

**State of Nevada**  
**Department of Indigent Defense Services**  
**BDR Subcommittee Meeting**

Monday, August 8, 2022

2:00 PM

Meeting Location:

OFFICE	LOCATION	ROOM
Virtual Only	Zoom	

**1. Call to Order/Roll Call**

**Director Ryba** called the meeting of the BDR Subcommittee to order shortly after 2:00 p.m. on Monday, August 8, 2022.

A roll call was conducted, and the following persons were present: Director Ryba, Thomas Qualls Drew Christensen, Kate Thomas, Allison Joffee, Chris Giunchigliani, and Jeff Wells.

**2. Public Comment**

There was no public comment.

**3. Bill Draft Submissions: (For discussion)**

**a. Discussion of Budgetary Bill Draft Requests (BDR) for the next legislative session.**

**Director Ryba** discussed the first proposal regarding funding for claims and expenses in the Department budget. The department is proposing to add language to NRS 7.155 in two subsections. First that that expenses for compensating an attorney for a client that is charged with escape from prison must be paid from money appropriated to DIDS. *Davis* requires prompt payment and it currently taking months for payment. Second, placing funding within the Department so that counties may be reimbursed for the maximum contribution formula but when the funds are exhausted money must be allocated from the reserve for statutory contingency account. Adding an NRS 353.264 a clarification in 1b subsection 2 that funding from the statutory contingency account can be used once the funds are exhausted that were appropriated to us to pay those expenses under NRS 180.320. We are considering limiting NRS 212.270 to subsection one because subsection two talks about expenses relating to prosecuting a person who escapes from a jail which is a county expense. These are recommendations that we would like to bring to the Board.

**Drew Christensen** commented this language pretty much already exists. You are replacing State Public Defender with DIDS in some areas and placing it in NRS 7.155.

**Jeff Well** commented that he was fine with submitting it the way it is and LCB will make their own version of it so if putting that same language into two sections is not appropriate, they will take it out.

**Director Ryba** questioned if the subcommittee agreed with submitting this as written to the Board at our next meeting. The subcommittee agreed.

**Director Ryba** stated that the next BDR to discuss is the hourly rates which had been sent out to the Board. Language has been provided that shows how the hourly rate is currently written and now we need to determine if the subcommittee feels it is more appropriate for the hourly rate to be set by Board or is it appropriate to have the Legislature set the rate by statute? We have been provided feedback that people want clear language that still allows counties to contract with attorneys for set rates. If we clearly define public defender as meaning an office created pursuant to chapter 180 or 260 or an attorney or group of attorneys contracted to provide primary indigent defense services as defined by NRS 180.004 that may still allow counties to continue with the status quo. Clark county is contracting with attorneys so we are open to discussion on this, and Jeff Wells may want to start this discussion.

**Jeff Wells** stated that he didn't want to speak for everyone else, but you provided two options and I believe the tenor of the group at the last meeting would not support option two because it has a CPI included. During the last recession employees took pay cuts so it would be counter intuitive to have a statute that gives one group raises while other people take pay cuts to avoid layoffs. The likelihood that we all will come up with a correct number might be different in Nye County, Storey County and Esmeralda might still be different. The Board is capable of setting rates that are specific to everybody.

**Director Ryba** stated the new proposed language mirrors the rates that the governor receives in NRS 223.04. It is tied to a cumulative percentage increase in the salaries of classified employees of the state during the preceding biennium which we had thrown out there, but it is just an update.

**Allison Joffe** commented that she agreed with Jeff Wells and likes the fact that we can immediately set a rate and have the ability to continue setting it. A procedure like the survey can provide back up in the future. If we are able to obtain the kind of statistics in the future to back up what we are doing now so we don't stay stagnant.

**Jeff Wells** stated suggested striking some of the language to make it very clear. It was left in originally because we said what if the Board said lower the amount and that is not going to happen. This just makes our Board responsible for what we were charged legislatively to do in the first place which is to fix the problem in the rural areas.

**Thomas Qualls** commented that it sounds like we all agree that there needs to be an increase. We wanted to make sure that everyone saw the recommendations from Soval Solutions and the data that backed up the data such as cost of living, housing costs and comparisons to other things.

**Jeff Wells** suggested that a presentation of the information could be made to the Board when in the process of setting these rates.

**Thomas Qualls** confirmed that was his intention and that Mitch from Soval Solutions was present for questions, and it would be a great idea for him to present to the Board when considering the proper rates.

