

Consolidated Municipality of Carson City

Plan for Indigent Defense Services

~~Est. September 16~~Eff. November 4, 2021



CARSON CITY INDIGENT DEFENSE SERVICES PLAN

The ~~Carson City~~ Indigent Defense Services Plan (“Plan”) ~~has been developed jointly between of~~ the Consolidated Municipality of Carson City (“Carson City”), ~~the First Judicial District Court (“FJDC”), and the Carson City Justice/Municipal Court (“CCJMC”) in all”) is intended for~~ situations in which counsel is required to be appointed for persons under section 180.004 of the Nevada Revised Statutes (“NRS”), ~~or under any other NRS provision. The FJDC and the CCJMC may individually be referred to as a “Court,” or collectively be referred to as the “Courts.””).~~ This Plan is designed to meet the requirements of NRS 260.070(2) placed on Carson City, and to comply with the Nevada Supreme Court’s orders in ~~ADKT 411. This Plan is effective once approved by the Carson City Board of Supervisors and adopted by the FJDC and the CCJMC by administrative order~~Administrative Docket (“ADKT”) 411.

1. RECITALS

- a. Carson City is committed to indigent defense. Carson City and the Courts have previously established an indigent defense system providing a high level of indigent defense to the people of Carson City. This system, a partnership between Carson City and the Courts, functioned well and was not in need of fixing. In the history of Carson City and Ormsby County, Carson City is not aware of any person who has ever been adjudged to have received ineffective assistance of counsel. Carson City was not part of the rural counties that were named in *Davis v. Nevada*, Case No. 17 OC 00227 1B (1st Judicial Dist. Ct. Nev. Aug. 11, 2020).
- b. Nevertheless, the regulations of the Board of Indigent Defense Services require Carson City to discard most of its successful indigent defense program and reestablish a new one. The objective of this Plan, therefore, is to comply with the obligations placed on Carson City under NRS Chapters 7 and 180, NRS 260.070(2), and the regulations of the Board of Indigent Defense Services.
- c. Carson City also has significant concerns about a state agency having the power to authorize the expenditure of county funds or dictate or override the autonomy of the elected or appointed officials of a Nevada County. As such, this plan is not intended to authorize any expenditures of county funds that are not authorized by elected or appointed persons in Carson City. It is not the desire or purpose of the Carson City Board of Supervisors to authorize a state agency to expend county monies. Through this Plan, Carson City elects to have its own independent contractors provide the services herein.
- d. The functioning of the broader representation and defense services in Carson City relies upon the State Public Defender representing parents in NRS Chapter 432B actions.
- e. Portions of this plan are contingent upon the State of Nevada paying for the increases in the budgetary amounts caused by the adoption of this Plan. In the event that the State of Nevada does not authorize the increase in expenditures, portions of this Plan may be eliminated and the provision of services undertaken without such funds.

2. OBJECTIVES AND APPLICABILITY

- a. This Plan is intended to continue to provide a system of selection and appointment of counsel that provides indigent defendants accused of a crime or a delinquent act with an adequate defense and effective assistance of counsel to protect his or her constitutional

rights; and to provide for the appointment and compensation of qualified counsel, without waste of public resources.

b. This Plan is designed to be fully compliant with the Nevada Supreme Court’s Orders in ADKT 411, NRS Chapters 7 and 180, NRS 260.070(2), and the regulations of the Board of Indigent Defense Services.

1. This Plan covers appointment of counsel for “indigent defense services,” as that term is defined in NRS 180.004. **OBJECTIVE**

The objective of this Plan is to:

a. address:

1. the determination of a person’s status as indigent;
2. the appointment of counsel for an indigent person in appropriate juvenile, misdemeanor, and felony matters pending before the Courts, including trial and pre-trial proceedings, post-conviction matters, and appeals not subject to Rule 3C of the Nevada Rules of Appellate Procedure; and
3. the approval of compensation and expenses for appointed counsel, including expert witness fees, investigative fees, and attorney fees; and

b. ensure an eligible indigent person is provided with qualified counsel to protect his or her constitutional rights.

c. This covers legal representation and services for a person under the Sixth Amendment to the United States Constitution, NRS 7.115, NRS 62D.030, NRS 171.180, and for any law imposing criminal liability on a person that requires or permits the appointment of counsel for an indigent person. This plan does not address NRS 34.750, NRS 62D.100, NRS 128.100, NRS 432B.420, and NRS 433A.270, or any other law not included in NRS 180.004 where the appointment of counsel is required for a juvenile, an indigent person, or any other person. This Plan does not cover NRS Chapters 159, 159A, or 253.

2.3. DEFINITIONS

a. “CCJMC” means the Carson City Justice/Municipal Court.

a.b. “Conflict Counsel” means a DIDS qualified attorney who has entered into a contract with Carson City to represent indigent persons when the State Public Defender has a conflict and is disqualified from representing an indigent person.

b.c. “Counsel” means the State Public Defender, conflict counsel, and a private attorney, ~~unless otherwise defined in a particular section.~~

d. “Counsel Assistant” means a legal assistant for the Conflict Counsel.

e. “Court” means a department of the FJDC or the CCJMC, and “Courts” means the FJDC and the CCJMC collectively.

e.f. “DIDS” means the Nevada Department of Indigent Defense Services.

e.g. “DIDS qualified” means DIDS’ placement of an attorney on the list of attorneys who are qualified to represent indigent persons in Carson City.

h. “FJDC” means the First Judicial District Court.

e.i. “Indigent Defense Coordinator” means ~~the person assigned by Carson City to coordinate the selection of counsel and the approval of fees and expenses for counsel, or the person’s an independent contractor qualifying as a “designee” of DIDS. An Indigent Defense Coordinator shall have the duties specified in this Plan.~~

f.j. “Indigent Person” means an individual deemed indigent under this Plan.

- ~~g.k.~~ “Private Attorney” means a DIDS qualified attorney other than the State Public Defender or Conflict Counsel.
- ~~h.l.~~ “Represent” or “Representation” means legal representation of an indigent person by appointed counsel.
- ~~i.m.~~ “Services” means services provided to an indigent person during appointed counsel’s representation of that person, and includes investigative, expert, and other services.
- ~~j.n.~~ “State Public Defender” means the Nevada State Public Defender’s Office established under NRS Chapter 180 with whom Carson City has contracted with to provide representation and services to an indigent person.

~~3. **APPLICABILITY**~~

- ~~a. This Plan covers appointment of counsel for “indigent defense services,” as that term is defined in NRS 180.004. This covers legal representation and services for a person under the Sixth Amendment to the United States Constitution, NRS 7.115, NRS 34.750, NRS 62D.030, NRS 171.180, and for any law imposing criminal liability on a person that requires or permits the appointment of counsel for an indigent person.~~
- ~~b. In addition to the representation and services required to be covered under NRS 180.004, this plan also addresses NRS 62D.100, NRS 128.100, NRS 432B.420, and NRS 433A.270, or any other law not involving criminal liability that requires or permits the appointment of counsel, whether or not for an indigent person.~~
 - ~~1. The appointment of counsel under NRS 62D.100, NRS 128.100, NRS 432B.420(1), and NRS 433A.270 will follow the procedures in this Plan.~~
 - ~~2. Carson City has contracted with Washoe Legal Services to represent minors in NRS Chapter 432B actions. Washoe Legal Services will be appointed under NRS 432B.420(2), and if Washoe Legal Services has a conflict, the procedure in subsections 8(e), (d), and (e) will be followed.~~
- ~~c. This Plan does not cover NRS Chapters 159, 159A, or 253.~~
- ~~d. Notwithstanding any other section of this Plan, under NRS 180.004 DIDS’ regulations apply only to attorneys providing services in cases under section 3(a). DIDS’ regulations do not apply to attorneys providing services in cases under section 3(b).~~
- ~~e. This is a holistic plan to address the provision of representation and services to individuals under applicable law in Carson City. The functioning of such representation and services in Carson City relies upon the State Public Defender representing parents in NRS Chapter 432B actions. If the State Public Defender fails to represent parents in NRS Chapter 432B actions or if any part of this Plan is required to be modified, Carson City and the Courts may terminate this Plan or reevaluate indigent defense services in Carson City, or both.~~

