

December 19, 2019 Minutes

Steve Sisolak
Governor



Marcie Ryba
Executive Director

Jarrold Hickman
Deputy Director

**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

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PUBLIC MEETING NOTICE AND AGENDA

Date and Time: December 19, 2019, 1:00 PM

Location: Legislative Counsel Bureau Building
401 S. Carson Street, Room 3134
Carson City, Nevada 89701

Video Conference Location: Grant Sawyer Building
555 E. Washington Avenue, Ste. 4406
Las Vegas, Nevada 89101

MINUTES

Board Members Present:
Mayor Robert Crowell
Chris Giunchigliani
Professor Anne Traum
Laura Fitzsimmons
Rob Tellis
Julie Cavanaugh-Bill
Joni Eastley
Lorinda Wichman
Jeff Wells
Drew Christensen
Kate Thomas
Senior Justice William Maupin

Others Present:
Marcie Ryba
Jarrod Hickman

Dave Mendiola
Cindy Atanzio
Heather Fields
Victoria Gonzalez
Sophia Long
Franny Forsman

1. Call to Order / Roll Call

The Chairman called the meeting of the Department of Indigent Services Executive Board to order a little after 1:00 PM on Thursday, December 19, 2019.

Ms. Atanzio conducted a roll call. **Quorum was established.**

2. Public Comment (The first public comment is limited to comments on items on the agenda. No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. The Chair of the Board will impose a time limit of three minutes).

There were no public comments from either North or South.

3. Approval of the October 9, 2019 Minutes (For possible action)

Ms. Eastley and Mr. Mendiola noted that their last names were spelled incorrectly on the October 9 Minutes.

Motion: Approve October 9, 2019 Minutes with corrections noted
By: Joni Eastley
Second: Laura Fitzsimmons
Vote: Passed unanimously

4. Introduction of Board Members

Chairman Crowell said he thought everyone knew everyone, so they could go ahead to Agenda Item 5.

5. Report from the Executive Director of the Department of Indigent Defense Service (For possible action)

- Overview of the Budget and Organization Chart
- Duties of the Board Pursuant to AB 81, Section 8

- Proposal for Future Agenda Items
 - Propose minimum standards for the delivery of Indigent Defense Services.
 - Procedure to receive Complaints regarding Indigent Defense Services and Procedures for resolution.
- Information and discussion regarding approval to request proposals for a Delphi study to establish caseload guidelines and uniform data tracking.

Director Marcie Ryba introduced the newest Deputy Director, Jarrod Hickman, who will be over the Nevada State Public Defender's Office. She said another Deputy Director will come on board just as soon as they find a space to accommodate their Department.

Director Ryba went over some budget details. Commission travel is limited to per diem rates, in-state to \$2,288 for this fiscal year and next fiscal year it's \$2,648. There's also the personal vehicle in-state reimbursement and some air travel. The Director said they will be creating a policy for Board travel to be approved by the Board. If travel is too expensive or a problem, the Board is able to set up meetings at the District Courts. The Board can use their systems so that individuals can appear for the meetings over Skype. This will save money until they're able to fill the next budget and ask for the money that's needed to be able to meet as often as necessary.

Director Ryba said they are having "issues" with office space. They don't have enough of it, and they only have about \$1,500 a month for rent. The Director is scrambling to find an appropriate space. She and Victoria Gonzalez (the Executive Director for the Department of Sentencing Policy) have talked about the possibility of throwing their departments in and merging their rents to maybe try and find something that would work.

Once they get that place to rent, then they're going to be able to hire on more employees. They will be getting one more Deputy Director, one Administrative Assistant II and two management analysts. One management analyst will be more of a fiscal person that will help with the budgeting and building the budget. The other will be the management analyst that helps with the caseload study. Richard Whitley from the Department of Health and Human Services has been kind enough to let them house one management analyst at his office and he's willing to have them trained at his office as well, until they get their space.

Joni Eastley asked how much flexibility is there in the budget, in terms of travel?

Ms. Heather Field from the Budget Office said if they don't use the airfare budget, they can use the money on mileage or per diem within that same category. They can charge expenditures for other items that are within that category that fit that budget amount for the category.

The Chair asked, how do they request reimbursement? Ms. Field said they are actually training that right now. To request a reimbursement, there's a process. A travel request is filled out before the trip and after the travel is complete, there's a travel request

reimbursement form to complete. It's likely that the Indigent Defense Department will fill those forms out for Members.

Ms. Field said if there is a savings created in Category 10, which is travel that's set aside specifically for the Board, that budget can be moved into Categories 2 and 3 to be spent on the staff travel. That's a process that requires a Work Program and an approval from the Finance Office. If it exceeds any parameter possible, it goes before the Interim Finance

Committee. Because those amounts are so small right now, Ms. Field doubts those parameters will come up this first and second year.

Laura Fitzsimmons asked if they scrimped and saved now, might that ultimately not be in their best interest of their goal if future funding is based on current expenses?

Ms. Field said the budget process will open up starting February and then the actual budget system will open up in March or April. That's the point where the agencies can get into the system and start building their budgets. That's when these guys will be busy and then that's when they can request more or an additional amount for rental expenses. The Budget Office knows that that rental expense will increase in the future, so they are already preparing to build an "enhancement decision unit" to request more funds for that.

Laura Fitzsimmons said they probably wouldn't have a handle on that in February or March because it sounds like they will just hopefully be getting an office and they will be getting information from the counties. Is there some kind of cut off for next session? What is the target date? Ms. Field replied the Agency's budget submission has to be at the Governor's

between the Finance Office and the Governor's Office and the budget is cleaned and prepared to make its way to that next layer, the legislative branch of government.

Chairman Crowell asked Director Ryba if she had ever put one of these budgets together? Director Ryba responded yes, when she was in the Nevada State Public Defender's Office. Director Ryba said they are learning things that are not in the current budget, for example, subscriptions. There are no funds to have *West Law*. They are trying to find out ways to afford that for the next two years.

The Chair asked do they have any funds to take *West Law* or *Lexis Nexis*, perhaps through the State Public Defender's Office? Ms. Field said they want to keep the expenditures that are specific to indigent defense within Indigent Defense's budget. As far as sharing funds, there'd have to be justification for that.

Director Ryba said the Nevada State Public Defender has *Lexis Nexis*, but it's provided by the county through the courts. So, they couldn't necessarily get on to their subscription. The Director did contact a representative from *West Law* to see if there was any possibility of using any open subscriptions or anything like that, but they've been told that they have to sign their own contract for three attorneys that they're going to be hiring. And, they did work that out. They were able to work it out for a 24-month period and they're going to try and pay

out of this fiscal budget. Since they don't have any place to rent yet, they aren't spending any of that rent money.

Ms. Eastley asked what does a *West Law* subscription costs? Director Ryba replied \$276 per month.

Mr. Mendiola asked if that \$276 per month was for a couple of licenses or is that an enterprise license for many users? Director Ryba responded that's three licenses for the three attorneys who are going to be in the office. There are different levels that you can access on *West Law*. They requested the high level because it allows them to pull federal cases and also regulations, which will be necessary to provide information to the Board regarding regulation recommendations.

The Chair asked were they on track then for this type of service? Director Ryba said yes, they are able to cover that. They've requested the bill for the two-year period, and they're going to pay out of this bill cycle. They do have salary savings because they only have three employees at this point in time. They also have rental savings that they can pull it from as well. So, they should be fine with that. When they're building their next budget, that's just an example of something that they're going to need to put in there.

Chairman Crowell asked if there was any latitude in the rent department? Is there any way they can move around that to get a little more money out of that? Ms. Field replied they are trying to be really creative. They've recruited the Sentencing and Policy Department to see if they can move in with them. There are two other new agencies, the Department of New Americans and the Patient Protection Commission that have maybe two and three employees each, that they could also try and combine with to get a bigger space and a more accommodating space. That said, when they talk about salary savings and they have possibly some rent savings, they're thinking of that to get through the first year and then maybe creating savings in that second year to continue that second year lease. The other options are negotiating a lower rate for that first and second year, until they can get through that budget build for the next biennium and request a little higher rate. They are basically waiting to see if the owners of some of these leased buildings will work with us on that.

Duties of the Board Pursuant to AB 81, Section 8

Director Ryba moved on to an overview of the duties of the Board pursuant to AB 81, Section 8. Those duties are: the Board oversees the Executive Director. So, the Board oversees the Director's office. The Board receives annual reports from the office. The Board will review any recommendations that are made. These recommendations are what they are hoping to have for the Board at the next meeting.

The Board will provide direction for the Department. If the Board would like them to go in a certain way with the recommendations they are doing or any sort of standards that they're recommending, that's fine.

The Board is going to direct the Department to conduct any sort of audit that the Board deems necessary. That's likely where that Management Analyst II would be used, to help to do that audit.

The Board is going to help the Department develop procedures for mandatory data collection and then also review and approve the office budget.

Director Ryba moved on to mandatory duties. In AB 81, Section 8(2)(a), it says that the Department is supposed to establish minimum standards and in these standards, they are supposed to ensure that services meet constitutional requirements, that there is no sort of economic disincentive and that they do not impair the ability of a defense attorney to provide effective representation. The Board directs this, kind of the overarching principles of the Department.

An example of 10 overarching principles is the ADA 10 Principles. That's the overarching standard and then they would have to create regulations which would basically be the tools to make sure that the standards or the principles are being met. When establishing those overarching principles, they have to keep in mind that they meet constitutional requirements, no economic disincentives and that they don't impair the ability of that defense attorney to provide representation.

Another mandatory duty is they are required to establish a procedure to receive complaints and develop resolutions to complaints. So in the next Board Meeting, staff will be presenting a procedure possibly through the website where they could have a form that individuals could fill out and send in.

Staff has to establish a way for appointed attorneys to request reimbursement for trial expenses. They have to work with the law school to establish incentives for rural public defense and they also have to review laws and recommend legislation for constitutional representation.

The tools used to try and reach the goals of the overarching standards are in Subsection D. That's where they have to adopt regulations for indigent defense services. The regulations that they are supposed to adopt, to establish standards are including but not limited to: they have to establish specific continuing legal education and experience requirements. They have to require attorneys to track time and to provide reports. At some point, there probably will be a recommendation for some sort of model contract to include in there. There's a provision that they are required to track time, because that's also set out in AB 81, to have to have a contractual provision in all of their contracts that they are required to comply with them and track their time.

Mr. Mendiola said one thing they want to try to avoid is making attorneys become data collectors and clerical people, so they can spend time doing what they're really supposed to be doing. So if there's a way to do that, that would be great.

Director Ryba concurred. She said they've had several discussions with other departments of indigent defense and those attorneys have limited time to deal with their caseloads, let alone take on cumbersome reporting responsibilities. The Director said they are figuring out what numbers they specifically need and what are they really trying to get at? In some other states they've been collecting numbers and they've done nothing with it. So, they want to make it as easy as possible for individuals to use. That's why they are really focusing on what information they want and why they want it. They just don't want to ask something that really has nothing behind it.

Other states have done the Delphi Study to actually establish caseloads. When they are creating their Uniform Reporting Standards, is this something that they just want to throw out there and say hey, start giving us numbers right away? Or, is this something that they want to hold off on and say, let's look at getting one of these studies done first. Let's see what information they want and then model their reporting standards to what information the person that's doing the study actually needs to do the study.

Director Ryba said that's something that they will have to talk about at future meetings is what are they trying to get with this? What information do they need? Clearly one thing that they'll have to track is whether or not they're complying with the continuing Legal education standard. If they have that, they are going to have to ask them about those numbers. But for sure they don't want to make this any more time consuming for the attorneys than they need to.

Director Ryba said the Uniform Reporting Standards establish the guidelines to determine maximum caseloads. That is the Delphi Study that other states have done. These are extremely expensive. They cost \$200,000 to \$250,000 to complete. Obviously, the Department doesn't have money at this point for this study. The Director said the Board needs to let staff know if they should proceed with a request for information. That would result in a number of how much they think it would cost. Once they have that request for information, since they don't have money in the budget, they would have the choice of either waiting until the next budget build and adding this into the next budget build, or if this is something that the Board thinks is imperative, they are also able to go to Interim Finance to request additional funds. If it's something that's important and they need to get it done, that's where they are going to have to go to get the money.

Ms. Fitzsimmons asked was there any downside in making a request for information? Was there a commitment or downside just to find out who's willing to do it and what it would cost? The Director replied she didn't think so and that's why she brought it up. Does the Board want to look into getting this caseload study immediately or would they prefer to establish the standards first? They are willing to go with whatever the Board feels is the best way to go first.

Ms. Giunchigliani said when she talked to the Speaker, he indicated there was an opportunity for them in Interim Finance. She doesn't think they should dismiss that as a potential to make some requests early on to at least get the work done that they need to make some recommendations down the road. Otherwise, they are just spinning around in a circle. So at

some point as a Board, they can have that discussion. Ms. Giunchigliani thought Ms. Fitzsimmons' point was well taken too; they might as well find out what's out there and what those costs are so they can build something properly to make a request to IFC.

Professor Traum said it's a little bit of a chicken and egg problem about data collection, which is if you don't start collecting data right away and you're waiting for money, you might not have the justification to show that you need it and how urgent it is. Professor Traum wondered if, when they make a request for information, they could at least assemble a little bit of a data framework which might be refined later, when they're actually in a study getting the information. She understands the need to be collecting the information that they actually need to do a proper study. But they might need to start collecting data now, in order to justify the request to do what they need to do and get them on that track.

Ms. Wichman asked wasn't there something about having a \$10 million budget? Director Ryba said when AB 81 was in the legislature, there was a line item for \$15 million to try and pay for it, but that was taken out of the bill. So the amount of money that they have for their budget is what she provided earlier. There is no additional money.

The Chairman asked the Director what was her suggestion? Did she want to have the Board tell her it's okay to go out and get information or did she want to go find a way to get into the Delphi System? Director Ryba said she just wanted to know if the Board was supportive of the idea of doing the request for information or if they felt that was an unreasonable request. In order to do a request for information, they have to complete a time consuming form. It will need to be posted by the Purchasing Department. This all can be done, but she needs the agreement of the Board.

The Chair said under the Open Meeting Law, as he reads the Agenda, the Board could make that recommendation to the Director right now. He asked if anyone had any objections, and there were none.

Motion: Authorize Director Ryba and her staff to gather information concerning the Delphi Study and bring it back to the Board for future consideration.
By: Joni Eastley
Second: Lorinda Wichman
Vote: Passed unanimously

Director Ryba said they will get information from the State Public Defender who compiles annual caseload information. They also have contracts for most of the counties. At the next meeting, Director Ryba is planning on presenting that information so that Members know how they are reporting at this point.

The regulations that they will have to complete are requiring vertical representation. This will likely be done in a model contract, once they create a model contract. Another required regulation is they have to establish a formula. They have to determine some sort of formula as to the maximum amount a county is required to pay for indigent defense services. More than likely they will be putting in a formula of 2018 plus any sort of inflation. So, they'll be

proposing something like that at the next Board Meeting. Then the Department will have to adopt any other necessary regulations that they see fit.

Ms. Giunchigliani asked if staff could find out what's currently in the State Contingency Account. She thinks that that could be a potential revenue place that they could take a look at through IFC. And secondarily, in Section 8, 3.3, they have to come up with a formula for funding, so Ms. Giunchigliani thinks they need to start at least kicking around what that should look like, so they're not behind the 8-ball on that part of it. That should be on the next agenda.

Chairman Crowell said they ought to take a look at what their next steps are and what they should direct the staff to be doing. They should also discuss establishing some workgroups that would be taking a look at different sections of AB 81 under Section 8. For instance, one workgroup might take a look at how to integrate with the UNLV Law School.

Professor Traum said she was very enthusiastic about working at UNLV to help the Board do its work and help the office do its work. She has already recruited a team of six volunteer students, who are working on these issues. The goal is to have some product in the Spring. Also, she and the students would like to assist the Director in some of her tasks, like setting up standards. She asked should she be doing this with just her students or should she involve other interested parties? Would there be Open Meeting implications if other people were involved? Chairman Crowell said he thought if they set up workgroups vs. formal subcommittees they didn't have to comply with the Open Meeting Law. If they actually moved to create a subcommittee, that has to be noticed and Open Meeting Law applies. The Chairman said he was not suggesting a way to get around the Open Meeting Law; he just wants to facilitate things so they can get off the ground.

Professor Traum said if there's someone who's particularly interested in either that work in general or a particular aspect of it, like researching the standards, they should contact her. That would be an easy way to do that.

Ms. Giunchigliani said she thought that was an excellent idea. And perhaps they could reach out to pre-law programs in other parts of the state, so that would be getting a voice from the rurals, as well as Northern Nevada. Staff could reach out and they could maybe be assigned some tasks to do.

Professor Traum said she and her students are already focused on reaching out to the rurals, and Julie Cavanaugh-Bill is in the rurals. So, she's happy to work with the student group on that. They will make that part of our plan.

Ms. Giunchigliani said they should have a group working on budget and/or funding formula. And is there any work done by the previous Commission that maybe they could use as a basis to work from? There were several formulas that had been looked at by the previous Commission and that had been an iteration in the legislation as AB 81 was moving forward. So, they maybe do a secondary one that looks at the numbers.

Mr. Christensen said he thought in some of the previous iterations of the bill, there were funding formulas that capped the county's expenses going forward. So some of that work has been done. They shouldn't have to recreate the wheel.

Mr. Wells said he recalled the formula was the average of the previous three years plus CPI. And that's what the cap was going to be for the rural.

Ms. Fitzsimmons noted that AB 81 says that the County's obligations shall not be more than it was in the previous fiscal year, plus inflation. So the data they would need is what each county is paid.

Mr. Christensen said Clark County has generated a lot of information and materials over the last decade. So if it's information that the Director needs, they've got it. Mr. Christensen said he could provide model plans, contracts that they ask their attorneys to sign, and grids as far as how the attorneys in Clark County report their time. That's part of their current contract. Based on what they heard from the Sixth Amendment Center, there are various models around the state on how the counties are complying with Defense. There are going to have to be some tweaks per counties, but it's at least a good starting point to utilize what Washoe and Clark have done to capture the work product of the lawyers and then ultimately look at that work product and make a determination as to whether that's constitutionally adequate.

Mr. Wells said one of their mandatory duties to request reimbursement for travel expense

do it now. They actually have forms that require lawyers to submit to them for investigators, for experts, etc., travel, all of those things are routinely approved. So, all of those things can be sent up to the Director because they actually have that plan and have been doing it for a decade.

Mr. Tellis inquired if it would be possible to get a copy or two of Delphi studies for other jurisdictions, other states, so that they can review those and be a little better prepared for future discussions? Director Ryba said yes. There are some available online and she will provide links for everyone.

The Chairman reread Section 14(2) of AB 81: if a plan of correction 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 Service to help support and pay for that bill. That means they are going to need all the county budget information.

Director Ryba said they could get that information. There was paperwork submitted when AB 81 was presented to the legislature that says what was spent by each County for the last fiscal year. They should also be able to get where they're at this year. They are planning on giving that information to Members in the Board packet for the next meeting.

Chairman Crowell asked Ms. Giunchigliani if she could take a look at how they work with the finances -- what's the best way to proceed from a fiscal standpoint to get things paid for? Ms. Giunchigliani said she would be happy to help with that.

Chairman Crowell said he still wasn't completely clear on the county obligations.

Mr. Wells said in Section 8, Paragraph 3, it says: 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 services. So, it's in there as a duty to establish the formula. One formula is for solving what you have to ask the legislature for and the other one is a formula for their maximum amount.

Ms. Eastley said she spoke against that part of the bill because the counties are behind the 8-ball no matter what happens. If the corrective action plan is recommended and the counties cannot come up with the money to implement the corrective action plan, then they can go back to the State and request that the State take over the indigent defense function, which is significantly more expensive for them to do than if the County were to do it themselves. So, they're stuck no matter which way you look at it.

