

ASSEMBLY BILL NO. 49—COMMITTEE ON TAXATION

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

PREFILED DECEMBER 20, 2012

Referred to Committee on Taxation

SUMMARY—Makes various changes relating to public defenders.
(BDR 32-255)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to public defenders; imposing an additional sales and use tax to be used by counties to pay costs associated with providing legal defense for indigent persons; authorizing boards of county commissioners to impose an additional sales and use tax to be used to provide revenue for the Fund for Legal Defense of Indigent Persons; establishing the Fund for Legal Defense of Indigent Persons to reimburse certain counties for certain extraordinary costs of providing public defender services; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Under existing law, any county whose population is 100,000 or more (currently
- 2 Washoe and Clark Counties) must create an office of public defender to provide
- 3 defense services to indigent persons, and any county with a population of less than
- 4 100,000 may, but is not required to, create such an office. (NRS 260.010) The State
- 5 Public Defender provides indigent defense services in counties which have not
- 6 created an office of public defender or which have hired private attorneys to
- 7 provide indigent defense services. The State Public Defender may charge those
- 8 counties, in amounts not to exceed limits set by the Legislature, for providing those
- 9 services. (NRS 180.110)
- 10 **Sections 2-9** of this bill establish a source of revenue to be used by a county to
- 11 pay the costs incurred in connection with the provision of indigent defense services.
- 12 **Section 2** imposes an additional one-eighth of 1 percent sales and use tax
- 13 throughout this State. **Section 3** requires this tax to be distributed to the county in
- 14 which it is collected after deduction of a certain percentage of the taxes to
- 15 compensate the State for collection costs. **Section 5** requires a county treasurer to
- 16 deposit this tax in a separate fund known as the indigent legal defense fund and



17 authorizes the county to use money in this fund to pay for: (1) the county's public
18 defender; (2) any amount required to be paid by the county to the State Public
19 Defender; or (3) any other costs required to be paid by the county in connection
20 with the provision of legal services to indigent persons.

21 **Section 7** of this bill authorizes a board of county commissioners to impose an
22 additional sales and use tax of not more than one-eighth of 1 percent in that county.
23 Under **section 8** of this bill, after deduction of a certain percentage of the tax to
24 compensate the State for collection costs, this tax must be transferred to the Fund
25 for Legal Defense of Indigent Persons created by **section 14** of this bill. **Section 15**
26 of this bill establishes a Board of Trustees of the Fund, consisting of a county
27 commissioner from each county which has imposed the maximum amount of the
28 optional tax who is appointed by the board of county commissioners of that county.
29 **Section 16** of this bill authorizes a county which has imposed the maximum
30 amount of the optional tax to apply to the Board of Trustees for reimbursement
31 from the Fund of certain extraordinary costs paid by the county in connection with
32 the provision of indigent defense services.

1 WHEREAS, In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the
2 United States Supreme Court held that the United States
3 Constitution requires states to furnish legal counsel to indigent
4 persons who are charged with certain crimes; and

5 WHEREAS, Since the decision in *Gideon*, the United States
6 Supreme Court has held that the United States Constitution requires
7 states to furnish legal counsel to indigent persons in additional
8 circumstances, including, without limitation, juvenile delinquency
9 proceedings, misdemeanor cases for which incarceration is possible
10 and certain pretrial and postconviction proceedings; and

11 WHEREAS, On April 26, 2007, the Nevada Supreme Court
12 ordered the creation of the Indigent Defense Commission to study
13 various issues concerning the system used in this State to provide
14 indigent defense services; and

15 WHEREAS, Upon the recommendation of the Indigent Defense
16 Commission, the Nevada Supreme Court has adopted performance
17 standards for public defenders in this State and is considering
18 adopting limits on the caseloads of public defenders; and

19 WHEREAS, In the State of Nevada, counties with a population of
20 100,000 or more are required to create an office of public defender
21 and counties with a population of less than 100,000 may create an
22 office of public defender, hire private attorneys to provide indigent
23 defense services or use the State Public Defender to provide such
24 services; and

25 WHEREAS, Counties pay a substantial percentage of the total
26 expenditures in this State for indigent defense services; and

27 WHEREAS, The provision of competent indigent defense
28 services in an increased number of cases has placed financial strain
29 on counties in this State; and



1 WHEREAS, To ensure that counties in this State are able to pay
2 for indigent defense services that satisfy constitutional standards, it
3 is necessary to provide additional sources of funding for indigent
4 defense services in this State; now, therefore,

5
6 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
7 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
8

9 **Section 1.** Title 32 of NRS is hereby amended by adding
10 thereto a new chapter to consist of the provisions set forth as
11 sections 2 to 9, inclusive, of this act.

