

Third Report of the Monitor
Davis v. State, Case No. 170C002271B
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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 October 15, 2021, to January 15, 2022.

Summary Points

The Nevada Department of Indigent Defense (hereinafter “the Department”) continues to take significant steps toward compliance with the Judgment despite the ongoing Covid-19 pandemic, a limited budget, and the necessary engagement of ten separate county governments in determining the shape of indigent defense services in the *Davis* counties.

The Department worked with each county to develop methods for selecting conflict counsel and approving attorney fees and case-related expenses. Further, the Department took steps to ensure that all rural indigent defense providers will report case and workload information required by the Judgment.¹ At the same time, this Report notes challenges to compliance, including ongoing collection of data for the workload study, the immediate need for a wage/salary survey, and the need for an overview process to review the counties' indigent defense services on a yearly basis. Some of these tasks depend on the authorization of funding for a consulting data analyst.

Achievements

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

County-specific processes for selecting conflict counsel and approving fees/expenses

The Department concluded 2021 with the major achievement of approving county plans, with accompanying budgets, for all ten *Davis* counties, which are discussed in the October 15, 2021, Monitor's Report.² The Board approved the county plans on October 6, 2021, although the question of how to select conflict counsel and approve attorney fees and case-related expenses remained unresolved for some counties.

Over the course of the past three months, the Department assisted counties in developing their methods for selecting conflict counsel and approving attorney fees and expenses. Per statute and the Board's regulations, the Department or its designee must select conflict counsel and approve fees and expenses.³ Some counties opted to hire a county-level plan administrator (sometimes called a coordinator) to serve as the Department's designee to select counsel and approve funds. With these counties, the Department developed a designee agreement and confidentiality form to clarify the administrator's role as the Department's designee. Other counties opted to have the Department serve as the plan administrator. In those counties, the Department developed an internal process for selecting conflict counsel, and for authorizing fees and case-related expenses for contract and panel attorneys.⁴

Outreach to secure data collection from all rural indigent defense providers

¹ Judgment, 18.

² The Department's website has a tab linking to a webpage for "Information by County," which links to the county plans for all *Davis* counties. Each county narrative also links to a webpage with 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/.

³ Consistent with the Judgment, the statutes and regulations require counties to establish a method for selecting counsel independent of the judiciary and for approving of attorney fees and case-related expenses, NRS 171.188 (4) (Department or its designee selects counsel in accordance with county plan); NRS 7.115 (Department or its designee selects conflict counsel); 7.135 (case-related expenses); 7.145 (requesting attorney's fees). Regulations, sec. 23; 25.

⁴ See *infra* pp. 7-8.

In addition to Legal Server training and technological assistance, which is ongoing, the Department reached out to all providers in the *Davis* counties to ensure that they were entering information into Legal Server as the Judgment and Department regulations require.⁵ For the few attorneys uncomfortable with the platform, the Department created an alternative reporting system in which attorneys submit a paper form, and Department staff enter the resulting information into Legal Server.

Finally, the Department established parameters for its own use of Legal Server to assuage county-level concerns about confidentiality, privilege, and authority.⁶

Continued provision of trainings, mentorship, and resources

The Department continued to develop its model for fostering a culture of excellence through trainings, resources, and mentorship. The Department began planning its annual statewide training, which will take place in May 2022.

Developing an oversight plan

The Department has begun the process of creating an outreach and oversight plan, by laying out the process for the first stage: relationship building and needs assessment.⁷

Areas of Concern

The areas of concern discussed in this Report should not be seen as failures of the Department but rather as part of an ongoing discourse regarding steps 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.

Determining a reasonable hourly rate of compensation

The Judgment requires the state to ensure that providers are paid a “reasonable hourly rate that takes into account overhead and expenses, including the costs relating to significant attorney travel time.”⁸ As discussed in the October 15, 2021, Monitor’s Report, the Department cannot assess the reasonable hourly rate without a wage/salary survey.

An unreasonably low hourly rate can create a financial disincentive to effective representation by pushing attorneys to take on unacceptably high caseloads through private and

⁵ Judgment, 18.

⁶ See *infra* pp. 19-20.

⁷ The Department’s oversight protocol for the upcoming quarter is attached to this Report as Appendix A.

⁸ Judgment, 11.

appointed cases. An unreasonably low hourly rate might also make it difficult to recruit attorneys who would otherwise be interested in practicing criminal defense in the *Davis* counties.

To address this need, the Department is requesting funds to hire a data analyst to complete a wage/salary survey.⁹

Workload study issues: (1) time keeping data; (2) quality adjustment

The workload study is required by the Judgment,¹⁰ and is essential to determining whether attorneys have adequate time to effectively represent each client.

As discussed below, due to the pandemic, the timekeeping portion of the workload study did not produce enough data to complete the study. The study administrators have asked for six to nine months of timekeeping data from Legal Server, the service that rural indigent defense providers began using in October 2021 to record attorney hours and other data. As discussed below, the Legal Server data provides less detailed information than the timekeeping portion of the workload study.¹¹ Legal Server does not provide data on time spent on each attorney task, such as client communication, discovery, and so forth. Additionally, the continued impact of the pandemic on travel and court time may result in an underestimation of the times required to represent clients in some of the rural counties. The study administrators have anticipated this issue, and future Monitor's reports will discuss how the study manages the two sets of timekeeping data.

Second, the study administrators will engage in the "quality adjustment" phase of the current workload study, which involves determining how much time casework *should* take to provide effective assistance of counsel.¹² In order to adjust for the limited data gathered on how much time *Davis* county attorneys usually spend on each case-related task, the study administrators plan to include additional criminal defense attorneys in the Delphi panels and in their time sufficiency analysis so that the study produces reliable caseload recommendations. The Monitor recommends that this phase of the workload study include more criminal defense attorneys in private practice who practice in both urban and rural areas but are not the contract holders in the counties subject to the *Davis* Judgment.¹³

Process for the annual review of indigent defense in all ten counties

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."¹⁴

⁹ See *infra* pp. 6-7.

¹⁰ Judgment, 17.

¹¹ See *infra* pp. 13-18. Note that the amount of information that attorneys report through Legal Server is consistent with the Judgment, 18, and with the Regulations sec. 43-45.

¹² See National Center for State Courts, *Rural Nevada Indigent Defense Interim Weighted Caseload Study Report 8* (June 2021) [*hereinafter* Interim Caseload Report] (attached to this Report as Appendix B).

¹³ See *infra* pp. 17-18.

¹⁴ Judgment, 16.

This Report reiterates the Department's need for developing a review -or "oversight" process of the county-level systems for providing indigent defense and their participating attorneys. To this end, the Department has made great strides through the county plans, the model contract, the client survey, and establishing an open channel of communication with the counties and providers.

However, the annual review process should be clarified and systematized to ensure that it is accurate, transparent, and fair. Moreover, the process must be feasible in terms of the Department's budget and staffing.

The Department is taking steps to create such an oversight/review plan.¹⁵ Assuming approval from the Interim Finance Committee for funds, a consulting data analyst can assist the Department in developing its oversight plan, as well as the wage/salary survey.

Incentives to practice indigent defense in rural counties

Although the Judgment does not require that the state incentivize rural practice, a shortage of attorneys willing to represent indigent defendants in some of the *Davis* counties is a significant concern. The Department is actively addressing how to attract attorneys to rural practice, in partnership with the Boyd Law School and by obtaining grants from the State Bar for student externships.

Assuming approval from the Interim Finance Committee for funds, the data analyst conducting the wage/salary survey and oversight plan can also assist the Department in developing an incentive strategy. The analyst would survey attorneys and law students to determine the primary concerns with rural practice, and would study how other states have increased interest in rural practice.

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.

¹⁵ The Department's Observation Protocol and Schedule is attached as Appendix A. *See also infra* pp. 10-12.

I. Removing Financial Disincentives and Ensuring Independence of the Defense Function

The unknown “reasonable hourly rate” of compensation

Although discussed in the October 15, 2021, Monitor’s Report, it must be reiterated how important it is for the Department to complete a wage/salary survey.¹⁶ A wage/salary survey is essential to determining a “reasonable” rate of compensation.¹⁷

Funding was approved for FY2021 for a data analyst to complete, among other things, a wage/salary survey. But the data analyst, Dr. Mitch Herian of Soval Solutions, could not complete his work by the end of FY2021 due to Covid-19 delays. Of the \$100,000 authorized for the data analyst, approximately \$34,000 was spent. Currently, the Department seeks authorization for funds to complete the data analyst’s work, including the wage-salary survey. On January 11, 2022, the Department obtained approval from the Board of Examiners to present its request to the Interim Finance Committee in February 2022.

The Judgment requires attorneys to be paid a “reasonable hourly rate that takes into account overhead and expenses, including costs relating to significant travel time.”¹⁸ The compensation should be comparable to prosecutors in the same county, taking into account that prosecutors do not pay overhead and expenses.¹⁹ While a system is now in place for reimbursing attorneys for expenses, and a workload study is underway for determining workload limits, one key issue that remains unaddressed is the determination of a “reasonable hourly rate.”

Without knowing a reasonable hourly rate of compensation, it is impossible to know whether the annual and biannual contracts used by nine of the counties (Churchill County established a public defender’s office) create a financial disincentive prohibited by the Judgment.²⁰ A reasonable rate of compensation permits an attorney to dedicate adequate time to each case and reduces the chances that an attorney will take on an unduly heavy private and appointed caseload to make a living. Finally, inadequate compensation may result in a lack of attorneys willing to practice in the rural counties.

