

State of Nevada
Department of Indigent Defense Services
Executive Board
Meeting Minutes

Friday May 8, 2020
1:00 PM

Meeting Locations:

OFFICE	LOCATION	ROOM
VIRTUAL ONLY		
VIRTUAL ONLY		

Public was able to access the following link <https://bluejeans.com> passcode 622 861 059/1426 to access and view live feed.

1. Call to Order/Roll Call

The Chairman called the meeting of the Department of Indigent Services Executive Board to order a little after 1:00 PM on Friday, May 8, 2020.

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

Board Members Present: Mayor Robert Crowell, Professor Anne Traum, Laura Fitzsimmons, Rob Telles, Julie Cavanaugh-Bill, Joni Eastley, Jeff Wells, Drew Christensen, Dave Mendiola, Lorinda Wichman, Kate Thomas, Chris Giunchigliani made several attempts to join but, was unable to connect. Justice William Maupin was not present.

Others Present: Executive Director Marcie Ryba, Deputy Director Patrick McGinnis, Deputy Director Jarrod Hickman, Alexis McCurley, Cindy Atanzio, Craig Newby, Franny Forsman, Christiana Dupont, Aden Kebede, Samantha King, Zachary Meyer, Misha Ray, Amanda Stafford, Graceanne Warburton, Kriston Hill, Karin Kreizenbeck, Deputy Attorney General Asheesh Bhalla.

2. Public Comment #1

There were no public comments from either North or South.

3. Approval of February 28, 2020 Minutes (For Possible Action)

There were no corrections or changes to be made on the Minutes.

Motion: Approve February 28, 2020 Meeting Minutes

By: Joni Eastley

Second: Lorinda Wichman

Vote: Passed unanimously

4. Recognition of Law Student Volunteers: Presentation of Certificates. Presentation by Student Volunteers (For Discussion)

Professor Traum announced the six student volunteers receiving certificates:

- **Aden Kedebe:** Joined the meeting by phone. A 3L graduating this year.
- **Christiana Dupont :** Graduating this year
- **Grace Warburton:** 2L student
- **Amanda Stafford:** 3L student graduating this year
- **Zachary Meyer:** 3L student graduating this year
- **Samantha King:** 2L student
- **Misha Ray:** Part-time 3L student graduating next year

Professor Traum reminded Members that in AB 81, there was a requirement that UNLV partner with the Board and look into ways in which the law school could encourage indigent defense students and professionals to take interest in indigent defense, particularly in the rurals.

At the beginning of the year, Professor Traum put a call out to the entire student body to see if anyone was interested in doing this on a volunteer basis. There was an overwhelming response, probably around 25 or 30 people. Professor Traum decided to stick to the three L's and she convened a little group. They met regularly in the fall to really come up with some ideas. Ms. Stafford, Mr. Meyer, and Ms. Warburton all stepped up to help the Department on some research assistance, and together they did amazing work. Professor Traum said she hoped that this is step one of what will continue to be a multiyear process.

Professor Traum then turned the floor over to the students giving presentations.

Misha Ray joined the virtual meeting from her car. Ms. Ray said she was from Winnemucca, which made her an "actual rural person." She grew up in rural Nevada and lived there for 18 years until she went to college in Reno. She came down to Las Vegas for law school. Right now, she is a part-time 3L and she'll graduate next year.

When this project became available and Professor Traum put out that call for students to be involved, Ms. Ray knew that she wanted to be a part of it. She always looked for projects with a rural connection because those are her roots. She said she was very proud to have played some small part in the betterment of indigent defense for rural Nevada.

Ms. Ray then gave a brief presentation on two of the ideas the students had worked on: an externship program and the creation of a student group that is focused on the whole state.

- **Statewide Student Externship Program:** There are a few options being considered. One of them would be a traditional, standalone summer externship with individual counties, based on their needs. Or, there could be an alternative weeklong spring break option where students could either caravan to different counties or spend the whole week in one county. Or students could go into the existing externships within Washoe and Clark County and have those externships possibly implement some

4. Recognition of Law Student Volunteers: Presentation of Certificates. Presentation by Student Volunteers (For Discussion) (continued)

kind of rural rotation. Time will tell whether those opportunities become realistic.

- **Students Create Student Group Focused on the Whole State:** Tentatively called the Greater Nevada Student Organization. This group will help students understand the needs of the rest of the state. The opportunities available in the rural counties are different, and they are certainly no less critical. This group will introduce the rural counties to a student organization that hosts regular events, has speakers, presents information sessions and so on and so forth, a student organization like that can really go to opening up the minds of the students.

Amanda Stafford: Said she would be virtually graduating in a few days. She grew up in Las Vegas for about 10 years and moved around a bit before coming back to Las Vegas for law school. Ms. Stafford shared some ideas on an indigent defense conference:

- **Indigent Defense Conference:** Will be held at Boyd. This is something that students would like to eventually see done annually. California has what they call a traveling training, where they have specialists and experts who go out to the communities and they invite all the adjacent rural areas to come in to see these experts and to kind of have these CLEs/Training Session, type situations to be more available to the rural communities. This is something that they would like to see in Nevada. They think that Boyd would be a great home base for this kind of a conference. They saw three main connection points that could be made through this conference.
 1. *Connection to the wider community*, to help access the indigent defense professionals. Who are the experts in this area and how do we contact them? Who is everyone kind of using? Who do they like? What is a good lab to use? Those kinds of things, to have all of those resources known and available.
 2. *Connection to the University and to the students.* This will help create a pipeline of students directly who meet people in the rural community that they then want to go work in, but also to have options for things like pro bono partnerships.
 3. *Connections to the other attorneys* doing the same things in similar communities so that every problem doesn't have to be faced on its own, but with having the support of other people who have been that situation or have that knowledge.

This conference can be the vehicle to share those resources of people, knowledge, and experience that already exist within the community.

The student organizations at the law school love to put on events; they love to put on CLEs. They are required to put on a certain number of events. So, this is something that they really see a lot of organizations being involved in. Having that broader Nevada connection group come in, as well as the indigent defense

4. Recognition of Law Student Volunteers: Presentation of Certificates. Presentation by Student Volunteers (For Discussion) (continued)

clubs, the criminal defense clubs, all those kind of student organizations working together on the ground at Boyd to put in motion, to have speakers come out, to have faculty talk and really just a way for everyone to connect, at least on an annual basis.

Zachary Meyer: Explained that his portion of the project is/was pipelines and financial incentives. The two have a lot of overlaps. It is about what schools have done to entice graduates, or lawyers to practice in rural communities, what have they done to entice people to indigent criminal defense in rural communities and to defend competently.

For the sake of sort of organizing his research, Mr. Meyer thinks of the pipeline as a metaphor. If you want the pipeline to work, to transport whatever you're transporting from Point A to Point B, you need like propulsion or some sort of pressure or it's not going to work and then you need to make sure it has like an unobstructed path.

That is sort of the two categories Mr. Meyer's research falls into. The first being propulsion -- what can be done to compel people to go to the rural communities? But of equal importance is that there is an unobstructed path. What is keeping you there? What is going to be the reason you get involved with these contracts that we are so concerned about or what makes you competitive compared to the problematic practices?

Beginning with propulsion: basically, Boyd can compel students to go to rural communities by just making it more visible that these do exist. They can integrate them into curriculum. They can open a clinic or just get more involved in rural practice so it is not like this mythical other thing. While students' goals are very specific as they pertain to indigent criminal defense, the larger issue is getting attorneys to the rural communities.

