

Eighth 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 February 15, 2023, to May 1, 2023.¹

Summary Points

The Monitor notes few developments since the last report of February 15, 2023. The focus of this quarterly report is to summarize accomplishments and highlight ongoing compliance concerns.

Achievements

Indigent Defense in the Legislative Session

While the legislative session has not closed, certain benchmarks should be noted. On April 22, 2023, the Joint Meeting of the Assembly Committee on Ways and Means and the Senate Committee on Finance [hereinafter “the Joint Committee”] decided that the Department should work with the staff of the Legislative Counsel Bureau to determine an appropriation amount that could be placed in the Interim Finance Committee’s Contingency Account to provide a funding source for compliance with the Judgment. This decision is an important step given that the Executive Budget appears to include insufficient funds to comply with the Judgment.²

¹ By agreement, this report was delayed awaiting the Budget Closing hearing before the Joint Meeting of the Assembly Committee on Ways and Means and the Senate Committee on Finance on April 22, 2023.

² See The Monitor’s Seventh Report (February 16, 2023) and the Monitor’s Preliminary Report on Budgetary Concerns (February 8, 2023).

- **Reimbursement to counties**

The Joint Committee voted on April 22, 2023, to include in the Department’s budget \$3.5 million for the 2024-25 biennium to reimburse counties for their expenses over their maximum indigent defense contribution.³ This will greatly ease the process through which the Department reimburses the counties.⁴

- **Confidentiality of attorney-client communications in workload and reimbursement reports**

SB39 (2023), which protects the confidentiality of attorney-client communications, advanced from the Senate to the Assembly.

- **Authority to set the minimum hourly rate for appointed counsel**

A bill giving the Board the authority to set the minimum hourly rate for appointed public defense counsel, AB 454, advanced from the Assembly to the Senate.

Department’s Compliance Achievements

The Nevada Department of Indigent Defense (hereinafter “the Department”) continues to take significant steps toward compliance with the Judgment in terms of training, oversight, and data collection, as well as in managing attorney selection, compensation and county reimbursements. In the past quarter, compliance-related achievements include the following:

- **Completion of an additional pay parity analysis**

The Department’s consultant for data analysis, Soval Solutions, produced a report on pay parity based on prosecutorial compensation in rural counties.⁵ This, combined with Soval Solutions’ earlier report on average overhead expenses for contract and appointed attorneys, makes it much easier to assess pay parity.

- **Continued oversight efforts**

The Department produced two oversight reports, one on confidential attorney-client meeting spaces at first appearances and another related to an in-person oversight visit to Nye County, respectively.

³ NRS 180.320 (“The Board shall adopt regulations to establish a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services”).

⁴ Prior reports of the Monitor described the cumbersome and time-consuming process of seeking funds on an ad hoc basis from the Governor’s Finance Office, the Board of Examiners, or the Interim Finance Committee.

⁵ Soval Solutions, *Analysis of Rural Attorney Hourly Rates* (March 5, 2023) is attached to this Report as Appendix A.

- **Annual training conference**

The Department finalized the plans for annual training conference in Reno on May 4-5, and have awarded 20 rural defense providers with scholarships to attend the conference.

- **Ensuring prompt appointment of counsel**

The Department continued to select appointed counsel in cases of conflicts or, particularly in Nye County, when contract counsel resigned or was otherwise unable to accept appointment.

- **Third Quarter Workload Report**

The Department collected and analyzed attorney workload reporting for January 1-March 31, 2023, and produced a report for the quarter.⁶

Areas of Concern

At the same time, this Report notes ongoing challenges to compliance:

- **Insufficient resources to conduct oversight**

The Judgment requires robust assessment and evaluation of county defense systems and of the attorneys providing public defense. This level of oversight is not taking place, and it is difficult to see how it could take place without additional staffing for the Department.

- **Insufficient budget for year-round training opportunities for rural defenders**

The Department's budget—combined with grants secured by the Department—provides funds sufficient for a two-day annual conference and a low-expense virtual CLE calendar, which includes training events hosted by various county and federal public defender offices. The budget is, however, insufficient to provide more robust training, support, and mentorship opportunities.