Incentives for attorneys to practice in rural counties

Perhaps related to compensation, several of the counties are having a difficult time attracting lawyers to indigent defense practice.

Lyon County raised its hourly rate of compensation to \$150 per hour for felonies and gross misdemeanors and \$125 per hour for misdemeanors. The increase is based on the rates

¹⁶ Second Report of the Monitor, 13-14 (October 15, 2021).

¹⁷ Per NRS 180.320, the Board has a duty to establish minimum standards that, among other things, “do not create any type of economic disincentive.”

¹⁸ *Id.* The state also must provide a “funding mechanism for excess, unusual, or complex cases.”

¹⁹ See also Regulation sec. 40 (10).

²⁰ Judgment, 13-14.

charged by local, private attorneys and the federal rate for panel attorneys. Douglas County is currently down two contract attorneys. In response, Douglas raised its hourly compensation rate to match Lyon County's rate increase, hoping to find attorneys willing to accept appointments while the county continues its search for a contract attorney. To attract candidates for the contracts, on January 20, 2022, the Board of Commissioners will consider increasing the contract rate from \$195,833.33 to \$265,000. In White Pine County, one of the contract attorneys plans to retire at the end of their present contract.²¹

To address how to incentivize rural practice, the Department is working with UNLV Boyd School of Law to develop interest in rural defense practice. This includes a student externship program, with funding through a State Bar grant, that is discussed in the Monitor's October 15, 2021, report.²² But, in 2021, no Boyd graduates went to the rural counties to practice public defense.

Should the Interim Finance Committee authorize funds for a data analyst, the analyst will create a survey of law students regarding their thoughts on rural practice and possible incentives. If warranted, the analyst would also review legislative options and conduct a fiscal note analysis.²³

County-level designees: Concerns adequately addressed

The October 15, 2021, Monitor's Report expressed concern over county administrators being given authority over whether to authorize funds for case-related attorney expenses.²⁴ Per the statutory scheme, a Department's county-level designee can select conflict counsel,²⁵ and can approve attorney's fees and expenses for investigation and experts.²⁶ The Monitor had been concerned that a county-level administrator might be ill-suited to deciding whether specific case-level expenses for investigators and experts were reasonable, and might prioritize budgetary issues over the need to provide effective assistance of counsel.

The Department has adequately addressed these concerns by setting the terms of its relationship with the county administrators who serve as its designees.

To date, two of the ten *Davis* counties (Lander, Douglas) have hired a county-level plan administrator. Mineral selected a plan administrator, who is in the process of being hired. Two

²¹ A job posting for the White Pine contract is listed on the Department's webpage for public defender career opportunities here: <https://dids.nv.gov/JobListings/JobListings/>.

²² To increase interest, the Department sought and was approved a grant of \$26,000 to provide \$6500 stipends for externships in the rural counties. Four students over two years will be able to extern with rural indigent defense providers and receive the stipend.

²³ Soval Solutions, Final Draft Deliverables, 3-4, available on the Department's website here: <https://dids.nv.gov/uploadedFiles/didsnvgov/content/Meetings/2021/Soval%20Solutions%20-%20Final%20Draft%20Deliverables%20to%20DIDS%20-%2006-30-21.pdf>.

²⁴ Second Report of the Monitor, 13-14 (October 15, 2021).

²⁵ This selection process is required by NRS 7.115 and NRS 171.188(4).

²⁶ NRS 7.135 (case-related expenses); 7.145 (attorney's fees).

additional counties—Churchill and Nye—plan to hire a county-level administrator. The Department currently serves as the plan administrator for the remaining eight *Davis* counties.

The designees for Douglas and Lander counties have each signed two agreements: one addressing confidentiality and nondisclosure of client information and another setting the terms of the designee relationship.²⁷ Per the designee agreement:

- The designee must “maintain their independence from the judiciary and prosecuting agency” and report any attempted interference to the Department.
- The designee must report to the Department if another person denies or modifies funds that the designee has authorized.
- The designee must notify and discuss with the Department any intention to deny or modify a claim for attorney fees or a request for case-related expenses.
- The designee acknowledges that the Department has the final authority to decide whether expenses for investigation and experts are authorized.

These provisions, particularly the prohibition against unilateral denial of fee and expense requests, coupled with the confidentiality and nondisclosure agreement, address the concerns voiced in the October 15, 2021, Monitor’s Report.

II. Establishment of Minimum Standards

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

- A. Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.²⁸
- B. Client communication per the standards set in ADKT 411; provision of space for confidential attorney-client meetings; all reasonable efforts to have confidential attorney-client meetings before initial appearance.²⁹
- C. Systems to identify and remove conflicts.³⁰
- D. Establishment of performance standards.³¹
- E. Establishment of workload standards.³²

²⁷ Both designee forms are attached to this Report as Appendix C.

²⁸ Judgment, 14.

²⁹ *Id.* at 14-15.

³⁰ *Id.* at 12.

³¹ *Id.* at 16.

³² *Id.* at 17.

F. Qualifications for attorneys.³³

G. A system of oversight.³⁴

H. Attorney training and resources.³⁵

To review the conclusions of the Monitor's two, 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, qualification of attorneys, and conflict detection and removal.³⁶

Given this progress, this Report's discussion of minimum standards will document the Department's continued work to provide training and resources and then focus on the questions of an oversight system and the workload study.

Attorney training and resources³⁷

It is the Department's intention to foster a culture of effectiveness and adherence to professional standards through training and providing 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 attorneys have the reasonable caseloads, adequate compensation, and case-related support services that will enable them to adhere to professional standards.

Since October 1, 2021, the Department has offered CLE trainings and made other trainings available through its website, including those provided by the Clark County Public Defender's Office (CCPD) and the Nevada Federal Public Defender. The trainings include:

- Traffic Stops and the Fourth Amendment (October 2, 2021; the Department (DIDS))
- Litigating DNA 1.0: Understanding the Basics and Critical Components of the DNA Casefile (October 15, 2021; DIDS)
- Litigating DNA 2.0: Understanding the Basics and Critical Components of the DNA Casefile (November 12, 2021; DIDS)
- Using the Fundamentals of Trial Practice to Get an Acquittal (November 18, 2021; CCPD)

³³ *Id.* at 15.

³⁴ *Id.* at 16-17.

³⁵ *Id.* at 16.

³⁶ 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. This is discussed *infra* p. 10.

³⁷ Judgment, 16.

- DNA's There. Who Cares? (About the problem of transfer and persistence of DNA) (November 22, 2021; NV Federal Public Defender)
- Legal Writing Refresher (November 30, 2021; NV Federal Public Defender)
- How To Identify the Challenging Client v. the Challenged Client (December 8, 2021; CCPD)
- Supreme Court in Review (December 16, 2021; NV Federal Public Defender)
- (Don't Fear) the Reaper: How to be a Zealous Advocate to your Former Client While Under Scrutiny (December 17, 2021; DIDS)
- Annual Appellate Case Review" (December 20, 2021; CCPD)³⁸

All but one contract attorney serving the *Davis* counties have attended at least one training.

In addition, the Department is planning its annual statewide training, which will take place on May 26-27 at the UNLV Boyd School of Law. The theme of the conference is "Spotlight in the Darkness: Using Investigators and Experts to Make Your Case." The Department received a Justice Assistance Grant for \$45,000 for programming and to assist attorneys with travel expenses.

The October 15, 2021, Monitor's Report, expressed concern that the ABA Standards for the Defense Function were not mentioned in the regulations,³⁹ or in county plans, although a link to these standards is available on the Department's website.⁴⁰

The specific requirement of the Judgment is as follows. "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]." The Judgment then states that attorneys shall be "reviewed on an annual basis for quality and efficiency according to nationally and locally adopted standards, including, but not limited to, the ABA Criminal Justice Standards."⁴¹

The Monitor's concern is that providers might be confused or overwhelmed when trying to determine what standards apply to various aspects of criminal defense, the standards upon which they will be reviewed.

The Department intends to begin to address the ABA Defense Function standards through training. To that end, the Department offered a newly designed training on December 17, 2021, addressing the standards as they may be relevant for lawyers who are the subject of post-conviction proceedings. In it, veteran defense attorney John Lambrose reviewed the regulations,

³⁸ A calendar of past and future trainings is available on the Department's website here: <https://dids.nv.gov/Training/Resources/>.

³⁹ The regulations state that the county plan must require that representation "be provided in a professional, skilled manner consistent with all applicable laws, regulations and rules of professional conduct and the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 411 of the Nevada Supreme Court." Sec 27 (1).

⁴⁰ Links to various professional standards for criminal defense attorneys are available on the Department's website here: <https://dids.nv.gov/Resources/Resources/>.

⁴¹ Judgment, 16.

ADKT 411 Indigent Defense Standards, the ABA Defense Function Standards, the Nevada Rules of Professional Conduct, and the ABA Model Rules of Professional Conduct, comparing those standards with a lawyer's general Sixth Amendment duty to perform effectively. The presentation was followed by a panel, including rural public defenders, who discussed the standards and rules within the context of their casework from trial through post-conviction.

Such trainings help defense attorneys become familiar with the ABA standards for criminal defense attorneys.

