

1 ROBERT LANGFORD (State Bar No. 3988)  
robert@robertlangford.com  
2 AMERICAN CIVIL LIBERTIES UNION OF NEVADA  
616 S. 8<sup>th</sup> Street  
3 Las Vegas, NV 89101  
(702) 471-6565

4 FRANNY FORSMAN (State Bar No. 14)  
f.forsman@cox.net  
5 LAW OFFICE OF FRANNY FORSMAN, PLLC  
1509 Becke Circle  
6 Las Vegas, NV 89104  
(702) 501-8728

7 EMMA ANDERSSON (*pro hac vice*)  
eandersson@aclu.org  
8 AMERICAN CIVIL LIBERTIES UNION  
9 FOUNDATION  
125 Broad Street  
10 New York, NY 10004  
(212) 284-7365

11 MARGARET L. CARTER (*pro hac vice*)  
12 MATTHEW R. COWAN (*pro hac vice*)  
mcarter@omm.com; mcowan@omm.com  
13 O'MELVENY & MYERS LLP  
400 South Hope Street, 18th Floor  
14 Los Angeles, CA 90071  
(213) 430-7592

15 *Attorneys for Plaintiffs*

16 **THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
17 **IN AND FOR CARSON CITY**

18 DIANE DAVIS, JASON LEE ENOX,  
19 JEREMY LEE IGOU, and JON WESLEY  
TURNER II, on behalf of themselves and all  
others similarly situated,

20 Plaintiffs,

21 vs.

22 STATE OF NEVADA; STEVE SISOLAK,  
23 Governor, in his official capacity,

24 Defendants.

Case No. 170C002271B

Dept. No. II

**STIPULATED CONSENT JUDGMENT**

25 **I. BACKGROUND**

26 Plaintiffs Diane Davis, Jason Lee Enox, Jeremy Lee Igou, and Jon Wesley Turner II  
27 (collectively, "Plaintiffs"), on behalf of themselves and all other indigent defendants in the Rural  
28 Counties, filed the above-captioned action (the "Action") against the State of Nevada and

1 Governor Steve Sisolak (collectively, “Defendants”), challenging, *inter alia*, the constitutionality  
2 of Defendants’ policies and practices regarding Defendants’ system of indigent defense in  
3 Nevada’s Rural Counties.<sup>1</sup>

4 Plaintiffs filed their First Amended Complaint on October 15, 2018; Defendants filed their  
5 Answer to Plaintiffs’ First Amended Complaint on November 15, 2018; Plaintiffs filed their  
6 Amended Motion for Class Certification on December 14, 2018; Defendants filed their  
7 Opposition to Plaintiffs’ Amended Motion for Class Certification on April 22, 2019; and  
8 Plaintiffs filed their Reply in Support of their Motion for Class Certification on May 24, 2019.

9 On June 3, 2019, the Nevada legislature passed Assembly Bill 81 (“AB 81”),<sup>2</sup> that: (1)  
10 acknowledges the State’s obligation to provide effective representation to accused indigent  
11 persons at each critical stage of criminal and delinquency proceedings and further acknowledges  
12 the State’s obligation to provide the general framework and resources necessary for the provision  
13 of indigent defense services;<sup>3</sup> (2) establishes an independent Board on Indigent Defense Services  
14 (“Board”) and Department of Indigent Defense Services (“Department”) charged with oversight  
15 and regulation of indigent defense services throughout the State; and (3) was signed into law by  
16 the Governor on June 7, 2019 as Chapter 485, Statutes of 2019.

17 This Court granted Plaintiffs’ Motion for Class Certification on June 14, 2019.

18 On April 30, 2020, the Interim Finance Committee approved certain expenditures for the  
19 Department, allowing it to accelerate implementation of AB 81 in the interim period prior to the  
20 2021-2023 biennial budget, both as to creating the framework contemplated for the Department  
21 while also addressing certain immediate economic-incentive issues that Plaintiffs contend must be  
22 immediately addressed because of the State’s obligation under the Sixth and Fourteenth  
23 Amendments to the U.S. Constitution, Article 1 Section 8 of the Nevada Constitution, and  
24

---

25 <sup>1</sup> “Rural Counties” means the following Nevada counties: Churchill, Douglas, Esmeralda,  
26 Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine.

27 <sup>2</sup> Codified at Nevada Revised Statutes (“NRS”) §§ 180.002 *et seq.*

28 <sup>3</sup> See § 8.2(a). (“The Board shall...[e]stablish minimum standards for the delivery of  
indigent defense services to ensure that such services meet the constitutional requirements and do  
not create any type of economic disincentive or impair the ability of the defense attorney to  
provide effective representation.”).

1 AB 81's acknowledgement that the State remains responsible for ensuring that indigent defense  
2 services are properly funded. Following IFC's approval and all other necessary approvals, the  
3 requested funds for specific items were made available to the Department.

4 Without any admission of fault or wrongdoing, and without conceding or otherwise  
5 expressing any position on any legal issue or argument previously raised in this Action, the  
6 Parties wish to settle the Action and all disputes arising therein as among them, in order to avoid  
7 the cost, difficulty, and uncertainty associated with further litigation while implementing AB 81  
8 to improve indigent defense in the Rural Counties for the certified class. Defendants deny  
9 Plaintiffs' allegations in this Action. Defendants specifically deny that the State has failed to  
10 carry out any constitutional duty whatsoever in relation to the claims and allegations asserted in  
11 this Action, and further deny that any act, omission, law, or policy of the State has caused or will  
12 cause any harm to Plaintiffs or those whose rights they claim to protect in this Action.