**Director Ryba** questioned if the information on the screen reflected what had been discussed which was changed and in blueprint.

**Drew Christensen** replied that the \$125 an hour should be removed.

**Director Ryba** questioned whether they should include a rate until we are able to make our recommendation.

**Jeff Wells** advised that rate already existed in the statute unless this BDR passes.

**Thomas Qualls** wondered if there is a gap between when this passes and when the Board meets to set these rates would this cause any trouble.

**Jeff Wells** stated that it would not.

**Drew Christensen** stated that begs the question that if this passes and a county goes under \$125 or \$100 a corrective action plan could be initiated for that specific county. Getting rid of the hourly rate altogether acknowledging that from a legislative point of view the same rate would not apply to all counties across the state. Some counties already pay \$200 an hour because it is the economics of the particular area. It should be in the Board's hands and does not need to be tied to governor state increases or the CPI. The Board will have the ability if they want to look yearly based on the economics of the county at the time. We can get the expertise from specific practitioners in those counties to look at the economics of its supply and demand. Many of the counties are charging or paying more because they don't have the supply, and this is something we can take into consideration when the Board looks at a particular county.

**Chris Giunchigliani** agrees that it should be changed from the legislature but believes we should have something that says a rate that to be considered by the Board not less than something. I don't know what that number would be, but I know they can go backwards. Soval Solutions can make their presentation and the Board can adjust whatever rates.

**Jeff Wells** stated I don't want to tie anything to the governor's state salary increase. I don't completely disagree with Chris Giunchigliani because I had that phrase in there the first time and now am thinking we should take it out. The other option is I would move that we submit it with and without that sentence to the Board and see what everybody wants to do between the two versions. Otherwise, we take option one as changed but just either with or without that black sentence that Drew Christensen said to pull out.

**Jeff Wells** stated that he thought Chris meant she wanted to leave in the existing language that is already in option one.

**Chris Giunchigliani** answered that she agrees that taking that money out gets too confusing. They need to know that there is the floor going up not a floor going back.

**Jeff Wells** stated that I still think the Board should make the decision. The only reason I left a dollar amount in there from the existing statute is there was concern that maybe the Board would lower the dollar amount and I just don't see that happening. If we put in the \$203 and \$163 it is no longer

the Board deciding because we are not to go higher than those numbers and those numbers are effectively unsupportable.

**Chris Giunchigliani** commented that if the BDR goes forward eliminating the \$100 and \$125 any reference is there a way that by regulation the Board could direct staff to have something that says not less than so there is a floor? Then does everybody understand when a presentation comes forward in two years that is okay this was the bottom line it wasn't something that you could go back to.

**Jeff Wells** commented that option one came to us does exactly that. The way option one came to us says the Board is going to do it, but it can't be less than \$100.

**Chris Giunchigliani** stated that she agreed with what Jeff Wells just said and that you don't have conflicting numbers in existing law.

**Jeff Wells** stated that it is whether we leave the black sentence in or take it out. If we leave that sentence in it will allow mischief along the way with people trying to shove in huge numbers that defeat the entire process.

**Director Ryba** stated that to make sure I am on the right path, we have reverted to the original language of the higher of the amount set by the Board or the \$125 is that where we are at now?

**Jeff Wells** stated that is what Chris Giunchigliani suggested. I suggested that we still strike the old black language and make it strictly the Board. The third suggestion is we could wait and have two options presented to the whole Board one and one A. The subcommittee has narrowed this down to a very tiny sentence and will leave it to the Board to tell us which one they want.

**Director Ryba** stated that the final thing to discuss is that we are proposing changing NRS 180.320 adding subsection four which allow this Board to adopt regulations to establish appointed indigent defense hourly rates.

**Jeff Wells** commented that you need to have that to make the top section work.

**Director Ryba** questioned whether we want to limit the authority to counties less than 100,000 or do we want full authority?

**Jeff Wells** commented to limit it to under 100,000. In the event the Board ever thinks that Clark and Washoe are not paying enough and that we are providing a sixth amendment inadequate defense then you could start a corrective action. We can debate it and see what is going on, but I want to remind everybody as a practical matter we don't just pay these hourly rates we actually pay contract rates plus the hourly. Our current contract is \$54,000 a year but we're going to move it to \$63,000 a year. The average in Clark County for the hourly add-ons to that rate is another \$36,000 so the average track lawyer down here made \$90,000 on it we had some that went up to \$150,000 and I think one person made it to \$200,000.

