

**Second Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**

**October 15, 2021**

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## Introduction

This Monitor’s Report to the First Judicial District Court of Carson City summarizes the Defendants’ compliance with the terms of the *Davis v. State* Stipulated Consent Judgment (hereinafter “the Judgment”) from July 1, 2021, to October 15, 2021.

## Summary Points

The Nevada Department of Indigent Defense (hereinafter “the Department”) continues to take significant steps toward compliance with the Judgment despite the Covid-19 pandemic, a

limited budget, and the necessary engagement of ten separate county governments in determining the shape of indigent defense services in the *Davis* counties.

## **Achievements**

Among the Department's compliance-related achievements are the following.

### **The creation and approval of county plans for indigent defense services**

All ten counties at issue in the *Davis* judgment submitted plans for indigent defense that were approved by the Board of Indigent Defense (hereinafter "the Board") on October 6, 2021, subject to certain approvals discussed below. The Department dedicated considerable resources to building relationships with the counties, responding to county concerns, and assisting county officials in developing plans and budgets for indigent defense.<sup>1</sup>

### **The promulgation of regulations**

The Department promulgated permanent regulations, which were approved by the Board on October 6, 2021, and are scheduled for hearing in the Legislative Committee on October 22, 2021. The regulations largely track the temporary regulations, which are set to expire on November 1, 2021. Changes in the regulations are discussed where relevant to compliance with the Judgment.<sup>2</sup>

### **Implementation of a qualification system for attorneys providing indigent defense**

The Department conducted extensive outreach to attorneys providing indigent defense representation in the *Davis* counties to ensure that they applied to join the Department's roster of qualified attorneys, were aware of training and resources available through the Department, and understood their reporting obligations.

### **Implementation of a system of uniform data collection for providers**

Indigent defense providers in the *Davis* counties have access to and training in Legal Server, the case management system provided by the Department. All county plans require their indigent defense providers to use the Department's case management software for case and workload data.

### **Continued provision of trainings, mentorship, and resources**

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<sup>1</sup> The plans are posted on the Department's website at <https://dids.nv.gov/CountyResource/CountyResources/>.

<sup>2</sup> Both the Temporary Regulations and the Proposed Permanent Regulations of the Board are available on the Department's website at <https://dids.nv.gov/Regs/Standards/>.

The Department has continued to provide regular training sessions, has held monthly “First Friday” meetings for indigent defense attorneys state-wide, and has begun planning the 2022 annual training conference.

### **Incentivizing attorneys to practice in Nevada**

The Department has applied for and received \$26,000 in grant funding from the State Bar of Nevada to create four summer internships for law students to expose them to rural indigent defense practice. The summer program represents an early step to encourage attorneys to practice public defense in rural Nevada. The Department also applied for and received two John R. Justice grants for student loan forgiveness for approximately \$36,000 each.

### **Areas of Concern**

Despite great strides, the Monitor notes areas of concern:

#### **Adequate funding for the county plans**

The earmarked contingency funds for FY2021 are insufficient to reimburse counties for the estimated cost of providing indigent defense in excess of each county’s maximum required contribution. The release of funds greater than the earmarked amount requires approval from the Governor’s Finance Office and Interim Finance Committee. Concern over the approval process and whether reimbursement will be forthcoming may discourage counties from following their indigent defense plans as written.<sup>3</sup>

#### **Department budget**

The Department has no out-of-state travel budget, a limited training budget, and may have an insufficient budget to staff and conduct yearly reviews of each of the ten *Davis* counties.

#### **Workload limits**

Pandemic-related delays in completing the Delphi workload study, discussed in the first report, have resulted in a delay in incorporating workload standards into the contracts between counties and indigent defense providers. The Delphi workload study requires at least six months of workload data from providers, which the Department will collect using its Legal Server case management system.<sup>4</sup>

### **Financial disincentives**

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<sup>3</sup> See *infra* pp. 24-26.

<sup>4</sup> See *infra* pp. 19-20.

### Modified flat fee contracts

In the absence of workload limits (which await the Delphi study) and a wage/salary survey (which awaits funding), compensation regimes for attorneys representing indigent defendants cannot be deemed compliant with the Judgment's prohibition against financial disincentives. Whether compensating attorneys through lump-sum, yearly contracts or hourly rates complies with the Judgment depends on an attorney's appointed and private workloads and whether the rate of compensation is both adequate and comparable to a similarly situated prosecutor's compensation. A compliance analysis must also take into account that prosecutors do not pay for overhead and expenses out of their compensation.<sup>5</sup>

### Case-related expenses

While the county plans provide for approval and reimbursement for case-related expenses through the Department or its designee, the Department is still in the process of approving county plan administrators who will be responsible for approving expenses in Churchill, Douglas, Lander, Mineral, and Nye counties. The Department is taking steps to ensure that county plan administrators understand their role and do not impinge upon the independence of the defense function or otherwise discourage necessary expenses.<sup>6</sup>

### **Comprehensive standards of performance**

The Board's regulations and the county plans refer to the Nevada Supreme Court's standards of performance set forth in ADKT 411, but the Judgment refers to both ADKT 411 and the ABA Criminal Justice Standards for the Defense Function. The gap between the standards in the Judgment and in the regulations/plans should be addressed.<sup>7</sup>

### **Compliance to Date**

The Judgment creates three categories of obligation:

- (I) Removing economic disincentives and ensuring independence
- (II) Setting and ensuring performance standards
- (III) Uniform data collection

This Report uses this tripartite structure to analyze compliance. But, as a preliminary matter, the Report addresses the approval of county plans, a major achievement, while also discussing the process of their creation and approval, and noting areas of concern.

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<sup>5</sup> See *infra* pp. 13-15.

<sup>6</sup> See *infra* pp. 13-16.

<sup>7</sup> See *infra* pp. 17-19.

## The County Plans

### Relationship of county plans to the terms of the Judgment

While the Judgment does not require county plans, these documents demonstrate the state's efforts to ensure that indigent defense services comply with the terms of the Judgment.<sup>8</sup>

The establishment of county indigent defense plans reflects the hard work of the Department. The Department created a plan template, initiated contact with county officials, traveled to county seats to meet with stakeholders, conducted online meetings to discuss the planning process with county officials, reviewed draft plans, listened to county concerns, and encouraged county cooperation.

In March 2021, the Department reached out to officials in the *Davis* counties. Throughout the spring and summer of 2021, Department staff traveled to the counties to make presentations to boards of commissioners (or presented online for counties not conducting in-person board meetings). Staff members then met with district attorneys, defense providers, county managers, and commissioners to answer questions about the planning process and encourage the counties to develop adequate plans. By working proactively with the counties throughout the plan creation process, the Department aimed to prevent delays that might occur if the Board was forced to later reject completed plans as inadequate or send them back for lengthy modifications. Although the plans were due September 3, 2021, the Department continued to work with counties to adjust their plans to ensure all the terms required by the Department and the Board's temporary regulations were included.

Crucially, the Department worked with the counties to ensure that the annual budget for each plan captured its projected costs. Several counties had initially underestimated indigent defense costs. That resulted in an inadequate amount of money being earmarked to reimburse counties for costs in excess of each county's maximum contribution under the Board's funding formula.<sup>9</sup>

Plans vary in how much detail they use to describe how the county and providers will comply with the regulations. A variation or even an omission in a county plan is not in itself a *Davis* compliance problem given that the Board's regulations are the primary vehicle for putting into place mechanisms and standards for compliance with the Judgment. Among the terms of the Judgment addressed in the regulations are requirements for:

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<sup>8</sup> The county plans are required by statute, NRS 260.070 (2), and Temporary Regulation, sec. 28.

<sup>9</sup> See *infra* pp. 24-26.

- Systems for selecting counsel independent of budgetary, judicial and prosecutorial influence.<sup>10</sup>
- Systems for identifying conflicts and appointing conflict counsel<sup>11</sup>
- Qualifications for attorneys by case type<sup>12</sup>
- Performance standards for attorneys<sup>13</sup>
- Standards for representation at arraignment and release hearings<sup>14</sup>
- Client communication standards<sup>15</sup>
- Vertical representation<sup>16</sup>
- Prompt indigency screening<sup>17</sup>
- Distribution of client surveys<sup>18</sup>
- Reporting of workload data<sup>19</sup>
- Workload limits<sup>20</sup>
- Funding for case related expenses<sup>21</sup>
- Adequate funding for fees and case-related expenses independent of the judiciary<sup>22</sup>

The plans contain some, but not all, of these detailed requirements. In some instances, plans state that the county and providers will comply with the regulations but provide few details, or provide details in only some of the target areas.

#### The Board and Department's approval process for the county plans

As a result of the hard work of the Department and county officials, all plans substantially conformed to their statutory and regulatory requirements by the October 6, 2021, meeting when the Board considered and approved the plans, subject to certain approvals discussed below.<sup>23</sup>

To determine whether plans should be approved, the Department created a checklist and analysis of each county's plan.<sup>24</sup> Per the Department's checklist, the plans must:

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<sup>10</sup> Temporary Regulations, sec. 23-24.

<sup>11</sup> *Id.* at sec. 26.

<sup>12</sup> *Id.* at sec. 32-39.

<sup>13</sup> *Id.* at sec. 29.

<sup>14</sup> *Id.* at sec. 25-26; 29.

<sup>15</sup> *Id.* at sec. 29.

<sup>16</sup> *Id.* at sec. 28.

<sup>17</sup> *Id.* at sec. 25.

<sup>18</sup> *Id.* at sec. 38.

<sup>19</sup> *Id.* at sec. 45-46.

<sup>20</sup> *Id.* at sec. 44.

<sup>21</sup> *Id.* at sec. 27.

<sup>22</sup> *Id.* at sec. 27.

<sup>23</sup> The plans are available on the Department's website: <https://dids.nv.gov/CountyResource/CountyResources/>

<sup>24</sup> The Department Review of County Plans, which includes the checklist for and analysis of the plans, is attached as Appendix A.

1. Be free from political and undue budgetary influence and subject to judicial supervision in the same manner as retained counsel or prosecuting attorney.<sup>25</sup>

Monitor's Analysis:

This requirement is broad, and reflected in varying provisions of the plans. Three of the county plans – Douglas, Esmeralda, and Eureka – contain specific language stating that indigent defense services should be free from undue budgetary and political influence as well as undue judicial supervision. All plans exclude the judiciary from selection of attorneys and approval of fees and expenses. This Report analyzes remaining issues relating to the independence of the defense function and removal of financial disincentives below.<sup>26</sup>

2. Describe how contract attorneys will be selected and compensated.

Monitor's Analysis:

The Judgment requires that “selection of private attorneys for public defense contracts shall be independent of the county District Attorney and the judiciary. Attorney selection shall be based upon individual qualifications and experience and shall not take into account the amount of fees previously charged by the applicant of public defense services.”<sup>27</sup>

All plans provide for a selection process outside of the judiciary.<sup>28</sup> Nine plans provide for primary public defense providers who contract with the county for a yearly, lump sum amount. The exception is Churchill County, which has established an office of the public defender. Contract attorneys are selected by the county commissioners (Esmeralda, Eureka, Lander, Lincoln, Mineral, White Pine) or through a selection committee (Lyon, Nye, Douglas).<sup>29</sup> Conflict counsel in the counties is either paid as a contract attorney or at an hourly rate. All plans require that the selected attorneys be qualified by the Department for the types of cases they will handle.

The plans vary, however, in how strongly they emphasize the exclusion of prosecutors or law enforcement from the selection process for contract attorneys. Esmeralda and Eureka counties explicitly bar both prosecutors and law enforcement from the selection process.

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<sup>25</sup> The Temporary Regulations require that the “plans be designed to promote the integrity of the relationship between an attorney and a client. The plan and any attorneys providing indigent defense services pursuant to the plan must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.” Temporary Regulations, sec. 23.

<sup>26</sup> See *infra* pp. 11-16.

<sup>27</sup> Judgment, 11-12.

<sup>28</sup> The selection of contract and conflict counsel must exclude prosecutors and law enforcement, and judicial input “should not be the sole basis for selection.” Temporary Regulations 24 (1) (b).

<sup>29</sup> The Temporary Regulations recommend but do not require a selection committee. Temporary Regulations 24 (1).

Douglas and Churchill exclude people with links to judiciary and prosecution from being on attorney selection committees but make no mention of law enforcement. The exclusion of prosecution and law enforcement is not mentioned in the plans for Lander and White Pine.

When conflict counsel is needed, either the Department or a plan administrator who acts as the Department's designee selects counsel for individual cases.<sup>30</sup> In Esmeralda, Eureka, Lincoln, Lyon, and White Pine counties, the Department will select private attorneys when the contract attorney is unable to represent the defendant. Churchill, Douglas, Lander, Mineral, and Nye counties will identify a plan administrator to select private attorneys in these cases. Because the plan administrator is a designee of the Department, the Department must approve of the choice of plan administrator.<sup>31</sup>

As discussed below, county-level administration of selection of conflict counsel raises concerns regarding financial disincentives and the independence of the defense function.<sup>32</sup> The Department is keenly aware of these issues and is working to reduce the risks through an approval and oversight process.

3. Detail how counsel is appointed.

Monitor's Analysis:

All plans separate appointment and selection of counsel per AB480's amendments to NRS 171.188(4). All plans provide for a method of determining indigency for in-custody defendants within 48 hours.<sup>33</sup>

4. Provide for confidential attorney-client communications.<sup>34</sup>

Monitor's Analysis:

All plans state that a confidential space for attorney-client communications will be made available, and some plans provide details on process and location. Mineral County conditions access to such a space on availability, but says it is looking for additional resources that can provide confidential meeting spaces.

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<sup>30</sup> This selection process is required by NRS 171.188(4) (providing that, in counties whose population is less than 100,000, the Department or its designee selects counsel after the sitting judge finds that the public defender is disqualified).

<sup>31</sup> NRS 7.115 (Department or its designee must select attorney where public defender is disqualified); NRS 171.188 (4) (Department or its designee must select attorney in accordance with county's plan).

<sup>32</sup> See *infra* pp. 11-16.

<sup>33</sup> Per the regulations, the plans must provide for a process for screening for indigency and appointment of counsel and require attorneys to be present at initial appearance prepared to argue for pretrial release. Temporary Regulations, sec. 25.

<sup>34</sup> The plans must address the resources and accommodations necessary to ensure that attorneys can have private, confidential communications with their incarcerated clients. *Id.* at sec. 26.

5. Provide a method for attorneys to pay experts and investigators.<sup>35</sup>

Monitor's Analysis:

All plans provide a process that comports with the statute and regulations for approval of funds for attorney's fees and case related expenses. AB480 modified existing statutes to remove the judiciary from the selection of indigent defense counsel and from the approval of attorney compensation and case-related expenses. The amended statutes provide that approval of compensation and expenses be performed by the Department or its designees in counties with less than 100,000 residents.<sup>36</sup> The Board's regulations state the same, recommending automatic approval for up to \$2,500, and providing a mechanism for judicial review of funding denials.<sup>37</sup>

As discussed below, county-level administration of the approval process for fees and expenses raises concerns regarding financial disincentives and the independence of the defense function.<sup>38</sup> The Department is keenly aware of these issues and is working to reduce the risks through an approval and oversight process.

6. Assure vertical representation after arraignment

Monitor's Analysis:

All plans affirm the need for continuity of representation after arraignment. The counties promise to provide continuity of representation "to the greatest extent possible," although Lander and Mineral mention simply that their indigent defense system is "currently premised" on the idea of a single attorney representing a client at all stages of the judicial process. Lyon county says it will provide continuity "to the extent practicable," language slightly less strong than in the majority of the counties.

7. State standards of representation<sup>39</sup>

Monitor's Analysis:

All plans state that attorneys providing indigent defense must adhere to certain standards, as required in the regulations. However, no plans list the ABA Criminal Defense

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<sup>35</sup> *Id.* at sec. 27.

<sup>36</sup> NRS 7.135 (providing method for requesting case-related expenses); NRS 7.145 (providing method for requesting attorney's compensation).

<sup>37</sup> Temporary Regulations, sec. 27

<sup>38</sup> *See infra* pp. 11-13.

<sup>39</sup> The plans "must require that representation be provided in a professional, skilled manner," that is guided by the applicable rules, laws and standards of performance adopted in ADKT411. Temporary Regulations, sec. 29. Specific standards laid out in the regulations include advising clients to--in most circumstances--not waive any substantive rights or plead guilty at arraignment, make all reasonable efforts to meet with the client no later than seven days after assignment to the case, and every 30 days thereafter unless there are no significant updates. *Id.* The plans must ensure continuity of representation, with the exception of initial appearance and/or arraignment. *Id.* at sec. 28.

Function Standards for the Defense Function. As discussed below, the Judgment requires attorneys providing indigent defense in the *Davis* counties to adhere to the ABA standards as well.<sup>40</sup>

Some plans, such as in Churchill and White Pine counties, detail the expectations for attorneys to be present at arraignment to argue for pretrial release and caution the client not to plead guilty at arraignment in most instances. Nearly all plans require attorneys to advise clients against pleading guilty at arraignments. Plans in Mineral and Lander counties are less explicit, advising that attorneys “should refrain from recommending” that clients waive a substantial right. Even if not included in the plans, explicit performance standards in these areas should be included in the contracts between counties and providers.

8. Provide for prompt compensation

Moderator’s Analysis:

All plans provide for methods of compensation and reimbursement. Any issues related to the promptness of reimbursement will be addressed in later reports. It should be noted, however, that reimbursement requires approval of appointed counsel’s fees and expenses, and county reimbursement requires approval of the Interim Finance Committee.

9. Require caseload reporting<sup>41</sup>

Analysis: All plans require providers to use the Department’s case management software to report on caseloads. With the exception of Churchill County, the plans do not provide detailed lists of the data that must be reported, but this level of detail is not necessary to include in the plans so long as it is included in the contracts between counties and providers.

The county plans are contingent on approval by the Interim Finance Committee and, for some counties, the Board of Examiners, for expenses exceeding the county’s maximum contribution under the Board’s formula.<sup>42</sup>

For five counties (Churchill, Douglas Lander, Mineral, and Nye), the Board’s approval of the county plans is also conditioned upon the Department’s approval of the county’s selection of a plan administrator, who acts as the Department’s designee.<sup>43</sup>

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<sup>40</sup> See *infra* pp. 18-20.

<sup>41</sup> All plans require indigent defense providers to use the case management system provided by the Department, as required by Temporary Regulations, sec. 45.

<sup>42</sup> See *infra* pp. 24-26.

<sup>43</sup> See *infra* p. 13.

The next step after this successful establishment of county plans is to ensure that plan implementation is compliant with the Judgment, and that Judgment terms which are not included or detailed in the plans are implemented.

Additional terms that should be included in the plans, such as workload limits, can only be added after the Delphi workload study is completed. Workload limits and adjustments to terms can be put in the FY2022 plans, which must be submitted by May 1, 2022.<sup>44</sup>

## **The Requirements of the Consent Judgment**

### **I. Removing financial disincentives and ensuring independence of the defense function**

#### *Ensuring independence of the defense function*

Two areas of independence are central to the Judgment: selection of attorneys and approval of case-related expenses. While the statutory scheme, regulations, and county plans shift these functions from the judiciary, defense counsel's independence may still be at risk of interference through the plan administrator's selection and approval process.

This report emphasizes a concern, understood by the Department, about the scope of control that the county plan administrators will have over selection of conflict counsel in individual cases and over approval of attorney fees and case-related expenses. As noted above, the county plans for Churchill, Douglas, Lander, Mineral, and Nye state that a county-based plan administrator will be responsible for selecting conflict counsel and for approving requests for attorney fees and case-related expenses.<sup>45</sup> The plan administrator is generally to be selected by the county commissioners and will serve under either the county manager or the commissioners.

While the Department is actively working with counties to select and monitor plan administrators, the risks to the independence of the defense function should be closely monitored.<sup>46</sup>

First, the plan administrator model may disincentivize attorneys from requesting fees and case-related expenses if the attorney perceives the plan administrator to be part of a county government that will decide whether to renew the attorney's contract.

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<sup>44</sup> NRS 260.170 (2).

<sup>45</sup> Esmeralda, Eureka, Lincoln, Lyon, and White Pine counties plan to have the Department approve fees and case-related expenses, rather than a designee at the county level.

<sup>46</sup> The Department's approval of the county's plan administrator flows from the statutory scheme, which requires fees and expenses to be approved by the Department or its designee. *See* NRS 7.115 (providing that the Department or its designee must approve expenses).

Second, the plan administrator must have guidance for determining the reasonableness of a request for fees and expenses. Not all proposed plan administrators are lawyers. Even if the administrator is a lawyer, the administrator may lack the requisite professional knowledge to decide whether to approve or deny expenses deemed necessary by defense counsel. This may result in denial of funds necessary to provide effective assistance of counsel.

The importance of investigation and expert consultations cannot be overstated. ABA Criminal Justice Standards for the Defense Function state that “[d]efense counsel has a duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges,” and that investigation should occur before accepting a plea offer.<sup>47</sup> With regard to retention of experts to review the state’s forensic evidence, ABA Standard 4-4.4 (b) states that “[d]efense counsel should evaluate all expert advice, opinions, or testimony independently, and not simply accept the opinion of an expert based on employer, affiliation or prominence alone.”

When attorneys request higher amounts, the issue of independence looms large. An attorney may not, under Nevada Rule of Professional Conduct 5.4 (c), “permit a person who recommends, employs, or pays the lawyer to ... regulate the lawyer’s professional judgment in rendering such legal services.”<sup>48</sup> The concern for denying requests for case-related expenses is partially alleviated by plans that provide for automatic approval of expenses up to a certain amount-- \$2,500, per the recommendation in the regulations, or more. Six counties - Churchill, Douglas, Esmeralda, Lyon, Nye, and White Pine - allow up to \$2,500 for reasonable expenses without prior authorization. Eureka County sets its limit for what it will approve without pre-authorization higher, at \$3,500. The concern is also partially alleviated by judicial review of denials of funding.<sup>49</sup>

Third, the ability of the administrator to request information about the facts of a case to determine reasonableness raises concerns about attorney-client privilege and the degree to which the administrator controls the course of legal representation.

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<sup>47</sup> “In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed.” ABA Defense Function Standard 4-6.1 (b). The ABA Standards further state that “duty to investigate is not terminated by factors such as the apparent force of the prosecution’s evidence, a client’s alleged admissions to others of facts suggesting guilt, a client’s expressed desire to plead guilty or that there should be no investigation, or statements to defense counsel supporting guilt.” *Id.*

<sup>48</sup> The state and county must respect the professional independence of appointed defense counsel. *Polk v. Dodson*, 454 U.S. 213, 320-322 (1981). The independence of counsel is constitutionally protected. *Strickland v. Washington*, 466 U.S. 668, 689 (1984). This independence is compromised when a judge--or, by extension, anyone not part of the defense team--can refuse to authorize funds for case-related expenses. As the Supreme Court stated in *Polk v. Dodson*, “An accused bound to tactical decisions approved by a judge would not get the due process of law.” *Polk v. Dodson*, 454 U.S. 213, 327 (1981).