~~4. **CASES IN WHICH COUNSEL MUST OR MAY BE APPOINTED**~~

- ~~a. Mandatory Appointment. Representation must be provided for any indigent person ~~who~~:~~
 - ~~1. who is charged with a felony or gross misdemeanor;~~
 - ~~2. who is charged with a misdemeanor ~~or gross misdemeanor~~ in which jail time is mandatory or the prosecution is seeking jail time (incarceration);~~
 - ~~3. who is alleged to have violated probation or other supervision and a jail or prison sentence of confinement may be imposed;~~
 - ~~4. is seeking relief under NRS 34.724(1) from a death sentence, under NRS 34.750;~~

- ~~5.4.~~ who is a minor alleged to have committed an act of juvenile delinquency, under NRS 62D.030;
- ~~6.~~ ~~a minor who has been placed outside of his or her home pursuant to NRS Chapter 432B and is involved in a proceeding to terminate the rights of the minor's parents, under NRS 128.100(2);~~
- ~~7.~~ ~~is a minor who is alleged to have been abused or neglected, under NRS 432B.420;~~
- ~~8.~~ ~~is a parent of an Indian minor who is alleged to have abused or neglected the minor, under NRS 432B.420(3);~~
- ~~9.~~ ~~is a person who is facing involuntary commitment, under NRS 433A.270;~~
- ~~10.5.~~ is in custody as a material witness;
- ~~11.6.~~ who is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution;
- ~~12.7.~~ who is entitled to appointment of counsel because due process requires the appointment of counsel;
- ~~13.8.~~ who is likely to face Court imposed jail or prison time;
- ~~14.9.~~ who faces loss of liberty in a case and Nevada law requires the appointment of counsel;
- ~~15.10.~~ who faces loss of liberty for criminal contempt; ~~or~~
- ~~16.11.~~ who has received notice that a grand jury is considering a charge against him/her and has requested counsel.; ~~or~~
- 12. where Nevada or Federal law otherwise requires the appointment of counsel for a person meeting the requirements of NRS 180.004.

b. Discretionary Appointment. When a court determines that the interests of justice so require, representation may be provided for any indigent person:

- ~~1.~~ who is:
 - ~~i.~~ ~~seeking post-conviction relief under NRS 34.724(1), other than from a death sentence, under NRS 34.750;~~
 - ~~ii.~~ ~~a parent of a minor who is alleged to be delinquent or in need of supervision, under NRS 62D.100(1);~~
 - ~~iii.~~ ~~a minor involved in a proceeding to terminate or restore parental rights, under NRS 128.100(1);~~
 - ~~iv.~~ ~~a parent who is facing a proceeding to terminate or restore his or her parental rights, under NRS 128.100(3);~~
 - ~~v.~~ ~~is alleged to have abused or neglected a child, under NRS 432B.420;~~
 - ~~vi.~~ ~~charged with civil contempt and faces loss of liberty; or~~
- ~~2.1.~~ called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, if there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty; or
- ~~3.2.~~ in any other case meeting the requirements of NRS 180.004 in which the court determines in the interests of justice appointment of counsel is appropriate.

5. DETERMINATION OF INDIGENCY

a. A person must be deemed indigent, and is eligible for appointment of counsel to represent the person, if the person is unable, without substantial hardship to himself or herself or

his or her dependents, to obtain competent and qualified legal counsel on his or her own.

- b. “Substantial hardship” is presumed for a person who:
 - 1. receives public assistance, including food stamps, temporary assistance for needy families, Medicaid, or disability insurance;
 - 2. resides in public housing;
 - 3. earns less than 200 percent of the Federal Poverty Guidelines;
 - 4. is currently serving a sentence in a correctional institution;
 - 5. is housed in a mental health facility, or
 - 6. is a minor.
- c. If substantial hardship is not presumed for a person, a Court may deem a person to have a substantial hardship based upon the person’s particular circumstances, including:
 - 1. the nature, extent, and liquidity of the person’s assets;
 - 2. the person’s disposable income from all sources;
 - 3. the person’s monthly expenses;
 - 4. the seriousness of the charges that the person is facing;
 - 5. whether the person is able to comprehend the proceedings and the charges that the person is facing;
 - 6. the effort and skill required to gather pertinent information about the case;
 - 7. the length and complexity of the proceedings;
 - 8. local private counsel rates;
 - 9. whether discovery is needed in post-conviction proceedings; or
 - 10. any other consideration that bears upon the person’s ability to retain and pay an attorney.
- d. The Court may determine that a person is partially indigent if the Court finds that a person can afford private counsel or has retained counsel, but the person cannot be effectively represented due to the person’s inability to pay for necessary services.
- ~~e. A finding of indigency is not required under:
 - 1. NRS 62D.030(3), for a minor alleged to have committed an act of juvenile delinquency;
 - 2. NRS 62D.100(1), for a parent of a minor alleged to have committed an act of juvenile delinquency;
 - 3. NRS 128.100(2), for a minor who has been placed outside of his or her home pursuant to NRS Chapter 432B and is involved in a proceeding to terminate the rights of the minor’s parents;
 - 4. NRS 432B.420(2), for a minor who is alleged to have been abused or neglected;
 - 5. NRS 432B.420(3), for the parent of an Indian minor who is alleged to have been abused or neglected; or
 - 6. NRS 433A.270, for a person who is facing involuntary commitment.~~

6. SCREENING FOR INDIGENCY

- a. Screening for indigency and substantial hardship must will be conducted by the Carson City Alternative Sentencing Department, the Carson City Sheriff’s Office, or other court or law enforcement personnel; within 48 hours for a person who is booked into the Carson City Jail or a juvenile detention facility and not released; at the initial appearance for a person

who appears before a Court and requests or is required to be appointed counsel; or sooner as required by applicable law.

~~1. within 48 hours, or sooner as required by applicable law:~~

~~i. for a person who is booked into the Carson City Jail or a juvenile detention facility; or~~

~~ii. for a person who appears before a Court and requests, or is required to be appointed, counsel; or~~

~~2. within the time frame directed by the Court.~~

b. The screening results must be provided to the ~~Courts immediately upon~~Court as soon as possible after completion.

7. TIME FOR APPOINTMENT OF COUNSEL

~~a. The Court must will review the screening results and ~~the case to determine:~~~~

~~1. , if a person has requested representation, determine whether:~~

~~b.a. the appointment of counsel is mandatory or the interests of justice require the discretionary appointment of counsel; and whether the person is indigent or partially indigent.~~

~~i. the person is indigent or partially indigent; or~~

~~2. if a person is required by law to be appointed counsel.~~

~~e. An attorney must be appointed for any eligible indigent person:~~

~~1. as soon as feasible after:~~

~~i. formal charges being filed against a person held in custody;~~

~~ii. or a person's first appearance before a judge; ~~or~~~~

~~2. as required by any other applicable provision of law;~~

~~d.b. or when a Court otherwise considers appointment of counsel appropriate; ~~or~~.~~

~~3. otherwise as soon as feasible.~~

~~e. An eligible indigent person must be appointed:~~

~~1. one attorney, except in a capital case; or~~

~~f.c. two attorneys in a capital case in which a person is reasonably believed to face capital punishment; ~~at~~. At least one of the two attorneys appointed in a capital case must meet the minimum standard for lead counsel pursuant to Rule 250 of the Nevada Supreme Court Rules and both attorneys appointed must conform to the performance guidelines or standards for capital cases as adopted by the Nevada Supreme Court.~~

8. INITIAL APPEARANCES

~~a. Unless counsel has already been assigned to a person, the State Public Defender will appear at all in custody pretrial release hearings, initial appearances, or arraignments. The State Public Defender may provide limited representation to an indigent person, discussing only matters pertaining to the initial appearance or arraignment to avoid creating conflicts of interest.~~

~~b. If the State Public Defender determines that it cannot provide limited representation of a person at the initial hearing or arraignment in a manner consistent with the Nevada Rules of Professional Conduct, the State Public Defender shall immediately notify the Court so that the Court may consider whether indigent defense counsel should be appointed.~~

~~c. If counsel other than the State Public Defender has been assigned as an indigent person's counsel before the initial appearance, the assigned counsel must appear at the initial appearance.~~

- d. At an initial appearance, Counsel must be prepared to address appropriate release conditions.
- e. A timely initial appearance or arraignment should not be delayed pending a determination of indigency.

