



Storey County Board of County Commissioners Agenda Action Report

Meeting date: 9/21/2021

Estimate of Time Required: 15 min.

BOCC Meeting

Agenda Item Type: Discussion/Possible Action

- **Title:** Consideration and approval of Storey County Indigent Defense Service Plan designed to meet the requirements of the State of Nevada in accordance with NRS 260.070 and to comply with the Nevada Supreme Court's orders in ADKT 411.
- **Recommended motion:** I (county commissioners) motion to approve Storey County Indigent Defense Service Plan designed to meet the requirements of the State of Nevada in accordance with NRS 260.070 and to comply with the Nevada Supreme Court's orders in ADKT 411.
- **Prepared by:** Austin Osborne

Department:

Contact Number: 7758470968

- **Staff Summary:** The Storey County indigent defense services plan is proposed to be updated in accordance with NRS and orders made to counties in Nevada by the Nevada Supreme Court in ADKT 411.
- **Supporting Materials:** See attached
- **Fiscal Impact:** none
- **Legal review required:** TRUE
- **Reviewed by:**

____ Department Head

Department Name:

____ County Manager

Other Agency Review: _____

- **Board Action:**

☐ Approved

☐ Approved with Modification

☐ Denied

☐ Continued

Storey County Plan for Indigent Defense Services

Est. _____, 2021



STOREY COUNTY INDIGENT DEFENSE SERVICES PLAN

The Storey County Indigent Defense Services Plan ("Plan") has been developed jointly between the Storey County ("Storey County"), the First Judicial District Court ("FJDC"), and the Justice Court of Virginia Township in and for the County of Storey, State of Nevada ("JCVT"). The FJDC and the JCVT may individually be referred to as a "Court," or collectively be referred to as the "Courts." This Plan is designed to meet the requirements NRS 260.070(2) placed on Storey County, and to comply with the Nevada Supreme Court's orders in ADKT 411. This Plan is effective once approved by the Storey County Board of County Commissioners and implemented by the FJDC and the JCVT by administrative order.

1. OBJECTIVE

The objective of this Plan is to:

- a. address:
 1. the determination of a person's status as indigent;
 2. the appointment of counsel for an indigent person in appropriate juvenile, misdemeanor, and felony matters pending before the Courts, including trial and pre-trial proceedings, post-conviction matters, and appeals not subject to Rule 3C of the Nevada Rules of Appellate Procedure; and
 3. the approval of compensation and expenses for appointed counsel, including expert witness fees, investigative fees, and attorney fees; and
- b. ensure an eligible indigent person is provided with qualified counsel to protect his or her constitutional rights.

2. DEFINITIONS

- a. "Conflict Counsel" means a Department qualified attorney to represent indigent persons when the State Public Defender has a conflict and is disqualified from representing an indigent person.
- b. "Counsel" means the State Public Defender, conflict counsel, and a private attorney, unless otherwise defined in a particular section.
- c. "Department" means the Nevada Department of Indigent Defense Services.
- d. "Department qualified" the Department's placement of an attorney on the list of attorneys who are qualified to represent indigent persons in Storey County.
- e. "Indigent Person" means an individual deemed indigent under this Plan.
- f. "Judicial Clerk" means a court clerk or a chambers clerk.
- g. "Private Attorney" means an appointed counsel if no conflict counsel are available, or all of the conflict counsel have a conflict of interest.
- h. "Represent" or "Representation" means legal representation of an indigent person by appointed counsel.
- i. "Services" means services provided to an indigent person during appointed counsel's representation of that person, and includes investigative, expert, and other services.
- j. "State Public Defender" means the Nevada State Public Defender's Office established under NRS Chapter 180 with whom Storey County has contracted with to provide representation and services to an indigent person.