<sup>49</sup> Temporary Regulations, sec. 27.

The Department is taking the following steps as it approves county plan administrators:

- Ensuring that each plan administrator is approved by the Department as its designee, and entering into a written agreement with each plan administrator that explain designee duties.<sup>50</sup>
- Requiring each plan administrator to contact the Department before denying a request for expenses (as well as for approvals for funds in excess of \$2,500).
- Explaining confidentiality issues to each administrator, and requiring the administrator to sign a confidentiality agreement.<sup>51</sup>
- Requiring attorneys to request fees and expenses using standard forms. Because the form has limited space to describe the reason for the request, the factual inquiry into the facts of the case by the plan administrator should be limited. The forms for fee and expense requests are available on the Department’s website, and can be filled in electronically.<sup>52</sup>

*Removing financial disincentives*

The Judgment broadly prohibits financial disincentives.<sup>53</sup> Several aspects of current practice, however, raise concerns about such disincentives. These are:

- (1) Lack of data to establish an hourly rate amount that is both adequate and commensurate with the compensation paid to prosecutors.
- (2) Lump-sum contracts that are untethered to workload data, workload standards, and a known hourly rate that is adequate and commensurate to prosecutor compensation.
- (3) A competitive bidding process for contract attorneys that may take into account the cost of the bids.

- (1) Undetermined “reasonable hourly rate”

Further analysis is needed to determine what hourly rate complies with the Judgment, which requires “a reasonable hourly rate that takes into account overhead and expenses, including costs relating to significant attorney travel time.”<sup>54</sup> The Judgment further requires that “[c]ompensation for public defense services provided by rural counties shall be comparable on an hourly basis to that of prosecutors in the same county with comparable experience, and should

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<sup>50</sup> The designee agreement is attached to this Report as Appendix D.

<sup>51</sup> The confidentiality agreement is attached to this Report as Appendix C.

<sup>52</sup> The request forms are attached to this Report as Appendix B and also available on the Department’s website at <https://dids.nv.gov/Resources/AttorneyResources>.

<sup>53</sup> Judgment, 11.

<sup>54</sup> *Id.*

take into account that prosecutors do not pay for overhead or expenses out of their own compensation.”<sup>55</sup>

In the absence of a wage/salary survey, it is impossible to determine whether and when the statutory hourly rate of \$100 per hour (and \$125 for death penalty cases) complies with the Judgment.<sup>56</sup> The Department recognizes this problem and, in response, has put out a request for information (RFI) for a consultant who can, among other tasks, conduct a wage/salary survey. Responses are due on October 15, 2021, so that the Department can approach the Board of Examiners later this year with a request for the appropriate amount of funding.

## (2) Eliminating the financial disincentives of flat fee contracts

In the absence of identified workload and compensation standards, a yearly contract to provide indigent defense services for a lump-sum payment creates financial disincentives similar to a flat fee contract. In short, without having a projected number of hours that an attorney should spend on appointed cases and the reasonable hourly rate an attorney should be paid, there is no way to know whether the yearly, lump sum payment creates a financial disincentive prohibited by the Judgment.

Through the county plans, the state has eliminated “totally flat fee” contracts, which the Nevada Supreme Court contrasted with contracts that, although paying a flat fee, provide for “modification of fees for extraordinary cases, and allow for investigative fees and expert witness fees.”<sup>57</sup> All county plans provide a mechanism for reimbursement for case-related expenses of investigation and experts, as well as a mechanism for requesting additional compensation for extraordinary cases.<sup>58</sup> In so doing, the state fulfilled the terms of the Judgment prohibiting a “single fixed fee for the services and expenses of the attorney” and separately funding expenses for experts and investigation related to a case.<sup>59</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> Lyon county raised its hourly rate for indigent defense to \$150 per hour.

<sup>57</sup> The Nevada Supreme Court described the features of a flat fee contract in ADKT41 I. Based on the findings in the October 24, 2014 report of the Rural Subcommittee of the Indigent Defense Commission, the Nevada Supreme Court recommended, among other things, a prohibition on flat fee contracts: “If counties use a contract counsel method, they shall not use a totally flat fee contract, but execute contracts that allow for a modification of fees for extraordinary cases, and allow for investigative fees and expert witness fees.” June 23, 2015 Order in ADKT41 I, p. 2).

<sup>58</sup> The Department should be commended on its successful bill draft requests to eliminate per-case flat fee remuneration in the Justice and Municipal courts and legislation to provide a non-judicial method for funds for investigators and experts. These steps to change the law fulfill several important requirements of the Judgment. Judgment 12-13.

<sup>59</sup> Contracts for public defense services shall specify performance requirements and anticipated workload, provide a funding mechanism for excess, unusual, or complex cases that does not require judicial approval, and separately fund expert, investigative, appellate work and other litigation support services.” Judgment, 11.

The Judgment, however, goes farther than the Nevada Supreme Court's prohibition of totally flat fee contracts. The Judgment requires the terms described above in terms of a "reasonable hourly rate that takes into account overhead and expenses, including costs relating to significant travel time," and a "funding mechanism for excess, unusual, or complex cases."<sup>60</sup> The compensation - taking into account overhead and expenses - should be comparable to prosecutors in the same county.<sup>61</sup> The Judgment's prohibition against economic disincentives is thus more capacious than a prohibition against a totally flat fee contract.

A modified flat fee contract that is based on an hourly rate could be compliant if safeguards are adopted to eliminate disincentives to effective representation. Such safeguards should include a cap on attorney hours over which extra compensation would be provided, as well as limits on private casework to avoid exceeding a full-time workload.<sup>62</sup> The hourly rate of such a contract should be clear, with compensation separate from any bump up for overhead and other expenses. These features also would make the contract easily comparable to prosecutors to ensure pay parity.

In order to know when an attorney is entitled to additional funding for excess work, the state must have a sense of the time required to provide representation for the projected number and types of cases. The line between normal workload and an excess workload must be determined through the workload study. Thus, both the workload study and the wage/salary study are essential to determining whether the lump sum contracts create financial disincentives prohibited by the Judgment.

### (3) Competitive bidding process

As noted in the First Report of the Monitor, the possibility of competitive bidding resulting in a county prioritizing cost over quality continues to be a concern. NRS 7.125 permits competitive bidding.<sup>63</sup> The regulations permit the county to consider cost as one factor in deciding whom to award an indigent defense contract.<sup>64</sup> Both statute and regulations may defeat

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<sup>60</sup> *Id.*

<sup>61</sup> See also Regulation 40(10).

<sup>62</sup> The uniform data reporting will assist in determining whether private practice of law is creating financial disincentives to some appointed counsel. Indigent defense providers are required to report private caseload hours. Temporary Regulation, sec. 47.

<sup>63</sup> NRS 7.125 states: "Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, this section does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation."

<sup>64</sup> Temporary Regulations, sec. 24(1)(v).

the purpose of encouraging attorneys to provide effective representation if such representation means that their fees and expenses regularly exceed that of another bidder.

Ideally, the establishment of workload limits will help the state set an expected payment range for each contract that is fairly stable, based on the anticipated number and types of cases, the estimated hours of work at an hourly rate with provisions for reimbursement for additional hours and case-related expenses. Future reports will analyze the dynamics of attorney selection after adoption of the county plans and model contracts, and in light of the results of the workload study.

## II. Establishment of minimum standards

The Judgment requires that the Defendants ensure minimum standards of representation in the following ways:

- A. Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.<sup>65</sup>
  - B. Client communication per the standards set in ADKT 411; provision of space for confidential attorney-client meetings; all reasonable efforts to have confidential attorney-client meetings before initial appearance.<sup>66</sup>
  - C. Systems to identify and remove conflicts.<sup>67</sup>
  - D. Establishment of performance standards.<sup>68</sup>
  - E. Establishment of workload standards.<sup>69</sup>
  - F. Qualifications for attorneys.<sup>70</sup>
  - G. A system of oversight.<sup>71</sup>
  - H. Attorney training and resources.<sup>72</sup>
- A. Screening for indigency, representation at initial appearance/arraignment without delay, and advocacy at initial appearance and bail hearings

All plans provide a method of screening for indigency, the prompt judicial appointment of counsel, and for appearance without delay. The Judgment states that initial appearances and arraignment “shall not be delayed pending a determination of defendant’s eligibility [for

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<sup>65</sup> Judgment, 14.

<sup>66</sup> *Id.* at 14-15.

<sup>67</sup> *Id.* at 12.

<sup>68</sup> *Id.* at 16.

<sup>69</sup> *Id.* at 17.

<sup>70</sup> *Id.* at 15.

<sup>71</sup> *Id.* at 16-17.

<sup>72</sup> *Id.* at 16.

appointed counsel].”<sup>73</sup> If screening and appointment occur within 48 hours, delays in first appearances should be mitigated.

All plans also provide assurances that indigent defendants have representation at bail hearings, with most requiring attorneys be prepared to address appropriate release conditions. Several counties - Mineral, Lander, Douglas, and Lyon - require counsel to attend such hearings but contain less specificity as to the duty of counsel at these hearings.

AB424 (2021), which goes into effect on July 1, 2022, requires that a pretrial release hearing be held within 48 hours of a person being taken into custody. The pretrial release hearing is often referred to as a *Valdez-Jimenez* hearing after the 2020 Nevada Supreme Court case that set forth its constitutional requirements.<sup>74</sup> The FY2022 plans should include a requirement that initial appearance and release hearings take place no later than 48 hours after arrest, per AB424. It is, of course, recommended that counties follow the policy endorsed by the Nevada legislature by implementing the 48-hour limit before AB424 becomes effective.

B. Client communication per the standards set in ADKT 411, and the county’s provision of space for confidential attorney-client meetings

As discussed above, all plans state that attorneys will be provided a space for confidential attorney-client meetings. Plans vary in the level of detail they provide about standards of communication between attorneys and clients. The standards for client communication should be included in the contracts between the county and its providers.

C. Systems to identify and remove conflicts

All plans describe a system for identifying conflicts and selecting conflict counsel. The selection process is made by the Department in Esmeralda, Eureka, Lincoln, Lyon, and White Pine and by the county administrator in Churchill, Douglas Lander, Mineral, and Nye.

D. Establishment of performance standards

All plans refer to the performance standards in ADKT 411 as well as applicable statutes and rules of professional conduct, and generally cite Section 29 of the Temporary Regulations, which states:

Plans for the provision of indigent defense services must require that representation be provided in a professional, skilled manner guided by applicable regulations; laws; Rules of Professional Conduct; and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada

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<sup>73</sup> *Id.* at 14.

<sup>74</sup> *Valdez-Jimenez v. Eighth Jud. Dist. Court*, 460 P.3d 976, 980 (2020) (defendant entitled to an adversarial, evidentiary hearing and may only be held in custody pretrial if the court finds by clear and convincing evidence that bail is necessary to ensure the defendant’s presence in court or to ensure the safety of the community or person in the community, and the bail amount must take into account the defendant’s financial resources).

Supreme Court Order in Administrative Docket 411, or the same as may be amended.

The Judgment, however, sets specific performance standards for indigent defense attorneys based on two main documents: The ABA Criminal Justice standards and the Nevada Supreme Court standards set forth in ADKT 411.<sup>75</sup> Attorneys practicing as indigent defenders must meet those standards, in addition to any explicit requirements spelled out in the Judgment that go beyond either the ABA or ADKT 411 mandates. While the Judgment does not require counties to mention defense standards in county plans, the consistent mention of the ADKT 411 standards without any reference to the ABA standards does raise concerns that the counties may not be fully aware of attorney obligations under the Judgment.

Regardless of whether both guidance documents are included in the county plans, it is crucial that attorneys contracted to represent indigent defendants are made aware that following the standards is a legal requirement, and are held to these standards. Some areas in which the ABA Defense Function standards are more expansive than the standards set forth in ADKT 411 are as follows.

#### *Experts*

ADKT 411 only briefly mentions expert consultation with respect to misdemeanor and felony representation. The ABA, however, delineates how defense counsel should work with experts, where this would serve a client's interests, and that counsel may specifically seek resources from the court to pay for such services.<sup>76</sup> The ABA also discusses requirements for checking expert credentials and guidelines for working with experts during an investigation.<sup>77</sup>

#### *Investigations*

Both the ABA and the ADKT 411 standards confer a duty to promptly investigate all cases upon defense attorneys, notwithstanding admissions of guilt or a desire to plead guilty.<sup>78</sup> ADKT 411, however, makes no mention of hiring outside investigators in its guidance covering case preparation and investigation of most felony or misdemeanor cases.<sup>79</sup> This difference is significant because of the serious limitations on defense counsel conducting investigative tasks,

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<sup>75</sup> Judgment, 16.

<sup>76</sup> American Bar Association. *Criminal Justice Standards for the Defense Function, Fourth Edition* (2017), available at [https://www.americanbar.org/groups/criminal\\_justice/standards/DefenseFunctionFourthEdition/?q=&wt=json&start=0](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/?q=&wt=json&start=0).

<sup>77</sup> *Id.* at Standard 4-4.4.

<sup>78</sup> *Id.* at 26; ABA *Criminal Defense Function*, Standard 4-4.1.

<sup>79</sup> ADKT 411 at 26.

such as interviewing witnesses and photographing the scene of the incident, without an investigator present.

### *Collateral Consequences*

Similarly, on the issue of collateral consequences, the ADKT 411 primarily focuses attention on the risks of broad collateral consequences for juvenile clients,<sup>80</sup> as well as the need to broadly inform all clients of the implications of conviction or plea agreements. By contrast, the ABA guidance on collateral consequences is much broader and more specific, including, for example, specific references to immigration consequences without regard to juvenile or adult felony or misdemeanor status.<sup>81</sup> More broadly, the ABA posits that clients should be advised on possible consequences in a timely enough manner that they may use such information in the decision-making process, including in mitigating or avoiding such consequences.<sup>82</sup>

#### E. Establishment of workload standards<sup>83</sup>

Per the Judgment, “Within six months of the study’s completion, Defendants, through the Board, shall include in the model contract references above, provisions to ensure that indigent defense providers’ workloads – including any private work outside of their indigent defense duties – are consistent with the standards established in the Delphi study.”<sup>84</sup>

Some plans refer to workload standards that are anticipated from the Department at a later date, using language contained in Section 44 of the Temporary Regulations:

The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any office, organization or attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney's competence, diligence or representation of clients under the Nevada Rules of Professional Conduct.

One might argue that some of the *Davis* counties have fewer cases per year than what would be considered a full workload for a salaried public defender. This is true, but does not answer the question of whether attorneys have adequate time to dedicate and adequate compensation for their work. In counties in which a contracting attorney is permitted to engage

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<sup>80</sup> *Id.* at 42.

<sup>81</sup> ABA *Criminal Defense Function*, Standard 4-5.4 to 4-5.5.

<sup>82</sup> *Id.*

<sup>83</sup> Judgment, 17.

<sup>84</sup> *Id.*

in private practice, we have no data on the amount of time spent on private and appointed cases. In short, we do not know the attorney's workload.

The Board, Department, and Plaintiffs agree that it is unwise to estimate workload standards and better to wait for the results of the Delphi study. Workload standards are essential yet impossible to set without completion of the workload study.

F. Qualifications for attorneys<sup>85</sup>

The Judgment requires the Board and Department to “ensure that indigent defense providers’ ability, training, and experience match the complexity of the case.”<sup>86</sup> As discussed in the First Report of the Monitor, the Board’s Temporary Regulations require attorneys to be qualified by case type and set additional requirements for annual training.<sup>87</sup>

The Department conducted extensive outreach to attorneys providing indigent defense representation in the *Davis* counties, ensuring that they applied for inclusion in the Department’s roster of qualified attorneys. In the few instances in which an attorney did not meet the qualifications by case type, the Department worked with the attorney to develop a mentorship relationship with a qualified attorney. The Department has provided its roster of qualified attorneys to the counties. As the plans move forward, the Department will oversee its designee-plan coordinators to ensure that only attorneys on the roster are selected for appointed indigent defense cases.

The Department is concerned that few new attorneys are considering practicing criminal defense in rural Nevada. To address this concern, the Department and Board have worked closely with UNLV Boyd School of Law to recruit law students as volunteers and externs. The Department has presented information sessions on rural practice to law students, and developed a state-wide system of training, mentorship, resources, and support--all of which helps to assure new attorneys that they will have adequate support to develop their skills in less populous counties. Another major accomplishment for the Department is the award of \$26,000 from the State Bar to support summer internships in rural indigent defense for four law students. Exposing law students to rural practice is essential to attracting new lawyers.

In September, the Department took an additional step to address the concern of a shrinking pool of attorneys by initiating a request for information (RFI) for a consultant to determine whether there is a shortage of rural defense attorneys and, if so, how best to incentivize attorneys to practice in the underserved areas.<sup>88</sup>

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<sup>85</sup> Judgment, 15.

<sup>86</sup> *Id.*

<sup>87</sup> Temporary Regulations, sec. 32-40.

<sup>88</sup> The RFI is attached to this Report as Appendix E.

G. A system of oversight

Compliance with the Judgment requires that the Department conduct a review of indigent defense in the counties on a regular basis. The establishment of regulations and county plans has set the benchmarks and requirements for indigent defense, and the next step is developing the review process through an oversight system. If the Department’s review process reveals deficiencies in the performance of indigent defense providers or in the county’s indigent defense system, the Department can work with the attorney or county and, if necessary, institute a corrective action plan.<sup>89</sup>

Instituting a fair and effective oversight system, however, requires further steps. In the past year, the Department consulted with Dr. Mitch Herian of Soval Solutions.<sup>90</sup> With the assistance of Soval Solutions, the Department developed four instruments to evaluate the performance of attorneys: (1) a client survey<sup>91</sup> (2) a questionnaire for attorneys to rate themselves, (3) a questionnaire for the attorney’s supervisor, if any, and (4) a court observation form.<sup>92</sup>

The next step for the Department is determining how to uniformly analyze the responses to the surveys and questionnaires. Per the Soval Solutions report, “A data analyst can provide technical expertise to ensure that data are effectively incorporated into official decision-making processes with DIDS and across public defender offices in Nevada.”<sup>93</sup> While Soval Solutions’ report provides a scoring rubric, the report stresses that developing a process of analysis will require additional consultations with Soval Solutions or another consulting agency with experience in this area. To that end, the Department’s September 20, 2021, RFI solicits information from interested consultants to complete the oversight planning process. The Department plans to present the cost of a consultant to develop the oversight plan (as well as

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<sup>89</sup> Nevada statutes require the Department’s deputy to review indigent defense services throughout the state, and, when necessary, to assist the counties in revising their indigent defense systems. NRS 180.440. A plan to raise the standards of indigent defense in a county is called a “corrective action plan,” which is developed by the Deputy Director of the Department in collaboration with the Board of County Commissioners for the county. NRS 180.450. The Board may direct the Executive Director of the Board to perform “additional audit, investigation, or review the Board deems necessary to determine whether minimum standards in the provision of indigent defense services are being followed and provided in compliance with constitutional requirements. NRS 180.320 (1) (c). It appears that the Department is also empowered by statute to remove an attorney from the approved list of indigent defense by virtue of its ability to approve attorneys for the list if they meet the requirements established by the Board on Indigent Defense Services to be eligible to provide indigent defense services. NRS 180.430 (1) (b).

<sup>90</sup> Soval Solutions final report is attached to this Report as Appendix F.

<sup>91</sup> The Department developed a means for incarcerated people to complete the client survey and return it to the Department. They provide each client with the survey and an attached, postage-paid envelope that is pre-addressed to the Department.

<sup>92</sup> These forms are part of the Soval Solutions report, attached to this Report as Appendix F.

<sup>93</sup> See Appendix F, 2.

develop an incentive plan and conduct a wage/salary survey) to the Governor's Finance Office during the November or December meeting of the Board of Examiners.<sup>94</sup>

H. Attorney training and resources<sup>95</sup>

The Department continues to provide training and resources.

In partnership with the UNLV Boyd School of Law, the Department continues to offer the SOAR program, which standards for Support, Outreach, Assistance, Resource, for public defense providers.<sup>96</sup> The program both supports rural attorneys representing indigent clients and provides the opportunity for law students to learn about the opportunities to practice in rural areas.

The Department continues to hold "First Friday" meetings remotely so that public defense attorneys statewide can participate and receive peer support and mentorship.

Since July 1, 2021, the Department offered CLE trainings and worked with the Clark County Public Defender's Office and the Nevada Federal Defender to provide and publicize their trainings, including:

- Litigating Prosecutorial Delay Through Doggett & Inzunza (July 14, 2021; Clark County Public Defender)
- Litigating Race and Adolescence (July 15, 2021; Western Juvenile Defender Center)
- The Importance of Pretrial Motion Work (July 16, 2021; DIDS)
- Criminal Law Changes - 2021 Legislature (July 22, 2021; CCPD)
- Building a Winning Appeal from the Ground Up (July 20, 2021; DIDS)
- Thorny Ethical Issues in Public Defense (August 25, 2021; NV Federal Defender)
- Preparing for Parole Problems (August 26, 2021; CCPD)
- Tips on Prosecuting/Defending (Yourself Against) a Post-Conviction Claim (September 10, 2021; DIDS)
- Traffic Stops and the Fourth Amendment (October 10, 2021; DIDS)
- Getting Started: Pretrial Release and Detention in Federal Court (October 13, 2021; NV Federal Public Defender)<sup>97</sup>

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<sup>94</sup> In anticipation of developing a system of oversight with the help of a consultant, Section 40 of the Temporary Regulations was revised in the proposed, Permanent Regulations in anticipation of the development of an oversight system. Section 38 of the proposed Permanent Regulation is essentially the first section of Section 40 of the Temporary Regulations, listing some of the types of information the Department may consider in its assessment of "whether counties and attorneys meet the requirements [of the regulations] and whether indigent defense services are being provided in a constitutional manner."

<sup>95</sup> Judgment, 16.

<sup>96</sup> The SOAR flyer is available here:  
<https://dids.nv.gov/uploadedFiles/didsnv.gov/content/Meetings/2021/SOAR%2002172020.pdf>

<sup>97</sup> A calendar of past and future trainings is available on the Department's website here:  
<https://dids.nv.gov/Training/Resources/>

The training and resources budget for FY2021 for the Department is \$3,160, plus an additional one-time total of \$25,000. As the pandemic lifts, permitting conferences and other training events to be held in-person, the budget may be inadequate to ensure that all indigent defense providers in the rural counties are able to participate in training, including an annual training, and have access to adequate resources. The Department projects that travel expenses for a state-wide training conference for indigent defense providers would cost approximately \$60,000, an amount outside of the Department's current budget. The Department is in the process of seeking grant funding for this expense.

