS Chapter 180. The NSPD is a state agency located within the Department of Health and Human Services. The State Public Defender is appointed by the Governor for a four-year term. In the past, the NSPD represented all 15 eligible counties. However, a number of the counties in Nevada now work with private attorneys to serve as the public defender. The current state of indigent defense service models utilized by counties in Nevada is shown in the table below.

Counties using Contract Attorneys	Counties Using County Public Defender	Counties Using State Public Defender
Churchill	Clark	Carson City
Douglas	Elko	Eureka
Esmeralda	Humboldt	Storey
Lander	Pershing	White Pine
Lincoln	Washoe	
Lyon		
Mineral		
Nye		

The NSPD currently represents four counties, and it is staffed from two offices with one public defender, ten deputy attorneys, three investigators, and five administrative staff. As a state agency, the NSPD’s budget is determined by the Legislature. Until 2005, the State paid for a set amount of the annual budget of the NSPD, with the user counties making up the difference. In 2005, the Legislature changed the funding calculation for the NSPD, requiring counties to pay by caseload. This increased the counties’ share of funding from 54% in 2004 to 81% in 2012.

The NSPD’s budgeted share for each county is estimated based on the average hours charged over the previous five years. If expenditures for the year are less than budgeted, then the NSPD evaluates the caseload share for each county compared to the budget and distributes refunds. However, if a county’s caseload is more than budgeted, then the NSPD does not issue a bill for costs over budget.

Since 2007, three counties have left the NSPD. Lincoln County moved to a contracted attorney model, and Pershing and Humboldt Counties established county public defender offices. As counties have left the NSPD, Carson City’s percentage of costs has risen. For example, in FY 12-13, the NSPD budgeted 68% of total hours to Carson City, an increase from 50% in 2010, when the NSPD represented an additional county.

Over the past five years, however, the NSPD’s budget for indigent services to counties has held relatively steady, even as counties have left the NSPD. The table below shows Carson City’s budget from NSPD, actual hours provided by NSPD, and cost per hour for NSPD services compared to those of all counties served by NSPD for FY 07-08 through FY 11-12.

	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>	<b>FY 11-12</b>
NSPD Budgeted Carson City Costs	\$824,696	\$899,484	\$915,691	\$935,193	\$978,924
NSPD Budgeted Total County Costs	\$1,313,798	\$1,313,737	\$1,359,834	\$1,366,620	\$1,363,447
NSPD Hours for Carson City Cases (includes investigations)	10,443	8,256	11,293	12,096	12,902
NSPD Hours for All Counties Served (includes investigations)	15,422	13,177	18,493	18,186	17,688
NSPD Cases Handled for All Counties	3,259	4,007	3,081	3,430	3,187

Over the five-year period FY 07-08 through FY 11-12, the NSPD budget for counties increased 3.8% from \$1,313,798 to \$1,363,447, while the NSPD budget for Carson City increased 18.7% from \$824,696 to \$978,924. Over the same timeframe, annual indigent defense hours provided by NSPD to counties increased 14.7% from 15,422 to 17,688, while hours to counties excluding Carson City decreased 3.9% from 4,979 to 4,786 and hours to Carson City increased 23.5% from 10,443 to 12,902. In addition, the total number of cases handled by the NSPD for counties decreased 2.2% from 3,259 to 3,187 cases over the five-year period.

Carson City has considered changing the structure of indigent defense services twice in recent years. In 2007, the City analyzed the cost of establishing a county public defender office, but only a small cost savings was expected. In 2011, the City discussed the potential to move to an all-contract model, but the timing was too late to introduce during the upcoming legislative session.

## IV. CURRENT COST AND UTILIZATION

Indigent defense services in Carson City are currently supplied by the NSPD and three conflict attorneys. Every case is assigned to the NSPD. If the NSPD determines that a conflict exists with its office, then the case is assigned to one of three conflict attorneys on a rotating basis. The conflict pool was recently reduced from four to three attorneys. The Carson City District and Justice/Municipal Courts have determined over time that three is the appropriate number of conflict attorneys to handle potential conflict of interest cases.

The three conflict attorneys are retained by the City on a flat-fee, three-year contract (July 1, 2011 through June 30, 2014) for \$341,985 per year, or \$113,995 per year each. Expenses for experts, investigations, and other items are approved on a case-by-case basis, bringing total compensation for each conflict attorney to approximately \$135,000 per year. The contract is negotiated on behalf of the City by the District and Justice/Municipal Court judges. Theoretically, each conflict attorney should handle the same number of cases. However, since the workload can vary from one case to another, the hours spent on indigent defense can vary widely from attorney-to-attorney and from month-to-month.