- **Potentially inadequate budget to reimburse counties**

The budgeted \$3.5 million to reimburse counties may be insufficient because of two dynamic factors. First, market forces have led some counties to increase the compensation they are offering to attract attorneys. These increased rates of compensation will increase the overall expenses of counties. Second, the anticipated caseload limits set by the forthcoming National Center for State Courts (NCSC) workload study likely will require some counties to contract with more attorneys. Both increased compensation and the implementation of workload limits will increase county expenses in the 2024-25 biennium.

- **Understaffed Nevada State Public Defender**

⁶ The Report is available on the Department's website at https://dids.nv.gov/Annual_Report/home/.

The Nevada State Public Defender must provide first tier public defense in White Pine County, starting October 1, 2023. It also must provide appellate and complex litigation in some Davis counties. But the office is currently understaffed and having difficulty attracting qualified attorneys given that the salaries offered are lower than those of the public defender offices in the larger counties.

- **Workload reporting gaps**

A few attorneys in Nye County are not reporting, and several other attorneys are believed to be underreporting their hours. No attorneys are reporting their private hours. Without incentives, the reporting requirement is unpopular and may continue to be uneven.

- **Prohibition on new regulations**

After the NCSC caseload study is completed, the Board must implement regulations to set caseload limits. The Governor’s Executive Order 2023-1002, however, mandates that “no new regulations shall be proposed, approved or acted on...until such time as this Executive Order is rescinded.” Section 5 of the Order exempts regulations that “affect public safety and security,” “affect pending judicial deadlines,” or that are “necessary to comply with federal law.”⁷ The Department’s request for an exemption is pending.⁸

Summary of Recommendations

- **Adequate resources for oversight:** The Department’s staff should be increased so the State can conduct required in-person oversight of all attorneys and county systems on an annual and as-needed basis.
- **Adequate budget for training:** The Department’s training budget should be increased so that it can provide rural attorneys with meaningful training and mentorship opportunities throughout the year.
- **Adequate staffing of the State Public Defender:** The Defendants should ensure that the State Public Defender is adequately funded and staffed to meet the public defense needs of the counties opting into the state system for some or all of their indigent cases.
- **Reimbursement for county expenses:** Consider increasing the amount of earmarked funds to reimburse counties in light of the anticipated workload study recommendations and the market-driven increase in hourly and contract rates for attorneys.

⁷ The Department’s Letter and Information Sheet Requesting Exemption are attached to the Monitor’s Seventh Report as Appendix F.

⁸ Executive Order 2023-102 is discussed in the Seventh Report of the Monitor.

- **Exemption to Executive Order 2023-003:** The state should exempt existing and new regulations that are necessary to comply with the *Davis* Judgment and the Sixth Amendment right to counsel.
- **Improve timekeeping:** The State should consider providing an incentive for timekeeping to contract attorneys to encourage consistent and accurate case and hourly reporting. For example, the Department has requested funding via grants and its budget to provide Westlaw subscriptions to attorneys who comply with the reporting requirements. Finally, the requirement of reporting total hours spent on private cases should be clarified in attorney contracts and county plans.

Compliance to Date

The Judgment creates three categories of obligation:

- (I) Removing economic disincentives and ensuring independence
- (II) Setting and ensuring performance standards
- (III) Uniform data collection

This Report uses this tripartite structure to analyze compliance.

I. Removing Financial Disincentives & Ensuring Independence of the Defense

Three issues related to financial disincentives and ensuring independence are discussed below: (A) The difficulty that the Nevada State Public Defender is experiencing in attracting qualified attorneys, (B) pay parity for rural contract attorneys, and (C) the possibility that insufficient funds have been set aside to reimburse counties for expenses over their maximum contributions.

A. Nevada State Public Defender Shortages

The Nevada State Public Defender does not currently have sufficient attorneys to staff an office in White Pine County, or to provide appellate and complex litigation representation in the rural counties that have requested its services. The role of the State Public Defender in *Davis* counties is increasing. In FY2024-25, the State Public Defender will provide all indigent defense services in White Pine County, as well as death penalty representation in Churchill, Humboldt, and Lander counties, and appellate representation in Esmeralda, Humboldt, Lander, and Lincoln

counties. Thus, pay parity between the assistant public defenders in the State Public Defender and their prosecutorial counterparts will be subject to the *Davis* Judgment.

