

ASSEMBLY BILL NO. 10—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the payment of costs associated with legal representation of indigent criminal defendants charged with capital crimes. (BDR 14-467)

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 public defenders; revising provisions governing the payment of the costs of providing legal representation to indigent criminal defendants in capital cases; prohibiting the State Public Defender from charging counties for the use of his or her services to provide representation to an indigent criminal defendant in a capital case; requiring the State Public Defender to reimburse a county for the costs of an attorney appointed by a court to provide legal representation to an indigent criminal defendant in a capital case; requiring the State Public Defender to reimburse certain counties for the expenses incurred to provide legal representation to an indigent criminal defendant in a capital case; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires a district judge, justice of the peace, municipal judge or
- 2 master to appoint an attorney for an indigent person who is charged with certain
- 3 crimes. (NRS 171.188) Under existing law, the appointed attorney must be: (1) a
- 4 county public defender, if the county has created an office of public defender to
- 5 provide defense services to indigent persons; (2) the State Public Defender, if the
- 6 county has not established such an office; or (3) a private attorney appointed by the
- 7 district judge, justice of the peace, municipal court judge or master, if the public
- 8 defender is disqualified from representing the indigent person. (NRS 7.115,



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171.188, 260.010) Under existing law: (1) the county is required to pay the compensation and expenses of a private attorney appointed by the judge, justice or master unless the proceedings are based on a certain postconviction petition; and (2) the State Public Defender may charge a county, in amounts not to exceed limits set by the Legislature, for providing his or her services to the county. (NRS 7.155, 180.110)

This bill requires the Office of State Public Defender to bear the costs of providing legal representation to an indigent person in a capital case, which is defined as a criminal case in which the most serious crime charged is a felony for which the death penalty may be imposed. **Section 1** of this bill: (1) provides that a county is not required to reimburse the State Public Defender for the costs of appearing in Justice Court to represent a defendant in a capital case; and (2) requires the State to reimburse the county for payments made by the county to a private attorney appearing in Justice Court to represent a defendant in such a case. **Sections 2, 3 and 9** of this bill prohibit the State Public Defender from charging counties for the use of his or her services to provide legal representation to an indigent defendant in a capital case. **Section 4** of this bill requires the State Public Defender to pay certain compensation for translation services in a capital case which are paid by a county under existing law. **Section 5** of this bill provides that when a private attorney is appointed by a master, magistrate or district judge to represent an indigent defendant in a capital case, the Office of State Public Defender must reimburse the county for any compensation or expense paid to the private attorney by the county. **Sections 7 and 8** of this bill require the State Public Defender to reimburse a county which has created an office of public defender for any expenses incurred by the county to provide legal representation to an indigent defendant in a capital case. Under **sections 1, 2, 4, 7, 8 and 10** of this bill, if the State Public Defender is required to pay expenses pursuant to the provisions of those sections and the appropriation for such expenses is exhausted, money must be allocated to the Office of State Public Defender from the Reserve for Statutory Contingency Account for the payment of such expenses.

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

Section 1. NRS 171.188 is hereby amended to read as follows:

171.188 1. Any defendant charged with a public offense who is an indigent may, by oral statement to the district judge, justice of the peace, municipal judge or master, request the appointment of an attorney to represent the defendant.

2. The request must be accompanied by the defendant's affidavit, which must state:

(a) That the defendant is without means of employing an attorney; and

(b) Facts with some particularity, definiteness and certainty concerning the defendant's financial disability.

3. The district judge, justice of the peace, municipal judge or master shall forthwith consider the application and shall make such further inquiry as he or she considers necessary. If the district judge, justice of the peace, municipal judge or master:



1 (a) Finds that the defendant is without means of employing an
2 attorney; and

3 (b) Otherwise determines that representation is required,
4 ➔ the judge, justice or master shall designate the public defender of
5 the county or the State Public Defender, as appropriate, to represent
6 the defendant. If the appropriate public defender is unable to
7 represent the defendant, or other good cause appears, another
8 attorney must be appointed.