8.9. SELECTION, ASSIGNMENT, AND APPOINTMENT OF COUNSEL

- a. ~~Attorneys appointed for co-defendants may not be from the same law firm.~~
- b. ~~The indigent defense coordinator will generally follow the procedure in this section to select counsel. The indigent defense coordinator may, however, select as counsel for an indigent person the counsel that represented the indigent person in a previous action if it would be in the indigent person's best interests to have the same counsel and would facilitate the indigent person's defense.~~
- a. Court Assignment of the State Public Defender
- e. ~~Unless the indigent defense coordinator~~ Court ~~is aware of a conflict in a particular case for the State Public Defender, or any other reason specified in this Plan why the indigent defense coordinator~~ State Public Defender should not be appointed as counsel, the Court must first select appoint ~~the State Public Defender to represent an eligible indigent person.~~
 - 1. ~~The State Public Defender must determine whether it may accept the representation and conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the person. If the State Public Defender cannot accept the representation or a conflict is determined to exist, the State must notify the indigent defense coordinator.~~
 - 2. The assignment to a case of a specific attorney, or attorneys, working for the State Public Defender rests solely within the discretion of the State Public Defender.
- b. Assignment of Conflict Counsel
 - 1. ~~If the State Public Defender has a conflict or is otherwise unable~~ cannot be appointed, the Court shall notify the counsel assistant.
 - ~~1.2.~~ Unless the counsel assistant is aware of a conflict for the conflict counsel or any other reason why a conflict counsel should not be assigned as counsel, the counsel assistant must assign a conflict counsel to represent an eligible indigent person, the indigent defense coordinator will select conflict counsel.
 - 1. ~~The indigent defense coordinator will use his or her best effort to balance the number of cases assigned to each conflict counsel, and the workload of each conflict counsel, by fairly rotating the case assignments through the list of conflict counsel.~~
 - 2. ~~Unless the indigent defense coordinator is aware of a conflict in a particular case for a conflict counsel, the indigent defense coordinator will contact the next conflict counsel on the list. The contacted conflict counsel must conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the person. If a conflict is determined to exist, the conflict counsel must notify the indigent defense coordinator. A conflict counsel must conduct the conflict checks and notify the indigent defense coordinator within 1 day of being appointed.~~
 - 3. ~~If the contacted conflict counsel has a conflict, the indigent defense coordinator will follow the procedure in subsection 1 and contact the next conflict counsel in the~~

~~rotation until a conflict counsel accepts the case, or all conflict counsel are unavailable or have a conflict of interest.~~

c. Assignment of a Private Attorney

~~d. If no conflict counsel are available, or if all conflict counsel have a conflict of interest, the indigent defense coordinator will contact private attorneys.~~

~~1. The indigent defense coordinator will use his or her best efforts to balance the number of cases can be assigned to each, the counsel assistant shall assign the next private attorney, and the workload of each on the DIDS list, unless the counsel assistant is aware of a conflict or any other reason why a specific private attorney should not be assigned by the Courts, by fairly rotating the case assignments through the DIDS list of private attorneys. Cases will be assigned to private counsel.~~

~~2. The counsel assistant must assign the next private attorney on the list in the following order:~~

~~i. Private attorneys having an office in Carson City first. If no private attorney on the DIDS list is available in Carson City, cases will be assigned to private.~~

~~ii. Private attorneys having an office in Churchill, Douglas, Lyon, Storey, or Washoe Counties.~~

~~iii. Private attorneys having offices in other counties are deemed to be too remote to Carson City to provide effective assistance of counsel.~~

d. Appointment of Counsel When No DIDS Qualified Counsel is Available

~~If the indigent defense coordinator is aware of a counsel assistant is unable to assign any conflict in a particular case for a counsel or private attorney to represent an indigent person, the counsel assistant must notify DIDS and the Court of the failure to assign counsel.~~

e. General Procedures for the Assignment of Counsel

~~1. Counsel assigned for co-defendants may not be from the same law firm.~~

~~2. The counsel assistant may assign counsel that has been previously appointed for an indigent defendant in a different action for the indigent person if it would be in the indigent person's best interests to have the same counsel and would facilitate the indigent person's defense.~~

~~3. Counsel must comply with section 13(d) in order to be assigned as counsel for an indigent person. Counsel who refuses to comply with section 13(d) will be deemed ineligible to be assigned as indigent defense coordinator will contact the next counsel in Carson City.~~

~~4. The counsel assistant must use his or her best efforts to fairly rotate the assignment of counsel among conflict counsel or private attorneyattorneys on the list. The contacted private attorneyany legitimate basis, taking into consideration conflicts, workloads, availability, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from clients, and feedback from Carson City officials.~~

~~5. An assigned or appointed counsel must conduct a conflict check to determine whether any conflict of interest exists which would prevent his or her representation of the indigent person. If a conflict is determined to exist, the private attorneycounsel must notify the indigent defense coordinator. A private attorneyCourt (for the State Public Defender) or the counsel assistant (for conflict~~

counsel and private attorneys). Counsel must conduct the conflict checks and notify the indigent defense coordinatorcounsel assistant within 1 day of being assigned or appointed.

- ~~2.~~ If the private attorney has a conflict, the indigent defense coordinator will follow the procedure in subsection 1 and contact the next private attorney on the DIDS list until a private attorney accepts the case, or all private attorneys on the DIDS list are unavailable or have a conflict of interest.
- ~~e.~~ If no counsel is available to represent the indigent person, the indigent defense coordinator may contact, and the Court may appoint, any attorney who, in the Court's discretion, will provide competent representation to the indigent person. The indigent defense coordinator and the Court will use their best efforts to contact and appoint an attorney who will comply with DIDS' regulations, if applicable. An attorney based in Washoe County who the Courts appoint to represent indigent persons in Carson City must comply with DIDS' requirements for counties whose population is 100,000 or more.
- ~~f.~~ The Court will enter an order appointing counsel or an attorney to represent the indigent person.
- ~~g.~~ Any counsel or attorney appointed in cases involving juveniles must be experienced in juvenile matters, or must otherwise be able to provide competent representation to the indigent person.
- ~~2.6.~~ The judges of the CourtCourts will have no input regarding the selectionassignment of counsel by the counsel assistant in a particular case.

~~9.~~ RECONSIDERATION OF DETERMINATION OF INDIGENCY

~~If a person or the person's counsel or attorney is unsatisfied with the Court's determination of indigency or partial indigency, the person or the person's counsel or attorney may request reconsideration of the Court's determination of indigency.~~

- ~~a.~~ A FJDC department will review a decision made by a CCJMC court.
- ~~f.~~ The department of the FJDC notCourt Appointment of Counsel
 - ~~1.~~ When the counsel assistant assigns counsel to the case, the counsel assistant will notify the Court of the assigned counsel.
 - ~~1.2.~~ The assigned attorney must file a notice of appearance indicating that he has been assigned to the case will review a decision made by a FJDC court.
 - ~~2.3.~~ The decision of a juvenile court masterCourt may be objectedenter an order appointing the assigned counsel to under juvenile courtrepresent the indigent person, according to its rules and procedures.

