

Sixth Report of the Monitor
Davis v. State, Case No. 170C002271B
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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 1, 2022, to November 11, 2022.¹

Summary Points

The Nevada Department of Indigent Defense (hereinafter “the Department”) continues to take significant steps toward compliance with the Judgment, in terms of training, oversight, data collection, and managing attorney selection, compensation and county reimbursements.

At the same time, this Report notes some challenges to compliance, including delays in the workload study, a limited budget, and a serious shortage of qualified attorneys willing to engage in public defense in some of the rural counties.

Achievements

The Department’s compliance-related achievements include the following:

- **Data Collection on Attorney Workload**

A major achievement of the Department reached this past quarter is the collection of one year’s worth of attorney caseload and timekeeping data. In the fourth quarter of reporting (FY23 Q1, ending October 1, 2022), all contract attorneys reported caseload and timekeeping using Legal Server.²

- **Wage/salary survey**

The Department-contracted data analyst, Dr. Mitch Herian of Soval Solutions, completed (1) a survey of attorneys’ overhead and expenses; and (2) a recommendation for a new hourly rate for attorney compensation.³

- **Reimbursement**

For expenses over their maximum contribution, the Department secured from the Interim Finance Committee \$1,599,286.92 total in reimbursement to *Davis* counties and \$225,591.00 for rural counties not named in the *Davis* Judgment.⁴

¹ By agreement, this report was delayed awaiting workload data from July 1, 2022, through September 30, 2022. Attorneys were given extra time to submit their workload data, until mid-October.

² Discussed *infra* in Section III.

³ Discusses *infra* in Section I. The Soval Solution, *Hourly Rate Recommendations for Contract Attorneys in Rural Nevada* (August 8, 2022) [hereinafter, *Hourly Rate Recommendations*] is attached to this Report as Appendix A.

⁴ Discussed *infra* in Section I.

- **Oversight**

The Department, in consultation with Dr. Herian of Soval Solutions, identified the staffing necessary to comply with the oversight required by the Judgment, statute, and Board regulations.⁵

The Department continued to engage in remote oversight, including analysis of Legal Server data, attorney selection, compensation, and reimbursement, and as-needed conversations with the judiciary and county officials.

- **Assistance to counties**

The Department worked directly with counties struggling to secure qualified attorneys to assume contracts and accept appointments. In consultation with the Department, several counties decided to transfer death penalty, appeals, and parole and pardons cases to the State Public Defender. White Pine County decided to transfer primary public defender services to the State Public Defender. In addition, the Department continued to select counsel for appointment in conflict cases in some *Davis* counties.⁶

- **Training**

The Department secured a grant for \$38,000 for rural attorneys and five students to attend an annual training conference to be held in Reno in the Spring of 2023.

The Department is in the process of hosting a four-session homicide workshop in partnership with the Clark County and Washoe Public Defender Offices.

- **Delphi Panels**

The National Center for State Courts (NCSC) conducted a follow-up Delphi panel with criminal defense attorneys.⁷

- **Bill Draft Requests**

The Department finalized and submitted bill draft requests for the 2023 legislative session, including:

1. A provision giving the Department authority to reimburse counties for their expenditures over their maximum contribution, without having to first make a request of the Interim Finance Committee.
2. A confidentiality provision to protect attorney-client information in the reimbursement and compensation process.
3. A provision that modifies NRS 260.070 to permit counties to submit their annual reports by May 31 instead of May 1.

⁵ Discussed *infra* in Section II. The Soval Solutions, *Recommendations for Senior Policy Positions* (August 30, 2022) [hereinafter *Senior Policy Positions*] is attached to this Report as Appendix B.

⁶ Discussed *infra* in Section II.

⁷ Discussed *infra* in Section II.

4. A provision changing the amount of time within which an attorney must request compensation under NRS 7.145 from 60 to 90 days.
5. A provision for compensation for representation in prison cases pursuant to NRS 212.070 to be paid through the state rather than through county funds.⁸

Areas of Concern

The areas of concern discussed in this Report are not failures of the Department but represent obstacles posed by budget limitations or external factors outside the Department's direct control. The Department is actively working to resolve these issues but is limited by fiscal and other external factors.

- **Insufficient number of qualified attorneys**

Several counties have struggled to recruit and retain attorneys to assume contracts, and the Department has had difficulty finding counsel willing to accept appointment on conflict cases in some rural counties. While some counties have raised their compensation rates, more must be done to attract and retain attorneys willing and qualified to work in public defense.⁹ To this end, the Department retained Dr. Herian to recommend methods for attracting attorneys to practice public defense in the rural counties. The report is expected by mid-January.

- **Insufficient department budget for oversight and other functions**

The Department's limited budget presents serious challenges to complying with the Judgment. Some of the required activities require substantial resources and staff, such as in-person oversight visits to all counties, annual review of all attorneys providing indigent defense, and support, training, and mentorship for attorneys.¹⁰

- **Delayed workload standards**

The National Center for State Courts (NCSC) has not completed the workload study. As a result, county-provider contracts do not contain workload limits yet.¹¹

- **Insufficient reporting of private workload**

Timekeeping through Legal Server has improved immensely, but attorneys are not uniformly reporting hours spent on private casework. Because they are independent contractors, some attorneys are unwilling to report time spent on private casework. Without this information, as well as time spent on other indigent defense work in other jurisdictions, it is impossible to assess workload of individual attorneys.¹²

⁸ The bill draft requests are attached to this Report as Appendix C.

⁹ Discussed *infra* in Section II.

¹⁰ Discussed *infra* in Section II.

¹¹ Discussed *infra* in Section II.

¹² Discussed *infra* in Section III.

Summary of Recommendations

- Reimbursement for county expenses over their maximum contribution should continue to be rapid and reliable.
- The reimbursement process should be streamlined to ensure prompt reimbursement for the counties so that the Department controls disbursements.
- The Soval Solutions' analysis of cost-of-living adjustments to the hourly rate should be implemented, whether through direct legislation or by given the Board the authority to set the hourly rate in its regulations.
- The Department's staff should be increased per the data analyst's recommendation to include policy analyst/oversight position(s) for in-person oversight in the counties.
- The Department should continue to discuss with counties the option of forming a county public defender or opting into the state public defender.
- The Defendants should ensure that the State Public Defender is adequately funded and staffed to meet the public defense needs of the counties opting into the state system for some or all of their indigent cases.
- The Department should ask the counties to incorporate specific performance standards into the counties' contracts with providers at the same time as the workload standards.
- The parties should determine whether remote appearance at initial appearance satisfies the Judgement.
- The parties should clarify goal of the client surveys and adjust distribution and collection accordingly.
- The parties may wish to determine the scope and format of the information to be included in quarterly and annual reports. Specifically, should the quarterly or annual report list average hours per case (by type) per attorney, or totals per attorney?
- The attorneys should be reminded that section 44(1)(e) of the regulations require that attorneys report total private workload. Additionally, this provision should be read to include time spent on indigent defense in other jurisdictions, especially in municipalities. Perhaps this expectation should be clarified in the regulations and the attorneys' contracts.
- The Defendants should compensate attorneys or otherwise incentivize contemporaneous timekeeping and prompt dispositional reporting through Legal Server. The contracts

require compliance with the reporting requirements, but incentives may help insure thoroughness.

- The state should continue to explore methods of recruiting attorneys to rural indigent defense.

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 Financial Disincentives & Ensuring Independence of the Defense

Three developments related to financial disincentives and ensuring independence occurred during the last quarter.¹³

- A. The Department secured a data analyst's report on fair compensation and submitted a bill draft request to empower the Board to set the hourly compensation rate for indigent public defense.
- B. The Department continued to secure reimbursement for county expenses over their maximum contribution through the Interim Finance Committee, and submitted a bill draft request to give the Department the ability to disperse compensation and reimbursement directly.
- C. The Department continued to work with attorneys and counties to fulfill their reporting requirements necessary for the compensation and funding structure.

A. Fair Compensation

The Judgment requires the state to ensure that providers receive a "reasonable hourly rate that takes into account overhead and expenses, including costs related to significant attorney travel

¹³ Additionally, the Department continues to monitor compliance with the Judgment and subsequent statutory changes to ensure independence in the selection of counsel. The Department addressed such a problem in Mineral County, where a judge selected and appointed an attorney not qualified by the Department. This oversight function is ongoing.

time.”¹⁴ The compensation should be comparable to prosecutors in the same county, considering that prosecutors do not pay overhead and expenses.¹⁵

1. The Wage-Salary Survey

Dr. Herian of Soval Solutions provided a report titled “Hourly Rate Recommendations for Contract Attorneys in Rural Nevada,” on August 8, 2022.¹⁶ The report can be seen as preliminary in that it acknowledges that certain, additional metrics should be considered. Nonetheless, several findings are notable.

First, Dr. Herian conducted a survey of Nevada attorneys to determine the average cost of overhead and expenses. Dr. Herian surveyed 136 attorneys, 56 of whom have contracts or accept appointments for indigent defense in Nevada’s rural counties. He found that solo practitioners spend an average of \$86,427 on overhead and expenses per year, with the most expensive areas of overhead being, “non-attorney compensation, office space, office supplies, [] attorney benefits and health care.”¹⁷ This number, or a similar survey particular to the county, should be considered in setting the contract amount.

Dr. Herian provided a sampling of comments from survey respondents, including one who stated, “The cost of inflation is unbearable and if hourly rates are not raised, I will no longer be taking appointed work.” Others noted that the wages for support and administrative staff have increased dramatically without an increase in the hourly rate for attorneys. One noted a preference for developing skill as an attorney representing clients in specialty court, but that “the pay is not enough on its own to dedicate my practice to just the specialty court.”¹⁸

The average overhead of \$86,427 provides a starting point for calculating parity, and can be subtracted from the total contract amount to see the rate of compensation provided by a contract for what amounts to full-time public defense (as is the case in some counties like Nye, Lyon, and White Pine. Moreover, the Soval Solutions survey suggests that local practitioners will provide information about overhead when requested, so it is possible to make a more localized determination of the expense of managing a law practice.

Second, Dr. Herian concluded that the hourly rate should be increased—at a minimum—from the statutory amounts of \$100 to \$163, and from \$150 to \$204 for death penalty cases. This calculation is based solely on the increased cost-of-living in Nevada from 2003—when the current rates were set—to 2022. Calculations were made using the Bureau of Labor Statistics Consumer Price Index (CPI) calculator.¹⁹ But Dr. Herian noted that his recommendation for the hourly rate

¹⁴ Judgment, 11. The state also must provide a “funding mechanism for excess, unusual, or complex cases.”

¹⁵ See also Regulation 40(10). Per AB81, the Department’s standards must guard against financial disincentives to provide effective representation.

¹⁶ The *Hourly Rate Recommendations* report is attached to this Report as Appendix A.

¹⁷ *Id.* at 2

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4.

is based only on the CPI, and that additional metrics should be taken into consideration, such as home prices and the compensation rates in comparable indigent defense systems. Given cost-of-living fluctuations and other variables, Dr. Herian recommended the CPI-based rate adjustment, followed by the setting of regular increases to keep pace with cost-of-living.

It should also be noted that the Soval Solutions report does not, however, analyze the salaries of prosecutors in the rural counties.

2. Changing the existing hourly rate-of-pay

After a great deal of discussion in a budgetary subcommittee meeting on August 8, 2022, and at the general Board meeting on August 18, 2022, the Board decided that the better course is not to request that the legislature amend the statute to the amounts suggested by Dr. Herian, but to request that the legislature permit the Board to set the hourly rates. The Department's bill draft request would amend NRS 7.125 to state that payment for indigent defense services as defined in NRS 180.004 or for representation in habeas corpus proceedings pursuant to NRS 34.750, would be an amount "set by the Board on Indigent Defense Services under NRS 180.320(4)." It further maintains the floor of not less than \$125 per hour for death penalty cases and \$100 for all other criminal cases.

Likewise, the Department proposes that NRS 180.320 be amended to state that the "Board shall adopt regulations to establish appointed indigent defense hourly rates."

The proposed Bill Draft Requests would position the Defendants to comply with the Judgment. The cost of overhead, expenses, and travel time may vary among counties. The Board meets frequently throughout the year and can respond to variations and changes that impact the fair rate of compensation better than the legislature.²⁰

B. Reimbursement for county expenses

For counties to adequately invest in indigent defense, they must be confident that the state will promptly reimburse them. In this regard, the ongoing efforts of the Department have been an unqualified success. In the past quarter, the Department continued to secure reimbursement for county expenses over the maximum contribution and submitted a bill draft request aimed at gaining the ability to directly reimburse.

Because the Interim Finance Committee requires a general ledger format that itemizes all expenditures, it is essential that attorneys keep track of their hours and reimbursable expenses, like expert and investigation services. The Department continues to work with counties to report their expenditures on indigent defense with as much detail as possible and, as discussed further in Part III, to work with attorneys to ensure that they are timekeeping on Legal Server.

²⁰ The bill draft requests are attached to this Report as Appendix C.

1. Department success securing reimbursement

On August 18, 2022, the Interim Finance Committee approved the Department’s request for \$429,860 to reimburse Douglas, Eureka, Lyon, Mineral, Nye, and White Pine counties for costs in excess of their estimated maximum contributions. Another request for \$834,240 for Douglas, Eureka, Lyon, Mineral, Nye, and White Pine counties was approved to improve compliance with AB424 (2021) (first appearance and release hearing within 48 hours of arrest). The expenses over the estimated maximum county contribution are granted.

Because reimbursement is key to cooperation from the counties, the Department put out a press release, titled, “DIDS Wins Big for Rural Nevada.” The total reimbursement to date is \$1,824,877.92 for FY22. The announcement points out that “This is a ground-breaking achievement, as historically, these counties have had to fund these programs on their own,” and that, to accomplish this, the Department had to work “tirelessly to bring together stakeholders...and help counties reimagine and recraft how they provide public defense services.”²¹

2. Inefficiencies and delays in reimbursement

At the same time, the process of petitioning the Interim Finance Committee for release of funds on an ad hoc basis is a drain on resources and often causes delays in reimbursement.²² Each request for reimbursement is dependent on the meeting schedule of the Interim Finance Committee, with the Department functioning as an intermediary, helping the county prepare its general ledger of expenditures and making the case for reimbursement to the Committee.

