

CARSON CITY BOARD OF SUPERVISORS
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A regular meeting of the Carson City Board of Supervisors was scheduled for 8:30 a.m. on Thursday, September 16, 2021 in the Community Center Robert "Bob" Crowell Boardroom, 851 East William Street, Carson City, Nevada.

PRESENT:

Mayor Lori Bagwell
Supervisor Stacey Giomi, Ward 1
Supervisor Maurice White, Ward 2
Supervisor Stan Jones, Ward 3
Supervisor Lisa Schuette, Ward 4

STAFF:

Nancy Paulson, City Manager
Aubrey Rowlett, Clerk-Recorder
Stephanie Hicks, Deputy City Manager
Dan Yu, Assistant District Attorney
Tamar Warren, Senior Public Meetings Clerk

NOTE: A recording of these proceedings, the Board's agenda materials, and any written comments or documentation provided to the Clerk, during the meeting, are part of the public record. These materials are available for review, in the Clerk's Office, during regular business hours. All meeting minutes are available for review at: <https://www.carson.org/minutes>.

1 - 4. CALL TO ORDER, ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE

(8:32:30) – Mayor Bagwell called the meeting to order at 8:32 a.m. Ms. Rowlett called roll and noted that a quorum was present. Airport Road Church of Christ Pastor Bruce Henderson provided the invocation. Mayor Bagwell also invited Pastor Henderson to lead the Pledge of Allegiance.

5. PUBLIC COMMENT

(8:34:48) – Mayor Bagwell entertained public comments and reminded everyone that public comment will be limited to three minutes per speaker.

(8:35:30) – Joy Trushenski read a prepared statement in support of the U.S. Constitution and noted that "any law passed by congress or state legislatures" did not constitute "the law of the land," citing related case law. Ms. Trushenski believed that certain drugs such as hydroxychloroquine, were banned even though they were effective. She also opposed masks and vaccine mandates, encouraging everyone to "stand for our rights."

(8:39:08) – Jim Shirk objected to the Mayor's speaking engagement regarding the "business, unemployment, and opportunities in Carson City," [at the non-profit Professional Saleswomen of Nevada (PSN) luncheon] at the Adams Hub for Innovation, noting that it was a \$25 paid lunch event. Mr. Shirk believed that "the Mayor has a duty and responsibility to provide the information to citizens free of charge." Mr. Shirk also objected to the public's inability to comment on each agenda item, noting that even with COVID-19 restrictions the Boardroom

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was full of members of the public and noted that “a recall of the Mayor should be open for discussion.” He also requested that the Board members “stand up for the citizens’ right to speak.”

(8:42:09) – Mayor Bagwell thanked Mr. Shirk and clarified that she is invited to speak at many meetings and “I do not have anything to do with whether or not meals [are provided]” or whether there is a charge for the meals. She noted “I speak for free and just for the record, I’ve never charged anyone to come and speak at their meetings.”

(8:42:50) – Parks, Recreation, and Open Space Department Director Jennifer Budge announced that the Prison Hill Recreation Area/Fifth Street Trailhead had received national recognition for an award, calling it an amazing accomplishment. Ms. Budge read into the record the announcement from the Coalition for Recreational Trails regarding its “Annual Achievement Award for Outstanding Use of Recreational Trails Program Funds in the Community Linkage Category.” She also thanked the Open Space Staff, the Public Works Department, Muscle Powered, the Great Basin Institute, the Boy Scouts, and the Nevada State Parks. Mayor Bagwell thanked and congratulated the team for this accomplishment.

(8:44:21) – Mayor Bagwell announced that items 21.A and 21.B would be continued to the next meeting, and that items 14.B and 14.C would be pulled from the Consent Agenda to be heard with item 16,C but acted upon separately.

6. FOR POSSIBLE ACTION: APPROVAL OF MINUTES – AUGUST 19, 2021

(8:44:53) – Mayor Bagwell introduced the item and noted that she had submitted two typographical errors. She also entertained additional changes and when none were forthcoming, a motion.

(8:45:06) – Supervisor Giomi moved to approve the minutes of August 19, 2021 as amended. The motion was seconded by Supervisor Schuette and carried 5-0-0.

7. SPECIAL PRESENTATIONS

7.A PRESENTATION OF A PROCLAMATION TO RECOGNIZE SEPTEMBER 17, 2021 AS CONSTITUTION DAY.

(8:45:25) – Mayor Bagwell introduced the item and invited Supervisor White to read the proclamation, incorporated into the record, recognizing September 17, 2021 as Constitution Day.

(8:46:10) – Supervisor White read the aforementioned proclamation and noted that he had provided copies of the U.S. Constitution for the audience to take home. He also encouraged “all elected and appointed government officials to recognize the authority of the U.S. Constitution and work within that authority.” Mayor Bagwell invited the Board members to sign the proclamation and to take part in a commemorative photograph. She also announced that the Daughters of the American Revolution Battle Born Chapter would celebrate Constitution Day on September 17, 2021 at the Carson City Library, which is also featuring a display in celebration of its 234th anniversary.

7.B PRESENTATION OF LENGTH OF SERVICE CERTIFICATES TO CITY EMPLOYEES.

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(8:50:32) – Mayor Bagwell introduced the item and presented length of service awards to the following employees:

25 Years:

- Maribel Gutierrez, Judicial Assistant

15 Years:

- Frank Mournighan, Detention Manager
- Elizabeth Patterson, Sheriff Support Specialist

Mayor Bagwell and the Board congratulated the recipients of the service awards and joined them for a commemorative photograph.

CONSENT AGENDA

(8:55:02) – Mayor Bagwell introduced the item and reminded everyone that items 14.B and 14.C would be pulled for discussion along with item 16.C. Supervisor White wished to pull item 12.A for discussion as well. Mayor Bagwell entertained a motion.

(8:55:29) – Supervisor Giomi moved to approve the Consent Agenda consisting of items 8.A, 9.A, 10.A, 11.A, 13.A, 14.A, and 14.D as presented. Supervisor Schuette seconded the motion.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor Giomi
SECONDER:	Supervisor Schuette
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

8. ASSESSOR

8.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED PARTIAL REMOVAL OF REAL PROPERTY TAXES FOR THE 2021/2022 FISCAL YEAR FOR ASSESSOR'S PARCEL NUMBER (APN) 009-102-19, 2207 BIRCH STREET, PER NRS 361.765 IN THE AMOUNT OF \$863.94.

9. CITY MANAGER

9.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION ON RATIFYING THE APPROVAL OF BILLS AND OTHER REQUESTS FOR PAYMENTS BY THE CITY MANAGER FOR THE PERIOD OF AUGUST 7, 2021 THROUGH SEPTEMBER 3, 2021.

10. COURTS

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10.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED NO-COST INTERLOCAL CONTRACT BETWEEN THE STATE OF NEVADA, ACTING BY AND THROUGH ITS DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH ("RURAL CLINICS"), AND THE CARSON CITY JUSTICE/MUNICIPAL COURT TO FACILITATE COLLABORATIVE CASE COORDINATION FOR MENTAL HEALTH COURT PROGRAM PARTICIPANTS, TO BE EFFECTIVE THROUGH JUNE 30, 2023.

11. FINANCE

11.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE REPORT ON THE CONDITION OF EACH FUND IN THE TREASURY AND THE STATEMENTS OF RECEIPTS AND EXPENDITURES THROUGH SEPTEMBER 3, 2021, PER NRS 251.030 AND NRS 354.290.

12. PARKS AND RECREATION

12.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING INTERLOCAL CONTRACT #NDOC21029 BETWEEN CARSON CITY, ON BEHALF OF THE PARKS, RECREATION AND OPEN SPACE DEPARTMENT ("DEPARTMENT") AND THE STATE OF NEVADA, ON BEHALF OF THE DEPARTMENT OF CORRECTIONS ("NDOC"), TO PROVIDE INMATE SERVICES FOR PARK MAINTENANCE THROUGH JUNE 30, 2025 AT THE BEGINNING RATE OF \$1 PER HOUR, WITH INCREMENTAL INCREASES IN THE HOURLY RATE UP TO A MAXIMUM RATE OF \$2.50 PER HOUR BASED ON CONTINUOUS EMPLOYMENT, FOR A TOTAL NOT TO EXCEED AMOUNT OF \$188,000.

(8:56:00) – Mayor Bagwell introduced the item. At Supervisor White’s request, Ms. Budge clarified that the State (including the Nevada Division of Forestry, for firefighting) is prioritized to receive inmate services first. She also noted that with the COVID-19 challenges, the City may receive up to 10 inmates which may offset the staffing challenges of the Department. Ms. Budge reviewed the cost analysis and the fiscal impact for the four-year contract which are outlined in the Staff Report. Mayor Bagwell entertained questions/comments and when none were forthcoming, a motion.

(8:58:29) – Supervisor White moved to approve the contract as presented. Supervisor Jones seconded the motion.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor White
SECONDER:	Supervisor Jones
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

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13. TREASURER

13. A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE TREASURER'S MONTHLY STATEMENT OF ALL MONEY ON DEPOSIT, OUTSTANDING CHECKS AND CASH ON HAND FOR AUGUST 2021, SUBMITTED PER NEVADA REVISED STATUTES ("NRS") 354.280.

14. PURCHASING AND CONTRACTS

14.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A DETERMINATION THAT JUSTIN WILSON CONSTRUCTION ("JWC") IS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER PURSUANT TO NEVADA REVISED STATUTES ("NRS") CHAPTER 338, AND WHETHER TO AWARD CONTRACT NO. 21300153 FOR THE CONTE DRIVE DRAINAGE IMPROVEMENTS PROJECT ("PROJECT") TO JWC FOR A TOTAL AMOUNT NOT TO EXCEED \$242,679.80.

14.B FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING CONFLICT COUNSEL ATTORNEY SERVICES CONTRACT NO. 20300005-B BETWEEN CARSON CITY AND JOHN E. MALONE FOR CONFLICT COUNSEL SERVICES, EFFECTIVE OCTOBER 1, 2021 THROUGH JUNE 30, 2023, IN THE AMOUNT OF \$12,500 PER MONTH FOR OCTOBER 1, 2021 THROUGH JUNE 30, 2022, AND \$14,583.34 PER MONTH FOR JULY 1, 2022 THROUGH JUNE 30, 2023, FOR A TOTAL CONTRACT AMOUNT OF \$287,500.08 TO BE FUNDED FROM THE GENERAL FUND COURTS PROFESSIONAL SERVICES/CONFLICT ACCOUNT.

