

ASSEMBLY BILL NO. 454—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE OFFICE OF FINANCE
IN THE OFFICE OF THE GOVERNOR)

MARCH 27, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to legal services for indigent defendants. (BDR 14-1067)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; revising provisions relating to the payment of compensation and expenses for certain attorneys who provide certain legal services to indigent defendants under certain circumstances; requiring the Board on Indigent Defense Services to adopt certain regulations relating to rates of compensation for certain attorneys who provide certain legal services to indigent defendants under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a magistrate, master or district court from appointing an attorney other than a public defender to represent a person charged with any offense or delinquent act unless the magistrate, master or district court finds that the public defender is disqualified from providing representation and explains the reasons for the disqualification. Under existing law, if the public defender is disqualified, the magistrate, master or district court is required to refer the selection of the attorney: (1) in a county whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties), to the Department of Indigent Defense Services or its designee in compliance with the plan of the county for the provision of indigent defense services; or (2) in a county whose population is 100,000 or more (currently Clark and Washoe Counties), in compliance with the plan of the county for the provision of indigent defense services. (NRS 7.115) Existing law provides that an attorney, other than a public defender, who is so selected to represent or defend a defendant is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made of \$125 per hour in cases in which the death penalty is sought and \$100 per hour in all other cases.



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(NRS 7.125) Finally, existing law provides that: (1) 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; and (2) if the appropriation for such expenses is exhausted, money must be allocated to the Office from the Reserve for Statutory Contingency Account within the State General Fund. (NRS 7.155, 353.264) **Section 2** of this bill requires the Board on Indigent Defense Services to adopt regulations establishing rates of hourly compensation for: (1) in counties whose population is less than 100,000, an attorney, other than a public defender, who is selected to provide indigent defense services; and (2) in all counties, an attorney who is appointed to represent a petitioner who files a postconviction petition for habeas corpus. **Section 3** of this bill makes a conforming change to reflect the change in **section 2**.

Section 1 of this bill provides that: (1) the compensation and expenses of an attorney appointed to represent a defendant are an obligation of the county unless the county has transferred its responsibility for the provision of indigent defense services or met the maximum amount to be paid for indigent defense services by the county, as determined using the formula established by the Board; and (2) amounts that are not an obligation of the county must be paid from money appropriated to the Department and, after the appropriation for such compensation and expenses is exhausted, money must be allocated from the Reserve for Statutory Contingency Account for the payment of such compensation and expenses. **Sections 4 and 5** of this bill make conforming changes to reflect the changes in **section 1**.

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

Section 1. Chapter 180 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in paragraph (b) of subsection 6 of NRS 180.450 and subsection 1 of NRS 212.070, the compensation and expenses of an attorney appointed to represent a defendant are an obligation of the county unless that county has:

(a) Transferred its responsibility for the provision of indigent defense services pursuant to NRS 180.450; or

(b) Met the maximum amount determined using the formula established by the Board pursuant to subsection 3 of NRS 180.320.

2. Amounts that are not an obligation of the county pursuant to subsection 1 must be paid from money appropriated to the Department. After the appropriation for such compensation and expenses is exhausted, money must be allocated from the Reserve for Statutory Contingency Account for the payment of such compensation and expenses.

Sec. 2. 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



1 otherwise contract for the provision of indigent defense services to
2 require or include a provision in the employment or other contract
3 requiring compliance with the regulations.

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

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

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

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

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

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

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

36 4. *The Board shall adopt regulations to establish hourly rates
37 of compensation for court appearances and other time reasonably
38 spent on indigent defense services or representation for:*

39 *(a) In counties whose population is less than 100,000, an
40 attorney, other than a public defender, who is selected pursuant to
41 NRS 7.115 to provide indigent defense services; or*

42 *(b) In all counties, an attorney who is appointed pursuant to
43 NRS 34.750 to represent a petitioner who files a postconviction
44 petition for habeas corpus,*



↪ *except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, the establishment by regulation of rates of compensation pursuant to this subsection does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.*

5. 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. 3. NRS 7.125 is hereby amended to read as follows:

7.125 1. An attorney, other than a public defender, who is selected pursuant to NRS 7.115 to represent or defend a defendant at any stage of the criminal proceedings from the defendant's initial appearance before the magistrate or the district court through the appeal, if any, is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made of :

(a) If the compensation of the attorney is subject to the provisions of subsection 4 of NRS 180.320, the amount set forth in the regulations adopted by the Board on Indigent Defense Services within the Department of Indigent Defense Services pursuant to subsection 4 of NRS 180.320; or

(b) If the compensation of the attorney is not subject to the provisions of subsection 4 of NRS 180.320, \$125 per hour in cases in which the death penalty is sought and \$100 per hour in all other cases.

2. Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, this section does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.

Sec. 4. NRS 7.155 is hereby amended to read as follows:

7.155 ~~[The]~~ *Except as otherwise provided in section 1 of this act, 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. 5. NRS 353.264 is hereby amended to read as follows:

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



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

(a) The payment of claims which are obligations of the State pursuant to NRS 41.03435, 41.0347, 621.025, 176.485, 179.310, 212.040, 212.050, 212.070, 281.174, 282.290, 282.315, 293.253, 293.405, 298.710, 304.230, 353.120, 353.262, 412.154 and 475.235;

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

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

(2) NRS 7.155, 34.750, 176A.640, 179.225 and 213.153 ~~H~~ *and section 1 of this act,*

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

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

(d) The payment of claims which are obligations of the State pursuant to NRS 41.950; and

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

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

Sec. 6. This act becomes effective upon passage and approval.

