

State of Nevada
Department of Indigent Defense Services
Board Meeting Minutes/Workshop

Thursday, June 16, 2022

1:00 PM

Meeting Location:

OFFICE	LOCATION
Tonopah Convention Center	301 Brougner Ave., Tonopah 89049
Virtual	Zoom

1. Call to Order/Roll Call

Chair Mendiola called the meeting of the Board on Indigent Defense Services to order shortly after 1:00 p.m. on Thursday, June 16, 2022.

A roll call was conducted, and a **quorum was established.**

Board Members Present: Chair Dave Mendiola, Joni Eastley, Drew Christensen, Commissioner Cassie Hall, Kate Thomas, Allison Joffee, Bevan Lister, Chris Giunchigliani, Jeff Wells and Harriet Cummings were present. Vice-Chair Laura Fitzsimmons, Rob Telles and Justice William Maupin were not present.

Others Present: Executive Director Marcie Ryba, Deputy Director Thomas Qualls, Deputy Director Peter Handy, Eve Hanan, Lorina Dellinger, Sue Sevon, Cynthia Atanzio, and Bet-Nimra Torres.

2. Public Comment

There was no public comment.

Chair Mendiola questioned if the Board had reviewed the minutes and whether there were any changes and with none noted I will welcome a motion to approve the minutes of April 28, 2022.

3. Approval of April 28, 2022, Minutes (For possible action).

Motion: Approval of Minutes from April 28, 2022.

By: Joni Eastley

Second: Allison Joffee

Vote: Passed unanimously

4. Review 4th Monitor Report: (For discussion and possible action).

Deputy Director Qualls provided an update to the Board on the 4th Monitor Report. The report highlighted the many achievements of the Department. The monitor's report also expressed

concerns which the Department continues to address. There are concerns on whether there is enough data for the workload study. The Department has extended the contract for another year with National Center for State Courts (NCSC) to obtain data from a Rand Study. Another concern is the insufficient number of attorneys in some of the counties and the Department is working on a pipeline to encourage attorneys to the rural counties. Finally, the Department's budget is insufficient to meet the judgment, but the Department is intending to seek additional funds in the next budget build.

Professor Eve Hanan summarized that she appreciates the transparency of the Department in her roles of collecting data as a monitor.

5. Update from the Department: (For discussion and possible action).

Deputy Director Handy advised the Board that the Department has entered a contract with Dr. Mitch Herian to complete the salary survey, pipeline recommendations, and oversight review. Dr. Herian had provided one salary survey which had been provided to the Board. The NCSC has extended its Weighted Caseload Study Contract for another year so that additional data can be collected.

Director Ryba further commented that the NCSC is involved in the Rand Study which has access to the data but can't publish it in our report until the original report comes out.

Chair Mendiola stated that something he was reading talked about the idea is to take the data from the Rand Study along with hours and somehow mold them together for more accuracy.

Deputy Director Qualls commented that NCSC is doing follow-up with Delphi Panels studies and will fuse that with the data they collected from us. Some of the data is critical with regard to travel time in our rural counties.

Director Ryba stated that Professor Hanan was also concerned that she wanted a survey sent out to the rural counties which is standard practice. NCSC did put together a survey that was sent out to all the indigent defense attorneys for the rural counties.

6. Training and Externship Update (For discussion and possible action).

Deputy Director Handy updated the Board about the Second Annual Indigent Defense Service Conference which was the first conducted in person. There were approximately 50 attendees made up of indigent defense providers, UNLV Boyd Law students, investigators, and mitigation specialists. Some panelists included Supreme Court Justice Hardesty, 8th Judicial District Court Judge Linda Bell, Justice Michael Gibbons (retired), and experts from Sapience. The Department obtained a subgrant from DPS to reimburse indigent defense providers for travel expenses and the Department is in the process of or reimbursing approximately 20 attorneys.

Allison Joffe noted that having a grant to provide "mentorship" training for indigent defense service provider would be a good idea in the future.

Deputy Director Handy discussed that the Department currently has one extern and two interns assisting with Bill Draft preparation. The Department received a grant for four awards from the Nevada State Bar for \$6500 per student to provide a stipend to pay for a student to work in a rural indigent defense service office. The extern was placed in the Elko Public Defender's Office and one in the Carson City State Public Defender's Office.

Chair Mendiola inquired whether these individuals were able to appear in court.

Deputy Director Handy advised that a requirement is that the externs be going into their third year of law school could argue at motion hearings, etc. under the Supreme Court Rule.

7. Review and Approval of Annual Report: (For discussion and possible action).

Deputy Director Qualls provided an overview of the Annual Report stating that although it is very heavy with data, there was also a focus on telling stories from the field and introducing the reader to public defenders. The report highlighted a story from Matt Stermitz, the Humboldt County Public Defender.