To address this issue, the Department made several bill draft requests aimed at adding certainty and speed to the payment and reimbursement process.²³

- Perhaps most importantly, the Department requests an amendment to NRS 7.155 that would allow the Department to reimburse the counties for expenditures in excess of their maximum contribution from money appropriated to the Department, and when such expenses are exhausted, from an amount allocated to the Department from the reserve for statutory contingency account.²⁴
- The Department requests that NRS 7.145 be amended to give attorneys 90 days to submit a claim for compensation and expenses, up from 60 days currently.

²¹ A copy of the press release is attached to this Report as Appendix E. Note that the total amount includes reimbursement for several rural counties not named in the *Davis* lawsuit but covered by AB81 (2019). Securing reimbursement for these counties took additional efforts from the Department, and was supported by the Plaintiffs in this case.

²² A related issue discussed in the last Monitor’s Report is the IFC’s decision that it will not reimburse for case-related expenses unless and until the county exceeds its maximum contribution. The Department’s position is that case-related expenses should be disbursed promptly and separately from the reimbursements disbursed after a county reaches its maximum contribution. See NRS 353.268.

²³ The bill draft requests are attached to this Report as Appendix C.

²⁴ A similar provision appears in the Department’s bill draft request to amend NRS 212.070.

- The Department requests that NRS 260.070 be amended to allow counties to submit their annual reports to the Department on May 31 rather than May 1 of each year.
- The Department requests that NRS 353.264 be amended to include in the Reserve for Statutory Contingency Account the payment of claims under NRS 180.320 (Board's regulations; maximum contributions) and 212.070(2) (representation of defendants in cases originating in state prisons). NRS 7.155 would be amended to shift the compensation and expenses for attorneys who represent defendants pursuant to NRS 212.070 (2) (escape from jail or detention facility) would be paid from funds appropriated to the Department. As it stands, it is difficult to pay attorneys for prison/jail-based cases and habeas corpus petitions. It would be simpler to include this compensation in the expenses that exceed the county's maximum contribution under the funding formula, and reimburse through the Department.

These Bill Draft Requests would give the Department greater control over the compensation and reimbursement processes that are described more fully in a memo from the Executive Director to the Deputy Chief of Staff to Governor Sisolak.²⁵

Recommendations: Reimbursement of expenses

- Reimbursement for county expenses over their maximum contribution should continue to be rapid and reliable. Ideally, the Department should control disbursements to ensure prompt reimbursement for providers and the counties. Having to repeatedly request portions of the earmarked funds from the Interim Finance Committee causes delays for the counties and additional work for the Department's limited staff.
- The Soval Solutions' analysis of cost-of-living adjustments to the hourly rate should be implemented, whether through direct legislation or by given the Board the authority to set the hourly rate in its regulations.

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.²⁶
- 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.²⁷

²⁵ The Memorandum to the Deputy Chief of Staff to Governor Sisolak is attached to this Report as Appendix D.

²⁶ Judgment, 14.

²⁷ *Id.* at 14-15.

- Systems to identify and remove conflicts.²⁸
- Establishment of performance standards.²⁹
- Establishment of workload standards.³⁰
- Qualifications for attorneys.³¹
- A system of oversight.³²
- Attorney training and resources.³³

Since July 1, 2022, the Department has:

- A. Secured opinion from data analyst/consultant on how best to conduct oversight activities;
- B. Continued oversight; addressing the problem of the attorney shortage;
- C. Planned trainings and secured funding for rural attorneys to attend the annual training;
- D. Continued efforts on the workload study with the National Center for State Courts; and
- E. Addressed miscellaneous issues related to quality of representation.

Each area is discussed below.

A. Securing Data Analyst’s Report on an Oversight Plan

On August 30, 2022, Dr. Mitch Herian of Soval Solutions provided the Department with his recommendation for oversight.³⁴ The report acknowledges that oversight of the counties requires regular travel to each county. The Department will have difficulty carrying out its oversight responsibilities under NRS 7.115-7.145 and NRS 171.188 with its current staffing.

Accordingly, the report recommends the creation of two positions, described as Senior Policy Counsel and classified as Program Officer II positions. Approximately 40 percent of the job responsibilities would involve travel to the rural counties. The report provides the following bullet-point list of responsibilities:

- Provide in-depth policy analysis by observing court procedures, reviewing client feedback, etc.
- Make determinations as to whether each county is in compliance with regulations.
- Perform both in-depth policy analysis and “quick response” research on a broad variety of subjects.

²⁸ *Id.* at 12.

²⁹ *Id.* at 16.

³⁰ *Id.* at 17.

³¹ *Id.* at 15.

³² *Id.* at 16-17.

³³ *Id.* at 16.

³⁴ *Senior Policy Positions*, Appendix B.

- Prepare in-depth research papers, reports, policy publications, and recommendations to leadership.
- Conduct statistical analyses
- Compile other written products and research memoranda as required.³⁵

The report notes that the Texas Indigent Defense Commission (TIDC) uses this model and employs fifteen policy and fiscal analysts. TDIC’s reports from its oversight of each county can be found on its website under the heading, Policy Monitoring.³⁶ There, the reader will find detailed reports on the indigent defense systems of individual counties. Take for example, the Policy Monitoring Review of Bastrop County’s Indigent Defense System, completed in January 2022.³⁷ The TDIC policy analysts observed court, interviewed officials, and reviewed data from past years. The areas requiring oversight are similar too, albeit not as extensive, as in the Davis Judgment. Two staff persons visited individual counties for several days in May and August of 2017, where they conducted interviews with the judges, the court administrator, and the county auditor. The policy specialists reviewed 150 criminal case files and reviewed other data. From this, they generated data on compliance with first appearance rules, indigency determinations, attorney qualifications, and so forth, making recommendations where necessary.³⁸

The Monitor agrees with the recommendation of Soval Solution, that compliance with the *Davis* Judgment requires annual assessments of each *Davis* county similar to the TDIC review plan.³⁹ It seems likely that the Soval Solution report is accurate, and that this type of oversight, assessment, data analysis, and reporting requires additional, experienced staff.

Recommendation

- Increase Department staff to include policy analyst/oversight position(s) for in-person oversight in the counties.

B. Oversight activities and related issues

The Director and Deputy Director provided the Monitor with regular updates on oversight activities they conducted remotely during the past quarter, such as reviewing new contracts and discussing emerging issues with county leadership.

Many of the issues addressed by the Board relate to management of the assignment of cases when the contract attorney has a conflict or when there is an unfilled contract. While at first blush, this may seem to be a ministerial function, it strikes at the heart of the quality of representation

³⁵ *Id.*

³⁶ Texas Department of Indigent Defense website at <http://www.tidc.texas.gov/oversight/read-monitoring-reports/policy-monitoring/>.

³⁷ *Id.* at http://www.tidc.texas.gov/media/dxvjo3ke/bastrop_policy_final.pdf.

³⁸ *Id.* at http://www.tidc.texas.gov/media/8d855ef5e651a49/policy-monitoring-review-comanche-201709__.pdf.

³⁹ Judgment, 16 (stating that the “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”).

when searching for appointed counsel takes too long or when continuity in representation is interrupted because an attorney does not renew their contract.

1. Difficulty in finding conflict counsel to appoint

It is the Department's strong recommendation that counties contract for conflict counsel to ensure prompt appointment and representation of counsel if the public defender or contract attorney has a conflict.⁴⁰ Without contracted conflict counsel, the Department or its county designee must find a qualified attorney willing to accept the appointment on a case-by-case basis. This process is inefficient and often results in delays in representation. The county plan administrator or the Department may meet with a series of rejections from qualified attorneys unwilling to accept appointment on a conflict case.

In an October 20, 2022, oversight report, the Department lays out how the absence of a designated conflict counsel impacts a county's ability to assure prompt appointment of counsel.⁴¹ Attorney Orrin Johnson moved to withdraw from his appointed cases in Lyon County due to billing disputes with the Department. The Court found for the Department regarding the billing issues but permitted Johnson to withdraw from his cases. The court, county, and Department have all noted difficulties in locating counsel to appoint to conflict cases in Lyon County, causing delays in representation.

Well before Johnson's withdrawal from cases in Lyon County, the Department noted difficulty in finding conflict counsel, a problem that resulted in delays in appointment of counsel.⁴² Between September 2021 and August 2022, the Department—which serves as Lyon County's appointed counsel administrator, responded to more than 200 requests for conflict counsel.⁴³ The local judges expressed concern for the rights of the defendants awaiting the appointment of counsel. And the District Court in Yerington had to resume virtual court hearings to accommodate attorneys who would otherwise not accept an appointment in the county.

Lyon county has begun to address the delays in selection of conflict counsel by contracting with attorneys to take a limited number of cases per month. But the Department expects that the supply of conflict cases will exceed the number of cases the conflict counsel has agreed to take.

It is possible that increasing the hourly rate for appointed counsel would draw more attorneys to the rural counties. The Department notes that Washoe county increased its conflict counsel rate to \$150 per hour, which can have the effect of drawing attorneys away from the rural counties where the rate remains \$100 per hour.

⁴⁰ See the Department's Oversight Report p. 6. (August 16, 2022), attached to this Report as Appendix G.

⁴¹ The Department's Oversight Report, Lyon County: Yerington (October 20, 2022) is attached to this Report as Appendix F.

⁴² See Oversight Report p. 3-4 (August 16, 2022), attached as Appendix G.

⁴³ *Id.*

2. Insufficient qualified attorneys to fill the contracts

When an attorney does not renew their contract, the attorney’s clients may be caught in limbo, awaiting new counsel who will not be familiar with their case. In Nye County, for example, two of five contract attorneys did not renew their contracts. Although the county raised its contract amount from \$150,000 to \$175,000, it received only three applicants, one of whom withdrew when the size of the caseload became apparent. While the county solicited more applications for the contracts, the Department had to “redistribute a significant number of cases to appointed counsel,” a situation that “threatened to leave dozens of defendants without counsel for months before the position could be refilled.”⁴⁴

A similar problem emerged in White Pine County when one of three contract attorneys retired. As the administrator of the appointed counsel process in the county, the Department assigned cases on an individual basis for two months before the contract was filled. The new attorney, however, was not qualified for higher-level felonies and requires mentorship from the established contract attorneys.⁴⁵

In filling contracts in some counties, the best or only candidate is sometimes an attorney who does not qualify for Category A or B felonies. The new contract attorney in Mineral County and two new contract attorneys in Nye County, for example, do not yet qualify for Category A and B felonies. In these cases, the Department must arrange for mentorship of the attorney until they get more trial experience.

One solution is to increase compensation. When Douglas County raised its contract amount from \$195,000 to \$265,000, it attracted an indigent defense provider to leave Nye County, where the contract amount is \$175,000 and the caseload higher.⁴⁶ In fact, Nye County voted to increase its annual defender contracts from \$150,000 to \$175,000, but, the Department notes, the increase may be insufficient to attract new attorneys.⁴⁷

The Churchill County approach is another possibility.⁴⁸ The county created offices of the public defender and alternate public defender, each staffed by one attorney. Third tier conflicts are handled by an attorney with a contract to accept those appointments. This arrangement creates more stability in both representation and in the appointment process, provided that compensation is fair and comparable to the prosecutor’s pay. For the public defender, overhead expenses are paid by the county.

A second solution is to form a county public defender office, as Churchill County did. Nye County is considering establishing a public defender office to offer more stable representation and case coverage, likely at a lower cost.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 2.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.* at 2.

A third solution is to transfer public defense services to the State Public Defender. The following counties will transfer aspects of public defense to the State Public Defender:

- Churchill: death penalty, appeals, parole and pardons
- Esmeralda: appeals, parole and pardons
- Lander: death penalty, appeals
- Lincoln: appeals, parole and pardons
- Lyon: parole and pardons
- White Pine: all public defense

The counties missed the deadline for opting in to FY2024-2025 services from the State Public Defender. Because the governing statute requires notice before the first day of November in an even-numbered year, it is not clear whether the transfer could take place before FY2026-27.⁴⁹

Finally, the Department continues to explore ways to increase interest in rural public defense among law students and practicing attorneys. Other states lacking attorneys in rural areas incentivize rural practice with law school debt forgiveness, payment of bar classes and bar exam costs for new attorneys, stipends for practicing attorneys, and reciprocity for out-of-state attorneys. Some of these incentives may be necessary to ensure that rural defendants have access to qualified counsel and, thus, to comply with the Judgment.

It should also be noted that the State Public Defender must be funded and staffed adequately to accommodate the incoming requests for public defender services in the *Davis* counties.

Recommendations

- Continue to discuss with counties the option of forming a county public defender or opting into the state public defender.
- Ensure that the State Public Defender is adequately funded and staffed to meet the public defense needs of the counties opting into the state system for some or all of their indigent cases.

C. Attorney training and resources⁵⁰

The Department secured \$38,000 from an Edward Byrne Memorial Justice Access Grant for the travel expenses of rural indigent defense attorneys and five students to attend the annual conference, which will be held in Reno in Spring 2023.

⁴⁹ NRS 180.450 (6)(a) (providing that “[t]he board of county commissioners for the county shall notify the State Public Defender in writing on or before November 1 of the next even-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the odd-numbered year following the year in which the notice was given, as determined by the Executive Director”).

⁵⁰ Judgment, 16.

The Department developed and hosted a State of Nevada First Annual Defenders Homicide Conference, in conjunction with the public defender and alternate public defender offices of Clark and Washoe counties. The conference is taking place remotely to ensure that defenders across the state can attend. Presentations occur on four days: September 28, October 26, November 16, and December 14, 2022.⁵¹ The first two installments drew over 100 attendees.

The Department also organized a two-credit CLE on defense ethics, which will be offered remotely on December 7, 2022.

D. Establishment of workload standards: Delphi Panels

The Judgment requires that the Defendants contract with an outside provider within 12 months of the effective date of the Judgment to complete a workload study.⁵² As previously reported, the Department took immediate steps to commission a workload study with the National Center for State Courts (NCSC), but the initial timekeeping data phase of the study was distorted by pandemic restrictions. After collecting the initial timekeeping data, the study administrators at the National Center of State Courts (NCSC) convened Delphi panels but ultimately determined that they lacked sufficient timekeeping data to probe the relevant issues.