Ms. Eastley said all of the counties have a significant part of their budget devoted to indigent defense services. It may or may not go up or down depending on what the counties are, but the rural counties are doing worse financially every year, not better. It's fair to accept the fact that the counties aren't all of a sudden going to be coming up with \$100 million for indigent defense. Year-by-year, the rural counties, there's not much deviation on that what they've been budgeting. If there's remedial action needed, if in some county the quality of defense is constitutionally deficient, the State is going to have to pay for that

at formula, they could also make some recommendations on

and they don't neglect people's proper rights in the long run.

After a brief break for audio checks, Chairman Crowell started a discussion on the cap and funding. He asked Ms. Giunchigliani if she could get a workgroup together that could bring back a recommendation that would talk about the cap, maybe draft some language and integrate what's required in Section 14(2), because that could form the basis of what they talked about in Section 8. The Chair said he thought the cap was really 2018 plus inflation. Period.

Ms. Giunchigliani said she would absolutely form a group and she invited all interested parties to join.

Ms. Fitzsimmons said she was sure Dagny Stapleton and Jeff Wells would be willing to serve and that would make up a great group.

Director Ryba asked Sophia Long, the DAG, to weigh in on "workgroups" that might be subject to Open Meeting Law. If they do form some sort of workgroups, would they be subject to Open Meeting Law? Ms. Long said they recently had an update on working groups, and they were told if the workgroup is going to make any sort of recommendation that the entire Board is going to act on, then it's subject to Open Meeting Law.

Senior Justice Maupin said it seems to him if you're going to have a working group, you can kind of avoid the problem by not making a decision, but just coming in and presenting facts and then arguing about it in the actual open meeting.

The Chair asked were they on the right track if they have Chris and Jeff come with some language or some suggested language or discussion about the cap for counties? Ms. Long said in the past, he would be right. She will confer with her staff to see if it would be okay now.

The Chair asked what if those folks reported to the Executive Director instead of the whole Board? Ms. Long said she would definitely get with the Executive Director and determine if the conversations of the working groups were subject or not.

The Chair said they could give their information back to the Executive Director. She could massage it and think about it, whatever and then present what she wants to present because she's the ultimate one that's going to be doing it. Ms. Long said she understood.

Ms. Giunchigliani said to make that easier, she could always just meet with Dagny first and gather and then she could meet with Jeff. So she's not doing anything that kicks those numbers in

The Chair said they'll have those two groups kind of work among themselves and then work with the Executive Director. And then if Ms. Long determines that they should be subject to the Open Meeting Law, then so be it. The Chair thinks that they need smaller groups to work on these things. Nobody on the Board is trying to go around the Open Meeting Law, but they are staff poor and they need to get this going.

6. Presentation on Developing Regulation (For Discussion)

Senior Deputy Attorney General Sophia Long said the Board needed to draft regulations and standards, so she would briefly discuss the process.

The AG Office did create an Administrative Rule Making Manual which breaks down NRS 233B, which is basically where the procedure is set forth. They are in the process of updating it. When it's finished being updated, she will give it to their Executive Director.

Basically there are three types of regulations. There are permanent regulations, temporary regulations and emergency regulations. Permanent regulation is what they all shoot for and it just depends on timing, as far as when you submit your draft regulations to LCB. Currently they are in that timeframe where if they submit their regulations to LCB they'll become permanent regulation. In 233B, it says any regulation submitted to LCB between July 2nd of an odd year to June 30th of an even year, if LCB reviews it and kicks it back then it will become a permanent regulation.

So, they have about six months to pretty much draft them and send them in. The process starts by drafting the regulation and usually staff does that. They're tasked with the workload,

with of course input from all the members. Then there needs to be a Small Business Analysis. That analysis needs to be done when you're done drafting your proposed regulations to see what sort of impact your regulations are going to have on small businesses. It's called a Small Business Impact Statement and will be sent to LCB with your proposed regulations.

During this regulation process, you do need to conduct at least one workshop. And what a workshop is, it basically invites the general public to make any sort of comments, either good or bad on the regulations being proposed. After the workshop, the regulations are sent to LCB and all LCB will do is they'll review your proposed regulations and make sure that the regulations that you're proposing you have jurisdiction over. Your regulations are in the confines of AB 81.

As long as they're in LCB before June 30th, they'll still be considered permanent regulations even if the LCB sends them back for changes. If you make the changes, if you like them, then what you'll do is conduct a public hearing that's basically like a workshop. And at that time, you're still welcome to make changes. Otherwise, you'll do what's called a final adoption and that's pretty much everybody agreeing to, these are the regulations that we'd like to set in stone. Then they would go back to LCB after you do a final adoption hearing. Then, they'll include it at their next Legislative Commission meeting and that's pretty much the process in a nutshell

7. Discussion and Announcement of Dates for Future Meetings

(For possible action)

The Chairman said they needed to decide how often they want to meet. And then, they need to speak to what deliverables they're going to ask the Director to bring to them at the next meeting.

The group had a discussion about the merits of various days, dates, times, and deadlines. They could not agree on a regular, set schedule for the entire year, but they did agree that their next meeting would take place on Wednesday, January 29th, at 1:00 PM.

Motion: Convene Department of Indigent Services Board meeting on January 29, 2020 at 1:00 PM
By: Professor Traum
Second: Lorinda Wichman
Vote: Passed unanimously

Director Ryba said that meeting will be held at the Old Assembly Chamber at the Capitol rather than in the LCB.

Chairman Crowell said as far as deliverables for that meeting, he was thinking a draft of something along the lines that would deal with a complaint procedure. The minimum standards concept. A report on Delphi and also, something to do with a discussion on the cap for local governments.

Director Ryba said they've been working on the complaint protocol. They have to build the website themselves, so that's something that they're also working on. The minimum standards, Jarrod Hickman has been working on those, and she will get them copies of the Delphi report. She will have some examples for that request for information. They will work with Ms. Giunchigliani to try and prepare a formula that they can present to the Board.

The Chair said they are going to be running up against deadlines for regulation purposes, so they need to be aggressive at the beginning and see what they can get done. He said he would entertain a motion on those deliverables.

Motion: Request for staff to bring back to the Board draft language for receiving and resolving complaints, draft language on the minimum standards of delivery for indigent defense, a report on Delphi, and a report or draft language on the caps that counties will be subject to in the event there's corrective action.

By: Lorinda Wichman

Second: Professor Traum

Vote: Passed unanimously

Mr. Wells suggested that the Board have a meeting where they can all be together at the same time. He thinks they'll have better results if they have better interaction and everybody's together. He knows funds are limited, and his suggestion is that during this time span between now and the next meeting, each of them could potentially go back to their own sponsoring person and see if they could come up with budget to cover the travel for the rest of this fiscal year. Just something to think about between now and the next meeting.

Director Ryba said she and Jarrod would like to appear down in the South and they are hoping to get in contact with Professor Traum and possibly go around the college and meet some of the law students. They are hoping to go down there and be present in Vegas for the next meeting.

8. Public Comment (This public comment period is for any matter that is within the jurisdiction of the public body. No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. The Chair of the Board will impose a time limit of three minutes.)

Ms. Franny Forsman said two times there has been a massive data collection in the federal system that might be helpful. It's probably more elaborate than what they would want to do in the State system, but there's a lot of work that's gone into it in terms of weighted caseloads. And as far as standards, there were Performance standards adopted under ADKT 411, and those could be used as a starting point for standards.

Director Ryba said they are using that to create the standards and they are trying to put it together with the Supreme Court rules on capital cases as well. They are trying to merge everything together.

9. Adjournment (For possible action)

Chairman Crowell thanked everyone and adjourned the meeting at 2:46 PM.

NOTE: Items may be considered out of order. The public body may combine two or more agenda items for consideration. The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time. The public body will limit public comments to three minutes per speaker and may place other reasonable restrictions on the time, place, and manner of public comments but may not restrict comments based upon viewpoint. We are pleased to make reasonable accommodations for members of the public who have disabilities and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Cynthia Atanzio at (775) 687-0139 as soon as possible and at least two days in advance of the meeting. If you wish, you may e-mail her at catanzioi@dids.nv.gov. Supporting materials for this meeting are available at 209 E. Musser Street, Suite 200, Carson City, NV 89701 or by contacting Cynthia Atanzio at (775) 687-0139 or by email at catanzioi@dids.nv.gov.

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4. Nevada State Library & Archives, 100 North Stewart Street, Carson City, NV 89701
5. Grant Sawyer Building, Capitol Police, 555 E. Washington, Las Vegas, NV 89101

Notice of this meeting was posted on the Internet: <https://notice.nv.gov>

Update on Contingency Fund

Governor Steve Sisolak
Chairman

Susan Brown
Clerk of the Board



Attorney General Aaron D. Ford
Member

Secretary of State Barbara K. Cegavske
Member

STATE OF NEVADA BOARD OF EXAMINERS

209 E. Musser Street, Room 200 / Carson City, NV 89701-4298
Phone: (775) 684-0222 / Fax: (775) 684-0260
<http://budget.nv.gov/Meetings>

PUBLIC MEETING NOTICE AND AGENDA

Date and Time: November 12, 2019, 10:00 AM

Location: Old Assembly Chambers of the Capitol Building
101 N. Carson Street
Carson City, Nevada 89701

Video Conference Location: Grant Sawyer Building
555 E. Washington Avenue, Ste. 5100
Las Vegas, Nevada 89101

AGENDA

- 1. Call to Order / Roll Call**
- 2. Public Comment** (The first public comment is limited to comments on items on the agenda. No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. The Chair of the Board will impose a time limit of three minutes).
- 3. Approval of the October 8, 2019 Minutes** (For possible action)

4. State Vehicle Purchases (For possible action)

Pursuant to NRS 334.010, no automobile may be purchased by any department, office, bureau, officer or employee of the state without prior written consent of the State Board of Examiners.

AGENCY NAME	# OF VEHICLES	NOT TO EXCEED:
Department of Conservation and Natural Resources – Division of Water Resources	1	\$27,373
Department of Conservation and Natural Resources – Division of State Parks	2	\$69,455
Department of Corrections	1	\$10,000
Department of Corrections	52	\$2,418,045
Department of Public Safety – Investigation Division	12	\$367,637
Total	68	\$2,892,510

5. Authorization for an Emergency Contract with a Current and/or Former State Employee (For possible action)

Department of Administration – Purchasing Division

Pursuant to NRS 333.705, subsection 4, the Department of Administration, Purchasing Division, on behalf of the Department of Education, seeks a favorable recommendation regarding the Department's determination to use the emergency provision to contract with former employee Dottie Loewen to perform administrative support duties to the Commission on School Funding on a part-time basis from September through December 2019. The employee has been hired through Master Service Agreement #18404, with HAT Ltd Partnership, DBA Manpower.

6. Authorization to Contact with a Current and/or Former State Employee (For possible action)

Board action under this item only grants permission to the employing agency. Current and former employees are still subject to all ethical requirements of NRS chapter 281A, specifically including subsection 550 which restricts certain former employees and state agencies.

A. Department of Administration – Purchasing Division

Pursuant to NRS 333.705, subsection 1, the Department of Administration, Purchasing Division, on behalf of the State Library, Archives and Public Records Division, requests authority to contract with former employee Gerald J. Lindsay to perform electronic scanning duties on a part-time basis. The employee will be hired through Master Service Agreement #18404, with HAT Ltd Partnership, DBA Manpower.

B. Department of Administration – Purchasing Division

Pursuant to NRS 333.705, subsection 1, the Department of Administration, Purchasing Division, on behalf of the State Controller's Office, requests authority to contract with former employee Eva Seal to assist with required financial reporting duties on a part-time basis. The employee will be hired through Master Service Agreement #18405, with Marathon Staffing Group.

C. Department of Public Safety – Office of Traffic Safety

Pursuant to NRS 333.705, subsection 1, the Department of Public Safety's Office of Traffic Safety requests to contract with a former employee, Howard Aronstein to provide quality assurance services for the Nevada Rider Motorcycle Safety Program at training providers located in Clark County.

7. Request for a Recommendation of Approval to the Interim Finance Committee for an Allocation Amount from the Contingency Account (For possible action)

A. Department of Education

Pursuant to NRS 353.268, subsection 1, the Department requests the Board's recommendation to the Interim Finance Committee for an allocation of \$342,179 from the Interim Finance Committee Contingency Account to replenish the Special Education Contingency Account

B. Department of Education

Pursuant to NRS 353.268, subsection 1, the Department requests the Board's recommendation to the Interim Finance Committee for an allocation of \$175,000 from the Interim Finance Committee Contingency Account to complete an impact and validity study in accordance with Senate Bill 475 of the 2019 Legislative Session.

C. Department of Public Safety – Division of Emergency Management

Pursuant to NRS 353.268, the Division requests the Board's recommendation to the Interim Finance Committee for \$343,908 from Contingency Account to cover costs associated with providing security support to Clark County during the upcoming New Year's Eve celebrations/activities.

8. [Approval of Proposed Leases](#) (For possible action)
9. [Approval of Proposed Contracts](#) (For possible action)
10. [Approval of Work Plan](#) (For possible action)
11. [Approval of Proposed Master Service Agreements](#) (For possible action)
12. [Information Item – Clerk of the Board Contracts](#)

Pursuant to NRS 333.700, the Clerk of the Board may approve all contract transactions for amounts less than \$50,000. Per direction from the August 13, 2013 meeting of the Board of Examiners, the Board wished to receive an informational item listing all approvals applicable to the new threshold (\$10,000 - \$49,999). Attached is a list of all applicable approvals for contracts and amendments approved from September 17, 2019 through October 18, 2019.

13. Information Item and Reports

A. Department of Conservation and Natural Resources – Division of State Lands

Pursuant to NRS 321.5954, the Division is required to provide the Board of Examiners quarterly reports regarding lands or interests in lands transferred, sold, exchanged, or leased under the Tahoe Basin Act program. Pursuant to Chapter 355, Statutes of Nevada, 1993, at page 1153, the agency is to report quarterly on the status of real property or interests in real property transferred under the Lake Tahoe Mitigation Program. This submittal reports on program activities for the 1st quarter of Fiscal Year 2020.

B. Stale Claims Account, Emergency Accounts, Statutory Contingency Accounts

Pursuant to NRS Chapter 353, the Governor's Finance Office, Budget Division presents a reconciled fund balance report for the TORT Claim Fund, Statutory Contingency Account, Stale Claims Account, Emergency Account, Disaster Relief Account, IFC Unrestricted Contingency Funds and IFC Restricted Contingency Funds as of June 25, 2019.

The TORT Claim Fund is the State Treasury Fund for Insurance Premiums. The Statutory Contingency Account, Stale Claims Account, Emergency Account, Disaster Relief Account, IFC Unrestricted Contingency Funds and IFC Restricted Contingency supplement funding for eligible agencies within statutory authority.

Below is the available balance for each account prior to any projected outstanding claims.

TORT Claim Fund	\$ 6,974,771.07
Statutory Contingency Account	\$ 4,713,887.31
Stale Claims Account	\$ 2,205,616.49
Emergency Account	\$ 279,841.00
Disaster Relief Account	\$ 11,666,800.00
IFC Unrestricted Contingency Fund General Fund	\$ 24,606,539.02
IFC Unrestricted Contingency Highway Fund	\$ 1,620,336.35
IFC Restricted Contingency Fund General Fund	\$ 61,110,277.00
IFC Restricted Contingency Highway Fund	\$ 2,220,935.00

- 14. Public Comment** (This public comment period is for any matter that is within the jurisdiction of the public body. No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. The Chair of the Board will impose a time limit of three minutes.

15. Adjournment (For possible action)

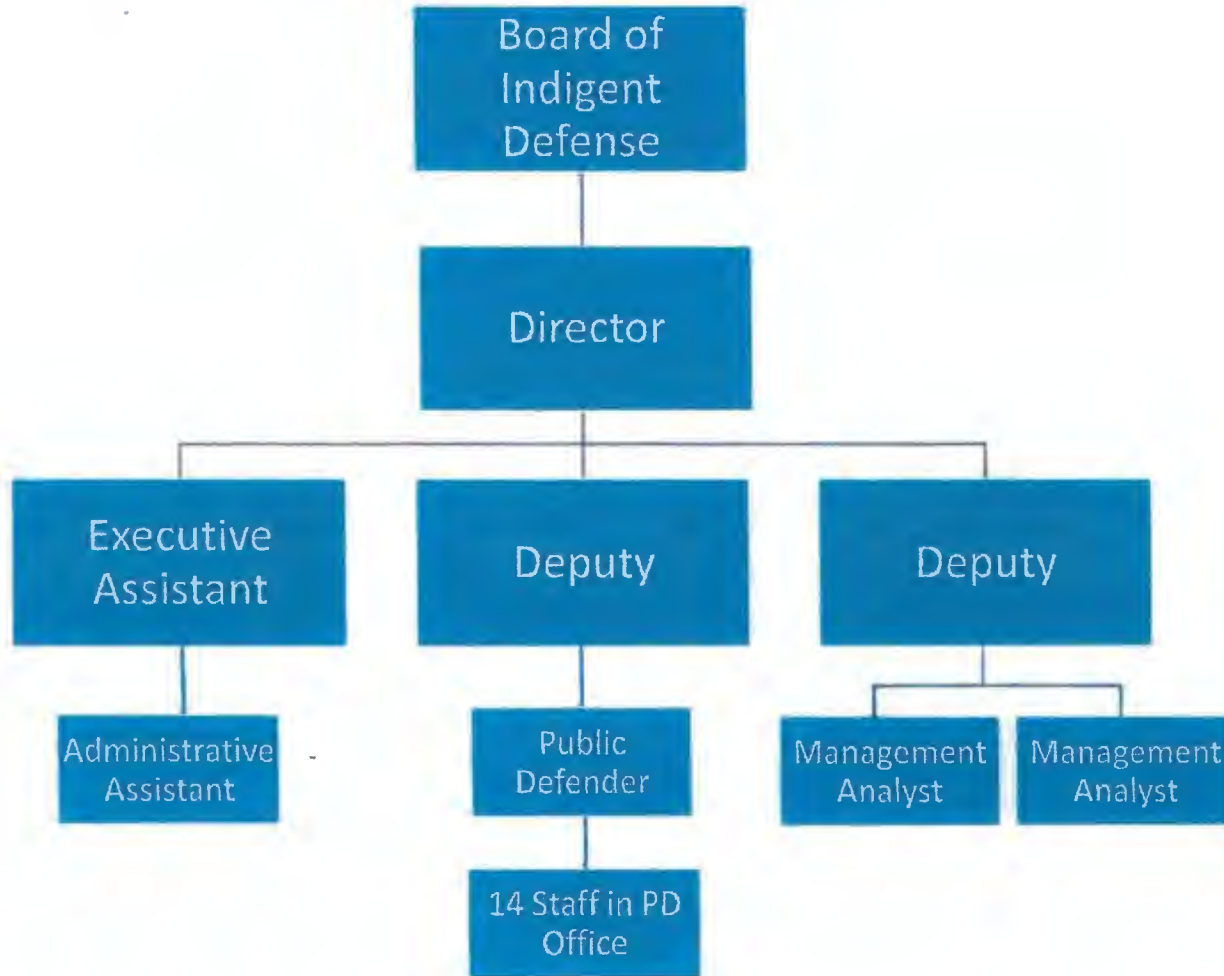
NOTE: Items may be considered out of order. The public body may combine two or more agenda items for consideration. The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time. The public body will limit public comments to three minutes per speaker and may place other reasonable restrictions on the time, place, and manner of public comments but may not restrict comments based upon viewpoint. We are pleased to make reasonable accommodations for members of the public who have disabilities and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Dale Ann Luzzi at (775) 684-0223 as soon as possible and at least two days in advance of the meeting. If you wish, you may e-mail her at daluzzi@finance.nv.gov. Supporting materials for this meeting are available at 209 E. Musser Street, Suite 200, Carson City, NV 89701 or by contacting Dale Ann Luzzi at (775) 684-0223 or by email at daluzzi@finance.nv.gov

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Updated Organizational Chart



AB codified into NRS 180.300, et. Seq.