13 In that context, the parties have negotiated in good faith and have agreed on the following  
14 terms in this Consent Judgment in order to resolve this case short of trial and to ensure  
15 prospectively that the Plaintiff Class receives representation that is both effective and in  
16 compliance with all relevant professional and ethical standards at every critical stage. The Parties  
17 agree that such effective representation shall include: timely and frequent client communication;  
18 meaningful representation of indigent defendants at initial appearances, bail and bail reduction  
19 hearings, and preliminary hearings; timely review of discovery; sufficient case investigation in  
20 order to determine the relative strengths and weaknesses of the state's case; retention of qualified  
21 experts whenever necessary to provide effective representation; robust pre-trial motion practice;  
22 timely and thorough preparation for trial; timely and thorough preparation for sentencing; and  
23 competent direct appeal advocacy.

24 The Plaintiff Class continues to be harmed by the status quo. Plaintiffs and Defendants  
25 agree that there is an urgent need to forgo additional litigation so that no member of the Plaintiff  
26 Class suffers a deprivation of constitutional rights going forward.

1           The parties agree that the terms of this Judgment are in the public interest and the interests  
2 of the Plaintiff Class and that this Judgment upon the order of the Court is the most appropriate  
3 means of resolving this action.

4           The parties agree that the Department of Indigent Defense Services, created by AB 81, is  
5 best suited to implement, on behalf of Defendants, certain obligations arising under this  
6 Judgment.

7           The Board has reviewed those obligations contemplated under this Judgment for  
8 implementation by the Department and will direct the Executive Director to implement such  
9 obligations in accordance with the terms of this Judgment. This direction is reflected in the  
10 *Authorization of the Board on Indigent Defense Services Concerning the Consent Judgment*  
11 *Settling the Davis v. Nevada Lawsuit*, incorporated herein as Appendix A.

12       **II. FINDINGS OF FACT**

13           The Court has subject matter jurisdiction over this action pursuant to Nev. Const. art. 6  
14 § 6; Nev. Rev. Stat. §§ 33.010, 34.330, and venue is proper under Nev. Rev. Stat. § 13.010  
15 because the State of Nevada and the Governor are named as Defendants, and Carson City  
16 encompasses the capital city of Nevada and the Governor’s office.

17           The Plaintiff Class consists of all persons who are now or will be under formal charge  
18 before a state court in a Rural County of having committed any offense, the penalty for which  
19 includes the possibility of confinement, incarceration, imprisonment, or detention in a  
20 correctional facility (regardless of whether actually imposed) and who are indigent and thus  
21 constitutionally entitled to the appointment of counsel.

22           Defendants are the Governor in his official capacity and the State of Nevada.

23           Plaintiffs and Defendants have determined that this Judgment is the most effective and  
24 prudent means to resolve the disputed issues underlying this action, rather than to engage in  
25 extensive fact and expert discovery, pretrial motions, trial, and appeal, which would be both long  
26 and costly.

27           Over twelve years ago, the Nevada Supreme Court created the Indigent Defense  
28 Commission based on “concerns about the current process for providing indigent defendants ...

1 with counsel and whether the attorneys appointed are providing quality and effective  
2 representation.” FAC ¶ 120; Ex. 1. At the Indigent Defense Commission’s first meeting, it  
3 identified the need for change. FAC ¶ 122; Ex. 2 at 5.

4 In 2018, the Sixth Amendment Center published a report commissioned by the Nevada  
5 Right to Counsel Commission, which had been created by Senate Bill 377, in June 2017. The  
6 2018 Sixth Amendment Center report identified numerous areas in which the representation  
7 Plaintiff Class receives needs to be improved; Plaintiffs allege these deficiencies in representation  
8 are unconstitutional. As a result of these issues, members of the Plaintiff Class contend that they  
9 face a substantial risk that they will be harmed.

10 **III. CONCLUSIONS OF LAW**

11 The right to counsel in criminal cases is protected by the Sixth and Fourteenth  
12 Amendments to the United States Constitution, Article 1, Section 8 of the Nevada Constitution,  
13 and Nevada Revised Statutes §§ 171.188 and 178.397. *See, e.g., Rothgery v. Gillespie Cty.*, 554  
14 U.S. 191, 217 (2008); *United States v. Wade*, 388 U.S. 218, 228 (1967); *In re Wixom*, 12 Nev.  
15 219, 219-24 (1877).

16 The federal and state constitutions require the State to provide counsel to criminal  
17 defendants who are unable to afford their own legal representation. *Gideon v. Wainwright*, 372  
18 U.S. 335 (1963); *In re Wixom*, 12 Nev. 219, 219-24 (1877); *see also Geders v. United States*, 425  
19 U.S. 80, 88–91 (1976) (holding that a criminal defendant has a constitutional right to consult with  
20 his appointed counsel).

21 Counsel must provide, at least minimally, adequate representation in order to meet federal  
22 constitutional standards. *See United States v. Cronin*, 466 U.S. 648, 653 (1984); *see also*  
23 *Strickland v. Washington*, 466 U.S. 668 (1984). The right to counsel may be conceived of as both  
24 prospective—i.e. applying from the outset of the criminal proceeding—and retroactive, i.e.  
25 permitting a guilty verdict or plea to be set aside if an individual defendant proves that the  
26 absence of competent counsel affected her criminal proceeding. *See Rothgery v. Gillespie Cty.*,  
27 554 U.S. 191, 217 (2008).

28

1 Proof that systemic inadequacies in a state’s public defense system have resulted in actual  
2 or constructive denials of counsel at critical stages of prosecution will support a claim for  
3 prospective relief under the Sixth Amendment. *See Cronin*, 466 U.S. at 653; *Tucker v. State*, 394  
4 P.3d 54, 62 (Idaho 2017); *State ex rel. Missouri Pub. Def. Comm’n v. Waters*, 370 S.W.3d 592,  
5 608 (Mo. banc. 2012); *Kuren v. Luzerne Cty.*, 146 A.3d 715, 718 (Pa. 2016).