### III. Uniform data collection and reporting

The Judgment requires that the Defendants ensure that providers report data in a uniform fashion, including case numbers, type, outcome, the hours worked by attorneys, staff, investigators, and experts, the number of motions to suppress filed and litigated, the number of trials, and the attorney's private workload, if any. The Judgment further requires that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.<sup>98</sup>

Plans for the provision of indigent defense in counties whose population is less than 100,000 must require the county's indigent defense providers to provide caseload information to the Department on an annual basis.<sup>99</sup> The plans must require providers to report annually on attorney, investigation, staff, expert and private workload as well.<sup>100</sup> As previously reported, the Department has implemented a statewide, uniform reporting method using Legal Server software, which providers are required to use.

Ensuring that all providers understand their reporting obligations and are trained in Legal Server is a time-consuming but essential, ongoing task. The Department has completed its introductory training sessions on the use of Legal Server software, first offering synchronous training sessions on June 22 and 25, and July 1 and 2, 2021, and then making those trainings available online. The Department reached out to providers and have fielded regular user support questions. The Department reports that many attorneys have contacted the Department with questions and requests for assistance.

In addition to providing technical support to new users, the Department is addressing other infrastructure issues. For example, Legal Server licenses will need to be provided to county plan administrators. The Department has developed protocols for limiting access to case information for both plan administrators and the Department when approving fee and expense requests. Another issue that the Department has addressed is license type. The Department must

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<sup>98</sup> Judgment, 18.

<sup>99</sup> Temporary Regulations, sec. 46.

<sup>100</sup> *Id.* at 47 (1).

allocate unrestricted and restricted licenses depending on the licensee. For example, a solo practitioner can use a restricted license, but an office in which files among attorneys requires an unrestricted license, of which the Department has purchased 100 and may need more.

The Deputy Director of the Department will attend a 2.5-day Legal Server training in Denver in late October 2021. The training includes, among other topics, problem solving in advanced reports, issues specific to public defender management, a branch logic workshop, and site administration collaboration.

By the next quarter, the Department should have a sense of whether attorneys are using Legal Server to record their workload information according to the requirements of the regulations.

### **Budgetary Issues**

#### **Funding indigent defense systems in the counties**

The Department faces several issues related to reimbursing the counties for their spending on indigent defense services over their maximum contribution. The first is that reimbursing counties for expenses over their maximum contribution under the formula set forth in section 18 of the Temporary Regulations requires approval of the Interim Finance Committee.

The second issue is that several of the counties significantly underestimated the cost of their plans. Based on the initial estimate, the amount of earmarked funds is \$1,169,428. After working extensively with the counties on the requirements for their plans, it became clear that some counties had underestimated their projected expenses.<sup>101</sup> Once the county plans and budgets were finalized, the total cost for the *Davis* counties over their maximum contributions is estimated to be \$2,756,778.79. This means that the Department must obtain approval for an additional \$1,587,350.79 from the Board of Examiners and the Interim Finance Committee.

The Department is limited in its ability to reassure counties that they will receive speedy reimbursement for indigent defense expenditures over their maximum contribution due to a structural feature of the funding arrangement. The funds to reimburse the counties are not part of the Department's general budget. As a result, after receiving a request for reimbursement from a county, the Department must request release of earmarked funds from the Interim Finance

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<sup>101</sup> The budgets for the finalized plans were greater than the counties' earlier estimates in most cases. Douglas county increased by almost \$400,000; Lyon increased by almost \$500,000; White Pine increased by more than \$600,000. Other counties had smaller or no increases. The Department is in the process of recalculating the counties maximum contribution, using the consumer price index (1.74%) to adjust for inflation for the comparison fiscal years of 2018 and 2019. This may alter the maximum contributions slightly and, thus, alter the amount of reimbursement from the state.

Committee. This funding arrangement introduces some uncertainty for the counties, which is likely to increase the difficulty the Department faces in fulfilling its obligations under the Judgment.

To restate the process, the county submits an estimate of the cost for providing indigent defense services in its county plan, which is submitted on an annual basis for approval by the Department and Board.<sup>102</sup> However, funds in excess of the county's maximum contribution are not immediately allocated to the county. Rather, the county must submit to the Department a financial status report seeking reimbursement on a quarterly basis.<sup>103</sup> Release of the funds to the county requires that, when a county exceeds its maximum contribution, (1) the Board approves the state contribution, and (2) the Department presents the financial status report and request for release of funds to the Interim Finance Committee. Understandably, county officials have expressed concern that reimbursement will be delayed or denied.

The Department has taken steps to ensure that reimbursement to counties from the earmarked funds goes smoothly. The Department has worked with individual counties to ensure that their projected expenses for indigent defense are realistic and that they understand their obligation to file detailed, quarterly reports for reimbursement.<sup>104</sup> The form for quarterly reporting was developed with the assistance of Soval Solutions and is available on the Department's website.

Second, and more concerning, is the need for funds to reimburse the counties for expenditures above both their maximum contribution and the earmarked state contribution requires extra steps of approval from the Governor's Finance Office through a revision of the agency's work program.

In sum, the success of the county plans depends on approval by the Board of Examiners and Interim Finance Committee of approximately \$1.6 million in additional funds. Should the Board of Examiners or the Interim Finance Committee deny or delay the additional amount necessary to fund the county plans, the state will quickly be out of compliance with the terms of the Judgment. Moreover, trust between the newly formed Department and the counties will evaporate if the changes required by the modified statutes and new regulations are not funded by the state in accordance with the Board's funding formula.

A third and final issue arises when the actual expenses of providing indigent defense services may also exceed the amount that the county estimated in its final, approved county

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<sup>102</sup> Temporary Regulation, sec. 19.

<sup>103</sup> *Id.* at, sec. 19, 20.

<sup>104</sup> Per the regulations, the counties must submit quarterly reports no later than 15 days after the end of the quarter to get reimbursed for expenditures in excess of the county contribution under the maximum contribution formula. *Id.* at, sec. 18.

plan.<sup>105</sup> In such a case, reimbursement requires another step. The Department must create a corrective action plan for the county in accordance with NRS 180.450, and request an allocation pursuant to NRS 353.266.<sup>106</sup>

The concern that the counties' indigent defense costs will exceed the final amounts projected in their approved plans is exacerbated by the fact that none of the ten counties have elected to have the State Public Defender's Office represent indigent defendants in death penalty, complex litigation, and appellate cases. These cases require significant financial resources which are often in excess of the anticipated budget.<sup>107</sup>

Part of the Department's work has included providing information to the Governor's Finance Office to make clear what is required to comply with the *Davis* Judgment in anticipation of future requests to reimburse the counties.

### **Budget for training**

The Department's budget has no line item for staff training and no budget for out-of-state travel.

The Department's effectiveness in leading and overseeing indigent defense in the rural counties depends on the Department staff having adequate opportunities to learn and implement best practices for leadership in public defense. For example, the National Association of Public Defenders conducts annual leadership conferences attended by the administration of statewide indigent defense agencies such as Nevada's. The Department would also benefit from sending its Executive and Deputy Directors to the Nevada State Bar conferences and similar events where opportunities for grant funding and other resources are often discussed.

As a result, training for attorneys and training for Department staff must be paid out of the training budget, which was initially \$3,166 and then augmented by \$25,000 for FY2021. In October, the Deputy Director will attend a necessary two-day Legal Server training in Colorado, the expense of which will be paid for out of the training budget as well.

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<sup>105</sup> The actual county-level expenses can be calculated every quarter based on the reports submitted by the county and providers. Quarterly financial reports for July 1, 2021, through September 30, 2021, for example, must be submitted to the Department by October 15, 2021.

<sup>106</sup> Temporary Regulations, sec. 19-20.

<sup>107</sup> Counties whose population is less than 100,000 may transfer responsibility for appeals and death penalty cases to the State Public Defender through procedures outlined in NRS 180.450 (6); Temporary Regulations, sec. 21. Counties must opt into the State Public Defender by March 1<sup>st</sup> of odd-numbered years, and no *Davis* county opted in before March 1, 2021. Should counties opt in before March 1, 2023, the estimated cost to the agency is \$602,978 for FY24 and \$765,654 for FY25.

### Conclusion

The Defendants have made significant progress in laying the foundation for compliance with the Judgment. The Department has:

- Drafted permanent regulations, which were approved by the Board.
- Assisted the counties in developing their annual plans for indigent defense, which were approved by the Board.
- Assisted the counties in formulating their annual budget and quarterly reporting.
- Rolled out Legal Server, the statewide case management system
- Trained and created training videos on using Legal Server (and continue to provide ongoing technical assistance).
- Worked to ensure attorneys providing indigent defense in the *Davis* counties qualify by case type for the Department's roster.
- Developed a system for selecting conflict counsel and reviewing attorney requests for fees and case-related expenses.
- Created and maintained training, mentorship, and other resources.
- Began the process of obtaining the services of a consultant to assist with a wage/salary survey, data analysis for the oversight process, and an incentive program for new attorneys.

The Department is currently developing a review process for county administrators who serve as the Department's designees for selecting and appointing counsel in Churchill, Douglas, Lander, Mineral, and Nye counties. In counties that will not have a plan administrator—Eureka, Esmeralda, Lincoln, Lyon, and White Pine—the Department will respond directly to all provider requests for fees and case-related expenses. This obligation, mandated by AB480, requires a new suite of tasks and significantly increases the Department's duties without increasing staffing.

The Department will also work with the counties to ensure that their quarterly reports document expenses accurately and completely so that they may receive reimbursement for expenditures over their maximum designated contribution.

The Department will be working with providers using the case management system to ensure collection of the workload data necessary for completion of the Delphi study.

In addition to ongoing trainings, the Department will be planning the 2022 statewide public defense conference.

Finally, if funding is approved, the Department will work with a consultant/data analyst to:

- Complete a wage/salary survey to determine reasonable rates of compensation.
- Develop a fair and sustainable system of county oversight.

- Develop an incentive plan to attract attorneys to rural indigent defense practice.

#### Next steps for the Monitor

As the Department continues to work with the counties to develop their plans and with individual attorneys to ensure uniform data collection, the Monitor will:

- Evaluate the terms of the designee relationship that the county administrators have with the Department.
- Evaluate existing contracts with indigent defense providers, and watch for issues in new contracts with an eye toward whether the contracts lock counties and providers into arrangements that will violate the workload standards and reasonable compensation rates to be set after completion of the studies.<sup>108</sup>
- Report on the status of obtaining funds to reimburse counties, if any such requests are made in the next quarter.
- Report on progress in obtaining funds for the wage/salary survey, oversight plan, and incentive plan.
- Report on progress gathering the workload data needed to complete the Delphi study.
- Report on plans for the 2022 state-wide training conference.

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<sup>108</sup> The Judgment specifies that the standard indigent defense contract must include the Delphi study standards within 6 months of completion of the Delphi study, and that attorneys must comply with the workload standards derived from the Delphi study within 12 months of completion of the study. Judgment, 9. This is particularly concerning for counties that enter into two-year contracts with their providers.

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**October 15, 2021**

**APPENDIXrA**  
**DEPARTMENT REVIEW OF COUNTY PLANS**

**DEPARTMENT REVIEW OF  
COUNTY PLANS FOR THE PROVISION OF  
INDIGENT DEFENSE SERVICES**

**For October 6, 2021 Board on Indigent  
Defense Services Meeting**

**Key: ✓: means "Meets Standards" with the  
Section**

|   | <b>Churchill</b> | <b>Douglas</b> | <b>Elko</b> | <b>Esmeralda</b> | <b>Eureka</b> | <b>Humboldt</b> | <b>Lander</b> | <b>Lincoln</b> | <b>Lyon</b> | <b>Mineral</b> | <b>Nye</b> | <b>Pershing</b> | <b>Sto rey</b> | <b>White Pine</b> |
|---|------------------|----------------|-------------|------------------|---------------|-----------------|---------------|----------------|-------------|----------------|------------|-----------------|----------------|-------------------|
| <b>1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Sec. 23)</b> | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               |                | ✓                 |
| <b>Appointed Counsel Coordinator (A) OR DIDS (D)</b>  | A                | A              | A           | D                | D             | D               | A             | D              | D           | A              | A          | A               | A              | D                 |
| <b>2. Plan for hiring contractor attorneys (Sec. 24):</b>   | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               | ✓              | ✓                 |
| <b>3. Appointment of Counsel (Sec. 25)</b>  | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               |                | ✓                 |
| <b>4. Confidential Communications (Sec. 26):</b>  | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               | ✓              | ✓                 |
| <b>5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):</b>  | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               |                | ✓                 |
| <b>6. Vertical Representation Requirement (Sec 28):</b>   | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               |                | ✓                 |
| <b>7. Standards of Representation (Sec. 29(1)):</b>   | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               |                | ✓                 |
| <b>8. Prompt Compensation (Section 43)</b>  | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               |                | ✓                 |
| <b>9. Caseload Reporting (Section 46)</b>   | ✓                | ✓              | ✓           | ✓                | ✓             | ✓               | ✓             | ✓              | ✓           | ✓              | ✓          | ✓               | ✓              | ✓                 |
| <b>Department Recommendation:</b>   | A                | A              | A           | A                | A             | A               | A             | A              | A           | A              | A          | A               | C<br>A         | A                 |
| <b>Key: A: Conditional Approval<br/>CA: Corrective Action</b>   |                  |                |             |                  |               |                 |               |                |             |                |            |                 |                |                   |

### Department or its designee

AB480, which was passed by the most recent legislature made the following changes that affect plans:

1. **Selection of Counsel:** AB480 created a distinction between the “Appointment” of counsel and the “Selection” of Counsel.
  - a. Appointment is a judicial function where the judiciary makes the determination of whether the Defendant qualifies for the appointment of indigent defense counsel.
  - b. Selection means the choosing of an attorney to provide representational services for a person.
  - c. **NRS 171.188(4)** was modified that if a public defender is unable to represent the defendant, the judge, justice or master shall order the appointment of another attorney and refer the selection of the attorney: in a county whose population is less than 100,000 to the Department of Indigent Defense Services or its designee in compliance with the plan of the county for the provision of indigent defense services.
  - d. **NRS 7.115** provides that a magistrate, master or district court shall not order the appointment of an attorney other than a public defender unless the public defender is disqualified. If the public defender is disqualified, the court, shall after making a finding of the disqualification on the record and the reasons therefor, refer the selection of the attorney: in a county whose population is less than 100,000 to the Department or its designee in compliance with the plan of the county for the provision of indigent defense services.
2. **Expert and Investigative Fee Requests and Payment of Appointed Counsel Billing:**
  - a. **NRS 7.135** provides indigent defense providers are entitled to be reimbursed for expenses reasonably incurred for investigative, expert or other services for a necessary defense. In a county whose population is less than 100,000 subject to the prior approval of the Department or its designee and in accordance with the plan of the county for the provision of indigent defense services.
  - b. **NRS 7.145** provides in a county whose population is less than 100,000, attorneys submit billing to the Department or its designee for review and approval.

The following counties have elected for the Department to perform the duties contained in AB480 (which are also covered by Sec. 23, 25, 27 43): Esmeralda; Eureka; Humboldt; Lincoln; Lyon and White Pine.

The following counties have created a designee within their Plan to perform these roles: Churchill County, Douglas County, Elko County, Lander County, Mineral County, Nye County, Pershing County, and Storey County.

**Request Approval of the Following Plans and Proposed Budgets  
(Contingent upon BOE and IFC approval):**

**Summary**

***Davis Counties***

1. Recommend Plan and budget approval, subject to BOE and IFC approval, for: Esmeralda County, Eureka County, Lincoln County, Lyon County, and White Pine County.
2. Recommend Plan and budget approval, subject to BOE and IFC approval and subject to approval of the proposed designee, for: Churchill County, Douglas County, Lander County, Mineral County, and Nye County.
3. Request permission to seek approval from the earmarked IFC Contingency Funds of \$1,124,427.14.
4. Request permission to seek approval from BOE and IFC Contingency Funds of \$1,701,922.94.

***Non-Davis Counties***

1. Recommend Plan and budget approval, subject to BOE and IFC approval, for: Clark County, Humboldt County, and Washoe County.
2. Recommend Plan and budget approval, subject to BOE and IFC approval and subject to approval of the proposed designee, for: Elko County and Pershing County.
3. Request permission to seek approval from BOE and IFC Contingency Funds of \$3,644,980.66.
4. Storey County:
  - a. Recommend rejection of the Storey County Plan
  - b. Recommend entering into a Corrective Action Plan with the Storey County Board of County Commissioners for the purpose of establishing a compliant plan as the proposed plan is deficient in the provision of indigent-defense services. NRS 180.440(4).
5. Carson City:
  - a. Has requested an extension until October 31, 2021.

**Davis Counties**

1. **Churchill County (Exhibit 1)**
  - a. Request approval of Churchill County Plan and Proposed Budget.
    - i. Contingent upon Department approval of proposed designee.
    - ii. Contingent upon BOE and IFC approval.
  - b. Request permission to seek approval of \$434,708.43 from the earmarked IFC Contingency Funds.
2. **Douglas County (Exhibit 2)**
  - a. Request approval of Douglas County Plan and Proposed Budget.

- i. Contingent upon Department approval of proposed designee.
    - ii. Contingent upon BOE and IFC approval.
  - b. Request permission to seek approval of \$16,578.93 from the earmarked IFC Contingency Funds.
  - c. Request permission to seek approval of \$387,432.94 from BOE and IFC Contingency Funds.
  
- 3. **Esmeralda County (Exhibit 3)**
  - a. Request Approval of Esmeralda Plan and Proposed Budget.
    - i. Contingent upon BOE and IFC approval.
  - b. Request Permission to seek Approval of \$14,147.38 from the earmarked IFC Contingency Funds.
  
- 4. **Eureka County (Exhibit 4)**
  - a. Request Approval of Eureka County Plan and Proposed Budget.
    - i. Contingent upon BOE and IFC approval.
  - b. Request Permission to seek Approval of \$95,000 from the earmarked IFC Contingency Funds.
  
- 5. **Lander County (Exhibit 5)**
  - a. Request Approval of Lander County Plan and Proposed Budget.
    - i. Contingent upon Department approval of proposed designee.
    - ii. Contingent upon BOE and IFC approval.
  - b. Request Permission to seek Approval of \$20,918.04 from the earmarked IFC Contingency Funds.
  - c. Request permission to seek approval of \$129,500 from BOE and IFC Contingency Funds.
  
- 6. **Lincoln County (Exhibit 6)**
  - a. Request approval of Lincoln County Plan and Proposed Budget.
    - i. Contingent upon BOE and IFC approval.
  - b. Request Permission to seek approval of \$10,580 from the earmarked IFC Contingency Funds.
  - c. Request Permission to seek approval of \$10,000 from BOE and IFC Contingency Funds.
  
- 7. **Lyon County (Exhibit 7)**
  - a. Request approval of Lyon County Plan and Proposed Budget.
    - i. Contingent upon BOE and IFC approval.
  - b. Request Permission to seek approval of \$311,566.92 from the earmarked IFC Contingency Funds.
  - c. Request Permission to seek approval of \$506,500 from BOE and IFC Contingency Funds.

**8. Mineral County (Exhibit 8)**

- a. Request approval of Mineral County Plan and Proposed Budget.
  - i. Contingent upon Department approval of proposed designee.
  - ii. Contingent upon BOE and IFC approval.
- b. Request Permission to seek Approval of \$27,124.00 from the earmarked IFC Contingency Funds.

**9. Nye County (Exhibit 9)**

- a. Request approval of Nye County Plan and Proposed Budget.
  - i. Contingent upon Department approval of proposed designee.
  - ii. Contingent upon BOE and IFC approval.
- b. Request Permission to seek Approval of \$96,403.45 from the Earmarked IFC Contingency Funds.

**10. White Pine County (Exhibit 10)**

- a. Request approval of White Pine County Plan and Proposed Budget.
  - i. Contingent upon BOE and IFC approval.
- b. Request Permission to seek Approval of \$97,400 from the earmarked IFC Contingency Funds.
- c. Request Permission to seek approval of \$668,490 from BOE and IFC Contingency Funds.

**Non-Davis Counties**

**1. Clark County**

- a. Request approval of Clark County Plan and Proposed Budget.
  - i. Contingent upon BOE and IFC approval.
- b. Request Permission to seek approval of \$2,159,467.17 from BOE and IFC Contingency Funds.
- c. **NOTE:** Sec. 22(3): Plans for the provision of indigent defense services approved pursuant to the Nevada Supreme Court Administrative Docket 411 will satisfy the requirements of this section.

**2. Elko County (Exhibit 11)**

- a. Request approval of Elko County Plan and Proposed Budget.
  - i. Contingent upon Department approval of proposed designee.
  - ii. Contingent upon BOE and IFC approval.
- b. Request Permission to seek approval of \$286,521 from BOE and IFC Contingency Funds.

**3. Humboldt County (Exhibit 12)**

- a. Request approval of Elko County Plan and Proposed Budget.
  - i. Contingent upon BOE and IFC approval.
- b. Request Permission to seek approval of \$110,885 from BOE and IFC Contingency Funds.

4. **Pershing County (Exhibit 13)**
  - a. Request approval of Pershing County Plan and Proposed Budget.
    - i. Contingent upon Department approval of proposed designee.
    - ii. Contingent upon BOE and IFC approval.
  - b. Request Permission to seek Approval of \$172,001.49 from the BOE and IFC Contingency Funds.
5. **Washoe County**
  - a. Request approval of Washoe County Plan and Proposed Budget.
    - i. Contingent upon BOE and IFC approval.
  - b. Request Permission to seek approval of \$916,106.00 from BOE and IFC Contingency Funds.
  - c. **NOTE:** Sec. 22(3): Plans for the provision of indigent defense services approved pursuant to the Nevada Supreme Court Administrative Docket 411 will satisfy the requirements of this section.

**Request Rejection of the Following Plan:**

1. **Storey County (Exhibit 14)**
  - a. Recommend Rejection of the Plan
  - b. Recommend entering into a Corrective Action Plan with the Storey County Board of County Commissioners for the purpose of establishing a compliant plan as the proposed plan is deficient in the provision of indigent-defense services. NRS 180.440(4).

**Plans Not Yet Submitted**

1. **Carson City**
  - a. requested extension until October 31.

# **Exhibit 1: Churchill County Review**

**DIDS Review**  
**Churchill County Plan**

**Meet Standards**                       **Does Not Meet Standards**

|  |              |
|--|--------------|
| Estimated Cost of the Plan:  | \$956,107    |
| Churchill County Maximum Contribution (Sec 19):  | \$521,398.57 |
| Estimated State Expense:   | \$434,708.43 |
| Original Estimate: \$956,107 (of the \$1.2 million earmarked with IFC, we requested \$434,708.43 on behalf of Churchill) |              |

**1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter “Sec.”]).**

**Meet Standards**                       **Does Not Meet Standards**

**2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**                       **Does Not Meet Standards**

The Churchill County Appointed Counsel Program Coordinator will select future contract attorneys in a process consistent with Section 24 of the Temporary Regulations. See, p. 12. Once the Appointed Counsel Program Coordinator is selected, the Coordinator shall establish a committee to, on a yearly basis, review appointed counsel and determine eligibility and whether to recommend appointed counsel for new and continued participation in accordance with applicable regulations and standards. See, p. 14. The Coordinator will seek input from judges and others familiar with the practice of criminal defense, juvenile and family law.