3. APPLICABILITY

- a. This Plan covers appointment of counsel for “indigent defense services,” as that term is defined in NRS 180.004. This covers legal representation and services for a person under the Sixth Amendment to the United States Constitution, NRS 7.115, NRS 34.750, NRS 62D.030, NRS 171.180, and or any law imposing criminal liability on a person that requires or permits the appointment of counsel for an indigent person.
- b. In addition to the representation and services required to be covered under NRS 180.004, this plan also addresses NRS 62D.100, NRS 128.100, NRS 432B.420, and NRS 433A.270, or any other law not involving criminal liability that requires or permits the appointment of counsel, whether or not for an indigent person.
 - 1. The appointment of counsel under NRS 62D.100, NRS 128.100, NRS 432B.420(1), and NRS 433A.270 will follow the procedures in this Plan.
- c. This Plan does not cover NRS Chapters 159, 159A, or 253.
- d. Notwithstanding any other section of this Plan, under NRS 180.004 the Department’s regulations apply only to attorneys providing services in cases under section 3(a). The Department’s regulations do not apply to attorneys providing services in cases under section 3(b).
- e. This is a holistic plan to address the provision of representation and services to individuals under applicable law in Storey County, beyond that required by applicable statute and regulation. The functioning of such representation and services in Storey County relies upon the State Public Defender representing parents in NRS Chapter 432B actions. If the State Public Defender fails to represent parents in NRS Chapter 432B actions or if any part of this Plan is required to be modified, Storey County or the Courts, in their sole discretion, may terminate this Plan and reevaluate indigent defense services in Storey County.

4. CASES IN WHICH COUNSEL MUST OR MAY BE APPOINTED

- a. Mandatory Appointment. Representation must be provided for any indigent person who:
 - 1. is charged with a felony;
 - 2. is charged with a misdemeanor or gross misdemeanor in which the prosecution is seeking jail time (incarceration);
 - 3. is alleged to have violated probation or other supervision and a jail or prison sentence of confinement may be imposed;
 - 4. is seeking relief under NRS 34.724(1) from a death sentence, under NRS 34.750;
 - 5. is a minor alleged to have committed an act of juvenile delinquency, under NRS 62D.030;
 - 6. a minor who has been placed outside of his or her home pursuant to NRS Chapter 432B and is involved in a proceeding to terminate the rights of the minor’s parents, under NRS 128.100(2);
 - 7. is a minor who is alleged to have been abused or neglected, under NRS 432B.420;
 - 8. is a parent of an Indian minor who is alleged to have abused or neglected the minor, under NRS 432B.420(3);
 - 9. is a person who is facing involuntary commitment, under NRS 433A.270;
 - 10. is in custody as a material witness;

11. is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution;
 12. is entitled to appointment of counsel because due process requires the appointment of counsel;
 13. is likely to face Court imposed jail or prison time;
 14. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
 15. faces loss of liberty for criminal contempt; or
 16. has received notice that a grand jury is considering a charge against him/her and has requested counsel.
- b. Discretionary Appointment. When a court determines that the interests of justice so require, representation may be provided for any indigent person:
1. who is:
 - i. seeking post-conviction relief under NRS 34.724(1), other than from a death sentence, under NRS 34.750;
 - ii. a parent of a minor who is alleged to be delinquent or in need of supervision, under NRS 62D.100(1);
 - iii. a minor involved in a proceeding to terminate or restore parental rights, under NRS 128.100(1);
 - iv. a parent who is facing a proceeding to terminate or restore his or her parental rights, under NRS 128.100(3);
 - v. is alleged to have abused or neglected a child, under NRS 432B.420;
 - vi. charged with civil contempt and faces loss of liberty; or
 - vii. called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, if there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty; or
 2. in any other case in which the court determines in the interests of justice appointment of counsel is appropriate.

