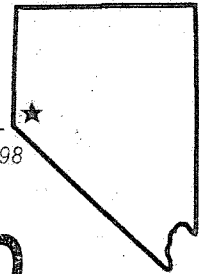




NEVADA ASSOCIATION OF COUNTIES

201 S. ROOP STREET, SUITE 101 • CARSON CITY, NEVADA 89701-4790 • (775) 883-7863 FAX (775) 883-7398



September 16, 2008

Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701

RE: ADKT NO. 411

FILED

SEP 16 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Honorable Supreme Court Justices:

The Nevada Association of Counties (NACO) would like to submit these additional comments for the Court's consideration. These comments are being offered to supplement NACO's letter of September 4th.

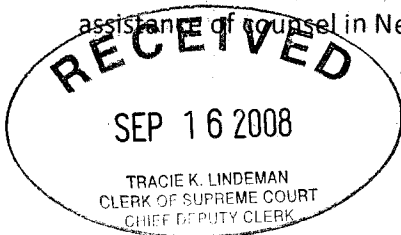
The NACO Board of Directors approved a Bill Draft Request (BDR) which was submitted on August 29th regarding Indigent Defense for consideration by the Nevada Legislature during the upcoming 2009 session. The BDR proposes to:

- Extend the option to utilize the State Public Defender's Office to all counties.
- Require that the State Public Defender maintain an office in each county that opts to use their service to provide indigent defense.
- Require that the state fully fund indigent defense regardless of delivery method chosen.

A copy of the NACO BDR is attached for your review.

In addition, NACO would like to voice our support for the request made by Washoe County that the Court continue the stay on the implementation of performance standards until July 1, 2009. This will allow sufficient time for the weighted caseload studies to be completed. In addition, a continuation until July 1 will give the Nevada Legislature an opportunity to take action to address the indigent defense system. We also support the request for an extension for submittal of the report regarding the results of the weighted caseloads studies made by Clark County.

Nevada's counties agree that the failure to provide any indigent defendant with adequate and competent counsel is unacceptable and, as previously stated in our September 4th letter, strive to provide their indigent defendants with defense counsel that meets or exceeds constitutional requirements and do so with little or no support from the state. It is our understanding that the instances of cases handled by public defenders being overturned due to ineffective assistance of counsel in Nevada are rare.



08-33205

NACO would again like to thank the Court for allowing our participation in the Indigent Defense Commission and for the Court's consideration of our comments and concerns.

Respectfully submitted,


Jeffrey Fortaine
Executive Director

CC: Via Email
The Honorable Joni Eastley, Nye County Commissioner
The Honorable John Ellison, Elko County Commissioner
Mr. Jeff Wells, Assistant County Manager, Clark County
Mr. John Berkich, Assistant County Manager, Washoe County
Mr. John McCormick, Administrative Office of the Courts

**ASSOCIATION OF COUNTIES OR CITIES
BILL DRAFT REQUEST
FOR THE
2009 LEGISLATIVE SESSION**

Required Information

Name of Association: Nevada Association of Counties

Person to be consulted if more information is needed:

Name: Jeff Fontaine / Wes Henderson
Title: Executive Director / Government Affairs Coordinator
Mailing Address: 201 S. Roop Street, Suite 101
Phone Number: 775-883-7863
E-mail Address: jfontaine@nvnaeo.org / whenderson@nvnaeo.org

Person to whom a copy of the completed draft should be mailed for review:

Name: Wes Henderson
Title: Government Affairs Coordinator
Mailing Address: 201 S. Roop Street, Suite 101
Phone Number: 775-883-7863
E-mail Address: whenderson@nvnaeo.org

Person to be contacted to provide testimony regarding the measure during the legislative session:

Name: Jeff Fontaine / Wes Henderson
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Request:

Describe the problem to be solved or the goal(s) of the proposed measure, or both:

Under current law, counties with populations under 100,000 have the option of creating a public defender's office by themselves or with other counties or of using the State Public Defender's Office to provide constitutionally mandated defense counsel for indigent defendants. Counties with populations over 100,000 are required to create public defender's offices. Demand for indigent defense services has increased with the state's burgeoning population. Concerns about the adequacy of defense counsel provided to indigent defendants as a result of the increased demand have been raised and studied by the Nevada Supreme Court (see ADKT No. 411). During the course of the study, it was repeatedly pointed out that the United States Supreme Court, in *Gideon v. Wainwright* (372 U.S. 335 (1963)), ruled that the right to counsel was "made obligatory upon the States (not counties) by the Fourteenth Amendment" (*supra* at 342). This measure would retain the current options for providing indigent defense services, remove the limitation that only counties with populations under 100,000 may choose to utilize the State Public Defender's Office, and require that the state fully fund its constitutional mandate to provide indigent defense regardless of method of delivery.

**ASSOCIATION OF COUNTIES OR CITIES
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FOR THE
2009 LEGISLATIVE SESSION**

Effective Date:

The proposed measure, if enacted, will become effective on October 1, 2009, unless one of the following dates is specified:

Passage and Approval

July 1, 2009

January 1, 2010

Other _____

Fiscal Notes:

State:

Would this measure, if enacted, create or increase any fiscal liability of state government or decrease any revenue of state government which appears to be in excess of \$2,000?

Yes No Unknown

Would this measure, if enacted, increase or newly provide for a term of imprisonment in the state prison or make release on parole or probation from the state prison less likely?

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Local:

Would this measure, if enacted, reduce revenues or increase expenditures of a local government?

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Yes No Unknown

Unfunded Mandate:

Would this measure, if enacted, have the effect of requiring one or more local governments to establish, provide or increase a program or service which is estimated to cost more than \$5,000 per local government and a specified source for the additional revenue to pay the expense is not authorized by this measure or another specific statute?

Yes No Unknown

Signature of Person Submitting Request: _____

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FOR THE
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Optional Information

(Use continuation sheet if necessary.)

Suggested Language or Proposed Solution to Problem:

NRS 260.010(1) - delete subsection. NRS 260.010(2) - delete up to "boards" NRS 260.040(3) - delete reference to subsection 4, delete "odd-numbered", NRS 260.010(4) - delete entire subsection. NRS 260.065 - change "may contract" to "may utilize". Add new subsection providing for submission of expenses to state for payment. NRS 180.040(2) - change "may" to "shall", change "necessary to perform his duties" to "in every county electing to use the State Public Defender". NRS 180.110 - delete subsection. Renumber sections as needed.

Special Instructions (e.g., disfavored wording):

NRS Title, Chapter and Sections, Nevada Constitutional Provisions, Administrative Regulations (NAC) Affected:

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Federal Law/Court Cases/Attorney General Opinions Involved:

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Similar Measures from Current or Previous Sessions:

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Thirty states fully fund indigent defense (AL, AK, AR, CO, CT, DE, FL, HI, IA, LA, KY, MA, MD, ME, MN, MO, MT, NC, ND, NH, NJ, NM, OR, RI, TN, VA, VT, WI, WV, WY). For example see Alabama Code Title 15 Chapter 12, Montana Code Annotated Title 47, New Mexico Statutes Chapter 31 Article 16, Oregon Revised Statutes Chapter 151.

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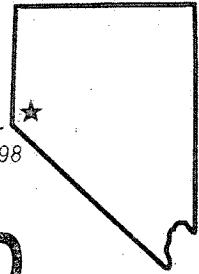
Copies of supporting information may be attached.

Please Note: Pursuant to Senate Bill No. 490 (2007), subsection 3 of NRS 218.2415 now provides that all legislative measures requested by an association of counties or cities must be prefiled on or before December 15 preceding the regular legislative session. A measure that is not prefiled on or before that date is deemed by statute to be withdrawn. There is no authority for anyone to waive this provision.

NACO

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RECEIVED

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