**3. Appointment of Counsel (Sec. 25)**

**Meet Standards**                       **Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** Court Services personnel (or other designated individual) shall conduct indigency screening no later than 48 hours after arrest to make an initial determination of financial eligibility and provide the recommendation to the Court. See p. 7.

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** Counsel shall be provided to eligible individuals within 72 hours, at their first appearance before a judge, when they are formally charged or notified of the charges, or when the Justice of the Peace or a District Court Judge otherwise considers appointment of counsel appropriate. See P. 6. The Churchill County Public Defender will be the primary and initial provider of indigent defense. See p. 8. Where a conflict exists, a contract attorney will be assigned by the appointed counsel coordinator. See p. 9 and 12-15.

**Distribution of Cases (Sec. 25(3)):** Churchill County Public Defender will be the primary assignment for cases. If there is a conflict, the case will be transfer to the conflict contract attorney. If the conflict contract attorney has a conflict, the Coordinator will select appointed counsel, in consecutive order from the hourly list and provide prompt notice and a proposed order to the Appointing Authority. P. 8 and 13.

**Initial Appearance (Sec. 25(4)):** The Justice Court shall provide reasonable advance notice of all arraignment proceedings to the public defender or Attorneys who may be appointed to ensure appearance. The Public Defender or Appointed Attorney must be present at such hearings. P. 15. Such attorney must be prepared to address pre-trial release.

The Public Defender is the primary and initial provider, but the Plan is unclear as to whether they are required to attend such hearings. P. 8.

**4. Confidential Communications (Sec. 26):**

**Meet Standards**       **Does Not Meet Standards**

Accommodations are provided in the Justice Court, District Court, jails, and the Office of the Public Defender. P. 20. Interpreters are provided by the Court, if necessary. P. 20.

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

The budget for independent experts and investigation will be built into the budget of the Office of the Public Defender and administered by the Public Defender. P. 22.

Churchill County will employ an Appointed Counsel Coordinator to review attorney billing claims as well as claims for case related expenses. Claims expected to exceed \$2,500 shall be submitted to the Coordinator for pre-authorization before they are incurred. The requests will remain confidential. All claims, whether pre-authorization is required, will be reviewed for reasonableness. Upon approval of the fees/expenses, the Coordinator will notify the Comptroller's Office of the approved requests and the Comptroller's Office shall issue prompt payment for the same. P. 14.

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

The Plan expects attorneys to ensure that, to the greatest extent possible, the same attorney represents a defendant through every substantive portion of the case without delegation of others. The Plan recognizes that there are times and circumstances where there are prudent and acceptable exceptions to this practice, but the expectation in place provides each client with a consistent attorney representation throughout the case. P. 15.

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

Attorneys are responsible for performance of all obligations and duties as dictated by the Nevada Rules of Professional Conduct and must demonstrate compliance with the standards and regulations of the Board on Indigent Defense Services. P. 15. Attorneys will be familiar with and guided by the Rules of Professional Conduct, Indigent Defense Standards of Performance adopted by the Nevada Supreme Court (October 16, 2008), and changes to such standards as they are made or adopted from time to time. P. 17.

**Davis Required Language (Sec. 29(2)):** contains required language. P. 16.

**Client surveys (Sec 29(3)):** contains required language. P. 16.

**8. Prompt Compensation (Section 43)**

**Meet Standards**

**Does Not Meet Standards**

Churchill County will employ an Appointed Counsel Coordinator to review attorney billing claims as well as claims for case related expenses. Upon approval of the fees/expenses, the Coordinator will notify the Comptroller's Office of the approved requests and the Comptroller's Office shall issue prompt payment for the same. P. 14.

**9. Caseload Reporting (Section 46)**

**Meet Standards**

**Does Not Meet Standards**

The Plan provides that "[i]f there are sufficient guarantees that use of such software ensures client file integrity, and case information confidentiality, Attorneys will comply with the applicable regulations as promulgated by the Nevada Department of Indigent Defense Services." P. 17.

# **Exhibit 2: Douglas County Review**

## DIDS Review-- Douglas County Plan

**Meet Standards**                       **Does Not Meet Standards**

### Estimated Cost of the Plan:

|  |                |
|--|----------------|
| Contract Attorneys   | \$ 979,166.65  |
| Litigation Expenses  | \$ 100,000     |
| Appointed counsel administrator  | \$200,000      |
| Total:   | \$1,279,166.65 |
| Douglas County Maximum Contribution (Sec 19):  | \$875,154.78   |
| Estimated State Expense:   | \$ 404,011.87  |
| Original Estimate: \$899,733.71 (in our Budget request to the legislature, we requested \$16,578.93 for Douglas) |                |

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**                       **Does Not Meet Standards**

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**                       **Does Not Meet Standards**

Douglas County will annually recruit attorneys to provide indigent defense services on a contract basis. The Appointed Counsel Program Coordinator will establish an Appointed Counsel Selection Committee to review qualifications. The selection committee will determine if an attorney is qualified to enter into a contract. P. 5-6.

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**                       **Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** Court Administration, through Pretrial Services, or Appointed Counsel Coordinator shall conduct screening no later than 48 hours. P. 5, Section III(E)(ii).

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** The Appointed Program Counsel Program Coordinator shall ensure counsel is present for initial appearances. P. 10, VI(D); p. 11, VII(B). If there is a conflict, appointed counsel shall notify the relevant court. P. 8, IV(E).

**Distribution of Cases (Sec. 25(3)):** Cases shall be assigned on a rotational basis from the list of qualified attorneys. P. 7, Section IV(C)(1).

**Initial Appearance (Sec. 25(4)):** The Appointed Counsel Program Coordinator shall ensure the provision of Representational Services for all eligible clients who are in custody and require a bail hearing. If the Coordinator is unable to assign an attorney to be present for the initial appearances and arraignments, the Coordinator may be present. The attorney shall be prepared to address appropriate released conditions. P. 10, Section VI(D).

**4. Confidential Communications (Sec. 26):**

**Meet Standards**       **Does Not Meet Standards**

The Plan provides information on the facilities available for privileged communications. P. 9, Section IV(G).

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

Douglas County agrees to budget for case-related expenses in the amount of \$100,000. Case-related expenses which are expected to exceed \$2,500 shall be submitted to the Coordinator for pre-authorization. P. 8, Section IV(F).

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

Consistency in representation required by the Plan. P. 6, Section IV(8); p. 10, Section VI(B).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. See p. 9, Section VI(A).

**Davis Required Language (Sec. 29(2)):** Required language set forth. See p. 9, Section VI(A).

**Client surveys (Sec 29(3)):** Qualified Attorneys must ensure clients are notified of and encouraged to participate in client surveys authorized by the Department. See p. 10, Section VI(G).

**8. Prompt Compensation (Section 43)**

**Meet Standards**       **Does Not Meet Standards**

Payment of fees of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Counsel Program Coordinator. P. 7. Section IV(C)(2).

**9. Caseload Reporting (Section 46)**

**Meet Standards**       **Does Not Meet Standards**

Appointed Counsel shall report caseload data and time as promulgated by the Regulations of the Board. P. 11, Section VI(H).

# **Exhibit 3: Esmeralda County Review**

**DIDS Review -- Esmeralda County Plan**

**Meet Standards**

**Does Not Meet Standards**

**Estimated Cost of the Plan:**

|  |                  |
|--|------------------|
| Contract Attorneys                     | \$50,000         |
| Conflict Counsel / Litigation Expenses | \$55,200         |
| <b>Total:</b>                          | <b>\$105,200</b> |

**Esmeralda County Maximum Contribution (Sec 19):** \$91,052.63

**State Expense:** \$14,147.38

**Original Estimate:** \$105,200 (in our Budget request to the legislature, we requested \$14,147.38 for Esmeralda)

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

Esmeralda County Plan appears to comply with this requirement.

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

Page 5, Section IV(A): Sets forth the Plan for hiring by the Board of County Commissioners.

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** Esmeralda County Sheriff's Office or any other law enforcement officer responsible for booking a criminal defendant shall provide an initial screening within 48 hours Section III(E)(2), page 4.

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** Esmeralda County Public Defender will initially handle all cases. IV(A). If there is a conflict, the public defender will contact the Court and DIDS for selection of new counsel. IV(B)(1).

**Distribution of Cases (Sec. 25(3)):** Cases shall be assigned on a rotational basis from the list of qualified attorneys. IV(B)(2).

**Initial Appearance (Sec. 25(4)):** The Public Defender shall provide Representational Services for all Eligible Clients who are in custody and shall be prepared to address appropriate released conditions. P. IV(C)(1).

- 4. Confidential Communications (Sec. 26):**

**Meet Standards**

**Does Not Meet Standards**

Gives contact information for how to conduct meetings at the jail. Also states there is a private meeting at the Courthouse. P. 10, Section V(C)(4).

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**

**Does Not Meet Standards**

Esmeralda will have a budget for case related expenses within the PD. IV(E), page 7. For conflict appointed counsel, expenses in excess of \$2,500 must be submitted to the department for pre-authorization before incurred. V(2)(a), page 9. There will be a budget independent of the judiciary for these expenses. V(3)

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**

**Does Not Meet Standards**

Consistency in representation required by the Plan. VII(B), page 12.

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**

**Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. VII(A), page 11.

**Davis Required Language (Sec. 29(2)):** Required language set forth. VII(A), page 11.

**Client surveys (Sec 29(3)):** Qualified Attorneys must ensure clients are notified of and encouraged to participate in client surveys authorized by the Department. VII(F), page 12.

**8. Prompt Compensation (Section 43)**

**Meet Standards**

**Does Not Meet Standards**

Compensation for hourly appointed counsel will be paid pursuant to NRS 7.125. V(C)(1). The attorney shall submit the voucher to the Department for review. Once approved, the Department will provide to the Auditor for vote by the Board of Commissioners. P. 8-9, Section V(C)(1).

**9. Caseload Reporting (Section 46)**

**Meet Standards**

**Does Not Meet Standards**

The Contract Esmeralda County Public Defender shall use the data collection and case management system provided by the Department of Indigent Defense Services at State expense for caseload and time reporting. Caseload reporting will be done by the Contract Esmeralda Public Defender. The Contract Esmeralda Public Defender shall report on an annual basis as required by Regulations on the Board on Indigent Defense Services. P. 13, Section VII(G).

# **Exhibit 4: Eureka County Review**

**DIDS Review -- Eureka County Plan**

**Meet Standards**

**Does Not Meet Standards**

**Estimated Cost of the Plan:**

|  |                     |
|--|---------------------|
| Public Defender's Office   | \$60,000            |
| Conflict Counselor   | \$45,000 (\$25,000) |
| Litigation Expenses  | \$50,000            |
| <b>Total:</b>  | <b>\$155,000</b>    |
| Eureka County Maximum Contribution (Sec 19):   | \$40,000            |
| State Expense:   | \$115,000           |
| Original Estimate: \$155,000 (in our Budget request to the legislature, we requested \$150,000 for Eureka) |                     |

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

Process set forth p. 4, Section IV(A). Proposals submitted to the Board of Commissioners and its designee, but shall not include the prosecution or law enforcement. Judicial input may be considered, but not the sole basis for selection.

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** within 48 hours when a person is taken into custody, the pre and post trial supervision officer or the Eureka County Sheriff's Office will provide them, prior to their first appearance, a financial declaration form. P. 4, Section III, (E)(3).

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** Counsel shall be appointed prior to 72 hours. P. 4, III(E)(3). If there is a conflict, the relevant court will notify DIDS immediately following the initial detention hearing for selection of counsel. P. 4-5, Section IV(B).

**Distribution of Cases (Sec. 25(3)):** All cases will be initially assigned to the contracted public defender. P. 4-5, Section IV(B).

**Initial Appearance (Sec. 25(4)):** The Eureka County Public Defender will be assigned for all initial appearances and be prepared to address release conditions. P. 4-5, Section IV(B).

- 4. Confidential Communications (Sec. 26):**

**Meet Standards**

**Does Not Meet Standards**

Eureka County will provide areas for privileged communications as set forth in the Plan. P. 6, Section IV(E). The areas appear to be the jury room, but the Plan states that if these rooms are not available, the county will provide another location for private communications.

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

Case-Related Expenses expected to exceed \$2,500 shall be submitted to the Department for pre-authorization. All expenses, whether subject to pre-authorization are subject to the Department's review for reasonableness. The Department shall approve all reasonable and necessary Requests for Case-Related Expenses and shall notify the Eureka County Comptroller's Office for payment. Eureka County will set aside \$50,000 for this purpose. See Plan, Section IV(D).

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

Qualified Attorneys providing services to eligible clients shall ensure, the extent practicable, consistency in representation such that the same attorney represents a defendant through every stage of the case. P. 7, Section VI(B).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. See Plan, Section VI(A), p. 7.

**Davis Required Language (Sec. 29(2)):** Required language. See Plan, Section VI(A), p. 7.

**Client surveys (Sec 29(3)):** Qualified Attorneys must ensure clients are notified of and encouraged to participate in client surveys authorized by the Department. See Plan, Section VI(F), p. 7.

**8. Prompt Compensation (Section 43)**

**Meet Standards**       **Does Not Meet Standards**

Eureka County will budget \$25,000 for conflict counsel payment. Conflict Counsel shall submit monthly invoices to the Department. Once reviewed for reasonableness and approved, the invoices will be sent to the Eureka County Comptroller's Office for payment. The Comptroller's Office will pay within 30 days. P. 5-6, Section IV(C).

**9. Caseload Reporting (Section 46)**

**Meet Standards**       **Does Not Meet Standards**

The Eureka County Public Defender shall submit caseload and time reporting as required by the regulations. P. 8, Section VII(A).

# **Exhibit 5: Lander County Review**

**DIDS Review -- Lander County Plan**

**Meet Standards**

**Does Not Meet Standards**

**Estimated Cost of the Plan:**

|  |                          |
|--|--------------------------|
| Public Defender's Office                     | \$130,000                |
| Conflict Public Defender Office              | \$50,000                 |
| Second Tier Conflict Public Defenders Office | \$25,000                 |
| Panel Attorneys                              | \$5,000                  |
| Counsel Administrator / Records              | \$ 5,000 / 20,000        |
| Expenses                                     | \$20,000                 |
| <b>Total:</b>                                | <b>\$235,000/250,000</b> |

**Lander County Maximum Contribution (Sec 19):** **\$99,581.96**

**State Expense:** **\$135,418.04/\$150,418.04**

**Original Estimate:** \$120,5000 (in our Budget request to the legislature, we requested \$20,918.04 for Lander)

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

The selection of the Public Defender shall be selected by the County Commissioners in consultation with the County Manager and the Counsel Administrator. P. 9 (Section V(I)). The First Tier Conflict Public Defender (p. 11, Section VI(I)); the Second Tier Conflict Public Defender (p. 13, Section VII(I)); and the Panel Attorneys (p. 14, Section VIII(N)) shall be selected by the County Commissioners.

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** The Court Administrator shall conduct a screening and provide the recommendation to the Court. (P. 5, Section IV(D)(2)). The screening will occur within 48 hours, but this requirement is contingent upon BIDS approving funding for the Counsel Administrator position. (P. 6, Section IV(D)(4)). However, if funding is not provided, the Court will screen in a manner to comply with the remainder of the rule. See footnote 2 on page 6.

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** The judge shall appoint counsel, if eligible. If the judge determines that the private attorney recommended to be appointed is not suitable for the particular case, they will contact the Counsel Administrator to ask for the next in rotation. (p. 7, Section IV(E)).

If the Public Defender determines there is a conflict, a motion must be written to the Court. If the Court believe the motion has merit, the Court shall appoint the First Tier Conflict Public Defender. (p. 8, Section V(B)). There is a similar process for conflicts of the First Tier Conflict Public Defender (p. 10, Section VI(B)), wherein the Court will automatically appoint the Second Tier Public Defender. If the Second Tier Public Defender (p. 11, Section VII(B)) or the Panel Attorneys (p. 13, Section VIII(B)) have a conflict, the process is modified where the Court asks the Appointed Counsel Administrator for a recommendation and the Court will have authority to appoint.

**Distribution of Cases (Sec. 25(3)):** rotational basis. (p. 7, Section IV(E)).

**Initial Appearance (Sec. 25(4)):** Public Defender shall provide representation at the first appearance. (p. 7, Section IV(G)). Counsel at first appearance must be prepared to address conditions of release. (p. 7, Section IV(G)).

**4. Confidential Communications (Sec. 26):**

**Meet Standards**                       **Does Not Meet Standards**

The Plan provides that the courthouse has two meetings rooms by the District Court and two by the Justice Court that are available to any attorney who has an ongoing case. The Jail has a meeting room. The Courthouse has a meeting room for people in the jail. (p. 8, Section V(D)).

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**                       **Does Not Meet Standards**

The Public Defender has a line item within his budget for this purpose. (p. 9, Section V(G)).

The First Tier Conflict Public Defender (p. 10, Section VI(G)) and the Second Tier Public Defender (p. 12, Section VII(G)) have the same process. Each must submit a request for payment to the counsel administrator who will then recommend approval or denial of the request. Upon approval of a claim, the Counsel Administrator will submit the voucher for payment. If the Counsel Administrator modifies or denies the request, the Attorney may appeal any modification to the Court for resolution. The Court may determine to pay the voucher and the County will be ordered to pay the voucher.

The Panel Attorneys must submit a request for payment to the Counsel Administrator who will then recommend approval or denial of the request. The Counsel Administrator will pay the voucher for payment. If the Counsel Administrator modifies or denies the request, the Attorney may appeal any modification to the Court for resolution. The Court may determine to pay the voucher and the County will be ordered to pay the voucher. (p. 14, Section VIII(L)).

This process is also mapped out within the specific duties of the Counsel Administrator. See p. 17-18, Section XI(C).

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**                       **Does Not Meet Standards**

Plan requires representation to be vertical. (p. 8, Section IV(H) and (p. 15, Section X(B)).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. (p. 15, Section X(A)).

**Davis Required Language (Sec. 29(2)):** Required language set forth. (p. 15, Section X(A)).

**Client surveys (Sec 29(3)):** Surveys must be provided as authorized by BIDS. (p. 16, Section X(F)).

**8. Prompt Compensation (Section 43)**

**Meet Standards**       **Does Not Meet Standards**

The Public Defender is compensated through the County's payment process. (p. 9, Section V(G). First Tier Conflict Public Defender (p. 10, Section VI(F)) and Second Tier Public Defender (p. 12, Section VII(F)) are compensated through a rate set by the County Commissioners.

There is inconsistency for payment of panel attorneys. In one section, the Plan sets out that panel attorneys will be compensated at the statutory rate through the County's vouchering process. The attorney will submit a request for reimbursement on a monthly basis to the Court Administrator. The Court Administrator will recommend approval or denial of the request to the County Commissioners. (p. 14, Section VIII(J)). If there is a dispute the Court will determine if the voucher shall be paid.

The Plan provides that the Appointed Counsel Administrator will receive the requests for a panel attorney for payment, determine if the fees are reasonable and if the fees exceed statutory amounts for case type; recommend approval of a sum certain for attorney's fees; and submit the recommendation to the County for payment. (p. 18, Section XI(C)) Approval of Attorney's Fees).

**9. Caseload Reporting (Section 46)**

**Meet Standards**       **Does Not Meet Standards**

Providers of Indigent Defense Services as required to maintain data through the data collection and case management services provided by the Department at State expense for caseload and time reporting. (p. 18, Section XIII)

# **Exhibit 6: Lincoln County Review**

**DIDS Review -- Lincoln County Plan**

**Meet Standards**

**Does Not Meet Standards**

**Estimated Cost of the Plan:** \$205,000  
**Lincoln County Maximum Contribution (Sec 19):** \$179,420  
**State Expense:** \$25,580  
**Original Estimate: \$190,000** (in our Budget request to the legislature, we requested \$10,580 for Lincoln)

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

Lincoln County will contract with an attorney in compliance with the requirements of the Department of Indigent Defense Services. P. 4, Section 3(A).

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** defendants shall have immediate access to applications for indigent defense. No later than 48 hours after arrest, a public defender or his agent will screen the individuals for financial eligibility. P. 3, Section 2(E)(ii)

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** upon a review of the financial affidavit, the Court will promptly appoint the Contract Attorney to represent the defendant. P. 3, Section 2(E)(ii). If there is a conflict, the contract attorney will notify the Court to have the case transferred to the Contract Conflict Public Defender. If the Contract Conflict Public Defender has a conflict, the Court shall be notified. The Court will request the Nevada Department of Indigent Defense Services to appoint conflict counsel. P. 4, Section 3(B).

**Distribution of Cases (Sec. 25(3)):** All cases will be initially assigned to the contracted public defender. P. 3, Section 2(E)(ii).

**Initial Appearance (Sec. 25(4)):** The Contract Attorney will be assigned for all initial appearances and be prepared to address release conditions. P. 4, Section 2(E)(v).

- 4. Confidential Communications (Sec. 26):**

**Meet Standards**

**Does Not Meet Standards**

County facilities housing or holding indigent defendants will provide accommodations for confidential or otherwise privileged communications between counsel and client. P. 4, Section 3(D).

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

Lincoln County will create line-item in its annual budget for the costs of investigators and experts. The Public Defender shall have sole discretion. A separate budget will be created for appointed counsel. Of which, appointed counsel may request disbursement by application for funds. P. 6, Section 7.

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

Qualified Attorneys providing services to eligible clients shall ensure, the extent practicable, consistency in representation such that the same attorney represents a defendant through every stage of the case. P. 5, Section 5(B).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. P. 5, Section 5(A).

**Davis Required Language (Sec. 29(2)):** Required language set forth. P. 5, Section 5(A).

**Client surveys (Sec 29(3)):** Qualified Attorneys must ensure clients are notified of and encouraged to participate in client surveys authorized by the Department. P. 5, Section 5(E).

**8. Prompt Compensation (Section 43)**

**Meet Standards**       **Does Not Meet Standards**

Lincoln County will create a line-item in its budget for payment of appointed conflict public defenders. Conflict public defenders will submit requests to the Department for review of billing. P. 6, Section 7.

**9. Caseload Reporting (Section 46)**

**Meet Standards**       **Does Not Meet Standards**

Lincoln County providers of indigent defense services shall submit caseload and time reporting as required by the regulations. P. 8, Section VII(A).