Chair Mendiola complimented the Department on the Annual Report.

Motion: To Approve the Annual Report and Allow the Department to Disseminate it to the Appropriate Parties.

By: Allison Joffe

Second: Jeff Wells

Vote: Passed unanimously

8. Bill Draft Submissions: (For discussion and possible action).

a. Update on Policy BDRs

Director Ryba provided a status update to the Board of the Policy BDRs. The Department has currently submitted two BDRs, one on confidentiality and the other related to the Department's grant budget account. The policy BDR changing the process for approval of the Department's proposed budget had been pulled as it was not necessary under the law.

b. Discuss Budgetary BDRs

Director Ryba presented five Budgetary BDR proposals:

- (1) To create a statute providing that the attorney client privilege is not waived by indigent defense attorneys requesting preauthorization for or payment of indigent defense services compensation or expenses.

Drew Christensen expressed concern that the client should always have access to his own case file and inquired whether this statute would prevent the Department from turning the file over which belongs to the client.

Director Ryba explained that the Department interpreted this that the client is entitled to his file which would be provided to the client upon request.

Motion: To Approve the Submission of the BDR and Allow the Department to modify as necessary.

By: Jeff Wells

Second: Joni Eastley

Vote: Passed unanimously

(2) To submit a BDR which modified the due date of the county annual reports from May 1st to May 31st. The counties are not required to submit their budget to the State until the end of May, so they are unable to complete the report by May 1st.

Motion: To Approve Submission of the BDR Changing the Due Date of the Annual Reports to May 31st.

By: Jeff Wells

Second: Joni Eastley

Vote: Passed unanimously

(3) To submit a proposal to modify the hourly rate for appointed counsel from \$125 for death penalty to \$202 and from \$100 for all other cases to \$158.

Jeff Wells and Drew Christensen both raised concerns that modifying the hourly rate in such a fashion would likely not be approved. There is resistance to using CPI, especially as written because it should have been limited to the Western States.

Chair Mendiola mirrored the concerns on using CPI and proposed forming a subcommittee to handle this proposal and requested volunteers.

Chris Giunchigliani, Jeff Wells, Drew Christensen, Kate Thomas, and Allison Joffee volunteered to serve on the subcommittee.

Chair Mendiola directed the Department staff to schedule a meeting for the subcommittee so that the recommendation could be brought back to the Board prior to the next Board meeting.

(4) A modification to NRS 7.145 which would allow additional time for attorneys to submit billing.

Motion: To Approve Submission of the BDR Modifying NRS 7.145 to Allow Time for Attorneys to Submit Billing.

By: Joni Eastley

Second: Allison Joffee

Vote: Passed unanimously

(5) BDR proposal to move funding for payment of indigent defense fees for the representation of a prisoner to be moved to the Nevada State Public Defender budget. This would allow for faster processing of payments.

Motion: To Approve Submission of BDR to Modify NRS 7.155 to Have Funds Allocated to the Office of the Nevada State Public Defender for Compensation of Attorneys who provide Representation of a Prisoner Under 212.070.

By: Chris Giunchigliani

Second: Joni Eastley

Vote: Passed unanimously

9. Budget: (For discussion only and possible action).

Director Ryba updated the Board on the status of county reimbursement requests. All requests have been placed on the June 21, 2022, Interim Finance Committee agenda for payment. Leadership has determined that the funds set aside by Assembly Bill 494, Section 80, could not be used to reimburse case-related expenses which, pursuant to the Board’s maximum contribution formula, may be a state expense. The Department had submitted reimbursement requests to the Board of Examiners under NRS 353.268.

Director Ryba further advised the Board that all counties had submitted their County Indigent Defense Plans and Budgets. Using the annual plans, the Department was able to determine the appropriate Maximum Contribution amount for each county. A table in the attachments set forth each county’s FY18 and FY19 average. The table highlights the lowest of either inflation or the COLA. It was requested for the Maximum Contributions to be set at the lower of either the inflation increase or COLA, the lower amount was highlighted and requested to be approved.

