

**State of Nevada**  
**Department of Indigent Defense Services**  
**Board Meeting Minutes/Workshop**

Wednesday, October 6, 2021

1:00 PM

**Meeting Locations:**

OFFICE	LOCATION	ROOM
Virtual Only		

Public was able to access the following link: Join Zoom Meeting

<https://us02web.zoom.us/j/82304735072?pwd=ZFhQWk1Zb1J4cjNHbnlWaifU1tZz09>

**Meeting ID:** 823 0473 5072

**Passcode:** 750606

By Telephone:

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## 1. Call to Order/Roll Call

Chair Professor Anne Traum called the meeting of the Board on Indigent Defense Services to order a shortly after 1:00 p.m. on Wednesday, October 6, 2021.

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

**Board Members Present:** Chair Professor Anne Traum, Vice Chair Dave Mendiola, Laura Fitzsimmons, Joni Eastley, Drew Christensen, Chris Giunchigliani, Jeff Wells, Bevan Lister, Rob Telles, Justice William Maupin, Commissioner Hall. Kate Thomas and Allison Joffe were not present.

**Others Present:** Executive Director Marcie Ryba, Deputy Director Peter Handy, Deputy Director Thomas Qualls, Cynthia Atanazio, Bet-Nimra Torres Perez, Todd Reese, Maxine Cortes, Sophia Long, Franny Forsman, Anne Langer and John Arrascada.

## 2. Public Comment

**Chair Traum** noted that the Board had received one written public comment from Carson City the prior evening and that it had been circulated to the Board this morning. Instructions were provided pertaining to time allotted for public comment and that additional time would be provided when addressing a specific agenda item.

## 3. Introduction and Welcome to New Board Members: (For possible action).

**Director Ryba** advised the Board that the Governor had appointed two new Board members. We have Cassie Hall a NACO appointment who is a commissioner in Mineral County. Our other new member was unable to attend because she had court today. Allison Joffe is an attorney in Carson City and qualifies as an attorney in the rurals and was appointed by the Board of Governors. We have new staff in the department, Peter Handy is our new Deputy Director who replaces Jarrod Hickman and comes to us from the Attorney General's Office. Our new Administrative Assistant is Bet-Nimra Torres Perez who is at our front desk.

## 4. Approval of September 1, 2021, Minutes (For possible action).

**Motion: Approval of Minutes from September 1, 2021.**

**By: Chris Giunchigliani**

**Second: Laura Fitzsimmons**

**Vote: Passed unanimously**

## 5. Presentation and Discussion of Revised Proposed Regulations of the Board on Indigent Defense Services, Chapter 180 of the Nevada Administrative Code, LCB File No. R042-20: (For discussion and possible Action).

**Director Ryba** provided a historical perspective of the work this Board has put into place on these regulations. Under Mayor Crowell's leadership we sent off our regulations to LCB in March 2020 and they were returned November 2020. On December 2, 2020, we held a workshop where we did receive comments and then held a hearing on January 28, 2021 and adopted those temporary regulations. In June of this year, we sent the temporary regulations to LCB and received them back and held a workshop in September. We did receive public comment and there were some changes that were made to those regulations from that workshop. Those temporary regulations are set to expire November of 2021 and we are here today to adopt permanent regulations.

**Todd Reese** stated Carson City's concerns of the regulations and believes there is a conflict which may violate the constitution.

**Chair Traum** commented that it may be helpful to have Director Ryba respond and explained the department's goal to set standards and ensure adequate funding and independence.

**Director Ryba** reminded the Board that when we created AB 480 which came into law that created a lot of these changes that we are talking about today. The distinction of selection of counsel versus appointment of counsel was something David Carroll from the Sixth Amendment Center recommended that the State of Nevada adopt. AB 480 is to create that independence from the

judiciary which has been recommended by the Sixth Amendment Center and recommended in the *Davis* settlement consent judgement. As for the costs related to these expenses DIDS has been tasked with several requirements and we have been told by the legislature in NRS 180.320(d)(1) that DIDS must establish requirements for specific education and experience for public defenders to be in court. Since 2020 we have worked hard to ensure that the experience of the attorney fits the complexity of that case. A maximum contribution formula was created for the counties which is contained in section 16 through 19 of the regulations.

