

SENATE BILL NO. 123—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION
ON THE ADMINISTRATION OF JUSTICE)

PREFILED FEBRUARY 3, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the Office of State Public Defender. (BDR 18-641)

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

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

AN ACT relating to the Office of State Public Defender; moving the Office from the Department of Health and Human Services to the Office of the Governor; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Under existing law, the Office of State Public Defender exists within the
2 Department of Health and Human Services to represent indigent persons charged
3 with a public offense. (NRS 180.010, 180.060) This bill moves the Office from the
4 Department to the Office of the Governor.

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

- 1 **Section 1.** Chapter 223 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 10, inclusive, of this
3 act.
4 **Sec. 2. 1. The Office of State Public Defender is hereby**
5 **created within the Office of the Governor.**
6 **2. The Governor shall appoint the State Public Defender for**
7 **a term of 4 years, and until a successor is appointed and qualified.**
8 **3. The State Public Defender:**
9 **(a) Must be an attorney licensed to practice law in the State of**
10 **Nevada.**



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1 (b) Is in the unclassified service of the State.

2 (c) Except as otherwise provided in NRS 7.065, shall not
3 engage in the private practice of law.

4 4. No officer or agency of the State, other than the Governor,
5 may supervise the State Public Defender. No officer or agency of
6 the State, other than the Governor, may assign the State Public
7 Defender duties in addition to those prescribed by sections 2 to 10,
8 inclusive, of this act.

9 Sec. 3. 1. The State Public Defender may employ:

10 (a) Deputy state public defenders in the unclassified service of
11 the State.

12 (b) Clerical, investigative and other necessary staff in the
13 classified service of the State.

14 2. Each deputy state public defender must be an attorney
15 licensed to practice law in the State of Nevada, and shall not
16 engage in the practice of law, except in performing the duties of
17 office and as otherwise provided in NRS 7.065.

18 Sec. 4. 1. The Office of the State Public Defender must be
19 located in Carson City, Nevada, and the Buildings and Grounds
20 Division of the Department of Administration shall provide
21 necessary office space.

22 2. The State Public Defender may establish branch offices
23 necessary to perform the State Public Defender's duties. The State
24 Public Defender shall designate a deputy state public defender to
25 supervise each such office.

26 Sec. 5. 1. The State Public Defender may contract with
27 attorneys licensed to practice law in the State of Nevada and with
28 county public defenders to provide services required by sections 2
29 to 10, inclusive, of this act if it is impracticable for the State Public
30 Defender or the State Public Defender's deputies to provide such
31 services for any reason.

32 2. All such contract services must be performed under the
33 supervision and control of the State Public Defender.

34 Sec. 6. 1. The State Public Defender may, before being
35 designated as counsel for that person pursuant to NRS 171.188,
36 interview an indigent person when the indigent person has been
37 arrested and confined for a public offense or for questioning on
38 suspicion of having committed a public offense.

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

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



(a) Counsel and defend the indigent person 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 the State Public Defender considers to be in the interests of justice.

4. In cases of postconviction proceedings and appeals arising in counties in which the office of 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 any county in which the office of 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. 1. The State Public Defender shall submit:

(a) A report on or before December 1 of each year to the Governor and to each participating county containing a statement of:

(1) The number of cases that are pending in each participating county;

(2) The number of cases in each participating county that were closed in the previous fiscal year;

(3) The total number of criminal defendants represented in each participating county, with separate categories specifying the crimes charged and whether the defendant was less than 18 years of age or an adult;

(4) The total number of working hours spent by the State Public Defender and the State Public Defender's staff for each participating county; and

(5) The amount and categories of the expenditures made by the State Public Defender's office.

(b) To each participating county, on or before December 1 of each even-numbered year, the total proposed budget of the State Public Defender for that county, including the projected number of cases and the projected cost of services attributed to the county for the next biennium.

(c) Such reports to the Legislative Commission as the regulations of the Commission require.

2. As used in this section, "participating county" means each county in which the office of public defender has not been created pursuant to NRS 260.010.



1 **Sec. 8.** *Except as otherwise provided in subsections 4 and 5*
2 *of section 6 of this act, the provisions of sections 2 to 10, inclusive,*
3 *of this act apply only to counties in which the office of public*
4 *defender has not been created pursuant to the provisions of*
5 *chapter 260 of NRS.*

6 **Sec. 9.** *The provisions of sections 2 to 10, inclusive, of this*
7 *act do not exclude any protection or sanction that the law*
8 *otherwise provides.*

9 **Sec. 10.** 1. *Each fiscal year the State Public Defender may*
10 *collect from the counties amounts which do not exceed those*
11 *authorized by the Legislature for use of the State Public*
12 *Defender's services during that year.*