The NCSC has extended its contract with the Department several times to ensure that:

- the study incorporates accurate workload data from the rural attorneys,
- the NCSC convenes additional Delphi panels as needed,
- the NCSC conducts a time sufficiency survey, and
- the study considers a national workload study expected to be released soon.

It is anticipated that the conclusions of the NCSC workload study will be available for discussion in the Board's January 2023 meeting.

Follow-Up Delphi Panel

On August 4, 2022, the NCSC conducted a follow-up panel for criminal cases, which was attended by the Monitor. This follow-up panel had initially been scheduled for June 28, 2022, to give participants in the original panel the opportunity to review their files and think about the actual and ideal lengths of time of various lawyering activities, but the panel was rescheduled.

On August 4, 2022, only two of the four attorneys were present—an attorney who has practiced indigent defense in Nye County and the training director for the Clark County Public Defender. In other words, only one rural practitioner participated. At the same time, the Monitor supports the inclusion of public defender offices in urban areas. Given the small sample size of rural attorneys, additional input from urban practitioners is helpful.

⁵¹ The flyer announcing the Homicide Conference is attached as Appendix H.

⁵² Judgment, 17.

Much of the discussion (at the panel?) focused on exploring the difference between the time needed for certain lawyering tasks and the limited time available given the attorney’s high caseload. For a rural practitioner appointed to 400 cases in one year—as experienced by the Nye County attorney—the gulf was staggering between what she needed to do in each case and what she had time to do. In a felony case, client counseling, legal research, investigation, review of hours of body worn camera footage, are all required to be effective. Yet, there is so little time.

The participants discussed the low amounts of time on the earlier time survey and estimated between 40 to 60 percent more time was needed to competently handle criminal cases at varying levels of severity.

E. Miscellaneous Issues

1. County-provider contracts: Performance standards

The outstanding issues in the contracts between counties and indigent defense attorneys are issues more related to quality and oversight than financial disincentives. This issue was discussed at length in the last Monitor’s Report.

The Judgment contains several provisions regarding contracts between the county and the attorney providing indigent defense services, specifically, performance related to client communication⁵³ and first appearance advocacy.⁵⁴ Moreover, contracts vary as to whether they include reference to ADKT 411’s performance standards, or other specific performance standards, like the ABA Criminal Justice Standards.⁵⁵

The Department has been following up with counties to request addenda to noncompliant contracts. But perhaps the best time to amend the language of the contracts is after the conclusion of the workload study so that this information can be incorporated into the contracts as well. The Judgment requires that contracts specify anticipated workload and workload limits.⁵⁶

⁵³ The “model contract” must include provisions addressing first appearances, specifically that the attorney should make “all reasonable efforts to meet with the client, in a confidential space, prior to first appearance;” argue for the client’s release; and advise client not to waive substantive rights or plead guilty at arraignment. Judgment, 14.

⁵⁴ The “model contract” must include provisions addressing first appearances, specifically that the attorney should make “all reasonable efforts to meet with the client, in a confidential space, prior to first appearance;” argue for the client’s release; and advise client not to waive substantive rights or plead guilty at arraignment. Judgment, 14.

⁵⁵ As discussed in the Monitor’s January 15, 2022, report, the Judgment requires that the Department measure attorney performance against the ABA Criminal Justice Standards as well as ADKT 411’s standards. Thus, it would make sense to include reference to the ABA standards in the contracts. The Judgment states that, in creating and overseeing standards for indigent defense, the “Defendants shall incorporate the performance guidelines set forth in the ABA Criminal Justice Standards and the Nevada Indigent Defense Standards of Performance [in ADKT 411].” Judgment, 16. To comply with this provision, the Department has provided a link to the ABA Standards on its website and offered a CLE that discussed the ABA Standards. See <https://dids.nv.gov/Resources/Resources/>.

⁵⁶ Judgment, 7.

2. Virtual first appearances

An unanswered question—discussed in the last Monitor’s Report—is whether remote hearings satisfy the Judgment. The Judgment requires that all indigent defendants be “represented by counsel *in person* at his or her initial appearance/arraignment.”⁵⁷ All counties have a plan in place to screen promptly for indigency to comply with AB424 (2021), which entitles all defendants an initial appearance and release hearing within 48 hours of arrest. Many attorneys appear remotely for a client’s first appearance, and remote appearances are likely to become more common now that the 48-hour rule is in effect.⁵⁸

The *Davis* parties should determine whether these remote appearances adequately comply with the Judgment and, if not, what resources would be required to assure in-person representation at first appearance.

3. Client surveys

The Department rarely receives a completed client survey despite providing methods of response electronically and through the state prison system.⁵⁹

It would be helpful for the parties to discuss whether the purpose of the survey is to provide a clear channel of communication between indigent defendants and the Department or to gather comprehensive information about client experiences. If the goal is the former, then the Department has fulfilled this requirement of the Judgment so long as it ensures that the surveys continue to be made available to clients.

If it is the latter, then perhaps other techniques of surveying defendants should be explored. Other means of survey for out-of-court defendants include the posting of a QR code that opens the survey in a cell-phone application. The QR code could be posted in the courthouse and at the exit to the jail. With limited technology, surveys for people incarcerated in state prisons will probably continue to be on paper, with a postage pre-paid envelope.

Recommendations

- Incorporate specific performance standards into the counties’ contracts with providers at the same time as the workload standards.
- Determine whether remote appearance at initial appearance satisfies the Judgment.

⁵⁷ Judgment, 14 (emphasis added).

⁵⁸ AB 424 permits the defendant’s remote initial appearance and is silent as to the presence of counsel, although it is highly likely that the defendant has a right to the presence of counsel at this critical stage of the proceedings. *See Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 212-213 (2008) (stating that first appearance is a “critical stage” of the proceedings).

⁵⁹ The online survey form can be found here: https://hal.nv.gov/form/DIDs/Client_Satisfaction_Survey_ENGLISH and https://hal.nv.gov/form/DIDs/Client_Satisfaction_Survey_SPANISH.

- Clarify goal of the client surveys.

III. Uniform Data Collection and Reporting

A. Attorney Workload Reporting

The last monitor's report was submitted before the third quarter of workload reporting from the attorneys. Thus, this monitor's report tracks improvements from the second to the fourth quarter of workload reporting.⁶⁰

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.⁶¹ The Board's regulations follow the Judgment's requirements.⁶²

The reader will see that, in the attorneys' fourth quarter of reporting (July 1, 2022-October 1, 2022), only one contract attorney in Nye County and one contract attorney in Mineral County have not submitted any timekeeping. In addition, the Monitor notes greater reporting of expert hours and—in a few cases—investigator hours.

In general, most attorneys are reporting their hours. The significance of this accomplishment cannot be overstated. As noted in the Monitor's last report, ensuring that all attorneys are reporting, and improving the accuracy of their reporting, requires consistent communication from the Department to the attorneys as well as to the county officials. It requires technical support for Legal Server, and interpersonal efforts to assuage concerns that the reporting requirement poses an unfair burden on already over-burdened rural attorneys which is not imposed on their urban counterparts.

In addition to working with individual attorneys to improve compliance, the Department worked with counties to ensure that new contracts contain the reporting requirement. The contracts in Mineral, Lander, Nye counties now contain the reporting requirement.

⁶⁰ The quarterly reports are available on the Department's website at <https://dids.nv.gov/litigation/Davis/>.

⁶¹ Judgment, 18.

⁶² Section 43 of the Regulations require 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 also 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.

Finally, the Department submitted a bill draft request to ensure that case and client information submitted by attorneys to the Department remains confidential and protected from public records requests.⁶³

Nevertheless, there remain some gaps in the reported data:

- Possible underreporting of hours
- Not reporting hours spent on private cases or other indigent defense contracts
- Not reporting all investigator or expert hours
- Understanding the relationship between hours worked and caseloads

The chart below does not include all information in the workload reports but, rather, is meant to demonstrate the trends from the second to the fourth quarter of reporting.

Comparison of Workload Reporting in the Second through Fourth Quarter

County	Second Quarterly Reporting January 1 – March 1	Third Quarterly Reporting March 1 - July 1	Fourth Quarterly Reporting (FY23 1 st Quarter) July 1 – October 1
Churchill	Public defender office reported 171 hours (likely undercount—they reported 111 open cases) Conflict counsel reported 53.8 hours, 0 private hours No investigation/expert hours reported	Public defender office (2 attorneys) reported 143.6 hours (likely undercount—they reported 375 open cases) Conflict counsel reported 55.8 hours No investigation or expert hours reported	Public defender (1 attorney) reported 752.5 hours, 11.5 expert hours Alt. public defender (1 attorney) reported 514.8 hours, 740.1 expert hours ⁶⁴ Appointed counsel attorneys reported 26.9 and 67.8, respectively. Both reported expert hours. No investigation hours reported, but some staff hours
Douglas	4 attorneys: all reported hours 3 of 4 attorneys reported private workload: 60 hours, 35 hours, and 0 hours, respectively	4 of 5 contracting attorneys reported hours Filter: 392 Ence: 680.3 Hart: no reported hours.	All 5 contracting attorneys reported hours Filter: 486.1 hours Ence: 573 hours (+ 10 hours private work)

⁶³ The bill draft requests are attached to this Report as Appendix C.

⁶⁴ It is unclear why the number of expert hours is so high.

	<p><i>Note:</i> 2 of 5 contracts now unfilled. The county coordinator is carrying 79 cases, but has not reported hours yet</p> <p>No expert/investigator hours reported</p>	<p>Brown: 276.36</p> <p>Pence: 91.8</p> <p>No investigation or expert hours reported</p>	<p>Hart: 27.5 hours</p> <p>Stovall: 320.3 hours (+ 66.4 hours private work)</p> <p>Morton: 381.1 hours</p> <p>No investigation or expert hours reported</p>
Esmeralda	<p>1 attorney total: 2.2 hours reported, with an open caseload of 8 cases (possible undercount)</p> <p>Same attorney contracts in Nye County</p> <p>No private practice hours reported</p> <p>No investigation or expert hours reported</p>	<p>1 attorney total: No hours reported, with an open caseload of 10 cases, including 4 felonies (1 Cat. A felony)</p> <p>Same attorney contracts in Nye County</p> <p>No private practice hours reported</p> <p>No investigation or expert hours reported</p>	<p>1 attorney total: 10.4 hours reported. The graphic does not give the number of cases open during this period.</p> <p>Same attorney contracts in Nye County</p> <p>No private practice hours reported</p> <p>No investigation or expert hours reported</p>
Eureka	<p>1 attorney total: 137.7 hours reported</p> <p>110 private hours reported</p> <p>No investigation or expert hours reported</p>	<p>1 attorney total: 219.8 hours reported</p> <p>100 private practice hours reported</p> <p>No investigation or expert hours reported</p>	<p>1 attorney total: 148.6 hours reported</p> <p>No private practice hours reported</p> <p>No investigation or expert hours reported</p>
Lander	<p>1 attorney total: 79.2 hours reported</p> <p>48.1 private hours reported</p> <p>No disposition data reported</p> <p>No investigation or expert hours reported</p>	<p>1 attorney: 128.8 hours reported</p> <p>No private hours reported</p> <p>Alternate defender: 0.4 hours reported</p> <p>No investigation or expert hours reported</p>	<p>1 attorney: 113.6 hours reported</p> <p>No private hours reported</p> <p>Alternate defender reported no hours</p> <p>Expert hours: 15</p>
Lincoln	<p>1 attorney total: 337.8 hours reported</p>	<p>1 attorney: 354 hours reported</p>	<p>1 attorney: 323.7 hours reported</p>

	<p>50 private hours</p> <p>Conflict counsel: 7.3 hours reported</p> <p>No investigation or expert hours reported</p>	<p>Alternate defender: 49.7 hours reported</p> <p>No private workload reported</p> <p>No investigation or expert hours reported</p>	<p>Alternate defender: 42.7 hours reported</p> <p>No private workload reported</p> <p>No investigation or expert hours reported</p>
Lyon	<p>5 total attorneys (3 through the one firm) 989.65 (firm) and 99.6 appt. counsel</p> <p>No private workload reported</p> <p>No investigation or expert hours reported</p>	<p>One firm with 3 full-time and 3 contract attorneys: 1,846.87 hours reported</p> <p>Private workload hours: 41.7</p> <p>Investigation hours: 198.4</p> <p>Expert hours: 71.1</p> <p>Appt. counsel: 152.4 hours</p>	<p>Same law firm: 1,655.2 hours</p> <p>No private workload hours reported</p> <p>Investigation hours: 208.2</p> <p>Expert hours: 11</p> <p>Appt. counsel: 179.4 hours</p>
Mineral	<p>No reporting</p> <p>The son of former contract attorney assumed the contract for his father</p>	<p>No hours reported.</p> <p>Some data on open cases provided by DIDS</p>	<p>New contract attorney: 142 hours reported</p> <p>No private workload reported</p> <p>No investigation or expert hours reported</p> <p>Conflict counsel: Karl Hylin – no hours reported. He is taking few cases but mentoring the new contract attorney on higher felonies.</p>
Nye	<p>5 attorneys</p> <p>1 attorney reported 438.5 hours</p> <p>1 attorney reported 614.2 hours</p> <p>1 attorney reported 249 hours</p> <p>2 attorneys did not report, one of whom has 401</p>	<p>5 attorneys (only two of the attorneys renewed contract for FY23)</p> <p>Gent: 495.3 hours</p> <p>Boskovich: 57.4 hours</p> <p>Morton: 19.4 hours</p> <p>Two attorneys – Earnest (78 open cases) and Deucker</p>	<p>Gent: 390.4</p> <p>Boskovich: 4.9</p> <p>Shahani: 20.7</p> <p>Jason Earnest: 101.0</p> <p>Andrew Coates: no reporting</p> <p>The report does not include open cases per attorney.</p>

