State of Nevada
Department of Indigent Defense Services
Board Meeting and Workshop Minutes

Wednesday December 2, 2020
9:00 AM
Meeting Locations:

OFFICE	LOCATION	ROOM
VIRTUAL ONLY		

Public was able to access the following link: Join Microsoft Teams Meeting +1 775-321-6111 United States, Reno (Toll) Conference ID: 593 716 425#

1. Call to Order/Roll Call

Acting Chair Professor Anne Traum called the meeting and workshop of the Board of Indigent Services to order shortly after 9:00 a.m. on Wednesday, December 2, 2020.

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

Board Members Present: Acting Vice Chair Professor Anne Traum, Laura Fitzsimmons, Julie Cavanaugh-Bill, Joni Eastley, Drew Christensen, Dave Mendiola, Lorinda Wichman, Rob Telles, Jeff Wells, Kate Thomas, Chris Giunchigliani, Bevan Lister and Justice William Maupin.

Others Present: Executive Director Marcie Ryba, Deputy Director Jarrod Hickman, Deputy Director Patrick McGinnis, Jason Kolenut, Cindy Atanazio, Alexus McCurley, Judge Schlegelmilch, Deputy Attorney General Sophia Long, JoNell Thomas, Clark County Special Public Defender, John Arrascada, Washoe County Public Defender, Darin Imlay, Clark County Public Defender, and Marc Picker, Washoe County Alternate Public Defender, John Lambrose, Franny Forsman and Matt Pennell.

2. Public Comment

Public Comments were submitted via emails from John Arrascada, Washoe County Public Defender, and Marc Picker, Washoe County Alternate Public Defender. A letter was submitted by JoNell Thomas, Clark County Special Public Defender and signed by John Arrascada, Marc Picker, and Darin Imlay.

JoNell Thomas commented that the institutional public defenders needed to leave before 2 pm and were hoping to ensure that they were able to comment on all necessary matters before leaving.

Acting Chair Professor Traum thanked Ms. Thomas for her comment and agreed to take the regulations out of order, if necessary.

Acting Chair Professor Traum asked for additional comment. There was none. Acting Chair Traum asked Ms. Atanazio if there were any written comments.

Cindy Atanazio stated no additional comments were submitted other than what was previously submitted to the Board.

3. Welcome New Board Member Bevan Lister from Lincoln County (For Discussion).

Acting Chair Professor Traum welcomed Bevan Lister to the Board and asked him to introduce himself.

Bevan Lister introduced himself to the Board.

4. Vote for New Chair and Vice Chair (For Discussion and possible action).

Lorinda Wichman nominated Professor Traum to remain as chair.

Laura Fitzsimmons seconded the motion.

Acting Chair Professor Traum agreed to be nominated and asked for any other nominations. There were no other nominations.

Motion: Professor Anne Traum to Serve as Chair to the Board of Indigent Defense Services.
By: Lorinda Wichman
Second: Laura Fitzsimmons
Vote: Passed unanimously.

Joni Eastley nominated Dave Mendiola for vice chair.

Lorinda Wichman seconded the motion.

Motion: Dave Mendiola to Serve as Vice-Chair to the Board of Indigent Defense Services.
By: Joni Eastley
Second: Lorinda Wichman
Vote: Passed unanimously.

5. Public Workshop: Review: For Discussion/Consideration/Potential Action for New Regulations (For possible action)

Chair Traum invited Executive Director Ryba and Deputy Director Hickman to present.

Executive Director Ryba explained that in preparation for the meeting, the Sixth Amendment Report written by David Carroll was reviewed. The Sixth Amendment Center recommended, encouraged the state of Nevada to authorize their department to promulgate some of the following standards: attorney qualifications; attorney training; early appointment of counsel; attorney

supervision; attorney workload; uniform data collection and reporting; contracting. Ms. Ryba explained that these standards should undergo public comment and then Board approval.

Executive Director Ryba explained to the Board that certain changes were being requested to the regulations in LCB file number R042-20 by the Legislative Counsel Bureau. Ms. Ryba explained that if the Board adopts recommended changes, the next step would be to set a public hearing and after 30 days, these will become temporary regulations through November 1, 2021. Ms. Ryba next explained the benefits of temporary regulations. The time period between adoption of the temporary regulations and November 1, 2021 would allow the Board time to evaluate the regulations and ultimately decide on their permanence. For that reason, Ms. Ryba recommended that the regulations currently be made temporary as there is the potential for substantive changes to be made.

Executive Director Ryba outlined the following sections that she will cover: Sections 1 through 10, Definitions; Sections 11 through 17, Declaratory Rulings and Petitions; Sections 18 through 21, Financial Reporting. Ms. Ryba explained that Deputy Director Hickman would be covering the following sections: Sections 22 through 26B, Content of Plans; Sections 27 through 39, Attorney Qualifications. Ms. Ryba explained that Deputy Director McGinnis would be covering the following sections: Section 40, Review Audit, and Investigation; Sections 42 through 43, Economic Disincentives and Contract Terms; Sections 48 through 50, Uniform Data Collection.

Some members of the Board indicated difficulty in following the prepared PowerPoint slides. Chair Traum indicated that she too would prefer to hear the presentation minus the prepared PowerPoint.

Executive Director Ryba gave a quick overview to the Board of the proposed changes. Ms. Ryba explained to the Board that no changes were being requested for Sections 1 and 2. Section 3 has been requested to be deleted as the focus has shifted from appointments to screening. Sections 4 and 4A have no proposed changes. A change of language has been requested for Section 5, whereby the words "in need of supervision" when discussing a juvenile have been added for consistency with the definition of Indigent Defense Services in NRS 180.004. The definition of department has been requested to be added to Section 5A. In Section 6, the requested change is to delete the definition of a delivery system as it was not used throughout the regulations and did not deem a definition necessary. There have been no proposed changes to Sections 7, 8, and 9. In Section 10, a request has been made to delete the language of Subsections 1, 2, and 3 because the language itself was too limiting regarding a plan and because a plan is more thoroughly defined in Sections 22 through 26B.

Jeff Wells suggested that the language in Section 10 be changed to read that it is in accordance with the regulations in ADKT411 and the Supreme Court.

Executive Director Ryba asked Mr. Wells to clarify if there was a certain section that needed to be added or just language that needed to be added. Ms. Ryba also reiterated to the Board that these definitions were discussed in further detail in Sections 22 through 26B.

Jeff Wells clarified that his request was for language indicating that the section is subject to ADKT411 and any further pronouncement of the court.

Chair Traum suggested adding bracketed language into the section, and Mr. Jeff Wells suggested that the bracketed language be general as it pertains to questions of law. Ms. Traum concurred with Mr. Wells' suggestion and suggested in addition that the Board circle back to this request later to determine whether or not this was the best location for the bracketed language.

Drew Christensen indicated that he would like to include the more rigorous screening process of finances to determine indigence in the definition language as defined by the Supreme Court in ADKT411. Mr. Christensen explained to the Board that the courts in Clark County use a form with the qualifications of indigency on it, and that it may be appropriate to add that additional language from ADKT411.

Executive Director Ryba next discussed the Administrative Rulemaking Procedural Guide regarding Sections 11 through 18 and indicated that the Guide sets forth that every agency is required to adopt regulations for filing a Disposition of Petitions for Declaratory Order and Advisory Opinions as to the applicability of any statutory provision agency regulation or decision of the agency. Each agency that is a rulemaking agency is required to have these regulations taken directly from the Guide. As a result, Ms. Ryba explained, no changes are being requested for Sections 11 through 17.

Chair Traum asked if any comments were received regarding Sections 11 through 17 prior to the meeting. Executive Director Ryba indicated to the Board that no written comments had been received. Ms. Traum then asked the Board for comments. The Board had no comments regarding Sections 11 through 17.

Executive Director Ryba informed the Board that Sections 18 through 21 have been grouped into the Financial Reporting and Maximum Contribution Formula and reminded the Board that pursuant to NRS180.320, Subsection 3, the Board shall adopt regulations to establish the formula for determining the maximum amounts that accounting may be required to pay for the provision of indigent defense services. Ms. Ryba indicated that the first recommended change is that the formula be divided into two parts: part 1 for counties with populations less than 100,000; part 2 for counties with populations greater than 100,000. Ms. Ryba explained that the reasoning for this is the Board's recommendation that any costs related to murder or capital offenses be deducted from that maximum contribution formula, and that in the cases of Washoe and Clark County, this would put a significant burden on the state to pay for those cases. In addition, Ms. Ryba continued, the regulations had been submitted for FY'18 and '19, but the LCB changed to FY'19 and '20. Ms. Ryba explained that each of the counties had been contacted and asked to fill out a financial reporting form that indicated how much was spent on indigent defense services in FY'18 and '19, but because counties were not requested to keep records specific to indigent defense services, the amount each spent on public defense was a general amount rather than specific. This problem arises, Ms. Ryba explained, because some counties have contracted public defenders to cover all 432B criminal cases but did not require any timekeeping, thus making it difficult to extrapolate how much of the attorney's contract was specifically for indigent defense services. Thus, if continuing on with the current recommendations, counties may be paying a higher rate in the maximum contribution formula than the Board's original intention.

Executive Director Ryba indicated that in Subsection 4, the recommendation was that the rural counties be able to send their death-penalty cases and direct appeals directly to the state public

defender, and those are a state expense. Ms. Ryba noted concerns that if this were to be exclusively a state expense, it could encourage some district attorneys in rural counties to file death-penalty cases as the state would incur the cost rather than the local county. Thus, Ms. Ryba recommended dividing Subsection 4 into two sections: one discussing death-penalty cases; the second discussing appeals, and whether or not those costs should be incurred by the county or the state. Ms. Ryba indicated that the union negotiated cost of living and a recommendation had been made that language be added regarding the lowest union negotiated cost of living. In some counties, multiple costs of living were negotiated and so if clarifying by the lowest, this would clarify which county would be applying.