In the survey, they asked the students what they considered the most encouraging or compelling aspects of rural practice. They ranked first the ability to have one's own practice and be their own boss. Second, the ability to develop and maintain localized clientele. And third, the perception of greater job stability. And then they asked them what were the most discouraging factors? Number one was the perception that they would earn a lower income. Number two was the perception that rural areas offer fewer career and economic activities. And three was the distance from the nearest city.

They also went on to survey rural practitioners and they asked, gauge your willingness as far as taking on an apprentice or someone that they could mentor. While 90% said they were willing to mentor a young lawyer in their community, only 44% said that they were willing hire at their practice, an attorney full time or someone to work part time to do work elsewhere.

4. Recognition of Law Student Volunteers: Presentation of Certificates. Presentation by Student Volunteers (For Discussion) (continued)

The survey points out some very important factors: they are people in rural communities, and there are people who are in civil practice who might be spread thin taking someone on. So, while there is a dynamic or there's something to be said about the difference between those in civil law as opposed to criminal law, when some of these firms are civil firms that are getting these contracts and the only reason they can bid them so low is because they already have an infrastructure in place to support, their civil practice in addition to the contract that they take. It is really important to appeal to the civil aspect of it as well, or at least equip students to be a very good hiring option for these people as opposed to a burden.

Unsurprisingly, money was the biggest factor. It seems that students are enticed by solo practice, but they are a little worried about ultimately what are misconceptions about rural practice. Students worry that they will not have the same lifestyle.

The role of law schools is to develop curriculum and just make it more visible at school in the first place. It does not have to be a monumental earthshattering change. It is when you are in a class like business organizations, you include something in the curriculum about rural practice. So, if you are in rural practice, you would probably need to learn more about individuals. Or, you need to learn about things that are germane to rural areas as opposed to just pumping people out into urbanity. Other curriculum includes solo practice curriculum, LLMs and that sort of thing, to prepare people for rural life. Again, it is a very important aspect of this is making students competitive. It is just about making it visible and having those opportunities that Ms. Stafford and Ms. Ray brought up where they go out to the rural communities. They get involved in clerkships and those sorts of things.

The second part is what Mr. Meyer titled "Removing Obstructions" because even if there's loan forgiveness program and there are financial incentives that get people out to the rural communities, that doesn't necessarily mean that they're going to be accepted or that someone wants to hire them or that someone wants to take on that burden.

The students who go to the rurals are enticed with this two-year loan repayment program or this opportunity to do this or that. That does not necessarily mean they are going to stay. The most direct pipeline is right out of high school where you commit to rural practice and then through that, you go through the University. One of the ways these students can be affected is in terms of marketing them or getting them involved in rural communities is by basically shouldering some of the costs at the law school itself.

Boyd Law School gives their students subscriptions to Westlaw and LexisNexis up 18 months after graduation. So, it is not impossible for law schools to offer their resources to attorneys who are out in the communities or the rural communities and give them that much to back them up. Students will have at least this resource.

4. Recognition of Law Student Volunteers: Presentation of Certificates. Presentation by Student Volunteers (For Discussion) (continued)

It is not placement of attorneys in rural communities so much as it is what is going on in the rural communities and how can we help? They do things like legislative drafting. The faculty gets involved and they will send people out to the communities and see how they can help with infrastructure. This does not address indigent defense in particular. But it is a model for how to make it one. Why can't this be organic? Instead of a pipeline, why isn't there a continuous flow where someone is always able to access the law school or delegate responsibilities and try to tap into their resources? Nevada rurals could benefit from this. Money is obviously an issue. The law school could conceivably intervene in the actual award of the contract and say, hey this is a competent professional and if you award the contract to him, he will have the Boyd Rural Law Clinic supporting him or her.

So, what needs to be done in the Nevada legislature in upcoming years? It is in the very early stages as far as the school's involvement. They are trying to get representation out to the rurals, but there is a larger issue. Some of the people in the rurals need food on their tables much more than they need indigent support.

Professor Traum thanked the three presenters and closed by saying said John Lambrose deserved credit for inspiring these, and many other, students at Boyd. Mr. Lambrose was involved at various points all along the way. He mentored the students and helped them with their focused research. Professor Traum said she also wanted to congratulate Mr. Meyer who would be clerking for Judge Gibbons in Carson starting in August.

Chairman Crowell said each student would be getting a certificate issued by the Board of Indigent Defense. It says "Department of Indigent Defense presents this Certificate of Appreciation to the students for all of your hard work and research and assistance in developing department regulations" signed by the Chairman dated today.

5. Update on Department Discussions with Counties (For Discussion and Possible Action)

Deputy Director Patrick McGinnis provided the update for Agenda Item 5. He said at the last Board meeting, they had made contact with three counties: Pershing, Humboldt and Lander. Their goal, prior to this Board meeting, was to meet and greet the remaining stakeholders in the counties. Due to COVID restrictions they were not able to do that in person, so they navigated through a remote/teleconference meeting, and met with all the stakeholders throughout all the rest of the counties. They discussed proposed regulations, gave the counties some ideas on what is happening with the regulations and the rule making process, and answered any questions they had. The next goal is to meet with all the commission chairs for each county and provide them with updates.

Director Ryba said in reading NRS 260.070, each Board of County Commissioners of each county is required to do an annual report on or before May 1st of each year. They have reached out to every county, but only

5. Update on Department Discussions with Counties (For Discussion and Possible Action) (continued)

Eureka, Lincoln, Washoe, Carson, Elko and Lyon submitted. The Director said she was requesting permission to extend the deadline of the on or before May 1st, to on or before June 1st.

Members discussed why some counties failed to report, and the reason was simple: those counties had not finished their budgets yet.

Mr. Wells said he pulled out the statute. **NRS 354.596 provides that the county shall submit their budget to the state, not sooner than the third Monday in May and not later than the end of May.** Mr. Wells said he would recommend a change to June 15th so that the counties who get it done on May 31st have a couple of weeks to send it in.

Chairman Crowell asked Mr. Wells how big of a problem was that from a public policy standpoint? How big of an issue is it to move the 15 days? Does that fit all the state or not? When they start presenting legislation, they must have a public policy behind it. Does it apply to all of them?

Mr. Wells replied the statute applies to everyone. That is why he is recommending moving it to June.

Ms. Wichman said she thought that date should be extended to the end of June.

Ms. Eastley concurred with the end of June.

Motion: Extend Annual Budget Report Deadline from “on or before May 1” to the end of June
By: Lorinda Wichman
Second: Joni Eastley
Vote: None taken

Director Ryba said pursuant to NRS 180.410(2), the Department is required to file an annual reporting on the status of indigent defense in Nevada on July 1st. If they extend the deadline to July 1st, that information will not be contained within that report and that report goes to the Supreme Court, the Governor and the LCB.

Mr. Wells said the other choice would be, go back to the June 15th date.

Amended Motion: Extend Annual Budget Report Deadline from “on or before May 1” to June 15
By: Lorinda Wichman
Second: Joni Eastley
Vote: Passed unanimously

6. Update on IFC Request (For Discussion and Possible Action)

Director Ryba provided an update on the IFC request. The Department was able to get all requests that they set forth. Details include:

a. Request permission to contract with LegalServer, if solicitation waiver granted by State Purchasing, or request to issue RFP for software program

Director Ryba said the Department's first request was permission to contract with LegalServer or establish funds for LegalServer. Currently, staff is working on a solicitation waiver with State Purchasing to see if they can just contract with them or if they need to set this out for bid. This may have to set this out for bid, so the Director is requesting permission to either contract with LegalServer, if that solicitation waiver is granted or if they're able to jump on another agency's contract.