(8:58:54) – Mayor Bagwell introduced items 14.B, 14.C, and 16.C. Courts Administrator Max Cortes gave background and reviewed the Staff Reports which are incorporated into the record.

(9:05:41) – Nevada Department of Indigent Services (DIDS) Executive Director Marcie Ryba introduced herself and noted that former Carson City Mayor Bob Crowell had chaired the Board of Indigent Defense Services. Ms. Ryba provided background on DIDS and requested the removal of Section V (n) from Exhibit A of the contract to ensure that the attorneys representing the indigent clients will not be responsible for investigative and other costs:

n. *The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of the CONTRACTOR'S practice as required by this contract are the responsibility of the CONTRACTOR and are part of CONTRACTOR'S compensation paid pursuant to Monthly Payments of this contract and as provided in NRS 260.040 (5).*

(9:07:25) – Ms. Ryba also requested removal of Section III d-f, recommending that the billing be provided to the counties.

d. *The Court may request periodic time summaries from the CONTRACTOR in a form prescribed by the Court.*

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e. These time summaries will report the amount of time necessary and reasonable spent for travel, investigation, research, trial preparation and hearings as well as trials.

f. These time summaries will be filed with the Court at the conclusion of each assigned case and sealed by the Clerk of Court until requested by the Court.

(9:10:12) – Deputy District Attorney Todd Reese recommended replacing *Court* with *Indigent Defense Coordinator* (in Sections III {d, e, f} and V {e, h, i} of Exhibit A). He also explained that he had been aware of the request to remove Section V.n the evening before the meeting; therefore, he recommended reviewing that section and returning with a recommendation at a later date. Thomas Qualls, DIDS Deputy Director clarified that removal of the section would comply with the Expenses Section (12.c) of the Indigent Defense Plan. Mr. Reese reiterated his recommendation to approve the contract to ensure that the Indigent Defense Services are not interrupted; however, he wished to coordinate with the Conflict Counsel to discuss that section. Mayor Bagwell believed that the compensation may already have included the routine investigative expenses and noted that a discussion was warranted to ensure “the Counsel and the City are on the same page.” Mayor Bagwell entertained a motion.

(9:18:44) – Supervisor Giomi moved to approve the Contracts No. 20300003 and 20300003-B with changes to Sections III d, e, f and Section V (e, h, i) replacing *Court* with *Indigent Defense Coordinator*. Supervisor Jones seconded the motion.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor Giomi
SECONDER:	Supervisor Jones
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

14.C FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING AMENDMENTS TO CONFLICT COUNSEL ATTORNEY SERVICES CONTRACT NO. 20300003, WITH WALTER B. FEY, AND CONTRACT NO. 20300004, WITH NOEL S. WATERS, FOR CONFLICT COUNSEL SERVICES EFFECTIVE OCTOBER 1, 2021 THROUGH JUNE 30, 2023, INCREASING THE AMOUNT OF EACH CONTRACT FROM \$10,802.92 TO \$12,500 PER MONTH FOR OCTOBER 1, 2021 THROUGH JUNE 30, 2022, FROM \$11,127.00 TO \$14,583.34 PER MONTH FOR JULY 1, 2022 THROUGH JUNE 30, 2023, FOR A TOTAL INCREASE PER CONTRACT OF \$56,749.72, FOR A NEW PER CONTRACT TOTAL AMOUNT OF \$445,768.00 FROM JULY 1, 2020 THROUGH JUNE 30, 2023 TO BE FUNDED FROM THE GENERAL FUND COURTS PROFESSIONAL SERVICES/CONFLICT ACCOUNT.

Please see the minutes of item 14.B.

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14.D FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING CONTRACT NO. 21300191 FOR THE JAIL AND COURTHOUSE NEW IDF CONTROL ROOM PROJECT, WITH CONWAY COMMUNICATIONS, FOR A NOT TO EXCEED AMOUNT OF \$90,995.

END OF CONSENT AGENDA

ORDINANCES, RESOLUTIONS, AND OTHER ITEMS

15. ITEM(S) PULLED FROM THE CONSENT AGENDA WILL BE HEARD AT THIS TIME

Please see the minutes of items 12.A, 14.B, and 14.C.

16. CITY MANAGER

16.A FOR DISCUSSION ONLY: DISCUSSION AND PRESENTATION BY MARK WLASCHIN, DEPUTY SECRETARY FOR ELECTIONS, ON THE NEVADA SECRETARY OF STATE'S VOTER OUTREACH PROGRAM WHICH IS INTENDED TO PROVIDE CLEAR, FACTUAL AND NONPARTISAN INFORMATION CONCERNING IMPACTS AND CHANGES TO VOTER AND ELECTIONS PROCESSES, IMPROVEMENTS TO VOTER AND ELECTIONS INTEGRITY AND OPPORTUNITIES FOR CITIZEN INVOLVEMENT LEADING UP TO AND DURING THE 2022 ELECTION CYCLE.

(10:11:16) – Mayor Bagwell introduced the item. Deputy Secretary of State for Elections Mark Wlaschin reviewed election-related legislative measures by the Nevada Legislature and the formal voter outreach campaign by the Office of the Secretary of State. Mr. Wlaschin also responded to clarifying questions by the Board. He explained to Supervisor White that voters may opt out of a mailed ballot by filling out a form 60 days before an election or fill out a form online to request an absentee ballot. Mayor Bagwell thanks Mr. Wlaschin and Secretary of State Barbara Cegavske for reaching out.

16.B FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED NO-COST RENEWAL TO COOPERATIVE AGREEMENT FOR AIRPORT AUTHORITY TO MANAGE CARSON CITY'S AIRPORT ("RENEWAL AGREEMENT"), TO BE EFFECTIVE UPON THE DATE OF APPROVAL AND FINAL EXECUTION BY CARSON CITY (THE "CITY") AND THE CARSON CITY AIRPORT AUTHORITY ("CCAA") THROUGH JUNE 30, 2026, WITH AUTOMATIC RENEWAL OF SUCCESSIVE TERMS OF ONE YEAR UNLESS EARLIER TERMINATED FOR CAUSE OR BY MUTUAL AGREEMENT.

(10:08:15) – Mayor Bagwell received confirmation from Mr. Wlaschin that this item may precede item 16.A and she introduced it. Airport Counsel Steve Tackes noted that the fire station adjacent to the Airport was included in “the description of parcels that include the Airport,” and indicated that he was working with the City’s Real Property Manager to “clearly break it,” adding that it would not require any changes to the agreement. Mr. Tackes also thanked the City for a great relationship with the Airport. Mayor Bagwell entertained a motion,

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(10:10:45) – Supervisor Jones moved to approve the Renewal Agreement as presented. Supervisor White seconded the motion.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor Jones
SECONDER:	Supervisor White
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

(10:17:48) – Mayor Bagwell indicated that per Mr. Tackes, an Assessor's Parcel Number (APN) correction was being considered and **requested to amend the previous motion by adding the following: "to allow the City Manager and the District Attorney's Office to make the clerical change to the contract, and to identify the revised APN for the fire station."** Supervisor Jones agreed to amend the motion and Supervisor White agreed to second the amendment. The amended motion carried 5-0-0.

16.C FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING CARSON CITY'S INDIGENT DEFENSE SERVICES PLAN ("PLAN"), A PLAN REQUIRED BY NEVADA REVISED STATUTES ("NRS") 260.070 FOR THE PROVISION OF LEGAL SERVICES TO PERSONS ACCUSED OF CERTAIN CRIMES WHO ARE UNABLE TO AFFORD AN ATTORNEY.

(9:19:35) – Mayor Bagwell introduced the item. Mr. Reese gave background and reviewed Carson City's Indigent Defense Plan which is incorporated into the record. He also recommended the following changes to the Plan:

3: Applicability:

d. Notwithstanding any other section of this Plan, under NRS 180.004 DIDS' regulations apply only to attorneys providing services in cases under section 2 3(a). DIDS' regulations do not apply to attorneys providing services in cases under section 2 3(b).

16: DIDS Requirements and Interaction:

m. Sections 16(a), (b), (d), ~~and (e)~~ (e), and (l) apply only to cases under section 2 3(a) of this Plan.

Adding to section 8:

8: Appointment of Counsel:

i. The judges of the Court will have no input regarding the selection of counsel in a particular case.

(9:29:41) – Ms. Ryba reviewed her public comments, incorporated into the record, including her concern for timekeeping. She believed that the State public defenders were keeping track of their time; however, the contract attorneys were not specifying "how much is being spent on indigent defense services and how much is being spent on other items." She also recommended that DIDS or a designee approve the expenses. Ms. Ryba and Mr. Reese responded to clarifying questions during discussion of the comments. Supervisor Giomi recommended moving forward with the plan and submitting it to the DIDS Board, adding that "after final regulations are

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adopted, I would encourage the Courts and the [District Attorney's] Office to provide comments." Mr. Reese explained that the Board of Indigent Defense Services had issued a public notice that it would be considering public comments for its permanent regulation on October 6, 2021 and that Staff had planned to provide comments. Supervisor Jones did not feel comfortable making a decision at this time. Mr. Reese clarified for Supervisor White that this item had been pulled from the previous Board meeting agenda due to comments received from DIDS, some of which had been addressed in the revised Plan. Supervisor White expressed frustration that a 40-page email from Ms. Ryba had arrived late Wednesday in the form of public comment. He believed that indigent citizens must be taken care of and requested that Mr. Reese see to that.

(9:56:40) – Mayor Bagwell recommended addressing Ms. Ryba's concerns:

- Contracting with a retired or senior judge who no longer has active cases. Mr. Reese believed that it would "remove the judiciary from the process" and be acceptable to the DIDS Board. Mayor Bagwell was in favor of keeping the section as is and forwarding it to the DIDS Board.
- Creating a selection committee. Mayor Bagwell did not see the need for another layer and Mr. Reese explained that there was no law requiring the creation of such a committee.
- Screening of indigency must occur within 48 hours. The Board agreed that due to circumstances beyond the City's control, screening may take longer than 48 hours. Mr. Reese agreed that the Sixth Amendment would cover the *timeframe directed by the Court, as noted in the plan.*

(10:06:36) – Based on the discussion above, Mayor Bagwell entertained a motion.

