

Assembly Bill No. 518–Committee on Ways and Means

Joint Sponsor: Senate Committee on Finance

CHAPTER.....

AN ACT relating to indigent defense; establishing the maximum amount that certain counties are required to pay for the provision of indigent defense services for Fiscal Year 2023-2024; establishing a formula for determining the maximum amount that such counties may be required to pay for the provision of indigent defense services in subsequent fiscal years; establishing a formula for determining the maximum amount that other counties may be required to pay for the provision of indigent defense services; prohibiting a county from seeking state contributions for the provision of indigent defense services in excess of the maximum county contribution for the costs of capital improvement projects relating to the provision of indigent defense services; establishing the procedure by which a county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution; authorizing the designee of a board of county commissioners to perform certain actions relating to corrective action plans; revising the date on which certain reports related to the provision of indigent defense services must be submitted to the Department of Indigent Defense Services; making an appropriation to the Interim Finance Committee for allocation to the Department for the reimbursement of counties for costs in excess of their maximum contribution amounts for the provision of indigent defense services and for the funding of certain other costs relating to the provision of indigent defense services; making an appropriation to the Department for certain costs related to pretrial release hearings that are or may be conducted on a weekend or holiday; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Board on Indigent Defense Services to adopt regulations to establish a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services. (NRS 180.320) **Section 5** of this bill removes that requirement, and **section 2** of this bill instead establishes: (1) the maximum amount that each county whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties) is required to pay for the provision of indigent defense services for Fiscal Year 2023-2024; and (2) a statutory formula for determining the maximum amount



that such a county may be required to pay for the provision of indigent defense services for each fiscal year after Fiscal Year 2023-2024. **Section 2** also establishes a statutory formula for determining the maximum amount that each county whose population is 100,000 or more (currently Clark and Washoe Counties) is required to pay for the provision of indigent defense services. **Section 2** additionally provides that a county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution after the county has exceeded its maximum contribution but prohibits a county from seeking such state contributions for the costs of any capital improvement projects relating to the provision of indigent defense services. **Sections 4 and 6** of this bill make conforming changes by replacing references to the maximum county contribution being determined by the formula set forth in regulation with references to the maximum county contribution being determined in accordance with **section 2**.

Section 3 of this bill establishes the procedure by which a county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution on a quarterly basis.

Section 6 of this bill authorizes the designee of a board of county commissioners to perform certain actions otherwise performed by the board of county commissioners with regard to certain corrective action plans.

Existing law requires the board of county commissioners of each county with a public defender or which contracts for indigent defense services to provide an annual report concerning the provision of indigent defense services to the Department of Indigent Defense Services on or before May 1 of each year. (NRS 260.070) **Section 6.5** of this bill changes the required date of the submission of the report to on or before May 31 of each year, unless the Department requires the report to be provided on a quarterly basis.

Section 7 of this bill makes an appropriation from the State General Fund to the Interim Finance Committee for allocation to the Department to fund the: (1) reimbursement of counties for costs in excess of their maximum contribution amounts for the provision of indigent defense services; (2) costs of the Department related to compliance with the *Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment; (3) costs of the Office of the State Public Defender for contracting for legal services for complex cases; and (4) costs for training and pay parity for attorneys who provide indigent defense services.

Section 7.3 of this bill makes an appropriation from the State General Fund to the Department for certain costs related to pretrial release hearings that are or may be conducted on a weekend or holiday. A portion of the appropriation must be allocated to counties whose population is less than 100,000 for the payment of stipends to: (1) prosecuting attorneys for being available to serve or serving as the prosecuting attorney in a pretrial release hearing conducted on a weekend or holiday; and (2) magistrates for being available to conduct or conducting a pretrial release hearing on a weekend or holiday. The remaining portion of the appropriation must be used by the Department for the payment of stipends to attorneys for being available to represent or representing a defendant in a pretrial release hearing conducted on a weekend or holiday in a county whose population is less than 100,000.



EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~for mitted material~~ is material to be omitted.

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

Section 1. Chapter 180 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *The maximum amount that a county may be required to pay for the provision of indigent defense services during a fiscal year is:*

(a) In a county whose population is less than 100,000:

(1) For Fiscal Year 2023-2024, the applicable amount set forth in the table below, as determined by the calculated maximum contribution amount for the county for providing indigent defense services for Fiscal Year 2022-2023, increased by 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) Five percent.

<i>Carson City</i>	<i>\$1,903,177</i>
<i>Churchill</i>	<i>375,706</i>
<i>Douglas</i>	<i>892,658</i>
<i>Elko</i>	<i>1,946,335</i>
<i>Esmeralda</i>	<i>94,702</i>
<i>Eureka</i>	<i>41,808</i>
<i>Humboldt</i>	<i>493,319</i>
<i>Lander</i>	<i>102,569</i>
<i>Lincoln</i>	<i>187,530</i>
<i>Lyon</i>	<i>851,690</i>
<i>Mineral</i>	<i>95,963</i>
<i>Nye</i>	<i>866,049</i>
<i>Pershing</i>	<i>258,163</i>
<i>Storey</i>	<i>93,593</i>
<i>White Pine</i>	<i>461,448</i>

(2) For each fiscal year after Fiscal Year 2023-2024, an amount equal to the calculated maximum contribution amount for



the county for providing indigent defense services for the immediately preceding fiscal year, increased by 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) Five percent.

(b) In a county whose population is 100,000 or more:

(1) The actual costs to the county for providing indigent defense services for the immediately preceding fiscal year; 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) Five percent.

2. If a county whose population is less than 100,000 chooses to transfer to the State Public Defender the responsibility of providing representation in:

(a) Direct appeals to the appellate court of competent jurisdiction, the cost of providing representation in those cases is a charge against the State and is excluded from the required maximum contribution of the county.

(b) Death penalty cases, the State Public Defender shall submit to the county an estimate for the representation. The county is responsible for paying 25 percent of the estimate and shall make such a payment in accordance with NRS 180.110. Such payments count towards the maximum contribution of the county.

3. Except as otherwise provided in subsection 4, a county may seek state contributions for the provision of indigent defense services in excess of the maximum contribution of the county, as determined pursuant to this section, after the county has exceeded its maximum contribution.

4. A county may not seek state contributions for the provision of indigent defense services in excess of the maximum contribution of the county, as determined pursuant to this section,



for the costs of any capital improvement projects relating to the provision of indigent defense services, including, without limitation, costs relating to the construction of a room or area in a courthouse in which an attorney who provides indigent defense services may consult with a client or any other capital improvement project that is indirectly related to the provision of indigent defense services.

5. Nothing in this section limits a county from expending more than its maximum contribution for the provision of indigent defense services, as determined pursuant to this section.

Sec. 3. 1. *A county may seek state contributions for the provision of indigent defense services in excess of the maximum contribution of the county, as determined pursuant to section 2 of this act, as follows:*

(a) For a county whose population is less than 100,000, the Executive Director shall include the estimated state contribution for the county for the provision of indigent defense services, based upon the annual reporting of the county pursuant to NRS 260.070, in the budget for the Department to help support the indigent defense services provided by the county.

(b) For a county whose population is 100,000 or more, if the county intends to seek state contributions for the provision of indigent defense services in excess of the maximum contribution of the county, as determined pursuant to section 2 of this act, the board of county commissioners for the county, or its designee, shall notify the Department in writing of the intention of the county to seek such contributions in the upcoming biennium, on a form prescribed by the Department, on or before March 1 of the next odd-numbered year. The Executive Director shall include the state contribution for the county in the next budget for the Department to help support the indigent defense services provided by the county.

2. If a county seeks state contributions pursuant to subsection 1, the board of county commissioners for the county, or its designee, shall submit a financial status report to the Department on a form prescribed, and in accordance with the timeline established, by the Department.

