

# State of Nevada

## Department of Indigent Defense Services

### Board Meeting Minutes

Friday June 29, 2020

9:00 AM

#### Meeting Locations:

OFFICE	LOCATION	ROOM
VIRTUAL ONLY		

Public was able to access the following link: [Join Microsoft Teams Meeting](#) +1 775-321-6111  
United States, Reno (Toll) Conference ID: 978 202 646#

#### 1. Call to Order/Roll Call

Chairman Crowell called the meeting of the Department of Indigent Services Board to order a little after 9:00 a.m. on Monday, June 29, 2020.

A roll call was conducted and **quorum was established.**

**Board Members Present:** Mayor Bob Crowell, Laura Fitzsimmons, Rob Telles, Julie Cavanaugh-Bill, Joni Eastley, Jeff Wells, Drew Christensen, Kate Thomas, Chris Giunchigliani, Dave Mendiola, Justice William Maupin, Professor Anne Traum, Lorinda Wichman was not present.

**Others Present:** Executive Director Marcie Ryba, Deputy Director Jarrod Hickman, Jason Kolenut, Cindy Atanazio, Christine Phipps, Sophia Long and Franny Forsman.

#### 2. Public Comment

A letter from Kriston Hill, Elko County Public Defender, was received by the Department and submitted to the board for public comment. Chairman Crowell asked if everyone had received a copy of the letter.

#### 3. Request to Contract: (For Discussion and Possible Action)

- a. Request permission for DIDS to enter into a contract with the winning bid for a weighted case load study within the financial limit set forth in our IFC request.
- b. Request permission for DIDS to enter into a contract with the winning bid for a data analyst.

**Director Ryba** advised the Board the Department was requesting permission to enter a contract with the winning vendors. To make the Board of Examiners Agenda in August, the Department must enter a contract by July 7<sup>th</sup>. Director Ryba's wanted the Board to know that the Department will not be able to extend the money past the fiscal year end, June 30, 2021.

### 3. Request to Contract: (For Discussion and Possible Action)(continued)

**Director Ryba** advised that Christine Phipps, from purchasing is here to answer any questions and advise of options to get that money extended.

**Chairman Crowell** asked if any of the Board Members had any questions for Christine Phipps. Upon hearing no questions, he thanked her for coming and advised that she was welcomed to stay and observe.

**Chairman Crowell** stated that before I go back to public comment, he referred back to item number two and reassured Julie Cavanaugh-Bill they would get back to the matter quickly. Chairman Crowell wanted to know if there were any additional public comments other than the one that was received electronically. Chairman Crowell stated that they would take up any other public comments at the end of the meeting and to finish up on item three.

#### **Discussion:**

**Chris Giunchigliani** stated that she believed that time is of the essence and based on what they discussed at the last Board meeting that they could augment additional language to the contract. The concern was if we missed the opportunity this year, it would be a whole year and there would still not be a case load study. Chris Giunchigliani said she would be happy to make the motion when appropriate.

**Laura Fitzsimmons** stated she would second the motion.

**Chairman Crowell** wanted to clarify for the record that the motion included both the caseload study and the data analyst.

**Motion: To direct Director Ryba to enter into a contract with the winning vendors and proceed with further negotiations on what other areas could be used to make sure we have a collection of data for the State.**

**By: Chris Giunchigliani**

**Second: Laura Fitzsimmons**

**Vote: Passed unanimously**

### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)

**Deputy Director Hickman** stated that the original intent is to decide which language to send to the Legislative Counsel Bureau (LCB). There are questions as to whether they should go forward today with a sole attachment. We provided two versions of the language; one is per the discussion of the Board with a language requirement that would just be a blanket requirement to utilize the data collection case management system provided by the Department at State expense. There is a

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

couple of regulations that would impact that which could be tweaked a bit to make all the language work together. We provided a paragraph that explains the reasoning behind that language. The second option would be a financial incentive to the counties that if they decide to use the data collection case management system at State expense and, if not, that is a cost borne by the county. The downside is the main entry of the data which is a slow process and would make the real-time reporting aspect of LegalServer not necessarily report in real time. We would have to wait on the information and input it manually. In terms of time data that can be a very unruly process because time data is generally done on a case by case basis. There is a significant concern about the option language and manual entry on the part of the Department. With respect to the time requirement our recollection from the last Board meeting was that our instructions were to prepare language for presentation to the Board. Whether this is considered at this meeting or the next meeting, I believe it is right for more discussion.

##### **Discussion:**

**Chairman Crowell** requested the Julie Cavanaugh-Bill weigh in on this.

**Julie Cavanaugh-Bill** stated that Ms. Hill, the Public Defender in Elko County did a very articulate job writing down her concerns. Julie Cavanaugh-Bill also heard from the contract Public Defenders of White Pine County who are also using a different system and they have not had time to check out LegalServer. In the legislation there is the opportunity for the departments to weigh in if the counties are not providing the information that the Department needs. The Board can put in a corrective action plan and work with the counties to make sure they are doing it right. Julie Cavanaugh-Bill feels like option one would be wrong at this point and thinks that option two is written well and likes the fact that there is a financial incentive for the counties.

**Joni Eastley** wanted to know if Julie Cavanaugh-Bill was making a motion to adopt option two.

**Julie Cavanaugh-Bill** stated that if it is at a point in time for the motion, she would make the motion. Chairman Crowell stated the chair would take the motion to adopt option two and discuss it.