(10:06:47) – Supervisor Giomi moved to approve the Indigent Defense Services Plan as presented with changes to Sections 3.d, 8.i, 16.m as presented on the record by the District Attorney's Office, and further, to direct Staff to provide input relative to formal regulations that the Board will be considering. Supervisor Schuette seconded the motion.

RESULT:	APPROVED (4-1-0)
MOVER:	Supervisor Giomi
SECONDER:	Supervisor Schuette
AYES:	Supervisors Giomi, Schuette, White, and Mayor Bagwell
NAYS:	Supervisor Jones
ABSTENTIONS:	None
ABSENT:	None

(10:18:55) – Mayor Bagwell recessed the meeting.

(10:32:13) – Mayor Bagwell reconvened the meeting. A quorum was still present.

17. PURCHASING AND CONTRACTS

17.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A DETERMINATION THAT ARMAC CONSTRUCTION ("ARMAC") IS THE LOWEST RESPONSIVE

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AND RESPONSIBLE BIDDER PURSUANT TO NEVADA REVISED STATUTES ("NRS") CHAPTER 338, AND WHETHER TO AWARD CONTRACT NO. 21300144 TO REPAIR AND IMPROVE UP TO 2.5 MILES OF DIRT ROAD BEYOND THE KINGS CANYON TRAILHEAD ("PROJECT") TO ARMAC FOR A TOTAL AMOUNT NOT TO EXCEED \$164,239.35.

(10:32:27) – Mayor Bagwell introduced the item. Parks Project Manager Nick Wentworth reviewed the Staff Report, incorporated into the record, and highlighted the base bid of the project which consisted of repair, drainage improvement, and erosion control for approximately two miles of dirt road for \$133,377.48. Mr. Wentworth also presented two additives to the bid which he noted were not recommended by Staff. Additive Alternative One was an additional half mile of improvements and the installation of a sign for \$19,616.25. Additive Alternative Two would add slope repair and additional erosion control to the Project for \$8,440. Mayor Bagwell entertained Board comments/questions and when none were forthcoming, a motion.

(10:37:34) – Supervisor Schuette moved to award the contract for the base bid only for a not to exceed amount of \$133,377.48, which includes a 10% contingency, and to adopt the contract as presented. Supervisor Giomi seconded the motion.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor Schuette
SECONDER:	Supervisor Giomi
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

18. PARKS AND RECREATION

18.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION ON A RECOMMENDATION FROM THE CARSON CITY OPEN SPACE ADVISORY COMMITTEE ("OSAC") FOR THE NAMING OF SIX OPEN SPACE PROPERTIES LOCATED THROUGHOUT CARSON CITY.

(10:38:10) – Mayor Bagwell introduced the item and entertained Board questions or comments. Supervisor Schuette thanked the Open Space Advisory Committee (OSAC) and Staff “for being mindful of historical significance, donors, and use.” She called the project “extremely well thought out” and was in favor of the OSAC recommendation of having interpretive kiosks. Mayor Bagwell thanked Staff and OSAC and entertained a motion.

(10:39:50) – Supervisor Schuette moved to designate the six Open Space properties with the recommended names as described on the record [Staff Report]. Supervisor Jones seconded the motion.

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RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor Schuette
SECONDER:	Supervisor Jones
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

19. FIRE

19.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED RESOLUTION FOR THE APPROVAL AND ADOPTION OF A HAZARD MITIGATION PLAN ("PLAN") ESTABLISHING PUBLIC SAFETY GOALS TO REDUCE LONG-TERM RISK FROM HAZARDS THAT COULD IMPACT CARSON CITY.

(10:40:17) – Mayor Bagwell introduced the item. Battalion Chief, Deputy Emergency Manager Jason Danen gave background and reviewed the Staff Report which is incorporated into the record. Mayor Bagwell noted that the City takes the plan seriously and supports the protection of the public and their assets. Supervisor Giomi also noted that the plan is important for the City, as a local government, to be eligible for pre and post disaster mitigation funds.

(10:43:24) – Kate Cunningham, Associate Planner at R.O. Anderson Engineering, Inc. and Elizabeth Ashby, Grants and Projects Analyst at State of Nevada, reviewed a PowerPoint presentation, incorporated into the record, titled Carson City Hazard Mitigation Plan Update. Ms. Cunningham and Ms. Ashby also responded to clarifying questions by the Board and offered to provide answers to several issues identified by Supervisor White. Ms. Hicks gave background on the prioritization efforts of cybersecurity for the City, noting that although the Federal Emergency Management Agency's (FEMA's) requirements focused on natural hazard, they did not disallow the inclusion of man-made hazards. She added that the City had opted to add cybersecurity to the plan at a later date and not in this iteration of the document. Supervisor White also pointed out that no action items were directly attached to the climate change section and noted corrections to the civil unrest portion of the plan. Ms. Ashby explained that the climate change goals were addressed in the specific areas such as floods and wildfires. Public Works Director Darren Schulz offered additional modifications regarding the City's water in Section Five. Discussion ensued regarding the City's prioritizations and it was believed that changes may impact funding. Ms. Ashby explained that after the approval of the plan by FEMA, the City could make changes. Mayor Bagwell recommended approving the plan as a Board and allowing the non-substantive changes discussed earlier by Supervisor White to be made by Staff. She also suggested subsequent annual reviews of the plan. Supervisor Schuette explained that she had participated in the process and appreciated the dialogue which involved immediate and anticipated issues. Supervisor White indicated that he had been prepared to vote for the plan but to also have a discussion. Mayor Bagwell entertained a motion.

(11:39:41) – Supervisor Giomi moved to approve Resolution No. 2021-R-25 and grant Staff the authority to make non-substantive and clarifying changes discussed on the record at this meeting [and those

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discovered that were not noted on the record] to the Hazard Mitigation Plan, and to further direct Staff to return annually to this Board and present a matrix and the progress made. Supervisor Jones seconded the motion.

(11:30:25) – Deputy District Attorney Adam Tully recommended modifying the resolution itself to include allowing Staff to make non-Substantive corrections. Mr. Yu was in agreement; however, he recommended not capturing additional conditions in the resolution such as returning to this Board for annual reviews.

(11:44:08) – Supervisor Giomi withdrew his previous motion and moved to approve Resolution No. 2021-R-25 as modified, subject to non-substantive changes and changes read into the record [to be made by the assigned Deputy District Attorney]. Additionally, to request that the item return to this Board annually for a review. The motion was seconded by Supervisor Jones.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor Giomi
SECONDER:	Supervisor Jones
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

20. COMMUNITY DEVELOPMENT - PLANNING

20.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED AMENDMENT TO THE MASTER PLAN LAND USE MAP TO RE-DESIGNATE FROM INDUSTRIAL TO LOW DENSITY RESIDENTIAL A 1-ACRE PARCEL LOCATED AT 1449 S. SUTRO TERRACE, APN 008-683-01.

(11:45:08) – Mayor Bagwell read into the record agenda items 20.A and 20.B, noting that both items will be heard concurrently but acted upon separately. Planning Manager Heather Ferris gave background and presented the Staff Reports incorporated into the record. She also noted that the Planning Commission had recommended approval of the proposed Master Plan (20.A) and Zoning Map (20.B) amendments. Mayor Bagwell entertained Board comment or questions and when none were forthcoming, a motion.

(10:48:31) – Supervisor White moved to approve the amendment to the Master Plan Land Use Map as presented. Supervisor Giomi seconded the motion.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor White
SECONDER:	Supervisor Giomi
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

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20.B FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION TO INTRODUCE, ON FIRST READING, AN ORDINANCE APPROVING A CHANGE OF ZONING FROM LIMITED INDUSTRIAL (LI) TO SINGLE FAMILY 1 ACRE (SF1A), FOR A 1 ACRE PARCEL LOCATED AT 1449 S. SUTRO TERRACE, APN 008-683-01. (HEATHER FERRIS, HFERRIS@CARSON.ORG) STAFF SUMMARY: THE PROPOSED ZONING MAP AMENDMENT WOULD REZONE THE PROPERTY TO BE CONSISTENT WITH THE CURRENT ZONING AND USE OF PROPERTIES TO THE WEST. THE BOARD OF SUPERVISORS IS AUTHORIZED TO AMEND THE ZONING MAP.

(10:48:51) – Based on previous discussion (item 20.A), Mayor Bagwell entertained a motion.

(10:48:55) – Supervisor White moved to introduce, on first reading, Bill No. 114. Supervisor Giomi seconded the motion.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor White
SECONDER:	Supervisor Giomi
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

21. HUMAN RESOURCES

21.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION ON A PROPOSED COLLECTIVE BARGAINING AGREEMENT ("CBA") BETWEEN CARSON CITY AND THE CARSON CITY EMPLOYEES ASSOCIATION ("CCEA"), EFFECTIVE ON THE DATE OF EXECUTION BY THE CITY AND CCEA THROUGH JUNE 30, 2026 WITH AN ESTIMATED FISCAL IMPACT OF \$1,844,319 ABOVE THE 5-YEAR PROJECTIONS INCLUDED IN THE CITY BUDGET WHICH WAS PREVIOUSLY APPROVED BY THE BOARD OF SUPERVISORS ("BOARD").

This item was pulled from the agenda.

21.B FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED RESOLUTION SETTING FORTH VARIOUS EMPLOYMENT BENEFITS FOR UNCLASSIFIED CITY EMPLOYEES, INCLUDING A ONE-TIME 1% COST-OF-LIVING ("COLA") INCREASE ON JANUARY 1, 2022 AND A 2.0% COLA ON JULY 1, 2022 AND EACH JULY 1 THEREAFTER, AND A REDUCTION IN THE MAXIMUM PERFORMANCE PAY SALARY INCREASE FROM 5% TO 3% FOR EMPLOYEES WHO RECEIVE A PERFORMANCE REVIEW RATING OF "MEETS EXPECTATIONS" OR ABOVE.

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This item was pulled from the agenda.