6 The absence of “traditional markers of legal representation” from a state public defense  
7 system—namely, counsel’s frequent nonattendance during critical stages of the criminal  
8 proceedings; minimally adequate communication with clients; and/or failure to conduct sufficient  
9 investigation—can demonstrate that a state’s public defense system is constitutionally inadequate.  
10 *See Geders v. United States*, 425 U.S. 80, 88–91 (1976); *see also Wilbur v. City of Mount Vernon*,  
11 989 F. Supp. 2d 1122, 1137 (W.D. Wash. 2013); *Avery v. Alabama*, 308 U.S. 444, 446 (1940);  
12 *Pub. Defender v. State*, 115 So. 3d 261 (Fla. 2013); *State v. Citizen*, 898 So. 2d 325 (La. 2005);  
13 *State v. Peart*, 621 So. 2d 780 (La. 1993).

14 The U.S. Department of Justice has identified and articulated the “traditional markers of  
15 legal representation” in various amicus briefs and statements of interest filed in other public  
16 defense reform cases across the country. *See, e.g., Hurrell-Harring, et al. v. State of New York, et*  
17 *al.*, Index No. 8866-07, Doc. No. 11697717 at 12–14 (N.Y. Sup. Ct. 2014), Statement of Interest  
18 of the United States; *Kuren, et al. v. Luzerne County, et al.*, 2015 WL 10768531 at 11–13 (Pa.  
19 2016), Brief of the United States as Amicus Curiae in Support of Appellants; *Tucker, et al. v.*  
20 *State of Idaho, et al.*, No. 43922-2016, Brief for the United States as Amicus Curiae Supporting  
21 Plaintiffs-Appellants at 25–28.

22 The constitutional guarantee of the assistance of counsel is a guarantee of “untrammelled  
23 and unimpaired” loyalty; representation by an attorney “struggl[ing] to serve two masters”  
24 amounts to a denial of counsel for purposes of the Sixth Amendment. *Glasser v. United States*,  
25 315 U.S. 60, 70, 75 (1942). In other words, an attorney forced to choose between the interests of  
26 two clients—co-defendants with conflicting defenses, for instance, or a current and a former  
27 client—is compromised as far as the Constitution is concerned. A defendant need not show  
28 prejudice if his attorney is laboring under a conflict of interest. *Holloway v. Arkansas*, 435 U.S.

1 475, 484 (1978). Where an attorney is unable to provide constitutionally adequate representation  
2 to all her clients, her clients' interests are in opposition with one another: doing the constitutional  
3 minimum for one defendant necessarily takes time that could be spent providing the constitutional  
4 minimum to another. *See Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d  
5 261, 267 (Fla. 2013); *People v. Roberts*, 321 P.3d 581, 589 (Colo. App. 2013); *State ex rel. Mo.*  
6 *Pub. Def. Comm'n v. Waters*, 370 S.W. 3d 592, 609 (Mo. banc 2012); *In re Edward S.*, 92 Cal.  
7 Rptr. 3d 725, 746–47 (Cal. Ct. App. 2009); *United States ex rel. Green v. Washington*, 917 F.  
8 Supp. 1238, 1275 (N.D. Il. 1996).

9 As previously determined by this Court, the Class satisfies the requirements of Rules  
10 23(a) and 23(c)(2)<sup>4</sup> of the Nevada Rules of Civil Procedure for class certification; and

11 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND ORDERED** as follows:

12 **IV. PARTIES**

13 Plaintiff Class Representatives Diane Davis, Jason Lee Enox, Jeremy Lee Igou, and Jon  
14 Wesley Turner II, representing the Plaintiff Class, consisting of all persons who are now or will  
15 be under formal charge before a state court in a Rural County of having committed any offense,  
16 the penalty for which includes the possibility of confinement, incarceration, imprisonment, or  
17 detention in a correctional facility (regardless of whether actually imposed) and who are indigent  
18 and thus constitutionally entitled to the appointment of counsel (“Plaintiffs”).

19 Defendant Stephen F. Sisolak, in his official capacity as the Governor of the State of  
20 Nevada, and Defendant State of Nevada (“Defendants”).

21 **V. NATURE OF THIS JUDGMENT**

22 **A. Duration and Expiration of Terms of this Judgment**

23 Unless otherwise specified, each term of this Judgment shall remain in effect until  
24 Defendants demonstrate substantial compliance by Motion, granted by this Court. Compliance  
25 may be demonstrated by factual update and/or a showing that a statute or regulation postdating  
26 the effective date of this Judgment imposes responsibilities upon Defendants that are identical to

27 \_\_\_\_\_  
28 <sup>4</sup> Current Nev. R. Civ. 23(c)(2) was found under section 23(b)(2) prior to the March 2019  
amendments to the Nevada Rules of Civil Procedure.

1 the terms of this Judgment.

2 **B. Interim Deadlines**

3 The following interim deadlines, each of which is discussed more fully below, shall apply  
4 to this Judgment:

Event	Deadline
Parties identify potential monitors	14 days after Effective Date
Workload data reporting commences	May 1, 2020
Annual reporting on status of indigent defense in Nevada commences	July 1, 2020
Executive Director shall establish a standard contract for the provision of indigent defense services	Within 6 months of Effective Date
All new county contracts for the provision of indigent defense must be approved by the Executive Director (or a designee) prior to execution	Within 6 months of Effective Date
All Class Members have immediate access to applications for indigent defense services	Within 6 months of Effective Date
All Class Members are screened for indigency within 48 hours.	Within 6 months of Effective Date
All Class Members eligible for publicly funded legal representation are represented by counsel at initial appearance/arraignment	Within 6 months of Effective Date



Event	Deadline
Defendants shall establish a system for issuing client surveys to indigent defendants and incorporating client survey feedback into Defendants' responsibility for reviewing the manner in which indigent defense services are provided throughout the State.	Within 12 months of Effective Date
Delphi study contract executed with qualified provider	12 months after Effective Date
Delphi study standards included in standard indigent defense contract	6 months after completion of Delphi study
Compliance with Delphi study workload standards	12 months after completion of Delphi study

**C. Dismissal**

Any time after June 30, 2023, and after a determination by this Court that all terms of this Judgment have been substantially complied with, this Court shall dismiss this Action. In evaluating substantial compliance, the Court should consider compliance with the interim deadlines set forth above. Until such dismissal, this Court shall retain jurisdiction over this action. In no event shall this Court dismiss the case before June 30, 2023.