If another state has a contract with LegalServer, the Department can also jump on to that contract or if that is not granted, request permission to issue a Request for Proposal for a software program.

Staff is trying to get that contract done with LegalServer if they are allowed to go with the solicitation waiver or just a direct contract through another state.

b. RFP for a Delphi Study was issued on Friday May 1, 2020

The Department issued the RFP for the Delphi Study. That was issued on May 1, 2020. Because that was issued, the Department should be able to enter into a contract by August Board of Examiners. The Delphi Study contract must be executed with a qualified provider within 12 months. The RFP is out at this point in time and staff thinks that they will have a contract executed sometime by August. The Delphi Study standards must be included in that indigent defense contract, within six months after the Delphi Study and staff intends to do that. Within 12 months, there must be compliance with Delphi Study workload standards.

Workload data reporting is required to commence on May 1, 2020, so that deadline has already passed. It will require an annual report on the status of indigent defense in Nevada. That is already a requirement in NRS 180.410. It will require staff to establish a standardized contract for indigent defense within six months. There is a contract that the Director proposed to the Board, but there cannot be any action on it today because they need the regulations to pass first.

c. Request permission to send out RFP to recruit data analyst

Director Ryba said the Department is also requesting permission to send out an RFP to recruit a data analyst. They are looking for possibly a fiscal data analyst to help with some of the fiscal notes on the BDRs that staff is setting forth and possibly some other issues regarding setting up different programs throughout rural Nevada.

Staff is going to be issuing an RFP. They will try to get it done by the 15th and that will set them up for the September BOE. The Department is actively working on those three items.

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

Director Ryba said she was requesting authorization for Chairman Crowell to sign Appendix A of *Davis v. State*. A copy of the settlement agreement was shared with all Board members.

6. Update on IFC Request (For Discussion and Possible Action) (continued)

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

Chairman Crowell read off what was being signed: “Pursuant to AB 81 the Board of Indigent Defense Services has the authority to act in pursuit of its statutory responsibility, to make efforts to improve the quality of mandated legal representation in the State of Nevada”.

The Board has reviewed the consent judgment settling the *Davis v. State* lawsuit and the State’s obligations contained therein that are expressly intended for implementation by the Board, the Department of Indigent Defense Services and/or the Executive Director or their Designee.

All new county contracts for indigent defense must be approved by the Executive Director prior to execution within six months. All class members must have immediate access to applications for indigent defense within six months. This will be a proposed regulation. Once they receive those regulations back, they can have a workshop.

Another is all class members must be screened for indigency within 48 hours. This is a proposed regulation that staff will present when they have the workshop.

All class members eligible for publicly funded legal representation must be represented by counsel at initial appearance and arraignment. This will be a proposed regulation.

Defendant shall establish a system for issuing client surveys to indigent defendants and incorporating that feedback into the responsibilities for reviewing the manner in which indigent defense services are provided. That needs to be done within 12 months. We are adding that requirement into the RFP for the data analysts to see if that is something that the data analysts can assist with.

Additional requirements are to provide training. This is the Board’s request that was approved in IFC. The Department received almost \$20,000 to put on travel and assist with per diem travel costs. Staff will have to monitor that and will monitor what the Board and Department are doing and whether they are complying with what is set forth and dated.

The Director said that in that July report, staff must include analysis of whether certain statutes are inconsistent with AB 81 and those are specifically NRS 7.115 to NRS 7.175 and NRS 171.188. Staff does recommend changing those statutes consistently with what the ACLU is asking us to look over those statutes to determine whether or not they create economic disincentives and if they do, whether or not we could recommend that those items be changed. Staff is recommending going forward with the BDRs on those statutes today.

The Board acknowledges that those obligations constitute measures that once implemented, will improve the quality of indigent defense services, therefore, the Board hereby authorizes and directs the Executive Director of the Department to implement those obligations in accordance with the terms in the consent judgment. The Board represents and warrants it has authority to take this action.

6. Update on IFC Request (For Discussion and Possible Action) (continued)

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

Mr. Wells stated he had a concern on one aspect. That aspect comes under the category for workload. It basically says that the workload standards as done by the Delphi Study shall be put into these contracts. It allows this Board to create standards that are equal to or more strenuous but, has effectively taken away a huge portion of the work of this Board. One of the things that this Board was charged to do was to create workload standards. And if it's handed it off to whoever the contractor is and they are stuck with whatever the contractor comes back, even if the Board disagrees with some premise that they have come up, they are powerless under this consent decree to change it.

Mr. Newby said this provision has been there from day one. There is a general understanding that the best practices for coming up with a workload study is not a Board. No matter how good a Board is or is not, to determine what a workload standard is, it is by going through this Delphi process. That was one of the bases behind which the goal was to do this through that process. To the extent that there are close calls associated with whatever these workload standards end up being, this Board is going to have discretion to say, well what do we do about it if someone is not meeting a standard or not? There's room for this Board to be involved. This is certainly a workload study. The standard is that it is developed independently. It is not something that's developed by an appointed board or an elected board.

Ms. Forsman said she agreed with Mr. Wells' interpretation. She asked if Director Ryba could give the Board more details on the study itself?

Director Ryba said regarding the study, the Department has issued an RFP, but haven't contracted with any agency yet. What staff is expecting or what they have seen is that they should use the software program for individuals that are actually practicing law and providing indigent defense services through the rurals. Staff would be asking that all members that are providing services throughout the rurals participate because they want to make sure that they encapsulate all types of cases. They make their report as to how long it takes, generally, to be able to complete these cases. Then, in a Delphi Study, they put together a panel of experts and the panel of experts look at what was done or look at the type of case and they make a determination as to how much they think, or how much time they think the case should take. And finally, the research or the data analysts put together what was reported by the indigent defense service providers, as well as the experts, to make their recommendations for workload studies. The reason it is phrased that way is to provide some independence. It is not complete independence, because you as a Board will oversee compliance issues.

Mr. Wells said he understood what their goal was. It would be difficult for the Board to vary much off any standard that this group would come up with in any event. AB 81 says that they shall establish guidelines to be used to determine the maximum caseload. And, even though the Legislature delegated it to this Board, they are now going to go delegate it to whomever they put under contract to make that study.

6. Update on IFC Request (For Discussion and Possible Action) (continued)

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

Mr. Wells said he would've preferred that that language say that they have within six months after they get the results back from the Delphi Study, they have to put it in the contract and it has to be substantially similar or some phrasing like that. But to say it is exactly their way takes all the judgment out of the Board and it was the Legislature that delegated it to the Board.

Chairman Crowell said then the next question is whether they must adopt those standards, whatever they may be.

Mr. Wells said that is what he was saying. They absolutely should contract with somebody to do all that work. They are going to get the experts out here to help them, which they should do, but no matter what they say.

Mr. Wells said he was in total agreement with hiring the Delphi folks. He agreed with the time limits that the settlement has come up with. It is only really the one sentence that bothers him – the sentence that says in the settlement that they get to disregard certain things, only if they want to make them equal or stricter than whatever these standards are.

Professor Traum asked whether it is subject to challenge by others as being an unlawful delegation of legislative duty?

Mr. Newby said he did not know the answer to that. He said he had two thoughts:

1. For this to be an effective Delphi Study, there is going to be a significant involvement by this Department and this Board to make it happen.
2. The settlement says what it says. There are dispute resolution provisions within this settlement. If something were to go that far off kilter, there's room to try to go through dispute resolution to fix it ultimately with a Judge.

