

## **Agenda Item 4**

### **Attachment 4<sup>th</sup> Monitor Report**

**Fourth Report of the Monitor**

**Davis v. State, Case No. 170C002271B**

**May 12, 2022**

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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 January 15, 2022, to May 1, 2022.

This Report was delayed to account for incoming reports on data collection and their analysis by the administrators of the workload study.

## Summary Points

The Nevada Department of Indigent Defense (hereinafter “the Department”) continues to take significant steps toward compliance with the Judgment despite a limited budget and the necessary engagement of ten separate county governments in determining the shape of indigent defense services in the *Davis* counties.

The Department began visiting individual counties to establish rapport and determine needs and compliance. Among other tasks, the Department continued to work with providers to ensure that they enter case and workload information into Legal Server in anticipation of the workload study that the National Center for State Courts (NCSC) is conducting.

At the same time, this Report notes challenges to compliance, including imperfect provider compliance with Legal Server, the immediate need for a wage/salary survey, and the Department’s limited budget for oversight and training.

### Achievements

Among the Department’s compliance-related achievements are the following:

#### **In-person visits to the counties to build relationships and conduct oversight**

Since January 15, 2022, the Department’s Executive Director and Deputy Director have conducted introductory oversight visits in the following counties: Douglas, Esmeralda, Eureka, Lyon, Mineral, Nye (Pahrump and Tonopah on separate occasions), and White Pine.<sup>1</sup>

In these visits, the Department met with county leadership, justices of the peace, district court judges, and indigent defense counsel, checked on the existence of spaces for private

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<sup>1</sup> The Department visited Churchill County on December 6, 2021.

meetings in the jail/courthouse, and, when possible, observed court. The Department generated reports for each visit, which include follow-up tasks for future visits.<sup>2</sup>

**Retention of a data analyst to develop an oversight plan and to conduct a wage/salary survey.**

The Department secured funding for a data analyst to assist in developing an oversight plan and to conduct a wage/salary survey and incentive survey.

**Continued efforts to assist counties in developing their systems for selecting conflict counsel and approving fees/expenses**

As noted in earlier reports, the Department concluded 2021 with the major achievement of approving county plans, with accompanying budgets, for all ten *Davis* counties.<sup>3</sup> Since January 15, 2022, the Department has continued to work with counties to identify plan administrators, assist in the training of plan administrators, and administer county plans for counties that have no plan administrator. The Department serves on the committee to appoint contract counsel in Douglas. In addition, the Department assisted counties with fine tuning their plans for the FY2023 plans, which were due on May 1, 2022.

**Outreach to secure data collection from all rural indigent defense providers**

Since its first workload report, the Department has continued to reach out to individual providers and plan administrators to remind, assist, and encourage them to report their hours and case information via Legal Server. The Department's efforts resulted in substantially more compliance with reporting requirements in the second reporting quarter—January 1, 2022, to March 31, 2022—than in the first reporting quarter.

**Analysis and publication of data collected from rural indigent defense providers**

The Department published two quarterly workload reports documenting caseload and workload of attorneys. The reports are based on the reporting data provided during the October 1, 2021-December 31, 2021, and the January 1, 2022-March 31, 2022, periods, respectively.<sup>4</sup>

**Annual training**

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<sup>2</sup> The county reports are attached to this Report as Appendices A through G. An additional oversight report from remote communication with an indigent defense provider in Lincoln County generated a ninth report, attached as Appendix H.

<sup>3</sup> The Department's website has a tab linking to a webpage for "Information by County," which contains the county plans for all *Davis* counties. Each county narrative also links to a webpage for the name and contact information for the current contract attorneys or public defender for the county.

[https://dids.nv.gov/Resources/Selection\\_and\\_Billing/Information\\_by\\_County/](https://dids.nv.gov/Resources/Selection_and_Billing/Information_by_County/).

<sup>4</sup> The workload reports are available on the Department's website at [https://dids.nv.gov/Annual\\_Report/home/](https://dids.nv.gov/Annual_Report/home/).

The Department organized a two-day statewide indigent defense conference for May 26-27<sup>th</sup> in Las Vegas. The Department secured a grant for \$45,000 to reimburse rural attorneys for travel to the annual conference. As discussed below, ensuring effective assistance of counsel requires—in addition to oversight—building mentorship and peer relationships among attorneys providing indigent defense. Connecting otherwise isolated public defense attorneys is a crucial part of this process.

### **Areas of Concern**

The areas of concern discussed in this Report are not failures of the Department but are, rather, steps that appear necessary to comply with the terms of the Judgment. The Department is actively working to complete these steps but is limited by budget and other external factors.

#### **Adequate time keeping for the workload study**

The National Center for State Courts (NCSC) requested time keeping data from October 1, 2021 through March 31, 2022 so that the study administrators could determine if the data are sufficient to complete the workload study.

Recently, the NCSC determined that the Legal Server data—standing alone—are not an adequate basis from which to extrapolate existing attorney workloads. The NCSC believes, however, that it can arrive at recommended weighted caseloads without this data through a process described in further detail below.<sup>5</sup>

#### **Insufficient number of attorneys in some counties**

Douglas and Lyon counties have unfilled contracts. Other counties may need additional attorneys as well. Yet, there are few qualified attorneys interested in applying for the contracts.

In addition to a wage/salary survey, the data analyst will assist the Department in developing an incentive strategy to determine how to attract qualified practitioners to rural indigent defense practice.

#### **Budget for oversight**

The lean staff of the Department has made great strides in visiting most *Davis* counties. The question of whether the Department has adequate budget and staff to engage in all required oversight activities—in addition to the Department's other duties—should be studied and addressed.

#### **Budget for travel, mentorship, and trainings**

The Monitor has concerns that the Department's budget is inadequate to meet its goal of creating a culture of excellence through support, training, and mentorship. The Department has

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<sup>5</sup> See *infra* Section II E.

taken significant steps to foster relationships, mentorship, and opportunities for training, but it is limited by its budget. For example, the has no host fund and thus cannot provide meals for its two-day training conference in Las Vegas. The inability to host informal gatherings decreases the chances that attorneys will linger to talk, forming important peer and mentorship relationships.

## 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.

### I. Removing Financial Disincentives & Ensuring Independence of the Defense

In the past quarter, at least two major steps have taken place to address financial disincentives in the *Davis* counties. First, a data analyst has been retained to begin a wage/salary survey that should assist the state in determining an hourly rate of pay for rural indigent defense providers. Second, the Interim Finance Committee approved the first request for reimbursement for counties—a step that should signal to county leaders that they can adequately fund their indigent defense systems, assured that the state’s reimbursement system works.

#### A. Financial disincentives for attorneys

##### Determining a reasonable hourly rate of compensation

Determining adequate compensation is critical to quality representation. An inadequate hourly rate or contract rate can result in ineffective assistance of counsel due to (1) attorneys maintaining high caseloads from multiple sources and (2) an insufficient number of attorneys willing to accept appointments.

The Judgment requires the state to ensure that providers receive a “reasonable hourly rate that takes into account overhead and expenses, including the costs relating to significant attorney travel time.”<sup>6</sup> The compensation should be comparable to prosecutors in the same county, considering that prosecutors do not pay overhead and expenses.<sup>7</sup>

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<sup>6</sup> Judgment, 11. The state also must provide a “funding mechanism for excess, unusual, or complex cases.”

<sup>7</sup> See also Regulation 40(10). Per AB81, the Department’s standards must guard against financial disincentives to provide effective representation.

As discussed in the October 15, 2021, and the January 15, 2022, Monitor's Reports, the Department cannot assess the reasonable hourly rate without a wage/salary survey.<sup>8</sup> The Department has renewed its contract with the Soval Solutions data analyst, who will survey compensation structures in other jurisdictions, and document the salaries for prosecutors in the relevant counties.

Essential to the data analyst's work will be a survey of overhead and expenses for the indigent defense providers in the *Davis* counties. The critical issue for private attorneys is their overhead, which includes, among other things, office space, health insurance, malpractice insurance, support staff, travel expenses, and technology. When subtracting expenses from compensation, and dividing by the total hours worked, wage/salary analyses of appointed counsel in other jurisdictions have found that private attorneys taking indigent defense cases make approximately \$5 per hour.<sup>9</sup> A former contract attorney (now justice of the peace) in Nye County calculated her former hourly rate under her contract to be \$15 per hour.<sup>10</sup>

Often it is assumed that the cost of living is lower in the rural areas than in the cities and, thus, the hourly rate and the contract amounts should be lower. But expenses like loan debt remain the same regardless of geography. Critically, private attorneys who contract for indigent defense work do not qualify for the student loan forgiveness programs available to prosecutors and public defenders through the John R. Justice Program.<sup>11</sup>

Another factor to consider in wage setting is travel time. The distance traveled varies dramatically depending on the county and the attorney's practice. The contract attorney for Eureka, for example, travels over 100 miles from White Pine to Eureka, and also to another Eureka courthouse that is more than a two-hour drive from the county seat. Douglas, Lander, Lincoln, Lyon, and Nye each have more than one justice court, with long drives between them. In Mineral and Esmeralda counties, the contract public defender travels in from another county.

An analysis of the impact of travel time, as well as the total travel time of each attorney, would be helpful in determining compensation and incentives. Some states compensate appointed counsel for travel time. When Colorado calculated that rural indigent defense providers spent more than 60% of their time driving, the state began compensating for travel time to attract more attorneys to rural practice.<sup>12</sup>

Without knowing the reasonable hourly rate of compensation, it is impossible to know whether the annual and biannual contracts create a financial disincentive prohibited by the Judgment.<sup>13</sup> A reasonable rate of compensation permits the attorney to dedicate adequate time to

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<sup>8</sup> Second Report of the Monitor, 13-14 (October 15, 2021).

<sup>9</sup> Debra Cassens Weiss, *Contract Public Defenders in This State Make About \$5 Per Hour After Overhead*, *New Study Says*, ABA JOURNAL (July 9, 2020) (discussing study of the Indiana Public Defender Commission).

<sup>10</sup> Nye County (Pahrump) Onsite Visit Report (Appendix F).

<sup>11</sup> See John R. Justice Program description at <https://bja.ojp.gov/program:john-r-justice-jrj-program/overview>.

<sup>12</sup> Presentation by Jonathan Rosen, Coordinator of Legal Resources for the Colorado Office of Alternate Counsel, ABA Public Defense Systems Summit (April 21, 2022).

<sup>13</sup> Judgment, 13-14.



each case and reduces the chances that the attorney will take on a heavy private and appointed caseload to make a living. Inadequate compensation may force attorneys to assume a higher caseload—multiple contracts and private caseloads—to maintain their practice. These high caseloads may, in turn, result in incompetent representation and conflicts of interest when attorneys cut corners on some cases to accommodate their high caseloads.

In addition to high caseloads from multiple sources, inadequate compensation may result in a lack of attorneys willing to practice in the rural counties. Some Nevada counties are increasing their compensation in the hopes of attracting sufficient indigent defense counsel. Lyon and Douglas County raised their hourly to attract counsel for its conflict cases. Douglas County has had difficulty filling its contract positions and, in response, increased the amount of each contract to \$265,000 per year to attract applicants.

### **Incentives to practice**

Incentives to practice in rural areas can come in several forms: better pay, loan forgiveness, externships for students, mentorship of new attorneys, and ongoing support and training. As noted in the Monitor's Third Report, the Department's partnership with UNLV to create compensated externships may prove helpful. Two students will extern in rural counties this summer. But it should also be noted that, in 2021, no Boyd Law School graduates went to the rural counties to practice public defense.

The data analyst retained by the Department will create a survey of law students regarding their perspectives of rural practice and, if warranted, analyze legislative options and conduct a fiscal note analysis.<sup>14</sup> Several incentive programs from other states seem promising. In a recent ABA symposium on public defense systems, University of South Dakota Law School Professor Hannah Haksgaard discussed South Dakota's pioneering efforts to attract attorneys to rural small, tribal and rural (STAR) communities.<sup>15</sup> The state instituted a five-year incentive payment for sixteen lawyers who went to qualifying counties.<sup>16</sup> The program was so successful that the South Dakota legislature continues to fund lawyers to fill the spots as attorneys complete the five-year period.

Likewise, Colorado is experimenting with a program to support attorneys interested in private practice in underserved rural areas. The state provides support, training, and mentorship in lawyering and managing a law firm. Critically, attorneys in the program are paid a state salary for two years while they build their practice. Their status as employees of the state eliminates the impact of malpractice and health insurance payments as they establish their law firms. After their

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<sup>14</sup> Soval Solutions, Final Draft Deliverables, 3-4.

<sup>15</sup> Presentation by Professor Hannah Haksgaard, University of South Dakota School of Law, ABA Public Defense Systems Summit (April 21, 2022).

<sup>16</sup> *Id.* The application process is available on the website for the South Dakota Unified Judicial System here: <https://ujs.sd.gov/Attorneys/RuralRecruitment.aspx>

two-year period as salaried attorneys, their private practice begins in earnest, and they continue to accept appointments in indigent defense cases.<sup>17</sup>

The Department awaits the data analyst's wage/salary survey and assessment of options to incentivize rural practice.

## **B. Financial disincentives for counties**

As noted above, financial disincentives to effective representation can be the result of county finances.

The Department has been successful in ensuring that all counties have a system to fund experts and investigators free from interference by county administration or the judiciary. As part of its oversight process, the Department addresses occasional lapses in the system. For example, in Douglas County, county officials requested that the appointed counsel administrator notify the county of requests for expert funding. The Department assisted the appointed counsel administrator in addressing this issue.<sup>18</sup> The Department also addressed an issue in Nye County where district court judges were still approving funds for experts and investigators.<sup>19</sup>

As a general matter, if counties are concerned that the state will fail to promptly reimburse them for expenditures over their maximum contribution, they may hesitate to increase the contract amount or to contract with an additional attorney to reduce attorney workload. In contrast, timely and complete reimbursement should encourage counties to adequately fund their indigent defense systems.

The reimbursement system worked successfully on April 7, 2022, when the Interim Finance Committee approved the release of \$26,360 of earmarked funds to reimburse counties for expert and investigation expenses.<sup>20</sup>

Based on the counties' quarterly financial reports for the past three quarters, the Department projects that Douglas, Eureka, Lyon, Mineral, Nye, and White Pine will exceed their maximum contribution.<sup>21</sup> Esmeralda and Lincoln may not exceed their maximum contribution. Lander has not submitted its expenses and does not seek reimbursement. Churchill's quarterly

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<sup>17</sup> Rosen, *supra* note 12. The presenters' list of incentive programs is attached to this Report as Appendix J.

<sup>18</sup> Douglas County Onsite Visit Report, 2-3 (Appendix A).

<sup>19</sup> Nye County (Pahrump) Onsite Visit Report, 3 (Appendix F).

<sup>20</sup> The following counties requested reimbursement for experts or investigators: \$5055 for Douglas; \$ 19,588.97 for Lyon; \$ 1716 for White Pine. Expenses for investigation, experts, and similar case-related expenses in counties whose population is less than 100,000 and who do not have an office of the public defender is administered by the Department or its designee. Sec. 25 (2) (a) (3). *See also* NRS 180.320 (5)(e) (stating that Board of Indigent Defense Services recommends procedure for reimbursement for case related expenses like experts and investigators).

<sup>21</sup> The Department's "Expected *Davis* County Indigent Defense Expenditures in Excess of Maximum Contribution" is attached as Attachment I. Overall, expenditures for the past two quarters have been less than estimated in the county plans, but that may be partially due to unfilled contracts and counties that budgeted for death penalty cases that did not go forward. White Pine, for example, accounted for a death penalty case in its estimated costs for the fiscal year.

expenditures suggest that it will not exceed its maximum contribution, but it is unclear whether it has accounted for all expenses of its new public defender's office.

On April 27, 2022, the Department submitted a request to the Interim Finance Committee for \$352,919 to reimburse the counties out of the earmarked funds. As counties exceed their maximum contribution near the end of the fiscal year, their prompt reimbursement will provide assurances that the counties can rely on the state to adequately fund overages necessary for competent, effective indigent defense.

Reimbursement would be timelier for the counties and less labor-intensive for the Department if the Department had authority over the funds allocated for county reimbursement. As it stands, the Department must repeatedly present requests on an ad hoc basis to the Interim Finance Committee throughout the year. Each request for reimbursement is dependent on the meeting schedule of the Interim Finance Committee.

### **Recommendations**

- The wage/salary survey should include an analysis of overhead and expenses of attorneys who are currently contracted and appointed to represent indigent defendants in the *Davis* counties. This is essential to determining their hourly rate, and whether it is comparable to the compensation of the local prosecutor.
- The data analyst's study of incentives to rural practice may benefit from programs implemented in other states, like South Dakota and Colorado.<sup>22</sup>
- Reimbursement for county expenses over their maximum contribution should continue to be rapid and reliable. Ideally, the Department should control disbursements to ensure prompt reimbursement for providers and the counties. Having to repeatedly request portions of the earmarked funds from the Interim Finance Committee causes delays for the counties and additional work for the Department's limited staff.

## **II. Establishment of Minimum Standards**

The Judgment requires that minimum performance standards be assured in the following ways:

- Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.<sup>23</sup>

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<sup>22</sup> A handout from the ABA Public Defense Summit on incentives to rural practice is attached as Appendix J.

<sup>23</sup> Judgment, 14.

- 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>24</sup>
- Systems to identify and remove conflicts.<sup>25</sup>
- Establishment of performance standards.<sup>26</sup>
- Establishment of workload standards.<sup>27</sup>
- Qualifications for attorneys.<sup>28</sup>
- A system of oversight.<sup>29</sup>
- Attorney training and resources.<sup>30</sup>

To review the conclusions of the Monitor's three, prior reports, the Board and Department have successfully promulgated regulations, approved county plans, and developed a model contract, all of which substantially comply with articulating the professional standards in categories of indigency determination, first appearance, pretrial release, client communication, and conflict detection and removal, and qualification of attorneys.<sup>31</sup>

Since January 1, 2022, the primary developments to report are in three areas: (1) the Department's oversight activities, particularly as they relate to screenings, first appearances, and confidential attorney-client communication; (2) developments in training, including the annual conference; and (3) progress toward workload standards.

#### **A. Oversight activities**

Since January 1, 2022, the Executive Director and Deputy Director have travelled to seven of the ten *Davis* Counties to conduct oversight visits: Douglas, Esmeralda, Eureka, Lyon, Mineral, Nye (two visits: Pahrump & Tonopah), and White Pine. The Department visited Churchill County in December of 2021. The Department created written reports for each visit.

- On February 2, 2022, the Executive Director and Deputy Director visited Mineral County, where they met with the board of commissioners, the district attorney, the justice of the peace, and contract attorney. The Department observed an arraignment as well.<sup>32</sup>

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<sup>24</sup> *Id.* at 14-15.

<sup>25</sup> *Id.* at 12.

<sup>26</sup> *Id.* at 16.

<sup>27</sup> *Id.* at 17.

<sup>28</sup> *Id.* at 15.

<sup>29</sup> *Id.* at 16-17.

<sup>30</sup> *Id.* at 16.

<sup>31</sup> As the October 15, 2021, report discussed, there remains a question of how to clarify the standards, including the inclusion of certain provisions from the ABA Criminal Justice Standards for the Defense Function that go beyond the standards set in ADKT 411.

<sup>32</sup> The Department's Onsite Visit Report to Mineral County is attached as Appendix E.

