

Eleventh Report of the Monitor
Davis v. State, Case No. 170C002271B
February 23, 2024

Provided by:

M. Eve Hanan, Esq., Associate Professor of Law, UNLV Boyd School of Law
Serving as the monitor in her private capacity
evehanan@gmail.com

Provided to:

The Honorable Kristin Luis
First Judicial District Court, Dept. II

Representatives of the Plaintiff Class:

Franny Forsman, Esq., Plaintiffs' counsel
f.forsman@cox.net

Matt Cowan, Esq. Plaintiffs' counsel
mcowan@omm.com

Emma Andersson, Esq., ACLU Plaintiffs' counsel
eandersson@aclu.org

Representatives of the Defendants, State of Nevada and Governor Sisolak:
Assistant Attorney General Craig Newby
CNewby@ag.nv.gov

Assistant Attorney General Jeffrey Conner
JConner@ag.nv.gov

The Department of Indigent Defense Services:
Marcie Ryba, Esq., Director of the Department of Indigent Defense
mryba@dids.nv.gov

The Board of Indigent Defense Services:
Dave Mendiola, Chair of the Board of Indigent Defense
dave.mendiola@humboldtcountynv.gov

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Introduction

This Monitor’s Report to the First Judicial District Court of Carson City summarizes the Defendants’ compliance with the terms of the *Davis v. State* Stipulated Consent Judgment (hereinafter “the Judgment”) from October 31, 2023, to February 22, 2024.¹

Summary Points

The Monitor notes developments since the last report of October 30, 2023, summarizes accomplishments, and discusses ongoing compliance concerns.

Achievements

The Department continues to take significant steps toward compliance with the Judgment in terms of implementing workload standards, improving compensation, improving county plans for the provision of indigent defense, setting practice standards, providing training, engaging in oversight, and collecting and reporting data. In the past quarter, compliance-related achievements include the following:

- **Implementation of the oversight plan**

The Department secured funds through the Interim Finance Committee (IFC), pursuant to AB 518(7) (2023),² to contract with two experienced attorneys to provide oversight in the rural counties. The contract attorneys will travel to the *Davis* counties to observe court and engage in other oversight activities.

In addition, the Department conducted oversight visits to Esmeralda, Lyon, Nye, and White Pine counties.³

- **Implementation of the workload study**

The Board approved and the Department began implementing the workload standards set forth in the weighted caseload study for rural Nevada, conducted by the National Center for State Courts (NCSC),⁴ determining the shortages of attorneys, investigators, and staff by county, and then meeting with county leadership to discuss how to remedy the shortages.

¹ This January 15, 2024, report was delayed so that it could include the results of a request to the Interim Finance Committee, scheduled to be heard on February 8, 2024, but the Department’s request was removed from the agenda, as is discussed below on pp. 6-8.

² AB 518 (7) appropriates \$6,306,880 in FY 2023-2023 from the State General Fund to the Interim Finance Committee and \$6,613,033 in FY 2024-2025 to be allocated to the Department to fund (a) Reimbursement to the counties, taking into account the “costs of compliance with workload standards; (b) the “costs of the Department related to compliance with [the *Davis* Judgment];” (c) the costs of the State Public Defender in contracting for complex litigation; and (d) the “costs for training and pay parity for attorneys who provide indigent defense services.” The Resolution allocating funds, and attached request from the Department, is attached to this Report as Appendix A.

³ The oversight reports for the past quarter are attached to this Report as Appendix B.

⁴ The updated Rural Nevada Indigent Defense Services Weighted Caseload Study, Final Report, (NCSC, November 2, 2023) [hereinafter the NCSC Study] is attached to this Report as Appendix C.

- **Promulgation of regulations**

The Board adopted changes to its regulations designed to comply with the Judgment, pursuant to a workshop on August 3, 2023, and a public hearing on November 3, 2023.⁵ The provisions of the regulations will be discussed below where relevant.

- **Addressing economic disincentives and disparity**

The Board's amended its regulations to set the minimum hourly rate for appointed counsel at the current rate for federal Criminal Justice Act (CJA) attorneys, which is \$172 per hour for non-capital cases, and \$220 per hour for capital cases, as of January 1, 2024. The rates apply to trial, appeal, and post-conviction habeas corpus cases.⁶

The Department proposed that the IFC allocate AB 518 (7) funds for stipends to recruit and retain attorneys in the Nevada State Public Defender, which is currently understaffed to meet the need for appellate and death penalty representation in several *Davis* counties, as well as trial-level representation in White Pine County. (This request was originally scheduled for hearing on February 8, 2024, and the Department awaits rescheduling.)

- **Improving the prompt appointment of counsel**

The Board promulgated regulations to reduce delays in appointment of counsel by requiring the counties' indigent defense plans to provide a process for appointing conflict counsel or specially qualified counsel in cases where the designated first-tier public defender is either conflicted out or not qualified to take the case. The new regulations require the county plans to set forth how they will ensure that counsel is present for pretrial release hearings, which includes weekend hearings. Further, the new regulations explicitly add municipal court judges to the category of judges, justices of the peace, and masters who must promptly appoint counsel after a determination of indigency.⁷

- **Ensuring qualification of attorneys and adherence to professional standards**

The amended regulations clarify that the American Bar Association's Criminal Justice Standards for the Defense Function is a source of professional standards that must be included in the county plans.⁸

⁵ The adopted changes to the regulations are contained in Approved Regulation of the Board on Indigent Defense Services, LCB File No. R033-34 (December 15, 2023) [hereinafter "Approved Regulation"], attached to this Report as Appendix D.

⁶ Assembly Bill 454 (2) (2023) requires the Board to adopt regulations establishing rates of hourly compensation for appointed counsel in counties whose population is less than 100,000, and in any county in which a private attorney is appointed to represent a petitioner in a post-conviction petition for habeas corpus.

⁷ Approved Regulations, Sections 2-3, Appendix D.

⁸ Approved Regulations, Section 4, Appendix D.

The new regulations require the county plans to include a process for appointing qualified counsel in instances where the lead contract attorney is not qualified for the seriousness of the case.⁹

- **Additional funds for training**

The Department requested and the IFC allocated AB 518 (7) funds to comply with the Judgment’s requirement for a “systematic and comprehensive training program.”¹⁰ The IFC provided \$37,340 for five rural attorneys to attend the National Criminal Defense College or a similar training program, \$20,000 to reimburse rural attorneys for their travel expenses for the annual Nevada conference on public defense, and \$10,500 to reimburse national trainers for presenting to public defenders in Nevada, as well as additional funds for assistance organizing the annual state-wide conference.

The Department secured six spots at the Mountain West Trial Skills Academy in Salt Lake City on April 29-May 3. This training is modeled after the National Criminal Defense College.

- **Building a pipeline to rural indigent defense**

The Interim Finance Committee allocated \$13,000 for stipends for two law students to extern in rural public defender offices in this summer. One UNLV Boyd Law Student will be externing at the Churchill Public Defender and the other at the Elko Public Defender.

The Nevada Supreme Court adopted an order permitting limited practice for law school graduates—pending bar passage—who work under the supervision of a legal service provider in counties whose population is fewer than 100,000.¹¹

- **Incentives for attorneys to report their workload**

The Department requested and the IFC allocated AB 518 (7) funds in the amount of \$32,784 for this fiscal year to incentivize timekeeping by offering free Westlaw access to attorneys who report their cases and hours using Legal Server.

- **Second quarter workload report**

The Department collected and analyzed attorney workload reporting for October 1 – December 30, 2023, and produced a report for the quarter that is formatted to include additional information required by the Judgment and make it easier to determine and monitor case and workload.¹²

⁹ For example, if an attorney is qualified to represent defendants in category C felonies and lower, the attorney must not be appointed to a category A or B felony without a qualified first chair. Approved Regulations, Section 6, Appendix D.

¹⁰ Judgment, 16.

¹¹ Supreme Court Rule 49.5 (ADKT 0611).

¹² The Department’s quarterly workload reports are available on the Department’s website at https://dids.nv.gov/Annual_Report/home/.

Areas of Concern

At the same time, this Report notes ongoing challenges to compliance:

- **Understaffed Nevada State Public Defender**

The Nevada State Public Defender (NSPD) now provides first-tier public defense in White Pine County and appellate and death penalty legislation in several *Davis* counties. The state has been unable to fully staff this agency, and it has proved exceptionally difficult to staff the Ely office, especially after the resignation of the deputy chief in December and the resignation of the lead State Public Defender in January. Staffing the NSPD is particularly difficult given that NSPD salaries are lower than those of the public defender offices in the larger counties and lower than the compensation offered to some contract attorneys.¹³

- **Workloads above NCSC caseload limits**

The Judgment requires compliance with workload standards within twelve (12) months of completion of the caseload study.¹⁴ The Board adopted the workload standards on November 2, 2023, which gives the state just over eight months from the writing of this Report to comply with the standards. The Department is working with each county to confirm current caseloads, predict future caseloads, and rework county plans to ensure that attorneys practice within workload limits. Critically, AB 518 (7) (a) sets aside funds for county reimbursement for expenditures made to comply with workload standards. Some counties need as many as six additional attorneys.

- **Workload reporting gaps**

Some attorneys continue to underreport, and a few do not report at all. The Department is now able to offer Westlaw subscriptions as an incentive to report, which, depending on how the subscriptions are awarded, may incentive the reluctant reporters.

Summary of Recommendations

- The state should incentivize recruitment and retention of NSPD attorneys to ensure prompt and complete case coverage and compliance with the workload standards in White Pine and in appellate and death penalty cases in the relevant counties.
- The state should consider additional measures to increase the number of defense attorneys in rural counties. The Department's recent request for the LASSO program would be an excellent start.¹⁵
- The state should consider funding social workers and mitigation specialists, per the recommendation of the NCSC Caseload Study, who could be deployed statewide to assist attorneys in the *Davis* counties.

¹³ The Amended Pay Parity Memorandum is attached to this Report as Appendix E.

¹⁴ Judgment, 17.

¹⁵ Discussed in this Report on p. 18.

- The Department should continue its efforts to account for municipal court caseloads in its total workload numbers for counties with municipal courts.
- The Department should continue to gather and analyze the private workloads of attorneys, especially for those attorneys who hold full-time contracts, and ensure that the attorneys have adequate time for indigent defense cases under the contract.
- The state should consider additional funds for a conference for the newly recruited public defenders, whether hired or contracted, to comply with the workload standards.
- The state should consider including all training funds in the Department's next two-year budget rather than requiring the Department to apply for an allocation of interim funds on an ad hoc basis.
- The Department should ensure that all new contracts between counties and attorneys contain clear workload limits and reference to the performance standards set by ADKT 411, the ABA Criminal Justice Standards, and the Judgment.
- The Department should continue to monitor the private caseload of attorneys who hold full-time contracts for indigent defense representation.

Compliance to Date

The Judgment creates three categories of obligation:

- (I) Removing economic disincentives and ensuring independence
- (II) Setting and ensuring performance standards
- (III) Uniform data collection

This Report uses this tripartite structure to analyze compliance. But, as a preliminary matter, the Monitor wishes to highlight the crisis in the Nevada State Public Defender, which is charged with providing first-line public defense in White Pine County as well as appellate and death penalty representation for an increasing number of *Davis* counties.

Nevada State Public Defender: Insufficiently Staffed

The shortage of attorneys in the office of the Nevada State Public Defender (NSPD) presents serious compliance issues for the state. The Nevada State Public Defender, based in Carson City, is currently staffed by a supervising chief deputy, an appellate chief, as well as an office manager and an investigator. Its lead public defender, Chris Arabia, resigned on January 26, 2024.

Five *Davis* counties have opted to have the NSPD handle appellate representation—Esmeralda, Humboldt, Lander, Lincoln, and Nye counties. Three *Davis* counties—Churchill, Lander, and White Pine—have opted to have the NSPD handle death penalty cases. Douglas and Lyon counties are considering transferring some case types to the NSPD as well. Due to its own staff shortages, the NSPD has contracted with outside attorneys to provide representation in some of these cases.

Critically, White Pine County elected to have the NSPD serve as the county’s public defender as of October 1, 2023. Efforts to staff the White Pine County public defender’s office have proved very difficult. The position postings received no applications. The former lead public defender, Chris Arabia, agreed to head the Ely office, with the assistance of a deputy. Two successive attorneys were hired for the deputy public defender position in Ely, but resigned or were terminated. With the inability to recruit and retain attorneys, the NSPD withdrew from cases already set for trial. To manage the crisis in representation, the Department assisted White Pine County in contracting with two private attorneys who previously provided indigent defense representation in the county. With these two contract attorneys accepting appointments to reduce the caseloads, the NSPD office in White Pine County requires two full-time attorneys and a staff person to comply with the workload standards.

The Department continued its recruitment efforts for attorneys to head and staff the Ely-based office of the NSPD. No one applied for the position. Through word-of-mouth, the Department recruited Derrick Penney.¹⁶ He is based in Las Vegas and will travel to Ely on a regular basis. The NSPD Appellate Chief is providing some case coverage in White Pine as well. It should be noted that there is a severe rental shortage in Ely. Even if an attorney agreed to move to Ely to serve in the NSPD office there, it would be difficult to secure housing.

Recruiting the additional attorney for the Ely office is likely to continue to prove challenging given the lack of lawyers in White Pine County, the housing shortage in Ely, and the fact that NSPD salaries are significantly lower than public defender salaries in the urban counties. The county has a total of twelve (12) people registered with the bar as attorneys, two (2) of whom are retired, five (5) of whom are prosecutors, one (1) of whom is married to a prosecutor, and two (2) of whom are in private practice and uninterested in employment with the NSPD. Of the last two, one initially accepted a position in the NSPD office, but is no longer employed by the NSPD.¹⁷

¹⁶ The new chief deputy in the Ely Office of the Nevada State Public Defender is Derrick Penney, who was suspended from the practice of law for 36 months, with all but the first six (6) months stayed, in April 2022. *In re Discipline of Penney*, No. 84201, 508 P.3d 418 (Nev. Apr. 29, 2022) (Order of Suspension). As part of the plea agreement, Penney admitted to “failing to diligently litigate his client’s postconviction actions in both federal and state court, by failing to communicate with the client, and by not placing the client’s attorney fees deposit into his trust account”). During the pendency of the 36-month period, an additional concurrent six-month-and-one-day suspension was imposed. *In re Discipline of Penney*, No. 85118, 518 P.3d 482 (Nev. Oct. 10, 2022) (Order of Suspension). He was reinstated on October 19, 2023, and is on probation for the remainder of the 36-month period. *In re Discipline of Penney*, No. 87118, 537 P.3d 135 (Oct. 19, 2023).

¹⁷ The number of attorneys per county is contained in the map created by the Deason Criminal Justice Reform Center, attached to this Report as Appendix F. The information relayed above about the status of the attorneys in White Pine County was provided to the Monitor by the Department.

The concerns about the understaffed NSPD were raised before and during the 2023 legislative session, but salaries were not significantly increased nor were any additional incentives built into the NSPD budget.

As reported in the Monitor's Tenth Report, the Department is making efforts to recruit and retain NSPD attorneys. It submitted a request for funding allocated pursuant to AB 518 (7) for a Pay Parity Stipend. In a December 19, 2023, the Department submitted an amended memorandum to the Budget Office, requesting an allocation of \$130,066 from AB 518 (7) (2023) to provide NSPD attorneys with a stipend that would make their total compensation comparable to the compensation offered by the larger, county offices of the public defender.¹⁸ Second, the Department requested a travel reimbursement for NSPD attorneys who provide representation in White Pine and other rural counties. The travel stipend has been secured, but the Department's request for a stipend to increase total compensation was not heard by the Interim Finance Committee on the scheduled date of February 8, 2024.

Increasing pay or otherwise offering financial incentives appears necessary to ensure that there are enough attorneys in the rural counties comply with workload standards, and especially in White Pine County.¹⁹ The pay of NSPD attorneys is thus a critical issue in addressing the shortage of qualified attorneys. It should be emphasized that it is the state of Nevada's responsibility to ensure that any person who qualifies financially for a public defender receives a qualified and competent defense attorney, whether that person is in White Pine County or any other part of the state. If there are not enough attorneys in Ely or any other town in a rural county, it is the state's obligation to remedy the constitutional problem. The current statutory scheme permits counties to opt into the Nevada State Public Defender. This makes sense because it is the state—not the counties—that is constitutionally obligated to provide effective assistance of counsel in criminal cases in which the defendant is unable to afford an attorney.

The Monitor assumed, perhaps incorrectly, that the simplest way to ensure assistance of counsel in rural counties that opted for the NSPD would be to offer financial incentives for attorneys who might otherwise seek employment with a better paying county public defender office or private practice. If this strategy worked with stipends in the first year, it could be proposed to the legislature in the next session. In any case, the state must either find a way to recruit and retain qualified attorneys for its public defender office or demonstrate a plan for an alternative. The alternative would require changing the statutory scheme that permits opting in to the NSPD, recruiting additional private attorneys, or incentivizing the creation of public defender officers at the county level.

¹⁸ The Department's amended memorandum to the Budget Office is attached to this Report as Appendix E.

¹⁹ Note that AB 518 (7)(d) may require pay parity among public defenders in appropriating funds for "[t]he costs of training and pay parity for attorneys who provide indigent defense services."

Recommendation

- The state should incentivize recruitment and retention of attorneys in the Nevada State Public Defender in order to ensure prompt and complete case coverage and compliance with the workload standards required by the Judgment.

I. Removing Economic Disincentives and Ensuring Independence

The Judgment contains several requirements to ensure independence of the defense function and removal of economic disincentives.²⁰

In the past quarter, the Department has: (a) implemented a new hourly rate of compensation, (b) taken steps to ensure that the qualification and selection process for death penalty representation is compliant with the Judgment, and (c) continued to work with the counties to develop and update their plans for indigent defense to include conflict attorneys and a plan to comply with workload standards.

A. Attorney compensation: minimum hourly rate

AB 454 (2023) requires the Board to establish hourly rates of compensation for indigent defense counsel other than salaried public defenders in counties whose population is less than 100,000, and for attorneys in all counties who are appointed to represent petitioners who file postconviction petitions for habeas corpus. The Board's amended regulations state:

An attorney who provides indigent defense services is entitled to receive hourly compensation for court appearances and other time reasonably spent on indigent defense services or representation at a rate equal to the prevailing hourly compensation rate for attorneys appointed to the Criminal Justice Act (CJA) Panel at the time such services or representation is provided. The Executive Director may increase such an hourly rate for good cause and as deemed reasonable and necessary, including, without limitation, because of the complexity of a case or the scarcity of available qualified attorneys to provide indigent defense services.²¹

The rate as of January 1, 2024, is \$172 per hour, and \$220 per hour in death penalty cases. The CJA rate is a floor, not a ceiling, and counties may — as some have — offer a higher rate.

The higher hourly rate is intended to attract and retain defense attorneys, and also to achieve pay parity with the defense attorneys' prosecutorial counterparts. An initial pay parity analysis is contained in the Soval Solutions report, *Analysis of Rural Attorney Hourly Rates*.²² Because rates for local prosecutors vary and may change over time, the Department should conduct periodic

²⁰ Judgment, 11-13.

²¹ See Appendix D.

²² The Soval Solutions Report is attached to the Monitor's Eighth Report (May 2, 2023) as Appendix A.

review of county-level district attorney salaries, as well as increases in overhead and other expenses for private defense attorneys.

B. Selection of death penalty qualified attorneys

The Department met with Justice Linda Bell to discuss the relationship between Supreme Court Rule (SCR) 250 and the *Davis* Judgment, along with the subsequent statutory and regulatory changes to the qualification, selection, and oversight of defense counsel in the rural counties.

As previously reported, many of the counties do not have readily identifiable attorneys qualified to accept appointment in death penalty cases per SCR 250. Several parts of the Department's request to the Nevada Supreme Court are important to the Judgment. First, the requested changes to SCR 250 would assure independence of defense counsel in death penalty cases by removing the judiciary from selection of counsel, compensation, and reimbursement for expenses associated with litigation. This complies with the Judgment and the statutory scheme set forth in NRS 171.188; 7.125; 7.135; 7.145. Second, the requested changes to SCR 250 shift responsibility for qualifying an attorney as eligible for death penalty representation to the Department. Under NRS 180.320 (2)(d)(1), qualification of counsel for death penalty cases should be done through the Board's regulations. Third, the requested changes to SCR 250 ensure that the Department can monitor workloads in the process of selecting attorneys in death penalty cases.

On January 25, 2024, Justice Bell filed a petition to consider the creation of a Committee to Study and Update Supreme Court Rule (SCR) 250 relating to procedures in capital cases, and, on February 9, 2024, the Nevada Supreme Court ordered the creation of the committee.²³

C. County-level indigent defense plans

The county-level indigent defense plans are subject to new regulations. First, if the county includes municipal courts,²⁴ representation in those courts must be a part of the plan. Churchill, Lyon, and White Pine counties have indigent defense plans that contain such provisions to ensure independence from the judiciary in the selection of counsel.

Second, the regulations require the county plans to include three tiers of representation to account for two levels of conflict. Prior arrangements to identify and contract with attorneys to serve as conflict counsel should reduce delays in representation that currently occur while the Department or its county designee attempts to locate a conflict attorney—often from a different county—who will agree to accept the appointment.

²³ The Department's January 17, 2024, Memorandum to Justice Bell and the Court's subsequent Order in ADKT 1067 are attached to this Report as Appendix G.

²⁴ The *Davis* counties the following municipal courts: Caliente (Lincoln), Ely (White Pine), Fallon (Churchill), Fernley (Lyon), and Yerington (Lyon).

Recommendation

- The Department should continue to monitor pay parity with prosecutors, as well as the independence in the selection process for attorneys, and ensure that both selection and appointment of conflict counsel occurs reliably and without delay.

II. Establishment of Minimum Standards

The Judgment requires that minimum performance standards be assured in the following ways:

- Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.²⁵
- Client communication per the standards set in ADKT 411; provision of space for confidential attorney-client meetings; all reasonable efforts to have confidential attorney-client meetings before an initial appearance.²⁶
- Systems to identify and remove conflicts.²⁷
- Establishment of performance standards.²⁸
- Establishment of workload standards.²⁹
- Qualifications for attorneys.³⁰
- A system of oversight.³¹
- Attorney training and resources.³²

This Report addresses (A) performance standards, (B) qualifications in death penalty cases, (C) the oversight system, (D) training, and (E) the implementation of workload standards.

A. Performance standards: ABA Criminal Justice Standards

The November 2, 2023, changes to the Board's regulations add the American Bar Association's Criminal Justice Standards for the Defense Function to the sources of professional standards that county plans must require of their attorneys providing indigent defense. The regulations now state:

A plan for the provision of indigent defense services must require that representation be provided in a professional, skilled manner consistent with all

²⁵ Judgment, 14.

²⁶ *Id.* at 14-15.

²⁷ *Id.* at 12.

²⁸ *Id.* at 16.

²⁹ *Id.* at 17.

³⁰ *Id.* at 15.

³¹ *Id.* at 16-17.

³² *Id.* at 16.

applicable laws, regulations and rules of professional conduct, the Nevada Indigent defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court **and the American Bar Association's Criminal Justice Standards for the Defense Function.**³³

The Monitor encourages the state to consider requiring the contracts between the counties and their attorneys to include reference to the ABA Criminal Justice Standards, in addition to the standards set forth in ADKT 411, because the Judgment requires the state to assess attorney performance using both sets of standards.³⁴

There is a risk of slippage in the language in county contracts because the contracts are drafted at the county level rather than by the Department. The recent contract for conflict counsel in White Pine County, for example, includes no language on the standards of practice, nor language about workload limits.³⁵

Recommendation

- The county contracts should make clear that attorneys must comply with the standards set forth in ADKT 411 and ABA Criminal Justice Standards. The ABA Standards are easy to navigate and understand, and thus provide a roadmap for competence in representation.

B. Qualifications and performance standards: Death penalty cases

As noted above, on February 9, 2024, the Nevada Supreme Court ordered the creation of a Committee to Study and Update Supreme Court Rule (SCR) 250 relating to procedures in capital cases. Under NRS 180.320 (2)(d)(1), qualification of counsel for death penalty cases should be done through the Board's regulations. This rule change is essential to bring the process of qualification for and oversight of death penalty representation under the purview of the Board and Department of Indigent Defense Services.

C. Oversight

The Department requested and received an allocation in the amount of \$626,335 from the funds appropriated for the Department pursuant to AB 518 (7) (b) to be used to contract with experienced defense attorneys to provide oversight in the *Davis* counties. The Judgment requires the following:

Consistent with the ABA Ten Principles, Defendants through the Board, shall ensure that public defense counsel are systematically reviewed on an annual basis

³³ Regulations, Section 27 (emphasis added).

³⁴ Judgment, 16.

³⁵ The October 23, 2023, contract between White Pine County and Jane Eberhardy is attached to this Report as Exhibit H.

for quality and efficiency according to nationally and locally adopted standards, including, but not limited to, the ABA Criminal Justice Standards.³⁶

The Department contracted with two experienced attorneys, each of whom will provide part-time oversight starting next week. The Department is in the process of contracting with a third oversight attorney. The Monitor will review the Department's plan for oversight in the next report.

Moreover, during the past quarter, the Executive and Deputy Directors of the Department conducted several in-person oversight visits in Esmeralda, Lyon, Nye, and White Pine counties designed to address workload limits and the need for additional attorneys and staff (discussed below) and solicit feedback from the judiciary on the quality of representation.³⁷

D. Training and resources

The Judgment states that the Defendants must offer “a systematic and comprehensive training program.”³⁸

The most encouraging development in the last quarter was the allocation by the Interim Finance Committee of \$89,340—the amount requested by the Department—to increase training opportunities. With these funds, the Department will have the capacity to do the following:

- Send five (5) attorneys to a nationally recognized trial college, based on the cost per attendee for the National Trial College, the premier criminal defense training program in the country.
- Continue to host an annual state-wide public defender conference with nationally recognized trainers, and reimburse *Davis* county attorneys for their travel expenses.³⁹

The Department was able to reserve six (6) spots at the Mountain West Trial Skills Academy, occurring April 28-May 3, 2024. The training is a full week of trial skills practice, individual performance, and trainer feedback. As noted in the Monitor's last report, the National Criminal Defense College and similar trial colleges offer excellent opportunities to learn trial skills, and, equally importantly, to establish a culture of excellence in advocacy. Cohorts that attend trial college together often form career-long peer relationships. For remote attorneys with limited opportunities to observe and confer with experienced defense attorneys, such an experience will be invaluable. The Department thus far has received 26 applications for the six (6) spots and awarded five (5) spots to *Davis* county indigent defense providers and one (1) spot to the Pershing County public defender. For those who were not awarded spots, the Department is taking steps to offer them enrollment in a different trial academy.

Given that the workload study—discussed below—requires the state to provide at least twenty (20) additional attorneys for indigent defense representation in the *Davis* counties by November 2, 2024 (one year after the implementation of the workload standards), it may be

³⁶ Judgment, 16 (emphasis added).

³⁷ The On Site Visit reports are attached to this Report as Appendix B.

³⁸ Judgment, 16.

³⁹ The total includes \$20,000 to reimburse rural attorneys for their travel expenses for the annual conference; \$21,500 for a conference manager; \$10,500 for presenters at the annual conference.

prudent to offer a new public defender training to the cohort, perhaps in early 2025. The “comprehensive training” required by the Judgment includes “at a minimum” (1):

client intake interviews; (2) client communication; (3) securing pretrial release; (4) preparation for arraignment, including preservation of client’s rights and requests for formal and/or informal discovery; (5) investigation; (6) filing and responding to pre- and post-trial motions; (7) plea and sentencing outcome negotiations; (8) trial advocacy; (9) appeals; and (10) special issues regarding the representation of juveniles.⁴⁰

Attorneys new to public defense will require comprehensive training in these areas to prepare them to represent indigent clients, especially in rural counties where contract and appointed attorneys may lack access to day-to-day mentorship.

Recommendations

- The state should consider additional funds for a conference for the newly recruited public defenders, hired or contracted by November 2, 2024, to comply with the workload standards.
- The state should consider including all training funds for ongoing and annual training into the Department’s budget rather than requiring the Department to apply for an allocation of interim funds on an ad hoc basis.

E. Workload standards

The Judgment requires that the Defendants implement workload standards in the rural counties within twelve months of the completion of the Delphi-based workload study.⁴¹ The study was completed and unanimously adopted at the Board on November 2, 2023.⁴² Thus, the deadline for compliance with the workload standards is November 2, 2024.

Compliance with workload limits must occur on two levels: the number of attorneys needed per county and the workload of each individual attorney. This Report addresses the first issue, the number of attorneys needed per county.

County-level compliance with workload standards

First, the state must ensure that the counties have enough attorneys, investigators, and support staff to comply with the workload limits. The total number of legal professionals needed can be calculated based on the historical data of the number and types of cases in the county. Per the NCSC study, each case has a “weight” assigned that represents “the average amount of time

⁴⁰ *Id.*

⁴¹ Judgment at 17.

