

State of Nevada

Department of Indigent Defense Services

Board Meeting Minutes

Wednesday, February 24, 2021

1:00 PM

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: 154 313 347#

1. Call to Order/Roll Call

Chair Professor Anne Traum called the meeting of the Board of Indigent Defense Services to order a shortly after 1:00 p.m. on Wednesday, February 24, 2021.

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

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

Others Present: Executive Director Marcie Ryba, Deputy Director Jarrod Hickman, Deputy Director Patrick McGinnis, Jason Kolenut, Cindy Atanzio, Alexis McCurley, and Deputy Attorney General Sophia Long, Franny Forsman and Dr. Mitch Herian.

2. Public Comment

There were no public comments from the North or South.

3. Approval of January 28, 2021 Minutes (For possible action).

Motion: Approval of Minutes from January 28, 2020.

By: Joni Eastley

Second: Jeff Wells

Vote: Passed unanimously

4. Update by Dr. Mitch Herian of Soval Solutions (For discussion and possible Action).

Director Ryba commented Dr. Herian was contracted by the Department with funding received from the Interim Finance Committee (IFC). The two items that he is presenting today are a survey and a financial status report.

Dr. Mitch Herian discussed the survey development and the county reporting form. The goal is to develop a survey that allows clients to indicate satisfaction of various aspects of their representation by public defenders in Nevada. We researched different aspects of creating the survey including the 2018 DC public defender's survey, a paper in the Ohio State Journal of Criminal Law. Creating a relatively short survey would reduce survey fatigue and reduce the possibility of not completing a long survey. If they get tired of the questions, they may begin to check option C or something like that for every question so having a relatively short survey would reduce the error that would result in those sorts of problems.

Joni Eastley stated that speaking as a representative from a frontier area I would be very interested that the survey includes a question of how the defendant met with their attorney.

Dr. Mitch Herian stated that might be a good question down the road after you get a critical mass of survey respondents in one, two or three years it might allow you to look at that question and see whether the levels of satisfaction differ based on whether they met with their attorney in person.

Rob Telles confirmed that the last few questions on the survey are for the purpose of demographics on the paper version only and wondered if there is a law that prohibits something electronically.

Dr. Mitch Herian stated that it gets into the survey administration on how we are going to get the survey out to these folks. We plan on having two survey methods or survey modes. One is going to be electronic and other in paper form. The electronic survey will be administered through LegalServer via email or text message to clients and in that case, we will have the demographic information which will be in the database. That is reasoning behind asking the demographic questions on the paper version. We could have the redundancy built in just so we have the same question across the surveys, and this is worth discussing with the department.

Rob Telles opined that it might be important to verify our data again as you never know if the data input had been done incorrectly and to have a person's own words on a survey.

Jeff Wells stated he was curious as to why we did not include "don't know" or "not applicable." Mr. Wells said he realized some questions folks are not going to know such as did my attorney look into the prosecutor's evidence and then my other question is should it be my attorney, or his staff investigated the case as it is not necessarily the attorney and retain an investigator.

Dr. Mitch Herian commented that was a good question. If when you are looking at the survey you need to see on the questions, we have a response option that range from strongly agree to strongly disagree. These are called a liker type scale answers but sometimes you will see an N/A option at the end or do not know option. It is something to consider if whether or not you want to include that, but it is good in terms of the questions that you referred to where the client may not know whether the attorney did something but if we do add it, I would recommend adding it to all the questions.

Jeff Wells questioned if the survey is going to study enough and if it was going statewide or just the rural counties.

Director Ryba replied that pursuant to *Davis* the plan is in the rural counties.

Chair Traum questioned whether there were any other comments on the survey.

Dr. Mitch Herian commented that they went back and forth on this and decided that they did not want people to use this as the complaint box.

Joni Eastley stated that she believed we already have a process for complaints, correct?

Chair Traum stated that she was curious that people might want to say things that are not complaints like random comments. Chair Traum questioned when you are expecting this to go live or what is the timing.

Director Ryba wanted to know if the Board would like to approve this today with the recommended changes or if they would like the department to make the changes and bring it back at the next meeting.

Julie Cavanaugh-Bill questioned whether the department had sent the survey out to the rurals and if there had been any comments from them.