[Rev. 12/21/2019 10:46:23 AM--2019]

CHAPTER 180 - INDIGENT DEFENSE SERVICES

GENERAL PROVISIONS

<u>NRS 180.002</u>	Definitions.
<u>NRS 180.0025</u>	“Board” defined.
<u>NRS 180.003</u>	“Commission” defined. [Expired by limitation.]
<u>NRS 180.0031</u>	“Department” defined.
<u>NRS 180.0035</u>	“Executive Director” defined.
<u>NRS 180.004</u>	“Indigent defense services” defined.

STATE PUBLIC DEFENDER

<u>NRS 180.010</u>	Office created; term; qualifications; private practice of law prohibited; supervision; assignment of additional duties.
<u>NRS 180.030</u>	Employment of deputies and other employees; qualifications of deputies.
<u>NRS 180.030</u>	Office; branch offices.
<u>NRS 180.030</u>	Contracts for legal services.
<u>NRS 180.080</u>	Duties: Representation of indigent persons; contracts to render services.
<u>NRS 180.090</u>	Duties: Reports to Executive Director and participating counties.
<u>NRS 180.100</u>	Application.
<u>NRS 180.110</u>	Other protections and sanctions not excluded.
<u>NRS 180.110</u>	Collection of charges to counties for services.

NEVADA RIGHT TO COUNSEL COMMISSION

<u>NRS 180.200</u>	Creation; members and appointing authorities; vacancies; per diem. [Expired by limitation.]
<u>NRS 180.210</u>	Commission to study and submit report concerning the provision of indigent defense services. [Expired by limitation.]

BOARD ON INDIGENT DEFENSE SERVICES

<u>NRS 180.300</u>	Creation; members and appointing authorities; members serve without compensation; members holding public office or employed by governmental entity.
<u>NRS 180.310</u>	Terms and reappointment of voting members; selection of Chair; removal of voting members; vacancies; meetings; voting.
<u>NRS 180.320</u>	Duties of Board; adoption of regulations.

DEPARTMENT OF INDIGENT DEFENSE SERVICES

<u>NRS 180.400</u>	Creation; Executive Director; employment and contracts for consultants.
<u>NRS 180.410</u>	Duties of Executive Director; annual report.
<u>NRS 180.420</u>	Deputy directors.
<u>NRS 180.430</u>	Duties of designated Deputy Director.
<u>NRS 180.440</u>	Duties of other designated Deputy Director.
<u>NRS 180.450</u>	Corrective action plans.
<u>NRS 180.460</u>	Transfer of responsibility for provision of indigent defense services.

GENERAL PROVISIONS

NRS 180.002 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 180.0025 to 180.004, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2017, 2940, 2943; A 2019, 2887, 2891)

NRS 180.0025 “Board” defined. “Board” means the Board on Indigent Defense Services created by NRS 180.300.
(Added to NRS by 2019, 2880)

NRS 180.003 “Commission” defined. Expired by limitation. (See chapter 460, Statutes of Nevada 2017, at page 2943)

NRS 180.0031 “Department” defined. “Department” means the Department of Indigent Defense Services created by NRS

NRS 180.0035 “Executive Director” defined. “Executive Director” means the Executive Director of the Department.
(Added to NRS by 2019, 2880)

NRS 180.004 “Indigent defense services” defined. “Indigent defense services” means the provision of legal representation to:

1. An indigent person who is charged with a public offense; or
 2. An indigent child who is:
 - (a) Alleged to be delinquent; or
 - (b) In need of supervision pursuant to title 5 of NRS.
- (Added to NRS by 2017, 2940, 2943 A 2019, 2891)

STATE PUBLIC DEFENDER

NRS 180.010 Office created; term; qualifications; private practice of law prohibited; supervision; assignment of additional duties.

1. The Office of State Public Defender is hereby created within the Department of Indigent Defense Services.
2. The Governor shall appoint the State Public Defender for a term of 4 years, and until a successor is appointed and qualified.
3. The State Public Defender is responsible to the Executive Director.
4. The State Public Defender:
 - (a) Must be an attorney licensed to practice law in the State of Nevada.
 - (b) Is in the unclassified service of the State and serves at the pleasure of the Executive Director.
 - (c) Except as otherwise provided in NRS 7.065, shall not engage in the private practice of law.
5. No officer or agency of the State, other than the Executive Director and the deputy director selected by the Executive Director pursuant to NRS 180.420 who is responsible for carrying out the duties provided in NRS 180.430 may supervise the State Public Defender. No officer or agency of the State, other than the Executive Director or deputy director selected by the Executive Director pursuant to NRS 180.420 who is responsible for carrying out the duties provided in NRS 180.430 may assign the State Public Defender duties in addition to those prescribed by this chapter.

(Added to NRS by 1971, 1410; A 1973, 707; 1977, 1176; 1989, 202; 1993, 1518; 2019, 2887)

NRS 180.030 Employment of deputies and other employees; qualifications of deputies.

1. The State Public Defender may employ:
 - (a) Deputy state public defenders in the unclassified service of the State.
 - (b) Clerical, investigative and other necessary staff in the classified service of the State.
 2. Each deputy state public defender must be an attorney licensed to practice law in the State of Nevada, and shall not engage in the practice of law except in performing the duties of the office and as otherwise provided in NRS 7.065.
- (Added to NRS by 1971, 1411; A 1973, 707; 1977, 1176; 1989, 202; 1993, 1518; 2019, 2887)

NRS 180.040 Office; branch offices.

1. The Office of the State Public Defender shall be in Carson City, Nevada, and the Buildings and Grounds Section of the State Public Works Division of the Department of Administration shall provide necessary office space.
 2. The State Public Defender may establish branch offices necessary to perform the State Public Defender’s duties. The State Public Defender shall designate a deputy state public defender to supervise each such office.
- (Added to NRS by 1971, 1411)

NRS 180.050 Contracts for legal services.

1. The State Public Defender may contract with attorneys licensed to practice law in the State of Nevada and with county public defenders to provide services required by this chapter if it is impracticable for the State Public Defender or the State Public Defender’s deputies to provide such services for any reason.
 2. All such contract services shall be performed under the supervision and control of the State Public Defender.
- (Added to NRS by 1971, 1411; A 1973, 706)

NRS 180.060 Duties; Representation of indigent persons; contracts to render services.

1. The State Public Defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when the indigent person has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.
 2. The State Public Defender shall, when designated pursuant to NRS 62D.030, 62D.100, 171.188 or 432B.420, represent without charge each indigent person for whom the State Public Defender is appointed.
 3. When representing an indigent person, the State Public Defender shall:
 - (a) Counsel and defend the indigent person at every stage of the proceedings, including revocation of probation or parole; and
 - (b) Prosecute any appeals or other remedies before or after conviction that the State Public Defender considers to be in the interests of justice.
 4. In cases of postconviction proceedings and appeals arising in counties in which the office of public defender has been created pursuant to the provisions of chapter 260 of NRS, where the matter is to be presented to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, the State Public Defender shall prepare and present the case and the public defender of the county shall assist and cooperate with the State Public Defender.
 5. The State Public Defender may contract with any county in which the office of public defender has been created to provide 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 1971, 1411; A 1973, 358; 1975, 41; 1977, 338; 1985, 1398; 2003, 1124; 2013, 1762; 2019, 2887)

NRS 180.080 Duties; Reports to Executive Director and participating counties.

1. The State Public Defender shall submit:
 - (a) A report on or before December 1 of each year to the Executive Director and to each participating county containing a statement of:

- (1) The number of cases that are pending in each participating county;
- (2) The number of cases in each participating county that were closed in the previous fiscal year;
- (3) The total number of criminal defendants represented in each participating county with separate categories specifying the crimes charged and whether the defendant was less than 18 years of age or an adult;
- (4) The total number of working hours spent by the State Public Defender and the State Public Defender's staff on work for each participating county;
- (5) The amount and categories of the expenditures made by the State Public Defender's office; and
- (6) Such other information as requested by the Executive Director of the Department of Indigent Defense Services or the Board on Indigent Defense Services.

(b) To each participating county, on or before December 1 of each even-numbered year, the total proposed budget of the State Public Defender for that county, including the projected number of cases and the projected cost of services attributed to the county for the next biennium.

2. As used in this section, "participating county" means each county in which the State Public Defender acts as the public defender for the county.

(Added to NRS by 1971, 1412; A 1977, 331; 1995, 498; 2019, 2888, 3127)

NRS 180.090 Application. Except as provided in subsections 4 and 5 of NRS 180.060, the provisions of NRS 180.010 to 180.100, inclusive, apply only to counties in which the office of public defender has not been created pursuant to the provisions of chapter 260 of NRS.

(Added to NRS by 1971, 1412; A 1975, 42; 1977, 338; 2019, 2889)

NRS 180.100 Other protections and sanctions not excluded. The provisions of this chapter do not exclude any protection or sanction that the law otherwise provides.

(Added to NRS by 1971, 1412)

NRS 180.110 Collection of charges to counties for services.

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.

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.

(Added to NRS by 1973, 719; A 1975, 714; 1977, 309; 1983, 528; 1991, 995; 2019, 2889)

NEVADA RIGHT TO COUNSEL COMMISSION

NRS 180.200 Creation; members and appointing authorities; vacancies; per diem. Expired by limitation. (See chapter 460, Statutes of Nevada 2017, at page 2943.)

NRS 180.210 Commission to study and submit report concerning the provision of indigent defense services. Expired by limitation. (See chapter 460, Statutes of Nevada 2017, page 2943.)

BOARD ON INDIGENT DEFENSE SERVICES

NRS 180.300 Creation; members and appointing authorities; members serve without compensation; members holding public office or employed by governmental entity.

1. There is hereby created a Board on Indigent Defense Services within the Department of Indigent Defense Services, consisting of:

(a) Thirteen voting members appointed as follows:

(1) One member who is an attorney licensed in this State and a member in good standing of the State Bar of Nevada, appointed by the Majority Leader of the Senate.

(2) One member who has expertise in the finances of State Government, appointed by the Speaker of the Assembly.

(3) One member appointed by the Chief Justice of the Nevada Supreme Court who:

(I) Is a retired judge or justice who no longer serves as a judge or justice in any capacity; or

(II) Has expertise in juvenile justice and criminal law.

(4) One member who is an attorney licensed in this State and a member in good standing of the State Bar of Nevada appointed by the Governor.

(5) One member selected by the Board of Governors of the State Bar of Nevada, appointed by the Governor, who:

(I) Is an attorney licensed in this State and a member in good standing of the State Bar of Nevada; and

(II) Resides in a county whose population is less than 100,000.

(6) Four members selected by the Nevada Association of Counties who reside in a county whose population is less than 100,000, appointed by the Governor. One member must have expertise in the finances of local government.

(7) Two members selected by the Board of County Commissioners of Clark County, appointed by the Governor.

(8) One member selected by the Board of County Commissioners of Washoe County, appointed by the Governor.

(9) One member selected jointly by the associations of the State Bar of Nevada who represent members of racial or ethnic minorities, appointed by the Governor.

(b) The Chief Justice of the Nevada Supreme Court may designate one person to serve as a nonvoting member to represent the interests of the Court.

2. In addition to the members appointed pursuant to subsection 1, the Governor may appoint up to two additional nonvoting members, one of whom must be upon the recommendation of the Board of Governors of the State Bar of Nevada.

3. Each person appointed to the Board must have:
 - (a) Significant experience providing legal representation to indigent persons who are charged with public offenses or to children who are alleged to be delinquent or in need of supervision;
 - (b) A demonstrated commitment to providing effective legal representation to such indigent persons; or
 - (c) Expertise or experience, as determined by the appointing authority, which qualifies the person to contribute to the purpose of the Board or to carrying out any of its functions.
4. A person must not be appointed to the Board if he or she is currently serving or employed as:
 - (a) A judge, justice or judicial officer;
 - (b) A Legislator or other state officer or employee;
 - (c) A prosecuting attorney or an employee thereof;
 - (d) A law enforcement officer or employee of a law enforcement agency; or
 - (e) An attorney who in his or her position may obtain any financial benefit from the policies adopted by the Board.
5. A person must not be appointed to the Board if he or she is currently employed:
 - (a) Within the Department of Indigent Defense Services;
 - (b) By a public defender; or
 - (c) By any other attorney who provides indigent defense services pursuant to a contract with a county.
6. Each member of the Board:
 - (a) Serves without compensation; and
 - (b) While engaged in the business of the Board, is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.
7. Each member of the Board who is an officer or employee of a local government must be relieved from his or her duties without loss of his or her regular compensation so that the member may prepare for and attend meetings of the Board and perform any work necessary to carry out the duties of the Board in the most timely manner practicable. A local government shall not require an officer or employee who is a member of the Board to make up the time the member is absent from work to carry out his or her duties as a member, and shall not require the member to take annual vacation or compensatory time for the absence.
(Added to NRS by 2019, 2880)

NRS 180.310 Terms and reappointment of voting members; selection of Chair; removal of voting members; vacancies; meetings; voting.

1. Except as otherwise provided in this section, the voting members of the Board on Indigent Defense Services are appointed for a term of 3 years and may be reappointed.
2. The Chair of the Board must be selected at the first meeting from among the voting members of the Board and serves until July 1 of the next year. The Chair for the following year must be selected in the same manner before the expiration of the current term of the sitting Chair. The Chair may be selected to serve another term as Chair.
3. The Governor may remove a voting member of the Board for incompetence, neglect of duty, committing any act that constitutes moral turpitude, misfeasance, malfeasance or nonfeasance in office or for any other good cause.
4. A vacancy on the Board must be filled in the same manner as the original appointment by the appointing authority for the remainder of the unexpired term.
5. The Board shall meet regularly upon a call of the Chair. An affirmative vote of a majority of the members of the Board is required to take any action.
(Added to NRS by 2019, 2882)

NRS 180.320 Duties of Board; adoption of regulations.

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.

(Added to NRS by 2019, 2882)

DEPARTMENT OF INDIGENT DEFENSE SERVICES

NRS 180.400 Creation; Executive Director; employment and contracts for consultants.

1. The Department of Indigent Defense Services is hereby created.

2. The Executive Director of the Department must be appointed by the Governor from a list of three persons recommended by the Board.

3. The Executive Director:

(a) Is in the unclassified service of this State;

(b) Serves at the pleasure of the Governor, except that the Executive Director may only be removed upon a finding of incompetence, neglect of duty, commission of an act that constitutes moral turpitude, misfeasance, malfeasance or nonfeasance in office or for any other good cause;

(c) Must be an attorney licensed to practice law in the State of Nevada; and

(d) Must devote his or her entire time to his or her duties and shall not engage in any other gainful employment or occupation.

4. The Executive Director may, within the limits of money available for this purpose, employ or enter into a contract for the services of such employees or consultants as is necessary to carry out the provisions of this chapter.

(Added to NRS by 2019, 2884)

NRS 180.410 Duties of Executive Director; annual report.

1. The Executive Director shall:

(a) Oversee all of the functions of the Department of Indigent Defense Services;

(b) Serve as the Secretary of the Board without additional compensation;

(c) Report to the Board on Indigent Defense Services regarding the work of the Department and provide such information to the Board as directed by the Board;

(d) Assist the Board in determining necessary and appropriate regulations to assist in carrying out the responsibilities of the Department;

(e) Establish the proposed budget for the Department and submit the proposed budget for approval of the Board;

(f) Prepare an annual report concerning indigent defense services in this State which includes information collected by the Department and such other information as requested by the Board; and

(g) Take any other actions necessary to ensure that adequate and appropriate indigent defense services are provided in this State.

2. The report prepared pursuant to paragraph (f) of subsection 1 must be submitted for input from the Board. The final report must be submitted on or before July 1 of each year to the Nevada Supreme Court, the Legislature and the Office of the Governor. The report may include any recommendations for legislation to improve indigent defense services in this State.

(Added to NRS by 2019, 2884)

NRS 180.420 Deputy directors.

1. In addition to the Executive Director, the Department must include not fewer than two deputy directors selected by the Executive Director who serve at the pleasure of the Executive Director.

2. The deputy directors:

(a) Must be attorneys licensed to practice law in the State of Nevada;

(b) Are in the unclassified service of this State; and

(c) Shall devote their entire time to their duties and shall not engage in any other gainful employment or occupation.

(Added to NRS by 2019, 2884)

NRS 180.430 Duties of designated Deputy Director. One deputy director selected pursuant to NRS 180.420 must be responsible for:

1. Overseeing the provision of indigent defense services in counties whose population is less than 100,000. Such oversight must include, without limitation:

(a) Oversight of the State Public Defender; and

(b) Determining whether attorneys meet the requirements established by the Board on Indigent Defense Services to be eligible to provide indigent defense services and maintaining a list of such attorneys.

2. Developing and providing continuing legal education programs for attorneys who provide indigent defense services.

3. Identifying and encouraging best practices for delivering the most effective indigent defense services.

4. Providing assistance to counties that must revise the manner in which indigent defense services are provided as a result of the regulations adopted by the Board pursuant to NRS 180.320. Such assistance may include, without limitation, assistance developing a plan and estimating the cost to carry out the plan.

(Added to NRS by 2019, 2885)

NRS 180.440 Duties of other designated Deputy Director. One deputy director selected pursuant to NRS 180.420 must be responsible for reviewing the manner in which indigent defense services are provided throughout the State. To carry out this responsibility, the deputy director shall:

1. Obtain information from attorneys relating to caseloads, salaries paid to criminal defense attorneys and the manner in which indigent defense services are provided.
2. Conduct on-site visits of court proceedings throughout the State to determine the manner in which indigent defense services are provided, including, without limitation, whether:
 - (a) Minimum standards for the provision of indigent defense services established by the Board on Indigent Defense Services are being followed;
 - (b) Court rules regarding the provision of indigent defense services are being followed;
 - (c) Indigent defendants are being asked to provide reimbursement for their representation or to take any other actions that violate the constitution, any law, a court rule or a regulation of the Board; and
 - (d) Representation of indigent defendants is being provided in an effective manner.
3. Report to the other deputy director upon a determination that any person is providing indigent defense services in an ineffective or otherwise inappropriate manner.
4. Recommend entering into a corrective action plan with any board of county commissioners of a county which is not meeting the minimum standards for the provision of indigent defense services or is in any other manner deficient in the provision of such services.
(Added to NRS by 2019, 2885)

NRS 180.450 Corrective action plans.

1. If a corrective action plan is recommended pursuant to NRS 180.440, the deputy director and the board of county commissioners 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. 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 shall notify the State Public Defender in writing on or before March 1 of the next odd-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the same 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.
(Added to NRS by 2019, 2885)

NRS 180.460 Transfer of responsibility for provision of indigent defense services.

1. A county that transfers responsibility for the provision of indigent defense services to the State Public Defender pursuant to NRS 180.450 may seek to have the responsibility transferred back to the county by submitting a request to the Executive Director in writing on or before December 31 of an even-numbered year.
2. Upon finding that the county is able to meet minimum standards for the provision of indigent defense services, the Executive Director shall approve transferring the responsibility for the provision of indigent defense services to the county.
3. If the Executive Director denies a request to transfer responsibility for the provision of indigent defense services to a county, the Executive Director must inform the board of county commissioners for the county of the reasons for the denial and the issues that must be resolved before the responsibility for the provision of indigent defense services will be transferred to the county.
4. If the Executive Director approves a request to transfer responsibility for the provision of indigent defense services to the county, the board of county commissioners for the county shall notify the State Public Defender in writing on or before March 1 of the next odd-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the same year in which the notice was given, as determined by the Executive Director.
(Added to NRS by 2016, 2887)

Procedure to Receive Complaints and Recommendations

Internal Operating Procedure for Complaints through Website

Complaints and Recommendations

1. Any interested person including, without limitation, judges, defendants, attorneys and members of the public may make complaints or recommendations to the Board of Indigent Defense Services through the Department of Indigent Defense Services website on a form approved by the Board.
2. DIDS staff shall respond to complaints or recommendations that do not implicate system-wide issues. DIDS staff shall provide a report to the Board regarding these complaints on a quarterly basis.
3. Complaints or recommendations that implicate possible system-wide issues shall be provided to the Board at the next Board meeting to allow the Board to evaluate the complaint and recommend a response to resolve complaints or implement recommendations.