9 4. The county or State Public Defender must be reimbursed by
10 the city for costs incurred in appearing in municipal court. The
11 county shall reimburse the State Public Defender for costs incurred
12 in appearing in Justice Court **H** , *except costs incurred in*
13 *appearing in Justice Court to represent a defendant in a capital*
14 *case*. If a private attorney is appointed as provided in this section,
15 the private attorney must be reimbursed by the county for
16 appearance in Justice Court or the city for appearance in municipal
17 court in an amount not to exceed \$75 per case. *If a county is*
18 *required to reimburse a private attorney who is appointed as*
19 *provided in this section for appearance in Justice Court to*
20 *represent a defendant in a capital case, the State Public Defender*
21 *must reimburse the county for that expense from money*
22 *appropriated to the Office of State Public Defender, but after the*
23 *appropriation for such expenses is exhausted, money must be*
24 *allocated to the Office of State Public Defender from the Reserve*
25 *for Statutory Contingency Account for the payment of such*
26 *expenses.*

27 5. *As used in this section, "capital case" means a criminal*
28 *case in which the most serious crime charged is a felony for which*
29 *a sentence of death may be imposed.*

30 **Sec. 2.** NRS 180.060 is hereby amended to read as follows:

31 180.060 1. The State Public Defender may, before being
32 designated as counsel for that person pursuant to NRS 171.188,
33 interview an indigent person when the indigent person has been
34 arrested and confined for a public offense or for questioning on
35 suspicion of having committed a public offense.

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

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

42 (a) Counsel and defend the indigent person at every stage of the
43 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 appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, 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. *All expenses incurred to provide representation in such postconviction proceedings and appeals in connection with a capital case must be paid from money appropriated to the Office of State Public Defender, but after the appropriation for such expenses is exhausted, money must be allocated to the Office of State Public Defender from the Reserve for Statutory Contingency Account for the payment of such expenses.*

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. *A contract entered into pursuant to this subsection may not require a county to pay the State Public Defender for the use of his or her services to provide representation for an indigent person in a capital case.*

6. As used in this section, "capital case" means a criminal case in which the most serious crime charged is a felony for which a sentence of death may be imposed, including, without limitation, any postconviction proceedings or appeals in connection with such a criminal case.

Sec. 3. NRS 180.110 is hereby amended to read as follows:

180.110 1. ~~Each~~ *Except as otherwise provided in this subsection, 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 the State Public Defender's services during that year. *The State Public Defender may not collect from a county any amount for the use of his or her services in a capital case.*

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 the State Public Defender's approved budget.

3. As used in this section, "capital case" means a criminal case in which the most serious crime charged is a felony for which a sentence of death may be imposed, including, without limitation, any postconviction proceedings or appeals in connection with such a criminal case.

Sec. 4. NRS 3.370 is hereby amended to read as follows:

3.370 1. Except as otherwise provided in subsection 3, for his or her services the official reporter or reporter pro tempore is entitled to the following compensation:

(a) For being available to report civil and criminal testimony and proceedings when the court is sitting during traditional business hours on any day except Saturday or Sunday, \$170 per day, to be paid by the county as provided in subsection 4.

(b) For being available to report civil and criminal testimony and proceedings when the court is sitting beyond traditional business hours or on Saturday or Sunday:

(1) If the reporter has been available to report for at least 4 hours, \$35 per hour for each hour of availability; or

(2) If the reporter has been available to report for fewer than 4 hours, a pro rata amount based on the daily rate set forth in paragraph (a),

➤ to be paid by the county as provided in subsection 4.

(c) For transcription:

(1) Except as otherwise provided in subparagraph (2), for the original draft and any copy to be delivered:

(I) Within 24 hours after it is requested, \$7.50 per page for the original draft and one copy, and \$2 per page for each additional copy;

(II) Within 48 hours after it is requested, \$5.62 per page for the original draft and one copy, and \$1.50 per page for each additional copy;

(III) Within 4 days after it is requested, \$4.68 per page for the original draft and one copy, and \$1.25 per page for each additional copy; or

(IV) More than 4 days after it is requested, \$3.55 per page for the original draft and one copy, and 55 cents per page for each additional copy.



(2) For civil litigants who are ordering the original draft and are represented by a nonprofit legal corporation or a program for pro bono legal assistance, for the original draft and any copy to be delivered:

(I) Within 24 hours after it is requested, \$5.50 per page and \$1.10 per page for each additional copy;

(II) Within 48 hours after it is requested, \$4.13 per page and 83 cents per page for each additional copy;

(III) Within 4 days after it is requested, \$3.44 per page and 69 cents per page for each additional copy; or

(IV) More than 4 days after it is requested, \$2.75 per page and 55 cents per page for each additional copy.