~~10.~~ CHANGE IN ELIGIBILITY

- ~~b.~~ An appointed counsel must advise the Court if, or when, an indigent person has a change in his or her financial condition that may make him or her ineligible for public payment for indigent representation.
~~Information that an indigent person provides to his or her appointed counsel that concerns the person's eligibility as an indigent person for appointment of counsel. Such information is not protected as a privileged attorney-client communication.~~

11. COMPENSATION

- ~~e.~~ Carson City will compensate the State Public Defender as provided by NRS Chapter 180 for representation of indigent persons.
- a. Carson City will compensate conflict counsel as provided in the applicable contract with Carson City. Carson City will compensate private attorneys ~~and other attorneys~~ under this Plan or other applicable law for time that is reasonable and necessary for representation of an indigent person.
- b. Unless otherwise provided in a contract, ~~conflict counsel, private attorneys, and attorneys (collectively “counsel” for this section)~~ statute, or regulation, counsel may seek compensation for representation of an indigent person through the following procedure.
1. Counsel must submit a request for compensation to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator, to DIDSPayment@carson.org.
 2. The request must be supported by a sworn statement specifying time entries rounded to the nearest one-tenth of an hour, a detailed description of the work performed for the representation, a description of the compensation rate applicable to counsel, ~~and a statement of~~ any compensation already received from any source for representation in the case, and any other material supporting the request for compensation. The invoice must comply with the requirements of section ~~4~~13.
 3. Counsel ~~must~~should submit a request for compensation at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after ~~the~~ representation is terminated will be denied.
 - ~~4.~~ The indigent defense coordinator will submit the request to a senior judge, if available, or a judge pro tempore, if a senior judge is not available, to review the request for compensation. The senior judge or judge pro tempore will approve, modify, or deny the request. The senior judge or judge pro tempore will not hold a for compensation.
 - ~~4.5.~~ No hearing will be held regarding the request for compensation.
 - ~~6.~~ If the request for compensation is approved, the indigent defense coordinator will send the request to the designated accounting personnel for entry into the City’s payment system.
 - ~~7.~~ If the request for compensation is denied, the indigent defense coordinator will notify counsel that his or her request was denied.
 - ~~5.8.~~ If the request is denied, counsel may file a motion for compensation with the trial court within 7 days of service of the denial of compensation. A motion for compensation must contain the request for compensation, any information accompanying the request, the denial of the request for compensation, and a proposed order. The Court may order counsel to provide further information regarding the motion for reconsideration. A hearing will not be held on the motion unless ordered by the Court.

12. EXPENSES

- a. ~~Carson City will reimburse the State Public Defender, conflict counsel, private attorneys, and any other attorney (collectively “counsel” for this section) for~~ counsel for services that are reasonable and necessary for the indigent person’s defense.

- ~~a.b.~~ Carson City will pay expenses for services of the State Public Defender for representation of indigent persons as provided by NRS Chapter 180 if the expenses are included in the budget of the State Public Defender. Carson City will pay expenses of conflict counsel as provided in the applicable contract with Carson City, and as further provided in this Plan.
- ~~d.~~ If funding is provided by the State of Nevada, Carson City will provide a fund of up to \$2,500 per case for counsel to spend without prior approval. Counsel may invoice Carson City directly for such expenses. The invoice must be on a form proscribed by the Carson City Finance Department, must comply with section 14, and the invoice or receipt for services must be attached to the invoice. Carson City will pay counsel directly for these expenses unless otherwise requested. The payee must comply with all applicable Carson City requirements for government payees.
- ~~b.c.~~ Absent funding under subsection 12(b), and unless ~~Unless~~ otherwise provided in a contract, counsel may incur expenses for services costing \$1,000 or less, but must obtain pre-authorization for expenses for services costing more than \$1,000. ~~Expenses for services costing \$1,000 or less~~ All expenses must be reasonable and necessary for the representation of the indigent person, and reimbursement for expenses for services costing \$1,000 or less may be denied, ~~even if already spent~~, if it is determined that the services were not reasonable and necessary for representation of the indigent person.
- ~~e.d.~~ Counsel may seek reimbursement or pre-authorization for expenses through the following procedure.
1. Counsel must submit a request for reimbursement or pre-authorization of expenses to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator, to DIDSPayment@carson.org.
 2. The request must be supported by a sworn statement specifying the services rendered or requested, the cost of the services, why the cost of the services are reasonable, and why the services are necessary for the representation, ~~and any compensation already received from any source for the services, and any other material supporting the request for expenses.~~ The invoice accompanying the request must comply with the requirements of section ~~14~~13.
 3. Counsel ~~must~~should submit a request for reimbursement or expenses at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after the representation is terminated will be denied.
 4. The indigent defense coordinator will ~~submit the request to a senior judge, if available, or a judge pro tempore, if a senior judge is not available, to review the request for compensation. The senior judge or judge pro tempore will approve, modify, or deny the request. The senior judge or judge pro tempore will not hold a for reimbursement or expenses.~~
 5. ~~No hearing will be held regarding the request. for reimbursement or expenses.~~
 - 4.6. ~~If the request for reimbursement or expenses is approved, the indigent defense coordinator will send the request to the designated accounting personnel for entry into the City's payment system.~~
 7. ~~If the request for reimbursement or expenses is denied, the indigent defense coordinator will notify counsel that his or her request was denied.~~
 - 5.8. ~~If the request is denied, counsel may file a motion for compensation expenses with the trial court within 7 days of service of the denial of expenses.~~ A motion for

~~compensation expenses~~ must contain the request for ~~compensation expenses~~, any information accompanying the request, the denial of the request for ~~compensation expenses~~, and a proposed order. ~~The Court may order counsel to provide further information regarding the motion for reconsideration. A hearing will not be held on the motion unless ordered by the Court.~~

~~10. **SEALED AND EX PARTE REQUESTS FOR COMPENSATION AND EXPENSES**~~

~~a. Any documents concerning requests for compensation or expenses or reconsideration filed with the trial court under sections 11 and 12 may be sealed at the request of the counsel or attorney until final judgment is entered in the case.~~

~~b. Any hearings under sections 11 or 12 must be held ex parte, without the presence of the prosecution.~~

13. PAYMENT FOR COMPENSATION AND EXPENSES

a. Requests for compensation and expenses or for reconsideration will be denied if not timely submitted. Approved requests will be paid reasonably promptly.

b. Invoices for requests for compensation and expenses under sections 11 and 12 must conform to government accounting standards.

c. Invoices for representation or services provided to an inmate of the Nevada State Prison system, or any person acting in concert with the inmate, for an escape, an attempted escape, or a crime committed while incarcerated, which are considered a state expense pursuant to NRS 212.070, must state on the invoices that the services are provided to such an inmate of the Nevada State Prison system. If approved, Carson City accounting personnel will submit the request for payment to DIDS at didscontact@dids.nv.gov with "Prison Expense" in the subject line.

d. Any person requesting payment from Carson City must be registered with Carson City as a vendor and have a 1099 tax form and a business license on file with Carson City. Any person requesting payment from the State of Nevada must be a registered vendor with the State of Nevada Controller's Office.

~~e. The indigent defense coordinator will forward any Counsel may request or order approving a motion for compensation or expenses to the that Carson City Finance Department ("Finance"), or its designee, for payment processing.~~

~~d. Finance may review the request, order and motion, and request clarification of any portion of the request, order or motion, from the indigent defense coordinator, the court, if approved by court order, or counsel or an attorney.~~

~~e. Carson City will pay counsel or the vendor within 30 days after receipt of the approved request for compensation or expenses, or if Finance requested clarification concerning the request, within 30 days after Finance receives clarification. If the expense is time sensitive, counsel or an attorney may request payment sooner directly if the vendor complies with this section.~~

14. CONTRACTS FOR CONFLICT COUNSEL

a. Carson City may, in its sole discretion, contract with attorneys for conflict counsel services on an hourly basis, a flat fee basis, or any other basis complying with NRS Chapter 180, NAC Chapter 180, and ADKT 411.