Ms. Julie Cavanaugh-Bill pointed out that because of the unclear wording of "In those cases," if the county chooses to transfer the death penalty case to the state public defender, the provision states that all costs, including the cost related to expert investigator fees, must be a charge against the state. Ms. Cavanaugh-Bill believed that it is possible this was simply a grammatical error.

Executive Director Ryba indicated that the wording "In those cases," could be removed because of the location of the language being clarified.

Chair Traum asked Ms. Ryba to clarify whether the charges would still be borne by the state or if they fell under the maximum contribution previously discussed.

Executive Director Ryba responded that this was dependent upon whether or not the Board considered those to be a county expense or a state expense. If a state expense, they would be a direct expense to the state and the ability to have a death-penalty-case unit within the public defender's office and the retention of two attorneys, a mitigation expert, an investigator, and secretarial staff would need to be built into the budget. This would also require a request to build up the public defender's office to handle these cases. In addition, Ms. Ryba explained that the counties want assurance that if a death-penalty cases arises, the counties have a public defender that can be called in so that the individual county would not be bankrupted.

Vice Chair David Mendiola explained that everybody budgets a reasonable amount for a capital case, including things like investigative fees, but that a case could potentially push a county over its maximum budget. Mr. Mendiola further asked Ms. Ryba to clarify the explanation on maximum expenditures by county given that some counties do not budget for 432Bs and such.

Executive Director Ryba indicated to the Board that this was exactly the issue with the current definition of the maximum contribution formula. The problem, Ms. Ryba explained, is that the way that the statutes are currently written is that public defenders are commonly appointed in 432B cases, involuntary commitments, and in termination of parental rights, and those are not included within the existing definitions. Because the maximum contribution plan is limited by indigent defense services, the amount that would be needed to include the public defender's services cannot be increased as the language in the statute limits to indigent defense services. Ms. Ryba further commented that this is one flaw that does not yet have a proposed solution.

John Arrascada suggested changing the wording in Section 4 from "Including the cost related to expert or investigative fees" to "In accordance with the ABA Guidelines for capital defense" because

they go beyond just the costs related to an expert or an investigator. Mr. Arrascada further explained that a mitigation expert is actually a team of experts, and not just one person.

Chair Traum concurred with Mr. Arrascada's suggestion. Ms. Traum further commented that there appear to be two distinct issues regarding the death penalty that she wanted to note, the first being access to high-quality resources by the people doing the work, and the second being ownership of the cost. Ms. Traum asked for clarification regarding the language in that section.

Executive Director Ryba indicated that no language had yet been written as this was a discussion that occurred late in the process but reiterated the idea of separating Subsection 4 into two sections, the first indicating transfer of the responsibility of the state public defender, and the second being cost of providing indigent defense services in death-penalty cases. Ms. Ryba additionally suggested adding something similar to Mr. Arrascada's language of "In accordance with the ABA Guidelines for capital or death penalty cases, those charges or those fees must be a charge against the county to be up to the maximum county contribution."

Joni Eastley questioned if when adding the death penalty costs up to the maximum of the county's contribution was in addition to what was already budgeted.

Executive Director Ryba explained that if the regulations pass, the hope is to work with each county to write out their plan for indigent defense services, how they will provide those things and how they intend to comply with the standards. Ms. Ryba indicated that once the cost of the county's plan is known, then the maximum contribution formula would need to be applied. At that point, the cost would be minus the maximum contribution, and that would be the amount requested of the state on behalf of the county. Ms. Ryba further indicated that ultimately it would be up to the legislature to determine whether or not they agree with the formula and thus whether or not they would be willing to fund it.

Laura Fitzsimmons indicated her understanding that the Clark County DA's Office has the death penalty review process, and she wondered if the Washoe County DA's office has any monitoring in place to determine whether or not to charge the death penalty.

John Arrascada responded that Washoe County puts together a committee on cases that they want to consider for the death penalty, but it is not an ongoing, standing committee.

Laura Fitzsimmons next asked if the cost to the county of prosecuting and defending a death case would be a factor.

Joni Eastley and Deputy Director Hickman indicated that it would.

Laura Fitzsimmons expressed concern that in the case of discretion regarding a death-penalty case's cost, the Board would be blunting the potential liability of a county. Should it decide that every murder would be a death-penalty case, there would be no monitoring throughout the system and thus would create the potential for inflation of cases in what is already a complicated issue. Ms. Fitzsimmons opined that the county should have some financial skin in the game prior to making a death-penalty decision.

Jeff Wells indicated that in Clark County, the DA's office does not generally factor in cost, but rather the facts of the case and makes their prosecutorial decision regardless of cost.

Darin Imlay confirmed Mr. Wells' assertion and noted that the huge expense is actually defending the case because it requires the mitigation specialist and the two attorneys, which increases the cost dramatically. For those reasons, the DA's office does not take cost into consideration because it does not impact them the same way it does the defense.

Chair Traum suggested building something in that triggers an assessment of the total cost so it can actually be calculated and considered as the case arises.

JoNell Thomas suggested providing something similar to Michael Porchetta's Habeas Resource Counsel job so that the state's PD office could provide expert and investigative assistance referrals and be a resource to rural communities but without taking on full responsibility for the case. Ms. Thomas opined that costs would likely be greater for rural communities seeking the death penalty.

Executive Director Ryba described how other states handle figuring out the average of fiscal year and what amount of the cost would be allocated to their state and indicated that Nevada has not yet been able to find a maximum contribution formula that would fit within the statute for guidance, and that the existing system is an impossibility for Nevada's rural communities. Ms. Ryba asked the Board for guidance for the rural counties to determine these costs.

Jeff Wells indicated his belief that the basic formula is fine as it will self-adjust because of inflation of COLAs for the union cost and will ultimately work.

Vice Chair David Mendiola concurred with Mr. Jeff Wells but did indicate his belief that Subsection 4 does need to be adjusted.

Chair Traum asked the Board's opinion on the need for language to make adjustments to things that are not counted.

Vice Chair David Mendiola opined his hope that the legislature will likely take that into consideration going forward and will adjust accordingly.

Chair Traum suggested once the temporary regulations are in place, fine-tuning in the future to add the language that is needed for the counties.

Bevan Lister asked how many of the other states researched by Executive Director Ryba have less than 2 percent of their land private where taxes can be assessed on it.

Executive Director Ryba indicated that she could reach out to the Texas Indigent Defense Commission for that data, and that the Texas Indigent Defense Commission has approximately 150 counties and that some of those counties have been transitioned to organized public defender offices.

Bevan Lister noted that with the exception of perhaps Alaska, no states in the rest of the US have as low of a percentage of private land as the rural counties in Nevada, and for that reason, budgeting constraints on those counties are large ones.

Chair Traum commented that the more generous contribution from the state in Texas would be beneficial to counties if it were emulated in Nevada.

Jeff Wells returned to the subject of Paragraph 4 and questioned whether or not the existing language actually creates an incentive to charge the death penalty. Mr. Wells suggested that the language include that the county's responsibility equals up to 25 percent of the cost up to the maximum established in the first part of Section 18, thus lowering the county's disincentive to charge the death penalty.

Executive Director Ryba indicated that 18(1)(A)(1) calls for the average of FY '18 and '19 minus any expenses related to murder and capital offenses, thus indicating the language exists that this should be subtracted from the information provided to DIDS.

Jeff Wells indicated that this is not a subtraction for the future but to make sure that the base year for the formula did not have a capital case in it so that they had an artificially high base. Thus, once the formula amount is established, that dollar amount is what moves forward; this subtraction does not occur annually--it is a one-time subtraction that establishes the base dollar amount. Chair Traum confirmed that Mr. Wells was proposing that if the county commits to a certain amount as of day one of the fiscal year, this would require the county to think through the potential fiscal ramifications of a death-penalty case as it could potentially use up their entire budget. Mr. Wells confirmed that this was correct.

Laura Fitzsimmons indicated her support for Mr. Wells' proposal.

Chair Traum asked the Board to comment on the percentage commitment for the proposal.

Chris Giunchigliani proposed a start point of 50-percent with the idea of entertaining objections if they arose.

Julie Cavanaugh-Bill suggested a start point of 15 percent but requested more research as to bearable percentages.

Chair Traum indicated that the percentage the county would shoulder would be the maximum cap on their contribution and explained Mr. Wells' proposal to create a percentage on death-penalty cases that would not change the overall maximum of the year but would show the sort of financial commitment death-penalty cases require.

Vice Chair David Mendiola indicated that 25 percent would be a large buy-in for counties and that 50 percent would be completely unreasonable. Mr. Mendiola indicated his opinion that the burden should be on the state and suggested 25 percent to be a reasonable amount.

Drew Christensen indicated that he would support the Board regarding percentage but cautioned creating an incentive where the state supports capital defense whereas the bigger goal was to have

the state support the counties in the general delivery of defense. Mr. Christensen opined that he would prefer for the state to help the counties on day-to-day operations more than on a capital case.

Lorinda Wichman opined that conversations about funding need to take place on an administrative scale as the public defender's office does not necessarily pay attention to budget. Ms. Wichman requested language in the documentation for the DIDS Board to review cases and establish appropriate funding at the time when unusual situations arise so as to review throughout the year as needed rather than define an absolute amount dedicated at the beginning of each fiscal year.

Chair Traum commented that the state would ultimately be responsible for the final accounting and the county contribution would be capped. Chair Traum reiterated her suggestion of including language of estimated costs because quantifying the amount would be useful to the Board for purposes of tracking and record keeping.

Lorinda Wichman concurred with Chair Traum's suggestion.

Laura Fitzsimmons concurred with the comments of the Board and indicated that temporary regulations would be beneficial in that they would allow time to see what would work best in terms of this decision. Ms. Fitzsimmons further suggested putting in place a mechanism to start addressing the charging situation with the rurals individually to prepare them for the idea that the DIDS Board would be attentive to the money being spent in the rural areas regarding death-penalty cases.

Justice William Maupin opined that the more a state legislature is required to analyze the budget based on the death penalty, the closer the state would come to repealing the death penalty entirely. Justice Maupin suggested that the legislature needing to invest and spend these kinds of monies consistently would create a disincentive for district attorneys to charge death penalty cases.