22. CITY MANAGER

22.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED REORGANIZATION OF THE CARSON CITY MANAGER'S OFFICE TO ELIMINATE THE EXISTING DEPARTMENT BUSINESS MANAGER POSITION AND TO CORRESPONDINGLY CREATE A GOVERNMENT AFFAIRS LIAISON/PUBLIC INFORMATION OFFICER ("PIO") POSITION, AND TO ELIMINATE THE EXISTING OFFICE SPECIALIST POSITION AND TO CORRESPONDINGLY CREATE AN OFFICE MANAGER POSITION.

(11:49:32) – Mayor Bagwell introduced the item. Ms. Paulson presented the Staff Report and responded to clarifying questions. Mayor Bagwell noted that the hiring of the Government Affairs Liaison position would eliminate one of the legislative contracts and provide a net gain of about \$10,000 to the City budget. She also entertained a motion.

(10:52:45) – Supervisor Giomi moved to approve the reorganization of the City Manager's Office as requested. Supervisor White seconded the motion.

RESULT:	APPROVED (5-0-0)
MOVER:	Supervisor Giomi
SECONDER:	Supervisor White
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

23. BOARD OF SUPERVISORS

NON-ACTION ITEMS:

FUTURE AGENDA ITEMS

STATUS REVIEW OF PROJECTS

INTERNAL COMMUNICATIONS AND ADMINISTRATIVE MATTERS

CORRESPONDENCE TO THE BOARD OF SUPERVISORS

STATUS REPORTS AND COMMENTS FROM THE MEMBERS OF THE BOARD

STAFF COMMENTS AND STATUS REPORT

(10:53:06) – Mayor Bagwell introduced the item. Supervisor Schuette thanked Jennifer Diamond of the Public Works Department for the tour she had conducted for the Carson Water Subconservancy District team of the City's water treatment center. She also responded to an earlier comment regarding public comment noting that it was really important to know that "people's voices aren't being silenced. That's what public comment is." She noted that she preferred having public comments tied to an item; however, there was opportunity to speak. Supervisor Schuette read a prepared statement, incorporated into the record, regarding the City staff's and the

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community's efforts to help with the Caldor Fire evacuation efforts. She especially thanked the Public Works and the Park and Recreation staff members for their efforts.

(11:57:48) – Supervisor Giomi also commented on the public discussion, noting that the City had “gone above and beyond, and while I would like to see public comment after every agenda item...I also recognize and respect the Mayor's position to be able to make that determination.” Supervisor Giomi noted that the written comments by citizens are now posted along with the meeting minutes. He also reported on behalf of the Culture and Tourism Authority (CTA) that July had recorded the highest net room tax revenue, surpassing the June figures, and anticipated the August revenue to be high as well. Supervisor Giomi also stated that the Arts and Culture Master Plan would be reviewed by this Board in October 2021, and praised the efforts of the new Arts and Culture Program Manager.

(12:00:40) – Supervisor Giomi announced that according to the Carson Water Subconservancy District, this year was a “dismal” water year and the second driest one since records were kept. He also explained that a water plan was scheduled to be reviewed by the Board, and that each county plan would be incorporated in an overall water purveyors' plan required by the State.

(12:01:57) – Supervisor White noted that even though he would like to hear public comment on each agenda item, “Carson City does offer more opportunities than what the Open Meeting Law requires.” He added that other counties have allowed fewer opportunities. Supervisor White announced that several grants will be made public and available to the Off Highway Vehicle (OHV) groups and encouraged them to begin looking into them online. He also thanked the CTA for their support of the Nevada State Prison Airsoft event weekend, calling the venue the final piece in putting Carson City on the tourism map.

(12:05:32) – Mayor Bagwell ensured everyone that “public comment is important.” She also stated that the City meets and exceeds the requirements of citizens' rights. Mayor Bagwell noted she understood that the discussion is whether to have public comment during each agenda item in order to debate those who testify. She explained that “we are under a COVID restriction, whether we agree with it or not, and want to get the public in and out as quickly as possible...to minimize exposure. We're here to do the business of the City and none of us want to get sick...my job is to keep us as safe as possible.” She ensured that there is no suppression of public comment in person and in writing, and that they are also incorporated as part of the minutes.

CLOSED NON-MEETING TO CONFER WITH MANAGEMENT REPRESENTATIVES AND COUNSEL

This item will be continued at a future meeting.

24. PUBLIC COMMENT

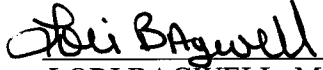
(12:09:06) – Mayor Bagwell entertained final public comments. Ms. Trushenski noted that the 2020 presidential election had been the most corrupt one in the United States. She stated that the Dominion Voting Systems had been corrupt, and that fraud had been committed as photocopied ballots were used and signature verification had been set to a low standard. She cited France as one of the countries that had banned electronic voting, and stated she was in favor of showing identification to vote.

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25. FOR POSSIBLE ACTION: TO ADJOURN

(12:13:00) – Mayor Bagwell adjourned the meeting at 12:13 p.m.

The Minutes of the September 16, 2021 Carson City Board of Supervisors meeting are so approved on this 21st day of October, 2021.


LORI BAGWELL, Mayor

ATTEST:


AUBREY ROWLATT, Clerk – Recorder

Attachments: written public comments

From: Maxine Bradshaw
To: Public Comment
Subject: Item 17A Grant - Thursday September 2nd 2021 Board of Supervisors Meeting
Date: Thursday, September 2, 2021 7:07:17 AM

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Submission for Public Comment - Sept 2, 2021 Consolidated Municipality of Carson City Board of Supervisors Meeting 7:06 am

My name is Maxine Bradshaw and on this day, September 2, 2021, I wish to address jointly, the consolidated municipality of Carson City Board of Supervisors and the Carson City School District Board of Trustees. My urgent request to you at this time is to please do not take any action to pass Item 17a Grant at this time. My reason for this request is explained below.

I want to start by saying that I have been where you are. I also served as a school board Trustee many years ago in Nye County where my three children attended school. I believe that we all commit to public service for the same reason. We want to make a difference for the better for our families and community. We love our children and grandchildren and want the best for them. There is no question that we are living in unprecedented times where people sitting in seats of authority are literally making life and death decisions about our children. Who should live? Who should die?

But the point that critically needs to be understood by everyone is that Covid has **never** killed anyone. But the **FEAR** of Covid is the **real** killer. People everywhere have been so terrified of the name Covid that all of our natural instincts and common sense to survive have been abandoned, even when **truth** science tells us that the survival rate is 99.997% with children virtually at no risk at all. But the most damning of all is the failure to look at the only one who has the power to save lives and the **true** decider of life and death and that is God.

The only true question left for each one of you to answer is this. Is the money worth the permanent loss of our children? It is always easy to separate the truth from the lies. Just look at the ones who have sacrificed the most to reveal the truth; the doctors and scientists who have risked everything, some even losing their lives, all for the sake of saving lives by simply speaking the truth. I know that you know who these people are. Let's stop now in putting our children, our future in harm's way. Thank you and may God touch each of your hearts to do the right thing now and not vote to pass this Grant.

Sincerely,
/s/Maxine Bradshaw

Maxine Bradshaw
mpdbradshaw@gmail.com

From: Carol Marie
To: Public Comment
Subject: Covid 19 CDC Grant--Aren't the vaccinations Free???
Date: Thursday, September 2, 2021 4:22:03 PM

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

What strings are attached to these "Federal" funds? What is meant by "events"?

Carol Marie Toohey, BS.28378

Broker-Manager / Realtor

Century 21 Americana

1502 N. Carson St., Ste. 1

Carson City, NV 89701

Cell (775) 721-5451

Office (775) 882-2135

CarolMarie@IntotheHome.com

Never trust wiring instructions sent via email. Cyber criminals are hacking email accounts and sending emails with fake wiring instructions. These emails are convincing and sophisticated. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.

From: Polly Price
To: Public Comment
Subject: Fwd: mail in ballots to all
Date: Monday, September 13, 2021 10:48:11 AM

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

----- Forwarded message -----

From: **Polly Price** <randpprice@gmail.com>
Date: Mon, Sep 13, 2021 at 10:46 AM
Subject: mail in ballots to all
To: <publiccomment@carson.org>

Why do you have to go to the expense of mailing ballots to everyone? My mail is always getting lost and I would hate for my ballot to go who knows where! Please do not send me one!

From: Mike
To: Public Comment
Subject: FW: Election Changes
Date: Monday, September 13, 2021 1:04:40 PM

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

--

From: Mike [mailto:mike@lucid-enterprises.com]
Sent: Monday, September 13, 2021 1:00 PM
To: 'publiccomment@carson.org' <publiccomment@carson.org>
Subject: Election Changes

I am writing to say that the election changes made by the state are unconstitutional because they are ripe for fraud. Mail-in voting and ballot harvesting cannot demonstrate the chain of custody needed to guarantee a valid vote.

Today it was announced that a postal worker has been arrested and charged for stealing ballots instead of delivering them to the election site.
<https://www.justice.gov/usao-wdny/pr/postal-worker-arrested-and-charged-failing-deliver-over-800-pieces-mail-which-included> This is just one real example of fraud.

How do we know if the intended recipient of the blank ballot actually received it and voted? We cannot know because identity cannot be established when the person, correct or not, votes.

Read more on the Constitutionality of Mail-In Ballots at
<https://revolutionaryideas.org/Mail-InBallots.php>

Please do something to fix this problem.

Mike Lucido – Carson City

--

Steve Sisolak
Governor



16.C late material

Marcie Ryba
Executive Director

Thomas Qualls
Deputy Director

**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8490 | dids.nv.gov

September 15, 2021

Carson City Board of Supervisors,

My name is Marcie Ryba and I am the Executive Director of the Department of Indigent Defense Services. I am writing today to provide public comment on Agenda Items 14B and 14C, the Contracts for the Contract Indigent Defense Providers. As well as 16C, Carson City's Plan for the Provision of Indigent Defense Services.

Since March of 2021, our department has made itself available to assist in the creation of Carson City's Plan for the Provision of Indigent Defense Services. Our department has had the opportunity to meet with County Manager Nancy Paulson, as well as Court Administrator Max Cortes, to introduce them to the Department, the Board on Indigent Defense Services Regulations, and the Plans for the Provision of Indigent Defense Services. I have attached the Temporary Regulations of the Board on Indigent Defense Services and Assembly Bill 480(2021) to this letter.

