

**Senate Committee on Finance and
 Assembly Committee on Ways and Means
 Meeting Jointly
 CLOSING LIST #8
 April 26, 2021**

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Title: DEPARTMENT OF INDIGENT DEFENSE SERVICES
 Account: 101 - 1008

Budget Page: INDIGENT DEFENSE-3, Volume III

Revenues	2019-20 Actual	2020-21 WP	% Chg	2021-22 GOV REC	% Chg	2022-23 GOV REC	% Chg
GENERAL FUND	730,732	900,208	23.19	946,372	5.13	962,024	1.65
INTERIM FINANCE	525,036						
INTERAGENCY TRANSFER		7,307					
BALANCE FORWARD	(525,036)	525,036	(200.00)				
REVERSIONS	(60,620)						
Total Revenues	670,112	1,432,551	113.78	946,372	(33.94)	962,024	1.65
Total FTE		7.00		7.00		7.00	

The work program year figures in the table above may not reflect all the actions taken during the interim and approved by the Governor's Finance Office, the IFC, or by the 31st Special Session.

Adjustments to Revenue

Dec Unit	Cat	GL	Description	2021-22 Gov Rec	2022-23 Gov Rec
Sub-total				0	0
Line Item Changes to Revenues				0	0

Adjustments to Expenditures

Dec Unit	Cat	GL	Description	2021-22 Gov Rec	2022-23 Gov Rec
Sub-total				0	0
Line Item Changes to Expenditures				0	0

Total		0	0
Grand Total General Fund Impact of Closing Changes		0	0
Grand Total Highway Fund Impact of Closing Changes		0	0

Overview

The Department of Indigent Defense Services was created pursuant to A.B. 81 (2019), codified as NRS 180.400. The department is governed by a Board on Indigent Defense Services, consisting of 13 voting members and up to 3 additional nonvoting members. The department provides support to counties to develop and maintain quality, cost effective indigent defense systems that meet the needs of local communities, and the requirements of the Constitution and state law.

Major Closing Issue

Davis v. Nevada Consent Judgment

Discussion of Major Closing Issues

***Davis v. Nevada* Consent Judgment**

Recommendation: As originally submitted, The Executive Budget does not include recommendations specific to the *Davis v. Nevada* consent judgment.

Summary of Issue: The *Davis v. Nevada* consent judgment is an agreement whereby the plaintiffs and State of Nevada agreed to settle the litigation in which plaintiffs challenged the state's fulfillment of its duty to adequately fund indigent defense in the rural counties.

Details Provided During the Committee Hearing: As background, A.B. 81 (2019), codified as Chapter 180 of NRS, created a new Department of Indigent Defense Services to oversee issues relating to the provision of legal representation to indigent persons in the state. The department is governed by the Board on Indigent Defense Services (Board), created by NRS 180.300. The 2019 Legislature approved the Governor's budget recommendation to establish the department with 7 new positions (including a Director and two Deputy Directors) and associated travel and operating expenditures, funded entirely with General Fund appropriations. Additionally, A.B. 81 moved the existing State Public Defender, with 14 positions, from the Department of Health and Human Services to the new Department of Indigent Defense Services.

On November 2, 2017, the American Civil Liberties Union (ACLU) of Nevada filed a class-action lawsuit, *Davis v. Nevada*, with Nevada's First Judicial District Court (Court) against the State of Nevada for allegedly failing to ensure rigorous legal representation to people accused of crimes who cannot afford attorneys. The lawsuit requested that the Court grant relief in numerous areas, including requiring the state to propose a plan to develop and implement a statewide system of public defense that is consistent with the U.S. Constitution, and requiring the state to propose and monitor uniform workload, performance, and training standards for attorneys representing indigent criminal defendants.

