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SECOND REPRINT

A.B. 81

ASSEMBLY BILL NO. 81—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA RIGHT TO COUNSEL COMMISSION)

PREFILED NOVEMBER 20, 2018

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to the oversight and provision of legal representation of indigent defendants in criminal cases. (BDR 14-436)

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 criminal defense; creating the Department of Indigent Defense Services to oversee criminal defense services provided to indigent persons in this State; creating the Board on Indigent Defense Services consisting of various appointed persons to oversee the Executive Director of the Department and to establish certain policies; requiring the Board to establish the maximum amount a county may be required to pay for the provision of indigent defense services; authorizing the Board to adopt regulations governing indigent defense services; providing for the transfer of responsibility for the provision of indigent defense services from certain counties to the State Public Defender in certain circumstances; allowing such services to be transferred back to the county in certain circumstances; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Senate Bill No. 377 of the 2017 Legislative Session created the Nevada Right
2 to Counsel Commission consisting of 13 voting members appointed by the
3 Governor, the Legislature and the Nevada Supreme Court. The Chief Justice of the
4 Supreme Court or his or her designee was to serve as an ex officio nonvoting
5 member of the Commission. The Commission was charged with conducting a study
6 during the 2017-2019 interim concerning issues relating to the provision of legal



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representation of indigent persons in criminal cases in this State. (Chapter 460, Statutes of Nevada 2017, p. 2940) The Commission is set to expire on July 1, 2019. In its place, **section 6** of this bill creates the Board on Indigent Defense Services and designates the manner in which members must be appointed. Members of the Board serve without compensation, except for per diem allowance and travel expenses. **Section 7** of this bill provides for the organization of the Board, whose voting members will serve for terms of 3 years and may be reappointed. Voting members may be removed by the Governor for incompetence, neglect of duty and certain acts. **Section 8** of this bill sets forth the duties of the Board, which include overseeing the Executive Director of the Department of Indigent Defense Services, which is created in **section 9** of this bill. The Executive Director of the Department serves at the pleasure of the Board. The Board is required to review information concerning indigent defense services in the State and establish: (1) minimum standards for the delivery of indigent defense services; and (2) procedures for receiving and resolving complaints concerning the provision of indigent defense services. The Board is further required to establish standards for providing indigent defense services, which include continuing education requirements for attorneys who provide indigent defense services, uniform tracking of information by such attorneys and guidelines for maximum caseloads of such attorneys. **Section 8** further requires the Board to work with the Dean of the William S. Boyd School of Law of the University of Nevada, Las Vegas, to determine incentives to recommend offering law students and attorneys to encourage them to provide indigent defense services, especially in rural areas of the State.

Section 10 of this bill establishes the duties of the Executive Director of the Department of Indigent Defense Services, which include overseeing the functions of the Department, serving as Secretary of the Board, reporting to the Board regarding the work of the Department, developing the budget for the Department and preparing an annual report for submission to the Nevada Supreme Court, the Legislature and the Governor.

Section 11 of this bill requires the Executive Director to select two deputy directors. **Section 12** of this bill makes one deputy director responsible for overseeing the provision of indigent defense services in certain smaller counties. This includes having oversight of the State Public Defender, who is moved from the Department of Health and Human Services to the Department of Indigent Defense Services in **sections 17-19, 21 and 24-26** of this bill. In addition, **section 12** charges this deputy director with determining whether attorneys are eligible to provide indigent defense services in accordance with the requirements established by the Board. This deputy director will also develop and provide continuing legal education programs for attorneys who provide indigent defense services and identify and encourage best practices for delivering effective indigent defense services.

Section 13 of this bill makes the second deputy director responsible for reviewing the manner in which indigent defense services are provided throughout the State. This deputy director will collect information from attorneys about caseloads, salaries and other information and will conduct on-site visits to determine whether indigent defense services are being provided in the most efficient and constitutional manner. If the deputy director determines that a county is not providing such services in a manner which satisfies minimum standards that are established by the Board, **section 13** requires the deputy director to establish a corrective action plan with the board of county commissioners for the county.

Section 14 of this bill requires such a plan to be agreed to by the board of county commissioners and the deputy director and submitted to and approved by the Board. If the board of county commissioners will have to spend more money than was budgeted in the previous year plus inflation to comply with the plan, **section 14** requires the Executive Director to include the additional amount in the budget for



the Department to help support the county in providing indigent defense services. If additional money is needed before the next budget cycle, the Executive Director is required to submit a request to the Interim Finance Committee for money from the Contingency Account. If the budget is not approved with the additional amount for the county, a county that is not required to have an office of public defender, which currently means a county other than Clark and Washoe Counties, has the option to continue providing indigent defense services or transfer responsibility for providing such services to the State Public Defender. In addition, if the county fails to meet the minimum standards for the provision of indigent defense services within the time set in the corrective action plan, **section 14** requires the deputy director to inform the Executive Director, who may then recommend establishing another corrective action plan or recommend requiring the county to transfer responsibility for provision of indigent defense services to the State Public Defender. Any recommendation of the Executive Director is required to be submitted to and approved by the Board. Once approved, the county is required to comply with the decision of the Board. In addition, **section 8** requires the Board to establish a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services. This cap also applies when determining the county responsibility in **sections 14 and 23** of this bill.