5. DETERMINATION OF INDIGENCY

- a. A person must be deemed indigent, and is eligible for appointment of counsel to represent the person, if the person is unable, without substantial hardship to himself or herself or his or her dependents, to obtain competent and qualified legal counsel on his or her own.
- b. "Substantial hardship" is presumed for a person who:
 1. receives public assistance, including food stamps, temporary assistance for needy families, Medicaid, or disability insurance;
 2. resides in public housing;
 3. earns less than 200 percent of the Federal Poverty Guidelines;
 4. is currently serving a sentence in a correctional institution;
 5. is housed in a mental health facility, or
 6. is a minor.
- c. If substantial hardship is not presumed for a person, a Court may deem a person to have a substantial hardship based upon the person's particular circumstances, including:

1. the nature, extent, and liquidity of the person's assets;
 2. the person's disposable income from all sources;
 3. the person's monthly expenses;
 4. the seriousness of the charges that the person is facing;
 5. whether the person is able to comprehend the proceedings and the charges that the person is facing;
 6. the effort and skill required to gather pertinent information about the case;
 7. the length and complexity of the proceedings;
 8. local private counsel rates;
 9. whether discovery is needed in post-conviction proceedings; or
 10. any other consideration that bears upon the person's ability to retain and pay an attorney.
- d. The Court may determine that a person is partially indigent if the Court finds that a person can afford private counsel or has retained counsel, but the person cannot be effectively represented due to the person's inability to pay for necessary services.
- e. A finding of indigency is not required under:
1. NRS 62D.030(3), for a minor alleged to have committed an act of juvenile delinquency;
 2. NRS 62D.100(1), for a parent of a minor alleged to have committed an act of juvenile delinquency;
 3. NRS 128.100(2), for a minor who has been placed outside of his or her home pursuant to NRS Chapter 432B and is involved in a proceeding to terminate the rights of the minor's parents;
 4. NRS 432B.420(2), for a minor who is alleged to have been abused or neglected;
 5. NRS 432B.420(3), for the parent of an Indian minor who is alleged to have been abused or neglected; or
 6. NRS 433A.270, for a person who is facing involuntary commitment.

6. SCREENING FOR INDIGENCY

- a. Screening for indigency and substantial hardship must be conducted by the Storey County Sheriff's Office, or other court or law enforcement personnel:
1. within 48 hours, or sooner as required by applicable law:
 - i. for a person who is booked into the Storey County Jail or a juvenile detention facility; or
 - ii. for a person who appears before a Court and requests, or is required to be appointed, counsel; or
 2. within the time frame directed by the Court.
- b. The screening results must be provided to the Courts immediately upon completion.

7. TIME FOR APPOINTMENT OF COUNSEL

- a. The Court must review the screening results and the case to determine:
1. if a person has requested representation, whether:
 - i. the appointment of counsel is mandatory or the interests of justice require the discretionary appointment of counsel; and
 - ii. the person is indigent or partially indigent; or

2. if a person is required by law to be appointed counsel.
- b. An attorney must be appointed for any eligible indigent person:
1. as soon as feasible after:
 - i. formal charges being filed against a person held in custody;
 - ii. a person's first appearance before a judge; or
 2. as required by any other applicable provision of law;
 3. when a Court otherwise considers appointment of counsel appropriate; or
 4. otherwise as soon as feasible.
- c. An eligible indigent person must be appointed:
1. one attorney, except in a capital case; or
 2. two attorneys in a capital case in which a person is reasonably believed to face capital punishment; at least one of the two attorneys appointed in a capital case must meet the minimum standard for lead counsel pursuant to Rule 250 of the Nevada Supreme Court Rules and both attorneys appointed must conform to the performance guidelines or standards for capital cases as adopted by the Nevada Supreme Court.

