

Tenth Report of the Monitor
Davis v. State, Case No. 170C002271B
October 30, 2023

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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 July 15, 2023, to October 30, 2023.¹

Summary Points

The Monitor notes developments since the last report of July 15, 2023, summarizes accomplishments, and discusses ongoing compliance concerns.

Achievements

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

- **Completion of a weighted caseload study**

The National Center for State Courts (NCSC) completed its weighted caseload study for rural Nevada in October 2023. The study sets case weights, i.e., average number of hours required per case type, number of hours available for case work per year for a full-time attorney, and maximum, yearly caseloads.² The report then determines the total number of attorneys, investigators, and staff needed to comply with the caseload limits.³

- **Request for AB 518 (7) funding allocation for oversight, training, recruitment, and data collection/reporting**

The Department requested an allocation pursuant to AB 518 (7)⁴ to advance compliance with the Judgment through additional oversight staffing, funds to train attorneys through programs

¹ This October 15, 2023, report was delayed for additional analysis of the Nevada weighted caseload study, discussed in Section II.A.

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

³ The Executive Summary of the NCSC Study is attached to this Report as Appendix A.

⁴ 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.”

within and outside of Nevada, funds to increase opportunities for student externships at rural public defender offices, and funds to incentivize contemporaneous timekeeping.⁵

- **Proposed regulation regarding the hourly rate of compensation for attorneys**

The Department drafted and the Board approved a proposed regulation setting the minimum hourly rate for appointed counsel at the current rate for federal Criminal Justice Act (CJA) attorneys.⁶

- **Reimbursement to counties**

The Department reimbursed the counties for their expenditures over the maximum contribution for the fourth quarter of FY 2023. All told, the state reimbursed the *Davis* counties \$2,186,631.30 during FY 2023.

- **Continued oversight activities**

The Department conducted partial oversight visits to Churchill, Douglas (three visits), Mineral, White Pine, and Eureka counties. The Department also surveyed the rural counties' capacity to staff death penalty cases with a qualified defense team.⁷

- **County plans**

The Department continues to work with counties to improve their indigent defense plans, alerting the counties to the upcoming caseload limits.

- **First quarter workload report**

The Department collected and analyzed attorney workload reporting for July 1 – September 30, 2023, and produced a report for the quarter that is formatted to include additional information required by the Judgment.⁸

- **Improved process for determining attorneys' private workload**

The Department conducted a survey of attorney's offices to determine private workload during the first quarter of FY 2024. This method yielded more information about private workload from many of the attorneys and is included in the Department's quarterly workload reporting.

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

⁵ The memorandum in support of this Interim Finance Committee request is attached to this Report as Appendix C.

⁶ AB 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 The combined oversight report for the past quarter is attached to this Report as Appendix D.

⁸ The Department's quarterly workload reports are available on the Department's website at https://dids.nv.gov/Annual_Report/home/.

The Department continues to take steps to build a pipeline to rural indigent defense, in partnership with the UNLV Boyd School of Law. The Department is requesting an allocation pursuant to AB 518 (7) for stipends for student externs in rural public defender offices.

Areas of Concern

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

- **Insufficient staff to conduct oversight**

The Judgment requires robust assessment and evaluation of both county defense systems and attorneys providing public defense. This requires in-person visits to observe attorneys in court in each county, as well as reviews of other documentation of attorney performance. This appears to be impossible without additional staffing for the Department.

- **Insufficient budget for year-round training opportunities for rural defenders**

The Judgment requires the Department to create a “systematic and comprehensive training program” covering all major areas of criminal defense practice.⁹ The Department’s budget — combined with grants secured by the Department — provides funds sufficient for a two-day annual conference and a low-expense virtual CLE calendar, which includes training events hosted by various county and federal public defender offices. The budget is, however, insufficient to provide more robust training, support, and mentorship opportunities, or to provide scholarship assistance to attorneys who would like to travel to attend training programs in and out of state.

- **Understaffed Nevada State Public Defender**

The Nevada State Public Defender (NSPD) now provides first-tier public defense in White Pine County and has been unable to fully staff its office in Ely. It is also tasked with providing appellate and complex litigation in some *Davis* counties. Staffing the NSPD is particularly difficult given that the NSPD salaries offered are lower than those of the public defender offices in the larger counties and lower than the compensation offered to some contract attorneys.¹⁰

- **Workloads above NCSC caseload limits**

The Judgment requires compliance with workload standards within 12 months of completion of the caseload study,¹¹ and that study has just been completed by the NCSC. The NCSC Study reveals high workloads for attorneys in most counties, with some counties (Nye, Douglas, Lyon, and Churchill) needing several additional attorneys. The Department now must work with each county to confirm current caseloads, predict future caseloads, and rework county

⁹ Judgment, 16.

¹⁰ See The Pay Parity Memorandum attached to this Report as Appendix G.

¹¹ Judgment, 17.

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.

- **Increasing recruitment needs in light of caseload study**

In the face of a serious attorney shortage, the Department should take additional steps, such as incentivizing rural practice. Funds for recruitment and incentives may be necessary for compliance with the Judgment under AB 518 (7) (b).

- **Workload reporting gaps**

Some attorneys continue to underreport, and a few in Nye County do not report at all. Without incentives, the reporting requirement is unpopular and may continue to be uneven.

Summary of Recommendations

- **Adequate resources for oversight:** The Department needs additional staffing to meet its oversight requirements. To this end, the Department requested an allocation 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.
- **Adequate budget for training:** The Department should improve its training opportunities to comply with the Judgment's requirement for a "systematic and comprehensive training program." To that end, the Department requested funds pursuant to AB 518 (7) (d) to increase in-state training opportunities and to send five rural attorneys per year to the National Criminal Defense College or a similar training program.
- **Limiting caseloads:** The Department should implement caseload limits based on the completed NCSC study, leaving room for adjusting the case weights in light of the newly released National Public Defense Workload Study conducted by the RAND corporation.¹² As discussed in Section II, there is variation in case weights between the Rural Nevada NCSC study and the RAND study. Because both sets of numbers are new, a cautious approach would be to observe and reassess the differences in a year or two when we can see how the NCSC/RAND case weights are playing out both here and elsewhere.
- **Attorney recruitment:** The Department should continue to pursue strategies for recruitment and incentives to rural practice. To that end, the Department requested an allocation of funds appropriated in AB 518 (7) (a) for stipends to align the pay for NSPD attorneys with the pay of other indigent defense providers in the rural counties, as well as funds to provide law students with stipends to extern in rural public defender offices.

¹² The RAND study is available here: https://www.rand.org/pubs/research_reports/RRA2559-1.html.

However, much more will be needed given the attorney shortages identified in the NCSC Study.

- **Improve timekeeping:** The State should consider providing an incentive for timekeeping to contract attorneys to encourage consistent and accurate case and hourly reporting. To that end, the Department requested an allocation of funds pursuant to AB 518 (7) (b) to incentivize reporting by providing Westlaw subscriptions.

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.

I. Removing Economic Disincentives and Ensuring Independence

The Judgment contains several requirements to ensure independence of the defense function and removal of economic disincentives.¹³

In the past quarter, the Department has: (a) continued to work with the counties to develop and update their plans for indigent defense and (b) continued to ensure that counties were reimbursed for expenditures over their maximum contributions, (c) developed proposed regulations setting a higher minimum hourly rate of compensation, (d) and requested AB 518 (7) funds to provide incentives to attract qualified attorneys to work for the Nevada State Public Defender in White Pine County and in other capacities in the rural counties.

A. County-level indigent defense plans

The Department continues to oversee county plans for the provision of indigent defense. Significant changes to county plans in the past two quarters have included the decision of White Pine County to utilize the Nevada State Public Defender to provide first-tier indigent defense, and the decision of Churchill and Lyon counties to incorporate municipal court representation in its

¹³ Judgment, 11-13.

plan. These changes were discussed in the Monitor's Ninth Report, and further developments are noted below.

Churchill County's updated plan includes tiers of representation: public defender, alternative public defender, and two contract attorneys to be appointed in third and fourth tiers of conflicts. The plan thus serves as a model of the Department's efforts to ensure prompt appointment of counsel in conflict cases by ensuring that the county plans have identified and (ideally) contracted with private attorneys to represent clients when the primary public defense provided has a conflict.

Under the Board's proposed amendments to its regulations, Sections 22 and 23 will require that county plans include a process for selecting additional and alternate counsel, and anticipating scenarios in which alternate counsel is either not available or is unqualified due to the severity or complexity of a case. Proposed changes to Section 30 of the regulations include a section clarifying that county plans must ensure that a first chair attorney will be appointed to cases in which the contract attorney lacks the qualifications to handle the severity of the case level.¹⁴

The updated Churchill County plan also clarifies that the county is responsible for appointing public defenders to criminal cases in the county's municipal court in Fallon.¹⁵ As discussed in the Monitor's July 15, 2023, report, the Department began aligning the selection of public defense counsel in municipal courts with NRS 171.188, which applies to judicial appointment of counsel by "the district judge, justice of the peace, municipal judge, or master." This raises thorny issues because the legislature has given the Department authority over all attorneys representing indigent defendants but has not explicitly stated that the Board and Department have authority over the municipalities to create collective action plans under NRS 180.450 or to reimburse for indigent defense expenditures given that the municipalities are not part of the maximum contribution formula in AB 518.

The following municipal courts adjudicate criminal matters in the *Davis* counties: Caliente (Lincoln), Ely (White Pine), Fallon (Churchill), Fernley (Lyon), and Yerington (Lyon). Lyon County now includes municipal courts in its indigent defense plan, and White Pine County plans to do the same. The Board's proposed amendments to Sections 22 and 23 of its regulations require county plans to provide a process for assigning cases in municipal courts. The proposed regulations will be the subject of public hearing on November 3, 2023.¹⁶

Given the anticipated caseload limits, significant changes to some county plans will be necessary, especially in counties requiring four to twelve more full-time attorneys to comply with workload standards. This issue is discussed below in Section II A.

¹⁴ The Notice of Adoption of Regulations, which will be discussed at the November 2, 2023, Board meeting, is attached to this Report as Appendix E.

¹⁵ Churchill County Indigent Defense Plan 8 (2023-24), available on the Department's website at https://dids.nv.gov/Resources/Selection_and_Billing/Information_by_County/.

¹⁶ See Appendix E.

B. Reimbursement to the counties

As previously noted, the maximum contribution formula and reimbursement process has been codified in statute. On August 3, 2023, the Board held a workshop on amendments to the regulations, including the repeal of the regulatory maximum contribution formula in Sections 16-19, due to the statutory codification of the formula in AB 518 (2023) and AB 454 (2023).

The FY 2023 reimbursement to the counties was \$3,265,972.92 total, with \$2,186,631.92 to the *Davis* counties. Note that, as discussed in the July 15, 2023, Monitor's Report, the state passed several bills to ensure the availability of sufficient funds to reimburse the counties for public defense expenses over their maximum contributions. In addition to including in the Department's biennial budget \$3.5 million per year for county reimbursement, the state passed SB 479, which appropriates an additional \$2,569,906 from the State General Fund to cover any shortfall in reimbursement funds. Moreover, AB 518 sets aside \$12 million for the biennium for unanticipated Department expenses, including reimbursement to the counties for costs incurred complying with the anticipated caseload limits. This is critical given the workload study, which, as discussed below in Section II A, requires adding attorneys to county plans for several *Davis* counties.

C. 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.

Accordingly, the Board considered hourly rates at its August 3, 2023, workshop on proposed regulations. The Board noted that many counties have increased their hourly rates from the \$100 per hour statutory rate to attract attorneys. Washoe offers \$300 per hour for representation in category A felonies, \$200 per hour for all other felonies, and \$150 per hour for misdemeanors. Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lincoln, Mineral, and White Pine counties compensate at \$150 per hour. Only Clark, Esmeralda, Lyon, and southern Nye County compensate at the statutory rate of \$100 per hour, the amount previously codified in NRS 7.125 (2003).¹⁷

Ultimately, the Board voted for a proposed regulation stating that an indigent defense provider in the rural counties (or handling postconviction habeas corpus petitions) "is entitled to receive an hourly compensation rate at the prevailing CJA panel attorney hourly compensation rate at the time of service." Currently, the CJA rate is \$163 per hour, and \$210 per hour in capital cases.

¹⁷ The Hourly Rates Comparison is attached to this Report as Appendix F.

While a welcome advance and a sensible regulation, it should be noted that the CJA rate may be insufficient to ensure parity with prosecutors in every county. Ultimately, determining whether the CJA rate is on par with the salaries of prosecutorial counterparts must be done at the county level, a task made difficult by varying arrangements for district attorneys, including some who are permitted to take on private work in addition to their prosecutorial duties.