The contract requires conflict attorneys to perform indigent defense services when required, with no minimum or maximum workload requirements. The conflict attorneys receive the same pay regardless of how many hours per month they work. However, the contracts are negotiated by the judges with the assumption that the contract does not provide enough compensation to maintain a full practice, and conflict attorneys need some time to work with private clients.

The NSPD recorded 12,902 hours in FY 11-12 for Carson City cases. Since the NSPD was under budget at the end of the fiscal year, it issued Carson City a refund of \$43,458. Carson City's total indigent defense budget for FY 11-12 was approximately \$1.325 million, including NSPD and conflict attorney services.

However, there are additional costs of indigent defense to the City paid directly by the Courts that are not reflected in the aforementioned costs. These additional costs include ex parte motions for expenses for expert witnesses, which can be requested by NSPD and conflict attorneys, as well as situations when neither the NSPD or conflict attorneys can be assigned due to conflicts. In that case, the Courts retain additional conflict attorneys at the cost of \$100 per hour. For FY 11-12, the City estimates these costs totaled approximately \$51,600, of which approximately \$39,300 was for conflict situations.

The hours charged to the City by the NSPD for attorneys and investigators by case type for FY 11-12 are detailed below, as reported by the NSPD.

FY 11-12 Case Type	Adult		Juvenile	
	Attorney	Investigator	Attorney	Investigator
Felony	3,141	1,430	283	15
Gross Misdemeanor	374	254	-	-
Misdemeanor	3,104	1,065	51	-
Parole Violation	309	17	102	-
Juvenile Court Appointment	280	-	-	-
432B	-	-	619	9
Administration	1,367	202	-	-
Travel		286	-	-
Other	3	1	-	-
<b>Total Hours</b>	<b>8,578</b>	<b>3,255</b>	<b>1,055</b>	<b>24</b>

Based on input from conflict attorneys and the NSPD, approximately 7.0 full-time equivalent (FTE) attorneys are providing indigent defense services to Carson City. FTE estimates for conflict and NSPD attorneys are provided below.

- Conflict Attorneys: 2.5 FTEs based on 32 hours per week divided by 40 hours per week and multiplied by three conflict attorneys ( $32/40 \times 3 = 2.4$  FTEs, rounded to 2.5 FTEs). There is no verifiable data for the hours charged by conflict attorneys. Each attorney provided an estimate in the range of 32 hours per week spent on indigent defense cases. In addition, the attorneys reported employing administrative staff and legal researchers to assist on cases.
- NSPD Attorneys: 4.5 FTEs of service based on four attorneys and the Chief Public Defender dedicating 0.5 FTEs to casework. We validated that estimate by dividing total NSPD attorney hours for Carson City for FY 11-12 by 1,650 hours per attorney, which resulted in 5.0 FTEs ( $8,282/1,650 = 5.0$  FTEs).

The Carson City District Attorney’s Office handles the prosecution for all types of cases, not just indigent defense cases. Other types of cases include open filed or no prosecution cases, defense of ineffective assistance of counsel, death case reviews, child death reviews, and warrants. The District Attorney’s Office provides all City prosecution services with 6.5 attorney FTEs.

## V. OPTIONS FOR INDIGENT DEFENSE SERVICES

There are three options for indigent defense services provided by the City. They include 1) status quo, 2) a County Public Defender’s office with conflict attorneys, or 3) contract attorneys only. The estimated cost and advantages and disadvantages of each option are presented below.

### A. STATE PUBLIC DEFENDER AND CONFLICT ATTORNEYS (STATUS QUO)

As a state agency, the NSPD’s budget is determined by the Legislature. Carson City has no control over the amount it is charged by the NSPD. Other counties that have left the NSPD in recent years have reported travel cost savings. The NSPD is located in Carson City, so almost no travel is charged to Carson City.

#### Estimated Cost

The FY 12-13 estimated cost for the current model is shown below. This estimate does not reflect refunds, which are unpredictable, or costs paid directly by the Courts, which were not captured in the City Administration’s indigent expenditures.

Component	FY 12-13
State Public Defender Budget	\$985,024
Conflict Attorneys	\$341,985
Expenses*	\$65,000
Total Budgeted	\$1,392,009

*\*Note: Expense estimate based on FY 11-12 expenditures*

#### Advantages

**Administrative Simplicity:** By outsourcing management of indigent defense, the City is relieved of day-to-day operations, risks, and personnel costs, and the administrative burden of another department.