Nevada Department of
Indigent Defense Services

Complaint or Recommendation Form

The Nevada Department of Indigent Defense Services (DIDS) is authorized by the Board of Indigent Defense 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.

Please complete this form to submit a recommendation or complaint to DIDS.

Name: _____

Please Check Appropriate box that describes yourself:

judge court administration defense attorney client member of general public

Mailing/Business address:

Email: _____

Telephone number: _____

Please state your recommendation or complaint (add additional pages as needed):

Please complete this form and return to: catanzio@dids.nv.gov

PLEASE NOTE: DIDS is subject to FOIA, and the information received on this form may be subject to disclosure pursuant to PRA (Nevada Public Records Act).



Nevada Department of
Indigent Defense Services

Resolution Form

Date Complaint/Recommendation Received: _____

Contact Information

Name: _____

judge court administration defense attorney client member of general public

Mailing/Business address:

Email: _____

Telephone number: _____

System-wide Issue? Yes No

If yes, Date Forwarded to the Board: _____

Proposed Resolution to complaint or to carry out recommendations:

If no, resolution performed by the Department of Indigent Defense Services:

RFI for Weighted Caseload Study

Steve Sisolak
Governor



Marcie Ryba
Executive Director

Jarrold Hickman
Deputy Director

**STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES**

209 E. Musser Street, Suite 200 | Carson City, NV 89701-4298
Phone: (775) 687-0138 | www.dids.nv.gov

Request For Information (RFI) No. 101

For

DEPARTMENT OF INDIGENT DEFENSE SERVICES

Release Date: January 31, 2020
Deadline for Submission: May 1, 2020

For additional information, please contact:

Marcie Ryba, Director
(775) 684-0138
E-mail: mryba@dids.nv.gov

This document must be submitted
In the Vendor's Response

Contact Information

Vendor Company Name _____

Address _____ City _____ State _____ Zip _____

Telephone (____) _____ Fax (____) _____

E-Mail Address: _____

Contact Person _____

Print Name & Title _____

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1. NOTICE

This solicitation is a Request for Information (RFI) only. It is NOT a solicitation for quotations, bids, or proposals. No contract award will result from this RFI. The RFI process will be used to gather information, Vendor contacts, and to expand upon the Department of Indigent Defense Services (DIDS) possible need for a Request for Proposal (RFP).

This RFI, having been determined to be the appropriate method for gathering the best information, is designed to provide interested Vendors with sufficient information to submit replies meeting the intent of this request. It is not intended to limit a Vendor's content or exclude any relevant or essential data.

2. RFI Background

The purpose of this RFI is to gather information and interest from Vendors that may be interested in responding to the RFI to perform a Delphi study to establish workload standards for the Rural Counties.

3. Introduction

The Department of Indigent Defense Services (DIDS) is requesting information from qualified vendors to assist DIDS in determining the appropriate numerical caseload/workload standards for criminal cases for providers of indigent legal representation in the state of Nevada.

DIDS seeks to procure the services of a vendor to conduct a study, to be performed in consultation with the DIDS, which can be used as a basis for stipulating numerical caseload/workload standards for adult criminal cases in Nevada courts. The selected vendor will work in consultation with the DIDS at all stages of the study, including the conduct of the study itself. The study must result in the production of recommended caseload standards for defense providers that accounts for (a) variation in counties and courts, and (b) variation in delivery models.

DIDS requests information from qualified vendors which may include, but are not limited to, private sector firms, not-for-profit organizations, and public or private institutions such as universities or colleges with expertise in conducting research like research described in later sections of this RFI.

4. Motivation for the Project

In 2019, the Nevada Legislature established the Department of Indigent Defense Services (DIDS) through AB81. Among other things, DIDS has been tasked with establishing guidelines to be used to determine the maximum caseloads for attorneys who provide indigent defense services.

DIDS is responsible for improving the representation of indigent defendants through several steps. First, DIDS must establish minimum standards and regulations 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. After the regulations are imposed, the DIDS must oversee the rural indigent defense attorneys to ensure that the minimum standards and regulations set forth by DIDS are being followed. In addition, DIDS helps local systems in their compliance with the minimum standards by creating a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services.

The standards and regulations are currently in development. However, DIDS is moving ahead ambitiously and believes that a weighted caseload study setting forth indigent defense caseload standards is a critical step in the DIDS' efforts to provide a statewide framework for quality legal representation.

The results of the weighted caseload study will be used to immediately and directly inform a caseload standard for trial-level indigent defense attorneys in Nevada.

5. The Structure of Nevada's Indigent Defense System

Nevada is composed of 17 counties. Until this point, counties and courts have received very little state-level oversight with regards to indigent defense practices. With indigent defense historically funded at the county-level, each county has made independent decisions about the structure and delivery of its indigent defense services.

Carson City and Storey County, alone among the rural jurisdictions, use the Nevada State Public Defender's office to provide primary (but not conflict) representation. Only the three rural counties of Elko, Humboldt, and Pershing have a county funded and administered public defender office, furnished and equipped at government expense and staffed by full-time government employees who receive a salary and benefits. Churchill, Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine counties instead provide right to counsel services by contracting with private attorneys. Each county sets forth its own compensation mechanisms. Cities receive almost no direction at all from the state about how to provide representation to indigent defendants charged in the municipal courts with misdemeanors that carry possible jail sentences. There are four free-standing municipal courts in all the 15 rural counties combined: Fallon Municipal Court within Churchill County; Fernley Municipal Court and Yerington Municipal Court within Lyon County; and Ely Municipal Court within White Pine County.

The variation across courts in delivery systems and payment schemes offers critical motivation for a weighted caseload study that can provide meaningful and objective standards for quality representation across the state. For more information on the structure of Nevada's trial courts, please see the Annual Report of the Nevada Judiciary at [https://nvcourts.gov/Supreme/Reports/Annual Reports/2019 Annual Report/](https://nvcourts.gov/Supreme/Reports/Annual%20Reports/2019%20Annual%20Report/)

6. Previous Caseload Studies

Studies in states including Texas, Missouri, Massachusetts, Louisiana and New York have recently addressed the best ways to develop caseload standards. These studies were based on empirical

research, took account of their unique state-level legal frameworks, and drew upon the expertise of local defenders and other stakeholders. While the details of any particular study may differ from what is required in this RFI, they may provide bidders with guidance when completing the study defined in this RFI.

These studies often involve two phases. The first phase begins with timekeeping where defenders track in detail their work, which allows the researchers to quantify how much time defenders put into specified activities in different classes of case. In other words, this first phase answers the question, “*What is?*” The second phase convenes a meeting of experts and key stakeholders, commonly called a Delphi Panel, which is tasked with developing recommendations for the final caseload standards, and, pursuant to Delphi principles, participate in a series of iterative discussions whereby meeting members are repeatedly polled until they reach consensus on ideal caseload limits. The second phase answers the question, “*What should be?*”

As DIDS was only recently established, there will likely be a necessity for obtaining extensive information about local indigent defense systems at the county, city/town, and court level. This can be accomplished with an on-line survey that can serve as a benchmark foundation for various efforts by the indigent defense authority going forward in its mandated responsibilities.

DIDS is requesting information, solutions, concepts, and interest for a weighted caseload study to be used directly inform a caseload standard for trial-level indigent defense attorneys in Nevada.

As part of your response to this RFI, please feel free to include any additional comments or suggestions your company believes would be helpful to the DIDS. However, generic marketing brochures, marketing resumes, and other non-project specific materials may be discarded without consideration and are not encouraged.

7. SCOPE OF WORK

The Scope of Work (SOW) details the services requested. Vendors with comments/suggestions may use track changes and submit this document with their response.

Vendors on this RFI may plan a study drawing on some version of the two phases mentioned above, although the DIDS is also interested in new and innovative approaches. Vendors should be aware that while the studies performed by other states or prior to the issuance of this RFI may provide insight into the area being studied or the methodologies used, they should not unduly direct or influence the conduct of the study to be completed as a result of this procurement. DIDS is requesting information for a new, empirically-based, methodologically-sound, and objective study of appropriate caseload/workload standards in the state of Nevada rural counties to be conducted.

Given the diversity of Nevada counties and courts, bidders will be expected to identify a strategy in their proposal for selecting a representative sample of rural counties and courts in which to conduct the caseload study. This study excludes Clark and Washoe counties. Study sites should be selected to represent the full range of rural counties and courts in Nevada.

Through the study, vendors will be expected to produce the following:

- (a) The appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender, assigned counsel program, or contract defender;
- (b) Recommendations for the means by which those standards will be implemented, monitored, and enforced on an ongoing basis, consistent with Nevada's AB81;
- (c) An accessible template by which courts, counties, defense providers, or other stakeholders can determine the number of additional attorneys, investigators, and other non-attorney staff, as well as the amount of other necessary in-kind resources, to comply with the caseload/workload standards.

In doing so, Vendors will be expected to develop, in collaboration with the DIDS, a complete list of all relevant categories of cases that may be handled by the attorneys in question. Vendors will also be expected to consider:

- (a) The qualifications and experiences of the attorneys;
- (b) The distance between courts and attorney offices;
- (c) The time needed to interview clients and witnesses, considering travel time and location of confidential interview facilities;
- (d) Whether attorneys work on a part-time basis;
- (e) Whether attorneys exercise supervisory responsibilities;
- (f) Whether attorneys are supervised;
- (g) Whether attorneys have access to adequate staff investigators, other non-attorney staff, and in-kind resources.

Vendors should be prepared to assess attorney time required in activities including the following:

- (a) Client communication;
- (b) Meetings and negotiations with opposing counsel or other officials;
- (c) Requesting, receiving and reviewing discovery materials;
- (d) Investigation of the facts of the case;
- (e) Research into the law and legal issues in the case;
- (f) Drafting of pleadings, motions or correspondence;
- (g) Preparation for trial;
- (h) Time spent in court;
- (i) Identifying and addressing collateral consequences;
- (j) Sentencing research and advocacy;
- (k) Administrative tasks;
- (l) Non case-specific tasks such as traveling, waiting in court, training, supervision, or vacation.

8. ANTICIPATED DELIVERABLES

The deliverables for the weighted caseload study will be defined in detail once the RFI process is completed and the results have been compiled and reviewed.

9. QUESTIONS REGARDING RFI

All questions relating to this RFI must be submitted to:
 Marcie Ryba at 775-687-0138 or mryba@dids.nv.gov.

10. HOW TO RESPOND

All Responses must be received by **May 1, 2020**. Please send your responses to:
Marcie Ryba at mryba@dids.nv.gov

11. DISCLAIMERS

11.1 COST OF PREPARING THE RESPONSE

All costs associated with preparing and responding to this RFI is the sole responsibility of the Vendor and will not be reimbursed by the State. Furthermore, there is no guarantee that a procurement of services will take place as a result of this RFI.

11.2 RIGHT TO CANCEL

The State of Nevada Department of Indigent Defense Services (DIDS) reserves the right to cancel this RFI at any time.

11.3 ACCEPTANCE OF RESPONSES

11.3.1 All responses properly submitted will be accepted.

11.3.2 All materials submitted become the property of the State of Nevada. Materials may be evaluated by anyone designated by the State as part of the response evaluation committee.

11.4 RESPONSE TO THE RFI IS NOT MANDATORY

Failure to respond to this RFI in whole or in part will not disqualify any Vendor from participation in any subsequent solicitation regarding this matter.

11.5 RESPONSE NON-BINDING

An RFI is not a procurement process and may not be used to enter into a contract. This RFI will not result in a contract award; a response to an RFI is not an offer and may not be accepted to form a binding contract.

11.6 REVIEW OF RESPONSES

DIDS will establish an impartial review committee to review the responses to the RFI, and reserves the right to consult with other state experts and stakeholders.

11.7 SUBSEQUENT SOLICITATIONS

Information obtained through this RFI may be used to shape future plans of DIDS, including the potential for issuing a Request for Proposals for the types of services identified in this process.

11.8 SITE LOCATION

Primarily, the Department of Indigent Defense Services is located in Carson City, Nevada.

11.9 PROJECTED TIMETABLE

BIDS and DIDS anticipates following the tentative schedule shown below.

Event	Date & Time
Release RFI	January 31, 2020
RFI Responses Due	May 1, 2020

The State reserves the right to modify this schedule at the State's discretion. Notification of changes in the response due date would be posted on the DIDS website or as otherwise stated herein.

11.10 RFI RESPONSES PROPERTY OF THE STATE

All materials submitted in response to this RFI become the property of the State. By submitting a response, the Vendor acknowledges and accepts that contents of the response and associated documents may become available to the public, except items that have been identified as proprietary by the Vendor shall label all information deemed proprietary or confidential in their response.

12. BASIC QUESTIONS

The State requires responders to include the Vendor's company name, address, phone number, e-mail address, fax number, and contact person when submitting answers/question.

Appendix A: Suggested Proposal Format

I. PROJECT SUMMARY

Please include:

- 1) Identification of the entity requesting funds.
- 2) Contact person, telephone, fax and email for this Request for Proposals.
- 3) Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project).
- 4) Amount of funding requested.
- 5) A 500-word abstract of the proposed project.

II. PROPOSAL NARRATIVE

A. Plan of action

Please answer the following questions about how you would conduct the proposed study. Bidders will be evaluated on the information they provide.

Description of the study

Describe the process, from start to finish, that you intend to follow in the development of weighted caseload standards, including:

- 1) An overview of the whole process of the study, including a detailed timeline.
- 2) Description of strategic approach to selecting relevant sites and attorneys for the study.
- 3) How will “quality” representation be conceptualized and operationalized in the study?
 - a) Refer to specific attorney performance standards in your answer and how they will be used in the study.
- 4) How would you assess the present caseloads/workloads of providers, including the amounts of time and types of work dedicated to cases? Include a description of any information technology products that will be used, how they will be used, and how you will seek to assure their successful use in this study. Please include a detailed description of how you will seek buy-in from participants.
- 5) How would you assess the additional time and resources necessary for the providers to provide quality representation? Include a description of any information technology products that will be used, how they will be used, and how you will seek to assure their successful use in this study.
- 6) How would the study incorporate participation from, and be generalizable to, public defense offices, assigned counsel, and contract defenders?

Accounting for non-case and non-attorney time

- 7) How would the study account for tasks or activities not related to specific cases, such as time spent traveling, waiting in court, or reviewing legal developments, and how would such differences be reflected in the numerical caseload standards and weights?
- 8) How would the study consider and quantify the time required for supervision of attorney and non-attorney staff, and how would such differences be reflected in the numerical caseload standards and weights?
- 9) How would the study consider and quantify the time required not only of attorneys, but also of non-attorney support staff such as investigators, paralegals, administrators and others, in order to meet standards, and how would such differences be reflected in the numerical caseload standards and weights?

Accounting for local differences in geography, caseload and service providers

- 10) How would the study account for geographic and other differences across the selected sites (and across the state generally), and how would such differences be reflected in the numerical caseload standards and weights?
- 11) How would the standards be applied to assigned counsel attorneys, or other attorneys, who split their time between indigent legal representation and other work?
- 12) How would the study account for representation performed in specialty courts, e.g. drug courts or veteran courts, and how would such differences be reflected in the numerical caseload standards and weights?
- 13) How would the study address not only new cases, but also any backlog of cases attorneys are carrying, and how would such differences be reflected in the numerical caseload standards and weights?
- 14) How would the study account for representation in cases which end prior to disposition – for example because a conflict of interest is discovered, or the person elects to retain private counsel?

Development and application of standards

- 15) How would your analysis use the data gathered to produce both numerical caseload/workload standards for providers of indigent legal services, and a weighting scheme for different types of cases?
- 16) How would those standards and weights be used to calculate the amounts of funding, additional staff (both attorney and non-attorney), and/or in-kind resources providers require to meet standards?
- 17) What types of data or other resources will be necessary for the MIDC to monitor compliance with caseload standards?

B. Proposer Capability and Personnel

Please provide qualifications and experience for the lead person(s) responsible for project implementation. Identify other members of the staff who will work on this project, as well as the role and level of involvement of outside participants in the completion of the project. If you are using sub-contractors for any other portion of the project plan, please specify their roles and responsibilities.

C. Budget and Cost

Proposals will be evaluated and rated on efficient use of funds and overall cost-effectiveness, which includes budget plans that are consistent with the proposed action plan, administrative costs, justification for each requested budget line, and cost benefit. The decision will not be based on pay rate alone; it will be an evaluation of all of the factors included in the proposal. Please be sure to address the following:

1. *Budget*: Provide a detailed, annualized budget containing reasonable and necessary costs. The budget for the proposed project must be consistent with the terms of the RFP and provide a justification for all expenses.
2. *Subcontracting*: Describe whether the proposed budget will include subcontracting with another service provider in order to complete the terms described in this RFP and, if so, provide a brief description of the purpose of the subcontract.
3. *Matching Funds*. As described above, matching funds are not an essential component of the proposed application but will be considered if available. If matching funds are available, please provide the source, amount, and any stipulations tied to funds.
4. *Budget Justification*: Include a brief narrative for each budget line justifying the budget request and relating the requested line budget amount to the plan of action and expected results. The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Form.

5. The *Budget Justification* must also describe how the proposer will monitor expenditures during the life of the project to ensure that the project stays within the budget.

Travel Policy

Policy Number:	Date Revised	Directors Signature
Policy #2	12/2019	
Policy #		

Travel and Per Diem

I. PURPOSE

The purpose of this policy and procedure is to ensure Board Members and staff follow consistent processes when required to travel to accomplish work activities and fulfill assigned responsibilities. Travel authorization will only be granted to accomplish official business or to further Indigent Defense Services interests and will be conducted in the most economical, effective, and efficient manner possible.

II. POLICY

It is the policy of the Department of Indigent Defense Services (DIDS) to ensure the rate of reimbursement for lodging, meals, and incidentals must be comparable to the Federal Government's U.S. General Services Administration (GSA) rate based on travel location. Staff and board members and staff are expected to be familiar with these policies prior to travel and follow the procedures set forth in this policy for requesting, approval, monitoring, and reporting of all travel and related per diem.

III. SCOPE

This policy applies to all Board Members and staff working under the authority of or within DIDS.

IV. RESPONSIBILITY

The DIDS front office is responsible for making travel arrangements for members of management and board members. Everyone else must prepare their own travel request and reimbursement forms.

V. DEFINITIONS

GSA Per Diem Rates are rates set by the U.S. General Services Administration. Located at: <http://www.gsa.gov/portal/category/100000>

Personal Travel Time is the period of time during travel when an employee or Board member has extended their travel for personal use. Personal Travel Time is not compensated by the Board nor is the employee or Board member covered by workers' compensation during the time they are in personal travel status. An employee or Board member may return to business of the Board at the end of the personal travel time and

commence with Board compensated travel such as returning to the duty station or traveling to another destination for additional Board business. This travel time is covered by workers' compensation. In cases where Personal Travel Time is used, the employee or Board member must define the time when Personal Travel starts and ends as part of the travel preauthorization documentation. Personal Travel Time may not increase the costs incurred by the Board.