**VI. DEFINITIONS**

The parties intend that the following terms will have the specified meaning when used throughout this Judgment:

“ABA Criminal Justice Standards” means the latest edition of the Criminal Justice Standards for the Defense Function, published by the American Bar Association, and available at: [https://www.americanbar.org/groups/criminal\\_justice/standards/DefenseFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/).

“ABA Ten Principles” means the ABA Ten Principles of a Public Defense Delivery System, and available at:

1 [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_s](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_s)  
2 [claid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_s).

3 “Action” means *Davis v. Nevada*, Case No. 170C002271B, originally filed on  
4 November 2, 2017.

5 “Judgment” and “Consent Judgment” mean this Stipulated Consent Judgment dated  
6 May 1, 2020 between and among Plaintiffs and Defendants.

7 “Assembly Bill 81” or “AB 81” means the Nevada statute signed into law on June 7,  
8 2019, titled “AN ACT relating to criminal defense; creating the Department of Indigent Defense  
9 Services to oversee criminal defense services provided to indigent persons in this State; creating  
10 the Board on Indigent Defense Services consisting of various appointed persons to provide certain  
11 direction and advice to the Executive Director of the Department and to establish certain policies;  
12 requiring the Board to establish the maximum amount a county may be required to pay for the  
13 provision of indigent defense services; authorizing the Board to adopt regulations governing  
14 indigent defense services; providing for the transfer of responsibility for the provision of indigent  
15 defense services from certain counties to the State Public Defender in certain circumstances;  
16 allowing such services to be transferred back to the county in certain circumstances; and  
17 providing other matters properly relating thereto.”

18 “Board” means the Board on Indigent Defense Services as established by AB 81.

19 “Department” means the Department of Indigent Defense Services as established by  
20 AB 81.

21 “Executive Director” means the Executive Director of the Department of Indigent Defense  
22 Services as established by AB 81.

23 “Corrective action plan” means any requirement relating to indigent defense services that  
24 the Department of Indigent Defense Services imposes upon a Rural County pursuant to Sections  
25 13 and 14 of AB 81.

26 “Criminal defendant” means any person under formal charge before a Nevada state court  
27 in a Rural County of having committed any offense, the penalty for which includes the possibility  
28 of confinement, incarceration, imprisonment, or detention in a correctional facility.

1           “Plaintiffs,” “Plaintiff Class,” “Class members,” or “Class” means all named Class  
2 Representatives and all persons who are now or who will be under formal charge before a state  
3 court in a Rural County of having committed any offense, the penalty for which includes the  
4 possibility of confinement, incarceration, imprisonment, or detention in a correctional facility  
5 (regardless of whether actually imposed) and who are indigent and thus constitutionally entitled  
6 to appointment of counsel; and

7           “Rural Counties” means the following Nevada counties: Churchill, Douglas, Esmerelda,  
8 Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine.

9           “Arraignment/Initial Appearance” means the proceeding at which criminal defendants are  
10 presented with the formal charges against them and are required to enter a plea.

11           “Effective Date” means the date upon which this Court signs the Consent Judgment.

12 **VII. ELIMINATION OF ECONOMIC DISINCENTIVES**

13 **A. Standardized Contracting**

14           Consistent with the ABA Ten Principles, Defendants, through the Board and Executive  
15 Director, shall ensure that contracts for rural public defense services after the effective date do not  
16 include terms such that the pricing structure charges or pays a single fixed fee for the services and  
17 expenses of the attorney. Counsel with whom counties contract with to provide public defense  
18 services shall be compensated with a reasonable hourly rate that takes into account overhead and  
19 expenses, including costs relating to significant attorney travel time. Contracts for public defense  
20 services shall specify performance requirements and anticipated workload, provide a funding  
21 mechanism for excess, unusual, or complex cases that does not require judicial approval, and  
22 separately fund expert, investigative, appellate work, and other litigation support services.

23           Compensation for public defense services provided by rural counties shall be comparable  
24 on an hourly basis to that of prosecutors in the same county with comparable experience, and  
25 should take into account that prosecutors do not pay for overhead or expenses out of their own  
26 compensation.

27           Consistent with the ABA Ten Principles, Defendants, through the Board and the  
28 Executive Director, shall ensure that selection of private attorneys for public defense contracts

1 shall be independent of the county District Attorney and the judiciary. Attorney selection shall be  
2 based upon individual attorney qualifications and experience and shall not take into account the  
3 amount of fees previously charged by the applicant for public defense services.

4 Defendants, through the Board and the Executive Director, shall establish a standard  
5 contract for the provision of indigent defense services within six months of the date upon which  
6 the Executive Director assumes his/her duties in that position. The Executive Director shall use  
7 the National Legal Aid and Defender Association’s Model Contract for Public Defense Services<sup>5</sup>  
8 as a model, amending it as necessary, given local needs, and to ensure consistency with AB 81  
9 and all implementing regulations. The contracting process shall include a check for conflicts of  
10 interest. Any applicant who previously served as a county prosecutor, shall not be eligible for an  
11 indigent defense contract in the same county before 18 months of their last date of employment as  
12 a prosecutor. Exceptions to this requirement may be made in extraordinary circumstances by the  
13 Executive Director, who shall evaluate any potential conflicts of interest and ensure the county  
14 has a process to notify indigent defendants of any such potential conflicts and ensure any conflict  
15 waivers obtained are knowing and voluntary and in compliance with legal ethics rules.