#### Disadvantages

**Lack of City control:** Under the current model, the City does not have control over the budget or operations of indigent defense, which represents nearly \$1.4 million in annual expenditures. The NSPD’s budget is determined without input from Carson City, its largest customer. As counties have left the NSPD, Carson City’s costs have increased.

**B. COUNTY PUBLIC DEFENDER OFFICE AND CONFLICT ATTORNEYS**

As other counties have left the NSPD, economies of scale have diminished and the City is paying a larger portion of the costs of indigent defense services provided by NSPD. If the City wishes to have more control over the budget for these services, it could appoint a County Public Defender and establish a City office to provide indigent defense services.

**Estimated Cost**

To replicate the current NSPD level of representation, the City would require the staff identified below. The cost of retaining three conflict attorneys will remain the same. This cost estimate is based on current Carson City District Attorney Office salary data.

<b>Legal Staff</b>	<b>Annual Salary</b>	<b>Total Annual Salaries</b>
Chief County Public Defender*	\$120,000	\$120,000
Deputy Attorneys (4)	\$70,000	\$280,000
Investigators (2)	\$80,000	\$160,000
Subtotal		\$560,000
<b>Administrative Staff*</b>	<b>Annual Salary</b>	<b>Total Annual Salaries</b>
Legal Secretaries (2)	\$50,000	\$100,000
Administrative Assistant	\$40,000	\$40,000
Subtotal		\$140,000
<b>Total Salaries</b>		<b>\$700,000</b>

*\*Notes: The Chief Public Defender is assumed to dedicate 0.5 FTE to administration and management and 0.5 FTE to casework; administrative staffing levels are based on a 2007 cost estimate compiled by the District Court.*

Based on this staffing structure depicted above, the estimated total cost for a County Public Defender Office and three conflict attorneys is provided below.

Cost Components	Estimated Cost
Salaries	\$700,000
Benefits (35% of salaries)	\$245,000
Overhead*	\$113,000
Conflict Attorneys	\$341,949
Expenses*	\$65,000
<b>Total Budgeted</b>	<b>\$1,464,949</b>

*\*Notes: The 2007 cost estimate assembled by the District Court assumed \$113,000 in ongoing overhead costs. Expenses are based on FY 11-12 expenditures. Startup costs, estimated in 2007 at \$33,000, were not included in the above estimate.*

**Advantages**

**Increased City control:** Under this model, the City would provide the same services as NSPD, but those services would be completely under City control. While costs are primarily driven by an unpredictable workload, the City would have tighter control over staffing and overhead costs.

**Disadvantages**

**No cost savings:** The costs of operating a City office are about \$73,000 higher than the cost of outsourcing to NSPD. In addition, the NSPD does not charge the City for direct appeals to the State Supreme Court, which could change under this approach. In FY 11-12, NSPD recorded an estimated at 1,200 hours for appeals on Carson City cases. The cost of this option is slightly higher than the NSPD cost due to administrative costs incurred by the City that are not charged by the NSPD.

**Increased administrative burden on City:** Opening and running a City public defender office would increase the administrative burden on the City.

**Added risks:** The City would be exposed to risks associated with additional personnel, as well as the high-profile nature of defense counsel.

### C. CONTRACT ATTORNEYS ONLY

Based on input from the NSPD, conflict attorneys, and Carson City District Attorney's Office, it is estimated that the City would need to retain six to seven contract attorneys to meet the current need for indigent defense services. A contract model of six or seven independent attorneys should reduce conflict situations, which are more prevalent under the current model with the NSPD conflicting out as a group.

#### Estimated Cost

The cost of retaining six to seven contract attorneys a year is approximately \$1,023,000 to \$1,193,500, representing a savings of approximately \$198,500 to \$369,000 per year when comparing to the FY 12-13 NSPD budget for Carson City. The cost estimate is based on extrapolation of the current conflict attorney model from 32 to 40 hours per week and from three to six or seven attorneys, as shown below.

- Annual salary:  $\$113,995 \times 40/32 \text{ hours} = \$142,494$
- Annual expenses: approximately  $\$22,000 \times 40/32 = \$28,000$  per year per attorney
- Total annual cost:  $(\$142,500 + \$28,000) \times 6 \text{ to } 7 = \$1,023,000 \text{ to } \$1,193,500$

#### Advantages

**Material cost savings:** Based on the calculation above, the cost of retaining six to seven contracted attorneys could save the City \$198,500 to \$369,000 per year. If the average annual NSPD refund of \$61,642 over the past five years is applied to the FY 12-13 NSPD budget for Carson City, and NSPD attorney expenses are considered on a weighted basis along with conflict attorney expenses, then the potential costs savings would decrease to \$95,000 to \$271,000 per year for six or seven attorneys, respectively.