State Administrative Manual (SAM) is a compilation of policy statements concerning the internal operations of state government. Policies are based on statute or other approved regulations. SAM is published for use as a guide in conducting the State's business. Located at: <http://budget.nv.gov/Manuals-Instructions/>

Fleet Services Division provides State of Nevada agencies with fleet management, alternative fuel, and transportation solutions. Located at: <http://motorpool.nv.gov/>

VI. PROCEDURE

Travel Request and Authorization

1. A board member or staff intending to travel shall notify the Executive Director (or designee) of the location, dates, times, and reason for travel.
2. The Pre-Travel Request form must be signed by the Executive Director (or designee).
3. All travel expenses for Board members will be charged to the budget account specifically appropriated or authorized to provide for the travel expenses.
4. The front office staff (on behalf of a board member or management member) or employee shall complete and submit the Pre-Travel Request Worksheet, along with the In-State or Out-of-State Pre-Travel Approval Request Cover Sheet, along with the associated back-up documentation, to the Executive Director for fiscal approval and tracking.
5. The GSA Per Diem rates may not be exceeded for travel unless the Executive Director (or designee) has provided written approval and justification. The request will be reviewed for appropriateness and approved/denied by the Executive Director.
6. Special instructions to properly complete the form are as follows:
 - a. The maximum reimbursement for parking at an airport will be established long-term rates. If the board member or employee chooses to use short-term parking, he/she will be responsible for the cost difference.
 - b. Meal reimbursement will only be allowed if the employee travels 50 miles or more from the office to which he/she is officially assigned.
 - i. A breakfast allotment per GSA Per Diem rates may be claimed if travel status commences at or prior to 6:30 AM and does not terminate prior to 8:00 AM. Commencement time for meal per diem for breakfast will be determined based on the time zone of the departure location.

- ii. A lunch allotment per GSA Per Diem rates may be claimed if travel status commences at or prior to 11:00 AM and does not terminate prior to 2:00 PM. Commencement time for meal per diem for lunch will be determined based on the time zone of the departure location.
 - iii. A dinner allotment per GSA Per Diem rates may be claimed if travel status commences at or prior to 4:00 PM and does not terminate prior to 7:00 PM. Commencement time for meal per diem for dinner will be determined on the time zone of the destination location.
 - iv. Incidentals are permitted at the current GSA Per Diem rate for miscellaneous travel expenses (e.g., luggage carts, metered parking, subway/bus use, toll charges, tips, etc.). Additional incidental costs associated to luggage carts, metered parking, tips, etc., will not be reimbursed.
 - c. Lodging: GSA Per Diem rates may be claimed for overnight trips with a receipt. Reimbursement will be based upon the actual receipted costs up to the maximum GAS Per Diem rate. Any additional charges (e.g., room services, movie, television service) are the responsibility of the employee. GSA Per Diem rates are found at: <http://www.gsa.gov/portal/category/100000>
 - i. Lodging rates may be exceeded if the exceptions contained in SAM 0212 and SAM 0214 are met and prior written authorization has been obtained from the Executive Director (or designee). If the employee selects lodging over and above the approved GSA Per Diem rate without prior authorization, he/she will be responsible for the additional cost.
 - ii. GSA maximum lodging rates do not include allowable taxes and surcharges (e.g., resort fees or internet charges for work purposes).
- 7. Any employee requesting mileage for use of his or her personal vehicle shall only be compensated for miles driven in excess of his or her normal commute. Normal commute is defined as the distance between the employee's residence and the employee's assigned duty station.
- 8. The Executive Director shall verify budget authority for the intended travel and approve or deny intended travel in writing.
 - a. Travel requests containing errors and/or incomplete information will be returned to the employee for clarification.
 - b. The Executive Director shall log all travel expenses (pending, projected and paid) into the budget.

Travel Arrangements

- 1. The Executive Director (or designee) shall:
 - a. Notify the board member or employee when the travel request is approved or denied.

- b. If changes are necessary, the board member or employee shall notify the Executive Director, who will document the changes on the original Travel Pre-Authorization Form and return a copy to the employee.
- c. Book all airline reservations, hotel reservations, conference registration, meetings, training, and any other necessary travel arrangements.
- d. Hotel and airline cancellation policies must be checked prior to booking a reservation to ensure cancellation fees are avoided. Reimbursement for cancellation fees will be approved on a case-by-case basis with written justification and Executive Director approval.
- e. Airline/flight reservations: The front office is responsible for booking air reservations for division management and staff. Southwest Airlines is the authorized airline for state travel. Any deviations from Southwest Air travel must be approved by a member of management prior to booking.

Fleet Services or rental car information:

1. If a Fleet Services vehicle is needed, an approved Fleet Services rental form must be sent to Fleet Services prior to in-state travel commencement.
2. Rental cars may only be rented from agencies with which the State has agreements. This list can be found on State Purchasing's website. http://purchasing.nv.gov/Contracts/Documents/Vehicle_Rentals/
3. Rental cars must be re-fueled prior to return to avoid excessive refueling charges. Reimbursements for additional fueling charges will be approved on a case-by- case basis with written justification and Executive Director approval.
4. Optional rental car products (see below) may be purchased but will be the sole responsibility of the employee and will not be reimbursed by the Department. Examples include, but are not limited to the following:
 - Personal Accident Insurance (PAI/PEC)
 - Peace of Mind (POM)
 - Loss Damage Waiver
 - Roadside Service Protection (RSP)
 - National Protection Plus (NPP)
 - Car Class Upgrade
 - GPS Equipment (03040)
 - Collision Damage Waivers

Claims for Travel Expenses

1. A Travel Expense Reimbursement Claim (TE) form shall be submitted when an employee requests reimbursement for completed travel. Reimbursement for business travel combined with personal travel may not increase the cost to the Department.
2. Per SAM 0220, all claims for travel expense should be completed and returned to the Executive Director (or designee) immediately upon return but must be

submitted within one month of travel completion unless prohibited by exceptional circumstances.

3. Per SAM 0234, if a travel claim is not filed within five (5) working days after returning from travel and interest charges accrue on a state sponsored credit card the employee will be responsible for the interest charges.
4. Per SAM 0220, a travel claim may not contain expenses associated with travelers other than the traveler indicated on the form, even if the traveler paid for another traveler's expenses.
5. The Travel Expense Reimbursement Claim form shall be completed in its entirety. Special instructions for the form are as follows:
 - a. List the employee's name
 - b. List the city and office for "Official Duty Station"
 - c. A separate line should be completed for each day of travel
 - d. Date: Enter day, month, and year of travel (i.e., 01-01-01)
 - e. Enter destination and purpose of the trip
 - f. Transportation Cost: Enter only if method of travel was a private car, taxi, shuttle, etc., and include original receipts
 - g. Reimbursement for private vehicle use will be 50% of the maximum mileage allowance if a state vehicle was available for use and/or if a private vehicle was used for the employee's convenience.
 - h. Attach the following applicable forms/receipts to the claim: All receipts smaller than 8"x11" should be taped to a blank 8"x11" sheet of paper and labeled with the employee name. (Note: Original receipts should be provided whenever possible. If a copy of the receipt is provided but is illegible, the original receipt will be required in order to consider the expense.)
 - Parking receipts
 - Hotel receipts
 - Actual conference schedule or agenda
 - Airline baggage fee receipts if not included in airline invoice (if applicable)
 - ATM Service Charge receipt indicating usage fee
 - Commercial ground transportation (taxi, shuttle, train, etc.)
 - Laundry/cleaning services (allowed only if business related travel is four consecutive nights or longer).
 - Other expenses which the traveler is requesting reimbursement for, must be accompanied by a justification and approval by the Executive Director.

These expenses will be evaluated by Executive Director for appropriateness and approval.

6. The Executive Director shall be responsible for reviewing the completed form for accuracy and for obtaining the employee's signature.
7. Per SAM 0220, a fax or scanned copy of the Travel Expense Reimbursement Claim form may be accepted in lieu of an original signature. However, the original

Travel Expense Reimbursement Claim form with original signature must be forwarded to the Executive Director.

8. The Executive Director will maintain a copy of the travel claim to reconcile with corresponding time sheets to ensure accuracy in reporting. Any discrepancies will be reported to the employee's supervisor for correction.
9. Non-state employees must submit a separate invoice for travel and include a detailed breakdown of all travel expenses (per diem, mileage, lodging, parking, taxi, etc.). All expenses must be reimbursed at GSA rates and original receipts must be included. Requests for travel reimbursement shall not exceed the approved contractual travel budget.
10. The Executive Director is responsible for reviewing, verifying, accepting, and logging any corrected information on the Travel Expense Reimbursement Claim form.

Combining Business and Personal Travel: If an employee or board member wishes to combine business travel with personal travel, the following guidelines will be utilized to determine reimbursement:

1. If an employee chooses to drive a personal vehicle rather than fly to/from his or her travel destination, reimbursement will be the lower of either the airfare on the date of approval for travel or mileage at the convenience rate.
2. Per Diem will be paid only while the employee is in business travel status. Meals will not be paid after completion of official business and the commencement of personal time.
3. Combining Business and Personal Travel may not increase the costs to the Board.

VII. POLICY EXCEPTION

On occasion there are special circumstances that may require an exception to this policy be granted. Exceptions, while not common, require the approval of the Executive Director.

VIII. POLICY COMMUNICATION

All supervisors and managers of BIDS and DIDS will provide their employees with a copy of this policy. Employees needing clarification should contact the Executive Director for assistance.

This policy is not a substitute for relevant law or regulation, nor does it establish additional rights beyond those provided in law and regulation. This policy is intended to be used in conjunction with federal regulations and State law.

Proposed Standards

PROPOSED STANDARD, Training and Education.

PRINCIPLE

Lawyers providing indigent defense services are provided with and required to attend training, including continuing legal education programs, relevant to the area of indigent defense services in which they practice.¹ American Bar Association (“ABA”), *Ten Principles of a Public Defense Delivery System*, Principle Nine (2002).

STANDARD

The proposed minimum standard regarding training and continuing legal education includes:

1. Knowledge of the law. Counsel shall have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices.² Counsel has a continuing obligation to have reasonable knowledge of changes and developments in the law.³ “Reasonable knowledge” as used in this standard means knowledge of which a lawyer competent under NRPC 1.1⁴ would be aware.

2. Knowledge of scientific evidence and applicable defenses. Counsel shall have reasonable knowledge of the forensic and scientific issues that can arise in a criminal

¹ “Area of indigent defense services in which they practice” includes capital case representation, *see* ADTK 0411, *Order in the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases* (“ADKT 0411”), Section 2 Capital Case Representation (Nev. Oct. 2008); appellate and post-conviction representation, *see* ADKT 0411, Section 3 Appellate and Post-Conviction Representation; felony and misdemeanor trial cases, *see* ADKT 0411, Section 4 Felony and Misdemeanor Trial Cases; juvenile delinquency proceedings, *see* ADKT 0411, Section 5 Juvenile Delinquency Cases; and proceedings under NRS Chapter 432B.

² *See* ADKT 0411, Standard 4-2(a).

³ *Id.*

⁴ “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

case,⁵ the legal issues concerning defenses to a crime, and be reasonably able to effectively litigate⁶ those issues.

3. Knowledge of technology. Counsel shall be reasonably able to use office technology commonly used in the legal community, and technology used within the applicable court system.⁷ Counsel shall be reasonably able to thoroughly review materials that are provided in an electronic format.

4. Continuing education. Counsel shall annually complete a minimum of five (5) hours of continuing education courses relevant to the areas of indigent defense services in which they practice.⁸ Continuing legal education courses shall include, but are not limited to, skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, effective use of courtroom technology, and litigation and negotiation skills.⁹ All attorneys providing indigent defense services shall annually complete a minimum of five (5) hours of continuing legal education.

⁵ See ADKT 0411, Standards 2-2(a), 2-3(b)(10) and 5-2(d)(2)(K).

⁶ See ADKT 0411, Standard 2-3(b) (recommending attorneys seeking qualification for capital case appointments satisfactorily complete comprehensive training programs including in capital litigation).

⁷ Examples include use of simultaneous audiovisual technology, use of courtroom technology such as PowerPoint, presentation of audio/video evidence, annotation monitors, witness monitors, evidence cameras, and/or integrated controllers/media carts. See Herbert Dixon Jr., *The Basics of a Technology Enhanced Courtroom*, *The Judges' Journal* (Nov. 2017), as viewed January 23, 2019 at https://www.americanbar.org/groups/judicial/publications/judges_journal/2017/fall/basics-technologyenhanced-courtroom/.

⁸ Each lawyer in the state of Nevada must complete 13 hours of continuing legal education per year. SCR 210(2)(a). Of those 13 hours, two (2) must be exclusively in the area of ethics and professional conduct and one (1) must be exclusively in the area of substance abuse, addictive disorders, and/or mental health issues that impair professional competence. *Id.* ADKT 0411 recommends a continuing duty of counsel handling general felony and misdemeanor cases to “stay abreast of changes and developments in the law” but does not recommend a specific number of hours be completed annually. ADKT 0411, Standard 4-2(a). In the area of juvenile delinquency proceedings, ADKT 0411 recommends a minimum of four (4) hours of continuing legal education relevant to juvenile defense annually. ADKT 0411, Standard 5-2(c).

⁹ Under the Regulation of the Board of Continuing Legal Education 3(1), the primary purpose of any accredited educational program must be (1) improving professional skills or competence, (2) furthering education in professional or ethical obligations, and/or (3) improving efficiency in delivery of services. Additionally, accredited education activities in areas other than criminal law may be approved for providers of indigent defense services “if the program has significant intellectual and practical content and improves

5. Duties of the Department. Consistent with its statutory obligation, the Department will develop and provide continuing legal education programs for attorneys who provide indigent defense services.¹⁰ This may include, but is not limited to, regular continuing legal education courses and/or annual training programs that include topics tailored to the needs of indigent defense services.

professional competence or skills or delivery of legal services.” *Regulations of the Board of Continuing Legal Education* 3(5) and (6).

¹⁰ NRS 180.430(2).

PROPOSED STANDARD, Minimum qualifications for attorneys providing indigent defense services.

PRINCIPLE

Defense counsel’s ability, training, and experience match the complexity of the case. American Bar Association (“ABA”), *Ten Principles of a Public Defense Delivery System* (“*Ten Principles*”), Principle Six (2002).

COMMENTARY

The commentary of the ABA’s *Ten Principles* indicates that “[c]ounsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.”¹

In its enabling legislation, the Board of Indigent Defense Services (“Board”) is required to “establish requirements for specific continuing education and experience for attorneys who provide indigent defense services.”² Nevada Rules of Professional Conduct impose a requirement like the ABA’s *Ten Principles*: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”³ The Nevada Supreme Court’s Order in ADKT 0411 builds upon that premise by recommending that lawyers have sufficient training or experience to provide competent representation.⁴ Further, the United States Supreme Court has held that the constitutional right to counsel guaranteed by the Sixth Amendment includes the right to effective assistance of counsel.⁵ The right to effective assistance of counsel applies equally whether counsel was appointed or retained.⁶

The Department of Indigent Defense Service’s (“Department”) proposed standard regarding training and education should be considered a prerequisite to, and means to achieve, the proposed standard for minimum qualifications of attorneys providing indigent defense services. The proposed standard for minimum qualifications includes:

¹ ABA, *Ten Principles of a Public Defense Delivery System* (“*Ten Principles*”), Principle Six (2002).

² NRS 180.320(2)(d)(1).

³ NRPC 1.1.

⁴ ADKT 0411, *Order in the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, Standard 4-2 (Nev. Oct. 2008) (“ADKT 0411”).

⁵ *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 2063 (1984).

⁶ *Cuyler v. Sullivan*, 446 U.S. 335, 344-45, 100 S.Ct. 1708, 1716 (1980).

STANDARD

1. Basic requirements. Every lawyer providing indigent defense services shall satisfy the minimum requirements for practicing law within the state of Nevada and comply with the Board’s Standard regarding training and education of lawyers providing indigent defense services.

2. Qualifications for trial counsel in misdemeanor and gross misdemeanor proceedings. Lawyers providing indigent defense services in all misdemeanor proceedings shall satisfy basic requirements and serve as co-counsel or second chair in a criminal bench or jury trial prior to acting as lead counsel in a misdemeanor or gross misdemeanor trial.⁷

3. Qualifications for trial counsel in category B, C, D, and E felony and proceedings. Lawyers providing indigent defense services in category B, C, D, and E proceedings shall:

- A. Satisfy basic requirements; and
- B. Have practiced criminal law for one full year; either as a prosecutor, provider of indigent defense services, or retained counsel; and
- C. Have been trial counsel, alone or with other trial counsel, and handled a significant portion of the trial in two criminal cases,⁸ one of which was submitted to a jury, tried to completion; or
- E. Have equivalent experience and ability to demonstrate similar skills as determined by the Department.

4. Qualifications for trial counsel in category A – murder (non-capital), category A – sexual offenses, and category A - other felony proceedings. Lawyers providing indigent defense services in category A proceedings shall:

- A. Satisfy basic requirements; and
- B. Have practiced criminal law for three full years; either as a prosecutor, provider of indigent defense services, or retained counsel; and

⁷ ADKT 0411 recommends that counsel in felony and misdemeanor trial cases should “prior to handling a criminal matter . . . have sufficient experience or training to provide competent representation.” ADKT 0411, Standard 4-2(b).

⁸ *Id.* Additionally, ADKT 0411, Standard 5-17(a) provides support for requiring two criminal trials prior to handling category B, C, D, and E felonies by recommending that counsel in juvenile transfer proceedings to adult court have litigated at least two criminal jury trials prior to undertaking the representation. *See also* NRS 62B.390 (establishing procedure for certification of a child for criminal proceedings as an adult for children 14 years of age or older charged with a felony offense).

C. Have been trial counsel, alone or with other trial counsel, and handled a significant portion of the trial in three criminal jury trial trials⁹ tried to completion; or

D. Have a significant record of consistently high-quality criminal trial court representation and the ability handle a category A felony matter as determined by the Department.

5. Qualifications for trial counsel in capital proceedings. Lawyers seeking appointment to represent individuals charged with category A offenses in which the state seeks death must meet the criteria established pursuant to SCR 250.¹⁰

⁹ The experience and trial qualifications recommended for category A offenses is similar to the requirements imposed upon counsel for capital representation under SCR 250 because the penalty for a category A offense is either “death or imprisonment in the state prison for life with or without the possibility for parole . . . as provided by the specific statute.” NRS 193.130(2)(a). This requirement is also consistent with recommendations of the National Legal Aid and Defender Association’s (“NLADA”) qualification and experience requirements within the Model Contract for Public Defense Services, Section VI (2000) and the Michigan Indigent Defense Commission, Standard 7 for Indigent Criminal Defense Services. Other similarly situated states only require “sufficient experience or training to provide competent representation.” See Idaho Public Defense Commission, Standards for Defending Attorneys, Sec. V, Comment 1 (“Prior to undertaking the defense of an indigent defendant . . . counsel should have sufficient experience to provide competent representation for the case.”); Utah Indigent Defense Commission, Core Principles for Utah Indigent Defense Systems, Principle 8A – Qualifications and Training (“Indigent defense systems must ensure defense counsel’s ability, training, and experience match the complexity of the case.”); Louisiana Administrative Code, Title 22, Section XV, Chapter 7, §705(B) (“Prior to agreeing to undertake representation in a criminal matter, counsel should have sufficient experience or training to provide effective representation.”).

¹⁰ “Unless the district court determines pursuant to subsection (2)(e) that defense counsel otherwise has the competence to represent an indigent person in a capital case, an attorney appointed as lead counsel at trial, at a minimum, must have: (1) acted as lead defense counsel in five felony trials, including one murder trial, tried to completion (i.e., to a verdict or a hung jury); (2) acted as defense co-counsel in one death penalty trial tried to completion; and (3) been licensed to practice law at least three years.” SCR 250(2)(b).