**Joni Eastley** said she would second the motion.

**Professor Anne Traum** requested the options be restated so she could be clear on what they were talking about.

**Deputy Director Hickman** provided a slide presentation and responded that the actual language reads "in counties whose population is less than 100,000 providers of indigent defense services shall use the data collection and case management system provided by the Department at State expense." Option two reads "the Department will provide, at State expense, a data collection case management system to providers of indigent defense services in counties with populations less than 100,000. Those counties may elect to require providers of indigent defense services to use the data collection and case management system provided by the Department. If a county elects not to require providers of indigent defense services to use the data collection and case management

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

system provided by the Department, the cost of data collection and case management system used by providers of indigent defense services will be a county expense and not included in determining a county's maximum contribution for indigent defense services."

**Professor Anne Traum** commented that it seems like one possibility is that a county could both opt out and defund. It seems like that one of the problems with option two is that it does give counties the flexibility to choose how to do their data but they could defund their data collection, so what happens if they defund their data collection?

**Deputy Director Hickman** stated that is an issue with this. One of the options a county could pursue is just not opt in at all and not make any requirements for data collection. Most counties do require some collection and the proposed regulations would require reporting a certain data. It will be the county's responsibility to ensure that the data gets to the Department if they opt out in the manner provided by the regulations but that is a possibility.

**Jeff Wells** stated he wanted to speak for Washoe and Clark Counties and if we adopt option two what do you intend for Washoe and Clark Counties?

**Deputy Director Hickman** said that Washoe and Clark Counties have always had an electronic case management system capable of producing the type of data that the Department seeks. The choice would be with what Washoe and Clark decide to do provided it is in format that the Department can use. The other component with option two was we would have to design an Excel spreadsheet that shows the data the Department is after in a manner in which it should be reported if you know which counties opt out.

**Jeff Wells** wanted to know if the State provides the case management system, are you including their integration with their DA's office and their courts? If you have a fully integrated system already and you are providing a new software for the rural public defenders, it does not help them if they lose the integration.

**Deputy Director Hickman** confirmed that there is no integration provided. The cost that the State will be covering under the Departments regulation will be for the provision of training and maintenance of the system.

**Director Ryba** stated that LegalServer is not integrated like JustWare, which will no longer be supported at the end of summer 2021. LegalServer does not have a system for district attorneys or courts where they can all be tied together. It is a system for public defender's timekeeping and case management system. There is an opportunity for data to be provided electronically. Documents such as police reports, etc. can be emailed and saved to the client's file. The Department cannot afford to migrate data from every county into the new system. When the Department reached out to the public defenders in the rurals, and there were maybe 10 to 12 different systems they were using. Due to the many different systems and the cost, it is not feasible for the Department to pay for the migration to LegalServer for the rurals. It will have to be done manually.

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

**Chris Giunchgliani** wanted to come back to what we are trying to accomplish. Collection of data from the public defenders as to what they are doing in all the counties and to get them all on one page. The fact that JustWare went out of business is not an issue because the counties will have to figure out how to intergrade with the courts and the DA's. The Board is talking about data collection for the public defenders and we need option one because it is time to get everybody on the same page. Chris Giunchgliani understands the rural counties concerns but option two does not get us there because it is too fluid. There is no protection for implementing for what we need to implement which is the data collection of time management for the public defenders in the rural counties.

**Rob Telles** agreed and said that if we do not get this data and we make it optional to participate that does not help with the mission. Rob Telles wondered if the Board could include a mandate that any software that these folks use for their case management be compatible with data extraction from LegalServer.

**Director Ryba** stated the Department reached out to LegalServer to see if that is a possibility. LegalServer said that it would have to be done manually unless it is coming from another LegalServer system. For example, if Clark and Washoe were to choose to go with the LegalServer system we can pay for a database where Clark and Washoe's data would be tied into our system. We would have no control over Clark and Washoe's system, but we would be able to get the data we are seeking. If everyone in the rural counties uses LegalServer, the Department could do snap shots of how many cases a person is working and determine the attorney's workload and see if things need to be shifted around. The Department would also be able to provide reports to the Board but that will be delayed ultimately if the Department must do manual input.

**Dave Mendiola** said he understood the issue and if the Board goes with option one in a perfect world that would be the best option. The reality is that somebody is going to have to input some data manually. If the Board goes with option one, Elko County is going to try to keep everything the same so that they can share information across those platforms. It will be up to Elko County to manually update some information back to Director Ryba and that is why Dave Mendiola personally likes option two. Humboldt County is looking at a similar situation as they have JustWare. The basic goal is Humboldt County will go with whatever the State wants unless it makes sense to stick with a different company. The bottom line is somebody is got to manually input something and whether you put that onus on the county, or you put it on the DIDS group, that is the decision here.

**Chris Giunchgliani** wanted to know if we can do a combination because with the option one requirement people hate mandates. By taking a portion of option two with the financial incentive it is not an unfunded mandate.

**Rob Telles** stated that we are in a situation where we have an answer for this lawsuit and thinks option one is it. Rob Telles does not know how the Board can get around that but if the Board is providing LegalServer to folks, is that the best option for most folks? Will it fit most counties needs and is there anything else that a county would need that is not provided by LegalServer? Could we

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

potentially just have them use LegalServer as their case management software so there is not any double input as they go along?

**Director Ryba** advised that the Department had not heard specifically of county needs other than they would like the data migrated. The Department does not have sufficient funds for data migration. Kriston Hill's letter expressed concern that this will be a cloud-based system where some counties are concerned that they may have slow internet and may not have the software system at all points when they need it.