- ~~e. Carson City will comply with the applicable provisions of NRS Chapter 332 for local government purchasing and with the Carson City purchasing policy when soliciting for conflict counsel.~~
- b. Carson City will solicit letters of interest through a solicitation released to the public and any DIDS qualified attorneys in Carson City.
- c. At a regularly scheduled public meeting, the Carson City Board of Supervisors may enter into a contract for conflict counsel services with none or any or all of the attorneys submitting letters of interest.
- d. The judges of the Courts, DIDS, or any other interested person or entity may submit public comment regarding the selection of conflict counsel.
- e. When selecting conflict counsel, Carson City will consider:
 1. the experience and qualifications of an applicant;
 2. applicant's past representation of indigent persons;
 3. applicant's ability to comply with DIDS regulations;
 4. the cost of applicant's proposed services;
 5. whether the applicant resides in or has an office in Carson City; and
 6. any other criteria that bears upon a conflict counsel contract.
- f. Judicial input should not be the sole basis for the selection of conflict counsel.
- f.g. Contracted conflict counsel must be a DIDS qualified attorney.
- g.h. Conflict counsel contracts must comply with all applicable DIDS requirements.
- ~~f. If Conflict counsel finds that compensation under the contract is not sufficient to permit conflict counsel to adequately represent indigent persons, conflict counsel may seek extraordinary expenses under the contract or may request additional funds from the Carson City Board of Supervisors.~~

11. DIDS REQUIREMENTS AND INTERACTION

The State Public Defender's Office

15. REQUIRED DUTIES OF COUNSEL

- h.a. Counsel must independently make arrangements for required comply with the caseload and time reporting to the DIDS, as required by the requirements for DIDS.
- ~~a. Conflict counsel and private attorneys must individually, or by firm if contracted or appointed by firm, make arrangements for required caseload and time reporting to the DIDS.~~
- b. The assigned counsel must make accommodations for confidential communication with the indigent person. Counsel must comply with the workload standards specified by DIDS.
- i.c. Jail and courthouse facilities for attorneys' use for discussions with witnesses or clients are generally available to counsel representing indigent persons for attorney/client meetings to the same extent that they are available to other counsel. Such facilities include the attorney meeting rooms outside of each courtroom, and private meeting space within the jail. Counsel who are not familiar with the accommodations at the Courts or the Carson City Jail may ask the Court Clerk's Office or jail personnel for assistance in speaking privately with the indigent person.
- j.d. Counsel or the Courts must provide client surveys authorized by the Nevada Board on Indigent Defense Services to an indigent person appointed counsel under this Plan.
- k.e. Complaints about counsel or attorneys must be forwarded to the DIDS and to the Court Administrator.

- ~~l.f.~~ If counsel ~~or an attorney~~ becomes aware of a complaint concerning representation of an indigent person that rises to the level of interfering with the representation of the indigent person, ~~the counsel or attorney~~ must timely notify the Court.
- ~~m.g.~~ Counsel ~~and attorneys~~ must comply with all applicable law concerning representation of an indigent person, including, but not limited to: the U.S. and Nevada Constitutions, the Nevada Revised Statutes, the Nevada Administrative Code, the Nevada Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance implemented by the Nevada Supreme Court.
- ~~n.h.~~ Counsel and attorneys must comply with all ~~applicable court rules. This Plan does not supersede~~ court rules.
- ~~b.~~ ~~As has been the historical practice in Carson City, an attorney appointed to represent an indigent person is expected to appear at the person's initial appearance.~~
- ~~o.i.~~ ~~As has been the historical practice in Carson City, an attorney~~Counsel appointed to represent an indigent person is expected to represent that person through every stage of the case, at every hearing, and at trial, unless a court order is entered substituting another attorney in place of the original attorney or otherwise relieving the original attorney of the responsibility of representing the indigent person. This provision does not prohibit another attorney from appearing at a hearing for the appointed attorney counsel to represent the indigent person if the appointed attorney has an unavoidable scheduling conflict, provided that the appointed attorney has sufficiently appraised the other attorney about the case to enable the other attorney to provide effective assistance of counsel.
- ~~p.j.~~ ~~As has been the historical practice in Carson City, an attorney~~Counsel appointed to represent an indigent person is expected to provide effective assistance of counsel to the indigent person. This includes: meeting with the indigent person before the first appearance after counsel is appointed; updating the indigent person on his or her case at least every 30 days, unless, in counsel's professional opinion, there are no significant updates in the indigent person's case; and advising the indigent person not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is, in ~~the appointed attorney's~~counsel's professional judgment, in the client's best interest.
- ~~e.~~ ~~Carson City or the Courts may request from DIDS a current list of DIDS-qualified conflict counsel and private attorneys. Should an attorney in Carson City become DIDS-qualified in between the times that Carson City or the Courts requests a current list of DIDS-qualified attorneys, DIDS may, in its discretion, update the Indigent Defense Coordinator with the changes to the list.~~
- ~~d.~~ ~~Sections 16(a), (b), (d), (e), and (l) apply only to cases under section 3(a) of this Plan.~~
- ~~k.~~ Appointed counsel shall not request, require or accept any payment or promise to pay or any other valuable consideration for representation under the appointment unless such payment is approved by order of the Court.

Consolidated Municipality of Carson City

Plan for Indigent Defense Services

Eff. November 4, 2021



CARSON CITY INDIGENT DEFENSE SERVICES PLAN

The Indigent Defense Services Plan (“Plan”) of the Consolidated Municipality of Carson City (“Carson City”) is intended for situations in which counsel is required to be appointed for persons under section 180.004 of the Nevada Revised Statutes (“NRS”). This Plan is designed to meet the requirements of NRS 260.070(2) placed on Carson City, and to comply with the Nevada Supreme Court’s orders in Administrative Docket (“ADKT”) 411.

1. RECITALS

- a. Carson City is committed to indigent defense. Carson City and the Courts have previously established an indigent defense system providing a high level of indigent defense to the people of Carson City. This system, a partnership between Carson City and the Courts, functioned well and was not in need of fixing. In the history of Carson City and Ormsby County, Carson City is not aware of any person who has ever been adjudged to have received ineffective assistance of counsel. Carson City was not part of the rural counties that were named in *Davis v. Nevada*, Case No. 17 OC 00227 1B (1st Judicial Dist. Ct. Nev. Aug. 11, 2020).
- b. Nevertheless, the regulations of the Board of Indigent Defense Services require Carson City to discard most of its successful indigent defense program and reestablish a new one. The objective of this Plan, therefore, is to comply with the obligations placed on Carson City under NRS Chapters 7 and 180, NRS 260.070(2), and the regulations of the Board of Indigent Defense Services.
- c. Carson City also has significant concerns about a state agency having the power to authorize the expenditure of county funds or dictate or override the autonomy of the elected or appointed officials of a Nevada County. As such, this plan is not intended to authorize any expenditures of county funds that are not authorized by elected or appointed persons in Carson City. It is not the desire or purpose of the Carson City Board of Supervisors to authorize a state agency to expend county monies. Through this Plan, Carson City elects to have its own independent contractors provide the services herein.
- d. The functioning of the broader representation and defense services in Carson City relies upon the State Public Defender representing parents in NRS Chapter 432B actions.
- e. Portions of this plan are contingent upon the State of Nevada paying for the increases in the budgetary amounts caused by the adoption of this Plan. In the event that the State of Nevada does not authorize the increase in expenditures, portions of this Plan may be eliminated and the provision of services undertaken without such funds.