“If an attorney does not satisfy the minimum requirements set forth in subsections (2)(b) . . . of this rule, or if the district court otherwise considers it warranted, the court shall hold a hearing to assess the attorney’s competence and ability to act as defense counsel. The court shall thoroughly investigate the attorney’s background, training, and experience and consult with the attorney on his or her current caseload. If satisfied that the attorney is competent and able to provide the representation, the court shall make that finding on the record and appoint the attorney.” SCR 250(2)(e).

6. Qualifications for appellate counsel in felony proceedings. Lawyers providing indigent defense services in direct or post-conviction appeals of felonies other than capital proceedings shall satisfy basic requirements and have sufficient experience or training to undertake the representation.¹¹

7. Qualification for appellate counsel in capital proceedings. Lawyers seeking appointment to represent individuals convicted of category A offenses in which the state sought death must meet the established criteria pursuant to SCR 250.¹²

8. Qualification of counsel in juvenile delinquency cases.¹³

A. Lawyers providing indigent defense services in juvenile delinquency proceedings shall satisfy basic requirements and have the knowledge and skill necessary to represent a child diligently and effectively.

B. Counsel beginning to represent clients in delinquency proceedings should consider working with an experienced juvenile delinquency practitioner as a mentor.

C. Lawyers representing children in transfer proceedings in accordance with NRS Chapter 62B shall have litigated at least two criminal jury trials or be assisted by co-counsel with the requisite experience.

¹¹ ADKT 0411 does not specifically recommend any qualifications for appellate or post-conviction counsel. However, it does remind counsel in these proceedings that they have “an obligation to abide by ethical norms” ADKT 0411, Standard 3-1. Attorneys must, pursuant to Nevada Rules of Professional Conduct, provide competent representation. NRPC 1.1. As such, ADKT 0411 recommends that counsel in appellate or post-conviction proceedings possess the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” *Id.* The recommendation for at least one prior misdemeanor appeal before undertaking representation in felony direct or post-conviction matters acknowledges that ethical obligation while imposing a tiered experience base consistent with existing rules and recommendations for trial counsel qualifications.

¹² “Counsel appointed to represent an appellant on direct or post-conviction appeal must have acted as counsel in at least two appeals of felony convictions and must otherwise satisfy the court that counsel is capable and competent to represent the appellant.” SCR 250(2)(d).

¹³ The following qualification standard utilizes the recommendations set forth in ADKT 0411, Standards 5-2 and 5-17.

PROPOSED STANDARD, Continuity in representation.

PRINCIPLE

The same attorney continuously represents the client until completion of the case. *American Bar Association (ABA) Ten Principles of a Public Defense Delivery System*, Principle Seven (2002).

COMMENTARY

The commentary in the ABA's *Ten Principles* explains: "[o]ften referred to as "vertical" representation, the same attorney should continuously represent the client from initial assignment through the trial and sentencing." Indeed, the Board of Indigent Defense Services' ("Board") enabling legislation specifically requires the Department of Indigent Defense Services ("the Department") and any county employing attorneys or contracting for indigent defense services to ensure vertical representation occurs to the greatest extent possible.¹ Such a requirement is also a mandatory provision of any contract for indigent defense services.²

Limited exceptions to true vertical representation should be noted. The National Legal Aid and Defender Association's ("NLADA") *Model Contract for Public Defense Services* provides that "[n]othing in this section [on continuity of representation] shall prohibit the Agency from making necessary staff changes or rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment."³ Thus it is permissible under this proposed standard for a single attorney, other than the attorney that ultimately sees the matter to disposition, under a contract or in an Office of the Public Defender to appear for the limited purpose of initial appearances/arraignment.⁴

The proposed minimum standard for continuity in representation includes:

¹ NRS 180.320(2)(d)(5).

² *Id.*

³ NLADA, *Model Contract for Public Defense Services*, Sec. VII(A) (2000).

⁴ National Study Commission on Defense Services, *Guidelines for Legal Defense Systems*, Standard 5.11 Continuity of Representation (1976) ("If necessary, the procedures for early representation, including initial contact, should be permit a limited exception to continuous representation. However, the defender officer should implement procedures for early case assignment and for informing the client of the name of the attorney who will represent him [or her] after the initial period covered by the exception.").

STANDARD

Providers of indigent defense services shall 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.⁵

⁵ NRS 180.320(2)(d)(5).

PROPOSED STANDARD, Capacity to comply with standards – uniform data collection.

PRINCIPLE

The organizational capacity of the indigent defense delivery system is sufficient to ensure compliance with core principles.

COMMENTARY

Critical to this capacity is the collection and regular review of reliable data and information about the services and quality of representation that a delivery system is providing. Since the 1970’s, experts in the realm of indigent defense have recognized the importance of collecting and reviewing data pertaining to delivery of indigent defense services to ensure quality of representation and adequate resources.¹ Indeed, collection of data pertaining to attorney caseload and workload analysis is the bedrock of contemporary studies assessing the functionality of indigent defense delivery systems in Nevada and across the country.² Existing Nevada law imposes some record-keeping requirements to conflict counsel, the State Public Defender, and county public defender offices where created.³ A Nevada Supreme Court Rule imposes time-keeping requirements in capital litigation.⁴

¹ See National Legal Aid and Defender Association (“NLADA”), *Guidelines for Legal Defense Systems in the United States, 5.2 Statistics and Record-keeping* (1976); NLADA, *Basic Data Every Defender Program Needs to Track*, p.5 (2014).

² Sixth Amendment Center (“6AC”), *The Right to Counsel in Rural Nevada*, p.170, 173 (2018); American Bar Association (“ABA”), *The Rhode Island Project – A Study of the Rhode Island Public Defender System and Attorney Workload Standards*, p. 13-19 (2017); Texas A&M University, *Guidelines for Indigent Defense Caseloads – A Report to the Texas Indigent Defense Commission*, p.10-26 (2014); ABA, *The Missouri Project – A Study of the Missouri Public Defender System and Attorney Workload Standards*, p.11-20 (2014); and NLADA, *Basic Data Every Defender Program Needs to Track* (2014).

³ See NRS 7.145 (requiring that appointed counsel, in instances where the public defender is disqualified, to accompany claims for compensation and expenses with “a sworn statement specifying time spent in court [and] the services rendered out of court and the time expended therein”); NRS 180.080 (requiring the Office of the State Public Defender to track caseload information and total working ours with respect to indigent defense services in participating counties); NRS 260.070 (requiring county public defender to make submit an annual report to the board of county commissioners covering all cases handled by the officer during the previous year).

⁴ See SCR 250(3) (requiring defense attorneys to keep contemporaneous records of work performed in capital representation, including time records).

The enabling legislation for the Board of Indigent Defense Services (“Board”) requires that it establish procedures for the uniform collection of data,⁵ require attorneys providing indigent defense services to track time and provide reports to the Department of Indigent Defense Services (“Department”),⁶ and review information regarding caseloads of attorneys providing indigent defense services.⁷ The captured information can then be used to improve client representation by increasing an administrator’s ability to supervise staff and evaluate performance, justify budget and resource allocations, and provide support for necessary changes to indigent defense practice and policy.⁸ To that end, this standard seeks to define the information collected and the frequency in which it is collected. The proposed standard for an indigent defense system’s ability to comply with this Board’s standards includes:

STANDARD

[Alternative or to-be-determined phrases bracketed and italicized].

1. Attorney qualifications. Upon initial application, and at least annually thereafter, an attorney seeking to provide indigent defense services shall provide the Department with information demonstrating the attorney’s qualification to perform as counsel in accordance with *[the minimum qualification standard]*. Such information shall be provided to the Department in the method *[upon the form]*⁹ approved by the Board.

2. Training and education. Upon initial application, and at least annually thereafter, an attorney seeking to provide indigent defense services shall provide the Department a copy of their continuing legal education (“CLE”) transcript demonstrating the annual completion of at least five hours of CLE programs relevant to the area of indigent defense services in which they practice in accordance with *[the training and education standard]*. Such information shall be provided to the Department in the method *[upon the form]* approved by the Board.

⁵ NRS 180.320(1)(d).

⁶ NRS 180.320(2)(d)(2).

⁷ NRS 180.320(1)(d).

⁸ NLADA, *Basic Data Every Defender Program Needs to Track*, p.5 (2014).

⁹ “[I]n the method *[upon the form]* approved by the Board.” The Department is currently analyzing case management systems that could be used to provide uniform data reporting and collection. It is anticipated that the Department will submit a request for information (“RFI”) to certain vendors upon identifying feasible solutions. Should the Department determine a statewide case management system for institutional and contract attorneys is not feasible, it will submit forms for the Board’s consideration.

3. Contract review and approval. Prior to entering into a contractual agreement for the delivery of indigent defense services, the county with which the contract is made shall submit the proposed agreement to the Department to ensure compliance with these standards. The contract shall conform in substance with the model contract adopted by the Board. The Department shall approve the proposed agreement or identify the term or terms in which compliance with these regulations is sought. [*inclusion of model contract provisions*]

4. Caseload/Workload data. On a monthly basis, attorneys providing indigent defense services shall provide to the Department a report detailing current caseloads of cases in which the attorney is assigned or appointed as primary counsel. The report shall be provided to the Department in the method [*upon the form*] approved by the Board and shall be due within seven (7) calendar days from the end of the reporting month.

The report shall include:

(1) the number of cases¹⁰ pending at the beginning of the reporting period;¹¹
(2) new appointments;¹² (3) cases returned from warrant;¹³ (4) cases

¹⁰ The definition of a case is that adopted by the Indigent Defense Commission:

Unit of Count - For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint or information from one or more related incidents on one charging document is one case, regardless of the number of counts). For juvenile cases, the unit of count is a single juvenile defendant on a single petition regardless of the number of counts. For traffic cases, the unit of count is a single case (by defendant) based on an original charging document from a single incident.

For defendants in cases whereby multiple charges are involved, courts will utilize a hierarchy (described below) when classifying the case for statistical purposes. For example, if a defendant is charged on a single charging document with a felony and a gross misdemeanor, for statistical purposes, the case is counted as a felony.

Felony and gross misdemeanor cases in Justice Court are counted when counsel is appointed to the case by the Court.

Misdemeanor and traffic cases in Justice and Municipal Courts are counted when counsel is appointed to the case by the Court.

Additional charges such as failure to appear or habitual criminal are not counted at this time because those are added after the initial charging document.

Indigent Defense Commission (“IDC”), *Indigent Defense Caseload Inventory Worksheet and Data Dictionary* (2010).

¹¹ Beginning Pending: A count of cases by defendant that, at the start of the reporting period, are awaiting disposition. *Id.*

¹² New Appointments: A count of cases by defendant that have been assigned counsel for the first time of each new appointment. *Id.*

¹³ Returned from Warrant (Re-activated): A count of cases in which a defendant has been arrested on a failure to appear warrant and has appeared before the court, returned from diversion program, or other similar occurrence that makes the case active. *Id.*

adjudicated, disposed, or closed;¹⁴ (5) cases in which a warrant was issued;¹⁵ and (6) the number of pending cases at the end of the reporting period.¹⁶

The report shall be arranged by the following case types:

(1) Death penalty; (2) Murder (non-capital); (3) Category A – sexual offenses; (4) Category A – other; (5) Category B – complex economic crimes; (6) Category B – > 10 max.; (7) Category B – < 10 max.; (8) Category C, D, E; (9) Gross misdemeanor; (10) Misdemeanor appeal; (11) Misdemeanor DUI; (12) Misdemeanor DV; (13) Misdemeanor; (14) Probation/Parole violation; (15) Juvenile felony; (16) Juvenile misdemeanor; (17) Juvenile sexual offense; (18) Juvenile violent offense; (19) Juvenile certification/transfer proceedings; (20) Juvenile appeal; (21) Juvenile probation/parole revocation; (22) Specialty Court; (23) Abuse and

¹⁴ Adjudicated/Disposed/Closed Cases: A count of cases by defendant for which an original entry of adjudication has been entered or for which an appointment has ended. *Id.*

Unit of Count - For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint from one or more related incidents is one case, regardless of the number of counts). A criminal case is considered disposed when final adjudication for that defendant or case occurs. For statistical purposes, final adjudication is defined as the date of sentencing, date of adjudication, or date charges are otherwise disposed, whichever occurs last. A case may be considered closed for an appointed attorney when the appointment ends regardless of adjudicatory status. Counsel should count the case adjudicated or disposed in the same category as it was counted in (felony in, felony out). *Id.*

¹⁵ Warrant (Placed on Inactive Status): A count of cases in which a warrant for failure to appear has been issued, a diversion program has been ordered, or other similar incident that makes the case inactive. *Id.*

¹⁶ Ending Pending: A count of cases by defendant that, at the end of the reporting period, are awaiting disposition. *Id.*

neglect proceedings; (24) Termination of parental rights; and (25) Involuntary commitments.^{17 18}

5. Time keeping. On a monthly basis, attorneys providing indigent defense services shall provide to the Department a report detailing time spent delivering those services. The report shall be provided to the Department in the method [*upon the form*] approved by the Board and shall be due within seven (7) calendar days from the end of the reporting month. The report shall include time spent in the following categories:¹⁹

(1) In-court activities:

(a) arraignment/bail; (b) preliminary hearing; (c) status or review; (d) motion or writ hearings; (e) trial; (f) sentencing; (g) post-trial/plea proceedings; (h) dispositional or plea hearings; (i) *Anaya* hearing; (j) competency proceedings; (k) *Sell* hearings; (l) contempt proceedings; (m) detention hearings; (n) Diversion/Specialty Court; (o) evidentiary hearings; (p) extradition hearing; (q) transfer/certification hearing; and (r) oral argument.

(2) Out-of-court activities:

(a) case preparation; (b) document review; (c) legal research; (d) legal document preparation; (e) case administration; (f) direct client contact; (g) client-related contact; (h) communication with investigator; (i) communication with social worker; (j) communication with witness; (k) communication with district attorney/court personnel; (l) communication with supervisor/team/colleague; (m) appellate document collection; (n) appellate filing; (o) social services by attorney; (p) investigation by attorney; (q) clerical; (r) travel; and (s) waiting.

(3) Expert, investigation, and private workload time:

(a) investigator hours per case; (b) expert witness hours per case; and (c) if the attorney engages in the private practice of law, total hours spent in such private practice.

¹⁷ Classification of case types were adopted from *The Assessment of the Clark and Washoe County, Nevada Public Defender Offices* (“*The Assessment*”) prepared by The Spangenburg Group (“TSG”) on July 1, 2009. Although the conclusions and recommendations of that study were not adopted and appear to be heavily disfavored by the entities analyzed, *The Assessment* was useful in identifying the classifications of data viewed as important to everyday work by attorneys and staff during initial onsite interviews. *The Assessment*, p.21. Any additional citation to *The Assessment* will only be for that narrow purpose and not for approval of the conclusions and/or recommendations.

¹⁸ Alternatively, the Board could adopt the caseload reporting tool approved by the Indigent Defense Commission on October 14, 2010 referenced in note 10, *supra*, and attached as Exhibit A. The Department would note that the tool is limited to very basic categories of cases and an expansion of the data collected appears to be intended by the prefatory language of the *Data Dictionary*.

¹⁹ TSG, *The Assessment*, p.29 (2009).

EXHIBIT A

EXHIBIT A

INDIGENT DEFENSE DATA DICTIONARY

Phase I, Indigent Defense Commission Approved Version, October 14, 2010

OBJECTIVE: To identify and define basic data elements for counting of cases assigned to appointed or indigent defense counsel. Phase I is expected to define those basic cases assigned and disposed categories necessary to begin understanding the caseload of appointed counsel. Future phases will expand data elements to be captured by counsel.

CASES APPOINTED

Appointment: Any time a lawyer is asked or assigned to act on behalf of a person in a criminal or juvenile matter by a judicial officer. An appointment ends when a lawyer is no longer involved in a case for whatever reason. There can be multiple appointments for a single defendant/case during the duration of the case.

Unit of Count - For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint or information from one or more related incidents on one charging document is one case, regardless of the number of counts).¹ For juvenile cases, the unit of count is a single juvenile defendant on a single petition regardless of the number of counts. For traffic cases, the unit of count is a single case (by defendant) based on an original charging document from a single incident.

For defendants in cases whereby multiple charges are involved, courts will utilize a hierarchy (described below) when classifying the case for statistical purposes. For example, if a defendant is charged on a single charging document with a felony and a gross misdemeanor, for statistical purposes, the case is counted as a felony.

Felony and gross misdemeanor cases in Justice Court are counted when counsel is appointed to the case by the Court.

Misdemeanor and traffic cases in Justice and Municipal Courts are counted when counsel is appointed to the case by the Court.

Additional charges such as failure to appear or habitual criminal are not counted at this time because those are added after the initial charging document.

Felony Case: A subcategory of criminal cases in which a defendant is charged with the violation of a state law(s) that involves an offense punishable by death, or imprisonment in the state prison for more than 1 year.

Gross Misdemeanor Case: A subcategory of criminal cases in which a defendant is charged with the violation of state laws that involve offenses punishable by imprisonment for up to 1 year and(or) a fine of \$2,000.

¹ This definition varies from the national standard as promulgated by the National Center for State Courts in that it counts a single defendant on a single charging document, while the national standard counts a single defendant with a single incident/transaction. This means that the Nevada measure herein, will under report caseload at times when one defendant is charged with separate crimes from separate incidents that may necessitate indigent defense counsel to treat the appointment as multiple cases. In the event that the capacity to accurately count cases in line with the national model becomes available in Nevada, the intent of the Subcommittee is that this definition be revisited.

Misdemeanor Non-Traffic Case: A criminal subcategory in which a defendant is charged with the violation of state laws and/or local ordinances that involve offenses punishable by fine or incarceration or both, the upper limits of which are prescribed by statute (NRS 193.120, generally set as no more than 6 months incarceration and/or \$1,000 fine).

Misdemeanor Traffic Case: A criminal subcategory for Justice and Municipal Courts in which a defendant is charged with the violation of traffic laws, local ordinances pertaining to traffic, or federal regulations pertaining to traffic.

Juvenile Case: A subcategory of juvenile cases that includes cases involving an act committed by a juvenile, which, if committed by an adult, would result in prosecution in criminal court and over which the juvenile court has been statutorily granted original or concurrent jurisdiction.

CASES ADJUDICATED/DISPOSED

Unit of Count - For felony, gross misdemeanor, and misdemeanor criminal cases, the unit of count is a single defendant on a single charging document (i.e., one defendant on one complaint from one or more related incidents is one case, regardless of the number of counts).²

A criminal case is considered disposed when final adjudication for that defendant or case occurs. For statistical purposes, final adjudication is defined as the date of sentencing, date of adjudication, or date charges are otherwise disposed, whichever occurs last. A case may be considered closed for an appointed attorney when the appointment ends regardless of adjudicatory status.

Counsel should count the case adjudicated or disposed in the same category as it was counted in (felony in, felony out).

CASELOAD INVENTORY

Unit of Count - For felony, gross misdemeanor, misdemeanor, and traffic criminal cases, the unit of count is a single defendant on a single case. The ending pending number for one month should be the beginning pending number for the next month.

Beginning Pending: A count of cases by defendant that, at the start of the reporting period, are awaiting disposition.

New Appointments: A count of cases by defendant that have been assigned counsel for the first time of each new appointment.

Warrant (Placed on Inactive Status): A count of cases in which a warrant for failure to appear has been issued, a diversion program has been ordered, or other similar incident that makes the case inactive.

² This definition varies from the national standard as promulgated by the National Center for State Courts in that it counts a single defendant on a single charging document, while the national standard counts a single defendant with a single incident/transaction. This means that the Nevada measure herein, will under report caseload at times when one defendant is charged with separate crimes from separate incidents that may necessitate indigent defense counsel to treat the appointment as multiple cases. In the event that the capacity to accurately count cases in line with the national model becomes available in Nevada, the intent of the Subcommittee is that this definition be revisited.

Returned from Warrant (Re-activated): A count of cases in which a defendant has been arrested on a failure to appear warrant and has appeared before the court, returned from diversion program, or other similar occurrence that makes the case active.