The department has reviewed Agenda Items 14B, 14C, and 16C. The Department has concerns regarding a number of provisions in these Contract Amendments and Carson City's Plan for the Provision of Indigent Defense Services which are not in compliance with the Temporary Regulations of the Board on Indigent Defense Services and with current Nevada law, including independence from the judiciary, as required by the relevant statutes and regulations. These concerns have been communicated with the County Manager and are attached to this letter.

Thomas Qualls, Deputy Director, and I will be present during public comment tomorrow morning. We are available for any questions that you may have.

Thank you,

A handwritten signature in black ink that reads "Marcie Ryba".
Marcie Ryba

enclosures

DIDS Review

Carson City Plan

☐Complies ☒Recommendations

Expenses

Estimated Cost of the Plan:	\$2,704,849.28
Carson Maximum Contribution (Sec 19):	\$2,054,655.50
Estimated State Contribution:	\$437,029.28

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

☐Complies ☒Recommendations

The Plan, as currently written, allows judicial oversight (senior judges or judge pro tempore) for the approval of requests for compensation of indigent defense experts as well as the billing of appointed counsel. See p. 6, Section 8(e)(3) and p. 7, Section 11(c)(1)(iii).

→**Recommendation:** The Department is unable to allow the judiciary to act as its designee for purposes of Chapter 7.115, 7.135, 7.145 and 171.188. The Department recommends that such oversight be removed from the Plan as it is not in compliance with Nevada Law or the Regulations.

- 2. Plan for hiring contractor attorneys (Sec. 24):**

☐Complies ☒Recommendations

Carson City may solicit letters of interest through a solicitation released to the public and any DIDS qualified attorneys in Carson City. The judges of the Courts, DIDS, and any other interested party may submit public comment regarding the selection. Carson City will consider listed qualifications prior to hiring. P. 9-10.

→**Recommendation:** The Department recommends the County consider the creation of a selection committee, as has been recommended by the Board on Indigent Defense Services, that utilizes stakeholders concerned with the integrity of indigent defense services, which may include the Department. The Department recommends that the

Plan reflect that judicial input may be considered, but not the sole basis for the selection as is a requirement in Sec. 24.

3. Appointment of Counsel (Sec. 25)

☐Complies

☒Recommendations

Indigency Screening (Sec. 25(1)): The screening for indigency must be conducted by the Carson City Alternative Sentencing Department, the Carson City Sheriff's Office, or other court or law enforcement personnel within 48 hours, or sooner as required by applicable law or "within the time frame directed by the Court." P. 4, Section 6(a).

→ **Recommendation:** It is unclear what the "time frame directed by the Court" will be. The screening must occur within 48 hours.

Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)): Unless there is a clear conflict, the Public Defender will be selected for the case by the indigent defense coordinator. P. 5, Section 8(c). If there is a conflict, the public defender will notify the indigent defense coordinator to reassign the case. P. 5, Section 8.

Distribution of Cases (Sec. 25(3)): The indigent defense coordinator will use best efforts to balance the number of cases assigned to each conflict counsel by fairly rotating through the list. P. 5, Section 8(d). If no conflict counsel is available, the Court may appoint any attorney who, in the Court's discretion will provide competent representation. P. 6, Section 8(e).

→ **Recommendation:** The law requires the Department maintain a list of attorneys eligible to provide appointed or contract indigent defense services in the rural counties. NRS 180.430. Attorneys that are not included on the list may not provide appointed indigent defense services in the rural counties. Plans must require that indigent defense services representation be compliant with, among other things, the regulations of the Board on Indigent Defense Services. Section 29(1). The regulations require attorneys to apply with the Department prior to practicing indigent defense services in the rural counties. See Section 32. It is recommended that such language allowing appointment of attorneys outside of the list be eliminated as it is not in compliance with the law.

Initial Appearance (Sec. 25(4)): an attorney appointed to represent an indigent person is expected to appear at the person's initial appearance. P. 10 Section 16(i).

→ **Recommendation:** Add language that appointed attorneys are expected to be prepared to address appropriate release conditions in accordance with relevant statute, rule of criminal procedure, and caselaw. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant.

4. Confidential Communications (Sec. 26):

☒ **Complies**

☐ **Recommendations**

Facilities are available including meeting rooms outside each courtroom and private meeting space at the jail. P. 10, Section 16(c).

5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):

☐ **Complies**

☒ **Recommendations**

Carson City will employ an indigent defense coordinator. Requests up to \$1,000 may be incurred without pre-authorization of the coordinator. Expenses over \$1,000 must be submitted through the coordinator to a Senior judge or judge pro tempore for review and approval. If the request is denied, a motion can be filed with the Court. P. 8, Section 12(d)(iii).

→ **Recommendation:** The Department is unable to allow the judiciary to act as its designee for purposes of Chapter 7.115, 7.135, 7.145 and 171.188. Starting October 1, 2021, AB480 will be effective which changed the procedure for approving case-related expenses. NRS 7.135 provides requests for experts or investigators be submitted to our Department or its designee for review and approval. Further, providers of indigent defense services shall have the same judicial oversight as prosecutors or private attorneys. See Temp. Regulation Section 23. Pursuant to Section 23, the judiciary is not permitted to fulfill this role and will not be approved as the Department's designee.

6. Vertical Representation Requirement (Sec 28):

☒ **Complies**

☐ **Recommendations**

The Plan expects attorneys to ensure that the attorney appointed to represent an indigent person is expected to representation that person through every stage of the case. P. 10, Section 16(j).

7. Standards of Representation (Sec. 29(1)):

☒ **Complies**

☐ **Recommendations**

Standards of Representation 29(1): required language included. P. 10, Section 16(g).

Davis Required Language (Sec. 29(2)): required language included. P. 11, Section 16(k).

Client surveys (Sec 29(3)): Plan requires surveys to be distributed as required by the Board of Indigent Defense Services. P. 10, Section 16(d).

8. Prompt Compensation (Section 43)

☒ **Complies**

☐ **Recommendations**

Carson City will employ an Indigent Defense Coordinator. Appointed counsel will submit requests for compensation through the indigent defense coordinator. The coordinator will submit the request to a senior judge or a judge pro tempore for review and approval. If the request is denied, counsel may file a motion with the appropriate court. P. 7, Section 11(c).

→ **Recommendation:** The Department is unable to allow the judiciary to act as its designee for purposes of Chapter 7.115, 7.135, 7.145 and 171.188. Starting October 1, 2021, AB480 will be effective which changed the procedure for approving attorney billing. NRS 7.145 provides requests for compensation be submitted to our Department or its designee for review and approval. Further, providers of indigent defense services shall have the same judicial oversight as prosecutors or private attorneys. See Sec. 23.

9. Caseload Reporting (Section 46)

☒ **Complies**

☐ **Recommendations**

The Plan requires attorneys to make arrangements for required caseload and time reporting. P. 10, Section 16.

Conclusion

Overall, the Department is concerned that Carson City's Plan provides judicial oversight to a public defender or indigent defense services provider that is greater than the judicial oversight provided to a prosecutor or private attorney. The Department is unable to allow the judiciary to act as its designee for purposes of Chapter 7.115, 7.135, 7.145 and 171.188.

Marcie Ryba

From: Marcie Ryba
Sent: Wednesday, September 15, 2021 1:55 PM
To: Nancy Paulson
Cc: Thomas Qualls (ThomasQualls@dids.nv.gov)
Subject: Carson City Contracts with Indigent Defense Counsel

Hello, Nancy,

I hope you are well.

We have reviewed the amendments to the contracts for indigent defense providers which are slated for the Board of Supervisors' Meeting tomorrow. The Department has concerns regarding a number of provisions in these Contract Amendments which are not in compliance with the Temporary Regulations of the Board on Indigent Defense Services and with current Nevada law, including independence from the judiciary, as required by the relevant statutes and regulations.

Section III (d-f) - these Amendments require Conflict Counsel to submit regular time summaries for each case to the Court. While it may be appropriate for the County to have this kind of oversight, allowing the Court to have increased judicial supervision over indigent defense providers does not comply with current Nevada law. See NRS 7.115-7.145 and Temp. Reg. Sec. 23.

Section V (e, h, i, l, m) - These provisions involve a requirement for monthly billing statements to the Court, instead of county authorities. These provisions are not in compliance with current Nevada law which prohibits the courts from exercising this kind of financial control of indigent defense services. See NRS 7.115-7.145 and Temp. Reg. Sec. 23. Which is similar to the comments above.

Section V (n) - This provision does not comply with current Nevada law, as it requires the indigent defense contractors to pay for their own investigative expenses. See NRS 7.115-7.145 and Temp. Reg. 40.

If you would like to discuss any of these issues further, please let me know.

Thank you,

Marcie



Marcie Ryba | Director
State of Nevada
Department of Indigent Defense Services
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mryba@dids.nv.gov
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Temporary Regulation of the Board on Indigent Defense Services.
Adopted January 28, 2021.
Effective Date March 5, 2021

Temporary Regulation of the Board on Indigent Defense Services.

Adopted January 28, 2021. Effective Date March 5, 2021.

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AUTHORITY: §§1 – 47, NRS 180.320

Section 1.

Chapter 180 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 50, inclusive, of this regulation.

Sec. 2.

As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 3.

“Attorney” means an attorney who provides indigent defense services as defined by NRS 180.004.

Sec. 4.

“Board” means the Board of Indigent Defense Services.

Sec. 5.

“Case” means:

1. A single adult defendant on a single charging document, regardless of the number of counts alleged, in a felony, gross misdemeanor or misdemeanor matter; or
 2. A single juvenile defendant on a single petition, regardless of the number of counts alleged, in a juvenile delinquency or in need of supervision matter.
- For a case in which multiple charges are involved, the case is classified by the highest offense charged at the time of the appointment.

Sec. 6.

“Department” means the Department of Indigent Defense Services.

Sec. 7 .

“Expert witness” means a person who is qualified by knowledge, skill, experience, training or education to render an opinion on scientific, technical or other specialized matters.

Sec. 8.

