

### NEVADA STATE PUBLIC DEFENDER

DIANE R. CROW STATE PUBLIC DEFENDER 511 E. ROBINSON STREET, SUITE 1 CARSON CITY, NEVADA 89701-4020 TELEPHONE (775) 687-4880 FAX (775) 687-4993

November 11, 2012

HONORABLE MAYOR R. CROWELL CARSON CITY BOARD OF SUPERVISORS AUDIT COMMITTEE

First, I would like to thank Carson City for undertaking the process of evaluating the costs of indigent defense in the County. I was pleased to be able to participate in the audit and provide Moss-Adams all information requested.

During the last Legislature, The Carson City Manger recommended that the County consider the option of hiring contract attorneys in place of the State Public Defender. Time was at issue and with not enough information to reliably proceed, the Board of Supervisors opted to table the discussion, hire an independent auditor and to review the issue again prior to the 2013 Legislature.

We now have the Final Draft Moss-Adams report dated November 2012. I must say I was quite surprised at the recommendation considering the numerous meetings, phone calls, and emails with Moss-Adams - most importantly considering the conclusions and recommendation of the FIRST AUDIT REPORT that was issued in September. In this report, the audit recommended maintaining the status quo with the State Public Defender and the conflict contract attorneys. The auditors found that no significant savings would be realized by Carson City to either establish a County Public Defender or contract with numerous private attorneys. Under both of those scenarios, there would be increased the administrative burdens both to the City and the Courts. I have attached both reports for your consideration.

In what follows, I point out the flaws and the questionable logic, the misinterpretations of the costs and numbers, and potential legal liabilities to the City. I will suggest questions for the Committee and Board of Supervisors to pose to the auditors, before making the final decision.

Respectfully submitted,

Dianes Recon

Diane R. Crow, NSPD

### HISTORY OF THE BUDGET PROCESS FOR THE STATE PUBLIC DEFENDER

Prior to 2005, the State subsidized the counties indigent defense expenses with the split approximately 60% State General Fund and 40% County Fees. In the 2005 Legislature, a Letter of Intent was issued that would require the counties to begin the process of paying for the actual indigent defense services rendered by the State Public Defender. The change was to take place over a long period. Thus, the legislature decided that the county portion each biennium would be calculated on a five year average. Over time the counties would see a slow increase in costs. Since then, the costs are now at actual use amounts of 20% State and 80% county. The Legislature sets the Public Defender budget amount then calculates the 80% to be paid by all counties using the State Public Defender services. The 80% is then distributed to the counties based on their individual use percentages.

### **QUESTIONS TO CONSIDER IN THIS PROCESS**

- 1. What level of service does Carson City expect for its citizens?
- 2. What changed between the first report (September) to the second report (November)?
- 3. What is the current available coverage by the State Public Defender?
- 4. If Carson City follows the recommendation, who will cover the (currently) five specialty courts (potentially) six?
- 5. Who will cover the in custody arraignments/first appearances?
- 6. Will all contract attorneys appear at the Pre-trial conferences?
- 7. Will all contract attorneys be qualified to handle a murder case or even be qualified under Nevada Supreme Court Rule 250 for Capital cases?
- 8. What will be the added costs to Carson City for the "extraordinary fees" allowed under NRS 7.125 and the current Conflict Counsel Contract?
- 9. Is \$22,000 for investigative costs per contract realistic?
- 10. What are the real cost savings?
- 11. How likely is it that Carson City will maintain the standard of indigent defense?
- 12. Are there sufficient QUALIFIED attorneys available and willing to contract with Carson City at the recommended amounts?
- 13. Does it meet the requirements of NRS 260?

## THOUGHTS TO CONSIDER IN ANSWERING THE PRECEEDING OUESTIONS

### 1. What level of service does Carson City expect for its citizens?

Both the Nevada Constitution and the US Constitution require that persons charged with a crime be provided publically funded representation, if found to be indigent.