**Justice William Maupin** said this dynamic that everybody is discussing in this meeting is not new. The administrative office of the courts and its funding from the Legislature and unfunded mandates to the local court systems are inactive all the time. Every time the Supreme Court of Nevada enacts a new rule of civil procedure it creates an unfunded mandate. The fact is at some point all these individual interests are going to have to be reconciled. Justice William Maupin said that with his experience as a former Chief Justice and dealing with these locals per State issues the Board is just kicking a can down the road. You have counties that do not have the resources necessary to keep up the technological side of running the court systems. So, option one is at this point something in term of a long-term benefit that seems to be what we should do but it does not sound like we are ready to approve one or the other. Justice William Maupin thinks there needs to be some sort of a meeting with all the constituent groups to see how this could be reconciled and does not know whether we are ready to vote on this.

**Julie Cavanaugh-Bill** stated she agreed with Justice William Maupin that the Board is not ready on either but, if the staff needs to move this forward, then the Board should go with option two. If a county is not complying and not meeting the requirements of the information provided than a corrective action can go into play for that county. In terms of them having to put the information in, Julie Cavanaugh-Bill thinks the Board should look at budgetary issues and maybe have a staff member responsible for the data entry in the Department instead of putting that on the county. Julie Cavanaugh-Bill said that it would be fine to table this until they had time to discuss with the counties. Julie Cavanaugh-Bill said her motion would be for option two or suggested the Board table it so there could be the type of meeting the Honorable Justice William Maupin mentioned.

**Chairman Crowell** asked for further discussion and does not think there is a problem delaying it until another meeting in July. The issue is that option two does not bring uniformity of all the counties about data collection. The Board can re-drill this thing until the next meeting but, encourage everybody including Elko County that if they do not want to use the State wide system which the law required, they come up with an idea of how they expect to participate in the system if they are not going to do the data collection.

**Justice William Maupin** said that every year the State Supreme Court provides a written report to the Legislature on the state of the judiciary. It has all sorts of statistics and other stuff from all the counties. Justice William Maupin would guarantee you that if you give latitude in putting data in that even if you put in all sorts of protocols in place, you are going to get qualitative data which then

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

gives you different qualitative data from every different county. That is a problem we have had every single year gathering this information about how many cases are prosecuted, etc.

**Director Ryba** said the Department was hoping to get this to the Legislative Counsel Bureau by June 30, 2020. Then once we receive it back and have the workshop it could possibly become a permanent regulation. If the Department submits this after June 30<sup>th</sup>, anything the Department receives back would be a temporary regulation. It would have to be redone to make it a permanent regulation later.

**Laura Fitzsimmons** questioned if the Board could send both options to the Legislative Counsel Bureau and have a workshop and say A or B. Laura Fitzsimmons wanted to know if it would be possible to put in the contract for private attorneys that will be providing indigent defense in the rural counties that as part of that contract they either use the system provided by the State or do the data input so it does not burn out the DIDS staff. In any event and for various reasons, Laura Fitzsimmons supports option two.

**Director Ryba** stated that a model contract had not been created yet, because the Department is waiting for the regulations. That would be an option to add that language into the contract if the Board wanted.

**Deputy Attorney General Sophia Long** said that both options could not be submitted to Legislative Counsel Bureau and would be kicked back because they cannot make the decision that is a decision for the Board.

**Chris Giunchigliani** stated that option one is fine because this is not a traditional unfunded mandate from the Legislature. There is funding for the program if the people choose to play by the right rules. If you choose to wait there is no way to say that the next session, they can undo it. They could say you are doing it and we are not paying you anything. So, you must look at the risk that are there if you do not carry it out as intended. Say you are doing it as a requirement, sometimes you have to require somethings, but it is not a traditional unfunded mandate. In my opinion an unfunded mandate would legislate you to say too bad you are going to do this. They put together funding to go with a program that we believe will coordinate the State. Justice William Maupin said that this is a point he was not considering when he made his last comment. If you are going to have the budget redo for the next Legislature, then you need to vote on one of them today. Option one is the best way to go but the problem is in the current environment option two might be better than nothing and it avoids voting on something today and will avoid having to start all over again in the next budget cycle.

**Jeff Wells** said they should take a quick roll call, and everybody say option one or option two and he would like to help Deputy Ryba get something put in and obviously you cannot send both. Jeff Wells stated that he would be going with option two but is curious as to how big the divide is with the Board or does it need to be pushed to another day.

**Joni Eastley** asked if that was like polling the Board and is that legal?

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

**Jeff Wells** said we are doing it in a public meeting, so it is legal.

**Julie Cavanaugh-Bill** said there is a motion on the floor.

**Joni Eastley** stated there is a motion and a second.

**Rob Telles** said I think we should table that motion.

**Deputy Attorney General Sophia Long** stated that since there is a motion on the floor whoever made the motion and the second would need to withdraw the motion and the second. Then you would be able to poll the Board or if you want to keep the motion, it is basically a motion so even if you poll the Board or if the Board votes then it turns into a vote.

**Chris Giunchgliani** stated that if you do the motion, stick with it. Chris Giunchgliani preferred option one but if you go with option two there is no language in that regulation with regards to defunding and we are all back to a whole another issue that comes into play so that language needs to be clarified. Chairman Crowell requested that Chris Giunchgliani restate what she just said. Chris Giunchgliani said that Julie Cavanaugh-Bill brought, or somebody had asked what happens if county says forget it, we are not going to fund it and we will defund it. There was no protection in that regulatory language that you are moving forward to anticipate that so you may need to add something if option two is the one that carries.

**Jeff Wells** asked would not the protection be the rest of the statute which allows the Board to adopt a corrective action plan for the county if they do not do that?

**Joni Eastley** agreed.

**Chris Giunchgliani** said that after so many years watching laws be made and corrected plans nobody ever goes back and reads them. Nobody realizes that stuff was not followed through so it becomes more delay and more work for people just because they could not come to a consensus.