16 Defendants, through the Board, shall require all future county contracts for the provision  
17 of indigent defense after the Effective Date to be approved by the Executive Director (or a  
18 designee) prior to execution.

19 **B. Flat Fee Contracts in Justice and Municipal Courts**

20 Defendants, through the Executive Director of the Department of Indigent Defense  
21 Services, shall include the following in the 2020 annual report required by AB 81, Section 10.1:  
22 An analysis of whether Nevada Revised Statutes § 171.188(4) is inconsistent with (1) the State’s  
23 constitutional and statutory obligation to ensure indigent defendants receive meaningful  
24 assistance of counsel, and (2) with AB 81’s requirement in section 8.2(a) that the Board on  
25 Indigent Defense Services “[e]stablish minimum standards for the delivery of indigent defense  
26 services to ensure that such services ... do not create any type of economic disincentive ... to  
27

---

28 <sup>5</sup> Available at: <http://www.nlada.org/defender-standards/model-contract/black-letter>.

1 provide effective representation.”

2 If the Executive Director determines that Nevada Revised Statutes § 171.188(4) is  
3 inconsistent with the constitutional and statutory provisions identified above, the Executive  
4 Director will—consistent with the enumerated responsibility in AB 81, Section 10.2—  
5 recommend legislation to cure those defects in the 2020 annual report.

6 **C. Court-Appointed Defense Counsel**

7 Defendants, through the Executive Director of the Department of Indigent Defense  
8 Services, shall include the following in the 2020 annual report required by AB 81 Section 10.1:  
9 An analysis of whether Nevada Revised Statutes §§ 7.115-7.175<sup>6</sup> (1) are inconsistent with AB  
10 81’s requirement in section 8.2(a) that the Board on Indigent Defense Services “[e]stablish  
11 minimum standards for the delivery of indigent defense services to ensure that such services ...  
12 do not create any type of economic disincentive ... to provide effective representation;” (2)  
13 provide adequate hourly rates to counsel; (3) create economic disincentives to counsel by capping  
14 total payments; (4) create economic disincentives for counsel to employ investigative, expert or  
15 other services by capping payment; and (5) are inconsistent with the State’s constitutional and  
16 statutory obligation to ensure indigent defendants receive meaningful assistance of counsel,  
17 including the “the obligation of the Legislature to provide the general framework and  
18 resources necessary for the provision of indigent defense services.”

19 If the Executive Director determines that Nevada Revised Statutes §§ 7.115-7.175 are  
20 deficient, the Executive Director will—consistent with the enumerated responsibility in AB 81  
21 Section 10.2—recommend legislation to cure those defects in the 2020 annual report.

22 **VIII. ESTABLISHMENT OF MINIMUM STANDARDS**

23 **A. Initial Appearance and Arraignment**

24 Defendants shall ensure, within six months of the effective date of the Consent Judgment  
25 and continuing thereafter, that:

26 \_\_\_\_\_  
27 <sup>6</sup> These statutes’ references to “appointed defense counsel” and “attorney[s] other than public  
28 criminal defendants and are neither contracted with a county to serve as a primary provider of  
indigent defense nor employed by an institutional public defender office.

- 1           • All Class Members have immediate access to applications for indigent defense
- 2           services by, among other things, ensuring that county jails are aware of all
- 3           relevant laws and rules regarding the provisions of such applications;
- 4           • All Class Members are promptly screened for indigence in order to provide
- 5           representation at such person’s initial appearance/arraignment; and
- 6           • All Class Members who are eligible for publicly funded legal representation are
- 7           represented by counsel in person at his or her initial appearance/arraignment. A
- 8           timely initial appearance with counsel shall not be delayed pending a
- 9           determination of defendant’s eligibility.

10           Defendants, through the Board and Executive Director, shall include in the model contract  
11           referenced above provisions requiring that indigent defense providers:

- 12           • Make all reasonable efforts to meet with the client, in a private confidential space,
- 13           prior to the initial appearance, and that in-court discussions with clients
- 14           supplement, not supplant, such meetings;
- 15           • Make an argument for the client’s release at the initial appearance and/or for a
- 16           bail amount that the client can afford to pay; and
- 17           • Advise all clients not to waive any substantive rights or plead guilty at the initial
- 18           appearance.

19           **B. Client Communication**

20           Defendants, through the Board and Executive Director, shall include in the model contract  
21           referenced above a provision requiring that indigent defense providers make all reasonable efforts  
22           to meet with each client within the first seven days following the assignment of the case, as well  
23           as every 30 days thereafter, unless there are no significant updates in the client’s case.

24           Defendants, through the Board and Executive Director, shall also ensure that indigent  
25           defense providers comply with the performance standards regarding client communication laid  
26           out in the Nevada Indigent Defense Standards of Performance ordered implemented by the  
27           Nevada Supreme Court in *In the Matter of the Review of Issues Concerning Representation of*  
28           *Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411 (Oct. 16,

1 2008), including making all reasonable efforts to conduct an initial interview with the client in a  
2 confidential setting as soon as practicable and before any court proceeding, which interview shall  
3 include, at a minimum, an explanation to the client of the charges against him or her and potential  
4 penalties; a discussion concerning pretrial release; an explanation of the attorney-client privilege;  
5 a general procedural overview of the progression of the case; how and when counsel can be  
6 reached; and when counsel will see the client next. These Standards of Performance are  
7 incorporated herein as Appendix B. In addition, Defendants, through the Board and Executive  
8 Director, shall engage in reasonable efforts to ensure that clients are able to contact their indigent  
9 defense providers throughout the pendency of their case, including requiring indigent defense  
10 providers to maintain a system for receiving collect telephone calls and emails from incarcerated  
11 clients.