The State Public Defender Office provides zealous representation for the citizens of Carson City. The Committee and the Board of Supervisors should consider the State Public Defender as the quality control of the criminal justice system. The State Public Defender has not been found to be ineffective by the District Court or the Nevada Supreme Court. The State Public Defender has a seat on the Supreme Court Indigent Defense Committee and regularly participates in each Legislative session (at no cost to the counties). Carson City must expect the highest level of service for its citizens. This can not be accomplished by contracting the work to six or seven private attorneys for the compensation recommended. The audit recommends a contract rate of \$142,000/yr for each of 7 attorneys. With approximately \$60,000 going to overhead of running an office, that leaves \$82,000 per year in salary and does NOT include any benefits. It DOES require 40 hours per week or 2080 hours per year; which effectively minimizes a private practice. This is NOT realistic for experienced attorneys or even for young inexperienced attorneys with significant law school debt.

### 2. What changed between the first report September) to the second report (November)?

### Page 1 section B. Current Situation:

The *September* report is erroneous taking into account only FY 11-12. It reports \$997,000 paid by Carson City – in fact:

	FY11	FY12	
CC billed	\$935,192	\$978,924	
CC refunded	- <u>\$61,357</u>	- \$56,128	
NET NSPD cost	\$873,835	\$922,796	= 5.6% increase

The report cites FY 11 hours at 11,293 (which actually are the hours for FY 10) – in fact:

	FY 11	FY12	
CC NSPD Hours	12,096	12902	= 6.6% increase
CC cost per hour	\$72.24	\$71.52	= .996% <u>decrease</u>

The other glaring omission in the reports is that the cost per hour INCLUDES ALL investigation. Private investigation ranges from \$50 to \$65/hr.

The November report is completely inaccurate and uses the wrong numbers. It mixes county amounts with state amounts and does not include the refunds to the counties. Again, the report does not use the net dollar amounts that Carson or the other counties paid; it ignores the refunds at the end of each fiscal year. From FY 08 – FY 12, Carson City has been refunded \$308,212.12; and

average of \$61,642.42/year. And all counties benefitted from \$524,833.96 total refunds over the 5 years.

The report cites that "annual indigent defense hours provided by NSPD have varied from 16,292 to 22,490 for counties ..." These numbers actually represent the total number of defense hours for the NSPD including State matters.

The report does reflect hours for Carson increasing from 8256 to 12902, however, fails to point out the increase is a 56.3% increase in hours with only an increase of 19.4% increase in net fees.

The report indicates that "Carson City paid more per hour than the counties as a whole, with Carson City's cost per hour exceeding other counties' cost per hour by an average of 26.6% over the five-year period." In fact, Carson City has paid the least per hour of any other county and costs per hour have steadily decreased as hours increase!!!

### **COST PER HOUR (INCLUDING INVESTIGATION)**

	FY 12	FY 11	FY 10
Carson City	\$71.52	\$72.24	\$77.24
Eureka	\$102	\$164	\$148
Storey	\$201	\$130	\$99
Wh. Pine	\$82.78	\$90.17	\$71.95

### Page 2 Pros and Cons chart of the model plans.

The only significant difference in the two charts is in the Contract Attorney Only model. In the September report in the Pros column there are "Cost savings, although minimal". Compare this to the November report, which cites "Potential cost savings of \$240,500 to \$405,000".

The question becomes, what different information did the auditor gain to make such a drastic change in the cost savings?

#### <u>Page 3 Section C. Methodology</u> provides the answer.

In the September report the auditors "conducted a series of interviews and work sessions with City Administration, District and Justice/Municipal Court Judges, Court Clerk, conflict attorneys, and the State Public Defender during June, July, and August 2012."

In the November report the auditors "conducted a series of interviews and work sessions with City Administration, District Attorney's Office, District and Justice/Municipal Court Judges, Court Clerk, conflict attorneys, and the State Public Defender during June, through September 2012."

The difference is clear: in September to October of 2012 the auditor met with the District Attorney.

The significant difference is what was the District Attorney's input?

Starting in 2011 when this issue first came to the City Manager's attention and subsequently to the Board of Supervisors, the District Attorney has steadfastly maintained that Carson City should change to a Contract Attorney Only Model.

## Now return to Question Number 1 – What level of service does Carson City expect for its citizens?

The Nevada Supreme Court issues a status report each year for the state of the judiciary. For fiscal years 2006-10 the Criminal Appeals filed within each Judicial District indicate that for the two largest counties (Washoe and Clark) 18% and 67% of cases are appealed, respectively. In the counties that the State Public Defender provides services 4% of the cases are appealed. But in counties with the all contract attorney model, only 0-2% cases were appealed. In particular, in Douglas County (the county the Carson City District Attorney suggested Carson City follow) 0% (3) cases were appealed compared to the State Public Defender in Carson City 39 cases were appealed and 42 cases in the 7<sup>th</sup> Judicial District.