	<p>open cases, and the other of whom has 69 open cases</p> <p>Private hours only reported by 1 attorney (12 hours)</p> <p>No investigation or expert hours reported</p>	<p>(448 open cases)- did not report</p> <p>No private hours reported</p> <p>No investigation or expert hours reported</p>	<p>No private hours reported</p> <p>No investigation or expert hours reported</p>
White Pine	<p>3 attorneys reported: 686.5, 571.7, 48.4 hours respectively</p> <p>No private hours reported</p> <p>No investigation reported; expert hours: 0.6 hours</p>	<p>3 attorneys, and 2 appointed conflict counsel</p> <p>Cole: 342.5 hours, plus 60 hours private practice. No expert or investigation hours.</p> <p>Eberhardy: 539.9 hours, plus 51.6 hours private practice, plus 84.7 hours NV contract. Expert hours: approx. 3. No investigation hours.</p> <p>Pickering: 698.8 hours, plus 71.2 hours private practice, plus 237.6 hours for NV state contract. No expert or investigation hours.</p> <p>Appt. conflict counsel #1 274.1. Expert hours: 80</p> <p>Appt. conflict counsel #2 139.7. Investigator hours: 80</p>	<p>Cole: 501.5 (includes 62.3 civil). No expert or investigator hours reported.</p> <p>Eberhardy: 678.3 (includes 39.6 civil). No expert or investigator hours reported</p> <p>Pickering: 659.9. No expert or investigator hours reported</p> <p>(It appears that Eberhardy and Pickering merged all their casework—county and NV state prison cases—into their total reported for this quarter.)</p> <p>No hours reported for conflict counsel, perhaps because Cole absorbed that category of cases.</p>
Motions to suppress filed	1 in Lincoln	<p>1 in Lyon</p> <p>1 in White Pine</p>	3 in Lyon
Motions to suppress litigated	None reported	<p>1 in Lyon</p> <p>1 in White Pine</p>	3 in Lyon

Trials	7 in Douglas 1 in Eureka 2 in Nye 1 in White Pine	1 in Lander 1 in Lyon 2 in White Pine	1 in Eureka 1 in Lyon 1 in White Pine
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B. Outstanding reporting issues

1. Underreporting

Because there is no secondary source to check against reported attorney hours, we can only guess that some attorneys are underreporting. For example, one of five contract attorneys in Douglas County reported 27.5 hours during the quarter.⁶⁵ Similarly, in Nye County, two attorneys reported only 4.9 and 20.7 hours. Another reported 101 hours in Nye and 10.4 hours in Esmeralda.⁶⁶ Eureka, Lander, and Mineral counties each have one contracted indigent defense attorney. Each reported less than 150 hours for during the past quarter.⁶⁷ This could be accurate but could represent an undercount, given the Department’s sense of the individual attorney’s caseloads.

The Department’s quarterly report lists the total number of cases open and closed, rather than the number of cases per attorney, so it is not possible to match the hours for these attorneys against their caseloads from the report. The Department does collect this information, though, and a report can be run that is specific to each attorney.

2. Spotty reporting of private workload and other indigent defense contracts

The Judgment requires that the Defendants “ensure” that indigent defense providers supply both their “attorney and staff hours spent per public defense case,” and their “private workload, if any, measured in attorney hours.”⁶⁸ The reader can see that many attorneys are not reporting a private workload. Some report a private workload during one quarter but not the next.

Of course, not all contract attorneys take on private cases. Some, like the primary contract attorneys have the equivalent of a full-time job in their caseloads under the county contract. Others report fewer hours on indigent defense cases and likely have contracts with other jurisdictions and/or take private cases. Jason Earnest, for example, contracts to provide indigent defense with both Esmeralda and Nye counties. In the past quarter, he reported 10.4 hours for Esmeralda County cases and 101 hours for Nye County cases. At less than 10 hours per week, and assuming these numbers do not reflect a serious underreporting of hours worked, it would be expected that Mr.

⁶⁵ FY23 Q1 Workload Report, 11.

⁶⁶ *Id.* at 17 (Esmeralda), 27 (Nye).

⁶⁷ *Id.* at 20 (Eureka), 26 (Lander), 35 (Mineral).

⁶⁸ Judgment, 18.

Earnest spends some time on private cases or on contract cases from other counties or municipalities. This clarifying information, however, has not been provided.

Likewise, the alternate defender for Lincoln County, the sole contract attorneys for Eureka, Lander, and Mineral counties, and another Nye County attorney report less than full-time hours spend on public defense, begging the question of whether private casework has gone unreported.⁶⁹ Attorneys in Eureka and Lyon reported private casework in the April 1-June 30, 2022, quarter, but none in the past quarter.

3. Excessive workload

In some counties, more hours are being entered. If accurate, this suggests an unsustainable workload. In Churchill County, for example, the newly established public defender's office is divided into two offices: the public defender and the alternative public defender. Each is staffed by one attorney. The public defender reported 725.5 hours of work in the past quarter, amounting to approximately 59 hours of work per week for a single attorney. If these hours are accurate, the Churchill public defender should hire a second attorney.

Similarly, Matthew Ence in Douglas County reports 680.3 hours from March 1-July 1, 2022, and 573 hours, plus 10 private practice hours from July 1, 2022-October 1, 2022. Given that he is a solo practitioner, this is a high workload. The report similarly suggests very high workloads in White Pine County.

Finally, the total workload of each attorney—including private practice workload and other county and municipal contracts for indigent defense—must be included in the attorney's total workload. If an attorney with a substantial indigent defense caseload in a county is also taking on municipal contracts and private cases, it may be a sign that the contract amount is insufficient. As a result, the attorney may be spread too thin to devote adequate time to indigent defense.

4. Investigation and Expert Hours

Reporting of expert hours has improved. Churchill, Lander, and Lyon counties all reported some hours for experts. Fewer attorneys report investigation hours.

Again, the question is whether attorneys are not using experts and investigators or whether they are merely underreporting. The Department's next step is to compare requests for reimbursement for experts and investigators against the Legal Server data to determine where underreporting is occurring.

5. Understanding the relationship between workload and caseload

The Judgment requires quarterly reporting of workload data, including caseload by case type, attorney, staff, investigator, and expert hours *per case*, private workload, and totals for

⁶⁹ *Id.* at 17 (Esmeralda), 20 (Eureka), 26 (Lander), 29 (Lincoln), 35 (Mineral), 37 (Nye).

motions to suppress and trials.⁷⁰ In contrast, the Department's quarterly reports provide the number of cases opened and closed for each county, a value that includes all open cases, and thus reflects the total caseload for the county, by type of case.

It is unclear how the Department would report per case, given confidentiality issues and the cumbersome presentation of such data. But reports could be run on Legal Server that group the information differently, such as the number of cases of a particular type—such as Category A felonies—that the attorney worked on over the course of the year, and the total number of hours that the individual attorney spent working on those types of cases. This would provide more granular data on the caseload and workload of each attorney.⁷¹

Thus, the question is just how much detail about the caseloads of individual attorneys that the parties expect to be included in the quarterly and annual reports.

Recommendations

- The parties may wish to determine the scope and format of the information to be included in quarterly and annual reports. Specifically, should the quarterly or annual report list average hours per case (by type) per attorney, or totals per attorney?
- Section 44(1)(e) of the regulations require that attorneys report total private workload, which should be read to include time spent on indigent defense in other jurisdictions, especially in municipalities. Perhaps this expectation should be clarified in the regulations and the attorneys' contracts.
- The state should compensate attorneys or otherwise incentivize contemporaneous timekeeping and prompt dispositional reporting through Legal Server. The contracts require compliance with the reporting requirements, but incentives may help insure thoroughness.

Looking ahead

- **Addressing attorney shortage and adjusting systems of public defense**

Of primary concern to the Department is the overall shortage of attorneys willing to accept appointments or contracts to provide indigent defense in the rural counties. The data analyst/consultant, Dr. Herian, is currently analyzing the issue and preparing a report on strategies to attract and retain rural attorneys.

⁷⁰ Judgment, 18. The Board's Regulation, Sec. 43 requires an annual report of cases by type and status per county. Section 44 requires an annual report of attorney workload similar to the quarterly reporting in the Judgment, which includes attorney, staff, investigator, and expert hours per case.

⁷¹ See Judgment, 18 (discussing workload reporting requirements).

Other states are dealing with a shortage of attorneys in rural areas and have adopted a variety of strategies, including increasing pay, forgiving student loans for contract attorneys (in addition to public defenders), and offering a starter salary to attorneys committed to opening a private practice in a rural area, and other incentives. The Department has already established a paid externship program and is administering a loan forgiveness program (although the loan forgiveness applies to public defender employees rather than contract attorneys).

The Department continues to work with Nye and other counties to consider alternatives, such as forming a county public defender or opting into the State Public Defender. Public defender agencies tend to attract more applicants and offer more continuity in case coverage and stability for attorneys.

For private attorneys, the Department is moving forward with its bill draft request to give the Board authority to set the minimum hourly rate of compensation and is encouraging counties to set contract amounts and hourly rates at levels competitive with more populous counties.

- **Data collection compliance**

The next quarter of workload reporting is due on January 15, 2023.

- **Workload study**

The NCSC study should be complete in January 2023.

Next steps for the Monitor

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

- The Department's oversight activities and their results
- The Department's efforts to increase the number of attorneys working in indigent defense in the rural counties.
- The legislative session, including the Department's Bill Draft Requests and other legislation that impacts the Judgment
- Progress on the Department's budget for the next fiscal year
- The conclusions of the NCSC workload study
- Application of the workload study to the caseloads and workloads of the attorneys
- Any new or adjusted contracts between providers and attorneys
- The Monitor will also schedule and conduct visits to several counties in coordination with the Department.

Appendix A

Soval Solutions: Hourly Rate Recommendation

Soval Solutions, LLC

Hourly Rate Recommendations for Contract Attorneys in Rural Nevada

Prepared for the Nevada
Department of Indigent Defense Services

8 August 2022

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Summary

In rural Nevada counties, conflict and contract attorneys serve the critical role of providing indigent defense services to criminal defendants. If it were not for the presence of these individuals, indigent criminal defendants, in many cases, would not have local access to constitutionally-protected representation in court.

Current conditions in rural Nevada counties are making it less likely that local attorneys will be present to provide indigent defense services. In particular, current hourly contract rates are not always sufficient to cover the costs of providing criminal defense services for current attorneys. Furthermore, the stagnating value of current rates is likely making it less likely that rural Nevada counties will be able to attract the next generation of attorneys willing to live and provide indigent defense services in rural areas of the state.

Nevada last set its hourly contract rate for non-capital cases at \$100/hour and \$125/hour for capital cases in 2003. This represents a nearly 20-year time span in which the costs of living have increased dramatically in Nevada. During this time, the cost of doing business for solo practitioner and small law firms has also increased considerably.

It is recommended that the Nevada Department of Indigent Defense Services (DIDS) mandate a minimum hourly rate of \$163 for non-capital cases and \$204 for capital cases in rural counties in the state. This would represent a 63% increase from current rates for both non-capital and capital cases. This 63% increase is consistent with the increase in the cost of living between 2003 and 2022, as estimated by the Bureau of Labor Statistics Consumer Price Index calculator. Given current contracts in place within Nevada Counties for the provision of indigent defense services, these new rates would increase the costs for indigent defense by \$1,648,914 in FY 2023.

It is recommended that the state also consider setting regular increases, either through board regulations or legislative actions. The federal defender system, and many states, currently use a system where oversight bodies recommend or mandate regular increases in hourly rates for indigent service providers. It is recommended that periodic increases to hourly rates are tied to the cumulative percentage increase for Nevada state classified employees, as described in NRS 223.050.

Results from 2022 Attorney Overhead Survey

In July, 2022, DIDS and Soval Solutions collaborated on the development of a survey to determine approximate overhead costs for contract indigent defense service providers. Attorneys were notified of the survey through various list serves, as well as through the Nevada State Bar Association weekly newsletter. A total of 136 attorneys completed the survey, including 56 who indicated that they currently work as a contracted or appointed criminal indigent defense service provider, or serve as a civil court-appointed attorney. The survey asked respondents to indicate the amount of overhead expenses incurred during a typical year, as well as the categories of overhead expenses that are most common. The survey asked several questions about the type of law firm at which attorneys are employed.

Among the 65 attorneys who serve as contracted or appointed criminal indigent defense service providers, or serve as a civil court-appointed attorneys, the results of the survey showed that 38 attorneys work as solo practitioners. Another 13 work in firms that range from 2-5 attorneys. The majority of attorneys indicated that they are solely responsible for overhead costs. Attorneys were asked to indicate the total amount of overhead costs for their firm/organization. The average overhead cost per attorney was \$86,427. The cost categories that comprise the greatest percentage of overhead costs were: non-attorney compensation, office space, office supplies, and attorney benefits and health care.

To understand how overhead costs might impact the take-home pay of contract attorneys who receive the current \$100/hour rate for their work, we can use data from the attorney overhead survey to develop estimates. Assuming that there are 220 working days in a typical year, and that there are seven working hours in a day, we arrive at a total of 1,540 work hours per year. An attorney who works the full 1,540 hours at an hourly rate of \$100/hour would gross a total of \$154,000 in a typical year. Assuming that an attorney incurs average overhead costs, this would net that an attorney \$67,573 per year.

To further contextualize the situation for contract indigent defense service providers, attorneys had the opportunity to provide open-ended comments about their role as providers. Table 1 below presents relevant comments that were received from attorneys. These comments are presented verbatim, copied directly from the comments provided in the survey.

Table 1. Open-Ended Comments from Nevada Indigent Defense Services Providers

The cost of inflation is unbearable and if hourly rates are not raised, I will no longer be taking appointed work.

I work as a specialty court contracted public defender. The pay is not enough on it's own to dedicate my practice to just the specialty court. If you want an experienced attorney that can dedicate his/her practice to the Indigent then, Depending on case load Location , cost of living and expenses then a minimum of \$150,000.00 per year in Northern Nevada is close. Southern Nevada is closer to \$200,000.

Experts, investigators, mitigation specialists for death penalty work and life sentence cases where the jury sentences, secretarial, paralegal, copy, print, network, computer, smartphone, mitigation travel for death penalty work, death penalty specific CLE?ÇOs, filing fees, malpractice insurance

Training costs for Indigent Defense attorneys. It should be considered to make sure attorneys are current in the practice of indigent defense, especially when discussing indigent defense for the youth in our community.