The CJA rate is a floor, not a ceiling, and counties may — as some have — offer a higher rate. The proposed regulations state: “This rate may be increased as deemed reasonable and necessary by the Executive Director of the Department of Indigent Defense Services for good cause including the complexity of the case and the scarcity of qualified attorneys.”¹⁸

D. Stipends for Nevada State Public Defenders

The Nevada State Public Defender (NSPD) faces ongoing difficulties attracting attorneys given its low salary range as compared with county public defender offices and rates of pay for private attorneys accepting appointed cases in many counties. As discussed in the Monitor’s Ninth Report, the difficulty staffing the NSPD is a particularly pressing problem given the decision of White Pine County to rely on the NSPD for first-tier public defense, and on several other rural counties to rely on the NSPD for death penalty litigation and appeals. Yet, the NSPD cannot adjust its salaries to attract qualified attorneys because the salaries are set by statute.

To that end, the Department submitted a request for funding allocated pursuant to AB 518 (7) for a Pay Parity Stipend.¹⁹ The total amount requested is \$130,066. While the NSPD cannot adjust its salaries except through statutory change, it seems possible to attract qualified attorneys by providing them with incentives for rural practice, which might include loan forgiveness, an annual stipend designated for attorneys who transition to rural offices to answer the call for access to justice, and so forth. This is what the Department’s request for a Pay Parity Stipend aims to do.

To be clear, this is not an issue of pay parity with the prosecutorial counterpart—at least as presented by the Department—but an issue of low NSPD salaries compared with county public defense offices and private attorneys compensated for indigent defense. Pay parity among public defenders may be required in AB 518 (7) (d), which appropriates funds for “[t]he costs of training and pay parity for attorneys who provide indigent defense services.” The Judgment, however, does not require pay parity among public defenders, but absolutely requires sufficient qualified attorneys to comply with caseload limits. The pay of NSPD attorneys is thus a critical issue in addressing the shortage of qualified attorneys.

¹⁸ Draft Minutes of the August 3, 2023, Board Meeting and Workshop on Proposed Regulations, 12.
<https://dids.nv.gov/Meetings/2023/Meetings/>.

¹⁹ The Department’s memorandum in support of this Interim Finance Committee request for pay parity is attached to this Report as Appendix G.

Recommendations

- The state, working with the Department, should ensure that the rates of compensation for rural public defense are sufficient to attract and retain qualified attorneys.
- The Department should continue to analyze pay parity between rural public defense providers and their local prosecutorial counterparts.

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.²⁰
- 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.²¹
- Systems to identify and remove conflicts.²²
- Establishment of performance standards.²³
- Establishment of workload standards.²⁴
- Qualifications for attorneys.²⁵
- A system of oversight.²⁶
- Attorney training and resources.²⁷

This Report primarily addresses developments in (a) workload standards, and associated attorney shortages, (b) oversight, and (c) attorney training and resources.

A. 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.²⁸ The NCSC

²⁰ Judgment, 14.

²¹ *Id.* at 14-15.

²² *Id.* at 12.

²³ *Id.* at 16.

²⁴ *Id.* at 17.

²⁵ *Id.* at 15.

²⁶ *Id.* at 16-17.

²⁷ *Id.* at 16.

²⁸ *Id.* at 17.

issued a final weighted caseload study for rural Nevada this month. The NCSC report and recommendations will be considered at the November 2, 2023, Board meeting.²⁹

Description of the NCSC study

As previously reported (and noted by the NCSC study itself), the caseload study has two components: a description of current caseloads and workloads, followed by an in-depth analysis of how much time on average each lawyering task should take an experienced defense attorney adhering to professional standards. This second phase is paramount because it results in consensus-based case weights (amount of time per case type, on average) that will be used to measure how many attorney hours are needed to cover all criminal cases in each jurisdiction. Delphi panels of criminal defense attorneys are the primary method of determining case weights and are also required by the Judgment. In sum, the results of the study derive from analysis of the time study, focus groups, Delphi panels, a census, and (later) Legal Server data—all conducted with Nevada attorneys, most of whom have some experience practicing in the rural counties.³⁰

As the NCSC study makes clear, the descriptive function of the study—determining how much time attorneys currently spend on casework—was hampered by the COVID-19 pandemic and the lack of established norms of timekeeping during the data collection phase. The NCSC attempted to supplement this data with more recent Legal Server data. Unfortunately, the study administrators found the additional timekeeping data to be insufficient on its own to be certain about how much time attorneys currently spend on various tasks in their cases.³¹

This uncertainty does not necessarily hamper the study’s ability to establish case weights using Delphi panels and other methods. What follows is a concern about the case weights established by the NCSC study, but not a concern that should hinder the immediate implementation of workload standards. Rather, the Monitor recommends that the workload standards should be set with an awareness that a recently-published national study of public defender caseloads by the RAND Corporation sets substantially higher values for case weights in most areas—in other words, more time on average required per case type.³²

Analysis of the NCSC Case weights.

Case weights represent “the average amount of time required to handle cases of each type over the life of the case.”³³ To arrive at these numbers, the NCSC Nevada study drew from state-level Delphi studies conducted in eight other states, including Maryland, Massachusetts, Michigan, Missouri, New Mexico, North Carolina, Texas, and Virginia.³⁴ Although the RAND national

²⁹ The NCSC Final Report is attached to this Report as Appendix B.

³⁰ NCSC Study, 8-9.

³¹ *Id.* at 11-12.

³² The RAND National Public Defense Workload Study (October 2023) is available here: https://www.rand.org/pubs/research_reports/RRA2559-1.html

³³ NCSC Study, 6.

³⁴ *Id.* at 3, 18.

caseload study was published this month, the NCSC study states that it had insufficient time to incorporate the RAND study results into its study.³⁵

As the table below demonstrates, the NCSC study case weights are difficult to compare to the RAND national case weights due to the categorization of types of cases. At the same time, the NCSC study includes case weights for case types not included in the RAND study, including appeals, and juvenile proceedings. The NCSC study also takes into consideration the annual time spent in specialty court per year and weekend hours spent covering first appearances.³⁶ Note also that the NCSC Study table of case weights does not include Category C-E Felonies or Gross Misdemeanors, but the Department clarified those case weights for inclusion here.

It is clear from the table below that the NCSC study assigns less weight to most case types than the RAND national study.³⁷

Nevada Case type	Nevada Case weight	RAND Case type³⁸	RAND Case weight
Category A Felony (up to life without parole-LWOP)	50 hours	LWOP	266 hours
Category B Felony- High (10 to 20 years)	50 hours	Felony-high-Murder (up to LWOP) Felony-high-Sex Assault (+ 15yrs) Felony-high (more than 15 years)	248 hours 167 hours 99 hours
Low Category B Felony- Low (10 or less); C-E Felonies & Gross Misdemeanors ³⁹	20 hours	Felony-mid (up to 15 years) Felony-low (up to 2 years)	57 hours 35 hours
Misdemeanors DUI/DV	10 hours	DUI high (+ 2 years) DUI low (up to 2 years)	33 hours 19 hours

³⁵ The NCSC Study discusses aspects of the RAND study, 4-5.

³⁶ NCSC Study, 16.

³⁷ The information in the table appears in the NCSC Study at 19 and the RAND study at 113.

³⁸ RAND Study, 58-59.

³⁹ The Monitor obtained the case weights for high and low Category B Felonies, Categories C-E Felonies, and Gross Misdemeanors from the Department. The table in the NCSC Study needs clarification on this point. NCSC Study, 19.

Misdemeanors	6 hours	Misdemeanor-high	22.3 hours
		Misdemeanor-low	13.8 hours
Probation/parole violations	4 hours	Probation/parole violations	13.5 hours
Appeals of felonies and gross misdemeanors	50 hours		
Appeals of misdemeanors	6 hours		
Juvenile delinquency, supervision, and appeals	7.1 hours		
Juvenile probation and parole violations	26 hours		
Annual time for specialty court duty	90 hours		
Time per weekend for 48-hour hearings	3 hours		

Although there is some variation in sentencing and case-type categories, the Nevada case weights are almost uniformly below the RAND case weights. There are exceptions. For example, a gross misdemeanor carries up to one year jail time and is included in the case weight of twenty hours, which includes a range of felonies up to low Category B felonies. In comparison, the RAND Study assigns a case weight of ten hours to DUI misdemeanors carrying up to two years jail time.

It is unclear whether lower case weights in the NCSC study reflect the judgment of attorneys participating in the Delphi panels and the census, or whether it also reflects the survey of state-level caseload studies from other states. If the Nevada case weights reflect caseload studies in other states, it is possible that some of those studies were conducted before recent changes in public defense practice, such as the need to watch hours of body-worn camera footage from police officers since the roll-out of such technology beginning around 2015, and the heightened attention to collateral consequences of even low-level offenses, particularly with regard to immigration. Thus, some of the case weights from earlier Delphi studies may be out-of-date. The RAND study contains tables comparing its case weights to median case weights in seventeen prior state caseload studies, which also suggests the Nevada case weights are on the low side.⁴⁰

Because the RAND study was published within the last few weeks, it has not been adopted or metabolized (i.e., analyzed, critiqued, endorsed, etc.). But the parties should not ignore the

⁴⁰ RAND Study, 113.

disparity between case weights in Nevada’s study and the national study. Perhaps the solution is to adopt temporary caseload limits based on the case weights established through the Nevada NCSC study and revisit those case weights at a later date.

Despite the concern regarding the conservative case weights of the NCSC compared with the RAND study, it is imperative that *some* caseload limits be put in place as soon as possible. Attorneys in several rural counties have caseloads that are too high by any state’s current standards. It is urgent that those counties, with the help of the Department, develop a plan to ensure reasonable caseloads. In some counties, this might necessitate the creation of public defender offices.

Determining the number of attorneys needed to comply with workload standards

An annual workload 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.”⁴¹ This annual workload, expressed in hours, can be measured against the number of full-time equivalent (FTE) attorneys available.

Even using what appear to be very conservative case weights, the Nevada NCSC study demonstrates the need for additional attorneys, investigators, and support staff in the *Davis* counties.⁴² In the fifteen rural counties, a total of 90 full-time equivalent (FTE) attorneys are needed, 46 administrative staff, and 22.5 investigators. Here is a table summarizing the findings of the total number of attorneys, investigators, and support staff that are needed to comply with the workload standards in just the *Davis* counties. Note that the table does not include the current number of attorneys, investigators, and support staff in each county. This comparison will be included in the next Monitor’s Report.

County	Total number of attorneys needed	Total number of investigators needed	Total number of support staff needed
Churchill	7.4	1.9	3.7
Douglas	8.8	2.2	4.4
Esmeralda	0.3	0.1	0.3
Eureka	0.3	0.1	0.3
Lander	1.3	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

⁴¹ NCSC Study, 6.

⁴² The Executive Summary of the Rural Nevada Indigent Defense Services Weighted Caseload Study (October 2023) is attached to this Report as Appendix A.

White Pine	3.3	0.8	1.6
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To arrive at these numbers, the NCSC Study calculates the number of hours that an FTE attorney has per year to work on case-related activities. Note that these activities do not include travel time, sick days, vacation, training, and administrative duties. Using 1,392.60 hours as the baseline for case-related work per year, the study coordinators divide the number of total hours available by the case weight. Thus, an FTE attorney assigned only Category A felonies has a caseload limit of 27.8 per year. An FTE attorney assigned only simple misdemeanors has a caseload limit of 223.1. Of course, most attorneys take on a variety of case types every year, which must be taken into consideration in their caseload limit, something the weighted caseload study makes relatively easy to do.

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.⁴³ 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.⁴⁴

The studies recommendations include:

- Reduce workloads by increasing the number of attorneys, investigators, and administrative assistants.
- Employ social workers to assist attorneys in the labor-intensive process of connecting clients with psychological and social services.
- Hire a small group of mitigation specialists who can assist rural attorneys in serious cases.
- Take care not to treat the roles of staff and investigators as interchangeable with the role of the attorney.
- Account for time attorneys spend on civil cases.
- Monitor case type, number, and hours moving forward and use data to update caseload limits.
- Use the weighted caseload model to monitor and manage workloads.
- Update the weighted caseload model every five to seven years.
- Ensure that the rural counties comply with the weighted caseload limits.⁴⁵

The urgency of the attorney shortage

With existing caseloads, it is clear that every *Davis* county needs additional attorney hours and some of the counties appear to need new or expanded public defender offices. This data on need tracks with reports from attorneys in the rural counties. The Monitor visited Nye County on

⁴³ NCSC Study, 20-23.

⁴⁴ *Id.* at 20.

⁴⁵ *Id.* at ii-iv.

July 31, 2023, and met with several of the contract attorneys. The attorneys reported high caseloads that sometimes made it impossible to tend to other tasks, including documenting hours in Legal Server and attending training and CLEs. But more importantly, some may be so habituated to high caseloads that they simply have gotten used to it and no longer even attempt to research and investigate every case as the standards of practice require.