# **Exhibit 7: Lyon County Review**

**DIDS Review-- Lyon County Plan**

**Meet Standards**

**Does Not Meet Standards**

**Estimated Cost of the Plan:**

|                          |                       |
|--------------------------|-----------------------|
| Public Defender's Office | \$937,000             |
| Conflict Counsel         | \$550,000             |
| Litigation Expenses      | \$150,000             |
| <b>Total:</b>            | <b>\$1,637,000.00</b> |

**Lyon County Maximum Contribution (Sec 19):** **\$818,933.08**

**State Expense:** **\$818,066.92**

**Original Estimate:** \$1,130,500.00 (in our Budget request to the legislature, we requested **\$311,566.92** for Lyon)

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

Lyon County shall use a selection committee composed of the County Manager, the Comptroller, and the Human Resources Director. The selection committee may, through a formal request for proposals or through other means, request information from Qualified Attorneys regarding their experience, workload capacity, fee structure, and other material information. The committee shall weigh these and other relevant factors (in Temp Reg 24(1)(c)) in identifying the Qualified Attorneys with whom it would be in Lyon County's best interest to contract, and the terms of such contracts. The selection committee may utilize outside counsel for assistance during any portion of the selection process, and during the drafting and negotiation of contracts with Qualified Attorneys. In addition, the selection committee may seek input from the Department. The selection committee shall present all proposed contracts to the Board of County Commissioners for approval. No contract shall be effective unless and until it is approved by the Board of County Commissioners. See Plan, Section III (A), p. 1-2

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** A Pretrial Services Officer may be utilized to assist with screening for indigence. The Pretrial Screening Officer shall use the screening form attached to the Plan. The screening shall occur within 48 hours of arrest. Indigence determinations are ultimately the responsibility of the Appointing Authority.

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** The Appointing Authority will make the indigency determination. Walther Law Offices will serve as the primary public defender and shall be assigned to represent all Eligible Clients, except if there is a conflict of interest. See Plan, Section V, p. 3. If there is a conflict, Walther Law Office will immediately notify the Department for selection of a Qualified Attorney. See Plan, Section V, p. 3-4. Lyon

County has created a panel of attorneys for conflict appointment and is continuing to increase the number of attorneys on the list.

**Distribution of Cases (Sec. 25(3)):** DIDS shall use a rotation system insofar as practicable, but shall ultimately have discretion to make assignments on any legitimate basis, including without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Lyon County officials, and capacity to take on work. See Plan, Section V(2), p. 4.

**Initial Appearance (Sec. 25(4)):** Walther Law Offices shall provide Representational Services for all Eligible Clients who are in custody and require a bail hearing. If there is a conflict, Walther Law Offices shall limit the scope of its representation and shall only advocate for the Eligible Client's best interests at the bail hearing and shall advise the Eligible Client of the limited scope of such representation. See Plan, Section VI(G), p. 6.

**4. Confidential Communications (Sec. 26):**

**Meet Standards**       **Does Not Meet Standards**

The Plan provides information on how to set up a confidential meeting in the jail. See Plan, Section VII, p. 7.

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

Case-Related Expenses expected to exceed \$2,500 shall be submitted to the Department for pre-authorization. All expenses, whether subject to pre-authorization are subject to the Department's review for reasonableness. The Department shall approve all reasonable and necessary Requests for Case-Related Expenses and shall notify the Lyon County Comptroller's Office for payment. Lyon County will set aside \$150,000 for this purpose. See Plan, Section VII(B), p. 8.

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

Qualified Attorneys providing services to eligible clients shall ensure, the extent practicable, consistency in representation such that the same attorney represents a defendant through every stage of the case; provided that attorneys may delegate appropriate administrative tasks to support staff, or may assign more than one (1) attorney to represent an Eligible Client as necessary provided it would not prejudice the rights or defense of the Eligible Client. See Plan, Section VI(B), p. 5.

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. See Plan, Section VI(A), p. 5.

**Davis Required Language (Sec. 29(2)):** Required language set forth. See Plan, Section VI(F), p. 6.

**Client surveys (Sec 29(3)):** Qualified Attorneys must ensure clients are notified of and encouraged to participate in client surveys authorized by the Department. See Plan, Section VI(F), p. 6.

**8. Prompt Compensation (Section 43)**

**Meet Standards**

**Does Not Meet Standards**

Lyon County shall use the Department to serve as an Appointed Counsel Administrator. The process for payment is contained in Section VII(A), p. 7 of the Plan. Once the Department has approved an attorney billing, the Lyon County Comptroller shall issue payment within 10 days of receipt.

**9. Caseload Reporting (Section 46)**

**Meet Standards**

**Does Not Meet Standards**

To the extent required by the Department's Board, Qualified Attorneys providing indigent defense services under this plan shall maintain caseload and track time spent providing indigent defense services in accordance with Sections 46 and 47 of the Regulations. Plan, Section VI(C), p. 6.

# **Exhibit 8: Mineral County Review**

**DIDS Review -- Mineral County Plan**

**Meet Standards**

**Does Not Meet Standards**

**Estimated Cost of the Plan:**

|  |           |
|--|-----------|
| Public Defender's Office   | \$117,000 |
| Conflict Public Defender Office (pursuant to 7.125)                                  | \$10,000  |
| Second Tier Conflict Public Defenders Office<br>(paid hourly rate pursuant to 7.125) | \$5,000   |
| Services and Supplies  | \$2,000   |
| Counsel Administrator<br>(10 hrs/wk at \$25 @ 31 weeks plus taxes)                   | \$9,000   |
| Experts/Investigators  | \$30,000  |
| <b>Total: \$173,000</b>  |           |

**Mineral County Maximum Contribution (Sec 19):** **\$91,813.00**

**State Expense:** **\$81,187**

**Original Estimate:** \$118,937.00 (in our Budget request to the legislature, we requested \$27,124.00 for Mineral)

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

The selection of the Public Defender shall be selected by the County Commissioners. P. 10 (Section V(G)). The First Tier Conflict Public Defender (p. 12, Section VI(I)); the Second Tier Conflict Public Defender (p. 14, Section VII(I)); and the Panel Attorneys (p. 16, Section VIII(M)) shall be selected by the County Commissioners in consultation with the Counsel Administrator.

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** The Court Administrator shall conduct a screening and provide the recommendation to the Court. (P. 5, Section IV(D)(2). The screening will occur within 48 hours, but this requirement is contingent upon BIDS approving funding for the Counsel Administrator position. (P. 7, Section IV(D)(4)).

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** The judge shall appoint counsel, if eligible. (p. 8, Section IV(E)).

If the Public Defender determines there is a conflict, a motion must be written to the Court. If the Court believe the motion has merit, the Court shall appoint the First Tier Conflict Public Defender. (p. 9, Section V(B)). There is a similar process for conflicts of the First Tier Conflict Public Defender (p. 11, Section VI(B)), wherein the Court will automatically appoint the Second Tier Public Defender. If the Second Tier Public Defender (p. 12, Section VII(B)) or the Panel

Attorneys (p. 14, Section VIII(B)) have a conflict, the process is modified where the Court asks the Appointed Counsel Administrator for a recommendation.

**Distribution of Cases (Sec. 25(3)):** rotational basis. (p. 8, Section IV(E)).

**Initial Appearance (Sec. 25(4)):** Public Defender shall provide representation at the first appearance. (p. 8, Section IV(G)). Counsel at first appearance must be prepared to address conditions of release. (p. 9, Section IV(G)).

**4. Confidential Communications (Sec. 26):**

**Meet Standards**       **Does Not Meet Standards**

The Plan provides that the courthouse has the jury room and commissioner rooms that are available to any attorney who has an ongoing case and needs to meet with the client. The jail will allow visits between counsel and their clients in the meeting room in the jail and/or jury room depending upon availability. (p. 9, Section V(D)).

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

The Public Defender has a line item within his budget for this purpose. (p. 10, Section V(G)).

The First Tier Conflict Public Defender (p. 12, Section VI(G)) and the Second Tier Public Defender (p. 13, Section VII(G)) have the same process. Each must submit a request for payment to the counsel administrator who will then recommend approval or denial. Counsel Administrator will submit the Recommendation to the County for Payment. If the Counsel Administrator Modifies or Denies a request, the request can be submitted to the Court for review.

The Panel Attorneys must submit a request for payment to the Counsel Administrator who will then recommend approval or denial. If approved, Counsel Administrator will submit the request to the County for payment. (p. 17, Section VIII(U)). If there is a dispute, the Court will determine if the voucher will be paid.

This process is also mapped out within the specific duties of the Counsel Administrator. See p. 18-19, Section XI(C).

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

Plan requires representation to be vertical. (p. 9, Section IV(H) and (p. 17, Section X(B)).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. (p. 16, Section X(A)).

**Davis Required Language (Sec. 29(2)):** Required language set forth. (p. 16, Section X(A)).

**Client surveys (Sec 29(3)):** Surveys must be provided as authorized by BIDS. (p. 17, Section X(F)).

**8. Prompt Compensation (Section 43)**

**Meet Standards**

**Does Not Meet Standards**

The Public Defender is compensated through the County's accounts receivable process. (p. 10, Section V(G). First Tier Conflict Public Defender (p. 11, Section VI(F)) and Second Tier Public Defender (p. 13, Section VII(F)) are compensated at the statutory rate.

Panel attorneys will be compensated at the statutory rate through the County's vouchering process. The attorney will submit a request for reimbursement on a monthly basis to the Court Administrator. The Court Administrator will recommend approval or denial of the request to the County Commissioners. (p. 15, Section VIII(J)). If there is a dispute the Court will determine if the voucher shall be paid. See also (p. 19, Section XI(C)) Approval of Attorney's Fees).

**9. Caseload Reporting (Section 46)**

**Meet Standards**

**Recommendations**

Providers of Indigent Defense Services as required to maintain data through the data collection and case management services provided by the Department at State expense for caseload and time reporting. (p. 20, Section XIII)

# **Exhibit 9: Nye County Review**

## DIDS Review-- Nye County Plan

Meet Standards

Does Not Meet Standards

### Estimated Cost of the Plan:

|  |                  |
|--|------------------|
| Contract Attorneys   | \$750,000        |
| Litigation Expenses  | \$100,000        |
| Appointed Counsel Program Coordinator  | \$75,000         |
| <b>Total:</b>  | <b>\$925,000</b> |
| Nye County Maximum Contribution (Sec 19):  | \$828,596.55     |
| State Expense:   | \$96,403.45      |
| Original Estimate: \$950,000 (in our Budget request to the legislature, we requested \$121,403.46 for Nye) |                  |

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

Meet Standards

Does Not Meet Standards

- 2. Plan for hiring contractor attorneys (Sec. 24):**

Meet Standards

Does Not Meet Standards

Nye County will annually recruit attorneys to provide indigent defense services on a contract basis. The Appointed Counsel Program Coordinator will establish an Appointed Counsel Selection Committee to review qualifications. The selection committee will determine if an attorney is qualified to enter into a contract. P. 5-6.

- 3. Appointment of Counsel (Sec. 25)**

Meet Standards

Does Not Meet Standards

**Indigency Screening (Sec. 25(1)):** The Appointed Counsel Program Coordinator or Court Administration may conduct screening no later than 48 hours after arrest. P. 3, Section 3(E)(ii).

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** Counsel shall be appointed promptly after a judge or master finds a defendant is eligible. P. 4, Section 3(E)(ii). The Appointed Counsel Program Coordinator will select the attorney for appointment once notified by the Court. P. 12, Section 7(B).

**Distribution of Cases (Sec. 25(3)):** Cases shall be assigned on a rotational basis from the list of qualified attorneys. P. 12, Section 7(b)(iii).

**Initial Appearance (Sec. 25(4)):** The Appointed Counsel Program Coordinator shall provide Representational Services for all Eligible Clients who are in custody and shall be prepared to address appropriate released conditions. P. 11, Section 6(D).

- 4. Confidential Communications (Sec. 26):**

Meet Standards

Does Not Meet Standards

The Plan provides information on the facilities available for privileged communications. P. 9, Section 4(F).

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

Nye County will budget for case-related expenses. Expenses in excess of \$2,500 must be submitted to the Coordinator for pre-authorization before incurred. P. 9, Section 4(E).

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

Consistency in representation required by the Plan. P. 10, Section 6(B).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. See p. 10, Section 6(A).

**Davis Required Language (Sec. 29(2)):** Required language set forth. See p. 10, Section 6(A).

**Client surveys (Sec 29(3)):** Qualified Attorneys must ensure clients are notified of and encouraged to participate in client surveys authorized by the Department. See p. 11, Section 6(G).

**8. Prompt Compensation (Section 43)**

**Meet Standards**       **Does Not Meet Standards**

Contracted Counsel are paid quarterly. P. 8, Section 4(C). Appointed Counsel shall submit billing to the Appointed Counsel Program Coordinator for payment. P. 8, Section 4(B)(iv).

**9. Caseload Reporting (Section 46)**

**Meet Standards**       **Does Not Meet Standards**

Appointed Counsel shall report caseload data and time as promulgated by the Regulations of the Board. P. 11, Section 6(H).

# **Exhibit 10: White Pine County Review**

**DIDS Review**  
**White Pine County Plan\***

\*The White Pine County Plan is a Proposal and has not yet been approved by the White Pine Board of County Commissioners. It is tentatively scheduled for the Board meeting on October 13, 2021.

**Meet Standards**                       **Does Not Meet Standards**

|  |                       |
|--|-----------------------|
| Contract Attorneys    3 PD contracts @ \$164,430   | \$493,290.00          |
| Investigators for PD Office  | \$300,000             |
| Experts for PD Offices   | \$200,000             |
| Investigators for Conflict Counsel   | \$100,000             |
| Experts for Conflict Counsel   | \$50,000              |
| Conflict Counsel   | \$75,000              |
| <b>Total:</b>  | <b>\$1,218,290.00</b> |
| <b>White Pine County Max Contribution (Sec 19):</b>  | <b>\$452,400</b>      |
| <b>State Expense:</b>  | <b>\$765,890</b>      |
| <b>Original Estimate:</b> \$549,800 (in our Budget request to the legislature, we requested \$97,400 for White Pine) |                       |

**1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter “Sec.”]).**

**Meet Standards**                       **Does Not Meet Standards**

**2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**                       **Does Not Meet Standards**

Section 3 describes the hiring Plan. The Board of Commissioners request proposals with specifications that meet or exceed NAC 180 § 2-50. P. 1.

**3. Appointment of Counsel (Sec. 25)**

**Meet Standards**                       **Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** County, or its designee, will screen detainees not later than 48 hours after arrest. Section 4. P. 2.

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** once a judicial officer determines that the criminal detainee is qualified to receive indigent defense services, a member of the Firm will be there for the first appearance or bail hearing. Section 4, p. 2. If there is a conflict with the Firm, the firm will provide immediate notice to DIDS for selection of new counsel. Section 4, p. 2.

**Distribution of Cases (Sec. 25(3)):** Conflict cases shall be assigned on a rotational basis from the list of qualified attorneys. P. 3, Section 4.

**Initial Appearance (Sec. 25(4)):** providers of indigent defense services will be present in court and prepared to address matters. P. 3, Section 5.

**4. Confidential Communications (Sec. 26):**

**Meet Standards**       **Does Not Meet Standards**

Plan provides information on the location of facilities for confidential communications. P. 4, Section 6.

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

County will set aside funding for experts and investigators which will be administered by the Department. Section 7, p. 4.

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

Consistency in representation required by the Plan. Section 8, p. 4.

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. P. 5, Section 9

**Davis Required Language (Sec. 29(2)):** Required language set forth. P. 5, Section 9

**Client surveys (Sec 29(3)):** Surveys will be provided to clients. P. 5, Section 9

**8. Prompt Compensation (Section 43)**

**Meet Standards**       **Does Not Meet Standards**

Payment of fees of Hourly and Capital Case appointed attorneys shall be approved by the Department. P. 5, Section 10.

**9. Caseload Reporting (Section 46)**

**Meet Standards**       **Does Not Meet Standards**

Section 12 requires attorneys to use LegalServer. Request clarifying language in the footnote of page 5 that LegalServer does not need to be used for billing, but attorneys must still use it pursuant to Section 12.

# **Exhibit 11: Elko County Review**

## DIDS Review-- Elko County Plan

Meet Standards

Does Not Meet Standards

### Estimated Cost of the Plan:

|                            |             |
|----------------------------|-------------|
| Public Defender's Office   | \$1,776,795 |
| Appointed Indigent Defense | \$300,000   |
| Total:                     | \$2,076,794 |

Elko County Maximum Contribution (Sec 19): \$1,790,273 (Elko is requesting to modify their maximum contribution – as they reported municipal expenses as well as 432B)  
State Expense: \$286,521

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

Meet Standards

Does Not Meet Standards

- 2. Plan for hiring contractor attorneys (Sec. 24):**

Meet Standards

Does Not Meet Standards

Elko County does not hire contract attorneys. Elko County employs a Public Defender.

In the future, Elko County may contract with private attorneys for conflict purposes. The process is set forth on page 8, Section V(G).

- 3. Appointment of Counsel (Sec. 25)**

Meet Standards

Does Not Meet Standards

**Indigency Screening (Sec. 25(1)):** Elko County Sheriff's Office or other law enforcement will be responsible for the initial screening within 48 hours. P. 3 Section III(E)(2).

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** Elko Public Defender will be first line of appointment. If there is a conflict, the Public Defender will contact the Appointed Counsel Program Coordinator to select counsel from the panel list. P. 4, Section IV.

**Distribution of Cases (Sec. 25(3)):** Public Defender Office is used in Elko. Not applicable.

**Initial Appearance (Sec. 25(4)):** Elko PD will be present for all initial appearances/arraignments and prepared to address appropriate released conditions. p. 5, Section IV(D). If there is a conflict, the appointed counsel coordinator will assign an attorney from the list to be present.

- 4. Confidential Communications (Sec. 26):**

Meet Standards

Does Not Meet Standards

The County will provide accommodations for confidential communications. P. 10, Section VIII.

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**

**Does Not Meet Standards**

Public Defender shall have a budget to pay for such fees. P. 5, Section IV(F).

For Appointed Counsel, Elko County will establish a case-related expense budget independent of the judiciary for such expenses. Case-related expenses exceeding \$2,500 must be submitted to the Appointed Counsel Coordinator for pre-authorization. Final expenses will be reviewed by the Appointed Counsel Coordinator for reasonableness and submitted to the Elko County Fiscal Affairs Office for Payment. P. 7, Section V(2).

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**

**Does Not Meet Standards**

Plan requires consistency in representation, to the greatest extent possible. Administrative and other tasks that do not affect the rights of the defendant may be delegated, if necessary. p. 10, Section VII(B).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**

**Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. See p. 9, Section VII(A).

**Davis Required Language (Sec. 29(2)):** Required language set forth. See p. 9, Section VII(A).

**Client surveys (Sec 29(3)):** Counsel shall ensure that any client surveys authorized by BIDS are provided to clients at the conclusion of representation. P. 10, Section VII(F).

**8. Prompt Compensation (Section 43)**

**Meet Standards**

**Does Not Meet Standards**

Compensation for appointed counsel are to be filed with the Appointed Counsel Program Administrator. The process is set forth, p. 6, Section V(C).

**9. Caseload Reporting (Section 46)**

**Meet Standards**

**Does Not Meet Standards**

To the extent required by the Board, Attorneys providing indigent defense services under the plan shall maintain caseload data and track time spent providing indigent defense services in accordance with the regulations. P. 10, Section VII(C)(3).

# **Exhibit 12: Humboldt County Review**

## DIDS Review -- Humboldt County Plan

**Meet Standards**

**Does Not Meet Standards**

**Estimated Cost of the Plan:**

|  |                  |
|--|------------------|
| Public Defender's Office                   | \$337,590        |
| Alt Public Defender Counsel                | \$247,640        |
| <b>Total:</b>                              | <b>\$585,230</b> |
| Humboldt County Max Contribution (Sec 19): | \$474,345        |
| Estimated State Expense:                   | \$110,885        |

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

Humboldt County does not hire contract attorneys. Humboldt County employs a Public Defender and a Conflict Public Defender.

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** A Pretrial Services Officer will screen for indigency within 48 hours. P. 3, Section III(E)(2).

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** The Appointing Authority will make the indigency determination. The Alternate Public Defender will handle all first appearances, Valdez-Jiminez hearings, 48 hour hearings, and 72 hour hearings. See 6, Section V(B); p. 6, Section V(D). The Public Defender is appointed to all indigent adults charged with a felony or gross misdemeanor and adult specialty courts. The Alternate Public Defender will handle all other cases. If there is a conflict, the Public Defender and Alt Public Defender will file a motion with the court and the case will automatically be transferred to the Alt PD from the PD or the PD from the Alt PD. If both offices are conflicted out, the office will file a motion with the Court and notify the Department of Indigent Defense Services for appointment of private counsel from the list of qualified counsel. See p. 6, Section VI(A) and VI(B).

**Distribution of Cases (Sec. 25(3)):** Public Defender Office is used in Humboldt. Not applicable.

**Initial Appearance (Sec. 25(4)):** Humboldt Alt PD will be present for all initial appearances/arraignments and prepared to address appropriate released conditions. P. 6, Section VI(D).

- 4. Confidential Communications (Sec. 26):**

**Meet Standards**

**Does Not Meet Standards**

The Plan provides information on how to set up a confidential meeting in the jail, private rooms in the courthouse. The detention center also has private rooms for telephone conferences. See p. 10, Section IX.

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**

**Does Not Meet Standards**

PD and Alt PD each have a budget within the office for expert witness fees, witness fees, witness travel costs, and investigation costs. P. 6, Section V(F). Appointed Counsel shall submit requests for case related expenses which exceed \$1,000.00 to DIDS for approval. P. 7, Section VI(D).

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**

**Does Not Meet Standards**

Plan requires consistency in representation, to the greatest extent possible. Administrative and other tasks that do not affect the rights of the defendant may be delegated, if necessary. P. 9, Section VIII(B).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**

**Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. See p. 8, Section VIII(A).

**Davis Required Language (Sec. 29(2)):** Required language set forth. See p. 9, Section VIII(A).

**Client surveys (Sec 29(3)):** Counsel shall ensure that any client surveys authorized by BIDS are provided to clients at the conclusion of representation. P. 10, Section VIII(F).

**8. Prompt Compensation (Section 43)**

**Meet Standards**

**Does Not Meet Standards**

Private counsel shall submit claims to DIDS for review and approval on an interim basis. Once approved and reviewed by DIDS, they will be sent to the Humboldt County Comptroller for payment. P. 7, Section VI(C).

**9. Caseload Reporting (Section 46)**

**Meet Standards**

**Does Not Meet Standards**

Humboldt county will utilize data collection and case management systems provided by DIDS at state expense for caseload and time reporting. P. 10, Section IX.