Our admin staff costs have increased dramatically since the COVID pandemic. Positions that we used to pay in the \$14-\$16 range are now \$18-22 per hour. An admin supervisor position that used to be \$20 per hour is now \$25 per hour. These are substantial increases of not less than 25 percent. The hourly rates in Nevada have been the same for 20 years. During that time, all costs have increased, notably staff pay, rents and malpractice insurance and health insurance (this has gone way up in 20 years). I compared the salaries for DAs and Public Defenders over this same period and they have increased at least 42%. The CJA rates for appointed counsel have gone from \$90 to \$158 over this time period, a 75% increase.

I previously worked in private practice as appointed indigent defense counsel associated overhead costs: 1. office space (they need a safe and confidential place to meet with clients...this will cost at least \$1000 a month) 2. office services-phone, email, fax 3. malpractice insurance 4. mailing costs 5. it's very beneficial to have office staff 6. yearly bar fees 7. legal research such as westlaw lexis/nexis research 8. employment taxes 9. workers comp/premises liability 10. health insurance 11. retirement savings

I simply do not know all of these requested figures as I've only been with the firm for 18 months but only through 1 fiscal year. I do know that as crime rates increase, so do the level of severity of these cases. We are not getting appointed to lower level felonies and gross misdemeanors as much. But, rather, Murders, Attempt murders, sex assault and related sex crimes, drug trafficking and human trafficking. I believe that the base contract should be raised to \$6,000.00/month, and billable cases be allowed at \$150/hour. Moreover, certain category "B" case should be automatically billable cases instead of having to ask for special permission from the OAC, such as attempt murder.

With inflation, costs are rising.

increased rate of statutory compensation beyond \$100 per hour. should be based upon inflation cost of living increase each year.

It can be expensive to run all this stuff
Does DIDS require paying for case management software when most practitioners already have their own? Transfer that cost to the practitioners and use the money elsewhere
The administrative costs associated with inputting all the DIDS information should be noted. Category A and death penalty cases should pay more. It is not ethical to have flat fee contract attorneys expected to do direct appeals. A study needs to be done to determine the percentage of direct appeals that come out of Clark County and Washoe versus rurals. There is a big incentive for attorneys to never inquire to inmates whether they want to appeal a sentence ESPECIALLY FROM GUILTY PLEAS! There are still plenty of grounds to appeal even from a guilty plea, and I don't believe inmates are getting told those options like they should be.
I do not even have health insurance because I CANNOT afford it.
Often for the indigent defense tracks, the case load is high enough that to handle the volume extra staff is needed OR alternatively, the clients get ignored. I could no longer justify the overhead spent on the amount of work involved and that's why I gave up my track that I had for the past 8 years.
Cost of living and inflation.
Paying people a livable wage and having an office that my clients can access is not cheap. If I didn't have retained clients to cover a lot of my overhead, I could not take on an indigent contract, which is a passion of mine.
The monthly flat rate for attorneys hasn't been risen...ever. Need to look at that. I am in court way more often so some cases should be billable if it's beyond 4 appearances in court.

Cost of Living Increases in Nevada

Since 2003, economic conditions within Nevada and the U.S. have changed. Recent data from the Bureau of Labor Statistics (BLS) have shown that just in the last year, the Producer Price Index for the provision of goods and services in the U.S. increased 17.9% from June, 2021 to June, 2022.¹ The Consumer Price Index (CPI) rose 9.1 percent during this same time.²

According to the Bureau of Labor Statistics Consumer Price Index calculator³, \$100 in 2003 dollars —the current hourly rate provided to indigent defense services providers in rural Nevada—would equate to about \$163 in June, 2022 dollars. The \$125/hour rate for capital cases would equate to about a \$204/hour rate in June, 2022 dollars. While the CPI index does not serve as a direct measure of “cost-of-living” increase, and therefore should not be the sole factor that determines whether rate increases are needed, the index does have validity as an indicator for public policy decisions.

Perhaps a more concrete measure of cost-of-living increases in Nevada can be obtained through housing prices. According to the 2020 American Community Survey (ACS) 5-year estimates the median home value in Nevada is \$290,200. The table below presents the top 15 states in terms of median home value. As the table shows, Nevada ranks 12th highest among the 50 states and the District of Columbia. It is important to note that the median home value is used here, rather than the mean. While the mean home value may show a much higher number for Nevada (and other states), the mean may be skewed upward by homes that have extremely high values. Therefore, it is common to see the median value used in analyses such as the one in Table 2.

State	Median Home Value	State	Median Home Value
1) Hawaii	\$636,400	9) Maryland	\$325,400
2) D.C.	\$618,100	10) New York	\$325,000
3) California	\$538,500	11) Utah	\$305,400
4) Massachusetts	\$398,800	12) Nevada	\$290,200
5) Colorado	\$369,900	13) Virginia	\$282,800
6) Washington	\$366,800	14) Connecticut	\$279,700
7) New Jersey	\$343,500	15) Rhode Island	\$276,600
8) Oregon	\$336,700	43) Iowa	\$153,900

Source: American Community Survey, 2020, Table B25107

To get a sense of the extent to which Nevada homes are priced at very high levels, it is possible to examine the proportion of homes that are priced between \$500,000 and \$1 million. Using this metric, Nevada again ranks high in terms of home valuation in 2020. The table below shows that 11.3% of homes in Nevada were valued between \$500,000 and \$1 million in 2020. This places Nevada 14th out of the 50 states and the District of Columbia. The right-hand column presents the percent of homes that

¹ U.S. Bureau of Labor Statistics. <https://www.bls.gov/opub/ted/2022/producer-prices-for-goods-up-17-9-percent-from-june-2021-to-june-2022.htm>

² U.S. Bureau of Labor Statistics. <https://www.bls.gov/opub/ted/2022/consumer-prices-up-9-1-percent-over-the-year-ended-june-2022-largest-increase-in-40-years.htm>

³ U.S. Bureau of Labor Statistics. https://www.bls.gov/data/inflation_calculator.htm

fell into this valuation category in 2015. The table shows a considerable increase in Nevada since 2015, when only 4.5% of homes were valued in this range. It is notable that Nevada (and other Western states) experienced rapid growth in the percentage of high-value homes, in relation to many of the Eastern states on the list.

Table 3. Percentage of Homes Valued between \$500,000 and \$1 million, 2015 to 2020		
	% of Homes Valued from \$500k to \$1 million in 2020	% of Homes Valued from \$500k to \$1 million in 2015
1) Hawaii	49.2%	42.6%
2) District of Columbia	41.3%	34.1%
3) California	37.0%	26.9%
4) Massachusetts	27.8%	18.0%
5) Washington	24.0%	12.5%
6) Colorado	22.8%	10.5%
7) New York	22.5%	18.0%
8) New Jersey	20.9%	16.9%
9) Oregon	18.8%	8.8%
10) Virginia	18.0%	14.1%
11) Maryland	17.8%	14.8%
12) Utah	13.3%	5.9%
13) Connecticut	12.1%	11.8%
14) Nevada	11.3%	4.5%
15) Rhode Island	10.4%	7.5%
Source: American Community Survey, 2020, Table B25075		

Federal Rates for Public Defenders

As noted, Nevada last set hourly rates for indigent service providers at \$100/hour for non-capital cases and \$125/hour for capital cases. At the time of this increase, the \$100/hour rate put Nevada ahead of the federal judiciary in potential rates paid to indigent defense providers. Since 2003, however, Nevada has fallen far behind the federal judiciary in this domain. As Table 4 indicates, the current maximum rate for federal public defenders is \$158/hour. This represents a 76% increase in the maximum hourly rate for public defenders since Nevada’s last rate increase. If the State of Nevada’s hourly rate had kept pace with federal increases, the current hourly rate would be \$176/hour for non-capital cases.

If services were performed between...	The maximum hourly rate is...
01/01/2022 to present	\$158
01/01/2021 through 12/31/2021	\$155
01/01/2020 through 12/31/2020	\$152
02/15/2019 through 12/31/2019	\$148
03/23/2018 through 02/14/2019	\$140
05/05/2017 through 03/22/2018	\$132
01/01/2016 through 05/04/2017	\$129
01/01/2015 through 12/31/2015	\$127
03/01/2014 through 12/31/2014	\$126
09/01/2013 through 02/28/2014	\$110
01/01/2010 through 08/31/2013	\$125
03/11/2009 through 12/31/2009	\$110
01/01/2008 through 03/10/2009	\$100
05/20/2007 through 12/31/2007	\$94
01/01/2006 through 05/19/2007	\$92
05/01/2002 through 12/31/2005	\$90
Source: https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-230-compensation-and-expenses#a230_16	

It is important to note that while the federal judiciary does offer much higher hourly rates to contract public defenders, there are caps on the total sum of dollars that can be billed by attorneys for specific types of cases. It may be worthwhile to review those caps at the website contained in Table 3.

Potential Shortage of Attorneys

In rural Nevada and other rural parts of the U.S., a shortage of attorneys occurring. While the shortage of attorneys in rural areas cannot be attributed to the pay and hourly rates received by indigent defense service providers, it must be recognized that the attorney shortage may be exacerbated by low rates of pay for attorneys working in the public domain. At the end of the day, any attorney shortage hampers the ability of the criminal justice system to carry out its functions. Competitive pay structures for indigent defense service providers (and other attorneys working in the criminal justice system) can help attract new attorneys to rural parts of the state.

To provide initial evidence regarding a potential shortage of attorneys in rural areas of the state, data from the American Bar Association (ABA) and the American Community Survey (ACS) were obtained. Specifically, a recent ABA report provided the number of attorneys per county throughout the U.S. in 2020. The ACS provides 5-year estimates on the total population of each county. Using these data sources, an attorney rate can be computed for each county. As Table 5 indicates that the rate of attorneys in rural areas of the state is much lower than in urban counties. Carson City has 6.26

attorneys per 1,000 residents; Washoe County has 3.56 attorneys per 1,000 residents; and Clark County has 2.73 attorneys per 1,000 residents. Most other rural counties lag far behind in the availability of attorneys for indigent defense, and other, work. Again, more competitive pay structures may entice some newer attorneys to reside and work in rural areas and provide critical public services, including serving as indigent service providers.

Table 5. Rate of Attorneys in Nevada Counties			
County	Attorneys	Population	Attorneys per 1,000 Residents
Carson City	346	55,244	6.26
Churchill	27	24,606	1.10
Clark	6,084	2,228,866	2.73
Douglas	101	48,486	2.08
Elko	92	52,537	1.75
Esmeralda	1	1,030	0.97
Eureka	2	1,839	1.09
Humboldt	23	16,834	1.37
Lander	4	5,565	0.72
Lincoln	6	5,177	1.16
Lyon	32	55,667	0.57
Mineral	3	4,487	0.67
Nye	31	45,514	0.68
Pershing	8	6,591	1.21
Storey	4	4,086	0.98
Washoe	1,654	464,182	3.56
White Pine	17	9,570	1.78
Sources: American Bar Association, Profile of the Legal Profession, 2020; U.S. Census Bureau, American Community Survey			

Appendix B

Soval Solutions: Recommendations for Senior Policy Counsel Positions

Soval Solutions, LLC

Recommendations for Senior Policy Counsel Positions

Prepared for the Nevada
Department of Indigent Defense Services

30 August 2022

Soval Solutions, LLC
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Omaha, NE 68022
Dr. Mitchel N. Herian, Owner
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Summary

Soval solutions has been working closely with the Nevada Department of Indigent Defense Services (DIDS) for over a year to determine the optimal methods for conducting oversight within those counties that are affected by the settlement consent judgment in *Davis v. Nevada*. Initially, in 2021, Soval Solutions and DIDS conceptualized a system whereby DIDS personnel would seek to collect self-reported data from attorneys, judges, and other actors within the judicial branch that are involved in providing indigent defense services. The approach would have provided basic information about the delivery of justice for indigent criminal defendants, as well as other individuals who rely upon court-appointed attorneys, in those rural counties.

As time has passed and the full scope of oversight tasks has come into view, two things have become clear. First, the initial conceptualizations of DIDS oversight functions were much too narrow. Second, DIDS cannot effectively carry out its oversight responsibilities with current staffing levels in place. What is needed, specifically, are two Senior Policy Counsel positions and a reclassified Program Officer II position that will allow DIDS to carry out its required oversight functions pursuant to NRS 7.115-7.145, NRS 171.188.

The Senior Policy Counsel positions will have several responsibilities that will enhance the ability of DIDS to effectively monitor the administration of indigent defense service in rural Nevada counties. The positions will have the following responsibilities:

- Provide in-depth policy analysis by observing court procedures, reviewing client feedback, etc.
- Make determinations as to whether the county is in compliance with regulations.
- Perform both in-depth policy analysis and “quick response” research on a broad variety of subjects.
- Prepare in-depth research papers, reports, policy publications, and recommendations to leadership.
- Conduct statistical analyses.
- Compile other written products and research memoranda as required.

The positions will require an estimated 40% of travel to rural counties in Nevada. This travel is necessary for the Policy Counsels to actively observe court procedures, review client feedback, and other related tasks at the local level. Remaining time will be spent reporting back to the DIDS Deputy Director regarding counties compliance with existing regulations.

This model has been used in other jurisdictions with remote areas that are required to adhere to specific standards in the delivery of indigent defense services. The State of Texas, in particular, has a robust system of oversight delivered through the Texas Indigent Defense Commission (TIDC). The TIDC employs 15 policy and fiscal analysts to examine: access to counsel, quality of counsel, and engage in data collection and reporting. This work is in response to requirements put forth by the Texas Task Force on Indigent Defense, created over 20 years ago. In short, the TIDC carry out many of the same functions as would a Senior Policy Counsel under the current proposal. The creation of the proposed positions would, therefore, not only enhance the ability of DIDS to carry out its responsibilities within Nevada, but it would also bring Nevada closer to providing the same oversight of indigent defense service providers that is being provided in peer states.