- On February 15-16, 2022, the Executive Director and Deputy Director visited Esmeralda County, where they met with the board of commissioners, the justice of the peace, and the contract attorney. The meeting with the commissioners focused on the annual reporting, financial reporting, and updated indigent defense plan. On the second day of the visit, the Department observed court.<sup>33</sup>
- Also on February 15-16, 2022, the Executive and Deputy Director conducted their first of two visits to Nye County. They visited the justice of the peace and contract attorney in Tonopah.<sup>34</sup>
- On February 28, 2022, the Executive Director and Deputy Director visited Lyon County, where they met with county officials, toured the jail facilities, observed bail hearings, discussed processes with Lyon County Sheriff's Office supervisors, and met with contract public defender.<sup>35</sup>
- On March 3, 2022, the Executive Director and Deputy Director visited Douglas County, where they participated in interviews with applicants for contract attorney positions and met with the county's appointed counsel administrator.<sup>36</sup>
- On March 30-31, 2022, the Executive Director and Deputy Directors made their second visit to Nye County, this time meeting with the county manager, the chief justice of the peace, two district court judges, and four contract attorneys. The Department also observed in-custody arraignments and release hearings.<sup>37</sup>
- On April 19-20, 2022, the Executive Director and Deputy Director visited Eureka County, where they toured the courthouse, met with the justice of the peace and the contract attorney for the county.<sup>38</sup>
- Also on April 19-20, 2022, the Executive Director and Deputy Director visited White Pine County, where they toured the courthouse and met with a justice of the peace, district court judge, county manager, and finance officers. (No contract public defenders were available to meet.) The Department toured the courthouse and discussed issues with caseloads, attorney shortages, and confidentiality in the billing processes for experts and investigators.<sup>39</sup>

In addition to establishing its presence as an oversight agency, the visits are intended to establish the Department as a source of support and assistance to the counties and attorneys.

The Judgment requires "public defense counsel [to be] systematically reviewed on an annual basis for quality and efficiency according to nationally and locally adopted standards."<sup>40</sup> As the reader will see, the visits provide insight into standards of practice. In its visits, the

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<sup>33</sup> The Department's Onsite Visit Report to Esmeralda County is attached as Appendix B.

<sup>34</sup> The Department's Two Onsite Visit Reports to Nye County are attached as Appendix F.

<sup>35</sup> The Department's Onsite Visit Report to Lyon County is attached as Appendix D.

<sup>36</sup> The Department's Onsite Visit Report to Douglas County is attached as Appendix A.

<sup>37</sup> The Department's Two Onsite Visit Reports to Nye County are attached as Appendix F.

<sup>38</sup> The Department's Onsite Visit Report to Eureka County is attached as Appendix C.

<sup>39</sup> The Department's Onsite Visit Report to White County is attached as Appendix G.

<sup>40</sup> Judgment, 16.

Department inquired about the procedures in place for indigency screening, appointment of counsel, identification of conflicts, appointment of conflict counsel, availability of a space for confidential communication, and promptness of the first appearance.

Additional court observation, feedback forms, and other methods of oversight will be necessary to get a complete picture of the representation provided in the *Davis* counties. These additional tasks will require significant staff time from the Department. Nye county, for example, has courts of initial appearance in three towns, the Pahrump Justice Court, Beatty Justice Court, and Tonopah Justice Court. The distance between Pahrump and Beatty justice courts is over 70 miles, and the Tonopah Justice Court is more than 95 miles north of Beatty.

The data analyst from Soval Solutions will assist the Department in developing a uniform plan for oversight that incorporates feedback forms, in-person visits and courtroom observation, and other methods of review. Future reports from the Monitor will discuss these developments.

**B. Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; contracts require counsel against waiving substantive rights.<sup>41</sup>**

Screening for indigency before first appearance

All counties have a plan in place to screen promptly for indigency. These plans may be adjusted to accommodate AB424 (2021), which goes into effect on July 1, 2022. AB 424 entitles all defendants an initial appearance and release hearing within 48 hours of arrest. The Department discussed the new, 48-hour rule in its visits to the counties.

In Douglas, the appointed counsel administrator conducts the screening for indigency and represents defendants in first appearances.<sup>42</sup> In Esmeralda, the justice of the peace reported that 48-hour first appearance hearings have already been instated, and that the contract attorney reliably appears to represent clients at first appearance. The Executive Director and Deputy Directors observed the contract attorney in arraignment and bail hearings, noting that he seemed to have a good relationship with his clients and to have met with them prior to the hearing. They confirmed with the justice of the peace that the contract attorney was prompt and prepared for hearings.<sup>43</sup>

In Eureka, the contract attorney travels from Ely for first appearances, but due to the low caseload in Eureka, this has not presented a problem and it is possible that the AB484 change will not have a major impact.<sup>44</sup> In Lyon County, attorneys (all qualified by the Department) from the Mario Walther Law Firm represent indigent defendants for first appearance and release

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<sup>41</sup> Judgment, 14.

<sup>42</sup> Douglas County Onsite Visit Report, 1-2 (Appendix A).

<sup>43</sup> Esmeralda County Onsite Visit Report, 1-3 (Appendix B).

<sup>44</sup> Eureka County Onsite Visit Report, 2 (Appendix C).

hearings. The county will increase the firm's contract by \$150,000 for an additional attorney and staff person to assist with the 48-hour hearings. The Department observed an arraignment in which the defendant was released through prior negotiation between defense counsel and the prosecutor.

In Tonopah (Nye County), the justice of the peace noted delays in screening. As a result, she appoints the contract public defender in all cases and screens for indigency at a later hearing if necessary. This complies with the Judgment's requirement that first appearances not be delayed pending a screening for eligibility.<sup>45</sup> She is also concerned about the feasibility of 48-hour hearings and anticipates that attorneys will appear virtually.<sup>46</sup> Likewise, in Pahrump, the chief justice of the peace anticipates that most 48-hour hearings will be remote.<sup>47</sup> In White Pine, the two contract attorneys are covering 48-hour hearings, and a third attorney has been contracted to fill the position of a retiring attorney.<sup>48</sup>

#### Arguments for release on bail

The Judgment requires that all indigent defendants be "represented by counsel in person at his or her initial appearance/arraignment."<sup>49</sup> This appears to require that the attorney be present in person in court. As noted above, many attorneys appear remotely for their client's first appearance, and many more may appear remotely after AB424 (2021) goes into effect on July 1<sup>st</sup>.<sup>50</sup> The parties may wish to determine whether these remote appearances adequately comply with the Judgment and, if not, what resources would be required to assure in-person representation at first appearance.

The Department observed bail hearings in Esmeralda and Nye counties during its initial oversight visits and noted that the attorneys appeared knowledgeable about their client's cases.<sup>51</sup> But in other counties, such as Douglas, the attorney at first appearance may be different from the attorney ultimately assigned to the case and thus have conducted a limited client interview prior to the bail hearing.

Additional observation is necessary to determine whether all attorneys consistently arguing for release or affordable bail. For example, the Department's first oversight visit to Mineral County did not permit assessing the first appearance procedures in practice.<sup>52</sup> This is a labor-intensive level of oversight that may require additional staffing.

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<sup>45</sup> Judgment, 14.

<sup>46</sup> Nye County (Tonopah) Onsite Visit Report, 1-2 (Appendix F).

<sup>47</sup> Nye County (Pahrump) Onsite Visit Report, 2 (Appendix F).

<sup>48</sup> White Pine County Onsite Visit Report, 2-3 (Appendix G).

<sup>49</sup> Judgment, 14.

<sup>50</sup> AB 424 permits the defendant's remote initial appearance and is silent as to the presence of counsel, although it is highly likely that the defendant has a right to the presence of counsel at this critical stage of the proceedings. See *Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 212-213 (2008) (stating that first appearance is a "critical stage" of the proceedings).

<sup>51</sup> Nye County (Pahrump) Onsite Visit Report, 6 (Appendix F).

<sup>52</sup> Mineral County Onsite Visit Report, 2 (Appendix E).

## Recommendations

- The Department may need to re-assess the indigency screening after AB 424 (2021) goes into effect.
  - The parties should clarify whether remote appearances for arraignment and pretrial release hearings satisfy the Judgment.
  - The Department may need additional resources to conduct meaningful oversight, including observation of bail hearings, in the ten counties. The exact resources should be determined according to an oversight plan created in consultation with the data analyst.
- C. 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>53</sup>**

### Confidential meeting space

From the Departments' visits to the counties, it appears that most spaces used for attorney-client meetings have a double use as jury deliberation or other type of room.<sup>54</sup> If the rooms are in use, it will be more difficult for attorneys to conduct private meetings with their clients.

In Tonopah, Nye County, the justice of the peace expressed concern that the courthouse has no secluded area for attorney-client meetings.<sup>55</sup> In Esmeralda County, the courthouse has no private space convenient for attorney-client meetings. The jury room is one floor above the courtrooms and is also a throughway. The justice of the peace sometimes clears the courtroom so that the defense counsel may speak to the client in private.<sup>56</sup> In Eureka County, both the justice of the peace and the contract attorney report adequate space for attorney-client meetings, primarily because it is a quiet courthouse and the courtroom itself is often available, as well as the jury room.<sup>57</sup> White Pine County has a relatively new courthouse with several rooms available for confidential meetings.<sup>58</sup>

Perhaps the best way to learn whether the double-use spaces present challenges to confidential attorney-client communications would be to survey the attorneys. In Esmeralda County, for example, the public defender told the Department that private meetings with clients

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<sup>53</sup> Judgment, 14-15.

<sup>54</sup> See, e.g., Mineral County Onsite Visit Report, 2 (Appendix E).

<sup>55</sup> Nye County (Tonopah) Onsite Visit Report, 1 (Appendix F).

<sup>56</sup> Esmeralda Onsite Visit Report, 1-2 (Appendix B). The Esmeralda jail also does not have a private meeting area.

<sup>57</sup> Eureka County Onsite Visit Report, 1-2 (Appendix C).

<sup>58</sup> White Pine County Onsite Visit Report, 1 (Appendix G).



are usually possible.<sup>59</sup> This could be due to the low volume of cases in the county, so that the courtroom and hallway frequently are empty.

In Lyon County, the Department was unable to tour the courthouse—and will do so at a later visit—but the jail has a confidential meeting place.<sup>60</sup> In Douglas County, confidential meetings are possible in the jail, and the Department will visit the courthouse on its next visit.<sup>61</sup>

#### Confidential meetings before initial appearance

The Judgment requires that the contracts between attorneys and the counties contain a provision stating that the attorney will “[m]ake all reasonable efforts to meet with the client, in a private and confidential space, prior to the initial appearance.”<sup>62</sup>

As a preliminary matter, it is not clear how attorneys communicate with clients when either the attorney or the client is remote. As noted above, attorneys in some counties appear remotely for first appearances. For example, in Esmeralda County, the justice of the peace has already begun complying with AB424 by holding first appearance hearings within 48 hours. If the contract attorney is not in Goldfield, he represents the new client remotely at the first appearance.<sup>63</sup> The attorney reported to the Department that he is generally able to meet privately with clients before hearings.<sup>64</sup> What is not clear from the initial reports is how he communicates with the new client prior to the first appearance when he appears virtually. Furthermore, it is not clear that defendants always appear in person or remotely from the jail.

Communication prior to bail hearings is essential. Bail hearing advocacy requires knowledge of the client’s circumstances: work, family, disabilities, and education, as well as the feasibility of complying with nonmonetary conditions of release and the defendant’s ability to pay a bail. Often, the bail hearing itself generates additional questions about the defendant’s circumstances that are relevant to release. Thus, it is essential for attorneys to be able to communicate with their clients prior to and during the hearing. Yet, as remote appearances become more common, the logistics of confidential attorney-client meetings becomes more complex.

#### Client communication per the standards set in ADKT 411

The Judgment requires that the Defendants “ensure that indigent defense providers comply with the performance standards regarding client communication laid out in [ ] ADKT 411 (Oct. 16, 3008) including making all reasonable efforts to [conduct a confidential interview] before any court proceeding, which interview shall include, at a minimum, an explanation to the client of the charges against him or her and potential penalties; a discussion concerning pretrial

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<sup>59</sup> Esmeralda Onsite Visit Report, 3 (Appendix B).

<sup>60</sup> Lyon County Onsite Visit Report, 2 (Appendix D)

<sup>61</sup> Douglas County Onsite Visit Report, 2 (Appendix A).

<sup>62</sup> Judgment, 14.

<sup>63</sup> Esmeralda Onsite Visit Report, 1 (Appendix B).

<sup>64</sup> Esmeralda Onsite Visit Report, 3 (Appendix B).

release; an explanation of the attorney-client privilege; a general procedural overview of the progression of the case; how and when counsel can be reached; and when counsel will see the client next.”<sup>65</sup>

Oversight of this standard likely will be accomplished through the client surveys and attorney self-reporting. At this point the Department has received few client surveys, although they have been made available in some of the courthouses and attorneys have been instructed to provide them to clients. Through Legal Server, the Department has received a total of five completed client surveys—three from Lyon, one from Lincoln, and one from Nye. (The surveys can also be sent as a text or email to out-of-custody clients through Legal Server.) The Department received two paper surveys from Churchill and two from Lyon.

### **Recommendations**

- Assess ability to communicate with clients remotely before bail hearings, especially after the implementation of AB 424.
- Explore methods of getting client feedback forms
- Determine staffing needs to observe bail hearings and other courtroom proceedings on regular intervals in all ten *Davis* counties

### **D. Attorney training and resources<sup>66</sup>**

It is the Department’s intention to foster a culture of effectiveness and adherence to professional standards through training and resources for attorneys. The Department’s vision is to raise the standard of practice by nurturing good relationships with practitioners. This requires building trust through transparency, communication, outreach, training, and other efforts that foster a culture of excellence. It also requires that attorneys can adhere to professional standards through reasonable caseloads, adequate compensation, and case-related support services.

Since January 1, 2022, the Department offered CLE trainings and worked with the Clark County Public Defender’s Office (CCPD) and the Nevada Federal Public Defender to publicize and make available their trainings at no cost, including:

- Ninth Circuit in Review: Habeas Cases (FPD, January 26)
- DIDS First Friday Discussion: Battered Women’s Experts (March 4)
- Nevada Mental Health Crisis Hold and Involuntary Treatment Summit (March 6 & 7)
- 10 Trial Commandments (FPD, March 9)
- The Government’s Private Eye: Fourth Amendment, Privacy Interests, and You (FPD, March 23)
- Making Brady Meaningful Using The Due Process Protection Act in Your Trial Practice (FPD, April 13).
- Client Intake and Witness Interviews (DIDS, April 15)

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<sup>65</sup> Judgment, 14-15.

<sup>66</sup> Judgment, 16.

- Judge Your Friends Carefully: The Perilous Ethics of Attorney-Judge Relationships (FPD, April 20)
- Lawyering Under the Influence (FPD, May 11)
- Behind the Scenes at the Nevada Supreme Court (SBN, May 13)

### The annual training

The Department has planned a two-day public defender conference in Las Vegas on May 26 and 27, 2022, which rural indigent defense providers are strongly encouraged to attend. The efforts that the Department to hold a statewide conference on a limited budget are impressive.<sup>67</sup> The Department took steps to make attendance feasible for rural providers by applying for and receiving a \$45,000 grant to pay for the travel costs for up to 45 rural indigent defense attorneys to attend the conference.

A total of seventeen contract attorneys from the *Davis* counties registered to attend the conference. Twelve of the seventeen attorneys applied for travel funds. More attorneys from the *Davis* counties are interested in attending the conference but are unable to attend because they lack coverage for their court appearances.

To host the conference in a manner that fosters meaningful dialogues and relationships among attorneys, the Department should provide opportunities for public defenders and appointed attorneys to socialize. To that end, the Department reserved the Mob Museum for three hours on Thursday night. Yet, the Department has limited ability to provide additional opportunities for attorneys to socialize because it has no budget for hosting.<sup>68</sup> Meals may seem like a small matter, but the Department is following best practices when it provides opportunities for informal peer relationships among attorneys. The past decade has seen a consensus among experts in public defense that fostering culture and support is an essential to consistent performance that meets constitutional standards.

Because the work of public defense is so difficult—and often unpopular—supportive relationships among public defenders improves motivation and courage in the face of displeasure from the public and from other courtroom professionals.<sup>69</sup> Constitutionally effective advocacy often has the side effect of slowing down the resolution of cases and increasing the workload of prosecutors and judges.<sup>70</sup> External pressures to tamp down advocacy are the strongest when an attorney attempts to do something new or uncommon in the court, such as filing a novel motion

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<sup>67</sup> The Department was allotted a total of \$25,000 from the State General Fund for training expenses for the year, including training for the Department's staff.

<sup>68</sup> To address this problem, the Department applied to the State Bar for a grant for \$25,000 food and beverage expenses. The amount would cover up to two (2) breakfast meals, two (2) lunch meals, and one (1) dinner meal, for the approximate 100 attendees. Because the Department does not have a "host fund" it cannot accept the money for hosting.

<sup>69</sup> Eve Brensike Primus, *Culture as a Structural Problem in Indigent Defense*, 100 Minn. L. Rev. 1769, 1790-92 (2016).

<sup>70</sup> *Id.* at 1771 (arguing that, because defenders are "obstacles" to prosecution and conviction, "it is easy for judges, prosecutors, and court personnel to make the life of a defender miserable").

or challenging whether the court is adhering to the law. Lawyers attempting to elevate the practice of indigent defense or challenge an existing court practice need support from their peers to withstand the pressure to conform to previous standards of defense practice.<sup>71</sup> In the words of one scholar of public defense, “the system and its concomitant pressures beat the fight out of them.”<sup>72</sup>

Solo and small firm practitioners may lack the kind of support and comradery found in public defender offices.<sup>73</sup> A central insight into improving indigent defense systems is that “culture flows from structure.”<sup>74</sup> Structural changes that improve culture include adequate pay, manageable caseloads, training and mentorship, feedback on performance, and a sense of being part of a professional community with shared challenges, goals, and values.<sup>75</sup> Thus, the past decade has seen efforts to, as one nonprofit puts it, improve the “*culture* of public defense,” meaning, “a set of values and assumptions shared and internalized by all members of an organization [that] drives the way we view our work, our clients, and our role in the criminal justice system. We strive to build cultures that reinforce the importance of public defense and the dignity and humanity of those we serve.”<sup>76</sup> An essential ingredient of culture-building is fostering relationships so that defenders in different organizations and geographical locations feel this shared sense of mission, and “work together to strengthen their skills, invigorate their commitment, support and inspire one another and build peer relationships that provide guidance and motivation.”<sup>77</sup>

The Department continues to take steps to overcome the geographic and demographic challenges to creating supportive communities of indigent defense providers in the rural counties. In addition to online CLEs and other training, resources provided online and by mail, and the SOAR program, the annual training can go a long way toward building a statewide community of indigent defense. Ideally, the solo and small firm practitioners who attend the conference will form relationships that will extend beyond the conference. Once relationships among indigent defense providers are formed, they can turn to each other for experience and expertise, as well as encouragement.<sup>78</sup> Generally, such relationship-building occurs not in training sessions, but informal opportunities for the conference attendees to socialize.

### **Recommendations**

- If possible, increase funds for training and support for non-institutional indigent defense providers, including opportunities for them to form professional relationships.

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<sup>71</sup> *Id.* at 1797 (arguing that, “[w]ithout training and support, the [new] attorney won’t have strategies for figuring out how to navigate this hostile environment”).

<sup>72</sup> *Id.* at 1770.

<sup>73</sup> *Id.* at 1794 (noting that “[l]awyers in assigned counsel systems rarely have a sense of community with their fellow defenders that enables them to stand up to the pressures of the system over time”).

<sup>74</sup> *Id.* at 1781.

<sup>75</sup> *Id.* at 1811-1818.

<sup>76</sup> <https://www.gideonspromise.org/about/>

<sup>77</sup> *Id.*

<sup>78</sup> Primus, *supra* note 69, at 1792.

- Address the lack of coverage for court dates, which prevent some attorneys from attending trainings and conferences.