In the attempt to compare Carson City to Douglas County, the most striking difference is the caseload. Yes, Douglas County uses 3 contract attorneys for all indigent defense matters. But, Douglas County's caseload is approximately one half of Carson City's. A better comparison would be to Elko County, which has a similar caseload to Carson. Elko has opted to open a County Public Defender Office. Elko County has 5 justice courts; Douglas County has 2 justice courts. Carson City has 2 justice courts which also act as municipal courts. There is NO county in Nevada with the caseload similar to that of Carson City or Elko County that has gone to an all contract attorney model.

### 3. What is the current available coverage by the State Public Defender?

The NSPD has eight full time attorneys available to cover any indigent defense matter in Carson City, while Carson City is budgeted for 4.75 attorneys. The November report indicates that the 8 attorneys are for both offices, Carson City and Ely. (This is a mistake; there are two additional attorneys in the Ely office.) Having 8 available attorneys in Carson City allows the office to provide coverage, without decrease, during illness, vacation, furlough, and jury trials. There are times, however, when continuances are required due to illness or trials as the NSPD has a policy of "vertical" representation. This means that one attorney, when at all possible, handles the matter from beginning to end, after the pre-trial conference stage. This provides better representation of the client and more efficiency for the courts, and is in the Indigent Defense Guidelines issued by the Nevada Supreme Court.

The individual contract attorneys will not be ethically able to cover for each other in times of illness, vacation, or trial. Thus, all of the affected attorney client matters will be continued, causing a backload of cases in all courts.

Currently, the NSPD has assigned one deputy to cover all Juvenile Court matters, delinquency and 432B – Child in Need of Protection. This allows that attorney to provide better representation, rather than having 2 or more attorneys with matters at juvenile court and justice court at the same time. The sole Juvenile Court attorney never must leave juvenile court to appear at the justice court. This is more efficient for the attorney, the clients, and the courts. Will all 7 contract attorneys be scheduled in Juvenile Court and Justice Court at conflicting times? Who will administer the assigning of the cases to the 7 contracts? If on a simple rotation basis, might 1 attorney receive all of the lesser cases, just by chance?

## 4. If Carson City follows the recommendation, who will cover the (currently) five pecialty courts – (potentially) six?

The office of the NSPD covers all 5 specialty courts (adult drug court, mental health court, DUI diversion court, juvenile drug court, and family/dependency court). Justice Court Dept 1 is currently planning a misdemeanor drug court in the near future, which would be covered by the NSPD at no added expense. As specialty courts were added in Carson City, the NSPD absorbed the work without requesting additional funding.

#### AN OBSERVATION:

Counties that use the all Contract Attorney Model do not provide the hands on contact with the Specialty Court clients. Douglas County, Lyon County and Carson City belong to the Western Regional Drug Court Program. The NSPD drafted and provided to each county the Drug Court Handbook. However, neither Douglas nor Lyon provides the new clients an orientation. The NSPD has included those county clients that transfer to the Carson City Drug Court in the weekly orientation meeting, at the request of the Drug Court Judges.

### Again this goes to Question Number One – WHAT SERVICE DOES CARSON CITY EXPECT FOR ~\$900,000 FOR ITS CITIZENS?

#### 5. Who will cover the in custody arraignments/first appearances?

The NSPD has an attorney appear each morning at the Justice Courts first appearance/arraignments of the in custody defendants. This typically takes between 1-2 hours each morning that the hearings are held (Monday, Tuesday, Thursday, and Friday). There is a possibility of adding this appearance both on Wednesday morning and afternoon. The NSPD will provide coverage at no additional cost.

If the City contracts with 7 attorneys, and these attorneys rotate appearances, will that create a client relationship with each defendant seen? Not necessarily, but the potential is there, depending on what is discussed at the hearing. Or will the attorney be limited in any meaningful conversation thus negating the reason for being present?