There are many issues related to implementation of the study's findings that will take more time to analyze, including funding, recruitment, and issues related to how to account for attorneys with private caseloads or multiple contracts and how to project case numbers that include municipal as well as state prosecutions. At this point, however, it is safe to view the NCSC Study as a grounded if conservative estimate of the amount of time each case type requires and a sound conclusion as to the bare minimum number of FTE attorneys needed to ensure each attorney in the *Davis* counties is practicing with some meaningful workload limits.

Regulations

The Judgment and NRS 180.320 (2)(d)(4) require the Board to establish guidelines to be used to determine maximum caseloads for attorneys who provide indigent defense services. Current Section 42 (1) states that “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.

On November 2, 2023, the Board will hold a public hearing on its proposed amendments to the regulations, including proposed changes to Section 42(2), stating that “[a] plan for the provision of indigent defense services must provide details regarding how the county will comply with any guidelines adopted by the Board which set forth the maximum workloads for attorneys providing indigent defense services.”

Recommendations

- The Board should promulgate workload limits based on the NCSC Study, taking into consideration that the case weights in the NCSC Study are conservative compared to the newly released national RAND study. As a result, the Board should consider making the workload limits interim, rather than final, while conducting further analysis of case weights in light of additional Nevada information as well as unfolding analysis, critique, and implementation of the RAND study in other states.
- All county plans and provider contracts should be amended to include the weighted caseload limits.
- County plans and contracts should make clear that no adverse action or negative inference will be made against an attorney who declines new cases due to reaching caseload limit.

Indeed, the opposite inference should be made - that such an attorney understands the ABA guidelines for the defense function, and the ethical duties of competence, diligence, and representation without conflicts of interest—including time conflicts.

- The Department should continue to work to ensure that all cases, including municipal court cases, are counted to understand the total workload of a county.

B. Attorney Shortages

Considering the weighted caseload study, the true shortage of attorneys in some rural counties is astonishingly high. Meanwhile, some counties and the Nevada State Public Defender struggle to meet existing vacancies.

The Department continues to work with the UNLV Boyd School of Law to introduce the idea of rural indigent defense to law students. The Department hosted seven externs over the summer, and the State Public Defender hosted an extern as well. In the Spring 2023 semester, one law student externed at the Elko Public Defender and two served as legislative externs for the Department. To ensure the feasibility of rural externships, the Department requested \$13,000 to fund two stipends for law student externs in FY 2024. These stipends of \$6,500 are currently funded through the Samuel S. Lionel Externship Program, an endowment to the Boyd Law School provided by Sam and Lexy Lionel. However, providing the funding through the Department assures its continued availability.

The Department engaged in direct recruitment activities. On October 23, 2023, the Executive Director traveled to UNLV law school to participate in a Public Interest Law Association lunchtime talk, and on October 24, 2023, the law school held a public defender panel discussion that included two rural public defender offices: Carson City and Elko.⁴⁶ Future public defender events at the law school could include other rural public defender offices. On October 12-13, 2023, the Deputy Director attended the Equal Justice Works Career Fair, held virtually, and attended by over 2,500 law students from across the county. But because the Department is not directly responsible for hiring county-level public defenders, participation in national job fairs may have minimal impact. It would be more impactful for the county-level public defender offices to attend national events like the Equal Justice Works Career Fair.

In addition, the Department was instrumental in 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.⁴⁷

⁴⁶ The Department’s report on its recent recruitment efforts is attached to this Report as Appendix I.

⁴⁷ Nevada Supreme Court Rule 49.5 is attached to this Report as Appendix H.

There is no doubt that the Department—and likely other state and county entities—will need to take additional action to increase the number of indigent defense providers in the rural counties. As noted in the Monitor’s prior report, other states incentivize rural practice through law school debt forgiveness, payment of bar classes and bar exam costs, stipends for practicing attorneys, and reciprocity for out-of-state attorneys.

Recommendation

The Department should consider requesting allocated funding for additional incentives to rural practice, including expanded loan forgiveness, stipends for answering the call to rural access to justice, payment of bar preparation courses, and the like.

C. Oversight

The Department continued oversight activities during the last quarter, including a review of the state’s capacity to staff death penalty cases in rural counties with qualified attorneys, and visits to Churchill, Douglas, Mineral, and White Pine counties.⁴⁸

With regard to death penalty cases, the Department canvassed all rural counties to determine whether they have adequate plans in place for qualified representation. The Department notes that procedures and qualifications in Nevada Supreme Court Rule 250 apply to all cases “in which the death penalty ... may be sought,” but that the limited number of death-qualified attorneys in Nevada in general and in the rural counties in particular make it difficult to comply with this rule. Three *Davis* counties - Churchill, Lander, and White Pine - have opted to have the NSPD handle death penalty cases. Due to its own staff shortages, the NSPD has contracted with outside attorneys to provide these services. Meanwhile, the plans for death penalty representation in other rural counties are outdated. The Department is in the process of helping each rural county develop a realistic and SCR 250 compliant plan for death penalty cases.

Churchill

The Executive Director conducted an in-person oversight visit to Churchill County on October 9, 2023, to discuss updating the county’s plan. After meeting with the county manager, the indigent defense administrator, the public and alternate public defenders and their assistants, it was determined that the county would opt in to the NSPD for coverage of death penalty cases, with the understanding that the cases would be second-chaired by either the Churchill public defender or alternate defender so that they can gain the experience to qualify for such cases at a later date.

Douglas

⁴⁸ The Department’s Combined Oversight Report is attached to this Report as Appendix D.

The Executive Director conducted an in-person oversight visit to Douglas County, where five contract attorneys handle most of the cases. Of concern in Douglas County is that complaints about attorneys—apparently made by judges and perhaps others—have been made to the appointed counsel administrator, who did not previously relay the complaints to the Department. The complaints related to fundamental issues of effectiveness, specifically the attorneys’ preparedness. Other concerns raised by attorneys were their high caseloads—a problem that may be exacerbated by the decision not to review one of the five attorney’s contract, and the lack of space to review cases (for those attorneys not based out of Douglas County). High caseloads may also be exacerbated by the transfer of some clients from the Minden to the South Lake Tahoe jail.⁴⁹

Given the concerns raised, the Executive Director traveled to Douglas for a second visit to meet with judges and the new administrative assistant for the county’s administrator of indigent defense. The judges expressed concern over attorneys missing court, appearing unprepared for hearings, and apparently failing to talk with their clients before hearings. They also expressed concern over the lack of a system of oversight of the contract attorneys, although they were glad to become aware of the ability to report concerns directly to the Department.⁵⁰

The Department was able to help the county fix a delay in the appointment-of-counsel process, and will follow up on several additional issues, including encouraging the administrative assistant to enter all cases into Legal Server and a larger issue in which the District Attorney’s office has adopted a policy of refusing to engage in plea bargaining without an early waiver of the right to a preliminary hearing. The county’s indigent defense administrator will reach out to the District Attorney’s office to explain that the Judgment (and professional guidelines) prohibit defense attorneys from advising clients to waive their rights before discovery and investigation has been completed.⁵¹

Mineral

On October 18, 2023, the Executive and Deputy Director visited Mineral County to provide a fiscal and legislative update to the county’s Board of Commissioners, meet with the new justice of the peace, and encourage the county to engage a third contract attorney, as its county plan requires. The Department solicited feedback on the contract attorneys and alerted the county to the forthcoming caseload study.⁵²

White Pine County

The Deputy Director visited White Pine County on October 3-4, 2023. They observed one drug court proceeding and met with an attorney as well as with members of the bench—the justice

⁴⁹ Combined Oversight Report, 6-8.

⁵⁰ *Id.* at 10.

⁵¹ *Id.* at 11-12.

⁵² *Id.* at 13-14.

of the peace, district court judge, and municipal court judge. All reported that the transition to state public defender representation was going relatively smoothly, with some concern over the need for additional attorneys.

The underfunding of the Ely office of the NSPD may be a serious issue. At the time of the Department's oversight visit, the office was unusable. It was without internet or phones and appeared to need significant work to renovate and furnish. Additionally, the building manager had entered without permission, creating concern over access to privileged and confidential information. Should it be developed, furnished, and secured, the office should be adequate. Moreover, the Ely office of the state public defender is short one attorney, one investigator, and one administrative assistant.⁵³

Eureka

The deputy director also visited Eureka County to meet with the justice of the peace. As in other counties visited, the Department made clear that concerns and complaints can be reported directly to the department.⁵⁴

Oversight capacity & funding issues

The Department is also requesting \$626,335 for FY 2024 to engage two full-time contract attorneys and an administrative assistant to meet its own oversight obligations under the Judgment. Section 7 of AB 518 (2023) appropriates funding to the Interim Finance Committee for, among other things, the costs of the Department related to compliance with the Judgment.

As previously reported, the Department previously engaged Dr. Mitch Herian of Soval Solutions to consult on how best to comply with the Judgment's oversight requirement given the challenges of geographical distance and the time needed to ensure that all attorneys are providing effective assistance of counsel. The Department's current request seems in line with Dr. Herian's conclusion that two full-time positions would be necessary to conduct this sort of oversight on an annual basis, as the Judgment requires.⁵⁵

To reiterate what was previously discussed in the Monitor's Eighth and Ninth Reports, the Judgment contemplates oversight that would necessarily include both remote and on-the-ground activities. 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**

⁵³ *Id.* at 20.

⁵⁴ *Id.* at 21.

⁵⁵ The Soval Solutions, *Recommendations for Senior Policy Positions* August 30, 2022) was discussed in the Sixth Report of the Monitor, 11-12, and also attached to the Ninth Report as Appendix C.

basis for quality and efficiency according to nationally and locally adopted standards, including, but not limited to, the ABA Criminal Justice Standards.⁵⁶

Some of the standards for indigent defense are specifically listed in the Judgment, such as prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights; 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.⁵⁷ Other standards derive from the ABA Criminal Justice Standards referred to in the Judgment. As a result, the Department must be able to evaluate attorneys in the rural counties in the following areas:

- Did the attorney have a substantive, confidential meeting with each client upon appointment?⁵⁸
- Did the attorney argue for pretrial release, or for no or reasonable bail?⁵⁹
- Did the attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case?⁶⁰
- Did the attorney counsel each client to refrain from waiving any rights at arraignment?⁶¹
- Did the attorney investigate and engage investigators to determine if there was “sufficient factual basis for criminal charges?”⁶²
- Did the attorney thoroughly prepare and investigate each case?⁶³
- Does the attorney adequately advise clients of the consequences of accepting a guilty plea or going to trial, including any collateral consequences?⁶⁴
- Does the attorney move to withdraw if accepting an additional case would cause a conflict with an existing client due to time constraints or conflicting interests?⁶⁵

⁵⁶ Judgment, 16 (emphasis added).

⁵⁷ *Id.* at 14-15.

⁵⁸ ADKT 411 Standard 4-4; ABA Standard 4-3.3.

⁵⁹ ADKT 411 Standard 4-5; ABA Standard 4-3.2.

⁶⁰ ADKT 411 Standard 4-9 (a); ABA Standard 4-5.1.

⁶¹ Judgment, 14.

⁶² ABA Standard 4-4.2.

⁶³ ADKT 411 Standard 4-7; ABA Standard 4-4.1.

⁶⁴ ADKT 411 Standard 4-9; ABA Standard 4-5.1.

⁶⁵ Nevada Rule of Professional Conduct 1.7 (a) (2).

- Does the attorney perform other essential lawyering tasks according to the adopted standards, such as negotiation,⁶⁶ ongoing client communication,⁶⁷ preliminary hearings,⁶⁸ legal research and motions practice,⁶⁹ trial preparation and trial,⁷⁰ sentencing and mitigation, including collateral consequences,⁷¹ and postconviction proceedings?⁷²
- Overall, does the attorney represent clients with the requisite diligence, promptness, and punctuality?⁷³

As the reader can see from the earlier section summarizing the Department's current oversight activities, the Department's short visits to each county do not allow for sufficient time to observe multiple court hearings and attorneys, or to conduct a comprehensive review of representation. It is hard to imagine how the Department could conduct such oversight without additional, experienced staff.

Recommendations

- Given the time and expertise required to conduct comprehensive annual oversight for each of the counties' indigent defense providers, the Department requires assistance of experienced defense attorneys who can analyze compliance with the Judgment's standards. This may be accomplished using funding allocated in AB 518 (7).
- The Department should continue to visit counties to assess compliance with the Judgment, and also develop a system for analyzing existing information about attorney performance designed to spot red flags.
- Although not discussed above, the Monitor reiterates her suggestion that the parties should consider how best to solicit feedback from clients. The ad hoc distribution of surveys have a poor response rate. The Department could request funds to conduct a comprehensive one-time survey of incarcerated clients represented by attorneys providing indigent defense in the *Davis* counties in 2022, for example. Alternatively, the parties could agree to a different method of obtaining client feedback.

⁶⁶ ADKT 411 Standard 4-9; ABA Standards 4-6.2, 4-6.3.

⁶⁷ ABA Standard 4-3.9,

⁶⁸ ADKT Standard 4-6.