Director Ryba responded that it was sent out to all interested parties and it was put on DIDS website as an attachment. Interested parties would have received a copy of this.

Laura Fitzsimmons stated that she thinks it is great what you have done, and everyone has seen it and expressed suggestions and concern so I do not feel it would need to come back to the Board.

Joni Eastley concurred that she agreed and let us just get it done.

Chair Traum asked if someone would like to move to approve the survey.

Joni Eastley questioned whether they could have a tiny bit more discussion before calling for the vote. I just want to review one more time what the changes were. Ms. Eastley said she knew what mine are which is how did you meet with your attorney and wanted to know what the other changes are.

Rob Telles said that he would second the motion.

Dr. Mitch Herian referred to his notes and stated how the person met with their attorney was one and add demographics to the electronic survey and the paper survey to make them identical. We will add a do not know option to the liker scale questions, a place to write their names and a place for notes and comments. No decision on multiple languages.

Joni Eastley commented that she did not have a problem leaving it to the staff's discretion and questioned whether Director Ryba wanted her to amend her motion to include how we are going to roll this out or is it more appropriate to leave at staff's discretion.

Director Ryba requested that we ask the Board's permission to have it left at staff's discretion. We are looking at the paper version and the cost of prepaid postage as it is not built in our budget so we are looking at our budget and see if something we can work in.

Joni Eastley suggested that it might be worthwhile for the paper versions to reach out to individual counties and see if they might not cover the cost and advised the Chair that her motion stands.

Motion: Approval of Survey covered in discussion with changes at staff discretion.
By: Joni Eastley
Second: Rob Telles
Vote: Passed unanimously

Director Ryba advised the Board that Dr. Mitch Herian had one more item to discuss and that is the reporting form that he would like to propose that we would like to roll out.

Dr. Mitch Herian explained that the financial reporting form.

Laura Fitzsimmons asked if this form had been sent out to the county managers.

Dr. Mitch Herian answered that it had not.

Laura Fitzsimmons opined that some input should be sought from the people who are going to be filing out the forms. Depending on the deadlines, Ms. Fitzsimmons suggest that the form should be sent out to the counties as they would probably know what works.

Dr. Mitch Herian suggested that they send it out to a couple of folks and let us see if this makes sense to them and if it does not make sense, we may need to amend it.

Laura Fitzsimmons said they might not understand what a category means and then there could be a conversation beforehand.

Director Ryba explained that this is very consistent with the form that was sent out previously to all the counties when they reported for fiscal year 18 and 19 expenses. We are going to have to work with them to separate the indigent defense expenses from all other expenses. We will need to meet and plan on showing them the form and reiterate that this is required under section 19.3 of our temporary regulation.

Dave Mendiola recommended that since the staff is going to go out and meet with the counties that they meet with the comptroller or the county manager or the public defenders or contract folks. At that time not only go through the plan which is part of the strategy but also the spreadsheet. Director Ryba is right we have already filled these things out. Everybody is familiar with it and I think because everybody has a different software system that is highly unlikely, they can produce it out of their software but filling out a form like this sounds pretty easy.

Chair Traum stated that it appears the question is it something we need to approve right now or is this just an update that does not require approval.

Director Ryba stated that she did not believe that you necessarily need to approve it right now and we can roll this out to the counties. Director Ryba reminded the Board that Section 19.3 says the financial status report shall be in the form approved by the Board.

Laura Fitzsimmons asked if she could make a motion to approve the form.

Jeff Wells questioned if this was going to apply to the larger counties as well. Is there a significant reason why we cannot split it up between offices? To lump my office of appointed counsel with my public defender's office and merge investigations and experts would not give you a clue as to what we are doing between the contract attorneys and conflict attorneys' offices. We can give it to you in three separate forms, one for the public defender's office, one for the special public defender and one for the office of special counsel.

Chair Traum confirmed that would be a good idea.

Jeff Wells stated with that he would second Ms. Fitzsimmons's motion.

Chair Traum questioned if there were any other comments before we take a vote. Chair Traum thanked Dr. Mitch Herian for all he was doing with the Board and the Department for getting all this going to comply with *Davis*.

Motion: Approval of Fiscal Reporting Form
By: Laura Fitzsimmons
Second: Jeff Wells
Vote: Passed unanimously

Chair Traum suggested that we move on to number five temporary regulations and handed it over to Deputy Director Hickman to give the Board an update covering A and B on the agenda.