Appendix C

Bill Draft Requests



Governor: **Steve Sisolak**
 Budget Period: **2023-2025 Biennium (FY24-25)**
 Budget Session: **82ND REGULAR SESSION**
 BDR Number: **23A1113135**
 Title: **Indigent Defense Claims and Expenses Processing**

1. Description

Primary Department: **11 11 - DEPARTMENT OF INDIGENT DEFENSE SERVICES**
 Primary Division: **111 111 - INDIGENT DEFENSE**

NRS title, chapter and sections, Nevada Constitutional provisions, administrative regulations (NAC) affected:

NRS 7.125, NRS 7.145, NRS 7.155, NRS 49, NRS 180.320, NRS 212.070, NRS 260.070, NRS 353.264

Description of the problem to be solved or the goal of the proposed measure, or both:

With the creation of the Department of Indigent Defense (DIDS) and the passage of AB480(2019), the proposed changes are to streamline and improve attorney billing processes. The following billing processes will be improved (1) maintain the attorney/client privilege for attorney billing to DIDS; (2) allow Board on Indigent Defense Services to modify the compensation rate for indigent defense providers; (3) allow attorneys additional time to submit billing; (4) providing a funding source for the maximum contribution formula and expenses related to defense of prison indigent defense litigation; and (5) allow counties additional time to submit their annual reports regarding budgets and indigent defense spending.

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

Unknown

Please Explain why this is unknown:

It is unknown whether or when the Board on Indigent Defense Services will increase the hourly rate. In addition, the State already has the fiscal liability to fund the maximum contribution formula and the prison litigation, this is simply moving the accounts which process the expenses.

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

No

Bill Type: **Policy-Substantive**
 Effective Date: **Upon Passage and Approval**

2. BA/DU

Budget Accounts
 1008 DEPARTMENT OF INDIGENT DEFENSE SERVICES

3. Contacts

Primary Contact:
 Name: **Marcie Ryba**
 Title: **Executive Director**
 Mailing Address: **896 W. Nye, Suite 202
 Carson City, NV 89703**
 Phone: **(775) 687-8493**
 Extension:
 Email: **mryba@dids.nv.gov**

4. Agency Notes

Are there similar measures from current or previous sessions?

No

Are there federal laws, court cases, or attorney general opinions involved?

Yes

Please explain

Davis v. State (the Stipulated Consent Judgment); NAC 180; NRS 180.320 also provides for funding for the maximum contribution formula.

Are there similar statutes in other states?

Yes

What are they?

Oregon Revised Statutes 40.225 (for attorney client privilege)

What would be the impacts of the BDR if implemented?

The impact would clarify the indigent defense billing process. First, the information would be clearly protected under the attorney client privilege. Second, the Board would be able to increase the hourly rate as necessary when there is a shortage of attorneys to ensure coverage. Third, placing funding in the DIDS budget for the maximum contribution formula under NRS 180.320 and prison expenses NRS 212.070 would allow attorney billing to be streamlined and processed faster, as it would be processed in a similar fashion to the process for post conviction habeas billing (NRS 34.750).

If the BDR fails to pass what are the consequences?

Attorneys have expressed concern that submitting billing to DIDS violates the attorney client privilege. Finally, rural counties may be unable to find indigent defense counsel to cover cases unless the rate is increased to encourage attorneys to travel to the rural counties. A delay in payment may continue to cause attorneys to refuse to take on new appointed cases and there could be inadequate coverage for such cases.

Describe any support for the BDR beyond the requesting agency

Board on Indigent Defense Services

Describe any opposition to the BDR

N/A

Approvals

Approval Level	User	Date
Agency Administrator Approval	mryba	08/23/2022 08:44:41 AM
Agency Director Approval	mryba	08/23/2022 08:44:43 AM
Budget Analyst Approval	Pending	
Team Lead Approval	Pending	
Budget Director Approval	Pending	
Governor Approval	Pending	
Final Transmittal Approval	Pending	

Budgetary BDR

Department of Indigent Defense Services

NRS 7.XXX. "Public Defender" defined: "Public Defender" means an office created pursuant to Chapter 180 or Chapter 260, or an attorney or group of attorneys contracted to provide indigent defense services as defined by NRS 180.004.

NRS 7.125 Fees of attorney other than public defender.

1. An attorney, other than a public defender, who is selected pursuant to NRS 7.115 to *provide indigent defense services as defined by NRS 180.004 or representation pursuant to a postconviction petition for habeas corpus under NRS 34.750*, ~~represent or defend an indigent 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]~~ *in the amount set by the Board on Indigent Defense Services under NRS 180.320(4). Until such time as the Board establishes the fee amount, the reimbursement shall remain at no lower than \$125 per hour in cases in which the death penalty is sought and \$100 per hour in all other criminal cases. [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.]*
2. *An attorney, other than a public defender, who is selected pursuant to NRS 7.115 to provide representation other than indigent defense services as defined by NRS 180.004 or postconviction petition for habeas corpus pursuant to NRS 34.750, is entitled to receive a fee of \$100 per hour for court appearances and other time reasonably spent on the matter to which the appointment is made.*

7.145. Claim for compensation and expenses

1. A claim for compensation and expenses made pursuant to NRS 7.125 or 7.135 must not be paid unless it is submitted within ~~[60]~~ **90** days after the representation is terminated, *unless otherwise permitted by the county:*
 - (a) In a county whose population is less than 100,000, to the Department or its designee in compliance with the plan of the county for the provision of indigent defense services;or

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

2. Each claim must be:

(a) Supported by a sworn statement specifying the time expended in court, the services rendered out of court and the time expended therein, the expenses incurred while the case was pending and the compensation and reimbursement applied for or received in the same case from any other source.

(b) Reviewed and, if necessary, modified and paid in compliance with the plan of the county for the provision of indigent defense services.

3. Any dispute regarding the approval, denial or modification of a claim may be reviewed by the trial court based upon reasonable and necessary standards.

7.155. Payment of compensation and expenses from county treasury or money appropriated to State Public Defender *and the Department of Indigent Defense Services*

1. The compensation and expenses of an attorney appointed to represent a defendant must be paid from the county treasury unless the proceedings are based upon a postconviction petition for habeas corpus, in which case the compensation and expenses must be paid from money appropriated to the Office of State Public Defender, but after the appropriation for such expenses is exhausted, money must be allocated to the Office of State Public Defender from the reserve for statutory contingency account for the payment of such compensation and expenses.

2. The compensation and expenses of an attorney appointed to represent a defendant pursuant to NRS 212.070(2) must be paid from money appropriated to the Department of Indigent Defense Services, but after the appropriation for such expenses is exhausted, money must be allocated to the Department of Indigent Defense Services from the reserve for statutory contingency account for the payment of such compensation and expenses.

3. The amount a county may be required to pay for indigent defense services must not exceed the maximum amount determined using the formula established by the Board on Indigent Defense pursuant to NRS 180.320. All indigent defense services expenses which exceed a county's maximum contribution will be reimbursed from money appropriated to the Department of Indigent Defense Services, but after the appropriation for such expenses is exhausted, money must be allocated to the Department of Indigent Defense Services from the reserve for statutory contingency account for the payment of such compensation and expenses.

NRS 49.XXX. Notwithstanding NRS 49.385 (Waiver of privilege by voluntary disclosure), a privilege is maintained under this section for a communication made to the Department of Indigent Defense Services or its designee, for the purpose of:

a. seeking preauthorization for or payment of compensation and expenses under NRS 7.125, NRS 7.135 and/or NRS 7.145; and

b. making or providing information regarding a complaint against a lawyer providing public defense services under NRS 180.320.

NRS 180.320 Duties of Board; adoption of regulations.

1. (No change)

2. (No change)

3. (No change)

4.

a. For counties with a population of less than 100,000, the Board shall adopt regulations to establish appointed indigent defense hourly rates pursuant to NRS 7.125(1).

b. For all counties, the Board shall adopt regulations to establish hourly rates for appointed representation in postconviction petition for habeas corpus matters pursuant to NRS 7.125(1).

5. The Board shall adopt any additional regulations it deems necessary or convenient to carry out the duties of the Board and the provisions of this chapter.

NRS 212.070 Expenses of prosecuting *and defending a prisoner and person acting in concert with prisoner who escapes or commits crime while incarcerated.*

1. The expenses and costs of prosecuting any person for escaping from, or breaking out of, the state prison, or attempting so to do, or for the commission of any crime while a prisoner therein, or any person acting in concert with such a prisoner, whether as a principal or accessory, are a charge against the State and must be paid from the Reserve for Statutory Contingency Account upon approval by the State Board of Examiners.

2. *The compensation and expenses of an attorney appointed to represent a defendant are a charge against the State and must be paid from the money appropriated to the Department of Indigent Defense Services pursuant to NRS 7.155, but after the appropriation for such expenses is exhausted, money must be allocated to the Department of Indigent Defense Services from the reserve for statutory contingency account for the payment of such compensation and expenses.*

3. The expenses and costs of prosecuting any person or persons for escaping from, or breaking out of, a jail, branch county jail or other local detention facility or attempting so to do, or for the commission of any crime while a prisoner therein, or any person acting in concert with such a prisoner, whether as a principal or accessory, are a charge against the county, city or other local government responsible for the operation of that facility.

NRS 260.070 Annual reports.

1. The public defender shall make an annual report to:

(a) The board of county commissioners covering all cases handled by his or her office during the preceding year.

(b) The Department of Indigent Defense Services created by NRS 180.400 which includes any information required by the Department.

2. The board of county commissioners of each county with a public defender or which contracts for indigent defense services shall provide an annual report to the Department on or before May 31 of each year. The report must include any information requested by the Department concerning the provision of indigent defense services in the county and must include, without limitation, the plan for the provision of indigent defense services for the county for the next fiscal year.

3. As used in this section, “indigent defense services” has the meaning ascribed to it in NRS 180.004.

NRS 353.264 Reserve for Statutory Contingency Account.

1. The Reserve for Statutory Contingency Account is hereby created in the State General Fund.

2. The State Board of Examiners shall administer the Reserve for Statutory Contingency Account. The money in the Account must be expended only for:

(a) The payment of claims which are obligations of the State pursuant to NRS 41.03435, 41.0347, 62I.025, 176.485, 179.310, 212.040, 212.050, 212.070(1), 281.174, 282.290, 282.315, 293.253, 293.405, 298.710, 304.230, 353.120, 353.262, 412.154 and 475.235;

(b) The payment of claims which are obligations of the State pursuant to:

(1) Chapter 472 of NRS arising from operations of the Division of Forestry of the State Department of Conservation and Natural Resources directly involving the protection of life and property; and

(2) NRS 7.155, 34.750, 176A.640, 179.225, **NRS 180.320, NRS 212.070(2)**, and 213.153,

except that claims may be approved for the respective purposes listed in this paragraph only when the money otherwise appropriated for those purposes has been exhausted;

(c) The payment of claims which are obligations of the State pursuant to NRS 41.0349 and 41.037, but only to the extent that the money in the Fund for Insurance Premiums is insufficient to pay the claims;

(d) The payment of claims which are obligations of the State pursuant to NRS 41.950; and

(e) The payment of claims which are obligations of the State pursuant to NRS 535.030 arising from remedial actions taken by the State Engineer when the condition of a dam becomes dangerous to the safety of life or property.

3. The State Board of Examiners may authorize its Clerk or a person designated by the Clerk, under such circumstances as it deems appropriate, to approve, on behalf of the Board, the payment of claims from the Reserve for Statutory Contingency Account. For the purpose of exercising any authority granted to the Clerk of the State Board of Examiners or to the person designated by the Clerk pursuant to this subsection, any statutory reference to the State Board of Examiners relating to such a claim shall be deemed to refer to the Clerk of the Board or the person designated by the Clerk.



Governor: **Steve Sisolak**
 Budget Period: **2023-2025 Biennium (FY24-25)**
 Budget Session: **82ND REGULAR SESSION**
 BDR Number: **23A1112826**
 Title: **Indigent Defense Services Housekeeping**

1. Description

Primary Department: **11 11 - DEPARTMENT OF INDIGENT DEFENSE SERVICES**

Primary Division: **111 111 - INDIGENT DEFENSE**

NRS title, chapter and sections, Nevada Constitutional provisions, administrative regulations (NAC) affected:

NRS 180; NRS 239.010

Description of the problem to be solved or the goal of the proposed measure, or both:

Pursuant to NRS 7, BIDS Regulations, and the Davis Stipulated Consent Judgment, indigent defense providers are required to report data to the Department of Indigent Defense Services which otherwise may be protected under the attorney client privilege. This BDR will protect such information from dissemination through the Public Record Request Process when it needs to be kept confidential. And the BDR will modify the Department's grant account language from mandatory to permissive.

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

No

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

No

Bill Type: **Policy-HouseKeeping**

Effective Date: **Upon Passage and Approval**

2. BA/DU

Budget Accounts

1008 DEPARTMENT OF INDIGENT DEFENSE SERVICES

1014 DEPARTMENT OF INDIGENT DEFENSE - SUPPORT OF

3. Contacts

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 Extension:
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4. Agency Notes

Are there similar measures from current or previous sessions?

No

Are there federal laws, court cases, or attorney general opinions involved?

No

Are there similar statutes in other states?

No

What would be the impacts of the BDR if implemented?

Attorney client privileged material would be clearly protected from public records requests. Indigent Defense Services would be further improved in the state.

If the BDR fails to pass what are the consequences?

Potential litigation to protect the records via case law.

Describe any support for the BDR beyond the requesting agency

indigent defense attorneys

Describe any opposition to the BDR

unknown

Approvals

Approval Level	User	Date
Agency Administrator Approval	mryba	05/18/2022 11:20:49 AM
Agency Director Approval	mryba	05/18/2022 11:20:51 AM
Budget Analyst Approval	myoun3	06/06/2022 14:54:27 PM
Team Lead Approval	myoun3	06/06/2022 14:54:30 PM
Budget Director Approval	myoun3	07/28/2022 13:57:22 PM
Governor Approval	myoun3	07/28/2022 13:57:24 PM
Final Transmittal Approval	myoun3	07/29/2022 09:33:18 AM

180.500. Grants, bequests, devises, donations or gifts; creation of Account; use of money in Account; nonreversion

1. The Department may apply for and accept any available grants, bequests, devises, donations or gifts from any public or private source to carry out the duties of the Department and Board.
2. Any money received pursuant to subsection 1 ~~must~~ *[may]* be deposited in the Special Account for the Support of Indigent Defense Services, which is hereby created in the State General Fund. Interest and income earned on money in the Account must be credited to the Account. Money in the Account may only be used to carry out the duties of the Department and the Board.
3. Any money in the Account remaining at the end of a fiscal year does not revert to the State General Fund, and the balance in the Account must be carried forward to the next fiscal year.

