

Amendment No. 902

Assembly Amendment to Assembly Bill No. 81 Second Reprint
(BDR 14-436)

Proposed by: Assembly Committee on Ways and Means

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE all appropriations from A.B. 81 R2.

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

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

KRO/EGO



Date: 5/23/2019

A.B. No. 81—Makes various changes relating to the oversight and provision of legal representation of indigent defendants in criminal cases. (BDR 14-436)



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:

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

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 ~~(§)~~, *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.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 **(a) A judge, justice or judicial officer;**

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

50 **(c) A prosecuting attorney or an employee thereof;**

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

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

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

- 3 (a) Within the Department of Indigent Defense Services;
4 (b) By a public defender; or
5 (c) By any other attorney who provides indigent defense services pursuant to
6 a contract with a county.

7 6. Each member of the Board:

- 8 (a) Serves without compensation; and
9 (b) While engaged in the business of the Board, is entitled to receive the per
10 diem allowance and travel expenses provided for state officers and employees
11 generally.

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

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

24 2. The Chair of the Board must be selected at the first meeting from among
25 the voting members of the Board and serves until July 1 of the next year. The
26 Chair for the following year must be selected in the same manner before the
27 expiration of the current term of the sitting Chair. The Chair may be selected to
28 serve another term as Chair.

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

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

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

38 Sec. 8. 1. The Board on Indigent Defense Services shall oversee the
39 Executive Director and provide recommendations and advice concerning the
40 administration of the Department. The Board shall:

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

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

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

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

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

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

4 (g) Review any recommendations of the Executive Director concerning
5 improvements to the criminal justice system and legislation to improve the
6 provision of indigent defense services in this State.

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

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

10 (a) Establish minimum standards for the delivery of indigent defense services
11 to ensure that such services meet the constitutional requirements and do not
12 create any type of economic disincentive or impair the ability of the defense
13 attorney to provide effective representation.

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

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

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

22 (1) Establishing requirements for specific continuing education and
23 experience for attorneys who provide indigent defense services.

24 (2) Requiring attorneys who provide indigent defense services to track
25 their time and provide reports, and requiring the State Public Defender and
26 counties that employ attorneys or otherwise contract for the provision of indigent
27 defense services to require or include a provision in the employment or other
28 contract requiring compliance with the regulations.

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

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

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

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

46 (f) Work with the Executive Director and the Dean of the William S. Boyd
47 School of Law of the University of Nevada, Las Vegas, or his or her designee, to
48 determine incentives to recommend offering to law students and attorneys to
49 encourage them to provide indigent defense services, especially in rural areas of
50 the State.

51 (g) Review laws and recommend legislation to ensure indigent defendants
52 are represented in the most effective and constitutional manner.

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

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

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

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

3. The Executive Director:

(a) Is ~~(not)~~ in the ~~(classified or)~~ unclassified service of this State;

(b) Serves at the pleasure of the Board on Indigent Defense Services, except that the Executive Director may only be removed upon a finding of incompetence, neglect of duty, commission of an act that constitutes moral turpitude, misfeasance, malfeasance or nonfeasance in office or for any other good cause;

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

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

4. The Executive Director may, within the limits of money available for this purpose, employ or enter into a contract for the services of such employees or consultants as is necessary to carry out the provisions of this chapter.

Sec. 10. 1. The Executive Director shall:

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

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

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

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

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

(f) Prepare an annual report concerning indigent defense services in this State which includes information collected by the Department and such other information as requested by the 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 1. Overseeing the provision of indigent defense services in counties whose
2 population is less than 100,000. Such oversight must include, without limitation:

3 (a) Oversight of the State Public Defender; and

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

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

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

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

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

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

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

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

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

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

33 (d) Representation of indigent defendants is being provided in an effective
34 manner.

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

38 4. Recommend entering into a corrective action plan with any board of
39 county commissioners of a county which is not meeting the minimum standards
40 for the provision of indigent defense services or is in any other manner deficient
41 in the provision of such services.

42 **Sec. 14.** 1. If a corrective action plan is recommended pursuant to section
43 13 of this act, the deputy director and the board of county commissioners must
44 agree on the manner in which the county will meet the minimum standards for
45 the provision of indigent defense services and the time by which the county must
46 meet those minimum standards. Any disagreement must be resolved by the Board.
47 Each corrective action plan must be submitted to and approved by the Board.

48 2. If the plan established pursuant to subsection 1 will cause the county to
49 expend more money than budgeted by the county in the previous budget year plus
50 inflation for the provision of indigent defense services, the Executive Director
51 shall include the additional amount needed by the county in the next budget for
52 the Department of Indigent Defense Services to help support the indigent defense
53 services provided by the county. If additional money is needed to carry out the

1 *plan before the next budget cycle, the Executive Director shall submit a request to*
 2 *the Interim Finance Committee for an allocation from the Contingency Account*
 3 *pursuant to NRS 353.266 to cover the additional costs.*

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

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

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

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

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

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

38 **Sec. 15.** *1. A county that transfers responsibility for the provision of*
 39 *indigent defense services to the State Public Defender pursuant to section 14 of*
 40 *this act may seek to have the responsibility transferred back to the county by*
 41 *submitting a request to the Executive Director in writing on or before December*
 42 *31 of an even-numbered year.*

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

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

52 *4. If the Executive Director approves a request to transfer responsibility for*
 53 *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] Indigent Defense 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.*

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

Sec. 18. ~~[NRS 180.030 is hereby amended to read as follows:~~

~~180.030 1. The State Public Defender may employ:~~

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

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

~~2. Each deputy state public defender must be an attorney licensed to practice law in the State of Nevada, and shall not engage in the practice of law, except in performing the duties of office and as otherwise provided in NRS 7.065.] (Deleted by amendment.)~~

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

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

~~2. The State Public Defender may establish branch offices necessary to perform the State Public Defender's duties. The State Public Defender shall designate a deputy state public defender to supervise each such office.] (Deleted by amendment.)~~

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

180.060 1. The State Public Defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person

when the indigent person has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.

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

3. When representing an indigent person, the State Public 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 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.~~
(Deleted by amendment.)

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~~

~~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.~~
(Deleted by amendment.)

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 222.085, 222.600 and 222.461 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 [or 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.] (Deleted by amendment.)~~

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.~~

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

~~4. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2023, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 15, 2023, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 15, 2023.] (Deleted by amendment.)~~

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

Sec. 33. This act becomes effective:

1. Upon passage and approval for the purpose of ~~[establishing]~~ **recruiting and selecting the Executive Director and employees of** the Department of Indigent Defense Services created by section 9 of this act, ~~[including appointing the Executive Director of the Department,]~~ and performing any other preliminary administrative tasks that are necessary to carry out the provisions of this act.

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

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