⁶⁹ ADKT 411 Standard 4-8.

⁷⁰ ADKT 411 Standards 4-10 through 4-15.

⁷¹ ADKT 411 Standards 4-16 through 4-19. ABA Standards 4-5.4, 4-5.5, 4-8.3.

⁷² ADKT 411 Standard 4-20.

⁷³ ADKT Standard 4-1; ABA Standard 4-1.9.

D. Training and Resources⁷⁴

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 sentencing outcome negotiations; (8) trial advocacy; (9) appeals; and (10) special issues regarding the representation of juveniles.”⁷⁵ This provision of the Judgment suggests a systematic approach to ensuring that attorneys have training in all areas crucial to public defense.

In the past quarter, the Department hosted or publicized statewide the following training programs:

- Bias in the Criminal Justice System with Dr. Adam Dunbar (UNR), hosted by the Department and attended by, among others, 34 attorneys who practice or take cases in the rural counties. July 21, 2023 (virtual).
- Navigating the System when Representing a Client with Mental Health or Substance Abuse Issues, with Courtney Farnsworth (DPBH), hosted by the Department and attended by, among others, 19 attorneys who practice or take cases in the rural counties. September 1, 2023 (virtual).
- DNA, hosted by the Washoe Public Defender and Alternate Public Defender. October 19-20, 2023.
- The Colorado Method of Voir Dire, hosted by the Clark County Public Defender and Special Public Defender. August 22-23, 2023.⁷⁶

As previously stated, it is the Monitor’s belief that 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 public defender’s office. In the Ninth Report, the Monitor suggested additional funds might be necessary for the Department to realize its plans to provide in-state training opportunities as well as opportunities for rural attorneys to attend national trial colleges. Such funds are contemplated in the language of AB 518 (7) (d) (2023), which allocates funds for training for which the Department may apply through the Interim Finance Committee.

The Department has made such a request in its October 23, 2023, memorandum to the Administrative Services Department. For FY 2024, the memorandum requests \$37,340 to send five rural attorneys to a national trial college, \$20,000 for reimbursement of travel expenses for rural attorneys attending the Department’s annual conference (currently covered by the Byrne

⁷⁴ Judgment, 16.

⁷⁵ *Id.*

⁷⁶ The Department’s memorandum on recent training activities is attached to this Report as Appendix J.

Grant), \$10,500 for outside speakers to travel to Nevada, and \$21,500 to engage a conference manager to reduce the administrative burden on the leanly-staffed department.

Of these requests, the importance of national trial colleges should be emphasized. Attorneys at well-regarded public defender offices (among others) usually attend such colleges once in their careers and describe the lasting impact of the experience. The National Criminal Defense College, for example, is staffed by some of the best defense attorneys in the country. Such colleges are critical not only for teaching skills but for establishing a culture of excellence in advocacy and fostering career-long mentorship and peer support among attendees.⁷⁷ Especially for remote attorneys with limited opportunities to observe and confer with many experienced defense attorneys, two weeks in a criminal defense representation college would be invaluable. Moreover, as the Department works to recruit more attorneys to rural practice, the opportunity to attend a defense college will be both an attractive bonus and a valuable way to ensure that attorneys new to criminal defense are meeting or exceeding the standards of practice set forth in the ABA guidelines and ADKT 411.

Recommendations

- The state should ensure that the Department has sufficient funds to provide robust in-state training opportunities, provide rural attorneys with stipends to attend the annual training conference, and ensure that a limited number of rural attorneys can attend a national trial college every year.

III. Uniform Data Collection and Reporting

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.⁷⁸ The Board's regulations follow the Judgment's requirements.⁷⁹

FY 2024 reporting

The Department changed its method of workload reporting to comply with the Judgment. Prior reports were well-organized, informative, and easy to read, but they did not include all the workload reporting required by the Judgment, which requires case numbers; type; outcome; the

⁷⁷ More information about the National Criminal Defense College, see <https://ncdc.net/> (last visited October 29, 2023).

⁷⁸ Judgment, 18.

⁷⁹ 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.

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.⁸⁰ The new method of reporting is much more detailed, providing a spreadsheet of entries for each attorney. Each time entry is included by case number, a level of detail not required by the Judgment, although it is helpful to see the amount of time spent on individual cases. The spreadsheet view can be adjusted to show the attorney's time per case and per case type, as well as the total number and types of cases that the attorney worked on during the reporting period. In other words, the spreadsheets contain all the required timekeeping data, although the viewer may need to interact with the spreadsheet functions to locate specific data points.

It should be noted that several attorneys are still failing to report or underreport, especially in Nye County. Regarding failures to report and underreporting, some attorneys are overburdened with high caseloads and are without administrative staff to assist them in record keeping. The Monitor confirmed this issue during a visit to Nye County to observe court and speak with the contract attorneys on July 31, 2023. Several attorneys noted that Legal Server does not have a phone application to facilitate simultaneous logging of activities and time. Others noted that the demands of the caseload are so high that time keeping is simply one thing too many.

The Department is taking steps to incentivize timekeeping by requesting an allocation of \$32,784 for FY 2024 to provide Westlaw or similar legal research software to appointed attorneys using Legal Server.

Progress in reporting of private workload

The Department made strides in collecting data on attorneys' private workloads by sending a survey to each office asking for staffing numbers and the amount of private workload. The results are included in a spreadsheet entitled, Staffing and Private Workload Fiscal Year 2024 Quarter 1.

As caseload limits are implemented, the parties may wish to consider an alternative: The contracts should take into consideration the percentage of FTE time the attorney has to dedicate to the contract. An attorney who spends 15% of their time on private casework, for example, should enter into a contract to provide indigent defense services with a caseload capped at 85% of an FTE attorney.

Recommendations

- The state should incentivize contemporaneous timekeeping and prompt dispositional recording through Legal Server. The Department's current request for an allocation for Westlaw subscriptions provides an opportunity to do so.

⁸⁰ The Department's explanation of the new reporting system is attached to this Report as Appendix K.

- The Department—and perhaps the Monitor, too—would benefit from clarification from the parties as to the format and contents of the quarterly workload reports, and the level of detail required.

Looking ahead

- **Funding requests**

On December 13, 2023, the Interim Finance Committee will consider the Department's requests for AB 518 (7) allocations need to facilitate compliance with the Judgment, including (1) oversight; (2) training; (3) student stipends; (4) data collection software; and (5) incentives for contemporaneous timekeeping.

- **Regulatory changes**

On November 2, 2023, the Board will hold a public hearing and possible vote on the proposed regulations.

- **Caseload limits**

The Board will discuss the NCSC Study results and adoption of caseload/workload guidelines on November 2, 2023.

- **Recruitment to rural practice**

The Department will continue to work 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.

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 comparison between the existing numbers of attorneys, 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 outcome of the Department's requests to the Interim Finance Committee for AB 518 (7) funds related to compliance with the Judgment, particularly for oversight, training, recruitment, and incentivizing timekeeping.
- The Department's training events.
- The Department's oversight activities and plans.
- The Monitor will also schedule and conduct visits to several counties in coordination with the Department.

Appendix A

Executive Summary

Rural Nevada Indigent Defense Services Weighted Caseload Study (NCSC Study)

Rural Nevada Indigent Defense Services Weighted Caseload Study

October 2023

EXECUTIVE SUMMARY

Project Design

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 tracked their worktime over a six-week period.
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.

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 developed specifically for rural indigent defense providers in Nevada.

Results

Applying the final weighted caseload model to current new cases shows a need for 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 22.5 investigators, both of which are based on recommended ratios, as shown in Figure ES-1.

Figure ES-1: 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 ¹ (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

¹ In locations where less than one FTE attorney is needed, support staff need equals that of the attorney need.

Appendix B

Final Report

Rural Nevada Indigent Defense Services Weighted Caseload Study
(NCSC Study)

Rural Nevada Indigent Defense Services Weighted Caseload Study

Final Report
October 2023

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Court Consulting Division
National Center for State Courts



Rural Nevada Indigent Defense Services Weighted Caseload Study Final Report October 2023

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.

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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 of 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, Marylin 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

Time per Day	Hours per Day	Minutes per Day
Workday	8	480
Non-case-related work	1	60
Travel	.67	40
Case-related workday	6.33	360

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

Work Year (days)		Case-Specific Hours per Day		Year Value (hours)
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.

Appendix C

Memorandum: Request to Interim Finance Committee



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

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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.

Appendix D

Combined Oversight Reports



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

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Oversight Report – Death Penalty Cases & Plan

10.24.23

Introduction.

The ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases call for each jurisdiction to adopt and implement a plan which formalizes the means by which the jurisdiction will provide high quality legal representation in all death penalty cases. (See Guideline 2.1)

The Guidelines set forth that this Capital Representation Plan should set forth how the jurisdiction will conform to each of the ABA Capital Guidelines. All elements of the Plan should be structured to ensure that counsel defending death penalty cases are able to do so free from political influence and under conditions that enable them to provide zealous advocacy in accordance with professional standards.

Guideline 3.1 establishes that an agency independent of the judiciary should be in charge of ensuring that each capital defendant in the jurisdiction receives high quality legal representation. DIDS is perfectly positioned to create and oversee this plan. Indeed, its mandate naturally includes such oversight. Accordingly, DIDS has drafted a Nevada Rural Capital Defense Plan and has been discussing with the counties their plans for handling death penalty cases under Nevada SCR 250.

NSPD Opt-in & General DP Plan Information.

The following counties are currently opted into the NSPD for death penalty case coverage: Churchill, Humboldt, Lander, and White Pine. The NSPD has currently contracted with two death penalty qualified attorneys for coverage of these cases. Recruitment efforts continue for more contractors.

Over the last several weeks, the Department has reached out to all rural counties to identify their mandatory lists of death-penalty qualified attorneys. We discovered that most lists are outdated, or possibly non-existent.

SCR 250 also requires that a death penalty qualified attorney be appointed to all first degree murder (or open murder) cases in which the district attorney has not affirmatively stated they won't seek the death penalty. While the Department understands the purpose

and intention of this rule, including continuity of representation should a *notice of intent to seek the death penalty* be filed, this rule presents a substantial challenge to rural courts.

In short, there are limited death-penalty qualified attorneys in Nevada to cover all open/first degree murder cases in which the prosecutor is silent on the intent to seek the death penalty. And this complicates establishing a county-by-county plan for what the courts will do when these cases.

The Department is in the process of trying to incorporate these plans into each of the counties' indigent defense plans.

In the meantime, there is one county in which the Department has some concerns about a current death penalty case. We are actively monitoring it.

Pershing County.

There is a capital murder case currently pending in Pershing County, and the Department has concerns about compliance with SCR 250, ADKT 411, and the ABA Standards of Performance for Capital Case Representation. Additionally, after our review of the decision of *Rogers v. Dzurenda*, No. 19-17158 (9th Cir. Feb. 2022), we are concerned about history repeating itself in this case.

In its *Rogers* decision, the Ninth Circuit upheld the lower court's finding of ineffective assistance and prejudice and remanded this case back to Pershing County to either enter a finding of Not Guilty by Reason of Insanity (NGRI) or to retry the matter. (The case is 40 years old.) Pershing County has elected to retry the matter.

Among other things, the Ninth Circuit's Opinion found that the original trial counsel's investigation, preparation, and execution of their chosen insanity defense fell below the standard of reasonableness. The *Rogers* Opinion lists a number of reasons for the Court's conclusion, which serve as cautionary factors today:

(1) Neither trial counsel for Rogers in the original trial had any experience with trying a capital case and they were not adequately trained for handling a death penalty case;

(2) Lead trial counsel in *Rogers* was overburdened with a caseload of approximately 80 cases (the ABA's recommendation is that counsel in a capital case not have more than 35 to 50 cases). In the remanded case at hand, according to LegalServer reports, the Pershing County Public Defender currently has 382 open cases and Kirsty Pickering has 231 open cases. These numbers eclipse the 80 cases called out as excessive by the 9th Circuit;

(3) Trial counsel in the original trial did not have an in-house investigator and was given limited funding to use an outside investigator. So far in the case at hand, counsel's reporting does not show any investigation being performed in the case;

(4) Trial counsel in the original case failed to consult with or otherwise prepare their experts (including an expert regarding legal sanity at the time of the offense -- the primary

issue in the case). It appears the only matter current trial counsel are pursuing is competency to stand trial;

(5) Trial counsel in the original trial failed to prepare to rebut the state's mental health expert. Again, it appears the only matter current trial counsel are pursuing is competency to stand trial;

(6) Trial counsel in the first trial failed to investigate Roger's childhood and did not provide any childhood information to any experts (counsel in a capital case has an obligation to conduct a thorough investigation of the defendant's background). Based upon the reporting, it does not appear any childhood or background information is being investigated or gathered; and

(7) Original trial counsel failed to adequately present the standard for legal insanity. There is no indication from their reporting that current trial counsel are pursuing a defense based upon legal insanity.