[NRS 180.XXX Confidentiality of certain records; exceptions.

1. *Except as otherwise provided in this section and NRS 239.0115, any records or information received by the Board, Department, or a designee of the Department, relating to an attorney's client, attorney's case file, attorney funding requests, or anything that would have otherwise been protected by attorney-client privilege, is confidential.*
2. *Except as otherwise provided in this section and NRS 239.0115, all documents and other information obtained or compiled during or after an investigation arising from a complaint received by the Board or Department related to an attorney's conduct are confidential, except as may be necessary for the performance of oversight functions of the Department of Indigent Defense Services.*
3. *The provisions of this section do not prohibit the Board or the Department, at its discretion, from communicating or cooperating with or providing any documents or other information to any other licensing board or any other agency that is investigating a person, except to the extent that such information is protected by the attorney-client privilege.]*

Marcie Ryba

From: Asheesh S. Bhalla
Sent: Friday, April 01, 2022 4:32 PM
To: Sophia G. Long; Marcie Ryba
Cc: Thomas L. Qualls; Peter P. Handy
Subject: RE: BDR

Director Ryba,

I hope all is well. I have reviewed and agree with Sophia – this is great language. Please let me know if you have any questions or concerns.

Kind regards,

Asheesh

Asheesh S. Bhalla
Deputy Attorney General
Division of Boards and Open Government
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101



From: Sophia G. Long <SLong@ag.nv.gov>
Sent: Friday, April 1, 2022 2:56 PM
To: Marcie Ryba <mryba@dids.nv.gov>
Cc: Asheesh S. Bhalla <ABhalla@ag.nv.gov>; Thomas L. Qualls <ThomasQualls@dids.nv.gov>; Peter P. Handy <P.Handy@dids.nv.gov>
Subject: RE: BDR

Hi Marcie,

I don't see any issues with the language. It's a standard confidentiality statute.

From: Marcie Ryba <mryba@dids.nv.gov>
Sent: Friday, April 1, 2022 2:06 PM
To: Sophia G. Long <SLong@ag.nv.gov>
Cc: Asheesh S. Bhalla <ABhalla@ag.nv.gov>; Thomas L. Qualls <ThomasQualls@dids.nv.gov>; Peter P. Handy <P.Handy@dids.nv.gov>
Subject: BDR

Hello,

Ok... we want to submit a BDR by May to the GFO regarding protecting attorney client privileged items that are disclosed to our Department from public records requests. Can you review the language attached and see if it is appropriate to protect this information?

Thanks!
Marcie



Marcie Ryba | Director

State of Nevada

Department of Indigent Defense Services

896 W Nye Ln, Suite 202

Carson City NV 89703

(775) 687-8493 (o)

(775) 431-0527 (c)

mryba@dids.nv.gov

dids.nv.gov

Justice. Equity. Support.



NOTICE: This communication, including any attachments, may contain confidential information and is intended only for the individual or entity to whom it is addressed. Any review, dissemination, or copying of this communication by anyone other than the recipient is strictly prohibited by the electronic Communications Privacy Act, 18 U.S.C. 2510-2521. If you are not the intended recipient, please contact the sender by reply email, delete and destroy all copies of the original message.

Appendix D

**Department's Amended Memorandum
to the Governor's Office**

Steve Sisolak
Governor



Marcie Ryba
Executive Director

Thomas Qualls
Deputy Director

Peter Handy
Deputy Director

**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

AMENDED MEMORANDUM

To: Bailey Bortolin, Deputy Chief of Staff to Governor Sisolak
From: Marcie Ryba, Executive Director, Department of Indigent Defense Services
Date: September 20, 2022
Re: Funding Solution for Indigent Defense

This memorandum is a follow-up from the Interim Finance Committee which took place on September 14, 2022.

The Board on Indigent Defense Services was directed in NRS 180.320(3) to make a formula to determine the maximum amount a county shall pay for indigent defense services. The formula is contained in NAC 180, Section 16. As the Department does not currently have funding within its budget to reimburse the counties pursuant to the formula, the Department requested contingency funds to reimburse the counties over their maximum contribution amounts.

The funding request was approved, but during the meeting Senate Majority Leader Cannizzaro commented that funding for the maximum contribution formula should be in the Department's budget moving forward. The legislators felt that the Department should not rely exclusively on contingency funding to reimburse the counties.

The Department agrees with the Senate Majority Leader's comments. As a solution to achieve this, the Board on Indigent Defense Services has proposed a bill draft request to modify NRS 7.155 and NRS 353.264 to clearly set out the funding source for the formula. The proposed changes are below:

7.155. Payment of compensation and expenses from county treasury or money appropriated to State Public Defender *and the Department of Indigent Defense Services*

1. The compensation and expenses of an attorney appointed to represent a defendant must be paid from the county treasury unless the proceedings are based upon a postconviction petition for habeas corpus, in which case the compensation and expenses must be paid from money appropriated to the Office of State Public Defender, but after the appropriation for such expenses is exhausted, money must be allocated to the Office of

State Public Defender from the reserve for statutory contingency account for the payment of such compensation and expenses.

2. The amount a county may be required to pay for indigent defense services must not exceed the maximum amount determined using the formula established by the Board on Indigent Defense pursuant to NRS 180.320. All indigent defense services expenses which exceed a county's maximum contribution will be reimbursed from money appropriated to the Department of Indigent Defense Services, but after the appropriation for such expenses is exhausted, money must be allocated to the Department of Indigent Defense Services from the reserve for statutory contingency account for the payment of such compensation and expenses.

NRS 353.264 Reserve for Statutory Contingency Account.

1. The Reserve for Statutory Contingency Account is hereby created in the State General Fund.

2. The State Board of Examiners shall administer the Reserve for Statutory Contingency Account. The money in the Account must be expended only for:

(a) The payment of claims which are obligations of the State pursuant to NRS 41.03435, 41.0347, 62I.025, 176.485, 179.310, 212.040, 212.050, 212.070(1), 281.174, 282.290, 282.315, 293.253, 293.405, 298.710, 304.230, 353.120, 353.262, 412.154 and 475.235;

(b) The payment of claims which are obligations of the State pursuant to:

(1) Chapter 472 of NRS arising from operations of the Division of Forestry of the State Department of Conservation and Natural Resources directly involving the protection of life and property; and

(2) NRS 7.155, 34.750, 176A.640, 179.225, *NRS 180.320*, and 213.153, except that claims may be approved for the respective purposes listed in this paragraph only when the money otherwise appropriated for those purposes has been exhausted;

(c) The payment of claims which are obligations of the State pursuant to NRS 41.0349 and 41.037, but only to the extent that the money in the Fund for Insurance Premiums is insufficient to pay the claims;

(d) The payment of claims which are obligations of the State pursuant to NRS 41.950; and

(e) The payment of claims which are obligations of the State pursuant to NRS 535.030 arising from remedial actions taken by the State Engineer when the condition of a dam becomes dangerous to the safety of life or property.

3. The State Board of Examiners may authorize its Clerk or a person designated by the Clerk, under such circumstances as it deems appropriate, to approve, on behalf of the Board, the payment of claims from the Reserve for Statutory Contingency Account. For the purpose of exercising any authority granted to the Clerk of the State Board of Examiners or to the person designated by the Clerk pursuant to this subsection, any statutory reference to the State Board of Examiners relating to such a claim shall be deemed to refer to the Clerk of the Board or the person designated by the Clerk.

Please note, this language, along with a other proposed changes has been submitted as BDR 23A1113135 in NEBS.

Appendix E

Press Release on Reimbursement for the Counties

For Immediate Release
September 22, 2022
Department of Indigent Defense Services
775-687-8490
contact@dids.nv.gov

DIDS Wins Big for Rural Nevada

Carson City, NV – The Department of Indigent Defense Services (DIDS) announced today that it has successfully reimbursed eight rural Nevada counties a total of \$1,824,877.92 in indigent defense costs for fiscal year 2022. This is a ground-breaking achievement, as historically, these counties have had to fund these programs on their own.

DIDS was created in 2019 by Assembly Bill (AB) 81 to oversee, support, and provide state resources to indigent defense providers (public defenders) throughout the state, primarily in the rural counties. As part of its mission, DIDS and the Board on Indigent Defense Services created a formula which capped the maximum amount each county would have to pay for its system of indigent defense.

DIDS has faced challenge in its short existence as it was essentially created during the COVID pandemic. Nevertheless, its dedicated staff has worked tirelessly to bring together stakeholders from across the state, create indigent defense plans in 15 diverse counties, and help counties reimagine and recraft how they provide public defense services.

All that work has paid off. Every county that exceeded its maximum contribution cap has now received the full amount of their requested reimbursements.

“The strength of any community is determined by many things. One thing strong communities all have in common, though, is a strong indigent defense system. A sustainable indigent defense system promotes public safety, ensures the fairness of our justice system, and also saves the community money,” said DIDS Executive Director Marcie Ryba.

Now that this milestone has been reached, DIDS is committed to continuing to work with these rural Nevada communities to build on the foundations that these new state-county relationships have created together.

#

Appendix F

Oversight Report: Lyon County



**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

OVERSIGHT REPORT

Lyon County: Yerington

Remote Contact

Report Date: October 20, 2022

I. Brief Narrative.

Over the past few months, there have been a few issues with the Lyon County Plan, as it concerns finding appropriate and available conflict counsel in a timely manner. Prior to that, the Department was forced into litigation with an independent appointed counsel in Lyon County over billing practices, which resulted in the attorney withdrawing from all his Lyon County cases, also causing issues with securing appointed counsel.

The Orrin Johnson Litigation.

Going in chronological order, on June 29, 2022, Deputy Director Thomas Qualls attended a virtual court hearing before District Court Judge John Schlegelmilch regarding appointed attorney Orrin Johnson's motion to withdraw as counsel in numerous Lyon County cases. Johnson attached an affidavit to his motions to withdraw which accused the Department, among other things, of arbitrarily striking time from his bills. Johnson also alleged that the acts of the Department were personal and vindictive, because he has been an open critic of the Department since its creation.

The court ordered both Lyon County officials and the Department to appear at the hearing and provide explanations regarding the issue. Lyon County was forced to hire outside counsel. And the Department was represented by Senior Deputy Attorney General Sophia Long. Lyon County officials and Mr. Qualls provided statements to the court at the virtual hearing.

The only portions of Johnson's bills that were stricken were those in which he billed for administrative time, including preparing invoices. The amounts stricken were miniscule, approximately \$40 per bill, amounting to less than 1% of the total billing. Johnson admitted at the hearing that the entries in question were activities performed by his clerical assistant, and not him. The Court found that billing for administrative time and/or for his assistant's time was specifically prohibited by Johnson's contract with Lyon

County, and that the actions of the Department in striking those entries were not unreasonable. Nevertheless, the court allowed Mr. Johnson to withdraw from all cases and authorized him to be able to bill for all his time in drafting the motions to withdraw and preparing for the hearing. As any denial in billing from the Department could have been appealed to the court anyway, the Department approved all of this billing.

Johnson's sudden departure from numerous cases, meant that all the cases had to be reassigned and new counsel had to be brought up to speed on the proceedings. The litigation also resulted in considerable unnecessary costs to the County in billing and attorneys fees.

Problems Regarding the Lack of a Second Tier /Conflict Office.

Both Lyon County and Elko County have only one tier of representation in their indigent defense plans. The Department also serves as Appointed Counsel Administrator for both counties. The lack of a second tier conflict office or contract(s) in both counties has placed considerable strain on the Department's limited resources over the last year. The geographic location of both counties often makes it challenging to secure conflict counsel. In general, the courts have worked with the Department to continue settings as necessary in order to accommodate counsel's ability to appear.

Several times in the last few months, however, the judges in Lyon County have contacted the Department and expressed frustration in having to repeatedly continue cases, as well as concerns over the quality of representation of some appointed attorneys, particularly those from Clark County who are not able to easily meet in person with their clients. On October 18, 2022, Director Ryba and Deputy Director Qualls attended another Lyon County court-ordered hearing, this time before Judge Leon Aberasturi. The Judge was concerned about a case in which two different counsel had been appointed, and the believed that the defendant had not had adequate in-person contact with counsel, in part due to the geographic location of the attorneys. The Judge entered an order no longer allowing zoom appearances.

Ryba and Qualls provided the court detailed information about the specific actions the Department had taken in the case at issue, as well as the steps the Department and the County had taken over the course of the last year in effort to make Lyon County's plan sustainable and effective. Both the Department and County explained that there is a statewide shortage of indigent defense attorneys (as well as prosecutors). The Department additionally explained that due to a shortage in staff, the Washoe County Public Defender recently began conflicting off all felony cases, which subsequently pushed an unusual amount of cases down to Washoe County appointed conflict counsel. Because most of the attorneys who take appointed conflict cases in Lyon County are these same Washoe County attorneys, the move by the Washoe PD has affected the availability of Washoe attorneys to continue to take Lyon County cases. Ultimately, the judge decided to continue to allow zoom appearances and to work with the Department to continue cases when necessary to accommodate the schedules of busy conflict attorneys.

Lyon County has recently contracted with a law firm that is willing to take a minimum of six Lyon County appointed cases a month, beginning in January of 2023. This is a little less than 1/3 of the monthly conflict numbers, but it is a start. Both the Department and Lyon County management continue to work on recruiting more attorneys to Lyon County's appointment list, as well as trying to find attorneys who are willing to take a mandatory amount of cases a month.

Appointed Counsel Administrator and Other Possible Solutions. The Department has suggested that the creation of a local Appointed Counsel Administrator in Lyon County could help with this process, including developing closer relationships with any holdouts to the DIDS qualified list.

Additionally, the Department has repeatedly advocated for the creation of a conflict office, either by establishing a Lyon County conflict office or by opting in to the State Public Defender for conflicts. Lyon County continues to resist this idea. County management also raised the valid point that if such an office(s) were created, it would still be difficult to find attorneys to staff it.