### 6. Will all contract attorneys appear at the Pre-trial conferences?

Currently the NSPD provides four attorneys on Wednesday for pre-trial conferences in the Justice Courts. Two attorneys cover the hearings in Dept 2 in the morning and two attorneys cover the hearings in Dept 1 in the afternoon. Each attorney has anywhere from 5-15 clients appearing, for a total of 20-60 clients on any Wednesday. The NSPD has worked with the Justice Courts to establish an efficient method of handling these matters. And will continue to do so. This leads to a question of efficiency for the court and blocking time for each of the 7 conflict attorneys.

## 7. Will all contract attorneys be qualified to handle a murder case or even be qualified under Nevada Supreme Court Rule 250 for Capital cases?

Supreme Court Rule 250 requires not only minimum qualifications for an attorney to represent a client in a Capital case; it requires two attorneys for each defendant. The NSPD currently has two attorneys that meet the qualifications of Rule

250, and others are in the arduous process of training and gaining experience. Even a non-capital murder case takes an experienced attorney and the NSPD is able to assign two trial attorneys, one appellate attorney, and an investigator to these matters. The contract attorneys will most likely bill over the contract amount as NRS 7.125 allows for extraordinary expenses at \$100/ hour and is in the current conflict attorney contracts. The NSPD is able to cover these cases in-house without added attorney expense to the City.

#### **OBSERVATION:**

Pershing County during the 2011 Legislative Session was interested in changing back from a County Public Defender to the State Public Defender. What interested the County Commissioners most was the ability of the NSPD to provide 2 experienced attorneys to any complex case that requires more attention. Ultimately, Pershing County decided to maintain the County Public Defender. However, to their astonishment, not long after, the Pershing County District Attorney filed a Murder case. The County Public Defender went to the County Commission requesting assistance for the matter, as he was not experienced enough and had never represented someone charged with murder. The Commission then had to pay an attorney from Reno at \$100 per hour to handle the case, including travel time.

### 8. What will be the added costs to Carson City for the "extraordinary fees" allowed under NRS 7.125 and the current Conflict Counsel Contract?

See the observation under Question Number 7, above. Further, if the courts do not approve the "extraordinary fees" request, then the contract starts looking more like a "flat fee contract". A "flat fee" contract is one in which the attorney handles as many cases, no matter the complexity, within the same contract price. The potential liability with this is that the attorney is not able to practically devote enough time to all of the cases that have been assigned. The NSPD deputies regularly devote more than 40 hours per week to their cases. It is common that preparation for a jury trial is after regular business hours and on weekends. An attorney could easily work 60-80 hours the week before and during a jury trial.

#### 9. Is \$22,000 for investigative costs per contract realistic?

Private investigators typically charge between\$50-65 per hour. At \$22,000 per year that, at an average of \$60, that will allow for 657 hours per year for each attorney. The NSPD has two full time investigators with a total of 2657 hours in FY 11 and 3254 hours in FY 12. Using these figures and assuming the contract attorneys would adequately investigate the cases the following chart shows the increased costs. Adequate funding for investigation per attorney should be \$39,420 per year.

# of contract attorneys	6	7	8
Total attorney contract	\$855,000	\$997,500	\$1,140,000
Investigators at \$60/hr*	\$236,520	\$275,940	\$315,360
TOTAL	\$1,091,520	\$1,273,440	\$1,455,360

<sup>\*</sup> investigator hours were calculated using the average of hours for NSPD investigators over FY 11(2657) and FY 12 (3254) = 2956/4.5 attorneys = 657 hours per investigator.

### 10. What are the real cost savings?

Using the more realistic investigation calculations above Carson City's indigent defense costs would be:

# of contract attorneys	6	7	8
**NET	-\$250,480	-\$68,560	+\$113,360

<sup>\*\*</sup>Assuming \$1,000,000 for the NSPD (which has never been charged to Carson City) and \$342,000 for the 3 conflict attorneys

### HOWEVER, NOW THE ATTORNEY CONTRACT SHOULD BE WEIGHED.

The September audit report calculates the need for 8 contract attorneys and even based on their numbers the report calculates savings of ONLY\$28,000. This is anticipating paying the attorneys \$150,000 per year. The report even questions how realistic it is to anticipate the City being able to hire 8 qualified criminal defense attorneys at that rate as "Contract attorneys in other Nevada counties earn up to \$195,000 annually." Between the September report and the November report, did the auditor canvass attorneys and determine that there are at least 7 qualified criminal defense attorneys willing to work full time for \$142,500 or even \$150,000? Further, the contract attorneys making \$195,000 are also allowed private practice and carry only one half of the indigent defense caseload.