12 **Sec. 2. 1.** *For the privilege of selling tangible personal*
13 *property at retail, a tax is hereby imposed upon all retailers at the*
14 *rate of one-eighth of 1 percent of the gross receipts of any retailer*
15 *from the sale of all tangible personal property sold at retail in a*
16 *county.*

17 **2.** *An excise tax is hereby imposed on the storage, use or*
18 *other consumption in a county of tangible personal property*
19 *purchased from any retailer for storage, use or other consumption*
20 *in the county at the rate of one-eighth of 1 percent of the sales*
21 *price of the property. The tax is imposed on all property which was*
22 *acquired out of State in a transaction which would have been a*
23 *taxable sale if it had occurred within this State.*

24 **3.** *Except as otherwise provided in sections 3, 4 and 5 of this*
25 *act, the tax must be administered, collected and distributed in the*
26 *same manner as the tax set forth in chapter 374 of NRS.*

27 **Sec. 3. 1.** *All fees, taxes, interest and penalties imposed and*
28 *all amounts of tax required to be paid to the counties under*
29 *section 2 of this act must be paid to the Department in the form of*
30 *remittances payable to the Department.*

31 **2.** *The Department shall deposit the payments with the State*
32 *Treasurer for credit to the Sales and Use Tax Account in the State*
33 *General Fund.*

34 **3.** *The State Controller, acting upon the collection data*
35 *furnished by the Department, shall monthly:*

36 **(a)** *Transfer from the Sales and Use Tax Account 1.75 percent*
37 *of all fees, taxes, interest and penalties collected pursuant to*
38 *section 2 of this act during the preceding month to the appropriate*
39 *account in the State General Fund as compensation to the State*
40 *for the cost of collecting the tax.*

41 **(b)** *Determine for each county an amount of money equal to*
42 *any fees, taxes, interest and penalties collected in or for that*
43 *county pursuant to section 2 of this act during the preceding*
44 *month, less the amount transferred to the State General Fund*
45 *pursuant to paragraph (a).*



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1 (c) Transfer the amount determined for each county to the
2 Intergovernmental Fund and remit the money to the county
3 treasurer.

4 **Sec. 4.** The Department may redistribute any fee, tax, penalty
5 and interest distributed to a county other than the county entitled
6 thereto, but no such redistribution may be made as to amounts
7 originally distributed more than 6 months before the date on
8 which the Department obtains knowledge of the improper
9 distribution.

10 **Sec. 5. 1.** The county treasurer shall deposit the money
11 received from the State Controller pursuant to section 3 of this act
12 in the county treasury for credit to a fund to be known as the
13 indigent legal defense fund. The indigent legal defense fund must
14 be accounted for as a separate fund and not as a part of any other
15 fund.

16 2. The board of county commissioners may only use the
17 money in the indigent legal defense fund to pay:

18 (a) The costs of creating, maintaining, operating or
19 administering the office of public defender created by the county
20 pursuant to NRS 260.010;

21 (b) Any amount required to be paid by the county to the State
22 Public Defender; or

23 (c) Any other fees, expenses or costs required to be paid by the
24 county in connection with the provision of legal services to an
25 indigent person.

26 **Sec. 6.** As used in sections 6 to 9, inclusive, of this act,
27 "Fund for Legal Defense of Indigent Persons" means the Fund
28 for Legal Defense of Indigent Persons created by section 14 of this
29 act.

30 **Sec. 7. 1.** The board of county commissioners of any
31 county may by ordinance, but not as in a case of emergency,
32 impose an additional tax pursuant to this section for the Fund for
33 Legal Defense of Indigent Persons.

34 2. An ordinance enacted pursuant to this section may not
35 become effective before a question concerning the imposition of
36 the tax is approved by a two-thirds majority of the members of the
37 board of county commissioners. Any proposal to increase the rate
38 of the tax must be approved by a two-thirds majority of the
39 members of the board of county commissioners.

40 3. Any ordinance enacted pursuant to this section must
41 specify the date on which the tax must first be imposed or on
42 which an increase in the rate of the tax becomes effective, which
43 must be the first day of the first calendar quarter that begins at
44 least 120 days after the date on which a two-thirds majority of the
45 board of county commissioners approved the question.



1 **4. An ordinance enacted pursuant to this section must**
2 **include provisions in substance as follows:**

3 **(a) A provision imposing a tax upon retailers at the rate of not**
4 **more than one-eighth of 1 percent of the gross receipts of any**
5 **retailer from the sale of all tangible personal property sold at**
6 **retail, or stored, used or otherwise consumed, in the county.**

7 **(b) Provisions substantially identical to those contained in**
8 **chapter 374 of NRS, insofar as applicable.**

9 **(c) A provision that all amendments to chapter 374 of NRS**
10 **after the date of enactment of the ordinance, not inconsistent with**
11 **sections 6 to 9, inclusive, of this act, automatically become a part**
12 **of an ordinance enacted pursuant to this section.**