Sections 20 and 28 of this bill remove obsolete language which requires the State Public Defender and the county public defender to provide indigent defense services within the limits of available money to conform with the provisions of this bill that require appropriate representation be provided to indigent defendants in every case. Existing law provides for a State Public Defender and requires certain large counties to establish an office of public defender. (NRS 180.010, 260.010) Smaller counties are authorized, but not required, to establish an office of public defender. (NRS 260.010) **Sections 22 and 27** of this bill revise these provisions to address their applicability when a county is required to transfer responsibility for the provision of indigent defense services to the State Public Defender. (NRS 180.090, 260.010) **Section 27** further requires each board of county commissioners to cooperate with the Board on Indigent Defense Services and the Department of Indigent Defense Services.

Existing law requires the public defender for a county to make an annual report to the board of county commissioners. (NRS 260.070) **Section 29** of this bill also requires the public defender to make an annual report to the Department of Indigent Defense Services and further requires the board of county commissioners of a county that has a public defender or which contracts for indigent defense services to provide an annual report to the Department with such information as requested by the Department.

Sections 17, 18 and 30 of this bill remove the State Public Defender and employees of the State Public Defender from the classified or unclassified service of the State. **Section 31** of this bill continues certain definitions applicable to the chapter governing the State Public Defender that were set to expire. **Section 31.3** of this bill staggers the terms of the members of the Board so that approximately 30 percent of the members will be appointed each year. **Section 31.5** of this bill makes an appropriation to allow the Department of Indigent Defense Services to award grants to counties that require assistance to comply with the plan established for the provision of indigent defense services.

WHEREAS, Section 1 of Article 1 of the Nevada Constitution recognizes the inalienable right of persons to defend life and liberty; and



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WHEREAS, The State is committed to protecting the individual liberties of persons in this State; and

WHEREAS, Section 2 of Article 1 of the Nevada Constitution acknowledges that the paramount allegiance of every citizen is due to the Federal Government in the exercise of all its constitutional powers as have been or may be defined by the Supreme Court of the United States; and

WHEREAS, Under the Sixth and Fourteenth Amendments to the Constitution of the United States, the obligation to provide effective representation to accused indigent persons at each critical stage of criminal and delinquency proceedings rests with the states; and

WHEREAS, Accordingly, it is the obligation of the Legislature to provide the general framework and resources necessary for the provision of indigent defense services in this State; and

WHEREAS, Although various counties in the State have accepted a large part of the responsibility for the provision of indigent defense, the State remains ultimately responsible for ensuring that such indigent defense services are properly funded and carried out; and

WHEREAS, The Legislature must ensure that adequate public funding is made available so that indigent defense services are provided by qualified and competent counsel in a manner that is fair and consistent throughout the State and at all critical stages of a criminal proceeding; and

WHEREAS, The Legislature must further ensure proper oversight of the provision of defense to indigent persons in this State and respond quickly, effectively and adequately to guarantee that the constitutional mandate of effective assistance of counsel is met; now, therefore

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. *The record in each such case must indicate that the defendant was provided an opportunity to make an oral statement and whether the defendant made such a statement or declined to request the appointment of an attorney. If the defendant declined to request the appointment of an attorney, the record must also indicate that the decision to decline was made knowingly and voluntarily and with an understanding of the consequences.*



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:

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

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

4. The county or State Public Defender must be reimbursed by the city for costs incurred in appearing in municipal court. The county shall reimburse the State Public Defender for costs incurred in appearing in Justice Court ~~H~~, *unless the county has transferred the responsibility to provide all indigent defense services for the county to the State Public Defender pursuant to section 14 of this act.* If a private attorney is appointed as provided in this section, the private attorney must be reimbursed by the county for appearance in Justice Court or the city for appearance in municipal court in an amount not to exceed \$75 per case.

Sec. 1.5. NRS 178.397 is hereby amended to read as follows:

178.397 Every defendant accused of a *misdemeanor for which jail time may be imposed, a* gross misdemeanor or *a* felony *and* who is financially unable to obtain counsel is entitled to have counsel assigned to represent the defendant at every stage of the proceedings from the defendant's initial appearance before a magistrate or the court through appeal, unless the defendant waives such appointment.

Sec. 2. Chapter 180 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 15, inclusive of this act.

Sec. 3. *"Board" means the Board on Indigent Defense Services created by section 6 of this act.*

Sec. 3.5. *"Department" means the Department of Indigent Defense Services created by section 9 of this act.*

Sec. 4. *"Executive Director" means the Executive Director of the Department.*



Sec. 5. (Deleted by amendment.)