Chairman Crowell said he was looking at AB 81. AB 81 clearly gives the Board the authority to adopt regulations, establish standards for the provision of indigent defense services, including without limitation, requiring indigent defense attorneys to track their time. Establishing a standard to ensure that attorneys who provide indigent defense services track and report information in a uniform manner. Establish guidelines to be used to determine the maximum caseloads for providing indigent defense services. The legal argument is whether the settlement agreement supersedes AB 81.

Mr. Newby said he didn't think it was the intent of the settlement to supersede AB 81, but there are requirements under AB 81 and this is a settlement to resolve a class action lawsuit. The Board certainly can impose additional requirements, above and beyond statute to the extent the parties are amenable.

6. Update on IFC Request (For Discussion and Possible Action) (continued)

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

Chairman Crowell said the acknowledgement they are being asked to sign on Appendix A also has this language in it: “The Board has reviewed the consent judgment settling *Davis v. Nevada* lawsuit and the State’s obligations contained therein that are expressly intended for implementation by the Board.” It does not say by anybody else.

Mr. Wells said he would have raised this way back when the negotiations were going on, had he seen it back then. There are a whole lot of these kinds of issues. The Board has punted its entire authority to make this decision to whomever they hire as the expert.

Ms. Wichman said it occurred to her that if their caseloads are too strict and the state doesn’t pay, then the counties are still left holding the bag.

Chairman Crowell asked Ms. Wichman if she was worried that the standards were going to come down too strictly and they could not do anything about it? Is that where she was coming from?

Ms. Wichman replied that a one-size-fits all solution is never going to fit the rurals. If they have to accept whatever Delphi comes down with and Delphi comes up with something that is too strict of a guideline and the State refuses to pay for this, to pay for those caseloads, whatever the number might be, then the counties are still left holding the bag on something that’s a requirement of the state.

Ms. Cavanaugh-Bill said if there is a concern being raised where they are not delegating unduly their authority to this contractor, would it be possible just to add a clause after that? “As approved by the Board.” So, it would read compliance with Delphi Study workload standards, as approved by the Department of the Board of Indigent Defense. That would give them the opportunity, once they get their standards, to determine if they think that they’re applicable, but they can show, pursuant to legislative authority, that they contracted out the workload, but then didn’t give up our final authority on it.

Chairman Crowell said that is an interesting change. It is not very many words, but it might have an effect on negotiations. The statute says the Board has that authority. They could make that argument that they have that authority to put it in Appendix A.

Mr. Newby said he was trying to work through a reading that’s reasonable right now. The workload standards refer to the last paragraph and may be superseded by standards of equal or greater rigor promulgated by the Board and/or Department.

Mr. Newby said there are two scenarios. One where the Delphi Study is way off track. If it is way off track, the Board has its discretion to comply with the settlement or not and, argue why it should not and why there shouldn’t be consequences for it. Weird things happen. We are in COVID-19 at the moment. People are making weird arguments in court, things that are completely unexpected. If it is the Board taking consideration, in terms of making the Delphi Standards consistent, by making it consistent and addressing

6. Update on IFC Request (For Discussion and Possible Action) (continued)

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

county differences and things like that or working in terms of the Delphi consultant presenting whatever this report is going to be before it is finalized and ultimately approved as part of this.

Mr. Newby said if it is a narrow type of difference, the Board has the discretion to work through it.

Ms. Cavanaugh-Bill said on Page 17, on Line 14 it says, “consistent with the standards established in the Delphi Study.” To this, she would add “and as approved by the Board.”

Chairman Crowell said if they make the change on Line 14, they can take out Lines 15-16.

Professor Traum said it might be useful so that they understand the relationship between the potential of triggering a lawsuit reaction or getting a challenge from the counties. In Scenario 1, the one that is contemplated by the agreement is that they have input into the Delphi Study. The Delphi Study comes back and the Delphi Study is good. Everyone is happy.

Mr. Newby said in that scenario that the Delphi Study comes back and within six months everyone is happy. That is the easy scenario where everyone is happy. Then the next scenario would be that the Delphi Study comes back. It is so stringent that someone is balking, saying we cannot do this for whatever reason. And so, the Board wants to make an adjustment to the Delphi Study. If the Board does that, the Board has discharged its duty under the statute, so there is no problem.

Mr. Newby said in the second, there are enforcement provisions in the settlement agreement, skipping to 2, because once everyone is happy, we all dance around. You never see me again. Scenario 2, there is a process for the state to go from where it is now, which is AB 81, and finally an Executive Director and a Board. This Department is going to be able to participate in the 2021 Legislative appropriations process. These are starting points, and this is a consent judgment that’s designed to allow the state, if and when it can demonstrate compliance with the requirements of this, but no sooner than Summer 2023. When the Department is able to demonstrate compliance with these various factors, they are going to be able to seek release from the consent judgment and this is going to be a Department just like every other state department.

In the time period from when the state is out from the settlement and everything is successful, whether it takes two and a half years from now, three years from now, or whether it may take a little longer given the state’s economic woes, there is going to be a process in terms of this Department, on the ground, demonstrating good faith and reasonableness in moving this process forward.

Mr. Newby said he is Counsel for a different client. And if this Board were to decide not to approve Delphi Study just because they thought they were too hard, or on some basis that is not reasonable, there would be legal consequences in a settlement agreement revised like this.

Chairman Crowell asked everyone to turn to Page 9 of the settlement agreement, Paragraph 5C, Dismissal. Doesn’t that say the Court retains jurisdiction on this until 2023?

6. Update on IFC Request (For Discussion and Possible Action) (continued)

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

Mr. Newby replied at least until 2023. Until the Department can demonstrate substantial compliance.

Chairman Crowell asked what do they have to do to demonstrate substantial compliance?

Mr. Newby said he thought they have done most of the things that are set forth in this agreement.

Ms. Fitzsimmons had some observations. If you look at the history of the AB 81 and look at the concerns that have been articulated in this meeting by our rural board members, she does not see it as a problem. Staff does not have the expertise to do this study. They have the expertise to put Nevada's imprint on the study, but they will be hiring experts to do caseload studies. So, if there is an expert that knows what they are doing and they come with a caseload study that really requires additional funding for some counties for indigent defense, the State's going to pay for that. The State is the party to this lawsuit. If the concern of the rural counties is the financial costs, based on the rural county's history, with unfunded mandates, that danger has been alleviated by AB 81. And it is further alleviated by the State's execution of this settlement agreement.

Mr. Wells said he agreed with Ms. Fitzsimmons. And that perhaps a method of avoiding this and allowing the Chairman to sign this thing today and move forward would be: they put in the RFP that we actually require the Delphi Study to submit to us a draft for our consideration and review, before they turn around and submit a final report. Using the language that could be tied to a final report and that would give them the opportunity, if they came back, for the Board to go back and discuss with them why they've done that and maybe make an attempt before we get to the final.

Chairman Crowell said that was not a bad idea; they should do that for certain.

Director Ryba said they have not entered into a contract, so with the RFP, individuals actually submit proposals to us. They have a committee that will sit and choose who to hire for the Delphi Study. When they enter into the contract, they can make that a requirement, that prior to the final report that the Board have one submitted for comment and that they take that into consideration. So, we can enter that into the contract.

Ms. Forsman said when she did this with the federal system, that is exactly what happened. It is actually common practice with one of these consultants is that they come back to whoever has led the contract with a draft. It is sort of like an audit. They come back to you with the draft and you work with them on the draft before it is finalized.

Chairman Crowell said he could take a motion that says they authorize the signing of the Appendix by him for the Board here, but consistent with that, they are going to insert in the contract they have with any provider that the Board retains authority to suggest and make changes.