“Indigency” means the inability of a defendant, without causing the defendant or any of his or her dependents to have substantial hardship, to obtain competent, qualified legal counsel on his or her own. As used in this section, a defendant is presumed to have “substantial hardship” if the defendant:

1. Receives public assistance, as that term is defined in NRS 422A.065;
2. Resides in public housing, as that term is defined in NRS 315.021;
3. Has a household income that is less than 200 percent of the federally designated level signifying poverty;
4. Is serving a sentence in a correctional institution; or
5. Is housed in a mental health facility.

Defendants not falling below the presumptive threshold will be subject to a more rigorous screening process to determine if their particular circumstances, including seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship were they to seek to retain private counsel.

Sec. 9.

"Investigator" means a person who is qualified to secure evidence and subpoena witnesses to be used in the preparation and trial of criminal cases and who is:

1. Licensed by the Private Investigator's Licensing Board;
2. An employee of a person who is licensed by the Private Investigator's Licensing Board; or
3. An employee of an attorney or an office of public defender.

Sec. 10.

"Plan for the provision of indigent defense services" or "plan" means the processes established by a county for the provision of indigent defense service in accordance with these regulations and applicable laws.

Sec. 11.

The provisions of this chapter govern the provision of indigent defense services as defined by NRS 180.004.

Sec. 12.

1. An interested person who wishes to petition the Board for the adoption, filing, amendment or repeal of a regulation of the Board must file with the Department the original and one copy of the petition.
2. The petition must include:
 - (a) The name and address of the petitioner;
 - (b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;
 - (c) The reason for the adoption, filing, amendment or repeal of the regulation;
 - (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation; and
 - (e) The name of the Board.

Sec. 13.

1. The Board may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if the requirements set forth in Section 12 of this regulation are not met.
2. The Board may require the Department to review a petition filed pursuant to Section 12 of this regulation.
3. The Department shall notify the petitioner in writing of the decision of the Board or Department, as applicable, not later than 30 days after a petition is filed.

Sec. 14.

1. Except as otherwise provided in subsection 4, an interested person may petition the Executive Director to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department.
2. The original and one copy of the petition must be filed with:
 - (a) The deputy director selected by the Executive Director pursuant to NRS180.420 who is authorized to administer or enforce the statute or regulation or to issue the decision; or
 - (b) The Executive Director, if the statute, regulation or decision is administered or enforced by the Executive Director.
3. The petition must include:
 - (a) The name and address of the petitioner;
 - (b) The reason for requesting the declaratory order or advisory opinion;
 - (c) A statement of the facts that support the petition; and
 - (d) A clear and concise statement of the question to be decided by the Executive Director or deputy director and the relief sought by the petitioner.
4. An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.

Sec. 15.

1. The Executive Director may refuse to review a petition filed pursuant to Section 14 of this regulation that requests the issuance of a declaratory order or advisory opinion if the requirements set forth in that section are not met.
2. The Executive Director may, or may designate a deputy director to:
 - (a) Conduct an informal hearing to determine issues of fact or hear arguments relating to a petition and enter reasonable orders that govern the conduct of such a hearing;
 - (b) Request a petitioner to provide additional information or arguments relating to a petition;
 - (c) Issue a declaratory order or an advisory opinion based upon the contents of a petition and any materials submitted with the petition;
 - (d) Consider relevant decisions that have been issued by the Department that apply or interpret the statute, regulation or decision in question; and
 - (e) Enter any reasonable order to assist his or her review of a petition.
3. The Executive Director or deputy director shall:
 - (a) Mail a copy of any declaratory order or advisory opinion that is issued to a petitioner not later than 60 days after whichever of the following events is the last to occur:
 - (1) The petition is filed;
 - (2) The petition is referred to the Executive Director for a decision;
 - (3) An informal hearing is conducted; or
 - (4) The Executive Director or deputy director receives any additional information or written arguments; and
 - (b) Maintain a record of each declaratory order and advisory opinion that is issued and index such records by subject matter.

Sec. 16.

1. After receiving a declaratory order or advisory opinion from a deputy director concerning the applicability or interpretation of a statute, regulation or decision of the Department, the petitioner may request that the Executive Director review the decision.
2. A request made pursuant to subsection 1 must:
 - (a) Be in writing;
 - (b) Contain the information required by subsection 3 of Section 14 of this regulation; and
 - (c) Be filed with the Executive Director not later than 30 days after the date the declaratory order or advisory opinion is issued.
3. The Executive Director shall review any request made pursuant to subsection 1 in accordance with the provisions of Section 15 of this regulation.

Sec. 17.

The Executive Director, a deputy director or any other staff member of the Department shall not render an oral response, including, without limitation, a response over the telephone, to a request for an advisory opinion. Any oral response is not a decision or an advisory opinion of the Department.

Sec. 18.

1. The maximum amount that a county is required to pay for the provision of indigent defense services during a fiscal year must not exceed the sum of:
 - (a) In counties whose population is less than 100,000:
 - (1) The actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and
 - (2) The percentage equal to the lesser of:
 - (i) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or
 - (ii) The lowest union-negotiated cost of living increase for employees for that county.
 - (3) If a county, in its plan for the provision of indigent defense services, follows the recommendation of Section 27 pertaining to the payment of case-related expenses, such expenses must be a charge against the State and reimbursed to the county pursuant to Section 19.
 - (4) If a county chooses, pursuant to Section 21 of this regulation, to transfer to the State Public Defender the responsibility of representation in direct appeals to the appellate court of competent jurisdiction, the costs of providing the appellate representation in those cases is a charge against the State and excluded from the required maximum contribution of the county.

(5) If a county chooses, pursuant to Section 21 of this regulation, to transfer to the State Public Defender the responsibility for representation in death penalty cases, the State Public Defender shall submit to the county an estimate for the representation. The county shall be required to pay 25% (twenty-five percent) of the estimate and payment will be collected pursuant to NRS 180.110. Such payments to the Nevada State Public Defender which are paid by the county will count towards the maximum contribution a county may be required to pay during a fiscal year.

(b) In counties whose population is more than 100,000:

(1) The actual costs to the county for providing indigent defense services calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(i) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(ii) The lowest union-negotiated cost of living increase for employees for that county.

Sec. 19.

1. A county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution, as calculated pursuant to Section 18 of this regulation, through:

(a) The submission of the annual report containing the plan for the provision of indigent defense services for the county for the next fiscal year as required pursuant to subsection 2 of NRS 260.070; or

(b) In accordance with NRS 180.450, a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to address immediate needs in a corrective action plan.

2. In accordance with the duty of the Board to review and approve the budget for the Department pursuant to paragraph (f) of subsection 1 of NRS 180.320, any state contribution requested by a county is subject to the approval of the Board. Disagreements with respect to plans for the provision of indigent defense services and/or state contributions necessary to comply with these regulations will be resolved by the Board.

3. A county seeking reimbursement pursuant to Section 19(1) must submit to the Department a financial status report certified by the board of county commissioners or its designee no later than 15 days after the end of each quarter. The financial status report shall be in the form approved by the Department.

Sec. 20.

1. Any state contributions for the provision of indigent defense services are provided for:

(a) One fiscal year; and

- (b) The express purpose of complying with applicable indigent defense standards or regulations or improving the provision of indigent defense services in a county.
2. Once a county reaches its maximum contribution for the provision of indigent defense services determined in accordance with Section 18, state contributions for the provision of indigent defense services will be provided to the county treasury by reimbursement upon the quarterly submission of a county's financial status report up to the amount approved by the Board and Legislature in the county's plan for indigent defense services.
 3. If a county exceeds the Board approved state contribution as provided in Section 19, any additional state contribution necessary for the provision of indigent defense services must be sought by corrective action plan in accordance with NRS 180.450, by a request from the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266.
 4. Any unencumbered or unexpended balance of state contributions remaining at the end of the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.
 5. As used in this section, "fiscal year" means the period beginning on July 1 of a given year and ending on June 30 of the following year.

Sec. 21.

1. Upon request of a county whose population is less than 100,000, the State Public Defender may handle for the county all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction.
2. If a county wishes to have the State Public Defender handle all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction, the board of county commissioners for the county shall notify the State Public Defender, and such responsibility must be transferred, in accordance with the procedure set forth in subsection 6 of NRS 180.450.
3. After the responsibility of handling all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction for a county is transferred to the State Public Defender, such responsibility shall not be transferred back to the county unless the county receives the approval of the Executive Director of the Department pursuant to NRS 180.460.

Sec. 22.

1. A plan for the provision of indigent defense services must include, without limitation, the processes for providing indigent defense services consistent with these regulations and applicable law.
2. A county shall provide its initial plan for the provision of indigent defense services to the Department not later than 180 days after the date on which this section becomes effective or on the next occurring May 1, as determined by the Department.
 - (a) If a county elects to receive assistance from the Department in creation of its plan pursuant to NRS 180.430(4), the county must notify the Department at least 90 days before the plan is due.
 - (b) To assess local needs, counties should consult with local providers of indigent defense services in formulating its plan.

(c) If a county joins with one or more other counties to establish an office of the public defender to serve those counties in accordance with NRS 260.020, the joining counties may submit a single, joint plan for the provision of indigent defense services.

3. Plans for the provision of indigent defense services approved pursuant to the Nevada Supreme Court Administrative Docket 411 will satisfy the requirements of this section.

Sec. 23.

1. A plan for the provision of indigent defense services must be designed to promote the integrity of the relationship between an attorney and a client. The plan and any attorneys providing indigent defense services pursuant to the plan must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

Sec. 24.

1. A plan for the provision of indigent defense services must provide a county's process for hiring independent contractor attorneys and panels of appointed attorneys.

(a) The process must be designed to provide notice of the opportunity to apply and provide interested parties with a reasonable opportunity to respond.

(b) Consistent with Section 23 of these regulations, the process should exclude the prosecution and law enforcement officials. The Board recommends creation of a selection committee that utilizes stakeholders concerned with the integrity of indigent defense services, which may include the Department. Judicial input in the hiring process may be considered but should not be the sole basis for selection.

(c) The process shall include, without limitation, the following factors when evaluating applications:

(i) In counties whose population is less than 100,000, ensuring that the applicant is on the Department's roster of eligible providers;

(ii) Experience and qualifications of the applicant;

(iii) Applicant's past performance in representing defendants in criminal cases;

(iv) Applicant's ability to comply with these regulations and/or terms of a contract; and

(v) If an independent contractor, the cost of the service under the contract.