In sum, based upon the Department's current oversight of this case, we have the following concerns about the Pershing DP case of *Rogers*: (1) It appears the only issue current trial counsel are pursuing is one of competency to stand trial; (2) There does not appear to be any parallel investigation occurring, including of the defendant's background, the lack of which the 9th Circuit specifically noted as deficient performance; (3) Current trial counsel do not appear to have engaged any experts who can speak to the primary substantive issue of insanity at the time of the offense; (4) Trial counsel both appear to have too high of a workload to devote adequate time and attention to a capital case; and (5) SCR 250 qualified counsel should have been appointed by DIDS and not its designee in this case. The result is a first chair who is not SCR 250 qualified to handle a capital case and a second chair who was qualified by district court judge, even though she has never tried a death penalty case to verdict.

Director Ryba has reached out to County Commission Chair Joe Crim, and discussed the possibility that Pershing County could opt into the NSPD for Death Penalty Representation. In the current *Rogers* case, the district court exercised its discretion under SCR 250 to enter an order qualifying the Pershing County Public Defender as 250 qualified to handle DP cases, even though the Public Defender has never handled a death penalty case as first or second chair. The district court also appointed a second chair who has not handled a death penalty case to verdict. Such a move would have the benefit of saving the county a significant amount of money, while ensuring death penalty experienced counsel were handling the case. If Pershing opts into such a plan, then Pershing would only be responsible for 25% of the expenses and fees in the case, and the state would cover the other 75%.

Again, the Department is actively monitoring the situation and will follow up on this report.



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

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ONSITE VISIT REPORT

Churchill County

October 9, 2023

I. Brief Narrative.

On October 9, 2023, Marcie Ryba traveled to Churchill County to attend a meeting to discuss Churchill County's Plan for the Provision of Indigent Defense Services and the need to update it to include a portion on Death Penalty Coverage. In attendance were: Jacob Sommer (Churchill PD); Wright Noel (Alt Churchill PD); Jim Barbee (County Manager); Sue Sevon (Churchill County Counsel Administrator); Judge Stockard; Emily Tunsil (Assistant to Churchill PD).

At the conclusion of the meeting, it was discussed that the County will update their Plan for the Provision of Indigent Defense Services to clarify that:

- If there is a filing of a death penalty case or if there is a case where the District Attorney remains silent on whether such a penalty will be filed, Jacob Sommer will immediately notify Sue Sevon.
- Sue Sevon will work with the Department to ensure that an appropriate 250 qualified counsel is present.
- Churchill County has opted into the NSPD for such coverage.
- NSPD is in the process of entering into contracts with SCR 250 qualified counsel to provide such coverage. Once the contracts are finalized, such attorneys will contact Sue Sevon to be added to the list of qualified counsel for the district court.
- Churchill County desires their salaried attorneys to gain experience on such cases and will request that they are appointed as second chair.

The group also discussed the county's current plan. Since Sue Sevon has been appointed as appointed counsel administrator and a contract has been entered with an attorney to provide conflict coverage, the plan has been working very smoothly.

The parties further discussed other possibilities of how to continue to improve the indigent defense plan such as: adding county social workers to the public defender office and adding additional attorney staff.

II. Next Steps.

1. Jacob Sommer has been tasked to update the plan and will provide to the Department upon completion and approval.



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

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ONSITE VISIT REPORT

Douglas County

Visit date: August 30, 2023

I. Brief Narrative.

Marcie Ryba, Executive Director of the Department traveled to Douglas County for an oversight visit to meet with (1) the Douglas County Manager, Jen Davidson; (2) Brittnie Brown, Douglas Administrative Assistant In Support of Indigent Defense; (3) Gina Reiboldt (who will temporarily be taking over Brittnie Brown's duties until a replacement is hired); (4) Justin Clouser, Douglas Counties Appointed Counsel Administrator.

As an overview, the Douglas County indigent defense plan calls for five contract attorneys to serve on a rotational basis as the primary indigent defense provider of Douglas County; the counsel administrator ensures a fair rotation of cases amongst the attorneys. If there is a conflict, the counsel administrator finds conflict counsel from the DIDS approved list.

Appointed Counsel Administrator

Justin Clouser serves as the Counsel Administrator for Douglas County. He advised that one of the five contract positions will be coming open as Nadine Morton is leaving the position. DIDS has requested a copy of the job advertisement once it is published so that it can be shared with all attorneys on the list.

Marcie and Justin discussed data reporting for Douglas County. One attorney has significantly lower hours reported than the rest of the attorneys. Justin advised that his belief was that the other attorneys had better reporting because they had assistants to help. This one attorney did not have an assistant. Also, he believes that until the caseloads are reduced, there will continue to be issues.

The weighted caseload study was also discussed. Justin believed that the caseload in Douglas County is quite high and believed that if more attorneys were added as contractors, the caseload would be more manageable and better reporting would be received.

Justin Clouser rarely goes outside of the contract attorneys for coverage. He advised that all other duties are going well.

Justin Clouser has received complaints regarding the contract attorneys, but usually the complaints are limited to two attorneys. Justin follows up with these attorneys to investigate the complaints. He does not forward them to the Department because he believes he has been able to take care of them in-house.

Judges have complained to Justin Clouser regarding the performance of 2 of the contract counsel.

The Department will follow up with the judges in another visit to inquire about these concerns.

Phone Calls with Contract Public Defenders

Following the conversation, Marcie Ryba had phone conversations with four of the five contract attorneys. In these discussions, attorneys expressed concerns with the caseload. Specifically, there is limited time to sit and review cases where an attorney is not in court. Some attorneys also stated that the district attorney does not provide case discovery until there is a court order assigning the case to the attorney. This causes delays in preparation and attorneys are hoping for faster access to the discovery.

Douglas County has chosen not to renew their contract with Nadine Morton. The other four contractors have had their contracts extended for another term. Douglas County will be posting the advertisement for the contract position shortly.

Marcie was unable to contact Marty Hart at the time of this report, but will continue to follow up with him.

Fiscal Reporting

At the time of the meeting, Brittanie Brown had provided her notice that she was leaving her position as the Administrative Assistant in Support of Indigent Defense. The position is being advertised and Gina Reiboldt plans to complete all duties until a replacement is found. Ms. Reiboldt previously worked for the District Attorney's Office in Douglas County prior to her recent retirement, so she felt comfortable with the reporting requirements. Ms. Reiboldt will be completing the fiscal reporting. DIDS has offered to assist in any manner needed once the reports are due.

County Manager

Marcie took the opportunity to introduce herself to the new County Manager Jen Davidson and explain the background of the Department, recent legislation regarding DIDS, and the history of the Douglas County Plan. Marcie offered to be available to answer any further questions by Douglas County. In the meeting, the County Manager seemed quite pleased with the services of the contract attorneys and the current set up of the appointed counsel administrator.

Court House Tour

Justin and Marcie discussed client communication in Douglas County. Justin advised that there were two attorney client meeting rooms on the top floor of the courthouse that could be utilized by the public defenders. Pictures of these rooms are below and appear to provide confidential meeting space in the Justice/District Court.

II. Oversight Criteria.

1. Client Communication
 - a. There are at least two confidential meeting spaces for Courts. See pictures below.
 - b. Since Minden jail is at capacity, some clients are transferred to the South Lake Tahoe jail. Attorneys expressed this does create extra difficulty if a client is transferred without the attorney's knowledge.
2. First Appearances
 - a. Rotating schedule with the attorneys. Contract Attorneys appear Tuesday-Saturday. The Sunday and Monday appearance are covered by Clouser. Tuesday coverage does provide an extra complication because District Court is running at the same time.
 - b. Attorneys are always present.
 - c. Concern is when Tuesday needs coverage because same time as District
3. Preparedness / Knowledge of Case
 - a. Attorneys express that the high number of cases is problematic. The attorneys expressed they are working their cases, but sometimes things get overlooked due to the sheer number of cases.
 - b. Clouser said that he has received complaints regarding 2 of the contractors' preparedness for cases from the judiciary. The Department will follow up on these complaints.
4. Investigation / Experts
 - a. A new investigator moved into the area. With the increased availability of investigators, attorneys represent they are using investigators at a higher rate than before.

III. Next Steps.

1. Contact Gina for Quarterly Reporting to ensure she understands which forms need to be submitted.
2. Set up appointments with the judges in Douglas County to follow up on their concerns.
3. Have a phone conversation with Marty Hart.

IV. Photos

Pictures of the two attorney client visitation rooms in the Douglas County courthouse.





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Follow up 2 -- ONSITE VISIT REPORT

Douglas County

October, 2023

I. Brief Narrative.

As a follow up to the initial visit, Marcie Ryba, Executive Director of the Department traveled to Douglas County for an oversight visit to meet with (1) the Douglas County District Court Judges, Judge Gregory and Judge Young and the East Fork Justice of the Peace, Judge Gilbert; (2) the new Indigent Defense Services Administrative Assistant Robyn Valdez, and (3) phone call a Douglas contract public defender.

As an overview, the Douglas County indigent defense plan calls for five contract attorneys to serve on a rotational basis as the primary indigent defense provider of Douglas County; the counsel administrator ensures a fair rotation of cases amongst the attorneys. If there is a conflict, the counsel administrator finds conflict counsel from the DIDS approved list.

Summary of Meeting with Judges

The Douglas County judges were concerned about oversight of the contract public defenders in Douglas County. Specifically, the judges relayed that some indigent defense providers are missing court, unprepared, and appear to fail to talk with their clients before court. But the judges did not know who to report this concern to because the current Douglas County Indigent Defense Services plan does not have an individual that has the authority to supervise or oversee the attorneys. Some of the judges took their concerns to Justin Clouser, the Indigent Defense Services Administrator, but did not know if that was sufficient. Some support was expressed to change the indigent defense system to an organized office with internal supervision. The judges were encouraged to contact that Department if there were concerns with representation.

The Department did discuss the maximum contribution formula and other legislative updates with the judiciary. There was a discussion of the Court list of Death Penalty qualified counsel. Douglas County does not have a list and did not believe that any members of the current contract public defenders would be able to qualify under SCR 250.

This issue will need to be clarified with the county.

Phone Calls with Contract Public Defenders

One issue of concern was that there was a delay in the District Attorney providing discovery to the appointed counsel. It appears that the delay is due to the appointment process being used at the time (which has since been remedied see the discussion with the Indigent Defense Coordinator Team) in Douglas County where a pleading is prepared by the Indigent Defense Administrative Assistant and will not be filed until Justin Clouser physically signs the document. Historically, this has led to delays because Clouser does not sign these documents daily.

Attorneys have expressed concern that the Administrative Assistant is not entering cases in LegalServer, as was initially the plan. This is creating an extra workload for the attorneys. The Department will follow up with the Admin Assistant next week to determine if this workload can be added to her duties.

Attorneys also expressed concern that some District Attorneys in the Douglas County District Attorney office have a policy that a client must waive their right to a preliminary hearing within 15 days at the first appearance/arraignment or no offers will be made in the case. Defense attorneys were very uncomfortable because they do not feel comfortable advising a client to waive a right without knowing whether it is in the client's best interest, but they are doing it because they want to preserve the possibility of an offer in the case. This issue was discussed with the Indigent Defense Coordinator Team.

Meeting with Indigent Defense Coordinator Team

On October 16, 2023, the Department met with Robyn Valdez (who will be the new administrative assistant (AA) for Justin Clouser), Gina Reibolt (who was temporarily in that position) and Justin Clouser.

The purpose of the meeting was to touch base with Robyn, as well as address some concerns that were raised by defense counsel.

First, Gina advised that the delay in discovery should be addressed because the Notice of Selection process was modified. At this time, the AA prepares the Notice of Selection of paperwork for Clouser's signature. Permission was received from the Court to use a stamp signature of Mr. Clouser's name on the documentation, so Mr. Clouser does not have to come down to the County Manager's Office for signature. The document is emailed to the Court, District Attorney, and Public Defender. Upon receipt of the emailed Notice of Selection, the District Attorney will release the discovery. It has been relayed that this process is usually complete within 24 hours or less.

Second, the parties discussed whether the AA position could enter the case assignments in LegalServer for the selected counsel and whether the AA would also track Mr. Clouser's time in LegalServer. Ms. Valdez received permission from the County Manager to take on these extra duties. The Department has a scheduled meeting this week to train her on LegalServer to start this process. It was also discussed that Ms. Valdez may also, if time allows, review open cases to see if any should be closed in the system and clean up the data. On October 19, 2023, the Department had a one-on-one training with Ms. Valdez.

Third, there was discussion on whether Justin Clouser is considered a supervisor over the public defenders. Mr. Clouser advised that he feels that it is included within his duties to ensure that each defense counsel is complying with their contracts and the regulations. Mr. Clouser will meet with the judges to let them know that it is appropriate to let him know any complaints regarding indigent defense services. Mr. Clouser did provide information that failure to comply with the contract requirements did lead to the termination of defense counsel for one of the contracts. DIDS has asked Mr. Clouser to let us know if he needs any assistance from us.