6. Update on IFC Request (For Discussion and Possible Action) (continued)

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

Mr. Christensen asked what prevents the Board from going out and reaching out to a different vendor(s)?

Chairman Crowell replied if they are unsatisfied with what they get back, they do not have to accept it. They are paying for it.

Mr. Christiansen asked are they acknowledging with the Delphi Study that there may be a discussion of workload that is different for each county around the state because they are so unique and different? So, whatever the product is, it is not necessarily going to have this Board vote on it, one-size fits all that the analysis would be county per county and there may be some overlap of practice similarities, but there may be significant practice differences that our final responsibility may have a variety of different points on how each county should conduct their business.

Ms. Forsman said she thought the intent was that the Delphi Study would account for variations in the different counties because you have got all kinds of differences, including travel time, all of that will feed into any sort of an assessment of workload.

Mr. Christiansen said he did not want to stall the momentum that they have achieved to this point, and he likes the fact that they will have the ability to work with the vendor, whoever it is, to see kind of a rough draft and data collection, kind of discussions along the way.

Chairman Crowell said in his view, they have the authority to do that now. To subcontract.

Chairman Crowell asked Members if they were ready to try a motion on that?

Ms. Fitzsimmons said for their purposes and comfort, if they just authorize the Chair to sign Exhibit A, that they are directing their Executive Director to include in the contract with the vendor that a draft of the Delphi Study will be provided within adequate time under whatever the timelines of the settlement are, 30 days before, for the Board's consideration and input. That is A. So, if that is the first motion. Then if that passes, then we are going to know if we vote to authorize the signature, that the Director is going to follow-up.

Director Ryba said it is in the RFP and it also says that they can negotiate the contract terms.

Chairman Crowell said the RFP that went out provides for variation in counties and courts, this is the Delphi Study. It provides for variation in the counties and courts, variation in delivery models and variation in distance between courts. That is in the request now.

Motion: Authorize the Chair to sign Appendix A, considering the language that is currently in the RFP of evaluations prior to a final report written

By: Drew Christensen

Second: Lorinda Wichman

Vote: None taken

(note: motion withdrawn by Ms. Fitzsimmons)

6. Update on IFC Request (For Discussion and Possible Action) (continued)

d. Request authorization for Chairman Crowell to sign Appendix A of *Davis v. State*

Amended Motion: Authorize the Chair to sign Appendix A, considering the language that is currently in the RFP of evaluations, prior to a final report written

By: Drew Christiansen

Second: None

Vote: None taken

Amended Motion: Authorize the Chair to sign Appendix A, considering the language that is currently in the RFP of evaluations, prior to a final report written. The vendor will provide a draft of the report for Board approval.

By: Drew Christensen

Second: Joni Eastley

Vote: Passed unanimously

Director Ryba said she wanted to clarify what is in the RFP, the project terms and conditions:

10.3.4. It is expressly understood and agreed that all work done by the contractor shall be subject to inspection and acceptance by the state.

10.3.4.2, any progress inspections and approval by the state of any item of work shall not forfeit the right of the state to require the correction of any faulty workmanship or material at any time during the course of the work and warranty period thereafter.

10.3.4.3, nothing contained herein shall relieve the Contractor of the responsibility for proper insulation, maintenance of the work, materials and equipment required, until that has all been completed and accepted by the state.

Ms. Cavanaugh-Bill said she thought that they still needed motions on 6A and 6C and she was happy to do the motioning part:

Motion: Give permission to the Executive Director to contract with a LegalServer if the solicitation waiver is granted by State Purchasing or to work with State Purchasing to use another state's contract. And/or to request to issue an RFP for a software program and as well, allowing the Executive Director permission to send out the RFP to recruit a data analyst

By: Julie Cavanaugh-Bill

Second: Lorinda Wichman

Vote: Passed unanimously

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action)

Director Ryba said next she wanted to talk about permission to submit bill draft requests to the budget office. The Director provided Members with the deadlines and the timeline coming up. On May 20, 2020, non-budgetary bill draft reports are due to budgets. Many of the proposals that the Director has would be considered non-budgetary. The Director is requesting to submit these prior to May 20th.

There are apparently three different types of bill draft requests; budget, which has a different deadline of September 1st to the Budget Division; Policy-substantive or policy-housekeeping. The Director can submit bill draft requests over several different NRSs, through one bill draft request.

The proposal today is to issue the majority of these as policy-substantive. There is one bill draft request to bring all appeals and death penalty cases into the Nevada State Public Defender, that would likely be considered a budget bill draft request because it would cost more than \$2,000 to implement and would be required to do a fiscal analysis on that.

Ms. Cavanaugh-Bill had a question. For the deadline coming up May 20th, when would they actually go into effect? They would still be working on the draft plan.

Director Ryba said they could have them go into effect immediately upon passage. There is also a July and an October possibility. This would be done through the next legislature. These would be submitted to the legislature for passing through usual session.

The first bill draft request that we are presenting here, is to try and create some sort of independence from the judiciary and this has been something that has been encouraged by the Sixth Amendment Center. Staff did speak with David Carroll and he pointed out that it may be necessary to put a definition of appointment and a definition of selection.

Right now, when you read the NRS, it only talks about the appointment of attorneys and the selection generally is through the judiciary. This would create separation where it would still be up to the Judges to decide whether or not it is appropriate to appoint an attorney and once that appointment is made, the selection would be a function of population -- if it is less than 100,000, the Department or their designee in the plan for the provision of indigent defense services, or in counties with a population of more than 100,000, you would refer to the plan for the provision of indigent defense services to choose a defense counsel that will provide the representational services. Staff is asking that they submit these to clarify appointments versus selection, just to make sure that it was clear the difference between the two.

Moving on to what currently sets forth as the appointment under NRS 7.115, it talks about that how Magistrate, Master or District Court Judge can appoint an attorney, but once they decide to appoint an attorney, we talk about that if the Public Defender, which is generally the first person that gets the appointment, if they are disqualified due to a conflict, the Court shall, after making a finding on the record of the conflict and the reason for the conflict, the Court shall refer the selection of the new defense counsel

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

to and we have that same breakdown of, if it is less than 100,000 to the Department or to their Designee which is set forth in that plan for the provision of indigent defense services, or in counties with a population of more than 100,000 in compliance with the county's plan for the provision of indigent defense services.

Ms. Cavanaugh-Bill discussed selection versus appointment in Department draft plan of indigent defense services. There is that same language then in 7.115, in the first subsection. This has been a hot topic out here in the rurals. Ms. Cavanaugh-Bill's understanding in reading the draft plan is that it would allow the District Court Judges to put forward panels of attorneys when the Public Defender is conflicted out. The Department would then be able to review those proposed panels. And then those panels would go back to the Districts Courts. The District Courts then, pursuant to the plan, would in fact be making those selections or appointments from those Department approved panels. Is that correct?

Director Ryba said staff thought the language needed to be more precise. That is why they wanted to change the language to "the Department or their Designee in compliance with a plan for the provision of indigent defense services." So, if they enter into a model plan and specifically talk about how to handle conflict and how they would like to go through selection on the list, if that met the Board and the Department requirements, then they could designate that to the counties to go forward how they feel is best.

Ms. Cavanaugh-Bill said her concern in moving these two forward is that they may get some kickback if we do not have the exact language of the plan proposed.

Director Ryba said they will have some proposed language by the time that these go before the Legislature. Most places should be in their model plans or model contracts at that point in time, before complying with *Davis*. So, this would be set forth. These are simply bill draft requests, and they can be amended once they get to the legislature. The Director is just requesting permission to move these forward but, they can be modified by the Legislature.