#### **E. Establishment of workload standards**

The Judgment requires that the Defendants contract with an outside provider within twelve months of the effective date of the Judgment in order to complete a workload study.<sup>79</sup> As previously reported, the Department took immediate steps to commission a workload study with the National Center for State Courts (NCSC), but the initial timekeeping data phase of the study was distorted by pandemic restrictions. After collecting the initial time keeping data, the study administrators at the National Center of State Courts (NCSC) convened Delphi panels but ultimately determined that they lacked sufficient timekeeping data to probe the relevant issues. The NCSC extended its contract with the Department to June 30, 2022, so that the Department could gather six to nine months of timekeeping data from Legal Server to use as a supplement to the initial NCSC timekeeping data.

Pursuant to the NCSC study administrators request, the Department took all possible measures to ensure that attorneys representing indigent defendants in the *Davis* counties complied with the data reporting requirements in the regulations. The Department provided the NCSC with case and timekeeping data collected on Legal Server from October 1, 2021, through March 31, 2022.<sup>80</sup>

Unfortunately, the NCSC concluded that the existing Legal Server data are insufficient for the study. The data do not adequately describe existing attorney workloads. As described in detail below in Section III (Data Reporting), most attorneys entered hours for closed cases and only some attorneys entered hours for open cases. This discrepancy makes it difficult to determine their total workload for the six-month period.

The Department and the NCSC have decided to extend the time-period for the study for an additional year. Although this delays the workload recommendations, it is the Monitor's opinion that extending the time for the study is the prudent choice. The extension of time will

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<sup>79</sup> Judgment, 17. The Judgment requires that the Defendant commission workload study within 12 months of the effective date of the Judgment, ensure that contracts between counties and providers set workloads consistent with the study's findings and recommendations within 6 months of the study's completion and ensure compliance with the workload recommendations within 12 months of completion of the study. The Board included the Judgment's requirement of a workload study in its regulations. Section 42 (1) of the regulations requires that the attorney's workload "allow the attorney to give each client the time and effort necessary to ensure effective representation," and that the attorney providing public 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." Section 42 (2) requires that the Board direct the Department to conduct separate workload studies for counties with populations of over and under 100,000 and that the results of each study shall be used by the Board to determine maximum workloads, pursuant with NRS 180.320(2)(d)(4).

<sup>80</sup> It should be noted that, as discussed in the Monitor's prior reports, the Legal Server data lack detail about the amount of time spent on each lawyering activity. The attorneys are not required to report time by activity type, making it difficult to disaggregate time spent, for example, on travel to a remote courthouse, from client meeting.

allow the NCSC to base their workload recommendations on better local and national data. The next steps of the study are as follows.

#### Provisional Workload Estimate

The study coordinators project that they can estimate existing case weights by (1) extrapolating from the January 2021 timekeeping data set that was collected during the pandemic, and (2) comparing it to timekeeping data from weighted caseload studies in other states.

Timekeeping data from other state studies may be applicable if the study coordinators ensure that the attorneys in those states worked under similar conditions. The distances traveled to courts and jails, for example, will vary among rural jurisdictions. Additionally, the applicability of timekeeping data from other studies depends on the resources available to the attorneys. The time spent on other lawyering tasks, such as legal research and developing mitigation evidence for sentencing, varies depending on the attorney's access to support staff and resources. Notably, few of the rural attorneys in the *Davis* counties have paralegals or investigators. Thus, studies of public defender offices may not be comparable to the working conditions of the attorneys in the *Davis* counties.

#### Second Set of Delphi Panels

The NCSC will convene three Delphi panels in mid-May, including a death penalty panel, a juvenile panel, and a non-death penalty criminal panel. This is the “quality adjustment” phase of the study,<sup>81</sup> in which the study administrators facilitate structured discussions among criminal defense attorneys to determine the amount of time particular case-related tasks should take.<sup>82</sup>

For this set of Delphi panels, the attorney participants will discuss how long various lawyering activities should take without complete data on existing attorney workloads. The study administrators, however, will be able to refer to caseload studies from other jurisdictions, as well as the results of Delphi panels conducted as part of an ongoing, national caseload study that is being conducted by the RAND Corporation. Moreover, the current approach to weighted caseload studies suggests that experienced attorneys can produce useful data on how long lawyering activities should take without reviewing existing timekeeping data.<sup>83</sup>

Critical to the success of the study will be the composition of the upcoming Delphi panels. Because this is a quality adjustment phase of the study, the Delphi panels and any other

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<sup>81</sup> National Center for State Courts, *Rural Nevada Indigent Defense Services Interim Weighted Caseload Study*, p. 4-5 (June 2021). Available at: [https://dids.nv.gov/Weighted\\_Caseload\\_Study/Weighted\\_Caseload\\_Study/](https://dids.nv.gov/Weighted_Caseload_Study/Weighted_Caseload_Study/)

<sup>82</sup> *Id.* at 23.

<sup>83</sup> In the “Missouri model” of caseload studies, for example, the Delphi panel participants arrive at a consensus about how long each lawyering activity should take before they see the existing timekeeping data to ensure that panel participants are not swayed by the anchoring effects of the first numbers presented. Geoffrey T. Burkhardt, *How to Leverage Public Defender Workload Studies*, 14 Ohio St. J. Crim. L. 403, 421-22 (2017).

data collection method should engage a range of experienced defense attorneys—at least some of whom practice under similar conditions in rural areas.

#### Supplemental Timekeeping Data

The extension of time for completion of the study will allow the Department to collect additional workload data. Practitioners will continue to report their case and time information through Legal Server so that the data better reflect their workload for each quarter. Accurate timekeeping requires practice. It is likely that some attorneys are making errors in their timekeeping, particularly because they are not required to keep time simultaneously but at the close of the case.<sup>84</sup> Moreover, the attorneys' reporting of their hours on open cases (as opposed to closed cases) should improve over time, yielding more accurate workload information. Finally, the additional timekeeping data will account for changes to the attorneys' workloads occasioned by implementation of AB424 (2021).

#### National Caseload Standards

The RAND Corporation is conducting a workload study aimed at setting national standards for public defender caseloads. The NCSC study administrators anticipate that the RAND study will be published in the Fall of 2022. This national study will serve as an additional data point for checking the accuracy of the Nevada study.

#### Time Sufficiency Survey

Finally, the NCSC study administrators will conduct a time sufficiency survey to determine if experienced criminal defense attorneys agree with the times assigned to various case-related activities and case types.

In sum, the delays in the weighted caseload study are due to a mixture of pandemic-related issues and data limitations. Completing the study by June 30th is feasible, but the prudent choice seems to be to delay the conclusion of the study to account for additional timekeeping data and for the results of the RAND Corporation's national caseload study.

#### **Recommendations**

- Delay conclusion of the weighted caseload study until the collection of additional timekeeping data and the publication of an anticipated national study.
- Include a variety of experienced defense attorneys in the Delphi panels.

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<sup>84</sup> The concern with inaccurate timekeeping in workload studies has been voiced by researchers. *See, id.* at 417-18 (noting that “[m]any defenders have never tracked time and lack familiarity not only with time-tracking software, but also with the practice of divvying one’s day into predesignated categories”).

- Ask Delphi panelists to consider case times according to professional standards (ADKT411 and the ABA Guidelines) rather than merely reflecting on their own practice. (The panelists may have high workloads as well.)
- Consider circulating the time sufficiency survey broadly. This is a way to involve more attorneys in the process, including attorneys who may decline to participate in a Delphi panel but who nonetheless could offer their opinion on the average time needed for various lawyering activities.
- Request that the final weighted caseload study address the variables of travel times and office staffing.

### III. Uniform Data Collection and Reporting

The Judgment requires that indigent defense 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>85</sup> The Board's regulations follow the Judgment's requirements.<sup>86</sup>

On October 1, 2021, attorneys were obliged to begin timekeeping and disposition reporting through Legal Server. Since the Monitor's last report, the Department has collected two quarters of reporting data and issued two quarterly workload reports, one for October 1-December 31, 2021, and the second for January 1-March 31, 2022.<sup>87</sup>

The Department has consistently and persistently worked with individual attorneys to address their concerns that reporting requirements only apply to indigent defense providers in rural counties and that entering the data into Legal Server requires significant time commitment. In general, the Department's vigorous efforts to contact, train, and remind every attorney about their reporting obligations on Legal Server has yielded improved data in the second report. Most attorneys are reporting their time.

However, some attorneys are:

- not reporting any hours,

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<sup>85</sup> Judgment, 18.

<sup>86</sup> Section 43 of the Regulations require an annual report of the number and type of cases, their disposition, whether motions to suppress were filed, and the number of trials. Section 44 requires that attorneys providing indigent defense in the relevant counties document their time in increments to the tenth of an hour, the number of hours for attorneys, investigators, experts, staff, and also the total number of hours the attorneys spent working on private cases. Section 44 further requires that time be "kept as close to contemporaneous as reasonably practicable to ensure the accuracy of time reporting and the ability of the Department to generate quarterly reports." Section 45 requires attorneys providing indigent defense to use the Department's data collection system.

<sup>87</sup> Both reports are available on the Department's website at [https://dids.nv.gov/Annual\\_Report/home/](https://dids.nv.gov/Annual_Report/home/).



- underreporting their hours,
- not reporting hours spent on private cases, and/or
- not reporting investigator and expert hours.

To address this issue, the Deputy Director created a memorandum of the most pressing gaps in reporting, and the second Deputy Director is creating a plan to address these compliance issues.<sup>88</sup> These gaps in the reporting, and the Department’s actions to address the gaps, are discussed below.

There is good reason to believe that reporting will continue to improve. First, resistance to new requirements tends to wane over time, especially because the Department is communicating a consistent message about the importance of timekeeping. Second, new contracts between attorneys and counties will contain a provision requiring reporting through Legal Server. The contractual obligation, coupled with normalization of the practice, should lead to a reduction in the gaps in the data.

The chart below does not include all information in the workload reports but, rather, is meant to demonstrate the areas of significant improvement in reporting between the first and second reports, as well as ongoing gaps.

**Comparison of Workload Reporting in First & Second Quarter**

<b>County</b>	<b>First Quarterly Reporting October – December 2021</b>	<b>Second Quarterly Reporting January – March 2022</b>
Churchill	No public defender hours reported  Conflict counsel reported 1.8 hours, no private hours  No investigation/expert hours reported	Public defender office reported 171 hours (likely undercount—they reported 111 open cases)  Conflict counsel reported 53.8 hours, no private hours  No investigation/expert hours reported
Douglas	5 attorneys total: all reported hours  2.9 hours of private work reported, but this may be incomplete or provided by one of five attorneys	4 attorneys total: all reported hours  3 of 4 attorneys reported private workload: 60 hours, 35 hours, and 0 hours, respectively

<sup>88</sup> The Memorandum on Deficiencies in Data Reporting is attached as Appendix K.

	No expert/investigator hours reported	<i>Note:</i> 2 of 5 contracts now unfilled. The county coordinator is carrying 79 cases, but has not reported hours yet  No expert/investigator hours reported
Esmeralda	No reporting received	1 attorney total: 2.2 hours reported, with an open caseload of 8 cases (possible undercount)  Same attorney contracts in Nye County  No investigation or expert hours reported
Eureka	1 attorney total: 129.6 hours reported  43 private hours reported  No investigation or expert hours reported	1 attorney total: 137.7 hours reported  110 private hours reported  No investigation or expert hours reported
Lander	1 attorney total: 128.3 hours reported  43 private hours reported  No disposition data reported  No investigation or expert hours reported	1 attorney total: 79.2 hours reported  48.1 private hours reported  No disposition data reported  No investigation or expert hours reported
Lincoln	1 attorney total: 301.4 hours reported  50-70 private hours  No investigation or expert hours reported	1 attorney total: 337.8 hours reported  50 private hours  Conflict counsel: 7.3 hours reported  No investigation or expert hours reported
Lyon	5 total attorneys (3 through the one firm)  678.16 hours total  No private workload reported	5 total attorneys (3 through the one firm)  989.65 (firm) and 99.6 appt. counsel  No private workload reported

	No investigation or expert hours reported	No investigation or expert hours reported
<b>Mineral</b>	No reporting  The son of former contract attorney assumed the contract for his father	No reporting  The son of former contract attorney assumed the contract for his father
<b>Nye</b>	5 total attorneys  1 attorney reported: 393.2 hours  4 attorneys did not report    No private hours reported  No investigation or expert hours reported	5 total attorneys  1 attorney reported 438.5 hours  1 attorney reported 614.2 hours  1 attorney reported 249 hours  2 attorneys did not report, one of whom has 401 open cases, and the other of whom has 69 open cases  Private hours only reported by 1 attorney (12 hours)  No investigation or expert hours reported
<b>White Pine</b>	3 attorneys reported: 504.9, 378, 308.7 hours respectively  Private hours: 182.6 but not clear if for one attorney or aggregate for all  No investigation or expert hours reported	3 attorneys reported: 686.5, 571.7, 48.4 hours respectively  No private hours reported  No investigation reported; expert hours: 0.6 hours
<b>Motions to suppress filed</b>	None reported	1 in Lincoln
<b>Motions to suppress litigated</b>	None reported	None reported
<b>Trials</b>	2 in Douglas  2 in Lyon  4 in White Pine	7 in Douglas  1 in Eureka  2 in Nye  1 in White Pine

The improvement from the first to the second quarter is heartening. More attorneys recorded their hours and case dispositions, and attorneys who were already using Legal Server appear to have provided more complete information in the second quarter of reporting.

Attorneys in Eureka, Lander, Lincoln White Pine, as well as some of the attorneys in Douglas, Lyon, and Nye counties, appear to be reporting their indigent defense hours completely.<sup>89</sup> This is largely due to the Department's continued efforts to reach out to attorneys individually and provide them with training and reminders. The Department's efforts have led to greater compliance as attorneys report hours as they close cases and add their hours to previously closed cases. More attorneys are keeping time contemporaneously as well.

The attorneys should be commended for making this transition. It may go without saying, but the habit of timekeeping takes time. Moreover, for the contract attorneys, timekeeping is an extra obligation that they must complete without extra compensation.

#### **A. Discussion of the gaps in reporting**

The second quarterly report of workload hours begins with an important caution that not all attorneys are reporting all their hours, so there is a real risk that the numbers do not reflect the caseload and workload.<sup>90</sup> The major gaps in reporting that might result in an underestimation of workload are the failures of some attorneys to report any hours, the underestimation of hours, the failure to report private casework or other indigent defense appointments, and the failure to report investigation and expert hours.

##### Failure to report any hours

A few attorneys did not report their cases and hours in either the first or second quarters. The primary and conflict attorneys in Mineral County did not report any hours. The primary contract is held by Justin Oakes after the death of his father, John Oakes, who previously served as the contract public defender for Mineral County. Justin Oakes has not used the Legal Server system or the case disposition form provided by the Department. The contracted conflict attorney, Carl Hylin, has not reported any case or workload hours either. Given the low caseloads in Mineral County, it is likely that both attorneys engage in private representation and other appointed indigent defense work, and it is unclear how much time they dedicate to their indigent defense cases in Mineral County. (Justin Oakes also contracts for municipal indigent defense in Sparks.) The Department is engaged in ongoing efforts to assist the attorneys with entering their hours into Legal Server.

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<sup>89</sup> The exception is the county administrator in Douglas County, who did not enter his hours in Legal Server in the first and second quarters due to time constraints. The Department worked with him to get local, administrative assistance with data entry.

<sup>90</sup> Second Workload Report, 2. Available at [https://dids.nv.gov/Annual\\_Report/home/](https://dids.nv.gov/Annual_Report/home/).

In Nye County, indigent defense is provided by five, separate contract attorneys. For the second quarterly reporting period, three of the five attorneys provided case and workload hours: Nathan Gent, Ronnie Boskovitch, and Nadine Morton. Jason Earnest and Alexis Dueker reported one hour or less, which, given their caseloads, indicates that they are not inputting their hours into Legal Server. Jason Earnest is also the contract attorney for Esmeralda County and has not reported his hours there.

In Douglas County, David Lopez, the appointed counsel administrator has had difficulty finding the time to enter his hours into Legal Server. He handles first appearances and selects conflict counsel when necessary. The Department assisted Mr. Lopez in getting administrative assistance for data entry, and anticipates that his hours will be included in the next report.<sup>91</sup>

### Underreporting

Some attorneys are entering hours but seem to be underreporting. The Churchill public defender's office, for example, has reported few hours, but the office probably carries a caseload of 450-500 cases based on the FY2020 annual report from the Department. In Lincoln County, the primary contract attorney reported 337.8 hours, but has 117 open cases, 80 of which are category C-E felonies, and 4 of which are category A felonies.

An additional concern with underreporting is travel time. Some attorneys hold contracts and accept appointments far from their law offices. In Eureka, for example, the contracting attorney is based out of Ely, which is about 100 miles from the main courthouse in Eureka County. The same attorney handles conflict cases in Lincoln County. And, the contract attorney for Lander County may travel from Winnemucca to Battle Mountain and Lovelock, distances of more than 50 and 70 miles respectively. If travel time is not reported completely, it will impede the state's ability to adjust workload limits.

In sum, we can only guess at the areas of potential underreporting. But underreporting poses a risk that attorney workloads will be higher than indicated by the data they provide.

### Spotty reporting of private workload

Some attorneys did not report time spent on private cases. Among the attorneys who reported no hours spent on private hours, it is not clear whether they took no private cases, or they simply did not report. Without knowing their hours spent on private cases, as well as hours spend on appointed work in other counties or municipalities, is it difficult to ascertain their total workload. Other attorneys reported private caseload and their other indigent defense hours. For example, Kyle Swanson, the contract attorney for Lander County, provided hours spent as conflict counsel in Pershing County so that the Department could better understand his total workload.

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<sup>91</sup> Douglas County Onsite Visit Report, 2 (Appendix A).

### Investigator and expert hours

Attorneys are not using Legal Server to report their expert and investigator hours. In some cases, this may be because they are not using experts or investigators. But the Department has evidence of the use of experts and investigators in the form of requests for reimbursement. Thus far, the Department received requests for reimbursement for experts and investigators from Douglas (\$9,150 for experts), Lincoln (\$6,063 for experts), Lyon (\$21,516.36 for investigators; \$22,929.46 for experts), Nye (\$18,400 for investigators); White Pine (\$10,230.80 for investigators; \$14,468.75 for experts). In some counties, this represents a significant increase in the use of experts and investigators. In Lyon County, for example, investigation charges have increased from \$5,000-\$6,000 in prior years to \$70,000 this year.<sup>92</sup>

### Motions to Suppress and Jury Trials

There is some discrepancy between the motions to suppress and trials reported in the dispositional totals and information culled from Legal Server. This may reflect the two types of data: closed case information versus reporting on open cases. In any case, the Department is eliciting some data on both. With time, a complete picture of motions to suppress and trials will come into focus as attorneys get in the habit of promptly reporting the disposition of closed cases.

## **B. What the data reveal**

At this point, the data are not complete enough to determine the workload for all the indigent defense providers in the *Davis* counties. The gaps and discrepancies should smooth out after a few cycles of reporting.

What can be said is that some attorneys have a demonstrably high workload. In Nye County, Nathan Gent reported 614.2 hours of work for the quarter, amounting to over 50 hours per week. It is not clear from the report whether he has any support staff. Two other Nye County attorneys reported over 500 hours during the quarter. In Douglas County, Matthew Ence reported that he spent 752.9 hours on indigent cases in Douglas County during the second quarter, and that he also spent 35 hours on private cases. It is possible that some of the hours relate back to work that he completed before the second quarter, but the numbers still suggest a high workload. In White Pine, two attorneys reported well over 500 hours in the quarterly reporting period. This suggests that their workloads may be too high, but, again, it is hard to tell given the lack of fit between quarterly hours and total number of cases.

Other attorneys may have excessive workloads, but that cannot be seen in the data if they do not report private casework or appointed casework in other jurisdictions. For example, the Walther Law Offices, PLLC in Lyon County has three to four attorneys who provide indigent defense. The firm reported 989.65 hours in the second quarter, but no private hours. We do not know the outside workload of the attorneys to calculate their workload.

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<sup>92</sup> Lyon County Onsite Visit Report, 2 (Appendix D).