Recommendation

The Department could further help attorneys understand the professional standards included in the various sources mentioned in the Judgment by creating a resource that describes professional standards by the type of task, referring to ADKT 411, the ABA standards, and other professional standards as necessary. So, for example, under the topic "advise clients of collateral consequences of conviction," the Department's resource on standards would refer to the ADKT 411 standards' general charge to inform clients of the implication of convictions, and also refer to the ABA Defense Function standards 4-5.4 to 4-5.5, which discuss specific collateral consequences such as immigration. The parties may decide that such a resource is not necessary, but the suggestion is based on the language of the Judgment requiring incorporation of the ABA Standards Defense Function and their use as a basis for review of attorney performance.⁴²

Development of an oversight plan

The central thrust of the Judgment is to ensure that "the Plaintiff class receives representation that is both effective and compliant with all relevant professional and ethical standards at every critical stage."⁴³ To that end, the Judgment requires yearly review of each of the ten counties' indigent defense delivery systems.

As noted earlier in this Report, the Department's approach to oversight is rooted in building relationships, assessing needs, and providing resources. To that end, the Department has applied for a grant to provide Westlaw service to indigent defense providers in the *Davis* counties. In addition, the Department will apply for funding to establish a holistic resource center to assist attorneys with, among other things, locating services for their clients. Through such efforts, the Department demonstrates its focus on providing resources and makes it easier for attorneys to provide effective assistance to their clients.

Over the next three months, the Department will initiate the first phase of its oversight plan: relationship building and needs assessment. To quote its plan:

It is essential that DIDS personnel form and build positive relationships across Nevada with all indigent defense providers on our team. It is important that these individuals know they can trust us, confide in us, and look to us for support. To this end, it is

⁴² Judgment, 16.

⁴³ Judgment, 3.

important to not start things off by showing up with a clipboard and a checklist, like a restaurant inspector.⁴⁴

This approach seems right and involves a survey of needs as well as face-to-face visits with attorneys in the *Davis* counties over the course of February and March 2022.

Later phases of the Department’s oversight plan—which the Department hopes will be set in consultation with a data analyst—involve monitoring and assessment. The Board’s regulations require the Department to “monitor and regularly assess whether counties and attorneys meet the requirements set forth [in the regulations] and whether indigent defense services are being provided in a constitutional manner.”⁴⁵ The regulations provide a non-exhaustive list of the sources of monitoring and review, including:

1. Client feedback;
2. Client surveys;
3. Other providers of indigent defense services;
4. Office staff;
5. Judicial personnel;
6. Observations of a deputy director of the Department;
7. Data provided to the Department pertaining to attorney workload;
8. Contracts for the provision of indigent defense services;
9. Financial information pertaining to the provision of indigent defense services; and
10. Information obtained through the procedure for receiving complaints and recommendations concerning the provision of indigent defense services established by the Board pursuant to paragraph (b) of subsection 2 of NRS 180.320.

The question of what source of information to draw on seems closely related to the kind of information sought. For example, the Department’s established selection process is probably adequate to ensure that only attorneys qualified by the Department for a specific case type will be selected as conflict counsel. Whether an attorney used an investigator or expert on a case will be included in the attorney’s quarterly report, and will also be evident in requests for funds for case-related expenses.

Confirming that standards are met in certain aspects of practice seems to require courtroom observation. These aspects include, for example, ensuring prompt screening for indigency; representation at initial appearance/arraignment without delay; an argument for release or affordable bail;⁴⁶ and the provision of space for confidential attorney-client meetings.⁴⁷

Other standards can only be confirmed through client surveys, which can be texted or emailed through Legal Server and provided in paper form with a detachable postage pre-paid

⁴⁴ See Appendix A, DIDS Observation Protocol and Schedule 2022.

⁴⁵ Regulations, sec. 38.

⁴⁶ Judgment, 8, 14.

⁴⁷ *Id.* at 14-15.

envelope.⁴⁸ These include client communication per the standards set in ADKT 411; ensuring all reasonable efforts to have confidential attorney-client meetings before an initial appearance,⁴⁹ and ensuring that clients are advised against waiving substantive rights at that appearance.⁵⁰

Getting a good sense of whether attorneys are providing effective assistance of counsel is challenging. The Judgment lists the following critical areas of public defender work:

- Timely and frequent client communication.
- Meaningful representation of indigent defendants and initial appearance, bail and bail reduction hearings, and preliminary hearings.
- Timely review of discovery.
- Sufficient case investigation to determine the strengths and weaknesses of the state's case.
- Retention of qualified experts whenever necessary to provide effective representation.
- Robust pre-trial motion practice.
- Timely and thorough preparation for trial.
- Timely and thorough preparation for sentencing.
- Competent direct appeal advocacy.⁵¹

One way to assess effectiveness of counsel might be by noting the time that attorneys spend in each category of competence. Attorneys are not, however, required to record the amount of time they spend in each activity on Legal Server or elsewhere. Indeed, that level of hourly oversight would be objectionable to many contract attorneys and public defenders, an issue discussed later in this Report.⁵²

Recommendation

It is a heavy lift both in terms of resources and staffing for the Department to—on a yearly basis—visit every *Davis* county, establish relationships with providers, assess and meet provider needs, and address any gaps in effective representation. This section thus should be considered an argument for the necessity of developing an oversight plan in consultation with a data analyst to ensure that the process is accurate, fair, and feasible. Finally, whatever the oversight system, it will require staffing and other resources to review all ten counties each year. Part of the work of a consultant or data analyst, should funds be authorized, would be to assist

⁴⁸ Client surveys are required by the Judgment, 16-17, and by Regulation sec. 27 (3) (“A plan for the provision of indigent defense services in a county whose population is less than 100,000 must ensure that any client surveys authorized by the Board are provided to a client at the conclusion of his or her representation by an attorney.”) The English and Spanish versions of the survey are attached as Appendix D.

⁴⁹ *Id.* at 14-15.

⁵⁰ Judgment, 8,14. Note that the client surveys do not ask whether the attorney counseled not to waive rights at first appearance.

⁵¹ Judgment, 3.

⁵² *See infra* pp. 19-20.

the Department in calculating the resources needed to ensure an effective and accurate annual review of all ten counties.

Establishment of workload standards.

The Judgment requires that the Defendant commission a workload study within twelve months of the effective date of the Judgment.⁵³ As previously reported, the study has faced delays due to the pandemic. This Report notes the Department's plan to realize an accurate workload study given pandemic conditions and other challenges.

Progress thus far

On June 7, 2020, the Department contracted with the National Center for State Courts (NCSC) to administer a workload study. In January 2021, the NCSC conducted three focus groups consisting of rural attorneys who practiced as public defenders, contract attorneys, and conflict attorneys. All three groups agreed that four areas of work posed significant demands on their time: (1) locating services for clients; (2) jail visits; (3) traveling to and waiting in court; and (4) reviewing electronic data like body camera footage. Moreover, the focus groups revealed that rural counties were taking a variety of approaches to Covid-19 protocols, making it difficult to generalize about how the pandemic was affecting workload.⁵⁴

Hopeful that the pandemic would abate and that usable data could emerge, the Department and NCSC decided to start the six-week timekeeping period of the study on January 25, 2021. Participants, who included rural attorneys providing indigent defense, attorneys who provide representation in both rural and urban areas, investigators, and support staff, were asked to keep track of their time and upload it on to a platform that the NCSC provided.

⁵³ 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).

⁵⁴ The NCSC report on the focus groups, *Rural Nevada Indigent Defense Services Weighted Caseload Study Focus Group Summary* (January 2021), is available on the Department's website here: [https://dids.nv.gov/uploadedFiles/didsnv.gov/content/Weighted_Caseload_Study/NV%20Focus%20Group%20Themes%201.19.21_%20\(002\).pdf](https://dids.nv.gov/uploadedFiles/didsnv.gov/content/Weighted_Caseload_Study/NV%20Focus%20Group%20Themes%201.19.21_%20(002).pdf).

Participants were asked to record the time they spent by case type,⁵⁵ and by activity type, including 13 categories of in- and out-of-court activities specific to cases, seven categories of case-related administrative work, and seven categories of non-case work.⁵⁶ For in- and out-of-court case work, attorneys were asked to document time spent in the following areas:

In-court work:

- Bail, general hearings (including specialty court hearings)
- Suppression hearings
- Bench trial
- Jury trials

Out-of-court work:

- Client contact
- Consult experts
- Consult investigators/Engage in investigation work
- Motions to suppress
- Waiting
- Other court actions
- Review police body work camera feeds
- Jury trial preparation
- Bench trial preparation⁵⁷

It took marketing, encouragement, and support to secure participation in a six-week study that required such detailed record keeping. In this, the NCSC and Department should be commended for their success. In addition to support staff and investigators, 44 attorneys recorded their time.

Despite strong participation by indigent defenders in the NCSC time study, the study administrators determined that they needed additional timekeeping data to ensure that the six weeks of data collected was not distorted by pandemic conditions. The pandemic changed arrest and charging patterns, postponed hearings and trials, closed courthouses, and made it difficult to

⁵⁵ The case types are : Felonies; Other Criminal Cases; Gross Misdemeanor; Misdemeanor; Appeals – Supreme Court; Appeals/Writs – District Court; Juvenile Felonies; Juvenile Misdemeanors; Juvenile Status Offense; Abuse and Neglect (NRS 432B) not required but done by many; Termination of Parental Rights (NRS 128) not required but done; Probation Violation; Habeas Corpus/ Post Conviction; Pardons board; Parole violation hearings; Involuntary Commitment (Hospitalization Petitions); Guardianship only some do these; Specialty Court. Nevada Rural Indigent Defense Providers' Weighted Caseload Study Committee—Decision Document 3 (October 23, 2020).

⁵⁶ The NCSC spreadsheet with case type and category of work is attached as Appendix E.