12 Defendants shall take appropriate legal steps to ensure that county jails and state prisons  
13 are in compliance with all existing laws and rules regarding access to counsel and the privacy of  
14 client communications.

15 **C. Attorney Qualifications**

16 Consistent with the ABA Ten Principles, Defendants, through the Board and Executive  
17 Director, shall ensure that indigent defense providers' ability, training, and experience match the  
18 complexity of the case. A defense attorney shall not be assigned a case if that attorney lacks the  
19 experience or training to handle the particular case competently.

20 Defendants' eligibility requirements for attorneys to provide indigent defense services  
21 (See AB 81 Section 12.1(b)) shall include a minimum amount of representative experience  
22 (including jury trials) at each of the following offense levels before attorneys are deemed eligible  
23 for the next level: (1) misdemeanors and gross misdemeanors; (2) category C-E felonies; (3) non-  
24 capital category A-B felonies; and (4) capital category A felonies. Defendants' eligibility  
25 requirements for attorneys to provide indigent defense services shall include specialized  
26 requirements for attorneys to be deemed eligible to represent juveniles facing delinquency  
27 proceedings or charges in criminal court.  
28

1           **D. Training & Resources**

2           Consistent with the ABA Ten Principles, Defendants, through the Board and Executive  
3 Director, shall provide indigent defense providers with access to a systematic and comprehensive  
4 training program, specifically including a certain amount of CLE specific to criminal defense.  
5 All indigent defense attorneys shall comply with the Board's requirement for systematic and  
6 comprehensive training.

7           Training topics shall be tailored to the needs of indigent defense practitioners and shall  
8 include, at a minimum: (1) client intake interviews; (2) client communication; (3) securing  
9 pretrial release; (4) preparation for arraignment, including preservation of a client's rights, and  
10 requests for formal and/or informal discovery; (5) investigation; (6) filing and responding to pre-  
11 and post-trial motions; (7) plea and sentencing outcome negotiations; (8) trial advocacy; and (9)  
12 appeals; and (10) special issues regarding the representation of juveniles.

13           Defendants shall make training and guidance resources available to all indigent defense  
14 providers. Such resources shall include experienced criminal attorneys available for consultation  
15 and a brief and motion bank of pleadings to be used for drafting guidance.

16           **E. Performance**

17           In implementing AB 81 Section 13, Defendants shall incorporate the performance  
18 guidelines set forth in the ABA Criminal Justice Standards and the Nevada Indigent Defense  
19 Standards of Performance ordered implemented by the Nevada Supreme Court in *In the Matter of*  
20 *the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile*  
21 *Delinquency Cases*, ADKT No. 411 (Oct. 16, 2008), included as Appendix B.

22           **F. Evaluation**

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

27           Within 12 months of the effective date, Defendants shall establish a system for issuing  
28 client surveys to indigent defendants and shall establish a system for incorporating client survey



1 feedback into Defendants’ responsibility for “reviewing the manner in which indigent defense  
2 services are provided throughout the State.” AB 81, Section 13. Client surveys shall be modeled  
3 on the survey included at Appendix C.

4 **G. Workload**

5 As part of its obligations under AB 81 Section 8.2(d)(4) (“Establishing guidelines to be  
6 used to determine the maximum caseloads for attorneys who provide indigent defense services”),  
7 Defendants shall commission a Delphi study to establish workload standards for the Rural  
8 Counties modeled upon the American Bar Association’s Louisiana and Rhode Island Projects.<sup>7</sup>  
9 Defendants shall make best efforts to enter into a contract with a qualified provider for the Delphi  
10 study within 12 months of the effective date.

11 Within six months of the study’s completion, Defendants, through the Board, shall include  
12 in the model contract referenced above, provisions to ensure that indigent defense providers’  
13 workloads—including any private work outside of their indigent defense duties—are consistent  
14 with the standards established in the Delphi study.

15 These workload standards may be superseded by standards of equal or greater rigor  
16 promulgated by the Board and/or Department.

17 Defendants shall require compliance with workload standards established as a result of the  
18 Delphi study within 12 months of completion of the Delphi Study.

19 **H. Enforcement of Minimum Standards**

20 Defendants shall timely and uniformly report to Plaintiffs all Board and/or Department  
21 determinations made pursuant to AB 81 Sections 13 and 14 that a specific Rural County is not  
22 meeting minimum standards and shall share the corrective action plan to address any deficiencies.  
23 Defendants shall regularly monitor the progress of each corrective action plan and provide

---

24 <sup>7</sup> Available at:  
25 [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_s](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf)  
26 [claid\\_louisiana\\_project\\_report.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf);  
27 [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_s](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf)  
28 [claid\\_def\\_ri\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf)

1 monitoring reports to Plaintiffs.

2 **IX. UNIFORM DATA COLLECTION AND REPORTING**

3 **A. Uniform Workload Data Collection**

4 Consistent with the Board’s authority in AB 81, Section 8.2(d)(2), Defendants shall ensure  
5 that indigent defense providers’ reports include at a minimum: (1) public defense caseload  
6 numbers and case outcome, organized by type of case (capital category A felony, non-capital  
7 category A-B felony, category C-E felony, gross misdemeanor, misdemeanor, probation  
8 violation, parole violation, capital appeal, felony appeal, misdemeanor or gross misdemeanor  
9 appeal); (2) attorney and staff hours spent per public defense case; (3) investigator hours per case;  
10 (4) expert hours per case; (5) total number of motions to suppress (i) filed and (ii) litigated; (6)  
11 number of trials over the reporting period; and (7) private workload, if any, measured in attorney  
12 hours.

13 **B. Workload Data Reporting Requirements**

14 Defendants shall ensure that the indigent defense providers’ reports of workload data  
15 described above are provided to Plaintiffs and made publicly available on a quarterly basis,  
16 commencing no later than May 1, 2020.