On February 24, 2020, the *Davis v. Nevada* plaintiffs and defendants stipulated and agreed that the lawsuit would remain stayed until April 30, 2020, to allow the parties to review the Interim Finance Committee's (IFC) funding decision regarding a request from the Department of Indigent Defense Services for a Contingency Account (General Fund) allocation of \$525,036 to fund a workload study, a data analyst consultant, a training program, and a timekeeping system. At its April 30, 2020, meeting, the IFC approved the allocation, which was to be used over the 2019-21 biennium to assist the State of Nevada in settlement discussions regarding *Davis v. Nevada*, and utilized to fulfill the agency's statutory responsibilities. The following table summarizes the approved use of funding from the Contingency Account:

Item No.	Description	Amount
1	Delphi expert study of appropriate attorney workload, including caseloads	\$295,000
2	One-year contract with a data analyst to analyze rural county defender data	\$100,000
3	Training program for rural indigent defense providers, both in-person and via video	\$19,836
4	Time-keeping and caseload-tracking software for use throughout the rural counties	\$110,200
Total IFC Contingency Account Funds Requested		\$525,036

On April 6, 2020, the Office of the Attorney General reported that, pursuant to common interest privilege, the IFC funding request (if granted) would result in settlement of the *Davis v. Nevada* case. As part of the compromise, the plaintiffs waived the right to recover their attorneys' fees and costs in this case, which they contend exceed \$2.8 million. According to the agency, on August 11, 2020, a stipulated consent judgment was filed for *Davis v. Nevada*.

On February 26, 2021, the Governor’s Finance Office transmitted Budget Amendment A214501008 to the Fiscal Analysis Division. The budget amendment recommends General Fund appropriations of \$75,000 in each year of the 2021-23 biennium to fund the expense of a court monitor for the *Davis v. Nevada* consent judgment, to assess the extent to which the State of Nevada is complying with the terms of the consent judgment. On April 19, 2021, the Governor’s Finance Office transmitted Budget Amendment A216591008 to the Fiscal Analysis Division. The budget amendment recommends General Fund appropriations of \$25,000 in each year of the 2021-23 biennium to fund training and resources as required in the consent judgment.

Decision for the Committees:
 Do the Committees wish to approve Budget Amendment A214501008, which provides General Fund appropriations of \$75,000 in each year of the 2021-23 biennium to support court monitor expenditures required by the *Davis v. Nevada* consent judgment; approve Budget Amendment A216591008, which provides General Fund appropriations of \$25,000 in each year of the 2021-23 biennium to support training and resources expenditures required by the consent judgment; and approve General Fund appropriations of \$1.2 million in each year of the 2021-23 biennium to fund estimated support to 10 rural counties stipulated in the consent judgment, and place this funding in the Interim Finance Committee Contingency Account whereupon the department could request the amount of funding needed based upon actual indigent defense services expenditures reported by the rural counties?

Other Closing Items

Other Closing Items	Category	Description of Decision Unit	FY 2022	FY 2023
			General Fund	General Fund
1	TRAVEL AND TRAINING	Restoration of travel that was delayed or canceled in FY 2020 due to the pandemic, and training for webinars. The recommended amount is less than was previously approved by the 2019 Legislature (E-225, INDIGENT DEFENSE-5).	\$ 16,251	\$ 16,251

Fiscal staff recommends all Other Closing Items be closed as recommended by the Governor, and requests authority for staff to make technical adjustments, as necessary.

Hearing Discussion and Post Hearing Update/Information: During the March 1, 2021, budget hearing, the Committees asked for an update on the *Davis v. Nevada* consent judgment, and whether the state has fulfilled its obligations. The department testified that the recommended budget does not include funding to supplement the maximum amount that a county is required to pay for the provision of indigent defense services, as authorized by NRS 180.320(3), and defined by Board regulations (effective March 5, 2021). The regulations establish a Maximum Contribution Formula, which provides that the maximum amount a county is required to pay for the provision of indigent defense services during a fiscal year must not exceed the sum of the average actual county costs for FY 2018 and FY 2019, plus an inflation factor. Any actual county costs for the provision of indigent defense services in excess of the maximum county contribution would be the state's responsibility, and counties may seek reimbursement of these excess costs through quarterly submission of a county's financial status report up to the amount approved by the Board.

The department also testified that it had estimated the state's liability for provision of indigent defense services for both FY 2022 and FY 2023 as:

- \$4.8 million per year in total for all 17 counties;
- \$1.8 million per year in total for the 15 counties with a population less than 100,000 (excluding Clark and Washoe); and
- \$1.2 million per year in total for the 10 rural counties defined in the *Davis v. Nevada* consent judgment (Churchill, Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine).