Sec. 6. 1. *There is hereby created a Board on Indigent Defense Services within the Department of Indigent Defense Services, consisting of:*

(a) *Thirteen voting members appointed as follows:*

(1) *One member who is an attorney licensed in this State and a member in good standing of the State Bar of Nevada, appointed by the Majority Leader of the Senate.*

(2) *One member who has expertise in the finances of State Government, appointed by the Speaker of the Assembly.*

(3) *One member appointed by the Chief Justice of the Nevada Supreme Court who:*

(I) *Is a retired judge or justice who no longer serves as a judge or justice in any capacity; or*

(II) *Has expertise in juvenile justice and criminal law.*

(4) *One member who is an attorney licensed in this State and a member in good standing of the State Bar of Nevada appointed by the Governor.*

(5) *One member selected by the Board of Governors of the State Bar of Nevada, appointed by the Governor, who:*

(I) *Is an attorney licensed in this State and a member in good standing of the State Bar of Nevada; and*

(II) *Resides in a county whose population is less than 100,000.*

(6) *Four members selected by the Nevada Association of Counties who reside in a county whose population is less than 100,000, appointed by the Governor. One member must have expertise in the finances of local government.*

(7) *Two members selected by the Board of County Commissioners of Clark County, appointed by the Governor.*

(8) *One member selected by the Board of County Commissioners of Washoe County, appointed by the Governor.*

(9) *One member selected jointly by the associations of the State Bar of Nevada who represent members of racial or ethnic minorities, appointed by the Governor.*

(b) *The Chief Justice of the Nevada Supreme Court may designate one person to serve as a nonvoting member to represent the interests of the Court.*

2. *In addition to the members appointed pursuant to subsection 1, the Governor may appoint up to two additional nonvoting members, one of whom must be upon the recommendation of the Board of Governors of the State Bar of Nevada.*

3. *Each person appointed to the Board must have:*



(a) Significant experience providing legal representation to indigent persons who are charged with public offenses or to children who are alleged to be delinquent or in need of supervision;

(b) A demonstrated commitment to providing effective legal representation to such indigent persons; or

(c) Expertise or experience, as determined by the appointing authority, which qualifies the person to contribute to the purpose of the Board or to carrying out any of its functions.

4. A person must not be appointed to the Board if he or she is currently serving or employed as:

(a) A judge, justice or judicial officer;

(b) A Legislator or other state officer or employee;

(c) A prosecuting attorney or an employee thereof;

(d) A law enforcement officer or employee of a law enforcement agency; or

(e) An attorney who in his or her position may obtain any financial benefit from the policies adopted by the Board.

5. A person must not be appointed to the Board if he or she is currently employed:

(a) Within the Department of Indigent Defense Services;

(b) By a public defender; or

(c) By any other attorney who provides indigent defense services pursuant to a contract with a county.

6. Each member of the Board:

(a) Serves without compensation; and

(b) While engaged in the business of the Board, is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

7. Each member of the Board who is an officer or employee of a local government must be relieved from his or her duties without loss of his or her regular compensation so that the member may prepare for and attend meetings of the Board and perform any work necessary to carry out the duties of the Board in the most timely manner practicable. A local government shall not require an officer or employee who is a member of the Board to make up the time the member is absent from work to carry out his or her duties as a member, and shall not require the member to take annual vacation or compensatory time for the absence.

Sec. 7. 1. Except as otherwise provided in this subsection, the voting members of the Board on Indigent Defense Services are appointed for a term of 3 years and may be reappointed.

2. The Chair of the Board must be selected at the first meeting from among the voting members of the Board and serves until July 1 of the next year. The Chair for the following year



1 must be selected in the same manner before the expiration of the
2 current term of the sitting Chair. The Chair may be selected to
3 serve another term as Chair.

4 3. The Governor may remove a voting member of the Board
5 for incompetence, neglect of duty, committing any act that
6 constitutes moral turpitude, misfeasance, malfeasance or
7 nonfeasance in office or for any other good cause.

8 4. A vacancy on the Board must be filled in the same manner
9 as the original appointment by the appointing authority for the
10 remainder of the unexpired term.

11 5. The Board shall meet regularly upon a call of the Chair.
12 An affirmative vote of a majority of the members of the Board is
13 required to take any action.

14 **Sec. 8. 1. The Board on Indigent Defense Services shall**
15 **oversee the Executive Director and provide recommendations and**
16 **advice concerning the administration of the Department. The**
17 **Board shall:**

18 (a) Receive reports from the Executive Director and provide
19 direction to the Executive Director concerning measures to be
20 taken by the Department to ensure that indigent defense services
21 are provided in an effective manner throughout this State.

22 (b) Review information from the Department regarding
23 caseloads of attorneys who provide indigent defense services.

24 (c) Direct the Executive Director to conduct any additional
25 audit, investigation or review the Board deems necessary to
26 determine whether minimum standards in the provision of
27 indigent defense services are being followed and provided in
28 compliance with constitutional requirements.