17 **C. Indigent Defense Services Reporting Requirements**

18 Consistent with the Executive Director’s enumerated responsibilities in AB 81 Sections  
19 10.1(f) and 10.2 regarding annual reporting, Defendants shall ensure that such annual reports  
20 regarding the state of indigent defense services in the State of Nevada are provided to Plaintiffs  
21 and the public, commencing no later than July 1, 2020. Such reporting shall comport with AB  
22 81’s enumerated requirements and shall include, at a minimum: (1) any workload and case  
23 disposition data collected from the Rural Counties; and (2) any costs related to provision of  
24 indigent defense services.

25 Plaintiffs may seek additional information pertaining to implementation of AB 81 and this  
26 Consent Judgment from the Department on a reasonable basis, with the Department agreeing to  
27 use best efforts to provide any such requested information in a timely fashion.  
28

1    **X.    MONITORING**

2           In order to facilitate the successful implementation of this Consent Judgment, the Court  
3 shall appoint a Monitor to assess, on an ongoing basis, the extent to which Defendants are  
4 complying with the terms of this Consent Judgment, and to advise the Court on any compliance  
5 issues that may arise. The Monitor’s authority shall be limited to the duties expressly set forth in  
6 this Consent Judgment.

7           Within fourteen days of the effective date of this Consent Judgment, the Parties shall  
8 identify and recommend potential monitors to each other. If the Parties can reach an agreement,  
9 the Court will appoint the agreed upon monitor. If the Parties cannot come to an agreement on  
10 who the monitor should be, the Parties shall identify their recommended monitors to the Court for  
11 consideration. The Court shall make the final determination as to which of these proposed  
12 monitors will be appointed for purposes of this Consent Judgment. Should the Monitor, or any  
13 successor, become unwilling or unable to serve as Monitor while this Consent Judgment is  
14 effective, then the Parties shall repeat the initial process to select a replacement monitor: first try  
15 to reach a joint decision; if a joint decision cannot be reached, submit potential names to the  
16 Court for decision. Defendants shall make all reasonable efforts to ensure that the fees and costs  
17 of the Monitor are paid in full in an amount not to exceed \$75,000 per year (absent agreement by  
18 the parties or Court approval for additional work) in a timely manner.

19           The duties of the Monitor shall include the following: 1) receive reports and information  
20 from the Department, Department staff, and the Board related to the Board’s and Department’s  
21 obligations under the terms of the Agreement; 2) analyze the information received to evaluate  
22 compliance with the terms of the Agreement; and 3) file quarterly written reports to the District  
23 Court and Parties, either confirming compliance with the terms of the Agreement or notifying the  
24 District Court and Parties of any failures to comply with the terms of the Agreement. The  
25 Monitor’s first report shall be due within 3 months of his or her start date.

26           Disputes between the parties regarding the Monitor’s compliance findings shall be  
27 resolved according to the following process: 1) within 7 work days of being served a copy of the  
28

1 Monitor's compliance report, a party shall notify the other party of the dispute;<sup>8</sup> 2) the parties  
2 shall meet and confer within 7 work days in order to resolve the dispute; 3) if in order to resolve  
3 the dispute, the parties agree that this Judgment requires revision, the parties shall file a joint  
4 motion to amend this Judgment; and 4) if the parties are unable to reach a resolution, the  
5 complaining party may file a motion with the District Court to either enforce the terms of this  
6 Judgment or dispute the Monitor's findings. The opposing party shall file its opposition within  
7 15 calendar days of the motion and the parties shall have an opportunity for a hearing by the  
8 District Court, to be attended by the Monitor.

9         The Monitor shall have access to Board members and Department personnel, upon  
10 reasonable notice, in order to complete his/her reports to the District Court and Parties. Such  
11 access shall be reasonably limited to what the Monitor deems necessary to fulfill his or her duties.  
12 Additional investigatory efforts to evaluate compliance, such as site visits in the Rural Counties,  
13 that will cause the Monitor's annual fee to exceed \$75,000, requires either prior agreement of the  
14 parties or Court approval.

15         The Court in which this case was filed, Department II of the First District Judicial Court  
16 of the State of Nevada in and for Carson City, will maintain jurisdiction for purposes of  
17 adjudicating disputes under this Section.

18 **XI. ATTORNEYS' FEES AND COSTS**

19         Each party shall bear their respective expenses and costs incurred from the date the Action  
20 was commenced through the Effective Date. In the event that further legal fees and costs are  
21 incurred as the result of a dispute arising from this Judgment, enforcement thereof and/or the  
22 terms herein, each Party shall bear its own future attorneys' fees and costs, unless the Court  
23 determines there is a material breach of a term of this Judgment, in which case the successful  
24 Party shall be awarded reasonable attorneys' fees and costs as determined by the Court.

25 **XII. DISPUTES**

26         In the event that a Party believes that any other Party is not in compliance with the terms

27 \_\_\_\_\_  
28 <sup>8</sup> If either party elects not to dispute the Monitor's findings or conclusions in one report, that party shall not have waived their ability to dispute the same findings or conclusions in a subsequent report.

1 of this Judgment, the complaining Party will notify the allegedly noncompliant Party of such  
2 noncompliance within 30 days of becoming aware of any issues of noncompliance. Notification  
3 will be in writing and will be provided to counsel for the Party alleged to be in noncompliance.

4 The Party alleged to be in noncompliance will have 30 days following receipt of the  
5 notification concerning the alleged noncompliance to respond to the notification.