Julie Cavanaugh-Bill interjected the idea that the death-penalty cases are also dependent upon the crimes being committed and not just on the desire of the district attorneys to charge them.

John Arrascada reiterated his suggestion to add language including the costs as related in accordance with the ABA Guidelines on Capital Defense as they do not indicate actual cost but do indicate the work entailed, which would then prompt conversation with the necessary experts to help formulate a generalized cost.

Jeff Wells proposed splitting Paragraph 4 into two parts. Further, Mr. Wells indicated his support for Ms. Wichman's suggestion of bringing such cases to the attention of the DIDS Board for decision making regarding maximum cost for rural areas.

Chris Giunchigliani requested language to increase staff for the Nevada State Public Defender's Office as it is not currently equipped to handle death-penalty cases.

Chair Traum indicated that currently there is no triggering time mechanism to determine these costs and suggested the potential usefulness of including one. Ms. Traum questioned how the right

resources could be gotten to the counties if the Nevada State Public Defender's Office is not currently equipped to handle such cases.

Chris Giunchigliani indicated that if the regulation were to be passed, counties would have the opportunity to opt into representation for the public defender and would need to let the public defender know prior to March 1, at which time the budget could be modified to request the appropriate staffing, ultimately incorporating a timing mechanism of July 1 for beginning of representation.

Chair Traum explained that a timing mechanism for any specific case would be useful in that a calculation of costs could be determined close to the charging decision in order to provide public information on the total to the counties, the state, the prosecutor, and the county commission.

Julie Cavanaugh-Bill indicated her desire not to have a lapse in time for the defendant as a result of timing mechanism while the defendant waited for the Board's decision on approximate costs if using the State Public Defender's Office.

JoNell Thomas indicated that this could potentially need to be subject to an amendment based on the fact that there may not be enough information about the defendant's personal situation early on in the process.

Jeff Wells reiterated the idea that the only way to eliminate the public defenders' argument of incentive would be to review on a case-by-case basis as cases move forward. Mr. Wells further reminded the Board of the issue of staffing at the State Public Defender's Office.

Chair Traum indicated her support of the suggestion to divide Section 4 into two distinct parts, adding Mr. Arrascada's concern regarding ABA standards and percentage.

Lorinda Wichman indicated that advertising the costs would warn future perpetrators that although the prosecution's funding is extensive, that of the defense is limited.

JoNell Thomas countered that clients are not reading regulations when deciding whether or not to commit a crime, and therefore while a good argument in theory, Ms. Wichman's was not a realistic one.

Lorinda Wichman indicated that while the offenders may not be reading the regulations, the people in the Public Defender's Office do look at the budgeting issues whereas the rural areas may not.

Executive Director Ryba explained that Sections 19 and 20 indicate how the maximum contribution formula actually works. Ms. Ryba informed the Board that the counties currently are able to request funds through the state legislature in two ways, the first being when they submit annual reports containing the plan for the provision of indigent defense service and estimation of costs. The maximum contribution formula is then applied and added into the budget by request of the county. The second way counties are able to request funds is if they utilize all of their maximum contribution and go over the estimated amount. Counties can then go through the Interim Finance Committee to request additional funds, which will then enter the county in a corrective action plan.

Ms. Ryba indicated that DIDS is requesting the deletion of Subsection 2 because it contains only surplus language that needs clarification. In addition, Ms. Ryba explained, DIDS is requesting that counties seeking reimbursement pursuant to Section 18 submit quarterly financial status reports of their indigent-defense spending so determinations can be made regarding proximity to maximum contribution and discussions can begin early regarding IFC and/or corrective action plans.

Jeff Wells pointed out technical issues with some of the language: Paragraph 3 of Section 19 indicates counties seeking reimbursement pursuant to Section 18 whereas Section 18 only establishes the cap; the reimbursement piece is actually located in Paragraph 1 of Section 19.

Executive Director Ryba informed the Board that a correction would be made.

Bevan Lister indicated language in the document referring to forms approved by the department and questioned if the forms were already available or needed to be created.

Executive Director Ryba indicated that a form had not yet been created. A yearly financial reporting form does currently exist, but the quarterly has not yet been created. Ms. Ryba indicated that DIDS does have a data analyst whose assistance will be retained in creation of these forms once the regulations are approved and begin moving forward.

Vice Chair Dave Mendiola suggested the necessity of uniformity of the quarterly form in order for counties to have just one report that could be run on a quarterly basis.

Executive Director Ryba explained that Section 20 clarifies that any state contribution is for the period of one fiscal year and is for the express purpose of indigent defense services and cannot be used for any other purposes. In addition, Ms. Ryba explained, Section 20 discusses the reimbursement process through the quarterly fiscal reporting as well as the process of contacting the Interim Finance Committee for request of additional funds. Section 20 also indicates that any unencumbered or unexpended balance of the state's contribution on behalf of the county would go back to the general fund at the end of the fiscal year when all recording is closed.

Executive Director Ryba next explained that Section 21 clarifies the request of a county with a population of less than 100,000 for the services of a public defender to handle the death penalty and/or direct appeals. Section 21 further explains the process of the counties giving notice to the public defender as well as how to transfer back to the county if the county chooses to recall the appeals or death-penalty cases as set forth in NRS 180.460.

John Arrascada asked for confirmation that Sections 18, 19, and 20 apply only to counties with populations below 100,000.

Executive Director Ryba indicated that the intent is that anyone seeking reimbursement from the county for the county's portion that is determined for the maximum formula would be submitting quarterly reports when requesting aid from the state.

John Arrascada again asked for confirmation that Sections 18, 19, and 20 apply only to counties with populations below 100,000.

Executive Director Ryba explained that the intent is that the form be certified by the Board of County Commissioners or its designee. Rather than each public defender submitting financial forms to the department, the form would come from each county's Board of Commissioners or their designees.

Jeff Wells explained to Mr. Arrascada that his understanding of Section 18 was that it contained two parts: Part A for counties under 100,000 and Part B for counties over 100,000. Sections 19 and 20 would not be triggered unless seeking state money.

Julie Cavanaugh-Bill asked if the counties needed to choose to transfer any and all death-penalty cases in a given year and any and all appellate direct appeals, or if this was on a case-by-case basis.

Executive Director Ryba responded that this would be all appeals and/or death-penalty cases as the state needs to know for budget-building purposes whether the counties are opting in by the deadline set forth in the statute. If the counties then decide that they want the public defender to handle cases that they want transferred back, the counties would need to follow the process set forth in NRS 180.460.

Julie Cavanaugh-Bill expressed her concern regarding timing, citing a possible example of a county that does not receive death-penalty cases often receiving one in June and thus missing the March 1 deadline and questioned whether or not exceptions would be made for such cases for counties to opt in.

Executive Director Ryba indicated that counties would not have the option to opt-in after the set deadline. As a result, in a case such as the one Ms. Cavanaugh-Bill described, the county would be subject to the maximum contribution formula.

Chair Traum indicated that the overall goal was to support indigent defense in the best way possible and suggested that the same type of situation could arise with a regular appeal and asked if a mechanism was in place to get the county the needed resources on a case-by-case basis.

Executive Director Ryba indicated that it was unlikely that the legislature would fund things that had not been previously approved.

Julie Cavanaugh-Bill questioned if Section 19 would cover such situations if a county were to go over their maximum contribution.

Executive Director Ryba indicated that a county could go to the Interim Finance Committee once the maximum estimate is exceeded but cautioned that the Public Defender's Office would not necessarily have the staff to come and cover the case.

Chair Traum suggested that advice and support from experts would be useful because of the possibility of issues like this arising.

Deputy Director Hickman explained to the Board that Sections 22 through 26B describe procedure for making and submitting plans for the provision of indigent defense services. Mr. Hickman explained that referring back to the Sixth Amendment Report and its recommendations is

useful because it provides an outline of these particular sections. Section 22, Mr. Hickman explained, is the procedure for initial submission. Paragraph 1 is the plan for indigent defense services should follow or be consistent with regulations and removes the limiting language that was in A, B, and C. Mr. Hickman explained that in the LCB draft, the June 14 date was inconsistent with the statute and so DIDS is trying to provide approximately six months to get an initial plan in place. The final addition to that paragraph provides notification requirements of 90 days' notice if a county would like assistance from the department.

Deputy Director Hickman explained that Subsections 2, 3, and 4 are new material. Subsection 3 suggests that counties meet with local providers to provide input when creating a plan, and Subsection 4 gives direction to any grouping of counties that elects to create a multi-county office of the public defender rather than submit individual county plans.

Jeff Wells suggested striking the wording regarding the form approved by the Board as it is essentially the same thing as the struck section on following the model plan approved by the Board.

Deputy Director Hickman agreed that the wording should be struck.

Marc Picker raised that concern that both Clark and Washoe Counties have created plans according to ADKT411 that have been approved by the Supreme Court and the current language in Section 22 does not acknowledge the fact that those counties are already in compliance. Mr. Picker suggested adding language indicating that this applies to counties under 100,000.

Deputy Director Hickman explained the requirement of an annual submission of the plan and the language is to clarify that the approved plan described by Mr. Picker would work as a county's annual submission.

Deputy Director Hickman explained to the Board that Section 23 is a provision related to independence of defense function. There is a large portion of the language being requested for removal and/or revision based on feedback that the language was confusing and waded into judicial provinces. For that reason, Mr. Hickman explained, the sections were revised and moved to different sections. The only other proposed change in Section 23, Paragraph 1 is to replace the word "guarantee" with "promote" based on feedback from judges.

Julie Cavanaugh-Bill commented that the proposed changes did address concerns she was receiving from rural judges.

Deputy Director Hickman discussed Section 23A, which involves the hiring of contract and panel attorneys. Consistent with the general standard in Section 23 of an independent defense function, this section recommends the creation of a selection committee as well as suggesting excluding prosecution and law enforcement from the process. The section on Judicial Input in the Hiring Process was relocated from Section 23 to Section 23A. As a result of concern that excluding judges in rural areas was not feasible, language was included that input from the judiciary should be considered but not be the sole basis. In addition, Subsection C provides additional guides without limitation.