8. APPOINTMENT OF COUNSEL

- a. Attorneys appointed for co-defendants may not be from the same law firm.
- b. The indigent defense coordinator will generally follow the procedure in this section to select counsel. The indigent defense coordinator may, however, select as counsel for an indigent person the counsel that represented the indigent person in a previous action if it would be in the indigent person's best interests to have the same counsel and would facilitate the indigent person's defense.
- c. Unless the indigent defense coordinator is aware of a conflict in a particular case for the State Public Defender, the indigent defense coordinator must first select the State Public Defender to represent an eligible indigent person.
 1. The State Public Defender must determine whether it may accept the representation and conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the person. If the State Public Defender cannot accept the representation or a conflict is determined to exist, the State must notify the indigent defense coordinator.
 2. The assignment to a case of a specific attorney, or attorneys, working for the State Public Defender rests solely within the discretion of the State Public Defender.
- d. If the State Public Defender has a conflict or is otherwise unable to represent an eligible indigent person, the indigent defense coordinator will select conflict counsel.

1. The indigent defense coordinator will use his or her best effort to balance the number of cases assigned to each conflict counsel, and the workload of each conflict counsel, by fairly rotating the case assignments through the list of conflict counsel.
 2. Unless the indigent defense coordinator is aware of a conflict in a particular case for a conflict counsel, the indigent defense coordinator will contact the next conflict counsel on the list. The contacted conflict counsel must conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the person. If a conflict is determined to exist, the conflict counsel must notify the indigent defense coordinator. A conflict counsel must conduct the conflict checks and notify the indigent defense coordinator within 1 day of being appointed.
 3. If the contacted conflict counsel has a conflict, the indigent defense coordinator will follow the procedure in subsection 1 and contact the next conflict counsel in the rotation until a conflict counsel accepts the case, or all conflict counsel are unavailable or have a conflict of interest.
- e. If no conflict counsel are available, or if all conflict counsel have a conflict of interest, the indigent defense coordinator will contact private attorneys.
1. The indigent defense coordinator will use his or her best efforts to balance the number of cases assigned to each private attorney, and the workload of each private attorney assigned by the Courts, by fairly rotating the case assignments through the Department list of private attorneys. Cases will be assigned to private attorneys having an office in Storey County first. If no private attorney on the Department list is available in Storey County, cases will be assigned to private attorneys having an office in Douglas, Lyon, Storey, or Washoe Counties. Private attorneys having offices in other counties are deemed to be too remote to Storey County to provide effective assistance of counsel.
 2. Unless the indigent defense coordinator is aware of a conflict in a particular case for a private attorney, the indigent defense coordinator will contact the next private attorney on the list. The contacted private attorney must conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the person. If a conflict is determined to exist, the private attorney must notify the indigent defense coordinator. A private attorney must conduct the conflict checks and notify the indigent defense coordinator within 1 day of being appointed.
 3. If the private attorney has a conflict, the indigent defense coordinator will follow the procedure in subsection 1 and contact the next private attorney on the Department list until a private attorney accepts the case, or all private attorneys on the Department list are unavailable or have a conflict of interest.
- f. If no counsel is available to represent the indigent person, the indigent defense coordinator may contact, and the Court may appoint, any attorney who, in the Court's discretion, will provide competent representation to the indigent person. The indigent defense coordinator and the Court will use their best efforts to contact and appoint an attorney who will comply

with Department's regulations, if applicable. An attorney based in Washoe County who the Courts appoint to represent indigent persons in Storey County must comply with Department's requirements for counties whose population is 100,000 or more.

- g. The Court will enter an order appointing counsel or an attorney to represent the indigent person.
- h. Any counsel or attorney appointed in cases involving juveniles must be experienced in juvenile matters, or must otherwise be able to provide competent representation to the indigent person.

9. RECONSIDERATION OF DETERMINATION OF INDIGENCY

If a person or the person's counsel or attorney is unsatisfied with the Court's determination of indigency or partial indigency, the person or the person's counsel or attorney may request reconsideration of the Court's determination of indigency.

- a. A FJDC department will review a decision made by a JCVT court.
- b. The department of the FJDC not assigned to the case will review a decision made by a FJDC court
- c. The decision of a juvenile court master may be objected to under juvenile court procedures.