⁴² The NCSC Final Report (revised November 2, 2023) is attached to this Report as Appendix C.

required to handle [the type of case, measured] over the life of the case.”⁴³ An annual workload for a full-time equivalent (FTE) attorney can be “calculated by multiplying the annual new cases for each case type by the corresponding case weight, then summing the workload across all case types.”⁴⁴ This annual workload, expressed in hours, can be measured against the number of FTE attorneys available. Using the existing trends in case number and type in each of the rural counties, the NCSC Study calculates existing caseloads by type, existing numbers of FTE attorneys, assistants, and investigators, and determines need.⁴⁵ The study recommends one investigator per four FTE attorneys and either one or administrative assistant per one solo or two FTE attorneys in the same practice.⁴⁶

The Department has calculated the numbers needed and has met with county leadership to discuss how to address shortages. The Nevada NCSC study demonstrates the need for additional staff in the *Davis* counties. Below are three tables showing the total number of attorneys needed, the existing number of FTE attorneys, and the current shortage.

County	Total number of FTE attorneys needed	Current number of FTE attorneys	Shortage of FTE attorneys
Churchill	7.4	2.4	5
Douglas	8.8	5	3.8
Esmeralda	0.3	0.3	0
Note that the Esmeralda contract attorney also holds a FTE contract in Nye.			
Eureka	0.3	0.3	0
Lander	1.3	1.0 (3 contracts for part time)	0.3
Lincoln	1.1	2	0
Lyon	12	6	6
Mineral	2.1	1 plus part time coverage from a law firm	1 (possibly)
Nye	12.0	6	6

⁴³ NCSC Study, 6. Please see the Monitor’s Tenth Report for a discussion of concerns around methodology and final case weights. Those concerns notwithstanding, the adoption of workload standards represents a significant accomplishment and set toward compliance with the Judgment.

⁴⁴ NCSC Study, 6.

⁴⁵ *Id.* at 20-23.

⁴⁶ *Id.* at 20.

White Pine	3.3 however need additional attorneys due to travel time (no local attorneys in NSPD)	1 NSPD attorney 2 conflict attorneys	1 NSPD (at least)
Appeals and death penalty representation through NSPD	Department is reassessing the number of attorneys needed in the NSPD to stay within workload limits for appeals and potential death penalty cases for the <i>Davis</i> counties opting in to NSPD representation in these areas.		(still in the process of finalization)

A few points should be made about the data. First, additional investigators and staff are needed to comply with the workload limits. The workload of the attorneys calculated above depends on the attorneys having adequate staff and investigative services. The Monitor's next Report will analyze the deficit in investigators and support staff.

Second, the workload of public defense providers can be significantly reduced if they have access to a social worker who can assist with, for example, locating and enrolling clients in drug treatment or psychiatric care, and mitigation specialists who can assist in gathering and preparing evidence for sentencing hearings. Both social workers and mitigation specialists can improve the quality of defense representation while reducing attorney workloads. And, in fact, the NCSC study recommends, and the state should consider, contracting with social workers and mitigation specialists.⁴⁷

Third, the NCSC caseload data does not include municipal court cases. Of the *Davis* counties, Churchill, Lincoln, Lyon, and White Pine have municipal courts. The additional criminal cases litigated in these municipal courts may alter the total workload numbers, requiring additional attorneys. Further adjustments to the workload limits should account for these municipal court appointments.

Fourth, the state should consider the civil workload of the attorneys who represent clients in Chapter 432B (abuse and neglect) cases. As can be seen in Section III below, the civil workload for some attorneys appears significant enough to impact the attorney's total workload.

⁴⁷ NCSC Workload study ii, Appendix C.

Compliance efforts by county

The Department is actively working with the counties to address with shortages of attorneys, often traveling to the county for in-person meetings with county leadership. The highlights of the Department's recent efforts are listed in the bullet points below.

- Churchill County has agreed to add four (4) deputy public defenders, as well as two assistants and an investigator, to the Churchill County Public Defender's Office.
- Douglas County is in the process of transferring its appeals, pardons, parole, and complex litigation cases to the NSPD, and adding additional contract attorneys through a corrective action plan with the Department.
- Esmeralda County will modify its contract with its primary public defender to comply with the workload limits, and, in response to outreach from the Department, add a conflict counsel contract and address issues related to representation in death penalty cases.
- Lander County will update its contract with its primary defense provider to be the equivalent of one full-time attorney with a full-time support staff position. The Department is working with the county to add a contract for a second, part-time attorney.
- Lincoln County will update its contract to include the workload limits, and also update the county plan.
- Lyon County is considering adding two additional contracts. Its primary contract for indigent defense is with the Walther Law Firm, which currently consists of two attorneys.⁴⁸ A three-contract system will accommodate both workload and conflict issues.
- Nye County leadership agrees with the assessment that an additional six (6) full-time defense attorneys are needed and plans to meet the need through six individual contracts with private attorneys.⁴⁹

Compliance efforts: Recruiting attorneys

Recruiting attorneys to represent clients in the *Davis* counties remains a major challenge. Overall, Nevada as a state is in the lowest quartile of states for lawyers per capita, with 2.4 attorneys per 1,000 people.⁵⁰ These lawyers are concentrated in Clark and Washoe counties, as well as Carson City. The State Bar of Nevada and the Deason Criminal Justice Reform Center analyzed the number of attorneys per county, demonstrating that some counties have only a handful of attorneys registered with the bar.⁵¹ As the ABA's 2020 report, *Profile of the Legal Profession* notes, simply having lawyers in a county does not ensure representation for particular legal needs because the lawyers may be retired or engage in work other than direct legal services. Moreover, the Department continues to see attrition in the number of attorneys in the rural counties, as they retire or are drawn to higher paying positions in the urban counties.

⁴⁸ Onsite Visit Report: Lyon County (November 8 2023; November 2, 2023), Appendix B.

⁴⁹ Information provided by the Department, and partially included in the Onsite Visit reports in Appendix B.

⁵⁰ ABA *Profile of the Legal Profession* 3 (2020)

<https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>

⁵¹ The Deason Center map and table is attached to this Report as Appendix F.

Attorney recruitment

As discussed earlier in this Report, the Department continues to work toward competitive salaries for the Nevada State Public Defender in order to attract and retain attorneys. Because state salary increases can only be accomplished through legislative action, the Department has proposed stipends and travel reimbursement as potential incentives to state practice.

Another avenue for recruitment is out-of-state attorneys with criminal defense experience. Proposed Supreme Court Rule 49.1 (7) (a) would remove the two-year cap on certificate of limited practice for out-of-state attorneys at public defender offices in rural counties. The State Bar of Nevada submitted a petition advocating for the elimination of the two-year cap. ADKT 0616. The hearing was held on February 22, 2024.

Law student /recent graduate recruitment

The Department continues to work with the UNLV Boyd School of Law to introduce the idea of rural indigent defense to law students. To ensure the feasibility of rural externships, the Department secured an allocation of \$13,000 to fund two stipends for law student externs in FY 2024.

As discussed in the last report, recruitment of new attorneys will be easier with the passage of Nevada Supreme Court Rule 49.5, which permits law school graduates to practice law through “limited certification as supervised legal practitioners” employed by a legal service provider, prosecutor’s office, or public defender’s office, pending bar passage.

The LASSO program (requested)

Finally, the Department has requested funding from the Nevada Department of Employment, Training, and Rehabilitation for a Law Student Supervision Operation (LASSO) program.⁵² With the funds, the Department would create a more comprehensive summer training program for law students. A cohort of first- and second-year law students would be placed rural public defenders over the summer and, upon graduation, receive a stipend for bar preparation courses and relocation. The Department’s proposal includes the following:

- The Department travels to UNLV Boyd Law School as well as nearby law schools in other states to recruit law students for the LASSO program.
- The Department and UNLV Boyd Law School host an event where rural defense attorneys meet the students selected for the summer externship program. Training and resources are provided to the students at this event.
- The Department funds summer stipends for ten (10) first-year law students, and ten (10) second-year law students working with rural public defenders.
- The Department funds stipends for ten (10) recent law school graduates who have accepted employment at a rural public defender office and who qualify for a limited practice certificate under the Nevada rules.

⁵² The Department’s request is attached to this Report as Appendix I.

The LASSO plan would be an excellent start to recruitment. Recruiting attorneys to rural practice may take multiple strategies and initiatives. Some states have instituted financial incentives, such as law school loan forgiveness or repayment, and higher compensation. If the state chooses to meet the need through private attorneys, it must find a way to get newer attorneys to go into private practice in rural counties. This may require incentives such as free office space or reimbursement of expenses for the first few years as the attorney builds a private practice.⁵³ Moreover, the state may choose to adopt strategies to increase the number of people currently living in rural counties who have law degrees. This has been done in Kansas and Nebraska, for example, through the state law schools. With a declared intent of returning to their communities, rural students receive undergraduate scholarships, funding for LSAT prep courses, and “preacceptance” to the state’s law school.⁵⁴

Recommendations

- The state should consider funding social workers and mitigation specialists, per the recommendation of the NCSC Caseload Study, who could be deployed statewide to assist attorneys in the *Davis* counties.
- The Department should continue its efforts to account for municipal court caseloads in its total workload numbers for the counties with municipal courts.
- The state should consider additional measures to increase the number of defense attorneys in rural counties. This can take a variety of forms. The Department’s recent request for the LASSO program would be an excellent start.

III. Uniform Data Collection and Reporting

The Judgment requires that attorneys providing indigent defense in the relevant counties document, the number of hours for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases, and that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.⁵⁵ The Board’s regulations follow the Judgment’s requirements.⁵⁶ Below is a table summarizing the second quarter reporting of attorneys based on the Department’s quarterly report, and the Monitor’s notes on reporting issues in the right-hand column.

⁵³ Pamela Metzger et al., *Greening the Desert: Strategies and Innovations to Recruit, Train, and Retain Criminal Law Practitioners for STAR Communities*, Deason Criminal Justice Reform Center 7 (September 2020) <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1000&context=deasoncenter>

⁵⁴ Metzger, *Greening the Desert*, 8.

⁵⁵ Judgment, 18.

⁵⁶ Section 43 of the Regulations requires an annual report of the number and type of cases, their disposition, whether motions to suppress were filed, and the number of trials. Section 44 requires that attorneys providing indigent defense in the relevant counties document their time in increments to the tenth of an hour, the number of hours for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases. Section 45 requires attorneys providing indigent defense to use the Department’s data collection system.

County	Q2 hours by attorney	Notes
Churchill	Public Defender 264.7 34.1 (432B)	The Public Defender and Alternative Public Defender may be underreporting their hours. No investigative or expert hours were reported.
	Alt Public Defender 246.4 43.6 (432B)	
	Appointed 202.6 Private: 200	
	Conflict 18.4	
	Ence 551.9 5.8 (432B) Private: 18	It is not clear whether Hart represented clients or simply did not submit hours. Morton returned to Nye County.
Douglas	Filter 325.4 4.7 (432B) Private: 20	Representation at pretrial release hearings was also provided by Brown and the Clouser, Hempen & Wasick firm. The Department is working with the firm to improve reporting of hours.
	Hart	
	None	

	Morton	
	9.1	
	Stovall	
	507.3	
	13.7 (432B)	
	Private: 30	
	Waters	
	1.0 (432B)	
Esmeralda	Earnest	
	23.5	
	Private: 60	In a meeting with the Department, Justice of the Peace Johnson expressed concern that Earnest may be incompletely reporting his hours, especially when travel is taken into account. ⁵⁷
		Earnest has a full-time contract in Nye County.
Eureka	Brown	
	203.8	
	0.5 (432B)	
	Private: 60	
	Conflict	
	13	
Lander	Swanson	
	161.2	
	Private: 38	
	Amens	

⁵⁷ Onsite Visit Report: Esmeralda County (November 6, 2023), Appendix B.

	54.8	
	Private: 250	
	Conflict	
	9.6	
Lincoln	Katschke	
	220.3	
	6 (432B)	
	Private: 30	
	Conflict	
	9	
	Manuele	
	139.3	
	Private: 30	
Lyon	Walther firm	Other times noted for Walther firm:
	1061.11	200.9 investigator
	16.42 (432B)	24.2 expert
	Conflict	90.9 staff
	401.8 plus 72.8 travel	
	Brown	
	3.5 plus 6.5 travel	
	Private 100	
	Silver State Law	
	118.6 plus 39.4 travel	
	Private: 30	

Mineral	Walther firm 176.7 1.7 (432B) Private: 10	Walther firm reported 57.9 staff hours.
	Hyelin 2.2 plus 5.3 travel	
	Conflict 15.4	
Nye	Earnest 111 3 (432B)	It appears that Shelton and Shahani are not reporting their hours. It is unclear whether others are underreporting hours, but it's possible given their high caseloads.
	Blatnik 587.7 Private: 20	
	Duecker 129	
	Gent 266.5 5 (432B) Private: 35	
	Shelton 7	
	Morton	

	83.9	
	Shahani	
	0	
	Conflict	
	34.11 plus 11.5 travel	
White Pine	NSPD	The chief and deputy chief NSPD attorney resigned during the second quarter.
	459.7	
	0.1 (432B)	
	Cole	
	2	
	Eberhardy	
	64.5	
	Private: 10	
	Pickering	
	13.4	

The Department is contacting attorneys who appear to be under-reporting or failing to report, offering one-on-one training in using Legal Server. The Department secured funds to incentivize timekeeping by providing Westlaw to attorneys using Legal Server. The total amount is \$32,784 for FY 2024. The Department has received positive feedback about access to Westlaw from several rural attorneys.

Progress in reporting of private workload

In its first quarter report, the Department solicited private workload hours and included them in a spreadsheet.⁵⁸ Based on this and reporting information from the second quarter, some attorneys accept private cases in addition to their cases under full-time contracts in counties that have not yet implemented workload limits. Douglas and Nye counties, for example, have high

⁵⁸ Staffing and Private Workload Fiscal Year 2024 Quarter 1. Available here: https://dids.nv.gov/Annual_Report/county-reports/

caseloads under full-time contracts, and attorneys who report at least some outside hours. This is permitted under the terms of their contracts. And, of course, an attorney can elect to work more than full-time. But the Department should continue the process of requiring contracts that clarify the number of hours that an attorney is expected to devote to a full-time contract for indigent defense.

Recommendations

- The Department should continue to gather and analyze the private workloads of attorneys, especially for those attorneys who hold full-time contracts, and ensure that the attorneys have adequate time for indigent defense cases under the contract.

Looking ahead

- **Recruitment of attorneys for the Nevada State Public Defender**

The Department requested an allocation of funds set aside pursuant to AB 518 (7) to incentivize application for the open positions in the Nevada State Public Defender. Filling these positions is critical to ensuring competent representation in the *Davis* counties that opted into State Public Defender representation for all public defense in White Pine and for appellate, parole/pardons, and death penalty cases in the relevant counties.

- **Recruitment to rural practice**

The Department will continue to recruit attorneys to rural public defense through externship placements and law school engagement, working toward fair compensation in the rural counties, and providing incentives (if funded by the state) to rural practice. Particularly promising is the Department's request for the LASSO program to recruit, train, and incentivize law students and recent graduates.

- **Workload limits**

In addition to recruiting more attorneys, the workload limits must be implemented at the level of the individual attorney. Attorneys who hold full-time contracts and also accept conflict appointments as well as private casework must be both committed to dedicating adequate time to their indigent defense work and feel empowered to reject appointments when the additional cases would compromise their ability to adequately represent their existing clients.

- **Oversight**

The two newly contracted oversight attorneys will begin visiting the counties next week. Their ability to provide ongoing assessment of the quality of representation in the counties marks an important milestone in the state's compliance with the Judgment.

Next steps for the Monitor

As the Department continues to conduct training, support, and oversight, while also collecting data on cases, workload, and expenditures for the counties, the Monitor will analyze and report on:

- The state's steps to address the crisis in the Nevada State Public Defender, and its responsibility for providing appellate and complex litigation to many of the *Davis* counties, as well as first line public defense in White Pine County. In particular, the Monitor will report on efforts to incentivize NSPD employment.
- Progress on the Department's efforts to secure funding for recruitment of law students for rural indigent defense, particularly through its LASSO program proposal.
- The comparison between the existing numbers of investigators and support staff in the rural counties and the total number required under the new workload standards, and the Department's plans to address shortages.
- The oversight activities of the newly contracted oversight attorneys.
- Attorney timekeeping in general, and whether Westlaw access will provide an incentive to accurate and complete timekeeping.

Eleventh Report of the Monitor
Davis v. State, Case No. 170C002271B
February 23, 2024

Appendix A

Resolution Allocating Funding

RESOLUTION

A resolution making an allocation from the Interim Finance Committee for the support of the Department of Indigent Defense Services; and providing other matters properly relating thereto.

WHEREAS, Pursuant to subsection 1 of section 7 of chapter 497, Statutes of Nevada 2023, the sum of \$6,306,880 was appropriated from the State General Fund to the Interim Finance Committee for allocation in Fiscal Year 2023-2024 to the Department of Indigent Defense Services for certain purposes, which include to fund the costs of the Department related to compliance with the *Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment, and to fund the costs for training for attorneys who provide indigent defense services; and

WHEREAS, Pursuant to section 7 of chapter 497, Statutes of Nevada 2023, the Department of Indigent Defense Services has submitted a request to the Interim Finance Committee for an allocation of \$765,583 from the money appropriated from the State General Fund pursuant to subsection 1 of section 7 of chapter 497, Statutes of Nevada 2023, to fund the costs of the Department related to compliance with the *Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment, and to fund the costs for training for attorneys who provide indigent defense services; and

WHEREAS, Pursuant to subsection 2 of section 7 of chapter 497, Statutes of Nevada 2023, the money appropriated by subsection 1 of that section may only be allocated by the Interim Finance Committee upon recommendation of the Governor and upon submittal by the Department of Indigent Defense Services of documentation of the costs; and

WHEREAS, Pursuant to subsection 2 of section 7 of chapter 497, Statutes of Nevada 2023, the Department of Indigent Defense Services has submitted the necessary documentation and the Governor has provided the necessary recommendation; and

WHEREAS, Pursuant to section 7 of chapter 497, Statutes of Nevada 2023, the Interim Finance Committee has determined that the sum of \$765,583 should and may lawfully be allocated to the Department of Indigent Defense Services for this purpose; now, therefore, be it

RESOLVED BY THE INTERIM FINANCE COMMITTEE, That pursuant to section 7 of chapter 497, Statutes of Nevada 2023, the sum of \$765,583 is hereby allocated from the Interim Finance Committee to the Department of Indigent Defense Services to fund the costs of the Department related to compliance with the *Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment, and to fund the costs for training for attorneys who provide indigent defense services; and be it further

RESOLVED, That any remaining balance of this allocation must not be committed for expenditure after June 30, 2025, by the Department of Indigent Defense Services or by any entity to which money from the allocation is granted or otherwise transferred in any manner, and any portion of the money remaining must not be spent for any purpose after September 19, 2025, by either the Department or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 19, 2025; and be it further

RESOLVED, That the State Controller is hereby directed to transfer the amount so allocated.

Adopted this 13th day of December 2023.


Daniele Monroe-Moreno, Chair
Interim Finance Committee

ATTEST:


Brenda J. Erdoes
Secretary of the Interim Finance Committee

I ATTEST THAT THIS REPRESENTS AN ORIGINAL DOCUMENT FOR PROCESSING AND PAYMENT PURPOSES.


Brenda J. Erdoes, Secretary

Joe Lombardo
Governor



Amy Stephenson
Director

David Johnson
Deputy Director

Jim Rodriguez
Administrator

**STATE OF NEVADA
GOVERNOR'S FINANCE OFFICE
Budget Division**

209 E. Musser Street, Suite 200 | Carson City, NV 89701-4298
Phone: (775) 684-0222 | www.budget.nv.gov | Fax: (775) 684-0260

Date: November 6, 2023
To: Amy Stephenson, Clerk of the Board
Governor's Finance Office
From: Bridgette Garrison, Executive Budget Officer
Governor's Finance Office – Budget Division
Subject: INTERIM FINANCE COMMITTEE **ACTION** ITEM

The following describes an action item submitted for placement on the agenda of the next Interim Finance Committee meeting.

DEPARTMENT OF INDIGENT DEFENSE SERVICES

Agenda Item Write-up:

Pursuant to Section 7 of Assembly Bill 518 of the 82nd Legislative Session, the department requests an allocation of \$765,583 from the Interim Finance Committee Contingency Account to comply with the Davis v. State consent judgment. Relates to work program #C64768.

Additional Information:

This request is based upon concerns expressed by the Davis Monitor in the Ninth Report and the recommendations for compliance contained therein. In order for the department to comply with the *Davis* Stipulated Consent Judgment in the following areas: (1) Oversight Requirements; (2) Training Requirements; (3) Compliance with Workload Standards; and (4) Compliance with the Data Collection and Reporting Requirements.

Statutory Authority:

Assembly Bill 518, Section 7 of the 82nd Legislative Session.

REVIEWED:	
ACTION ITEM:	3-6





STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

896 W. Nye, Suite 202 | Carson City, NV 89703
(775) 687-8490 | www.dids.nv.gov

Memorandum

DATE: October 23, 2023

TO: Bridgette Mackey-Garrison, Executive Branch Budget Officer – Team Lead
Don Carlson, Budget Advisor, ASD

FROM: Marcie Ryba, Executive Director, Department of Indigent Defense Services

SUBJECT: Request for AB518, Section 7 Allocation (Work program C64768)

AB518(2023), Section 7 appropriates funding to the IFC for allocation to the Department of Indigent Defense Services to fund:

- (a) The reimbursement of counties for costs in excess of their maximum contribution amounts for the provision of indigent defense services, including, without limitation, the costs of compliance with workload standards;
- (b) The costs of the Department related to compliance with the Davis v. State (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment;
- (c) The costs of the Office of State Public Defender for contracting for legal services for complex cases; and
- (d) The costs for training and pay parity for attorneys who provide indigent defense services.

The Department requests an allocation of \$765,583 from Assembly Bill 518(2023), Section 7, for Fiscal Year 2024 for the Department to comply with the Davis v. State (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment in the following areas: (1) Compliance with Oversight Requirements; (2) Compliance with Training Requirements; (3) Compliance with Workload Standards; and (4) Compliance with the Data Collection and Reporting Requirements. This request is based upon concerns expressed by the *Davis* Monitor in the Ninth Report and the recommendations for compliance contained therein.

Oversight Requirements

The *Davis* Stipulated Consent Judgment requires the following:

Consistent with the ABA Ten Principles, Defendants through the Board, shall ensure that public defense counsel are **systematically reviewed on an annual basis for quality and efficiency according to nationally and locally adopted standards**, including, but not limited to, the ABA Criminal Justice Standards.¹

According to the monitor, the Judgment requires robust assessment and evaluation of both county defense systems and attorneys providing public defense.² This requires in-person visits to observe attorneys in court in each county, as well as reviews of other documentation of attorney performance.³ The monitor notes that it is difficult to see how a robust, annual review of all counties and attorneys could take place without additional staffing for the Department.⁴ To comply with these oversight requirements in the judgment, the monitor recommends that the Department request funds appropriated for the Department pursuant to AB 518 (7)(1) (b) and available in the State Contingency Fund for compliance with the Judgment.⁵

As such, the Department requests an allocation to fund an Administrative Assistant and to fund two-full time hourly contract attorneys to provide oversight. The Department is requesting operating funds to contract with attorneys, rather than hire staff attorneys, because prevailing state salaries are substantially lower than the salaries offered at county public defender offices or compensation offered to contract attorneys; thus, the Department does not believe it will be able to fill two staff attorney positions with attorneys possessing the requisite knowledge to provide oversight. Costs associated with the oversight positions would total \$626,335 in Fiscal Year 2024. NEBS210 is attached.

Total Estimated Cost for Oversight Requirements: Fiscal Year 2024: \$626,335

Indigent Defense Services Training

The *Davis* Stipulated Consent Judgment requires the following:

Consistent with the ABA Ten Principles, Defendants through the Board and Executive Director, shall provide indigent defense providers with access to a systematic and comprehensive training program, specifically including a certain amount of CLE specific to criminal defense.⁶

The Judgment states that the Defendants must offer “a systematic and comprehensive training program,” which covers “at a minimum: (1) client intake interviews; (2) client communication; (3) securing pretrial release; (4) preparation for arraignment, including preservation of client’s rights and requests for formal and/or informal discovery; (5) investigation; (6) filing and responding to pre- and post-trial motions; (7) plea and

¹ Judgment, 16 (emphasis added).

² Ninth Report of the Monitor, July 15, 2023, p. 13-16.

³ Id.

⁴ Id.

⁵ Id.

⁶ Judgment, 16.

sentencing outcome negotiations; (8) trial advocacy; (9) appeals; and (10) special issues regarding the representation of juveniles.”⁷ This provision of the Judgment suggests a systematic approach to ensuring that attorneys have training in all areas crucial to public defense.

The monitor notes that the Department has been able to provide a two-day annual conference for indigent defense attorneys and that the Department obtained an Edward Byrne Memorial Justice Access Subgrant to provide training. However, the monitor believes the Judgment requires more robust training opportunities for public defense providers who lack access to mentorship, mootings, and in-house programming typical of a large defender’s office.⁸ The Monitor recommends that in addition to current training opportunities, the Department should seek funding to send rural attorneys to a national conference/training on a rotating, yearly basis.⁹ Also, the Monitor believes the Department should seek funding for stipends so that attorneys can attend trainings that are held at larger public defender offices within the state and nearby.¹⁰

First, based upon the recommendations of the *Davis* monitor for compliance with the *Davis* training requirements, the Department requests an allocation of \$37,340 per year of the biennium in additional training authority to offer increased CLE for indigent defense attorneys for the purpose of sending five rural attorneys per year to a national trial advocacy college (or similar training). This funding would allow 5 rural indigent defense services attorneys to attend National Trial College (NCDC) per year.¹¹ The mission of the college is to provide the highest standard of trial skills training to criminal defense attorneys across the United States to ensure that people accused of crimes are represented by zealous counsel.

- Estimated Cost: Fiscal Year 2024: \$ 37,340

Next, the Department requests an allocation of AB 518 (7)(1)(d) funds for providing assistance to the Department for, and for reimbursing attorneys, trainers, and law students for their expenses related to attending, the Department’s annual training conference which is currently funded in part by an Edward Byrne Memorial Justice Access Grant. The Department would request \$20,000 to reimburse rural attorneys to travel to the annual conference and other trainings, \$10,500 to reimburse nationally accepted trainers for training our indigent defense services providers, and \$21,500 to engage a professional conference manager. These requests are discussed more fully in the bullet points below:

- Funding to reimburse rural attorneys to travel to annual conference (or other conferences that indigent defense attorneys feel are important to attend – like

⁷ Judgment, 16

⁸ Ninth Report of the Monitor, July 15, 2023, p. 17-18.

⁹ Id.

¹⁰ Id.

¹¹ This estimate is based upon the following NCDC TPI Attendance Costs where the total cost per attorney to attend the training is approximately \$7,468.00, including tuition (\$2,700), housing (\$1,633), per diem (\$644), and airfare (\$620). Information was obtained from the NCDC website at <https://ncdc.net/trial-practice-institute/>.

drug court training). Department currently relies on Federal Grant to reimburse attorneys (Byrne Jag subgrant from DPS). It is unknown whether this will continue. The grant was limited to airfare, lodging, and per diem to rural attorneys to attend only the DIDS conference, so the total amounts expended over 2 years of conferences totaled about \$17,700. However, expanding the scope of who can be reimbursed (law students, etc.) and the amounts for which reimbursement may be paid (e.g., parking and travel to and from an airport), and the trainings that can be attended, the amounts expected to be reimbursed would likely increase.

- Estimated Cost: Fiscal Year 2024: \$20,000
- Funding to reimburse nationally accepted trainers to come in to train our defenders. Historically the Department has paid about \$7,500 for fees and travel for a keynote speaker, and approximately \$1,500 in travel for each speaker who came from out of state, typically for 1-2 speakers. The funding would be used to pay for one keynote/paid trainer and 2 speakers from out of state would cost about \$10,500 each year.
 - Estimated Cost: Fiscal Year 2024: \$10,500.
- Funding to engage a professional conference manager. In the past, the Department has handled all the duties associated with planning and hosting its annual conferences. When the initial conference was virtual, this was an easier task to accomplish. With the two conferences that occurred in person, there is significantly more work needed to be conducted to ensure successful training is provided to meet the *Davis* compliance obligations. Engaging with a professional manager (e.g., the Nevada Public Health Foundation) will free up Department time to ensure the best quality conference is provided to defense attorneys throughout the state without any loss of performance in the other duties the Department must fulfill. An estimate to provide such services from the Nevada Public Health Foundation is attached.
 - Estimated Cost: Fiscal Year 2024: \$21,500.

Total Estimated Cost for Compliance with Davis Training Requirements:
Fiscal Year 2024: \$89,340

Compliance with Anticipated Workload Standards

The Department has commissioned a Delphi study to establish workload standards for the rural counties, as is required in NRS 180 and the judgement. Once the workload standards are established, the Department must require compliance with the workload standards within 12 months. It is expected the number of indigent defense services attorneys in the rural counties will be required to increase.