### **EXTRAPOLATED ATTORNEY COSTS AND EXPECTATIONS:**

Currently the conflict attorneys are estimated to cover approximately 15% (or 5% per attorney) of the total caseload. Contracting with 7 attorneys will require each attorney to handle approximately 14% of the caseload. This increases the caseload by 64% per attorney. However, the contract amount only increases by 20%. In other words, the each of the contract attorneys will be expected to handle another 9% in 8 hours compared to the current 5% in 32 hours. This easily suggests that the clients and justice system in Carson City will suffer. The final report also recommends that the attorneys are contracted for 40 hours per week, thus limiting any private practice. See the table below for realistic costs for 7 qualified criminal defense attorneys working 40 hours per week at the current rate of compensation to the 3 contract attorneys.

#of attorneys	6	7	8
Increase from 5-14%	\$1,915,200	\$2,234,400	\$2,553,600
Cost of investigators	\$ <u>236,520</u>	\$275,940	\$315,360
TOTAL	\$2,151,720	\$2,510,341	\$2,868,960
Difference in costs from	current model		

### 11. How likely is it that Carson City will maintain the standard of indigent defense? OBSERVATION:

+\$ 809,720 +\$1,168,341 +\$1,526,960

Judges from counties with contract attorneys have complained to me about the level of representation they see in court. One District Attorney commented to me that he is

not satisfied with the highly qualified attorneys in his county contract, saying the contract attorneys in his county have not had a jury trial in 6 years – that was 2 years ago. He further stated that one contract attorney would set matters for trial then at the last minute plead the client as charged – with NO negotiations! These attorneys are allowed to have a private practice to enhance their income. One must wonder which clients are getting more attention – the flat fee indigent or the private per hour paying clients?

12. Are there sufficient QUALIFIED attorneys available and willing to contract with Carson City at the recommended amounts?

THIS IS HIGHLY DOUBTFULL CONSIDERING THE INCREASED CASELOAD EXPECTATIONS FOR SUCH A SMALL INCREASE IN SALARY AND NOT BEING ABLE TO HAVE A PRIVATE PRACTICE.

The office of the State Public Defender brings in excess of 75 years of criminal defense experience in the Carson City office.

### 13. Does it meet the requirements of NRS 260?

A copy of NRS 260 is attached for your convenience. I will only point out one item to consider.

NRS 260.040 Compensation; deputies and employees; private practice of law limited; expenses; ...

2. The public defender may appoint as many deputies or assistant attorneys, clerks, investigators... As the public defender considers necessary to enable him or her to carry out his or her responsibilities...

This section clearly does NOT contemplate contracting with multiple attorneys. Obviously, other counties are using the contract model, but does that mean it follows the law or that Carson City should follow?

#### **CONCLUSION**

Typically Public Defenders are looked on as lesser or lower ability attorneys, but the State Public Defender and particularly the Carson City office is highly regarded in the indigent defense community. I have attached a letter from Chief Justice Michael Cherry from June 2012 to the Carson City Manager.

It has as been my pleasure and honor to be a Public Defender for 23 with 22 of those years in Carson City. I will be retiring next summer.

Finally, thank you for considering this response to the Final Auditor Report. I will be available to answer any questions you may have. This is a very important decision that you will be making on behalf of the citizens of Carson City.

CC: James T. Russell, District Court Judge
James Wilson, District Court Judge
John Tatro, Justice/Municipal Court Judge
Tom Armstrong, Justice/Municipal Court Judge
Kristin Luis, Juvenile Special Master
Maxine Cortes, Court
Larry Werner, City Manager
Nick Providenti, City Treasurer
Kay Ellen Armstrong
Ben Walker
Noel Waters
Neil Rombardo, District Attorney

### SUPREME COURT OF NEVADA

Michael A. Cherry, Chief Justice 201 South Carson Street Carson City, Nevada 89701-4702 (775) 684-1540

Fax (775) 684-1543



. . . .

