

ASSEMBLY BILL NO. 417—ASSEMBLYMAN O’NEILL

MARCH 27, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to indigent defense services. (BDR 14-916)

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 indigent defense; revising provisions concerning regulations adopted by the Board on Indigent Defense Services; providing that certain provisions relating to corrective action plans do not apply in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Board on Indigent Defense Services (hereinafter “Board”) to adopt: (1) regulations establishing standards for the provision of indigent defense services; (2) regulations establishing a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services; and (3) any additional regulations it deems necessary or convenient to carry out its duties and the provisions of law governing indigent defense services. (NRS 180.320) **Section 1** of this bill requires the Board, before adopting regulations, to: (1) solicit comments from the board of county commissioners of each county and from each court within each county; and (2) consult with each county and each court within each county to determine how to enable counties and courts to provide quality indigent defense services. **Section 1** also requires the Board, when adopting regulations, to address the needs and indigent defense processes of each county by considering certain specific information.

Existing law requires the Executive Director of the Department of Indigent Defense Services to select at least two deputy directors, one of whom is responsible for reviewing the manner in which indigent defense services are provided throughout the State. If a county is not meeting the minimum standards for the provision of indigent defense services or is deficient in the provision of those services, such a deputy director is required to recommend entering into a corrective action plan with the board of county commissioners of that county. (NRS 180.420, 180.440) Existing law sets forth the procedure following the establishment of a corrective action plan, including, in certain circumstances, requiring a county to



transfer responsibility for the provision of all indigent defense services to the State Public Defender if the county does not comply with the corrective action plan. (NRS 180.450) **Section 2** of this bill provides that the provisions of existing law concerning a county that has not complied with a corrective action plan do not apply if: (1) a corrective action plan requires a county to spend more than the maximum amount the county may be required to pay for the provision of indigent defense services; and (2) the State refuses to reimburse the county for the amount that exceeds the maximum amount the county may be required to pay.

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

Section 1. NRS 180.320 is hereby amended to read as follows:
180.320 1. The Board on Indigent Defense Services shall:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



(g) Review laws and recommend legislation to ensure indigent defendants 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.

5. Before adopting regulations pursuant to this section, the Board shall:

(a) Solicit comments from the board of county commissioners of each county and from each court within each county; and

(b) Consult with each county and each court within each county to determine how to enable counties and courts to provide quality indigent defense services.

6. In addition to the requirements set forth in subsection 5, when adopting regulations pursuant to this section, the Board shall address the needs and indigent defense processes of each county by considering, without limitation:

(a) The method by which a county provides indigent defense services, including, without limitation, whether a county:

(1) Provides indigent defense services through a county public defender's office or the Office of State Public Defender; or

(2) Enters into contracts with private attorneys to provide indigent defense services;

(b) Whether a court of competent jurisdiction has found that a county has provided deficient indigent defense services and, if so, the reasons therefor and any remedial action ordered by the court;

(c) Whether the State has reimbursed or refused to reimburse a county for costs for the provision of indigent defense services or increased levels of indigent defense services that exceed the maximum amount that a county may be required to pay for the provision of indigent defense services, as determined using the formula established by the Board pursuant to subsection 3; and

(d) Whether indigent defendants within the county are receiving prompt legal representation.

Sec. 2. NRS 180.450 is hereby amended to read as follows:

180.450 1. If a corrective action plan is recommended pursuant to NRS 180.440, the deputy director and the board of county commissioners must collaborate on the manner in which the county will meet the minimum standards for the provision of indigent defense services and the time by which the county must meet those minimum standards. Any disagreement must be resolved



1 by the Board. Each corrective action plan must be submitted to and
2 approved by the Board.

3 2. If the plan established pursuant to subsection 1 will cause
4 the county to expend more money than budgeted by the county in
5 the previous budget year plus inflation for the provision of indigent
6 defense services, the Executive Director shall include the additional
7 amount needed by the county in the next budget for the Department
8 of Indigent Defense Services to help support the indigent defense
9 services provided by the county. If additional money is needed to
10 carry out the plan before the next budget cycle, the Executive
11 Director shall submit a request to the Interim Finance Committee for
12 an allocation from the Contingency Account pursuant to NRS
13 353.266 to cover the additional costs.

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

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

26 5. Upon being informed by the deputy director pursuant to
27 subsection 4 that a county has not complied with a corrective action
28 plan, the Executive Director must review information regarding the
29 provision of indigent defense services in the county and determine
30 whether to recommend establishing another corrective action plan
31 with the board of county commissioners of the county. For a county
32 that is not required to have an office of public defender pursuant to
33 NRS 260.010, the Executive Director may instead recommend
34 requiring the board of county commissioners to transfer
35 responsibility for the provision of all indigent defense services for
36 the county to the State Public Defender. The recommendation of the
37 Executive Director must be submitted to and approved by the Board.
38 Once approved, the board of county commissioners shall comply
39 with the decision of the Board.

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

43 (a) The board of county commissioners for the county shall
44 notify the State Public Defender in writing on or before November 1
45 of the next even-numbered year and the responsibilities must



1 transfer at a specified time on or after July 1 of the odd-numbered
2 year following the year in which the notice was given, as
3 determined by the Executive Director.

4 (b) The board of county commissioners for the county shall pay
5 the State Public Defender in the same manner and in an amount
6 determined in the same manner as other counties for which the State
7 Public Defender has responsibility for the provision of indigent
8 defense services. The amount that a county may be required to pay
9 must not exceed the maximum amount determined using the
10 formula established by the Board pursuant to NRS 180.320.

11 *7. The provisions of this section concerning a county that has*
12 *not complied with a corrective action plan do not apply if:*

13 *(a) A corrective action plan requires that a county spend more*
14 *than the maximum amount that a county may be required to pay*
15 *for the provision of indigent defense services, as determined by the*
16 *formula established by the Board pursuant to NRS 180.320; and*

17 *(b) The State refuses to reimburse the county for any portion*
18 *of the amount that exceeds the maximum amount that a county*
19 *may be required to pay for the provision of indigent defense*
20 *services, as determined using the formula established by the Board*
21 *pursuant to NRS 180.320.*

22 **Sec. 3.** This act becomes effective on July 1, 2023.