5. Temporary Regulations, Anticipated Effective Date: March 5, 2021 (For discussion and possible action).

- a. Discussion for County Plans: Setting Due Date for Plans: May 1, 2021 or August 6, 2021.**
- b. Presentation, Discussion, and Approval of Forms: Attorney Application to the Department, Model Plan Template, Contract Template.**

Deputy Director Hickman stated that just as a reminder the temporary regulations are anticipated to be effective absent any formal objection when filed on March 5, 2021. We are anticipating that we might get the regulations approved or effective before or right after the statutory May 1st deadline. We included in the regulations a provision that allows the initial plan to be submitted within six months of the effective date and noted as August 6th, but it is actually September 3rd. The September 3rd date is preferable to the Department as we still have several components of the plan that are not up and running: LegalServer, weighted caseload study, and the budget closing. DIDS supports the September 3rd date as it gives us more time for planning with the counties.

Chair Traum requested to know if anyone had any questions or comments and inquired if there was something in part B or forms to approve.

Deputy Director Hickman confirmed that there are forms that we will be asking for approval.

Chair Traum suggested that they hold off on this and do the whole thing deadlines and forms since it is slated as a whole piece. Chair Traum confirmed that both Director Ryba and Deputy Director Hickman will be reporting on item B.

Deputy Director Hickman commented the first form to review would be the application for list of qualified providers. Modeled after existing applications used in both Clark and Washoe County for their appointed counsel programs, the form will be available through our website and focuses on the qualification requirements that are within the temporary regulation and gives us an opportunity to review those for inclusion on that list. The next document is the plan for the provision of indigent defense template.

Director Ryba stated that the next document that we have proposed is the standard contract for indigent defense services. As a reminder the *Davis* requirement say the executive director shall establish a standard contract for the provision of indigent defense services and this is required to be completed within six month of effective date which is approximately February 11, 2021. One requirement in *Davis* is that the contract should have a requirement that any applicant who previously served as a county prosecutor shall not be eligible for and indigent defense contract in the same county before 18 months of their last employment date we are proposing moving forward. Director Ryba said they are proposing the Department be allowed to waive that because we still have that conflict check language in there. We are proposing to move that to the attorney application form which Deputy Director Hickman originally discussed rather than placing it in the contract. One change that we request to make sure that I would be making to the standard is to add a signature line for the Department at the bottom of all these contracts pursuant to the *Davis* requirement all new county contracts must be approved by the executive director or designee prior to execution. We did send this form off to the Attorney General and met with them yesterday and had a thorough conversation about the changes he recommended that have been made so what we are submitting to you is our standard contract proposal with the addition that we add the signature line for Department approval of the contract.

Chair Traum questioned if there were any comments or questions from the Board.

Joni Eastley asked Director Ryba that as long as the county meets all the requirements or matches the language in this draft or standard contract does, they have some latitude about including things that might be peculiar to or specific to their county.

Director Ryba deferred the question to Deputy Director Hickman.

Deputy Director Hickman responded that yes there is some latitude I think the language of *Davis* although recommending the NLADA model contract is a guide.

Director Ryba commented that is part of the reason we did the regulations section 42 because we wanted to give the counties authority to make their own contracts so long as they include the required language that is set forth in the temporary regulations.

Drew Christensen wanted to know what the typical contractual period for most of the counties is.

Director Ryba answered that it depends county by county. Not all contracts are on the same schedule.

Julie Cavanaugh-Bill commented that with regard to the attorney application that Deputy Hickman was talking about when we were first looking at the requirements for different category felonies that there had been some change in the language and the actual regulations to make a little more flexible. The concern was and I have received two comments just this week on the particular form the concern is that in the rurals we are limited on the attorneys that will take criminal appointments in the first place and oftentimes a lot of our cases and our felonies in particular do not go to a full trial. Julie Cavanaugh-Bill stated that I do not know what the percentages are, but the concern was if you say they have to have completed or substantially been involved in three felony trials before you can take a category B felony, we do not know how many attorneys that will leave us with. Julie Cavanaugh-Bill stated that she would encourage the people with comments to make comments to the Department. I do not know if they did, but I think that is a concern, and I would hate to leave the Judges with zero to one attorney that applied for and to take those appointed cases.