Director Ryba said in talking about these statutes as they set forth in *Davis*, some of the requirements were to address certain statutes and these are the statutes which *Davis* wants us to specifically address in our report in July.

The next recommendation that we have is under NRS 7.125. Staff started off by crossing out Subsections 2, 3 and 4 because those provided caps that after you hit a certain amount of time, you had to file a motion for funds to be able to spend more time on a case. Staff believes that with the workload study that they will have, that cap will no longer be required because they will know how long, generally each case should be required to take for an attorney. When they submit their bills, they will be able to say whether or not they are far off that recommendation that is set forth in the workload and be able to take that into consideration later on, in some statutes that are being proposed.

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

Director Ryba said what they are doing is proposing that defense counsel who is selected by the Department Designee, so this would be that same language, or in compliance with that plan for the provision of indigent defense services, if the population is less than 100,000 or in counties over 100,000 in compliance with their county's plan for the provision of indigent defense services. If they are appointed, then it just talks about how they get paid \$125 per hour in cases where there are death penalty cases and \$100 per hour in all other cases. Staff recommends removing the cap, as *Davis* did propose and then Subsection 2, they are requesting to cross out what the total amount of fees granted to all appointed attorneys must not exceed those allowable if but one attorney represented the defendant at all stages of the criminal proceeding. They need clarification on that, for these fees to be approved through the model plan or through the designee, or our Department.

Director Ryba detailed 7.135. Right now, what happens is attorneys must file ex parte motions for funds to be able to employ investigative experts or other individuals necessary to give an adequate defense. The proposal is that instead of that application going towards the Judge first, what happens instead is that if it is a county with a population less than 100,000, the Department or their designee in the plan for the provision of indigent defense services or in counties with a population of more than 100,000, pursuant to their plan, you would file the application with them for approval. If that application for funds is denied by the Department or their designee, or pursuant to the plan, then that is where they could go for the ex parte motion through the Judge to request funds for those services. So that would be the backup.

Next up was 7.145. This again is similar to the prior; that these claims for compensation for representation, if there is a population than 100,000, it would be to the Department or their designee in the plan for the provision of indigent defense services or in counties of a population of more than 100,000, pursuant to that county's plan, that would be submitted to for payment. The Department would request that the claims be reviewed and modified if necessary and paid pursuant to the county's plan for the provision of indigent defense services. And any dispute of the approval, denial or modification may be reviewed by the trial court based upon reasonable, necessary standards.

Up next was 7.155. This was kind of a housekeeping matter where currently the State Public Defender handles the post-conviction claims, the bills for those and we would like to move that process into our Department of Indigent Defense Services. The State Public Defender should be able to be out and doing public defender work, rather than processing payments. There are management analysts in the Department, and these can be things that can be handled within our Department more easily. So, staff is requesting that that compensation be done through the Department rather than the State Public Defender. That would just move it from their budget into ours.

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

Director Ryba said she was adding one thing, however, and that is proceedings related to representation of a prisoner, under NRS 212.070. Currently what happens for a payment, if you are appointed to represent a prisoner is you have to submit your billing to the AG and then the AG submits it to the Governor's Finance Office for payment. If you are a defense attorney, you do not necessarily want to release who your experts are, or request for payment or let them know what you are doing when you directly have to provide that to the Attorney General's Office. If that could put within the Department as well, to process the payment for the attorneys, possibly they would get their payments more quickly and they also wouldn't have to release any information as to who their experts were before they were required to release that information.

Mr. Christensen asked if the changes to 7.155 and in combination with 7.125 that your Department will now collect vouchers statewide on post-conviction cases that will not require a court order?

Director Ryba said no, she was not intending to change the voucher system because they would still need a court order for payment. At this point in time, it is basically processing the payment through that post-conviction fund. So probably it would still be the same process, but it would just be done through the Department where we have management analysts, rather than through the Office of the State Public Defender.

Ms. Cavanaugh-Bill asked how does the county know that some outside entity is not just reviewing these and signing off on them?

Director Ryba said they are also proposing a maximum contribution that the counties have to make. So, there will also be state money, which they are attempting to get for the counties to help support them in these areas.

Mr. Christensen asked the Director if a private attorney asks for an investigator or expert, those bills are run through the District Court for signage?

Ms. Cavanaugh-Bill replied yes, that is how it works. A motion is filed with the District Court. It can be filed ex parte so the other side, the defense obviously does not see what we are asking for but then that is up to the District Court Judge to approve and deny.

Director Ryba said 7.165 was a similar housekeeping matter too. If those post-conviction funds or anything comes out of the Office of the Public Defender, it would generally be coming out of this Department's budget.

Director Ryba said the definition currently of indigent defense is an indigent person who is charged with a public offense or an indigent child who is alleged to be delinquent or in need of supervision. The Director

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

said she did not know if the Board has authority under NRS 34.750 cases, because that person is not charged with a public offense at the time. They have been convicted and they are challenging it. So, with that recommendation, staff is requesting that the money that was appropriated to the Public Defender's Office be appropriated to the Department of Indigent Defense Services for that reserve statutory contingency account.

Mr. Hickman asked Mr. Christensen if this was the area in which he had a question regarding the payment of post-conviction?

Mr. Christensen said all fees for services in Clark County are just now run through the executive branch. The post-conviction work still requires court orders. Many judges down in Clark County do not like still being part of the process because of the independence suggested or ordered by ADKT 411. Perhaps Director Ryba's office could review the indigency bills for habitus that come through and kind of make some own declarations of reasonableness about the case without having court intervention. There have been numerous cases where the Court refused to sign the voucher. All the work is already completed. The court will reach out for an appointment in a particular case, the work will be done, the hearing will be had and potentially even the appeal to the Supreme Court and then the District Court won't sign the payment.

Director Ryba said they are withdrawing their request for 34.980, any changes to that.

NRS 171.188 is similar to the appointment and selection that we pointed out previously in Chapter 7. It just puts in there that although it is the Judge that appoints, it will be referred for selection. Again, the population breakdown, less than 100,000 by the Department or the designee pursuant to the county and/or municipality's plan for the provision of indigent defense services and then the same for over 100,000. NRS 171.188, Subsection 4, does have a cap in the municipal cases for \$75.00 per case. Staff is proposing removing that cap, which is also consistent with the *Davis* case recommendation.

171.196 clarifies selected pursuant to NRS 7.115.

NRS 180.010, is something thrown out there that the Department or the Board of Indigent Defense Services shall select the Nevada State Public Defender for that term. Currently the Public Defender is appointed by the Governor. Do they want to change it to the Board or the Department selecting that Public Defender? That would remove the concerns over political interference if the Governor is the one appointing them.

NRS 180, is the grants or that gift account. The Board already talked about this and accepted this gift account, so we can get grants or things in the future.

NRS 212.070 brings them back to defending a prisoner. These are state expenses, and the compensation and expenses of that attorney are a charge against the state, which they are currently and must be paid

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

from that money appropriated to the Department of Indigent Defense Services pursuant to NRS 7.155. And that after those funds are exhausted, they must be allocated additional funds.

NRS 260.040. Compensation of a Public Defender must be fixed by the Board of County Commissioners. Staff would like to add, "and in compliance with the regulations of the Department of Indigent Defense Services." There is a proposed regulation that there should be parity between the Attorney General's Office, the DA's Office and what providers of indigent defense services shall be paid. Jeff Wells also made the recommendation to delete Subsection 6 regarding the merit system.

NRS 260.060. This again clarifies the appointment process and then it should be referred for selection pursuant to NRS 7.115. It just breaks out that definition.