**Joni Eastley** said the difference is we do have a staff that is going to do that and she clarified that she was talking about the DIDS staff. That they are the ones who will implement the corrective action plan and follow up to whether or not it was adhered to and they are backed by this Board.

**Chris Giunchgliani** said then we will see if the ACLU accepts any of this because the ACLU may think that it is just circumventing what they thought they were going to get.

**Chairman Crowell** suggested putting this off until July 22, 2020, if the makers of the motion and the second want to do that. If that is the case, the motion should include that Elko County come up with a regulation that works for Elko County and the State and the Board will take that up for discussion along with the other one at the July 22<sup>nd</sup> meeting. Elko County gets to write a regulation for the whole State and how it is going to work. Come up with a way to make it work under existing



#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

law AB 81 and then we will discuss that one and discuss option two on the 22<sup>nd</sup>. It means that we will be in the business of adopting a temporary regulation because that is what the Legislature rules say. The Board needs to get over this hurdle about people not wanting to join the system. If they do not want to join, then come up with an answer.

**Drew Christensen** said what appears to be the controversy with option two is with counties that already have an institutional office. Counties that do not have an institutional office should want to use LegalServer. As part of a contract the Board could require private attorneys to either input the data for the benefit of the Department or they send the data in a format that the Department likes and the staff can input it. The discussion between option one and option two is for jurisdictions like Washoe, Clark and Elko and other counties that have institutional defenders with a case management system. The Board's goal is to track the defense information. It is going to be up to those lawyers in those counties that have a contract to either input the information into LegalServer because we are providing it to them for free or keep the data in a format that the Department likes so that staff can input the data. It is noted that Elko has some concerns about having to switch their JustWare to LegalServer. Clark is having the same concerns, and a small portion of the counties statewide do not have any case management systems. The focus is on the defense aspect because the courts case management system tracks everything and the Board's goal is to track the caseloads and time these defenders in these various counties are working on their cases. Why wouldn't the county want to adopt this as part of the contract with LegalServer if they are getting it for free? Drew Christensen stated he would support option two because of caveat of institutional concerns. Many of these counties that do not have software that is strictly focused on defense work.

**Rob Telles** thinks that option two would be a compliance nightmare. To try and hold a county accountable when those folks providing indigent defense services decide not to utilize the system. A lot of work is going to be spent trying to deal with the situation, so option two is a little too ambiguous and will cause a lot more headaches for everyone involved.

**Jeff Wells** asked the Chairman Crowell if he could call a question.

**Chairman Crowell** said he would call a question absent anyone wanting to withdraw the motion and delay it to July 22, 2020, the next meeting. That is two separate motions, the motion that we are on right now which is to adopt option two as is or not, or option one.

**Laura Fitzsimmons** wanted to know if the Board chose option two today, would that foreclose the Department from requiring as a condition of the contracts that private providers still be required to use this system. Could this stop the DIDS group from saying that as part of the state contract you must submit your data to the Department in this format?

**Director Ryba** said it may be inconsistent. What the Department is requesting today is permission to send this to the LCB so possibly after a workshop it could become a permanent regulation. We are not adopting this for any reason other than just permission to send it off and it might be completely changed after it comes back from LCB.

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

**Chairman Crowell** stated that he agreed with Director Ryba that regulations can be changed. The problem going down this road is the Board should not send something to the LCB that this agency is not certain that the Board or Department wants. If the Board is still debating how the regulation should read, the Board should not put LCB in the position of trying to make a regulation which is the Board's job. It is job of the Legislature to review it for consistency with the law, etc. On the agenda the Board has two options, one is to take a vote on motion we have and see how that goes and if that fails take another one to put this back on July 22, 2020. Somehow, the Board must move along, or the Board can talk about this forever. At the last meeting I thought that uniformity was a bridge we already crossed, but apparently not. The Board needs to move along so let us see where we go on the motion. Any discussion.

**Rob Telles** asked if the Board was going to go ahead and force a vote or do, we still want to think about withdrawing this motion or to table it?

**Chairman Crowell** wanted to know if the Board wanted to go down that road or the maker of the motion or the second can do that, or we can push it out to table it.

**Deputy Attorney General Sophia Long** stated that you already have a motion on the floor so you cannot do a motion to table because there is already a motion on the floor. Either the person who motioned and the second need to withdraw the motion or the motion must fail to do another motion.

**Laura Fitzsimmons** said that the prime directive here is realizing what Director Ryba and her Department are up against from all directions. Laura Fitzsimmons understands that Director Ryba is just asking to get something to LCB today, so the Board and Department are not placed with a temporary regulation. If the Department sends it to LCB before June 30, 2020, then we have our workshop and it could possibly become a permanent regulation. Laura Fitzsimmons asked Director Ryba what would be the best for our mission considering the lawsuit?

**Director Ryba** said our concern is uniform data. If you do not have one system where you are collecting one thing you will have inconsistent data.

**Laura Fitzsimmons** concluded that there does not appear to be a middle path. If you change option two today, Director Ryba's staff is going to have more budget cuts and more work no matter what we do, and they are going to be reaching a breaking point. Do the people who made the motion and second adopt option two have anything they can articulate which would say that we cannot in option two say for the counties with institutional defenders they can pick and that would carve out all those counties that have six or seven guys doing their own thing.

**Deputy Director Hickman** agreed with Director Ryba that from a purely data driven stance, option one is the way to go to ensure uniformity. However, what you are proposing given the sophistication of the systems that Washoe, Clark, Elko and Humboldt will likely end up with that is probably the better path. If the Board and Department can amend it to require contract defenders to use the system provided by the Department and then specify the format from the institutional offices.