Deputy Director Hickman commented that the Department had not received outside comments. The concern about building flexibility into the temporary regulations and the application the answer is yes and that was certainly done in each of the regulations dealing with qualifications. On page 3 of 5 in the application there is the quote in the section entitled qualification based upon equivalent experience and skills to establish qualifications and experience. Those may include but are not limited to misdemeanor jury trials, bench trials, preliminary hearings, clerkships, internships, trial college participation, etcetera.

Julie Cavanaugh-Bill suggested that maybe when it is first asked for that we put an asterisk and have them also see that section because some attorneys when they are filling out the application may look at it and go, I am not qualified and not finish it.

Deputy Director Hickman concluded that we could do something we can either move that up or include a note under that section to direct any applicant to that section for alternative qualification.

Jeff Wells stated he wanted to thank Director Ryba and Deputy Director Hickman of the template for the standard plan. One of the things I have said for 12 to 15 years is that one size does not fit all. When reviewing the last attorney contract or the standard contract that there are a couple of things that look like it is in conflict. Paragraph 7 says basically that oversight of both the contracting authority and the contractor will be by the Department, so you have the county entering the contract but now oversight of the performance of the lawyer is now done by the Department. Then when you get into paragraph 15 there is an implication that even if the county wants to have a corrective action against a contractor or if the county even wants to dismiss them or move on to someone else it looks like the Department is trying to take over and say they are trying to tell the county whether

they can do that or note. If I am reading this correctly, it looks like it is going to be very difficult for a county without the permission of the Department to terminate an individual contract.

Director Ryba stated we can go back to the model contract language for both seven as well as 15.

Bevan Lister wanted to know if it would not be more effective to have a set of items that the counties need to have in their contract with their Public Defense contractor rather than have you write a contract that we may or may not like anyway. That is just one thought you know if you give us the things that need to be in the contract then let us have that contract written and agreed to. The other thing is my understanding that all these new reports and new requirements are all the stuff that we are putting in place here is only applicable to the rural counties. Clark and Washoe counties have their own system so this does not apply to them.

Director Ryba concurred that they agree with Bevan Lister that we wanted to set out what was required in the contract in a temporary regulation section so that counties would have the ability to make the contracts to fit their county as long as it contained certain things, they would not need to use this model contract. It is just there for them to be able to use and it is also required pursuant to the *Davis* lawsuit that we have a standard contract for indigent defense services which could be used by the counties. Our original intention was just to set forth what was required but because of *Davis* and there is a deadline for February.

Deputy Director Hickman commented that about Mr. Lister's second concern, the *Davis* settlement agreement applies to rural counties that are providing the service by contract attorneys. That is the first reason why the abundance of the regulations apply to the rural counties only. The second reason is that the urban counties like Clark and Washoe have already undergone this process in ADKT411 and have formulated and submitted model plans to the Supreme Court which contain in substance the very things that we are setting out to accomplish via the regulations for the smaller counties. The plans are on file and made public in the Supreme Court ADKT411 docket and are available to be reviewed. They contain the same push for the independence of the defense function qualification requirements which I think are more stringent than ours as well as the discussions on payment and in some instances data collection.

Chair Traum asked if there were any further comments and stated she only had one comment. It is her understanding that the black boxes in paragraph seven in the standard contract were a guide if you are writing your own contract and you must include these things is that correct?

Director Ryba confirmed that the black boxes were added by the Department specifically referring to our regulations of what you need to include in those portions.

Chair Traum confirmed that those items are the must include and then the entire contract is just a template. Jeff Wells' comment on paragraph seven oversight might not be the word that you want to use. Subject to review may be another option that captures the statute goal but less of an oversight look and feel. Does the Department have the feedback that you need from the Board in terms of minor changes or comments and they seem like minimal changes? If we could entertain a motion to approve the September 3rd date for submission of the county plans, approval of the three different forms that we have been discussing would someone like to make that motion?

Chris Giunchigliani stated she would be happy to make the motion exactly as Chair Traum had said.

Motion: Approval of September 3, 2021 date for County Plan and Approval of the Three forms discussed.