Adjudicated/Disposed/Closed Cases: A count of cases by defendant for which an original entry of adjudication has been entered or for which an appointment has ended.

Ending Pending: A count of cases by defendant that, at the end of the reporting period, are awaiting disposition.

Set for Review: A count of cases that, following an initial Entry of Judgment during the reporting period, are awaiting regularly scheduled reviews involving a hearing before a judicial officer. For example, if a status check hearing is ordered to review post adjudication compliance.

ADDITIONAL STATISTICS

Death Penalty: The number of defendants for which the District Attorney's Office has filed the notice of intent to seek the death penalty, in accordance with Supreme Court Rule 250.

Probation Revocations: The number of defendants for which post-adjudication criminal activity involving a motion to revoke probation due to an alleged violation of one or more conditions of probation (usually from the Department of Parole and Probation) or suspended sentence. The unit of count for revocation hearings is a single defendant, regardless of the number of charges involved. Revocation hearings are counted when the initiating document (e.g., violation report) is received by the court.

Informal Juvenile Hearing (involving a judicial officer): The number of hearings/events involving a juvenile in which no formal charge has been filed with the court. Only record an informal hearing if it is held on a matter that is not a part of an existing case. The court may impose a disposition as a result of the informal hearing.

Juvenile Detention Hearing: The number of hearings requesting a juvenile to be held in detention, or continued to be held in detention, pending further court action(s) within the same jurisdiction or another jurisdiction. Only record a detention hearing if it is held.

Conflicts: The number of defendants during the reporting period that a lawyer's appointment to case ended because of a conflict that necessitated the transfer of the case to another lawyer.

Specialty Court Cases: A count of cases in which a lawyer represents a defendant in a specialty court program, i.e., drug court or mental health court. This type of case should be counted in this additional category when the defendant appears during a specialty court session within the reporting period or if the indigent defense counsel is assigned to the defendant for specialty court.

Justice Court Felony/Gross Misdemeanor Reductions: A number of defendants for which any felony or gross misdemeanor charge was totally (and only) adjudicated in justice court.

Reporting Unit: _____

Reporting Period:
MMM / YYYY

Indigent Defense Caseload Inventory Worksheet

Felony
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on-T
sdemeano
venile

1. Beginning Pending

2. New Appointments

3. Returned From Warrant (Re-activated)

4. Adjudicated/Disposed/Closed

5. Warrant (Placed on Inactive Status)

6. End Pending

7. Set for Review

Indigent Defense Additional Statistics

Probation R
HEARINGS

Informal Juvenile HEARINGS
Involving a Judicial Officer

Juvenile Detention
HEARINGS

Conflicts CASES

Justice Court Felony/Gross
Misdemeanour Reductions
CASES

Prepared by: _____

Approved by: _____

PROPOSED STANDARD, Prompt eligibility screening and appointment of counsel; presence of counsel at first appearances

PRINCIPLE

Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. American Bar Association ("ABA"), *Ten Principles of a Public Defense Delivery System*, Principle Three (2002).

COMMENTARY

The commentary of the *Ten Principles* elaborates that "[c]ounsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter." *Id.* The United States Constitution, the Nevada Constitution, and Nevada law guarantee the right to counsel. In Nevada, that right extends to all accused persons facing any possibility of incarceration or detention,¹ and to parents/legal guardians subject to child welfare proceedings and/or petitions to terminate their parental rights.² In criminal cases, the right to counsel extends to "every stage of the proceedings from the defendant's initial appearance before a magistrate or the court through appeal, unless the defendant waives such appointment."³

Nevada law requires that a person arrested be brought before a magistrate "without unnecessary delay."⁴ If arrested without a warrant, the United States Constitution requires that a judge or magistrate make a probable cause determination within 48 hours of the arrest;⁵ if the arrest was made upon a warrant, the probable cause determination was previously satisfied.

After an arrest, a defendant must initially appear before a judge or magistrate within 72 hours of arrest.⁶ At that time, a defendant may make an oral application for counsel that the magistrate or judge must consider forthwith to determine whether the

¹ NV CONST Art. 1, Sec. 8; NRS 178.397 ("Every defendant accused of a misdemeanor for which jail time may be imposed, a gross misdemeanor or a felony and who is financially unable to obtain counsel is entitled to have counsel assigned to represent the defendant . . ."); NRS 62D.030 (right to appointed counsel in juvenile delinquency proceedings).

² NRS 432B.420 (right to counsel for parent or other responsible person to be represented by counsel).

³ NRS 178.397.

⁴ NRS 171.178(1).

⁵ *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S.Ct. 1661 (1991).

⁶ NRS 171.178(3).

defendant is financially eligible⁷ for counsel.⁸ It is normally at this juncture, where an indigent accused has been incarcerated for at least, and often more, than 72 hours that an attorney is appointed, but not necessarily present.⁹ It is also at this juncture where defendants may be effectively denied counsel by imposition of cost recoupment for indigent defense services or unrepresented contact with prosecutors.¹⁰ As such, experts in indigent defense standards acknowledge the importance of having counsel present at the initial appearance of the accused.¹¹

However, the Sixth Amendment right to counsel only attaches at a criminal defendant's first appearance before a judicial officer; the Constitution does not necessarily guarantee the presence of counsel at the moment of attachment.¹² But Nevada law is not silent upon the issue - it provides that public defenders "may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when the indigent person has been arrested for a public offense or for questioning

⁷ "A person will be deemed 'indigent' who is unable, without substantial hardship to himself or his dependents, to obtain competent, qualified legal counsel on his or her own. 'Substantial hardship' is presumptively determined to include all defendants who received public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline. 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.

Defendants not falling below the presumptive threshold will be subjected to a more rigorous screening process to determine if their particular seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship were they to seek to retain private counsel." ADKT 0411, *Order* p.2-3 (Nev. Jan. 4, 2008).

⁸ NRS 171.188.

⁹ Sixth Amendment Center ("6AC"), *The Right to Counsel in Rural Nevada – Evaluation of Indigent Defense Services* p.151-58 (2019).

¹⁰ *Id.* at p. 156-58 (detailing the author's observation of courts imposing up to \$500.00 in reimbursement for appointed counsel, even if found not guilty, and a prosecutor advising an unrepresented defendant to plead guilty).

¹¹ ABA, *Standards for Criminal Justice – Providing Defense Services*, Standard 5-6.1 Initial provision of counsel, Standard 5-8.1 Providing counsel to persons in custody (3rd Ed.); National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, Standard 1.2 Time of Entry (1976); National Legal Aid and Defender Association ("NLADA"), *Performance Guidelines for Criminal Defense Representation*, Guideline 3.1 (2006).

¹² 6AC, *The Right to Counsel in Rural Nevada – Evaluation of Indigent Defense Services* p.154 (2019) citing *Rothgery v. United States*, 554 U.S. 191, 211-12, 128 S.Ct. 2578, 2591-92 (2011).

on suspicion of having committed a public offense.” NRS 180.060; 260.050. And states may expand the individual rights of their citizens under state law beyond those provided under the Federal Constitution.¹³

With the above framework, the Nevada Supreme Court established model plans for urban counties that insert court administration, through a department of Pretrial Services, to assess and provide a recommendation as to a defendant’s eligibility for indigent defense services.¹⁴ ¹⁵ With respect to rural counties, “compromise” recommendations were made that recognized the “practical realities of rural Nevada.”¹⁶ Indeed, the Sixth Amendment Center’s comprehensive study of indigent defense in rural Nevada recommends that “[l]ocal governments should be authorized to select the method of delivering indigent defense services that most appropriately serves their local needs” and be given a reasonable amount of time to “create and submit plans” to the Department as to how they intend to meet promulgated standards¹⁷ with funding for any increase in cost provided by the State.¹⁸

The Department of Indigent Defense Services (“Department”) is authorized to take “actions necessary to ensure that adequate and appropriate indigent defense services are provided in this State.” NRS 180.140(1)(g). Similarly, the Board of Indigent Defense Services (“Board”) may adopt “any additional regulations it deems necessary or

¹³ *State v. Bayard*, 119 Nev. 241, 246, 71 P.3d 498, 502 (2003) citing *Arkansas v. Sullivan*, 532 U.S. 769, 772, 121 S.Ct. 1876 (2001).

¹⁴ ADKT 0411, *Order In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, p.3-4 (Nev. Jan. 2008); ADKT 0411, *Model Plan for the Provision of Appointed Counsel for Urban Courts in Nevada* (Nev. May 2008); ADKT 0411, *Clark County’s Administrative Plan for Appointment of Counsel* (Nev. May 2008); ADKT 0411, *The Second Judicial District Court Indigent Defense Report* (Nev. May 2008).

¹⁵ The delegation of eligibility screening and recommendation for the appointment of counsel was ordered by the Nevada Supreme Court, through ADKT 0411, to provide a degree of independence from the judiciary in the appointed counsel process. ADKT 0411, *Order In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, p.3-4 (Nev. Jan. 2008); ABA, *Ten Principles of a Public Defense Delivery System*, Principle One (“The public defense function, including selection, funding, and payment of defense counsel, is independent.”). Independence from the judiciary will be further addressed in these standards.

¹⁶ ADKT 0411, *Indigent Defense Commission Rural Subcommittee Report and Recommendations*, p. 45-46 (Nev. Dec. 2008).

¹⁷ 6AC, *The Right to Counsel in Rural Nevada – Evaluation of Indigent Defense Services*, p.174 (2019).

¹⁸ NV AB 81, Preamble, 80th Session (2019) (“[T]he State remains ultimately responsible for ensuring that such indigent defense services are properly funded and carried out. . . .”); NRS 180.320(3); 180.450 (2).

convenient” to “ensure indigent defendants are represented in the most effective and constitutional manner.” NRS 180.320(3), (4).

To that end, this proposed standard seeks to ensure that the accused in Nevada is promptly screened for eligibility of indigent defense services and that counsel is present at the initial appearance/arraignment while providing flexibility to local government in determining the most effective method of delivering the service:

STANDARD¹⁹

[*Alternative language italicized and bracketed*].

A. The indigency determination shall be made and counsel appointed to the defendant as soon as the defendant’s liberty is subject to restriction by a magistrate or judge, or as soon as reasonably possible, but no later than 48 hours.

1. Mandatory Appointments. Representation shall be provided for any financially eligible person who:

- a. is charged with a felony or gross misdemeanor;
- b. is charged with a misdemeanor in which the prosecution is seeking jail time;
- c. is alleged to have violated probation or other supervision and a jail or prison sentence of confinement may be imposed;
- d. is a juvenile alleged to have committed an act of juvenile delinquency;
- e. is subject to commitment pursuant to NRS 433A.310;
- f. is seeking relief from a death sentence pursuant to NRS 34.724(1);
- g. is in custody as a material witness;
- h. is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or any provision of the Nevada Constitution, or when

¹⁹ It should be noted that the proposed standard is based largely upon the Indigent Defense Commission’s *Model Plan for the Provision of Appointed Counsel for Urban Courts in Nevada* (May 2008). See *Exhibit B*. Although the Plan was intended for urban courts, the Committee noted that the Model Plan was only recommended for urban counties due to continued discussion by rural courts of ADKT 0411. *Id.* However, the Committee did not recommend different systems for rural and urban Nevada but recognized practical differences in implementation will be required. *Id.* Given the passage of AB 81, the structure of the Model Plan is proposed but grants flexibility based on location differences in implementation.

due process requires the appointment of counsel, or the Court is likely to impose jail or prison time;

i. faces loss of liberty in a case and Nevada law requires the appointment of counsel;

j. faces loss of liberty for criminal contempt; or

k. has received notice that a grand jury is considering charges against him/her and has requested counsel.

2. Discretionary Appointment. Whenever a court determines that the interests of justice so require, representation may be provided for any financially eligible person who:

a. is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;

b. is seeking post-conviction relief, other than from a death sentence, pursuant to NRS 34.724(1);

c. is charged with civil contempt who faces loss of liberty;

d. has been called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, and there is reason to believe, either prior to during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

e. faces any other case in which the interest of justice requires appointment of counsel;

g. is party to a dependency case in which termination of rights is a possibility.

3. Financial Eligibility. A person will be deemed 'indigent' who is unable, without substantial hardship to himself or his dependents, to obtain competent, qualified legal counsel on his or her own. 'Substantial hardship' is presumptively determined to include all defendants who received public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline. 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. Defendants not falling below the presumptive threshold will be subjected to a more rigorous screening process to determine if their particular seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship were they to seek to retain private counsel.

4. Screening for Eligibility. Screening for indigent defense services shall be upon application approved by the Board. The application shall be made available upon arrest. [*The Pretrial Services Agency -or- Court Administrator -or- other administrative agency -or- other employee independent of a judicial officer*] shall conduct any screening for financial eligibility upon the application and provide a recommendation to the court with regard to eligibility of the defendant for the services of appointed counsel based upon the provisions set forth in subsection (3), above. Appointed counsel may assist in providing information during the screening but shall not be asked to make a recommendation with regard to eligibility.

5. Timing. Counsel shall be provided to eligible persons when they appear before a judge; when they are formally charged or notified of charges, if formal charges are sealed; or when a District Judge or Limited Jurisdiction Judge otherwise considers appointment of counsel appropriate.

6. Partial Eligibility. If a court determines that a defendant is able to afford counsel but cannot be effectively represented due to inability to pay for appropriate services such as investigators, experts, or other services, the court shall require the defendant to retain counsel but shall order those ancillary services be provided at no cost to the defendant.

7. Disclosure of Change in Eligibility. If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as privileged communication, counsel shall advise the court.

8. Appointment of Counsel in Juvenile Matters. In Juvenile Delinquency matters filed with the court, the juvenile should be presumed indigent. The court may order the parents of the juvenile to reimburse the county for the reasonable attorney fees, whether Public Defender, contract, or appointed counsel (NRS 62E.300) based on ability to pay.

B. Counsel shall be present at initial appearance/arraignments. Representation includes, but is not limited to, the initial appearance or arraignment on the complaint or warrant. Where release on a persons' own recognizance is not granted, counsel shall be prepared to make argument regarding an appropriate bail and release conditions. A timely initial appearance or arraignment with counsel shall not be delayed pending a determination of indigency.

1. Counties contracting with counsel for provision of indigent defense services may include the requirement of representation at initial appearances/or arraignments in the agreement for provision of services. The workload of such contract attorney(s) shall be adjusted to reflect the additional requirements imposed by this standard.

2. Counties contracting with counsel for the provision of indigent defense services may use an on-duty arraignment attorney to represent defendants at initial appearance /arraignment. This appearance may be limited to the initial appearance/arraignment

with the subsequent appointment of different counsel for future proceedings. If such an arraignment attorney also contracts with a county for the provision of indigent defense services, the contractual workload of the attorney shall be adjusted to reflect the additional requirements imposed by this standard.

3. Where the county has created an Office of the Public Defender, the Public Defender may assign a deputy or deputies to represent defendants at the initial appearance/ arraignment. This appearance may be limited to the initial appearance/arraignment with the subsequent assignment of different counsel for future proceedings. If such an attorney also maintains a caseload within the Office of the Public Defender for provision of indigent defense services, the workload of the attorney shall be adjusted to reflect the additional requirements imposed by this standard.

C. Nothing in the standard shall preclude a county from pursuing a different method that accomplishes the prompt appointment of counsel or requiring counsel's attendance at the initial appearance/arraignment so long as the county's plan is in accordance with this standard.

D. Nothing in this standard shall prevent the defendant from making an informed waiver of counsel so long as the record reflects that the waiver was made knowingly and voluntarily and with an understanding of the consequences in accordance with NRS 171.188(1).

EXHIBIT B

EXHIBIT B

**MODEL PLAN FOR THE PROVISION OF APPOINTED COUNSEL
FOR URBAN COURTS IN NEVADA**

May 22, 2008

Committee Note: The Model Plan has been recommended for Washoe and Clark County as of its writing due to continuing discussion by rural courts of ADKT 411. The Committee does not recommend that a dual system of representation should be permitted in Nevada for Urban and Rural Courts but recognizes that some practical differences in implementation will be required in carrying out the intent of the order in ADKT 411.

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. The further objective of this Plan is to implement the requirements set forth in the Order entered by the Supreme Court of Nevada on January 4, 2008 in ADKT 411: "In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases."

II. DEFINITIONS

A. "Representation" includes counsel and investigative, expert and other services.

B. "Appointed attorney" includes private attorneys, both contracted and hourly, Public Defenders and staff attorneys of the Public Defender offices.

III. PROVISION OF REPRESENTATION

A. Mandatory: Representation Shall be provided for any financially eligible person who:

1. is charged with a felony;
2. is charged with a misdemeanor in which the prosecution is seeking jail time (incarceration);

3. is alleged to have violated probation or other supervision and jail time a sentence of confinement may be imposed;
4. is a juvenile alleged to have committed an act of juvenile delinquency;
5. is subject to commitment pursuant to NRS 433A.310;
6. is seeking relief from a death sentence pursuant to NRS 34.724(1);
7. is in custody as a material witness;
8. 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;
9. faces loss of liberty in a case and Nevada law requires the appointment of counsel;
10. faces loss of liberty for criminal contempt;
11. has received notice that a grand jury is considering charges against him/her and requests appointment of counsel.

B. Discretionary: Whenever a court determines that the interests of justice so require, representation may be provided for any financially eligible person who:

1. is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;
2. is seeking post-conviction relief, other than from a death sentence, pursuant to NRS 34.724(1).
3. is charged with civil contempt who faces loss of liberty;
4. has been called as a witness before a grand jury, a court, or any agency which 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 civil or criminal contempt proceeding, or face loss of liberty;
5. faces any other case in which the interest of justice requires appointment of counsel
6. is party to a dependency case in which termination of rights is a possibility

C. When Counsel Shall be Provided

Counsel shall be provided to eligible persons within 72 hours or as soon as feasible after their first appearance before a judge, when they are formally charged or notified of charges if formal charges are sealed, or when a Justice of the Peace, Municipal Judge or District Judge otherwise considers appointment of counsel appropriate.

D. Number and Qualifications of Counsel in Capital Cases

1. Number: Two lawyers must be appointed as soon as possible in all open murder cases which are reasonably believed to result in a capital charge.
2. Qualifications: Appointment of attorneys to represent defendants charged in capital cases shall comport with SCR 250 and ADKT 411.

E. Eligibility for Representation

1. Financial Eligibility: A person shall be deemed “indigent” who is unable, without substantial hardship to himself or his dependents, to obtain competent, qualified legal counsel on his or her own. “Substantial hardship” is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline. 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. Defendants not falling below the presumptive threshold will be subjected to a more rigorous screening process to determine if their particular circumstances, including seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship were they to seek to retain private counsel.

2. Screening for Eligibility: [The Pretrial Services Agency, Court Administrator or other administrative agency] shall conduct any screening for financial eligibility and provide a recommendation to the court with regard to eligibility of the defendant for the services of appointed counsel based upon the provisions set forth in subsection (1) above. Appointed Counsel may assist in providing information during the screening but shall not be asked to make a recommendation with regard to eligibility.

3. Partial Eligibility: If a court determines that a defendant is able to afford counsel but cannot be effectively represented due to inability to pay for appropriate services such as investigators, experts or other services, the court shall order reasonably necessary services be provided at no cost to the defendant, subject to the procedures

established in each jurisdiction for the approval and payment of fees and expenses.

4. **Disclosure of Change in Eligibility:** If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as privileged communication, counsel shall advise the court.

5. **Appointment of Counsel in Juvenile Matters:** In Juvenile Delinquency matters filed with the court, the juvenile should be presumed to be indigent. The court may order the parents of the juvenile to reimburse the county for the reasonable attorney fees, whether Public Defender, contract, or appointed counsel (NRS 62E.300) based on ability to pay .