The Department believes that providing stipends for law students to work in the rural counties will create a pipeline for law students to work in the rural counties upon graduation. Pursuant to NRS 180.320(2), the Department shall work with Boyd School of Law to determine incentives to recommend offering to law students to encourage

them to provide indigent defense services. In furtherance of this, in Fiscal Year 2022 and Fiscal Year 2023, the Department had applied for and received grant funding from the State Bar of Nevada to provide stipends to law students who served as interns or externs in a public defender's office in one of Nevada's rural counties. In Fiscal Year 2022, two interns were placed with rural agencies and stipends totaling \$13,000 were paid out. In Fiscal Year 2023, one intern was placed with a rural agency and \$6,500 was paid. The monitor highlights the Department's steps to build a pipeline to the rural counties from the law school via the internship program. However, after Fiscal Year 2023, due to State Bar of Nevada grant funding/awarding policy changes, the Department will no longer be receiving these grant funds and this program will be eliminated unless funding is provided.

The Department believes that this internship stipend program fulfills part of the obligation of the Board to incentivize rural indigent defense practice. If law students are interested in employment in the rural counties after graduation, the program will assist with the compliance with the workload as a source of new attorneys.

Total Estimated Cost for Pipeline: Fiscal Year 2024: \$13,000

Data Collection and Reporting Requirements

The Judgment requires that indigent defense providers report data in a uniform fashion, including case numbers; type; outcome; the hours worked by attorneys, staff, investigators, and experts; the number of motions to suppress filed and litigated; the number of trials; and the attorney's private workload, if any. The Judgment further requires that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.¹²

The Department collects data using the LegalServer case management system. NAC 180, Section 45. The Department must renew the LegalServer case management system contract which unexpectedly increased in cost over legislatively budget amounts. The Department is requesting \$4,124 to allow continuance with the case management system and cover the shortfall created by the new contract. A failure to continue the case management system contract will result in a failure to comply with the data collection and reporting requirements.

- Estimated Cost: Fiscal Year 2024: \$4,124

Next, the Monitor recommends that the State should consider providing an incentive for timekeeping to appointed attorneys to encourage consistent and accurate case and hourly reporting.¹³ Based upon this recommendation, the Department requests an allocation of \$32,784 to provide Westlaw EDGE, or a similar online legal research service, to the appointed attorneys that are providing indigent defense services in rural counties. The Department believes that providing access to an online legal research service will incentivize attorneys to comply with the workload reporting requirements so

¹² Judgment, 18

¹³ Judgment, p. 20-22.

that the State will be compliant with the uniform data collection requirements of the judgement because it would cost an attorney \$504 a month to have similar access. Also, prosecutors are routinely provided free access to online legal research systems and such an action would provide the same resources to indigent defense services attorneys as are provided to prosecutors.

- Estimated Cost: \$32,784 Fiscal Year 2024 (6 months at \$5463.94 per month)

Total Estimated Cost for Data Collection Compliance: Fiscal Year 2024
\$36,908

Conclusion

In conclusion, the Department respectfully requests a total allocation of \$765,583 from the AB518(2023), Section 7 appropriation to be used during Fiscal Year 2024 to comply with the *Davis* Stipulated Consent Judgment in the following areas: (1) Oversight; (2) Training; (3) Compliance with Workload Standards; and (4) Compliance with the Data Collection and Reporting Requirements.

State of Nevada Work Program

WP Number: C64768

FY 2024

Add Original Work Program

XXX **Modify Work Program**

BUDGET DIVISION USE ONLY

DATE_

APPROVED ON BEHALF OF
THE GOVERNOR BY

DATE	FUND	AGENCY	BUDGET	DEPT/DIV/BUDGET NAME
08/22/23	101	111	1008	DEPARTMENT OF INDIGENT DEFENSE SERVICES

Funds Available

Budgetary GLs (2501 - 2599)	Description	WP Amount	Revenue GLs (3000 - 4999)	Description	WP Amount	Current Authority	Revised Authority
			4654	TRANSFER FROM INTERIM FINANCE	765,583	0	765,583
Subtotal Budgetary General Ledgers		0	Subtotal Revenue General Ledgers(RB)		765,583		765,583
Total Budgetary & Revenue GLs					765,583		

Expenditures

[illegible]

Sub Total Category Expenditures

Total Budgetary General Ledgers and Category Expenditures (AP)

765,583

Remarks

The purpose of this work program is to add funding to comply with the Davis v. State (Nev. First Jud. Dist. Ct. Case No. 170C002271B), consent judgment, approved during the 82nd Nevada Legislative Session, amending Assembly Bill 518, Section 7, for the Department of Indigent Defense Services.

dcarlso4

Authorized Signature

10/23/23

Date _____

Controller's Office Approval

Does not require Interim Finance approval since Submitted as an IFC Action Item for Restricted IFC Contingency Pursuant to AB 518 82nd Session

Eleventh Report of the Monitor
Davis v. State, Case No. 170C002271B
February 23, 2024

Appendix B

On Site Visits



STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8490 | dids.nv.gov

ONSITE VISIT REPORT

Esmeralda County

Visit date: November 6, 2023

I. Brief Narrative.

Executive Director Marcie Ryba and Deputy Director Thomas Qualls traveled to Goldfield, NV for a follow-up oversight visit, to meet with Justice of the Peace Danielle Johnson.

During our meeting Judge Johnson voiced concerns regarding the county's lack of prompt payment of bills for appointed counsel. Marcie will follow up with new finance manager to assure that an efficient process is established. On a related subject, Marcie was able to obtain a current Quarterly Report from the clerk.

Judge Johnson is quite satisfied with Jason Earnest's performance and consistency as their public defender. She has also been happy with appointed conflict counsel and the process the Department helped to establish.

She expressed grave concern over the current issue with the Esmeralda County Sheriff, who is not qualified to hold his office, due to a domestic battery conviction. This situation has caused a disruption of the ability to process charges.

Regarding the new workload standards, Judge Johnson is concerned that Jason's reporting may be incomplete, and therefore the new workload numbers do not reflect the actual caseload for the county, especially when travel is taken into account.

She also expressed support for the county to contract with another attorney to cover conflict cases (in compliance with DIDS upcoming regulation that counties need at least a two tier system). Court is every Wednesday in Justice Court, and every other Thursday in District Court. Marcie and Tom attempted to meet with Judge Wanker, but she was on vacation.

I. Next Steps.

1. Follow up with Jason and the county regarding workload compliance.



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

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Phone: (775) 687-8490 | dids.nv.gov

ONSITE VISIT REPORT

Lyon County: Yerington

Visit date: November 8 & 28, 2023

I. Brief Narrative.

Workload Discussions

Deputy Director Thomas Qualls traveled to Yerington, NV on two different occasions to meet with County Comptroller Josh Foli and also with contract public defenders Mario and Olga Walther.

On November 08, 2023, Qualls met with Josh Foli in Yerington to have preliminary discussions regarding how to achieve compliance with Workload Standards. Josh understands the importance of compliance and will assist in achieving. He is concerned about how to make the FTE numbers work with conflict counsel and conflict contracts. He will talk with Mario Walther and then get back to us.

On November 28, 2023, Qualls met with Mario and Olga Walther at their law office in Yerington, NV. Mario had talked with Josh Foli the day before about the possibility of returning to a three contract system. Josh is open to the idea, if enough attorneys are interested. He asked Mario to do some leg work to find out if it would be viable. A three contract system would take a significant caseload burden off Mario and Olga. And it would reduce their recruitment efforts. Since they entered the contract with Lyon County, Mario and Olga have been recruiting constantly. Kale Brock is interested in a contract. Mario should have more information within a week.

Other Matters

In the November 28, 2023 meeting with Mario and Olga, they also discussed the current status of their access to the jail. They said it was actually better than it used to be. And they are not forced to enter via the backdoor anymore, where they used to have to wait outside in all kinds of weather. Improvements also include the fact that there are now two secure attorney rooms behind the Walker River Justice Court they can use now. (Used to be storage rooms.) The rooms include phones that allow them to call jail staff and let them know when they are ready for the next detainee. Jail staff, in general, has been helpful

and they are now transporting defendants to court by 7:30 or 7:45 (it often used to be not until 8:45 am, and court starts at 9 am).

Mario also reported that he was able to tour the new construction at the courthouse and there will be more attorney spaces upstairs with similar access.

Also, the county is working on obtaining tablets for use in the jail, so that each detainee can have his/her own secure tablet and the attorneys can upload discovery straight to the tablets. This will make their jobs much more efficient, as they won't have to sit with defendants through hours of video or pages of discovery, but allow them to view independently, and then go over questions or issues.

Also, the county is looking into using a part of the jail that isn't currently being used as attorney-client meeting space. The proposal would be that Mario (and at least other contract PDs) would have key cards to access the meeting spaces 7 days a week, including after hours. Apparently, Josh is getting quotes for construction. No timeline currently, though.

Mario and Olga are also interested in funding for a social worker.

Transportation of detainees from one location to another in Lyon County is also still a problem.

They are also troubled by the fact that some of their clients are likely not indigent, adding an unnecessary burden to their workload. They wish the courts had a more effective screening process, as this would reduce their caseloads.

They inquired as to whether they could eliminate from their caseload defendants who the prosecutor would verify are not facing jailtime.

Finally, they are in favor of the county doing separate contracts for 432B cases.

III. Next Steps.

1. Follow up with Mario on status and interest in contracts;
2. Schedule a meeting with county manger Andrew Haskins, Josh Foli, Mario and Olga, and possibly other stakeholders regarding workload compliance;
3. Follow up with Josh Foli regarding tablets, construction, and the possibility of separating out 432B contracts.



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

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Phone: (775) 687-8490 | dids.nv.gov

ONSITE VISIT REPORT

Nye County (Tonopah)

Visit dates: November 6-7, 2023

I. Brief Narrative.

DIDS Director Marcie Ryba and Deputy Director Thomas Qualls traveled to Tonopah, Nevada for an oversight visit, and to meet with Assistant County Manager Lorina Dellinger, as well as Justice of the Peace Klapper and to also present to the Nye County Board of Commissioners.

We first met with Assistant County Manager Lorina Dellinger on Monday, November 6, 2023. We discussed the workload study and the results for Nye County, which call for a total of 12 public defenders. We discussed possible options for compliance, including the need to increase the contract price to be competitive with Clark County and to attract enough applicants. We also discussed the ongoing need for a Nye County Appointed Counsel Administrator to help manage the 12 contracts or 12 attorneys within any arrangement.

On Tuesday, November 7, we presented to the Nye County Board of Commissioners regarding the workload study and its requirements, as well as our successes at the Legislature this year, which included supplemental reimbursement funding for the counties to cover the expenses of additional attorneys due to the workload standards, as well mandatory backup funding in case counties exceed their projected budgets.

The information was well-received by the Commissioners who were each supportive of the need for more public defenders. In fact, there were comments that it was likely Nye County would need more than 12 public defenders, as the county was much larger than Lyon County, which requires the same number. Also, the Commissioners want to move quickly to fill these spots. And they want to explore the possibility of using one or more law firms in the mix. The Nye County District Attorney was also very supportive of the need and of the importance of staffing the positions with qualified and adequately-paid attorneys.

Finally, on Tuesday November 7, we met with Justice of the Peace Jennifer Klapper. Judge Klapper agreed that an Appointed Counsel Administrator would be helpful in

managing scheduling for attorneys and cases in the north and south of the county. She remains frustrated that she cannot get other attorneys to come to court in Tonopah, except virtually, except Jason Earnest. That said, she is happy with Jason as the primary public defender. She does not believe that virtual / zoom court is adequate in most circumstances. She would like standard guidelines on when attorneys will need to be in court in person.

She provided positive feedback on the Department's last Annual Conference in Reno, says that Jason came back rejuvenated and recharged afterwards. He commented to her that it was the best live training he'd been to in a long time.

She is happy about the \$450 weekend compensation for 48 hour hearings, for all parties involved. Marcie also explained the procedures and the allocation of monies from the Legislature.

We also discussed the procedures for the appointment and selection of counsel with her and clarified how it works, including that she still has to authority to decide when there is a conflict.

Finally, she is still concerned about adequate attorney-client meeting space.

II. Next Steps.

1. Continue to work with county management to develop a viable and sustainable plan for workload compliance.
2. Follow-up on atty-client meeting space issues.

Eleventh Report of the Monitor
Davis v. State, Case No. 170C002271B
February 23, 2024

Appendix C

NCSC Rural Nevada Indigent Defense Services
Weighted Caseload Study
(revised 11/2/23)

Rural Nevada Indigent Defense Services Weighted Caseload Study

Final Report October 2023

(Revised 11.2.23)

Suzanne Tallarico, M.A.
Brian Ostrom, Ph.D.
John Douglas, B.A.
Shannon Roth, B.A.

Court Consulting Division
National Center for State Courts



Rural Nevada Indigent Defense Services Weighted Caseload Study

Final Report

October 2023

(Revised 11.2.23)

The authors extend their sincere appreciation to the indigent defense service providers, including attorneys, investigators, and administrative staff of rural Nevada, all of whom contributed their valuable time and insights during the time study, focus group, and quality adjustment panels. We also thank the members of the Study's Advisory Committee for their thoughtful guidance throughout the course of the project. Marcie Ryba, Tom Qualls, Peter Handy, and Stanley Morrice from the Department of Indigent Defense Services (DIDS) were invaluable for providing leadership and data support. Thank you all for the serious attention you provided to this important project.

Weighted Caseload Study Advisory Committee Members

Colleen Brown, Office Manager
Elko County

Kristine Brown, Contract Attorney
Douglas County

Steve Cochran, Public Defender
Pershing County

Lorina Dellinger, Asst. County Manager
Nye County

Jason Earnest, Contract Attorney
Esmerelda/Nye Counties

Mitch Herian, Data Analyst
Soval Solutions, LLC

Margaret Judge, Investigator

Carson City Public Defender's Office

Karen Kreizenbeck, State Public Defender
Nevada State Public Defender's Office, Retired

Maureen MacDonald, Legal Secretary
Humboldt County

Dave Mendiola, DIDS Board Member/County
Manager
Humboldt County

Jeffery Page, County Manager
Lyon County

Wayne Pederson, Contract Attorney
Lyon County

Matthew Pennell, Deputy Public Defender
Elko County

Tosca Renner, Office Manager
Nevada Supreme Court

Marcie Ryba, Director
Department of Indigent Defense Services

Richard Sears, Contract Attorney
White Pine County

Jacob Sommer, Public Defender
Churchill County

Matt Stermitz, Public Defender
Humboldt County

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EXECUTIVE SUMMARY

Project Design

To provide oversight and guidance on matters of policy throughout the project, DIDS established the Indigent Defense Workload Standards Advisory Committee (the Advisory Committee) comprising public defenders, contract indigent defense providers, administrative staff members, an investigator, a Board of Indigent Defense Services member, a County Manager, and an Assistant County Manager. The workload assessment was conducted through a multi-phased approach, including:

1. A time study in which all rural public defender/contract attorneys, investigators and administrative staff were asked to record all case-related and non-case-related work, including evenings and weekends, over a six-week period. The time study provides an empirical description of the amount of time currently devoted to handling cases of each type, as well as the division of the workday between case-related and non-case-related activities. One hundred percent of all expected participants entered data during the time study.
2. An analysis of current practice, based on time spent working on cases, as entered into the new time tracking system, called *LegalServer*.
3. A review of case weights in other jurisdictions, including the new RAND Corporation's workload standards published in August 2023, and
4. A quality adjustment process to ensure that the final weighted caseload model incorporates sufficient time for effective representation. Grounded in applicable

professional standards, the quality adjustment process included:

- Focus groups conducted by NCSC staff with attorneys to develop an in-depth understanding of indigent defense work across the rural counties and to identify challenges attorneys face in handling their workload.
- Delphi panels, consisting of a structured review of the case weights by a set experienced attorneys, investigators, and administrative staff members.
- Census survey of rural indigent defense attorneys, and
- A review of past indigent defense provider weighted caseload studies to compare case weights for similar case types, which also accounted for adherence to ABA standards.

This multi-staged quantitative/qualitative approach takes advantage of empirical data from the time study ("what is") and relies upon expert opinion and data from other states, as well as a nationally focused assessment of public defender case weights to formulate the quality adjustments ("what should be"), resulting in reasonable case weights and workload standards for rural indigent defense providers in Nevada.

Results

Applying the final weighted caseload model to current new cases shows a need for a total of 90 full-time equivalent (FTE) attorneys to effectively handle current indigent defense provider caseloads. The model also shows a need for approximately 46 administrative support staff members, and 22 investigators, both of which are based on recommended ratios. The weighted caseload model therefore suggests

that indigent defense providers' need either more resources or smaller caseloads to enable attorneys to provide every client with effective assistance of counsel.

Recommendations

This workload assessment provides evidence of a need for more attorney and staff resources to effectively handle the current workload of Nevada's rural indigent defense provider system. The following recommendations are intended to promote the effective implementation of the weighted caseload model, preserve the model's integrity and utility over time and ensure effective representation of Nevada's rural indigent defendants.

Recommendation 1

Indigent defense provider offices should be provided with enough attorneys, administrative staff, and investigator support to represent clients effectively and consistently across rural Nevada. The focus groups, Delphi Panels, census survey, and state comparison quality adjustment processes clearly demonstrate that attorneys and staff face serious resource constraints at current caseloads and staffing levels. Appropriate resource levels can be achieved either by adding attorneys and staff to indigent defense provider offices or by reducing first-tier public defender office caseloads. Options used to reduce first-tier defender caseloads could include transferring a portion of the workload to the NSPD under NRS 180.450, contracting with private counsel, or reducing or eliminating the civil workload.

Recommendation 2

Social workers serve a critical function where they exist in indigent defense provider offices.

Where social workers are not employed, attorneys, investigators or administrative staff provide this function in addition to their traditional duties. Social workers' specialized professional knowledge enables them to investigate clients' social histories, obtain educational and health records, place clients in treatment and other programs, prepare mitigation information, and assist in developing alternative sentencing plans—often more efficiently and effectively than an attorney, investigator or administrative staffer can. Nevada's rural indigent defender offices currently employ just one social worker, in Elko (who is sometimes assisted by interns), although there are 51 indigent defense attorneys in fifteen rural counties. To improve both the effectiveness and efficiency of client representation, social workers should be made available in all rural Nevada counties.

Recommendation 3

DIDS should consider hiring a small group of mitigation specialists available to work with rural indigent defense attorneys in the rural counties. Mitigation specialists are members of the criminal defense team that provide significant documented history of the defendant for use by defense counsel. The information provided is used to identify potential mitigating factors that should be presented to the court. Mitigation specialists are especially important for use in capital murder cases and high-level felony cases. In Nevada, Clark County employs 2 mitigation specialists for 20 attorneys and Washoe County employs 1 mitigation specialist for 37 attorneys, for a combined total of three mitigation specialists for 57 attorneys, or ratio of 1 mitigation specialists for every 19 attorneys. Applying this ratio to the 80.8 rural indigent defense attorneys needed, that implies a need

for 4.3 mitigation specialists across all of the rural counties.

Recommendation 4

Administrative staff, investigators, and social workers are essential components of the defense team. These staff members complement the work of the attorney, increasing the attorney's effectiveness and efficiency in representing clients, but cannot fulfill the attorney's unique professional functions. Therefore, staff and attorney positions should not be treated as fungible.

Recommendation 5

Many of the rural indigent defense attorneys have civil cases assigned to them, which increases their workload beyond what is presented in this report. Developing case weights for civil cases was outside of the scope of this project, and the recommendations are for the number of attorneys needed that are practicing only indigent defense as defined by NRS 180.004

Recommendation 6

DIDS should create a complex litigation unit that would be housed in the State Public Defender's Office. The complex unit should include attorneys, administrative staff, investigators, and mitigation specialists. Death penalty case attorneys have to be specially trained and have a certain level of experience to represent indigent defendants (Nevada Supreme Court Rule 250). If a rural attorney does not have the requisite qualifications and skills another will be appointed. Given that the NCSC are relatively rare, but they do occur, we are unable to recommend the staffing needs for this unit.

Recommendation 7

DIDS should monitor the new case count and hours expenditure database located on *LegalServer* to ensure its accuracy. Once the accuracy has been ensured and ample, accurate data have been entered, DIDS should use this information to update the needs model on an annual basis.

Recommendation 8

DIDS and indigent defense providers should actively use the weighted caseload model to monitor and manage workloads. Annual calculations of workload based on caseload numbers can aid DIDS in determining the appropriate allocation of attorneys, investigators, and staff to offices. Calculating incoming workload on the basis of appointments can also assist indigent providers in monitoring capacity and assigning cases to individual attorneys.

Recommendation 9

Over time, the integrity of any weighted caseload model may be affected by external factors such as changes in legislation, case law, legal practice, court technology, and administrative policies. NCSC recommends that Department of Indigent Defense Services conduct a comprehensive update of the public defender office weighted caseload model every five to seven years. This update could either entail an analysis of the *LegalServer* data or it could include both a time study and a comprehensive quality adjustment process.

Recommendation 10

It is recommended that all rural counties in Nevada heed the recommended case

weights/caseload standards and provide staffing resources, including attorneys, investigators, and administrative staff equally across all rural counties.

I. INTRODUCTION

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.”¹ In 1963, the United States Supreme Court held that the Sixth Amendment requires states to provide counsel for criminal defendants who cannot afford to hire counsel for themselves.² Twenty-one years later, the Court held that the right to counsel is a right not merely to token representation, but to the effective assistance of counsel.³

For any criminal defense attorney, maintaining a manageable caseload is essential to providing effective assistance of counsel. According to the American Bar Association’s *Model Rules of Professional Conduct*, the requirement of diligence in representation includes the responsibility to control the lawyer’s workload “so that each matter can be handled competently.”⁴ Similarly, the American Bar Association Standards for Criminal Justice: Defense Function assert that “[d]efense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client’s interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations.”⁵ Faced with an excessive workload,

an attorney may not have sufficient time to investigate the facts of a case, visit a crime scene, identify or interview witnesses, prepare mitigation information, address potential collateral consequences, explore the possibility of diversion or alternative sentencing, or maintain regular communication with a client.

Since the beginning of the twenty-first century, concern over excessive workloads among attorneys who represent indigent clients has grown. Forty years after *Gideon v. Wainwright* established the right to state-provided defense counsel, the American Bar Association’s Standing Committee on Legal Aid, and Indigent Defendants (SCLAID) held a series of hearings to determine whether that promise was being kept. SCLAID concluded that the defense function was systematically underfunded and that indigent defense providers in many states were chronically overworked and could not devote sufficient time to their cases.⁶ Similarly, in 2009 the Constitution Project’s National Right to Counsel Committee found that inadequate funding and excessive workloads were “a problem virtually everywhere in public defense throughout the United States.”⁷ In 2011, the Justice Policy Institute concluded that inadequate representation resulting from excessive indigent defense workloads leads to increased incarceration costs, reduces public trust and confidence in the judicial system, and has a disproportionate impact on people of color and low-income communities.⁸

¹ U.S. Constitution amend. VI.

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³ *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

⁴ American Bar Association Model Rules of Professional Conduct Rule 1.3 comment. 4 (2007).

⁵ ABA Standards for Criminal Justice: Defense Function, Standard 4-1.8(a) (4th ed. 2015).

⁶ Standing Committee on Legal Aid and Indigent Defendants, American Bar Association, *Gideon’s Broken*

Promise: America’s Continuing Quest for Equal Justice (2004).

⁷ National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel* 65 (2009).

⁸ Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense* (2011).

In response to these concerns, the American Bar Association promulgated a series of guidelines related to indigent defense workloads. These guidelines direct providers to “avoid excessive workloads and the adverse impact that such workloads have on providing quality legal representation to all clients.” The guidelines also advise that public defense providers establish “a supervision program that continuously monitors the workloads of its lawyers to assure that all essential tasks on behalf of clients ... are performed.”⁹

In 2017, the Nevada State Legislature created the Nevada Right to Counsel Commission (NRTCC), which contracted with the Sixth Amendment Center to evaluate the state of rural indigent defense in Nevada. This report identified a number of problems associated with indigent defense in the state’s rural counties. Of direct relevance to the project reported on here, the NRTCC found that, while the state has a Fourteenth Amendment obligation to ensure Sixth Amendment services, at that time there was no “entity authorized to promulgate and enforce systemic standards...Moreover, the State of Nevada does not require uniform indigent defense data collection and reporting. Without objective and reliable data, right to counsel funding and policy decisions are subject to speculation, anecdotes and potentially even bias.”¹⁰

In 2018, indigent defendants in Nevada’s rural counties filed an action against the governor challenging the constitutionality of the policies and practices of the state’s indigent defense system (*Davis v. State*). In June, the general

assembly passed Assembly Bill 81 (AB 81), creating the Department of Indigent Defense Services (DIDS) and its oversight body, the Board of Indigent Defense Services (BIDS) to promulgate policies and practices for rural indigent legal service providers. One of the first requests from BIDS was funding to conduct a rural-focused weighted caseload study to determine staffing levels necessary to provide effective representation to rural indigent defendants in Nevada.

In July of 2020, DIDS contracted with the NCSC to conduct a weighted caseload study with indigent defense providers in Nevada.

To measure and monitor indigent defenders’ workloads effectively in Nevada, the state must first establish workload standards. The current workload assessment study is the beginning step that DIDS is taking in this effort. Until very recently, when the RAND Corporation published new recommended national workload standards (August 2023 study referenced below), the only existing national public defender workload standards were established in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals and later adopted by the National Legal Aid and Defender Association (NLADA). These standards have frequently been criticized on the grounds that they were not based upon empirical research, do not allow for the varying complexity of different types of cases within each of the broad categories (e.g., homicide, violent felonies, and nonviolent felonies), ignore variation among the states in criminal justice policies and procedures, and

⁹ American Bar Association, *Eight Guidelines of Public Defense Related to Excessive Workloads*, guidelines 1 – 2 (2009).

¹⁰ Sixth Amendment Center Newsletter, *Report released evaluating the right to counsel in rural Nevada*, September 18, 2018, p. 7.

predate the widespread usage of information technology in courts and law offices.¹¹

Over the past decade and a half, statewide public defender systems have increasingly begun to adopt state-specific weighted caseload systems for monitoring workload assessment. Some of the earliest empirically based studies of public defender workload were conducted by National Center for State Courts (NCSC) in Maryland (2005), New Mexico (2007), and Virginia (2010).¹² More recently, the ABA has partnered with accounting firms to establish weighted caseload formulas in Missouri (2014), Louisiana (2017), Colorado (2017), and Rhode Island (2017).¹³ Other organizations have conducted weighted caseload studies in Missouri (2014), Massachusetts (2014) Texas (2015), New York (2016), Maryland (2017) and Idaho (2017).¹⁴ These studies uniformly find that public defender agencies do not have enough attorneys to effectively handle their workloads.

Most recently, in August 2023, the RAND Corporation published the *National Public Defense Workload Study* in which they developed defense workload standards based

on average case processing times reported in 17 separate studies published between 2005 and 2022. This comprehensive review and expert analysis included a panel of 33 criminal defense attorneys from across the country. RAND's new standards incorporate "attorneys' experience with modern criminal defense practice, including the tremendous expansion of digital discovery from body-worn cameras, cell phone data, and social media data; the increasing use of forensic evidence; and the expanding scope of a criminal defense lawyer's obligations, such as advising clients on the collateral consequences that attend criminal convictions."¹⁵ This most recent nationally focused study on defense attorney standards recommends that indigent defense attorneys maintain significantly lower caseloads than previous guidelines have indicated, especially considering the modern-era defense realities noted above. See Figure 1, below, for a comparison of the case weights developed by the NLADA, RAND, and the NCSC for rural Nevada indigent providers.

¹¹ Matthew Kleiman & Cynthia G. Lee, *Public Defenders*, in *Encyclopedia of Criminology and Criminal Justice* 4134, 4139 (Gerben Bruinsma & David Weisburg eds., 2013).

¹² Matthew Kleiman & Cynthia G. Lee, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment* (2010); National Center for State Courts & American Prosecutors Research Institute, *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorneys' Offices and New Mexico Public Defender Department* (2007); Brian J. Ostrom, Matthew Kleiman & Christopher Ryan, *Maryland Attorney and Staff Workload Assessment* (2005).

¹³ Blum Shapiro & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards* (Nov. 2017); Rubin Brown & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Colorado Project: A Study of the Colorado Public Defender System*

and *Attorney Workload Standards* (Aug. 2017); Postlethwaite & Netterville & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Louisiana Project: A Study of the Louisiana Public Defender System and Attorney Workload Standards* (Feb. 2017); Rubin Brown, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards* (June 2014).

¹⁴ Idaho Policy Institute, Boise State University, *Idaho Public Defense Workload Study* (2018); N.Y. State Office of Indigent Legal Services, *A Determination of Caseload Standards Pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement* (Dec. 2016); Dottie Carmichael et al., *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission* (Jan. 2015).

¹⁵ Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study*, RAND Corporation, 2023, Santa Monica, CA.