By: Chris Giunchigliani

Second: Drew Christensen

Vote: Passed unanimously

Chair Traum suggested that we move to item six on the agenda regarding the update from the Department.

6. Update on the Department: (For discussion and possible Action).

- a. NAPD Grant Award for \$,3000 and the Creation of SOAR – Support, Outreach, and Assistance Resource.
- b. Creation of Committee to put together Law Bank, as required by *Davis*.

Deputy Director Hickman informed the Board that we hired our second Management Analyst, Stanley Morrice. The second part of this section is the National Association of Public Defender Grant award for our newly implemented Soar program. SOAR stands for Support Outreach and Assistance Resource and is our promotional flyer in the materials. We have our first meeting this Friday and we are excited about that and look forward to having a successful program. We were awarded a \$3,000 grant award for this implementation. The second activity of the Department is in compliance with the *Davis* settlement working on the motion bank or law bank. We have formed a committee that is developing a research trial practice resource.

Director Ryba commented that she would like to add that in *Davis* one thing that we are required to do is to make training and guidance resources available to all indigent defense providers. Such resources should include experienced criminal attorneys available for consultation and a brief and motion bank of pleadings. To meet this obligation is why we are taking these steps.

Chair Traum thanked the Department for the update. Chair Traum thinks the response in the rurals to getting additional help and support and building community and solidarity is already happening. Moving on to seven with discussion regarding the budget hearing and whether to make public comment from the Board. The budget that was submitted by the Department was only approved in part and Director Ryba will be appearing on March 1st on behalf of the Department in front of the Ways and Means Committee. The question for the Board is whether we want to and in what form to do more than that. The budget does not cover everything they asked for and the Board has agreed to implement the *Davis* requirements and the budget does not cover implementing those requirements.

7. Discussion regarding Budget hearing and whether to make public comment from Board: Joint Full Money Committee Meeting, consisting of Senate Finance and Assembly Ways and Means: March1, 2021 at 8a.m. (For discussion and possible Action).

Director Ryba stated that the agenda for the joint meeting of the Assembly Committee on Ways and Means and the Senate Committee on Finance scheduled for March 1st at 8am is in the attachments.

Chair Traum acknowledged that this is a discussion item, and it is up to Board as we are not the Department. It is permissible and may be our obligation to share our voice about why the budget coming up short and is going to hobble the implementation of *Davis*. The practical question I would like to open for discussion is how we do that and who wants to do that and how should we do that.

Joni Eastley stated she had one question and that is do we know specifically which parts of Director Ryba's budget requests were denied and why they were denied and if they were strictly financial decisions or if there were some other mitigating factors.

Chair Traum commented that was a great question and that maybe Director Ryba could answer that and whether she got a justification or just did not get the funding.

Director Ryba stated we have been talking about certain requirements that *Davis* obligates us to be able to complete. We did receive funding from the Interim Finance Committee (IFC) to be able to move forward with the weighted caseload study and to complete the training that we are required to provide. The concern is when we move to impose our temporary regulations, we are required under *Davis* to ensure that all defendants have immediate access to applications for indigent defense services and all must be screened for indigency within 48 hours. We believe that this will increase costs for the counties by hiring additional personal to ensure that these applications are provided as attorneys must be present at initial appearance and arraignment. Ultimately within a year of completion of the weighted caseload study providers of indigent defense will be required to comply with the workload standards and we suspect that may call for the increase of staff for many of the offices and there was no funding received for that. Based on the State's shortfall the enhancements did not move forward. The first enhancement was to cover the maximum contribution formula and the other enhancement we requested was to build the complex litigation unit within the Nevada State Public Defender's office.

Chair Traum questioned what the availability or process for getting more money along the way if you did not get it now.

Director Ryba stated that in reading the legislation of the creation of AB81, our Department does have the ability to go to the IFC to request funding if appropriate.

Chris Giunchigliani questioned is not the monitor also supposed to be funded and that was part of the *Davis* settlement and that was an ongoing cost.

Director Ryba answered that the Department received approval to build \$75,000 into our budget.

Chris Giunchigliani commented that helps so someplace other than the two items that went through or the two enhancements because we did not get \$240,000. According to my notes there are quite a few things that I think were related directly to *Davis* and the lawsuit versus your general operating is that correct or am I not reading the budget correctly?