**Laura Fitzsimmons** directed her comment and questioned if Mr. Reese was aware that we need to adopt these regulations today, so I just want to make sure Carson City submitted a plan.

**Todd Reese** confirmed that Carson City did create a plan, but it was not included in the materials provided and not on the agenda today. He explained that Director Ryba had given Carson City until the end of October to submit a plan to DIDS.

**Laura Fitzsimmons** questioned if Mr. Reese was aware of the hearings with the Right to Counsel Commission as she had never heard of him. This has all been in process long before last year, the Board and the late Mayor as well as Director Ryba and her crew have worked extremely hard on this. You do make good points and I want to make sure that you said the Nevada Supreme Court has authorized the use of senior judges to shuffle cases off.

**Todd Reese** wanted to clarify that the Nevada Supreme Court did not authorize senior judges to be DIDS designee. What the Nevada Supreme Court did authorize was to allow senior justices to review requests for compensation and expenditures of money from defense counsel.

**Chair Traum** questioned if Mr. Reese was talking under ADKT 411 or more recent.

**Todd Reese** stated that he was talking more recent. Our court administrator spoke with the court administrator at the Supreme Court and said if we receive a request for expenses from indigent defense counsel would senior judges be authorized to review those and the answer we got was yes.

**Laura Fitzsimmons** questioned if they told the Supreme Court, it was in the context of these regulations which were an outgrowth of the Indigent Defense Commission. The conversation couldn't have been in that context because the primary thing the Supreme Court justices has always said is a total separation between the judiciary and expenses.

**Joni Eastley** commented that Laura was right they were adamant about that.

**Maxine Cortes** stated that she is the court administrator for the Carson City court and assists Storey County. When Judge Russell and Judge Armstrong were on the Indigent Defense Commission, they said that Carson City was the gold standard. Back in April of this year I was approached by the city to talk about the indigent defense services plan, and I went to Katherine Stocks, State Court Administrator. Ms. Stocks said she had conferred with John McCormick who was at a meeting with Director Ryba and provided input with them for support of the plan. I did ask them if senior judges would be allowable to review expenses because they have the background and legal experience needed and there would be no cost to Carson City.

**Laura Fitzsimmons** questioned if John McCormick knew you were making this inquiry?

**Maxine Cortes** answered that she had an email from Katherine Stocks stating she had spoken with John McCormick. We are concerned that the regulations that are for the counties that are not using the state public defender are going to dismantle what we are currently doing with indigent services in Carson City and Storey.

**Drew Christensen** wished to convey a few comments around the judiciary reviewing expenses. This has been a 12-year project since ADKT 411, and AB 480 and the regulations have somewhat narrowed that discussion. ADKT 411 did originally say specifically whereas the appointment of counsel, approval of fees and determination of indigency could be performed by an independent board, agency, or committee or by judges not directly involved in the case. On a second note I am not as offended by Carson City's practice if Director Ryba's department has vetted and approved the counsel on the list.

**Franny Forsman** wanted to make it clear that Carson City was not sued in *Davis* because it was determined that it was best to go after those counties that didn't have a public defender's office. It was not because we had done an assessment of quality of representation or the services before naming the defendants.

**Maxine Cortes** wanted the Board to know that the Justice Court has four full-time employees that review cases every morning. The person is screened within 24 hours of arrest for the financial disclosure form and that is presented at the 72-hour hearing and that is a very fast turnaround.

**Chair Traum** stated she appreciated that one of the realities is we are navigating new terrain trying to do so with efficiency, but we are also realigning the way the system works which we realize is a big adjustment.

**Laura Fitzsimmons** commented that we are an hour into this, but we have got to approve these regulations today. We understand that you guys were busy, but we have been working on this for a long time. After the adoption of the regulations if there is a problem you guys can come back to us with specifics and facts. It would be helpful if you could work with Director Ryba and submit a plan.