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

**Laura Fitzsimmons** requested to know if the persons who made the motion and the second have an objection to adding that language in.

**Joni Eastley** stated that she made the second and did not have a problem with that and noted Julie Cavanaugh-Bill had gone to court.

**Deputy Attorney General Sophia Long** said that it was her understanding that the person who made the motion had left the meeting. The only option you have now is your motion is on the table as it is.

**Professor Anne Traum** had a question about the lawsuit and the timing of compliance with LegalServer. If that is the system that is being used, do either the lawsuit or regulations that we have already proposed require uniformity of data?

**Director Ryba** confirmed that part of the NRS 180 is that we must collect uniform data but, the way we collect it was not set forth. The settlement has not yet been finalized and we agreed to start collecting data.

**Professor Anne Traum** stated that it seems like option one creates that uniformity of data and that option two is going to create a possible problem. It either creates a data problem or creates a huge workload problem. That even if you do the work you might not be able to recreate the data if it was not tracked in whatever system that the Public Defender's office is using.

**Rob Telles** said that as a matter of housekeeping the Board needs to vote the motion down unless the Board is going to continue the discussion within the motion because it sounds like the Board has no option of amending it.

**Jeff Wells** suggested that the Board do what Rob Telles said and vote down the current motion. Then Laura Fitzsimmons can make the motion to go with option two with the amendment that the providers in the non-institutional counties will use this system. Then the Board can have a mandate for part of one and have the balance of making it discretionary for the institutional counties and move forward with that.

**Chairman Crowell** wanted to know if there was further discussion on the motion or state your name for the record and all in favor say yes or "I" on the motion.

**Motion: Julie Cavanaugh-Bill made the motion to adopt option two of the proposed regulation requiring use of the State Provided Data Collection and Case Management System.**

**By: Julie Cavanaugh-Bill**

**Second: Joni Eastley**

**Vote: Motion Failed**

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

**Director Ryba** reminded the Board that pursuant to NRS 180.320 (d)(3) the language reads, “That the Board must establish standards to ensure that the attorney to provide indigent defense serves tracks and reports information in a uniform manner.”

**Chris Giunchgliani** stated that she did not want to beat a dead horse but with the potential of the next motion are we still not really in compliance. Chris Giunchgliani is trying to figure out why the larger counties cannot figure out how to do this. This is only capturing the Public Defender’s office and is not affecting the DA’s or the courts. Chris Giunchgliani is trying to understand why we just would not require the uniformity which is what the statute requires and gets the Board and Department the data on what is going on out in the rurals.

**Drew Christensen** agreed with Chris Giunchgliani but thinks some of the larger counties that have case management systems are also in discussions. Clark County is trying to join the courts and DA’s to make processing smoother. Drew Christensen does not think that means the counties still cannot provide the data to Director Ryba’s group in the format that LegalServer wants. Drew Christensen knows for example that if Clark County took LegalServer they do not have a product that migrates the current information or a product that would merge with the courts and DA.

**Chris Giunchgliani** stated that it makes good sense if your trying to get to the model where Elko is at. If Laura Fitzsimmons makes the motion to approve option two with the amendment to the institutional or non-institutional, is the language going to be clear enough to work for our collection.

**Professor Anne Traum** said that the word uniformity is sticking in her mind and wondering as to the lawsuit if there is a way to provide technical support. Professor Anne Traum realizes no one is going to have money but technical support to make sure the counties and the institutional offices can do LegalServer and the input that is required. Is there a possibility in terms of rolling this out it may violate the statute, or it significantly shifts information of work burden to the Department? The concern is this going to result in non-uniform data because when the data is not captured where it needs to be captured it will not exist and cannot be recreated.

**Director Ryba** confirmed that training was included in the LegalServer contract so that all users will be trained on the system.

**Justice William Maupin** wanted to know if the idea is that the system captures the same data by every entity that provides indigent defense services in the state including the big counties, middle sized counties, and the smallest population counties.

**Joni Eastley** stated she would like to hear from Jeff Wells and Kate Thomas in terms of Washoe and Clark Counties and how they would answer that.

**Jeff Wells** said that obviously the intent of the statute is to have a uniform set of data and is not convinced that there is only one software program that exists that can still calculate a uniform set of data. Once the Board and Department have a good case load definition in case type definition etcetera, then there are multiple software programs that can do it. A modification is worth

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

considering because if the Board is considering forcing the option this seems like the wrong time to do it. The counties are worried about their own budgets and this would be the wrong time to get unnecessarily confrontational. If the Board goes with option two with a modification that in counties that do not have an institutional public defender's office that the Board could mandate that individual providers use this case management tool. Jeff Wells thinks we have accomplished a huge chunk of our goal of what even the *Davis* lawsuit was trying to do was addressing those counties that do not have institutional providers and have contracts. This could be the best of both worlds without actually fighting with any of the counties.

**Professor Anne Traum** asked if we were going to have a regulation that specifies the data that is required?

**Deputy Director Hickman** confirmed that the regulation that specifies the data was already pending at the LCB.

**Professor Anne Traum** said the Board could require the data as required in the regulation and that it be part of it is to in graph in option two the way it is being proposed. Just that data needs to be submitted in the way that the Department wants so it is useful.

**Chairman Crowell** said suppose the Board took the first sentence of option two and put the Department will provide at State expense a statewide uniform data collection and case management system to providers of indigent defense service in counties with populations with less than 100,000.

**Director Ryba** said the reason this whole discussion came up is because counties have been asking if they will be required to use the system. The Department does not know the answer, and therefore the Department is reaching out to the Board. The Department is just looking for an answer as to whether the counties are required to use it or not.