Judge Schlegelmilch indicated that there is no funding mechanism to the cities nor plan for the provision of indigent defense in relation to their municipal courts and questioned what the requirements would be in relation to the cities, and did they need to provide plans, and would the budgets be supplemented because of their lack of funding in light of new jury trial requirements on domestic cases.

Executive Director Ryba indicated that NRS 180.230 is limited to counties and does not indicate municipalities or cities and likely for that reason, the budget could be built into the maximum contribution plan on behalf of the county.

Rob Telles asked for clarification of the process by which committees can be created and judicial input considered if there were not a member of the judiciary on the committee.

Deputy Director Hickman indicated that this could be accomplished in a number of ways and that the Sections were composed with a degree of flexibility that would not mandate one particular solution to any issue. Mr. Hickman suggested a non-voting member of the committee, from solicitation of feedback from persons in the locality, or from commentary as a few examples. Mr. Hickman further indicated that one of the department's duties is to create a list of eligible indigent defense providers in rural counties.

Drew Christensen indicated that Clark County routinely reaches out to the judiciary for feedback on a yearly basis despite the fact that there is no formal judge on the selection committee itself.

Chair Traum explained that the wording is intended to exclude judges from decision making but not from the decisional process itself as their feedback is useful.

Bevan Lister asked if there was currently a roster of eligible providers in the department and if so, what the process to be an eligible provider looks like. Mr. Lister also asked if being licensed with the Bar sufficed to be an eligible provider.

Deputy Director Hickman responded that there is not an existing roster of eligible attorneys and that the net grouping of categories deals with the qualification process and the formation of that list. Mr. Hickman further explained that the department has been waiting on the formation of the regulations and qualifications process to begin formation of the list and will likely take place within the initial 180 days prior to implementation of the plan.

Executive Director Ryba indicated that the statute specifically states the need for a list.

Deputy Director Hickman acknowledged that one of the duties of the department is specifically to create a list of eligible providers in the counties with populations below 100,000.

Joni Eastley asked if an attorney indicates that they want to provide indigent defense services, are they able to exclude themselves from representing certain counties.

Deputy Director Hickman indicated that the intent is not for attorneys to serve everywhere but rather to provide a list for the Boards of County Commissioners to consider when deciding whether or not to create a public defender office or use a contract. Mr. Hickman explained that there will be

specifications in the application allowing an attorney to indicate qualifications and preferred location.

Chris Giunchigliani commented that it is important to ensure that attorneys are not just Bar-certified but actually have background in death-penalty cases.

Deputy Director Hickman explained that the very first of the Board's mandatory duties is to provide specific experience and qualification standards and that this subject will be addressed in another section.

Deputy Director Hickman continued onto Section 24, which deals with screening, prompt appointment, and counsel at first appearances. Mr. Hickman indicated that there was some confusion as to whether or not the plan was trying to take the appointment power or the determination of eligibility power. Subsection 1, Mr. Hickman explained, discusses the screening process, which is the gathering of information related to indigency that the court uses to make a timely determination of eligibility. Subsection 2 deals with the prompt appointment of counsel and the requirement of a plan to outline the process when a frontline of indigent defense is unavailable by conflict or other disqualifications. Paragraph 3 deals with the assignment of cases where a public defender office is not used. The department or department's designee may then be involved in that case assignment process, but the distribution should be on a rotational basis or other method that ensures fair distribution of cases. Paragraph 4 deals with attorneys at initial appearances in accordance with Nevada statute and recent case law. Language was added in accordance with relevant statute, Rule of Criminal Procedure, and case law. Subsection 5 is a restatement of Subsection 171.188, stating that nothing is intended to preclude the defendant from declining to request counsel if they so choose.

John Lambrose reminded the Board that with regard to selection for a contract counsel and panel counsel, when the Indigent Defense Commission was established in 2007, one of the subcommittees was the Rural County Subcommittee headed by Judge Papez. Mr. Lambrose was on the subcommittee with Judge Papez. Mr. Lambrose indicated that the rurals were unable to come up with a model plan because it would not work without the Department of Indigent Services, which did not yet exist. In 2008, the Commission needed the input of the rural judges to implement a system that worked, which was contrary to one of the underpinnings of the Indigent Defense Commissions creation. One of the issues was that the judiciary was too involved with the appointment of counsel. Therefore, in an attempt to avoid cronyism, the Commissioner tried to implement a Rural County Program and deferred it until such a time that it could be overseen by a department such as DIDS. Mr. Lambrose further mentioned the importance of these regulations ensuring that counties would not be responsible to pay for rural indigent defense because, under the Sixth Amendment, it is not their responsibility as well as the importance that the plan ensures sufficient independence from the judiciary in terms of selection of conflict or contract counsel.

John Arrascada suggested editing the second line of Section 24 by removing the words "bail and" leaving the statement, "And be prepared to address appropriate release conditions in accordance with statute, rule of procedure, and case law." Mr. Arrascada pointed out the necessity of this as bail is a last resort according to Valdez-Jimenez case.

Julie Cavanaugh-Bill asked Mr. Hickman to clarify that once the defendant was screened and determined eligible, the defendant would then wait for the judicial determination on the actual appointment and not just on the judge's discretion.

Deputy Director Hickman confirmed that this was correct. Mr. Hickman indicated that the judge is determining eligibility and term appointment in terms of if a person is eligible for indigent defense counsel, and then the plan will outline next steps.

Julie Cavanaugh-Bill asked if the individual performing the screening process could be a staff member.

Deputy Director Hickman explained that in terms of the screener, the plan was written intentionally open in order to allow for flexibility and explained ways that different counties handle this process citing examples like pretrial service officers, Memorandums of Understanding, or using the Department of Alternative Sentencing. Mr. Hickman further explained that the department is encouraging that this process be done in conjunction with the probable-cause finding so that everything is ready to go at the time the judge takes the bench at the initial appearance.

Chair Traum suggested changing the wording in Section 24, Subsection 5 from "declining" to "waiving" counsel.

Jeff Wells requested that the second sentence in Section 24, Paragraph 3, which states, "Cases may be assigned by the Department or the Department's designee," be deleted, stating that this may not work, especially in larger counties.

Deputy Director Hickman explained that the genesis of this was consistent with the bill draft request, which is independent of selection of counsel. Mr. Hickman further explained that the language in the original draft was mandatory and applied to counties under 100,000. Based on comments and concerns from rural judges, the language was changed to discretionary language, the intent of which was to provide this as an option if the county chose not to require it.

Jeff Wells suggested adding language at the beginning of the sentence to say, "If requested by the County, cases may be assigned by the Department or the Department's designee."

Lorinda Wichman indicated her agreement with Mr. Wells' suggestions.

Laura Fitzsimmons reiterated the concern raised by Board members of judges appointing counsel and indicated her worry that the language suggested by Mr. Wells does not undermine the process.

Jeff Wells explained the way the process works in Clark County, where the general-track lawyers is assigned to each of the Justice Courts, from there the are tracked up to the District Court. The judge then rotates cases between the lawyers assigned to the track. In the case of a special case, a murder for example, the clerk for the individual court contacts Mr. Wells' department, who then chooses and assigns lawyers based on qualifications. Thus, Mr. Wells explained, the court never gets to pick the lawyers assigned to their track and nor do they get to do any of the Category A cases.

Laura Fitzsimmons commented that this sounded like a perfect way to do this.

Marc Picker explained that Washoe County also has a list, which is not selected by judges but does get created with input from judges, and the administrator rotates through the list on all cases that come up. For specialty cases, there are qualified attorneys as well as an appellate group and a habeas group. All of this, Mr. Picker explained, falls under the master plan approved by the Supreme Court under ADKT411.

Drew Christensen reiterated the process that Mr. Wells outlined for Clark County and added that the judges have no input on who appears in their courtroom. The clerks, rather, rotate the attorneys as appointments arise. The attorneys then report monthly as to what type of cases they had and how many. Through that process, it is possible to monitor and ensure that each attorney within the courtroom gets approximately the same number of cases per month.

Deputy Director Hickman continued onto Section 25, which deals with client communication. Mr. Hickman pointed out that there are significant portions of this section proposed for deletion. Mr. Hickman explained that rather than incorporate the specific attorney requirements, DIDS is proposing that those be removed and require that the plan seek to provide those resources and accommodations for confidential client communication through cooperation with local partners. Mr. Hickman referred specifically to language that was changed from "ensure" to "seek to provide" as feedback received indicated that it could become impossible to ensure the necessary accommodations.

Deputy Director Hickman discussed Section 26, which deals with the plan ensuring resources for experts, investigations, and other case-related expenses. This section also discusses the recommendation for payment of cash-related expenses. Mr. Hickman explained that a revision to the recommendation is contained in Paragraph 2, which is a new section and consistent with the general standard in Section 23, the independence of the defense function. It is recommended that in counties of less than 100,000 in population, if there is a public defender office, a budget is created for those case-related expenses that can only be used for reasonably necessary expense. Where there is not a public defender's office or where there are individual appointments, creation of a separate and independent budget for those expenses is recommended. The department's involvement would be to make a recommendation on requests that come from attorneys needing funding and then within two judicial days, the department would send the recommendation to the court for approval, modification, or denial and to create a decision for the record. Mr. Hickman noted concerns regarding speed and flexibility of the requests. As such, Paragraph 2 includes the automatic approval of requests up to $2,500 by the submission of an order to the presiding judge in order to expedite those routine submissions.

Deputy Director Hickman discussed Section 26A, the provision regarding vertical representation that has been relocated from Section 41. The language arose out of the statutory language of 183.320(2)(d)(5). Subsection 2 discusses the intent to require vertical representation consistent with the statute and provide some flexibility in the manner in which things are done based on local needs.