(3) For any party other than the party ordering the original draft, for the copy of the draft to be delivered:

(I) Within 24 hours after it is requested, \$1.10 per page;

(II) Within 48 hours after it is requested, 83 cents per page;

(III) Within 4 days after it is requested, 69 cents per page; or

(IV) More than 4 days after it is requested, 55 cents per page.

(d) For reporting all civil matters, in addition to the compensation provided in paragraphs (a) and (b), \$30 for each hour or fraction thereof actually spent, to be taxed as costs pursuant to subsection 5.

(e) For providing an instantaneous translation of testimony into English which appears on a computer that is located at a table in the courtroom where the attorney who requested the translation is seated:

(1) Except as otherwise provided in this subparagraph, in all criminal matters in which a party requests such a translation, in addition to the compensation provided pursuant to paragraphs (a) and (b), \$140 for the first day and \$90 per day for each subsequent day from the party who makes the request. ~~This~~ *Except as otherwise provided in this subparagraph and subject to the provisions of section 7 of this act, this* additional compensation must be paid by the county as provided pursuant to subsection 4 only if the court issues an order granting the translation service to the prosecuting attorney or to an indigent defendant who is represented by a county or state public defender. *If an indigent defendant is represented by a state public defender in a capital case, the additional compensation must be paid from money appropriated to the Office of State Public Defender, but after the appropriation for such expenses is exhausted, money must be allocated to the Office of State Public Defender from the Reserve*



1 *for Statutory Contingency Account for the payment of such*
2 *additional compensations.*

3 (2) In all civil matters in which a party requests such a
4 translation, in addition to the compensation provided pursuant to
5 paragraphs (a), (b) and (d), \$140 for the first day and \$90 per day
6 for each subsequent day, to be paid by the party who requests the
7 translation.

8 (f) For providing a diskette containing testimony prepared from
9 a translation provided pursuant to paragraph (e):

10 (1) Except as otherwise provided in this subparagraph, in all
11 criminal matters in which a party requests the diskette and the
12 reporter agrees to provide the diskette, in addition to the
13 compensation provided pursuant to paragraphs (a), (b) and (e),
14 \$1.50 per page of the translation contained on the diskette from the
15 party who makes the request. ~~[This]~~ *Except as otherwise provided*
16 *in this subparagraph and subject to the provisions of section 7 of*
17 *this act, this* additional compensation must be paid by the county as
18 provided pursuant to subsection 4 only if the court issues an order
19 granting the diskette to the prosecuting attorney or to an indigent
20 defendant who is represented by a county or state public defender. *If*
21 *an indigent defendant is represented by a state public defender in*
22 *a capital case, the additional compensation must be paid from*
23 *money appropriated to the Office of State Public Defender, but*
24 *after the appropriation for such expenses is exhausted, money*
25 *must be allocated to the Office of State Public Defender from the*
26 *Reserve for Statutory Contingency Account for the payment of*
27 *such additional compensations.*

28 (2) In all civil matters in which a party requests the diskette
29 and the reporter agrees to provide the diskette, in addition to the
30 compensation provided pursuant to paragraphs (a), (b), (d) and (e),
31 \$1.50 per page of the translation contained on the diskette, to be
32 paid by the party who requests the diskette.

33 2. For the purposes of subsection 1, a page is a sheet of paper 8
34 1/2 by 11 inches and does not include a condensed transcript. The
35 left margin must not be more than 1 1/2 inches from the left edge of
36 the paper. The right margin must not be more than three-fourths of
37 an inch from the right edge of the paper. Each sheet must be
38 numbered on the left margin and must contain at least 24 lines of
39 type. The first line of each question and of each answer may be
40 indented not more than five spaces from the left margin. The first
41 line of any paragraph or other material may be indented not more
42 than 10 spaces from the left margin. There must not be more than
43 one space between words or more than two spaces between
44 sentences. The type size must not be larger than 10 characters per



1 inch. The lines of type may be double spaced or one and one-half spaced.

3. If the court determines that the services of more than one reporter are necessary to deliver transcripts on a daily basis in a criminal proceeding, each reporter is entitled to receive:

(a) The compensation set forth in paragraphs (a) and (b) of subsection 1 and subparagraph (1) of paragraph (e) of subsection 1, as appropriate; and

(b) Compensation of \$7.50 per page for the original draft and one copy, and \$2 per page for each additional copy for transcribing a proceeding of which the transcripts are ordered by the court to be delivered on or before the start of the next day the court is scheduled to conduct business.