**Chair Traum** stated this is a baby agency launched to tackle this work. The regulation process is an ongoing dialogue where I know the department will be talking to everybody about their experiences and fine-tuning as we go along so we will keep that conversation going.

**Bevan Lister** stated he had a process question. Do the temporary regulations expire and if I understand there's different timelines? Is November 1<sup>st</sup> the last opportunity to submit permanent regulations before the next legislative commission process?

**Sophia Long** stated the temporary regulations expire November 1<sup>st</sup> and if you have nothing in place you just don't have regulations.

**Chair Traum** commented that if you start over the process, but we do not know how long that would take so that is one of the reasons we have been mindful of this. In September we had a discussion that if we were to substantially revise the regulations we would be off our timeline, and

we have been careful in terms of making fine-tuning the regulations that we can still meet this November deadline.

**Bevan Lister** stated he understood and wondered what the implications are if we re-adopt our temporary regulations without going forward with the permanent regulations.

**Sophia Long** stated you can't re-adopt temporary regulations because we are outside that timeframe. We are in the timeframe where you can only adopt permanent regulations.

**Chair Traum** questioned whether the temporary regulations are mostly what our regulations are with very minor adjustments to incorporate the change in the statute that happened this legislative session. We have talked about moves to cement this independent function, so we are no longer having judges appoint counsel and approve public defender expenses in cases.

**Director Ryba** confirmed that they are very similar, with only minor modifications.

**Bevan Lister** questioned if we adopt these today and then we feel like there are warranted arguments and amendments need to be made what is the process or time schedule in that case?

**Sophia Long** answered that you can adopt permanent regulations every other year. I would recommend that in the in-between you can adopt temporary regulations just as we did you have to do this process twice.

**Chris Giunchigliani** commented that in looking at the handout today we had the list of the plans that were submitted. Storey county did submit a plan. Where is Carson City's plan?

**Chair Traum** stated that Storey County is the only one that has not been recommended for approval. Storey County and Carson City plans are similar. We don't have Carson City's plan they have been given an extension until the end of October.

**Chris Giunchigliani** commented that we have been laboring this conversation of trying to appease something when we don't even have the final document to look at. We need to move forward see if there is any more testimony and get through the rest of the items on the agenda. It appears that there still seems to be an available process down the road if there is a concern after we adopt the regulations.

**Jeff Wells** commented that he is sympathetic to one of Carson City's concerns that when we talk about expenses for investigator and expert expenses now the state public defender's office is reporting to Director Ryba. The way around that would be a simple amendment that they will appoint a designee in those jurisdictions that the state public defender is providing the first layer of defense.

**Chair Traum** commented that she would like to hear from Director Ryba and point to the language because we are not changing the statute. I want to be dialed into the particular regulation and want to get clarification from Director Ryba.

**Director Ryba** stated that she thinks Mr. Wells is referring to is a law, assembly bill 480, where it is the department or its designee. I don't believe that we are able to modify at this point without going back to the legislature. When considering a designee, they should consider Karin Kreizenbeck as the designee for expenses within the Nevada State Public Defender's office. It shouldn't be a conflict if Karin is the designee for her office and this would be consistent with what Drew Christensen and Krista Meyer do for Clark and Washoe Counties.

**Anne Langer** commented the Storey County has 111 cases that are with the State Public Defender's Office. The problem that I see is the State Public Defender's office is under DIDS and Director Ryba has the ability to go through her case management system and read attorney notes. How do you distinguish her being Karin's boss and also the head of DIDS?

**Chair Traum** advised Ms. Langer that was incorrect that DIDS does not go through the case management system and read attorney notes. We should table this for the moment because we are getting into hypotheticals and mixing regulations and specific plans and getting into a whole new area. This is beyond the scope of what is in front of us now in terms of acting and passing these regulations that have been in the works for more than a year.

**Jeff Wells** stated that while suggesting it be a designee, I was not suggesting the designee be the judiciary and it is not the same as what we do down here. Would we be able to appease Carson City and Storey County with a minor amendment that simply says for the expenses for experts when in those counties that are represented by the State Public Defender that they pick a designee outside of that system to do it.