10. CHANGE IN ELIGIBILITY

- a. Appointed counsel must advise the Court if, or when, an indigent person has a change in his or her financial condition that may make him or her ineligible for public payment for indigent representation.
- b. Information that an indigent person provides to his or her appointed counsel that concerns the person's eligibility as an indigent person for appointment of counsel is not protected as a privileged attorney-client communication.

11. COMPENSATION

- a. Storey County will compensate the State Public Defender as provided by NRS Chapter 180 for representation of indigent persons.
- b. Storey County will compensate conflict counsel and other attorneys under this Plan or other applicable law for time that is reasonable and necessary for representation of an indigent person.
- c. Unless otherwise provided in a contract, conflict counsel, private attorneys, and attorneys (collectively "counsel" for this section) may seek compensation for representation of an indigent person through the following procedure.
 - 1. Counsel must submit a request for compensation to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator.
 - i. The request must be supported by a sworn statement specifying time entries rounded to the nearest one-tenth of an hour, a detailed description of the work performed for the representation, a description of the compensation rate applicable to counsel, and any compensation already received from any

- source for representation in the case. The invoice must comply with the requirements of section 14.
- ii. Counsel must submit a request for compensation at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after representation is terminated will be denied.
 - iii. The indigent defense coordinator will submit the request to a senior judge, if available, or a judge pro tempore, if a senior judge is not available, to review the request for compensation. The senior judge or judge pro tempore will approve or deny the request. The senior judge or judge pro tempore will not hold a hearing regarding the request.
2. If the request is denied, counsel may file a motion for compensation with the trial court within 7 days of service of the denial of compensation. A motion for compensation must contain the request for compensation, any information accompanying the request, the denial of the request for compensation, and a proposed order. The Court may order counsel to provide further information regarding the motion for reconsideration. A hearing will not be held on the motion unless ordered by the Court.

12. EXPENSES

- a. Storey County will reimburse the State Public Defender, conflict counsel, private attorneys, and any other attorney (collectively "counsel" for this section) for reasonable and necessary expenses for services.
 - b. If funding is provided by the State of Nevada, Storey County will provide a fund of up to \$1,500 per case for counsel to spend without prior approval. Counsel may invoice Storey County directly for such expenses. The invoice must be on a form proscribed by the Storey County Finance Department, must comply with section 14, and the invoice or receipt for services must be attached to the invoice. Storey County will pay counsel directly for these expenses unless otherwise requested. The payee must comply with all applicable Storey County requirements for government payees.
 - c. Absent funding under subsection 12(b), and unless otherwise provided in a contract, counsel may incur expenses for services costing \$1,000 or less, but must obtain pre-authorization for expenses for services costing more than \$1,000. Expenses for services costing \$1,000 or less must be reasonable and necessary for representation of the indigent person, and may be denied, even if already spent, if it is determined that the services were not reasonable and necessary for representation of the indigent person.
 - d. Counsel may seek reimbursement or pre-authorization for expenses through the following procedure.
1. Counsel must submit a request for reimbursement or pre-authorization of expenses to the indigent defense coordinator, using a form prescribed by the indigent defense coordinator.

- i. The request must be supported by a sworn statement specifying the services rendered or requested, the cost of the services, why the services are reasonable and necessary for the representation, and any compensation already received from any source for the services. The invoice accompanying the request must comply with the requirements of section 14.
 - ii. Counsel must submit a request for expenses at least quarterly, but in any event within 60 days after the date that the representation is terminated. Requests submitted more than 60 days after representation is terminated will be denied.
 - iii. The indigent defense coordinator will submit the request to a senior judge, if available, or a judge pro tempore, if a senior judge is not available, to review the request for compensation. The senior judge or judge pro tempore will approve or deny the request. The senior judge or judge pro tempore will not hold a hearing regarding the request.
- 2. If the request is denied, counsel may file a motion for compensation with the trial court within 7 days of service of the denial of expenses. A motion for compensation must contain the request for compensation, any information accompanying the request, the denial of the request for compensation, and a proposed order. The Court may order counsel to provide further information regarding the motion for reconsideration. A hearing will not be held on the motion unless ordered by the Court.

