EUREKA COUNTY PLAN FOR PROVISION OF INDIGENT DEFENSE SERVICES

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I. STATEMENT OF POLICY

A. Objectives

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services of appointed counsel, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. Meeting the constitutional requirements of providing appointed counsel while not creating any economic disincentive or impairing the ability of appointed counsel to provide effective representation.
3. Promoting the integrity of the relationship between an appointed attorney and a client. Eureka County shall administer this plan in a manner that ensures the Contract Eureka County Public Defender and other appointed counsel are free from political and undue budgetary influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

4. Implementing the requirements of appointed counsel deriving from the U.S. and Nevada Constitutions, Nevada Revised Statutes, Nevada and 7th Judicial District Court Rules, Nevada Rules of Criminal Procedure, and any regulations promulgated by the Board on Indigent Defense Services.

II. DEFINITIONS

A. "Appointed Attorney/Counsel" includes the Eureka Contract County Public Defender and appointed private attorneys, both contracted and hourly.
B. "Ancillary Services" are defense services paid for in addition to attorney's fees: (1) investigator services, (2) expert services, (3) and any other expenses that appointed attorney can reasonably justify as needed for effective assistance of counsel.
C. "Expert Witness" is a person qualified by knowledge, skill, experience, training, or education to render an opinion on scientific, technical, or other specialized matters.
D. "Indigent" means a person who is unable, without substantial hardship to himself/herself or his/her dependents, to obtain competent, qualified legal counsel on his or her own.
E. "Investigator" is a person licensed by the State of Nevada who is qualified to secure evidence, interview and/or subpoena witnesses.
F. "Representation" includes counsel, investigative, expert, and other services that appointed attorney can reasonably justify as needed for effective assistance of counsel.

III. PROVISIONS OF REPRESENTATION

A. Mandatory: Eureka County shall provide representation for any financially eligible person who:
   1. is confined and entitled to a prompt, counseled, adversarial bail hearing;
   2. is charged with a felony or gross misdemeanor;
   3. is charged with a misdemeanor with a minimum jail sentence;
   4. is charged with a misdemeanor where the prosecution is seeking jail time (incarceration);
   5. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
   6. is a juvenile alleged to have committed an act of juvenile delinquency or alleged to be a child in need of supervision;
   7. is in custody as a material witness;
   8. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
   9. has received notice that a grand jury is considering charges against him or her and requests appointment of counsel;
   10. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or when due

process requires the appointment of counsel, or the judge is likely to impose jail time.

B. Discretionary: Whenever a court determines that the interests of justice so require representation Eureka County may provide representation for any financially eligible person who:
   1. is charged with a misdemeanor, infraction, or code violation that a sentence of confinement is authorized;
   2. has been called as a witness before a grand jury, a court, or any agency that has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a criminal contempt proceeding, or faces a potential loss of liberty;
   3. faces any other case where the interest of justice requires appointment of counsel.

C. Timing of Appointment of Counsel; When Eureka County Shall Provide Counsel: Eureka County shall provide an appointed attorney at an indigent person's first appearance before a judge or at least within 48 hours after being confined, when they are formally charged or notified of charges if formal charges are sealed, or when a Justice of the Peace, or District Judge otherwise considers appointment of counsel appropriate.

D. Number and Qualifications of Counsel in Capital Cases:
   1. Number: A relevant court must appoint two (2) lawyers as soon as possible in all open murder cases that are reasonably believed to result in a capital charge.
   2. Qualifications: Appointing of attorneys representing defendants charged in capital cases shall comport with NSCR 250.

E. Financial Eligibility for Representation:
   1. Indigency Determination Financial Eligibility: An indigent person is entitled to appointed counsel.
      a) "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.
      b) "Substantial hardship" is presumptively determined to include all defendants who receive public assistance, as that term is defined in NRS 422A.065; such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in-public housing, as the term is defined in NRS 315.021; or has a household income that is earn less than 200 percent of the Federal Poverty Guideline.
      c) A defendant is presumed to have a substantial hardship if he or she is currently serving a sentence in a correctional institution or housed in a mental health facility or is a minor.
      d) Defendants not falling below the presumptive threshold are subject to a more rigorous screening process to decide if his/her circumstances would result in a substantial hardship if he/she sought retaining private counsel. Those circumstances include the seriousness of charges being faced, monthly expenses, and local private counsel rates and availability.

