

Amendment No. 395

Assembly Amendment to Assembly Bill No. 45

(BDR 20-457)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

RBL



Date: 4/13/2009

A.B. No. 45—Requires the State Public Defender to provide defense services to indigent persons in counties without county public defender offices and to fully fund such services. (BDR 20-457)



ASSEMBLY BILL NO. 45—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

PREFILED DECEMBER 6, 2008

Referred to Committee on Judiciary

SUMMARY—~~[Requires the State Public Defender to provide defense services to indigent persons in counties without county public defender offices and to fully fund such services.]~~ Makes various changes to provisions governing public defenders. (BDR 20-457)

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

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

AN ACT relating to public defenders; authorizing ~~[the creation and discontinuation of county]~~ all counties to create an office of public defender ; ~~[offices];~~ requiring the State to reimburse counties for ~~[expenditures made in providing defense services to indigent persons];~~ operating such an office; requiring the State Public Defender to establish branch offices in counties that do not ~~[have a county]~~ create an office of public defender ; ~~[office];~~ requiring, under certain circumstances, that the State Public Defender provide defense services to indigent persons in counties with a county public defender office; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, any county whose population is 100,000 or more (currently Washoe and Clark Counties) must create an office of public defender to provide defense services to indigent persons, and any county whose population is less than 100,000 may, but is not required to, create such an office. (NRS 260.010) The State Public Defender provides defense services to indigent persons in counties that do not have a county public defender and may charge those counties, in amounts not to exceed limits previously set by the Legislature, for providing those services. (NRS 180.110) The State Public Defender and any county with a county public defender may contract with each other for the State Public Defender to provide defense services to indigent persons in that county if a court, for cause, has disqualified the county public defender or if the county public defender is otherwise unable to provide representation. (NRS 180.060, 260.065)

Section 2 of this bill removes the requirement that counties whose population is 100,000 or more create an office of public defender and instead authorizes any county to create such an office by ordinance. Section 2 further provides that once created by the county, the office of public defender may not be discontinued. In addition, **section 8** of this bill repeals the authority of the State Public Defender to charge counties for expenses related to the defense of indigent persons in counties that do not have a county public defender. **Section 1** of this bill

~~[authorized]~~ **requires** a county that has established the office of public defender to submit a claim for reimbursement to the State Public Defender for the cost of operating the office. **Section 4** of this bill requires the State Public Defender to prescribe the form and time for filing such claims and further requires the State Public Defender to reimburse the counties from money appropriated for that purpose at least once every 3 months.

Section 5 of this bill requires the State Public Defender to establish at least one branch office in each county that does not have a county public defender. If, thereafter, the State Public Defender is notified that a county intends to create an office of public defender, the State Public Defender is required to discontinue the branch office in that county on June 30 of the year in which it is notified, which notice must be received by March 1 of an odd-numbered year pursuant to **section 2** of this bill.

Section 6 of this bill revises the provision authorizing a county to contract with the State Public Defender to provide representation for a defendant when the county public defender is disqualified from providing or unavailable to provide representation so that the State Public Defender is required to provide representation in those circumstances.

Section 9 of this bill requires each county to notify the State Public Defender by October 1, 2009, whether it will have an office of county public defender, and the State Public Defender must create a branch office in each county without a county public defender by July 1, 2010. After July 1, 2010, a county may only create ~~[or discontinue]~~ an office of county public defender ~~[if]~~ **in the manner set forth in section 2 of this bill which requires** the county ~~[notified]~~ **to notify** the State Public Defender by March 1 of an odd-numbered year of its intent to do so.