⁵⁷ Nevada Rural Indigent Defense Providers' Weighted Caseload Study Committee—Decision Document 5 (October 23, 2020). Multi-tasking is noted in two areas: working on something while waiting in court, and driving while talking on the phone. *Id.* at 3. The Committee noted that double billing is prohibited by the ABA. *Id.*

visit clients who were in custody. The NCSC convened Delphi panels but lacked sufficient timekeeping data to probe the relevant issues.⁵⁸

The Department and NCSC agreed to supplement the timekeeping data with six to nine months of data collected by the Department on Legal Server.

Issue 1: Establishing normal casework times from data gathered during the pandemic.

The NCSC study administrators anticipate that the combination of the timekeeping study data, the Legal Server data, and comparisons with workload studies from other states, will be sufficient to determine caseload weights.

There ongoing pandemic continues to present challenges, which may result in undercounting the amount of time rural attorneys spend traveling to courthouses, jails, and prisons during non-pandemic times. Counties vary in the degree to which they are conducting remote court proceedings. Moreover, jails and prisons may still be using remote means of communication that will not continue after the pandemic subsides. Finally, AB424 (2021) requires pretrial release hearings be held within 48 hours of arrest. After AB424 goes into effect on July 1, 2022, the travel time for some contract attorneys may increase if they need to make more trips to the courthouse to ensure prompt release hearings for all arrestees.

As discussed below in Section III (Uniform Data Collection), the Department has made great strides in ensuring that providers track their time on Legal Server. Yet, it should be noted that the Legal Server data tracks the amount of time per case rather than the amount of time per task, per case. It may be hard to sort out how much more time attorneys spend traveling and waiting in court during non-pandemic times. The Department has concluded that it is unrealistic to ask rural indigent defense providers to complete another detailed, six-week timekeeping study,⁵⁹ or to ask them to engage in the same type of task-based timekeeping in Legal Server.⁶⁰

The NCSC study administrators plan to address this pandemic/post-pandemic discrepancy, and subsequent Monitor's reports will describe that process.

Issue 2: Determining the amount of time casework *should* take.

A critical part of the weighted caseload study is determining how much time various types of cases *should* take to complete. This is a different question than how much time attorneys are currently spending on their cases. The study should first capture an accurate description of how long attorneys spend working on cases. Second, the study should determine how much time attorneys should spend on cases based on the professional judgment of these and other

⁵⁸ Interim Caseload Report, Appendix B.

⁵⁹ The Judgment and section 42 (2) of the Board's regulations require the rural attorneys to participate in weighted caseload studies.

⁶⁰ The Judgment requires that attorneys providing public defense in the Davis counties document 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. Judgment, 18.

experienced attorneys. The way that workload studies address the question of how much time attorneys *should* spend on cases is addressed after the timekeeping portion of the study. In its Maryland caseload study, for example, the NCSC used a timekeeping survey, a time sufficiency study, site visits, focus groups, and a “consensus process between the contracting agency and the study administrators to establish final case weights.”⁶¹

Likewise, the NCSC’s current Nevada study has multiple components to determine what caseloads should be. The study is to include a time study of rural public defenders, investigators, and administrative staff, followed by a quality adjustment process to ensure the resulting recommendations are sufficient for effective representation.⁶² The quality adjustment process includes focus groups, Delphi panels to review case weights, a census survey of rural indigent defense attorneys, and a review of past indigent defense studies to compare weights for similar case types.

A 2015 caseload study in Texas, which included contract and panel attorneys in multiple counties, illustrates the importance of timekeeping by activity to determine the amount of time attorneys should spend on cases. In that study, attorneys kept time across a basket of eight task categories, from investigator hours to attorney time spent on negotiations, and even on social work assistance for clients.⁶³

The Texas study then moved to a time sufficiency survey in which it surveyed defense attorneys in both public and private practice across the state about the time needed to deliver effective representation across the categories and case types.⁶⁴ A wide range of criminal defense attorneys gave their opinions on the length of time each activity should take.⁶⁵ The survey participants responded that more time should be spent on virtually all activities for all types of cases. The overall recommendation was that the time spent on cases should be increased by about two-thirds.⁶⁶ Importantly, survey respondents recommended specific increases in time spent in certain key activity areas, including client communication, investigation, discovery, and negotiation.⁶⁷

Finally, the Texas study engaged in a Delphi process, convening panels of highly experienced attorneys to determine the time that should be spent on cases.⁶⁸ Delphi panels

⁶¹ See, e.g., National Center for State Courts, *Maryland Attorney and Staff Workload Assessment* 8-9 (2005).

⁶² Interim Caseload Report 4-5, Appendix B.

⁶³ *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission* 10-12 (2015). Available at: <http://www.tidc.texas.gov/media/8d85e69fd4fb841/guidelines-for-indigent-defense-caseloads-01222015.pdf>

⁶⁴ *Id.*

⁶⁵ *Id.* at 19.

⁶⁶ *Id.* at 20

⁶⁷ *Id.*

⁶⁸ *Id.* Here is a description of the attorneys in the Texas Delphi panels: “The Texas Delphi Panel was comprised of 18 highly experienced criminal defense practitioners selected to represent each of the state’s nine Administrative Judicial Regions. Participants averaged 25.3 years practicing criminal law. Thirteen were solo private practitioners or partners. Three chief public defenders and two managed assigned counsel attorneys were also represented. Panel

provided similar information: What is needed and how much time does it take to complete certain case-related tasks? But the Delphi panels answer these questions in a structured conversation among experts.⁶⁹

The Texas Delphi panels resulted in recommendations of the amount of time by case type, distinguishing trials from negotiated dispositions.⁷⁰ The Delphi panels also made recommendations by task. For example, the panel recommended a five-fold increase in discovery and attorney investigation and almost a twenty-fold increase in investigator time.⁷¹

From its time sufficiency survey and the Delphi panels, the Texas study was able to provide prescriptive recommendations for an appropriate workload, based on recommended increases in hours in some categories compared to the existing practice. Furthermore, significant correlations between the separate results of the time sufficiency survey and the Delphi panel raised confidence in the accuracy of the recommendations.⁷² The Texas study thus offered assurance that its recommended caseloads were set according to effective standards of practice.⁷³

One challenge the NCSC faces in the current Nevada study is that the data collected by Legal Server does not include a detailed breakdown of hours by task. It is possible, however, that the data that the NCSC previously collected over the six-week timekeeping period, plus the Legal Server data, will be sufficient for the sufficiency survey and the Delphi panel review. If the timekeeping data is reviewed and reflected upon by a broad ranger of experienced criminal defense attorneys, it will go along way to ensuring that the prescriptive values—how much time casework should take—are accurate.

members included people specializing in both felony and misdemeanor cases, as well as individuals on appointment lists for foreign language clients and mental health cases.” *Id.*

⁶⁹ *Id.* at 23. The Texas study Delphi panel process involved (1) a meeting to review procedure, (2) a seven-week process “involving a three-round sequence of activities designed to integrate their cumulative expertise and arrive at recommended case weights.” And, then (3) the participants met for the last time to confirm they had “reached consensus on final caseload guidelines.” *Id.*

⁷⁰ *Id.* at 25.

⁷¹ *Id.*

⁷² *Id.* at 28.

⁷³ Other caseload studies have included similar approaches, with some variation. A Rhode Island study, for example, used timekeeping records to estimate time spent but struggled to determine case-specific hours. Instead, it divided up the number of cases assigned to the public defender office and then looked at the full-time attorney staffing levels in lieu of case-specific time. National Association of Criminal Defense Lawyers, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards* (2017). The study then used online surveys followed by a Delphi panel of experts to determine caseload recommendations. *Id.* at 20-22. However, the Rhode Island study looked at caseloads of salaried public defenders only. This type of survey might be difficult to replicate in Nevada due to the model of delivery of services, relying on contract attorneys across multiple counties. Similarly, a caseload study in Louisiana used caseload data collected in pilot public defender offices across the state to determine workload and followed up with a Delphi panel for recommendations. Again, this system is an insufficient model for Nevada because it involved public defender offices and not a contract or mixed system of indigent defense as exists in Nevada. *The Louisiana Project: A study of the Louisiana Public Defender System and Attorney Workload Standards* (2017).

Recommendations

Both the Department and the NCSC study administrators are aware of the challenges posed by the pandemic data and of the importance of professional judgment in determining sufficient times for casework. The Department and NCSC are communicating about how to use the Legal Server data to arrive at accurate estimates for the time that attorneys spend on various case types. The NCSC has agreed to conduct a time sufficiency analysis, and to convene Delphi panels with additional defense attorneys who have practiced in rural and urban courts. The Monitor agrees that these steps are necessary for the weighted caseload study.

III. Uniform Data Collection and Reporting

The Judgment requires the Defendants to ensure providers report data in a uniform fashion, including case numbers, type, outcome, the number of motions to suppress filed and litigated, the number of trials, and the attorney's private workload, if any. They must also report the hours worked by attorneys, staff, investigators, and experts. 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.⁷⁴ The Board's regulations follow the Judgment's requirements.⁷⁵

From its preliminary check, the Department has determined that almost all the contract attorneys have logged on to Legal Server, and it anticipates substantial compliance with data entry. Moreover, panel attorneys working for an hourly rate enter their hours into Legal Server as part of the payment process, adding an incentive for compliance. The Department will run its first report on Legal Server on January 15, 2022, to determine the degree of compliance in the first quarter after the approval of the county plans.