13. SEALED AND EX PARTE REQUESTS FOR COMPENSATION AND EXPENSES

- a. Any documents concerning requests for compensation or expenses or reconsideration filed with the Court under sections 11 and 12 may be sealed at the request of the counsel or attorney until final judgment is entered in the case.
- b. Any hearings under sections 11 or 12 must be held ex parte, without the presence of the prosecution.

14. PAYMENT FOR COMPENSATION AND EXPENSES

- a. Requests for compensation and expenses or for reconsideration will be denied if not timely submitted.
- b. Invoices for requests for compensation and expenses under sections 11 and 12 must conform to government accounting standards.
- c. Invoices for representation or services provided to an inmate of the Nevada State Prison system, or any person acting in concert with the inmate, for an escape, an attempted escape, or a crime committed while incarcerated must state on the invoices that the services are provided to such an inmate of the Nevada State Prison system.
- d. Any person requesting payment from Storey County must be registered with Storey County as a vendor and have a 1099 tax form and a business license on file with Storey County.
- e. The indigent defense coordinator will forward any request or order approving a motion for compensation or expenses to the Storey County Finance Department ("Finance"), or its designee, for payment processing.

- f. Finance may review the request, order and motion, and request clarification of any portion of the request, order or motion, from the indigent defense coordinator, the court, if approved by court order, or counsel or an attorney.
- g. Storey County will pay counsel or a vendor within 30 days after receipt of the approved request for compensation or expenses, or if Finance requested clarification concerning the request, within 30 days after Finance receives clarification. If the expense is time sensitive, counsel or an attorney may request payment sooner.

15. DEPARTMENT REQUIREMENTS AND INTERACTION

- a. The State Public Defender's Office must independently make arrangements for required caseload and time reporting to the Department, as required by the Department.
- b. Conflict counsel and private attorneys must individually, or by firm if contracted or appointed by firm, make arrangements for required caseload and time reporting to the Department.
- c. The assigned counsel must make accommodations for confidential communication with the indigent person. Jail and courthouse facilities for attorneys' use for discussions with witnesses or clients are generally available to counsel representing indigent persons for attorney/client meetings to the same extent that they are available to other counsel. Such facilities include the attorney meeting rooms outside of each courtroom, and private meeting space within the jail. Counsel who are not familiar with the accommodations at the Courts or the Storey County Jail may ask the Court Clerk's Office or jail personnel for assistance in speaking privately with the indigent person.
- d. Counsel or the Courts must provide client surveys authorized by the Nevada Board on Indigent Defense Services to an indigent person appointed counsel under this Plan.
- e. Complaints about counsel or attorneys must be forwarded to the Department and to the Court Administrator.
- f. If counsel or an attorney becomes aware of a complaint concerning representation of an indigent person that rises to the level of interfering with the representation of the indigent person, the counsel or attorney must timely notify the Court.
- g. Counsel and attorneys must comply with all applicable law concerning representation of an indigent person, including, but not limited to: the U.S. and Nevada Constitutions, the Nevada Revised Statutes, the Nevada Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance implemented by the Nevada Supreme Court.
- h. Counsel and attorneys must comply with all applicable court rules. This Plan does not supersede court rules.
- i. The Department must provide to Storey County and the Courts on July 1 of each year a then current list of Department qualified conflict counsel and private attorneys, and must update the list with the Courts as other conflict counsel and private attorneys are added to or are removed from the list.
- j. Sections 16(a), (b), (d), and (e) apply only to cases under section 2(a) of this Plan.