2. Automatic Eligibility: A minor alleged to have committed a crime, an act of juvenile delinquency, or alleged to be a child in need of supervision is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.
3. Screening for Eligibility: When a person is taken into custody the Pre and Post Trial Supervision Officer or the Eureka County Sheriff's Office will provide them, prior to their first appearance, a Financial Declaration and Order form. See Appendix A. The Financial Declaration and Order form will be filled out and provided to the Pre and Post Trial Supervision Officer who will review the form to ensure all necessary information is included prior to the first appearance. The Financial Declaration and Order will be provided to the judge for review and determination of eligibility. The decision to appoint or not appoint an attorney will be based on the criteria in section III(E)(1) of this plan and as otherwise required by law. The eligibility determination will be made within 72 hours of the time the person is taken into custody. Appointed Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility.

IV. APPOINTMENT OF CONTRACT EUREKA COUNTY PUBLIC DEFENDER

A. Process for hiring Contract Eureka County Public Defender.
   1. Proposals for the provision of services with specifications that meet or exceed regulations of the Board on Indigent Defense Services will be sought by November 1 of a) prior to any biennium fiscal year when indigent services are being sought; or, b) any year prior to the termination or expiration of a currently existing system for indigent defense services.
   2. Proposals will set forth the qualifications and legal experience of the applicant.
   3. Proposals will include the applicant's past performance in representing persons in the criminal justice system.
   4. Proposals will include the applicant's ability to comply with current regulations then in effect for the provision of indigent defense services and/or the terms of the contract. Proposals will only be accepted from attorneys on the Department of Indigent Defense roster of eligible providers.
   5. Proposals will include the cost of services under the contract including the cost for services, if any, that must be provided in addition to criminal defense services.
   6. The County may seek references and consult references in the hiring process, including the Department, in the hiring process.
   7. Proposals will be evaluated by the Board of County Commissioners and its designees but shall not include any members of law enforcement or prosecution. Judicial input may be considered but may not be the sole basis for selection. Contracts will be awarded based on the merits of the proposals.

B. How Cases Are Assigned. The Contract Eureka County Public Defender will be appointed to represent all defendants at their initial detention hearing and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of criminal procedure, and caselaw. If there are one or more co-

defendants in a case the relevant court will notify the Department of Indigent Defense Services immediately following the initial detention hearing. The Contract Eureka Public Defender will represent co-defendants only for the initial detention hearing. If the Contract Eureka Public Defender is unavailable for the initial detention hearing, the Justice Court will appoint other counsel for the initial detention hearing only.

C. Conflict of Interest Checks in Indigent Defense Cases: The Contract Eureka County Public Defender shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant.
   1. When the Contract Eureka County Public Defender determines that a conflict exists requiring disqualification, a Motion to Withdraw will be filed with the Court.
   2. The Motion to Withdraw will be reviewed by the Judge as soon as possible. Upon approval, the Judge will sign an ORDER FOR APPOINTMENT AND REFERRING FOR SELECTION OF CONFLICT COUNSEL.
   3. The Court Clerk will file the order and email the Order, with a copy of the Probable Cause Declaration and next set court dates, to the Department of Indigent Defense Services for selection of conflict counsel.
   4. Upon notice of the conflict, the Department of Indigent Defense Services shall appoint conflict counsel Pursuant to the Selection of Counsel and Payment Procedures. See Appendix B.
   5. Eureka County will Budget Ten Thousand Dollars ($10,000.00) for conflict counsel.
   6. Compensation of Court Appointed Conflict Counsel Pursuant to NRS 7.125, attorneys will be compensated at the following hourly rates for court appearances and other time reasonably spent on the matter to which the appointment is made:
      a) $125.00/hour in cases in which the death penalty is sought,
      b) $100.00/hour in all other cases, or
      c) The rate specified in an agreement between an attorney and county.
      d) Travel is reimbursed at the hourly rate plus mileage at the current State Mileage Reimbursement Rate or pursuant to the rate specified in an agreement between and attorney and county. Attorney travel outside the State must be submitted to the Department of Indigent Defense Services for prior authorization.
   7. Appointed Attorneys, other than the Eureka County Public Defender, shall submit monthly invoices to the Department. Such invoices shall be submitted on the Requests for Attorney's Fees form, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered. The backup shall contain time entries rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.
   8. The Department shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. In reviewing for reasonableness, the Department may consider factors such as: (i) average case times as determined by workload analysis; (ii) time and skill required;

(iii) complexity of the case; and (iv) experience and ability of the Appointed Attorney(s). The Department may request additional information or explanation where necessary. In the event the Department denies or modifies a Request for Attorneys' Fees, it shall provide an explanation to the Appointed Attorney as to why the denied portion was not reasonable. Such denials shall be subject judicial review pursuant to NRS 7.135.

9. Payment for all approved attorneys' fees shall be issued by the Eureka County Comptroller's Office. The Department shall notify the Comptroller's Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. The Comptroller's Office shall issue payment within thirty (30) days of receipt.
10. The Contract Eureka County Public Defender will remain counsel of record until such time as the relevant court enters an Order granting withdrawal.
11. The Eureka County District Attorney's office shall have no authority to determine or recommend whether or not the Contract Eureka County Public Defender has a conflict of interest.