**Chairman Crowell** stated that then the counties are going to have to want to spend their own money on their own program, or they are going to let the State pay for it. Chairman Crowell did not know any other way out of the conundrum because AB 81 and the settlement agreement really look for uniformity.

**Chris Giunchigliani** said you also risk the speaker saying forget it and I will mandate it and I thought it was made clear you do not get any money for the counties. Let them do it on their own and you must be careful in this climate of minimal dollars and how people react.

**Rob Telles** wanted to know if there is any way that we put to the counties the requirements, the data points you want, the formats that want and if their systems can't deliver it then require them to use LegalServer.

**Joni Eastley** stated that she can only speak for Nye County and Nye County is totally supportive of going with whatever the State or Board chooses. Their only concern is the data migration and that is what you are going to find from most of the counties.

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

**Chairman Crowell** suggested that the item be moved to July 22<sup>nd</sup> so the Board can put more thought into this, or the Board can take Laura Fitzsimmon's motion to go forward and see where it goes.

**Joni Eastley** stated that before we move on that, there is an agenda item to cancel the July 22<sup>nd</sup> meeting and the Board should get that out of the way before we decide what we are doing with this.

**Chairman Crowell** said the Board will just say at the next regular meeting as we did not anticipate this, but we will make sure that everybody gets a full chance anyway.

**Justice William Maupin** said that the fiscal year ends on June 30<sup>th</sup> and if this is moved over what does that do to our funding if this is moved over into the next fiscal year?

**Director Ryba** responded that the Department will have until probably March or April when this system will actually be able to be used. Under the contract terms it will be for up to 100 users, sufficient for all rural attorneys and one support staff to use the system which we budgeted in. The Department could wait until we make this regulation until the system is rolling out so that we can show it to individuals. By that time, the Department should have a regulation done as to what mandatory reporting there will be. The Department asked because as it says in the Elko letter certain counties are looking at what to do to replace JustWare. Director Ryba thinks that is going to cost money to replace it depending upon whether or not the counties are required to use this system or not.

**Justice William Maupin** concluded that we have three choices. Either use the State provided computer mechanism, adapt their software so they can put the same data in that are trying to retrieve or by manual inputting the data. Am I right about that?

**Director Ryba** said the Department would be manually inputting what they report in LegalServer as they provide it to us.

**Justice William Maupin** stated that Jeff Wells is right because you can either add existing software to give you the information that you need, or you can do manual input. It sounds like in a perfect world option one is the way to go but this is an imperfect world. Given the budget restraints the Board is going to need some sort of hybrid to be moved forward and that sounds like Laura Fitzsimmons' motion.

**Chairman Crowell** stated because it is difficult to do this electronically, we are talking about words that are still up in the air and not in print. As Chairman, the Board will table this discussion until the next regularly scheduled meeting and come up with some language from Elko, from the State or anybody else who wants to put it out there. We will talk about that at the next meeting otherwise; we are going to be re-inventing the wheel. The law is clear the Board must require a statewide uniform system of data collection. Unless there is an objection, the Chair will take a motion to table the motion until the next regular scheduled meeting with the instructions that people come back with their own ideas and how to solve this enigma.

#### 4. Propose Regulation Requiring Use of State Provided Data Collection and Case Management System: (For Discussion and Possible Action)(continued)

**Motion:** To table this item until the next regular scheduled meeting.

**By:** Laura Fitzsimmons

**Second:** Joni Eastly

**Vote:** Passed unanimously

**Chairman Crowell** wanted to make sure that the people go back to their counties as this is not one where we can kick the can down the road continually. People need to come up with some ideas. It is easy to come up with objections to the rules and it is harder to come up with rules that meet those objections. Let us just do our best and come to a conclusion before the next meeting.

#### 5. Discuss the Budget Reduction/Proposal: (For Discussion and Possible Action)

**Director Ryba** advised the Board that Jason Kolenut was there from the DID's office to share a power point presentation regarding some concerns that have been brought up with our current statute. We have a deadline of September 1<sup>st</sup> of this even year that we must submit our budget. Once our budget is submitted to the budget division, they can request changes any time after we submit it. This budget build is confidential pursuant to NRS 353.205(3) but this is conflicting to our current statute. Pursuant to NRS 180.410, the Executive Director must establish and submit a proposed budget for approval of the Board and pursuant to NRS 180.320 the Board shall review and approve the budget for the Department. I have forwarded this question to Sophia Long from the Attorney General's office and it still appears that although we can discuss overviews and what we are looking for in our budget we are not allowed to share specific numbers with the Board as to what we are asking for. The budget does not become public until the Governor passes it to the Legislature when the session goes in. Jason Kolenut will explain a little bit what goes into the budget build and what ultimately, we are going to be asking for in the next budget and then at the end of the presentation we will be seeking recommendations from the Board. We are also going to be asking the Board to approve our proposed budget and allow us to make any changes requested by the Governor's Finance Office without having to bring it back to the Board. We wanted to update the Board on what we are planning to request and then have the Board approve our request.

