



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

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Memorandum

DATE: October 23, 2023
TO: Bridgette Mackey-Garrison, Executive Branch Budget Officer – Team Lead
Don Carlson, Budget Advisor, ASD
FROM: Marcie Ryba, Executive Director, Department of Indigent Defense Services
SUBJECT: Request for AB518, Section 7 Allocation (Work program C64768)

AB518(2023), Section 7 appropriates funding to the IFC for allocation to the Department of Indigent Defense Services to fund:

- (a) The reimbursement of counties for costs in excess of their maximum contribution amounts for the provision of indigent defense services, including, without limitation, the costs of compliance with workload standards;
- (b) The costs of the Department related to compliance with the *Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment;
- (c) The costs of the Office of State Public Defender for contracting for legal services for complex cases; and
- (d) The costs for training and pay parity for attorneys who provide indigent defense services.

The Department requests an allocation of \$765,583 from Assembly Bill 518(2023), Section 7, for Fiscal Year 2024 for the Department to comply with the *Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment in the following areas: (1) Compliance with Oversight Requirements; (2) Compliance with Training Requirements; (3) Compliance with Workload Standards; and (4) Compliance with the Data Collection and Reporting Requirements. This request is based upon concerns expressed by the *Davis* Monitor in the Ninth Report and the recommendations for compliance contained therein.

Oversight Requirements

The *Davis* Stipulated Consent Judgment requires the following:

Consistent with the ABA Ten Principles, Defendants through the Board, shall ensure that public defense counsel are **systematically 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.¹

According to the monitor, the Judgment requires robust assessment and evaluation of both county defense systems and attorneys providing public defense.² This requires in-person visits to observe attorneys in court in each county, as well as reviews of other documentation of attorney performance.³ The monitor notes that it is difficult to see how a robust, annual review of all counties and attorneys could take place without additional staffing for the Department.⁴ To comply with these oversight requirements in the judgment, the monitor recommends that the Department request funds appropriated for the Department pursuant to AB 518 (7)(1) (b) and available in the State Contingency Fund for compliance with the Judgment.⁵

As such, the Department requests an allocation to fund an Administrative Assistant and to fund two-full time hourly contract attorneys to provide oversight. The Department is requesting operating funds to contract with attorneys, rather than hire staff attorneys, because prevailing state salaries are substantially lower than the salaries offered at county public defender offices or compensation offered to contract attorneys; thus, the Department does not believe it will be able to fill two staff attorney positions with attorneys possessing the requisite knowledge to provide oversight. Costs associated with the oversight positions would total \$626,335 in Fiscal Year 2024. NEBS210 is attached.

Total Estimated Cost for Oversight Requirements: Fiscal Year 2024: \$626,335

Indigent Defense Services Training

The *Davis* Stipulated Consent Judgment requires the following:

Consistent with the ABA Ten Principles, Defendants through the Board and Executive Director, shall provide indigent defense providers with access to a systematic and comprehensive training program, specifically including a certain amount of CLE specific to criminal defense.⁶

The Judgment states that the Defendants must offer “a systematic and comprehensive training program,” which covers “at a minimum: (1) client intake interviews; (2) client communication; (3) securing pretrial release; (4) preparation for arraignment, including preservation of client’s rights and requests for formal and/or informal discovery; (5) investigation; (6) filing and responding to pre- and post-trial motions; (7) plea and

¹ Judgment, 16 (emphasis added).

² Ninth Report of the Monitor, July 15, 2023, p. 13-16.

³ Id.

⁴ Id.

⁵ Id.

⁶ Judgment, 16.

sentencing outcome negotiations; (8) trial advocacy; (9) appeals; and (10) special issues regarding the representation of juveniles.”⁷ This provision of the Judgment suggests a systematic approach to ensuring that attorneys have training in all areas crucial to public defense.