**Kate Thomas** commented that with as difficult as it is right now to get appointed attorneys, I don't think that paying less would get us anywhere. The market sort of corrects itself but again that leaves

the Board the discretion to decide. If I leave and somebody else comes and decides that we are going to severely undercut these prices and impact the quality of defense that the Board could interject.

**Thomas Qualls** stated I did appointed work for a long time, so I don't want to see Washoe excluded from any rate increase because I feel like the lawyers are going to keep leaving the list if that happens. It seems to me like there is almost three tiers in the state it being in the middle but again Kate Thomas knows more about this.

**Kate Thomas** stated we don't do the contract, you are correct.

**Thomas Qualls** stated that I feel like if we just left it open for all the counties than certainly the Board can have the discussion that Jeff Wells wants and determine what it should be for Clark. He can make his pitch for it staying the status quo there but I do think excluding Washoe from that conversation completely is a bit dangerous. Most of the focus is on the rurals but then again, we have got to be careful not to create additional problems while we are trying to correct some other ones.

**Jeff Wells** stated it should be up to Kate Thomas to answer for her county but if you wanted to include a number it should say for counties with a population less than 700,000 or if she's grown it is something more. If you put a new number in there and exclude Clark but not Washoe historically and practically every legislative thing I can think of Clark and Washoe are either jointly in or jointly out and it gets to me to be continuing to separate them.

**Kate Thomas** commented that my folks will not be thrilled at separation. We will go above and are in the process of doing that because it is in our best interest to secure attorneys to do the work. We need to make sure we are paying appropriately, or we don't get people so by hand stringing us to a rate or something that ties to the rurals I don't think does a service. I know we are in the middle there, but I don't know that our folks will buy off of not being included or not being excluded with Clark and you know who my folks are.

**Jeff Wells** commented which is why I wrote it that way.

**Director Ryba** stated my only question is to clarify if the Board accepts the language where we cross out the hourly rate if the Board does not have the authority to set the hourly rate in Washoe and Clark what will be used as the hourly rate because we're crossing it out of the statute correct?

**Jeff Wells** deferred to Drew Christensen as he couldn't recall if they put a dollar amount in or just reference in our contracts. The contracts all say here is you monthly stipend and here's what we pay for going to trial, for having complex cases and we have a whole stack of reasons why you shift the hourly, but we are not going to lower it.

**Drew Christensen** commented that our contracts currently say in those cases that we pay hourly are paid pursuant to seven points. One to five if the hourly rate is taken out, we will have to change our contract to whatever number we feel is appropriate here in Clark County. There are a variety of numbers that have been put out there and if you as the department feel that rate is not appropriate could ask for a corrective action plan. In Clark County it gives us the ability when we set the rate to

know the economics of the supply and demand within our own jurisdiction and ultimately that may be different than Washoe. You are going to set the rates for all the other counties based on the economics of the time and whether that number needs to go up or down and your department will make some determinations with the Board on whether that is appropriate. Washoe and Clark will set their own rates and you will have input with respect to information about whether that's worthwhile in those jurisdictions. You won't be able to set the rates in those two counties, but you could obviously oversee how that practice qualifies under the sixth amendment.

**Director Ryba** questioned regarding post-conviction claims (PCR) that would apply particularly to Drew Christensen. We have determined PCR to be non-indigent defense expenses so how do we deal with the hourly rate for PCRs? Should we have a separate section that says what the hourly rate for post-conviction cases is because we historically provide more reimbursement for death penalty versus others but if we erase the language that will cause problems.

**Drew Christensen** commented that as the department of indigent defense services you could set the rate for what the state pays. That will be a discussion that you will have with the state as far as what your budget will be, and you will set the PCR rate. Since we are not paying it, you can tell us what the rate is. I get the potential there could be a conflict where you are paying \$150, and we are paying less so we will have to have discussions but removing the numbers out of the statute gives some flexibility to us as a Board and your department as to what is the appropriate rates around the state.

**Chris Giunchigliani** stated that our model plan outlines post-conviction and the determination of fees whether it is a mandatory appointment or how those attorney fees shall be recommended for the approval by the appointed counsel administrator.

**Drew Christensen** stated that we do the same, but I get Director Ryba's point because we kind of default to the statute. So does the department because we send the claims to you to pay, and you pay \$100 and \$125 an hour. Since your department is still paying the bills, you have got to feel comfortable with the supply and demand you have with lawyers around the state. I could see the possibility you may have different rates around the state as well it may be harder for you to get post-conviction counsel in certain counties so your PCR rates could be different around the state.