Although he has not reported his hours, Justin Oakes (Mineral County) told the Executive and Deputy Director that his caseload is high due to having a private practice and a municipal court contract in addition to covering his father's contract in Mineral County.<sup>93</sup> Likewise, Kelly Brown holds the contract in Eureka County and the Lincoln County conflict contract. Brown reported to the Department that the Lincoln County cases are more numerous and involved than anticipated, in part because many of the former contract attorney's clients are requested that he help them withdraw their pleas as uncounseled.<sup>94</sup> In other counties, the attorney's caseload may include federal prison cases.<sup>95</sup>

The Department continues to take vigorous and often effective steps to ensure reporting. To that end, and pursuant to NRS 180.440 (3),<sup>96</sup> the Deputy Director Qualls issued an internal memorandum listing the compliance issues, most of which are mentioned above.<sup>97</sup> The memorandum notes the considerable time that the Department has spent on trainings, recorded trainings, visual trainings, emails, one-on-one assistance, and direct aid in entering case information. Also pursuant to NRS 180.440 (3), Deputy Director Handy is developing a plan to address the compliance issues. An additional aid in this effort will be the new contracts between attorneys and the counties. These new contracts will make timekeeping and quarterly reporting a condition of the contracts, and, over time, the process will be normalized.

### **Recommendations**

- Section 44(1)(e) of the regulations require that attorneys report total private workload, which should be read to include time spent on indigent defense in other jurisdictions, especially in municipalities.
- The Department should ensure—as it plans to do—that all new contracts with providers contain clear language requiring reporting in accordance with the board's regulations, sections 43-45. This provision is already in the Department's model contract.
- The state should compensate attorneys or otherwise incentivize contemporaneous timekeeping and prompt dispositional reporting through Legal Server. The Department attempted to secure Westlaw accounts as an incentive for the attorneys, but the request has thus far been denied.

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<sup>93</sup> Mineral County Onsight Visit Report, 2 (Appendix E).

<sup>94</sup> Lincoln County Oversight Report, 1 (Appendix H).

<sup>95</sup> Nye County (Pahrump) Onsight Visit Report, 5 (Appendix F).

<sup>96</sup> Stating that the Deputy Director shall "report to the other deputy director upon a determination that any person is providing indigent defense services in an ineffective or otherwise inappropriate manner." NRS 180.440 (3).

<sup>97</sup> Attached as Appendix K. Additional compliance issues include: (1) Churchill County Public Defender: failure to track juvenile and civil cases and limited case closure entries; (2) Lander County Contract Attorney: failure to close cases; (3) some attorneys in Nye and White Pine not tracking civil cases.

## Looking ahead

### Contracts

Some contracts for attorneys providing indigent defense in the *Davis* counties expire on June 30, 2022. The Department must approve the new contracts and determine the extent to which they comply with the regulations and follow the Department's template.

It is the Monitor's recommendation that the new contracts contain a reference to the ABA Standards for the Defense Function, which the Judgment requires the Department to implement as part of its performance standards, along with the ADKT 411 performance standards.<sup>98</sup> Including reference to the ABA Standards in the contracts will alert attorneys to the professional standards to which they will be held in the oversight process. The Judgment states that, in creating and overseeing standards for indigent defense, the "Defendants shall incorporate the performance guidelines set forth in the ABA Criminal Justice Standards and the Nevada Indigent Defense Standards of Performance [in ADKT 411]."<sup>99</sup>

Second, the Monitor recommends that the new contracts between providers and counties clearly state the responsibility of attorneys to monitor their workloads and seek assistance if their workloads become excessive. The ABA Guidelines for Excessive Workloads stress the importance of attorneys' obligation to inform their supervisory agency of excessive workloads, noting how difficult it is for lawyers to say when their casework has become unmanageable.<sup>100</sup> Attorneys understandably worry that refusing cases due to an excessive caseload may be held against them or even violate the terms of their contract.<sup>101</sup>

To the contrary, attorneys carrying excessive caseloads must refuse cases and request the assistance of the Department in selecting conflict counsel. Excessive caseloads risk incompetent representation and conflicts of interest because excess cases impact the amount of time the attorney can spend on current cases.<sup>102</sup> A concurrent conflict results because the lawyer is forced to choose between the interests of various clients, depriving at least some, if not all clients, of competent and diligent defense services.<sup>103</sup>

Clarifying that the attorney has both permission and an obligation to request conflict counsel when the workload becomes excessive is even more important because the workload study is incomplete. Without strict case limits, the main benchmark of excessiveness is the attorney's subjective evaluation of their workload.

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<sup>98</sup> The Department's contract template already refers to the Indigent Defense Standards in ADKT 411 and "all applicable regulations, laws, Rules of Professional Conduct."

<sup>99</sup> Judgment, 16. To comply with this provision, the Department has provided a link to the ABA Standards on its website and offered a CLE that discussed the ABA Standards. See <https://dids.nv.gov/Resources/Resources/>.

<sup>100</sup> ABA Eight Guidelines of Public Defense Related to Excessive Workloads, [hereinafter ABA Workload Guidelines] (2009), Comment to Guideline 3.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at Guideline 1.

<sup>103</sup> ABA Model Rules of Professional Conduct 1.7 (a).



### **Annual report**

The Department will publish its annual report by July 1, 2022.

### **Data collection compliance**

The third quarter of workload reporting is due on July 15, 2022.

### **Workload study**

The NCSC will conduct three Delphi panels in May of 2022.

### **Wage/salary survey, incentive study, oversight plan**

If the wage/salary survey is completed within the next few months, it can serve as the basis for setting a reasonable hourly wage in the contracts between attorneys and the counties, many of which will be renewed on July 1, 2022.

Of particular importance is the accurate calculation of overhead, which distinguishes private attorneys accepting appointed cases from both public defender offices and prosecutors. Overhead includes “the maintenance of an office, including rent, the costs of support staff, professional fees, the cost of liability insurance, the cost of continuing legal education,<sup>104</sup> among other things.

### **Reimbursement for counties that exceed their maximum contribution**

To date, the counties have provided financial reports for three quarters, on October 15, 2021, January 15, 2022, and April 15, 2022. Based on their expenditures, the Department requested \$350,000 from the Interim Finance Committee (IFC) to reimburse counties for expenses over their maximum contribution.

The reimbursement process risks delays that may undermine county confidence in the process. The Department must wait for the IFC to place the request on the agenda for a meeting. The number and frequency of its meetings depends upon its chair’s actions in response to requests, but may occur less than once a month. Thus, a county may wait several months to learn whether the IFC approved reimbursement. The uncertainty and delay in county reimbursements could be alleviated by making the estimated state contribution for the fiscal year part of the Department’s budget, to be disbursed by the Department.

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<sup>104</sup> Hannah Haksgaard, *Court-Appointed Compensation and Rural Access to Justice*, 14 U. ST. THOMAS J. L. & PUB. POL’Y 88, 104 (2020).

### **Department capacity**

The Department has a small staff and an increasing workload. In addition to its oversight, training, grant application, and data collection obligations, the Department is serving as the county administrator for conflicts for several counties. In Lyon County, for example, more than 100 conflicts resulted in the need to find and select conflict counsel since September 21, 2021. The Department selects conflict counsel in each case individually. To fulfill its obligations under the Judgment, the Department may need additional staff.

### **County Plans**

County plans were due on May 1, 2022. The Department did not anticipate significant changes in the county plans, although some include adjustments to comply with the 48-hour rule in AB 424 (2021).

### **Next steps for the Monitor**

As the Department continues to conduct training, support, and oversight, while collecting data on cases, workload, and expenditures for the counties, the Monitor will analyze and report on

- Any updated county plans
- Any new contracts between providers and attorneys
- Compliance of attorneys with the required data collection through Legal Server
- Progress on the data analyst's wage/salary survey, oversight plan, and incentive plan
- The Delphi panels
- The 2022 state-wide training conference.
- The Department's oversight activities and their results
- The Department's bill draft requests

**Appendix A**

**Onsight Visit Report for Douglas County**



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

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**ONSITE VISIT REPORT**

**Douglas County: Part 1**

Visit date: March 03, 2022

**I. Brief Narrative.**

Douglas County formed their contract public defender selection committee – in accordance with their Indigent Defense Plan – consisting of the following members: Marcie Ryba, Thomas Qualls, Peter Ryba, Derrick Lopez, and Mike McCormick. The committee spent the day interviewing candidates for the two Douglas County open contract positions. The interviews were technically for the remaining 3 months of this fiscal year. Derrick was encouraged by the Department to attempt to make the new contracts for a 15-month term, rather than a 3-month term. Derrick was also encouraged to collect letters of intent from the remaining 3 attorneys who are currently contracted so that the committee can meet with them and, if appropriate, extend their contracts (with the higher pay rate) through the next fiscal year. Derrick will consider this option.

Marcie, Thomas, and Peter Handy also met with (Douglas County Appointed Counsel Administrator) Derrick Lopez to discuss several issues with the Douglas County Indigent Defense Plan. The meeting was at the DIDS office, where we were also interviewing candidates for the two open public defender contracts. We discussed the following:

1. The new proposed PD contract, the Department reviewed the proposed contract and determined that it was not in compliance with the regulations, the Department will make proposed changes and get it back. It seems that the DA may have played a role in changing the language in the contract. We discussed how they determined malpractice insurance and other types of insurance were required. We inquired as to how the county determined the amounts of insurance that are needed – it seems to vary by county and contract. We will follow up on the question of whether the insurance requirements can be lessened so they are not so expensive for attorneys. Finally, we discussed concerns that have been expressed that the DA has a voice in how much the compensation amount of the contracts are and who will be approved. Derrick will follow up on this, but thinks the Board will approve who we recommend.
2. Screening. Derrick is currently completing the screening within 48 judicial hours (not counting weekends). To perform the screening, Derrick obtains a list of clients

who are to be seen by the court and collect the screening data as well as interview them for the upcoming bail hearing. Derrick expressed frustration that the jail process is inefficient in that they are sometimes very slow at transferring clients to meet with him and letting him in/out of the jail. This unnecessarily increase the amount of time necessary to perform these functions. Derrick was meeting with the jail on Friday, March 4 to discuss these issues.

3. LegalServer Entries. Derrick also has taken on the duties of agreeing to enter case intake data into LegalServer. It appears that since he does not have a secretary, he has fallen behind in entering the cases. It becomes more complicated because he must also prepare a Notice Pleading for the Court to identify the counsel that was selected. Derrick believes that a secretary would greatly assist him in the administrative tasks. For the moment, in order to get him caught up, the Department has offered to assist Derrick in entering the cases. Especially with the upcoming deadline of April 1 wherein reports will be provided to NCSC.
  - a. On March 4, Marcie emailed Derrick to inform him that overtime will be approved for Stanley Morrice to assist Derrick with the entry of cases.
4. Jail release: Derrick brought up a concern that all inmates, no matter where arrested, are transported to the Minden/Gardnerville Jail. If a client from Lake Tahoe is released, many of them have no transportation back to the Lake. We have reached out to FASTT to see if they are a possible solution (this is a problem in Lyon County, too).
5. 72 hour hearings –
  - a. In Gardnerville, these hearings currently take place daily. On Tuesday – Friday, they are more organized and a Criminal Complaint is usually filed. On Mondays, Derrick says, it is chaos, often there’s no criminal complaints and not as much information.
  - b. At the Lake –currently, they appear on Tuesday and on an as-needed basis.
6. Approval of Expert fees – There seems to be a misunderstanding on this. Derrick is unsure, but he believes he has been told that he can only approve up to \$5,000 and anything over that needs to go to the county manager. We discussed that the plan does not contain such a limitation. Also, pursuant to statute, there is no such limitation. We discussed that possibly, as a courtesy, he could let the finance office know if there is a big expense, but that would probably need to be discussed with them. We also discussed confidentiality in billing, and whether he can use a LegalServer number rather than case number. He will look into whether he needs to use attorney name and time descriptions.
  - a. Apparently \$100k was set aside for expert/investigators and the county needs to know when to add more money to this budget.
  - b. Another issue is the possible requirement of “professional service agreements” with all experts. Attorneys are concerned that “professional service agreements” will give the DA notice of which experts are being used (professional service agreements must be approved by the IRC (Internal Review Committee) – which is an internal committee of the Board of Commissioners on which the DA sits). Derrick will look into options here and will let us know.

## Douglas County: Part 1

Potential discovery issue. We also discussed feedback from one conflict counsel that in Douglas County, defense counsel may be receiving plea offers prior to receiving discovery (which implicates some ethical issues) – it may be worth investigating and could potentially be a training issue to address.

### **II. Oversight Criteria.**

1. Client Communication
  - a. As discussed above, Derrick reports there are private spaces in the jail for confidential communications. Even though the process is really slow.
  - b. We will follow up on courthouse communications.
  - c. We will follow-up on surveys when we meet with attorneys.
2. First Appearances
  - a. See discussions with Derrick, above. He is covering all first appearances.
3. Preparedness / Knowledge of Case
  - a. More info on this when we observe court.
4. Investigation/ Experts
  - a. See earlier discussion with Derrick. There is some confusion with the county about whether they want him to run expenses over \$5k through them. This is not how it should work.

### **III. Next Steps.**

1. We will travel to Douglas County to observe courts and meet with attorneys and judges. The Oversight Criteria will be more fully addressed then.

### **IV. Photos**

(Sorry, no photos in this report.)

**Appendix B**

**Onsite Visit Report for Esmeralda County**



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

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**ONSITE VISIT REPORT**

**Esmeralda County**

Visit date: February 15-16, 2022

**I. Brief Narrative.**

Day 1.

Executive Director Marcie Ryba and Deputy Director Thomas Qualls traveled to Goldfield, NV for an oversight visit, to meet with the Board of Commissioners, the Justice of the Peace, and contract Public Defender Jason Earnest.

Prior to the Commissioners meeting, we met with Justice of the Peace Danielle Johnson. Judge Johnson gave us a tour of the Esmeralda County Courthouse, including the Justice Court and District Court courtrooms, the jury room, Sheriff's Office, and various other spaces. The historic courthouse was built in 1905 and much of the original furniture is still being used.

During our meeting and tour, the judge voiced several concerns, including lack of adequate space for attorneys to meet privately with their clients. Under the current system, attorneys are able to meet with their clients in the jury room. A drawback of this is that it connects to two other rooms, and so is not completely private. The room is one floor above the justice court. Occasionally the Judge allows attorneys to meet in her courtroom, and she temporarily clears the room. Due to the lack of convenient meeting space, it appears the more common practice is just to talk to clients in the hallway.

Overall, Judge Johnson is extremely helpful and knowledgeable about the system and its challenges. She introduced us to the Commissioners, the Sheriff, and the District Attorney. She has also placed the DIDS client surveys directly outside the courtroom, where defendants can collect them either coming or going from court.

Judge Johnson informed us that she is already doing 48 hour hearings, in advance of the mandate by AB 424, and that Public Defender Jason Earnest has made himself available virtually. Judge Johnson speaks highly of Jason Earnest as being an effective advocate and of being consistently present and on time. She did not have the same praise for the District Attorney.



Marcie and Tom then presented to the Board of Commissioners. The presentation included discussions of the upcoming Annual Reporting, including the Financial Reporting, and the updated Indigent Defense Plan, due May 1, 2022. It was decided by the Commissioners that LaCinda Elgan will be our point of contact in these reporting matters. We also discussed the County's ability to opt-in to the Nevada State Public Defender system, including for direct appeals and death penalty cases. The Commissioners seemed interested in opting in to the NSPD for direct appeals and death penalty coverage.

We also met with the Esmeralda District Attorney. He does not seem to be interested in continuing to work on the Indigent Defense Plan. We are waiting for him to send us a copy of the old plan, so we can use it to move forward.

The Sheriff gave us a tour of the jail, which is attached to the courthouse. The Sheriff is concerned about the lack of attorney/client privacy in the jail. There is a phone and a computer next to the jail cells, but they are currently not private. There was only one inmate in custody during our visit. But if any more were present, then communication in the jail would be a problem. The Sheriff did confirm that there is a private space on the third floor of the courthouse, in a kind of attic space, where attorneys can meet privately with clients. Based upon the fact that Judge Johnson was not aware of the space, it is unclear how often it is used. Also, to access the third floor, the attorney and client must walk up a set of very steep stairs, which seems to discourage its regular use.

## Day 2.

Marcie and Tom returned to Goldfield on Wednesday, February 16, for pre-trial hearings before Judge Johnson in Esmeralda Justice Court. The DA appeared virtually, from Las Vegas, and Jason Earnest appeared in person. Mr. Earnest was prepared and was an effective advocate for each of his clients. There appears to be chronic late discovery problems with the District Attorney's office and lack of criminal complaints filed in time for the pre-trial conference, but Mr. Earnest appeared to be on top of it.

We then met with Jason Earnest after court. We spent over an hour with him and discussed a wide range of issues, including his observations and personal experience that Nye County needs more indigent defense attorneys. I will discuss that more in the Nye County Oversight Report. (Jason serves as Public Defender for Esmeralda County, and also has a contract to cover Tonopah courts and do conflict cases in southern Nye County.)

Jason assures us that the caseload in Esmeralda is manageable, that he is generally able to meet with clients privately, and that his biggest frustrations about the work is that the DA is not very organized. This results in the system being inefficient and causing inconveniences for both clients and the attorney.

## **II. Oversight Criteria.**

1. **Client Communication**
  - a. There are options for private or semi-private meeting spaces, but overall they are inadequate, inconvenient, or cause disruptions and time delays to use. Also, spaces on the second or third floors are inaccessible to older or disabled clients.
  - b. Jason Earnest appears to be able to communicate with his clients in advance and to have a good relationship with them.
  - c. The Justice Court has made surveys available to all defendants. It is unclear how many use them. Also, it is unclear how many Jason personally delivers to his client. We will follow up on this.
2. **First Appearances**
  - a. Jason Earnest is reliable and timely and appears virtually or in person for all hearings.
  - b. Judge Johnson reports that Jason is already appearing virtually for 48-hour hearings. It is anticipated that this system will remain in place after July 1, 2022.
3. **Preparedness / Knowledge of Case**
  - a. Jason Earnest was prepared and had knowledge of his cases and client's histories. Judge Johnson had great things to say about Jason and his reliability. (She did not have similar accounts of the district attorney.)
4. **Investigation / Experts**
  - a. We discussed several cases in which Jason intends to use investigators and experts in the near future. There did not appear to be an issue with the availability of fees..

## **III. Next Steps.**

1. Jason Earnest appears to be doing a great job as Public Defender. His office has caught up with caseload data entry on LegalServer, but they still need to finish entering attorney time. We will continue to run regular LegalServer reports, as with all offices, to monitor progress.
2. We are working with the county regarding updated Indigent Defense Plan, due May 1, as well as their annual report.
3. We will continue to check in with Jason regarding his needs and his upcoming need for experts and investigators, as well as any other resources.

**Appendix C**

**Onsite Visit Report for Eureka County**



**STATE OF NEVADA  
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**ONSITE VISIT REPORT**

**Eureka County**

Visit dates: April 19-20, 2022

**I. Brief Narrative.**

DIDS Executive Director Marcie Ryba and Deputy Director Thomas Qualls traveled to Eureka, NV for an oversight visit, to meet with Justice of the Peace Dorothy Rowley, to tour the Justice Court facilities, and to meet with contract Public Defender Kelly Brown.

We met with **Judge Rowley** in Eureka on April 19, 2022. We discussed Eureka's unique situation and needs. We began with Eureka's plan to cover the 48-hour hearings. Because of Eureka's low overall caseload, it is not anticipated that this will be a significant burden, though there still needs to be availability. Her plan right now is for the court and the contract PD to be on-call. (So far this year, there have only been 9 new cases. She explained that most of them involve domestic violence charges, which is the primary type of cases she sees lately.) Judge Rowley intends to issue a Standing Order, similar to what Judge Chamlee proposed in Nye County, regarding standard OR releases and remote hearings. She was unsure if the requirement to cover the 48-hour hearings was in Kelly Brown's contract. She said Eureka does not currently have a contingency plan, should she or Mr. Brown be unavailable.