4. ~~[The]~~ *Except as otherwise provided in subparagraph (1) of paragraph (e) and subparagraph (1) of paragraph (f) of subsection 1 and subject to the provisions of section 7 of this act,* the compensation specified in paragraphs (a) and (b) of subsection 1, the compensation for transcripts in criminal cases ordered by the court to be made, the compensation for transcripts in civil cases ordered by the court pursuant to NRS 12.015, the compensation for transcripts for parents or guardians or attorneys of parents or guardians who receive transcripts pursuant to NRS 432B.459, the compensation in criminal cases that is ordered by the court pursuant to subparagraph (1) of paragraph (e) and subparagraph (1) of paragraph (f) of subsection 1 and the compensation specified in subsection 3 must be paid out of the county treasury upon the order of the court. When there is no official reporter in attendance and a reporter pro tempore is appointed, his or her reasonable expenses for traveling and detention must be fixed and allowed by the court and paid in the same manner. The respective district judges may, with the approval of the respective board or boards of county commissioners within the judicial district, fix a monthly salary to be paid to the official reporter in lieu of per diem. The salary, and also actual traveling expenses in cases where the reporter acts in more than one county, must be prorated by the judge on the basis of time consumed by work in the respective counties and must be paid out of the respective county treasuries upon the order of the court.

5. Except as otherwise provided in subsection 4, in civil cases, the compensation prescribed in paragraph (d) of subsection 1 and for transcripts ordered by the court to be made must be paid by the parties in equal proportions, and either party may, at the party's option, pay the entire compensation. In either case, all amounts so paid by the party to whom costs are awarded must be taxed as costs in the case. The compensation for transcripts and copies ordered by the parties must be paid by the party ordering them. No reporter may



1 be required to perform any service in a civil case until his or her
2 compensation has been paid to him or her.

3 6. Where a transcript is ordered by the court or by any party,
4 the compensation for the transcript must be paid to the reporter
5 before the furnishing of the transcript.

6 *7. As used in this section, "capital case" means a criminal*
7 *case in which the most serious crime charged is a felony for which*
8 *a sentence of death may be imposed, including, without limitation,*
9 *any postconviction proceedings or appeals in connection with such*
10 *a criminal case.*

11 **Sec. 5.** NRS 7.155 is hereby amended to read as follows:

12 7.155 *1. The compensation and expenses of an attorney*
13 *appointed to represent a defendant must be paid from the county*
14 *treasury unless the proceedings are based upon a postconviction*
15 *petition for habeas corpus, in which case the compensation and*
16 *expenses must be paid from money appropriated to the Office of*
17 *State Public Defender, but after the appropriation for such expenses*
18 *is exhausted, money must be allocated to the Office of State Public*
19 *Defender from the reserve for statutory contingency account for the*
20 *payment of such compensation and expenses.*

21 *2. If the compensation and expenses of an attorney appointed*
22 *to represent a defendant in a capital case are paid from the county*
23 *treasury, the State Public Defender must reimburse the county for*
24 *any compensation or expenses paid from the county treasury. The*
25 *reimbursement must be paid from money appropriated to the*
26 *Office of State Public Defender, but after the appropriation for*
27 *such expenses is exhausted, money must be allocated to the Office*
28 *of State Public Defender from the Reserve for Statutory*
29 *Contingency Account for the payment of such compensation and*
30 *expenses.*

31 *3. As used in this section, "capital case" means a criminal*
32 *case in which the most serious crime charged is a felony for which*
33 *a sentence of death may be imposed, including, without limitation,*
34 *postconviction proceedings and appeals in connection with such a*
35 *criminal case.*

36 **Sec. 6.** NRS 7.165 is hereby amended to read as follows:

37 7.165 If , at any time after the appointment of an attorney or
38 attorneys , the magistrate or the district court finds that money is
39 available for payment from or on behalf of the defendant so that the
40 defendant is financially able to obtain private counsel or to make
41 partial payment for such representation, the magistrate or the district
42 court may:

- 43 1. Terminate the appointment of such attorney or attorneys; or
44 2. Direct that such money be paid to:



(a) The appointed attorney or attorneys, in which event any compensation provided for in NRS 7.125 shall be reduced by the amount of the money so paid, and no such attorney may otherwise request or accept any payment or promise of payment for representing such defendant; or