Director Ryba requested Jason Kolenut, the Management Analyst how many enhancements the Department had requested.

Jason Kolenut commented that he believed there were three enhancements, and the county maximum contribution was not actually an enhancement. It was an item for special consideration, and they did rollback each of the enhancement requests from what we had asked for. There was some additional training money that was requested, and they did give us some but not all.

Chris Giunchigliani stated that it looked like \$82,000 and I think \$66,000 was for annualized enhanced training then prison cases so they do not have to through contingency fund processing and that was eliminated and that reduced the budget by \$240,000.

Jason Kolenut stated that the prison cases we took over processing were previously handled by the Attorney General's office. The process was just moved to the Department and not something not built into their budget. It comes out of the statutory contingency fund, so the process is the same we are doing the work instead the Attorney General's office.

Chris Giunchigliani wanted to know if there was an assurance that it would only be paid from the statutory contingency fund.

Jason Kolenut confirmed that it is statutorily mandated that the claims be paid out of the statutory contingency fund. We had hoped that they would give us the appropriation to take up the additional general funds because the process to get the payment can take some time as it goes to the Governor's Finance office and then the Administrative Service Division and they process the payment.

Chris Giunchigliani commented then the department is doing the prison claims states quo and questioned what was the maximum contribution enhancement amount requested?

Jason Kolenut responded that the amount was 4.8 million dollars per year and that included all counties.

Director Ryba wanted to add that if we only include the rural counties the request would be 1.8 million.

Chris Giunchigliani questioned if there is a way to step in on that maximum contribution and appealed to the committee for the funding for at least the rurals would that be appropriate and then in two years go back for the additional funding.

Director Ryba stated that she believed that could be an argument that the statute says that all counties should be included in the maximum contribution formula.

Chris Giunchigliani wanted to know what Chairman Brooks' rule this time for how you testify.

Director Ryba stated her understanding is depending on who you may want to testify if you are a nonprofit for example David Carroll of the Sixth Amendment Center, he is not allowed to give public comment unless the chair who we believe is Chris Brooks request input from David Carroll and then they could be prepared to provide input.

Chris Giunchigliani stated that helped her understand that it is not a Chris Brooks per se, it is Carroll's rule that he has to follow and is there time, do we need him and if so, is there time for us to request the chair to ask for him.

Chair Traum commented that she believed that Chris Brooks has the information he needs to make the request and was possibly interested in making the request.

Laura Fitzsimmons stated that she may have misunderstood when the Director and Ms. Giunchigliani asked about the full amount versus the 1.8 million. If we focus on the *Davis* case and the 1.8 million it shows our understanding of the constraints of the budget. Ms. Fitzsimmons suggested that we as a Board authorize a letter of support in our names and that the Chair Traum present that letter and wanted to know if Chair Traum's schedule would permit her to testify as our Chair on all of our behalf of the Board.

Chris Giunchigliani reiterated that Chair Traum would be perfect with that to represent the Board and that having a letter that bullet points what they need to understand about the gravity of how the settlement came about and what they risk if they do not at least fund the necessary implementation of it. We can get the settlement off the ground with the 1.8 million and then can go back either to IFC and or a commitment of next session that the remainder be funded or something along those lines.

Laura Fitzsimmons commented that the easy way to handle this is we are asking the 1.8 million now. Laura Fitzsimmons urged the Board members to contact members of the committee.

Joni Eastley stated that is something she has done.

Chair Traum stated that the Board can use the letter and that everyone has a copy, so they are aware of the itemized items.

Laura Fitzsimmons stated that there is just no money and she feels the Governor's budget was undertaken on a dire economic outlook and no department is happy with the budgets .

Chris Giunchigliani commented that she agreed with Laura Fitzsimmons that it was not cost shifted it is just the reality.

Jeff Wells commented that Director Ryba is basically in a trap.

Chris Giunchigliani agreed with Mr. Wells that the Director cannot advocate to the committee.

Joni Eastley commented that it is the Directors job to defend.

Chris Giunchigliani opined that the letter is to get people familiar and with only three minutes to talk you want to brief and to the point and explain why the need is different for this organization versus what they would normally look at for an enhancement.

Chair Traum questioned whether they should be discussing this at the Board Meeting.