Sec. 25.

1. A plan for the provision of indigent defense services must provide the indigency screening process necessary for the judicial determination of eligibility for an appointed counsel. The process of screening for indigency must occur not later than 48 hours after arrest, exclude the judiciary, and describe the person(s) or agency responsible.

2. After such screening and upon a judge, justice or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, the plan must provide for prompt appointment of counsel. If a public defender is disqualified from providing representation, a plan must provide for the appointment of another attorney in accordance with NRS 7.115 and 171.188.

3. If a county uses independent contractor attorneys in lieu of an office of the public defender or where the public defender is disqualified, the plan must describe how

attorneys are assigned cases. Distribution of cases may be on a rotational basis or other method that ensures fair distribution of cases.

4. Plans for indigent defense services must require that an attorney be present at initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with relevant statute, rule of criminal procedure, and caselaw. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. Plans should ensure the presence of counsel at all other critical stages, whether in or out of court.

5. This section must not be construed to preclude a defendant from waiving the appointment of an attorney in accordance with subsection 1 of NRS 171.188.

Sec. 26.

1. A plan shall, through cooperation with local agencies, seek to provide necessary resources and accommodations for private discussions between an attorney and a client in courthouses, jails, prisons, detention centers and other places where a client must confer with an attorney, and provide a description of such resources and accommodations.

Sec. 27.

1. A plan for the provision of indigent defense services must ensure that an attorney has the resources to:

(a) Conduct an independent investigation of the charges filed against the client as promptly as practicable and, if appropriate, retain an investigator to assist with the defense of the client; and

(b) Request the assistance of experts when such assistance is reasonably necessary to prepare the defense of an indigent defendant.

2. Pursuant to NRS 180.320(2)(e), the Board recommends that plans provide for the payment of expenses related to trial, including, without limitation, expenses for expert witnesses and investigators, in the following manner:

(a) In counties with a population less than 100,000,

(1) Exclude the judiciary from the payment of reasonably necessary investigative, expert, or other case-related expenses for indigent defense providers.

(i) Where the office of the public defender is created pursuant to NRS Chapter 180 or 260, the county shall provide a budget for investigative, expert, and other case-related expenses that is administered by the public defender.

(ii) Where public defense services are provided by independent contractor, the county shall provide a budget for case-related expenses that is administered by the Department or its designee and include a mechanism for judicial review of any modified or denied requests.

(iii) Where the public defender has been disqualified, the county shall provide a budget for case-related expenses that is administered by the Department or its designee and include a mechanism for judicial review. Budgets pursuant to paragraphs (2)(a)(1)(ii) and (2)(a)(1)(iii) may be the same budget.

(2) To ensure prompt approval of frequent, necessary case-related expenses, the Board recommends provisions for automatic approval of case-related expenses up to \$2,500.00.

(b) In counties with a population more than 100,000, pursuant to the county's plan for the provision of indigent defense services.

Sec. 28.

1. A county's plan for the provision of indigent defense services shall 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.

2. The provisions of subsection 1 do not preclude a county from using a single attorney or rotation of attorneys to provide representation to an indigent defendant at an initial appearance or arraignment, but any such attorney should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest.

Sec. 29.

1. Plans for the provision of indigent defense services must require that representation be provided in a professional, skilled manner guided by applicable regulations; laws; Rules of Professional Conduct; and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada Supreme Court Order in Administrative Docket 411, or the same as may be amended.

2. Plans and/or contracts must require attorneys to advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is in the client's best interest and require indigent defense providers to make all reasonable efforts to meet with each client within the first seven days following the assignment of the case, as well as every 30 days thereafter, unless there are no significant updates in the client's case.

3. Plans for the provision of indigent defense services in counties whose population is less than 100,000 must ensure that any client surveys authorized by the Board are provided to a client at the conclusion of his or her representation by an attorney.

Sec. 30.

1. As used in Sections 32 to 39, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in Section 31 of this regulation have the meanings ascribed to them in those sections.

2. Sections 32 to 39, inclusive, of this regulation apply only to counties whose population is less than 100,000.

Sec. 31.

"CLE" means continuing legal education as discussed in Nevada Supreme Court Rules 205 to 215, inclusive.

Sec. 32.

1. To ensure that the ability, training, and experience of an attorney in a criminal matter matches the complexity of a case, an attorney must demonstrate compliance with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department on a form approved by the Department. The application must be submitted:
 - (a) By mail; or
 - (b) Electronically, as provided on the website of the Department.
2. The Department shall, not later than 30 days after receiving an application:
 - (a) Review the application and determine the area of indigent defense services for which the attorney is qualified; and
 - (b) Provide written notice of the determination of the Department to the attorney.
3. After an attorney submits an application pursuant to this section, the attorney may continue practicing in the areas of indigent defense for which the attorney is seeking the determination of the Department until the attorney receives written notice of the determination.
4. If the Department determines that an attorney is qualified to provide indigent defense services, the Department shall place the name of the attorney and areas of qualification on a roster of attorneys who are eligible to provide indigent defense services that will be used by boards of county commissioners to select the attorneys who will provide indigent defense services for a county. An attorney may seek qualification for different or other areas of indigent defense services by further application demonstrating the additional qualifications at any time.
5. If an attorney disagrees with the determination of the Department regarding the areas for which the attorney is qualified to provide indigent defense services, the attorney may submit a request for reconsideration to the Department not later than 30 days after receiving the determination of the Department. The Board will review any request for reconsideration that is submitted to the Department.
6. Failure to provide the application or failure to practice within a classification in which the attorney is qualified may result in exclusion or removal from the list of eligible providers.

Sec. 33.

1. An attorney who seeks to provide indigent defense services to a person charged with a misdemeanor must:
 - (a) Be licensed to practice law in the State of Nevada; and
 - (b) Have sufficient training or experience to provide competent representation.
2. An attorney who is beginning to provide indigent defense services in misdemeanor matters is encouraged to consider seeking the participation of a supervising or more experienced attorney before undertaking representation in a jury trial involving a misdemeanor offense or a misdemeanor offense for which the penalty can be enhanced and, if applicable, make a motion for the appointment of such an additional attorney pursuant to NRS 260.060.

Sec. 34.

An attorney who seeks to provide indigent defense services to a person charged with a category B felony for which the maximum penalty is less than 10 years, a category C, D or E felony or a gross misdemeanor must:

1. Meet the following requirements:
 - (a) Be licensed to practice law in the State of Nevada; and
 - (b) Have been trial counsel, alone or with other trial counsel, in two or more bench or jury trials that were tried to completion; or
2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1.

Sec. 35.

An attorney who seeks to provide indigent defense services to a person charged with a non-capital category A felony or a category B felony for which the maximum penalty is 10 years or more must:

1. Meet the following requirements:
 - (a) Be licensed to practice law in the State of Nevada;
 - (b) Have practiced criminal law for three full years, either as a prosecutor, provider of indigent defense services or retained counsel; and
 - (c) Have been trial counsel, alone or with other trial counsel, and handled a significant portion of three felony jury trials that were tried to completion; or
2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1, have a significant record of quality representation in criminal trials and have the ability to handle complex felony matters.

Sec. 36.

An attorney who seeks to provide indigent defense services to a person charged with or convicted of a category A felony in which the death penalty is or may be sought or has been imposed must meet the criteria established in Supreme Court Rule 250.

Sec. 37.

An attorney who seeks to represent a person in a direct appeal of a non-capital felony must:

1. Be licensed to practice law in the State of Nevada; and
2. Have sufficient training or experience to provide competent representation.

Sec. 38.

1. An attorney who seeks to represent a juvenile alleged to be delinquent or in need of supervision must:

- (a) Be licensed to practice law in the State of Nevada;
- (b) Have the knowledge and skills necessary to represent a child diligently and effectively; and
- (c) Be familiar with:
 - (i) The department of juvenile justice services in the county and other relevant state and local programs;

- (ii) Issues concerning competency and child development;
 - (iii) Issues concerning the interaction between an attorney and a client; and
 - (iv) Issues concerning school-related conduct and zero-tolerance policies specific to juvenile representation.
2. An attorney who seeks to represent a child in a certification proceeding in accordance with NRS 62B.390 must additionally have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience.
3. As used in this section, "department of juvenile justice services" has the meaning ascribed to it in NRS 201.555.

Sec. 39.

1. In addition to any other requirements provided by law or this chapter, an attorney must:

(a) Have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law and criminal procedure, the rules of evidence, the rules of appellate procedure, ethical rules, local rules and practices and changes and developments in the law. As used in this paragraph, "reasonable knowledge" means knowledge possessed by an attorney who provides competent representation to a client in accordance with Rule 1.1 of the Nevada Rules of Professional Conduct;

(b) Have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case and the legal issues concerning defenses to a crime and be reasonably able to litigate such issues effectively; and

(c) Be reasonably able to use the office technology that is commonly used in the legal community and the technology that is used within the applicable court system and thoroughly review materials that are provided in an electronic format.

2. An attorney shall:

(a) Complete on an annual basis a minimum of 5 hours of CLE courses relevant to indigent defense services;

(b) Submit proof of compliance with such CLE requirements to the Department before January 1 each year by submitting a copy of the annual transcript from the State of Nevada Board of Continuing Legal Education:

(1) By mail; or

(2) Electronically, as provided on the website of the Department; and

(c) Follow the minimum standards of the Board in determining CLE courses relevant to the provision of indigent defense services.

(d) Any CLE credit(s) offered by the Department will count toward satisfaction of the annual requirements. If an attorney satisfies the annual CLE requirement through CLE provided by the Department, the annual submission of proof of CLE compliance is waived.

Sec. 40.

1. The Department shall monitor and regularly assess whether counties and attorneys meet these regulations and whether indigent defense services are being provided in a constitutional manner. In conducting an assessment, the Department may obtain information from a variety of sources, including, without limitation:

(a) Client feedback;

- (b) Client surveys;
- (c) Other providers of indigent defense services;
- (d) Office staff;
- (e) Judicial personnel;
- (f) Observations of a deputy director of the Department;
- (g) Data provided to the Department pertaining to attorney workload;
- (h) Attorney contracts;
- (i) Financial information pertaining to the provision of indigent defense services;

and

- (j) Information obtained through the Complaint and Recommendation process.