Sec. 4. NRS 180.110 is hereby amended to read as follows:

180.110 1. Each fiscal year the State Public Defender may collect from the counties amounts which do not exceed those authorized by the Legislature for use of the State Public Defender's services during that year. The amount that a county may be required to pay must not exceed the maximum amount determined ~~using the~~



~~formula established by the Board pursuant to NRS 180.320.] in accordance with section 2 of this act.~~

2. The State Public Defender shall submit to the county an estimate on or before the first day of May and that estimate becomes the final bill unless the county is notified of a change within 2 weeks after the date on which the county contribution is approved by the Legislature. The county shall pay the bill:

(a) In full within 30 days after the estimate becomes the final bill or the county receives the revised estimate; or

(b) In equal quarterly installments on or before the 1st day of July, October, January and April, respectively.

➤ The counties shall pay their respective amounts to the State Public Defender who shall deposit the amounts with the Treasurer of the State of Nevada and shall expend the money in accordance with the State Public Defender's approved budget.

Sec. 5. NRS 180.320 is hereby amended to read as follows:
180.320 1. The Board on Indigent Defense Services shall:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

—4.] The Board shall adopt any additional regulations it deems necessary or convenient to carry out the duties of the Board and the provisions of this chapter.

Sec. 6. NRS 180.450 is hereby amended to read as follows:

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

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

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



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

5. Upon being informed by the deputy director pursuant to subsection 4 that a county has not complied with a corrective action plan, the Executive Director must review information regarding the provision of indigent defense services in the county and determine whether to recommend establishing another corrective action plan with the board of county commissioners of the county ~~§~~, *or its designee*. For a county that is not required to have an office of public defender pursuant to NRS 260.010, the Executive Director may instead recommend requiring the board of county commissioners to transfer responsibility for the provision of all indigent defense services for the county to the State Public Defender. The recommendation of the Executive Director must be submitted to and approved by the Board. Once approved, the board of county commissioners shall comply with the decision of the Board.

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

(a) The board of county commissioners for the county, *or its designee*, shall notify the State Public Defender in writing on or before November 1 of the next even-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the odd-numbered year following the year in which the notice was given, as determined by the Executive Director.

(b) The board of county commissioners for the county shall pay the State Public Defender in the same manner and in an amount determined in the same manner as other counties for which the State Public Defender has responsibility for the provision of indigent defense services. The amount that a county may be required to pay must not exceed the maximum amount determined ~~[using the formula established by the Board pursuant to NRS 180.320.]~~ *in accordance with section 2 of this act.*

Sec. 6.5. NRS 260.070 is hereby amended to read as follows:

260.070 1. The public defender shall make an annual report to:

(a) The board of county commissioners covering all cases handled by his or her office during the preceding year.



(b) The Department of Indigent Defense Services created by NRS 180.400 which includes any information required by the Department.

2. The board of county commissioners of each county with a public defender or which contracts for indigent defense services shall provide an annual report to the Department on or before May ~~15~~ **31** of each year ~~15~~ **15**, *unless the Department requires the report to be provided on a quarterly basis.* The report must include any information requested by the Department concerning the provision of indigent defense services in the county and must include, without limitation, the plan for the provision of indigent defense services for the county for the next fiscal year ~~15~~ **15** *or, if the Department requires the report to be provided on a quarterly basis, for the next quarter.*

3. As used in this section, “indigent defense services” has the meaning ascribed to it in NRS 180.004.

Sec. 7. 1. There is hereby appropriated from the State General Fund to the Interim Finance Committee the sum of \$6,306,880 in Fiscal Year 2023-2024 and the sum of \$6,613,033 in Fiscal Year 2024-2025 for allocation to the Department of Indigent Defense Services to fund:

(a) The reimbursement of counties for costs in excess of their maximum contribution amounts for the provision of indigent defense services, including, without limitation, the costs of compliance with workload standards;

(b) The costs of the Department related to compliance with the *Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment;

(c) The costs of the Office of State Public Defender for contracting for legal services for complex cases; and

(d) The costs for training and pay parity for attorneys who provide indigent defense services.