(b) The clerk of the district court . ~~For~~ *Except as otherwise provided in this paragraph, the clerk of the district court shall deposit the money received in the county treasury . ~~[, if all of]~~ If, pursuant to NRS 7.155, the State Public Defender reimbursed the county for* the compensation and expenses in connection with the representation of such defendant *which* were paid from the county treasury ~~[and remittance to the Office of State Public Defender, if or any~~ such compensation and expenses were *otherwise* paid ~~[partly]~~ from moneys appropriated to the Office of State Public Defender ~~[and]~~ , *the clerk of the district court must remit to the Office of State Public Defender the money received that exceeds the amount of compensation and expenses which was paid from the county treasury ~~[]~~ and not reimbursed by the State Public Defender.*

Sec. 7. Chapter 260 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a county has created the office of public defender, the State Public Defender must reimburse the county for any expenses incurred by the county to provide representation to an indigent person in a capital case. The expenses must be paid from money appropriated to the Office of State Public Defender, but after the appropriation for such expenses is exhausted, money must be allocated to the Office of State Public Defender from the Reserve for Statutory Contingency Account for the payment of such expenses.

2. As used in this section, "capital case" means a criminal case in which the most serious crime charged is a felony for which a sentence of death may be imposed, including, without limitation, postconviction proceedings and appeals in connection with such a criminal case.

Sec. 8. NRS 260.060 is hereby amended to read as follows:

260.060 ~~For~~ *Subject to the provisions of section 7 of this act,* for cause, the magistrate or district court may, on its own motion or upon motion of the public defender or the indigent person, appoint and compensate out of county funds an attorney other than, or in addition to, the public defender to represent such indigent person at any stage of the proceedings or on appeal in accordance with the laws of this state pertaining to the appointment of counsel to represent indigent criminal defendants.



Sec. 9. NRS 260.065 is hereby amended to read as follows:

260.065 **1.** Any county in which the office of public defender has been created may contract for 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. *A contract entered into pursuant to this subsection may not require a county to pay the State Public Defender for the use of his or her services to provide representation for an indigent person in a capital case.*

2. As used in this section, "capital case" means a criminal case in which the most serious crime charged is a felony for which a sentence of death may be imposed, including, without limitation, any postconviction proceedings or appeals in connection with such a criminal case.

Sec. 10. NRS 353.264 is hereby amended to read as follows:

353.264 **1.** The Reserve for Statutory Contingency Account is hereby created in the State General Fund.

2. The State Board of Examiners shall administer the Reserve for Statutory Contingency Account. The money in the Account must be expended only for:

(a) The payment of claims which are obligations of the State pursuant to NRS 41.03435, 41.0347, 621.025, 176.485, 179.310, 212.040, 212.050, 212.070, 281.174, 282.290, 282.315, 288.203, 293.253, 293.405, 353.120, 353.262, 412.154 and 475.235;

(b) The payment of claims which are obligations of the State pursuant to:

(1) Chapter 472 of NRS arising from operations of the Division of Forestry of the State Department of Conservation and Natural Resources directly involving the protection of life and property; and

(2) NRS **3.370**, 7.155, 34.750, **171.188**, 176A.640, 179.225 , **180.060** and 213.153 **and section 7 of this act,**

↪ except that claims may be approved for the respective purposes listed in this paragraph only when the money otherwise appropriated for those purposes has been exhausted;

(c) The payment of claims which are obligations of the State pursuant to NRS 41.0349 and 41.037, but only to the extent that the money in the Fund for Insurance Premiums is insufficient to pay the claims; and

(d) The payment of claims which are obligations of the State pursuant to NRS 535.030 arising from remedial actions taken by the State Engineer when the condition of a dam becomes dangerous to the safety of life or property.



1 3. The State Board of Examiners may authorize its Clerk or a
2 person designated by the Clerk, under such circumstances as it
3 deems appropriate, to approve, on behalf of the Board, the payment
4 of claims from the Reserve for Statutory Contingency Account. For
5 the purpose of exercising any authority granted to the Clerk of the
6 State Board of Examiners or to the person designated by the Clerk
7 pursuant to this subsection, any statutory reference to the State
8 Board of Examiners relating to such a claim shall be deemed to refer
9 to the Clerk of the Board or the person designated by the Clerk.

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