IV. APPOINTMENT OF THE PUBLIC DEFENDER

A. Determination of Conflict of Interest

The Public Defender shall, as soon as practicable, upon appointment, conduct a conflict check to determine whether any conflict of interest exists which would prevent representation of the defendant. If such a conflict is determined by the Public Defender to exist, such fact shall be brought to the attention of the court as soon as possible. In no instance, shall the Public Defender be appointed to represent co-defendants in a case.

B. Assignment of Attorneys

The determination of which attorney within the office of the Public Defender shall be assigned to any case rests solely within the discretion of the Public Defender.

C. Complaints by Clients

The Public Defender shall maintain a system for receipt and review of written complaints made by clients.

V. APPOINTMENT OF PRIVATE ATTORNEYS

A. Contract and Hourly Attorneys

1. Contract Attorneys:

a. Compensation of Contract Attorneys

If a contract is employed for appointment of counsel, compensation may be based either on an hourly basis, a flat fee basis, or a combination of both. If the contract is based on a flat fee basis, the contract should ✓ consider the following factors:

1. The average overhead for criminal defense practitioners in the locality;
2. The number of assignments expected under the contract;
3. The hourly rate paid for all appointed counsel; and
4. The ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court.

2. Categories of Assigned Counsel

Qualified Appointed counsel will be selected for appointments in the following areas:

[The [court/contract administrator/Appointed Counsel Administrator] may choose to create lists in specialty areas, e.g. Juvenile, Appellate, Misdemeanor, Life sentence/death-attorneys may be appointed to multiple lists]

3. Assignment of Cases

Assignment of counsel to a courtroom or to a case may not be performed by the judiciary. The assignment shall be made in the following fashion:

a. Non-hourly Representations: In courts using contract attorneys who are not paid hourly, in all cases which cannot be handled by the Public Defender or the Special Public Defender, an attorney will be assigned by [e.g. the Appointed Counsel Administrator, the Contract Attorneys Administrator] except in cases carrying a penalty of life or when the [court/Appointed Counsel Administrator] determines the complexity of the cases or the severity of the penalty are such as to necessitate the appointment of an hourly attorney.

b. Hourly Representations: In all cases that have a possible penalty of life-time imprisonment or death, that cannot be handled by the Public Defender or Special Public Defender, counsel shall be selected from a list of qualified attorneys maintained by [e.g. Appointed Counsel Administrator]. Hourly compensation should be provided for work

directly related to the filing of any notice that a sentence of life imprisonment will be sought under NRS 207.010(b) (Habitual Offender statute).

B. Selection of Panel of Attorneys

1. Appointed Counsel Selection Committee: The [Court Administrator, Assigned Counsel Administrator, or other] shall establish a committee to review the qualifications of applicants for contract or hourly appointments, to review the list of attorneys from which appointments are made in hourly cases, to determine which attorneys shall be selected for appointments in the district and to [other duties].

2. Composition of Selection Committee: The committee shall be made up of [number] members. The committee will be composed of members from a variety of stakeholders concerned with the integrity of indigent criminal defense. No member of the committee should have a pecuniary interest in the outcome of the attorney selection process or be in any way legally or financially related to any attorney whose qualifications will be evaluated. Organizations may designate representatives from bar associations and groups, e.g. State Bar of Nevada, Nevada Attorneys for Criminal Justice, [Clark/Washoe] Bar Associations, National Bar Association, Asian Bar Association [other Associations]. Additionally, a designee of the Public Defender, Special Public Defender and the Federal Public Defender shall be members of the committee. Additionally, the committee will be free from any judicial or prosecutorial involvement.

3. Qualifications of Appointed Counsel: The Selection Committee shall determine the minimum qualifications for all Appointed Counsel and shall determine any additional qualifications required for cases of exceptional difficulty such as death penalty and sexual assault cases. Inquiries on the application should reflect those minimum qualifications.

4. Review of Applications and Continuing Eligibility: The Selection Committee shall meet at least once a year and shall solicit input from judges, and others familiar with the practice of criminal defense, shall review any complaints from clients and the history of participation in training of each applicant and each contract or hourly attorney receiving appointments to determine eligibility and continuing participation.

5. **Responsibility Cannot be Delegated:** While appointed counsel may receive assistance from associate attorneys, participants in a mentorship program, or other attorneys deemed qualified by the Selection Committee, in carrying out his/her responsibilities, appointed counsel cannot delegate responsibilities for representation to another attorney. All substantive court appearances must be made by an attorney who has been determined to be qualified by the Selection Committee.

6. **Complaints by Clients:** Complaints from clients, judges or the public about representation by appointed counsel shall be transmitted to [Appointed Counsel Administrator, Court Administrator, other] for consideration by the Selection Committee in evaluation of appointed counsel.

C. Payment of Fees and Expenses of Private Attorneys

[insert details of process of review of fees and expert/investigator expenses]

VI. MENTORSHIP AND TRAINING

A. Mentoring Programs: If the Selection Committee determines that the ends of justice will be served by selection of attorneys who do not possess the requisite experience as determined by the committee, a mentoring program should be established to insure that the inexperienced attorney will be provided supervision and mentoring from an experienced criminal defense attorney. In no instance shall an attorney who has not tried at least one felony trial be permitted to try a felony case without an experienced criminal defense attorney sitting as "second chair."
[insert details here of a mentoring program]

B. Annual Training: An intensive training program shall be conducted once each year for all private attorneys who receive appointments to criminal cases. The program shall include training in bail and release, motions practice, search and seizure, evidentiary issues and trial practice, appeals and post-conviction practice. All contract and hourly appointed attorneys shall attend. Attorneys who are new members of the contract or hourly lists are required to attend in order to receive any further appointments.

C. Periodic Training: Periodic training events will be conducted throughout the year on issues of interest to appointed counsel.

D. Creation and Coordination of Training: _____, shall be responsible for coordinating, scheduling and creating the training events described above.

VII. DUTIES OF APPOINTED COUNSEL

A. Standards: The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person. Representation shall be provided in compliance with the Performance Standards for Representation of Indigent Defendants adopted by the Supreme Court.

B. Professional Conduct: Attorneys appointed under this Plan shall conform to the highest standards of professional conduct, including but not limited to the provisions of the Nevada Rules of Professional Conduct.

C. No Receipt of Other Payment: Appointed counsel 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.

D. Continuing Representation: Once counsel is appointed, counsel shall continue representation until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order. If appointed counsel is relieved, such counsel must assist successor counsel in securing the file and other necessary information to insure that all deadlines are met, including those applicable to post-conviction matters.

VIII. APPOINTED COUNSEL ADMINISTRATOR

A. Selection

B. Duties

Recommendation for Appeals to go to Nevada
State Public Defender

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE REVIEW OF
ISSUES CONCERNING
REPRESENTATION OF INDIGENT
DEFENDANTS IN CRIMINAL AND
JUVENILE DELINQUENCY CASES

ADKT 0411

FILED

JUL 23, 2015

ORDER

WHEREAS, the United States and Nevada constitution that every individual charged with a serious crime is entitled to legal representation, even if that individual cannot afford counsel, and competent representation of indigents is vital to our system of justice; and

WHEREAS, the Indigent Defense Commission created by this court directed the Rural Subcommittee to study the methods employed by the rural counties of this state to provide counsel to those charged with serious crimes; and

WHEREAS, the Rural Subcommittee provided a report on the status of indigent defense in the rural counties and made 5 separate recommendations in a document filed in this court on October 24, 2014; and

WHEREAS, this court solicited comment and conducted a public hearing on this matter on December 4, 2014, and took this matter under advisement; accordingly,

IT IS HEREBY ORDERED the court takes the following action as to the recommendations:

Recommendation 1, that the State of Nevada should fully fund indigent defense in the rural counties raises an unresolved legal question which is better raised in an actual case in controversy, and this court will take no action on the recommendation.

Recommendation 2, that the rural counties should use either the Nevada State Public Defender's Office, establish a county public defender's office, or continue to use the contract counsel method, is adopted. If counties use the contract counsel method, they shall not use a totally flat fee contract, but execute contracts that allow for a modification of fees for extraordinary cases, and allow for investigative fees and expert witness fees.

Recommendation 3, that the State Public Defender's Office should handle all death penalty cases and appeals in the rural counties is adopted, except that the counties may provide counsel on a non-contract fee basis.

Recommendation 4, that there should be an Indigent Defense Board created, is endorsed by this court, but should be implemented by either the Executive or Legislative branches of the State of Nevada.

Recommendation 5, that the Indigent Defense Commission provide legislative support to the Nevada State Public Defender's Office and the counties to rebalance the costs of indigent defense back to the state and away from the rural counties, is adopted.

It is so ORDERED.

Hardesty, C.J.
Hardesty

arraguirre, J.
arraguirre

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Saitta, J.
Saitta

Pickering, J.
Pickering

**cc: Members of the Indigent Defense Commission
Hon. David Hardy, Chief Judge, Second Judicial District
Second Judicial District Court Clerk
Hon. David Barker, Chief Judge, Eighth Judicial District
Steven Grierson, Court Executive Officer
All District Court Judges
All Justices of the Peace
All Justices' Court Administrators
All Municipal Court Judges
All District Attorneys
All Public Defenders
Washoe County Alternative Public Defender
Clark County Special Public Defender
All City Attorneys
Rene Valladares, Federal Public Defender
All County Managers
Administrative Office of the Courts**

**Establish Formula for maximum paid by county
and FY 18 and FY County Costs**

Marcie Ryba

From: Dagny Stapleton <dstapleton@nvnaco.org>
Sent: Thursday, January 16, 2020 11:49 AM
To: Marcie Ryba; Jeff Wells; Chris
Subject: Cap Language Proposal

Hi Marrcie - Jeff, Chris and I had a call yesterday. We talked through the language in the bill requiring BIDS to create a cap, and after a discussion about the history, intent, and requirement, came up with the following:

The maximum amount that a county will be required to pay for the provision of indigent defense services shall not exceed that county's actual costs to provide indigent defense services for the average of fiscal year 2018 and fiscal year 2019 minus any expenses related to capital and murder cases for those years plus, for each subsequent year, the percentage equal to the lesser of: a) the cost of inflation (measured by west region consumer price index); and/or the union negotiated cost of living increase for employees for that county.

Jeff said he would be willing to address any questions the Board may have on this proposal, and, just a reminder, I believe Chris is out of the country and not able to attend the next meeting. I am also willing to answer any questions from the Board if needed. Finally, we also wanted to confirm that the next meeting is January 29th at 1pm.

Thanks!

~ Dagny

Dagny Stapleton
Executive Director
Nevada Association of Counties

304 South Minnesota Street
Carson City, NV 89703
[\(775\) 883-7863](tel:7758837863) office
[\(775\) 848-8004](tel:7758488004) cell
dstapleton@nvnaco.org

Indigent Defense Costs

Location	2018-Actual	2019-Actual
Carson City	1,949,790	1,913,966
Churchill	441,563	404,820
Clark	44,334,271	48,710,518
Douglas	853,444	896,865.00
Elko	1,461,145	1,388,954
Esmeralda	50,000	50,000
Eureka	40,000	69,851
Humboldt	390,231	405,093
Lander	88,000	104,000
Lincoln	190,550	168,050
Lyon	853,748	942,154
Mineral	80,000	105,000
Nye	864,745	926,019
Pershing	291,008	248,762
Storey	97,522	108,708
Washoe	13,598,377	13,889,516
White Pine	435,000	469,000

Power point Presentation

Ineffective Assistance of Counsel Standards

Jonathan M. Kirshbaum

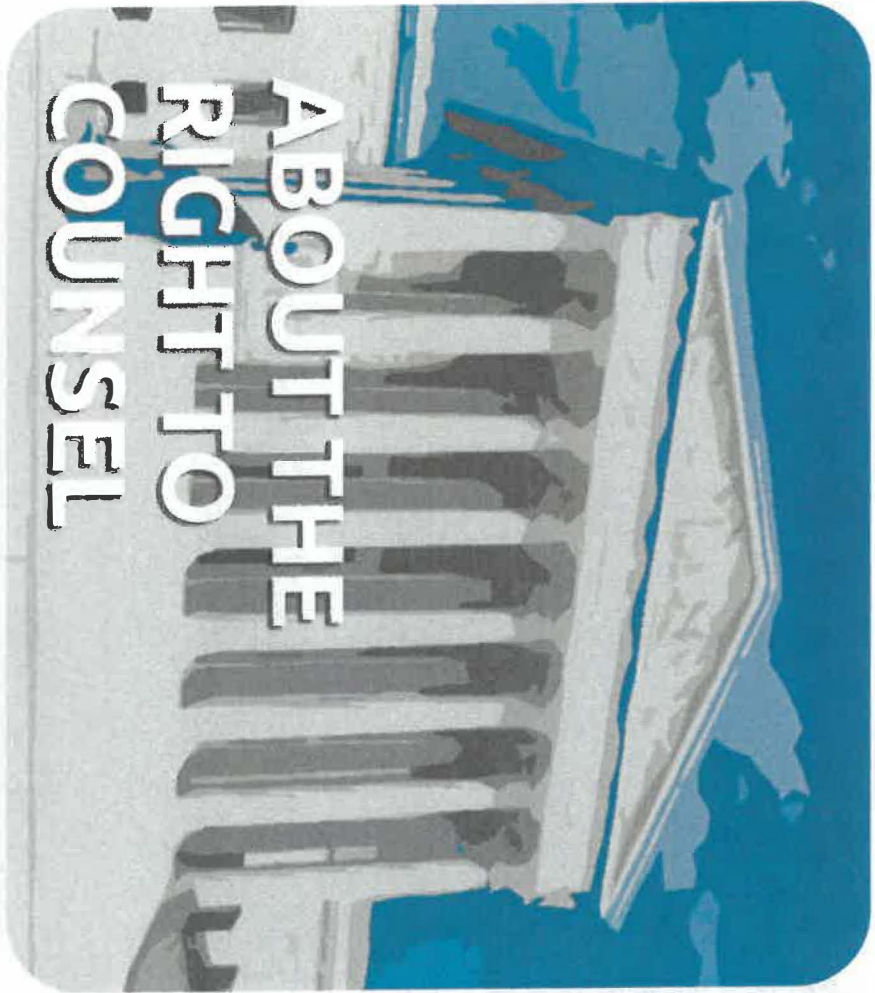
Chief, Non-Capital Habeas Unit, FPD

January 29, 2020

Objective

- To explain how difficult it is for a petitioner to win an ineffective assistance of counsel claim in both state and federal court, which shows why the number of victorious ineffectiveness claims is a poor representation of the quality of criminal defense in any particular jurisdiction.

**ABOUT THE
RIGHT TO
COUNSEL**



COUNSEL



Landmark U.S. Court Decisions



Strickland v. Washington

1. Deficient Performance
2. Prejudice



www.SeeHearSayLearn.com





Deficient Performance

- Counsel's performance fell below an objective standard of reasonableness.
- Counsel is given "wide latitude" in decision-making
- When reviewing IAC claims, judges should be "highly deferential."
- Courts must indulge a "strong presumption" that counsel's conduct was reasonable.

deference

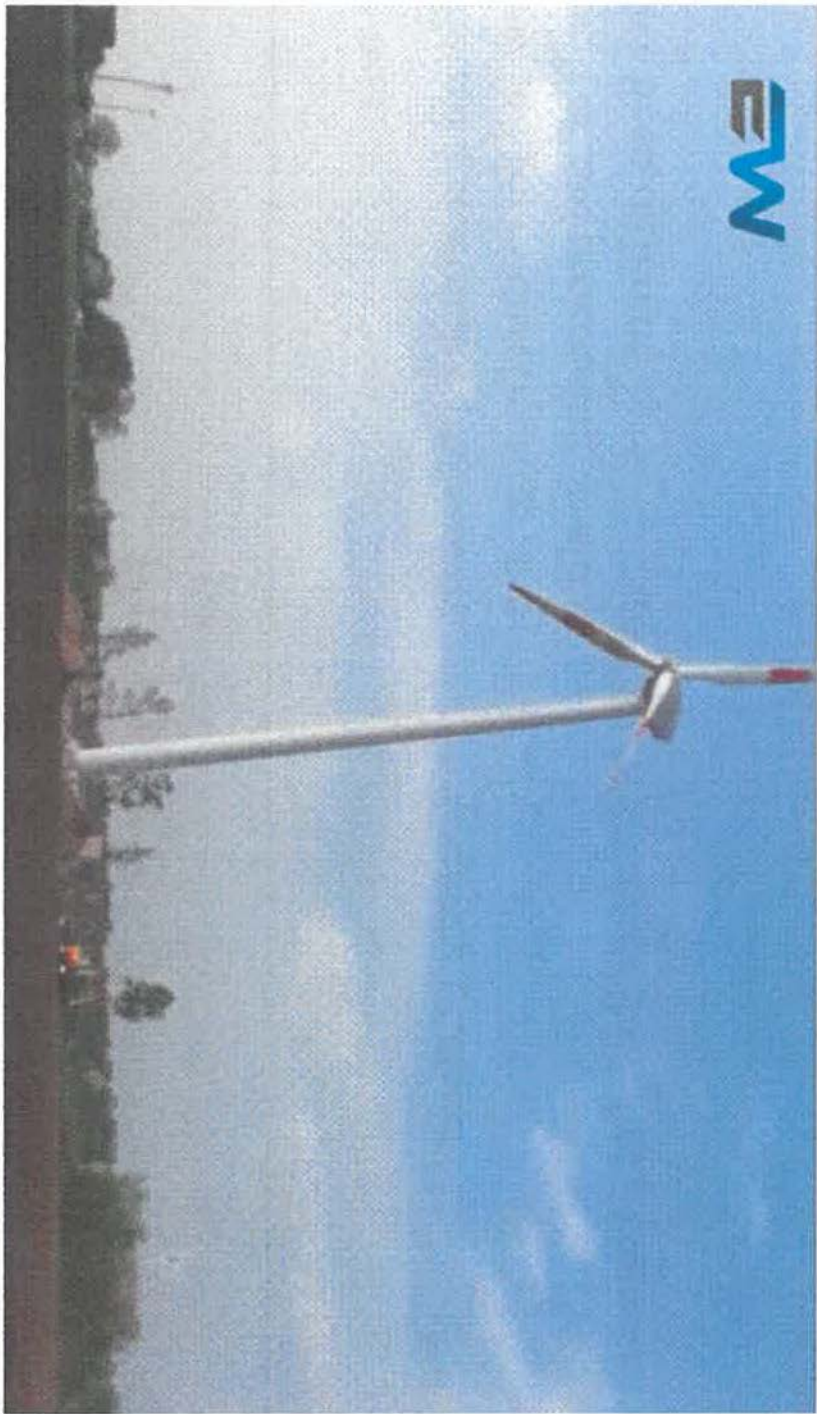
Prejudice

The test

- There is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.

Levels of Prejudice

- *Chapman* - Lowest
- *Kotteakos*
- *Strickland* Prejudice - Highest



Federal Habeas Review

“Doubly Deferential”

Hurdles to Relief



Courts Have Found Deficient Performance

- *State v. Gibbs*, 126 Nev. 714 (2010) (unpublished)
- *State v. Reberger*, 128 Nev. 928 (2012) (unpublished; implied finding of deficient performance)
- *State v. LaPena*, 114 Nev. 1159 (1998) (reversing lower court finding of deficient performance)
- *State v. Rangel*, 128 Nev. 928 (unpublished; assuming deficient performance)
- *Sampson v. Palmer*, 628 Fed. Appx. 477 (9th Cir. 2015)
- *Anderson v. Neven*, 2019 WL 6954375 (9th Cir. Dec. 19, 2019)
- *State v. Melendez*, No. 65479, 2015 WL 6163908 (Nev. Oct. 16, 2015) (reversing lower court finding of deficient performance)
- *Yowell v. Warden*, 2014 WL 605673 (Nev. Feb. 13, 2014)



THIS IS FINE.