These estimates are calculated by subtracting the maximum county contribution per the Board formula from the estimated FY 2021 county budgets for indigent defense services.

Fiscal staff worked with the Governor's Finance Office and the agency after the budget hearing to determine the resources that would be necessary for the department to comply with the consent judgment, which stipulates that the Court may dismiss the *Davis v. Nevada* action any time after June 30, 2023, if the Court determines that all terms of the judgment have been substantially complied with. The consent judgment includes a schedule for interim deadlines; stipulates the elimination of economic disincentives, establishment of minimum standards, and uniform data collection and reporting; and provides for independent monitoring of the consent judgment. The department has indicated that the minimum amount required in the 2021-23 biennium to comply with the consent judgment is estimated at \$1.2 million per year.

Pursuant to Board regulations, prior to requesting state contributions, each county must submit a plan for the provision of indigent defense services; the initial due dates for the plans are September 3, 2021. According to the agency, once the plans are in place and approved by the Board, each county will submit quarterly financial reports. Although the agency has provided estimates of the amounts required for the state to fulfill its fiscal responsibility pursuant to the consent agreement, costs for FY 2022 and FY 2023 are not known at this time. Based on the processes set out in Chapter 180 of NRS and Board regulations, costs will likely not be known until the fourth quarter of each calendar year in the 2021-23 biennium.

Consequently, the money committees may wish to set aside restricted General Funds in the IFC Contingency Account of \$1.2 million for each year of the 2021-23 biennium, based on proposed county maximum contribution amounts for FY 2021. Upon submittal of financial reports demonstrating costs in excess of a county's maximum contribution formula, and up to the amount approved by the Board for provision of indigent defense services, the department may approach the Interim Finance Committee, upon recommendation of the Governor, for Contingency Account funding to reimburse the counties. In conversations with Fiscal staff, the Governor's Finance Office has indicated support of this IFC Contingency Account allocation.

Title: PUBLIC DEFENDER
 Account: 101 - 1499

Budget Page: INDIGENT DEFENSE-7, Volume III

	2019-20 Actual	2020-21 WP	% Chg	2021-22 GOV REC	% Chg	2022-23 GOV REC	% Chg
Revenues							
GENERAL FUND	1,937,657	1,524,461	(21.32)	1,477,852	(3.06)	1,481,390	0.24
FEDERAL FUND	36,198	36,176	(0.06)	36,198	0.06	36,198	
OTHER FUND	1,349,889	1,367,414	1.30	1,362,788	(0.34)	1,377,418	1.07
INTERAGENCY TRANSFER		13,083					
REVERSIONS	(489,624)						
Total Revenues	2,834,120	2,941,134	3.78	2,876,838	(2.19)	2,895,006	0.63
Total FTE		14.00		14.00		14.00	

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Adjustments to Revenue

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Adjustments to Expenditures

Dec Unit	Cat	GL	Description	2021-22 Gov Rec	2022-23 Gov Rec
Sub-total				0	0
Line Item Changes to Expenditures				0	0

Total				0	0
Grand Total General Fund Impact of Closing Changes				0	0
Grand Total Highway Fund Impact of Closing Changes				0	0

Overview

Staff is responsible for developing closing recommendations for this budget. The Subcommittee has not previously reviewed this budget.

The Office of the State Public Defender (Office), authorized under NRS 180.010, represents adult and juvenile indigent criminal defendants when a court appoints the Office as counsel. The Office currently provides services for 2 counties: Carson and Storey. The 15 remaining counties provide their own public defender services through a county public defender or private contract attorneys. The Office is also responsible for appeals for state prison inmates whose habeas corpus post-conviction petitions have been denied. The State Public Defender is located in Carson City.

The budget is supported by a State General Fund appropriation and fees assessed to the counties utilizing the services of the Office. The Executive Budget recommends funding the non-post-conviction relief and departmental cost allocation expenditures at 25% General Fund and 75% County Fees, which is based on

a 5-year average of the total service hours provided to each county and the total service hours related to state and appellate work. Post-conviction relief services are funded entirely with General Funds, while statewide cost allocation expenditures are funded entirely with County Fees.

Major Closing Issues

None

Other Closing Items

None

Fiscal staff recommends this budget be closed as recommended by the Governor, and requests authority for staff to make technical adjustments, as necessary.