D. Case Related Expenses: Eureka County shall maintain a budget of Fifty Thousand Dollars ($50,000.00) for payment of investigator and expert witness fees. The Contract Eureka Public Defender or conflict counsel will have discretion to hire investigators, Experts and incur other expenses necessary to provide defendants with a competent defense.
   1. Expenditures of up to Three Thousand Five Hundred Dollars can be made without prior approval and will be billed to Eureka County.
   2. Expenditures over Three Thousand Five Hundred Dollars will require prior approval of the Department of Indigent Defense Services as provided for in the Selection of Counsel and Payment Procedures. See Appendix B. The Attorney shall submit the request for pre-authorization to the Department by email at didscontact@dids.nv.gov. The request shall include an explanation of why the expense is reasonably necessary. Any modification or denial of expenditures for investigators or experts is subject to judicial review by the appropriate court.
   3. Reasonableness Review: All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the Department's review for reasonableness. Invoices and W-9's for Case-Related Expenses shall be submitted to the Department for such review no later than thirty (30) days following the termination of the representation. The Department shall approve all reasonable and necessary Case-Related Expenses and shall notify the Eureka County Comptroller's Office of all approved expenses and provide a copy of the invoice and W-9.

E. Privileged Communications: County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense client and appointed counsel. Attorneys will meet with clients in the justice court pretrial and posttrial supervision officer's office, the district court jury room or the room designated "justice court" at the sheriff's office. If any of these rooms are not available, Eureka County will provide another location suitable for private conversations between defendants and their counsel.

F. Complaints by Clients: The Contract Eureka County Public Defender will notify all clients at the initial interview of their ability to file a complaint with the Nevada State Bar or the Department of Indigent Defense Services should they be dissatisfied with the services provided by counsel. At the conclusion of every case the Contract Eureka Public Defender will provide the client with the following links to provide complaints to the Nevada State Bar and complaints or recommendations to the Department of Indigent Defense services:

https://dids.nv.gov/Complaints/Complaints_or_Recommendations
https://nvbar.org/file-a-complaint-2/

V. TRAINING

The Contract Eureka County Public Defender shall use the services of the Nevada Department of Indigent Defense Services (DIDS), Nevada State Bar, Washoe County Public Defender, Clark County Public Defender, and Nevada State Public Defender to obtain free or low-cost training opportunities. Training will meet or exceed the requirements of the Nevada Department of Indigent Defense Services, the Nevada State Bar, Nevada Rules of Professional Conduct, and any other Nevada law or regulation governing the training, experience, or qualification of an attorney. Counsel must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services (DIDS) regulations.

VI. DUTIES OF INDIGENT DEFENSE COUNSEL

A. Standards of Performance: Services rendered by appointed counsel shall be commensurate with those rendered if counsel privately employed by a person. Representation shall be provided in a professional, skilled manner guided by applicable regulations; laws; Nevada 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.
   1. The Appointed Attorney will provide counsel at first appearance and be prepared to address appropriate release conditions in accordance with relevant statutes, rules of criminal procedure, and caselaw. The Contract Eureka Public Defender shall be present at all other critical stages, whether in or out of court.
   2. The Appointed Attorney will 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.
   3. The Appointed Attorney will make all reasonable efforts to meet with each client within the first seven days following assignment of the case, and every thirty days thereafter, unless there are no significant updates in the client's case.

B. Continuity in Representation: Eureka County shall, to the greatest extent possible, provide 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 administrative and other tasks that do not affect the rights of the defendant.

C. Workload Standard: The workload of Appointed Attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any Appointed 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, or representation of clients.
   1. Eureka County will provide maximum workload guidelines to attorneys who provide indigent defense services as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.

D. No Receipt of Other Payment: Appointed Attorney may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment unless such payment is approved by order of the court.

E. Private Practice of Law: Appointed Attorneys may engage in the private practice of law so long as such practice does not adversely impact representation of the indigent client.

F. Use of Client Surveys: Appointed Attorney shall ensure that any client surveys authorized by the Board of Indigent Defense Services are provided to clients at the conclusion of his or her representation by an attorney.

VII. DATA COLLECTION

A. The Contract Eureka County Public Defender shall use the data collection and case management system provided by the Department of Indigent Defense Services at State expense for caseload and time reporting. Caseload reporting will be done by the Contract Eureka Public Defender. The Contract Eureka Public Defender shall report on an annual basis as required by the Regulations of the Board on Indigent Defense.

VIII. EFFECTIVE DATE

A. The provisions of this Eureka County Indigent Defense Plan become effective on July 1, 2023.

Appendix A.

Appendix B.