29 (d) Work with the Executive Director to develop procedures for
30 the mandatory collection of data concerning the provision of
31 indigent defense services, including the manner in which such
32 services are provided.

33 (e) Provide direction to the Executive Director concerning
34 annual reports and review drafts of such reports.

35 (f) Review and approve the budget for the Department.

36 (g) Review any recommendations of the Executive Director
37 concerning improvements to the criminal justice system and
38 legislation to improve the provision of indigent defense services in
39 this State.

40 (h) Provide advice and recommendations to the Executive
41 Director on any other matter.

42 2. In addition to the duties set forth in subsection 1, the
43 Board shall:

44 (a) Establish minimum standards for the delivery of indigent
45 defense services to ensure that such services meet the



1 constitutional requirements and do not create any type of
2 economic disincentive or impair the ability of the defense attorney
3 to provide effective representation.

4 (b) Establish a procedure to receive complaints and
5 recommendations concerning the provision of indigent defense
6 services from any interested person including, without limitation,
7 judges, defendants, attorneys and members of the public.

8 (c) Work with the Department to develop resolutions to
9 complaints or to carry out recommendations.

10 (d) Adopt regulations establishing standards for the provision
11 of indigent defense services including, without limitation:

12 (1) Establishing requirements for specific continuing
13 education and experience for attorneys who provide indigent
14 defense services.

15 (2) Requiring attorneys who provide indigent defense
16 services to track their time and provide reports, and requiring the
17 State Public Defender and counties that employ attorneys or
18 otherwise contract for the provision of indigent defense services to
19 require or include a provision in the employment or other contract
20 requiring compliance with the regulations.

21 (3) Establishing standards to ensure that attorneys who
22 provide indigent defense services track and report information in a
23 uniform manner.

24 (4) Establishing guidelines to be used to determine the
25 maximum caseloads for attorneys who provide indigent defense
26 services.

27 (5) Requiring the Department of Indigent Defense Services
28 and each county that employs or contracts for the provision of
29 indigent defense services to ensure, to the greatest extent possible,
30 consistency in the representation of indigent defendants so that
31 the same attorney represents a defendant through every stage of
32 the case without delegating the representation to others, except
33 that administrative and other tasks which do not affect the rights
34 of the defendant may be delegated. A provision must be included
35 in each employment or other contract of an attorney providing
36 indigent defense services to require compliance with the
37 regulations.

38 (e) Establish recommendations for the manner in which an
39 attorney who is appointed to provide indigent defense services may
40 request and receive reimbursement for expenses related to trial,
41 including, without limitation, expenses for expert witnesses and
42 investigators.

43 (f) Work with the Executive Director and the Dean of the
44 William S. Boyd School of Law of the University of Nevada, Las
45 Vegas, or his or her designee, to determine incentives to



1 *recommend offering to law students and attorneys to encourage*
2 *them to provide indigent defense services, especially in rural areas*
3 *of the State.*

4 *(g) Review laws and recommend legislation to ensure indigent*
5 *criminal defendants are represented in the most effective and*
6 *constitutional manner.*

7 *3. The Board shall adopt regulations to establish a formula*
8 *for determining the maximum amount that a county may be*
9 *required to pay for the provision of indigent defense services.*

10 *4. The Board shall adopt any additional regulations it deems*
11 *necessary or convenient to carry out the duties of the Board and*
12 *the provisions of this chapter.*

13 *Sec. 9. 1. The Department of Indigent Defense Services is*
14 *hereby created.*

15 *2. The Executive Director of the Department must be*
16 *appointed by the Governor from a list of three persons*
17 *recommended by the Board.*

18 *3. The Executive Director:*

- 19 *(a) Is not in the classified or unclassified service of this State;*
20 *(b) Serves at the pleasure of the Board on Indigent Defense*
21 *Services, except that the Executive Director may only be removed*
22 *upon a finding of incompetence, neglect of duty, commission of an*
23 *act that constitutes moral turpitude, misfeasance, malfeasance or*
24 *nonfeasance in office or for any other good cause;*

25 *(c) Must be an attorney licensed to practice law in the State of*
26 *Nevada; and*

27 *(d) Must devote his or her entire time to his or her duties and*
28 *shall not engage in any other gainful employment or occupation.*

29 *Sec. 10. 1. The Executive Director shall:*

30 *(a) Oversee all of the functions of the Department of Indigent*
31 *Defense Services;*

32 *(b) Serve as the Secretary of the Board without additional*
33 *compensation;*

34 *(c) Report to the Board on Indigent Defense Services*
35 *regarding the work of the Department and provide such*
36 *information to the Board as directed by the Board;*

37 *(d) Assist the Board in determining necessary and appropriate*
38 *regulations to assist in carrying out the responsibilities of the*
39 *Department;*

40 *(e) Establish the proposed budget for the Department and*
41 *submit the proposed budget for approval of the Board;*

42 *(f) Prepare an annual report concerning indigent defense*
43 *services in this State which includes information collected by the*
44 *Department and such other information as requested by the*
45 *Board; and*



(g) Take any other actions necessary to ensure that adequate and appropriate indigent defense services are provided in this State.