**Management Analyst Jason Kolenut** stated that there are three categories to the budget, base budget, adjusted base, and enhancements. The overview of the base budget for the Department of Indigent Defense Services which is going to be two times our cap limit in the second year of this biennium, FY 21. We have \$925,000 and basically everything that we will build will have to stay within two times that number, 1.85 million dollars and anything above that would become an enhancement. The base budget will include seven positions that we currently have and I will look to requesting additional funds for all the categories, as discussed in the last meeting such as out of state travel, state traveling, operating, IT services, commission travel and training categories. I will try and fit everything into the previous slide show M-150 if it falls within that 1.85 million it stays within that base in the M-150. Additional requests will be enhancements or items with special consideration. We are looking at a death penalty or appellate unit and looking at potentially six positions which would be two death penalty attorneys, appellate attorney, supervising legal secretary, mitigation specialist and chief investigator. The Department will also build in travel, equipment, office space and everything that would be needed for those positions. We will also be

## 5. Discuss the Budget Reduction/Proposal: (For Discussion and Possible Action)(continued)

building in a request for counties based on the current proposed formula for maximum contribution which we are still waiting to hear back from LCB and additional training for rural attorneys.

**Director Ryba** stated that we did submit a proposed regulation that counties could opt into the Nevada State Public Defender's office for a death penalty case as well as appellate work. We met with Karin Kreizenbeck at the Public Defender's office and went over the positions. She felt that these would be appropriate to meet the needs and obviously the amount of death penalty attorneys would depend on how many death penalty cases they have. It is my understanding that the Public Defender's office in Las Vegas assigns two death penalty cases to an attorney. If these two attorneys split up, we could handle four death penalty cases. The appellate attorney was looking at their current staff and how many appeals were filed with the Supreme Court over the last year. Using the American Bar Association (ABA) standard of 25 appeals per person they would need one additional person. They would need a supervising secretary to handle the attorneys, a mitigation specialist to assist with the death penalty cases. Currently there is no mitigation specialist in the Public Defender's office. They do have two investigators, but a chief investigator with a higher level of ability to assist with the more complex cases and would allow someone with a higher level of ability to also train, monitor or supervise the investigators that are currently in the office. That is the proposals of what we plan to build in and are requesting recommendations of things that the Board members feel we should add as an enhancement decision or add to our current budget.

### **Discussion:**

**Justice William Maupin** had a question and wanted to know in counties other than Washoe or Clark how many death penalty cases they are getting in the rural counties? Some counties elect to not seek the death penalty case because of the cost involved and others ask for help from other counties.

**Director Ryba** responded that Churchill County believes they will have an upcoming death penalty case and they are very interested in having the Public Defender possibly take it over or to pay for it if the regulation passes. I believe that we talked about an Elko County case where they talked about a death penalty case that is now negotiated. There is a case in Ely where the highway patrolman was shot, and we were hearing it could possibly be a death penalty case. There may also be one in Lyon County.

**Justice William Maupin** said that answers his question as to whether this was adequate resources and it sounds like it is.

**Director Ryba** voiced that another concern from within our department is the pay we can pay a death penalty attorney. It is not competitive with Washoe County or Clark County. We do have a proposal to pay these death penalty attorneys a higher salary something consistent with a chief attorney general or solicitor general on that pay scale. We believe that will make us more competitive to be able to pull attorneys in with this level of knowledge that is necessary to be a death penalty attorney.



## 5. Discuss the Budget Reduction/Proposal: (For Discussion and Possible Action)(continued)

**Chairman Crowell** wanted to know what Chris Giunchgliani thoughts the odds are on the six new positions. Chris Giunchgliani said that she is part of the death penalty coalition, so I am somewhat prejudice that they get rid of it this year. Chris Giunchgliani really would not want to encourage that by hiring staff personally.

**Director Ryba** said the concern of the Department and Karin Kreizenbeck, the Nevada State Public Defender is this Board is proposing which is consistent with the Nevada Supreme Court that the rural death penalties come within the Nevada State Public Defender's purview, and there is insufficient staff to cover it.

**Justice William Maupin** said it sounds like if you want to get rid of the death penalty put something like this into place and say in order to be able to do this you are going to have to spend more money. Maybe that will stimulate the ultimate fiscal discussion about how the death penalty does not make sense from a State fiscal responsibility. Basically, the death penalty is a life sentence because no one has been executed since the last volunteer in the 2000s when Governor Guinn was Governor.

**Chairman Crowell** said it looks like this is one of those things we are not certain we want to make any changes to what Jason put forth right now because the money stuff we can work around once it gets into the system. Chairman Crowell thinks we should ask for the right thing because it is going to be tough in this environment to add positions. The Board can address that if we get the authority to put that in the budget.

**Laura Fitzsimmons** is concerned because it is my understanding one of the things that factors into a charging decision by any DA's office is the cost of going as a death penalty case. Laura Fitzsimmons agrees with Chris Giunchgliani that we do not want to encourage more death penalty cases and although the Supreme Court has limited the aggravating factors is concerned that just to get the financial burden of a murder case that would not otherwise be a death case on to the State and out of the counties. Laura Fitzsimmons does not want people thinking okay we will charge a death penalty case because then the States going to pay for it. But if we have a further conversation about that, it should go in.

**Director Ryba** stated this is where we are requesting that the Board approve our proposed budget and allow the Department to make changes as needed without bringing this back to the Board due to the requirements of confidentiality. When the budget is no longer confidential, we can bring it back to the Board for further discussion but that will be after it is at the Legislature.

**Chris Giunchgliani** wanted to confirm that the budget would include staffing for a death penalty unit.

**Jason Kolenut** confirmed that it would be an item for special consideration. It is something that will be built in the budget but if it does not have support from the Governor and from the Governor's Finance office it will not go to the Legislature. The Department is just asking for the Board's approval to build this into the budget for special consideration.

## 5. Discuss the Budget Reduction/Proposal: (For Discussion and Possible Action)(continued)

**Chris Giunchgliani** stated that she would have to vote against this because she thinks it will encourage it. Chris Giunchgliani would rather see it not put in and if somebody wants to fund it then let them find the money during the next session.