Davis Counties	Proposed Maximum Contribution FY23 (Inflation)	Proposed Maximum Contribution FY23 (COLA)	FY23 Budgeted	Expected State Contribution
Churchill	\$ 375,705.74	N/A	\$ 918,044.00	\$ 542,338.26
Douglas	\$ 914,711.78	\$ 892,657.88	\$ 1,624,000.00	\$ 731,342.12
Esmeralda	\$ 94,702.24	N/A	\$ 82,000.00	\$ (12,702.24)
Eureka	\$ 41,808.00	N/A	\$ 110,000.00	\$ 68,192.00
Lander	\$ 104,083.06	\$ 102,569.42	\$ 217,099.00	Not Requesting
Lincoln	\$ 187,529.78	N/A	\$ 205,000.00	\$ 17,470.22
Lyon	\$ 855,948.86	\$ 851,690.40	\$ 1,667,500.00	\$ 815,809.60
Mineral	\$ 95,962.95	N/A	\$ 182,000.00	\$ 86,037.05
Nye	\$ 866,049.11	N/A	\$ 955,000.00	\$ 88,950.89
White Pine	\$ 472,848.48	\$ 461,448.00	\$ 643,290.00	\$ 181,842.00
Davis Estimated State Expense:				\$ 2,531,982.14
Carson	\$ 1,950,196.35	\$ 1,903,176.69	\$ 1,867,637.00	\$ (35,539.69)
Clark	\$48,464,986.27	N/A	\$55,498,054.00	Not Requesting
Elko	\$ 1,946,334.86	N/A	\$ 2,663,766.00	\$ 717,431.14
Humboldt	\$ 495,785.39	\$ 493,318.80	\$ 652,130.00	\$ 158,811.20
Pershing	\$ 258,162.84	N/A	\$ 271,422.00	\$ 13,259.16
Storey	\$ 93,592.97	N/A	\$ 142,442.00	\$ 48,849.03
Washoe	\$14,365,173.40	\$14,087,545.68	\$11,497,909.00	Not Requesting
Non-Davis Estimated State Expense:				\$938,350.53

Motion: To Approve All Indigent Defense Plans and Budgets and Adopt the Maximum Contributions, at the lower highlighted amount.

By: Chris Giunchigliani

Second: Jeff Wells

Vote: Passed unanimously

Director Ryba informed the Board that Churchill County had requested to modify their base for the maximum contribution formula as previously reported FY18 and FY19 were submitted inaccurately.

Sue Sevon advised the Board she had recently retired as the Churchill County Court Administrator position and would be taking over as the appointed counsel administrator. She advised that she had reviewed the prior reporting and determined that it was not accurate and submitted corrected FY18 and FY19 reporting.

Motion: To Approve Churchill's Amended FY18 and FY19 Reporting.

By: Joni Eastley

Second: Kate Thomas

Vote: Passed unanimously

Director Ryba requested permission to seek reimbursement from the AB494, Section 80 allotment of \$1,169,427 as needed for the maximum contribution formula for the *Davis* Counties and an additional \$1,362,555.14, as needed, from the Interim Finance Committee non-restricted Contingency Account. And the Department requested authority to request non-restricted Contingency Account Funds from IFC \$938,350.53, as needed, to reimburse the non-*Davis* counties.

Motion: To Approve Authority for the Department to Request Reimbursement from the Interim Finance Committee as Requested by the Counties as the Department Determines to be Appropriate.

By: Jeff Wells

Second: Allison Joffee

Vote: Passed unanimously

Director Ryba advised the Board that the next steps would be the Department's budget build. Soval Solutions had provided a salary survey with recommendations that the salary structure of the Department should be modified to more closely resemble the Attorney General's Office.

Jeff Wells questioned why those salaries were compared to the Attorney General's Office. He believed it was more appropriate to compare to public defender salaries and that the proposal did not reflect to workload or complexity of what the directors were doing within the Department. His feeling was that each of the salaries should actually be \$10,000 higher than what is proposed.

Motion: To Amend the Class Series Compensation Plan Request to Modify the Executive Director's Salary to \$168,347 and the Deputy Director's salary to \$158,272.

By: Jeff Wells

Second: Drew Christensen

Vote: Passed unanimously

Director Ryba discussed future proposals in the budget build which included a holistic resource center, more attorneys, social workers, investigators and policy advisors. Additional items included the possibility of an office in each location that opt in, an appellate unit and a complex litigation unit.

Joni Eastley questioned whether one investigator was enough and felt the need to request two and questioned the cost.

Director Ryba explained that the budget had not been built, so there is no number at this time.

Jeff Wells questioned which is the priority and liked the direction being proposed but did not know if all the positions would be funded.

Director Ryba stated that the Department would continue to build the budget and bring the proposal to the Board at the next meeting for input.

10. Scheduling of Future Meeting: (For discussion and possible action).

Chair Dave Mendiola stated that the next meeting is scheduled for July 28, 2022, at 1 p.m. After further discussion the Board agreed that August 18, 2022, at 1p.m., would be a better date and time to conduct the next Board Meeting.

Chair Dave Mendiola requested to know if there were any public comments.

11. Public Comment.

There were no additional public comments.

12. Adjournment.

Chair Dave Mendiola adjourned the meeting at approximately at approximately 3:55 p.m.