The monitor notes that the Department has been able to provide a two-day annual conference for indigent defense attorneys and that the Department obtained an Edward Byrne Memorial Justice Access Subgrant to provide training. However, the monitor believes the Judgment requires more robust training opportunities for public defense providers who lack access to mentorship, mootings, and in-house programming typical of a large defender’s office.⁸ The Monitor recommends that in addition to current training opportunities, the Department should seek funding to send rural attorneys to a national conference/training on a rotating, yearly basis.⁹ Also, the Monitor believes the Department should seek funding for stipends so that attorneys can attend trainings that are held at larger public defender offices within the state and nearby.¹⁰

First, based upon the recommendations of the *Davis* monitor for compliance with the *Davis* training requirements, the Department requests an allocation of \$37,340 per year of the biennium in additional training authority to offer increased CLE for indigent defense attorneys for the purpose of sending five rural attorneys per year to a national trial advocacy college (or similar training). This funding would allow 5 rural indigent defense services attorneys to attend National Trial College (NCDC) per year.¹¹ The mission of the college is to provide the highest standard of trial skills training to criminal defense attorneys across the United States to ensure that people accused of crimes are represented by zealous counsel.

- Estimated Cost: Fiscal Year 2024: \$ 37,340

Next, the Department requests an allocation of AB 518 (7)(1)(d) funds for providing assistance to the Department for, and for reimbursing attorneys, trainers, and law students for their expenses related to attending, the Department’s annual training conference which is currently funded in part by an Edward Byrne Memorial Justice Access Grant. The Department would request \$20,000 to reimburse rural attorneys to travel to the annual conference and other trainings, \$10,500 to reimburse nationally accepted trainers for trainer our indigent defense services providers, and \$21,500 to engage a professional conference manager. These requests are discussed more fully in the bullet points below:

- Funding to reimburse rural attorneys to travel to annual conference (or other conferences that indigent defense attorneys feel are important to attend – like

⁷ Judgment, 16

⁸ Ninth Report of the Monitor, July 15, 2023, p. 17-18.

⁹ Id.

¹⁰ Id.

¹¹ This estimate is based upon the following NCDC TPI Attendance Costs where the total cost per attorney to attend the training is approximately \$7,468.00, including tuition (\$2,700), housing (\$1,633), per diem (\$644), and airfare (\$620). Information was obtained from the NCDC website at <https://ncdc.net/trial-practice-institute/>.

drug court training). Department currently relies on Federal Grant to reimburse attorneys (Byrne Jag subgrant from DPS). It is unknown whether this will continue. The grant was limited to airfare, lodging, and per diem to rural attorneys to attend only the DIDS conference, so the total amounts expended over 2 years of conferences totaled about \$17,700. However, expanding the scope of who can be reimbursed (law students, etc.) and the amounts for which reimbursement may be paid (e.g., parking and travel to and from an airport), and the trainings that can be attended, the amounts expected to be reimbursed would likely increase.

- Estimated Cost: Fiscal Year 2024: \$20,000
- Funding to reimburse nationally accepted trainers to come in to train our defenders. Historically the Department has paid about \$7,500 for fees and travel for a keynote speaker, and approximately \$1,500 in travel for each speaker who came from out of state, typically for 1-2 speakers. The funding would be used to pay for one keynote/paid trainer and 2 speakers from out of state would cost about \$10,500 each year.
 - Estimated Cost: Fiscal Year 2024: \$10,500.
- Funding to engage a professional conference manager. In the past, the Department has handled all the duties associated with planning and hosting its annual conferences. When the initial conference was virtual, this was an easier task to accomplish. With the two conferences that occurred in person, there is significantly more work needed to be conducted to ensure successful training is provided to meet the *Davis* compliance obligations. Engaging with a professional manager (e.g., the Nevada Public Health Foundation) will free up Department time to ensure the best quality conference is provided to defense attorneys throughout the state without any loss of performance in the other duties the Department must fulfill. An estimate to provide such services from the Nevada Public Health Foundation is attached.
 - Estimated Cost: Fiscal Year 2024: \$21,500.