Under NRS 179A.030, it defines an agency of criminal justice and the purpose of this is to be able to get criminal history checks. Right now, public defenders' offices are not allowed to go through the Nevada system for checks. They do have the local checks, but they do not necessarily have the statewide checks. And, staff believes that if they add "Public Defender's Office," they'd be able to have access to this for investigation purposes and wouldn't have to go through the District Attorney to try and obtain this information, which is obviously necessary for impeachment purposes.

The Board is limited by the definition of "indigent defense services." So, under Subsection A, the Board must provide direction to ensure that indigent defense services are provided in an effective manner through the state. The Board must review caseloads of attorneys who provide indigent defense services. The Board may direct audits or investigations to determine that the standards of indigent defense services are being followed. Staff must develop procedures for data collection for indigent defense services and they must review and recommend legislation for indigent defense services.

So again, what is the definition of "indigent defense services"? Right now, the definition is these two things. One, an indigent person who is charged with a public offense. This is where the concern about NRS 34 comes in because they are no longer charged with a public offense, they have already been convicted. Two, an indigent child who is alleged to be delinquent or in need of supervision pursuant to NRS Title 5. When you look at the statute specifically for NRS 180.060, the Public Defender can be appointed to cases of NRS 62D.030, juvenile delinquency cases which are in Title 5; 62D.100, that is in Title 5; NRS 171.188, that is a person charged with a public offense; and 432B.420, which does not fall within indigent defense services. The board also had this discussion of NRS 34.

When you look at the County Public Defender, they can be appointed in NRS 62D.030, NRS 171, and then also 432B. So, NRS 432B.420, those are abuse and neglect cases that generally happen in juvenile court. That does not appear to be within the definition of indigent defense services. The question arises of whether

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

the Board can recommend legislation or even monitor those 432B cases that the State Public Defender and the County Public Defenders are, at this point, required to take under the law?

And it goes further. Our original request was to change the definition of "indigent defense services." Staff was proposing certain things like including 432B cases which are abuse and neglect. 433A cases, which are involuntarily commitment or these NRS 34 cases which are the post-convictions. Those, at this point, are outside the definition of "indigent defense services." Staff requests direction from the Board whether they should work within the realm of the definition of "indigent defense services" as it currently is, or whether we should increase the authority of the Board by increasing what is in the "indigent defense services" definition. The Director said when staff set forth this definition, they pulled this out of a model plan.

Mr. Hickman said it was the model plan from the Supreme Court.

Mr. Wells said he thought he was one of the ones that pointed out the 432B problem. At a minimum, they need to strike out 432B and clean up the language where other statutes are making cross-references. One of the Board's duties is to establish caseload standards for anything that is an "indigent defense service." Now, 432B has nothing to do with criminal. They are not delinquency cases; they are civil dependency and neglect cases. If they include them under the definition of indigent defense services, they will be tasked with creating caseload standards for family law practitioners who never set foot in a criminal court room. That is not an expansion that they want. They should not only not put it in our definition of indigent defense services, they should clean up the one little reference out there where it looks like they were trying to appoint a Public Defender in those cases. Under NRS 432B, they are required to provide an attorney for the child. They are required to provide an attorney for the parent. But in those cases, when you get to the actual specific statute, it does not say "Public Defender," it says "an attorney" and staff has a full system for how to do all those appointments.

Ms. Forsman said she "completely agreed" with Mr. Wells. The oversight that the Board and the Executive Director have are just so outside of the realm of a criminal practice that it just does not fit here.

Director Ryba said what they are proposing in their bill draft request, NRS 180.060(2), they are asking to cross some of the designated duties out. The Director would like the authority to cross it out, NRS 62D.100. NRS 62D.030 is where an attorney is going to represent a child in a juvenile delinquency case. NRS 62D.100 is if the court feels that it is necessary to appoint counsel to the parents. Then they first go to the Public Defender but how can you have the Public Defender take them if they already represent the child? That might have been some sort of mistake previously. The Director asked that they cross out NRS 62D.100 out of the Public Defender duties, as well as NRS432B.420.

Mr. Wells said he agreed with both of those.

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

Mr. Mendiola said they also looked at this and have the same concern. These need to be stricken from the record.

Ms. Cavanaugh-Bill disclosed to the Board that she does get appointed on a lot of the 432B's. And for that reason, she will just stay silent on the issue.

Director Ryba said in addition, they would like to add that language to the Office of the Public Defender part. Does the Board want to say, "**may** handle all death penalty and/or direct appeals if it's less than 100,000" or do they want to say, "**shall** handle all death penalty and/or direct appeals if it's less than 100,000"? If the Court would like to choose the language of "may", then staff proposes the language that a county must notify the Office of the State Public Defender in writing before March 1st of an odd numbered year if they desire to transfer responsibility. The responsibilities will be transferred at a time specified or after July 1st of the same year in which the notice is given as determined by the Executive Director of the Department. Once a County's population is less than 100,000, has opted in for these services, they will not be allowed to opt out.

Ms. Fitzsimmons said her personal preference would be very strongly that it be "shall." Having done post-conviction work on death cases out of rural counties, financially it is devastating. This speaker strongly feels that the State Public Defender should take these cases.

Karin Kreizenbeck, the Nevada State Public Defender said that I certainly welcome the case work but again, my concern is, we are not budgeted or staffed to take on that responsibility. My only concern would be, if we travel to the rurals and provide a death penalty qualified attorney, we would need substantial funding to hire investigation and hire death penalty qualified attorneys who are willing to travel to the rurals for extended periods of time.

Ms. Cavanaugh-Bill said they have a new death penalty case in Elko. It was handled very quickly by the Court and it is a local attorney. He is actually a former District Attorney who is State Death Penalty Certified and co-counsel will be one of the attorneys from the Public Defender's Office. It is moved quickly, both for the family of the alleged perpetrator and also though for the victim's family. The community has really appreciated the court's handling it so efficiently. That would not have happened if they could not have used one of our local attorneys, who is death penalty certified.

Ms. Cavanaugh-Bill said she thought it should be "may." It comes across as somewhat paternalistic otherwise. If they have death penalty certified attorneys that they can access, they should not be required to impose that burden on the State Public Defender.

Director Ryba said what they are proposing is to build this into the budget into the future. Staff would do a fiscal note analysis to try to determine how much the cost of this would be and they would propose building

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

the budget so that we would have sufficient personnel to handle the appeals as well as the death penalty cases. These death penalty cases could be something that could be addressed in the model plan. If they would like to work with the State Public Defender to have the lead counsel be from the State Public Defender's Office and possibly the second chair, the local attorneys so that they could get experience as well, that's something that could work out in the model plan.

Mr. Mendiola said he would agree with the use of "may." "Shall" is a strong statement. He votes for "may."

Ms. Fitzsimmons concurred; her vote was for "may."

Director Ryba said another thing that was proposed in their discussions was that once they opt-in, they cannot opt-out. That is for the purpose of building budgets, because if they are jumping in and out, obviously handling the appeals and the death penalty will be expensive for the State. To build that into the State Public Defender's budget would cause significant changes if they are able to lead, depending on the year.

Mr. Wells asked can't that be amended? That they cannot opt-out without permission of the Board and that way, if a county decides that they have enough extra money in the future, they can ask the Board to be able to opt-out?

The Director said they could change that if the Board would like.

Chairman Crowell said that is not a bad way of doing it.

Ms. Cavanaugh-Bill said she would agree with that language as well, because then as a Board, they can look at the budget, they can look at those items and see if the opt out is going to harm to the Department or not, or if it is okay.