Figure 1: Case Weights Comparisons – NLADA and RAND

Organization	NLADA 1973	RAND 2023
	Hours per Case	Hours per Case
Case Types		
Felonies - All	12	
Felony - High Life without Parole		286
Felony - High - Murder		248
Felony - High - Sex		167
Felony - High - Other		99
Felony - Mid		57
Felony - Low		35
DUI - High		33
DUI - Low		19
Misdemeanor - All	4	
Misdemeanor - High		22.3
Misdemeanor - Low		13.8
Juvenile Delinquency	9	
Probation/Parole Violations		13.5
Mental Health Cases	9	
Appeals	70	

The RAND workload standards study clearly delineated between different types of felonies and misdemeanors, whereas the 1973 NLADA standards had a single case weight/standard for all felonies of 12 hours and 4 hours for all misdemeanors. The NLADA study also included juvenile delinquency and mental health cases as well, which RAND did not, but RAND did include probation and parole appeals. Obviously, the case weights, or average case processing times are extremely dissimilar.

When the case weights are translated into caseload standards, the difference between the NLADA and RAND recommendations is even more stark. The caseload standard represents the maximum number of cases of that type that should be assigned to an attorney in a year, if that were the only type of case that attorney handled. The caseload standards presented in Figure 2 assume that each attorney has 1,760 hours available per year for all casework, which

is the annual working year that was agreed to for the current study in rural Nevada (discussed later in this report).

Figure 2: Workload Standard Comparisons – NLADA and RAND

Organization	NLADA 1973	RAND 2023
	Annual Cases	Annual Cases
Case Types		
Felonies - All	150	
Felony - High Life without Parole		6
Felony - High - Murder		7
Felony - High - Sex		11
Felony - High - Other		18
Felony - Mid		31
Felony - Low		50
DUI - High		53
DUI - Low		93
Misdemeanor - All	400	
Misdemeanor - High		79
Misdemeanor - Low		128
Juvenile Delinquency	200	
Probation/Parole Violations		130
Mental Health Cases	200	
Appeals	25	

The new RAND workload standards recommend that a single defense attorney only handling low level felony cases could adequately represent 50 clients (cases) in a year, whereas the previous standards suggested that a single defense attorney could handle three times as many felony cases of all types in a single year.

The new RAND workload standards were designed to provide states with guidance on reasonable caseload sizes in the absence of a state-focused workload assessment study. However, the RAND report does note that “While having a specific state or local workload study remains the ideal approach for public defense resource planning, in the absence of a jurisdiction-specific study, nationally applicable workload standards are needed to provide

benchmarks and assist administrators in assessing system needs.”¹⁶

In 2019, the Board of Indigent Defense Services (BIDS) and the Department of Indigent Defense Services (DIDS) were established to oversee and improve criminal defense services provided to indigent persons in Nevada by providing state funding and guidance to local indigent defense providers. Specifically, BIDS and DIDS have been tasked with developing minimum standards and regulations for the delivery of indigent services, develop guidelines for maximum caseload sizes and, once these are established, to oversee the rural indigent defense attorneys to ensure that the minimum standards and regulations are being followed.

The Department of Indigent Defense Services is currently working on developing practice standards and they contracted with the National Center for State Courts to conduct a workload assessment study for indigent defense providers in the 15 rural counties of the state. The results of the workload assessment study, described in this report, will be used to create reasonable and sustainable preliminary caseload standards for indigent defense attorneys in Nevada. At the foundation of the workload assessment study is a time study, which, under normal working conditions, will provide an empirical profile of the amount of time indigent defense providers currently spend working on the various types of cases to which they are assigned. As will be discussed later, for the current study, the empirical data obtained through the time study was supplemented with additional consensus-based and qualitative data to develop the current preliminary standards.

¹⁶ Please see Appendix C for the final Rand case weights.

¹⁷ Clark and Washoe Counties are considered urban counties, so they were not included in this study.

A. Indigent Defense Services in Rural Nevada

Nevada is composed of 17 counties, 15 of which are considered to be rural.¹⁷ Nevada law stipulates that counties with populations of 100,000 or more must provide a county-funded public defender office; counties with populations of less than 100,000 can either opt into representation by the Nevada State Public Defender, open a county public defender office, or contract with private attorneys to provide public defender representation.

Of the 15 rural counties in Nevada, only one rural public defender office (Carson City) employs full-time or contract investigators to support the work of county-based indigent defense attorneys. Storey County contracts with Carson City Public Defender’s Office or may enter into individual contracts with attorneys. Five rural counties, including Carson City, Elko, Churchill, Humboldt, and Pershing have established public defender offices. These offices are funded by the county, including furnishings, equipment, and salaries. The remaining eight counties contract with private attorneys to provide indigent defense services. In locations in which investigators are not permanently employed, attorneys request additional fees for investigation or expert consultation from DIDS when needed¹⁸. Administrative staffing support also varies across the counties. Finally, all of the rural counties either have contracts with private attorneys, or rely on DIDS’s list of approved counsel, to provide indigent defense services in cases in which the public defender or contract attorney has a conflict of interest. In cases

¹⁸ AB 480, passed in 2021 provided the funds to DIDS to review requests and, if approved, provide investigative service fees.

involving the death penalty, attorneys must meet specific training and experiential criteria, so most of these attorneys are appointed from a specific pool of qualified attorneys.

The remaining counties, including Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, and Nye, and contract with private attorneys.

Understanding that rural counties face different challenges than urban areas do, the current workload analysis is specific to Nevada's rural counties. The study's findings are intended to assist counties in understanding the size of their workload and caseload, the number of attorneys that are needed to provide effective representation, and how defense-related support resources should be planned and allocated.

B. About Weighted Caseload

The weighted caseload method of workload analysis is grounded in the understanding that different types of cases vary in complexity, and consequently in the amount of work they generate for attorneys and staff. For example, a typical felony creates a greater need for attorney and staff resources than the average misdemeanor case. The weighted caseload method calculates resource need based on the total workload of each county, while accounting for the variations in workload associated with different types of cases. The weighted caseload formula consists of three critical elements:

1. *New open case counts*, or the number of cases of each type assigned indigent defense providers each year;¹⁹
2. *Case weights*, which represent the average amount of time required to handle cases of each type over the life of the case; and
3. The *year value*, or the amount of time each attorney or staff member has available for case-related work in one year.

Total annual workload is calculated by multiplying the annual new cases for each case type by the corresponding case weight, then summing the workload across all case types. Each office's workload is then divided by the year value to determine the total number of full-time equivalent attorneys, needed to handle the workload.

C. Introduction to Workload Assessment Methodology

A weighted caseload model is established through a study called a *workload assessment*. There are two primary methods of workload assessment: the Delphi method and the time study method. Originally developed for the United States Department of Defense by the RAND Corporation in the 1950s as a tool for forecasting the influence of technology on warfare, the *Delphi method* is a structured, iterative, consensus-based process for gathering and distilling expert opinion about a particular

¹⁹ For purposes of this study, a case is defined as 1. A single adult defendant on a single charging document, regardless of the number of counts alleged, in a felony, gross misdemeanor, or misdemeanor matter; or 2. A single juvenile defendant on a single petition, regardless of the

number of counts alleged, in a matter concerning a child who is alleged to be delinquent or in need of supervision pursuant to title 5 of NRS. For a case in which multiple charges are involved, the case is classified by the highest offense charged at the time counsel is appointed.

topic.²⁰ The Delphi method is best suited for situations in which “[t]he problem does not lend itself to precise analytical techniques but can benefit from subjective judgments on a collective basis,” such as when empirical data are nonexistent, inaccurate, or unavailable.²¹ Under the classical Delphi approach, experts interact through questionnaires and remain anonymous throughout the entire process. In the context of workload assessment, the traditional Delphi approach has evolved into a structured in-person group discussion, which may or may not be preceded by one or more rounds of questionnaires.

Unlike the Delphi method, which is grounded entirely in expert opinion, the *time study* method of workload assessment is based on empirical data describing how attorneys and staff spend their time. During the time study, participants track their working time by case type and/or event, allowing researchers to construct an empirical profile of their activity. Depending on the project design, the time study may record only certain case-related activities, or all work performed by attorneys and staff, including case-related and non-case-related work. A time study typically runs for several weeks and may involve a sample of attorneys and staff members, or all attorneys and staff throughout the state.

A well-executed time study will produce a more accurate calculation of the time currently spent handling cases than a typical Delphi study; however, unlike a Delphi study, a time study can quantify only the time that attorneys and staff *currently* spend on their cases and does not

examine whether this is the amount of time that they *should* be spending to handle their cases efficiently and effectively. For this reason, NCSC has long employed a two-phase approach to workload assessment that is frequently referred to as the “what is”/“what should be” approach. Other organizations that conduct weighted caseload studies have since adopted the “what is”/“what should be” terminology, but typically do not incorporate the empirical data from the time study into the final workload model.

Under the NCSC framework, a time study forms the empirical foundation of the workload model. The time study results in a set of *initial case weights* that describe the amount of time attorneys and staff currently spend handling cases of each type, or “what is.” Given the unusual circumstances in which the current time study was conducted (during a global pandemic), the NCSC based the current case weights on the time study, but also used additional data to inform the case weights. To do this, NCSC staff used qualitative data from focus groups and a variant on the Delphi method in which panels of experienced indigent and private defense attorneys, investigators, and administrative staff members provided *qualitative* information to assist NCSC consultants in developing adjustments to the initial case weights; NCSC consultants used data for the census survey to determine if additional issues needed to be considered. Finally, since this time study was conducted during the COVID-19 pandemic, in which courts and other justice-related agencies were not conducting business as usual, the Nevada data was supplemented with both *LegalServer* data reporting the number of hours

²⁰ Harold A. Linstone & Murray Turoff, *Introduction to The Delphi Method: Techniques and Applications* 3, 10 (Harold A. Linstone & Murray Turoff eds., 2002).

²¹ *Id.* at 4.

worked on various cases, and case weights derived from indigent defense provider studies in other states.

The NCSC's two-phase workload assessment methodology provides the basis for judicial and/or court staff weighted caseload models currently in use in the majority of states. Two counties in Nevada (Clark and Washoe) have previously relied on the same two-phase "what-is"/"what should be" methodology to create weighted caseload models for district court judges.²²

D. Study Methodology

Using the NCSC "what is"/"what should be" framework, the current workload assessment was conducted in several phases:

1. At the onset of this study, an Indigent Defense Workload Standards Advisory Committee (the Advisory Committee) comprising chief public defenders, senior public defenders, office investigators and administrative staff, DIDS staff, and an Indigent Defense Commission member was convened to determine the parameters of the study, including the case types and activities on which to collect data, the attorney year value and the timeframe and dates during which the time study would occur. Given the unusual circumstances under which the time study was conducted and the fact that business was not being conducted as usual, the NCSC worked with DIDS leadership to discuss alternative methods by which to develop final case

weights for use in the development of an attorney needs model.

2. A *time study* in which all rural public defender/contract attorneys, investigators and staff were asked to record all case-related and non-case-related work, including evenings and weekends, over a six-week period (January 25 through March 5, 2021). The time study provided an empirical description of the amount of time participants devoted to handling cases of each type, as well as the division of the workday between case-related and non-case-related activities. However, as noted above, since the time study was conducted during the COVID-19 pandemic, the case weights did not provide an accurate portrayal of indigent defense work under "normal" working conditions and had to be further supplemented with additional data sources.
3. A *quality adjustment* process to ensure that the case weights incorporated sufficient time for effective representation. The quality adjustment process included:
 - *Focus groups* with attorneys in rural counties, including public defenders, contract attorneys and conflict attorneys. Focus groups provided lived experience of stresses and frustrations associated with the work and provided useful feedback regarding the provision of indigent defense services in rural Nevada. This feedback was useful in providing constructive insight into the detail behind the time study data collected. The focus group questions

²² Christopher Ryan, Marilyn Wellington, Anne Jones, Mary-Beth Kirven, John Douglas, Judicial Workload Assessment. Eighth District, Clark County, Nevada (2005); Suzanne

Tallarico, John Douglas, Anne Jones, Judicial Workload Assessment, Washoe County Nevada (2007).

focused primarily on the variations on workload demands based on the type of attorney (public defender, contract, conflict) and location in which the attorneys work and whether and how the COVID-19 pandemic impacted attorneys' ability to provide adequate representation to their clients.

- A structured review of the case weights by a set of *Delphi panels* comprising experienced attorneys, investigators, and administrative staff volunteers.
- Census survey data, especially regarding travel times by attorneys to meet client and travel to and from court.
- A comparison of case weights for similar case types from workload assessment studies conducted in other states under more normal working conditions.
- *LegalServer* data. NRS 180 requires the uniform collection of the amount of time indigent defense attorneys spend on their casework. DIDS began requiring all rural defense attorneys who provide indigent services to report all time associated with case work in the case management system called *LegalServer* on October 1, 2021. The NCSC analyzed data from the first nine months (October 1, 2021, through June 30, 2022) of data to obtain average case processing times, or case weights. This data available at that time was not sufficiently robust to generate statistically significant case processing information, because not all attorneys were entering data consistently or correctly in the early

months of implementation of that case management system. As the use of *LegalServer* becomes more consistent over time, the data should be able to be used to determine average case processing times.

The quality adjustment process, including focus groups, Delphi quality adjustment sessions, census survey data, and the comparison to other states' indigent defense provider case weights, was grounded in applicable professional standards and guidelines, including the ABA Standards for Criminal Justice: Defense Function and the temporary regulations for attorneys as promulgated by the Board of Indigent Defense Services in Nevada.²³

II. Case Types and Activities

On October 23, 2020, the Advisory Committee met to review and discuss the study design and establish the case type and activity categories upon which the time study would be based. Together, the case types, case-specific activities, and non-case-related activities describe all the work performed by rural Nevada indigent defense attorneys, investigators, and support staff.

A. Case Type Categories

The Advisory Committee was charged with determining the case type categories into which all indigent defense provider time would be divided for purposes of the weighted caseload model. The case type categories were designed to satisfy the following requirements:

²³ These standards were built into case weights to provide adequate time to provide effective representation in the various case types.

- The case type categories are both mutually exclusive and collectively exhaustive, meaning that any given case falls into one, and only one, case type category.
- Categories are legally and logically distinct.
- There are meaningful differences among categories in the amount of attorney, investigator and support staff work required to represent clients in cases of different types.
- There are a sufficient number of new case filings within the category to develop a valid case weight.
- New case filings for the case type category or its component case types are, or will be, tracked consistently and reliably.²⁴
- Case types are aligned with the reporting regulations being developed by DIDS (NAC 180), so in the future, case counts for these categories should be easily determined.

Figure 3 lists the case type categories identified for rural indigent defense providers.

B. Activity Categories

In addition to the case type categories, the Advisory Committee identified a set of activity categories to describe all case-related and non-case-related work performed by attorneys, investigators, and administrative staff. Because variations in local needs and staff availability result in some overlap between the roles of attorneys, administrative staff and investigators, all study participants used the same activity categories.

Case-related work includes all work directly linked to a represented individual in which the

attorney, investigator or administrative staffer engaged.

Non-case-related activities include all work that is not related to any case, such as office administration and preparing for and attending meetings. To simplify the task of completing the time study forms and to aid in validation of the time study data, vacation and other leave, and time spent completing time study forms were included as non-case-related activities.

Figure 3: Case Type Categories

Case Type
Death Penalty Cases
Category A Felonies
Category B Felonies
Misdemeanor DUI/Domestic Violence
Appeals (Felony and Gross Misdemeanors)
Misdemeanors & Appeals
Probation & Parole Violations
Juvenile Delinquency, Supervision, Appeals
Juvenile Probation/Parole Violations
Specialty Court Cases

Figure 4 lists the case-specific activities, and Figure 5 lists the non-case-related activity categories for public defender office attorneys and staff. Appendices A and B provide detailed definitions of each activity.

²⁴ At the point at which the time study was conducted, there was no system in place to consistently count new cases filed and assigned to rural indigent defense attorneys. The NCSC asked attorneys to track these cases during the time study,

but this was not consistently done in the same manner by all attorneys. By the time the report was finalized, the *LegalServer* data entry system was in full use by indigent providers, so accurate case counts can now be obtained.

Figure 4: Case-Related Activity Categories

Case-Specific Activities	
In-Court Activities	Bail and other general hearings
	Suppression hearings
	Bench trials
	Jury trials
	Waiting in court
Out-of-Court Activities	Client contact
	Consulting experts
	Consulting investigators/engaging in investigation
	Legal research
	Social work/sentencing advocacy
	Motions to suppress
	Other court actions
	Review police camera feeds
	Jury trial preparation
	Bench trial preparation
	In-court attorney support

Figure 5. Non-Case-Specific Activity Categories

Non-Case-Specific Activities
General non-case-related/administrative tasks
Attending and preparing for meetings
Training, conferences, continuing legal education
Work-related travel (not normal commute)
Providing supervision
Vacation/illness/other leave/furlough
Other
Time study tracking

III. Time Study

To provide an empirical portrait of current practice, NCSC conducted a comprehensive time study. For a period of six weeks, all attorneys, investigators, and support staff were asked to track all their working time by case type and activity. Part-time contract and conflict attorneys and staff were identified as “ancillary” staff, since they do not work exclusively on indigent cases; all others, were considered to be

“primary” staff, meaning that their work time is exclusively dedicated to indigent defense work.

Separately, each county provided annual counts of cases by case type category and office directly to the NCSC on a weekly basis. NCSC used the time study and caseload data to calculate the average number of minutes currently spent resolving cases within each case type category (initial case weights).

Data Collection

1. Time Study

During the six-week period from January 25 through March 5, 2021, all rural indigent defense service providers, including attorneys, investigators, and administrative staff were asked to track all working time by case type category and activity (for case-specific work), or by activity (for non-case-related work). Participants were instructed to record all working time, including any after-hours and weekend work. All participants recorded their time to the nearest five minutes using a web-based form.

To maximize data quality, all time study participants were asked to attend a webinar training session explaining how to categorize and record their time. In addition to the training sessions, participants were provided with web-based reference materials, and NCSC staff were available to answer questions by telephone and e-mail.

The web-based method of data collection allowed time study participants to verify that their own data were accurately entered and permitted real-time monitoring of participation

rates, helping to maximize the quality and completeness of the time study data. To ensure sustained participation throughout the course of the time study, NCSC provided weekly reports to DIDS regarding the participation rates of expected participants. If participation was low for a particular location, DIDS employees reached out to those individuals to ensure participation. This personal encouragement ensured sustained participation throughout the course of the study. At the conclusion of the time study, the data were weighted to account for the small amounts of missing data associated with sick leave, vacation time, vacancies, and temporary failures to report data.

In total, 100% percent of all primary participants (attorneys, investigators, and administrative staff) participated in the time study. This extremely high level of participation, if collected during “normal times” would ensure sufficient data to develop an accurate and reliable profile of the amount of time attorneys, investigators and administrative staff currently spend representing clients in each type of case, as well as on non-case-specific and non-case-related work. However, as will be discussed later, this did not hold true during the COVID-19 era, so the empirical data were supplemented with qualitative data derived from focus groups, Delphi Panels, census survey data as well as with case weights derived from weighted caseload studies for indigent defense providers in other states (during normal times).

2. Caseload Data

To translate the time study data into the average amount of time expended on each type of case (initial case weights), it was first necessary to determine how many individual cases of each type were assigned to each location on an annual basis. When the time study data were analyzed, obtaining accurate new case counts for rural indigent defense providers did not exist, so NCSC staff had to triangulate multiple sources of data for this information.

Prior to the creation of DIDS, state law did require that counties report caseload information; however, there was no guidance regarding the content of that information, so reporting detail was left largely to the counties. With the passage of AB 81 in 2018 (now codified in NRS 180), the enacting language that created DIDS, there is now a requirement to report “the total number of cases pending, closed, hours spent, and the number of expenditures in each participating county.”²⁵ DIDS has been collecting uniform data through *LegalServer* since October 2021.

To generate a reasonable set of open cases, the NCSC team had to estimate the number of cases being held in each county. To do this, the team relied on three data sources:

- **The Annual Report of the Nevada Judiciary and Data Appendix (fiscal year 2019).** This report, produced by the Nevada Administrative Office of the Courts (AOC), summarizes all cases filed in Nevada state courts by case type and county.
- **The Annual Report of the Nevada Department of Indigent Defense Services**

²⁵ Nevada Department of Indigent Defense Services Annual Report, Fiscal Year 2020, p. 15.

(fiscal year 2020 containing data from fiscal year 2019). The Board and Department of Indigent Defense Services was created in 2019. This report is the inaugural annual report produced by DIDS.

- **Case counts provided by attorneys during the 6-week time study.** In addition to recording time, attorneys were asked to track the number of new cases opened during the time study period using the case type categories displayed in Figure 4.
- **LegalServer new case counts.** In October 2021, rural indigent defense providers were required to report all new cases assigned, as well as the time they expended on each case. While the initial months of this data proved unreliable. By 2023, the indigent defense providers were using the *LegalServer* database to track new cases, so the final case counts used in the final resource needs model represents the most accurate method of counting new cases in rural Nevada.

IV. Case Weight Development

The initial case weights generated from the time study were expected to provide the amount of time rural Nevada indigent defense service providers spent handling various types of cases during that six-week period. As indicated previously, the time study was conducted under the unusual circumstance of a global pandemic that lasted for over a year. The pandemic disrupted court schedules because many courts were instituted social distancing protocols, which lengthened court hearings. Unlike the urban counties in Nevada courts in the rural counties remained open during the pandemic, but working under social distancing conditions became more time-consuming. Similarly, jail visits became more onerous, with jails either limiting attorney visits to allow for social distancing or are conducted via telephone or

Zoom calls, both of which are less than satisfactory to attorneys who seek to build a trust relationship with clients.

Given this significant change in practices, the NCSC team relied on other sources from which to generate interim case weights, including focus groups conducted with rural indigent defense providers, Delphi Panels conducted with attorneys, a census survey conducted with rural indigent defense attorneys, and past weighted caseload studies conducted for indigent defense providers, which incorporated ABA standards.

A. Focus Groups

As a precursor to the time study, the National Center for State Courts conducted focus groups with three attorney groups, including rural public defenders, contract attorneys, and conflict attorneys. A total of twenty-one attorneys participated in the focus groups, which were conducted via Zoom in December 2020.

The purpose of the focus groups was to inform the NCSC about the variations in their workload demands, time constraints and whether and how responses to the COVID-19 pandemic impacted their ability to adequately represent their clients. The information obtained from the focus groups was used to inform the final case weights presented below.

Focus Group Themes

Three primary questions were posed to the focus group participants. First, we asked whether they feel they have sufficient time, without working overtime, to attend to all aspects of their job. Second, we asked what the greatest constraints on their time are; and third, we asked whether and how the COVID-19 pandemic has changed

the way their work is conducted. The results are presented below.

Is their sufficient time to engage in all aspects of your work without having to work overtime on a regular basis?

All of the focus group participants indicated that the work ebbs and flows, so there is never a “typical week or month;” however, there were variations in perceptions of workload across the three groups. Public defender participants were more likely to indicate feeling as though they are “never caught up.” These sentiments did not come from a defeatist attitude, but rather a realistic attitude. They all agreed that they do not have enough time in a day to get their work done, and they all described working long days and most weekends just to stay on top of the work. One participant summed up what all of the participants were saying this way: “When I first started, I worked all the time; now I work less; you just learn to be more efficient.” As a group, the public defenders noted that the high workload levels lead to frustration at not being able to do more for their clients. One participant noted that “Early on, I was stressed that I could not keep up with everything. You just need to learn to live with not getting everything done.”

Contract attorneys were more likely to indicate that their workloads are generally manageable, but that they can sometimes get out of hand. Depending on where they are located, these attorneys have contracts that amount to an approximate half-time job or a full-time job, which might account for their sentiment regarding their workload levels. To a person, contract attorneys all agreed that it is hard to predict when cases will be assigned, and they may come one at a time, or in groups. Given this, a contract attorney may find him/herself

working seven days each week for ten to twelve hours per day; but when caseloads drop, they could be working much less. Overall, contract attorneys agreed their workloads generally are manageable.

Conflict attorneys saw their workloads more similarly to contract attorneys. Many of the conflict attorneys work in multiple jurisdictions, so their work may be impacted by virtue of the location of the case to which they have been assigned, often requiring more travel time to meet with a client and/or attend court hearings. One attorney summed up the work in this way “As far as general workload is concerned, I feel that we are very busy and occasionally it can be overwhelming, but not to the extent of many other offices across the country that you hear horror stories about. We are fortunate to have the resources that we do, so I can understand why it has been and likely will continue to be difficult to find attorneys in the rural counties that are willing to take on indigent defense given the amount of work, lack of resources, and high expectations.”

When you think about your work, what are the greatest constraints on your time?

Four major categories arose from the discussion of the greatest time constraints associated with representing indigent clients in the rural counties of Nevada, including: client services, jail visits and associated travel, court visits and associated travel, and reviewing electronic discovery data. Each issue will be discussed in order.

Client Services. Several the attorneys indicated that they spend more time on “social work” activities than they do on legal work. Contract attorneys and public defenders were the most

likely to report spending a lot of their time tracking down and enrolling clients in services, such as mental health or substance abuse treatment programs. Similarly, attorneys work with clients ensuring they appear in court, helping to reinstate driver's licenses, having interlock systems installed in cars, connecting them with computers to attend virtual court hearings, obtaining transportation to work, meetings and other services and in simply helping their clients navigate the criminal justice system.

Focus group participants said they feel this aspect of the job is as important as the legal services they provide, because following terms and conditions of placement. Working to obtain services for clients is also extremely challenging for rural indigent attorneys, because services are limited, mass transportation is non-existent and many clients do not have adequate means of communication, including phone service or computer access. Some attorneys enlist the assistance of office workers, such as paralegals or secretarial support, but in the end, most of this work is done by the attorney.

Jail Visits and Associated Travel. All attorney groups listed jail visits and travel associated with them is an extremely time-consuming, but critical component of their job. Finding time to travel to the jail, locating clients, finding private places to meet, and completing the necessary paperwork to meet with a client combine to make meeting with detained clients a time-consuming task.

Due to the COVID-19 restrictions, some jails are allowing detainees to meet with attorneys over Zoom or by telephone, but several of the participating attorneys expressed conflicting feelings about these options. As one attorney

stated "Video visitation in rural jails would be really great and could increase the number of attorneys who could take a case. On balance though, I prefer to look people in the eyes when I talk to them, and this is a big limitation of video interactions." Another participant made a strong case for meeting with clients in person at the jail, noting that the clients don't know the attorneys and have no reason to trust them, so meeting with them in person provides the ability to begin establishing that trust relationship.

Court Hearings and Associated Travel. Similar to the discussion relating to jail visits and travel, rural indigent defense service providers spend a lot of time traveling to and from court and attending court hearings. At a minimum, all attorneys have to juggle hearing dates and times in district and justice courts; and in some cases, they cover more than two court locations. Most indigent defense service providers attend arraignments, initial appearances, and bail/detention hearings, as these are the most likely places from which to obtain newly assigned cases. While this practice has significant benefits, including quickly connecting an attorney and client, it is also a time-consuming process. In one rural court location, each of the three attorneys spends a full week of their time in court, just to ensure that individuals to whom they might be assigned have their rights protected. And once a court session has ended, attorneys reported that they typically have a lot of phone calls to make and new cases for which to prepare, making court days very long days.

Attorneys indicated that it is difficult to get other work done while waiting in court, so much of the waiting time is lost. Courts also have different practices regarding the order in which they call cases. In one location, public defender cases are

prioritized by the court, so attorneys in that court can get in and out of court in a reasonable amount of time; other attorneys indicated that courts in which they work are just the opposite and prioritize paid attorneys' cases over the indigent cases.

Another factor exacerbating the court schedule is that some jurisdictions have multiple justice and district courts. For example, in Douglas County there are two district courts and two justice courts, so juggling court schedules can be very difficult. Several attorneys also noted that having clients in specialty courts can be difficult on both the attorney and the client. For clients, transportation is always an issue for indigent defendants as there is no public transportation available. Some attorneys indicated they provide rides to clients to attend drug court and other treatment services, but this is not sustainable. It is not unusual for rural indigent clients to give up on drug court because of these transportation limitations.

Three public defender participants indicated that they regularly spend time in specialty court meetings and hearings. These participants noted that they really don't do anything for their clients during these sessions and wondered aloud why non-lawyers could not participate instead.

Reviewing Electronic Data. Obtaining, storing, and reviewing electronic data has become one of the most onerous tasks in which indigent defense attorneys engage. Not only does the review of electronic data take hours, but depending on the court, the information may be delivered to the attorney at the last minute, with little or no time to effectively review it. For example, watching police body camera or dashboard camera footage is a necessary, but

time-consuming task. The entire footage has to be reviewed at least once to determine what information is available, and then it has to be reviewed again, often several times, to clearly understand what evidence exists. In a single case, it is not unusual to have ten hours of body camera footage to review. Other types of digital data can also be time consuming to review, such as social media data and digital information such as text messages. As one attorney stated: "All pieces of data must be read or listened to and much of which will, in the end, not be useful but you don't know until you've reviewed the information." Another attorney agreed with the degree of scrutiny needed to review electronic data: "Watching relevant footage is hard. First, you have to locate the relevant footage (for example, on CD-ROM), then watch everything that may be relevant. I may get questions if something occurs at arraignment; if the judge asks if I've reviewed the camera footage, I don't want to say 'no.' This takes a lot of time. This is true of body or police dashboard cameras, surveillance camera footage and cell phone data review (social media, text messages), especially used in probation violations."