Judge Schlegelmilch commented on Section 26, Subsection 2 stating that if an expense was denied, it goes to the judge. For that reason, Judge Schlegelmilch posited, he is unsure why a secondary provision regarding a presiding judge needing to approve versus a trial judge certifying and

approving exists. It appeared that Judge Schlegelmilch may have had an outdated version of the document and was directed to the website for the most up-to-date one.

Julie Cavanaugh-Bill reiterated Judge Schlegelmilch's concern regarding Section 26, Subsection 2 and suggested changing the wording to say that the plan shall identify the judge to which the application will be sent in order for the county to then craft it in a way that works best for that particular county or district.

Deputy Director Hickman indicated that the choice of the presiding-judge language came from NRS 7.135 and the requirements of that statute, specifically Paragraph 2, relating to the payment of expenses approved by the presiding judge of the judicial district. Mr. Hickman continued to state that in the circumstances where there is no presiding judge, 183.320 provides the authority to make a recommendation and if a trial judge was substituted, there would likely be no issue.

Drew Christensen indicated that Section 2 mirrors NRS 7.135, contradicting ADKT411, which suggests that the judiciary should have independence from the defense's pursuit of their case. Mr. Christensen cited the process in Clark County, where private contracted attorneys are treated equally to institutional lawyers when coming to the executive branch to ask for investigators and experts, and judiciary only becomes involved if the attorney is not satisfied with the decision of the executive branch. Mr. Christensen indicated his displeasure with the idea of the department recommending the court in making the final decision. Mr. Christensen explained that the intent of ADKT411 was to treat the defense as independent of the judge's decision on what experts and investigators can be utilized. Mr. Christensen did indicate his approval of a record being made of these decisions, whether approved or denied.

Laura Fitzsimmons pointed out to the Board the inequity of the defense needing judicial approval as prosecutors have the ability to use any expert without involving a judge.

Mr. John Arrascada responded to Mr. Christensen's comment by informing the Board that no group in his county needs to seek judicial approval on the hiring of an expert or for investigative costs; these requests are either approved or denied by appointed counsel administrators or by himself or Alternate Public Defender for Washoe County, Mr. Picker. Mr. Arrascada indicated that he thus supports the removal of the judiciary from the approval or denial of costs and expenses in case defense.

John Lambrose concurred with Mr. Arrascada and indicated that the goal of the rural subcommittee and the Commission has always been to reach a point where contract counsel is placed on the same footing as retained counsel or an institutional defender office counsel. In these instances, Mr. Lambrose informed the Board, a judge is never party to that discussion or strategic plan. The cost benefit analyzes are done in the retained scenario between lawyer and client and the contract counsel does not have that benefit. Mr. Lambrose further indicated that the goal for the Commission should be for contract or appointed counsel to have the same privileges as private counsel, who do not need to follow the same process.

Chair Traum asked Mr. Hickman and Ms. Ryba if they felt as though they had received sufficient suggestions for additional proposed language.

Deputy Director Hickman indicated that the language does track the statute. Mr. Hickman explained to the Board that because of Chapter 7, agency regulation cannot conflict with existing statute and thus only recommendations can be made. Mr. Hickman explained that this plan was reached as a compromise to incorporate the department in the process while at the same time acknowledging existing law. Mr. Hickman further indicated to the Board that the department is open to suggestions for changing the language.

JoNell Thomas opined that if a decision were made to follow the statute, it would be important that it be the presiding judge where that is an option so as not to include the trial judge and suggested adding the language, "Someone other than the trial judge."

Chair Traum concurred with Ms. Thomas and suggested including language to say, "Except to the extent required by some other statute," in order to flag the issue at hand.

Laura Fitzsimmons questioned how Washoe and Clark Counties work around the existing statute and expressed her opinion that this had the potential to be an equal-protection argument ripe for litigation in the rural counties.

Drew Christensen indicated that when Clark County incorporated its model plan in 2008, the bench was in agreement that the plan was designed in the best interest of the system. Budget that was previously for private attorneys, investigators, and expert was transferred to the County Manager's Office. Mr. Christensen further indicated that the only time such decisions go before a judge is if the attorney and the public defender's office cannot agree as to what is reasonable and necessary for a particular case. Mr. Christensen informed the Board that this has rarely occurred.

Laura Fitzsimmons questioned if taking in the category of indigent defense into the state budget would work or create a problem.

Executive Director Ryba explained that for post-conviction, an order from the court must exist in order to be able to pay for certain things. Ms. Ryba was unsure how that could be broken down by county and indicated that the current proposal was a reimbursement process where counties would be reimbursed for the costs incurred. Ms. Ryba further indicated that it was possible that having the plan indicate that the budget would be built within DIDS for the max contribution or a certain amount could be a solution.

Judge Schlegelmilch opined that in reality, this does not make a difference as a statutory matter as witness and investigator fees are generally approved when requested. It does, however, make a difference under Chapter 7. For that reason, Judge Schlegelmilch sees no reason not to support a statutory change for the reallocation of the necessary funds to the county manager's budget.

Chris Giunchigliani reminded the Board that they should be cautious about anticipating what might be funded this session due to the current financial constraints of the state as a result of the pandemic. Ms. Giunchigliani suggested, therefore, that this should be fixed in the regulations rather than relying on potential funding.

Laura Fitzsimmons indicated her belief that involving judicial in the rural areas when the same is not done in the larger counties' places indigent defendants in the rural counties at a disadvantage.

Judge Schlegelmilch responded that this issue could be resolved by removal of the language in the provision in the statute that says, "Subject to approval by the district court."

Drew Christensen explained to Ms. Fitzsimmons and the Board that in Clark County, even in a witness case, the court will not be aware of what ancillary services have been utilized unless they were noticed and called at trial.

Chair Traum summarized the commentary by indicating that although there may be a need for a statutory change, there may be workarounds in place in terms of forums or draft orders to alleviate the indicated issues. Ms. Traum next asked Mr. Hickman and Ms. Ryba if they felt they had enough feedback in place to work with.

Deputy Director Hickman indicated that he did feel he had enough but suggested that the Board look again at the old Section 23(1)(C) from the LCB file, which Mr. Hickman read into the record, to see if that section comported more with the direction the Board was proposing.

Drew Christensen indicated his support for the language in the old Section 23(1)(c) from the LCB file.

Julie Cavanaugh-Bill questioned whether or not the department was ready to handle the burden if signing off on cases were to be transferred from the judges to the department instead.

Deputy Director Hickman indicated that the department could handle the workload given that the statute was limited to the rurals.

Executive Director Ryba suggested including in the policy of the department that certain requests up to $2,500 would be approved, which is the amount commonly needed for substance-abuse evaluations and mental-health evaluations, which are things that would not be denied but need to proceed quickly. Ms. Ryba suggested that anything over that amount would require a more vigorous process. Ms. Ryba also indicated to the Board that if using a program called LegalServer, expert funds can be requested directly within the program and would go immediately to the office of the department.

John Arrascada indicated that because both Clark and Washoe have a process already in place, this proposed process could apply to rural counties only.

Deputy Director Hickman discussed Section 26B as an answer to an issue that had been raised regarding client communication regulation stating that rather than delineate a long list of specific attorney performance standards, Subsection 1 seeks to incorporate the attorney performance standards in ADKT411. Mr. Hickman indicated that Section 2 includes language regarding specific attorney performance standards that came out of *Davis* and informed the Board that there has been some internal discussion as to whether or not to keep the language in light of Paragraph 1 given that ADKT411 contains similar language. Mr. Hickman indicated that the department had received commentary from both Clark and Washoe Counties regarding language in Paragraph 3 regarding provision in an employment contract requiring compliance with regulations. Mr. Hickman informed the Board that the language in question came directly from 183.320. Mr. Hickman next informed

the Board that Paragraph 4 discusses the client survey as required by *Davis* and informed the Board that a conclusion had been reached with Clark and Washoe Counties, who were concerned about cost, that a survey was more of an oversight tool and consistent with the department's oversight capacity in 184.30 and would be limited to counties with populations under 100,000. Mr. Hickman informed the Board that the aforementioned LegalServer has a built-in capacity to provide these types of surveys.

JoNell Thomas indicated her belief that it is the right of the management to set standards and to require compliance with statute, Supreme Court rules, and ABA provisions but suggested her hesitance in adding a collective bargaining agreement to Paragraph 3, citing the possibility that this addition could conflict with Chapter 288.

Jeff Wells indicated his agreement with Ms. Thomas' concerns and suggested dividing the section into two parts, indicating that contract provisions for independent contractors in case of a conflict could not be added into the employment contract because of its origination with a collective bargaining group. Mr. Wells argued that contract provisions should not be bargained and should instead be management rights that can be imposed.

John Arrascada indicated his agreement with both Ms. Thomas and Mr. Wells regarding Paragraph 3. Mr. Arrascada further informed the Board that client surveys in his county were discontinued due to a lack of response.

Chair Traum requested that Mr. Hickman and Ms. Ryba find language that better delineates individual case appointment contract situations from office-wide employment in Paragraph 3. Prior to calling for a break, Ms. Traum indicated her concern regarding time and suggested prioritizing the additional sections for the benefit of Ms. Thomas.

JoNell Thomas indicated that the largest priority for the institutional defenders were Sections 48 and 49.

Chair Traum called for a break and indicated to the Board that upon its return, Section 48 would be taken out of order for discussion.

Deputy Director McGinnis indicated to the Board that Sections 48 through 50 discuss the uniform data collection, which includes the tracking of time, tracking information in a uniform manner, and establishing guidelines for the maximum caseload. Mr. McGinnis focused first on Section 48, creating a caseload, and outlined the two significant changes, the first of which indicates that the workload study now requires one to be done in a populations of less than 100,000 and populations greater than 100,000. Mr. McGinnis also pointed out that the department wants to require counties to participate in these workload studies. Mr. McGinnis reminded the Board that the department is now under contract with the National Centers for State Courts and is currently undergoing the process of a weighted caseload study. The executive director has sent out letters to the county managers of a variety of jurisdictions requesting that attorneys and staff participate at the direction of the National Center for State Courts and without the participation of these individuals, the department cannot expect accurate results. Mr. McGinnis explained to the Board that under NRS 183.320, the Board is required to create the maximum caseloads and that underneath the Davis Settlement, a caseload study is required.