Chairman Crowell asked what would happen if you said, "the Office of the State Public Defender in consultation with the Board of Indigent Defense may handle all death penalty cases?"

Director Ryba said they would need to think about their budget build.

Chairman Crowell asked because they are not going to be able to budget it? He is okay with "may".

Director Ryba said she would make the change of that they **may** handle it. And instead of not be able to opt-out, it will say that they cannot opt-out unless they receive permission of the Board. And the notice provision remains, that they have to do it by a certain time.

NRS 260.050. We would request permission, like we crossed it out in the NRS 180, to cross out 432B.420.

Going to 62D.030, we have made changes from the PowerPoint. After further discussion, staff thinks that it would be appropriate, this again breaks out the selection and the appointment, just that the selection be

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

referred to NRS 7.115, which again breaks it down to the Department or their designee, through county and/or municipalities plan for the provision of indigent defense services if it is over 100,000, that consistent language.

NRS 62D.100 is for the appointment of counsel for the parents. Staff would ask that they handle it through the model plan because it would not necessarily be going through the public defender, it would have to be alternate counsel.

And then, in Subsection 2, it says, each attorney other than a public defender who is appointed, since the public defender in our purposes would not be appointed anymore, I believe that staff would request permission to cross out "other than a public defender."

Ms. Cavanaugh-Bill said on NRS 62D.100, she was a little confused by the language for that second sentence in Subsection 1. It says, the juvenile court may not order the appointment and refer the selection of an attorney pursuant to and then A - population of 100,000 by the Department / municipalities plan. Is that saying the Court may not order it, or the Court must order it pursuant to the Department or the plan?

Director Ryba said they may not order the selection and appointment unless they find out that it is required in the interest of justice.

The Director said because of their discussion, they were originally requesting that the termination of parental rights be included because it was in that definition of those plans that we were looking at from the Supreme Court, but it doesn't appear to be within the definition of indigent defense services. They also are withdrawing anything regarding NRS 432B.420.

Director Ryba said they are requesting to cross out some language in NRS 433A.270. This is an involuntary commitment. If a person is in a mental health crisis, an attorney can be appointed and it says, it may be the public defender or his deputy. Again, this is outside the indigent defense services. Staff would ask to cross that out.

The Director reminded Members of the change of NRS 260.070(2) Annual Reporting. Staff proposes that the date be changed from May 1st to June 15th.

Mr. Wells asked if the Director could go over NRS 180.004 again. Are they keeping that in or are they taking that out and just sticking with the current definition? What was the decision on that?

Director Ryba replied that they proposed sticking with the current definition and they would withdraw their modified definition.

7. Bill Draft Requests: Discuss and Request Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau (For Discussion and Possible Action) (continued)

Ms. Kriston Hill, Chief Public Defender from Elko, had a question. Since the 432B cases will not be under the purview of the Indigent Defense Board, would her office be required to handle those cases anymore?

Director Ryba said they are submitting a bill draft request to take that out of the statute of NRS 260. Currently the law is that it appears that it is a duty of the Public Defender's Office but, we are attempting to clarify.

Motion: Give Permission to Submit Bill Draft Requests to Governor's Finance Office and Legislative Counsel Bureau

By: Jeff Wells

Second: Laura Fitzsimmons

Vote: Passed unanimously

8. Model Plan and Model Contract Proposals: discuss Model Plan and Model Contract Proposals (For Discussion)

Mr. Hickman provided an overview of the model plan and model contract proposals. He presented the initial draft following the NLABA model contract that is mentioned in the settlement agreement. The model plans are just drafts at this point. Everything is subject to what happens with the proposed regulations.

Ms. Eastley asked if it would be okay if they submitted suggestions/comments/questions to Mr. Hickman in writing?

Mr. Hickman said absolutely. You can email them to me directly.

Ms. Eastley will reach out as she has some concerns about the model plan.

Ms. Cavanaugh-Bill asked if these would be sent out to all the folks doing these cases in the rurals and the District Court Judges?

Director Ryba said they have provided them as an attachment and listed that it was for discussion today, so they have complied with notice. They have talked to Judges and indigent defense providers to let them know where staff is going, so they have been made aware of it. They have not mailed them out to every person, but they have made them available on our website.

Chairman Crowell said they were not ready to vote on this one today, but it would be great for Members to send in their comments. They will make sure that everybody has got plenty of time to look at these and so they are not time crunched.

Mr. Hickman noted that it is listed on the Department's website as well, under the materials for today's agenda.

8. Model Plan and Model Contract Proposals: discuss Model Plan and Model Contract Proposals (For Discussion) (continued)

Director Ryba said she and Mr. McGinnis have been talking about going to each of the counties and meeting with the County Managers and proposing these things with them first and seeing where the County Managers are and the Board of Commissioners because they are ultimately the ones that will be entering it.

9. Update on Regulations: Regulations submitted to Legislative Counsel Bureau on March 31, 2020 (For Discussion)

Director Ryba said they submitted the regulations to the Legislative Council Bureau on March 31st. There is still no word back from them. The Attorney General told the Director that once they receive them back, then the Department can set a workshop. They do not need any sort of Board vote on setting a workshop. So, they will get that set.

10. Discussion and Announcement of Dates for Future Meetings (For Possible Action)

- a. Schedule next meeting and/or schedule workshop
- b. Next meeting scheduled in Tonopah June 18, 2020, possibly to be rescheduled

Director Ryba said the next meeting scheduled is June 18th in Tonopah. Staff is requesting permission to cancel and reschedule the Tonopah meeting considering the restrictions on travel and would like input on when they should have the next meeting.

Chairman Crowell said he like to go to Tonopah.

Director Ryba said part of the problem is they do not know if the virtual meetings will be extended. After the extensions end, staff will need to contact places to check for availability, but the places are not opening their calendars yet. They could set a time towards the beginning or end of June and staff could start looking for dates.

Chairman Crowell said he thought it would be good to go down to Tonopah for a day. They could all chat and get to know each other. He thinks it is the right thing to do.

Director Ryba asked were they having a meeting in June? Chairman Crowell said yes.

Director Ryba asked will it be in Tonopah or not? Chairman Crowell said June meeting in Tonopah. They will keep it as June 18th for the time being.

11. Public Comment #2

Ms. Eastley said she had been emailing with a member of the public who was trying to access the meeting at the State Supreme Court's website. The video was not working through that website.

11. Public Comment #2 (continued)

Ms. Eastley said the Agenda for the meeting today listed the State Supreme Court's website as the place to access the live video feed. That might be an Open Meeting Law problem.

Asheesh Bhalla, Deputy AG as OML counsel said that he understood there was an issue but, it is not on the Agenda and not something we should be discussing at this time.

Ms. Eastley said it was absolutely something we should be discussing at this time. It's an Open Meeting Law problem that the video was not working, and the public was not able to view the meeting and appropriate that it is brought under Public comment.

Chairman Crowell asked from the AG's perspective, the fact that the video feed did not work at the Supreme Court, did that create an Open Meeting Law violation?

Asheesh Bhalla, Deputy AG said there was potential, of course, for liability under the Open Meeting Law, but the Board is required to engage in reasonable efforts and if there is some issue in the link or the telephonic access then of course, that is something that would be considered upon the submission of a complaint to the AG's Office, but that is not frankly something to be discussed at public comment.

Director Ryba said they did release the link that everyone signed in on to interested parties. So, all interested parties had the sign in code and the phone number and staff did provide an ability for public comment via email.

12. Adjournment

After thanking everyone for their hard work, Chairman Crowell adjourned the meeting at 4:43 pm.