Focus Group Summary

The attorneys participating in the focus groups indicated that there are four areas of work that take up most of their time: finding and coordinating client services, such as mental health or substance abuse treatment; conducting jail visits; time in court hearings and trials (including waiting in court); and reviewing electronic data, such as police body camera footage and social media output. While they agree this is all part of their jobs, the amount of time some of these activities require is exacerbated by the fact that they practice in rural jurisdictions with limited services, far

distances between court and jails and the explosion of forensic use of electronic data. It is also important to note that most of the time-consuming factors identified were not present when the initial defender standards were developed in 1973.

B. Delphi Panels and Case Weights for Indigent Providers in Other States

To ensure that the final workload model incorporated sufficient time for effective representation, project staff facilitated a series of Delphi sessions with five panels of attorneys, investigators, and administrative staff in April 2021. Separate panels were held for public defenders, private attorneys, contract indigent defense attorneys, death penalty attorneys, investigators, and administrative support staff; each panel consisted of volunteers. The attorney panels focused on a subset of case types, including death penalty, felony cases, adult misdemeanors (including DUI and domestic violence cases), juvenile delinquency, appeals, and probation/parole violations. The investigator and administrative staff panels addressed all case types.

The Delphi panels provided opportunities for the NCSC staff to hear from participants how much time it currently takes – and should take -- to handle different types of cases from each of their perspectives.

C. Rural Indigent Defense Attorney Census Survey

As part of the Nevada Indigent Defense Services Weighted Caseload Study, the Department of Indigent Defense Services (DIDS) and the

National Center for State Courts (NCSC) asked all attorneys to complete a census survey to provide important background information to assist with the data analysis and development of standards. Since there are differences among defender systems across rural Nevada, it was important to understand the variations between counties and how these variations affect representation of indigent defendants. The survey was sent to public defenders, contract attorneys, and conflict attorneys. Out of 73 attorneys, 45 completed the survey.

To get a better understanding of the variations between practices, the attorneys were asked to provide some basic background information. Respondents were asked how long they have been practicing law and specifically how long they have been practicing criminal law. The responses ranged for both questions, with the minimum number of years being 1 and the maximum being 43 years, suggesting that there is a vast range of experience among those who completed the survey.

The majority of attorneys indicated they either meet with their clients in their offices (83%), at the courthouse (8%), or at another location (10%). This suggests that the need to build in additional travel time for this purpose was not necessary. Survey respondents were also asked to provide the average amount of time they spend traveling for court, to meet with clients, or for other purposes related to their jobs. When averaged, it was found that attorneys spend approximately 12.33 hours per month traveling.

D. Case Weights from Previous Indigent Defense Provider Workload Assessment Studies in Other Jurisdictions

To generate the final case weights, the case weights from public defender workload assessment studies conducted in Maryland, Massachusetts, Michigan, Missouri, New Mexico, North Carolina, Texas, and Virginia compared across comparable categories for capital murder, non-capital murder, B felonies, misdemeanor DUIs and DV, misdemeanors, adult probation and parole violations, specialty court cases and juvenile delinquency. The case weights from these states were compared with input derived from the Nevada time study, focus groups and Delphi Panels and recommended case weights were generated. There were no case weights for appeals cases, so the focus group and Delphi input were heavily relied upon to generate that case weight. The capital case weights were derived solely from the Delphi Panels.

While the RAND Corporation's recommended case weights and standards have recently been published, there was not sufficient time to incorporate this information into the current recommended case weights. RAND's recommended standards for indigent representation are suggested for use in the absence of a local workload assessment. RAND states that having a specific state or local workload study is the ideal approach for public defense resource planning. The current case weights and caseload standards are based on Nevada-specific data and input.

E. Final Case Weight Methodology

As discussed previously, the time study did not provide adequate information from which to

determine representative case weights. Largely due to the pandemic, fewer cases were filed, because fewer arrests were made; few, if any jury trials occurred, since many courts were either closed or were limiting trials due to the need to socially distance and ensure health safety. Additionally, there was limited travel to courts and jails during this time, again, to ensure health safety. All of this combined to provide a less-than-accurate picture of the work conducted by indigent defense providers, investigators, and staff.

Given this unusual set of circumstances, the NCSC relied heavily on past weighted caseload studies conducted with indigent defense providers, ABA standards, as well as feedback from the Delphi panels. Additionally, time study data from investigators (there were only two employed full-time) and administrative staff was truncated for the same reasons described above for attorneys, so NCSC consultants again looked to past studies as well as Delphi panel information and staffing patterns in the larger public defender offices in Nevada to determine appropriate staffing levels and ratios of investigators and support staff to attorneys. The recommendations for staffing for investigators and support staff are based on ratios of staff to attorneys, rather than on case weights.

Final Case Weights and Staffing Ratios for Investigators and Administrative Staff

Provided below are the final case weights computed from a combination of the sources identified above. All case weights represent the average number of hours that should be expended on each identified case type by one attorney. The death penalty case weight is an exception, in that it includes the total number of hours that are expected to be associated with a

death penalty case for two attorneys over a period of several years. Attorneys defending death penalty cases must meet specific experiential criteria laid out in Nevada Supreme Court Rule 250, which many indigent providers do not currently meet.

Figure 6: Final Attorney Case Weights in Hours

Case Type ²⁶	Case Weight (hours)
Death penalty cases	3,647.6
Category A Felonies	50
Category B Felonies	20
Misdemeanor DUI/DV	10
Appeals (Felony and Gross Misdemeanors)	50
Misdemeanor and Appeals	6
Probation and Parole Violations	4
Juvenile Delinquency, Supervision and Appeals	7.1
Juvenile Probation and Parole Violations	26
Specialty court cases**	90
Annual time for 48-hour hearings***	3

*Death penalty cases require two attorneys with specific qualifications.

**Specialty court cases require attorneys to be present at weekly or monthly meetings, as well as to participate in staffing sessions, for an average of 7.5 hours per month.

***The annual time for 48-hour hearings is weekend and holiday in-custody bail review hearings.

Another metric that can be computed based on case weights is the caseload standard. Once case weights have been computed, caseload standards are then generated for each case type by dividing the number of attorney case-related hours available per year (shown in Figure 10) by

the case weight to determine the number of cases a single attorney could be expected to handle in one year if he or she was only handling that particular case type.

For example, the number of hours required to process the average felony case in is 50 hours. The number of hours available per year rural indigent defense attorney to process cases is 1,392.6 hours (220 days x 6.33 hours per day)²⁷. Dividing the number of hours available per year for each attorney by the number of hours required, on average, to handle each case filed results in the number of cases of a particular type a single attorney could handle in one year (i.e., $1,392.6 / 50 = 27.85$ felony cases annually). The case weights and workload standards per attorney/per year for each case type are presented in Figure 7.

²⁶ While civil cases were originally a part of this project, we opted to not include this case type in this project because DIDS was only tasked with developing standards for criminal/delinquent case types. Also, there are a range of civil case types that are sometimes assigned to these

attorneys, that it was nearly impossible to determine a case weight.

²⁷ The 6.33 hours per day includes an 8-hour working day minus 1 hour for non-case-related work and 40 minutes (.67 hour) of travel time per day.

Figure 7: Attorney Annual Caseload Standards

Case Type ²⁸	Case-Specific Hours per Year	Case Weight (hours)	Caseload Standard
Death penalty cases	1,392.6 ÷	3,647.6	= .38
Category A Felonies	1,392.6 ÷	50	= 27.8
Category B Felonies	1,392.6 ÷	20	= 69.6
Misdemeanor DUI/DV	1,392.6 ÷	10	= 139.3
Appeals (Felony and Gross Misdemeanors)	1,392.6 ÷	50	= 27.8
Misdemeanor and Appeals	1,392.6 ÷	6	= 223.1
Probation and Parole Violations	1,392.6 ÷	4	= 348.2
Juvenile Delinquency, Supervision and Appeals	1,392.6 ÷	7.5	= 53.6
Juvenile Probation and Parole Violations	1,392.6 ÷	26	= 185.7
Specialty court cases	1,392.6 ÷	90	= 15.5
Annual 48-hour hearings	NA	3	NA

Looking at caseload standards can provide an easy metric from which to determine when a defender's caseload has reached levels of full capacity. Of course, no attorney is handling a single case type, so the standards would need to be combined for each attorney to determine when each attorney has reached their viable caseload capacity. The attorney caseload standards, based on the case weights are shown in Figure 7.

Given the limitations of the time study data, along with significant variations in staffing levels across the rural counties, the NCSC recommends using staffing ratios to determine the number of support staff and investigators needed in each county, based on the number of full-time

²⁸ While civil cases were originally a part of this project, we opted to not include this case type in this project because DIDS was only tasked with developing standards for criminal/delinquent case types. Also, there are a range of civil case types that are sometimes assigned to these

equivalent (FTE) attorneys required. These ratios are based on past studies reviewed where staffing needs for investigators and administrative staff were assessed.

Since all of the investigators utilized by rural indigent defense providers are privately employed, the ratio for investigators should begin with the development of a fund that is consistent with the comparable level of an FTE position (e.g., 25% of one FTE investigator's salary) if there is only one attorney in a particular county. For administrative staff, there appear to be economies of scale when multiple attorneys exist in a particular office. For this reason, we recommend one administrative staff person for a single attorney and one administrative staff person for every two attorneys in offices in which there are multiple attorneys. Figure 8 provides these recommended ratios.

Figure 8: Staffing Ratio Recommendation for Investigators and Administrative Staff

Positions	Ratios (Attorneys: Staff)
Investigators: Attorney(s)	4:1
Administrative Staff: Attorney (single attorney offices)	1:1
Administrative Staff: Attorney (multiple attorney offices)	2:1

V. Resource Need

In the weighted caseload model, three factors contribute to the calculation of attorney²⁹ need:

attorneys, that it was nearly impossible to determine a case weight.

²⁹ Since the need for investigators and administrative staff are determined based by a ratio of attorneys to staff, the weighted caseload model has been developed for attorneys

caseload data, case weights, and the year value. The year value is equal to the amount of time each full-time attorney or staff member has available for case-specific work on an annual basis. The relationship among caseload data, case weights, and year value is expressed as follows:

$$\frac{\text{Caseload Data}}{\text{Year Value}} \times \text{Case Weights} = \text{Resource Need (FTE)}$$

Multiplying the caseload data (new cases assigned in a single year) by the corresponding case weights calculates the total annual case-specific workload in minutes. Dividing the workload by the year value yields the total number of FTE attorneys needed to handle the workload, and application of the ratios to the attorney need indicates the need for investigators and support staff. Death penalty cases were not included in the development of the attorney needs model, since they are relatively rare and can take many years to reach resolution. Given that the model estimates the number of attorneys needed to provide representation for all cases assigned in a given year, death penalty cases do not fit this model.

All workload studies are based on the development of a standard year in which workers are expected to work. Typically, year values exclude weekends, holidays, and a reasonable amount of time for employees to have time off for vacation, illness, or personal time, and a reasonable amount of time devoted to professional training. While the standard year value does not preclude employees from working additional hours at any time, the

expectation that employees would work overtime is not reasonable. In Nevada, for example, the judicial workload studies conducted in Clark County (2005) and in Washoe County (2007), included year values of 219 days at 7.5 hours per day and 210 days at 7.5 hours per day, respectively.

A. Year Value

To develop the year values for attorneys³⁰, it was necessary to determine the number of days available for case-related work in each year (work year), and to divide the workday between case-specific and non-case-specific work (day value).

1. Work Year

The *work year* represents the number of days per year during which a full-time attorney works on case-specific matters. As shown in Figure 9, the Advisory Committee constructed the work years for attorneys and staff by beginning with 365 days per year, then subtracting weekends, holidays, annual leave and sick leave, and conferences and training. The work year is 220 days, at 8 hours per day, for attorneys, staff, and investigators.

Figure 9. Attorney Work Year Value

Work Year Breakdown	Attorneys, Staff & Investigators Days
Total days per year:	365
-Weekends	104
-Holidays	11
-Personal leave	25
-Training & staff education	5
Total working days available	220

and the ratios for investigators and administrative staff are derived by applying the ratios at the bottom.

³⁰ Though not used to develop the need model for investigators and administrative staff, the year value for both positions is consistent with the attorney year value.

2. Day Value

The day value represents the amount of time each attorney has available for case-specific work each day. This value is calculated by subtracting time for lunch/breaks, and non-case-related work from the total working day. The time study indicated that attorneys spend approximately one hour each day on non-case-related work. Data from the attorney census survey indicated that attorneys travel, on average 12.33 hours per month, which averages out to 40 minutes per day. Given this, in a normal 8-hour workday, attorneys spend 6 hours on case-related work, not including travel.³¹

Figure 10: Attorney Day Value

Workday	8	480
Non-case-related work	1	60
Travel	.67	40
Case-related workday	6.33	379.8

To calculate the final year value for case-specific work, the number of days in the working year was multiplied by the day value for case-specific work. This figure was then expressed in terms of hours per year. Figure 11 shows the calculation of the case-related year value for attorneys.

Figure 11: Case-Related Annual Attorney Year Value

Year Value				
220	x	6.33	=	1,392.6

³¹ Based on information obtained through both focus groups and Delphi Panels, travel is likely underestimated in this non-case-related time estimate. Time study data is the only empirical data available for this estimate, and that data indicated that both non-case-related work and travel combined to equal 43 minutes per day, which we rounded up to 60 minutes to account for travel.

B. Resource Need

To calculate the number of attorneys needed in each county, the annual new case count for each case type was multiplied by the corresponding case weight to compute the annual workload in minutes associated with that case type. Workload was summed across all case types, then divided by the year value, or the amount of time each full-time attorney has available for case-specific work in one year. This yielded the total number of attorneys required to handle each location's case-related workload and non-case-related responsibilities, in full-time equivalent terms.³²

Figure 12 shows that, across the 15 rural counties in Nevada, a total of 89.2 attorneys are needed to manage the number of new cases assigned in Fiscal Year 2022-23.

Figure 12: Rural Indigent Defense Attorney Resource Need by County

Location	Attorneys Needed (FTE)
Carson City	16.3
Churchill	7.4
Douglas	8.8
Elko	16.4
Esmerelda	.3
Eureka	.3
Humboldt	4.9
Lander	1.3
Lincoln	1.1
Lyon	12.0
Mineral	2.1
Nye	12.0
Pershing	2.3
Storey	1.3
White Pine	3.3
TOTAL	89.9

³² Basing staffing needs on case weights is not a new concept in Nevada. Indeed, in 2005 Clark County employed the NCSC to develop a judicial needs model based on case weights in 2005, and Washoe County engaged the NCSC to conduct a similar study in 2007. In August of 2023, NCSC received an inquiry from the Washoe County Family Court to conduct another study of this nature.

Figure 13 shows the need for investigators and administrative staff (based on the recommended ratios shown in Figure 8) in each rural indigent defense provider county. In the aggregate, the model demonstrates a need for 89.9 attorneys to effectively handle current rural indigent defender caseloads. The model also shows a need for 46.4 administrative support staff members, and a need for 22.5 investigators.

Social workers in public defense systems play a critical role in ensuring clients are assessed for, and receive, critical services prior to and after case resolution. Social workers also frequently testify in court, providing judges with information and insights into extenuating circumstances surrounding the client's actions, as well as recommended services to address those circumstances.³³ As discussed in the focus group section of this report several attorneys reported spending more time on social work activities, such as obtaining treatment services, obtaining transportation, reinstating driver's licenses, and similar assistance that help ensure that they can meet the obligations of pre-trial release.

One study did find that public defender clients who received social worker services were less likely to incur additional misdemeanors or felonies within a two-year period than those who did not receive such services.³⁴ While no reports exist on recommended staffing levels for social workers, these critical positions, if included as part of all public defense teams in rural Nevada, are likely to result in better overall representation of clients, and could alleviate

some of the work currently conducted by attorneys, so they can focus on lawyering, rather than the provision of social services.

Figure 13: Rural Indigent Investigators and Support Staff Resource Need by County

Location	ATTORNEYS		
	Attorneys Needed (FTE)	Number of Investigators Needed (FTE)	Number of Support Staff Needed ³⁵ (FTE)
Carson City	16.3	4.1	8.1
Churchill	7.4	1.9	3.7
Douglas	8.8	2.2	4.4
Elko	16.4	4.1	8.2
Esmerelda	0.3	0.1	0.3
Eureka	0.3	0.1	0.3
Humboldt	4.9	1.2	2.5
Lander	1.3	0.3	1.0
Lincoln	1.1	0.3	1.0
Lyon	12.0	3.0	6.0
Mineral	2.1	0.5	1.1
Nye	12.0	3.0	6.0
Pershing	2.3	0.6	1.1
Storey	1.3	0.3	1.0
White Pine	3.3	0.8	1.6
TOTAL	89.9	22.5	46.4

VI. Recommendations

This workload assessment provides strong evidence of a need for more attorney and staff resources to effectively handle the current workload of Nevada's rural indigent defense providers. The following recommendations are intended to promote the effective implementation of the weighted caseload model, preserve the model's integrity and utility

³³ Assessing a Social Worker Model of Public Defense, Urban Institute, Andrea Matei, Jeanette Hussemann, and Jonah Siegel, March 2021.

³⁴ Sara Beck Buchanan, Social Work Practice in Public Defense, Phd diss., University of Tennessee, 2017.

³⁵ In locations where less than one FTE attorney is needed, support staff need equals that of the attorney need.

over time and ensure effective representation of Nevada's rural indigent defendants.

Recommendation 1

Indigent defense provider offices should be provided with enough attorneys, administrative staff, and investigator support to represent clients effectively and consistently across rural Nevada. The focus groups, Delphi Panels, census survey, and state comparison quality adjustment processes clearly demonstrate that attorneys and staff face serious resource constraints at current caseloads and staffing levels. Appropriate resource levels can be achieved either by adding attorneys and staff to indigent defense provider offices or by reducing first-tier public defender office caseloads. Options used to reduce first-tier defender caseloads could include transferring a portion of the workload to the NSPD under NRS 180.450, contracting with private counsel, or reducing or eliminating the civil workload.

Recommendation 2

Social workers serve a critical function where they exist in indigent defense provider offices. Where social workers are not employed, attorneys, investigators or administrative staff provide this function in addition to their traditional duties. Social workers' specialized professional knowledge enables them to investigate clients' social histories, obtain educational and health records, place clients in treatment and other programs, prepare mitigation information, and assist in developing alternative sentencing plans—often more efficiently and effectively than an attorney, investigator or administrative staffer can. Nevada's rural indigent defender offices currently employ just one social worker in Elko

(who is sometimes assisted by interns), although there are 51 indigent defense attorneys in fifteen rural counties. To improve both the effectiveness and efficiency of client representation, social workers should be made available in all rural Nevada counties.

Recommendation 3

DIDS should consider hiring a small group of mitigation specialists available to work with rural indigent defense attorneys in the rural counties. Mitigation specialists are members of the criminal defense team that provide significant documented history of the defendant for use by defense counsel. The information provided is used to identify potential mitigating factors that should be presented to the court. Mitigation specialists are especially important for use in capital murder cases and high-level felony cases. In Nevada, Clark County employs 2 mitigation specialists for 20 attorneys and Washoe County employs 1 mitigation specialist for 37 attorneys, for a combined total of three mitigation specialists for 57 attorneys, or ratio of 1 mitigation specialists for every 19 attorneys. Applying this ratio to the 80.8 rural indigent defense attorneys needed, that implies a need for 4.3 mitigation specialists across all of the rural counties.

Recommendation 4

Administrative staff, investigators, and social workers are essential components of the defense team. These staff members complement the work of the attorney, increasing the attorney's effectiveness and efficiency in representing clients, but cannot fulfill the attorney's unique professional functions. Therefore, staff and attorney positions should not be treated as fungible.

Recommendation 5

Many of the rural indigent defense attorneys have civil cases assigned to them, which increases their workload beyond what is presented in this report. Developing case weights for civil cases was outside of the scope of this project, and the recommendations are for the number of attorneys needed that are practicing only indigent defense as defined by NRS 180.004.

Recommendation 6

DIDS should create a complex litigation unit that would be housed in the State Public Defender's Office. The complex unit should include attorneys, administrative staff, investigators, and mitigation specialists. Death penalty case attorneys have to be specially trained and have a certain level of experience to represent indigent defendants (Nevada Supreme Court Rule 250). If a rural attorney does not have the requisite qualifications and skills another will be appointed. Given that the NCSC are relatively rare, but they do occur, we are unable to recommend the staffing needs for this unit.

Recommendation 7

DIDS should monitor the new case count and hours expenditure database located on *LegalServer* to ensure its accuracy. Once the accuracy has been ensured and ample, accurate data have been entered, DIDS should use this information to update the needs model on an annual basis.

Recommendation 8

DIDS and indigent defense providers should actively use the weighted caseload model to monitor and manage workloads. Annual calculations of workload based on caseload numbers can aid DIDS in determining the appropriate allocation of attorneys, investigators, and staff to offices. Calculating incoming workload on the basis of appointments can also assist indigent providers in monitoring capacity and assigning cases to individual attorneys.

Recommendation 9

Over time, the integrity of any weighted caseload model may be affected by external factors such as changes in legislation, case law, legal practice, court technology, and administrative policies. NCSC recommends that Department of Indigent Defense Services conduct a comprehensive update of the public defender office weighted caseload model every five to seven years. This update could either entail an analysis of the *LegalServer* data or it could include both a time study and a comprehensive quality adjustment process.

Recommendation 10

It is recommended that all rural counties in Nevada heed the recommended case weights/caseload standards and provide staffing resources, including attorneys, investigators, and administrative staff equally across all rural counties.

Appendix A. Case-Specific Functions

Activities that pertain to a specific case in which you have been appointed to represent the client.

IN-COURT ACTIVITIES

01. Bail and other general hearings

Includes initial appearances, pretrial conferences, status conferences arraignments, specialty court hearings and sentencings.

02. Suppression hearings

Appearing for suppression and other evidentiary hearings.

03. Bench trials

All in-court work associated with bench trials.

04. Jury trials

All in-court work associated with jury trials.

05. Waiting in court

All time spent waiting in court while not actually engaged in a hearing or trial.

OUT-OF-COURT ACTIVITIES

06. Client contact

Includes all client contact, including interviews, case-related discussions, institutional visits (jail, hospital), phone calls, office visits, correspondence.

07. Consult experts

Includes all work related to experts, including identifying and conferring with, preparing for expert testimony.

08. Consult investigators/engage in investigation

Includes all work related to investigations, including preparing and submitting discover requests, interviewing law enforcement, witnesses, and others, conducting crime scene visits, requesting documents.

09. Legal research

All legal research conducted to inform or support work on an indigent client's case, including the preparation of legal memoranda or other written documents.

10. Social work/sentencing advocacy functions

Includes developing mitigation information, working with probation on pre-sentence investigation and identifying sentencing and placement alternatives for clients, arranging for client placement in appropriate programs, gathering medical, psychiatric educational and family histories, evaluating clients, performing home visits, staffing cases, coordinating emergency responses.

11. Motions to suppress

Preparing motions to suppress, including legal research, and writing of motions.

12. Other court actions

Other out-of-court actions not defined above, including reviewing discovery and preparing for pleadings and negotiations that are not related to a trial, and post-conviction writs and appeals of post-conviction writs.

13. Review police camera feeds

Time spent reviewing body camera footage and time spent reviewing the dash camera footage.

14. Jury trial preparation

All time associated with preparation for a jury trial.

15. Bench trial preparation

All time associated with preparation for a bench trial.

16. In-court attorney support

Includes activities that support the attorney's in-court work on indigent cases, such as providing information at arraignments, providing support and information at other hearings/reviews.

Appendix B: Non-Case-Specific Functions

Activities that *do not pertain to an individual case in which you or your office has been appointed to provide representation*. Includes activities that are not related to client representation, are related to a case in which you or your office has not been appointed to represent the client or may be related to multiple cases in which you are providing representation.

a. General non-case-related/administrative tasks

Includes activities related to general office work, such as non-case-specific paperwork, preparing and reviewing bills, authorizing leave requests of subordinates, responding to general email, phone calls and other correspondence, addressing technical and technological issues.

b. Attending and preparing for meetings

Includes time spent in meetings, preparing for meetings, such as staff meetings, state-or county-level meetings; include all meetings whether internal or external.

c. Training, conferences, continuing legal education

Participating in. any training or other educational opportunities related to your work, whether required or optional.

d. Work-related travel (NOT normal commute from home to office)

All reimbursable travel time not including your regular commute time.

e. Providing supervision

Direct supervision of subordinates (attorneys, investigators, administrative staff, others).

f. Vacation/Illness/Other leave/Furlough

All time off taken for vacation, illness or other purposes, including Furlough days. Assume each day off is equivalent to 8 hours; short period off for doctor or other appointments can be reported as the amount of time away for that appointment (e.g., 1 or 2 hours).

g. Other

All other non-case-related work that does not have a distinct reporting category.

h. Time study data tracking and reporting

Record all time associated with tracking and entering time for the weighted caseload study.

Appendix C: RAND Corporation’s Recommended Case Weights³⁶

Case Type	Case Weights (hours)
Felony – High (Life without Parole)	266
Felony – High – Murder	248
Felony – High – Sex	167
Felony – High – Other	99
Felony – Mid	57
Felony – Low	35
DUI – High	33
DUI – Low	19
Misdemeanor – High	22.3
Misdemeanor – Low	13.8
Probation and Parole Violations	13.5

³⁶ Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study*, Rand Corporation, Santa Monica, CA, 2023, p 113.

Eleventh Report of the Monitor
Davis v. State, Case No. 170C002271B
February 23, 2024

Appendix D

Approved Regulation Changes

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

CARSON CITY OFFICE
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701
(775) 684-6800

LAS VEGAS OFFICE
GRANT SAWYER STATE OFFICE BUILDING
555 E. WASHINGTON AVENUE, SUITE 4400
LAS VEGAS, NEVADA 89101
(702) 486-2800

December 15, 2023

Ms. Marcie Ryba
Director
Department of Indigent Defense Services
896 West Nye Lane, Suite 202
Carson City, NV 89703

Re: LCB File No. R033-23

Dear Ms. Ryba,

A regulation adopted by the Board on Indigent Defense Services has been filed today with the Secretary of State pursuant to NRS 233B.067 or 233B.0675 as appropriate. As provided in NRS 233B.070, this regulation becomes effective upon filing, unless otherwise indicated.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 6 of NRS 233B.070.

Sincerely,

Asher A. Killian
Legislative Counsel

Melissa N. Mundy
Principal Deputy Legislative Counsel

Bradley A. Wilkinson
Chief Deputy Legislative Counsel

AAK/amh
Enclosure

SECRETARY OF STATE
FILING DATA

FILED.NV.SOS
2023 DEC 15 AM 8:29

**Form For Filing
Administrative Regulations**

**Agency: Department of
Indigent Defense Services and the
Board on Indigent Defense Services**

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: These Regulations are added to the Nevada Administrative Code (NAC) Chapter 180, which regulate indigent defense services in the State of Nevada.

Authority citation other than 233B NRS 180, NRS 260, AB454(2023)

Notice date September 26, 2023

Date of Adoption by Agency

Hearing date November 2, 2023

November 2, 2023

**APPROVED REGULATION OF THE
BOARD ON INDIGENT DEFENSE SERVICES**

LCB File No. R033-23

Filed December 15, 2023

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: § 1, NRS 180.320, as amended by section 2 of Assembly Bill No. 454, chapter 285, Statutes of Nevada 2023, at page 1888; §§ 2-11, NRS 180.320; § 12, NRS 180.320, as amended by section 5 of Assembly Bill No. 518, chapter 497, Statutes of Nevada 2023, at page 3060.