Chair Traum indicated that there had been commentary from the institutional defenders on the workload study and its application to the urban counties and asked if that issue had been addressed or resolved.

Executive Director Ryba explained that this had required clarification as to who would fund the workload study and indicated that the department would conduct it at the state's expense.

JoNell Thomas expressed concern that incorporating a workload study under pandemic conditions would be meaningless as out-of-state investigations, trials, and contact visits with clients are not currently occurring and in-town investigations have been greatly diminished. For that reason, Ms. Thomas explained, the results from a study right now would be valid only under future pandemic conditions. Ms. Thomas additionally questioned if a time estimate could be provided and if it could be done with a sampling of the offices as right now, adding the burden would be unjustified given the invalidity of the data.

Deputy Director McGinnis explained to the Board that the department has consulted with the National Centers for State Courts, who have indicated that despite the pandemic, based on the results of the Delphi study, the results garnered would be an accurate, case-weighted study. Mr. McGinnis further explained that the department needs to move forward with the study as the funding from the IFC for the study expires in June. Mr. McGinnis further indicated that the department would not be able to address specific concerns regarding the study until entered into an RFP with a company. Mr. McGinnis informed the Board that the current planned timeframe for the study for the rural counties is a six-week time period from January 5 to March 25, and that all individuals are expected to participate for the sake of accuracy.

Executive Director Ryba added that an advisory committee consisting of attorneys attempting to determine what data needed capturing was in place. Ms. Ryba informed the Board that the department's goal would be to incorporate the study into the larger counties within the next five years, following completion of the rural workload study. Ms. Ryba also indicated that the department would welcome input from Clark and Washoe Counties as to how the survey should be conducted but cautioned that ultimately the process would depend upon the contract between the state and the chosen vendor, that there are certain limitations that require the issuance of an RFP, and the vetting of the chosen vendor. Ms. Ryba reiterated Mr. McGinnis' assertion that the questions cannot be answered until after the issuance of an RFP.

Jeff Wells requested the addition of a Paragraph B, stating that once the rural study is completed, the executive director would be directed by the Board at such a time as they see appropriate to solicit an RFP. As such, the Board can continue to focus on the rural counties under 100,000, can wait until the funds are available, can wait until the pandemic has ended, and can itself make the decision on moving forward for the larger counties.

Darin Imlay agreed with Mr. Wells and the Clark County Public Defenders. Mr. Imlay further inferred that the other factor needing consideration is that in order to do the workload study, the case management system needs to be up and running. Mr. Imlay explained that as the current contract with JustWare ends on June 30, they no longer have the ability to run reports and because

JustWare has been the system in use for approximately 17 years, to migrate the 30,000 cases per year that were inputted into JustWare will take approximately 18 months' time.

John Arrascada concurred with Mr. Wells, Ms. Thomas, and Mr. Imlay.

Executive Director Ryba discussed Section 48A, the department's proposal that the Board require counties with a population of less than 100,000 use the LegalServer software and that counties with a population of greater than 100,000 build this into their request if seeking reimbursement. Ms. Ryba discussed the benefits of a uniform software system.

Julie Cavanaugh-Bill indicated her understanding that the Board had not yet decided and was potentially looking at an opt-in option for the program.

Executive Director Ryba indicated to the Board that the department has proposed to add this regulation and proposing to the Board to require the use of LegalServer in the temporary regulations.

Jeff Wells indicated his belief that the Board and the department have the authority to request data collection and request data points but may not have the authority to tell counties what system has to be used to provide those data points. Mr. Wells indicated his dislike of the provision of funding being withheld unless the recommended system is used.

Laura Fitzsimmons acknowledged Mr. Wells' dislike of this, but explained that when the federal government is funding, one of the reasons for all the CFRs and provisions is for uniformity, which is the Board's ultimate goal.

Executive Director Ryba indicated her recommendation to require counties with populations under 100,000 to use the program based upon the fact that the department has sufficient funds to provide them the program at no cost. Ms. Ryba further informed the Board that Mr. Popovich from the Administrative Office for the Courts had explained that when the specialty courts required everyone to use a certain software program, they had valid information that could then be taken to the legislature as everyone was reporting in the same way. Ms. Ryba indicated that given the recommendation of the Board wanting independence from the judiciary if there's independent counsel, a uniform software program for the rural counties would be beneficial. Ms. Ryba further indicated that the department was of the understanding that Clark and Washoe Counties did not intend to use LegalServer and left it to the discretion of the Board as to how to proceed with the funding mechanism.

Jeff Wells reiterated Mr. Imlay's commentary regarding hundreds of thousands of cases in the JustWare system, a system that JustWare will no longer support after June 30. Mr. Wells informed the Board that LegalServer had indicated that to migrate the cases from one system into another would take 18 months and that they had never performed a migration of this size. For that reason, Mr. Wells continued, the county was looking at a 12 to 18-month timeframe with an unsupported system and having the system collapse during that time period was too great of a risk to shift to LegalServer. E-Defender, on the other hand, has agreed to maintain the JustWare system during that migration process, even if it takes longer than the proposed 18 months. Requests for a price from LegalServer has not yet been answered. Therefore, Mr. Wells concluded, the only way to

bridge the gap for the time period in question is to join the E-Defender system. In addition, Mr. Wells suggested striking sentence 2 out of Section 48A.

Chair Traum indicated her understanding of sentence 2 required the use of LegalServer only if counties were seeking reimbursement and thus did not apply.

Jeff Wells confirmed that it did not apply now but could in the future if the state recognized that indigent defense is a state responsibility and not a county responsibility.

Executive Director Ryba indicated that Washoe and Clark Counties did report for FY'18 and '19 and intended to report for FY'21. Ms. Ryba reiterated that requiring the usage of LegalServer for the larger counties was at the discretion of the Board.

Vice Chair Dave Mendiola asked Jeff Wells to clarify if the migration to LegalServer could occur while using E-Defender.

Jeff Wells responded that in order to do that, the county would need to do essentially do two migrations, from JustWare to E-Defender, and then after 18 months, when the initial migration finished, from E-Defender to LegalServer. Two companies would not be able to migrate information at the same time. Mr. Wells reiterated that the risk of having no case-management system was larger than having a uniform set of data by everyone using LegalServer.

Chris Giunchigliani asked if Washoe and Clark would be without software in two years because of the end of JustWare.

Mr. Darin Imlay indicated that this was not the case. The counties would be without a system if they chose not to go with E-Defender for at least 18 months, during which time they would continue with JustWare and after which, they would continue with E-Defender. Mr. Imlay further indicated that the DAs also would need to find a new case-management system.

John Arrascada indicated that his county, too, is on JustWare and will be moving to a new program called Karpel Solutions. Mr. Arrascada indicated that a company on the west coast had indicated that the conversion from JustWare to LegalServer had created problems and stated that if they were to do it again, they would have started fresh and entered from case one into the LegalServer program. Mr. Arrascada indicated that his county has more than a decade's worth of data that needs to be converted, and Karpel Solutions is able to do so.

Chris Giunchigliani asked for clarification that both Clark and Washoe, although going with different systems, still had the ability to communicate with LegalServer based on the required information.

Chair Traum clarified that Clark and Washoe would be able to generate reports and data specs but would not necessarily communicate with LegalServer.

Marc Picker indicated that Washoe County had tested multiple software and the staff decided on Karpel Solutions, which would allow the county to provide data. Mr. Picker further indicated that Washoe County would never be able to provide the data points being requested in Section 49

without additional personnel, and that was the main problem Washoe saw with the requirement. In addition, Mr. Picker questioned the need for this data, where it was going, and what it was accomplishing. Because Washoe is not rural, it is not included in the funding for DIDS to assist the rurals and Washoe has not been given a reason as to why the data needs to be provided.

Vice Chair Dave Mendiola asked Executive Director Ryba if the data points being requested came from DIDS or the legislative council.

Laura Fitzsimmons indicated that the Board could not risk Clark County losing data or being unsupported for any period of time, and for that reason, the use of LegalServer should currently fall only on the rural counties. Ms. Fitzsimmons reiterated Mr. Imlay's question of why the larger counties needed to take part in the caseload study.

Executive Director Ryba indicated that the caseload study would not include Clark and Washoe Counties and further indicated that the department agreed with the concerns raised by the Board. Ms. Ryba agreed to the removal of sentence 2.

Julie Cavanaugh-Bill indicated her concern for sentence 1 and expressed her confusion over singling out the rural areas and mandating things on them. Ms. Cavanaugh-Bill informed the Board that some of the rural areas had been vocal about their displeasure with the mandates and indicated her support for other options.

Chair Traum indicated that the regulations were noted and posted with this workshop in mind and although the Board had heard from the urban counties, no commentary had been received from anyone else. In addition, Ms. Traum opined that the recommendation was based on solid reasons and did not feel that there was justification for building in another option when the option for requiring LegalServer was a strong one and not objected.

Chris Giunchigliani indicated her belief that the Board should move forward with the rural component.

Laura Fitzsimmons recalled that in a previous meeting, Ms. Cavanaugh-Bill had articulated the complaints from Elko County and the decision was made to move on and rehash this issue in the work session.

Julie Cavanaugh-Bill reminded the Board that although the discussion had been had many times, a vote had never been taken.

Matt Pennell from the Elko County Public Defender's office indicated that his county wanted to use the same system as the DA's offices and courts and had chosen to go to a new system not because of the mandatory requirement but because their current system could no longer be supported by the provider.

Executive Director Ryba pointed out that unlike Washoe and Clark, the software program would be provided to all rural counties with a go-live date of March or April. Ms. Ryba informed the Board that Elko County had been given the contact information for LegalServer to ask about interfacing

and cost to interconnect the programs but did not know if any action was ever taken to explore that possibility.