The Eureka contract PD has not had any conflicts since the Plan was implemented, so she could not comment on how that part of the process was working.

There is no public defender's office in Eureka. Kelly Brown, the contract PD for Eureka, has an office in Ely (approximately an hour and 10 minutes away), where he also lives. Kelly is able to meet with his clients in the court room (she and any court personnel are generally not in the courtroom until proceedings begin – or they can step out and give him privacy). Additionally, there is a Pre-trial Services Office close to the courtroom that Kelly can also use to meet with clients.

We also discussed mental health, substance abuse, and competency evaluations, as well as access to resources for all of the above. Judge Rowley explained there was definitely a lack of mental health services in Eureka and that she would welcome any kind of coordination of these resources by DIDS. Judge Rowley is on a subcommittee of the

sentencing commission to determine the needs of rural communities regarding substance abuse, including the opioid epidemic. And the Judge arranged for a substance abuse recovery expert to come to Eureka every Wednesday to facilitate a program called Overdose Data to Action Program.

Related to this, we talked with Judge Rowley about our plans for the Holistic Resource Center. She was very much in favor of such a resource and reiterated that because of Eureka's size and remote location, access to any of these resources, including competency evaluations and treatment options is scarce.

Judge Rowley also discussed the fact that approximately six domestic battery cases were set for trial. They will need to be tried at the district court, however, because her courtroom was only designed for 6 jurors.

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On Wednesday, April 20, we met with Eureka Contract Public Defender **Kelly Brown**, in his office in Ely, NV. While he confirmed only 9 new cases in Eureka this year, so far, he also explained that currently, most of the felony charges get pled down to misdemeanors, but then end up with a 2-year probation tail, for which there are regular status check hearings. Accordingly, most of his current court time in Eureka is related to status hearings on older cases. He confirms that he is able to meet with clients either in the courtroom or the pretrial services office.

Also, Kelly just took over the conflict contract in Lincoln County and is pretty busy with that, including having to withdraw a number of pleas facilitated by prior counsel. (See separate Lincoln County preliminary report.)

Kelly also represents the local Ely Shoshone Tribe, as well as another local entity, and he takes some private cases. He states that due to the shortage of attorneys in the area, the local judges often contact him to request that he take on certain civil cases. Though he has done so in the past, he plans to stop that practice, as he feels he is near capacity with the rest of his work.

## **II. Oversight Criteria.**

1. Client Communication
  - a. Though there is not a public defender's office in Eureka, Public Defender Kelly Brown is able to communicate privately with his clients in one of two spaces in the Justice Court center.
  - b. The caseload is light in Eureka, so it is not difficult for Kelly to spend adequate time with his clients.
2. First Appearances
  - a. Kelly covers first appearance, often remotely
  - b. Kelly plans to cover all 48 hour hearings, for now.

**3. Preparedness / Knowledge of Case**

- a. Kelly is well-experienced, the former District Attorney of White Pine County, and appears to provide thoughtful and competent representation.

**4. Investigation/ Experts**

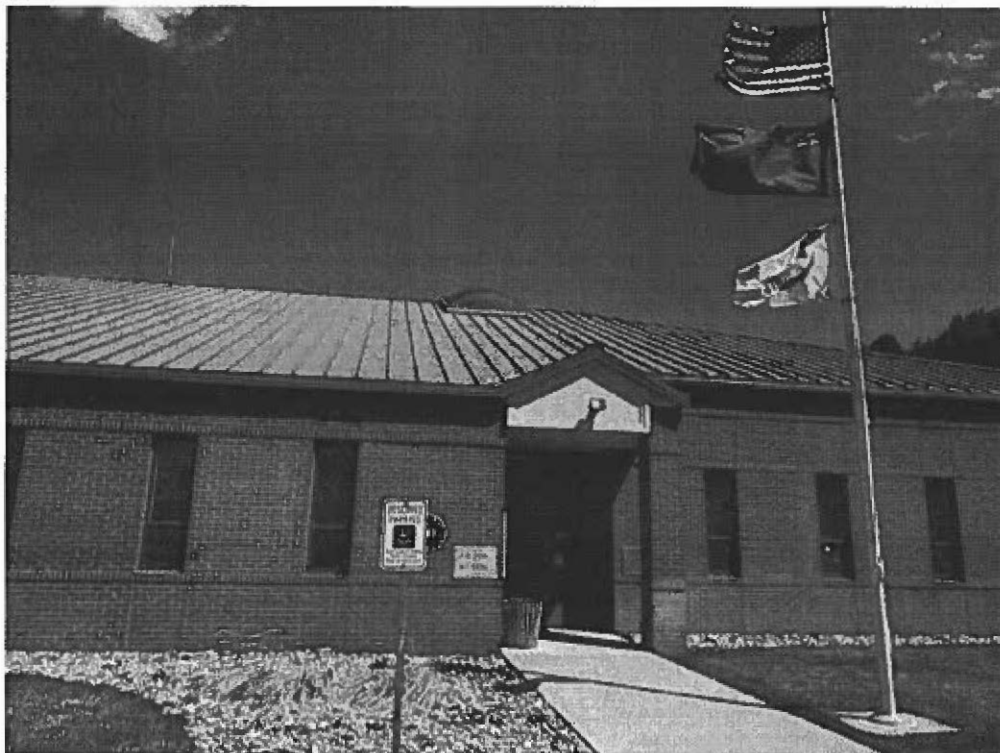
- a. Kelly reports that he does use both investigators and experts occasionally, but he did not realize he needs to record them in LegalServer, but will begin. He sought our assistance with two different experts recently.

**III. Next Steps.**

Follow-up a month or two after July 1 to check on how 48-hour hearings are going.

**IV. Photos**

1. Eureka Justice Court center
2. Justice Court Courtroom
3. Justice Court





**Appendix D**

**Onsite Visit Report for Lyon County**





**STATE OF NEVADA**  
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**ONSITE VISIT REPORT**

**Lyon County: Yerington**

Visit date: February 28, 2022

**I. Brief Narrative.**

Executive Director Marcie Ryba and Deputy Director Thomas Qualls traveled to Yerington, NV for an oversight visit, to meet with county officials Eric Milavsky and Josh Foli, tour the jail facilities, observe bail hearings, discuss processes with Lyon County Sheriff's Office supervisors, and meet with contract Public Defender Mario Walther.

During the meeting with Eric Milavsky, HR Director (and Indigent Defense Plan drafter), and Josh Foli, Lyon County Comptroller, the following were discussed:

(1) the Annual Report – they are working on their plan for next year;  
(2) 48-hour hearings. They are addressing the needs for additional staff for the hearings. For instance, regarding Mario's office (contract PD), the county will increase the amount of the contract by \$150k to cover 1 additional attorney and 1 clerical staff to handle the weekend hearings. They believe that hearings will happen Saturday and Sunday, but are still working on the process. They are also increasing their Court Services Staff from 1 to 3 employees. This will assist with the screening process and pre-trial bail forms which must be completed. They would like to be reimbursed for these expenses;

(3) Concerns over conflict attorney Carl Arnold. Carl was recently disciplined by the State Bar. They informed that feedback from the local judges is that Carl is not doing a very good job. He is generally not prepared and they are unable to contact him when need. Eric requested that Carl be taken off of the list for Lyon County for now and be given no more assignments. They requested he stay on his current cases, for now, but they may request he be taken off those if something doesn't change. Tom will advise Deputy Director Peter Handy of the problems. And we will schedule a meeting with Drew Christenson to discuss.

(4) Appointed Counsel Administrator. Feedback from the county and the judges is that they are very happy with the current process and DIDS' handling of selection of counsel and billing. (Judges are reportedly happy with no longer having to approve bills.) The county has no plans at this time to hire their own counsel administrator and will continue to use the Department;

(4) Investigator for Lyon County. There was a discussion of whether Lyon County was willing to add an investigator to Mario's contract. Eric and Josh advised that the investigation charges have increased from \$5-6k in prior years to \$70k this year. (This means a lot more investigation is happening, which is one of our goals.) But the county says this amount is not sufficient to bring on a full-time staff member, yet.

(5) Following up on this meeting, we recommended that Lyon County create an official conflict contract. There have been 100 conflict cases since we took over appointed counsel admin and started counting (since September 1, 2021). Over a year, this is enough for a full-time contract. We are having trouble finding people to cover cases and occasionally the court dates need to be continued. A conflict contract would eliminate this problem and take a substantial load off our office. Josh Foli responded to us that the county has had several conversations with private attorneys in attempt to secure a conflict attorney contract, and none of the attorneys were willing to take on such a contract. He stated he is not interested in having further conversations on that issue at this point.

Lt. Josh Barnes & Justice Complex Visit. Next, at the Lyon County Justice Complex, we met first with Lt. Josh Barnes, and discussed the processes he oversees and what he sees as gaps that need to be filled. He expressed frustration at the judges not streamlining the process more to take more detainees at one hearing. This includes not grouping warrants with the other detainees. The result is that some people are held longer than others before a hearing and it also makes more work for his crew. We also discussed our grant award for discovery tablets, as well as the proposal for a Holistic Resource Center. He expressed a desire for the tablets to be able to connect to their lawyer's offices (only) so they could talk to their lawyers, as well as watch discovery. He would like five tablets, one tablet per unit. One issue I see with this is how to make them accessible to all indigent defense attorneys this way.

We were impressed with Lt. Barnes and the other two Sheriff's deputies who walked us through their processes and who seemed to have a keen interest in due process and protecting rights. They were generally complementary of how Mario and his team have been handling cases and noted it has not always been that way, with prior defense lawyers.

Sgt Sobol had concerns that some defendants were being released before they were connected to resources, which often meant they went right back to troubled conditions or behaviors. In general, they are happy with the FASTT team. We discussed that we've been working with FASTT to make the system even better, more comprehensive. And also to duplicate what Lyon County's FASTT is doing well to other counties.

Finally, we met with Mario Walther, both before and after the bail hearings. We discussed 48-hour hearings, the potential addition of an investigator, discovery tablets, FASTT, and other matters. They have not sorted out all the details of covering the 48-hour hearings, but plan to hire a new attorney. They also hired a new part time assistant for mostly data entry. Mario showed us the private attorney rooms in the jail.

So he has access to space for confidential attorney-client conversations. He noted that they generally do not want to have confidential conversations with detainees prior to bail hearings, as his office has not been appointed until during the hearing, and they've not done a conflict check yet.

## **II. Oversight Criteria.**

1. Client Communication
  - a. There are private spaces in the jail for confidential communications.
  - b. We only observed bail hearings and did not tour the full courthouse for additional spaces. But the jail is in the same building as the courthouse.
  - c. We did not discuss client surveys.
2. First Appearances
  - a. Mario's office covers all initial detention hearings and intends to continue to cover them 7 days a week, when the 48-hr hearings begin.
3. Preparedness / Knowledge of Case
  - a. Mario and his office seem to have the process pretty dialed. Multiple people commented on how much better his representation is than some of his predecessors.
4. Investigation / Experts
  - a. Mario's office spent \$70,000 on investigators this last year, as compared to \$5-6,000 in years past. (Not sure what the numbers are on experts.) This is a vast improvement over years past and a subject we are planning to spend significant time on during our annual conference this year.

## **III. Next Steps.**

1. We need to schedule a follow-up trip to meet with judges and tour courthouse more extensively.
2. We will follow-up on 48-hour hearings, as with other counties, as they begin to occur.
3. Lyon County continues to be a pleasure to work with, from county management to Sheriff's department, to Mario's office. We look forward to continuing to work with them as they adjust the plan, and as we grow our office and our budget.

## **IV. Photos**

Lyon County Justice Center

**Appendix E**

**Onsite Visit Report for Mineral County**



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

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**ONSITE VISIT REPORT**

**Mineral County**

Visit date: February 02, 2022

**I. Brief Narrative.**

Marcie Ryba and Thomas Qualls traveled to Hawthorne, NV for an oversight visit and to meet with the Board of Commissioners.

Prior to the Commissioners meeting, we met with the incoming District Attorney, Jaren Stanton. (Prior DA Sean Rowe recently resigned his position.) Mr. Stanton gave us a tour of the district court courthouse and of the various client meeting spaces, including the jury room. He explained that the jail was attached to the district court building, and that there were visiting rooms in the jail, as well.

Next Marcie and Tom presented an Update to Board of Commissioners. (See PDF, attached.) The update included acknowledging our new Board member, Cassie Hall, who is a Mineral County Commissioner. We also discussed the ongoing *Davis* monitoring, our Permanent Regulations, Grant funding of \$45,000 for rural attorneys to travel to our Annual Conference, successful approval of all Indigent Defense Plans, Uniform Data Reporting with LegalServer, and the first Quarterly data reports. We also discussed the lack of data for Mineral County, the importance of the weighted caseload study, and the need to remedy the lack of data. We also discussed the possibility of an Appointed Counsel Administrator as a possible solution. Finally, we discussed the quarterly financial reports and the importance of their timely submission in order to seek state funds for Mineral County under the Maximum Contribution Formula.

After our presentation to the Board of Commissioners, we met with Judge James (Mineral County Justice of the Peace) in the jury room of the district court. We discussed Mineral County's Indigent Defense Plan and possible modifications to plan, including the provisions concerning the Appointed Counsel Administrator, and the needs for changes to the screening process. We also discussed with Judge James the importance of uniform data collection through LegalServer. And we brought in acting Public Defender Justin Oakes to discuss the same.

We then attended an in-custody status and arraignment hearing before Judge James, which was held in the district court, likely because of the proximity to the jail.

After the hearings, we again met with Justin Oakes to discuss uniform data collection needs. Justin has assumed the responsibility for the main public defender contract after the death of his father, John Oakes, who previously held the contract. Justin also has the Sparks Municipal Court contract and is stretched really thin in dealing with both contracts, his own practice, and managing the estate affairs for his deceased father. There is some concern that Justin is stretched too thin.

Because of this situation, DIDS offered to perform the LegalServer case intake for Justin on a temporary basis (not to exceed July 1, when a new public defender contract term begins. We discussed the process with Judge James and his clerk, Sherri Gamble. We explained to Justin that we would still need him to log his hours and the disposition of cases.

## **II. Oversight Criteria.**

1. Client Communication
  - a. It appears there a place in all courthouses / jails where attorneys can have private conversations with their clients. It does seem, however, that in both courthouses these spaces double as other spaces, such as offices or jury rooms.
  - b. Under current circumstances, we are concerned that there may be time constraints on representation. We will continue to monitor this and to have more conversations with Justin Oakes.
  - c. We discussed sending the client surveys to the Judge, so he can hand them to the clients to encourage their feedback.
2. First Appearances
  - a. We need more information on how first appearances are handled in Mineral County courts.
  - b. We discussed with Judge James the need for a plan for 48-hour hearings by July 1, 2022.
3. Preparedness / Knowledge of Case
  - a. We need to continue to monitor and gather more information.
4. Investigation / Experts
  - a. There does not appear to be extensive use of experts and investigators in Mineral County, but we will need research further. It is difficult to ascertain, because to date this data has not been recorded anywhere.

## **III. Next Steps.**

1. We created a Memorandum of Understanding which covers the selection of conflict counsel. The MoU also sets forth the process for the clerk notifying us

of all cases assigned to Justin Oakes, so that we can input the case data into LegalServer. We forwarded it to Judge James for approval.

2. We will follow up with Justin Oakes on LegalServer training and data input and we will run a report in 30 days from LegalServer to check on time and disposition entries.
3. We discussed that future Mineral County Public Defender contracts require the contract public defender to enter of all case intakes into LegalServer, with conflicts then being transferred through us, just like in other jurisdictions.

#### **IV. Photos**

1. District Court, view 1
2. District Court, view 2
3. Jury Room / client meeting space



**Appendix F**

Onsite Visit Reports for Nye County (Tonapah & Pahrump)





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**ONSITE VISIT REPORT**

**Nye County: Tonopah**

Visit date: February 15-16, 2022

**I. Brief Narrative.**

Executive Director Marcie Ryba and Deputy Director Thomas Qualls traveled to Tonopah, NV for an oversight visit, to meet with Justice of the Peace Jennifer Klapper, and contract Public Defender Jason Earnest.

After our visit to Goldfield, we traveled to Tonopah to meet with Judge Klapper. Her courtroom and chambers spaces are currently under construction, in order to build a jury deliberation room. We discussed the current indigent defense plan, as well as her concerns regarding current and future processes. Her first concern was the lack of adequate attorney meeting space convenient to her courtroom. There is one conference room, far away on the other end of the courthouse, that can be used for meetings, if it is not occupied. She believes that it is infrequently used, and that attorneys generally use the hallway to talk to their clients. She does not have access to a jury room currently.

She has great concerns about the 48 hour hearings. Specifically, she states there are problems with the district attorney not showing up for the hearings. Among other things, she believes this is a problem with potentially having to release a defendant who may be a danger to themselves or others.

Judge Klapper also has concerns that the indigent screenings are not being done before defendants appear before her. She states that she appoints the public defender to everyone, at their first appearance, and then sorts it out later if not appropriate.

Judge Klapper is also concerned that the courts in Pahrump take priority over Tonopah. Whenever there are cases set at same time in Pahrump and Tonopah, attorneys routinely call to reschedule their Tonopah court dates, which she believes puts Tonopah defendants at a disadvantage to those in the larger communities. Occasionally, Tonopah judges will even call to encourage her to reschedule her court dates. She currently sees the Public Defender in person three times a month. Otherwise, the attorney appears virtually for 72 hour hearings.

Klapper reports that many attorneys are still wanting virtual court, but now that the pandemic is waning, she would prefer for them to be in person again.

We also discussed the selection process. She prefers that if an attorney is representing a defendant on a case in Pahrump, she would like the same attorney for that Defendant on Tonopah cases. Otherwise, it is difficult for Jason to have to gather all the information about the other cases. It seems screening is an issue in Pahrump, as well. This is likely due to the fact that Nye County's Indigent Defense Plan calls for the Appointed Counsel Coordinator to do the screening, but the county has not yet hired someone for that position. Currently, DIDS is performing the duties of selection and review of fees.

As discussed in our Esmeralda County Report, on February 16, we met with Public Defender Jason Earnest after court in Goldfield. Jason is the contract Public Defender for the towns of Tonopah and Beatty in Nye County, and he also does conflict cases in Pahrump. We spent over an hour with him and discussed a wide range of issues, including his observations and personal experience that Nye County (specifically, Pahrump) needs more indigent defense attorneys. (Jason also serves as Public Defender for Esmeralda County.) As discussed in the Esmeralda Report, Jason is a well-experienced and well-regarded defense attorney in these jurisdictions. He seems to be prepared and makes himself available to the courts, both in person and virtually.

## **II. Oversight Criteria.**

### **1. Client Communication**

- a. As discussed with Judge Klapper, and as we observed, there is one option for a private meeting space in the courthouse, but it is at the opposite side of the courthouse from the courtrooms. Judge Klapper says attorneys just meet in the hall. She has no functioning jury room presently and does not have access to the district court's jury room.
- b. Though the distances he travels are definitely a factor, Jason Earnest appears to have good communication with his clients.
- c. We will follow up on the issue of client surveys with Jason, and make sure he is sending them out or delivering them with the disposition of cases.

### **2. First Appearances**

- a. Jason Earnest is reliable and timely and appears virtually or in person for all hearings.
- b. Judge Klapper has concerns, as set forth in more detail in the report, about the viability of for 48-hour hearings in remote communities such as Tonopah. There has been a discussion of county judges sharing weekend responsibilities for these hearings, she does not believe that Nye County will want to pay judges in other jurisdictions to make these appearances. It is anticipated that attorneys will appear virtually for most 48 hour hearings in Tonopah.