Total Estimated Cost for Compliance with Davis Training Requirements:
Fiscal Year 2024: \$89,340

Compliance with Anticipated Workload Standards

The Department has commissioned a Delphi study to establish workload standards for the rural counties, as is required in NRS 180 and the judgement. Once the workload standards are established, the Department must require compliance with the workload standards within 12 months. It is expected the number of indigent defense services attorneys in the rural counties will be required to increase.

The Department believes that providing stipends for law students to work in the rural counties will create a pipeline for law students to work in the rural counties upon graduation. Pursuant to NRS 180.320(2), the Department shall work with Boyd School of Law to determine incentives to recommend offering to law students to encourage

them to provide indigent defense services. In furtherance of this, in Fiscal Year 2022 and Fiscal Year 2023, the Department had applied for and received grant funding from the State Bar of Nevada to provide stipends to law students who served as interns or externs in a public defender's office in one of Nevada's rural counties. In Fiscal Year 2022, two interns were placed with rural agencies and stipends totaling \$13,000 were paid out. In Fiscal Year 2023, one intern was placed with a rural agency and \$6,500 was paid. The monitor highlights the Department's steps to build a pipeline to the rural counties from the law school via the internship program. However, after Fiscal Year 2023, due to State Bar of Nevada grant funding/awarding policy changes, the Department will no longer be receiving these grant funds and this program will be eliminated unless funding is provided.

The Department believes that this internship stipend program fulfills part of the obligation of the Board to incentivize rural indigent defense practice. If law students are interested in employment in the rural counties after graduation, the program will assist with the compliance with the workload as a source of new attorneys.

Total Estimated Cost for Pipeline: Fiscal Year 2024: \$13,000

Data Collection and Reporting Requirements

The Judgment requires that indigent defense providers report data in a uniform fashion, including case numbers; type; outcome; the hours worked by attorneys, staff, investigators, and experts; the number of motions to suppress filed and litigated; the number of trials; and the attorney's private workload, if any. The Judgment further requires that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.¹²

The Department collects data using the LegalServer case management system. NAC 180, Section 45. The Department must renew the LegalServer case management system contract which unexpectedly increased in cost over legislatively budget amounts. The Department is requesting \$4,124 to allow continuance with the case management system and cover the shortfall created by the new contract. A failure to continue the case management system contract will result in a failure to comply with the data collection and reporting requirements.

- Estimated Cost: Fiscal Year 2024: \$4,124

Next, the Monitor recommends that the State should consider providing an incentive for timekeeping to appointed attorneys to encourage consistent and accurate case and hourly reporting.¹³ Based upon this recommendation, the Department requests an allocation of \$32,784 to provide Westlaw EDGE, or a similar online legal research service, to the appointed attorneys that are providing indigent defense services in rural counties. The Department believes that providing access to an online legal research service will incentivize attorneys to comply with the workload reporting requirements so

¹² Judgment, 18

¹³ Judgment, p. 20-22.

that the State will be compliant with the uniform data collection requirements of the judgement because it would cost an attorney \$504 a month to have similar access. Also, prosecutors are routinely provided free access to online legal research systems and such an action would provide the same resources to indigent defense services attorneys as are provided to prosecutors.

- Estimated Cost: \$32,784 Fiscal Year 2024 (6 months at \$5463.94 per month)

Total Estimated Cost for Data Collection Compliance: Fiscal Year 2024
\$36,908

Conclusion

In conclusion, the Department respectfully requests a total allocation of \$765,583 from the AB518(2023), Section 7 appropriation to be used during Fiscal Year 2024 to comply with the *Davis* Stipulated Consent Judgment in the following areas: (1) Oversight; (2) Training; (3) Compliance with Workload Standards; and (4) Compliance with the Data Collection and Reporting Requirements.