2. The report prepared pursuant to paragraph (f) of subsection 1 must be submitted for approval of the Board. The final report must be submitted on or before July 1 of each year to the Nevada Supreme Court, the Legislature and the Office of the Governor. The report may include any recommendations for legislation to improve indigent defense services in this State.

Sec. 11. 1. In addition to the Executive Director, the Department must include not fewer than two deputy directors selected by the Executive Director who serve at the pleasure of the Executive Director.

2. The deputy directors:

(a) Must be attorneys licensed to practice law in the State of Nevada;

(b) Are not in the classified or unclassified service of this State; and

(c) Shall devote their entire time to their duties and shall not engage in any other gainful employment or occupation.

Sec. 12. One deputy director selected pursuant to section 11 of this act must be responsible for:

1. Overseeing the provision of indigent defense services in counties whose population is less than 100,000. Such oversight must include, without limitation:

(a) Oversight of the State Public Defender; and

(b) Determining whether attorneys meet the requirements established by the Board on Indigent Defense Services to be eligible to provide indigent defense services and maintaining a list of such attorneys.

2. Developing and providing continuing legal education programs for attorneys who provide indigent criminal defense services.

3. Identifying and encouraging best practices for delivering the most effective indigent defense services.

4. Providing assistance to counties that must revise the manner in which indigent defense services are provided as a result of the regulations adopted by the Board pursuant to section 8 of this act. Such assistance may include, without limitation, assistance developing a plan and estimating the cost to carry out the plan.

Sec. 13. One deputy director selected pursuant to section 11 of this act must be responsible for reviewing the manner in which indigent defense services are provided throughout the State. To carry out this responsibility, the deputy director shall:



1 1. Obtain information from attorneys relating to caseloads,
2 salaries paid to criminal defense attorneys and the manner in
3 which indigent defense services are provided.

4 2. Conduct on-site visits of court proceedings throughout the
5 State to determine the manner in which indigent defense services
6 are provided, including, without limitation, whether:

7 (a) Minimum standards for the provision of indigent defense
8 services established by the Board on Indigent Defense Services are
9 being followed;

10 (b) Court rules regarding the provision of indigent defense
11 services are being followed;

12 (c) Indigent defendants are being asked to provide
13 reimbursement for their representation or to take any other
14 actions that violate the constitution, any law, a court rule or a
15 regulation of the Board; and

16 (d) Representation of indigent criminal defendants is being
17 provided in an effective manner.

18 3. Report to the other deputy director upon a determination
19 that any person is providing indigent defense services in an
20 ineffective or otherwise inappropriate manner.

21 4. Recommend entering into a corrective action plan with any
22 board of county commissioners of a county which is not meeting
23 the minimum standards for the provision of indigent defense
24 services or is in any other manner deficient in the provision of
25 such services.

26 **Sec. 14. 1.** If a corrective action plan is recommended
27 pursuant to section 13 of this act, the deputy director and the
28 board of county commissioners must agree on the manner in
29 which the county will meet the minimum standards for the
30 provision of indigent defense services and the time by which the
31 county must meet those minimum standards. Any disagreement
32 must be resolved by the Board. Each corrective action plan must
33 be submitted to and approved by the Board.

34 2. If the plan established pursuant to subsection 1 will cause
35 the county to expend more money than budgeted by the county in
36 the previous budget year plus inflation for the provision of
37 indigent defense services, the Executive Director shall include the
38 additional amount needed by the county in the next budget for
39 the Department of Indigent Defense Services to help support the
40 indigent defense services provided by the county. If additional
41 money is needed to carry out the plan before the next budget cycle,
42 the Executive Director shall submit a request to the Interim
43 Finance Committee for an allocation from the Contingency
44 Account pursuant to NRS 353.266 to cover the additional costs.



3. For any county that is not required to have an office of public defender pursuant to NRS 260.010, if the additional amount included in the budget of the Department pursuant to subsection 2 is not approved, the board of county commissioners for the county to which the amount applies may determine whether to continue providing indigent defense services for the county or enter into an agreement with the Executive Director to transfer responsibility for the provision of such services to the State Public Defender.

4. If a county does not meet the minimum standards for the provision of indigent defense services within the period established in the corrective action plan for the county, the deputy director shall inform the Executive Director.

5. Upon being informed by the deputy director pursuant to subsection 4 that a county has not complied with a corrective action plan, the Executive Director must review information regarding the provision of indigent defense services in the county and determine whether to recommend establishing another corrective action plan with the board of county commissioners of the county or to require the board of county commissioners to transfer responsibility for the provision of all indigent defense services for the county to the State Public Defender. The recommendation of the Executive Director must be submitted to and approved by the Board. Once approved, the board of county commissioners shall comply with the decision of the Board.