6 Following the complaining Party's receipt of the response from the allegedly  
7 noncompliant Party, the Parties agree to negotiate in good faith to resolve any remaining disputes  
8 regarding the alleged noncompliance. The complaining Party agrees not to file any motion to  
9 enforce this Judgment until this dispute resolution process has been completed, and then only if  
10 the alleged noncompliance has not been corrected or deemed by the Parties to be unfounded. If  
11 the allegedly noncompliant Party fails to respond to the notification as set forth above, the  
12 complaining Party may file a motion to enforce this Judgment after the expiration of the 30 day  
13 period identified in that subdivision. Any motion to enforce this Judgment shall be filed in the  
14 Court in which this Action was filed.

15 The Court in which this case was filed, Department II of the First District Judicial Court  
16 of the State of Nevada in and for Carson City, will maintain jurisdiction for purposes of  
17 monitoring and enforcing of this Judgment.

18 This Section shall not apply to disputes arising out of the Monitor compliance report  
19 process, as set forth in Section X, above.

20 **XIII. RESERVATION OF RIGHTS**

21 Nothing in this Judgment shall limit the rights, if any, of individual class members to  
22 preserve issues for judicial review in the appeal of an individual case or for class members to  
23 exercise any independent rights they may otherwise have.

24 **XIV. REPRESENTATIONS AND WARRANTY**

25 Counsel for the Parties, on behalf of themselves and their clients, represent that they know  
26 of nothing in this Judgment that exceeds the legal authority of the Parties or is in violation of any  
27 law. Defendants' counsel represents and warrant that they are fully authorized and empowered to  
28 stipulate to this Judgment on behalf of the State of Nevada and the Governor of Nevada, Steve

1 Sisolak, in his official capacity, and acknowledge that Plaintiffs stipulate to this Judgment in  
2 reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully  
3 authorized and empowered to stipulate to this Judgment on behalf of the Plaintiffs, and  
4 acknowledge that Defendants stipulate to this Judgment in reliance on such representation. The  
5 undersigned, by their signatures on behalf of Plaintiffs and Defendants, warrant that upon  
6 execution of this Stipulated Judgment in their representative capacities, their principals, agents,  
7 and successors of such principals and agents shall be fully and unequivocally bound hereunder to  
8 the full extent authorized by law.

9 **XV. SEVERABILITY**

10 In the event any of the terms or provisions of this Judgment are found to be legally  
11 unenforceable, then the remaining terms and conditions shall nevertheless be enforceable without  
12 regard to any such provisions or terms that are found to be legally unenforceable.

13 **XVI. SOLE AGREEMENT**

14 The Parties understand and agree that this Judgment constitutes the sole agreement among  
15 them as to the subject matter of this Judgment, and that in stipulating to this Judgment they have  
16 not relied on any other promises, inducement, or representations other than as expressly set forth  
17 herein in deciding to stipulate to this Judgment. Any modifications must be made in writing and  
18 signed by all Parties to this Judgment.

19 **XVII. EXECUTION**

20 Having read the foregoing and understood and agreed to the terms of this Judgment,  
21 consisting of a total of twenty-two typewritten pages (not including counterpart signature pages)  
22 and having been advised by counsel, the Parties hereby voluntarily affix their signatures. This  
23 Judgment may be executed in counterparts, and a copy shall be as valid and admissible into  
24 evidence as the original in any subsequent proceeding among the Parties.

25 **XVIII. APPLICABLE LAW**

26 This Judgment shall be interpreted under the laws of the State of Nevada.  
27  
28

1 **IT IS SO ORDERED**

2

3 Dated \_\_\_\_\_, 2020

4

5

6 For Plaintiffs:

7 Signed: \_\_\_\_\_

8 Title: \_\_\_\_\_

9 Dated: \_\_\_\_\_

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

\_\_\_\_\_  
Hon. James E. Wilson Jr.  
District Judge

AMERICAN CIVIL LIBERTIES UNION OF  
NEVADA  
ROBERT LANGFORD (State Bar No. 3988)  
616 S. 8<sup>th</sup> Street  
Las Vegas, NV 89101  
(702) 471-6565  
robert@robertlangford.com

FRANNY FORSMAN (State Bar No. 14)  
LAW OFFICE OF FRANNY FORSMAN,  
PLLC  
1509 Becke Circle,  
Las Vegas, NV 89104  
(702) 501-8728  
f.forsman@cox.net

EMMA ANDERSSON (*pro hac vice*)  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad Street,  
New York, NY 10004  
(212) 284-7365  
eandersson@aclu.org

MARGARET L. CARTER (*pro hac vice*)  
mcarter@omm.com  
MATTHEW R. COWAN (*pro hac vice*)  
mcowan@omm.com  
O'MELVENY & MYERS LLP  
400 South Hope Street, 18th Floor  
Los Angeles, CA 90071  
(213) 430-7592

1 For Defendants:  
2 Signed: \_\_\_\_\_  
3 Title: \_\_\_\_\_  
4 Dated: \_\_\_\_\_  
5

AARON D. FORD  
Attorney General  
CRAIG A. NEWBY  
Deputy Solicitor General  
JEFFREY M. CONNER  
Deputy Solicitor General  
FRANK A. TODDRE II  
Senior Deputy Attorney General  
STEVE SHEVORSKI  
Office of the Nevada Attorney General  
100 North Carson Street  
Carson City, NV 89701

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**APPENDIX A**

*Authorization of the Board on Indigent Defense Services Concerning Consent Judgment Settling the Davis v. Nevada Lawsuit*

Pursuant to AB 81, the Board on 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. Nevada* 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 designee). The Board acknowledges that those obligations constitute measures that, once implemented, will improve the quality of indigent legal services. Therefore, the Board hereby authorizes and directs the Executive Director and Department to implement those obligations in accordance with the terms of the Consent Judgment. The Board represents and warrants that it is authorized to take this action.

Board Chair Signature: \_\_\_\_\_ Date: \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**APPENDIX B**

Nevada Indigent Defense Standards of Performance ordered implemented by the Nevada Supreme Court in *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411 (Oct. 16, 2008)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**APPENDIX C**  
**CLIENT SURVEY**