Vice Chair Dave Mendiola explained that Elko had made a determination to have an integrated system and opted against LegalServer. Mr. Mendiola opined that fighting over Elko was a waste of the Board's time that would be better spent coming up with different language regarding Elko's reporting to the department or letting Elko figure out how to get the data to the department even though it would take some work on Elko's part. Mr. Mendiola further indicated that this was a rural issue and Clark and Washoe were a completely different situation.

Chair Traum suggested creating language that the counties either use the case-management system provided by the department at state expense or provide data as required by Section 49 to the department at county expense.

Vice Chair Dave Mendiola agreed.

Executive Director Ryba indicated that the department is short-staffed and would not have the staffing to input the data into LegalServer if it is provided to the department a different way. Ms. Ryba indicated that if all the rurals were using the LegalServer software, the department would have up-to-date information as to county caseloads and compliance. The counties providing data a different way could delay the department from taking action. Ms. Ryba further indicated that the AOC had pointed out that when everyone has their own systems, the department would need data dictionaries that specifically defined what certain things mean, and for the reasons cited by the AOC, the department was encouraging use of a uniform system.

Chair Traum clarified that her earlier suggestion included the counties bearing the responsibility of the additional staffing costs in obtaining and entering the data.

Deputy Director McGinnis informed the Board of the concerns of excluding Clark and Washoe Counties from the data reporting requirement and indicated that the best conclusion would be to exclude them for the time being but include them later when their new systems were up and running. Mr. McGinnis informed the Board that the department and the counties were in agreement that the larger counties were currently unable to report based on how Section 49 reads because of the changeover to new systems.

Chair Traum clarified that the recommendation would be for Section 49 to be limited to counties with populations less than 100,000.

Darin Imlay indicated that this would resolve his issues.

John Arrascada concurred that this would resolve his issues, as well. Mr. Arrascada further indicated that because 90 percent of criminal cases in Nevada are in Washoe and Clark Counties, reporting would skew the data for the rural counties. Mr. Arrascada indicated that he was open to good-faith negotiations with the department regarding relevant data points beyond annual reports.

Darin Imlay clarified that the migration to the new software had a start point of 18 months and so that would not necessarily be the end date of the migration.

John Arrascada requested that Washoe County be uniform with Clark County so that both would have the same start point.

JoNell Thomas indicated no definition in Section D for the outcome of each case and opined that this would leave the subject open to interpretation as well as impose a huge burden on staff to enter that data.

Jeff Wells indicated his belief that reporting should be semi-annual or annual rather than quarterly. Mr. Wells questioned Paragraph 1(h), the total number of motions to suppress and the motions litigated. Mr. Wells then discussed Paragraph 2 and asked to lump subsets R, S, T, and U into a subset of R with the wording, "In cases where the county uses contracts that provides for these services, as well as the criminal cases to provide that data." Mr. Wells indicated that if a county does not have a contract doing the things asked, it does not make sense to force a county to produce data.

Chair Traum questioned the frequency of reporting, indicating that semi-annual and annual reporting might be insufficient.

Executive Director Ryba explained that the requirement of quarterly reporting came directly from the *Davis* lawsuit. In response to Mr. Wells' suggestion to group together R, S, T, and U, Ms. Ryba indicated that several county managers had expressed a desire to know specifically what their attorneys were doing and requested specifically that those items be separated. Ms. Ryba further indicated that there is possible federal grant 4E funding for representation of parents in 423B cases so the department is exploring trying to get those funds for the rural counties.

Jeff Wells clarified that by asking to group all the subsections together, he meant to list each one only once rather than multiple times. The data points would still be separate, but all limited to, "County that uses that type of contract."

Chris Giunchigliani asked about separating what is pertinent to counties with 100,000 and under population from what is pertinent to counties with populations over 100,000 for easier review.

Executive Director Ryba indicated that the department had made an effort to clarify how the Sections applied to each county with the language of "Counties of a population less than 100,000 versus counties with a population over 100,000." Ms. Ryba clarified that the only counties with populations over 100,000 were Clark and Washoe. Ms. Ryba indicated that the language applying to the counties was consistent with NRS 180.

Chris Giunchigliani indicated that when originally reading through the business impact statement, there were no objections.

Executive Director Ryba responded that the received objections were regarding data collection and the increased work independent contractors felt that would place on them but believed that providing LegalServer would assist. Ms. Ryba indicated that the recommendations were noticed on the agenda as well as the attachments of the department's recommendations being provided on the website, thus providing sufficient notice of these recommendations, in her opinion.

Chris Giunchigliani mentioned the budgetary impact might change if LegalServer was not required and suggested that the department ensure the dollar amount is modified to reflect that change.

Executive Director Ryba agreed that the department would likely need to increase their staff for data collection to be able to process the information.

Executive Director Ryba indicated that in Section 50, the department carved out for counties with populations over 100,000 to require timekeeping only when a weighted caseload study was taking place. Otherwise, no timekeeping requirement is in place for counties with populations over 100,000.

JoNell Thomas thanked the department for listening to and addressing the concerns of the institutional defenders, who needed to leave the meeting.

Deputy Director McGinnis reiterated Executive Director Ryba's earlier statement that Subsection 2 of Section 50 for population over 100,000 was to keep time during the weighted caseload study and asked for the subsection to be adopted.

Judge Schlegelmilch asked if in relation to the hours provided per case, this was just for contracted indigent defense providers or for appointed counsel on a conflict. The judge indicated that there appears to be some disconnect on how many attorneys are available in rural Nevada to provide any services and the fact that conflict attorneys who will come in on an occasional case have indicated their dismay at the fact that they are going to have to meet all these requirements because they are not a provider of indigent defense services. The judge questioned if this applies just to the contracted attorneys providing indigent defense services or if it applies to appointed counsel that does occasional cases.

Executive Director Ryba indicated her belief that this applies to all providers of indigent services under NRS 180.004. The department will be providing conflict attorneys with limited Legal Server ability in order for them to enter their case and time tracking, but they would not have the full access granted to institutional offices and contract attorneys.

Chris Giunchigliani reminded the Board that there were certain language requirements due to the settlement of a case, and that this section was one of them.

Executive Director Ryba concurred with Ms. Giunchigliani and then informed the Board that the department did not recommend that all staff keep track of their time as it was not beneficial for offices as a whole.

Franny Forsman opined that because this diverges from the language of the settlement, the department should discuss this with Craig Newby.

Jeff Wells concurred with Franny Forsman that the Board should consult Craig Newsby and let him discuss the issues with the council.

Chair Traum agreed with Executive Director Ryba's proposal, indicated that she did not think it was productive to track staff's time, but agreed with Franny Forsman that Craig Newsby should be consulted.

Vice Chair Dave Mendiola indicated his belief that the outlying counties that cannot meet the criteria for any reason would have to be cutouts.

Executive Director Ryba asked from clarification of the Board's proposals regarding Section 50.

Rob Telles indicated his agreement with uniformity of platforms for analyzation of data and indicated his support for leaving the sentence in Section 50 as is.

Chris Giunchigliani concurred with Mr. Telles.

Executive Director Ryba reminded the Board that as an agreement had not been reached in the past, Chairman Crowell had asked for input of alternate language, which ultimately led to the department's proposal to the Board for LegalServer becoming a requirement for the rural counties.

Chair Traum asked Executive Director Ryba about next steps scheduled to occur on January 28.

Ms. Sophia Long responded that following today's workshop, the executive director would clean up the language based on the Board's input, a public hearing would follow where the regulations would be adopted.

Chair Traum questioned if the Board were to make changes following today's workshop, would another notice need to be provided or could the plan be posted as final.

Ms. Sophia Long replied that it would be posted again because comments were still being provided.

Chair Traum indicated that one option would be to leave the Section as is with the caveat that there might be an opportunity to revise language. Ms. Traum expressed her belief in the uniformity of using one system like LegalServer in order to avoid workarounds and also acknowledged that if counties wanted to choose another option, the counties should be responsible to shoulder the burden completely of the reporting so as not to burden the department.

Chris Giunchigliani concurred with Ms. Traum that the Section should be left as-is with the exception of removing the second sentence and that the Board should agree to discuss it one more time along with other sections that needed to be fixed or clarified.

Chair Traum indicated her preference would be to hear again from Elko County and LegalServer regarding feasibility of data collection and reporting. Ms. Traum further proposed leaving open the possibility of a workaround by which the department could receive the necessary information from Elko without additional expense. Ms. Traum next advised the Board that the next sections covered would be 27 through 39.

Deputy Director Hickman informed the Board that the next sections discussed the specific attorney qualifications and the qualification process, the concept of which was taken from NRS

183.20(2)(d)(1) and that these sections, 27, 28, and 29, included no proposed changes. Regarding Section 30, Mr. Hickman informed the Board that the department proposed removing this section in its entirety because of redundancy, with the exception of Sentence 1, which has been relocated to Section 31.

Deputy Director Hickman informed the Board that Section 31 incorporated the application process for addition to the department roster of eligible qualified indigent defense providers found in NRS 180.430. Proposed modification to Paragraph 1 is the inclusion of the aforementioned Sentence 1 from Section 30. Mr. Hickman explained the proposal to delete excess language in Paragraph 4 and further explained that Paragraph 4 provides a flexible process for increasing qualifications with time and experience. Paragraph 5 is the procedure for disputing disagreements with respect to the department's determination on qualifications. Paragraph 6 outlines consequences for not providing application or failing to practice within the area of qualification as discussed in Section 34. Mr. Hickman informed the Board that pertinent information in Section 32 had been moved to Section 31 thus prompting the removal of Section 32 entirely.

Deputy Director Hickman explained that Sections 33, 34, 35, 36, 37, and 38 included the specific experience requirements with respect to different categories of cases. Mr. Hickman explained that the department had received many questions regarding the origin of these requirements and thus felt it was important to cover these sections with the Board. Mr. Hickman explained that the starting point for each qualification came from the Supreme Court Rules 250 Requirement for Capital Litigators. The next step was to review the same specific experience requirements contained within the Clark and Washoe Counties' model plans and to use those plans as a starting point for the different areas of qualification. From there, the department attempted to work backwards in reaching the specific recommendations. In addition, Mr. Hickman explained, the section of ADKT411 discussing the attorney performance standards make specific experience requirements which also were considered.