The Department's efforts to implement a statewide data collection system are impressive. As the last Report described, the Department created training videos and offered extensive training and support in the use of Legal Server. In addition, the Deputy Director and one member of the Department staff attended a 2.5-day Legal Server training in Denver in late October 2021. The training included, among other topics, problem solving in advanced reports, issues specific to public defender management, a branch logic workshop, and site administration collaboration. In addition to creating training videos, offering contemporaneous training, and attending Legal

⁷⁴ Judgment, 18.

⁷⁵ Section 43 of the Regulations require an annual report of annual 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.

Server administration training, the Deputy Director and a staff member have faced three months of steady questions from providers.

The Department has spent substantial time addressing the concerns of providers and explaining the benefits of documenting work.

Objections to using Legal Server came from various perspectives. First, some attorneys objected to the fact that the required record keeping is an extra obligation for which they are not compensated. Attorneys receive no compensation for the time they are required to spend on record-keeping under the new regulations. If the timekeeping obligation is perceived as too onerous, it has the potential to discourage attorneys from accepting cases in rural counties. (Timekeeping through Legal Server is not required in urban counties.) To address these concerns, the Department is planning a bill draft request to increase the hourly rate for indigent defense representation and to provide compensation for the time that the attorneys' administrative staff spend on case-related activities such as data entry in Legal Server.

Second, in addition to the extra work of inputting data into a new software program, some attorneys were already using a different case management system and did not want to switch platforms or duplicate work. For example, the new public defender office for Churchill County recently purchased a case management system. The Department assured attorneys that they may continue to use alternative case management systems and are only required to use Legal Server to document the information required in Regulation sections 43 and 44.

Third, the Department took steps to address concerns over attorney-client privilege and the confidentiality of client information. To address the concerns over confidentiality, the Department solicited ethics advice from the Nevada Attorney General's office and from UNLV Boyd School of Law professors with expertise in legal ethics. As a result of these consultations, the Department created confidentiality agreements for county-level designees who administer case assignments. The Department also entered into a written confidentiality agreement with the Churchill Office of the Public Defender, which defines the limits, scope and use of case-related information gathered by the Department. While no other county or attorney's office has requested a confidentiality agreement, the Department has made clear its policy to protect privileged and confidential information.

The Department agreed to limit the number of its employees that have full access to case information. The Department's policy is that it will not access the casefile except to provide technical support, run required reports, or to enter data with the express permission of the attorney. Others in the office can see a casefile only when it is transferred to them for the purpose of selecting conflict counsel.

Third, several established indigent defense providers were not comfortable with computers or refused to use the system. To accommodate their needs, the Department created a Disposition Report, which contains the relevant information, including the client name and case number, the code for the type of case (called the Legal Problem Code), the total number of

attorney, expert, investigator, and staff hours, the disposition of the case, whether a motion to suppress was filed and litigated, whether the survey was provided to the client, and whether there was a jury trial.⁷⁶ The Department also reached out to those attorneys who had never logged on to Legal Server or had not logged on recently.

Recommendations

The Judgment requires attorneys to report their time spent on private casework. This appears to be designed to identify when a contract attorney has such a high external caseload that it compromises the attorney's ability to provide effective representation under the contract. If that is indeed the purpose, it is important that the Department collect quarterly reports on contract attorneys' outside caseload.

Contract attorneys provide data on time spent on private cases through Legal Server. If an attorney is not using Legal Server, but is instead reporting using the Case Disposition Report form, the attorney will need to provide information on their private caseload separately.

Finally, to have a complete picture of a contract attorney's external caseload, the Department should also collect data on hours spent on municipal court appointed cases. To be clear, this is not mentioned in the Judgment. Moreover, the Department has no authority over public defense in municipal courts.

However, to understand how much work contract attorneys are taking on, it is important to consider their municipal indigent defense work as well as their private work. When an attorney who contracts to provide indigent defense with a county also has a high number of private cases and municipal court appointments, it may be a sign that the payment for county-level indigent defense is inadequate to support a practice. On its own, it is unlikely that asking attorneys to report number of hours spent on both private casework and municipal appointments would exceed the Department's authority.

Conclusion

The Department continues to make steady progress implementing the terms of the Judgment. It has:

- Taken steps to secure a funding for a data analyst for the oversight plan, wage/salary survey, and incentive plan
- Taken steps to ensure providers use Legal Server
- Provided an alternate means of reporting for attorneys unable or unwilling to use Legal Server
- Developed a confidentiality plan for casefiles on Legal Server
- Begun the process of organizing an annual statewide training for May 2022

⁷⁶ The Disposition Report is attached as Appendix F.

- Obtained a grant for \$45,000 for travel expenses for rural attorneys for the annual conference in May 2022
- Obtained \$26,000 for law student externships in rural public defender offices
- Finalized the county-level designees for selection of counsel and approval of expenses
- Developed a designee agreement to ensure funds are authorized in accordance with the Department's guidance
- Provided numerous trainings
- Provided at least one training to address the ABA Criminal Justice Standards for the Defense Function
- Hired a new deputy director
- Updated the Department's website to include a new mission statement, vision, and goals
- Updated the Department's website to include the county plans, county providers, and all other current information for attorneys and the public
- Applied for a grant to provide Westlaw to rural indigent defense providers in the *Davis* counties.
- Developed a proposal for a state-wide holistic resource center

Looking ahead

The results of some of the Department's work will become clearer over the next few months.

Data collection compliance

The Department will learn the degree to which providers are recording their cases in Legal Server when they run the January 15, 2021, quarterly report. It should be noted, however, that there is no clear way to cross-check the number of cases, case types, and hours against a different data set.

Wage/salary survey, incentive study, oversight plan

The Department will appear before the Interim Finance Committee in February 2022 to request funds for a data analysis to conduct the wage/salary survey, the incentive to rural practice study, and to assist in developing an 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.

Improving the chances that the caseload study will yield usable conclusions

In conversation with the NCSC workload study coordinators, the Department is likely to learn more about whether the Legal Server data provides enough data to determine existing workloads and to assess what amount of time is needed to effectively represent people in various

types of cases. The Monitor recommends and believes the NCSC study administrators are receptive to the idea of expanding the attorneys on the Delphi panels to include criminal defense attorneys in private practice.

If the workload study is completed in the spring, workload limits can be included in the contracts between attorneys and counties, many of which will be renewed on July 1, 2022.

Reimbursement for counties that exceed their maximum contribution

Reimbursement to the counties for expenses above their maximum contribution occurs after the county has exceeded its maximum contribution. (Note that the counties' maximum contributions were adjusted for inflation in November 2021).

As noted in the October 15, 2021, Report, the county plans were accompanied by an estimated budget. All counties except Lander County submitted a quarterly report for the first quarter of FY2022 on October 15, 2022. (Counties are required to submit quarterly financial reports only if they are seeking reimbursement for expenses over their maximum contribution). The second quarterly report is due on January 15, 2022. It should provide a sense of whether the counties' estimated budgets for FY2022 are accurate. Complicating matters, several counties intend to hire plan coordinators but have not yet done so. This will be an additional expense not captured in the counties' first two quarterly financial reports.

Once the counties exceed their maximum contribution, the Department will request reimbursement from the Legislature's Interim Finance Committee for earmarked funds. If those earmarked funds are exhausted, the Department must request additional funds from the Governor's Finance Office—a procedure lengthier and more complex than obtaining authorization to disburse existing earmarked funds.

Next steps for the Monitor

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

- Report on the first two quarterly financial reports from the counties.
- Report on the compliance of indigent defense providers with the required data collection through Legal Server.
- Report on progress in obtaining funds for the wage/salary survey, oversight plan, and incentive plan.
- Report on progress gathering the workload data needed to complete the Delphi study.
- Report on the 2022 state-wide training conference.
- Report on the Department's oversight activities and their results.

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January 15, 2022

APPENDIX A
DIDS OBSERVATION PROTOCOL & SCHEDULE

DIDS Observation Protocol & Schedule 2022

It is anticipated that DIDS will move through 3 phases of onsite review protocols:

1. Relationship Building & Needs Assessment
2. Implementation of New Processes & Longer-term Strategic Planning
3. Ongoing Reviews & Updates

Phase 1 - It is essential that DIDS personnel form and build positive relationships across Nevada with all indigent defense providers on our team. It is important that these individuals know they can trust us, confide in us, and look to us for support. To this end, it is important to not start things off by showing up with a clipboard and a checklist, like a restaurant inspector.

The primary focus in the beginning will be meeting the team members on location. We have worked with most of the practitioners in constructing the county plans. But meeting face-to-face and spending time in person is invaluable.

Observation Priorities for Q1

We have previously identified four main areas we focused on in the client and attorney surveys. They were: (1) Client Communication; (2) Investigation / Experts; (3) Preparedness / Knowledge of Case; and (4) First Appearances. These are subject to change as we begin to receive quarterly reporting from the Oct-Dec 2021 Quarter via LegalServer.

Accordingly, these are areas to observe and to ask informal questions about during our initial on-location visits:

1. Client Communication
 - a. Is there a place in all courthouses/ jails where you can have private conversations with your clients?
 - b. How much time are you usually able to spend with each client to familiarize yourself with them and to understand their case?
 - c. How much time do you spend with clients in discussing plea offers?
 - d. Except for those cases that go to trial, how much time do you usually spend with a client prior to resolution of their case?
2. First Appearances
 - a. Do you appear at first appearances?
 - b. If not, how do you receive information from that hearing?
 - c. Are first appearances handled within 48 hours?
 - d. If not, is there a plan for 48-hour hearings by June, 2022?
3. Preparedness/ Knowledge of Case
 - a. Do you have time to successfully manage all your cases in the manner you'd like?
 - b. How fair do you think the system is towards indigent defendants?
 - c. How fair do you think the system is towards you?
 - d. Are you given all the information you need to do your job effectively?
 - e. Are you given information in a timely manner to do your job effectively?
 - f. How prepared do you feel like you are at the various stages of the case?