**Chair Traum** commented that the reality is that is a plan decision and can be worked out at the plan level and not necessarily required in the regulations. The real sticking point is whether the designee is the judiciary and if we move off of that DIDS is going to designate that and will consider the local situation of having a public defender and who could step into that role.

**6. Adoption of Revised Proposed Regulations of the Board on Indigent Defense Services Chapter 180 of the Nevada Administrative Code, LCB File No. R042-20 (For possible action).**

**Laura Fitzsimmons** stated she would like to make a motion and move to adopt the proposed regulations with the minor clarifications that were noted by Director Ryba.

**Bevan Lister** expressed concerns that in trying to minimize the challenges to the counties to provide sound public defense and have the state take some of that responsibility and cost all we have done is develop a whole new layer of government and a whole other set of costs to go along with it. There are some challenges that will need to be addressed down the road and we are going to have to start the process of molding this in a direction that it needs to be to make is simpler and more effective for the counties.

**Motion: Motion to Adopt the Proposed Regulations with Minor Clarifications**  
**By: Laura Fitzsimmons**  
**Second: Chris Giunchigliani**  
**Vote: Passed unanimously**

**7. Process for Approval of Department Designee. (For discussion and possible action).**  
**a. Confidentiality Agreement and Terms and Conditions for Department designees.**

**Thomas Qualls** stated we will be asking the Board to approve a number of these county plans and those plans will include the designation of someone to fulfill the role of selection of counsel and of approval of defense fees. AB 480 was introduced and passed last year by the legislature with the primary intent to create a measure of independence for indigent defense from the judiciary which is on par with what the prosecutors enjoy. The designee will have temporary access to potentially sensitive information. With that in mind we created a confidentiality agreement, with the assistance of the AG's office, Chair Traum and ethic professors at UNLV. Since the designee will be in the chain of collecting data and inputting these cases it seems inappropriate for the judicial system or even the clerks to be doing the case input or be in the chain of transferring these case files to conflict counsel.

**Director Ryba** stated that she wanted to clarify that we cannot see what is in the LegalServer files until it is transferred to our office. Even though we have oversight over the Public Defender's office arguably within our statute we cannot see any of their cases. When a case is transferred into the LegalServer system that individual will have access to that information to transfer to the new attorney so we can track this information and ensure that information is staying with the case.

**8. County Plans and Budget Approval. (For discussion and possible action).**

**Director Ryba** commented that before we get into specifics of the plans, I would like to call out the individuals we have been able to work with in creating their plans. We will be recommending approval of several plans. Churchill County we worked with Jim Barbee (County Manager), Jacob Sommer (Public Defender) and Commissioner Pete Olsen; Douglas County we worked with Patrick Cates (County Manager); Elko County we worked with Cash Minor (Asst. County Manager), Amanda Osborne (County Manager), Matt Pennell (PD), Rand Greenburg (Chief Civil Deputy DA); Esmeralda County we worked with Robert Glennan (DA), Jason Earnest (acting PD), Judge Johnson (Justice of the Peace); Eureka County we worked with Kelly Brown (PD) and Judge Dorothy Rowley; Humboldt County we worked with Dave Mendiola (County Manager), Matt Stermitz (PD) Maureen MacDonald (PD's office), Derrick Penney (Alt. PD); Lander County we worked with Judge Shirley, Bert Ramos (County Manager), Ted Herrera (DA); Lincoln County we worked with Bevan Lister (County Commissioner) and Franklin Katschke; Lyon County we worked with Jeff Page (County Manger), Eric Milavsky (Lyon County HR Director), Jeff Foli (Comptroller); Mineral County we worked with Judge Shirley, Sean Rowe (DA), John Oakes (acting PD); Carl Hylin (Alt. acting PD); Nye County we worked with Lorina Dellinger (Asst. County Manager); Pershing County we worked with Judge Shirley, Bryce Shields (DA), and Steve Cochran (PD). In order to get these plans prepared today there were some last-minute changes and these individuals worked extremely hard to get these plans where we needed them today for approval.

**Chair Traum** questioned whether the Board should approve batch by batch or as a whole bunch. All the plans check out, some have proposed designees that you would then approve and then there is a request for funds.