6. If a county is required to transfer or voluntarily transfers responsibility for the provision of all indigent defense services for the county to the State Public Defender:

(a) The board of county commissioners for the county shall notify the State Public Defender in writing on or before March 1 of the next odd-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the same year in which the notice was given, as determined by the Executive Director.

(b) The board of county commissioners for the county shall pay the State Public Defender in the same manner and in an amount determined in the same manner as other counties for which the State Public Defender has responsibility for the provision of indigent defense services. The amount that a county may be required to pay must not exceed the maximum amount determined using the formula established by the Board pursuant to section 8 of this act.

Sec. 15. 1. A county that transfers responsibility for the provision of indigent defense services to the State Public Defender pursuant to section 14 of this act may seek to have the



responsibility transferred back to the county by submitting a request to the Executive Director in writing on or before December 31 of an even-numbered year.

2. Upon finding that the county is able to meet minimum standards for the provision of indigent defense services, the Executive Director shall approve transferring the responsibility for the provision of indigent defense services to the county.

3. If the Executive Director denies a request to transfer responsibility for the provision of indigent defense services to a county, the Executive Director must inform the board of county commissioners for the county of the reasons for the denial and the issues that must be resolved before the responsibility for the provision of indigent defense services will be transferred to the county.

4. If the Executive Director approves a request to transfer responsibility for the provision of indigent defense services to the county, the board of county commissioners for the county shall notify the State Public Defender in writing on or before March 1 of the next odd-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the same year in which the notice was given, as determined by the Executive Director.

Sec. 16. NRS 180.002 is hereby amended to read as follows:

180.002 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 180.003 and 180.004 and sections 3, 3.5 and 4 of this act have the meanings ascribed to them in those sections.

Sec. 17. NRS 180.010 is hereby amended to read as follows:

180.010 1. ~~{The Office of State Public Defender is hereby created within the Department of Health and Human Services.~~

~~—2. The} There shall be a State Public Defender within the Department of Indigent Defense Services who must be appointed by the Governor {shall appoint the State Public Defender}~~ for a term of 4 years, and until a successor is appointed and qualified.

~~{3.} The State Public Defender is responsible to the Executive Director.~~ The State Public Defender:

(a) Must be an attorney licensed to practice law in the State of Nevada.

(b) Is *not* in the *classified or* unclassified service of the State ~~{}~~ and serves at the pleasure of the Executive Director.

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

~~{4.} 2. No officer or agency of the State, other than the {Governor and the Director of the Department of Health and Human Services,} Executive Director and the deputy director selected by~~



1 *the Executive Director pursuant to section 11 of this act who is*
2 *responsible for carrying out the duties provided in section 12 of*
3 *this act* may supervise the State Public Defender. No officer or
4 agency of the State, other than the ~~{Governor,}~~ *Executive Director*
5 *or deputy director selected by the Executive Director pursuant to*
6 *section 11 of this act who is responsible for carrying out the duties*
7 *provided in section 12 of this act* may assign the State Public
8 Defender duties in addition to those prescribed by this chapter.

9 **Sec. 18.** NRS 180.030 is hereby amended to read as follows:

10 180.030 1. The State Public Defender may employ:

11 (a) Deputy state public defenders *who are not* in the *classified*
12 *or* unclassified service of the State.

13 (b) Clerical, investigative and other necessary staff *who are not*
14 in the *classified or unclassified* service of the State.

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

19 **Sec. 19.** NRS 180.040 is hereby amended to read as follows:

20 180.040 1. The ~~{Office of the}~~ State Public Defender shall be
21 *located* in Carson City, Nevada, and the Buildings and Grounds
22 Section of the State Public Works Division of the Department of
23 Administration shall provide necessary office space.

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

28 **Sec. 20.** NRS 180.060 is hereby amended to read as follows:

29 180.060 1. The State Public Defender may, before being
30 designated as counsel for that person pursuant to NRS 171.188,
31 interview an indigent person when the indigent person has been
32 arrested and confined for a public offense or for questioning on
33 suspicion of having committed a public offense.

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

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

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

42 (b) Prosecute any appeals or other remedies before or after
43 conviction that the State Public Defender considers to be in the
44 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.

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. 21. NRS 180.080 is hereby amended to read as follows:

180.080 1. The State Public Defender shall submit:

(a) A report on or before December 1 of each year to the ~~{Governor}~~ *Executive Director* 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 on work for each participating county; ~~{and}~~

(5) The amount and categories of the expenditures made by the State Public Defender's office ~~{ }~~; *and*

(6) Such other information as requested by the Executive Director of the Department of Indigent Defense Services or the Board on Indigent Defense Services.