3. Preparedness / Knowledge of Case
  - a. Though we did not witness Jason Earnest in Tonopah, we did the following day in Goldfield. Jason appears prepared and had knowledge of his cases and client's histories. Both Judge Klapper and Judge Johnson had good things to say about Jason and his reliability and preparedness.
4. Investigation / Experts
  - a. When we met with Jason, we discussed several cases in which he intends to use investigators and experts in the near future. There did not appear to be an issue with the availability of fees in either jurisdiction.

### **III. Next Steps.**

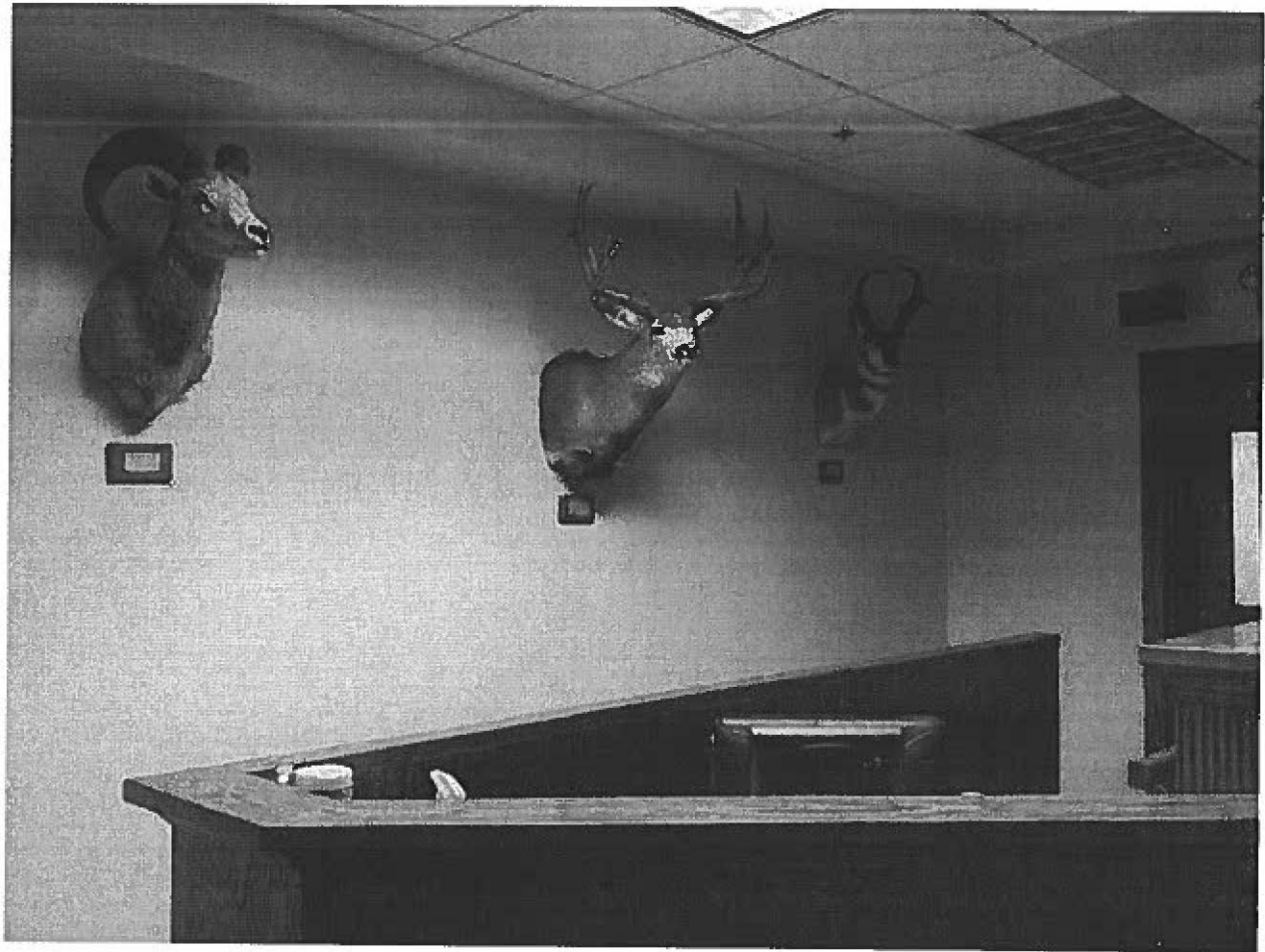
1. Jason Earnest appears to be doing a great job as Public Defender. His office has caught up with caseload data entry on LegalServer, but they still need to finish entering attorney time. We will continue to run regular LegalServer reports for both counties, as with all offices, to monitor progress.
2. We plan to visit the communities of Pahrump and Beatty in the near future, more than likely it will be a multiple day visit. We will continue to work with the county to hire a Counsel Administrator / Coordinator, and regarding their updated Indigent Defense Plan, as well as their annual report.
3. We will continue to check in with Jason regarding his needs and his upcoming need for experts and investigators, as well as any other resources.

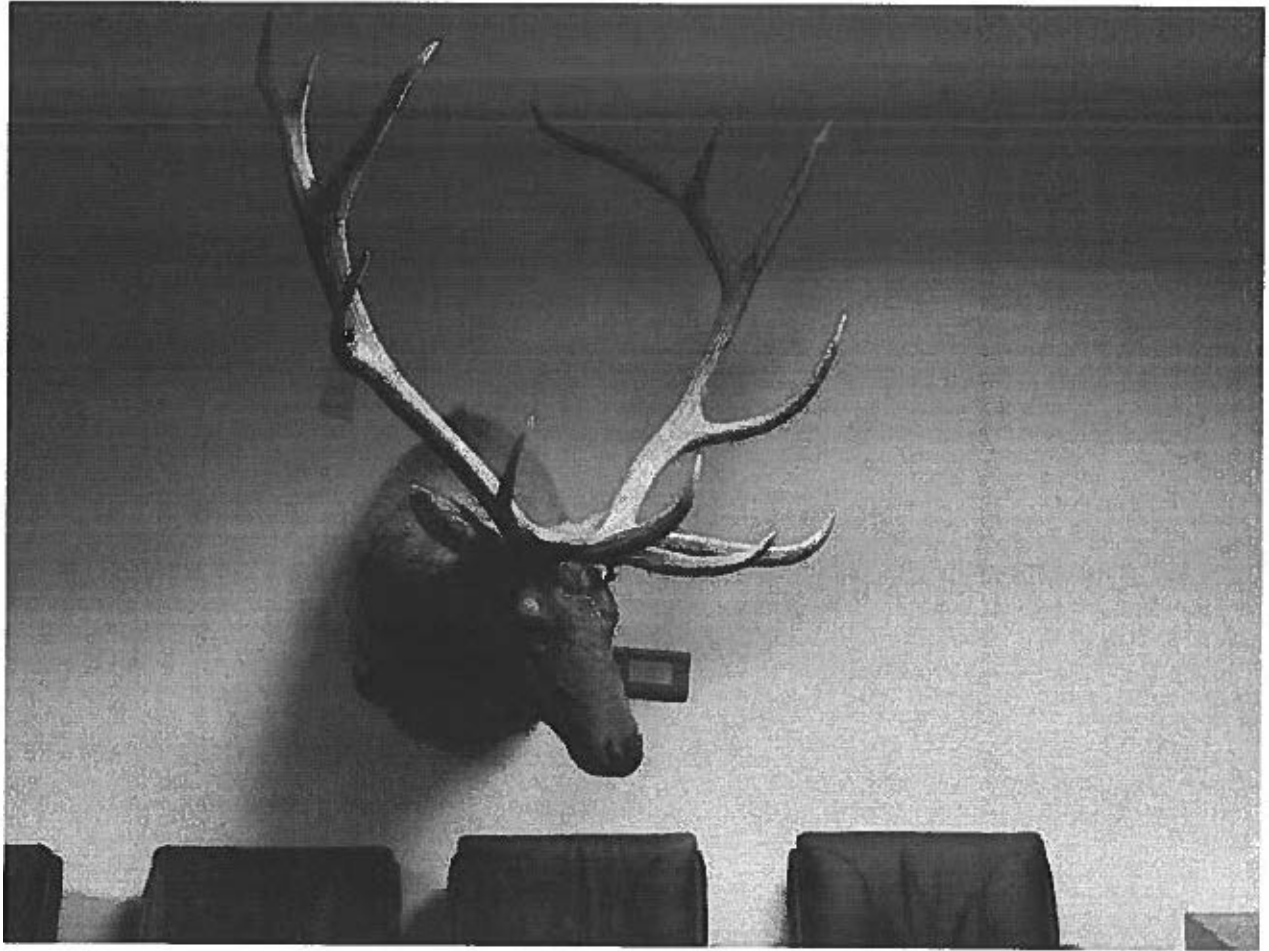
### **IV. Photos**

1. Conference Room, possible meeting space
2. Justice Court
3. Justice Court
4. Justice Court











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**ONSITE VISIT REPORT**

**Nye County, Part II : Pahrump**

Visit date: March 30-31, 2022

**I. Brief Narrative.**

Prior to our March visit, on February 25, 2022, **Executive Director Marcie Ryba** and **Deputy Director Thomas Qualls** met with **County Manager Lorina Dellinger** over zoom. We discussed a number of the issues brought to light by our previous visits to Goldfield and Tonopah. We also discussed necessary revisions to the Indigent Defense Plan and the attorney contracts.

Specifically, we discussed the 48-hour hearings which will be required starting July 1, 2022. Lorina plans to request an increase in the compensation amounts of the attorney contracts in light of the additional work that will be necessary. We discussed the deficits in reporting in Nye County attorneys' first quarterly reports. She is also considering an increase to the contract amount to cover the reporting work required by *Davis*, with the hopes that this will allow the attorneys to hire an assistant to handle the reporting.

We also discussed Judge Klapper's concerns about the lack of adequate attorney meeting space convenient to her courtroom, as well as her concerns about attorneys showing up to court when they have a schedule conflict with Pahrump courts. We discussed the possibility of adding a contract conflict attorney to cover Tonopah, to remedy that issue.

We also discussed amending the plan regarding indigent screenings, because there is not currently an administrator handling screening. Since screenings will likely be performed by judges starting July 1, at 48-hr hearings, it is likely the plan will be amended accordingly.

Finally, we discussed at some length changes that Nye County could make regarding how it provides Indigent Defense, including adding more attorneys, designating a conflict attorney to Tonopah, creating a County Public Defenders Office (and an APD), and opting in to the NSPD for appeals, DP, a conflict office, or full representation.

\*\*\*



Following up on our zoom meeting with Lorina Dellinger, on March 30, Marcie and Tom traveled to Pahrump for oversight visits on March 30-31. On March 30, we met again with **County Manager Lorina Dellinger**, as well as **Chief Justice of the Peace Lisa Chamlee**, **District Court Judge Kimberly Wanker** and **District Court Judge Robert Lane**. Justice of the Peace Jasper is currently out of the office, due to health issues. On March 31, we observed in-custody arraignments before **Justice of the Peace Gus Sullivan**, and we met with contract public defenders **Ronnie Boskovich**, **Nadine Morton**, **Nathan Gent**, and **Jason Earnest**. Afterwards, we continued our conversation with Judge Lane.

On March 30, we met with **Lorina Dellinger**, along with **Judge Chamlee**, at the Courthouse complex at 1520 E. Basin Road, in Pahrump. We discussed the county's proposed changes to the Indigent Defense Plan. Lorina indicated that the new draft budget includes a position for an Appointed Counsel Administrator, an additional public defender contract, and increases to the public defender contract amounts. We also discussed the possibility of removing non-indigent defense work from the public defender contracts. There was a question raised as to whether the Board of Commissioners will support all these increases. Lorina intends to bring these matters before the Board later this month (April). DIDS will stay in touch with Lorina regarding this issue and possibly appear before the Board for presentation and/or to answer questions, either live or by zoom.

Additionally, we discussed the upcoming 48-hour hearings with Lorina and Judge Chamlee. The public defenders are not currently required to cover these hearings, so the new plan and the new contracts will need to address this issue. We discussed the possibility that the Appointed Counsel Administrator could coordinate appearances, and that all contract public defenders could appear by rotation. If both the Administrator and the new PD contract are approved by the Commissioners, then there could be a 7-week rotation, i.e., each person would only be required to do Saturday hearings once every 7 weeks.

Finally, with Lorina still present, we discussed the request from the public defenders to have the county provide a computer in the courthouse, so that defendants who do not have a computer, but are required to do online Domestic Violence classes, could have centralized access to a public computer to fulfill the requirement.

\* \* \*

With Judge Chamlee, we discussed the 48-hour hearings in more detail. She is fine with most of the hearings being remote. We also discussed that this is appropriate given that the attorney appearing has not yet been appointed, and so should avoid being privy to confidential information about the case. She plans to issue a Standing Order regarding remote appearances. Additionally, she informed us that we can watch any of the justice court proceedings on zoom. The link is on their website. She also informed us that, due to a recent covid-related administrative order, justice court hearings may be in person, but only litigants, witnesses, and victims may attend. The courtrooms are closed to other persons.

Chamlee states that everyone in the system can see that the public defenders are currently overworked and do not have adequate time for their caseloads. She believes the contracts should be longer than one year, to provide some consistency in the system and to give the attorneys some job security. Chamlee held one of these positions years ago. The pay for the contract has not changed since then. (It hasn't changed since they started contract public defenders in 2013.) She fully understands that at the current contract rate, \$150,000.00 / year, and after overhead is paid, the attorneys are not ending up with much. She told us that when she had the contract, she did the math on how much was left after paying overhead, divided by the number of hours she was working, and she made approximately \$15/hr. This is not a sustainable amount for the high-level work required and the stress involved.

After our discussion on the issue, Judge Chamlee also thinks it is a great idea for the county to opt-in to the NSPD for direct appeals and death penalty cases. This will take pressure off the attorneys holding these contracts and off the county resources.

\* \* \*

Later on the 30<sup>th</sup>, we met with District Judges Wanker and Lane. Judge Lane had to leave early, to take care of his son. Both judges are still approving fee requests for experts and investigators. We discussed the new procedures and the statute requiring all such requests to go through our office now. We will also follow up with Lorina on this.

We also discussed the selection of counsel process. Judge Lane does not like it as it is and would like a list of current rotation every week so that he can tell the defendants who their attorney is.

Both judges expressed concern about the current status of competency evaluations. The court does not currently have a plan to replace the Lakes Crossing facilitation. They largely believe that it is the attorneys' obligation to find a replacement for the Lakes process.

\* \* \*

We asked Judge Wanker what she sees needing improvement. She agrees that public defenders are underfunded and overworked. She is concerned with pay parity, as well. The current situation creates an environment in which the attorneys do not always have time to meet with clients prior to court, and sometimes results in mistakes in things like plea memos. She states that the court system in general in Nye County is underfunded.

We discussed that one of the contract public defenders bought a copier / printer out of her own funds, to place in the courthouse, so that the public defenders would have access to it for copying, editing, and printing court documents. As neither the district attorney nor the courthouse will allow them to use their equipment. (And, like most courthouses in Nevada, there is no public defender-dedicated space there.)

## Nye County Oversight Report #2

Wanker strongly supports the creation of a county public defenders office. This would give the attorneys more resources to do their jobs, including support staff, and possibly social worker(s) and investigator(s), in addition to more sustainable pay. We followed this up with a long discussion about holistic defense and her support of the same, including alternative sentencing. She would like to establish a mental health court in Nye County, but the court has not been given the resources to establish it. The judge also noted the lack of attorneys on either side of the aisle coming to drug court. She stated that the district attorneys never appear, and only two contract attorneys come regularly. She would like for all public defenders to attend drug court training.

There also seems to be an issue of parity in plea negotiations, as not all public defenders get the same kind of plea deals for the same or similar cases.

Judge Wanker showed us her courtroom (photos attached) and we discussed attorney/client meeting space, and she acknowledged that there is a shortage in Nye County, including in Tonopah. There are two spaces right outside her courtroom in Pahrump, for atty-client meetings (photos attached). Judge Wanker proposed the same configuration in Tonopah, as there is more seating space in the courtroom than necessary, but the funding to build the spaces was not granted. There is a large meeting room outside the justice court, but it appears to be used for multiple purposes, so it may not always be available.

We also discussed the options for the county to opt-in to the NSPD for direct appeals and death penalty cases. She is in favor of these measures, as well.

\* \* \*

On the morning of March 31, we observed in-custody arraignments before Justice of the Peace Gus Sullivan, who was visiting from Beatty. And we noted a couple of things that were concerning. In at least two instances, it appeared that a warrant was issued by the court for failure to pay a traffic fine, and the defendants were taken into custody and brought before the court. Both defendants appeared indigent and were represented by one of the public defenders. We have made inquiries since then, as to whether they were provided with counsel at the initial entry of plea. (As of this writing, we have not received a definitive answer.) If they were not represented, we believe there may be an *Alabama v. Shelton* issue. (The Sixth Amendment does not permit activation of a suspended sentence upon an indigent defendant's violation of the terms of his probation where the State didn't provide him/her with counsel during the prosecution.) Further, in these situations it seems that the court should not be able to impose a jail sentence for the failure to pay under AB416 (2019), which modified the procedures for traffic ticket fine collection. We followed up on these concerns with the attorneys. We have also proposed a state-wide training on *Shelton* for similar situations.

\* \* \*

Meeting with the attorneys. After court on March 31, we met with public defenders **Ronnie Boskovich, Nadine Morton, Nathan Gent**. We met with attorney **Jason Earnest** briefly, before the hearings with Judge Sullivan.

The attorneys discussed that, in addition to their regular county caseload, they handle federal prison cases. There is a federal prison in Nye County, and apparently the county has contracted with them to handle these charges, which are filed by the county district attorney. (I do not believe they are paid separately for these cases. Though we are exploring whether they could be.) This situation creates a problem sometimes for Nye County inmates, who must be shipped up to Tonopah, to make room for federal prisoners. This makes access to their attorneys more difficult sometimes.

Under their current contracts, non-capital, Category A felonies are able to be billed separately, pursuant to NRS 7.125. Not everyone was aware of this. So we will follow-up to make sure they are billing separately on these cases.

We discussed with them many of the same issues we discussed with the judges and Lorina, including crushing caseloads and low pay. After discussing the options, they each like the idea of an organized county public defenders office. They are interested in an office with better salaries, assistants, an investigator, benefits, case coverage, and the possibility of student loan forgiveness. If no county PD office created and the amount of their contracts are not significantly increased, some may not renew the contracts.

\* \* \*

After meeting with the attorneys, we met with Judge Lane, again, this time for a longer meeting. He like the idea of an organized public defender office, as well. He like the current public defenders and supports giving them more money. Lane also commented more than once that he likes our optimism, but has been around a long time and is a little skeptical.

We discussed various options to reduce the indigent defense attorney caseloads, including the county removing DCFS cases from their workloads. Judge Lane is concerned about removing DCFS cases from the public defenders' workloads, as he does not think there are enough qualified local counsel to handle those cases. We informed him that the court can seek Title 9 DCFS grants to pay for appointed counsel, which might attract attorneys from the Las Vegas area to take those cases.

## **II. Oversight Criteria.**

### **1. Client Communication**

- a. It appears the attorneys are doing their best with pre-court client communication, especially under the circumstances. Though Judge Wanker expressed some concerns, due to their heavy caseload burdens, when we observed court on March 31, the public defender was prepared and seemed to have a solid knowledge of her clients and their circumstances.

- b. There may be an issue with access to some clients if being held in Tonopah. We will follow-up on that.
- c. There is limited meeting space. In District Court, there are two rooms attached to Judge Wanker's courtroom. It is unclear if these are always available, but it is pretty good accommodation. There is one large room adjacent to the Justice Court.