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

Section 1. Chapter 260 of NRS is hereby amended by adding thereto a new section to read as follows:

- 1. A county whose board of county commissioners has:**
 - (a) Created an office of county public defender pursuant to NRS 260.010; or*
 - (b) Joined with one or more other counties pursuant to NRS 260.020 to establish one office of county public defender to serve those counties,*~~↳ [may]~~ **must** submit a claim for reimbursement to the State Public Defender for the costs associated with operating the office of county public defender.
- 2. A claim for reimbursement submitted pursuant to subsection 1 must be made in the form and at such times as prescribed by the State Public Defender pursuant to section 4 of this act.**

Sec. 2. NRS 260.010 is hereby amended to read as follows:

260.010 1. ~~[In counties whose population is 100,000 or more, the boards of county commissioners shall create by ordinance the office of public defender.~~

~~— 2. Except as otherwise provided by subsection 4, in counties whose population is less than 100,000, boards]~~ **A board** of county commissioners may ~~[if their respective counties create] f~~

~~— (a) Create,~~ **create,** by ordinance, at the beginning of a fiscal year, the office of county public defender.

~~[3. Except as otherwise provided in subsection 4, if]~~

~~f— (b) If the county has an office of county public defender, discontinue, by ordinance, at the beginning of a fiscal year, the office of county public defender.]~~

2. If a board of county commissioners intends to create the office of county public defender, the board ~~[shall]~~ **must** notify the State Public Defender in writing on or before March 1 of any odd-numbered year and the office may not be created before July 1 of the same year in which the notice was given.

~~[4. If the county contribution approved by the Legislature exceeds the estimate provided to the county on December 1 by more than 10 percent for either year of the biennium, the]~~

3. A board of county commissioners ~~[may create]~~ *that has created* the office of county public defender ~~[on July 1 of the next even numbered year if]~~ *pursuant to this section or NRS 260.020 shall not discontinue [the] that office . [of county public defender]*

~~—(a) Unless the board notifies the State Public Defender on or before March 1] [of the same year in which the office is to be created.~~

~~—5.] [of an odd-numbered year that the board intends to discontinue the office of county public defender; and~~

~~—(b) Before July 1 of the same year in which the notice is given.]~~

4. The office of *county* public defender when created must be filled by appointment by the board of county commissioners.

~~[6.]~~ 5. The *county* public defender serves at the pleasure of the board of county commissioners.

Sec. 3. NRS 260.065 is hereby amended to read as follows:

260.065 Any county in which the office of *county* public defender has been created may ~~[contract for]~~ *use* the services of the State Public Defender in providing representation for indigent persons when the court, for cause, disqualifies the county public defender or when the county public defender is otherwise unable to provide representation.

Sec. 4. Chapter 180 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *The State Public Defender shall prescribe the form and time of filing for counties to submit claims for reimbursement for the costs associated with operating an office of county public defender established pursuant to NRS 260.010 or 260.020.*

2. *At least once every 3 months, and upon verification of a claim for reimbursement submitted by a county to the State Public Defender pursuant to section 1 of this act, the State Public Defender shall authorize reimbursement to the county by the State from money appropriated for that purpose.*

Sec. 5. NRS 180.040 is hereby amended to read as follows:

180.040 1. The Office of the State Public Defender shall be in Carson City, Nevada, and the Buildings and Grounds Division of the Department of Administration shall provide necessary office space.

2. ~~The [Subject to the provisions of subsection 3, the]~~ State Public Defender ~~[may establish branch offices necessary to perform his duties. He shall designate] shall establish at least one branch office in each county that [~~

~~—(a) Has] has not established an office of county public defender.~~

~~[(b) Has established an office of county public defender but the board of county commissioners in such county has notified the State Public Defender pursuant to subsection 3 of NRS 260.010 that the board will discontinue the office of county public defender.~~

~~—3. A branch office established pursuant to paragraph (b) of subsection 2 must be established as of July 1 of the same year that the State Public Defender is notified that the board of county commissioners intends to discontinue the office of county public defender.~~

~~—4.]~~ 3. Except as otherwise provided in subsection ~~[5.]~~ 4, the State Public Defender shall maintain each branch office established pursuant to this section.

~~[5.]~~ 4. If the State Public Defender is notified pursuant to subsection 2 of NRS 260.010 that a board of county commissioners intends to create an office of

county public defender, the State Public Defender shall discontinue each branch office in that county on June 30 of the same year in which it is notified.

~~6-7 5. The State Public Defender shall designate~~ a deputy state public defender to supervise each ~~[such office.]~~ *branch office established and maintained pursuant to this section.*

Sec. 6. NRS 180.060 is hereby amended to read as follows:

180.060 1. The State Public Defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when he has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.