# **Exhibit 13: Pershing County Review**

**DIDS Review -- Pershing County Plan**

**Meet Standards**

**Does Not Meet Standards**

**Estimated Cost of the Plan:**

|  |                     |
|--|---------------------|
| Public Defender's Office                     | \$270,000           |
| Conflict Public Defender Office              | \$54,000            |
| Second Tier Conflict Public Defenders Office | \$15,000            |
| Third Tier Conflict Public Defender          | \$5,000             |
| Panel Attorneys                              | \$5,000             |
| Counsel Administrator                        | \$50,000            |
| Expenses                                     | \$20,000            |
| <b>Total:</b>                                | <b>\$419,000.00</b> |

**Pershing County Maximum Contribution (Sec 19): \$246,998.51**

**State Expense: \$172,001.49**

- 1. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

- 2. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

The selection of the Public Defender shall be selected by the County Commissioner in consultation with the Counsel Administrator. P. 10 (Section V(I)). The same is true for the First Tier Conflict Public Defender (p. 12, Section VI(I)); the Second Tier Conflict Public Defender (p. 12, Section VII(I)); and the Third Tier Conflict Public Defender (p. 15, Section VIII(R)); and the Panel Attorneys (p. 17, Section VIII(W)).

- 3. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** The Court Administrator shall conduct a screening and provide the recommendation to the Court. (P. 5, Section IV(D)(2)). The screening will occur within 48 hours. (P. 7, Section IV(D)(4)).

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** The judge shall appoint counsel, if eligible. If the judge determines that the private attorney recommended to be appointed is not suitable for the particular case, they will contact the Counsel Administrator to ask for the next in rotation. (p. 8, Section IV(E)).

If the Public Defender determines there is a conflict, a motion must be written to the Court. If the Court believe the motion has merit, the Court shall appointed the First Tier Conflict Public Defender. (p. 9, Section V(B)). There is a similar process for conflicts of the First Tier Conflict Public Defender (p. 11, Section VI(B)); Second Tier Public Defender (p. 12, Section VII(B)). If the Third Tier Public Defender (p. 14, Section VIII(K)) or the Panel Attorneys (p. 16, Section

VIII(B)) have a conflict, the process is modified where the Court asks the Appointed Counsel Administrator for an attorney for appointment.

**Distribution of Cases (Sec. 25(3)):** rotational basis. (p. 8, Section IV(E)).

**Initial Appearance (Sec. 25(4)):** Public Defender shall provide representation at the first appearance. (p. 8, Section IV(G)). Counsel at first appearance must be prepared to address conditions of release. (p. 9, Section IV(G)).

**4. Confidential Communications (Sec. 26):**

**Meet Standards**       **Does Not Meet Standards**

The Plan provides that the courthouse has two meetings rooms that are available to any attorney who has an ongoing case. The jail will allow visits between counsel and their clients in the meeting room in the jail. (p. 10, Section V(D)).

**5. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**       **Does Not Meet Standards**

The Public Defender has a line item within his budget for this purpose. (p. 10, Section V(G)).

The First Tier Conflict Public Defender (p. 11, Section VI(G)); Second Tier Public Defender (p. 13, Section VII(G)); the Third Tier Public Defender (p. 15, Section VIII(G)), and the Panel Attorneys (p. 17, Section VIII(U)) have the same process. Each must submit a request for payment to the counsel administrator who will then recommend approval or denial. The approval will be paid through the county vouchering process. If there is a dispute, the Court will determine if the voucher will be paid.

The specific duties of the Appointed Counsel Administrator are set forth in Section XI(C). See p. 20-21.

**6. Vertical Representation Requirement (Sec 28):**

**Meet Standards**       **Does Not Meet Standards**

Plan requires representation to be vertical. (p. 9, Section IV(H) and (p. 18, Section X(B)).

**7. Standards of Representation (Sec. 29(1)):**

**Meet Standards**       **Does Not Meet Standards**

**Standard (Sec. 29(1)):** Required language set forth. (p. 18, Section X(A)).

**Davis Required Language (Sec. 29(2)):** Required language set forth. (p. 18, Section X(A)).

**Client surveys (Sec 29(3)):** Surveys must be provided as authorized by BIDS. (p. 19, Section X(F)).

**8. Prompt Compensation (Section 43)**

**Meet Standards**       **Does Not Meet Standards**

The First Tier Conflict Public Defender (p. 11, Section VI(E)); Second Tier Public Defender (p. 13, Section VII(F)); and the Third Tier Public Defender (p. 15, Section VIII(O)) is compensated through a rate set by the County Commissioners.

Panel attorneys will be compensated at the statutory rate through the County's vouchering process. The attorney will submit a request for reimbursement on a monthly basis to the Court Administrator. The Court Administrator will recommend approval or denial of the request to the County Administrator. (p. 17, Section VIII(S)).

**9. Caseload Reporting (Section 46)**

**Meet Standards**

**Does Not Meet Standards**

Providers of Indigent Defense Services as required to maintain data through the data collection and case management services provided by the Department at State expense for caseload and time reporting. (p. 21, Section XIII)

# **Exhibit 14: Storey County Review**

**DIDS Review -- Storey County Plan**

**Meet Standards**

**Does Not Meet Standards**

**Expenses**

|  |                 |
|--|-----------------|
| <b>Estimated Cost of the Plan:</b>           | \$ Not Provided |
| <b>Storey Maximum Contribution (Sec 19):</b> | \$89,545.52     |
| <b>Estimated State Contribution:</b>         | \$ Not Provided |

→**Recommendation:** Assist Storey County to estimate the cost to carry out the plan.

- 10. Plan must be free from political and undue budgetary influence and subject to judicial supervision in same manner as retained counsel or prosecuting attorney (Temporary Regulation of the Board on Indigent Defense Services Section 23 [hereinafter "Sec."]).**

**Meet Standards**

**Does Not Meet Standards**

The Plan, as currently written, allows judicial oversight (senior judges or judge pro tempore) for the approval of requests for compensation of indigent defense experts as well as the billing of appointed counsel. See p. 6, Section 8(e)(3) and p. 8, Section 11(c)(1)(iii).

→**Recommendation:** Assist Storey County to develop an appropriate designee or encourage use of the Department.

- 11. Plan for hiring contractor attorneys (Sec. 24):**

**Meet Standards**

**Does Not Meet Standards**

Storey County uses the Nevada State Public Defender and does not hire contractor attorneys.

- 12. Appointment of Counsel (Sec. 25)**

**Meet Standards**

**Does Not Meet Standards**

**Indigency Screening (Sec. 25(1)):** The screening for indigency must be conducted by the Storey County Sheriff's Office, or other court or law enforcement personnel within 48 hours, or sooner as required by applicable law or "within the time frame directed by the Court." P. 4, Section 6(a).

→**Recommendation:** Ensure the plan provides that a screening will occur within 48 hours.

**Prompt Appointment and handling a Conflict of the PD (Sec. 25(2)):** Unless there is a clear conflict, the Public Defender will be selected for the case by the indigent defense coordinator. P. 5, Section 8(d). If there is a conflict, the public defender will notify the indigent defense coordinator to reassign the case. P. 5, Section 8.

**Distribution of Cases (Sec. 25(3)):** The indigent defense coordinator will use best efforts to balance the number of cases assigned to each conflict counsel by fairly rotating through the list. P. 5, Section 8(d). If no conflict counsel is available, the Court may appoint any attorney who, in the Court's discretion will provide competent representation. P. 6, Section 8(e).

→ **Recommendation:** Remove language from the Plan which allows the indigent defense coordinator to select attorneys that are not on the Department list of attorneys. The law requires the Department maintain a list of attorneys eligible to provide appointed or contract indigent defense services in the rural counties. NRS 180.430. Attorneys that are not included on the list may not provide appointed indigent defense services in the rural counties. Plans must require that indigent defense services representation be compliant with, among other things, the regulations of the Board on Indigent Defense Services. Section 29(1). The regulations require attorneys to apply with the Department prior to practicing indigent defense services in the rural counties. See Section 32. It is recommended that such language allowing appointment of attorneys outside of the list be eliminated as it is not in compliance with the law.

**Initial Appearance (Sec. 25(4)):** Missing language

→**Recommendation:** Ensure required language is in the Plan. Request the following language is added: appointed attorneys must be present at initial appearances and arraignments are expected to be prepared to address appropriate release conditions in accordance with relevant statute, rule of criminal procedure, and caselaw. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant.

**13. Confidential Communications (Sec. 26):**

**Meet Standards**

**Does Not Meet Standards**

Facilities are available including meeting rooms outside each courtroom and private meeting space at the jail. P. 10, Section 15(c).

**14. Ensure Resources to conduct an independent investigation and hire experts (Sec. 27):**

**Meet Standards**

**Does Not Meet Standards**

Storey County will employ an indigent defense coordinator. Requests up to \$1,000 may be incurred without pre-authorization of the coordinator. Expenses over \$1,000 must be submitted through the coordinator to a Senior judge or judge pro tempore for review and approval. If the request is denied, a motion can be filed with the Court. P. 8, Section 12(d)(iii).

→**Recommendation:** Assist Storey County to develop an appropriate designee or encourage use of the Department.

**15. Vertical Representation Requirement (Sec 28):**

**Meet Standards**

**Does Not Meet Standards**

The Plan expects attorneys to ensure that the attorney appointed to represent an indigent person is expected to represent that person through every stage of the case. P. 10, Section 16(j).

**16. Standards of Representation (Sec. 29(1)):**

**Meet Standards**

**Does Not Meet Standards**

**Standards of Representation 29(1):** required language included. P.10, Section 16(g).

**Davis Required Language (Sec. 29(2)):** missing language.

**Client surveys (Sec 29(3)):** Plan requires surveys to be distributed as required by the Board of Indigent Defense Services. P. 10, Section 16(d).

→ **Recommendation:** Ensure required language is in the Plan.

**17. Prompt Compensation (Section 43)**

**Meet Standards**

**Does Not Meet Standards**

Storey County will employ an Indigent Defense Coordinator. Appointed counsel will submit requests for compensation through the indigent defense coordinator. The coordinator will submit the request to a senior judge or a judge pro tempore for review and approval. If the request is denied, counsel may file a motion with the appropriate court. P. 7, Section 11(c).

→ **Recommendation:** Assist Storey County to develop an appropriate designee or encourage use of the Department.

**18. Caseload Reporting (Section 46)**

**Meet Standards**

**Does Not Meet Standards**

The Plan requires attorneys to make arrangements for required caseload and time reporting. P. 10, Section 15(b).

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**October 15, 2021**

**APPENDIX B**  
**REQUEST FOR ATTORNEY FEES**  
**REQUEST FOR CASE-RELATED EXPENSES**

**REQUEST FOR ATTORNEY FEES**

Attorney: \_\_\_\_\_

Date: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

Client Name: \_\_\_\_\_  
(If juvenile, use first initial and last name)

Case No.: \_\_\_\_\_

Court: \_\_\_\_\_

Funding Source: State  County  Charge: \_\_\_\_\_

**ATTORNEY FEES REQUESTED:** [Refer to NRS 7.125 or applicable contract for hourly rate].

Attorney Time: \_\_\_\_\_ Hour@ \$ \_\_\_\_\_ rate per hour = \$ \_\_\_\_\_

Pay to: \_\_\_\_\_

**CASE STATUS:** As of today, this case is:

Currently Active/Interim billing. Invoice Period: From \_\_\_/\_\_\_/\_\_\_ To \_\_\_/\_\_\_/\_\_\_

**-OR-**

The representation was terminated by [select one]:

Judgement of Conviction, Acquittal/Dismissal, by Order of Court

Substitution of Counsel                      FTA / Bench Warrant                      Remittitur

Other (provide description)

**\*\*\* Supporting Documentation must be included in order for this request to be processed. \*\*\***

**STATEMENT MADE UNDER OATH**

I hereby certify that the above and foregoing claim is just and reasonable. That the work performed was necessary in the defense of my client, and that said claim is now due, owing, and unpaid.

That if this is not my initial billing in this matter, I have previously received \$ \_\_\_\_\_ in fees in the representation of this matter.

\_\_\_\_\_  
Claimant

**APPROVAL**

To be completed by DIDS

DIDS has reviewed this request and has:  approved a total amount of \$ \_\_\_\_\_; OR

not approved this request: \_\_\_\_\_

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

## REQUEST FOR CASE-RELATED EXPENSE

Attorney: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Defendant Name: \_\_\_\_\_  
(If juvenile, then first initial and last name)  
Court of Jurisdiction \_\_\_\_\_  
Funding Source: \_\_\_\_\_

Date: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
Case No.: \_\_\_\_\_  
Charge: \_\_\_\_\_ e \_\_\_\_\_ e

INVESTIGATOR       EXPERT       MITIGATION SPECIALISTS  
 OTHER. Please describe:

Name: \_\_\_\_\_ Tax ID No.: \_\_\_\_\_  
License No.: \_\_\_\_\_

Field of Expertise: \_\_\_\_\_  
Hourly Rate: \$ \_\_\_\_\_ Hours Requested: \_\_\_\_\_ Total: \$ \_\_\_\_\_

**Explain Reason for Request:**

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### APPROVAL

To be completed by DIDS

DIDS has reviewed this request and has:  approved a total amount of \$ \_\_\_\_\_;  not approved this request.

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**October 15, 2021**

**APPENDIX C**  
**DESIGNEE CONFIDENTIALITY AGREEMENT**

**Steve Sisolak**  
Governor



**Marcie Ryba**  
Executive Director

**Thomas Qualls**  
Deputy Director

**Peter Handy**  
Deputy Director

**STATE OF NEVADA**  
**DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578  
Phone: (775) 687-8490 | [dids.nv.gov](http://dids.nv.gov)

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the State of Nevada Department of Indigent Defense Services (“DIDS”) and its Designated Appointed Counsel Administrator \_\_\_\_\_ (“Designee”), for the purposes of protecting all Confidential Client Information regarding all indigent defendant cases to which Designee has access in its official capacity.

The Term of this Agreement will remain in effect throughout Designee’s tenure serving in the capacity of Designee.

**1. Confidentiality.**

The Designee recognizes and acknowledges that all confidential, privileged, attorney-client, and propriety information it may have access to in the course of its duties as Designee, including any information generally considered confidential is not only a valuable, special, and unique asset, but is also protected by the attorney-client privilege and by the Fifth and Fourteenth Amendments to the United States Constitution. Designee will not, during or after the Term, in whole or in part, directly or indirectly, use or disclose such confidential, attorney-client, and proprietary information to any person, firm, corporation, association, prosecutor, governmental agency, or any other entity, for any reason or purpose unless expressly authorized by DIDS. This provision shall continue in full force and effect in perpetuity.

Neither DIDS nor any party who holds a possessory or privacy interest in the Confidential Information is waiving nor will they be deemed to have waived or diminished, any of their attorney work product protections, attorney-client privileges, or similar protections and privileges as a result of its Designee having access to Confidential Information (including Confidential Information related to pending or threatened litigation) to the Designee, regardless of whether DIDS has asserted, or is or may be entitled to assert, such privileges and protections.

The parties: (a) agree that all information received by Designee in its role as Designee is Confidential Information that is subject to all such privileges and protections as set forth elsewhere in this agreement; (b) intend that such privileges and protections remain intact should either party become subject to any actual or threatened proceeding to which the Confidential Information covered by such protections and privileges relates; and (c) intend that at all time

relevant the Designee shall have the right to assert such protections and privileges toward any third party.

No Designee shall admit, claim, or contend, in any proceedings involving either party or the Confidential Information, that any party has waived any of its attorney work-product protections, attorney-client privileges, or similar protections and privileges with respect to any Confidential Information, documents or other material disclosed or not disclosed to Designee in the course of its duties.

**2. Additional Definitions.**

Protection of “Confidential Information” also expressly means: (1) all proprietary information of DIDS, including:

Any data and information that is owned by or in possession of DIDS, whether embodied in writing or other physical form or communicated or disclosed in any other manner which is protected by attorney-client privilege, attorney work product, or is otherwise treated by DIDS as confidential. “Confidential Information” also more generally includes, without limitation, information relating to the financial affairs, policies, services, clients, employees, including, without limitation: legally protected, privacy, financial, residence, criminal history, defense theory, and any and all of the foregoing confidential information of any other agent, employee, or subsidiary of DIDS, or any person or agency to whom DIDS owes a fiduciary duty.

\_\_\_\_\_  
signature

\_\_\_\_\_  
signature

\_\_\_\_\_  
printed name  
Designee

\_\_\_\_\_  
printed name  
obo Department of Indigent Defense

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**October 15, 2021**

**APPENDIX D**  
**DESIGNEE AGREEMENT**

**Steve Sisolak**  
Governor



**Marcie Ryba**  
Executive Director

**Thomas Qualls**  
Deputy Director

**Peter Handy**  
Deputy Director

**STATE OF NEVADA**  
**DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578  
Phone: (775) 687-8490 | [dids.nv.gov](http://dids.nv.gov)

**Designee Agreement of Terms & Conditions**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the State of Nevada Department of Indigent Defense Services (“DIDS” or “the Department”) and its Designated Appointed Counsel Administrator \_\_\_\_\_ (“Designee”), to ensure compliance with DIDS Regulations and relevant Nevada Law.

The Term of this Agreement will remain in effect throughout Designee’s tenure as Designee.

The Designee maintains their designation at the pleasure of the Executive Director of DIDS. The Executive Director of DIDS may suspend or revoke the designation at any time, with or without cause or reason.

Designation is expressly conditioned upon the Designee agreeing to the following terms:

1. The Designee agrees to comply with all relevant statutory and regulatory authority, specifically, Nevada Revised Statutes Chapters 7, 171, 180, and 260, and Nevada Administrative Code Chapter 180.
2. The Designee agrees to utilize LegalServer case management software, for which an account and training will be provided by DIDS at no cost to Designee, in the performance of their duties and in a manner as required by the Department.
3. In the performance of their duties, Designee must maintain their independence from the judiciary and the prosecuting agency. If any member of the judiciary or the prosecuting agency attempts to exert pressure or influence over Designee’s performance of their duties, Designee must report the attempts to the Department as soon as is practicable.
4. If any funds approved by Designee are subsequently denied or modified by any person for any reason, Designee must report the denial or modification of funds to the Department as soon as is practicable.
5. If the Designee becomes aware of any possible violations of Nevada Revised Statutes Chapters 7, 171, 180, and 260, or Nevada Administrative Code Chapter 180, Designee must furnish the following information to the Department as soon as is practicable:

- a. A brief narrative of the facts and circumstances surrounding the possible violation;
  - b. Any documentation related to the possible violation; and
  - c. A list of other witnesses to the possible violation.
6. If in the course of its duties, the Designee intends to deny or modify any claim for payment of attorney fees, or request for pre-authorization of defense expenses, or request for other fees or costs, Designee must contact the Department to report and discuss Designee's reasons for the intended denial or modification, prior to issuing the denial or modification. This requirement is in addition to any reporting required by Designee's local Indigent Defense Plan or any other agreement with Designee's local county.
  7. If in the course of its duties, the Designee intends to deny or modify any claim for investigator or expert fees, Designee must contact the Department to report and discuss Designee's reasons for the intended denial or modification, prior to issuing the denial or modification. The Department has final approval authority.
  8. In the course of its duties, the Designee shall occasionally select conflict counsel. Designee shall only select conflict counsel from the list of qualified attorneys approved by DIDS. Selection must be in a manner approved by DIDS. The Department has final authority regarding the selection of counsel.
  9. If any of Designee's actions as Designee become the subject of a Petition for Judicial Review pursuant to Nevada Revised Statutes Chapter 233B or any other provision of law, Designee must notify the Department as soon as is practicable.
  10. Upon request, Designee will provide such information or documentation as may be required by the Department.
  11. In the event Designee becomes unable to carry out the duties of Designee, Designee must contact the Department immediately to discuss an appropriate solution and substitution of Designee.
  12. Upon termination of Designee's position, by either the Designee or the Department, all relevant case information, financial information, and other documentation, passwords, accounts, and pending matters associated with Designee's position, must be turned over to the Department immediately.

\_\_\_\_\_  
signature

\_\_\_\_\_  
signature

\_\_\_\_\_  
printed name  
Designee

\_\_\_\_\_  
printed name  
obo Department of Indigent Defense

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**October 15, 2021**

APPENDIX E  
REQUEST FOR INFORMATION: CONSULTANT/DATA ANALYST

**Steve Sisolak**  
Governor



**Marcie Ryba**  
Executive Director

**Thomas Qualls**  
Deputy Director

**STATE OF NEVADA**  
**DEPARTMENT OF INDIGENT DEFENSE SERVICES**

896 W. Nye, Suite 202 | Carson City, NV 89703  
Phone: (775) 687-8490 | [www.dids.nv.gov](http://www.dids.nv.gov)

Request For Information (RFI) No. 101

For

DEPARTMENT OF INDIGENT DEFENSE SERVICES

Release Date: September 20, 2021  
Deadline for Submission: October 15, 2021

For additional information, please contact:  
Marcie Ryba, Director  
(775) 687-8490  
E-mail: [mryba@dids.nv.gov](mailto:mryba@dids.nv.gov)

This document must be submitted  
in the Vendor's Response

**Contact Information**

Vendor Company Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Contact Person \_\_\_\_\_

Print Name & Title \_\_\_\_\_

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## **NOTICE**

This solicitation is a Request for Information (RFI) only. It is NOT a solicitation for quotations, bids, or proposals. No contract award will result from this RFI. The RFI process will be used to gather information, Vendor contacts, and to expand upon the Department of Indigent Defense Services (DIDS) possible need for a Request for Proposal (RFP).

This RFI, having been determined to be the appropriate method for gathering the best information, is designed to provide interested Vendors with sufficient information to submit replies meeting the intent of this request. It is not intended to limit a Vendor's content or exclude any relevant or essential data.

## **RFI Background**

The purpose of this RFI is to gather information and interest from Vendors that may be interested in responding to the RFI to perform a wage salary survey, create an incentive program, and review the oversight process of the Department. The wage salary study would review salaries for public defenders and the hourly rate for appointed counsel with the federal system and neighboring states to see if the payment is in line with other areas. The review of incentive programs will compare programs across the country which create pipelines to bring public defenders to the rural counties and retain them in the rural areas. Ultimately, the study would recommend a program for Nevada. The review of the oversight process and determine the most efficient and effective process for oversight of the State of Nevada.

## **Introduction**

The Department of Indigent Defense Services (DIDS) is requesting information from qualified vendors to assist DIDS in performing a wage salary survey, creating an incentive program for attorneys, and reviewing the oversight process of the Department.

DIDS requests information from qualified vendors which may include, but is not limited to, private sector firms, not-for-profit organizations, and public or private institutions such as universities or colleges with expertise in conducting research as described in later sections of this RFI.

## **Motivation for the Project**

In 2019, the Nevada Legislature established the Department of Indigent Defense Services (DIDS) through AB81. DIDS is responsible for improving the representation of indigent defendants through several steps. First, DIDS must establish minimum standards and regulations for the delivery of indigent defense services to ensure that such services meet the constitutional requirements and do not create any type of economic disincentive or impair the ability of the defense attorney to provide effective representation. After the regulations are imposed, DIDS must oversee the rural indigent defense attorneys to ensure that the minimum standards and regulations set forth by DIDS are being followed.