(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.}~~ *State Public Defender acts as the public defender for the county.*



Sec. 22. NRS 180.090 is hereby amended to read as follows:

180.090 Except as provided in subsections 4 and 5 of NRS 180.060, the provisions of ~~this chapter~~ *NRS 180.010 to 180.100, inclusive*, 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. 23. NRS 180.110 is hereby amended to read as follows:

180.110 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 the State Public Defender's services during that year. *The amount that a county may be required to pay must not exceed the maximum amount determined using the formula established by the Board pursuant to section 8 of this act.*

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.

Sec. 24. NRS 7.155 is hereby amended to read as follows:

7.155 The compensation and expenses of an attorney appointed to represent a defendant must be paid from the county treasury unless the proceedings are based upon a postconviction petition for habeas corpus, in which case the compensation and 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 compensation and expenses.

Sec. 25. NRS 7.165 is hereby amended to read as follows:

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

1. Terminate the appointment of such attorney or attorneys; or



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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 deposit in the county treasury, if all of the compensation and expenses in connection with the representation of such defendant were paid from the county treasury, and remittance to the ~~Office of~~ State Public Defender, if such compensation and expenses were paid partly from moneys appropriated to the ~~Office of~~ State Public Defender and the money received exceeds the amount of compensation and expenses paid from the county treasury.

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

232.320 1. The Director:

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

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

(2) The Administrator of the Division of Welfare and Supportive Services;

(3) The Administrator of the Division of Child and Family Services;

(4) The Administrator of the Division of Health Care Financing and Policy; and

(5) The Administrator of the Division of Public and Behavioral Health.

(b) Shall administer, through the divisions of the Department, the provisions of chapters 63, 424, 425, 427A, 432A to 442, inclusive, 446 to 450, inclusive, 458A and 656A of NRS, NRS 127.220 to 127.310, inclusive, 422.001 to 422.410, inclusive, 422.580, 432.010 to 432.133, inclusive, 432B.621 to 432B.626, inclusive, 444.002 to 444.430, inclusive, and 445A.010 to 445A.055, inclusive, and all other provisions of law relating to the functions of the divisions of the Department, but is not responsible for the clinical activities of the Division of Public and Behavioral Health or the professional line activities of the other divisions.

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

(d) Shall, after considering advice from agencies of local governments and nonprofit organizations which provide social



services, adopt a master plan for the provision of human services in this State. The Director shall revise the plan biennially and deliver a copy of the plan to the Governor and the Legislature at the beginning of each regular session. The plan must:

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

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

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

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

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

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

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

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

2. Notwithstanding any other provision of law, the Director, or the Director's designee, is responsible for appointing and removing subordinate officers and employees of the Department . ~~[-, other than the State Public Defender of the Office of State Public Defender who is appointed pursuant to NRS 180.010.]~~

Sec. 27. 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]~~ **provide** by ordinance **for** the office of public defender.

2. Except as otherwise provided by subsection 4 ~~[-]~~ **and except if the county voluntarily transfers or has been required to transfer responsibility for the provision of indigent defense services to the State Public Defender pursuant to section 14 of this act**, in counties whose population is less than 100,000, boards of county commissioners may in their respective counties ~~[-create]~~ **provide** by ordinance, at the beginning of a fiscal year, **for** the office of public defender.



3. Except as otherwise provided in subsection 4, if a board of county commissioners intends to ~~create~~ *provide by ordinance for* the office of county public defender, the board shall 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 board of county commissioners may ~~create~~ *provide for* the office of county public defender on July 1 of the next even-numbered year if 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. The office of public defender when created must be filled by appointment by the board of county commissioners.

6. The public defender serves at the pleasure of the board of county commissioners.

7. Each board of county commissioners shall cooperate with the Board on Indigent Defense Services created by section 6 of this act and the Department of Indigent Defense Services created by section 9 of this act. The board of county commissioners shall:

(a) Ensure that data and information requested by the Board or Department is collected and maintained; and

(b) Provide such information and reports concerning the provision of indigent defense services as requested by the Board or the Department.

8. As used in this section, "indigent defense services" has the meaning ascribed to it in NRS 180.004.

Sec. 28. 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, any appeals or other remedies before or after conviction that he or she considers to be in the interests of justice.



Sec. 29. NRS 260.070 is hereby amended to read as follows:

260.070 **1.** The public defender shall make an annual report to ~~the~~:

(a) The board of county commissioners covering all cases handled by his or her office during the preceding year.

(b) *The Department of Indigent Defense Services created by section 9 of this act which includes any information required by the Department.*

2. *The board of county commissioners of each county with a public defender or which contracts for indigent defense services shall provide an annual report to the Department on or before May 1 of each year. The report must include any information requested by the Department concerning the provision of indigent defense services in the county and must include, without limitation, the plan for the provision of indigent defense services for the county for the next fiscal year.*

3. *As used in this section, "indigent defense services" has the meaning ascribed to it in NRS 180.004.*

Sec. 30. NRS 284.140 is hereby amended to read as follows:

284.140 The unclassified service of the State consists of the following state officers or employees in the Executive Department of the State Government who receive annual salaries for their services:

1. Members of boards and commissions, and heads of departments, agencies and institutions required by law to be appointed.