2. The State Public Defender shall, when designated pursuant to NRS 62D.030, 62D.100, 171.188 or 432B.420, and within the limits of available money, represent without charge each indigent person for whom he is appointed.

3. When representing an indigent person, the State Public Defender shall:

(a) Counsel and defend him at every stage of the proceedings, including revocation of probation or parole; and

(b) Prosecute any appeals or other remedies before or after conviction that he considers to be in the interests of justice.

4. In cases of postconviction proceedings and appeals arising in counties in which the office of *county* public defender has been created pursuant to the provisions of chapter 260 of NRS, where the matter is to be presented to the Supreme Court, the State Public Defender shall prepare and present the case and the public defender of the county shall assist and cooperate with the State Public Defender.

5. The State Public Defender ~~[may contract with]~~ *shall provide to* any county in which the office of *county* public defender has been created ~~[to provide]~~ representation for indigent persons when the court, for cause, disqualifies the county public defender or when the county public defender is otherwise unable to provide representation.

Sec. 7. NRS 180.090 is hereby amended to read as follows:

180.090 Except as *otherwise* provided in *NRS 180.040*, subsections 4 and 5 of NRS 180.060 ~~and~~ *and section 4 of this act*, the provisions of this chapter apply only to counties in which the office of public defender has not been created pursuant to the provisions of chapter 260 of NRS.

Sec. 8. NRS 180.110 is hereby repealed.

Sec. 9. 1. Subject to the provisions of subsections 2 and 3 and chapter 260 of NRS, a board of county commissioners for a county that does not have an office of county public defender on July 1, 2009, may create, by ordinance, the office of county public defender.

2. Except as otherwise provided in NRS 260.010, a board of county commissioners may not create an office of county public defender unless it notifies the State Public Defender in writing on or before October 1, 2009, that it intends to create such an office.

3. A board of county commissioners that notifies the State Public Defender pursuant to subsection 2 ~~is~~

~~(a) Shall~~ *shall* create the office as of July 1, 2010. ~~and~~

~~(b) May not discontinue the office except pursuant to the provisions of NRS 260.010.~~

4. Subject to the provisions of subsections 5 and 6, a board of county commissioners for a county that has an office of county public defender on July 1, 2009, may, by ordinance, discontinue that office.

5. Except as otherwise provided in NRS 260.010, a board of county commissioners may not discontinue an office of county public defender unless it

1 notifies the State Public Defender, in writing, on or before October 1, 2009, that it
2 intends to discontinue the office.

3 6. A board of county commissioners that notifies the State Public Defender
4 pursuant to subsection 5 that it intends to discontinue the office of public
5 defender shall discontinue the office as of July 1, 2010.

6 7. On July 1, 2010, the State Public Defender shall establish at least one
7 branch office in each county that:

8 (a) Does not have an office of county public defender on July 1, 2009, and
9 whose board of county commissioners does not notify the State Public Defender
10 pursuant to subsection 2 that it intends to create the office; and

11 (b) Has an office of county public defender on July 1, 2009, and whose board
12 of county commissioners notifies the State Public Defender pursuant to subsection
13 5 that it intends to discontinue the office.

14 **Sec. 10.** This act becomes effective on July 1, 2009.

TEXT OF REPEALED SECTION

180.110 Collection of charges to counties for services.

1. Each fiscal year the State Public Defender may collect from the counties amounts which do not exceed those authorized by the Legislature for use of his services during that year.

2. The State Public Defender shall submit to the county an estimate on or before the first day of May and that estimate becomes the final bill unless the county is notified of a change within 2 weeks after the date on which the county contribution is approved by the Legislature. The county shall pay the bill:

(a) In full within 30 days after the estimate becomes the final bill or the county receives the revised estimate; or

(b) In equal quarterly installments on or before the 1st day of July, October, January and April, respectively.

➤ The counties shall pay their respective amounts to the State Public Defender who shall deposit the amounts with the Treasurer of the State of Nevada and shall expend the money in accordance with his approved budget.