2. Money appropriated by subsection 1 may only be allocated by the Interim Finance Committee upon recommendation of the Governor, and upon submittal by the Department of Indigent Defense Services of documentation of the costs.

3. The sums appropriated by subsection 1 are available for either fiscal year. Any remaining balance of those sums must not be committed for expenditure after June 30, 2025, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 19, 2025, by either the entity



to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 19, 2025.

Sec. 7.3. 1. There is hereby appropriated from the State General Fund to the Department of Indigent Defense Services for certain costs related to pretrial release hearings that are or may be conducted on a weekend or holiday the following sums:

For the Fiscal Year 2023-2024	\$1,474,200
For the Fiscal Year 2024-2025	\$1,474,200

2. The sums appropriated pursuant to subsection 1 must be allocated as follows:

(a) On or before August 1, 2023, and August 1, 2024, the Executive Director of the Department of Indigent Defense Services shall pay \$982,800 to the counties in this State whose population is less than 100,000, with each county receiving the following applicable amount:

Carson City	\$46,800
Churchill	46,800
Douglas	93,600
Elko	93,600
Esmeralda	46,800
Eureka	46,800
Humboldt	46,800
Lander	46,800
Lincoln	93,600
Lyon	93,600
Mineral	46,800
Nye	93,600
Pershing	46,800
Storey	46,800
White Pine	93,600

(b) The remaining \$491,400 must be distributed to the Department of Indigent Defense Services for the purposes set forth in subsection 4.

3. Money allocated pursuant to paragraph (a) of subsection 2:

(a) Must be used only to pay a stipend of \$450 per day to a:

(1) District attorney, assistant district attorney, deputy district attorney or other attorney employed by a district attorney for being available on a weekend or holiday to serve as the prosecuting attorney in a pretrial release hearing required by NRS 178.4849 or for serving as the prosecuting attorney in any such pretrial release



hearing conducted on a weekend or holiday in a county whose population is less than 100,000; or

(2) Magistrate for being available on a weekend or holiday to conduct a pretrial release hearing required by NRS 178.4849 or for conducting any such pretrial release hearing on a weekend or holiday. As used in this subparagraph, “magistrate” means a judicial officer who presides over a pretrial release hearing.

(b) Except as otherwise provided in paragraph (a), must not be used to pay any other staffing costs, including, without limitation, any staffing costs attributable to the courts, district attorneys, public defenders or sheriffs.

4. Money distributed to the Department of Indigent Defense Services pursuant to paragraph (b) of subsection 2 must be used only to provide a stipend of \$450 per day to a public defender, the State Public Defender or any other attorney employed by the public defender or State Public Defender for being available on a weekend or holiday to represent a defendant in a pretrial release hearing required by NRS 178.4849 or to represent a defendant in any such pretrial release hearing conducted on a weekend or holiday in a county whose population is less than 100,000.

5. The expenditure of money allocated pursuant to paragraph (a) of subsection 2 by a county is subject to an annual audit of the county. Each county that receives money allocated pursuant to paragraph (a) of subsection 2 shall provide, on or before October 1, 2024, and October 1, 2025, a report to the Director of the Legislative Counsel Bureau, for transmittal to the Legislature and the Department of Indigent Defense Services, that sets forth the expenditure of such money for the immediately preceding fiscal year.

6. Any remaining balance of the allocations made by paragraph (a) of subsection 2 and the money distributed to the Department of Indigent Defense Services pursuant to paragraph (b) of subsection 2 from the appropriation made by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2024, and September 19, 2025, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General



Fund on or before September 20, 2024, and September 19, 2025, respectively.

Sec. 7.7. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 8. This act becomes effective on July 1, 2023.