RECEIVED

JUN 07 2012

CARSON CITY EXECUTIVE OFFICES

June 7, 2012

Mr. Lawrence Werner, City Manager Carson City Hall 201 N. Carson Street, #2 Carson City, NV 89701

Dear Mr. Werner:

As Chief Justice and Chair of the Commission on Indigent Defense, the access to justice for our accused is of great importance to me. I understand that a meeting between Carson City, the State Public Defender, and the Carson City Courts' Administrator will be taking place to discuss local funding for indigent defense representation. I felt compelled to share with you information about the statistics we publish to ensure your decisions are made with the best of information available.

The Administrative Office of the Courts has performed an in-depth analysis of the number of cases filed in fiscal year 2011 in the Justice Courts in Carson City, Douglas County, Elko County, and Washoe County. My understanding is that the analysis was requested by the First Judicial District Court and the Carson City Justice/Municipal Courts (Carson City Courts) to determine caseload comparisons. We encourage you to look at the whole workload issue by also considering the charges, for example, for these courts. For this decision process, that statistic may be a better gauge.

During the analysis it was discovered that the Justice Courts in Douglas County, Elko County, and Washoe County have varying methods as to how they cases are filed in their counts by the prosecutors, which makes the caseload numbers difficult to use for some comparisons. Consequently, cases compared in the 2011 Annual Report are not case-by-case comparisons. The Carson City Courts have been provided with this information.

As a Nevada Supreme Court Justice, I have spent a great deal of time reviewing the needs for indigent defense representation throughout the State of Nevada. As a former Clark County Public Defender, I spent a great deal of time representing indigent defendants. I appreciate the associated costs for indigent defense representation and the burden that this may cause local governments, especially in the current economic times. However, I believe that reducing funding for indigent defense representation should be a last resort. Since serving on the Nevada Supreme Court, I am unaware of any court cases where incompetency of counsel has been established from Carson City Courts. One could come

Mr. Lawrence Werner, City Manager June 7, 2012 Page 2

to the conclusion that Carson City is providing the funding necessary to have professional and competent indigent defense representation.

Please contact Robin Sweet, Nevada State Court Administrator at (775) 684-1717, if you have any questions or need any further information. If you need additional statistics, she will be happy to work with you to provide them if we have them available.

Sincerely,

Michael A. Cherry

cc: Robin Sweet, State Court Administrator Maxine Cortes, Carson City Courts' Administrator

MAC/rs/jl

### YRS 260,010 Creation of office by ordinance; restrictions on creation; appointment; term of office.

- 1. It counties whose population is 100,000 or more, the boards of county commissioners shall create by annance the office of public defender.
- 2. Except as otherwise provided by subsection 4, in counties whose population is less than 100,000, oards of county commissioners may in their respective counties create by ordinance, at the beginning of a fiscal year, the office of public defender.
- 3. Except as otherwise provided in subsection 4, if a board of county commissioners intends to create the office of county public defender, the board shall notify the State Public Defender in writing on or before March 1 of any odd-numbered year and the office may not be created before July 1 of the same year in which the notice was given.
- 4. If the county contribution approved by the Legislature exceeds the estimate provided to the county on December 1 by more than 10 percent for either year of the biennium, the board of county commissioners may create the office of county public defender on July 1 of the next even-numbered year if the board notifies the State Public Defender on or before March 1 of the same year in which the office is to be created.
- 5. The office of public defender when created must be filled by appointment by the board of county commissioners.
  - 6. The public defender serves at the pleasure of the board of county commissioners. (Added to NRS by 1965, 597; A 1969, 1475, 1545; 1979, 525; 1989, 1646; 1991, 994; 1995, 499)

NRS 260.020 Joint action to establish office. A county may join with one or more other counties to establish one office of public defender to serve those counties.

(Added to NRS by 1965, 597)

### NRS 260.030 Qualifications; representation of indigent person charged with public offense.

- 1. The public defender shall be a qualified attorney licensed to practice in this state.
- 2. The public defender shall, when designated pursuant to <u>NRS 171.188</u>, represent, without charge, each indigent person who is under arrest and held for a public offense.

(Added to NRS by 1965, 597; A 1967, 1471; 1969, 479; 1973, 358)

# NRS 260.040 Compensation; deputies and employees; private practice of law limited; expenses; deputies in certain counties governed by merit personnel system.