A REGULATION relating to indigent defense services; establishing provisions concerning hourly rates of compensation for certain attorneys who provide indigent defense services; requiring that plans for the provision of indigent defense services provide the processes that counties will use to hire certain attorneys and select and assign additional or alternate attorneys to provide indigent defense services in certain circumstances; requiring that plans provide for a first tier and second tier of indigent defense representation and set forth the process for assigning or determining the attorneys who will be present at pretrial release hearings, initial appearances and arraignments; providing that plans must require indigent defense representation to be provided consistent with the American Bar Association's Criminal Justice Standards for the Defense Function; revising provisions relating to the qualifications of attorneys who provide indigent defense services or represent juveniles alleged to be delinquent or in need of supervision; requiring an attorney to notify the Department of Indigent Defense Services or its designee and each county within which the attorney provides indigent defense services if the attorney accepts employment as a prosecuting attorney or judge or is sanctioned by a court or the State Bar of Nevada; requiring that a contract between a county and an attorney who provides indigent defense services as an independent contractor identify any attorney providing representation as a subcontractor; requiring that contracts for the provision of indigent defense services be approved by the Department before being executed; removing provisions requiring the Department to conduct separate workload studies for counties; requiring that plans provide details regarding how a county will comply with any guidelines adopted by the Board on Indigent Defense Services which set forth maximum workloads for attorneys who provide indigent defense services; repealing provisions relating to the establishment of a formula for determining the maximum amount a county may be required to pay for

the provision of indigent defense services and the seeking of state contributions for the provision of indigent defense services in excess of the maximum amount; repealing provisions authorizing the State Public Defender to handle certain cases for certain counties upon request; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board on Indigent Defense Services to adopt any regulations it deems necessary or convenient to carry out the duties of the Board and the provisions of law governing indigent defense services. (NRS 180.320) Existing law also requires the Board to adopt regulations establishing hourly rates of compensation for: (1) in counties whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties), an attorney, other than a public defender, who is selected to provide indigent defense services; and (2) in all counties, an attorney who is appointed to represent a petitioner who files a postconviction petition for habeas corpus. (NRS 180.320, as amended by section 2 of Assembly Bill No. 454, chapter 285, Statutes of Nevada 2023, at page 1888) **Section 1** of this regulation provides that such hourly compensation must be equal to the prevailing hourly compensation rate for attorneys appointed to the Criminal Justice Act (CJA) Panel.

Existing regulations require that a plan for the provision of indigent defense services (hereinafter "plan") provide the process a county will use to hire attorneys who are independent contractors to provide indigent defense services and panels of appointed attorneys. (Section 22 of LCB File No. R042-20) **Section 2** of this regulation also requires a plan to provide the process a county will use to hire attorneys who serve as county public defenders and chief county public defenders. **Section 2** additionally requires that a plan provide the process a county will use to select and assign an additional or alternate attorney to provide indigent defense services if the attorney who would otherwise be assigned to the case is not sufficiently qualified to do so because of the complexity of the case.

Existing regulations require that a plan describe how attorneys are assigned to cases if a county uses attorneys who are independent contractors in lieu of an office of public defender or if the public defender is disqualified. (Section 23 of LCB File No. R042-20) **Section 3** of this regulation requires that a plan provide for a first tier and second tier of indigent defense representation and describe how attorneys will be assigned to cases in each tier. Existing regulations also provide that a plan must require an attorney to be present at initial appearances and arraignments. (Section 23 of LCB File No. R042-20) **Section 3** additionally provides that a plan must require an attorney to be present at pretrial release hearings and set forth the process for assigning or determining the attorney who will be present at pretrial release hearings, initial appearances and arraignments.

Existing regulations provide that a plan must require that indigent defense representation be provided in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court. (Section 27 of LCB File No. R042-20) **Section 4** of this regulation additionally provides that a plan must require that indigent defense

representation be provided consistent with the American Bar Association's Criminal Justice Standards for the Defense Function.

Existing regulations require that an attorney in a criminal matter who is providing indigent defense services in a county whose population is less than 100,000 must demonstrate compliance with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department of Indigent Defense Services for the purpose of ensuring that the ability, training and experience of the attorney matches the complexity of the case. (Sections 29 and 30 of LCB File No R042-20) **Section 5** of this regulation specifies that such a requirement applies to all attorneys who provide indigent defense services in a county whose population is less than 100,000, including those who are employed by an office of public defender. **Section 5** provides that if an attorney with whom a county has contracted does not have the qualifications necessary to handle the full range of cases required for the contract, the attorney must not be assigned to any cases that exceed his or her level of qualification unless another attorney who is qualified to handle the case is also assigned in the case to act as the first chair. **Section 5** provides that the assignment of such an additional attorney is at the expense of the county and requires the plan of the county to set forth the procedure for the assignment.

Existing regulations establish the requirements that an attorney must satisfy if the attorney seeks to provide indigent defense services to a person charged with a misdemeanor in a county whose population is less than 100,000, including having sufficient training or experience to provide competent representation. (Sections 29 and 31 of LCB File No. R042-20) **Section 6** of this regulation provides that proof of completion of 6 hours of continuing legal education related to indigent defense services, or full attendance at the annual conference of the Department, during the 12 months immediately preceding the provision of such indigent defense services constitutes sufficient training or experience to provide competent representation.

Existing regulations establish the requirements that an attorney must satisfy if the attorney seeks to provide indigent defense services to a person charged with certain category B felonies, a category C, D or E felony or a gross misdemeanor in a county whose population is less than 100,000, including having been trial counsel in two or more bench or jury trials that were tried to completion. (Sections 29 and 32 of LCB File No. R042-20) **Section 7** of this regulation specifies that such bench or jury trials must have been criminal trials.

Existing regulations establish the requirements that an attorney must satisfy if the attorney seeks to represent a juvenile who is alleged to be delinquent or in need of supervision in a county whose population is less than 100,000. (Sections 29 and 36 of LCB File No. R042-20) **Section 8** of this regulation also requires such an attorney to be skilled in juvenile defense and provides that proof of completion of 2 hours of continuing legal education related to juvenile defense services within the 12 months immediately preceding such representation constitutes sufficient skill in juvenile defense. **Section 8** additionally requires such an attorney to be knowledgeable about adolescent development and the special status of youth in the legal system. Existing regulations also provide that an attorney who seeks to represent a child in a proceeding in which the child may be certified for criminal proceedings as an adult in a county whose population is less than 100,000 must have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience. (Sections 29 and 36 of LCB File No. R042-20)

Section 8 authorizes an attorney to submit a request pursuant to the plan of a county pursuant to **section 2** to obtain the assistance of such other counsel.

Existing regulations impose certain additional requirements on attorneys who provide indigent defense services in a county whose population is less than 100,000. (Sections 29 and 37 of LCB File No. R042-20) **Section 9** of this regulation requires an attorney to notify the Department or its designee and each county within which the attorney provides indigent defense services if the attorney accepts employment as a prosecuting attorney or judge or is sanctioned by a court or the State Bar of Nevada. The attorney is required to provide such notification not later than 72 hours after he or she accepts such employment or is sanctioned.

Existing regulations require that a contract between a county and an attorney who provides indigent defense services as an independent contractor include certain information, including the identification of each attorney who will provide legal representation in each category of cases covered by the contract. (Section 40 of LCB File No. R042-20) **Section 10** of this regulation specifies that such a requirement includes the identification of any attorney providing representation as a subcontractor. **Section 10** also requires that every contract for the provision of indigent defense services, including any subcontract, be approved by the Department before the contract is executed.

Existing law requires the Board to adopt regulations establishing guidelines to be used to determine the maximum caseloads for attorneys who provide indigent defense services. (NRS 180.320) Existing regulations require the Department to conduct separate, specific workload studies for counties whose population is less than 100,000 and counties whose population is 100,000 or more (currently Clark and Washoe Counties) to determine workload guidelines and requirements for attorneys and include a recommendation to the Board for the purpose of establishing guidelines to be used to determine maximum workloads for attorneys providing indigent defense services. (Section 42 of LCB File No. R042-20) Pursuant to the *Davis v. State* consent judgment, the State of Nevada is required to: (1) commission a Delphi study to establish indigent defense workload standards for Churchill, Douglas, Esmerelda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye and White Pine Counties; and (2) require compliance with the workload standards established under the study within 12 months after the study is completed. (*Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B at 17 (Aug. 11, 2020)) consent judgment) **Section 11** of this regulation removes the provisions requiring the Department to conduct separate, specific workload studies for counties and requires that each plan provide details regarding how a county will comply with any guidelines adopted by the Board which set forth the maximum workloads for attorneys providing indigent defense services.

Nevada law previously required the Board to adopt regulations establishing a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services. (NRS 180.320) Existing regulations establish such a formula and set forth provisions relating to a county seeking state contributions for the provision of indigent defense services in excess of the maximum county contribution. (Sections 16-18 of LCB File No. R042-20) Assembly Bill No. 518 of the 2023 Legislative Session: (1) removes the provision of law requiring the Board to adopt regulations for establishing such a formula and instead establishes a statutory formula for the maximum amount that a county may be required to pay for the provision of indigent defense services; and (2) provides that a county may seek state

contributions for the provision of indigent defense services in excess of the maximum county contribution. (NRS 180.320, as amended by section 5 of Assembly Bill No. 518, chapter 497, Statutes of Nevada 2023, at page 3060) **Section 12** of this regulation accordingly repeals the provisions of existing regulations that establish the formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services and the provisions relating to state contributions in excess of the maximum county contribution. **Section 12** additionally repeals the provisions of existing regulations that authorize the State Public Defender to handle certain cases for counties whose population is less than 100,000 upon the request of a county.

Section 1. Chapter 180 of NAC is hereby amended by adding thereto a new section to read as follows:

1. An attorney who provides indigent defense services is entitled to receive hourly compensation for court appearances and other time reasonably spent on indigent defense services or representation at a rate equal to the prevailing hourly compensation rate for attorneys appointed to the Criminal Justice Act (CJA) Panel at the time such services or representation is provided. The Executive Director may increase such an hourly rate for good cause and as deemed reasonable and necessary, including, without limitation, because of the complexity of a case or the scarcity of available qualified attorneys to provide indigent defense services.

2. As used in subsection 1, "attorney who provides indigent defense services" means:

(a) In a county whose population is less than 100,000, an attorney, other than a public defender, who is selected pursuant to NRS 7.115 to provide indigent defense services; or

(b) In all counties, an attorney who is appointed pursuant to NRS 34.750 to represent a petitioner who files a postconviction petition for habeas corpus.

Sec. 2. Section 22 of LCB File No. R042-20 is hereby amended to read as follows:

Sec. 22. 1. A plan for the provision of indigent defense services must provide the process a county will use to hire attorneys who *serve as county public defenders or chief county public defenders or who* are independent contractors to provide indigent defense services and panels of appointed attorneys. The process must be designed to provide notice of the opportunity to apply and a reasonable opportunity for interested parties to respond.

2. Consistent with the provisions of section 21 of ~~[this regulation,]~~ *LCB File No. R042-20*, the process ~~[should]~~ *used pursuant to subsection 1 must* exclude prosecuting and law enforcement officials. The creation of a selection committee that utilizes stakeholders concerned with the integrity of indigent defense services, which may include the Department, is recommended. Judicial input in the hiring process may be considered but ~~[should]~~ *must* not be the sole basis for selection.

3. For the purposes of evaluating an application, the process *used pursuant to subsection 1* must require, without limitation:

(a) In a county whose population is less than 100,000, verification that the applicant is included on the roster of attorneys who are eligible to provide indigent defense services that the Department compiles pursuant to section 30 of *LCB File No. R042-20, as amended by section 5 of* this regulation; and

(b) The consideration of the following factors:

- (1) The experience and qualifications of the applicant;
- (2) The past performance of the applicant in representing defendants in criminal cases;
- (3) The ability of the applicant to comply with ~~[sections 2 to 45, inclusive, of this regulation,]~~ *this chapter* and the terms of a contract; and

(4) If the applicant is an independent contractor, the cost of the service under the contract.

4. A plan for the provision of indigent defense services must also provide the process a county will use to select and assign, at the expense of the county, an additional or alternate attorney to provide indigent defense services in a case if an attorney with whom the county has contracted to provide indigent defense services, and who would otherwise be assigned to the case pursuant to the plan, does not have sufficient qualifications to provide indigent defense services because of the complexity of the case.

Sec. 3. Section 23 of LCB File No. R042-20 is hereby amended as follows:

Sec. 23. 1. A plan for the provision of indigent defense services must set forth the process of screening for indigency that is necessary for the judicial determination of eligibility for appointed counsel. The process of screening for indigency must:

(a) Occur prior to, or at the earlier of, the initial arraignment or appearance and not later than 48 hours after the arrest of the defendant; and

(b) Describe the person or agency responsible for the screening.

2. After such screening and upon a judge, justice of the peace, *municipal judge* or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, the plan must provide for the prompt appointment of counsel. If a public defender is disqualified from providing representation, a plan must provide for the selection of another attorney in accordance with NRS 7.115 and ~~NRS~~ 171.188.

3. *Each plan for the provision of indigent defense services must provide for a first tier and second tier of indigent defense representation.* If a county uses *multiple* attorneys who are independent contractors *for first tier representation* in lieu of an office of public defender ~~for if~~

, the plan must describe how the attorneys will be assigned to cases in the first tier. A first tier consisting of multiple independent attorneys or offices may constitute a first tier and second tier, as determined by the Department. If a plan provides that an office of public defender will provide first tier representation but the public defender is disqualified, a plan must describe the second tier and how attorneys in that tier are assigned cases. The distribution of cases within the first tier and second tier may be made on a rotational basis or in accordance with another method that ensures the fair distribution of cases. Unless an exception is requested from and granted by the Department, a county may not provide in its plan that it will rely upon the roster of attorneys compiled by the Department pursuant to section 30 of LCB File No. R042-20, as amended by section 5 of this regulation, to provide first tier and second tier representation.

4. A plan for *the provision of* indigent defense services must require that an attorney be present at *pretrial release hearings*, initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with all relevant laws, rules of criminal procedure and caselaw ~~{}~~ *and set forth the process for assigning or determining the attorney who will be present. A plan must provide that a* timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. ~~{A plan should ensure the presence of counsel at all other critical stages, whether in court or out of court.}~~

5. This section must not be construed to preclude a defendant from waiving the appointment of an attorney in accordance with subsection 1 of NRS 171.488.

Sec. 4. Section 27 of LCB File No. R042-20 is hereby amended as follows:

Sec. 27. 1. A plan for the provision of indigent defense services must require that representation be provided in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct, ~~{and}~~ the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court ~~{}~~ *and the American Bar Association's Criminal Justice Standards for the Defense Function.*

2. Any plan or contract for the provision of indigent defense services must require the attorney representing the defendant to:

(a) Advise each client not to waive any substantive rights or plead guilty at the initial appearance unless doing otherwise is in the best interest of the client; and

(b) Make all reasonable efforts to meet with each client within the first 7 days following the assignment of the case and, unless there are no significant updates in the client's case, every 30 days thereafter.

3. A plan for the provision of indigent defense services in a county whose population is less than 100,000 must ensure that any client surveys authorized by the Board are provided to a client at the conclusion of his or her representation by an attorney.

Sec. 5. Section 30 of LCB File No. R042-20 is hereby amended as follows:

Sec. 30. 1. To ensure that the ability, training and experience of an attorney in a criminal matter matches the complexity of a case, ~~{the attorney}~~ *attorneys who provide indigent defense services, including, without limitation, those who are employed by an office of public defender,* must demonstrate compliance with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department on a form approved by the Department. The application must be submitted:

(a) By mail; or

(b) Electronically, as provided on the website of the Department.

2. The Department shall, not later than 30 days after receiving an application:

(a) Review the application and determine the areas of indigent defense services in which the attorney is qualified; and

(b) Provide written notice of the determination of the Department to the attorney.

3. After an attorney submits an application pursuant to this section, the attorney may continue practicing in the areas of indigent defense for which the attorney is seeking the determination of the Department until the attorney receives written notice of the determination.

4. If the Department determines that an attorney is qualified to provide indigent defense services, the Department shall place the name of the attorney and his or her areas of qualification on a roster of attorneys who are eligible to provide indigent defense services that will be used by boards of county commissioners to select the attorneys who will provide indigent defense services for a county. An attorney may, at any time, seek qualification for different or other areas of indigent defense by submitting another application pursuant to this section that demonstrates the additional qualifications.

5. If an attorney disagrees with the determination of the Department regarding the areas in which the attorney is qualified to provide indigent defense services, the attorney may submit a request for reconsideration to the Department not later than 30 days after receiving the determination of the Department. The Board will review any request for reconsideration that is submitted to the Department.

6. ~~{The}~~ *Except as otherwise provided in subsection 7, the* failure of an attorney to submit an application before providing indigent defense services for a county *or municipality* or to practice only within the areas in which the attorney is qualified may result in the exclusion or removal of the attorney, as applicable, from the roster of attorneys who are eligible to provide indigent defense services established pursuant to subsection 4.

7. If an attorney with whom a county has contracted does not have the qualifications necessary to handle the full range of cases required for the contract, the attorney must not be assigned to any case that exceeds his or her level of qualification unless an attorney who is qualified to handle the case is, at the expense of the county, also assigned in the case to act as the first chair. The plan of a county must set forth the procedure for selecting and assigning such an additional attorney in accordance with subsection 4 of section 22 of LCB File No. R042-20, as amended by section 2 of this regulation.

Sec. 6. Section 31 of LCB File No. R042-20 is hereby amended as follows:

Sec. 31. 1. An attorney who seeks to provide indigent defense services to a person charged with a misdemeanor must:

- (a) Be licensed to practice law in the State of Nevada; and
- (b) Have sufficient training or experience to provide competent representation. *For purposes of this paragraph, proof of completion of 6 hours of CLE related to indigent defense services, or full attendance at the annual conference of the Department, during the 12 months immediately preceding the provision of such indigent defense services constitutes sufficient training or experience to provide competent representation*

2. An attorney who is beginning to provide indigent defense services in misdemeanor matters is encouraged to consider seeking the participation of a supervising or more experienced attorney before undertaking representation in a jury trial involving a misdemeanor offense or a misdemeanor offense for which the penalty can be enhanced ~~{and,}~~ *in accordance with*, if applicable, ~~{make a motion for the appointment of such an additional attorney pursuant to NRS 260.060.}~~ *the process set forth in the plan for the provision of indigent defense services.*

Sec. 7. Section 32 of LCB File No. R042-20 is hereby amended as follows:

Sec. 32. An attorney who seeks to provide indigent defense services to a person charged with a category B felony for which the maximum penalty is 10 years or less, a category C, D or E felony or a gross misdemeanor must:

1. Meet the following requirements:

(a) Be licensed to practice law in the State of Nevada; and

(b) Have been trial counsel, alone or with other trial counsel, in two or more *criminal* bench or jury trials that were tried to completion; or

2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1.

Sec. 8. Section 36 of LCB File No. R042-20 is hereby amended as follows:

Sec. 36. 1. An attorney who seeks to represent a juvenile who is alleged to be delinquent or in need of supervision must:

(a) Be licensed to practice law in the State of Nevada ~~{}~~

(b) Have the knowledge and skills necessary to represent a child diligently and effectively. ~~{}~~

~~and}~~

(c) *Be skilled in juvenile defense. For purposes of this paragraph, proof of completion of 2 hours of CLE related to juvenile defense services within the 12 months immediately preceding such representation constitutes sufficient skill in juvenile defense.*

(d) Be familiar with:

(1) The department of juvenile justice services in the county and other relevant state and local programs;

(2) Issues concerning competency and child development;

(3) Issues concerning the interaction between an attorney and a client; and

(4) Issues concerning school-related conduct and zero-tolerance policies specific to juvenile representation.

(e) *Be knowledgeable about adolescent development and the special status of youth in the legal system.*

2. An attorney who seeks to represent a child in a certification proceeding pursuant to NRS 62B.390, additionally must have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience. *To obtain the assistance of other counsel with requisite experience, the attorney may submit a request pursuant to a plan for the selection and assignment of an additional attorney in accordance with subsection 4 of section 22 of LCB File No. R042-20, as amended by section 2 of this regulation.*

3. As used in this section, “department of juvenile justice services” has the meaning ascribed to it in NRS 201.555.

Sec. 9. Section 37 of LCB File No. R042-20 is hereby amended as follows:

Sec. 37. 1. In addition to any other requirements provided by law or this chapter, an attorney must:

(a) Have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law and criminal procedure, the rules of evidence, the rules of appellate procedure, ethical rules, local rules and practices and changes and developments in the law. As used in this paragraph, “reasonable knowledge” means knowledge possessed by an attorney who provides competent representation to a client in accordance with Rule 1.4 of the Nevada Rules of Professional Conduct;

(b) Have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case and the legal issues concerning defenses to a crime and be reasonably able to litigate such issues effectively; and

(c) Be reasonably able to use the office technology that is commonly used in the legal community and the technology that is used within the applicable court system and thoroughly review materials that are provided in an electronic format.

2. An attorney shall:

(a) Complete, on an annual basis, a minimum of 5 hours of CLE courses relevant to indigent defense services ~~;~~

~~(b) Except as otherwise provided in subsection 3,~~ *and* submit proof of compliance with ~~the~~ *such* CLE requirements ~~in paragraph (a)~~ to the Department before January 1 each year by submitting a copy of the annual transcript for the attorney from the ~~State of Nevada~~ Board of Continuing Legal Education ~~;~~

~~(1) By~~ *of the State Bar of Nevada by* mail ~~;~~ or

~~{(2) Electronically,}~~ *electronically*, as provided on the website of the Departmenta ~~{; and~~
~~—(c) Follow the minimum standards of the Board in determining which CLE courses areaa~~
~~relevant to the provision of indigent defense services.~~
~~—3.}~~ Any CLE courses provided by the Department count toward satisfaction of the annual
CLE requirementa ~~{set forth in subsection 2. If an attorney satisfies the annual CLE requirement~~
~~through CLE courses provided by the Department, the annual submission of proof of compliance~~
~~with the CLE requirements required by paragraph (b) of subsection 2 is waived.}~~

*(b) Notify the Department or its designee and each county within which the attorneyee
provides indigent defense services if the attorney accepts employment as a prosecuting
attorney or judge or is sanctioned by a court or the State Bar of Nevada. An attorney shall
provide such notification not later than 72 hours after he or she accepts such employment or
is sanctioned.*

Sec. 10. Section 40 of LCB File No. R042-20 is hereby amended as follows:

Sec. 40. *1.* The terms of any contract between a county and an attorney who provides
indigent defense services as an independent contractor *in any court within a county* must avoid
any actual or apparent financial disincentives to the obligation of the attorney to provide clients
with competent legal services. Such a contract must include, without limitation, the following:

~~{1.}~~ *(a)* The identification of the contracting authority and each attorney subject to the
contract.

~~{2.}~~ *(b)* The terms of the contract, including, without limitation, the duration of the contract,
any provision for renewal and any provision for terminating the contract by a party.

~~{3.}~~ (c) The category of cases in which each attorney subject to the contract is to provide services.

~~{4.}~~ (d) The minimum qualifications for each attorney subject to the contract, which must be equal to or exceed the qualifications required by ~~{sections 2 to 45, inclusive, of this regulation,}~~ *this chapter*, and a requirement that each attorney maintain the applicable qualifications during the entire term of the contract. If a contract covers services provided by more than one attorney, the qualifications may be graduated according to the seriousness of offense, and each attorney must be required to maintain only those qualifications established for the offense levels for which the attorney is approved to provide indigent defense services.

~~{5.}~~ (e) The identification of each attorney who will provide legal representation in each category of case covered by the contract , *including, without limitation, any attorney providing such representation as a subcontractor*, and a provision that ensures consistency in representation in accordance with section 26 of ~~{this regulation.}~~

~~—6.}~~ *LCB File No. R042-20.*

(f) A provision establishing the maximum workload that each attorney may be required to handle pursuant to the contract based upon the applicable guidelines established by the Board pursuant to section 42 *of LCB File No. R042-20, as amended by section 11* of this regulation , and a provision requiring the reporting of indigent defense data in accordance with sections 43 and 44 of ~~{this regulation.}~~

~~—7.}~~ *LCB File No. R042-20.*

(g) In accordance with section 27 *of LCB File No. R042-20, as amended by section 4* of this regulation, a requirement that each attorney provide legal representation to all clients in a

professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court.

~~{8-}~~ (h) The statement of a policy that ensures that an attorney does not provide representation to a defendant when doing so would involve a conflict of interest.

~~{9-}~~ (i) A provision regarding how investigative services, expert witnesses and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with all applicable laws and regulations.

~~{10-}~~ (j) A provision requiring compensation to be provided at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and that is determined after taking into consideration comparable workload, overhead costs, expenses and costs relating to significant attorney travel.

2.e Every contract for the provision of indigent defense services, including, without limitation, any subcontract, must be approved by the Department before the contract is executed.

Sec. 11. Section 42 of LCB File No. R042-20 is hereby amended to read as follows:

Sec. 42. 1. The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any office, organization or attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence or representation of clients under the Nevada Rules of Professional Conduct.

2. ~~{At the direction of the Board, the Department shall conduct separate, specific workload studies for counties whose population is less than 100,000 and counties whose population is 100,000 or more to determine workload guidelines and requirements for attorneys. Counties shall ensure that all attorneys providing indigent defense services participate in such workload studies. The results of each study must include a recommendation to the Board for the purpose of establishing}~~ *A plan for the provision of indigent defense services must provide details regarding how the county will comply with any* guidelines ~~{to be used to determine}~~ *adopted by the Board which set forth the* maximum workloads for attorneys providing indigent defense services . ~~{pursuant to subparagraph (4) of paragraph (d) of subsection 2 of NRS 180.320.}~~

Sec. 12. Sections 16, 17, 18 and 19 of LCB File No. R042-20 are hereby repealed.

TEXT OF REPEALED SECTIONS

Sec. 16. 1. The maximum amount that a county is required to pay for the provision of indigent defense services during a fiscal year must not exceed the sum of:

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

(1) The actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2)aThe percentage equal to the lesser of:a

(I)aThe cost of inflation, as measured by the Consumer Price Index for All Urbana Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(II)aThe lowest union-negotiated cost of living increase for employees for that county.a

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

(1)aThe actual costs to the county for providing indigent defense services, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2)aThe percentage equal to the lesser of:a

(I)aThe cost of inflation, as measured by the Consumer Price Index for All Urbana Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(II)aThe lowest union-negotiated cost of living increase for employees for that county.a

2.a If a county whose population is less than 100,000 chooses, pursuant to section 19 of this regulation, to transfer to the State Public Defender the responsibility of providing representation in:

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

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

3.a If a county, in its plan for the provision of indigent defense services, follows the recommendations set forth in section 25 of this regulation pertaining to the payment of case-related expenses, such expenses may be a charge against the State and reimbursed to the county in accordance with sections 17 and 18 of this regulation.

Sec. 17. 1. A county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution, as calculated pursuant to section 16 of this regulation, through:

(a) The submission of the annual report containing the plan for the provision of indigent defense services for the county for the next fiscal year as required pursuant to subsection 2 of NRS 260.070; or

(b) Pursuant to NRS 180.450, a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to address immediate needs in a corrective action plan.

2. In accordance with the duty of the Board to review and approve the budget for the Department pursuant to paragraph (f) of subsection 1 of NRS 180.320, any state contribution

requested by a county is subject to the approval of the Board. Any disagreement with respect to a plan for the provision of indigent defense services or state contributions necessary to comply with sections 2 to 45, inclusive, of this regulation will be resolved by the Board.

3.ee A county seeking state contributions pursuant to subsection 1 must submit to the Department a financial status report, certified by the board of county commissioners or its designee and in a form approved by the Department, not later than 15 days after the end of each calendar quarter.

Sec. 18. 1. Any state contributions for the provision of indigent defense services must be provided for:

(a) One fiscal year; and

(b) The express purpose of complying with applicable indigent defense standards and regulations and improving the provision of indigent defense services in a county.

2.ee If a county reaches its maximum contribution for the provision of indigent defense services as determined in accordance with section 16 of this regulation, state contributions for the provision of indigent defense services will be provided to the county treasury by reimbursement, up to the amount approved by the Board and the Legislature in the county's plan for indigent defense services, upon the quarterly submission of the financial status report of the county in accordance with subsection 3 of section 17 of this regulation.

3.ee If a county reaches the maximum state contributions approved by the Board in accordance with section 17 of this regulation, any additional state contributions necessary for the provision of indigent defense services must, in accordance with NRS 180.450, be sought by a

corrective action plan pursuant to a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266.

4.aa Any unencumbered or unexpended balance of state contributions remaining at the end of a fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.

5.aa As used in this section, “fiscal year” means the period beginning on July 1 of a given year and ending on June 30 of the following year.

Sec. 19. 1. Upon the request of a county whose population is less than 100,000, the State Public Defender may handle for the county all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction.

2. If a county wishes to have the State Public Defender handle all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction, as applicable, the board of county commissioners for the county shall notify the State Public Defender, and such responsibility must be transferred, in accordance with the procedure set forth in subsection 6 of NRS 180.450.

3.aa After the responsibility of handling all death penalty cases, direct appeals to the appellate court of competent jurisdiction, or death penalty cases and direct appeals to the appellate court of competent jurisdiction for a county, as applicable, is transferred to the State Public Defender, such responsibility must not be transferred back to the county unless the county receives the approval of the Executive Director of the Department in accordance with NRS 180.460.



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

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8490 | dids.nv.gov

**INFORMATIONAL STATEMENT REQUIRED BY NRS 233B.066
CONCERNING ADOPTED REVISED PROPOSED REGULATION OF THE
BOARD ON INDIGENT DEFENSE SERVICES
LCB FILE NO. R033-23**

The following statement is submitted for the adoption of regulations to Nevada Administrative Code (NAC) Chapter 180.