13 **(d) A provision that the county shall contract before the**
14 **effective date of the ordinance with the Department to perform all**
15 **functions incident to the administration or operation of the tax in**
16 **the county.**

17 **(e) A provision that a purchaser is entitled to a refund, in the**
18 **same manner as set forth in NRS 374.635 to 374.720, inclusive, of**
19 **the amount of the tax required to be paid that is attributable to the**
20 **tax imposed upon the sale of, and the storage, use or other**
21 **consumption in a county of, tangible personal property used for**
22 **the performance of a written contract:**

23 **(1) Entered into on or before the effective date of the tax or**
24 **the increase in the tax; or**

25 **(2) For the construction of an improvement to real property**
26 **for which a binding bid was submitted before the effective date of**
27 **the tax or the increase in the tax if the bid was afterward accepted,**
28 **↳ if, under the terms of the contract or bid, the contract price or**
29 **bid amount cannot be adjusted to reflect the imposition of the tax**
30 **or the increase in the tax.**

31 **5. An ordinance amending an ordinance enacted pursuant to**
32 **this section must include a provision in substance that the county**
33 **shall amend the contract made pursuant to paragraph (d) of**
34 **subsection 4 by a contract made between the county and the State**
35 **acting by and through the Department before the effective date of**
36 **the amendatory taxing ordinance, unless the county determines**
37 **with the written concurrence of the Department that no such**
38 **amendment of the contract is necessary or desirable.**

39 **6. In any proceeding under any ordinance enacted pursuant**
40 **to this section, the Department may act for and on behalf of the**
41 **county which has enacted that ordinance.**

42 **Sec. 8. 1. All fees, taxes, interest and penalties imposed and**
43 **all amounts of tax required to be paid pursuant to section 7 of this**
44 **act must be paid to the Department in the form of remittances**
45 **payable to the Department.**



1 2. *The Department shall deposit the payments with the State*
2 *Treasurer for credit to the Sales and Use Tax Account in the State*
3 *General Fund.*

4 3. *The State Controller, acting upon the collection data*
5 *furnished by the Department, shall monthly:*

6 (a) *Transfer from the Sales and Use Tax Account 1.75 percent*
7 *of all fees, taxes, interest and penalties collected pursuant to*
8 *section 7 of this act during the preceding month to the appropriate*
9 *account in the State General Fund as compensation to the State*
10 *for the cost of collecting the tax.*

11 (b) *Determine the amount of money equal to any fees, taxes,*
12 *interest and penalties collected pursuant to section 7 of this act*
13 *during the preceding month, less the amount transferred to the*
14 *State General Fund pursuant to paragraph (a).*

15 (c) *Transfer the amount determined pursuant to paragraph (b)*
16 *to the Fund for Legal Defense of Indigent Persons.*

17 Sec. 9. *The Department may redistribute any fee, tax, penalty*
18 *and interest to the Fund for Legal Defense of Indigent Persons if*
19 *the Fund is entitled thereto, but no such redistribution may be*
20 *made as to amounts originally distributed more than 6 months*
21 *before the date on which the Department obtains knowledge of the*
22 *improper distribution.*

23 Sec. 10. Title 14 of NRS is hereby amended by adding thereto
24 a new chapter to consist of the provisions set forth as sections 11 to
25 17, inclusive, of this act.

26 Sec. 11. *As used in this chapter, unless the context otherwise*
27 *requires, the words and terms defined in sections 12 and 13 of this*
28 *act have the meanings ascribed to them in those sections.*

29 Sec. 12. *"Board of Trustees" means the Board of Trustees of*
30 *the Fund.*

31 Sec. 13. *"Fund" means the Fund for Legal Defense of*
32 *Indigent Persons created by section 14 of this act.*

33 Sec. 14. 1. *The Fund for Legal Defense of Indigent*
34 *Persons is hereby created as a special revenue fund for the*
35 *purposes described in this chapter.*

36 2. *Interest earned on the money in the Fund must be*
37 *deposited for credit to the Fund.*

38 3. *Any money remaining in the Fund at the end of a fiscal*
39 *year remains in the Fund and does not revert to the State General*
40 *Fund.*

41 4. *Claims against the Fund must be paid on claims approved*
42 *by the Board of Trustees.*

43 Sec. 15. 1. *The Fund must be administered by a Board of*
44 *Trustees composed of one member of the board of county*
45 *commissioners from each county which has imposed the*



1 *maximum amount of the tax authorized by section 7 of this act.*
2 *The board of county commissioners of a county which has*
3 *imposed the maximum amount of the tax authorized by section 7*
4 *of this act shall appoint a member of the board to the Board of*
5 *Trustees.*

6 2. *Each member of the Board of Trustees shall serve a term*
7 *of 1 year or until a successor has been appointed and has*
8 *qualified.*