**Professor Anne Traum** said she did not know what the appellate statistics look like but suspects that not many appeals are coming from the rurals compared to what could or should be. Appellate oversight or appellate review could be something encouraged. Professor Anne Traum wonders if there is a way of shifting positions of attorneys generally without the death penalty label? Can we ask for attorney positions that are death penalty qualified for the Department to assist with overall support of appellate review and support of defense around the state?

**Director Ryba** stated that the Department did not need to call them death penalty attorneys. The concern we have is the level of skill or background that you need to be able to take these cases. The Department does not know if we can get these attorneys into the Public Defender's office because the Public Defender's office pays less than Clark and Washoe Counties. That was a concern unless we increase the pay scale. The Department would need these requirements and that was the reasoning for increasing the pay scale.

**Chairman Crowell** said that the idea here was to release the potential financial load on the other counties who do not have the State Public Defender. It will release some of the cost if they get a murder case. Chairman Crowell thinks we kind of avoid them having to pay for that and the State pays for that.

**Justice William Maupin** confirmed that Chris Giunchgliani made a very good point that if you put something like this in it may encourage the death penalty activists that are in favor of the death penalty. You could put it in and try and get money in the next legislature and when that goes up for consideration and they do not have the money for it then at that point centering the overall debate about the death penalty. There is no question that you need this if you are going to have death penalty cases handled by the State Public Defender because these lawyers are hard to find. So, you put it in because you need it and you may not be able to get but it will create a whole series of very interesting debates that are conducted as a matter of public policy.

**Chris Giunchgliani** said if public policy wants to move forward, let them have the money in if it is important enough. Chris Giunchgliani just does not like enabling it in this day in age.

**Professor Anne Traum** stated that the Chairman made the point that one of the reasons to have additional attorneys in this office is to cover the additional counties that the Public Defender's office does not cover. It seems like you might need those attorneys that are highly skilled to step in and help and provide support with the more complex cases. It would be unfortunate if the death penalty was a trigger for getting that higher level of support and is any way to reframe it as a way of providing a high level of support in complex cases to counties that is not death penalty connected?

**Justice William Maupin** referred to the 1997 legislature that the court obtained a whole bunch of resources and one was a funding for a death penalty coalition of criminal defense, but that death

## 5. Discuss the Budget Reduction/Proposal: (For Discussion and Possible Action)(continued)

penalty decision handles all life sentences. So, instead of calling them death penalty attorneys you could call it complex litigators dealing with life sentencing cases so you can get rid of this toxic language.

**Director Ryba** said that an issue we are going to have is that one of the proposed regulation at the LCB is that a county can opt-in to have a death penalty case covered at State expense by the Public Defender's office. The Public Defender's office does not have the staff sufficient to cover that and that is a concern if that regulation passes and counties opt-in and we do not have these attorneys. Another question is if we do a complex litigator there is significantly more life sentence cases that happen in all counties so would two attorneys be sufficient to assist or should we build more than two attorneys into the budget?

**Chairman Crowell** said what is happening here is we are using our office as not just an oversight office and coordination office, we are paying people to put boots on the ground out in rurals and anywhere out in Nevada. Chairman Crowell understands where Chris Giunchigliani is coming from and not wanting to promote the death penalty, and this is probably not going to proceed. Chairman Crowell is not sure about six new positions and how important this is but maybe Craig Newby can help us work through this.

**Justice William Maupin** voiced concern that if you have a category called death penalty lawyers provided at state expense then they are going to start charging death penalty for these murders.

**Chairman Crowell** said it is up to the Board to decide if you want to put it in the budget, but it probably won't get funded.

**Laura Fitzsimmons** stated it also contributes to a good because if it is not funded then the points made and if it is funded, I guess we deal with it. Laura Fitzsimmons is not sure but anticipates the next session there is going to be vibrant conversation about the whole criminal system and it may include the death penalty. If there is an understanding of the financial cost on a State level, this should be a reminder of that. If we do not have overreaching Criminal Justice Reform and we continue to charge the death penalty without review. Washoe and Clark Counties, have it and you are going to have to pay for it.

**Chairman Crowell** suggested that we finish the discussion on the budget and come back to this item and we will have a motion to put this all together.

**Director Ryba** stated that we change from death penalty and call it a complex litigation and make a requirement that they be death penalty qualified. Our concerns are that we get the Board's approval of our proposed budget. Our budget is technically confidential and other agencies only have to get recommendations from their Board. It is unknown why ours needs to have the approval of the Board rather than recommendations. At this point, we would ask for either additional recommendations or approval of this budget and that we be allowed to go forward and comply with the Governor's Finance office as necessary without bringing it back to the Board.

## **5. Discuss the Budget Reduction/Proposal: (For Discussion and Possible Action)(continued)**

**Motion:** Motion for the Department to submit their proposed budget to the Governor's Finance Office and be allowed to make changes without bringing back to the Board for approval.

**By:** Laura Fitzsimmons  
**Second:** Jeff Wells  
**Vote:** Passed unanimously

## **6. Discussion on Future Meetings**

**Motion:** To vacate the July 22, 2020 meeting and set for August 27, 2020 at 1:00 p.m.

**By:** Jeff Wells  
**Second:** Joni Eastley  
**Vote:** Passed unanimously

## **7. Public Comment:**

There were no public comments from either North or South.

## **8. Motion for Adjournment**

**Motion:** To adjourn meeting till the next regular scheduled meeting.

**By:** Laura Fitzsimmons  
**Second:** Drew Christensen  
**Vote:** Passed unanimously

**Chairman Crowell** adjourned the meeting at approximately 2:50 p.m.