Finally, we have suggested that Lyon County consider copying the Carson City conflict contract model and broadly advertise – with our assistance --- a similar or higher contract amount.

III. Next Steps.

1. Lyon County is reaching out to an attorney who applied for the most recent opening for a conflict contract in Carson City.
2. Both Lyon County and the Department continue to work to recruit more attorneys willing to commit to a mandatory number of cases.
3. Because Washoe County recently approved a proposal to pay conflict attorneys \$150/hour for all cases, no matter the case level, Lyon County is considering raising its hourly rates again for appointed cases, in order to continue to attract attorneys from Washoe and other places.

Appendix G

Oversight Report: Rural Counties Update



**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

OVERSIGHT REPORT

Rural Counties Update

Report date: August 16, 2022

I. Carson City.

Karin Kreizenbeck resigned her position as the Nevada State Public Defender. We are currently seeking new applicants to fill this position. We have posted the position on our website, the Nevada State Bar has emailed it to its membership, and other groups like NAPD and NACJ have sent it out to their lists. The application period closes September 2, 2022.

DIDS is also in the process of reimagining the functional duties of the State Public Defender. Our vision for the head of the NSPD in the future includes acting as an ambassador -- locally and throughout the state -- building more relationships, educating county management about the opportunities the office can provide, working to expand the duties of the office, and actively recruiting new talent.

In other news, one of the Carson City contract conflict attorneys retired and the county opened up the contract for new applicants. There were at least four applicants who were fully qualified to handle all levels of cases, through category A felonies. There were several other candidates who were less qualified.

Four county judges wrote a letter to the Board of Supervisors recommending Daniel Spence for the contract. Daniel Spence is not qualified by our office to handle Category A or B felonies. In part, this is due to the fact that Spence does not have sufficient jury trial experience. DIDS wrote a letter to the Board of Supervisors which detailed the qualifications of all of the candidates and explained that if the contract were awarded to Spence, a mentor would have to supervise him on all higher level cases. The Board awarded the contract to Spence, despite there being other, fully qualified candidates available. DIDS intends to monitor the situation throughout the contract period.

II. Churchill.

DIDS continues to actively work with Churchill County in building a sustainable indigent defense structure. After the *Davis* lawsuit, Churchill created a county public defenders office. The office included two attorneys and a legal assistant.

Since that time, Churchill has modified its indigent defense plan to include a primary public defenders office, a county alternate public defenders office, and a contract for third-tier conflict cases. The county also added its own Appointed Counsel Administrator to act as the Department's appointee in that role.

Jacob Sommer will continue to be the primary Public Defender for the county. His former deputy, Wright Noel, is now the Alternate Public Defender. And Charles Woodman has contracted to fill the third-tier conflict position. Additionally, Mr. Woodman will act as a mentor/supervisor for Mr. Noel, so that he will be able to accept high category cases and complete his full qualification status. Finally, Sue Sevon, a former court administrator, has accepted the position as Appointed Counsel Administrator.

III. Douglas.

Douglas County has contracted with several new contract public defenders for this fiscal year. Matt Ence and Brian Filter have renewed their contracts. And Martin Hart, Max Stoval, and Nadine Morton have accepted contracts for this new term.

Of note, Nadine Morton chose to pursue the Douglas County contract, rather than renew her previous contract with Nye County. A comparison of the two options reveals a significant disparity in pay and caseloads. Even though Nye County increased their public defender contracts by \$25,000 for the current term, the amount is currently set at \$175,000. Compare that to the Douglas public defender contracts, which were increased earlier this year from \$195,000 to \$265,000. Nye County's caseloads are also reportedly much higher than in Douglas County. (Nye is considering additional and substantial changes to their system.)

IV. Elko.

Elko County currently has a single-tiered system: the Elko County Public Defenders office. There is no second-tier/conflict office nor contracted conflict counsel. DIDS currently serves as the county's Appointed Counsel Program Administrator, even though the county's indigent defense plan states that Elko will contract with an attorney to fill this position.

The lack of a second tier in the system to handle conflict cases and the lack of a contracted Appointed Counsel Program Administrator combine to create some friction in the county's system. The situation places a burden on the limited staff at DIDS to appoint all conflict counsel and approve all appointed counsel billing.

Recently, a judge expressed concern over DIDS appointing conflict counsel from out of the region. These instances have all involved situations where DIDS contacted the attorneys on the regional list, and none were available, before assigning the case(s) to those outside the area. A multiple tier system could alleviate most of these issues.

Finally, DIDS directors had a zoom meeting on August 15, 2022 with several judges who were concerned over what to do with Municipal Court appointments and indigent defense expenses. Their interpretation of NRS Chapter 7 was that it governed all indigent defense systems, county and municipal. Elko's plan does not include any provisions for municipal courts. DIDS has not, to date, concluded that it has authority over municipal indigent defense systems. Although it has considered incorporating them into the plans. Such an action would require approval of the Board and a revamp of each county's maximum contribution formula, at a minimum.

V. Esmeralda County.

To date, Esmeralda has not reported any caseload or time data. We continue to work on this situation.

VI. Eureka.

Nothing to report.

VII. Humboldt.

The former Alternate Public Defender for Humboldt County, Derrick Penny, was temporarily suspended from practice by the Nevada State Bar, for reasons unrelated to his indigent defense work. Humboldt County has now hired a new APD, Maureen McQuillan.

VIII. Lander.

Lander County's contract conflict attorney resigned, and they are looking for a new attorney to fill the spot. The county contacted DIDS regarding wanting us to oversee the process. Lander County's current district attorney (who used to be the contract public defender) lost his re-election bid, and so there was some indication that he might apply for the conflict contract. The regulations, however, prevent him from holding such a contract for 18 months after leaving the prosecutor's office.

IX. Lincoln.

No new information to report.

X. Lyon.

Lyon is another county that only has a single tier system and relies upon appointed conflict counsel to take up all the slack in the system. Lyon also relies upon DIDS to act

as Appointed Counsel Administrator. Since the beginning of September 2021, Lyon County's contract public defender has conflicted off over 200 cases. The average is in excess of 18 cases per month. The result is that it is often difficult to find conflict counsel and often court dates must be continued to accommodate potential appointed counsel.

DIDS has been contacted by judges in this jurisdiction who are concerned with the due process rights of defendants, due to multiple continuances. For some time, DIDS has been encouraging Lyon County officials to add a second-tier contract (or contracts) to their indigent defense plan. The county has reached out to several indigent defense providers, but initially none were willing to enter into a contract which includes mandatory appointments. In follow-up conversations, the county has been resistant to pursuing the matter further. Recently, however, after hearing the concerns of the judiciary, the county has revisited its efforts to contract with one or more attorneys to accept a minimum number of conflict cases each month. One law firm is currently in negotiations to begin a conflict contract starting January 1, 2023.

XI. Mineral.

Mineral County has contracted with a new attorney to act as their primary public defender. The contracted attorney, Kale Brock, was previously qualified to higher level cases under the condition that he would be supervised by a mentor. He was working under the supervision of Mario Walther. We have made inquiries of county officials as to how they are going to provide for this supervision. We are informed that Karl Hylin will take all category A cases.

The county renewed its conflict contract with Karl Hylin. Both contracts included mandatory LegalServer reporting clauses for both contractors. This has been a standing problem with Mineral County, and we are encouraged that the County included this provision. To date, however, we still have no reporting from Mineral. DIDS will continue to address the matter until the county comes into compliance.

XII. Nye.

As noted previously, Nye County recently increased the amount of its public defender contracts, from \$150,000 to \$175,000. And while the Department is encouraged that the Nye County Commissioners recognized the need to increase the value of the contract, other circumstances indicate that the increase was not sufficient to attract attorneys from nearby Clark County.

Nye County's indigent defense plan relies upon five independent public defender contracts. Two of those contracts were available for this fiscal year. (Nadine Morton moved to a Douglas County contract and Alexis Duecker did not renew her contract.) The Commission received only 3 applicants for those two spots. And of the two attorneys who were chosen to take the contracts, one of them immediately backed out of the contract after recognizing the size of the caseload he would inherit. The contract was opened again for applications. Three attorneys have applied again and the matter is on the agenda for the Commissioners meeting on August 16, 2022.

In the interim, the Department has had to manage the transfer of caseloads to the new contract attorney(s), but also had to redistribute a significant number of cases to appointed counsel when the second new contract attorney backed out of the contract. The unexpected withdrawal threatened to leave dozens of defendants without counsel for months before the position could be refilled.

Nye County has been an area of some concern for the Department. The primary reason for this concern has been the high volume of cases and relatively low fee structure. (For comparison, Douglas County public defender contracts now pay \$265,000 and the attorneys carry lower caseloads.) DIDS has been working with county management on ideas for restructuring the system. After this latest problem, and the added expense of paying appointed counsel to take over contract cases, it appears there is a willingness on Nye County's part to explore the creation of a county public defender's office.

A county public defender's office in Nye could offer a number of benefits over the existing system, including: a more stable structure that would offer consistent peer support and backup for court; legal assistants and investigative support for the attorneys; salaries, insurance, retirement, and possible student loan relief; a training ground for new attorneys, so that the system is more sustainable over time; and an overall more flexible system that can better accommodate the vicissitudes of normal events such as employee turn-over, illness, and vacations. The county understands that if they move to a county public defender system, they will also need to either create a conflict office, as well, or contract with private counsel for conflict services. DIDS is encouraged by these latest discussions that Nye County is moving in a positive direction.

XIII. Pershing.

There are two outstanding questions in Pershing County. The first one is that the total amount of defense-related expenses reported to DIDS for reimbursement for the fiscal year is \$195. It seems that either the Pershing County Public Defender is not hiring any experts or investigators, or this amount is underreported.

The second issue is that new information from the county regarding indigent defense expenses for FY 2018 have now been received. Pershing County's maximum contribution formula was previously based upon reporting for years 2019-20. The Board may need to adjust the county's maximum contribution amount accordingly.

Finally, Pershing County has expressed concerns to DIDS that there is some disparity between their budget, and thus their maximum contribution cap, and that of their similarly situated sister counties, Lander and Mineral. The complaint is that Pershing is being punished for having established a county public defender office prior to the *Davis* lawsuit. And so the county was spending more money on public defense, making their maximum contribution much higher than Lander or Mineral.

XIV. Storey.

Please see Carson City report. No additional information to report.

XV. White Pine.

White Pine County has a system similar to Nye County, only somewhat smaller. The county relies upon three contract public defenders to provide indigent defense services. Earlier this year, one of the contractors retired, leaving a gap that needed to be filled by appointed counsel until a new contract attorney could be secured. As Appointed Counsel Administrator for the county, DIDS had to manage the reallocation of cases.

Like Nye County, there was a false start in filling the open White Pine public defender contract, with one attorney initially agreeing to the contract, but then withdrawing. Eventually, after the position being open for over two months, an attorney agreed to take the contract. She also was not qualified by DIDS to take higher level felonies. The difference between the White Pine situation and Carson City's, however, is that there were no other fully qualified attorneys available in White Pine. The county entered into a contract with her, with the understanding that one of the other current contract attorneys would mentor her where necessary.

White Pine County officials have expressed interest in restructuring their indigent defense system. This has included a request from the county for an estimate to build a State Public Defender office in the county. The county is also aware of the need for at least a two-tiered system, to cover conflicts. DIDS has discussed the options of either a county or state public defender system with officials.

XVI. Recommendations.

Based upon the Department's experience over the last ten months, the following are recommendations for possible Board action and/or amendments to the Board's Regulations.

1. That all counties be required to implement at least a two-tiered indigent defense system to better manage the volume of conflict cases. This is especially true in rural areas where it is consistently a challenge to secure appointed conflict counsel in a timely manner.
2. That Municipal Court indigent defense systems, including conflict appointments and expense requests, be incorporated into the DIDS system of regulation, oversight, and support. (And the best path for accomplishing this.)
3. That additional considerations of parity should be considered in determining / amending certain counties' maximum contribution formulas, i.e., the situation in Pershing County.

Appendix H

Flyer for Homicide Case Training

STATE OF NEVADA

First Annual Defenders Homicide Conference

CLE General Credits

All Sessions will be broadcast
at the following locations:

Washoe County Public
Defender

Clark County Public
Defender

State Capitol Building
Old Assembly Chambers
on **9-28, 11-16 & 12-14**
Nevada State Capitol
101 N. Carson Street
Carson City, NV 89701
*10-26 will not be broadcast in
Carson City*

In Person Program:

9-28 & 12-14

Clark County Public Defender
309 S. 3rd Street
Las Vegas, NV 89101

In Person Program:

10-26 & 11-16

Washoe County Public
Defender 350 S. Center
Street 5th Floor
Reno, NV 89501

Sponsored by:

Nevada Department Indigent
Defense Services (DIDS)

Clark County Public Defender

Clark County Special Public
Defender

Washoe County Public Defender

Washoe County Alternate Public
Defender



September 28, 2022

Time: 1:30pm – 3:30pm

Registration Link (*registration is required to receive zoom link*)
https://us02web.zoom.us/webinar/register/WN_PIGM0CVhSqCtrlHxYgSMDg

The Homicide Appointment Process

Presented by: Drew Christensen & Marcie Ryba

&

Black Letter Homicide Law

Presented by: Scott Coffee & Jordan Savage

October 26, 2022

Time: 1:30pm – 2:30 pm

Registration Link (*registration is required to receive zoom link*)
https://us02web.zoom.us/webinar/register/WN_6T5pUa0ZQ9yzIJnsmXmUDg

Organizing the Homicide File

Presented by: Kate Hickman

November 16, 2022

Time: 1:30–3:30pm

Registration Link (*registration is required to receive zoom link*)
https://us02web.zoom.us/webinar/register/WN_EiYrYU4AT1WUFNPfiAbwwA

The First 100 days of Homicide Representation

Presented by: Marc Picker and Trish Tabet

December 14, 2022

Time: 1:30pm – 3:30pm

Registration Link (*registration is required to receive zoom link*)
https://us02web.zoom.us/webinar/register/WN_gRBuHnKgQ3WAU4LSidNZsA

How to Read an Autopsy Report What Defenders Need to Know

Presented by: Dr. Larry Simms