1. A clear and concise explanation of the need for the adopted regulation:

The need for and the purpose of the proposed regulation and amendment are to:

- Repeal the regulatory maximum contribution formula, as it has been superseded by statute (AB 518).
- Require compliance in the county plan with the caseload/workload standards for Nevada's rural counties as they are adopted by the Board on Indigent Defense Services.
- Set an hourly rate in lieu of the \$100 rate in NRS 7.125 for the 15 rural counties, and for representation in post-conviction petitions for habeas corpus across the state (AB 454); and,
- Amend NAC 180 to make the remaining language clearer and more concise to be consistent with the Board's intent.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

A copy of this notice and the regulation to be Adopted, Amended, and Repealed was on file at the State Library, Archives and Public Records, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the Notice and the Regulation to be Adopted, Amended, and Repealed were available at the Department of Indigent Defense Services, 896 W. Nye, Suite 202, Carson City, NV 89703, and our website dids.nv.gov, for inspection and copying by members of the public during business hours.

A workshop was held on August 3, 2023, in conjunction with the Board of Indigent Defense Services ("Board") Meeting to provide an opportunity to comment on the

proposed regulations. The minutes of the meeting, contain a summary of the discussion held at the Workshop regarding the proposed amendments.

Thereafter, on September 26, 2023, the Director of the Department issued a Notice of Intent to Act Upon a Regulation which incorporated in the proposed regulations, the suggestions of the parties attending the August 3rd Workshop, as well as the recommendations of the Board.

A copy of the minutes of the August 3, 2023, Workshop and Board Meeting, which includes a summary of the public response to the proposed regulations, may be obtained by visiting the Department website at <http://dids.nv.gov/> or by contacting:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 89703
Phone: (775) 687-8490 Email: didscontact@dids.nv.gov

The Notice of Intent to Act Upon the Regulation and the regulations were additionally posted on the Internet at dids.nv.gov and notice.nv.gov, the Administrative Regulation Notices Website, <https://www.leg.state.nv.us/App/Notice/A/>, was on file at the State Library, 100 Stewart Street, Carson City, Nevada for inspection, and was posted at the following locations:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 89703
<http://dids.nv.gov/>

Capitol Building
101 North Carson Street,
Carson City, NV 89701

The Public Hearing was held in conjunction with the November Board Meeting on October 3, 2023. Interested persons were invited to comment at the Public Hearing in written form or in oral presentation. The Board received no public comment.

Recordings of the August 3, 2023, Workshop and the November 3, 2023, Public Hearing can be viewed on our YouTube Channel:
<https://www.youtube.com/channel/UCAGEFbVylncGBI2zzaB4uqw/videos>

3. The number persons who:

a. Attended the hearing:

- i. August 3, 2023, Workshop: 42 participants.
- ii. November 3, 2023, Public Hearing: 37 virtual participants and 0 participants at the physical location.

b. Testified at the hearing:

- i. August 3, 2023, Workshop: 4

- ii. November 3, 2023, Public Hearing: 0
- c. Submitted to the agency written comments:**
 - i. August 3, 2023, Workshop: No written comments received.
 - ii. November 3, 2023, Public Hearing: No written comments received.

4. A list of names and contact information, including telephone number, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.

August 3, 2023, Workshop: See Exhibit A.

November 3, 2023, Public Hearing: See Exhibit A.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. No comments were received during the August 3 Workshop nor the November 3, 2023, Public Hearing from affected businesses. A copy of the minutes of the workshop and/or the public hearing may be obtained by contacting:

Department of Indigent Defense Services
896 W. Nye Ln., Suite 202
Carson City, NV 8903
Phone: (775) 687-8490 Email: didscontact@dids.nv.gov

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulations were adopted without clarifications.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- a. Both adverse and beneficial effects; and**
- b. Both immediate and long-term effects.**

There are no reasonably foreseen potential economic impacts to small business or the public.

8. The estimated cost to the agency for enforcement of the adopted regulation.

The estimated cost to the agency is unknown at this time.

- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

To our knowledge, the proposed regulation does not duplicate any existing federal, state, or local standards regulating the same activity.

- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

To our knowledge, there are no federal regulations that apply.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulation does NOT establish a new fee nor increase an existing fee.

EXHIBIT A

A list of names and contact information, including telephone number, business address, business telephone number, electronic email address, and name of entity or organization represented, for each person identified in #3 of the Informational Statement.

August 3, 2023, Workshop: Public Comment:

Todd Reese
Deputy District Attorney as Counsel for
Carson City
885 E. Musser St, Suite 2030
Carson City, NV 89701
775-887-2070
Email: TReese@carson.org

Lori Bagwell
Mayor
Carson City Board of Supervisors
201 N. Carson Street
Carson City, NV 89701
775-283-7144
Email: lbagwell@carson.org

Nancy Paulson
City Manager for Carson City
201 N. Carson Street
Carson City, NV 89701
775-283-7944
Email: npaulson@carson.org

Josh Foli
Lyon County Comptroller
27 S. Main Street
Yerington, NV 89447
(775) 463-6510
Email: jfoli@lyon-county.org

November 3, 2023, Public Hearing: Public Comment:

None Received

Eleventh Report of the Monitor
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February 23, 2024

Appendix E

Amended Pay Parity Memorandum




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

896 W. Nye, Suite 202 | Carson City, NV 89703
(775) 687-8490 | www.dids.nv.gov

Amended Memorandum

DATE: December 19, 2023

TO: Bridgette Mackey-Garrison, Executive Branch Budget Officer – Team Lead
Don Carlson, Budget Advisor, ASD

FROM: Marcie Ryba, Executive Director, Department of Indigent Defense Services 

SUBJECT: Request for AB518, Section 7 Allocation to Provide Pay Parity for Attorneys who Provide Indigent Defense Services

AB518(2023), Section 7 appropriates funding to the IFC for allocation to the Department of Indigent Defense Services to fund:

- (a) The reimbursement of counties for costs in excess of their maximum contribution amounts for the provision of indigent defense services, including, without limitation, the costs of compliance with workload standards;
- (b) The costs of the Department related to compliance with the Davis v. State (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment;
- (c) The costs of the Office of State Public Defender for contracting for legal services for complex cases; and
- (d) The costs for training and pay parity for attorneys who provide indigent defense services.

The Department requests an allocation of \$229,401 from Assembly Bill 518(2023), Section 7, for Fiscal Year 2024 to provide pay parity for attorneys in the Nevada State Public Defender's Office ("NSPD") who provide indigent defense services.

Pay Parity by Funding Stipend

The Department requests an allocation of \$130,066 from Assembly Bill 518(2023), Section 7, for Fiscal Year 2024 for purposes of creating a stipend to provide pay parity for attorneys in the Nevada State Public Defender's Office ("NSPD") who provide indigent defense services.

Pursuant to NRS 180.450, any county may transfer responsibility for the provision of indigent defense services to the NSPD. Several rural counties have transferred all or partial responsibility for indigent defense services to the NSPD. To provide coverage, the NSPD continues to have difficulty staffing the office with attorneys to provide indigent defense services. The *Davis* Monitor highlights lack of pay parity of the NSPD as an area of concern in her Ninth Oversight Report. Specifically, she notes that the NSPD is understaffed and having difficulty attracting qualified attorneys given that the salaries offered are lower than those of the public defender offices in the other counties and lower than the compensation offered to contract attorneys and this is a concern because several *Davis* counties have transferred all or part of the responsibility of indigent defense services to the NSPD. See Ninth Report of the Monitor, p. 7.

This concern of the Monitor is well-founded as the shortage of attorneys willing to work for the NSPD at prevailing state salaries resulted in corrective action plans in Carson City and Storey County wherein the responsibility of providing indigent defense services was transferred from the NSPD to a county public defender office. The county office that was opened in lieu of the state office was able to fully staff the office due to substantially higher salaries than could be offered by the NSPD.

As a solution to assist with staffing the NSPD, the Department requests an allocation of \$130,066 to pay NSPD attorneys who provide indigent defense services pay parity stipends on a quarterly basis. The purpose of the stipend is to provide pay parity with other indigent defense services attorneys and ensure the NSPD will be able to continue to provide indigent defense services. For the remaining part of Fiscal Year 2024, the stipend will be paid to each attorney employed with the Nevada State Public Defender's Office on March 31, 2024, and June 15, 2024.

Pay Parity by Funding Travel Reimbursement

The Nevada State Public Defender has opened an office located in White Pine County to provide primary representation for indigent defense services in that county. To date, NSPD Chris Arabia has struggled to staff the White Pine office. The *Davis* Monitor highlights the challenges that the NSPD is having to staff its office and recommends that the Department should ensure that the rates of compensation for rural public defense attorneys are sufficient to attract and retain qualified attorneys. See Tenth Report of the Monitor, p. 10. NSPD Arabia received no local applicants for his open attorney positions, so he turned to attorneys that live in urban areas, outside the White Pine County area, to staff the office, but the current budget does not have sufficient funding to reimburse travel from the attorney's home location to the courthouse. Failing to reimburse attorneys for their travel creates an economic disincentive and impairs the attorney's ability to provide effective representation, contrary to the direction in NRS 180.320(2)(a).

On November 9, 2023, the Nevada Supreme Court released in ADKT0581 a "Final Report and Recommendations of the Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts" which made recommendations regarding applicable rules to govern the unified use of remote technology in Nevada's general and limited

jurisdiction courts. Although some criminal hearing types were recommended as presumptively virtual, most criminal hearing types were recommended as presumptively in-person. See ADKT 0581.


Requested travel funds would allow staff to travel from their home to White Pine County to cover court, meet with clients, and investigate cases without creating an economic disincentive or impairing the ability of the defense attorney to provide effective representation.

The Department is requesting \$99,335 to reimburse Nevada State Public Defender employees for their weekly travel to White Pine County.

Conclusion

In conclusion, the Department respectfully requests a total allocation of \$ 229,401 from the AB518(2023), Section 7 appropriation to be used during Fiscal Year 2024 to provide pay parity for NSPD attorneys who provide indigent defense services.

Respectfully submitted,

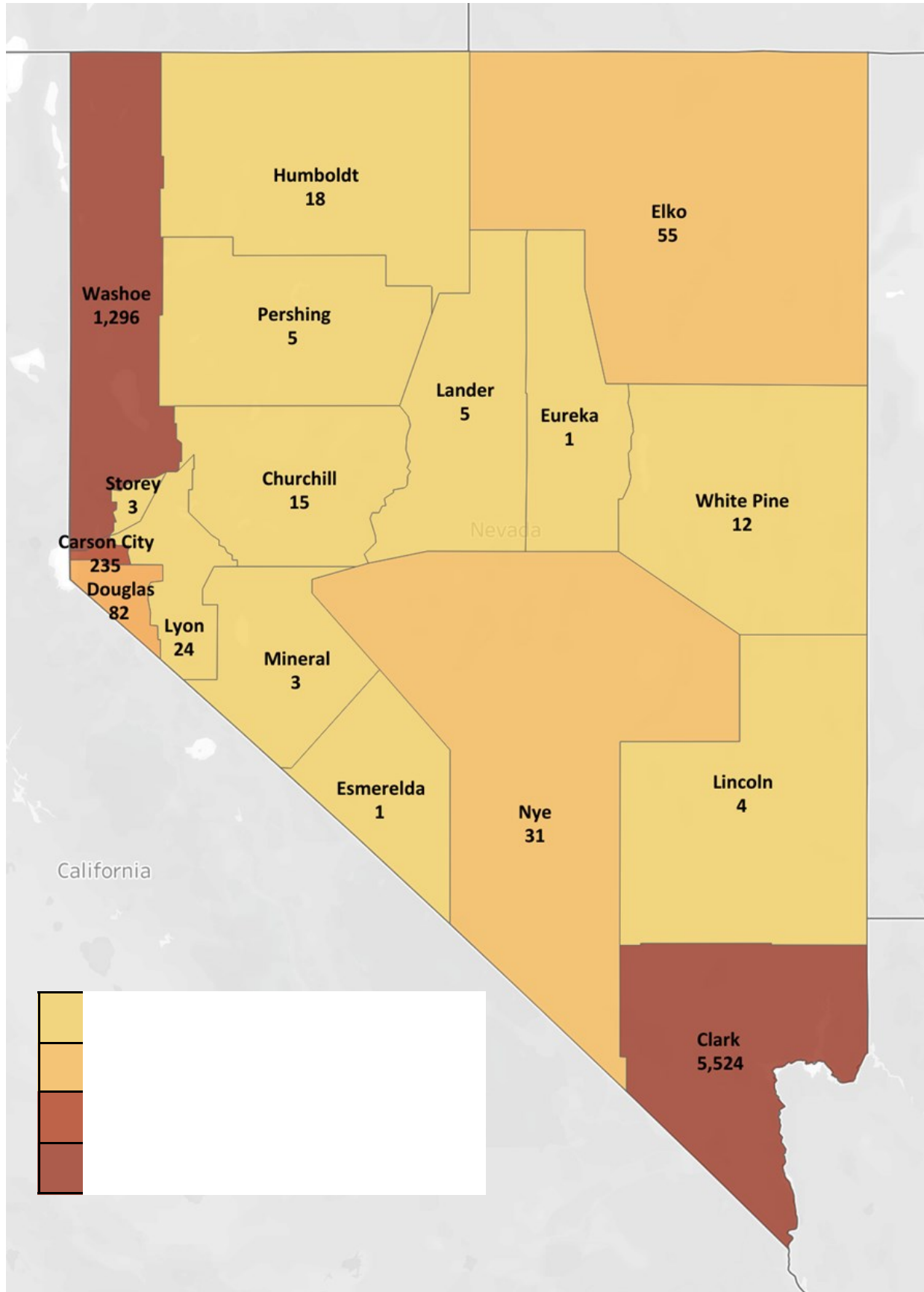

Marcie Ryba
Executive Director

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February 23, 2024

Appendix F

Map of Attorneys
Deason Criminal Justice Reform Center

Attorneys by County in Nevada



Characteristics of attorneys by city in Nevada

City name	Active attorneys	Active attorneys barred before 1994	Mean year of bar admission
<i>Alamo</i>	1	0	2005
<i>Amargosa Valley</i>	1	0	2010
<i>Battle Mountain</i>	5	2	1998
<i>Beatty</i>	1	0	2007
<i>Blue Diamond</i>	1	0	2019
<i>Boulder City</i>	15	4	2003
<i>Caliente</i>	1	0	2010
<i>Carson City</i>	235	57	2003
<i>Coyote Springs</i>	1	0	1998
<i>Crystal Bay</i>	2	1	2001
<i>Dayton</i>	8	1	2011
<i>Elko</i>	52	13	2003
<i>Ely</i>	12	2	2004
<i>Eureka</i>	1	0	1994
<i>Fallon</i>	15	4	2002
<i>Fernley</i>	7	4	1994
<i>Gardnerville</i>	8	6	1988
<i>Genoa</i>	3	0	2006
<i>Gerlach</i>	1	0	2016
<i>Glenbrook</i>	1	1	1992
<i>Goldfield</i>	1	1	1985
<i>Hawthorne</i>	2	0	2019
<i>Henderson</i>	592	102	2006
<i>Imlay</i>	1	0	1995
<i>Incline Village</i>	25	8	2002
<i>Indian Springs</i>	1	0	2016
<i>Lake Tahoe</i>	5	1	2002
<i>Las Vegas</i>	4837	713	2006
<i>Logandale</i>	4	2	1999
<i>Lovelock</i>	4	2	2000
<i>Mesquite</i>	9	1	2002
<i>Minden</i>	40	12	2001
<i>Mt. Charleston</i>	1	0	2011
<i>North Las Vegas</i>	62	7	2010
<i>Overton</i>	1	0	2011

City name	Active attorneys	Active attorneys barred before 1994	Mean year of bar admission
<i>Pahrump</i>	27	9	2002
<i>Panaca</i>	1	0	2014
<i>Pioche</i>	1	0	2004
<i>Pleasant Valley</i>	1	0	2002
<i>Reno</i>	1224	380	2001
<i>Round Mountain</i>	1	0	2018
<i>Ruby Valley</i>	1	1	1991
<i>Schurz</i>	1	0	1998
<i>Sparks</i>	38	16	2001
<i>Spring Creek</i>	1	0	2014
<i>Stateline</i>	10	3	1996
<i>Sun Valley</i>	1	0	2007
<i>Tonopah</i>	1	1	1993
<i>Verdi</i>	2	1	1999
<i>Virginia City</i>	3	3	1987
<i>Washoe Valley</i>	2	1	1997
<i>Wellington</i>	1	0	1994
<i>West Wendover</i>	1	0	2015
<i>Winnemucca</i>	18	8	1999
<i>Yerington</i>	9	2	2002
<i>Zephyr Cove</i>	14	5	2005
Grand Total	7314	1374	Mean, all attorneys: 2005

Original analysis by the Deason Criminal Justice Reform Center of data provided by State Bar of Nevada, 12/19/2023.

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February 23, 2024

Appendix G

Supreme Court Rule 250
Memorandum and Order



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

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578
Phone: (775) 687-8490 | dids.nv.gov

MEMORANDUM

To: Justice Linda Bell, Supreme Court of Nevada

From: Marcie Ryba, Department of Indigent Defense Services

Date: 01/17/2024

Re: SCR 250 discussion on Friday

Justice Bell,

In preparation for our meeting on Friday, I wanted to give you a little background information that prompted this request to meet with you regarding SCR 250. Please excuse me if any of this information is not new to you.

In 2018, a lawsuit (*Davis v. State*, Nev. First Jud. Dist. Ct. Case No. 170C002271B) was filed against the State of Nevada challenging the constitutionality of policies and practices regarding Nevada's system of indigent defense in the rural counties. On June 3, 2019, the Nevada legislature passes Assembly Bill 81 establishing the Board and Department of Indigent Defense Services and tasking this Department with oversight and regulation of indigent defense services throughout Nevada. Eventually the parties entered into a stipulated consent judgment which tasked the Board on Indigent Defense Services to achieve compliance with the agreements. The stipulated consent judgment is attached to this email.

Of relevance here, the Board was directed to establish standards, including experience levels for attorneys who provide indigent defense services, as well as requirements for specific continuing legal education. See NRS 180.320(2)(d)(1). To achieve this, the Board developed regulations which were enacted at NAC 180, Sections 31-36 establishing qualification requirements to handle different case types. For qualification of death penalty representation, the regulation defers to SCR 250 in Section 36.

Recently, the Department has been working with counties to include death penalty representation processes in county plans, as this process had not been included in rural plans to date. In preparation of these plan updates, the Department contacted district court judges to request their SCR 250-required lists of qualified attorneys and found that many courts do not actually have a list, or if they do, it is outdated. The Department has learned that the public defenders in our rural counties, with the exception of Matt Pennell in Elko, would not meet the qualifications for representation under SCR250, but the judges would be asked to place them on the local list under the exception the rule. See SCR 250(2)(e). To assist the rural counties, in the latest legislative session, the Nevada State Public Defender was funded to build a complex litigation unit which could provide representation in death penalty cases. Rural counties may elect to transfer the responsibility of death penalty cases to the Nevada State Public Defender. Several counties have already transferred this responsibility to the NSPD, but others do not intend to transfer such responsibility to the NSPD. As a sidenote, working with those counties that have transferred the death penalty representation to the NSPD, questions have arisen as to whether the contracted “NSPD Complex Litigation Counsel” must contact every district court to be added to their individual lists (pursuant to SCR 250) or whether if they are on one district court’s list that is sufficient. Below is a proposal to eliminate this requirement of individual judicial district lists and prevent a piecemeal system of determining qualifications for appointment. It also complies with the changes to Chapter 7 and NRS 171.188 via AB480 (2021).

The Department is requesting that SCR 250 be modified by the Supreme Court to bring the rule in harmony with changes brought about by AB81 (2019) and AB480 (2021), the workload study adopted by the Board on Indigent Defense Services, the Regulations of the Board on Indigent Defense Services (NAC 180), ADKT 0411, the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and the requirements of the *Davis* “Stipulated Consent Judgment.”

First, it is proposed to eliminate SCR250’s qualifications to handle death penalty cases and instead, create them by regulation via the Board on Indigent Defense Services, as contemplated in NRS 180.320(2)(d)(1). (The proposal is below.) If this approach is approved, the Board on Indigent Defense can provide the same standards, but by regulation, and add a training requirement as was recommended in ADKT No. 411, Capital Case Representation, Standard 2-2 and 2-3, as well as the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 5.1. It should be noted that pursuant to Section 4 of LCB File No. R033-23 and the *Davis* consent judgment, all plans for the provision of indigent defense services shall require that representation be provided in a manner consistent with applicable laws, regulations and rules of professional conduct, the Nevada Indigent Defense Standards for Performance set forth in ADKT No. 411 of the Nevada Supreme Court and the American Bar Association’s Criminal Justice Standards for the Defense Function. Specifically Standard 4-1.2 of the American Bar Association’s Criminal Justice Standards for the Defense Function requires that defense counsel in capital cases must review and comply with the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. It is also requested the 2(f) be modified to eliminate the provision providing for the appointment of second chair counsel in capital postconviction

proceedings and instead allow this to be paired with the minimum standards requiring that postconviction counsel have previously acted as lead counsel in a capital postconviction proceeding litigated to completion.

Second, it is requested that the judicial exception clause in 2(e) be removed. With limited counsel in the rural areas, local judges are appointing their local public defender counsel to take such cases. This happened in Pershing County where the Federal Public Defender obtained a reversal in a Capital Habeas case in the 9th Circuit and the case was remanded for a new trial in the District Court. The local attorney, who carries a full caseload (in a county where the workload study recommends 2.3 attorneys to cover the caseload, yet there is only one public defender), was appointed to the case. Both attorneys appointed by the court in Pershing County lack the minimum qualifications set forth in SCR 250(2)(b).

Third, with the passage of AB480 (2021), Chapter 7 and NRS 171.188 were modified to remove the judiciary from the selection of counsel and review of billing, as recommended by ADKT No. 411 of the Nevada Supreme Court. It is proposed to eliminate SCR 250(3)(c), as the process for reimbursement of expenses is no longer handled by the judiciary. See NRS 7.125, NRS 7.135 and NRS 7.145. As selection of counsel is no longer performed by the judiciary, it is also requested that SCR 250(2)(g) and (h) be removed.

Fourth, the State of Nevada is obligated to comply with the National Center for State Courts Rural Indigent Defense Services Weighted Caseload Study by November 1, 2024. This study has determined that the value of a death penalty case is 3,647.6 hours for two attorneys over a period of several years. In short, death penalty qualified counsel are limited to 2-3 death penalty cases per year (in rural counties).

Pursuant to SCR 250(4), death penalty qualified counsel must be appointed immediately in all cases where the state initiates charges of open or first-degree murder. NAC 180, Section 26 requires continuity in representation (to the greatest extent possible) so that the same attorney represents a defendant through every stage of the case. If a death penalty qualified counsel is appointed in every open or first-degree murder case where the District Attorney is silent on whether to seek the death penalty, the pool of death penalty qualified counsel will be exhausted quickly.

The language proposed below asks the court to consider the special limitations in our rural counties and the shortage of death penalty qualified indigent defense counsel in Nevada, and to consider whether a District Attorney should be required to declare the intention to seek the death penalty earlier.

The following modifications are respectfully requested:

Rule 250. Procedure in capital proceedings.

2. Appointment *and Selection of Counsel* ~~[and qualifications of counsel]~~.

(a) **Applicability.** This section applies to all defense counsel including public defenders who are appointed to represent indigent persons

in capital cases. *The qualifications to serve as lead counsel in a death penalty case will be set by regulations adopted by the Board on Indigent Defense Services within the Department of Indigent Defense Services pursuant to subsection 2(d)(1) of NRS 180.320. Until the regulations are adopted, the following shall be the qualifications:*

~~[(b)]~~

(i) Trial counsel~~[-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.

(ii) ~~[(e)]~~ Counsel in post-conviction proceedings in district court. Counsel appointed to represent a petitioner for post-conviction relief in the district court must have acted as counsel in at least two post-conviction proceedings arising from felony convictions and must otherwise satisfy the court that counsel is capable and competent to represent the petitioner.

(iii) ~~[(d)]~~ Counsel on direct and post-conviction appeal. 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.

~~[(e) Exceptions.—If an attorney does not satisfy the minimum requirements set forth in subsections (2)(b), (e), or (d) 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.]~~

(b) ~~[(f)]~~ Co-counsel. When the district court appoints defense counsel to provide representation at trial, *it shall order the appointment of [appoint] two counsel, one of whom must be qualified [under this rule] to act as lead counsel in a capital case. [When the court appoints defense counsel to provide representation in a direct appeal, a first post-conviction petition for a writ of habeas corpus, or an appeal from such post-conviction proceeding, the court may only appoint one counsel who is qualified under this rule.]* The selection of counsel shall be referred to:

1. *In a county whose population is less than 100,000, to the Department of Indigent Defense Services, in compliance with the plan of the county for the provision of indigent defense services; or*

2. *In a county whose population is 100,000 or more, in compliance with the plan of the county for the provision of indigent defense services.*

~~[(g) Appointment of public defender.—When the district court appoints an office of a public defender to provide representation in a capital case, any attorney assigned by the office to act as defense counsel shall prepare and file with the [court] the application form required by subsection (2)(h) of this rule.~~

~~—(h) Application forms and list of qualified counsel.—Each judicial district shall maintain a list of qualified defense counsel and shall establish procedures to ensure that defense counsel are considered and selected for appointment to capital cases from the list in a fair, equal and consecutive basis. The judicial districts shall further arrange for the preparation and distribution of application forms to defense attorneys who wish to be included on the list. The forms must require specific information respecting the attorney's qualifications to act as defense counsel in a capital case and a complete statement of any discipline or sanctions pending or imposed against the attorney by any court or disciplinary body. Before appointing any attorney to act as counsel in a capital case, the district court to which the case is assigned shall carefully consider the information in the attorney's application form.]~~

3. Duties and compensation of defense counsel.

(a) Records of litigation. Defense counsel shall maintain contemporaneous records of all work performed while serving as trial counsel, appellate counsel, or post-conviction counsel, including time records, communications with the client, expert witness reports, witness statements, investigations, and the rationale for strategic decisions. Defense counsel shall file with the district court an affidavit certifying that counsel has maintained and retains the record required by this subsection within 30 days after any of the following events: (1) the district court's imposition of the death sentence, (2) the district court's entry of an order resolving a post-conviction matter, or (3) the supreme court's entry of a written decision finally resolving an appeal. Defense counsel shall retain either the original record or a copy until the court authorizes its disposal.

(b) Providing files to successor counsel. If for any reason defense counsel is unable to continue to represent a capital case client prior to concluding the representation for which counsel was appointed, defense counsel's case files and copies of counsel's records of litigation must be provided to successor counsel. Defense counsel shall not be permitted to withdraw until successor counsel has been retained or appointed and the files have been delivered to the successor. Withdrawing counsel shall thereafter promptly file a notice of the disposition of the files with the clerk of the district court and serve a copy of the notice on the prosecutor. If defense counsel at trial is permitted to withdraw after trial from representing the defendant on appeal, counsel shall have 30 days from the date of withdrawal within which to prepare a memorandum for appellate counsel detailing each arguable issue on appeal with appropriate specific citations to the pertinent parts of the record.

~~[(c) Compensation of counsel and defense costs.—Appointed defense counsel must be compensated for all time reasonably spent on a case and~~

~~must be reimbursed for all expenses reasonably incurred. The court shall conduct ex parte proceedings to authorize employment and payment of investigative, expert, or other services for the defense, and the transcript of such proceedings must be placed in the record under seal.]~~

4. Proceedings before trial.

(a) Proceedings by criminal complaint. When the state seeks to initiate a charge of open or first-degree murder by the filing of a criminal complaint, ~~[unless]~~ *if* the state declares at the defendant's first appearance before a magistrate pursuant to NRS 171.178 that it will ~~[not]~~ *or may* seek the death penalty, the magistrate *shall order the* appointment of one attorney *who must be qualified to act as lead counsel in a capital case* to serve as defense counsel during the preliminary hearing if the defendant is indigent. ~~[Appointed counsel must possess the qualifications specified in subsection 2(b) of this rule.]~~

(b) Proceedings by indictment. When the state seeks to initiate a charge of open or first-degree murder by indictment, the state shall, together with the notice required by NRS 172.241(2), notify the person whose indictment will be considered that if the person is indigent, he or she may request the court to appoint defense counsel prior to the commencement of the grand jury proceedings. This notice is required unless: (i) the district court finds adequate cause to withhold notice under NRS 172.241; (ii) the state declares that it will not seek the death penalty; or (iii) the state is unable, after reasonable diligence, to locate or notify the person. Upon the person's request, the district court shall *order the* appointment of one attorney *who is already qualified to act as lead counsel in a capital case* to serve as defense counsel during the grand jury proceedings. ~~[Appointed counsel must possess the qualifications specified in subsection 2(b) of this rule.]~~

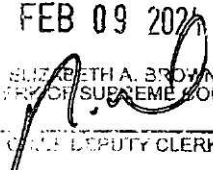
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMITTEE TO STUDY AND
UPDATE SUPREME COURT RULE 250.