Fourth, the concern of counsel encouraging defendants to waive their rights at Preliminary Hearing was discussed. Mr. Clouser has agreed to schedule a meeting with Erik Levin (in the District Attorney's Office) to see if this requirement can be eliminated. Mr. Clouser's understanding that it was not an office policy, but rather certain district attorneys within the office required the waiver. DIDS shared a copy of the Regulations, *Davis Stipulated Consent Judgment*, and the County Plan where advising client's to waive such rights is not in compliance with the plan. Mr. Clouser shared this information with defense counsel and will share it in his meeting with the District Attorney to see if this policy can be stopped.

II. Oversight Criteria.

1. Client Communication
 - a. Mr. Clouser has shared the Douglas Plan with defense counsel as a reminder.
 - b. Mr. Clouser will meet with the Douglas County judges to let them know that any complaints can be shared with him, the County Manager, or DIDS.
2. First Appearances
 - a. No concerns expressed for first appearances.
3. Preparedness / Knowledge of Case
 - a. The judiciary expressed concern that not all attorneys are always prepared, in their observation.
 - b. Mr. Clouser will meet with the judges to ask them to inform him if attorneys appear unprepared.
4. Investigation / Experts

III. Next Steps.

1. Check in with Justin Clouser in the future on (1) death penalty plan and (2) follow up on the waiver of fifteen days requirement by the District Attorney.



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ONSITE VISIT REPORT

Mineral County

Visit date: October 18, 2023

I. Brief Narrative.

Marcie Ryba and Thomas Qualls traveled to Hawthorne, NV for an oversight visit, to present to the Board of Commissioners, and to meet with Justice of the Peace Robert Hoferer.

Marcie presented a fiscal and legislative update to the Board of Commissioners. She discussed the indigent defense reimbursements for the last two fiscal years, the amount that DIDS is allocated for the next biennium, that the maximum contribution formula is not in the statutes, and the safety net of contingent funding under AB 454 if counties exceed their projected budgets for indigent defense. She also discussed the ongoing *Davis* monitoring, and reiterated the importance of data collection to reimbursements. She gave the county a heads-up as to the workload study forthcoming, and finally discussed the county's ability to opt in to the NSPD's complex litigation unit for coverage of death penalty cases. Concern was expressed by the District Attorney that the county has had issues with appointed counsel (that are not in a contract with the county) failing to appear in person. As Mineral County's Indigent Defense Plan calls for a third indigent defense contract, it was discussed that the county may want to consider entering into this third contract to address the district attorney's concern.

While Marcie presented to the County Commissioners, Thomas met with Justice of the Peace Robert Hoferer and Court Administrator, Shaniya Williams. Because Judge Hoferer is relatively new to the bench, and the Department had not met with him before, Thomas provided the background of the Department, its basic functions, and its vision for the future. He also discussed many of the same matters that Marcie presented to the Commissioners, including AB 518, AB 454, and allocated funding for the future.

Thomas asked both Judge Hoferer and Ms. Williams to provide feedback on the indigent defense system in Mineral County, including their impressions of the process and the practitioners. They both remarked that it appeared to be working smoothly, that they were happy with both their primary public defender, Kale Brock and their conflict defender, Carl Hylin. They noted that Kale is prompt and prepared and that he always spends plenty

of time before and after hearings talking with his clients. They reported that since he had been on the bench, beginning January of 2023, there was only one appointed attorney on a single occasion who did not show up for court, due to a district court appearance in another county. And that attorney had attempted in good faith to secure a stipulated continuance, but the district attorney had refused to sign it.

Finally, of some concern was a report that the district court judge who oversees three counties was not available to travel as often as regularly scheduled. And that as a partial result, the jail was sometimes full and defendants had to be transferred to Lyon County. In a follow-up conversation, this matter was discussed with Kale Brock, to see if perhaps there were any due process violations as a result that deserved to be litigated by way of a Writ. Kale explained that he was not aware of any such violations.



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ONSITE VISIT REPORT

Pershing County

Visit date: October 5, 2023

I. Brief Narrative.

Marcie Ryba, Executive Director of the department traveled to Pershing County for an oversight visit to meet with (1) the Pershing County Board of County Commissioners Chair Joe Crim; (2) Erika Canchola, quarterly fiscal reporter for Pershing County; and (3) District Court Judge Jim Shirley and Kate Martin, Clerk of the Court/Court Administrator.

As an overview, the Pershing County indigent defense plan calls for a primary indigent defense provider of the Pershing County Public Defender, Steven Cochran; a first tier conflict public defender, Kyle Swanson; a second tier conflict public defender, unfilled; a third tier conflict public defender, unfilled; and a panel of attorneys from which the Counsel Administrator selects conflict counsel.

Chair Joe Crim

Historically the Department has been concerned that Pershing County may be missing financial expenses in their quarterly reporting. This is based upon the person that is responsible for reporting not having access to all of the information. For example, Kelly Weaver (Indigent Defense Coordinator) reviews billing and submits the bill to payment to Justice Court (for Justice Court bills) and District Court (for District Court bills). Further, the County Public Defender has his own budget for expenses. The Department encouraged Pershing to consider (1) developing a process for payment of indigent defense expenses that may be in one line in the budget and can be monitored by one person that is also responsible for reporting.

The Department also discussed the pending death penalty case and expected expenses for the case. The Department wants to ensure that the attorneys are provided with resources they feel are necessary.

Fiscal Reporting

DIDS has been advised that the fiscal reporting will be completed by Erika Canchola, the newly hired legal secretary in the Pershing County Public Defender's Office. Marcie

checked in with Erika and she has started the process to collect the information for reporting.

District Court

Marcie met with Judge Shirley and Kate Martin, as well. Judge Shirley was updated on recent legislative changes and the maximum contribution formula. Judge Shirley was also asked if he had any thoughts to share. There was concern expressed that some of the attorneys on the appointed list did not want to appear in person and did not sign up for the e-filing system that his judicial district requires.

The issue of billing was also discussed. Recently there was delay on a payment to appointed counsel due to a missing invoice. However, justice court pays attorney billing without such an invoice. It was discussed that a meeting should be held with the Counsel Administrator and the Courts and the County to determine the billing requirements so there is consistency in how these are processed.

The Department has sent emails requesting a meeting, but has been unable to set at this time.

II. Oversight Criteria.

1. Client Communication
 - a. There are several meeting spaces for Justice Court: the Board of County Commissioners Board Room can be used, as well as two conference rooms located in the law library of the court house.
2. First Appearances
 - a. Steve Cochran covers first appearance. He is grateful for the weekend stipend provided by AB518 because he can find coverage if he is unavailable.
3. Preparedness / Knowledge of Case
 - a. Kyle Swanson, in the one criminal matter scheduled for the day was prepared for the case.
 - b. Steven Cochran did not have court on the date of the visit, but appeared to be working on a case file prior to our discussion.
4. Investigation / Experts
 - a. Steve Cochran was not aware that he needed to track investigator time. He advised he uses one quite often, and he will start to enter the investigator time moving forward.

III. Next Steps.

1. Email Kelly Weaver and Erika Canchola to train on LegalServer and entry of time.

Pershing County

IV. Photos



Lake Township Justice Court, Pershing County, Nevada: Courtroom.



Law Library, Pershing County Courthouse with two conference rooms.

Pershing County



Conference Room 2.



Conference Room 1.



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ONSITE VISIT REPORT

White Pine County

Visit dates: October 3–4, 2023

On Tuesday, October 3, 2023, I, Peter Handy, Deputy Director of the Department, traveled to Ely, Nevada to conduct an oversight visit. I was able to observe a short proceeding in the Drug Court and Deputy Public Defender Christi Kindle. I met with Justice of the Peace Stephen Bishop, Seventh Judicial District Court Judge Gary Fairman, and Municipal Court Judge Mike Coster. This report will not discuss the facilities, as they have not substantially changed since the Department last conducted an oversight report.

All of the judges acknowledged that the transition from the prior contractors to the Nevada State Public Defender's Office (NSPD) was going relatively smoothly. All of the judges shared a concern for being able to recruit new attorneys to the area. Judge Fairman in particular was hoping that any additional hires to the NSPD would be moving to, and living in, the Ely area. We discussed the Department's pipeline program efforts, hurdles that exist to bringing attorneys (and other professionals) into rural areas in Nevada and across the country, and what other ideas the Department was hoping to implement in the near and distant future, including limited practice rule changes, marketing to other states and law schools, and monetary incentives. Judge Coster mentioned that weekend bail hearings were being attended to in a much more efficient manner by the NSPD than the prior contracted public defenders. I explained to the judges that, should they have any complaints or concerns about indigent counsel appearing before them that they could forward their complaints or concerns to the Department for review and possible action.

I was able to observe a brief proceeding of the White Pine County Drug Court with Chief Deputy Public Defender Christi Kindel representing the sole defendant, who had the only matter on calendar for the proceeding. Ms. Kindel acted competently and professionally, meeting the requisite standards of conduct for a criminal defense attorney as informed by ADKT 0411 and the ABA Defense Function Standards. Ms. Kindel had clearly discussed the proceedings in advance with her client, who appeared aware of the nature of the proceedings and acted accordingly.

Ms. Kindel communicated with her client during the proceedings to protect her client's interests and with the court to assist the court in understanding her client's position and to propose remedies that would keep her client in the drug court program.

I was able to have a conversation with Ms. Kindel outside of the proceedings about the goings-on with the White Pine Office and learned that the physical office was not yet up and running, as there was no active internet and no phones; she was primarily working in the courthouse. She did indicate that, due to this and there only being her and Chris Arabia to cover the cases, their efficiency was not being maximized. Ms. Kindel accompanied me to the meeting with Judge Bishop. During the proceedings, meeting with the judge, and during our conversations, Ms. Kindel was always civil, courteous, patient, and candid.

I was able to visit the NSPD office space in Ely, which consisted of several vacant offices, containing only desks and chairs and a storage closet, which lacked any kind of flooring over the visible bare concrete subfloor. Some carpets appeared to have been replaced, as there were different colors and patterns visible in different areas of the office. There were some places where it was apparent that texture had been applied over some paneling on the walls; it was unclear if paint had been applied over the texture. The NSPD staff reported that the suite manager had made several entries into the unit without providing notice or reason to the NSPD; should such conduct continue, it will be a security issue as the office will contain confidential and privileged client and personnel information. There were no visible ethernet outlets in any portion of the unit. Several power outlet faceplates were ajar with some wiring visible behind the wall. NSPD staff seemed to have reasonable plans for utilizing the various spaces in the office, including an alcove for a multifunction copier, orientation of the waiting/reception area, which doors would be locked or unlocked to the public, and how storage would be accomplished. The facility was unadorned and inconspicuous, within a building that consisted of office suites. Once fully furnished and developed, the location appears to be able to accommodate the needs of the Office.

Impressively, despite the slow progress of opening the new physical office, the attorneys with the NSPD have been able to attend to their clients and their cases by utilizing the limited facilities available to them. The judges and District Attorney lauded the performance of the attorneys, indicating that they found them to be more professional than the prior contracted attorneys. This is especially remarkable given that one attorney position, the investigator position, and one staff position for the Ely office remain vacant. Ms. Kindel and Mr. Arabia should be commended for their efforts to ensure that their clients are getting sufficient representation with such extreme limitations placed upon them.

On Wednesday, October 4, 2023, I traveled to Eureka, Nevada, to meet with Justice of the Peace Dorothy Rowley. Judge Rowley and her staff were pleased with the speed at which the Department was able to select counsel for indigent defendants. They were pleased with the attorneys who had been appearing in Eureka County and thought that the system was working well. There was a question about who they should direct any complaints to. I informed them that they could direct any complaints, or compliments, to our office, and we would use the information to support our oversight efforts. There were no proceedings taking place that day that I could observe.

Appendix E

Notice of Adoption of Regulations



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

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NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the
Adoption, Amendment, and Repeal of Regulations of the
Board on Indigent Defense Services.