Temporary Regulation 41 of the Board on Indigent Defense Services provides that an attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and recourses. The rates of compensation paid by county district attorneys, the Nevada Attorney General,

and other county or state offices must serve as guidance for reasonable compensation. Further, Temporary Regulation 42(1)(j) provides that contracts for attorneys providing contract indigent defense services shall provide compensation at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience, and must consider overhead, expenses, and costs relating to significant attorney travel. A wage salary survey is necessary to determine what a “reasonable hourly rate” is and to determine whether public defenders are receiving a “reasonable salary.”

DIDS must work with the UNLV Boyd School of Law to determine incentives to recommend offering to law students and attorneys to encourage them to provide indigent defense services, especially in the rural areas of the state. NRS 180.320(2)(f).

Temporary Regulation 40 and NRS 180.440 require DIDS to provide oversight for reviewing the manner in which indigent defense services are provided throughout the state. DIDS needs to create a process to ensure that it is efficient and effective. DIDS has created client surveys and attorney questionnaires, but the process will not roll out until the October 1, 2021 start date.

### **The Structure of Nevada’s Indigent Defense System**

Nevada is composed of 17 counties. Until this point, counties and courts have received very little state-level oversight with regards to indigent defense practices. With indigent defense historically funded at the county-level, each county has made independent decisions about the structure and delivery of its indigent defense services.

Carson City and Storey County, alone among the rural jurisdictions, use the Nevada State Public Defender’s office to provide primary (but not conflict) representation. Only the three rural counties of Elko, Humboldt, and Pershing have a county-funded and administered public defender office, furnished and equipped at government expense and staffed by full-time government employees who receive a salary and benefits. Churchill, Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine counties instead provide right to counsel services by contracting with private attorneys. Each county sets forth its own compensation mechanisms. Cities receive almost no direction at all from the state about how to provide representation to indigent defendants charged in the municipal courts with misdemeanors that carry possible jail sentences. There are four free-standing municipal courts in all the 15 rural counties combined: Fallon Municipal Court within Churchill County; Fernley Municipal Court and Yerington Municipal Court within Lyon County; and Ely Municipal Court within White Pine County.

The variation across courts in delivery systems and payment schemes offers critical motivation for a weighted caseload study that can provide meaningful and objective standards for quality representation across the state. For more information on the structure of Nevada’s trial courts, please see the Annual Report of the Nevada Judiciary at <https://nvcourts.gov/Supreme/Reports/Annual Reports/2019 Annual Report/>

Work that has been completed thus far can be found on our website: [dids.nv.gov](https://dids.nv.gov) and in our annual reports:

The Transformation Begins – July 1, 2021 DIDS Annual Report: <https://dids.nv.gov/uploadedFiles/didsnvgov/content/Annual Report/FINAL%20v6%20Annual%20Report.pdf>

Fiscal Year 2020 DIDS Annual Report:

<https://dids.nv.gov/uploadedFiles/didsnvgov/content/Annual Report/DIDS%20Annual%20Report%202020.pdf>

## SCOPE OF WORK

Vendors are encouraged to respond to the below tasks/deliverables. Additionally, any recommendations to carry out the provisions of NRS 180 will be considered.

### 1. Wage Salary Survey.

Set forth a wage salary survey to collect data on salaries of indigent defense providers and prosecutors. Review hourly rates for appointed counsel to determine if they are appropriate or need to be increased/decreased. Also, determine the hourly rate of prosecutors as compared to indigent defense providers to determine whether parity exists. Comparison of pay in the urban vs. rural areas and whether a financial incentive should be created to encourage attorneys to practice indigent defense in the rural counties. Review Temporary Regulations 41 and 42 to determine a “reasonable salary” and “reasonable hourly rate.”

- Consultant shall meet (virtually) with the Executive Leadership during the project, as needed.
- Consultant shall identify and benchmark Indigent Defense Providers salaries across the State: comparing urban and rural; state, county, and federal; full time employees of an office and independent contractors.
- Consultant shall review compensation of indigent defense providers in the rural counties and compare the compensation to an hourly basis of prosecutors in the same county with comparable experience. This review should take into account that prosecutors do not pay for overhead or expenses out of their own compensation.
- Consultant shall conduct relevant research and provide comparative analysis of conventional salaries and best practices of those peer organizations.
- Consultant shall review increases in the cost of living since the hourly rate for appointed counsel was last amended in 2003 (See NRS 7.125).
- Market compensation data should also be presented by gender and race to ensure equitable pay in each of these areas.
- The Consultant shall create salary ranges for the organization and accompanying policy, guidance, documentation, and communication guides.
- The Consultant shall review whether financial incentives would assist in encouraging individuals to practice indigent defense in the rural areas.
- The Consultant shall meet (virtually) with the Executive Leadership of DIDS at the conclusion of the project for a debrief and next steps.
- Provide instructional information to allow DIDS staff to conduct individual salary audits and adjustment consistent with the study methods until the next study is conducted.

- The Consultant may be required to present findings on the survey to BIDS at a Board Meeting (date yet to be determined).

## **2. Create Incentive Program.**

The purpose of the incentive program would be to encourage attorneys to provide indigent defense, especially in the rural counties. Ultimately, the consultant would determine if there is a shortage of indigent defense providers in the rural counties, why there is a shortage, and how to fix the shortage.

- Consultant shall meet (virtually) with the Executive Leadership during the project, as needed.
- Consultant shall review each rural county to determine whether there is a shortage of small-town, rural lawyers who are experienced in handling serious felony cases or managing specialized practice areas, such as juvenile law, sex crimes, environmental crime, and capital defense.
- Consultant shall conduct relevant research to make this determination which may include a review of how many experienced attorneys are presently in each rural county making the distinction between those that reside in the county versus those that travel to the county from an urban area.
- Consultant shall conduct relevant research to determine the cost to the county to compensate attorneys to drive to the rural county to provide indigent defense representation.
- If there is a shortage of available and experienced indigent defense counsel in the rural Nevada counties, consultant shall research existing programs across the country which create incentives to encourage attorneys to move to the rural counties to practice indigent defense. Consultant shall review whether regional public defender offices could also be a possible solution for Nevada.
- Consultant shall decide the program that would best fit with Nevada's specific needs and present such findings in a report.
- Consultant shall work with DIDS and the William S. Boyd School of Law at the University of Nevada, Las Vegas, in the creation of the plan.
- The Consultant shall meet (virtually) with the Executive Leadership of DIDS at the conclusion of the project for a debrief and next steps.
- The Consultant may be required to present findings on the survey to BIDS at a Board Meeting (date yet to be determined).
- Provide instructional information to allow DIDS staff to implement the recommended program and how to monitor the success of the program.

## **3. Oversight Review**

DIDS is required to oversee the provisions of indigent defense services throughout Nevada. Previously, a survey was developed for collection of client feedback. Feedback must be incorporated into responsibility for reviewing the way indigent defense services are provided throughout the state. It is necessary to create

an Oversight Process which complies with the oversight requirements of NRS 180 and Temporary Regulation 40 and is also effective and efficient, especially due to the Department's small staff.

- Consultant shall meet (virtually) with the Executive Leadership during the project, as needed.
- Consultant shall conduct relevant research to compare how other indigent defense commissions provide oversight.
- Consultant shall review the current oversight process and assist the Department in finalizing or modifying the oversight process which determines whether: 1. minimum standards for the provision of indigent defense services established by the Board on Indigent Defense Services are being followed; 2. court rules regarding the provision of indigent defense services are being followed; 3. indigent defendants are being asked to provide reimbursement for their representation or to take any other actions that violate the constitution, any law, a court rule or a regulation of the Board; and 4. Representation of indigent defendants is being provided in an effective manner.
- The Consultant shall review the staffing levels of the Department and recommend whether additional staff is needed to comply with oversight requirements.
- The Consultant shall meet (virtually) with the Executive Leadership of DIDS at the conclusion of the project for a debrief and next steps.
- Provide instructional information to allow DIDS staff to implement the recommended program the success of the program.
- The Consultant may be required to present findings on the survey to BIDS at a Board Meeting (date yet to be determined).

## **1. QUESTIONS REGARDING RFI**

All questions relating to this RFI must be submitted to:  
Marcie Ryba at 775-687-8490 or [mryba@dids.nv.gov](mailto:mryba@dids.nv.gov).

## **2. HOW TO RESPOND**

All Responses must be received by **October 15, 2021**. Please send your responses to:  
**Marcie Ryba at [mryba@dids.nv.gov](mailto:mryba@dids.nv.gov)**

## **3. DISCLAIMERS**

### **3.1 COST OF PREPARING THE RESPONSE**

All costs associated with preparing and responding to this RFI are the sole responsibility of the Vendor and will not be reimbursed by the State. Furthermore, there is no guarantee that a procurement of services will take place as a result of this RFI.

### **3.2 RIGHT TO CANCEL**

The State of Nevada Department of Indigent Defense Services (DIDS) reserves the right to cancel this RFI at any time.

### **3.3 ACCEPTANCE OF RESPONSES**

3.3.1 All responses properly submitted will be accepted.

3.3.2 All materials submitted become the property of the State of Nevada. Materials may be evaluated by anyone designated by the State as part of the response evaluation committee.

### **3.4 RESPONSE TO THE RFI IS NOT MANDATORY**

Failure to respond to this RFI in whole or in part will not disqualify any Vendor from participation in any subsequent solicitation regarding this matter.

### **3.5 RESPONSE NON-BINDING**

An RFI is not a procurement process and may not be used to enter into a contract. This RFI will not result in a contract award; a response to an RFI is not an offer and may not be accepted to form a binding contract.

### **3.6 REVIEW OF RESPONSES**

DIDS will establish an impartial review committee to review the responses to the RFI and reserves the right to consult with other state experts and stakeholders.

### **3.7 SUBSEQUENT SOLICITATIONS**

Information obtained through this RFI may be used to shape future plans of DIDS, including the potential for issuing a Request for Proposals for the types of services identified in this process.

### **3.8 SITE LOCATION**

Primarily, the Department of Indigent Defense Services is located in Carson City, Nevada.

### **3.9 PROJECTED TIMETABLE**

BIDS and DIDS anticipate following the tentative schedule shown below.

| <b>Event</b>      | <b>Date &amp; Time</b>    |
|-------------------|---------------------------|
| Release RFI       | <b>September 20, 2021</b> |
| RFI Responses Due | <b>October 15, 2021</b>   |

The State reserves the right to modify this schedule at the State's discretion. Notification of changes in the response due date would be posted on the DIDS website or as otherwise stated herein.

### **3.10 RFI RESPONSES PROPERTY OF THE STATE**

All materials submitted in response to this RFI become the property of the State. By submitting a response, the Vendor acknowledges and accepts that contents of the response and associated documents may become available to the public, except items that have been identified as proprietary by the Vendor shall label all information deemed proprietary or confidential in their response.

## **4. BASIC QUESTIONS**

The State requires responders to include the Vendor's company name, address, phone number, e-mail address, fax number, and contact person when submitting answers/question.

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**October 15, 2021**

APPENDIX F  
SOVAL SOLUTIONS—FINAL DRAFT DELIVERABLES

# Soval Solutions, LLC

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## Final Draft Deliverables

Prepared for the Nevada  
Department of Indigent Defense Services

30 June 2021

Soval Solutions, LLC  
1406 Veterans Drive, #212  
Omaha, NE 68022  
Dr. Mitchel N. Herian, Owner  
[mitch@sovalsolutions.com](mailto:mitch@sovalsolutions.com)  
402-651-6329

## **Tasks**

From September, 2020 to June, 2021, Soval Solutions has served as a data analyst with the Nevada Department of Indigent Defense Services (DIDS) working on several lines of effort. As described below, several of the contracted tasks have been completed and the work products are currently being utilized by DIDS and rural counties. In other cases, the tasks have been partially completed, or no work on the task was completed. This is largely due to the short time period between the contract start date and the end of the 2021 state fiscal year. Needless to say, the coronavirus pandemic also slowed work to some degree.

It is suggested that the data analyst role continue to be supported so that work on ongoing tasks can be completed. The presence of a data analyst will provide DIDS with a resource in the face of unanticipated needs during the 2022 state fiscal year. More generally, the presence of a data analyst into the 2022 fiscal year will help ensure that DIDS meets its obligations under the Davis v Nevada Settlement Consent Judgment. Below is a brief overview of each task engaged in by Soval Solutions, as well as a status update indicating next steps and recommendations.

### **1. Annual Reporting Form**

**Overview.** Soval Solutions worked with DIDS staff to create Quarterly Financial Status Report, which will be distributed to counties on a quarterly basis. The form will be used to identify quarterly expenditures for defense services. Information will be used to determine state compensation to counties for defense service expenditures and will be used to set future budget requests. See Appendix A for more information.

**Next Steps and Recommendations.** The form is now available online. The form should be accessed by/distributed to counties for their use.

### **2. Data Collection with National Center for State Courts (NCSC)**

**Overview.** Served as liaison for data request to Nevada Administrative Office of the Courts (AOC). Data were used to determine whether current data collection mechanisms in rural Nevada courts had utility in the NCSC caseload study. The goal was to explore the potential for AOC data to supplement the attorney caseload data with administrative data. See Appendix B for more information.

**Next Steps and Recommendations.** Data from the Nevada AOC were not utilized by the NCSC in its study. NCSC is currently in the process of analyzing data from its attorney caseload study.

### **3. Counties Maximum Contributions**

**Overview.** Soval Solutions worked with DIDS to collect county-level budget data to determine historical expenditures on indigent defense in rural counties. Formula for contributions was established early in contract period.

**Next Steps and Recommendations.** Formula is now in use. As information from Annual Report Form is submitted, DIDS staff and data analyst may examine whether alterations to maximum contribution formula are warranted.

#### **4. Client Satisfaction Survey**

**Overview.** Soval Solutions developed several versions of a client satisfaction survey. The initial draft was based on 2018 Public Defenders Service survey included as appendix in Davis v Nevada Settlement Consent Judgment. Subsequent iterations were based on several peer-reviewed articles. The final draft created after discussions about specific purposes of the client survey. A Spanish version of this survey was also created. The survey largely consists of questions with responses along a Likert type scale. There were discussions of whether to include a free text box for clients to add more general statements about their public defender. However, after deliberation, it was decided that there are already several avenues through which indigent defendants can lodge complaints about their representation. Further, there are currently limitations on the information that DIDS staff can process, without the presence of a dedicated data analysts. Therefore, it was decided that a free text box would not be included in the survey. See Appendix C for copies of the surveys.

**Next Steps and Recommendations.** The next step will be to determine appropriate methods for the delivery of the survey to clients. The most likely method of administration is for the public defender to mail the survey to defendants with sentencing documents. Alternative delivery methods may include an online survey through Helpful Algorithms and Logic (HAL), the state's online database. The data analyst can provide guidance on survey administration as this process unfolds.

According to the in Davis v Nevada Settlement Consent Judgment, "Defendants shall establish a system for issuing client surveys to indigent defendants and incorporating client survey feedback into Defendants' responsibility for reviewing the manner in which indigent defense services are provided throughout the state." To meet this requirement, it will be critical that data from the client satisfaction survey be properly analyzed and interpreted. A data analyst can provide technical expertise to ensure that data are effectively incorporated into official decision-making processes with DIDS and across public defenders offices in Nevada.

#### **5. Attorney Monitoring/System Performance**

**Overview.** Soval Solutions helped develop several methods for assessing attorney performance, including an attorney self-rating questionnaire, a supervisor rating form, and a court observation form. Initial drafts of documents were updated based on strategic communications about how to best assess attorney performance and needs, as well as system-level performance and needs. See Appendix D for more information.

**Next Steps and Recommendations.** The next step will be to determine appropriate methods for the delivery of the tools. The most likely method of administration of the attorney self-rating

questionnaire is through an online survey through HAL. Supervisor rating forms and court rating forms can also be developed and used to collect data that will be housed in HAL.

Soval Solutions recommends that the self-rating form and the supervisor rating form be completed at roughly the same time. For example, it may be beneficial that both forms be completed within a two-week window annually. This would ensure that the attorney and supervisor are both working from contemporaneous information when they complete the forms. It is also recognized that some sort of incentive or requirement may be necessary in order for attorneys to complete the forms. Incentives can include drawings for gift cards, or perhaps a reduction in bar dues (pending agreement from the State Bar of Nevada).

For court observations, it may not be possible for DIDS staff to be present at each county within the two-week window in which self-rating forms and supervisor forms are completed. Therefore, court observations may need to take place outside the two weeks. If in-person court observations are utilized, it may be beneficial to increase DIDS staff to accommodate the increased workload on current staff. Further, travel budgets will likely need to be increased to facilitate the process.

Once again, the presence of a data analyst may enhance the administration of the attorney self-rating questionnaire, the supervisor rating form, and the court observation form. The data analyst can provide guidance on the administration of these tools, as well as guide data analysis to ensure proper interpretation and use of the data.

## 6. Wage Salary Survey

**Overview.** Soval Solutions collected data from publicly-available sources about pay for public defenders and prosecutors. Data is to be used to make comparison of salaries for both sets of individuals. The data analyst looked into federal sources of data such as the Bureau of Labor Statistics but was unable to find anything of use. See Appendix E for more information.

**Next Steps and Recommendations.** To fully assess attorney pay in rural Nevada, additional effort is needed. To date, Soval Solutions and DIDS staff have examined various variables that might inform the need to adjust hourly rates for conflict and contract attorneys as well as perhaps adjust annual salaries for public defenders. Nevada last set its hourly contract rate at \$100/hour in 2003. According to the Bureau of Labor Statistics Consumer Price Index calculator, \$100 in 2003 dollars would be equal to about \$148 in 2021 dollars. A contract rate of \$150 in Nevada would cover the cost of inflation from 2003 to 2021. Further, if a \$150/hour is adopted in Nevada, the state should also consider setting regular increases, similar to annual cost of living adjustments. The federal defender system currently adopts this approach.

In addition to setting competitive pay for rural defenders, it is critical to attract young lawyers to work as public defenders in rural Nevada. The data analyst and DIDS staff have examined various programs that might be implemented to attract legal talent to rural areas of the state. It is possible that a survey of law students regarding their thoughts on rural practice will yield information about what types of incentives would encourage young lawyers to serve as public defenders in rural areas. In the end, if legislation on this point is introduced, a fiscal note

analysis may be required. In sum, the continuation of the data analyst position will allow this work to continue unimpeded.



**Appendix B. Data Collection with National Center for State Courts (NCSC)**

Below is a copy of the data request that was submitted to the Nevada Administrative Office of the Courts to assist in the weighted caseload study that was conducted by the National Center for State Courts.

Soval Solutions, LLC is currently working as a contractor for the Nevada Department of Indigent Defense Services (DIDS). Soval Solutions is working with the National Center for State Courts (NCSC) to conduct several analyses to help DIDS develop regulations for rural Indigent Defense Attorneys in the state. As part of this effort, NCSC is conducting a weighted caseload study to determine attorney demand in rural areas.

To obtain a sense of caseloads in rural areas, we seek a breakdown in the number of cases, by county, according to the table below. We would like up-to-date data for the current fiscal year, as well as the three prior fiscal years.

We understand that annual reports may contain some of this information, but our understanding is that annual reports will probably not contain case counts that line up with our preferred categories. We request the data in one of two formats: 1) aggregate number of cases, by county, for each of the categories listed in the table below; or 2) individual-level data sets that would allow a data analyst to classify cases according to the categories below, and then compute aggregate statistics. We are happy to have a phone call or email exchange about which approach is most appropriate in this case.

|  |  |  |
|--|--|--|
| A. Death penalty case (NRS 193.130)  |  |  |
| B. Non-capital A&B felonies 10+ years (NRS 193.130)  |  |  |
| C. B felonies <10years; C, D & E felonies (NRS 193.130)  |  |  |
| D. Gross misdemeanors (NRS 193.140)  |  |  |
| E. Misdemeanor DUIs  |  |  |
| F. Misdemeanors - domestic violence (NRS 33.018 with penalty set forth in NRS 200.485)                       |  |  |
| G. Other misdemeanors, including misdemeanor appeals (NRS 193.150)   |  |  |
| H. Probation violations  |  |  |
| I. Parole violations   |  |  |
| J. Direct appeals of capital convictions (adult)   |  |  |
| K. Direct appeals of non-capital felony convictions and gross misdemeanors (adult) appeals in juvenile cases |  |  |
| Juvenile appeals   |  |  |
| L. Specialty court cases   |  |  |
| M. Juvenile delinquency cases (NRS 62B.330)  |  |  |
| Juvenile gross misdemeanor (NRS 62B.330)   |  |  |
| Juvenile misdemeanors (NRS 62B.330)  |  |  |

|  |  |  |
|--|--|--|
| N. Juvenile child in need of supervision (NRS 62B.320) |  |  |
| O. Juvenile certification proceedings (NRS 62B.390)    |  |  |
| P. Juvenile probation violations (NRS 62B.340)         |  |  |
| Q. Juvenile parole violations (NRS 62B.340)            |  |  |
| R. NRS Chapter 128 cases (TPR)                         |  |  |
| S. NRS Chapter 432B cases (Abuse & Neglect)            |  |  |
| T. NRS Chapter 433A cases (Mental Health Commitment)   |  |  |
| U. NRS Chapter 159 cases (Guardianship)                |  |  |

**Appendix C. Client Satisfaction Survey**

**Nevada Department of Indigent Defense Services Client Satisfaction Survey**

The Nevada Department of Indigent Defense Services wants to learn more about your experiences with your appointed public defender. The responses you give to the survey will be confidential and will not be shared with your attorney or anyone else. The results will help us improve representation for indigent defendants in Nevada. For the first group of questions, please fill in the blank or circle your response.

- 1. Your name and case number (optional – will be kept confidential)**

Name \_\_\_\_\_ Case No. \_\_\_\_\_

- 2. Which county was your case in?**

Name: \_\_\_\_\_

- 3. What was the name of your appointed attorney?**

Name: \_\_\_\_\_

- 4. After your arrest, how many days was it until you saw your attorney?**

\_\_\_\_\_ Days

- 5. Did you speak with your attorney prior to the first time you saw a judge?**

Yes                      No

- 6. Did you always have a private place to talk to your attorney?**

Yes                      No

- 7. Did you have the same attorney throughout your case?**

Yes                      No

We would now like to ask you some questions about your satisfaction with your attorney. Please circle the most appropriate answer for the following statements.