2. OBJECTIVES AND APPLICABILITY

- a. This Plan is intended to continue to provide a system of selection and appointment of counsel that provides indigent defendants accused of a crime or a delinquent act with an adequate defense and effective assistance of counsel to protect his or her constitutional rights; and to provide for the appointment and compensation of qualified counsel, without waste of public resources.
- b. This Plan is designed to be fully compliant with the Nevada Supreme Court’s Orders in ADKT 411, NRS Chapters 7 and 180, NRS 260.070(2), and the regulations of the Board of Indigent Defense Services.

- c. This Plan covers appointment of counsel for “indigent defense services,” as that term is defined in NRS 180.004. This covers legal representation and services for a person under the Sixth Amendment to the United States Constitution, NRS 7.115, NRS 62D.030, NRS 171.180, and for any law imposing criminal liability on a person that requires or permits the appointment of counsel for an indigent person. This plan does not address NRS 34.750, NRS 62D.100, NRS 128.100, NRS 432B.420, and NRS 433A.270, or any other law not included in NRS 180.004 where the appointment of counsel is required for a juvenile, an indigent person, or any other person. This Plan does not cover NRS Chapters 159, 159A, or 253.

3. DEFINITIONS

- a. “CCJMC” means the Carson City Justice/Municipal Court.
- b. “Conflict Counsel” means a DIDS qualified attorney who has entered into a contract with Carson City to represent indigent persons when the State Public Defender has a conflict and is disqualified from representing an indigent person.
- c. “Counsel” means the State Public Defender, conflict counsel, and a private attorney.
- d. “Counsel Assistant” means a legal assistant for the Conflict Counsel.
- e. “Court” means a department of the FJDC or the CCJMC, and “Courts” means the FJDC and the CCJMC collectively.
- f. “DIDS” means the Nevada Department of Indigent Defense Services.
- g. “DIDS qualified” means DIDS’ placement of an attorney on the list of attorneys who are qualified to represent indigent persons in Carson City.
- h. “FJDC” means the First Judicial District Court.
- i. “Indigent Defense Coordinator” means an independent contractor qualifying as a “designee” of DIDS. An Indigent Defense Coordinator shall have the duties specified in this Plan.
- j. “Indigent Person” means an individual deemed indigent under this Plan.
- k. “Private Attorney” means a DIDS qualified attorney other than the State Public Defender or Conflict Counsel.
- l. “Represent” or “Representation” means legal representation of an indigent person by appointed counsel.
- m. “Services” means services provided to an indigent person during appointed counsel’s representation of that person, and includes investigative, expert, and other services.
- n. “State Public Defender” means the Nevada State Public Defender’s Office established under NRS Chapter 180 with whom Carson City has contracted with to provide representation and services to an indigent person.

4. CASES IN WHICH COUNSEL MUST OR MAY BE APPOINTED

- a. Mandatory Appointment. Representation must be provided for any indigent person:
 - 1. who is charged with a felony or gross misdemeanor;
 - 2. who is charged with a misdemeanor in which jail time is mandatory or the prosecution is seeking jail time (incarceration);
 - 3. who is alleged to have violated probation or other supervision and a jail or prison sentence of confinement may be imposed;
 - 4. who is a minor alleged to have committed an act of juvenile delinquency, under NRS 62D.030;

5. who is in custody as a material witness;
 6. who is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution;
 7. who is entitled to appointment of counsel because due process requires the appointment of counsel;
 8. who is likely to face Court imposed jail or prison time;
 9. who faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 10. who faces loss of liberty for criminal contempt;
 11. who has received notice that a grand jury is considering a charge against him/her and has requested counsel; or
 12. where Nevada or Federal law otherwise requires the appointment of counsel for a person meeting the requirements of NRS 180.004.
- b. Discretionary Appointment. When a court determines that the interests of justice so require, representation may be provided for any indigent person:
1. who is charged with civil contempt and faces loss of liberty; or called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, if there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty; or
 2. in any other case meeting the requirements of NRS 180.004 in which the court determines in the interests of justice appointment of counsel is appropriate.

5. DETERMINATION OF INDIGENCY

- a. A person must be deemed indigent, and is eligible for appointment of counsel to represent the person, if the person is unable, without substantial hardship to himself or herself or his or her dependents, to obtain competent and qualified legal counsel on his or her own.
- b. “Substantial hardship” is presumed for a person who:
1. receives public assistance, including food stamps, temporary assistance for needy families, Medicaid, or disability insurance;
 2. resides in public housing;
 3. earns less than 200 percent of the Federal Poverty Guidelines;
 4. is currently serving a sentence in a correctional institution;
 5. is housed in a mental health facility, or
 6. is a minor.
- c. If substantial hardship is not presumed for a person, a Court may deem a person to have a substantial hardship based upon the person’s particular circumstances, including:
1. the nature, extent, and liquidity of the person’s assets;
 2. the person’s disposable income from all sources;
 3. the person’s monthly expenses;
 4. the seriousness of the charges that the person is facing;
 5. whether the person is able to comprehend the proceedings and the charges that the person is facing;
 6. the effort and skill required to gather pertinent information about the case;
 7. the length and complexity of the proceedings;

8. local private counsel rates;
 9. whether discovery is needed in post-conviction proceedings; or
 10. any other consideration that bears upon the person's ability to retain and pay an attorney.
- d. The Court may determine that a person is partially indigent if the Court finds that a person can afford private counsel or has retained counsel, but the person cannot be effectively represented due to the person's inability to pay for necessary services.

6. SCREENING FOR INDIGENCY

- a. Screening for indigency and substantial hardship will be conducted by the Carson City Alternative Sentencing Department, the Carson City Sheriff's Office, or other court or law enforcement personnel within 48 hours for a person who is booked into the Carson City Jail or a juvenile detention facility and not released; at the initial appearance for a person who appears before a Court and requests or is required to be appointed counsel; or sooner as required by applicable law.
- b. The screening results must be provided to the Court as soon as possible after completion.

7. TIME FOR APPOINTMENT OF COUNSEL

- a. The Court will review the screening results and, if a person has requested representation, determine whether the appointment of counsel is mandatory or the interests of justice require the discretionary appointment of counsel; and whether the person is indigent or partially indigent.
- b. An attorney must be appointed for any eligible indigent person as soon as feasible after formal charges being filed against a person held in custody or a person's first appearance before a judge; as required by any other applicable provision of law; or when a Court otherwise considers appointment of counsel appropriate.
- c. An eligible indigent person must be appointed one attorney, except in a capital case, or two attorneys in a capital case in which a person is reasonably believed to face capital punishment. At least one of the two attorneys appointed in a capital case must meet the minimum standard for lead counsel pursuant to Rule 250 of the Nevada Supreme Court Rules and both attorneys appointed must conform to the performance guidelines or standards for capital cases as adopted by the Nevada Supreme Court.

8. INITIAL APPEARANCES

- a. Unless counsel has already been assigned to a person, the State Public Defender will appear at all in custody pretrial release hearings, initial appearances, or arraignments. The State Public Defender may provide limited representation to an indigent person, discussing only matters pertaining to the initial appearance or arraignment to avoid creating conflicts of interest.
- b. If the State Public Defender determines that it cannot provide limited representation of a person at the initial hearing or arraignment in a manner consistent with the Nevada Rules of Professional Conduct, the State Public Defender shall immediately notify the Court so that the Court may consider whether indigent defense counsel should be appointed.
- c. If counsel other than the State Public Defender has been assigned as an indigent person's counsel before the initial appearance, the assigned counsel must appear at the initial appearance.

- d. At an initial appearance, Counsel must be prepared to address appropriate release conditions.
- e. A timely initial appearance or arraignment should not be delayed pending a determination of indigency.