4. Investigation/ Experts

- a. Do you feel like you have sufficient resources to do your job effectively?
- b. Do you have easy access to funding for investigators or experts when you need them?
- c. How often would you say you hire an investigator?
- d. How often would you say you hire experts?
- e. What kinds of cases do you generally hire experts or investigators for?
- f. Would easy access to a regular or full-time investigator make your job easier / make you more effective?

Also:

Q: What would you say are your biggest challenges in doing your job?

Q: What resource or resources would most make your job easier and/or allow you to be more effective?

Tentative Q1 schedule for 2022*

1. Mineral County – Tentative date: February 2

The primary contract public defender, John Oakes, died recently. His son Justin is taking over the contract. But we have not yet seen a contract between the county and Justin. An on-location visit is necessary to talk to the stakeholders, including the judiciary, the substitute public defender, and possibly present an update to the County Commission. Discussion topics must include the necessities of: (1) an appointed counsel administrator; and (2) the required data entry into LegalServer, as we currently have no data to report for Mineral County for the quarter.

2. Nye County / Esmeralda – Tentative dates: February 23-24

The plan is to fly into Vegas, and drive up through Pahrump, Beatty, and stay the night in Tonopah. Then meet the next day with people in Tonopah and Goldfield, before returning to Carson City. Along the way, we would meet with contract public defenders, visit courthouse spaces, including in Pahrump, and attend county commissioner meetings, if possible.

3. Douglas County – Tentative Date: March 2

There is a solid Appointed Counsel Administrator in Douglas, so we want to meet with him to discuss how the plan is progressing and what needs remain. Also, there is currently a shortage of contract public defenders. We need to meet with the existing (and possibly exiting) defenders to discuss issues.

4. Lander County – Tentative Date: March 30

We have not yet been able to meet on location with Lander County stakeholders, so we want to finally accomplish this. Further, we want to walk through a day in the life of a public defender there, visit the courthouse and jail spaces and hopefully meet with the public defender.

5. White Pine / Eureka – Tentative Dates: April 4- 5

We would meet with contract public defenders, visit courthouse spaces, including in Pahrump, and attend county commissioner meetings, if possible.

• ***Churchill** – Marcie and Tom completed an oversight visit to Churchill County on December 06, 2021, including meeting with Churchill Co Public Defenders, County Manager Jim Barbee, to discuss progress on the indigent defense plan and future steps.

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January 15, 2022

APPENDIXaB
NCSC INTERIM CASELOAD REPORT (JUNE 2021)

Rural Nevada Indigent Defense Services Interim Weighted Caseload Study

Report
June 2021

Suzanne Tallarico, M.A.
Brian Ostrom, Ph.D.
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Shannon Roth

Court Consulting Division
National Center for State Courts



Rural Nevada Indigent Defense Services

Weighted Caseload Study

Interim Report

June 2021

The authors extend their sincere appreciation to the indigent defense service providers, including attorneys, investigators and administrative staff of rural Nevada, all of whom contributed their valuable time and insights during the time study, focus group, and quality adjustment panels. We also thank the members of the Study's Advisory Committee for their thoughtful guidance throughout the course of the project. Marcie Ryba, Jarrod Hickman, and Thomas Qualls from the Department of Indigent Defense Services (DIDS) and Mitch Herian from Soval Solutions were invaluable for providing leadership and data support. Thank you all for the serious attention you provided to this important project.

Weighted Caseload Study Advisory Committee Members

Colleen Brown, Office Manager
Elko County

Kristine Brown, Contract Attorney
Douglas County

Steve Cochran, Public Defender
Pershing County

Lorina Dellinger, Asst. County Manager
Nye County

Jason Earnest, Contract Attorney
Esmeralda/Nye Counties

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Maureen MacDonald, Legal Secretary
Humboldt County

Dave Mendiola, DIDS Board Member/County
Manager
Humboldt County

Jeffery Page, County Manager
Lyon County

Wayne Pederson, Contract Attorney
Lyon County

Matthew Pennell, Public Defender
Elko County

Tosca Renner, former Office Manager
Nevada State Public Defender's Office

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Richard Sears, Contract Attorney
White Pine County

Jacob Sommer, Public Defender
Churchill County

Matt Stermitz, Public Defender
Humboldt County

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Introduction

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.”¹ In 1963, the United States Supreme Court held that the Sixth Amendment requires states to provide counsel for criminal defendants who cannot afford to hire counsel for themselves.² Twenty-one years later, the Court held that the right to counsel is a right not merely to token representation, but to the effective assistance of counsel.³

For any criminal defense attorney, maintaining a manageable caseload is essential to the ability to provide effective assistance of counsel. According to the Model Rules of Professional Conduct, the requirement of diligence in representation includes the responsibility to control the lawyer’s workload “so that each matter can be handled competently.”⁴ Similarly, the American Bar Association Standards for Criminal Justice assert that “[d]efense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client’s interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations”⁵ Faced with an excessive workload, an attorney may not have sufficient time to

investigate the facts of the case, visit the crime scene, identify and interview witnesses, prepare mitigation information, address potential collateral consequences, explore the possibility of diversion or alternative sentencing, or maintain regular communication with the client.

Since the beginning of the twenty-first century, concern over excessive workloads among attorneys who represent indigent clients has grown. Forty years after *Gideon v. Wainwright* established the right to state-provided defense counsel, the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (SCLAID) held a series of hearings to determine whether that promise was being kept. SCLAID concluded that the defense function was systematically underfunded and that indigent defense providers in many states were chronically overworked and could not devote sufficient time to their cases.⁶ Similarly, in 2009 the Constitution Project’s National Right to Counsel Committee found that inadequate funding and excessive workloads were “a problem virtually everywhere in public defense throughout the United States.”⁷ In 2011, the Justice Policy Institute concluded that inadequate representation resulting from excessive indigent defense workloads leads to increased incarceration costs, reduces public trust and confidence in the judicial system, and has a disproportionate impact on people of color and low-income communities.⁸

¹ U.S. Constitution amend. VI.

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³ *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

⁴ American Bar Association Model Rules of Professional Conduct Rule 1.3 comment. 4 (2007).

⁵ ABA Standards for Criminal Justice: Defense Function, Standard 4-1.8(a) (4th ed. 2015).

⁶ Standing Committee on Legal Aid and Indigent Defendants, American Bar Association, *Gideon’s*

Broken Promise: America’s Continuing Quest for Equal Justice (2004).

⁷ National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel* 65 (2009).

⁸ Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense* (2011).

In response to these concerns, the American Bar Association promulgated a series of guidelines related to indigent defense workloads. These guidelines direct providers to “avoid excessive workloads and the adverse impact that such workloads have on providing quality legal representation to all clients.” The guidelines also advise that public defense providers establish “a supervision program that continuously monitors the workloads of its lawyers to assure that all essential tasks on behalf of clients ... are performed.”⁹

To monitor workloads effectively, public defenders must first establish workload standards. The current workload assessment study is the beginning step that DIDS is taking in this effort. The only existing national public defender workload standards were established in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals and later adopted by the National Legal Aid and Defender Association. Assuming that each attorney handles only one case type, the standards call for limiting per-attorney caseloads to 150 felonies, 400 non-traffic misdemeanors, 200 juvenile

court cases, 200 Mental Health Act cases, or 25 appeals per year.¹⁰ These standards have frequently been criticized on the grounds that they were not based upon empirical research, do not allow for the varying complexity of different types of cases within each of the broad categories (e.g., homicide, violent felonies, and nonviolent felonies), ignore variation among the states in criminal justice policies and procedures, and predate the widespread usage of information technology in courts and law offices.¹¹

Over the past decade and a half, statewide public defender systems have increasingly begun to adopt state-specific weighted caseload systems for monitoring workload. Some of the earliest empirically based studies of public defender workload were conducted by National Center for State Courts (NCSC) in Maryland (2005), New Mexico (2007), and Virginia (2010).¹² More recently, the ABA has partnered with accounting firms to establish weighted caseload formulas in Missouri (2014), Louisiana (2017), Colorado (2017), and Rhode Island (2017).¹³ Other organizations have conducted weighted

⁹ American Bar Association, *Eight Guidelines of Public Defense Related to Excessive Workloads*, guidelines 1 – 2 (2009).

¹⁰ Task Force on Courts, National Advisory Commission on Criminal Justice Standards and Goals, *Courts*, Standard 13.12 (1973).

¹¹ Matthew Kleiman & Cynthia G. Lee, *Public Defenders*, in *Encyclopedia of Criminology and Criminal Justice* 4134, 4139 (Gerben Bruinsma & David Weisburg eds., 2013).

¹² Matthew Kleiman & Cynthia G. Lee, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment* (2010); National Center for State Courts & American Prosecutors Research Institute, *A Workload Assessment Study for the New Mexico Trial Court Judiciary*, New Mexico District Attorneys’ Offices and New Mexico Public Defender Department (2007); Brian J. Ostrom, Matthew

Kleiman & Christopher Ryan, *Maryland Attorney and Staff Workload Assessment* (2005).