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

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

20 (b) *In equal quarterly installments on or before the first day of*
21 *July, October, January and April.*

22 ↪ *The counties shall pay their respective amounts to the State*
23 *Public Defender who shall deposit the amounts with the State*
24 *Treasurer and shall expend the money in accordance with the*
25 *State Public Defender's approved budget.*

26 **Sec. 11.** NRS 232.320 is hereby amended to read as follows:

27 232.320 1. The Director:

28 (a) Shall appoint, with the consent of the Governor,
29 administrators of the divisions of the Department, who are
30 respectively designated as follows:

31 (1) The Administrator of the Aging and Disability Services
32 Division;

33 (2) The Administrator of the Health Division;

34 (3) The Administrator of the Division of Welfare and
35 Supportive Services;

36 (4) The Administrator of the Division of Child and Family
37 Services;

38 (5) The Administrator of the Division of Health Care
39 Financing and Policy; and

40 (6) The Administrator of the Division of Mental Health and
41 Developmental Services.

42 (b) Shall administer, through the divisions of the Department,
43 the provisions of chapters 63, 424, 425, 427A, 432A to 442,
44 inclusive, 446 to 450, inclusive, 458A and 656A of NRS, NRS
45 127.220 to 127.310, inclusive, 422.001 to 422.410, inclusive,



1 422.580, 432.010 to 432.133, inclusive, 444.003 to 444.430,
2 inclusive, and 445A.010 to 445A.055, inclusive, and all other
3 provisions of law relating to the functions of the divisions of the
4 Department, but is not responsible for the clinical activities of the
5 Health Division or the professional line activities of the other
6 divisions.

7 (c) Shall administer any state program for persons with
8 developmental disabilities established pursuant to the
9 Developmental Disabilities Assistance and Bill of Rights Act of
10 2000, 42 U.S.C. §§ 15001 et seq.

11 (d) Shall, after considering advice from agencies of local
12 governments and nonprofit organizations which provide social
13 services, adopt a master plan for the provision of human services in
14 this State. The Director shall revise the plan biennially and deliver a
15 copy of the plan to the Governor and the Legislature at the
16 beginning of each regular session. The plan must:

17 (1) Identify and assess the plans and programs of the
18 Department for the provision of human services, and any
19 duplication of those services by federal, state and local agencies;

20 (2) Set forth priorities for the provision of those services;

21 (3) Provide for communication and the coordination of those
22 services among nonprofit organizations, agencies of local
23 government, the State and the Federal Government;

24 (4) Identify the sources of funding for services provided by
25 the Department and the allocation of that funding;

26 (5) Set forth sufficient information to assist the Department
27 in providing those services and in the planning and budgeting for the
28 future provision of those services; and

29 (6) Contain any other information necessary for the
30 Department to communicate effectively with the Federal
31 Government concerning demographic trends, formulas for the
32 distribution of federal money and any need for the modification of
33 programs administered by the Department.

34 (e) May, by regulation, require nonprofit organizations and state
35 and local governmental agencies to provide information regarding
36 the programs of those organizations and agencies, excluding
37 detailed information relating to their budgets and payrolls, which the
38 Director deems necessary for the performance of the duties imposed
39 upon him or her pursuant to this section.

40 (f) Has such other powers and duties as are provided by law.

41 2. Notwithstanding any other provision of law, the Director, or
42 the Director's designee, is responsible for appointing and removing
43 subordinate officers and employees of the Department, other than ~~f:~~
44 ~~—(a) The~~ **the** Executive Director of the Nevada Indian
45 Commission who is appointed pursuant to NRS 233A.055 . ~~f:and~~



~~(b) The State Public Defender of the Office of State Public Defender who is appointed pursuant to NRS 180.010.]~~

Sec. 12. NRS 260.050 is hereby amended to read as follows:

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

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

3. When representing an indigent person, the public defender shall:

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

(b) Prosecute, subject to the provisions of subsection 4 of ~~NRS 180.060,~~ **section 6 of this act**, any appeals or other remedies before or after conviction that he or she considers to be in the interests of justice.

Sec. 13. NRS 180.010, 180.030, 180.040, 180.050, 180.060, 180.080, 180.090, 180.100 and 180.110 are hereby repealed.

Sec. 14. This act becomes effective on July 1, 2011.

LEADLINES OF REPEALED SECTIONS

180.010 Office created; term; qualifications; private practice of law prohibited; supervision; assignment of additional duties.

180.030 Employment of deputies and other employees; qualifications of deputies.

180.040 Office; branch offices.

180.050 Contracts for legal services.

180.060 Duties: Representation of indigent persons; contracts to render services.

180.080 Duties: Reports to Governor, participating counties and Legislative Commission.

180.090 Application.

180.100 Other protections and sanctions not excluded.

180.110 Collection of charges to counties for services.