**Thomas Qualls** wanted to clarify something because I thought Chris Giunchigliani suggested the thought was to put \$125 and \$100 back in the statute as the floor.

**Director Ryba** stated that I believe there were two alternatives that they would like to present to our Board. The first says that the appointment is the higher of the amount set by the Board under NRS 180.320 or \$125 per hour in death penalty and \$100 in criminal. The alternative is we take out that hourly rate and leave it to the Board.

**Thomas Qualls** wanted to clarify that it was not the intent of taking out the 100,000 to tie either Washoe or Clark to whatever the rates of the rurals. It would just be the fluidity and the Board could set the rate for any county so it wouldn't be artificially suppressing or increasing it would just be there as a floor in the statute. Kate Thomas will not always be in that position so maybe there is someone in that seat who doesn't think the market's going to drive this. We need to keep good people and then we've got a problem there and I agree we can always resort to corrective action but

that seems like we're taking even more steps that would be unnecessary. Those are just my thoughts but again I just wanted to clarify that the idea wasn't to tie Washoe and Clark to the rurals.

**Kate Thomas** stated just know that our membership of the appointed counsel selection committee helps to drive those rates. The clerk of the court of the second judicial district has to have a group of people that serves on our appointment committee. We have somebody licensed to practice in the state of Nevada that doesn't have any interest in the outcome of attorney selection. These are a group of folks that are not related to any members of the judiciary that get together, so it is not just me unilaterally making those decisions. It is a little bit more protected from the person that comes into my role in the future.

**Jeff Wells** responded to Tom, as a practical reality supply and demand will drive that. I'm going to recommend we stick with the original language that you folks sent out under option one. Let the Board work its way through the smaller *Davis* counties, and if in the future years there is a big push that we need to have this Board to start setting the rates for Clark and Washoe that could be addressed as a separate question. At the moment the bigger issue is the rural counties and the language that says less than a 100,000 addresses the rural counties we should start there till we prove this Board can do that.

**Director Ryba** stated just to confirm I have on my screen the two alternatives and I think we've changed where we would like to keep the original language that says the higher of the amount set by the Board under NRS 180.320 or \$125 per hour or \$100 as appropriate so to leave that language in and then we will remove this alternate option because of the issues that we've brought up in our discussion is that correct?

**Jeff Wells** answered no. The first paragraph still has both options to move forward and the bottom one just stays the way it is, paragraph four stays the way it is, paragraph one has the two options.

**Director Ryba** then do we want to put in there do we want to try to give the Board the authority to establish appointed indigent defense hourly rates for post-conviction cases as well?

**Chris Giunchigliani** stated that it is always better to be clear.

**Jeff Wells** commented it doesn't need to be in here you can establish your rates. Drew looks at them for you before we send them up, but we don't care what rate you pay. Pay whatever you want.

**Director Ryba** stated that she was just concerned that if we remove the \$125 Drew would not have the authority to pay death penalty post-conviction at the \$125 rate.

**Jeff Wells** said he would it that's who you've agreed to pay.

**Chris Giunchigliani** questioned where does it say that?

**Thomas Qualls** stated we have the authority to set those rates, so I think that is Marcie's concern.

**Director Ryba** stated that we do not have the authority to set any rates, so we refer back to 7.125 to determine what rate post-convictions are paid for so in Churchill County and Esmeralda.

**Chris Giunchigliani** we should say that you have the authority.

**Jeff Wells** stated you have a 4a and a 4b. 4a is what you already have written and 4b is the Board will establish for counties under 100,000 and you will establish the PCR rate.

**Director Ryba** wanted to know who will establish counties over 100,000.

**Jeff Wells** answered Washoe and us.

**Director Ryba** questioned does Washoe and Clark have the authority to bind the state to an hourly rate?

**Drew Christensen** stated I think you have some problems there.

**Jeff Wells** stated it is probably fine so just don't put the under 100,000.

**Director Ryba** stated I will get the correct language and then I'll modify this so that we could set that rate because that's commonly what we're seeing at the department as well through Drew and this is an issue with Washoe county as well is we need to have a rate for those post-convictions.

**Drew Christensen** wanted to Director Ryba to remind him where it is in the statue.

**The subcommittee agree to** move forward the two proposed bill draft requests to the Board for the Board to make the final decision.

#### **4. Public Comment.**

There were no public comments.

#### **12. Adjournment.**

**Director Ryba** adjourned the meeting at approximately at approximately 2:55 p.m.