The Board on Indigent Defense Services will hold a public hearing at 1:00 PM on the second day of November of 2023, at the following locations:

Physical Location: **Capitol Building**
Old Assembly Chambers
101 North Carson Street
Carson City, NV 89701

Virtual Meeting Access: **VIRTUAL**

The meeting may be viewed electronically through an Internet connection by accessing the following Zoom link:

<https://us02web.zoom.us/j/88316904363?pwd=NkhSdGhhSEorR0JoQ2MyQk1zckcxdz09>

Zoom Meeting ID: 883 1690 4363

Passcode: 156236

By Telephone:
One Tap Mobile
+16694449171, 88316904363#, *156236# US
+16699006833, 88316904363#, *156236# US (San Jose)

Dial by your location
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)

+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
Meeting ID: 883 1690 4363
Passcode: 156236
Find your local number:
<https://us02web.zoom.us/j/88316904363?pwd=NkhSdGhhSEorR0JoQ2MyQk1zckcxdz09>

The purpose of the hearing is to receive comments from all interested persons regarding the Adoption, Amendment and Repeal of regulations that pertain to chapter 180 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation and amendment are to:
 - a. Repeal the regulatory maximum contribution formula, as it has been repealed by statute (AB 518).
 - b. 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.
 - c. 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,
 - d. Amend NAC 180 to make the remaining language clearer and more concise to be consistent with the Board's intent.
2. A copy of this notice and the regulation to be Adopted, Amended, and Repealed will be 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 will be 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.
3. The estimated economic effect of the regulation on the business which it is to regulate and on the public.
 - a. The estimated economic effect of the proposed regulation on the small business which it is to regulate, including, without limitation both adverse and beneficial effects; and both direct and indirect effects: There are no reasonably foreseen potential economic impacts to small business.
 - b. There are not reasonably foreseen potential immediate or long-term effects to small business.
4. To determine the impact of the regulation on small businesses, the Department of Indigent Defense Services requested input from private attorneys, law firms, and related businesses via an e-mailed survey link. The survey asked for input on economic effects on small businesses with space to elaborate on responses. The Department received 4 completed surveys.
5. The estimated cost to the agency for enforcement of the proposed regulation is unknown.
6. There are no known regulations of other state or local governmental agencies or federal regulations which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.
7. The proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Board on Indigent Defense Services may appear at the scheduled public hearing or may address their

comments, data, views, or arguments, in written form, to Department of Indigent Defense Services, 896 W. Nye, Suite 202, Carson City, NV 89703 or by email at didscontact@dids.nv.gov. Written submissions must be received by the Department of Indigent Defense Services on or before 7:00 AM on the date of the public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board on Indigent Defense Services may proceed immediately to act upon any written submissions. A copy of this notice and the regulation to be Adopted, Amended, and Repealed will be 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 will be 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. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us/>. Copies of this notice and the proposed regulation will also be mailed to members of the public at no charge upon request. Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption. This notice of hearing has been posted at the following locations:

1. Department of Indigent Defense Services, 896 W. Nye, Suite 202, Carson City, NV 89703.
2. Capitol Building, 101 North Carson Street, Carson City, NV 89701
3. Notice of this meeting was posted on the Internet: <http://dids.nv.gov> and <https://notice.nv.gov>

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

LCB File No. R033-23

September 26, 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 setting 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 171.188.

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 1.1 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 Department . ~~;~~ and

~~—(c) Follow the minimum standards of the Board in determining which CLE courses are relevant to the provision of indigent defense services.~~

~~—3.] Any CLE courses provided by the Department count toward satisfaction of the annual CLE requirement . [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 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. 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. 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) The percentage equal to the lesser of:

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

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

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

(1) The 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) The percentage equal to the lesser of:

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

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

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

5. 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. 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.

Appendix F

Hourly Rates Comparison

Workshop Item 3: Setting the Hourly Rate (AB454(2023))

AB454(2023), Sec. 2: NRS 180.320(4) is hereby amended to read as follows:

“The Board shall adopt regulations to establish hourly rates of compensation for court appearances and other time reasonably spent on indigent defense services or representation for:

(a) In counties 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.

⊇ Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, the establishment by regulation of rates of compensation pursuant to this subsection does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.

Sec. 3. NRS 7.125 is hereby amended to read as follows: 1. An attorney, other than a public defender, who is selected pursuant to NRS 7.115 to represent or defend a defendant at any stage of the criminal proceedings from the defendant’s initial appearance before the magistrate or the district court through the appeal, if any, is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made of :

(a) If the compensation of the attorney is subject to the provisions of subsection 4 of NRS 180.320, the amount set forth in the regulations adopted by the Board on Indigent Defense Services within the Department of Indigent Defense Services pursuant to subsection 4 of NRS 180.320; or

(b) If the compensation of the attorney is not subject to the provisions of subsection 4 of NRS 180.320, \$125 per hour in cases in which the death penalty is sought and \$100 per hour in all other cases.

2. Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, this section does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.

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Department recommendation:

The Department recommends setting the hourly compensation rate at “the prevailing CJA rate at the time of service.”

Sec. XX

The hourly rates of compensation for court appearances and other time reasonably spent on indigent defense services or representation for:

- (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,

is entitled to receive a hourly compensation rate of the prevailing CJA Panel Attorney hourly compensation rate at the time of service.

Comparisons:

CJA (Criminal Justice Act) PANEL ATTORNEY HOURLY RATES AND MAXIMUM CASE COMPENSATION RATES

Case Type	On or after January 1, 2023
NON-CAPITAL CASES	\$164.00
CAPITAL CASES	\$210.00

Hourly Rates Comparison of Nevada Counties

Washoe County:

Attorney Rates							
	Category A	Category B	Category C	Category D	Category E	Misdemeanors	Juvenile Flat Rate
Hourly Rate	\$300 hr.	\$200 hr.	\$200 hr.	\$200 hr.	\$200 hr.	\$150 hr.	
Max Cap	\$40K	\$15K	\$10K	\$5K	\$5K		\$500

Carson City

Attorney Rates						
	Category A	Category B	Category C	Category D	Category E	Misdemeanors and Juvenile
Hourly Rate	\$300 hr.	\$200 hr.	\$200 hr.	\$200 hr.	\$200 hr.	\$150 hr.
Max Cap	\$40K	\$15K	\$10K	\$5K	\$5K	

Clark, Esmeralda: \$100 per hour

Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lincoln, Mineral, White Pine: \$150 an hour

Lyon: \$100 per hour (unless have a contract with the county)

Nye: \$150 for Tonopah cases, \$100 for Pahrump/Beatty cases

NRS 7.125: \$125 per hour, death penalty; \$100 per hour, all other cases

Attorney General Cost Allocation to State Agencies: \$163 per hour

Appendix G

Memorandum to the Interim Finance Committee on Pay Parity



**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 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 \$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.

Oversight Requirements

Pursuant to NRS 180.450, any county may transfer responsibility for the provision of indigent defense services to the NSPD. Rural counties have transferred responsibility for indigent defense services to the NSPD, but 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 providing indigent defense services that is employed with the Nevada State Public Defender on March 31, 2024, and June 15, 2024.

Conclusion

In conclusion, the Department respectfully requests a total allocation of \$130,066 from the AB518(2023), Section 7 appropriation to be used during Fiscal Year 2024 to provide pay parity stipends to provide pay parity for NSPD attorneys who provide indigent defense services.

Annual NSPD Salary Increases for Midline Average Stipend by Position

Assumption: Higher salary figures are used when the NSPD lacks the position represented in other jurisdictions; i.e., Deputy PD III value will be used for the Deputy PD Position

	Current Salary	Stipend Amount	Number of Positions	Total Annual Increase (excludes PERS & Assessments)	
Deputy Public Defender	\$ 104,328.00	\$ 23,002.66	1	\$	23,002.66
Supervising Public Defender	\$ 116,602.00	\$ 57,661.26	3	\$	172,983.78
Public Defender	\$ 128,876.00	\$ 64,145.06	1	\$	64,145.06
Grand Total				\$	260,131.50

WP Requested Amount for Two Quarters = \$130,066

	Clark County			Washoe County			WSA	Carson City		
	Min	Mid	Max	Min	Mid	Max		Min	Mid	Max
Deputy PD I	\$ 82,575.00	\$ 121,885.00	\$ 161,095.00	\$ 107,723.20	\$ 123,884.80	\$ 140,046.40	\$ 104,328.00	\$ 89,338.63	\$ 97,741.08	\$ 114,143.52
Deputy PD II/Senior DPD				\$ 119,808.00	\$ 143,769.60	\$ 167,731.20		\$ 98,216.40	\$ 116,386.39	\$ 134,556.37
Deputy PD III/Supervising(CC)/Chief(Clark) DPD	\$ 121,264.00	\$ 154,585.60	\$ 187,907.20	\$ 140,192.00	\$ 168,240.80	\$ 196,289.60	\$ 116,602.00	\$ 113,439.82	\$ 136,127.98	\$ 158,816.14
Deputy PD IV/Assistant PD	\$ 148,075.20	\$ 188,780.80	\$ 229,486.40	\$ 164,902.40	\$ 197,881.00	\$ 230,859.60				
Public Defender	\$ 162,905.60	\$ 207,698.40	\$ 252,491.20	\$ 184,683.20	\$ 221,624.00	\$ 258,564.80	\$ 128,876.00	\$ 124,783.80	\$ 149,740.78	\$ 174,697.76
Alternate Public Defender	\$ 184,683.20	\$ 221,624.00	\$ 258,564.80							
Special Public defender	\$ 162,905.60	\$ 207,698.40	\$ 252,491.20							

NSPD Maximum Position Pay Disparity Analysis														
	NSPD	Minimum Pay			Midline Pay			Maximum Pay			Average Min	Average Mid	Average Max	Total Average Difference
	NSPD Max	Carson Min	Clark Min	Washoe Min	Carson Mid	Clark Mid	Washoe Mid	Carson Max	Clark Max	Washoe Max				
Deputy PD II/Senior DPD	\$ 104,328.00	\$ (6,111.60)	\$ (21,752.00)	\$ 15,480.00	\$ 12,058.39	\$ 17,508.00	\$ 39,441.60	\$ 30,228.37	\$ 56,768.00	\$ 63,403.20	\$ (4,127.87)	\$ 23,002.66	\$ 50,133.19	\$ 23,002.66
Deputy PD IV/Assistant PD	\$ 116,602.00	\$ (3,162.18)	\$ 31,473.20	\$ 48,300.40	\$ 19,525.98	\$ 72,178.80	\$ 81,279.00	\$ 42,214.14	\$ 112,884.40	\$ 114,257.60	\$ 25,537.14	\$ 57,661.26	\$ 89,785.38	\$ 57,661.26
Public Defender	\$ 128,876.00	\$ (4,092.20)	\$ 34,029.60	\$ 55,807.20	\$ 20,864.78	\$ 78,822.40	\$ 92,748.00	\$ 45,821.76	\$ 123,605.20	\$ 129,688.80	\$ 28,581.53	\$ 64,145.06	\$ 99,708.59	\$ 64,145.06

Appendix H

Nevada Supreme Court Rule 49.5

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION
OF SUPREME COURT RULE 49.5

ADKT 0611

FILED

OCT 19 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER ADOPTING SUPREME COURT RULE 49.5

WHEREAS, Elissa F. Cadish, Associate Chief Justice of the Nevada Supreme Court and Co-Chair of the Access to Justice Commission, petitioned the Nevada Supreme Court on its administrative docket to adopt Supreme Court Rule (SCR) 49.5 to allow limited practice of law under the supervision of organized legal services programs and rural district attorney and public defender offices by law school graduates for a limited time; and

WHEREAS, this court solicited public comment on the petition and a public hearing was held in this matter on October 2, 2023; and

WHEREAS, this court concludes that the proposed adoption of SCR 49.5 is warranted; accordingly,

IT IS HEREBY ORDERED that SCR 49.5 shall be adopted and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that this rule shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described

publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule.

Dated this 19TH day of October, 2023.

Stiglich, C.J.
Stiglich

Cadish, J.
Cadish

Pickering, J.
Pickering

Herndon, J.
Herndon

Lee, J.
Lee

Parraguirre, J.
Parraguirre

Bell, J.
Bell

cc: Julie Cavanaugh-Bill, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Legal Aid Center of Southern Nevada
Northern Nevada Legal Aid
Nevada Legal Services
Southern Nevada Senior Law Project
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Douglas County Bar Association
Elko County Bar Association
Administrative Office of the Courts

EXHIBIT A
ADOPTION OF SUPREME COURT RULE 49.5

Rule 49.5. Limited practice for Supervised Legal Practitioners.

1. Eligibility. Law school graduates with a “qualified employment” may apply for limited certification as supervised legal practitioners. “Qualified employment” shall mean the graduate is:

(a) Employed by or associated with an organized legal services program approved by the Access to Justice Commission or its designee and funded from state, federal, or recognized charitable sources that provides legal assistance to indigents in civil matters;

(b) Employed as a deputy district attorney by a county whose population is fewer than 100,000 persons; or

(c) Employed by the State Public Defender or the county equivalent of such an office to practice in a county whose population is fewer than 100,000 persons;

and supervised by a member of the State Bar of Nevada who meets the eligibility requirements as a supervising lawyer.

2. Requirements. A graduate applying for limited certification as a supervised legal practitioner under this rule shall:

(a) Have completed a full course of study and graduated with a juris doctorate or equivalent law degree from a law school approved by the American Bar Association;

(b) Intend to become a member of the Nevada bar;

(c) Not have been denied admission to the practice of law in any state based on failure to meet applicable character standards;

(d) Certify that the applicant is not currently subject to discipline for academic dishonesty or the subject of a pending disciplinary matter in any jurisdiction; and

(e) Apply for certification with the Nevada state bar pursuant to this rule using the attached form or a different form furnished by the Nevada state bar.