ADKT 0617

FILED

FEB 09 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

***ORDER CREATING COMMITTEE TO
STUDY AND UPDATE SUPREME COURT RULE 250***

On January 25, 2024, Linda Marie Bell, Associate Justice of the Nevada Supreme Court, filed a petition seeking to create a Committee to Study and Update Supreme Court Rule 250 relating to procedures in capital cases.


Having considered the petition, we conclude that such a Committee should be created. The Committee shall conduct all hearings in public and post all meeting minutes and documents considered by the Committee on the Supreme Court's website.


Associate Justices Douglas Herndon and Linda Marie Bell are hereby appointed as co-chairs of the Committee. Pursuant to NRAD 7.1, the Chief Justice will enter an order appointing members to the Committee.

The Committee shall file a report with this court on its findings and recommendations no later than August 1, 2024.


Dated this 9TH day of February, 2024.

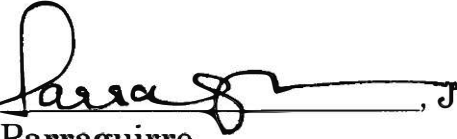

_____, C.J.
Cadish


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre


_____, J.
Bell

cc: Julie Cavanaugh-Bill, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Elko County Bar Association
Douglas County Bar Association
Administrative Office of the Courts

Eleventh Report of the Monitor
Davis v. State, Case No. 170C002271B
February 23, 2024

Appendix H

White Pine County Contract

AGREEMENT FOR CONFLICT PUBLIC DEFENDER SERVICES

This Agreement is entered into the ___ day of October, 2023 ("Effective Date") by and between WHITE PINE COUNTY (hereinafter referred to as "Contracting Authority") and Jane Eberhardy, Esq (hereinafter referred to as "Contractor").

WHEREAS, the right to counsel in certain criminal matters is guaranteed by the United States Constitution, the Nevada Constitution, and the Nevada Revised Statutes (NRS);

WHEREAS, the Contracting Authority is required by law to appoint a public defender to provide counsel in such matters to eligible indigent persons;

WHEREAS, the Contracting Authority desires to contract with Jane Eberhardy Law LLC to serve as alternate/conflict public defender;

WHEREAS the Contractor is a private law firm that aims to serve as one of the Contractor's Authority's alternate/conflict public defender and warrants that it has the means and ability to do so zealously and competently; and

WHEREAS, both parties desire to reduce the entirety of their agreement to writing in this document (hereinafter "this Agreement") and intend for all funds paid under this Agreement to be used to provide indigent defense services to eligible clients of the Contractor.

NOW, THEREFORE, the parties agree as follows:

1 DEFINITIONS

As used in this Agreement, the words below shall have the following meanings:

1. **Appointed Counsel:** Includes the Nevada State Public Defender (NSPD) and appointed conflict counsel attorney Jane Eberhardy Law LLC.
2. **Appointed Counsel Program Coordinator (ACPC) (or designee):** The Nevada Department of Indigent Services (DIDS) will act as the ACPC, overseeing the Indigent Defense Services, including assigning conflict and overflow cases: **First** to Jane Eberhardy Law LLC and, **Second** to any second alternate conflict counsel as designated by the White Pine County Commissioners. ACPC will monitor case reporting requirements from Contractors, approval, oversight of the use of substitute attorneys, and other related matters.
3. **Ancillary Services:** Defense services paid for in addition to attorney's fees: (1) investigator services, (2) expert services, (3) and any other expenses that the appointed attorney can reasonably justify as needed for effective assistance of counsel. Also known as Case-Related Expenses.
4. **Case:** A "Case" shall have the following meaning prescribed:
 - a. **Misdemeanor Case:** A Case in which the highest charge is a Misdemeanor.
 - b. **Category B, C, or E Felony or Gross Misdemeanor Case:** A Case in which the highest charge is a gross misdemeanor or a Category B, C, D, or E Felony for which the maximum penalty is less than ten (10) years imprisonment.

- c. **Category B Felony (10+ year maximum):** A Case in which the highest charge is a Category B felony for which the maximum penalty is greater than ten (10) years imprisonment.
 - d. **Non-Capital Category A Case:** A Case in which the highest charge is a non-capital Category A felony.
 - e. **Capital Case:** A case with the highest charge is a Capital A felony.
 - f. **Juvenile Proceedings:** A Case arising under NRS 432B and/or a Case in which a juvenile is alleged to be delinquent or in need of supervision.
 - g. **Appeal:** Any appeal of interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
5. **Case-Related Expenses:** Expenses necessary to provide an appropriate defense other than attorneys' fees. Such expenses may include, without limitation, fees for investigators, expert witnesses, forensic services, photocopying, transcription, and subscription service for legal research such as Lexis/Nexis. Case- Related expenses are defined in the Alternate Public Defender Services Agreement. Also known as "Ancillary Services."
 6. **Department:** The Nevada Department of Indigent Defense Services.
 7. **NSPD:** Nevada State Public Defender, including the Chief and staff.
 8. **Eligible Client:** An indigent person whom a Reviewing Authority has determined to be eligible for a court-appointed attorney pursuant to Section 6 of the Permanent Regulations of the Board of Indigent Defense Services in a Case arising in a court of law within White Pine County.
 9. **Expert Witness:** A person qualified by knowledge, skill, experience, training, or education to render an opinion on scientific, technical, or other specialized matters.
 10. **Indigent:** A person who is unable, without substantial hardship to themselves or their dependents, to obtain competent, qualified legal counsel on their own.
 11. **Investigator:** A person licensed by the state of Nevada who is qualified to secure evidence and subpoena witnesses.
 12. **Final Adjudication:** "Final Adjudication" shall have the meaning prescribed to it in Section 43(4)(d) of the Regulations.
 13. **Qualified Attorney:** An attorney approved by the Department to provide indigent defense services within specific categories of cases as outlined in the Regulations.
 14. **Regulations or Reg.:** The Permanent Regulations of the Board of the Indigent Defense Services, as amended.
 15. **Representational Services:** All services, part and parcel of the Contractor's delivery of competent, zealous legal representation to Eligible Clients under this Agreement. Such services may include, without limitation: investigation; interviews of clients and potential witnesses; review of physical evidence; legal research; preparation of pleadings, briefs, correspondence, exhibits, or other documents; preparation for and attendance at hearings and conferences; expert witness selection, discovery, and preparation; pretrial advocacy; trial advocacy; sentencing advocacy; appellate advocacy; plea bargaining; and any and all other services needed to provide competent, zealous legal representation from the beginning of a Case through Final Adjudication and, if applicable, through Appeal.

16. Reviewing Authority: The judge or justice presiding over a Case arising in a court of law within White Pine County, determining the need for indigent services.

2 APPOINTMENT OF CONFLICT COUNSEL

The Contractor shall be appointed as a public defender for the contracting Authority. The term of the Contractor's appointment shall be one (1) year, commencing on the Effective Date of this Agreement. A written, signed agreement of the parties may extend this term.

3. TERMINATION

a. Without Cause

Either Party may terminate this Agreement early without Cause upon ninety (90) days written notice.

b. For Cause

Either Party may terminate this Agreement for Cause. Before a Party may terminate this Agreement pursuant to this provision, the Party claiming "Cause" shall provide a "Notice of Cause" to the other Party no later than five (5) calendar days. The Notice of Cause shall clearly articulate the provisions of this Agreement that are in breach and how the breach occurred.

After Notice of Cause is given, the breaching Party shall have 20 calendar days to cure the breach. If the breaching Party cannot cure the violation within twenty (20) calendar days, the Non-breaching Party may terminate the Agreement.

c. Responsibility Upon Termination

In the event of any earlier termination, with or without Cause, the Contractor shall take all professionally responsible action to ensure an orderly transition of counsel that does not prejudice the rights or defense of Eligible Clients.

4 SCOPE OF SERVICES

The Contractor shall be authorized to provide Representational Services to Eligible Clients within White Pine County when the Nevada State Public Defender's Office has a conflict of interest or cannot represent all Eligible Clients in a matter. The Department will, consistent with the NSPD Plan, offer such assignments to Jane Eberhardy Law LLC insofar as practicable. The Department shall have the ultimate discretion to distribute assignments on any legitimate grounds, including, without limitation, qualifications, interest, feedback from White Pine County officials, and capacity to take on work.

The Contractor shall not accept assignments to provide the Representational Services to the extent that doing so would violate any provision of the Nevada Rules of Professional Conduct, including but not limited to the provisions concerning conflicts of interest. The Contractor will refer to the Nevada Rules of Professional Conduct, as interpreted by the State Bar of Nevada and/or opinions of the State judiciary, and to the American Bar Association Standards for

Criminal Justice to determine the existence and appropriate resolution of conflicts of interest. If a conflict of interest exists, the Contractor will promptly file an appropriate motion or follow the procedure for handling conflicts of interest as outlined by DIDS.

5 ATTORNEY QUALIFICATIONS; PERFORMANCE

- a. Jane Eberhardy Law LLC shall provide a copy of their list of qualifications before the Effective Date (DIDS Eligibility Letter) and in the event of any subsequent change to their qualifications. (Eligibility Letter attached).
- b. Attorney Qualifications: It shall be the sole responsibility of the Contractor to maintain all requisite qualifications for the category(ies) of Case(s) in which they are providing representational services. The Contractor shall also ensure, to the greatest extent practicable, consistency in the representation of the Eligible Clients such that the same attorney represents an Eligible Client through every stage of a Case. Nothing in this paragraph shall be construed to prohibit the Contractor from delegating appropriate administrative tasks to support staff or assigning more than one (1) attorney to represent an Eligible Client as necessary, provided it would not prejudice the rights or defense of the Eligible Client.

6 WORKLOAD

If DIDS requires, the Contractor shall participate in any DIDS workload study to determine an appropriate caseload for individual attorneys providing conflict counsel services under this Agreement. Before completing a workload study, the Contractor shall reasonably comply with the DIDS's workload guidelines.

7 CONTRACTOR EXPENSES

The expense of office space, furniture, equipment, technology, supplies, insurance, and personnel suitable for the conduct of the Contractor's practice of law is the sole responsibility of the Contractor. The Contractor's expenses described in this paragraph are not a charge against the County and are not considered Litigation Expenses.

8 REPORTING

The Contractor shall report Case data to LegalServer. The report shall be submitted either monthly or quarterly which shall be determined by the White Pine County Finance Manager. In no event shall the Contractor be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any Eligible Client, or violate any provision of the Nevada Rules of Professional Conduct.

9 INSURANCE

The Contractor will maintain adequate liability insurance, including errors and omissions coverage and general liability coverage, in policy limits of at least one million dollars per occurrence during the term of this Agreement. The Contractor shall also maintain workers' compensation insurance for its personnel as required by Nevada Law. The premium expense for all insurance coverage required by this Section is the sole responsibility of the Contractor.

10 COMPENSATION

The Contractor shall be compensated:

- a. At the rate of ONE HUNDRED FIFTY DOLLARS and 00/100 CENTS (\$150.00) per hour for attorney time spent providing Representational Services for all categories of cases.
- b. At a rate to be negotiated separately by the parties in the event of an assignment to serve as a lead counsel or co-counsel in a Capital Category A case, including those that are death penalty qualified.
- c. The preceding rates may be adjusted by mutual written assent of Jane Eberhardy Law LLC and the White Pine County Manager as approved by the White Pine County Commissioners.

The Contractor shall submit a monthly or quarterly invoice for all fees above, with time entries rounded to the nearest one-tenth (1/10) hour. The Contractor shall deliver the invoice to DIDS and the White Pine County Finance Department within ten (10) days of the end of the month in which the services were rendered. Submission, review, and payment of invoices shall be in accordance with White Pine County Finance Department but no later than 20 days from the date of invoice.

11 INDEPENDENT CONTRACTOR; PRIVATE LAW PRACTICE

This Agreement is for professional services as an independent contractor and does not create any employer/employee relationship between the Contracting Authority and the Contractor, its employees, or its affiliates. The Contracting Authority does not control how the Contractor provides services. The Contracting Authority is not responsible for withholding income tax or other taxes in payments to the Contractor, procuring workers' compensation insurance for the Contractor, or providing group insurance, retirement, and other benefits available to White Pine County employees.

The Contractor may maintain a private law practice and engage in the private practice of law that does not conflict with its obligations under this Agreement.

12 ASSIGNMENT AND DELEGATION

The Contractors' rights and obligations under this Agreement are not assignable to any other law firm or third party without the express approval of the Contracting Authority.

13 DEFENSE AND INDEMNIFICATION

The Contractor shall, to the fullest extent of the law, during and after the term of this Agreement, defend, indemnify, and hold harmless the Contracting Authority, its officers, agents, and employees from and against all claims, lawsuits, or asserted damages arising from the Contractor's provision of Representational Services under this Agreement.

14 ENTIRE AGREEMENT; MODIFICATIONS

This Agreement constitutes the entire agreement between the parties. This Agreement may be amended or modified only by a written modification duly executed by both parties.

15 GOVERNING LAW; CHOICE OF FORUM

The laws of the State of Nevada shall interpret this Agreement. Any action to enforce any provision in this Agreement shall be brought in the Seventh Judicial District Court in White Pine County, Nevada.

16 JOINT PRODUCT OF PARTIES; NO THIRD-PARTY BENEFICIARIES

This Agreement results from arms-length negotiations between the parties to this Agreement and their respective attorneys. Accordingly, no party shall be deemed the author of this Agreement, and this Agreement shall not be construed against any party. This Agreement is for the sole and exclusive benefit of the parties and their respective permitted successors and assigns. No third party is intended to or shall have, any rights hereunder.

17 WAIVER:

No waiver of any right under this Agreement shall be effective unless contained in writing and signed by a duly authorized officer or representative of the party sought to be charged with the waiver. No waiver of any right arising from any breach or failure to perform shall be deemed a waiver of any future right or any other right arising under this Agreement.

18 SEVERABILITY

Should any of the provisions of this Agreement be found to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be stricken, and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the parties.

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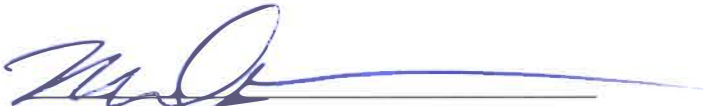
By signing below, Jane Eberhardy of Jane Eberhardy Law LLC and Michael Wheable, Esq., White Pine County Manager and White Pine County Commission Chairman agree that they have read this contract and understand the content therein.

DATED this ____ day of _____, 2023



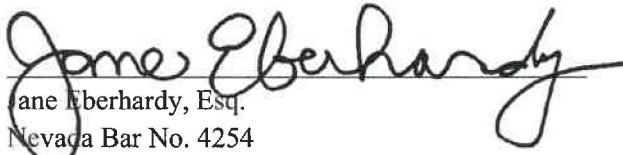
Shane Bybee
Chairman, White Pine County Commission

DATED this 9th day of October, 2023



Michael Wheable, Esq.
Nevada Bar No. 12518
White Pine County Manager

DATED this 29th day of September, 2023



Jane Eberhardy, Esq.
Nevada Bar No. 4254
Jane Eberhardy Law, LLC
705 Avenue K, Suite B
Ely, NV 89301
O: (775) 717-9167
F: (702) 974-1850
jane@jeberhardylaw.com

APPENDIX A -APPOINTED COUNSEL CLIENT COMPLAINT POLICY AND FORM

The contract negotiations will include the appointed counsel client complaint policy and form.

Client Complaint Procedure for Jane Eberhardy Law, LLC, Appointed Conflict Counsel Providing Indigent Legal Services in White Pine County Nevada

Jane Eberhardy, Esq. of Jane Eberhardy Law, LLC, appointed counsel providing indigent legal services in White Pine County, Nevada, is committed to ensuring that no person is excluded from participation in or denied the benefits of its services based on race, color, or national origin, as protected by Title VI, as well as other protected persons under the Civil Rights Act of 1964, as amended. The protected classes include: age, ancestry, color, disability, ethnicity, gender, gender identity or expression, genetic information, HIV/AIDS status, military status, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran status, or any other bases under the law. The County has established a discrimination complaint procedure and will take prompt and reasonable action to investigate and eliminate discrimination when found.

If you feel your civil rights have been violated by Jane Eberhardy Law, LLC, while engaged as appointed counsel on your White Pine County legal matter, civil rights complaints will be investigated by White Pine County. This does not limit persons submitting complaints to Nevada Defense for Indigent Services.

Please be aware White Pine County will not investigate complaints against the Appointed Legal Representatives. Please contact Nevada Defense for Indigent Services at the contact information below. If you submit a complaint with White Pine County for any reason other than discrimination, it will be turned over to Nevada Defense for Indigent Services.

To make a complaint regarding the Appointed Legal Representative(s), please contact Nevada DIDS directly:

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

Eleventh Report of the Monitor
Davis v. State, Case No. 170C002271B
February 23, 2024

Appendix I

LASSO Request for the
Department of Employment, Training, and Rehabilitation

CETS #:	28845
Agency Reference #:	3837-26-ESD

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting by and through its

Public Entity #1:	Department of Employment, Training, and Rehabilitation Employment Security Division Workforce Innovation Support Services Unit
Address:	1370 S Curry Street
City, State, Zip Code:	Carson City, NV 89706
Contact:	Gina Hein
Phone:	775 687-8097
Email:	gmhein@detr.nv.gov

Public Entity #2:	State of Nevada Department of Indigent Defense Services (DIDS)
Address:	896 W. Nye Lane
City, State, Zip Code:	Carson City, Nevada 89703
Contact:	Marcie Ryba
Phone:	775 687-8490
Email:	mryba@dids.nv.gov

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services hereinafter set forth are both necessary and in the best interests of the State of Nevada.

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.

2. **DEFINITIONS**

TERM	DEFINITION
State	The State of Nevada and any State agency identified herein, its officers, employees and immune contractors.
Contracting Entity	The public entities identified above.
Fiscal Year	The period beginning July 1 st and ending June 30 th of the following year.
Contract	Unless the context otherwise requires, 'Contract' means this document titled Interlocal Contract Between Public Agencies and all Attachments or Incorporated Documents.

CETS #:	28845
Agency Reference #:	3837-26-ESD

3. **CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 4, Termination*.

Effective From:	Upon GFO approval	To:	June 30, 2026
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4. **TERMINATION.** This Contract may be terminated by either party prior to the date set forth in *Section 3, Contract Term*, provided that a termination shall not be effective until **30** days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Contract shall be terminated immediately if for any reason State and/or federal funding ability to satisfy this Contract is withdrawn, limited, or impaired.
5. **NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (a) by delivery in person; (b) by a nationally recognized next day courier service, return receipt requested; or (c) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or email to the address(es) such party has specified in writing.
6. **INCORPORATED DOCUMENTS.** The parties agree that this Contract, inclusive of the following Attachments, specifically describes the Scope of Work. This Contract incorporates the following Attachments in descending order of constructive precedence:

ATTACHMENT AA:	SCOPE OF WORK AND BUDGET
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Any provision, term or condition of an Attachment that contradicts the terms of this Contract, or that would change the obligations of the State under this Contract, shall be void and unenforceable.

7. **CONSIDERATION.** The parties agree that the services specified in *Section 6, Incorporated Documents* at a cost as noted below:

Total Contract or installments payable at:	As invoiced by the Contractor and approved by the State.
--	--

Total Contract Not to Exceed:	\$465,647.00
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Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

8. **ASSENT.** The parties agree that the terms and conditions listed in the incorporated Attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.
9. **INSPECTION & AUDIT**
- A. **Books and Records.** Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and document as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes.

CETS #:	28845
Agency Reference #:	3837-26-ESD

- B. **Inspection & Audit.** Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.
- C. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.
10. **BREACH - REMEDIES.** Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall not exceed \$150.00 per hour.
11. **LIMITED LIABILITY.** The parties will not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.
12. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, acts of public enemy, acts of terrorism, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
13. **INDEMNIFICATION.** Neither party waives any right or defense to indemnification that may exist in law or equity.
14. **INDEPENDENT PUBLIC AGENCIES.** The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or constructed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.
15. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
16. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
17. **ASSIGNMENT.** Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.
18. **OWNERSHIP OF PROPRIETARY INFORMATION.** Unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

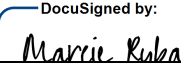
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19. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.
20. **CONFIDENTIALITY.** Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.
21. **FEDERAL FUNDING.** In the event, federal funds are used for payment of all or part of this Contract, the parties agree to comply with all applicable federal laws, regulations and executive orders, including, without limitation the following:
 - A. The parties certify, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to Executive Orders 12549 and 12689 and Federal Acquisition Regulation Subpart 9.4, and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
 - B. The parties and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder, including 28 C.F.R. Section 35, inclusive, and any relevant program-specific regulations.
 - C. The parties and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964 (P.L. 88-352), as amended, the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
 - D. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
22. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in ***Section 6, Incorporated Documents***.
23. **GOVERNING LAW – JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.
24. **ENTIRE AGREEMENT AND MODIFICATION.** This Contract and its integrated Attachment(s) constitute the entire agreement of the parties and as such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated Attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such Attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the Office of the Attorney General.

CETS #:	28845
Agency Reference #:	3837-26-ESD

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Dept of Indigent Defense Services (DIDS)

DocuSigned by:

 Marcie Ryba
 39043740E0B450...
 Date

Director, Department of Indigent Defense Services

Department of Employment, Training and Rehabilitation (DETR)

Kristine Nelson
 Date

ESD Administrator,
 Department of Employment, Training and
 Rehabilitation

Carrie Edlefsen on behalf of Christopher Sewell
 Date

Director,
 Department of Employment, Training and
 Rehabilitation

APPROVED BY BOARD OF EXAMINERS

Signature – Board of Examiners

On: _____
 Date

Approved as to form by:

Deputy Attorney General for Attorney General

On: _____
 Date

Joe Lombardo
Governor



CETS #28845
CONTRACT #3837-26-ESD
Attachment AA – SOW and Budget

Marcie Ryba
Executive Director

Thomas Qualls
Deputy Director

Peter Handy
Deputy Director

STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

896 W. Nye, Suite 202 | Carson City, NV 89703
(775) 687-8490 | www.dids.nv.gov

I. Executive Summary

The lack of availability of public defense attorneys is an increasing problem in Nevada and neighboring states which threatens the ability of court systems to process criminal filings, particularly within rural areas. The State of Nevada Department of Indigent Defense Services ("Department") is specifically tasked with determining incentives to recommend offering to law students and attorneys to encourage them to provide indigent defense services, especially in the rural areas of the state. (NRS 180.320(2)(f)(2) & Stipulated Consent Judgment in *Davis v. State*). Specifically, a path needs to be created to encourage law students to enter into the practice of indigent defense services and remove barriers to practice in underserved and rural areas of the state. To this end, the Department believes that it is necessary to establish Law Student Supervision Operation ("LASSO") to provide support for job training programs in the public sectors for training, retaining and/or improving the skills of persons employed in this State that are training to practice law in Nevada.

Recognizing that addressing unrepresented persons will require creative solutions, the Department is requesting innovative strategies directed at increasing the number of attorneys practicing in the area of indigent defense services and reducing the number of persons who do not have the court-appointed counsel to which they are entitled. The public defender crisis, which is a national issue, has left hundreds of people languishing in jails or in the community awaiting legal representation. This proposal request to the Nevada Department of Employment, Training and Rehabilitation accomplishes that by requesting training funding, training supports and retention incentives to mitigate the significant gap of public defense attorneys in Nevada's underserved and rural areas.

The Department has offered job training stipends in the past which have successfully encouraged individuals to accept employment in rural counties providing indigent defense services. The Department hopes to continue this positive forward momentum with LASSO.

With LASSO, the Department will coordinate with one or more law schools to place first- and second-year law students in a summer training program with experienced public defense attorneys located in underserved and/or rural areas of the state. LASSO will

also encourage recent graduates to take employment in a rural public defender office to gain indigent defense services experience by practicing law immediately upon graduation. LASSO will strive to provide real-world and hands-on public defense experience under the mentorship of the experienced public defense attorneys, including active representation and litigation opportunities, with the purpose of encouraging the student to consider employment opportunities in the practice of indigent defense services in underserved and/or rural areas of Nevada.

Finally, LASSO will provide a stipend for training materials to individuals that have accepted employment at a qualifying office to take the Nevada Bar Exam and continue their practice in providing indigent defense services.

The Department is requesting **\$465,647** from the Nevada Department of Employment, Training and Rehabilitation's (DETR) Career Enhancement Program (CEP) to further expand this training program as allowable under NRS 612.605-612.610.

II. Definitions:

“Qualifying Office”: Office at the state or unit of local government who provides legal representation as defined in NRS 180.004. This term can include indigent defense services providers that have a contract to provide first-line primary indigent defense services for a county. Federal and municipal offices are not eligible. The office also must be able to provide supervision for the limited practice of law under Supreme Court Rule (SCR) 49.1, 49.3, or 49.5.

“Rural county” is defined as a county with a population of less than 100,000 people. An individual seeking to practice in a rural county under SCR 49.3 shall have priority in receiving the stipend.

“Underserved county” is defined as a county within Nevada which the Department has determined is struggling to fill indigent defense services vacancies in their qualifying office(s) and would benefit from LASSO.

“First-year student” is defined as a student enrolled in a law school approved by the American Bar Association and who has completed at least thirty (30) semester credit hours, or the equivalent.

“Second-year student” is defined as a student enrolled in a law school approved by the American Bar Association who has completed at least forty-five (45) semester credit hours, or the equivalent.

A **“supervising lawyer”** shall be defined by SCR 49.3(4).

III. Term of Program

This request for funding is for a period of two years.

IV. Budget Detail and Narrative

Expense Budget Summary	
Line Item	Amount
A. Outreach	\$43,147
B. Training Materials	: \$97,500
C. Training and Retention	: \$325,000
Total Direct Charges (sum of A.-C.)	: \$465,647

A. Outreach

The Department requests a total of **\$43,147** for Outreach to promote the program. This would include:

- Funding for DIDS staff to travel to in-state and out-of-state law schools – approximate cost: \$18,736.
- Funding for rural attorneys to travel to Boyd School of Law to meet students – approximate cost: \$14,411.
- Funding for DIDS staff to purchase items to perform program outreach – approximately \$10,000.

B. Training Materials

The Department requests a total of **\$97,500** to serve up to **15** participants with preparation for the Nevada Bar Exam. Qualified individuals will receive a \$6,500 stipend to purchase training materials to prepare for the Nevada Bar Exam. As determined by DIDS, the individual must accept employment at a qualifying office in the State of Nevada and individuals employed by a rural county office will receive preference to receive the stipend.

C. Training and Retention

The Department requests a total of **\$ 325,000** to serve up to **30** participants with an opportunity to enhance legal education by learning through observation and hands-on learning experience while under the direct supervision of lawyers in a public defender setting, with a focus on maintaining service in Nevada's rural and

underserved areas.

The program shall have three **funding tiers**:

1. Scout Tier:

Up to a total of **\$65,000** to serve up to **10** students @ **\$6,500 stipend** per student.

- a. Provide summer training opportunities and support for first-year students to work and train in a rural and/or underserved Nevada qualifying office for at least 10 weeks (as agreed by the student and supervising lawyer).
 - i. Ten summer training opportunities with a Qualifying Office (“Public Defender”).
 - ii. The summer training shall be led by a supervising lawyer that is continuously and personally present through the following activities:
 1. Assisting and counseling the student in the activities and reviewing such activities with the student, to the extent necessary for the proper training of the student and protection of the client.
 2. Reading, approving, and personally signing any pleadings, briefs, or other papers prepared by the student before filing; reading and approving any documents prepared by the student for execution by any person before submission to that person; and reading and approving any correspondence prepared by the student before mailing.
 3. And being present for any appearance by a student before a court or administrative tribunal, if allowed.

2. Trigger Tier:

Up to a total of \$105,000 to serve up to **10** students @ **\$10,500 stipend** per student.

- a. Provide summer training opportunities and support for second-year students to work and train in an underserved and/or rural Nevada qualifying office for at least 10 weeks (as agreed by the student and supervising lawyer).
 - i. Ten summer training opportunities with a Qualifying Office (“Public Defender”).
 - ii. The summer training shall be in compliance with SCR 49.3 and led by a supervising lawyer that is continuously and personally present

through the following activities:

1. Assisting and counseling the student in legal practice activities and reviewing such activities with the student, to the extent necessary for the proper training of the student and protection of the client.
2. Reading, approving, and personally signing any pleadings, briefs, or other papers prepared by the student before filing; reading and approving any documents prepared by the student for execution by any person before submission to that person; and reading and approving any correspondence prepared by the student before mailing.
3. And being present for any appearance by a student before a court or administrative tribunal.

3. Silver Tier:

Up to a total of **\$155,000** to serve up to **10** limited practice practitioners @ **\$15,500** per training stipend.

- a. To qualify, individuals must accept employment at a rural public defender office and be qualified to practice law by either having either passed the Nevada bar or qualify for a limited practice certification under SCR 49.1 or 49.5.
 - i. Ten positions with qualifying offices in rural Nevada.
 - ii. New hires will be provided with hands-on practice opportunities in the rural public defender offices. The individuals will handle cases, learn local rules, and have an earlier opportunity to improve their skills in providing indigent defense services.