9 3. *A vacancy on the Board of Trustees must be filled in the*
10 *same manner as the original appointment.*

11 **Sec. 16. The Board of Trustees may:**

12 1. *Enter into all necessary contracts and agreements.*

13 2. *Employ personnel as necessary and prescribe their*
14 *compensation and working conditions.*

15 3. *Enter into agreements with the Department of*
16 *Administration to obtain the services of consultants, attorneys,*
17 *auditors and accountants.*

18 4. *Rent, lease, purchase or otherwise procure or receive real*
19 *or personal property.*

20 5. *Adopt regulations necessary for carrying out the provisions*
21 *of this chapter.*

22 **Sec. 17. 1.** *A county which has imposed the maximum*
23 *amount of the tax authorized by section 7 of this act may apply to*
24 *the Board of Trustees for reimbursement or partial reimbursement*
25 *of extraordinary costs that the county is required to pay in*
26 *connection with the provision of legal services to an indigent*
27 *person in a complex case, a capital case or a case in which an*
28 *unforeseen increase in costs has occurred.*

29 2. *The Board of Trustees shall set forth the manner in which*
30 *a county may apply for reimbursement pursuant to this section.*

31 3. *After reviewing an application received pursuant to this*
32 *section, the Board of Trustees may approve reimbursement of all*
33 *or part of the costs if the Board of Trustees determines that:*

34 (a) *The county has imposed the maximum amount of the tax*
35 *authorized by section 7 of this act;*

36 (b) *The county was required to pay the costs in connection*
37 *with the provision of legal services to an indigent person;*

38 (c) *The costs were extraordinary; and*

39 (d) *The costs were incurred in a complex case, a capital case*
40 *or a case in which an unforeseen increase in costs occurred.*

41 4. *If the Board of Trustees approves reimbursement or partial*
42 *reimbursement, payment to the county must be made from the*
43 *Fund, to the extent that money is available in the Fund.*

44 5. *Upon payment to the county, the Board of Trustees:*



1 (a) *Is subrogated to the right of the county to recover from the*
2 *indigent person or any other person responsible for the support of*
3 *the indigent person any costs paid by the county for the provision*
4 *of legal services to the indigent person, to the extent of the*
5 *reimbursement or partial reimbursement paid from the Fund; and*

6 (b) *Has a lien upon the proceeds of any recovery by the county*
7 *of any costs paid by the county for the provision of legal services*
8 *to the indigent person, to the extent of the reimbursement or*
9 *partial reimbursement paid from the Fund.*

10 6. *As used in this section:*

11 (a) *“Capital case” means a criminal case in which the most*
12 *serious crime charged is a felony punishable by death or by*
13 *imprisonment for life with or without possibility of parole.*

14 (b) *“Complex case” means a case in which the provision of*
15 *adequate legal representation requires significantly more time or*
16 *resources because of:*

17 (1) *The number, novelty or difficulty of the factual or legal*
18 *issues involved in the case;*

19 (2) *The severity of the charges against the client; or*

20 (3) *Other special circumstances.*

21 **Sec. 18.** This act becomes effective on July 1, 2013.



MOSS ADAMS_{LLP}

FINAL REPORT

Carson City
Public Defender Cost and Utilization Study

November 28, 2012

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TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
A.	OBJECTIVE AND SCOPE	1
B.	CURRENT SITUATION	1
C.	OPTIONS	1
D.	RECOMMENDATIONS	2
II.	BACKGROUND, OBJECTIVE, AND METHODOLOGY	3
A.	BACKGROUND	3
B.	OBJECTIVE	3
C.	METHODOLOGY	3
III.	HISTORY OF CARSON CITY INDIGENT DEFENSE	5
IV.	CURRENT COST AND UTILIZATION	7
V.	OPTIONS FOR INDIGENT DEFENSE SERVICES	9
A.	STATE PUBLIC DEFENDER AND CONFLICT ATTORNEYS (STATUS QUO)	9
B.	COUNTY PUBLIC DEFENDER OFFICE AND CONFLICT ATTORNEYS	10
C.	CONTRACT ATTORNEYS ONLY	12
VI.	RECOMMENDATIONS	14

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.

NSPD and Conflict Attorneys (Status Quo)		
Advantages	Disadvantages	Costs
Administrative simplicity of an outsourced model	Lack of City control	\$1,392,009
County Public Defender and Conflict Attorneys		
Advantages	Disadvantages	Costs
Increased City control	No cost savings Increased administrative burden on City	\$1,464,949
Contract Attorneys Only		
Advantages	Disadvantages	Costs
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.

MOSS ADAMS^{L.L.P.}

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.

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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.

	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
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.

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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	-	-
Total Hours	8,578	3,255	1,055	24

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.

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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.

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

**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.*

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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
Total Budgeted	\$1,464,949

**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.

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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.

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."

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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.