- 1. The compensation of the public defender must be fixed by the board of county commissioners. The public defender of any two or more counties must be compensated and be permitted private civil practice of the law as determined by the boards of county commissioners of those counties, subject to the provisions of subsection 4 of this section and NRS 7.065.
- 2. The public defender may appoint as many deputies or assistant attorneys, clerks, investigators, stenographers and other employees as the public defender considers necessary to enable him or her to carry out his or her responsibilities, with the approval of the board of county commissioners. An assistant attorney must be a qualified attorney licensed to practice in this State and may be placed on a part-time or full-time basis. The appointment of a deputy, assistant attorney or other employee pursuant to this subsection must not be construed to confer upon that deputy, assistant attorney or other employee policymaking authority for the office of the public defender or the county or counties by which the deputy, assistant attorney or other employee is employed.
- 3. The compensation of persons appointed under subsection 2 must be fixed by the board of county commissioners of the county or counties so served.
- 4. The public defender and his or her deputies and assistant attorneys in a county whose population is less than 100,000 may engage in the private practice of law. Except as otherwise provided in this subsection, in any other county, the public defender and his or her deputies and assistant attorneys shall not engage in the private practice of law except as otherwise provided in NRS 7,065. An attorney appointed to defend a person for a limited duration with limited jurisdiction may engage in private practice which does not present a conflict with his or her appointment.
- . 5. The board of county commissioners shall provide office space, furniture, equipment and supplies for the use of the public defender suitable for the conduct of the business of his or her office. However, the board of county commissioners may provide for an allowance in place of facilities. Each of those items is a charge against the county in which public defender services are rendered. If the public defender serves

- core man one county, expenses that are properly allocable to the business of more than one of those unties must be prorated among the counties concerned.
- 5. In a county whose population is 700,000 or more, deputies are governed by the merit personnel system of the county.
- Added to NRS by 1965, 597; A 1973, 678; 1979, 525; 1989, 203; 1993, 2260; 1999, 161; 2005, 684; 2011, 1129)

### NRS 260.050 Interview with and representation of indigent person.

- 1. The public defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when he or she has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.
- 2. The public defender shall, when designated pursuant to NRS 62D.030, 171.188 or 432B.420, and within the limits of available money, represent without charge each indigent person for whom he or she is appointed.
  - 3. When representing an indigent person, the public defender shall:
- (a) Counsel and defend the person at every stage of the proceedings, including revocation of probation or parole; and
- (b) Prosecute, subject to the provisions of subsection 4 of <u>NRS 180.060</u>, any appeals or other remedies before or after conviction that he or she considers to be in the interests of justice.
- (Added to NRS by 1965, 598; A 1967, 1471; 1969, 479; 1971, 1412; 1973, 358; 1975, 42; 1977, 339; 1985, 1400; 2003, 1130)

NRS 260.060 Magistrate or district court may appoint and compensate other defense counsel. For cause, the magistrate or district court may, on its own motion or upon motion of the public defender or the indigent person, appoint and compensate out of county funds an attorney other than, or in addition to, the public defender to represent such indigent person at any stage of the proceedings or on appeal in accordance with the laws of this state pertaining to the appointment of counsel to represent indigent criminal defendants.

(Added to NRS by 1965, 598; A 1969, 479)

NRS 260.065 County may contract for services of State Public Defender. Any county in which the office of public defender has been created may contract for the services of the State Public Defender in providing representation for indigent persons when the court, for cause, disqualifies the county public defender or when the county public defender is otherwise unable to provide representation.

(Added to NRS by 1977, 338)

NRS 260.070 Annual reports. The public defender shall make an annual report to the board of county commissioners covering all cases handled by his or her office during the preceding year.

(Added to NRS by 1965, 598)

NRS 260.075 Reports to Legislative Commission. The public defender shall submit such reports to the Legislative Commission as the regulations of the Commission require.

(Added to NRS by 1977, 331)

NRS 260.080 Construction of chapter. Nothing in this chapter shall be construed to interfere in any way with the manner in which the several counties and district courts deal with indigent defendants, if the provisions of this chapter are not applicable.

(Added to NRS by 1965, 598)