Jeff Wells indicated that Sections 33, 34, and 35 all refer back to Section 31, which applies to attorneys who provide services and counties with populations under 100,000 and asked for clarification that Sections 33, 34, and 35 also refer to counties with populations under 100,000.

Deputy Director Hickman confirmed for Mr. Wells that this is correct.

Deputy Director Hickman indicated to the Board that the last section is Section 39, which deals with specific CLE requirements that arose out of the same statutory provision. Subsection 1, the general guidance for what CLE or educational requirements should reflect, has no requested changes. The department is proposing removal of Subsection 2 as the requirement that the department develop and provide CLE training programs is already clear and included in the statute and thus needs no additional explanation. Subsection D has been added to provide the benefit of doing a CLE through the department. Mr. Hickman indicated that there does not need to be submission of proof as if the provider is doing the CLE through the department, the record will already exist. Mr. Hickman informed the Board that this subsection had also been subject to the Clark and Washoe Public Defender Office's comment as to whether or not it applied to their counties and general consensus was that given the development of their training program, this should be included with the under 100,000 reference to Section 31.

Bevan Lister asked for confirmation that the qualifications in Section 39 did not apply to Clark and Washoe Counties.

Deputy Director Hickman reaffirmed that this was correct as the offices in Clark and Washoe Counties have already developed internal training programs where CLE is regularly provided to their employees as well as to attorneys in other jurisdictions.

Bevan Lister asked if the CLEs are credited to individual attorneys and if a record is kept of that.

Jeff Wells replied to Mr. Lister that the Supreme Court requires all attorneys to have a certain amount of CLEs and clarified that the provision in Section 39 would have required each of the attorneys in the larger counties to submit their CLE requirements to the department each year. Mr. Wells explained that this was an unnecessary requirement in the case of the larger counties as it is already required within the counties and it is already done with the Supreme Court. For that reason, this section would apply only to counties with populations under 100,000.

Deputy Director McGinnis discussed Section 40, informing the Board that the department has a duty to review how defense services are provided throughout the state. Mr. McGinnis explained that the statute provides that this needs to be done, but does not provide guidance. For that reason, Section 40 specifically deals with the review process and is a relatively new section that had not been submitted to the LCB prior. The section was drafted based on research received from consulting with multiple indigent defense commissions, looking at their regulations, and looking at their policies.

Chair Traum indicated that Section 40 had been flagged by the institutional defenders and asked if this had been resolved.

Deputy Director McGinnis replied that it had not yet been resolved as it had not been discussed and that the concern specifically addressed whether or not Section 40 applied to counties with populations over 100,000. Mr. McGinnis informed the Board that Subsection 2, pursuant to NRS 180.440, does apply because it specifically states, "Review of indigent services throughout the state." Mr. McGinnis further indicated that Subsection 3 also applies and the only area that might not apply would be Subsection 2 of Subsection 2, which indicates that one deputy reports to another deputy if a person is providing indigent defense services in an ineffective or otherwise inappropriate manner. Thus, Mr. McGinnis explained, if the person who is monitoring throughout the state has to report to the other deputy director who, underneath 184.30, is providing indigent services in an ineffective or otherwise inappropriate manner, that deputy has oversight over the population that's less than 100,000 under 184.30.

Judge Schlegelmilch opined that in relation to the requirements being set forth it would be difficult for attorneys to comply with all of the things on the list that were approved by the Board and thus counties would have a difficult time retaining attorneys who had met the requirements. Thus, the judge raised the concern that there would be no applicants as a result. The judge then questioned if the department was therefore intruding into the state's purview in relation to regulating the practice of law. In addition, Judge Schlegelmilch opined that consolidating into a singular state system had not worked in the past and was unlikely to work in the future because no regulatory standards have been provided by the department in the case that a state public defender comes in

and takes over public defense and no requirements have been provided in relation to what can or cannot be done in relation to their provision of their service to the county. The judge further opined that because the regulations are so greatly in excess of the State Bar's regulations, what is happening in actuality is that attorneys are turning away from public defense, which in the past attorneys had done more as a public service than as a way to make money. Judge Schlegelmilch ended with a question: what's going to happen when nobody applies to the department to be a provider of indigent services because they're unwilling to comply with the regulations?

Chair Traum acknowledged the judge's concerns and asked the Board for further commentary on the language of Section 40.

Bevan Lister questioned if the additional requirements for the public defenders would end up costing counties more when trying to contract and hire.

Chair Traum indicated that the mission at hand was to provide and regulate public defense as well as to alleviate and remove the expense off of the counties so that the state would be fulfilling its mission to bear responsibility for providing a quality defense. Ms. Traum further indicated her belief that the standards are replicating what is considered the standard for quality defense in the state and is practiced by the urban counties. In addition, the standards are relatively consistent with the ABA requirements and the *Davis* lawsuit.

Chris Giunchigliani reminded the Board that the mission at hand was because of a lawsuit in which indigent services were not being provided and for that reason, either the Board needed to comply with this, or the *Davis* case would be reactivated, thus placing the rural counties on the hook for significantly more than the regulations at hand.

Chair Traum indicated her agreement with Ms. Giunchigliani's statement and confirmed that this plan was only one piece of a large, complex effort and thus the importance of the Board, while still recognizing that challenges would be ahead, remaining focused on the standards at hand.

Deputy Director McGinnis informed the Board that the department was requesting striking Section 41 as it is now contained in Section 26A. Sections 42 and 43 outline the economic disincentives and contractual terms. Mr. McGinnis informed the Board that 42 specifically dealt with attorney compensation, and that the word "county" had been added in the proposed changes. Mr. McGinnis informed the Board that 2, 3, and 4 be stricken as they are now discussed in 42A under contractual provisions.

Deputy Director McGinnis informed the Board that Section 42A encompasses the contract terms required when a county contracts for the indigent defense services. Mr. McGinnis informed the Board that this section had been removed from Section 42 and given its own section because the requirements are built inherently into the statute and into *Davis*. Mr. McGinnis informed the Board that these are the requirements that are needed in a contract. Mr. McGinnis explained the department's belief that this would be a great model for the counties to follow as it gives direction and clarity on the terms needed for a contract, prevents the flat-fee contract, and is consistent with *Davis*, and the department's regulations. Mr. McGinnis indicated that Section 42A applies to independent contractors who contract for indigent services.

Jeff Wells expressed his belief that Section 42A was unclear in regard to not applying to institutional offices in larger counties.

Deputy Director McGinnis indicated to the Board that Section 43 was a request for counties to bill quarterly in order for the department to track indigent defense expenditures for determination of the need for state contribution for conflict counsel.

Jeff Wells commented that the larger counties do not allow quarterly billing with the exception of hourly cases, and even then, only the complex ones. Mr. Wells explained that it is easier to track the total amount of a case and the average dollar amount per cases when billing at the end of a case. In addition, Mr. Wells pointed out that the bill, when billed quarterly, is larger than when billed only once at the end of a case.

Executive Director Ryba explained to the Board that the state budgets on a fiscal year and that monies need to be spent within that fiscal year. Ms. Ryba indicated that allowing billing at the end of the case would complicate the maximum contribution formula and could create stale claims where the department would not be allowed to pay out of the money in their account. For this reason, Ms. Ryba explained, the department felt it important to request quarterly billing.

Jeff Wells indicated that the quarterly billing is currently the process for out-of-state claims, but not for all claims. As such, Mr. Wells requested that the language be amended to state that this process applies to things paid out of the state budget. That way, Mr. Wells explained, there would be no issues with the existing process at the county level.

6. Discussion and Announcement of Future Meetings and Items for Future Agenda (For possible action)

Chair Traum announced to the Board that the next scheduled meeting was scheduled for January 28, 2021. This meeting would be significant, Ms. Traum stated, because it falls on the date scheduled to adopt the regulations with the 30-day notice period. Ms. Traum indicated that the notice would be posted timely and the date would still give the Board an opportunity to circle back to some of things still requiring deliberation and discussion. Ms. Traum further informed the Board that if there were additional items they needed added to the agenda, to please indicate so now or to email the department with those items.

Executive Director Ryba questioned whether the 1:00 to 5:00 time allotted for the next meeting would suffice or whether it should be rescheduled to the morning.

Chair Traum replied that she feels that the four-hour window in the afternoon would suffice but did open up the floor to Board members for their input.

Jeff Wells concurred with Ms. Traum. Mr. Wells complimented the work of the department on the plan and opined that if the new version was sent out to Board members ahead of time, the discussion of the plan at the next meeting would likely take significantly less time.

Vice Chair Traum indicated that the main focus at the next meeting regarding the plan would be on Section 48A along with a handful of other sections. As such, Ms. Traum proposed keeping the

meeting in its scheduled afternoon slot. Ms. Traum further thanked the members of the department for the significant amount of time, work, and research they had devoted to the plan being workshopped today. Ms. Traum next followed up on a comment from Mr. Lister earlier in the meeting regarding the death penalty, in which she indicated that neither the Board nor the department has any particular view regarding the death penalty and that the earlier discussion was in response to the creation of regulations that change the funding mechanisms for death-penalty cases. Ms. Traum indicated that the mission of the Board is to supply people with good quality defense counsel when they need it, and to that end, that is where the Board's focus lies whereas anything specific to the death penalty is beyond the scope of the Board's responsibilities.

7. Public Comment

(This public comment period is for any matter that is within the jurisdiction of the public body. No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. Oral public comment may also be given during the meeting. The Chair of the Board will impose a time limit of three minutes.)

There were no public comments from either North or South.

8. Motion for Adjournment

Motion: To adjourn meeting till the next regular scheduled meeting.
By: **Chris Giunchigliani**
Second: **Drew Christensen**
Vote: **Passed unanimously**

Chair Traum adjourned the meeting at approximately 2:55 p.m.