**Director Ryba** stated that as the Board is aware, we did receive 1.2 million that is earmarked in the IFC contingency fund. In working with the counties and how much they budgeted in their plans we could request \$1,124,427.14. After speaking to the Governor's Finance Office, we need to add inflation which may reduce that amount. Since the request will use up the funds that were set forth or set aside for the *Davis* counties will need additional funding to comply with their plan, we are seeking permission to seek additional funding from the BOE and IFC contingency fund in amount of approximately \$1.7 million. This amount has increased by two hundred thousand.

**Jeff Wells** expressed that he would like to make a motion to approve all the plans in 8(a).

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

**Motion: Motion to Approve All Davis County Plans in 8(A)**

**By: Jeff Wells**

**Second: Joni Eastley**

**Vote: Passed unanimously**

**Chair Traum** requested that Director Ryba address the Non-*Davis* County plans.

**Director Ryba** responded the Non-*Davis* County plans that we received are Clark County and Washoe County. These plans had been previously approved by the Supreme Court and ADKT 411 so they meet our requirements. We will be asking Clark, Humboldt, and Washoe County's plans and budget approval subject to BOE and IFC and subject to approval of designee for Elko County and Pershing County. We are requesting permission to seek from the BOE and IFC contingency funds in the amount of \$3,644,980.66 and again that amount will be reduced by inflation.

**Drew Christensen** stated considering that the money that we really wanted is for those *Davis* counties does it hurt our request to include funds based on the formula on Clark and Washoe's budget when neither Clark nor Washoe are probably going to request those.

**John Arrascada** commented that regarding the budget is that related to the reimbursement funds that are referenced in the regulations. It is my understanding that our assistant county manager declined the reimbursement funds.

**Director Ryba** stated that she didn't think it appropriate for DIDS to recommend to not seek funds from IFC and BOE on behalf of a county. We did have discussion with the Governors Finance Office and there is appropriately six million dollars that is set aside in the IFC contingency fund. If we request the \$3,644,000 the largest portion of that is for Clark and Washoe County so if we took those requests out it would significantly reduce our request by about three million dollars.

**Drew Christensen** commented that he just threw that out there because I know you guys have more experience with dealing with IFC but that is such a big number in the percentage of what's available that we are more successful asking for those counties that are in more need as commissioner Lister said. Some of these concerns of the expenses with the hope that the IFC does that we want to make a big push that there is a need in these counties' funds.



**Jeff Wells** stated that the risk I see of taking that three million out is we may go to IFC asking for three million and they decide because of other requests they only give DIDS a million and a half. They cut it in half so if we ask for six million and they cut it in half you still have three. Perhaps we can make these decisions after we see what IFC says as opposed to jumping out half of the money to start with.

**Motion: Motion to go to BOE and IFC for Contingency funds for the County Plans**

**By: Joni Eastley**

**Second: Jeff Wells**

**Vote: Passed unanimously**

**9. County Plans Corrective Action (For discussion and possible action).**

**a. Non-Davis County: Storey County**

**i. Recommend Rejection of the Storey County Plan**

**ii. Recommend entering into a Corrective Action Plan with the Storey County Board of County Commissioners for the purpose of establishing a complaint plan as the proposed plan is deficient in the provision of indigent-defense services. NRS 180.440(4).**

**Deputy Director Qualls** stated that Storey County's plan and Carson City's plan are similar. Carson City withdrew their plan and requested that we not bring it to this Board so that we could continue to work with them. We are supporting corrective actions just as a way saying we want to enter the next phase of this process and want to continue to work with Storey County to bring this plan into compliance.

**Jeff Wells** stated that he would suggest that we not do this. Carson City and Storey County basically have the same issues and we have agreed that Director Ryba will continue the discussions and negotiations with Carson City. I do not see why she can't do both simultaneously and we can entertain both of them at the same time. This is the first round of submissions and I do not want to start off doing corrective actions since we know there is going to be ongoing discussions.