- 8. My attorney talked to the witnesses I asked to be interviewed.**

Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree      Don't Know

- 9. My attorney listened carefully to what I said.**

All of the time      Most of the time      About half the time      Some of the time      None of the time

**10. My attorney thoroughly investigated my case.**

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

**11. My attorney discussed the evidence with me.**

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

**12. I feel like my attorney spent enough time with me.**

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

**13. My attorney was always prepared in court and appeared to understand my case.**

|                 |                  |                     |                  |                  |            |
|-----------------|------------------|---------------------|------------------|------------------|------------|
| All of the time | Most of the time | About half the time | Some of the time | None of the time | Don't Know |
|-----------------|------------------|---------------------|------------------|------------------|------------|

**14. My attorney answered all my questions.**

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

**15. My attorney explained the different decisions I could make in my case and the possible advantages and disadvantages of each one.**

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

**16. Overall, I am satisfied with the way my attorney handled my case.**

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

**17. How fair or unfair was the outcome of your case?**

|           |      |         |        |             |            |
|-----------|------|---------|--------|-------------|------------|
| Very Fair | Fair | Neutral | Unfair | Very Unfair | Don't Know |
|-----------|------|---------|--------|-------------|------------|



- |                       |            |         |               |                          |       |
|-----------------------|------------|---------|---------------|--------------------------|-------|
| Totalmente de acuerdo | De acuerdo | Neutral | En desacuerdo | Totalmente en desacuerdo | No sé |
|-----------------------|------------|---------|---------------|--------------------------|-------|
- 12. Siento que mi abogado(a) me dedicó suficiente tiempo.**
- |                       |            |         |               |                          |       |
|-----------------------|------------|---------|---------------|--------------------------|-------|
| Totalmente de acuerdo | De acuerdo | Neutral | En desacuerdo | Totalmente en desacuerdo | No sé |
|-----------------------|------------|---------|---------------|--------------------------|-------|
- 13. Mi abogado(a) estaba siempre preparado(a) en las audiencias y parecía entender mi caso.**
- |                |                           |                          |               |       |       |
|----------------|---------------------------|--------------------------|---------------|-------|-------|
| Todo el tiempo | La mayor parte del tiempo | Como la mitad del tiempo | Algunas veces | Nunca | No sé |
|----------------|---------------------------|--------------------------|---------------|-------|-------|
- 14. Mi abogado me respondió todas mis preguntas.**
- |                       |            |         |               |                          |       |
|-----------------------|------------|---------|---------------|--------------------------|-------|
| Totalmente de acuerdo | De acuerdo | Neutral | En desacuerdo | Totalmente en desacuerdo | No sé |
|-----------------------|------------|---------|---------------|--------------------------|-------|
- 15. Mi abogado(a) me explicó las distintas decisiones que yo podía tomar en mi caso y las posibles ventajas y desventajas de cada una.**
- |                       |            |         |               |                          |       |
|-----------------------|------------|---------|---------------|--------------------------|-------|
| Totalmente de acuerdo | De acuerdo | Neutral | En desacuerdo | Totalmente en desacuerdo | No sé |
|-----------------------|------------|---------|---------------|--------------------------|-------|
- 16. En general estoy satisfecho(a) con la forma en que mi abogado(a) llevó mi caso.**
- |                       |            |         |               |                          |       |
|-----------------------|------------|---------|---------------|--------------------------|-------|
| Totalmente de acuerdo | De acuerdo | Neutral | En desacuerdo | Totalmente en desacuerdo | No sé |
|-----------------------|------------|---------|---------------|--------------------------|-------|
- 17. ¿Qué tan justo fue el resultado en su caso?**
- |           |       |         |         |             |       |
|-----------|-------|---------|---------|-------------|-------|
| Muy justo | Justo | Neutral | Injusto | Muy injusto | No sé |
|-----------|-------|---------|---------|-------------|-------|

**Appendix D. Attorney Monitoring/System Performance**

**Nevada Department of Indigent Defense  
Indigent Defense Provider Survey**

The Nevada Department of Indigent Defense Services wants to support you and the important work you are doing in your indigent defense practice. Please take a moment to answer these brief questions (as they relate to your indigent defense work only) as clearly and candidly as you can by circling your response. There is also a space at the end for you to tell us about your primary area of concern or need. Thank you for your service in this important area of practice.

1. I have sufficient resources to provide effective legal services to my clients.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree
2. I am able to spend sufficient time with each client to understand their case and communicate their options effectively.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree
3. I am (or an attorney from my office ls) at all first appearances for my clients.  
All of the time      Most of the time      About half the time      Some of the time      None of the time
4. I am able to interview my clients within 48 hours of appointment.  
All of the time      Most of the time      About half the time      Some of the time      None of the time
5. I have a private place to talk to my clients.  
All of the time      Most of the time      About half the time      Some of the time      None of the time
6. Once appointed to a case, I appear for all hearings in the case, except in the case of emergencies.  
All of the time      Most of the time      About half the time      Some of the time      None of the time
7. I have sufficient time and resources to interview all necessary witnesses in my cases.  
All of the time      Most of the time      About half the time      Some of the time      None of the time
8. I hire an investigator for cases where necessary or helpful.  
All of the time      Most of the time      About half the time      Some of the time      None of the time
9. I have access to the State's evidence in a timely manner and am able to thoroughly review the evidence with my clients.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree
10. I hire experts for cases where necessary or helpful.  
All of the time      Most of the time      About half the time      Some of the time      None of the time
11. I have sufficient time to be prepared in court and to understand my cases.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

12. I thoroughly discuss the benefits and drawbacks of all plea offers with my clients.

All of the time    Most of the time    About half the time    Some of the time    None of the time

13. I have adequate training and experience to handle the kinds of cases and the level of charges I am assigned.

Strongly Agree    Agree    Neutral    Disagree    Strongly Disagree

14. Regarding the number of cases I handle, I am \_\_\_\_\_.

Very satisfied    Satisfied    Neutral    Dissatisfied    Very dissatisfied

15. I do not feel overwhelmed by the complexity or number of cases I handle.

Strongly Agree    Agree    Neutral    Disagree    Strongly Disagree

Please elaborate on any area(s) of your indigent defense practice that are of concern to you regarding insufficient resources, time, or fairness factors you have experienced:

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Finally, please tell us about your primary area(s) of concern with your county that you would like to see addressed in the County Plan for the Provision of indigent Defense Services:

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**Nevada Department of Indigent Defense  
Supervisor Assessment Survey**

The Nevada Department of Indigent Defense Services wants to public defenders and the important work that is being done in indigent defense practice. The current assessment asks you to rate your employees or contractors along several different categories. Please take a moment to answer these brief questions as clearly and candidly as you can by circling your response. If you do not know the answer to a question, please circle "Don't Know". There is also a space at the end for you to tell us about your primary area of concern or need in regard to the employee or contractor being assessed. Thank you for your service in this important area of practice.

1. Name of Employee/Contractor

Name \_\_\_\_\_

2. The attorney talks to witnesses that client asks to be interviewed.

|                   |       |         |          |                      |               |
|-------------------|-------|---------|----------|----------------------|---------------|
| Strongly<br>Agree | Agree | Neutral | Disagree | Strongly<br>Disagree | Don't<br>Know |
|-------------------|-------|---------|----------|----------------------|---------------|

3. The attorney listens closely to his or her clients.

|                    |                     |                           |                     |                     |               |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|
| All of the<br>time | Most of<br>the time | About<br>half the<br>time | Some of<br>the time | None of<br>the time | Don't<br>Know |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|

4. The attorney thoroughly investigates his or her cases.

|                    |                     |                           |                     |                     |               |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|
| All of the<br>time | Most of<br>the time | About<br>half the<br>time | Some of<br>the time | None of<br>the time | Don't<br>Know |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|

5. The attorney discusses evidence with his or her clients.

|                    |                     |                           |                     |                     |               |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|
| All of the<br>time | Most of<br>the time | About<br>half the<br>time | Some of<br>the time | None of<br>the time | Don't<br>Know |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|

6. The attorney is) at all first appearances for his or her clients.

|                    |                     |                           |                     |                     |               |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|
| All of the<br>time | Most of<br>the time | About<br>half the<br>time | Some of<br>the time | None of<br>the time | Don't<br>Know |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|

7. The attorney is able to interview my clients within 48 hours of appointment.

|                    |                     |                           |                     |                     |               |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|
| All of the<br>time | Most of<br>the time | About<br>half the<br>time | Some of<br>the time | None of<br>the time | Don't<br>Know |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|

8. The attorney has a private place to talk to his or her clients.

|                    |                     |                           |                     |                     |               |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|
| All of the<br>time | Most of<br>the time | About<br>half the<br>time | Some of<br>the time | None of<br>the time | Don't<br>Know |
|--------------------|---------------------|---------------------------|---------------------|---------------------|---------------|

9. The attorney appears for all hearings in the case, except in the case of emergencies.

|                 |                  |                     |                  |                  |            |
|-----------------|------------------|---------------------|------------------|------------------|------------|
| All of the time | Most of the time | About half the time | Some of the time | None of the time | Don't Know |
|-----------------|------------------|---------------------|------------------|------------------|------------|

10. The attorney has sufficient time and resources to interview all necessary witnesses in his or her cases.

|                 |                  |                     |                  |                  |            |
|-----------------|------------------|---------------------|------------------|------------------|------------|
| All of the time | Most of the time | About half the time | Some of the time | None of the time | Don't Know |
|-----------------|------------------|---------------------|------------------|------------------|------------|

11. The attorney hires an investigator for cases where necessary or helpful.

|                 |                  |                     |                  |                  |            |
|-----------------|------------------|---------------------|------------------|------------------|------------|
| All of the time | Most of the time | About half the time | Some of the time | None of the time | Don't Know |
|-----------------|------------------|---------------------|------------------|------------------|------------|

12. The attorney has access to the State's evidence in a timely manner and is able to thoroughly review the evidence with clients.

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

13. The attorney hires experts for cases where necessary or helpful.

|                 |                  |                     |                  |                  |            |
|-----------------|------------------|---------------------|------------------|------------------|------------|
| All of the time | Most of the time | About half the time | Some of the time | None of the time | Don't Know |
|-----------------|------------------|---------------------|------------------|------------------|------------|

14. The attorney has sufficient time to be prepared in court and to understand his or her cases.

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

15. The attorney thoroughly discusses the benefits and drawbacks of all plea offers with his or her clients.

|                 |                  |                     |                  |                  |            |
|-----------------|------------------|---------------------|------------------|------------------|------------|
| All of the time | Most of the time | About half the time | Some of the time | None of the time | Don't Know |
|-----------------|------------------|---------------------|------------------|------------------|------------|

16. The attorney has adequate training and experience to handle the kinds of cases and the level of charges he or she is assigned.

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

17. The attorney seems to feel overwhelmed by the complexity or number of cases he or she handles.

|                |       |         |          |                   |            |
|----------------|-------|---------|----------|-------------------|------------|
| Strongly Agree | Agree | Neutral | Disagree | Strongly Disagree | Don't Know |
|----------------|-------|---------|----------|-------------------|------------|

18. In general, the county has the resources necessary to successfully carry out defense responsibilities.

Strongly Agree    Agree    Neutral    Disagree    Strongly Disagree    Don't Know

19. Recent changes have improved the defense capabilities of attorneys in my county.

Strongly Agree    Agree    Neutral    Disagree    Strongly Disagree    Don't Know

20. Please elaborate on any area(s) of your indigent defense practice that are of concern to you regarding insufficient resources, time, or fairness factors you have experienced:

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21. Finally, please tell us about your primary area(s) of concern with your county that you would like to see addressed in the County Plan for the Provision of Indigent Defense Services:

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**Public Defender Court Observation Form**  
**(To be completed and submitted online)**

1. Name of Observer
2. County
3. Name of Reviewer
4. Date of Observation
5. Did the attorneys have a place to meet confidentially.
6. Attorneys appear to meeting clients prior.
7. How did judge(s) treat defense and defendant?
8. Attorneys appeared to be prepared and competent.
9. Were all defendants represented by an attorney during your visit?
10. Please enter any other notes about your visit.

## Nevada Department of Indigent Defense

### Client Satisfaction and Attorney Assessment Data Collection and Analysis Plan

This document outlines the data collection and analytic plan for four separate assessments: the Client Satisfaction Survey, the Attorney Self-Assessment, the Supervisor Assessment, and the Courtroom Observation Assessment.

#### Data Collection

**Client Satisfaction.** In accordance with the *Davis v Nevada* Settlement Consent Judgment, the Nevada Department of Indigent Defense (DIDS) is required to administer client satisfaction surveys to defendants who have been served by public defenders in the state. The timing and administration of the client satisfaction survey will be key to collecting valid information from clients who have been served by public defenders. Likely, the client satisfaction survey will need to be available in various modes in order to facilitate the process. Specifically, the survey should be available in paper-and-pencil format, as well as electronically via computers, tablets, or smartphones. The electronic version of the survey will be hosted on Legal Server, the case management system to be used by public defenders' offices in Nevada.

For in-custody clients, survey administered may vary across jurisdictions. In general, however, it will be attorneys' responsibility to deliver a client satisfaction survey—including a postage paid envelope—along with correspondence (e.g., the judgement/sentence or the right to appeal) that attorneys commonly send to incarcerated individuals at the end of their case.

**Attorney Self-Assessment.** Public defenders will be asked to self-rate their performance on an annual basis. The self-assessment will be programmed into Helpful Algorithms and Logic (HAL), the state's online database. A weblink to complete the survey will be delivered to attorneys via email. Attorneys will complete the assessment at their leisure prior to an annual deadline. It is likely that the survey will be delivered in mid-to-late-February with a deadline of mid-March each year.

**Supervisor Assessment.** Supervisors at the county level and management from DIDS will rate the performance of individual attorneys on a regular basis (e.g., annually), using an online form similar to the attorney self-assessment. The assessment will be programmed into HAL and made available for supervisors and managers to complete at their leisure prior to an annual deadline.

**Courtroom Observation.** Personnel from DIDS will conduct in-person courtroom observations. Observers will focus on general courtroom context, but will also record anything noteworthy about individual attorneys. To facilitate collection of data by observers, it will be beneficial that DIDS obtain devices such as iPads that allow observers to collect data in all areas of the state. These electronic devices will ideally have the ability to connect to the internet via both Wi-Fi and cellular data. Furthermore, due to the remote nature of data collection it will be necessary for DIDS to obtain sufficient travel funds, and perhaps additional personnel, to complete this portion of the attorney evaluation process.

#### Data Analysis of Quantitative Questionnaires

**Client Satisfaction.** To utilize the results of the Client Satisfaction Survey to inform decision-making at the organizational level, it is important to take the proper steps to score and analyze the survey. Doing

so will allow DIDS to identify specific areas in which clients communicate dissatisfaction with services, and will allow DIDS to take corrective action at the individual or organizational level. Below is some guidance on how to score and analyze the DIDS Satisfaction Survey.

**Scoring.** To quantitatively analyze the data from the DIDS Satisfaction Survey it is necessary to first convert categorical responses to numeric values. For example, on Question 5 of the survey: "Did you speak with your attorney prior to the first time you saw a judge?", it is appropriate to score a "Yes" response a "1", and score a "No" response a "0". The same approach should be taken for other "Yes/No" questions on the survey.

For Questions 8 through 16, a mix of response options range from "Strongly Disagree" to "Strongly Agree" and from "None of the Time" to "All of the Time". These responses should be re-scored on a 1-5 scale. That is, a response of "Strongly Disagree" should be scored a "1", and a response of "Strongly Agree" should be scored a "5". Similarly, a response of "None of the Time" should be scored a "1" and a response of "All of the Time" should be scored a "5". Similarly, Question 17 should be scored such that a response of "Very Unfair" should be scored a "1", and a response of "Very Fair" should be scored a "5". Questions 8 through 17 are worded in such a way that higher response values on these questions represent higher levels of agreement that attorneys are effectively representing clients.

**Descriptive Statistics.** Questions 8 to 17 will allow DIDS to evaluate the extent to which clients agree that they are being effectively represented by their public defender, are satisfied with their public defender, and view the outcome of their case as fair. By converting responses to these questions to numeric values as described above, it is possible to conduct a quantitative analysis of these questions. In particular, mean scores (and standard deviations) can be computed on each of these questions. This will allow DIDS to see those questions on which clients score attorneys relatively high or low, and allow for comparisons across questions.

**Comparison of Mean Scores.** The quantification of responses allows for a wide range of comparisons to be made. For example, after a sufficient number of Satisfaction Surveys have been collected, DIDS can compare responses to Question 9, for example, across age categories, across attorneys, or even across offices/counties. A t-test or analysis of variance (ANOVA) can be utilized to make these comparisons. These statistical tests provide mean scores for various groups (e.g., compare mean scores on Question 9 across those under 30 versus those over 30), as well as a statistical test to determine whether such differences are statistically significant. Such a test can provide DIDS with an understanding of whether different groups of clients view their interactions with public defenders differently. Once again, corrective actions can be taken if differences are found.

**Correlation Analysis.** The final analytic strategy recommended here is a correlation analysis. Correlation is a statistical technique used to describe the relationship between two variables. The correlation coefficient will range between a score of -1 (a perfect negative relationship) and 1 (a perfect positive relationship). A correlation coefficient of 0 indicates that there is no relationship between two variables.

To provide an example, it is likely that there will be a high level of correlation between one's agreement that "My attorney asked for my opinion on issues regarding my case", and "My attorney listened carefully to what I said". Upon collecting a sufficient number of surveys, and after converting variables to numeric scores, a Pearson Correlation can be computed to assess the positive relationship between

these two variables. Often, public opinion researchers will conduct large correlational analysis of many relevant variables included in a dataset. This approach can yield a large correlation matrix that allows researchers to see patterns in the relationships between many variables at one time. It is important to keep in mind the Pearson Correlation is appropriate with scaled variables such as Questions 8 through 17 on the Satisfaction Survey. If scaled questions are correlated with categorical variables (e.g., Yes/No questions or binary variables related to race/ethnicity/gender), Point Biserial Correlations are more appropriate. In many statistical packages, Person Correlations and Point Biserial Correlations are executed in the same way.

**Attorney Self-Assessment.** The recommendations provided above for the analysis of the Client Satisfaction Survey are relevant for the Attorney Self-Assessment. Questions that are ordered on a “Strongly Agree to Strongly Disagree” scale and an “All of the Time to None of the Time” scale should be quantified on a scale ranging from 1-5. That is, a response of “Strongly Disagree” should be scored a “1”, and a response of “Strongly Agree” should be scored a “5”. Similarly, a response of “None of the Time” should be scored a “1” and a response of “All of the Time” should be scored a “5”. This approach will allow analysts to compare mean scores and conduct correlational analyses as described above.

## Appendix E. Wage Salary Survey

### Nevada Department of Indigent Defense Services

#### Methodology to Inform Public Defense Attorney Pay Rates

##### **Goal 1. Determine whether rural public defenders' pay is roughly equivalent to prosecutor pay.**

Comprehensive information on defender and prosecutor pay is not readily available. The website [www.transparentnevada.com](http://www.transparentnevada.com) does contain information about pay for public employees. However, it is unknown whether the data are accurate and comprehensive. Surely, the data do not include information about hourly rates and fees paid to contract and conflict attorneys in rural areas. A rough analysis of the data suggest that salaries are comparable.

##### **Goal 2. Determine new minimum hourly rate for contract attorneys for entire state.**

There are several ways to determine the optimal hourly rate for conflict and contract defenders in Nevada. A straightforward method to use is to identify inflation since the rate was last set statutorily. In 2003, a \$100/hour rate for non-capital cases was set in Nevada. Using the Bureau of Labor Statistics Consumer Price Index Calculator ([https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)), it appears that \$100 in 2003 would be equal to \$148.15 in 2021 dollars. While this calculator does not consider geographical differences in cost of living (for example the cost of living in Nevada is higher than in many midwestern states), it does suggest the need for a 48% increase in attorney wages to keep up with the cost of inflation since the last increase.

An additional data point comes from the federal public defender system. As of January, 2021, the hourly rate for private attorneys in non-capital cases was \$155/hour, and \$197 in capital cases. Again, this is a nationwide figure that does not account for the wide variation in cost of living across geographies. Data show that these rates have increased regularly in recent years, suggesting that Nevada consider regular increases to its hourly rates ([https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-230-compensation-and-expenses#a230\\_16](https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-230-compensation-and-expenses#a230_16)).

Other sources of information to inform hourly rates for private defenders can be found in report in other localities and states. For example, a Harris County (TX) 2016 Report provides detailed information on private attorney pay and number of cases processed (<http://www.tidc.texas.gov/media/8d855ef7a4461a7/policy-monitoring-analysis-pretrial-id-harris-2016.pdf>). Other potential sources include Iowa State Public Defender Fees (<https://spd.iowa.gov/contract-attorneys/fee-claim-process>) and Missouri State Public Defender Fees (<https://publicdefender.mo.gov/private-counsel-opportunities/mspd-contracting/panel-rates/>); however, the latter sources may not be applicable to a state such as Nevada with a relatively high cost of living.

##### **Goal 3. Determine whether rates/contracts should differ across geographic areas.**

Within Nevada, it may be necessary to identify a baseline rate and include increased hourly rates for more urban areas with higher cost of living. This approach may be akin to federal GSA rates where there is a standard per diem/lodging rate for entire state and increased rates for urban centers (in the case of Nevada, Clark and Washoe Counties). Increased hourly rates can be applied in other areas that may

have high housing costs. Further, it might make sense to increase rates in those locales with historically high caseloads in relation to population.

#### **Goal 4. Identify Potential Programs to Increase the Number of Indigent Defense Attorneys in Rural Nevada**

A recent report (<https://www.smu.edu/~/media/Site/Law/Deason-Center/Publications/STAR-Justice/Greening-the-Desert/Report-Greening-the-Desert-FINAL.pdf>), highlights the lack of rural attorneys throughout the U.S. The report discusses strategies to recruit, train, and retain attorneys to practice criminal law in rural areas. In Nevada, it is unclear whether there are truly shortages of attorneys available to practice rural indigent defense. However, much like other states with expansive rural areas, attorneys who are considering practicing in those areas may face many challenges: high student debt loads, relatively low pay, lack of access to interpersonal networks, spotty internet and cell phone coverage, and lack of support from county governments. In situations where indigent defense providers are contract attorneys, it is not clear whether the contracted work will be sufficient to sustain a law practice; in such situations attorneys may be required to take on other legal work to ensure an adequate flow of business. Given these challenges, it is understandable that there may be new and experienced attorneys who are reluctant to take on a rural indigent defense practice.

The “Greening the Desert Report”, as well as a recent Pew report (<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/06/26/wanted-lawyers-for-rural-america>), highlight the many programs that states are implementing in the hopes of enticing lawyers to practice in rural areas. Incentives include: states ensuring higher rates of pay, partial or full student loan forgiveness for indigent defense practice, rural practice incubators within law schools, and specialized training for law students interested in working in rural areas. The Nevada DIDS and other relevant entities in Nevada should look closely at other states’ attempts at incentivizing lawyers to work in rural areas, particularly in the area of indigent defense.