9. SELECTION, ASSIGNMENT, AND APPOINTMENT OF COUNSEL

- a. Court Assignment of the State Public Defender
 - 1. Unless a Court is aware of a conflict for the State Public Defender or any other reason specified in this Plan why the State Public Defender should not be appointed as counsel, the Court must first appoint the State Public Defender to represent an eligible indigent person.
 - 2. The assignment to a case of a specific attorney, or attorneys, working for the State Public Defender rests solely within the discretion of the State Public Defender.
- b. Assignment of Conflict Counsel
 - 1. If the State Public Defender cannot be appointed, the Court shall notify the counsel assistant.
 - 2. Unless the counsel assistant is aware of a conflict for the conflict counsel or any other reason why a conflict counsel should not be assigned as counsel, the counsel assistant must assign a conflict counsel to represent an eligible indigent person.
- c. Assignment of a Private Attorney
 - 1. If no conflict counsel can be assigned, the counsel assistant shall assign the next private attorney on the DIDS list, unless the counsel assistant is aware of a conflict or any other reason why a specific private attorney should not be assigned as counsel.
 - 2. The counsel assistant must assign the next private attorney on the list in the following order:
 - i. Private attorneys having an office in Carson City.
 - ii. Private attorneys having an office in Churchill, Douglas, Lyon, Storey, or Washoe Counties.
 - iii. Private attorneys having offices in other counties are deemed to be too remote to Carson City to provide effective assistance of counsel.
- d. Appointment of Counsel When No DIDS Qualified Counsel is Available

If the counsel assistant is unable to assign any conflict counsel or private attorney to represent an indigent person, the counsel assistant must notify DIDS and the Court of the failure to assign counsel.
- e. General Procedures for the Assignment of Counsel
 - 1. Counsel assigned for co-defendants may not be from the same law firm.
 - 2. The counsel assistant may assign counsel that has been previously appointed for an indigent defendant in a different action for the indigent person if it would be in the indigent person's best interests to have the same counsel and would facilitate the indigent person's defense.
 - 3. Counsel must comply with section 13(d) in order to be assigned as counsel for an indigent person. Counsel who refuses to comply with section 13(d) will be deemed ineligible to be assigned as indigent defense counsel in Carson City.
 - 4. The counsel assistant must use his or her best efforts to fairly rotate the assignment of counsel among conflict counsel or private attorneys on any legitimate basis,

taking into consideration conflicts, workloads, availability, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from clients, and feedback from Carson City officials.

5. An assigned or appointed counsel must conduct a conflict check to determine whether any conflict of interest exists which would prevent his or her representation of the indigent person. If a conflict is determined to exist, counsel must notify the Court (for the State Public Defender) or the counsel assistant (for conflict counsel and private attorneys). Counsel must conduct the conflict checks and notify the counsel assistant within 1 day of being assigned or appointed.
 6. The judges of the Courts will have no input regarding the assignment of counsel by the counsel assistant in a particular case.
- f. Court Appointment of Counsel
1. When the counsel assistant assigns counsel to the case, the counsel assistant will notify the Court of the assigned counsel.
 2. The assigned attorney must file a notice of appearance indicating that he has been assigned to the case.
 3. The Court may enter an order appointing the assigned counsel to represent the indigent person, according to its rules and procedures.

10. CHANGE IN ELIGIBILITY

An appointed counsel must advise the Court if, or when, an indigent person has a change in his or her financial condition that may make him or her ineligible for public payment for indigent representation. Such information is not protected as a privileged attorney-client communication.

11. COMPENSATION

- a. Carson City will compensate the State Public Defender as provided by NRS Chapter 180 for representation of indigent persons. Carson City will compensate conflict counsel as provided in the applicable contract with Carson City. Carson City will compensate private attorneys under this Plan or other applicable law for time that is reasonable and necessary for representation of an indigent person.
- b. Unless otherwise provided in a contract, statute, or regulation, counsel may seek compensation for representation of an indigent person through the following procedure.
 1. Counsel must submit a request for compensation to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator, to DIDSPayment@carson.org.
 2. The request must be supported by a sworn statement specifying time entries rounded to the nearest one-tenth of an hour, a detailed description of the work performed for the representation, a description of the compensation rate applicable to counsel, a statement of any compensation already received from any source for representation in the case, and any other material supporting the request for compensation. The invoice must comply with the requirements of section 13.
 3. Counsel should submit a request for compensation at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after the representation is terminated will be denied.

4. The indigent defense coordinator will approve, modify, or deny the request for compensation.
5. No hearing will be held regarding the request for compensation.
6. If the request for compensation is approved, the indigent defense coordinator will send the request to the designated accounting personnel for entry into the City's payment system.
7. If the request for compensation is denied, the indigent defense coordinator will notify counsel that his or her request was denied.
8. If the request is denied, counsel may file a motion for compensation with the trial court. A motion for compensation must contain the request for compensation, any information accompanying the request, the denial of the request for compensation, and a proposed order.

12. EXPENSES

- a. Carson City will reimburse counsel for services that are reasonable and necessary for the indigent person's defense.
- b. Carson City will pay expenses of the State Public Defender for representation of indigent persons as provided by NRS Chapter 180 if the expenses are included in the budget of the State Public Defender. Carson City will pay expenses of conflict counsel as provided in the applicable contract with Carson City, and as further provided in this Plan.
- c. Unless otherwise provided in a contract, counsel may incur expenses for services costing \$1,000 or less, but must obtain pre-authorization for expenses for services costing more than \$1,000. All expenses must be reasonable and necessary for the representation of the indigent person, and reimbursement for expenses for services costing \$1,000 or less may be denied if it is determined that the services were not reasonable and necessary for representation of the indigent person.
- d. Counsel may seek reimbursement or pre-authorization for expenses through the following procedure.
 1. Counsel must submit a request for reimbursement or pre-authorization of expenses to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator, to DIDSPayment@carson.org.
 2. The request must be supported by a sworn statement specifying the services rendered or requested, the cost of the services, why the cost of the services are reasonable, and why the services are necessary for the representation, any compensation already received from any source for the services, and any other material supporting the request for expenses. The invoice accompanying the request must comply with the requirements of section 13.
 3. Counsel should submit a request for reimbursement or expenses at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after the representation is terminated will be denied.
 4. The indigent defense coordinator will approve, modify, or deny the request for reimbursement or expenses.
 5. No hearing will be held regarding the request for reimbursement or expenses.

6. If the request for reimbursement or expenses is approved, the indigent defense coordinator will send the request to the designated accounting personnel for entry into the City's payment system.
7. If the request for reimbursement or expenses is denied, the indigent defense coordinator will notify counsel that his or her request was denied.
8. If the request is denied, counsel may file a motion for expenses with the trial court. A motion for expenses must contain the request for expenses, any information accompanying the request, the denial of the request for expenses, and a proposed order.

13. PAYMENT FOR COMPENSATION AND EXPENSES

- a. Requests for compensation and expenses or for reconsideration will be denied if not timely submitted. Approved requests will be paid reasonably promptly.
- b. Invoices for requests for compensation and expenses under sections 11 and 12 must conform to government accounting standards.
- c. Invoices for representation or services provided to an inmate of the Nevada State Prison system, or any person acting in concert with the inmate, for an escape, an attempted escape, or a crime committed while incarcerated, which are considered a state expense pursuant to NRS 212.070, must state on the invoices that the services are provided to such an inmate of the Nevada State Prison system. If approved, Carson City accounting personnel will submit the request for payment to DIDS at didscontact@dids.nv.gov with "Prison Expense" in the subject line.
- d. Any person requesting payment from Carson City must be registered with Carson City as a vendor and have a 1099 tax form and a business license on file with Carson City. Any person requesting payment from the State of Nevada must be a registered vendor with the State of Nevada Controller's Office.
- e. Counsel may request that Carson City pay the vendor directly if the vendor complies with this section.