**Anne Langer** stated that she wanted to bring up a few points when looking at the plan. When you are looking at the initial appearance or at vertical prosecution those are things that are going to subject to DIDS. These are things we can't enforce as a county. When looking at the county budget, we realize that the defense wants to enjoy the pleasures of or what the prosecution gets. Storey County has an issue in trying to predict something that you are never going to get back.

**Chair Traum** commented that we appreciate you being here and there has been a robust discussion and I wanted to give you sufficient time so that people really understand in context what your perspective. There is a proposal to not act on this but to send it back for more constructive dialogue and work together to a positive solution. Unless anyone is opposed it is my inclination to move on to number ten.

**Anne Langer** questioned if Storey County would be set on the agenda next month to address this.

**Chair Traum** stated that it would depend on the status of where things stand but we are hopeful that there will be parallel talks because they are so interconnected and similar.

**Laura Fitzsimmons** commented that after hearing from Ms. Langer I think we are on the cusp of a corrective action. If Director Ryba feels comfortable having the same deadline as Carson City to come to an agreement and work out a plan which DIDS can approve and if not, I would very much ask that this be put on the agenda for a vote on corrective action.

**Anne Langer** questioned if you come back for corrective action what happens next? What is the next stage that DIDS Board would do if we were not going to correct, or we don't have a plan?

**Director Ryba** answered that if we are unable to come to an agreement on a corrective action plan then ultimately the Board is the one that would decide what the plan would look like.

**10. Update from the Department: (For discussion and possible action).**

- a. Discussion of County Plans and Recommendations for the Department.
- b. Introduction of Peter Handy, Deputy Director, and Bet-Nimra Torres Perez, Administrative Assistant.
- c. RFI Released for data analyst.

**Director Ryba** named the parties that the department has been working with in trying to create a plan with Carson City. There was a request to extend the deadline until the end of October because the mayor was unavailable. Their next Board meeting is scheduled for October 21<sup>st</sup> and the plan will be agenzized for that meeting. We will be reaching out to Story County to schedule a meeting to try and get their plan moving forward. We released our request for a data analyst and there is a deadline of October 15<sup>th</sup>. We will use the information to go in front of and will request from the Governor's Finance Office funding for a data analyst so we can do a salary survey and review whether or not we can create a pipeline to get attorneys into the rural counties and finally to review our oversight.

**Chair Traum** stated that she wanted to compliment the Department on the enormous amount of work that went into today and all of this there is so much outreach and coordination. It's all very time sensitive because of the regulation deadlines, IFC deadlines, Davis monitoring deadlines which are just being adjusted to make room for this. Not only is this a lot of work but very time sensitive and we are so grateful for the amount of teamwork but also outreach and very detailed work that you have done with the counties.

**11. Confirmation of Next Meeting:**

- a. Request to Cancel meeting: October 27, 2021
- b. Confirmation of next meetings: November 17, 2021, at 1pm; December 15, 2021, at 1 pm; January 26, 2022, at 1pm.

**Chair Traum** stated that we are cancelling the October 27<sup>th</sup> meeting and we have scheduled meetings through January 2022. There will be notifications sent via zoom for the future meetings and cancellations for the team meetings.

**12. Public Comment:**

**Todd Reese** stated he wanted to make a brief comment. I want to thank the Board for their consideration and hard work. You know it is always difficult establishing new regulations in a new regulatory scheme as in many other areas. We miss Mayor Crowell's guidance on this particular issue. The last thing I wanted to say is that there was a comment that the county's contributions are capped. The county contributions are not capped. Essentially, we are spending it and then looking for reimbursement from the state who can choose not to reimburse us, and we are stuck with the expense.

**Chair Traum** commented that we are of course mindful of the funding scheme and would have been extremely happy if we had the whole thing funded that would make it more secure for everyone, but I think part of the reality is that we are a new agency and a new Board and building this piece by piece. Hopefully over time we will make the case that this is a viable way to do indigent defense and with everyone's buy-in and also the state's full support, so we are working on that. So, with that I am going to adjourn the meeting. Thank you everyone for your attention and thank you Carson City and Storey County for showing up and being part of this and we wish you well as you move forward.

### **13. Adjournment:**

**Chair Traum** adjourned the meeting at approximately 3:10 p.m.