¹³ Blum Shapiro & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards* (Nov. 2017); Rubin Brown & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Colorado Project: A Study of the Colorado Public Defender System and Attorney Workload Standards* (Aug. 2017); Postlethwaite & Netterville & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Louisiana Project: A Study of the Louisiana Public Defender System and Attorney Workload Standards* (Feb. 2017); Rubin Brown, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards* (June 2014).

caseload studies in Missouri (2014), Massachusetts (2014) Texas (2015), New York (2016), Maryland (2017) and Idaho (2017).¹⁴ These studies uniformly find that public defender agencies do not have enough attorneys to effectively handle their workloads.

In 2019, the Board on Indigent Defense Services (BIDS) and the Department of Indigent Defense Services were established to oversee and improve criminal defense services provided to indigent persons in Nevada by providing state funding and guidance to local indigent defense services. Specifically, BIDS and DIDS have been tasked with developing minimum standards and regulations for the delivery of indigent services, developing guidelines for maximum caseload sizes and, once these are established, overseeing the rural indigent defense attorneys to ensure that the minimum standards and regulations are being followed.

The Department of Indigent Defense Services is currently working on developing practice standards, and they contracted with the National Center for State Courts to conduct a workload assessment study for indigent defense providers in the 15 rural counties of the state. The results of the workload assessment study, described in this report, will be used to create preliminary caseload standards for indigent defense attorneys in Nevada.¹⁵ At the foundation of the workload assessment study is a time study, which, under normal working conditions, will provide an empirical profile of

the amount of time indigent defense providers currently spend working on the various types of cases to which they are assigned. As will be discussed later, for the current study, the empirical data obtained through the time study was supplemented with additional empirical and qualitative data to develop the current preliminary standards.

A. Indigent Defense Services in Rural Nevada

Nevada is composed of 17 counties, 15 of which are considered to be rural.¹⁶ Nevada law stipulates that counties with populations of 100,000 or more must provide a county-funded public defender office; counties with populations of less than 100,000 may make independent decisions about the structure and delivery of its indigent defense services. In these counties, indigent defense services may be provided through 1) contracting with the Nevada State Public Defender, 2) creating a county public defender's office or 3) by contracting with attorneys to provide the service.

Two rural counties, Carson City and Storey County contract with the Nevada State Public Defender. Four rural counties, including Elko, Humboldt, Pershing and Churchill Counties have established county public defender offices; the remaining nine rural counties contract with private attorneys to provide indigent defense

¹⁴ Idaho Policy Institute, Boise State University, Idaho Public Defense Workload Study (2018); N.Y. State Office of Indigent Legal Services, A Determination of Caseload Standards Pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement (Dec. 2016); Dottie Carmichael et al., Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission (Jan. 2015).

¹⁵ As will be described later in this report, the standards developed in this report should be viewed as preliminary, as they study was conducted during the midst of the COVID-19 pandemic, thus the accuracy of these standards may not adequately represent typical work activities.

¹⁶ Clark and Washoe Counties are considered urban counties, so they were not included in this study.

services. Currently, in the rural counties, only the Nevada State Public Defender Office in Carson City employs full-time investigators to support the work of county-based indigent defense attorneys. In locations in which investigators are not permanently employed, attorneys are permitted to ask the court for additional fees for investigation or expert consultation when needed. Administrative staffing support also varies across the counties, ranging from county-employed administrative staff in public defender offices to contract attorneys who have no administrative support staff, leaving the attorneys to provide their own administrative support. Finally, all of the rural counties have contracts with private attorneys to provide indigent defense services in cases in which the public defender or contract attorney has a conflict of interest. In cases involving the death penalty, attorneys must meet specific training and experiential criteria, so most of these attorneys are appointed from a specific pool of such attorneys, often located in the larger counties, necessitating travel costs to meet clients in the rural locations.

B. About Weighted Caseload

The weighted caseload method of workload analysis is grounded in the understanding that different types of cases vary in complexity, and consequently in the amount of work they generate for attorneys and staff. For example, a typical non-capital felony creates a greater need for attorney and staff resources than the average misdemeanor case, largely because the cases tend to be more complex and the potential consequences are greater in the higher-level cases, so they are more likely to either go through trial or stay in the system longer before a plea bargain has been offered and accepted.

The weighted caseload method calculates resource need based on the total workload of each office, while accounting for the variations in workload associated with different types of cases. The weighted caseload formula consists of three critical elements:

1. *New case counts*, or the number of cases of each type assigned indigent defense providers each year;
2. *Case weights*, which represent the average amount of time required to handle cases of each type over the life of the case; and
3. The *year value*, or the amount of time each attorney or staff member has available for case-related work in one year.

Total annual workload is calculated by multiplying the annual new cases for each case type by the corresponding case weight, then summing the workload across all case types. Each office's workload is then divided by the year value to determine the total number of full-time equivalent attorneys needed to handle the workload.

Original Project Design

To provide oversight and guidance on matters of policy throughout the project, DIDS established the Indigent Defense Workload Standards Advisory Committee (the Advisory Committee) comprised of public defenders, contract indigent defense providers, administrative staff members, an investigator, a Board of Indigent Defense Services member, a County Manager, and an Assistant County Manager. The workload assessment was designed to be conducted in two phases:

1. A time study in which all rural public defender/contract attorneys, investigators and administrative staff were asked to record all case-related and non-case-related work, including evenings and weekends, over a six-week period. The time study provides an empirical description of the amount of time currently devoted to handling cases of each type, as well as the division of the workday between case-related and non-case-related activities. 100 percent of all expected participants entered data during the time study.
2. A quality adjustment process to ensure that the final weighted caseload model incorporates sufficient time for effective representation. Grounded in applicable professional standards, the quality adjustment process included:
 - Focus groups conducted by NCSC staff with attorneys to develop an in-depth understanding of indigent defense work across the rural counties and to identify challenges attorneys face in handling their workload;
 - Delphi panels, consisting of a structured review of the case weights by a set of experienced attorneys, investigators and administrative staff members;
 - Census survey of rural indigent defense attorneys; and
 - A review of past indigent defense provider weighted caseload studies to compare case weights for similar case types, which also accounted for adherence to ABA standards.

This two-stage quantitative/qualitative approach takes advantage of empirical data from the time study (“what is”) and relies upon expert opinion and data from other states only

to formulate the quality adjustments (“what should be”), resulting in a high degree of accuracy.

C. Conducting a Time Study During COVID-19

In total, 100% percent of all primary participants (attorneys, investigators, and administrative staff) participated in the time study. This extremely high level of participation, if collected during “normal times” would ensure sufficient data to develop an accurate and reliable profile of the amount of time attorneys, investigators and administrative staff currently spend representing clients in each type of case, as well as time spent on non-case-specific and non-case-related work.

Despite engaging in all of the tasks that typically result in useable data, this study was conducted during the global COVID-19 pandemic, so courts were not running or functioning in a typical fashion. Largely due to the pandemic, fewer cases were filed, because fewer arrests were made; few, if any jury trials occurred, since many courts were either closed or were limiting trials due to the need to socially distance and ensure health safety, and limited travel to courts and jails took place, again, to ensure health and safety. All of this combined to provide an atypical picture of the work conducted by indigent defense providers, investigators and staff. Similarly, the development of case weights relies on the ability to accurately count the number of cases on which indigent defense providers work, but this data was also not available in a consistent manner.

Given the unusual circumstances under which the time study was conducted and the fact that

business was not being conducted as usual, the NCSC is going to work with DIDS to use data collected on Legal Server in the future to develop case weights using rural Nevada-specific case processing data.

The NCSC has extended their contract with DIDS – at no extra cost¹⁷ – to develop case weights based on data collected and maintained by DIDS. The Legal Server system, set up to maintain data on the number and type of cases on which attorneys are working, along with the number of hours spent on those cases, is available for use now, but entering case-specific data into this system will become compulsory in October 2021. The NCSC will work with the Department again as soon as six to nine months of data have been collected, in order to update the case weights.

D. Recommendation

Given the challenges experienced through the process of conducting the weighted caseload study in the middle of a pandemic, the single recommendation made in this report concerns the ongoing reporting of data into the Legal Server system beginning no later than October 1, 2021. This data collected through focus groups and Delphi Panels suggests the need for more attorney and staff resources, but at this time, sufficient data does not exist to quantify those needs.

Recommendation 1

Indigent defense providers should begin entering caseload data along with hours worked

into the Legal Server system no later than October 1, 2021.

DIDS should monitor the new case counts and hours expenditure database to ensure that attorneys are entering data in a consistent manner. Once DIDS staff have ensured the data are completely and consistently entered and that ample data (six to nine months' worth) have been entered, DIDS should work with the NCSC to develop new case weights for the case types explored in the current study.

¹⁷ A no-cost extension to the NCSC's contract for this work has been signed, and the NCSC and DIDS will begin work on the development of new case weights

once sufficient data have been collected through the Legal Server system.

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APPENDIX C
DESIGNEE AGREEMENTS



STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

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

Designee Agreement of Terms & Conditions

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

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

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

Designee agrees to the following terms and conditions:

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

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

signature

signature

printed name
Designee

printed name
obo Department of Indigent Defense

Steve Sisolak
Governor



Marcie Ryba
Executive Director

Thomas Qualls
Deputy Director

Peter Handy
Deputy Director

STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

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

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

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

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

1. Confidentiality.

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

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

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

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

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

2. Additional Definitions.

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

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

signature

signature

printed name
Designee

printed name
obo Department of Indigent Defense

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APPENDIX D
CLIENT SURVEY



State of Nevada

Department of Indigent Defense

Satisfaction Survey

The Nevada Department of Indigent Defense Services wants to learn more about you with your appointed public defender. The responses you give to the survey will not be shared with your attorney or anyone else. The results will help us improve services for indigent defendants in Nevada. For the first group of questions, please fill in your response.