Joni Eastley commented that politics make strange bedfellows and wondered if the ACLU knows about the this.

Chair Traum stated that Franny Foresman was on and maybe we will get her comments on this.

Chris Giunchigliani commented that she was sure she was out there, and she is sure they are monitoring and there is a risk and that is how Chair Traum should start out that “the State is at risk of undoing *Davis*”.

Joni Eastley stated that we have held up our end and then some.

Jeff Wells stated that he agreed with most of everything that has been said and that they had covered the fact that Director Ryba cannot talk about this because the cuts came at the executive branch level not the legislative branch level so the Board will have to be there. Jeff Wells touched on the fears that the counties had back in 2019 session and a couple of things that are in our temporary rules makes sense for counties like the complex litigation unit being able to move death penalty cases over to the State. We cannot hold a county to try to meet those guidelines if there is no maximum contribution. It is important to try and get somebody in addition to Chair Traum to testify such as Franny Foresman or our AG to talk about the *Davis* case so that we have at least two voices and if we get David Carroll that would be extra beneficial.

Joni Eastley stated that she has already lobbied behind the scenes.

Jeff Wells suggested either NACO or one of the Commissioners that is on this Board. Either way we still want to be able to discuss the alliance that the counties made on the 2019 legislation and the expectation of dollars is slightly different than *Davis*, but it addresses the unfunded mandate issue.

Laura Fitzsimmons wondered if Dagny Stapleton would be willing to write a letter for NACO and she would be happy to reach out to her.

Laura Fitzsimmons commented that it is agenized and yes, we can vote on it. If we agree in theory that the Board is going to form a motion that Chair Traum writes a bullet point letter targeting *Davis* explaining the need for these specific enhancements.

Joni Eastley questioned if that was a motion.

Laura Fitzsimmons stated okay then I move that the Board all agree that we as a Board need to seek specific enhancements on March 1st from the money committee and that the person who is going to convey that message is Chair Traum in both written form and she will be available for testimony.

Chris Giunchigliani stated that she would second the motion.

Jeff Wells stated that he did not think we should take a vote on whether David Carroll is there if Dagny Stapleton is there or the ACLU is there. Our vote should simply be that we authorize the Chair Traum to present both written and oral testimony on our behalf.

Motion: Approval for Chair Traum to represent the Board and present oral and written testimony at the Full Money Committee meeting on March 1, 2021.

By: Laura Fitzsimmons

Second: Chris Giunchigliani

Vote: Passed unanimously

Joni Eastley commented that as we all know Director Ryba must defend the Governor's budget and it is not up to her to go before the Money Committee and complain about what they are giving her and what was cut out. Joni Eastley stated she lobbied some folks on that committee and explained her position on this which matches the Board's discussion was. If some other people wanted to do that it might work.

Chair Traum suggested that we move back to the agenda number eight the discussion of the BDR and update on status.

8. Discussion of BDR: Update on Status. (For discussion).

Director Ryba stated that the Department submitted the two BDR's one is to be consistent with our maximum contribution formula and have death penalty be a State expense as set forth in our formula that has not moved forward. Our second is attached as an attachment to this meeting and it has moved to the Legislative Counsel Bureau and we are waiting for them to make their changes. We are expecting it to come out and once it does, we will send it to all the Board Members. We did have to make one change to get it to move forward. Board member Kate Thomas did recommend that we add public defenders to the definition of agency of criminal justice to attempt to allow public defenders have access to criminal histories. We met with the Department of Public Safety and the Washoe County Public Defender's office and it was unrealistic to go this version as they would need to install computers in every Public Defender's office so they could have access. It would be extremely costly and possibly it would have sunk our Bill Draft Request, so we decided to pull it out and we are exploring other avenues. We are doing group meetings with Department of Public Safety IT, public defenders, and prosecutors throughout the State to try and create a uniformity of how the State produces criminal histories for public defenders. We are trying to make sure that every public defender gains access to these and how they can be distributed more quickly.

Chair Traum questioned if there were any comments on the BDR's. Then moving on to number nine.

9. Confirmation of Next Meeting: March 24, 2021 at 1pm.

10. Public Comment.

Franny Foresman wanted the Board to know that with regard to the Money Committee they are watching it very closely and we will be doing something.

11. Adjournment:

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