(1) The application shall include a written certification that the applicant has read and is familiar with the Model Rules of Professional Conduct of the American Bar Association and the Rules of Professional Conduct of this court and will abide by the same in the activities permitted by this rule. The filing of an application pursuant to this rule is deemed a consent by the applicant to be subject to all disciplinary processes of the court and the state bar. Any offense that would subject a lawyer admitted to practice law in this state to suspension or disbarment may be punished by suspension or forfeiture of the applicant's privilege of taking the bar examination and being licensed to practice law in this state.

(2) The application must be accompanied by a statement from the applicant's supervising attorney, on a form substantially similar to the form Declaration of the Supervising Lawyer Pursuant to Rule 49.5, attesting that the applicant will be a full-time employee or otherwise associated with the organization in a full-time capacity except for periods when studying or sitting for the Nevada Bar examination and that the nature of the employment conforms to the requirements of this rule.

3. Certification.

(a) Unless sooner withdrawn or terminated, certification under this rule shall remain in effect as long as the supervised legal practitioner remains eligible to participate in the activities permitted under this rule.

(b) The certification may be terminated by the state bar at any time without notice or hearing and without any showing of cause by mailing a notice of such termination to the supervised legal practitioner and the supervising lawyer.

(c) The certification terminates automatically whichever occurs sooner:

(1) Twelve (12) months after the supervised legal practitioner has graduated from law school or

(2) The supervised legal practitioner leaves the qualified employment as described herein.

4. Supervision. A “supervising lawyer” shall mean a member of the state bar in active practice employed with qualified employment. A supervising lawyer shall:

(a) Be an active resident member of the state bar and, before supervising the activities specified in subsection 5, shall have actively practiced law in Nevada as a full-time occupation for at least five (5) years.

(b) Supervise not more than two (2) supervised legal practitioners concurrently.

(c) Personally assume professional responsibility for all work undertaken by the supervised legal practitioner while under the lawyer’s supervision.

(d) Assist and counsel the supervised legal practitioner in the activities permitted by this rule and review such activities to the extent necessary for the proper training of the practitioner and protection of the person on whose behalf the legal practitioner is appearing.

(e) Not be required to be continuously personally present throughout the activities permitted under subsection 5 after a period of time deemed appropriate by the supervising lawyer.

(f) Be responsible to the court for all filings, and the supervising lawyer's name must be on all pleadings, briefs, or other papers prepared by the supervised legal practitioner for filing; and the supervising lawyer must read and approve any documents prepared by the supervised legal practitioner for execution by any person before submission to that person.

(g) Notify the state bar in writing promptly whenever supervision of the supervised legal practitioner pursuant to this rule ceases, unless by reason of automatic termination pursuant to section 3(c)(1).

5. Activities permitted under this rule. Under the limited application of this rule, the supervised legal practitioner may, under the supervision of a supervising lawyer, but without requiring the supervisor's continued presence after a period deemed appropriate by the supervising lawyer, engage in the following activities:

(a) Appear in any state court, a legislative body or an administrative tribunal without the presence of the supervising lawyer. The supervised legal practitioner shall announce their appearance as a supervised legal practitioner at the beginning of any hearing or proceeding.

(b) Prepare documents to be filed in any state court or with a legislative or administrative body.

(c) Prepare transactional documents such as contracts, incorporation papers and by-laws, and filings required by a state, federal, or other governmental body.

(d) Negotiate and mediate the settlement of claims and disputes.

(e) Prepare and mail correspondence.

(f) **Counsel and give legal advice.**

The qualified employment office shall notify the client that a supervised legal practitioner may represent them during the pendency of the case.

6. Use of supervised legal practitioner's name. The name of a supervised legal practitioner under this rule may properly be:

(a) **Signed and printed or typed on briefs, pleadings, and other similar documents on which the supervised legal practitioner has worked under the direction of the supervising lawyer if the supervised legal practitioner is clearly identified as certified under this rule.**

(b) **Signed to letters written on the supervising lawyer's letterhead that relate to the supervised work if the supervised legal practitioner is clearly identified as certified under this rule.**

7. Compensation. A supervised legal practitioner may neither ask for nor receive any compensation or remuneration of any kind directly from the person on whose behalf he or she renders service. This shall not prevent the qualified employment office from compensating the supervised legal practitioner for his or her services and from applying to the court for fees for such services in appropriate cases.

8. Other Lawful Acts. Nothing in this rule shall affect the right of any supervised legal practitioner who is not admitted to practice law to engage in any legal-related services he or she might lawfully do otherwise.

9. Place of filing. All documents required to be filed with the state bar by this rule shall be filed with the admissions director of the state bar.

Appendix I

Department's Recruitment Efforts:

Access to Justice Report



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

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

Oversight Report – Student Pipeline Efforts

10.30.23

Equal Justice Works Career Fair

On October 12 and 13, 2023, Deputy Director Thomas Qualls attended the Equal Justice Works Career Fair, which was held virtually this year. There were over 250 potential employer vendors who attended and over 2,500 law students participated. Two third year law students signed up for interviews with DIDS, one on each day.

The Department's participation in this fair was necessarily different from all other vendors because we are not a direct employer of public defenders, and we do not have authority to recruit for any of the rural public defender offices. Further, the Department's funding for the summer externship stipend was not renewed, as the State Bar changed its policies for grant eligibility, requiring all applicants to be 501(c)(3) organizations.

Deputy Director Qualls explained to both students the role and functions of the Department, the opportunities for internship/externship with the Department, as well as the possibilities that exist for future employment in public defense in the rural counties.

The first student attendee was only interested in a hands-on courtroom internship/externship and employment experience, and so DIDS was not a good fit for her. The second student attendee was currently working in an appeals clinic at George Washington University and was interested in employment doing appeals and/or post-conviction habeas work. Qualls explained that the Nevada State Public Defenders Office was expanding its focus on complex litigation, including death penalty, appeals, and post-conviction habeas work. The student was very interested in possible opportunities doing this work for NSPD, plans to explore taking the Nevada Bar Exam next July and plans to stay in touch.

The Department will encourage Nevada's rural public defender offices to attend future Equal Justice Works Career Fairs, as well as other career fairs to assist with recruitment. The Department believes county expenditures for public defender offices to attend this fair would be reimbursable as an indigent defense expense. It is questionable, however, whether attending this Fair is a good use of Department resources, since we are

not a direct employer, and especially since grant funding for the summer stipends has not been renewed.

Public Interest Law Association – Careers in Public Interest Panel

On October 24, 2023, Executive Director Marcie Ryba travelled to Boyd School of Law to sit on a Careers in Public Interest Panel. The Panel provided a unique opportunity to talk with students about careers at the Department of Indigent Defense Services, as well as public defense, in general. A separate panel for public defenders was held on October 25, 2023, where rural public defenders were able to share insight on a career in public defense.

To encourage a pipeline to the rural counties, the Department purchased coffee mugs with a quote and the Department logo. These mugs were provided at no cost to the students that attended the panel.

Prior to the panel, Marcie took the opportunity to talk with students in attendance. Many were interested in public defense and one student was interested in returning to her hometown of Elko to work in a District Attorney or Public Defender office. After the panel, Marcie was able to get contact information for this student and connect her with Elko County Public Defender Matthew Pennel to explore whether there would be an externship opportunity in the Elko PD office.

After the Panel, Marcie met with Boyd's Assistant Dean of Career Development, Nikki Harris and Boyd's Director of Externships, Dawn Nielsen. We discussed possible pipelines to encourage Boyd graduates to accept employment in the rural counties. Nikki shared that there is a very high need for their law school graduates, especially by private firms. Nikki shared that many of the private firms provide an employment contract to their 2L externs guaranteeing employment after graduation. Both Nikki and Dawn encouraged the Department to open up the summer stipend (if funds are provided by IFC) to 1L students. They believed there would be a higher success rate to find students to place into the summer stipend if more were allowed to apply. Further, Nikki and Dawn encouraged the Department to consider student loan forgiveness to encourage students to take employment in the rural counties. Many of Boyd's students have families and need to ensure financial stability if they are to take such employment. Nikki specifically provided a story where one student was offered a job in public interest, but ultimately turned it down for a higher paying job at a private firm.

After this meeting with Nikki and Dawn, the Department believes it is necessary to (1) explore the possibility of student loan forgiveness for rural public defenders; (2) if funding for the stipend is approved, open the stipend to 1Ls; and (3) consider providing BARBRI (or similar Bar Review Course) and paid time off as an incentive to employment in the rural counties.

Appendix J

Department's Summary of Recent Training Activities



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

October 30, 2023

FY24 Q1&2 Training Synopsis

On July 21, 2023, the Department hosted a webinar featuring Dr. Adam Dunbar¹ on Bias in the Criminal Justice System. 59 people registered for the program and 36 attorneys attended the training on the day it was presented. Of the 36 attendees, 34 regularly practice in the rural counties or took cases in the rural counties.

On September 1, 2023, the Department hosted a webinar featuring Courtney Farnsworth, a Psychiatric Case worker with the Division of Public and Behavioral Health, on Navigating the System when Representing a Client with Mental Health or Substance Abuse Issues. 43 people registered for this program and 23 attorneys attended the training on the day it was presented. Of the 23 attorney attendees, 19 regularly practice in the rural counties or took cases in the rural counties.

The Department also co-hosted a program on DNA with the Washoe County Public Defender's Office and the Washoe County Alternate Public Defender's Office. The class was presented over October 19th and 20th (a half day, and a full day of training, respectively) for a total of 9.0 CLE credits. Topics included DNA basics, issue spotting, making sense of reports and methods, ethics and discovery, DNA transfers, DNA statistics, probabilistic software, pre-trial and trial strategies, and emerging issues in DNA cases. Six rural attorneys attended the majority of the content virtually. The total number of in-person attendees is not known by the Department at this time.

The Department encouraged rural attorneys to attend a training presented by the Clark County Public Defender's Office and the Clark County Special Public Defender's Office on August 22nd and 23rd of 2023 on the Colorado Method of voir dire. However, no rural attorneys attended the training.

The Department has planned trainings for November (on wellness) and December (on ethics and civility) and has begun the process of planning our 2024 Annual Conference.

¹ Adam Dunbar is an assistant professor in the Department of Criminal Justice at the University of Nevada, Reno.

Appendix K

Introduction and Explanation of Quarterly Reporting Format



**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

Introduction and Explanation of Quarterly Reporting Format

To: To Whom It May Concern

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

Date: October 20, 2023

Re: Introduction and Explanation of Quarterly Reporting Format

The Department of Indigent Defense Services has modified the quarterly reports to ensure compliance with the *Davis* “Stipulated Consent Judgment.” The Judgment requires the Department to report:

- (1) public defense caseload numbers and case outcome, organized by type of case;
- (2) attorney and staff hours spent per public defense case;
- (3) investigator hours per case;
- (4) expert hours per case;
- (5) total number of motions to suppress (i) filed and (ii) litigated;
- (6) number of trials over the reporting period; and
- (7) private workload, if any, measured in attorney hours.

To achieve each of these reporting points, the Department has opted to present raw data in an excel format. Each County has its own report with tabs at the bottom indicating each office that is in the county. If private counsel was appointed who is not part of an organized office or a county contract, that data is reported in a tab entitled “NV Appt Counsel.”

A table within each Excel spreadsheet contains the total number of Attorney, Investigator, Expert, and Staff hours spent by each office in that county. Additional data is contained in the spreadsheet regarding:

- Date of Service – this is the date of the time entry;
- Office – the name of the office providing services;

- County of Dispute – this is the county in which the matter is based;
- Matter/Case ID# -- this is the LegalServer case number provided to the case;
- Legal Problem Code – is the case type;
- Name – entries in this field are for a grouping of activities where many cases may be involved like specialty court or bail hearings;
- Caseworker Name – this is the name of the person performing the activity;
- Activity Type – sets forth whether it is Attorney, Investigator, Staff, or Expert time;
- Funding Code – defines the funding source for the case which can include municipal, county or state;
- Time Spent - this is the amount of time entered for that one entry;
- Total Time Spent for the Case – this is the hourly amount of the total time entered on that case by all activity types;
- Case Disposition – informs whether the case is open or closed;
- Date Closed – provides the date the case was closed; and
- Close Reason – defines how the case was closed.

The area below the spreadsheet provides: (1) the number of entries made; (2) the unique count of LegalServer case numbers; (3) a count by case types separated by legal problem code; (4) the number of entries by activity type; (5) the number of entries by funding type; and (6) the total amount of time entered.

Private workload was also collected from each office or contract public defender by the Department sending a survey to each office asking for staffing numbers and the amount of private workload. This information is contained within its own spreadsheet entitled “Indigent Defense Office Responses.” If an office is missing in this field, it means they did not provide a response to the survey.

The number of trials and motions to suppress is contained in the Trials Motions County Excel Spreadsheet.