1. Your name and case number (optional – will be kept confidential)

Name _____ Case No. _____

2. County your case was in? _____

3. Name of your appointed attorney? _____

4. After your arrest, how many days was it until you saw your attorney? _____

5. Did you speak with your attorney prior to the first time you saw a judge?

Yes

No

6. Did you always have a private place to talk to your attorney?

Yes

No

7. Did you have the same attorney throughout your case?

Yes

No

We would now like to ask you some questions about your satisfaction with your attorney. Circle the most appropriate answer for the following statements.

8. My attorney talked to the witnesses I asked to be interviewed.

Strongly
Agree

Agree

Neutral

Disagree

Strongly
Disagree

9. My attorney listened carefully to what I said.

All the time

Most of the
time

About half the
time

Some of
the time

None of the
time

My attorney thoroughly investigated my case.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
----------------	-------	---------	----------	-------------------	------------

My attorney discussed the evidence with me.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
----------------	-------	---------	----------	-------------------	------------

I feel like my attorney spent enough time with me.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
----------------	-------	---------	----------	-------------------	------------

My attorney was always prepared in court and appeared to understand my case.

All the time	Most of the time	About half the time	Some of the time	None of the time	Don't Know
--------------	------------------	---------------------	------------------	------------------	------------

My attorney answered all my questions.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
----------------	-------	---------	----------	-------------------	------------

My attorney explained the different decisions I could make in my case and the possible advantages and disadvantages of each one.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
----------------	-------	---------	----------	-------------------	------------

Overall, I am satisfied with the way my attorney handled my case.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know
----------------	-------	---------	----------	-------------------	------------

How fair or unfair was the outcome of your case?

Very Fair	Fair	Neutral	Unfair	Very Unfair	Don't Know
-----------	------	---------	--------	-------------	------------



Departamento de Servicios Defensoría Pública para los Ind de Nevada

encuesta del nivel de satisfac [Nevada Department of Indigent Defense Se

El Departamento de Servicios de Defensoría Pública para los Indigentes de [Nevada Department of Indigent Defense Services] desea saber más sobre su experiencia con el sistema de defensa pública que le nombraron de oficio. Las respuestas que usted dé en esta encuesta son confidenciales y no se compartirán ni con su abogado(a) ni con nadie más. Los resultados de esta encuesta se utilizarán para mejorar los servicios de representación letrada a los indigentes en Nevada. Por favor, responda a las preguntas, favor llenar el espacio en blanco o encerrar su respuesta en un círculo.

1. Su nombre y número de caso (optativo – se mantendrá confidencial)

Nombre _____ Caso No. _____

2. ¿En qué condado fue su caso? _____

3. ¿Cómo se llamaba su abogado(a) de oficio? _____

4. ¿Cuántos días transcurrieron desde su arresto hasta que vio a su abogado(a)?

Sí _____ No _____

5. ¿Habló usted con su abogado(a) antes de la primera vez en que vio al juez?

6. ¿Siempre pudo hablar con su abogado(a) en un lugar privado?

Sí _____ No _____

7. ¿Durante todo el caso siempre tuvo el (la) mismo(a) abogado(a)?

Sí _____ No _____

Quisiéramos hacerle unas preguntas acerca de cuán satisfecho(a) está usted con su abogado(a) de oficio. Marque con un círculo la respuesta más apropiada.

8. Mi abogado(a) habló con los testigos que yo pedí que entrevistaran.

Totalmente
de acuerdo

De acuerdo

Neutral

En desacuerdo

Totalmente
desacuerdo

ado(a) escuchaba con atención lo que yo le decía.

el o	La mayor parte del tiempo	Como la mitad del tiempo	Algunas veces	Nunca	No sé
---------	---------------------------------	--------------------------------	---------------	-------	-------

ado investigó mi caso a profundidad.

nte erdo	De acuerdo	Neutral	En desacuerdo	Totalmente en desacuerdo	No sé
-------------	------------	---------	---------------	-----------------------------	-------

ado(a) habló conmigo acerca de las pruebas.

nte erdo	De acuerdo	Neutral	En desacuerdo	Totalmente en desacuerdo	No sé
-------------	------------	---------	---------------	-----------------------------	-------

ue mi abogado(a) me dedicó suficiente tiempo.

nte rdo	De acuerdo	Neutral	En desacuerdo	Totalmente en desacuerdo	No sé
------------	------------	---------	---------------	-----------------------------	-------

ado(a) estaba siempre preparado(a) en las audiencias y parecía entender mi caso.

el o	La mayor parte del tiempo	Como la mitad del tiempo	Algunas veces	Nunca	No sé
---------	---------------------------------	--------------------------------	---------------	-------	-------

ado me respondió todas mis preguntas.

nte erdo	De acuerdo	Neutral	En desacuerdo	Totalmente en desacuerdo	No sé
-------------	------------	---------	---------------	-----------------------------	-------

ado(a) me explicó las distintas decisiones que yo podía tomar en mi caso y las posibles
i y desventajas de cada una.

nte erdo	De acuerdo	Neutral	En desacuerdo	Totalmente en desacuerdo	No sé
-------------	------------	---------	---------------	-----------------------------	-------

ral estoy satisfecho(a) con la forma en que mi abogado(a) llevó mi caso.

nte erdo	De acuerdo	Neutral	En desacuerdo	Totalmente en desacuerdo	No sé
-------------	------------	---------	---------------	-----------------------------	-------

n justo fue el resultado en su caso?

isto	Justo	Neutral	Injusto	Muy injusto	No sé
------	-------	---------	---------	-------------	-------



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APPENDIX E
NCSC SPREADSHEET FOR TIMEKEEPING

**Nevada Indigent Defense Services
Weighted Caseload Study, 2021**

Date _____

CASE TYPES		CASE-RELATED ACTIVITIES	
CRIMINAL	A. Death penalty cases	In-Court Activities	01. Bail, general hearings (including specialty court hearings)
	B. Non-capital A&B felonies 10+ year sentence		02. Suppression hearings
	C. B felonies <10-year sentence; C,D & E felonies		03. Bench trials
	D. Gross misdemeanors		04. Jury trials
	E. Misdemeanor DUIs		05. Waiting in court
	F. Misdemeanors - domestic violence	Out-of-Court Activities	06. Client contact
	G. Other misdemeanors, including appeals		07. Consult experts
	H. Probation violations		08. Consult investigators/engage in investigation work
	I. Parole violations		09. Motion to suppress
J. Direct appeals of capital convictions	10. Other court actions		
APPEALS	K. Direct appeals of non-capital felony convictions	Administrative Work	11. Review police body camera feeds
	L. Juvenile delinquency - felonies		12. Jury trial preparation
	M. Juvenile delinquency - gross misdemeanors		13. Bench trial preparation
	N. Juvenile delinquency - misdemeanors	NON-CASE-RELATED ACTIVITIES	14. Intake & eligibility
	O. Child in need of supervision (NRS Chapter 62B.320)		15. Records management
	P. Juvenile certification proceedings		16. Interpreter services
	Q. Juvenile probation violations		17. Direct attorney support
	R. Juvenile parole violations		18. Legal research
	S. NRS Chapter 128 cases (TPR)		19. Social work/sentencing advocacy functions
	T. NRS Chapter 432B cases (Abuse & Neglect)		20. In-court support
U. NRS Chapter 433A cases			
V. NRS Chapter 159 cases			
PSC	W. Specialty court cases	NON-CASE-RELATED ES	a. General non-case-related/administrative tasks
	X. Non-case-related work		b. Attending and preparing for meetings
NCR			c. Training/Conferences/Continuing legal education
			d. Work-related travel (NOT normal commute from home to office)
			e. Providing supervision
			f. Vacation/Illness/Other leave
			g. Other
			h. Time study data tracking and reporting

RECORD DATA BELOW

CASE TYPE CODE	ACTIVITY CODE	TICK MARKS (FOR TIME INTERVALS) OR TIME SEGMENTS	Location	TOTAL TIME	
				HOURS	MINUTES

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January 15, 2022

APPENDIX F
DISPOSITION REPORT FORM



Department of Indigent Defense Services Case Disposition Sheet

Pursuant to the Regulations of the Board on Indigent Defense Services, indigent defense providers shall use the case management system which is provided by the Department for purposes of caseload and time reporting.

To assist appointed conflict counsel, the Department is providing this form as an alternate method to report the required information, in lieu of appointed counsel using LegalServer. Indigent Defense Service providers are encouraged to use the case management system.

Attorney Name: Click or tap here to enter text.

County: Click or tap here to enter text.

Client Name: Click or tap here to enter text.

Case No.: Click or tap here to enter text.

Legal Problem Code: Choose Legal Problem Code

Total Number of hours:

Attorney Hours: Click or tap here to enter text.

Expert Hours: Click or tap here to enter text.

Investigator Hours: Click or tap here to enter text.

Staff Hours ("staff" means paralegal hours): Click or tap here to enter text.

Case Disposition: Choose an item.

Motion to Suppress: Filed: Choose an item. Litigated: Choose an item.

Survey: Was a Survey Provided to Client? Choose an item.

Jury Trial: Was there a jury trial in this case? Choose an item.

Opiates: Were opiates or an opioid addiction part of the case? Choose an item.

Statement Under Oath:

I hereby certify that the above answers are true and correct. I give express permission to the Department of Indigent Defense Services to access the necessary client file(s) to enter the relevant information in LegalServer.

Date: Click or tap here to enter text.