2. Except as otherwise provided in NRS 223.085, 223.600 and 232.461 *and section 9 of this act*, all persons required by law to be appointed by the Governor or heads of departments or agencies appointed by the Governor or by boards.

3. All employees other than clerical in the Office of the Attorney General ~~[and the State Public Defender]~~ required by law to be appointed by the Attorney General . ~~[for the State Public Defender.]~~

4. Except as otherwise provided by the Board of Regents of the University of Nevada pursuant to NRS 396.251, officers and members of the teaching staff and the staffs of the Agricultural Extension Department and Experiment Station of the Nevada System of Higher Education, or any other state institution of learning, and student employees of these institutions. Custodial, clerical or maintenance employees of these institutions are in the classified service. The Board of Regents of the University of Nevada shall assist the Administrator in carrying out the provisions of this chapter applicable to the Nevada System of Higher Education.



5. All other officers and employees authorized by law to be employed in the unclassified service.

Sec. 31. Section 35 of chapter 460, Statutes of Nevada 2017, at page 2943, is hereby amended to read as follows:

Sec. 35. ~~1.~~ This act becomes effective on July 1, 2017 ~~. [- and expires]~~

2. Sections 1, 3, 5, 6 and 8 to 34 inclusive, of this act expire by limitation on June 30, 2019.

Sec. 31.3. The members of the Board on Indigent Defense Services created by section 6 of this act shall serve initial terms ending on:

1. June 30, 2022, for the members appointed by the Chief Justice of the Nevada Supreme Court, the Majority Leader of the Senate, the Speaker of the Assembly and the Governor pursuant to subparagraphs (1) to (5), inclusive, of paragraph (a) of subsection 1 of section 6 of this act.

2. June 30, 2021, for two of the members selected by the Nevada Association of Counties pursuant to subparagraph (6) of paragraph (a) of subsection 1 of section 6 of this act, as determined by the Nevada Association of Counties.

3. June 30, 2021, for the member selected by the Board of County Commissioners of Washoe County pursuant to subparagraph (8) of paragraph (a) of subsection 1 of section 6 of this act and one of the members selected by the Board of County Commissioners of Clark County pursuant to subparagraph (7) of paragraph (a) of subsection 1 of section 6 of this act, as determined by the respective Boards.

4. June 30, 2020, for all of the remaining members.

Sec. 31.5. 1. There is hereby appropriated from the State General Fund to the Department of Indigent Defense Services created by section 9 of this act the sum of \$15,000,000 to be used to award grants to counties which are required to pay more than budgeted in the previous year plus inflation to provide indigent defense services in a manner that meets the standards for the provision of indigent defense services established by regulation by the Board on Indigent Defense Services pursuant to section 8 of this act.

2. Grants must be awarded on a first-come, first-served basis and in accordance with the greatest need, as determined by the Executive Director of the Department. A county seeking a grant must identify the amount of money needed and provide adequate information demonstrating the need for the additional money.

3. Upon the request of the Legislative Commission, any county which receives a grant pursuant to this section may be requested to demonstrate the manner in which the money is used and shall make



1 available to the Legislative Auditor any of the books, accounts,
2 claims, reports or other records of information, confidential or
3 otherwise, regardless of their form or location, which the Legislative
4 Auditor deems necessary to conduct an audit of the use of the
5 money provided through a grant pursuant to this section.

6 4. Any remaining balance of the appropriation made by
7 subsection 1 must not be committed for expenditure after June 30,
8 2023, by the entity to which the appropriation is made or any entity
9 to which money from the appropriation is granted or otherwise
10 transferred in any manner, and any portion of the appropriated
11 money remaining must not be spent for any purpose after
12 September 15, 2023, by either the entity to which the money was
13 appropriated or the entity to which the money was subsequently
14 granted or transferred, and must be reverted to the State General
15 Fund on or before September 15, 2023.

16 **Sec. 32.** The provisions of subsection 1 of NRS 218D.380 do
17 not apply to any provision of this act which adds or revises a
18 requirement to submit a report to the Legislature.

19 **Sec. 33.** This act becomes effective:

20 1. Upon passage and approval for the purpose of establishing
21 the Department of Indigent Defense Services created by section 9 of
22 this act, including appointing the Executive Director of the
23 Department, and performing any other preliminary administrative
24 tasks that are necessary to carry out the provisions of this act.

25 2. Upon passage and approval for the purpose of appointing
26 members to the Board on Indigent Defense Services created by
27 section 6 of this act. Members must be appointed by the Governor,
28 the Majority Leader of the Senate, the Speaker of the Assembly and
29 the Chief Justice of the Supreme Court, as applicable, as soon as
30 practicable and assume their positions on July 1, 2019.

31 3. On October 1, 2019, for all other purposes.