## 2. First Appearances

- a. Attorneys are currently appearing, in person or virtually, for all first appearances.
- b. The county does not currently have a settled plan for 48-hr hearings / weekend hearings. Though Tonopah is currently holding them, virtually. The public defenders are not currently contracted to handle weekend hearings and do not plan to attend without additional compensation / amendment to their contracts.
- c. Judge Chamlee stated that the court will handle the Saturday hearings through a judge *pro tem*, and that attorneys will be allowed to attend virtually.
- d. We discussed with Chamlee, Lorina Dellinger, and with the attorneys the possibility of a rotational system, in which they would only need to appear one Saturday every seven or so weeks. (Provided an appointed counsel administrator is hired, and an additional public defender contract is added.)

## 3. Preparedness / Knowledge of Case

- a. We did not witness any unpreparedness of the attorneys. Overall, the judges seems to have respect for them and the jobs they are doing. Judge Wanker did express that she was concerned that their caseloads sometimes prevented them from being able to meet with their clients for an appreciable amount of time before court.

## 4. Investigation / Experts

- a. For some reason, these requests are still being submitted to the district court judges. We discussed this with both the judges and the attorneys and believe the new statutory process will be undertaken moving forward. We did, again, encourage the use of both when talking with the attorneys.

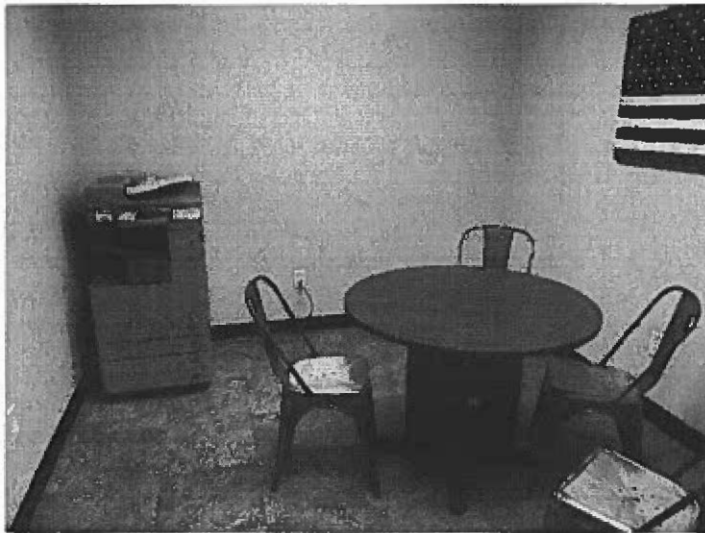
## III. Next Steps.

We followed-up with Lorina Dellinger, by email, to discuss the increase to the contracts and the possibility of creating a county public defender office in the near future.

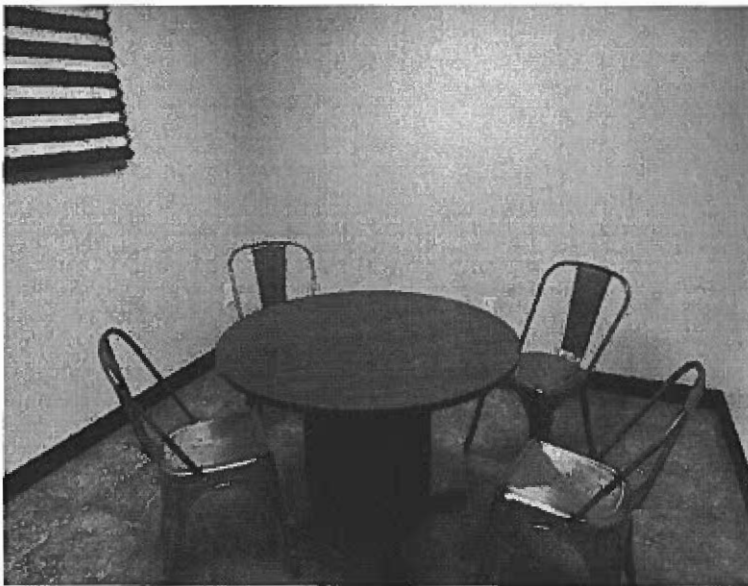
We will follow up with Judge Lane's staff regarding advising them of the rotation of attorneys, possibly for Monday morning hearings.

**IV. Photos**

1. Atty-client meeting room 1, with copier purchased by one of the public defenders. These two rooms are adjacent to the gallery seating in district court.



2. Atty-client meeting room 2.



**Appendix G**

**Onsite Visit Report for White Pine County**



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ONSITE VISIT REPORT

White Pine County

Visit dates: April 19-20, 2022

I. **Brief Narrative.**

Executive Director **Marcie Ryba** and Deputy Director **Thomas Qualls** traveled to Ely, Nevada for an oversight visit, to meet with **Justice of the Peace Stephen Bishop**, **District Court Judge Steve Dobrescu**, **County Manager Michael Wheable**, and finance officers **Elizabeth Frances** and **Elaine Eldridge**. No contract public defenders were available to meet with us.

We met first with **Justice of the Peace Stephen Bishop**, on April 19, and he gave us a tour of the new White Pine County Courthouse facilities. The facilities are impressive and well-appointed, including three attorney-client meeting spaces (one for each courtroom), as well as two jury rooms, and another conference room where attorneys can meet privately with their clients.

We discussed the current Indigent Defense Plan with Judge Bishop, as well as how 48-hour hearings would be handled in White Pine. Judge Bishop is already holding 48-hour hearings on the weekends. Right now, the two current contract public defenders are covering these hearings in rotation, even though they are arguably not contractually bound to do so. (Their contracts were signed before the passage of AB 424.) There is definitely some push-back from the attorneys, and it is unclear how long they will continue to do these hearings. It should be noted that the contracts were based upon each attorney taking one third of the public defender caseload. As it is, the two remaining attorneys intend to conflict off every third case, until a new attorney can be contracted to fill the vacant spot.

After the tour, Judge Bishop accompanied us to **Judge Steve Dobrescu's** office, where we all discussed the current Indigent Defense process, as well as plans and options for the future. Judge Dobrescu candidly opined that he thinks the current public defender contract amounts are not sustainable, and that \$100/hr is basically pro bono work.



We discussed the current state-wide shortage of indigent defense attorneys (and prosecutors, in some places). Like other counties, including Elko, Dobrescu said that students and recent graduates are no longer applying to be law clerks in White Pine County. We explained the number of efforts we are making to address the shortage, including the pipeline program with Boyd School of Law, our plans to increase the hourly rate for appointed counsel, our salary survey through Stoval Solutions, and our groundwork regarding student loan repayment assistance, state bar fee waivers, and incubator programs for new rural attorneys.

We discussed the current situation in White Pine, with the retirement of Rich Sears, and the gap that left in the county's plan for three contract public defenders. We discussed adjustments to the indigent defense plan that could be made to provide for greater continuity of coverage. This could include an organized office that still allows for its salaried attorneys to engage in the private practice of law. Another idea the Judge brought up was to implement a policy of a geographical limitation for conflicts.

We also discussed the statewide crisis in access to competency evaluations, as well as other holistic resources. We discussed our plans to build a Holistic Resource Center to address these concerns and to link the rural counties to mental health, substance abuse, immigration, investigation, and mitigation resources. Judge Dobrescu liked this idea and says it is definitely needed.

On April 20, 2022, we met with **County Manager Michael Wheable**, and finance officers **Elizabeth Frances** and **Elaine Eldridge**. We discussed the confidentiality of attorney billing records. Specifically, the tension between the county's need to ensure that the billings are legitimate, including that there is not accidental double-billing, and DIDS' need to protect the confidentiality of the notes in those bills. Right now, the system we're working with is that detailed bills are sent to DIDS, along with a redacted version, and DIDS forwards the redacted version to White Pine County for payment. We discussed the option that the County Manager could take on the role of Appointed Counsel Administrator for billing, and that he would have to sign the DIDS Designee agreements, including the Confidentiality Agreement, which would require the Manager to not share the bills with anyone, and to seal them / have a place where they could be locked up.

We also discussed the importance of separating civil cases from criminal cases in county reporting, as well as the importance of LegalServer data to Maximum Contribution formula, weighted caseload study, and *Davis* compliance.

As with the judges, we discussed the statewide shortage of attorneys, the need for increased wages and salaries, and the flexibility of work. And we continued the conversation about the various options for amending the indigent defense plan to allow for more consistency and more support for the attorneys.

## **II. Oversight Criteria.**

1. Client Communication
  - a. There are spaces for attorney-client meetings near every courtroom in the new courthouse. Plus, there are jury rooms, as well that could be used.
  - b. We were unable to observe any of the contract attorneys at work, but the judges report they are overall happy with them.
2. First Appearances
  - a. Attorneys are appearing at the initial appearances. Some are remote.
  - b. 48-hour hearings are already being held on the weekend. And the contract attorneys are showing up, even though they are arguably not required to yet. There is still a question as to how White Pine will handle this matter for the long-haul.
3. Preparedness / Knowledge of Case
  - a. Though we did not witness court proceedings on this trip, the judges did report that they are satisfied with the quality of representation of the current contract attorneys.
4. Investigation / Experts
  - a. White Pine is using investigators and experts where needed. We clarified how these are to be reported. Also, we informed officials that we received a reimbursement from the State for \$1,750 for investigators and experts in White Pine for this last quarter.

## **III. Next Steps.**

1. We will follow-up on 48-hour hearings, the integration of the new contract attorney, whether the County Manager wants to accept the role of Appointed Counsel Administrator, and any changes to the structure of indigent defense in the county's plan.

## **IV. Photos**

1. Attorney-client meeting room 1
2. Attorney-client meeting room 2
3. Attorney-client meeting room 2 (alt view)
4. Attorney-client meeting room 3
5. District Court 1
6. District Court 2
7. Jury Room 1
8. Jury Room 2
9. Justice Court
10. Courthouse lobby
11. Ely Railroad Station

**Appendix H**

Oversight Report for Lincoln County



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

898 West Nye Lane, Suite 202 | Carson City, NV 89703-1578  
Phone: (775) 887-8490 | [dids.nv.gov](http://dids.nv.gov)

**OVERSIGHT REPORT**

**Lincoln County**

Contact date: April 20, 2022

**I. Brief Narrative.**

On Wed, April 20, 2022, Executive Director **Marcie Ryba** and Deputy Director **Thomas Qualls** were in Ely, Nevada, to visit with attorney **Kelly Brown**. Kelly is the Eureka County contract Public Defender (see Eureka County Oversight Report), but he is also the newly **contracted conflict counsel in Lincoln County**.

Kelly explained that the Lincoln County conflict contract has significantly increased his workload recently. He reports that this is due to a few factors: (1) the caseload is more than was anticipated; and (2) that in almost all of the cases he inherited from prior conflict counsel, the clients are asking to withdraw their pleas. The clients have reported that their prior attorney had not spoken with them sufficiently about their cases and/or that they felt coerced into their pleas.

Kelly also stated that he was seeking to renegotiate the contract for additional pay under the circumstances.

As a side note, prior conflict counsel did not communicate well with the DIDS office and was not using LegalServer to collect the mandatory data required by the *Davis* settlement and DIDS Regulations.

**III. Next Steps.**

We plan to follow-up with Kelly Brown on this matter and we also plan to complete an on-site visit in Lincoln County.

**Appendix I**

Expected *Davis* County Indigent Expenditures

**Expected Davis County Indigent Defense Expenditures in Excess of Maximum Contribution**

**Churchill**

Estimated Cost of the Plan:	\$956,107
Maximum Contribution	\$530,471
Estimated State Expense:	\$425,637
<hr/>	
Total Expended in Q1, Q2, Q3:	\$258,854
End of Year Projection:	\$345,139

**Estimated State Expense Based on Current Spending:  
\$0 + Case related Expense**

**Douglas**

Estimated Cost:	\$1,279,167
Maximum Contribution:	\$890,383
Estimated State Expense:	\$388,784
<hr/>	
Total Expended in Q1, Q2, Q3:	\$816,688
End of Year Projection:	\$1,088,918

**Estimated State Expense Based on Current Spending:  
\$198,535**

*\*Expected End of Year Projection Due to Increased Contract Rate from \$48,958 per quarter to \$66,250 per quarter. In place for Q3 and Q4 for 5 attorneys.*

**Esmeralda**

Estimated Cost:	\$105,200
Maximum Contribution:	\$92,637
Estimated State Expense:	\$12,563
<hr/>	
Total Expended in Q1, Q2, Q3:	\$47,875
End of Year Projection:	\$63,834

**Estimated State Expense Based on Current Spending:  
\$0 + Case related Expense**

**Eureka**

Estimated Cost of the Plan:	\$155,000
Maximum Contribution:	\$40,696
Estimated State Expense:	\$114,304
<hr/>	
Total Expended in Q1, Q2, Q3:	\$53,257
End of Year Projection:	\$71,010

**Estimated State Expense Based on Current Spending:  
\$30,314**

**Lander**

*no reimbursement requested*

**Lincoln**

Estimated Cost:	\$205,000
Maximum Contribution:	\$182,542
Estimated State Expense:	\$22,458
<hr/>	
Total Expended in Q1, Q2, Q3:	\$112,257
End of Year Projection:	\$165,300

**Estimated State Expense Based on Current Spending:  
\$0 + Case related Expense**

**Lyon**

Estimated Cost:	\$1,637,000
Maximum Contribution:	\$833,183
Estimated State Expense:	\$803,818
<hr/>	
Total Expended in Q1, Q2, Q3:	\$957,115
End of Year Projection:	\$1,276,154

**Estimated State Expense Based on Current Spending:  
\$442,971**

**Mineral**

Estimated Cost:	\$173,000
Maximum Contribution:	\$93,410
Estimated State Expense:	\$79,590
<hr/>	
Total Expended in Q1, Q2, Q3:	\$109,534
End of Year Projection:	\$146,946

**Estimated State Expense Based on Current Spending:  
\$53,538**

**Nye**

Estimated Cost:	\$925,000
Maximum Contribution:	\$843,015
Estimated State Expense:	\$81,986
<hr/>	
Total Expended in Q1, Q2, Q3:	\$705,864
End of Year Projection:	\$864,448

**Estimated State Expense Based on Current Spending:  
\$21,433**

**White Pine**

Estimated Cost:	\$1,218,290.00
Max Contribution:	\$460,272
Estimated State Expense:	\$758,019
<hr/>	
Total Expended in Q1, Q2, Q3:	\$623,538
End of Year Projection:	\$848,330

**Estimated State Expense Based on Current Spending:  
\$388,058**

*\*Costs likely to increase due to possible renegotiation of 3 indigent defense contracts*

<b>IFC Allocation:</b>	<b>\$1,169,427</b>
<b>Total Estimated State Expense (from County Plans):</b>	<b>\$2,687,159</b>
<b>Total Estimated State Expense Based on Current Spending for Davis Counties: + case related expenses</b>	<b>\$1,134,849</b>
4/7/22 IFC Reimbursement Request, approved:	\$26,360
4/27/22 Work program submitted for IFC:	\$352,919

**Appendix J**

ABA Public Defense Summit Report:  
Finding and Retaining Qualified Counsel

## Finding and Retaining Qualified Counsel

### Overview

Across the country jurisdictions large and small are struggling to recruit and retain attorneys to provide public defense services. The harms that arise can create a powerful downward spiral—the lack of attorneys to manage the existing caseload place pressures on the attorneys who are providing representation. The added pressures of handling an excessive caseload drive attorneys away from continuing to provide public defense representation, which exacerbates the shortage.

The challenges are not new to those working in the public defense field.<sup>1</sup> Overloaded and under resourced public defense systems have been the norm in many parts of the country for decades.<sup>2</sup> Funding disparities play an important role in the issue, with public defense budgets representing less than 3% of the funds expended in the criminal legal system at the state and local level.<sup>3</sup> While a number of states have experienced increases in funding for both their institutional defenders and their assigned counsel programs<sup>4</sup>, the increases lag behind the funds allocated to other system actors such as law enforcement, corrections, and prosecution<sup>5</sup>.

Events over the past several years have refocused the spotlight on funding, pay, and resource inequities, with a renewed resolve to address the role this imbalance plays in perpetuating systemic racism and the racial disparities that are so prominent throughout the U.S. legal system<sup>6</sup>. However, examining the problems and potential solutions, it is critical to keep in mind that while the issues may appear similar throughout the

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<sup>1</sup> National Indigent Defense Reform: The Solution is Multifaceted, NACDL & ABA-SCLAID (2012). (“As the 50th anniversary of Gideon approaches, defense of the indigent accused in the United States still fails to provide the counsel promised by the Supreme Court. Overreliance upon the criminal justice system as an instrument of social and regulatory control, absence of administrative support structures, and insufficient funding streams have left the assurance of Gideon fundamentally unfulfilled.”)

<sup>2</sup> State of Crisis: Chronic Neglect and Underfunding for Louisiana’s Public Defense System, Andrea Marsh, NACDL (2017), Public defenders nationwide say they are overworked and underfunded, Philip McCausland, NBC News, Dec. 11, 2017, System Overload: The Costs of Under resourcing Public Defense, Justice Policy Institute, July 2011.

<sup>3</sup> State, County, and Local Expenditures for Indigent Defense Services, Fiscal Year 2008, The Spangenberg Project, The Center for Justice, Law and Society at George Mason University, ABA SCLAID 2010.

<sup>4</sup> See e.g. Wisconsin which raised its court appointed rate from \$40/hour to \$70/hour in 2018 (Wisconsin Supreme Court Raises Pay for Court Appointed Defense Lawyers, Shawn Johnson, WNPR, May 18, 2018) and North Carolina which raised its rate from \$55/hour to \$65/hour (Rate Increases for Court Appointed Attorneys Starting January 1, the News Herald, Dec. 18, 2021.)

<sup>5</sup> Virginia Public Defenders Face Resistance in push for pay parity with prosecutors, Ned Oliver, Virginia Mercury, April 20, 2021 and A Fair Fight, Achieving Indigent Defense Resource Parity, Bryan Furst, The Brennan Center, Sept. 9, 2019.

<sup>6</sup> Access to Justice for People of Color in STAR Communities, Webinar from the Deason Center, March 9, 2022.



national landscape, the causes, needs, and solutions for small, tribal, and rural (STAR) communities may look very different<sup>7</sup> than their urban and suburban counterparts.<sup>8</sup>

“The rural [access to justice] crisis is compounded by limited or absent treatment facilities, immigration assistance, public transit, and childcare; . . . initiatives that are developed in and largely for urban spaces, consequently neglecting the unique challenges posed by rurality.”<sup>9</sup>

## STAR Community Challenges

While 1 in 5 people in the US lives outside a metropolitan area, less than 7% of law practices are located in those communities.<sup>10</sup> This number likely overstates the actual number of lawyers available in rural communities to address the legal needs of the residents. Some of those licensed will be employed by government agencies, work in non-legal jobs, are retired, or are not practicing in the area of expertise needed. Even when lawyers are physically present in a community, limited transportation, large distances, and lack of reliable communications through cell service and broadband internet make accessing a lawyer more challenging.<sup>11</sup>

As the population in rural America grows older, there are fewer and fewer young people moving into (or staying in) these communities. Negative population growth results in professionals and professional services such as medical providers,<sup>12</sup> mental health counselors<sup>13</sup>, and advanced level educators being absent in the region as there is not enough population to support them.<sup>14</sup> The absence of these services dissuades professionals from moving to the area, as there is neither infrastructure nor employment prospects. When coupled with the substantial student debt young professionals carry,

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<sup>7</sup> The Right to Counsel in Rural America, Webinar from the Deason Center, Nov. 23, 2020.

<sup>8</sup> No Country for Rural Lawyers, by Wendy Davis, Feb. 1, 2020, ABA Journal.

<sup>9</sup> Statz, Michele and Friday, Robert and Bredeson, Jon, 'They Had Access, but They Didn't Get Justice': Why Prevailing Access to Justice Initiatives Fail Rural Americans (March 1, 2021). Georgetown Journal on Poverty Law Policy, Volume XXVIII, Number 3, Spring 2021, Available at SSRN: <https://ssrn.com/abstract=3800215>.