2. Pursuant to NRS 180.440, the Department must review the manner in which indigent defense services is provided throughout the State.

(a) Prior to an on-site review, the Department will contact the county, court, and/or attorney(s) to identify a convenient time and/or location for which the review will take place and identify any information necessary to the review.

(b) Once a convenient time and/or location is selected, or in the event that no agreement can be reached, the Department will notify the subject of the review at least 10 days before the review.

(c) The Department will issue a report within 30 days of the review detailing its findings.

(1) If a county is not in compliance with these regulations or deficient in the provision of indigent defense services in any other manner, the report will recommend a corrective action plan for the county.

(i) No later than 30 days after recommending a corrective action plan, the Department will seek to identify a convenient time for which to collaborate on the manner in which the county will meet these regulations and the time by which the corrective action plan must be executed.

(ii) Upon agreement as to the contents of a corrective action plan and time in which it must be executed, the corrective action plan will be submitted to the Board for approval at the next scheduled Board meeting. Disputes as to the contents of the plan or the time in which it must be executed will be submitted to the Board for resolution at the next scheduled Board meeting.

(2) In counties less than 100,000, if the Department determines that any person is providing indigent defense services in an ineffective or otherwise inappropriate manner, the report will be issued to the person; entity that employs or contracts with the person; and the other deputy director of the Department pursuant to NRS 180.430.

(i) The other deputy director of the Department will collaborate with the person to provide training and/or educational opportunities consistent with Section 39 and best practices for delivering effective indigent defense services.

(ii) Upon completion of, or refusal to participate in, training and/or educational opportunities, the deputy director will provide notice to the entity that employs or otherwise contracts with the person. Refusal to

participate in training or educational opportunities may result in the recommendation of a corrective action plan to a county.

3. Pursuant to NRS 180.320(1)(c), the Board may direct the Executive Director to perform any additional audit, investigation, or review the Board deems necessary to determine whether its regulations are being followed and indigent defense services are being provided in a constitutional manner.

(a) Upon such direction, the Executive Director will work with the subject of the audit, investigation, or review to identify a convenient period for which to conduct the audit, investigation, or review.

(b) Once a convenient time is selected, or in the event that no agreement can be reached, the Executive Director will notify the subject of the audit, investigation, or review at least 10 days before the audit, investigation, or review is to take place.

(c) The Executive Director will issue a report to the subject of the audit, investigation, or review no later than 30 days upon completion of the audit, investigation, or review.

(d) If the Executive Director finds that the subject of the audit, investigation, or review is not in compliance with the regulations for the provision of indigent defense or that indigent defense services are not being provided in a constitutional manner, the subject will have 60 days from the date of the report to respond in writing to each finding of non-compliance and steps taken to remedy such findings. The subject of the audit, investigation, or review may request additional time to respond to the inquiry, if necessary. Such request must be directed to the Executive Director.

(e) The Executive Director's report and response from the subject of the audit, investigation, or review, if any, shall be provided to the Board at the next scheduled meeting. Failure to respond or to take remedial action may result in a corrective action plan in accordance with NRS 180.450 or removal from the list of eligible indigent defense provider maintained in accordance with NRS 180.430.

Sec. 41.

1. An attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources. The rates of compensation paid by county district attorneys, the Nevada Attorney General and other county or state offices must serve as guidance for reasonable compensation.

Sec. 42.

1. The terms of any contract between a county and independent contract attorney must avoid any actual or apparent financial disincentives to the obligation of an attorney to provide clients with competent legal services. Such a contract must include, but is not limited to, the following terms:

(a) Identify the appointing authority, contracting authority, and contractor;

(b) Specify the terms of the contract, including duration, any provision for renewal, and a provision for terminating the contract by either party;

(c) Specify the category of cases in which the contractor is to provide services;

(d) Specify the minimum qualifications for attorneys covered by the contract and require such attorneys to maintain the qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in these regulations. If a

contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to maintain only those qualifications established for the offense level(s) for which the attorney is approved to provide indigent defense services;

(e) Identify the attorney(s) who will perform legal representation in each category of case covered by the contract and include a provision that ensures consistency in representation in accordance with Section 28 of these regulations;

(f) Set the maximum workload each attorney may be required to handle pursuant to the contract based upon the applicable workload guidelines determined by the Board in accordance with Section 44 and require the reporting of indigent defense data in accordance with Sections 46 and 47;

(g) In accordance with Section 29, require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable regulations, laws, Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada Supreme Court Order in Administrative Docket 411;

(h) State a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest;

(i) Specify how investigative services, expert witnesses, and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with applicable regulations and laws; and

(j) Provide compensation at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and considers overhead, expenses, and costs relating to significant attorney travel.

Sec. 43.

If a public defender is disqualified from providing indigent defense services and another attorney is appointed in accordance with NRS 7.115:

1. The appointed attorney must receive prompt compensation in accordance with NRS 7.125. Activities outside of court appearances, including, without limitation, directing investigations, negotiating or tactical planning are equally important to quality representation and must be included in the compensation of the appointed attorney, subject to the limitations set forth in subsection 2 of NRS 7.125.

2. A plan for the provision of indigent defense services must provide the county's process for payment of counsel appointed pursuant to NRS 7.115.

Sec. 44.

1. The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any office, organization or attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence, and/or representation of clients under the Nevada Rules of Professional Conduct.

2. At the direction of the Board, the Department shall conduct separate, specific workload study for:

- (a) counties whose population is less than 100,000, and
- (b) counties whose population is more than 100,000

to determine workload guidelines and requirements for attorneys. Counties must ensure that all attorneys providing indigent defense services participate in workload studies. Consistent with NRS 180.320(2)(d)(4), results of each study shall be a recommendation to the Board in determining maximum workloads for attorneys providing indigent defense services.

Sec. 45.

In counties whose population is less than 100,000, providers of indigent defense services shall use the data collection and case management system provided by the Department at State expense for caseload and time reporting.

Sec. 46.

1. In counties whose population is less than 100,000, each plan shall require caseload reporting by the county's indigent defense providers. The plan shall specify whether the reporting will be done by attorney or collectively by office of a public defender. The plan shall require such reporting on an annual basis that details, without limitation, the total number of:

- (a) Beginning pending cases;
- (b) New appointments;
- (c) Cases returned from warrant or re-activated;
- (d) Cases adjudicated, disposed or closed and:
 - (i) The manner in which each case was adjudicated, disposed or closed, including, pursuant to a plea, dismissal or verdict at trial;
- (e) Warrant or placed on inactive status cases;
- (f) Cases set for review;
- (g) End pending cases.
- (h) Total number of motions to suppress (i) filed and (ii) litigated; and
- (e) Number of trials over the reporting period.

2. The cases included in a report required pursuant to subsection 1 must be further arranged by the following case type:

- (a) Death penalty cases;
- (b) Non-capital category A felonies and category B felonies for which the maximum penalty is 10 years or more;
- (c) Category B felonies for which the maximum penalty is less than 10 years and category C, D, E felonies and gross misdemeanors;
- (d) Misdemeanor driving under the influence and domestic violence cases;
- (e) Other misdemeanors, including misdemeanor direct appeals;
- (f) Probation and parole violations;
- (g) Direct appeals of capital convictions;
- (h) Direct appeals of non-capital felony and gross misdemeanor convictions;
- (i) Juvenile cases including delinquency, child in need of supervision, and appeals;
- (j) Juvenile probation and parole violations, and
- (k) Specialty court cases.

3. If the independent contractor attorney or office of a public defender provides representation beyond those services provided in NRS 180.004, reports should also include case totals for:

- (a) NRS Chapter 128 cases;
- (b) NRS Chapter 432B cases;
- (c) NRS Chapter 433A cases; and/or
- (d) NRS Chapter 159 cases.

4. As used in this section:

(a) "Adjudicated, disposed or closed" means a case in which an original entry of final adjudication has been entered.

(b) "Beginning pending" means a case which, at the start of the reporting period, is awaiting disposition.

(c) "End pending" means a case which, at the end of the reporting period, is awaiting disposition.

(d) "Final adjudication" means an entry of judgment or adjudication, an order of dismissal or the end of the appointment of an attorney regardless of adjudicatory status.

(e) "Juvenile case" means a matter involving an allegation of a juvenile in need of supervision or an act committed by a juvenile which, if committed by an adult, would result in criminal prosecution and over which a juvenile court has statutory original or concurrent jurisdiction.

(f) "New appointment" means a case in which a defendant has been assigned counsel for the first time.

(g) "Returned from warrant or re-activated" means a case re-opened because a defendant has been arrested on a warrant for failure to appear and has appeared before the court or has returned from a diversion program or another similar event has occurred that reactivates a case.

(h) "Set for review" means a case that, after an initial entry of judgment during the reporting period, is awaiting regularly scheduled reviews involving a hearing before a judicial officer.

(i) "Warrant or placed on inactive status" means a case closed because a warrant for failure to appear has been issued, the defendant has been ordered to participate in a diversion program or another similar incident has occurred to make the case not active.

Sec. 47.

1. Each county whose population is less than 100,000 shall require time reporting by indigent defense attorneys in their plan. The plan shall require reporting on an annual basis that details:

- (a) attorney hours per case;
- (b) investigator hours per case;
- (c) staff hours per case;
- (d) expert hours per case; and
- (e) private workload, if any, measured in attorney hours.

2. Time entries should be kept as close to contemporaneous as reasonably practicable to ensure accuracy of time reporting and the ability of the Department to generate quarterly reports.

3. As used in this section, "staff" means a paralegal, or similar employee, as defined by the Bylaws of the Paralegal Division of the State Bar of Nevada, adopted on November 11, 1994 or the same as they may be amended.

Temporary Regulation of the Board on Indigent Defense Services.
Adopted January 28, 2021.
Effective Date March 5, 2021

4. In each county whose population is over 100,000, time records must be kept only during periods in which weighted caseload studies, pursuant to Section 44, are conducted.



**** This sign-in sheet is a public record under the Public Records Act. For limitations on public comment, please refer to the Agenda ****

Meeting Date: 9/16/2024

[illegible]



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Meeting Date: 9/16/2021

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