In addition, the City could save up to \$39,300 as a result of fewer situations when both the NSPD and conflict attorneys have a conflict.

**Increased City control:** Under this model, the City would have increased control over the indigent defense budget. Even though the Courts negotiate contracts on behalf of the City, the City could set a budget for the contracts and enforce contract terms.

#### Disadvantages

**Increased administrative burden on City:** Moving from an outsourced model to individual contracts will increase the City's administrative burden. The City's purchasing and finance departments will be required to provide a higher level of contract management than the current approach requires.

**Increased administrative burden on Courts:** There are two ways an all-contract model could impact District Court administration. First, District Court judges currently negotiate conflict attorney contracts as a group on behalf of the City. The judges would have to negotiate the new contracts with a larger group of attorneys, which will likely take more time and effort than the current three-attorney contract. Second, judges currently approve expenses for the conflict attorneys on a case-by-case basis. Judicial time devoted to expense approval would also likely increase under an all-contract model.

**Risk of additional costs:** Carson City could incur additional costs such as appeals to the State, for which the NSPD does not charge the City, and capital cases, which require attorneys with minimum qualifications specified by Supreme Court Rule 250.

**Lack of District and Justice/Municipal Court Support:** Judges from both the District and Justice/Municipal Courts have expressed concern that indigent defense service levels and quality could be negatively impacted if the City moves to a contract attorney only model.

## VI. RECOMMENDATIONS

**Work with the NSPD to determine how to obtain more cost effective services or pursue an all-contract attorney indigent defense model.** Carson City's portion of the NSPD's total cost of county indigent defense services, as determined by Carson City payments to NSPD over total county revenues budgeted by NSPD, has increased from approximately 50% in FY 07-08 to 71.8% in FY 11-12. This percentage has continually increased over the past several years, while the NSPD budget for counties has increased only 3.8% FY 07-08 to FY 11-12. As a result, Carson City could be paying an increasing portion of NSPD's resource costs as a result of the NSPD not adjusting its budget in response to a diminishing county client base. The City should work with NSPD to develop a new cost allocation formula that is more affordable to the City.

If a more cost effective agreement cannot be reached with the NSPD, then the City should consider moving to a contract attorney only model to provide indigent defense services for the City. It appears the City could save approximately \$95,000 to \$369,000 per year by utilizing a contract attorney model, as well as up to an additional \$39,300 due to fewer conflict situations. However, the City will need to evaluate the risks of a contract only model against potential cost savings.

**Collect comprehensive case data from conflict/contract attorneys.** State law (NRS 260.070) requires county public defenders to make an annual report to the Board of Supervisors covering all cases handled during the preceding year. Carson City should also require conflict/contract attorneys to provide the same type of annual reports. At a minimum, the City should collect the same data from conflict/contract attorneys that the State requires the NSPD to provide on an annual basis. This data includes:

- The number of cases that are pending
- The number of cases closed the previous year
- The total number of criminal defendants represented by case type
- The total number of criminal defendants by age group (adult or juvenile)
- The total number of hours used for travel, investigation, research, trial preparation, and hearings

Collecting this data will enable the City to develop a better understanding of the amount of service provided by all of its indigent defense attorneys and perform appropriate cost effectiveness analysis.

**Include performance standards in attorney contracts.** The current contracting process does not necessarily guarantee a certain standard of performance on the part of conflict attorneys. The contract states, "The professional services described ... must be performed in a professional, competent and effective manner given the law applicable to the particular matter for which legal services are being rendered and the applicable rules and standards of professional responsibility."

By including performance standards in contracts, such as minimum qualifications, training requirements, and reporting procedures, the City will have an additional level of control and ability to terminate contracts if performance does not meet expectations.

**Gain greater visibility by City administration of indigent defense costs paid directly by the Courts.** These costs include ex parte motions for expert witnesses, which can be requested by NSPD and conflict attorneys, as well as special situations when neither the NSPD or conflict attorneys can be assigned. For FY 11-12, the City estimates these costs totaled approximately \$51,600. The City Manager's Office needs to be aware of these costs, so it understands the full cost of indigent defense services.