14. CONTRACTS FOR CONFLICT COUNSEL

- a. Carson City may, in its sole discretion, contract with attorneys for conflict counsel services on an hourly basis, a flat fee basis, or any other basis complying with NRS Chapter 180, NAC Chapter 180, and ADKT 411.
- b. Carson City will solicit letters of interest through a solicitation released to the public and any DIDS qualified attorneys in Carson City.
- c. At a regularly scheduled public meeting, the Carson City Board of Supervisors may enter into a contract for conflict counsel services with none or any or all of the attorneys submitting letters of interest.
- d. The judges of the Courts, DIDS, or any other interested person or entity may submit public comment regarding the selection of conflict counsel.
- e. When selecting conflict counsel, Carson City will consider:
 1. the experience and qualifications of an applicant;
 2. applicant's past representation of indigent persons;
 3. applicant's ability to comply with DIDS regulations;
 4. the cost of applicant's proposed services;
 5. whether the applicant resides in or has an office in Carson City; and

- 6. any other criteria that bears upon a conflict counsel contract.
- f. Judicial input should not be the sole basis for the selection of conflict counsel.
- g. Contracted conflict counsel must be a DIDS qualified attorney.
- h. Conflict counsel contracts must comply with all applicable DIDS requirements.

15. REQUIRED DUTIES OF COUNSEL

- a. Counsel must comply with the caseload and time reporting requirements for DIDS.
- b. Counsel must comply with the workload standards specified by DIDS.
- c. Jail and courthouse facilities for attorneys' use for discussions with witnesses or clients are generally available to counsel representing indigent persons for attorney/client meetings to the same extent that they are available to other counsel. Such facilities include the attorney meeting rooms outside of each courtroom, and private meeting space within the jail. Counsel who are not familiar with the accommodations at the Courts or the Carson City Jail may ask the Court Clerk's Office or jail personnel for assistance in speaking privately with the indigent person.
- d. Counsel or the Courts must provide client surveys authorized by the Nevada Board on Indigent Defense Services to an indigent person appointed counsel under this Plan.
- e. Complaints about counsel or attorneys must be forwarded to the DIDS.
- f. If counsel becomes aware of a complaint concerning representation of an indigent person that rises to the level of interfering with the representation of the indigent person, counsel must timely notify the Court.
- g. Counsel must comply with all applicable law concerning representation of an indigent person, including, but not limited to: the U.S. and Nevada Constitutions, the Nevada Revised Statutes, the Nevada Administrative Code, the Nevada Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance implemented by the Nevada Supreme Court.
- h. Counsel and attorneys must comply with all court rules.
- i. Counsel appointed to represent an indigent person is expected to represent that person through every stage of the case, at every hearing, and at trial, unless a court order is entered substituting another attorney in place of the original attorney or otherwise relieving the original attorney of the responsibility of representing the indigent person. This provision does not prohibit another attorney from appearing at a hearing for the appointed counsel to represent the indigent person if the appointed attorney has an unavoidable scheduling conflict, provided that the appointed attorney has sufficiently appraised the other attorney about the case to enable the other attorney to provide effective assistance of counsel.
- j. Counsel appointed to represent an indigent person is expected to provide effective assistance of counsel to the indigent person. This includes: meeting with the indigent person before the first appearance after counsel is appointed; updating the indigent person on his or her case at least every 30 days, unless, in counsel's professional opinion, there are no significant updates in the indigent person's case; and advising the indigent person not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is, in counsel's professional judgment, in the client's best interest.
- k. Appointed counsel shall not request, require or accept any payment or promise to pay or any other valuable consideration for representation under the appointment unless such payment is approved by order of the Court.

Carson City Plan

Meets Standards

Does Not Meet Standards

Expenses

| | |
|---------------------------------------|-----------------|
| Estimated Cost of the Plan: | \$2,704,849.28 |
| Carson Maximum Contribution (Sec 16): | \$ 2,090,407.00 |
| Estimated State Contribution: | \$ 614,442.28 |

1. **Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Regulation of the Board on Indigent Defense Services Section 21 [hereinafter "Sec."]).**

Meets Standards

Does Not Meet Standards

2. **Plan for hiring contractor attorneys (Sec. 22):**

Meets Standards

Does Not Meet Standards

Carson City may solicit letters of interest through a solicitation released to the public and any DIDS qualified attorneys in Carson City. The judges of the Courts, DIDS, and any other interested party may submit public comment regarding the selection. Carson City will consider listed qualifications prior to hiring. Section 14, P. 8-9. Judicial input should not be the sole basis for the selection of a conflict counsel. Section 14, P. 9

3. **Appointment of Counsel (Sec. 23)**

Meets Standards

Does Not Meet Standards

Indigency Screening (Sec. 23(1)): The screening for indigency must be conducted by the Carson City Alternative Sentencing Department, the Carson City Sheriff's Office, or other court or law enforcement personnel within 48 hours for a person who is booked into the Carson City Jail or juvenile detention facility and not released; at the initial appearance; or sooner as required by applicable law. P. 4, Section 6(a).

Prompt Appointment and handling a Conflict of the PD (Sec. 23(2)): An attorney must be appointed for an eligible person as soon as feasible after formal charges have been filed against a person held in custody or a person's first appearance before a judge; as required by law; or when a Court considers appointment appropriate. Section 7, p. 4. Unless the Court is aware of a conflict for the Public Defender or any other reason specified why the Public Defender should not be appointed, the Court will first appoint the State Public Defender. Section 9, p. 5. If the Public Defender determines there is a conflict, the Public Defender must notify the Court. Section 9, p. 6. The Court shall notify the counsel assistant for appointment of conflict counsel, or a private attorney as set forth in the Plan. Section 9, p. 4.

Distribution of Cases (Sec. 23(3)): The counsel assistant must follow the general procedures set forth in Section 9(e) for the selection of counsel. P. 5.

Initial Appearance (Sec. 23(4)): Unless counsel has already been assigned, the State Public Defender will appear for the initial appearance, pretrial release hearing or arraignment. Sec. 8,

p. 4. If the Public Defender is unable to represent a person due to the Rules of Professional Conduct, the Public Defender shall immediately notify the Court. Sec. 8, p. 4. If counsel other than the PD is already assigned, the counsel must appear at the initial appearance. Sec. 8, p. 4.

4. Confidential Communications (Sec. 24):

Meets Standards **Does Not Meet Standards**

Facilities are available including meeting rooms outside each courtroom and private meeting space at the jail. P. 9, Section 15(c).

5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 25):

Meets Standards **Does Not Meet Standards**

Request for Experts/Investigators is provided in Sec. 12 on page 7 and Sec 13, p. 8. If costs are expected to exceed \$1,000, the attorney must obtain pre-approval from the indigent defense coordinator. The request must be supported by a statement explaining why the cost is reasonable and necessary. The indigent defense coordinator can approve/deny/modify the request.

6. Vertical Representation Requirement (Sec 26):

Meets Standards **Does Not Meet Standards**

The Plan expects attorneys to ensure that the attorney appointed to represent an indigent person is expected to representation that person through every stage of the case. P. 9, Sec. 15(i).

7. Standards of Representation (Sec. 27):

Meets Standards **Does Not Meet Standards**

Standards of Representation 27(1): required language included. P. 9, Section 15(g).

Davis Required Language (Sec. 27(2)): required language included. P. 9, Section 15(j).

Client surveys (Sec 29(3)): Plan requires surveys to be distributed as required by the Board of Indigent Defense Services. P. 9, Section 15(d).

8. Prompt Compensation (Section 41)

Meets Standards **Does Not Meet Standards**

Compensation is discussed in Section 11 and 13. Counsel must submit a request for compensation to the “indigent defense coordinator.” The coordinator can review/deny/modify the request. If approved, the coordinator will send the request to the designated accounting personnel. If denied, counsel will be notified and can request a hearing with the trial court.

9. Caseload Reporting (Section 43)

Meets Standards **Recommendations**

The Plan requires counsel to comply with the caseload and time reporting requirements for DIDS. P. 9, Section 15(a) and (b).