<sup>10</sup> Greening the Desert, Strategies and Innovations to Recruit, Train, and Retain Criminal Law Practitioners for STAR Communities, The Deason Center at SMU.

<sup>11</sup> Pruitt, Lisa R. and Kool, Amanda L. and Sudeall, Lauren and Statz, Michele and Conway, Danielle M. and Haksgaard, Hannah, Legal Deserts: A Multi-State Perspective on Rural Access to Justice (June 18, 2018). 13 Harvard Law & Policy Review 15 (2018), Georgia State University College of Law, Legal Studies Research Paper No. 2019-01, Available at SSRN: <https://ssrn.com/abstract=3198411>.

<sup>12</sup> Health disparities affect millions in rural US communities, Robin Warshaw, AAMC News, Oct. 31, 2017.

<sup>13</sup> C. Holly A. Andrilla, et al., Geographic Variation in the Supply of Selected Behavioral Health Providers, AJPM, Vol. 54, Issue 6, Supp. 3, June 1, 2018. See also, Rural Health Information Hub, Rural Mental Health. Last visited Apr. 8, 2022.

<sup>14</sup> Although rural communities have higher than average high school graduation rates (80%) than their urban peers and just below their wealthy suburban counterparts (81%), they have lower rates of college attendance (59%) and higher rates of college dropout than their urban and suburban peers. Less than 20% of rural residents hold a bachelor's degree in comparison to 33% nationwide. In rural America too few roads lead to college success, Lumina Foundation, Fall 2019. See also, The rural higher education crisis, Jon Marcus and Matt Krupnick, The Atlantic, Sept. 27, 2017.

the limited opportunities rural communities appear to offer make it extremely difficult for the community to attract and retain lawyers, doctors, and other professionals.<sup>15</sup>

In many regions, dwindling tax bases makes it difficult for small communities to have the funds necessary to support a myriad of needs, including public defense.<sup>16</sup>

*Those providing rural legal services face challenges, of course, the most obvious being the struggle for economic viability, along with others generally associated with small firms and solo practice. Rural lawyers also face socio-spatial barriers to professional development and networking opportunities, and the lack of anonymity associated with rural places creates both ethical and economic conflicts of interest. Beyond the challenges facing rural lawyers, we recognize that individuals residing in rural America encounter obstacles to seeking legal services. These obstacles include affordability, confidentiality, and even inability to actually get to courthouses and other legal institutions and actors.<sup>17</sup>*

### **Funding:**

Rural communities face challenges in funding public defense, which, in turn harms efforts to recruit and retain attorneys to practice in these areas. About 1 in 10 states rely primarily upon local government to fund public defense. For communities with limited tax bases, there is insufficient funds available to provide compensation packages that are similar to those in more urban areas and/or that can compete with private practice.<sup>18</sup>

The harms of limited pay are exacerbated by the fact that many rural practitioners are unable to take advantage of federal programs designed to help ease some of the crushing student loan debt young lawyers face. This is because many rural communities rely exclusively, or almost exclusively, on court appointed attorneys to provide public defense representation. Because they are not employed by a state or local government agency, these private attorneys are *ineligible* for many federal loan forgiveness programs, including the John R. Justice loan forgiveness program.

See generally, Haksgaard, Hannah, Court-Appointment Compensation and Rural Access to Justice (July 30, 2020). 14 University of St. Thomas Journal of Law & Public Policy 88 (2020)

### **Rural Strengths**

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<sup>15</sup> 2018 Policy Paper, Courts Need to Enhance Access to Justice in Rural America, COSCA 2018

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

<sup>17</sup> Pruitt, Lisa R. and Showman, Bradley, Law Stretched Thin: Access to Justice in Rural America (August 24, 2014). 59 South Dakota Law Review 466 (2014), UC Davis Legal Studies Research Paper No. 391, Available at SSRN: <https://ssrn.com/abstract=2480748>

<sup>18</sup> Equality before the law: ending legal deserts in rural communities, Aburieya Amaso, Georgetown Journal on Poverty Law & Policy.

While there are a number of challenges for rural communities, they also have many unique strengths that can be built upon to improve access to justice and attract and retain quality counsel. While there may be high financial barriers to practice in STAR communities, there is limited competition, providing robust opportunities for a young lawyer to build a practice. The substantially smaller legal community can provide opportunities for collaboration and reduce bureaucratic barriers allowing for innovation and implementation. For general examples of rural communities using their strengths for innovations, see the [Rural Justice Collaborative's Innovation Sites](#), including the West Virginia Public Defender Office's use of [peer recovery coaches](#).

## **Innovations and Strategies**

When it comes to recruiting lawyers to practice in rural communities, most efforts are directed at law schools and law students. Some efforts are designed to introduce and entice law students to consider practicing in rural communities, while others focus on encouraging those who live in rural communities to pursue legal degrees with the hope these students will return to their communities.<sup>19</sup>

Most of these efforts look to create general practitioners to fill the myriad of legal needs STAR community residents have.

Another model, aimed at creating a level of criminal specialization to the practice, is the creation of regional public defense offices.

### **General:**

What role can law schools play to help close the access to justice gap by encouraging students from rural areas to enter the practice of law and by encouraging law students to open practices in rural communities? See, Pruitt, Lisa R. and Kool, Amanda L. and Sudeall, Lauren and Statz, Michele and Conway, Danielle M. and Haksgaard, Hannah, [Legal Deserts: A Multi-State Perspective on Rural Access to Justice](#) (June 18, 2018). 13 Harvard Law & Policy Review 15 (2018), Georgia State University College of Law, Legal Studies Research Paper No. 2019-01e

Whole system evaluations that consider the interconnected needs of STAR communities can identify root causes and promote more effective strategies for change. For example, the [Deason Center's Country Justice project](#) "investigates rural criminal law deserts, the implementation of the Sixth Amendment right to counsel, and the efficacy of rural justice innovations. This empirical research study focused on Texas generates a statewide view by collecting and analyzing data from state and national statistical agencies. It includes case studies of rural communities, deeply researched through interviews with local justice officials, court observation, and record review. The project will seek to conduct trauma-informed interviews with justice-involved community members. In the long term, Country Justice aims to address critical issues facing rural

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<sup>19</sup> [Greening the Deserts: Strategies to Recruit, Train, and Retain STAR Criminal Law Practitioners](#), Webinar, The Deason Center, Sept. 18, 2020.

areas in Texas, including access to legal representation, jail overcrowding, and wrongful convictions.”

### **State efforts:**

#### **Arkansas:**

Rural Practice Incubator Project, an 18-month program at the William H. Bowen School of Law at the University of Arkansas at Little Rock.

The pilot program, funded by the attorney general’s office and donations, provides continuing education programs, introduces participants to rural attorneys and judges and offers training and resources on how to run an office. Most participants have set up solo legal practices. The goal of the Rural Practice Incubator is to support Bowen alumni in launching viable small or solo practices in rural, underserved Arkansas communities. The first cycle of the incubator began in September 2018. The 18-month program supports incubator attorneys with training, resources, mentoring, and guidance to assist them in building their professional careers as rural attorneys.

Incubator attorneys are encouraged to implement innovative legal service delivery models to increase access to justice for low- and moderate-income rural Arkansans. Each participant will provide a minimum of 100 hours of pro bono or low bono legal services during the program.

See also, Lisa Pruitt, et. al. Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It, 37 Univ. of Arkansas Little Rock Law Review 573 (2016)

Wanted, Lawyers for Rural America, April Simpson, Pew Charitable Trust, June 26, 2019.

#### **Colorado:**

Provides information on emerging rural practices and issues on its state bar website

Greater Colorado Fellowship Program: Identifying the need for public defense lawyers in the state’s STAR regions, the Office of Alternative Defense Counsel (OADC) successfully pursued legislation to create the Greater Colorado Fellowship Program. The Fellowship will support a lawyer with an interest in developing expertise in criminal defense and/or representation of youth who wishes to practice in a rural community. Although focused on criminal defense expertise, the Fellowship will provide support for the attorney to develop a “small-town” practice that can include other private and court-appointed representation.

The program will provide mentorship and partnership opportunities to help the Fellow establish their practice, develop their legal skills and connect themselves with the

community. Importantly, the Fellowship provides the practitioner with a stream of income and other state benefits for 2 full years to have sufficient time and opportunity to launch and build their practice. In exchange, the participants agree to take on court appointed case.

ODAC is also providing funded internship opportunities in STAR communities for 1L and 2L students interested in rural criminal defense practice.

See also, Justice for All: Colorado's Strategic Plan for Access to Justice, Dick Gast, Colorado Lawyer, May 2018.

**Illinois:** State Bar Rural Practice Fellowship Program connects STAR law firms looking for clerks and associates with law students and new lawyers who have an interest in practicing in rural regions of the state.

**Iowa:**

Drake University Rural Access to Justice Initiative provides a stipend to students interested in interning in rural communities.

Iowa State Bar Rural Practice Committee provides an online forum for law students, young attorneys and rural practitioners to connect, facilitating the hiring of summer clerks and associates.

**Kansas:** Washburn Law Rural Law Program provides selected students tuition that covers 6 hours of externship credit along with a \$5,000 stipend for summer living expenses to work with practicing lawyers or judges in one of 26 identified counties in the northwestern part of the state.

**Maine:** Rural Law Fellowship Program at Maine Law. A collaboration between Main Law, the Maine Justice Foundation, the Main Board of Overseers of the Bar, and the Maine State Bar Association created funding for the school to award paid summer fellowships to students who accepted positions in the state's rural counties. The program is designed to provide mentorship and encourage students to pursue careers in these areas.

**Montana:** Rural Incubator Project for Lawyers is a 24 month program that provides participants with training in opening and operating a law office, CLE and training, access to office spaces for client meetings, loan repayment assistance, and a referral service, in exchange for the participants' agreement to provide 70 hours of pro bono and 530 hours of modest means representation to underserved communities.

**Nebraska:** Rural Law Opportunities Program, To address the shortage of lawyers in rural Nebraska (12 Nebraska Counties have no lawyers), the state created a partnership between 3 Nebraska universities and University of Nebraska Law. Students from rural communities in the state who attend one of the identified universities and maintain a 3.5 GPA and meet minimum LSAT scores are automatically accepted to Nebraska Law. The Program's students receive a scholarship to fund their

undergraduate education and have regular contacts with the law school throughout their undergraduate years

**New Mexico:** Innovation to Address the Access to Justice Gap, Dec. 2019 Report

**New York:**

Report and Recommendations of the Task Force on Rural Justice, March 18, 2020.

ILS Assigned Counsel Program Standards (2019) Assigned Counsel Program Standards - ILS (ny.gov) (general); Black Letter Standards with Commentary

Implementing Caseload Relief and Quality Initiatives in Assigned Counsel Programs (2020) Implementing Caseload Relief and Quality Initiatives in Assigned Counsel Programs.pdf (ny.gov)

**North Dakota:** Rural Attorney Recruitment Program was created by the legislature to aid rural counties in recruiting attorneys. The state, the state bar, and the participating community all pay a portion of the \$45,000 incentive payment for participating attorneys who agree to work full-time in an eligible community and who agree to live within close proximity to the community for 5 years.

**South Dakota:** Operates the South Dakota Rural Recruitment Program, a pilot program, paying lawyers an additional \$13,000 per year to practice in counties with populations of 10,000 or less. The funding is covered through a cooperative agreement between the state (50%), the local government (35%) and the State Bar (15%).

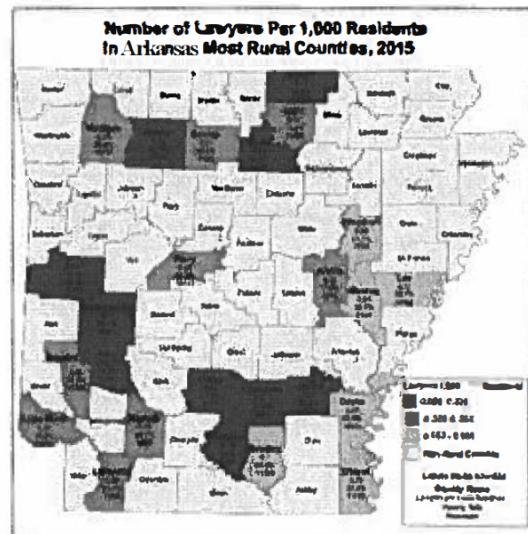
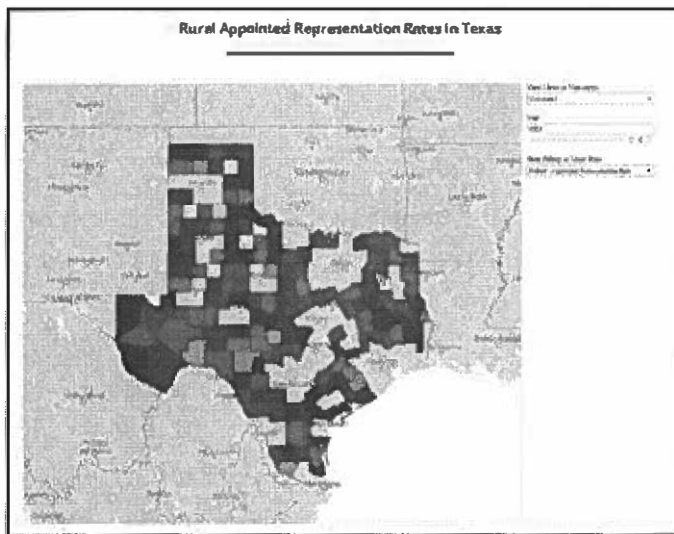
**Texas:** The state has no centralized public defense system. Texas' 254 counties each select their method for the provision of public defense. All communities utilize assigned counsel from the private bar, with some also operating institutional defender offices and/or managed assigned counsel programs. To serve the needs of smaller communities, some parts of the state employ regional defender offices which operate multiple offices and serve several counties at once. This model provides many of the benefits of institutional defenders, including access to support services, investigators, and the development of specializations amongst the attorneys. Several counties also use managed assigned counsel (MAC) programs. Similar to a public defender office, the MAC model provides participating attorneys access to shared resources, knowledge, and experience, but reduces the challenges of conflicts because each MAC attorney is a private practitioner.

- Caprock Regional Public Defender Office and Clinic: operates in partnership with Texas Tech Law School to provide students with hands on experience while providing representation to individuals in 10 counties.
- Far West Texas Regional Public Defender
- RioGrande Legal Aid Public Defender Program provides representation in 14 Texas counties, utilizing a staff of lawyers, investigators, and support staff.

- **Starr County:** Partnered with TRLA to open a 3-county regional public defender office. TIDC provides 2/3 of the funding, with the localities paying the remaining 1/3. An evaluation of program in 2020 is available in a TIDC Report. The evaluation found that the creation of the regional office improved the administration of justice and increased community access to counsel. Use of investigators and appointment of counsel rates rose to approach expected guidelines while pretrial jail populations have decreased. Feedback from clients and others indicates a positive impact the office has had in the community.

**Communicating Needs and Solutions:**

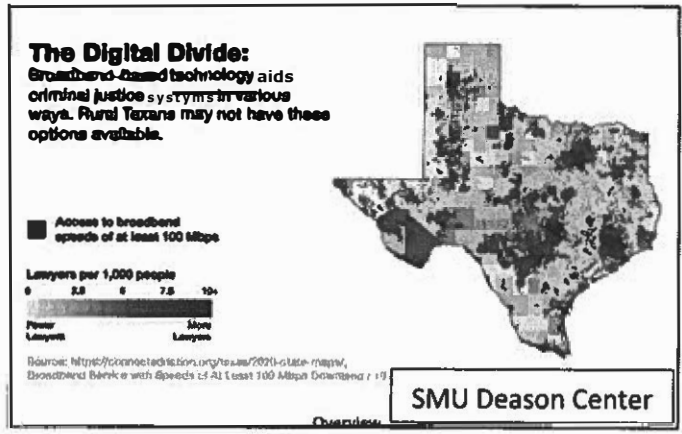
It is critical that those seeking reforms of systems not only assess the problems at hand, and develop proposed solutions, but they must do so in a way that helps those who hold the community’s purse strings and power to fully understand the breath and depth of the problem as well as its solution. A compelling way to message the lack of attorneys and services in rural settings is to utilize a map.<sup>20</sup> It may seem relatively obvious that an image can help transform data into tangible actions.



In conceptualizing rural needs, it is important to not only consider the physical distance between locations (such as between a defendant’s home and the courthouse) but also the real time meaning of those distances. A distance of 200 miles may be covered by fully paved, multilane highway traveling across relatively flat land or it could require navigating a partially paved, 2 lane road that winds through mountainous areas that may be unpassable due to snow or rain.

<sup>20</sup> See e.g. Bridging the Map: The Geography of Legal Need and Aid in Arkansas, Nigel Halliday, Arkansas Policy Program.

Maps can help decision-makers understand how technology innovations may struggle to take root in rural communities where broadband internet access is very limited.





**Appendix K**

The Deputy Director's Report on Deficiencies in Data Reporting

**Steve Sisolak**  
Governor



**Marcie Ryba**  
Executive Director

**Thomas Qualls**  
Deputy Director

**Peter Handy**  
Deputy Director

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

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**MEMORANDUM**

**To:** Peter Handy, Deputy Director  
**From:** Thomas Qualls, Deputy Director  
**Re:** Report on deficiencies in data reporting (NRS 180.440(3))  
**Date:** April 25, 2022

**I. Summary**

In running the last two Quarterly Reports through LegalServer (October 1 - December 31, 2021 and January 1 – March 31, 2022), it has come to the Department's attention that there are a number of deficiencies in data reporting in the various counties. I am forwarding this report to you, pursuant to NRS 180.440(3). As you are aware, certain uniform data reporting is mandated through the *Davis* settlement and consent judgment, and all indigent defense practitioners in our system are required to use the LegalServer case management system we have provided to collect this data.

The following is list of county offices and practitioners that are currently deficient in their reporting in one or more ways.

**Carson City**

- Noel Waters – entering cases, but not reporting time
- None of the Conflict Contract Counsel are reporting expert or investigator hours

**Churchill PD**

- not reporting time sufficiently (Jacob has not entered any time & Wright only entered time in 16 closed cases)
- not tracking Juvenile or Civil cases
- not reporting expert or investigator hours
- limited case closure entries

**Douglas**

- None of the five contract attorneys are reporting expert or investigator hours

**Elko**

- The Elko PDs office has requested additional LegalServer training

**Esmeralda**

- Jason Ernest not entering time or closing cases

**Lander**

- Kyle Swanson is not closing cases

**Lincoln**

- As with Lander, Franklin Katschke is doing a good job, but is not currently entering experts and investigators

**Mineral**

- Justin Oakes and Carl Hylin have done no reporting

**Nye**

- Alexis Duecker and Jason Earnest have not entered any time nor closed any cases
- Alexis, Ronni, and Nadine are not tracking civil cases – this is important for reimbursement

**Pershing (PD)**

- Not tracking investigator/expert time
- Not closing cases

**White Pine**

- No contract PDs are tracking private time
- No contract PDs have been tracking civil cases/ time

Some of these are more serious than others, of course. Some may only require additional communications by phone or email. This report is being forwarded to you, though, because the Department has spent a considerable amount of time working to train, educate, and support practitioners across the state to make this data reporting as painless as possible. We put on eight different trainings in June of 2021. We have a YouTube channel dedicated to LegalServer training. We have prepared and emailed numerous visual trainings to help with common questions. We have answered hundreds of questions and provided detailed step-by-step processes for things like case transfers, case closings, and mandatory data entry. We have even undertaken to do the initial intake entries for several counties. The primary areas of concern here are obviously those offices where, despite these efforts (and numerous personalized nudges), time is not being entered or the system is not being used at all.

I am happy to discuss the various remedies for each county if you like. Thanks for your time and efforts on this.