The State Public Defender currently has four attorneys, a 44 percent vacancy rate, not including the additional attorneys needed to staff the new White Pine public defender's office. Difficulty filling vacancies in the State Public Defender's office is widely believed to result from a salary range that is lower than the range for comparable county public defenders and prosecutors.⁹ Moreover, attorneys may see no advantage in taking a salaried public defender position when contracts to provide indigent defense services permit them to engage in private practice to supplement their income, an option not permitted for salaried public defenders.

B. Assessing Pay Parity and Adequacy 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 costs related to significant attorney travel time."¹⁰ The compensation should be comparable to prosecutors in the same county, considering that prosecutors do not pay overhead and expenses.¹¹

The Department obtained additional information on pay parity and the adequacy of compensation, based on Soval Solutions reports to date. As previously reported, in 2022, Dr. Mitch Herian of Soval Solutions determined that solo practitioners spend an average of \$86,427 on overhead and expenses per year, with the most expensive areas of overhead being, "non-attorney compensation, office space, office supplies, ... attorney benefits and health care."¹² So, for example, contract amount of \$175,000 for what amounts to full-time caseload, the private attorney nets \$88,573, after overhead expenses. This amount, rather than the contract amount, should be compared to the local prosecutorial counterpart's salary.

On March 5, 2023, Soval Solutions produced a report analyzing pay parity between public defenders and their prosecutorial counterparts, using data on prosecutor salaries obtained from Transparent Nevada.¹³

Consider the \$175,000 contract for Nye County defense attorneys, adjusted for average overhead to \$88,573. In comparison, in 2019, a deputy district attorney in Nye County received

⁹ From my conversations with the State Public Defender, Chris Arabia, the Department, and reviewing salaries for public defenders in Washoe and Clark counties.

¹⁰ Judgment, 11.

¹¹ See also Regulation 40(10). Per AB81, the Department's standards must guard against financial disincentives to provide effective representation.

¹² Soval Solutions, *Hourly Rate Recommendations for Contract Attorneys in Rural Nevada* (August 8, 2022) is attached to this Report as Appendix B.

¹³ Soval Solutions, *Analysis of Rural Attorney Hourly Rates* (March 5, 2023), is attached to this Report as Appendix A.

\$169,172.66 in total pay and benefits (\$121,172.66 in total pay and \$47,689.72 in benefits).¹⁴ When taking overhead and other relevant costs into account, what looks like a substantial contract amount on the surface - \$175,000 -lacks parity with the prosecutorial counterpart.

Soval Solutions used the same method to calculate the compensation minus overhead for an attorney paid the statutory rate of \$100 per hour for full-time work (1,540 hours), resulting in gross pay of \$154,000. Subtracting average overhead, the attorney's take home pay would be \$67,573 per year. Pay parity exists only if the corresponding prosecutor's salary is \$67, 573.¹⁵

While some attorneys have substantially lower overhead, that is usually because they lack administrative assistants and/or paralegal support. As a result, they may spend significantly more time engaged in administrative and ministerial tasks, increasing their total hours of work. In short, while more work is needed to analyze pay parity in each county, it is clear that pay parity is lacking in some counties.

To a certain extent, pay rates are adjusting in response to market forces. As described in earlier reports, various counties have increased their hourly and contract rates to attract attorneys. Over the past year, for example, Nye County increased its contract rate by \$25,000 to \$175,00, and added an additional contract position; Churchill, Eureka, Douglas, and Lincoln counties increased their hourly rate to \$150; Lyon County offers some appointed counsel \$150 an hours for felony cases; Douglas County increased its contract rate to \$265,000. In addition, Washoe County is in the process of raising its salary for public defenders and its hourly rate for appointed counsel. Increased pay in Washoe County is likely to draw attorneys away from rural practice, and increased pay in some *Davis* counties without corresponding increases in the others could leave to a reshuffling of attorneys, with some counties offering less compensation unable to attract sufficient legal representation for indigent defendants.¹⁶ This may compound the shortage of attorneys available to provide public defense in some rural counties.¹⁷

Recommendations

- The Department should continue to analyze pay parity with prosecutors for contracted defense attorneys as well as those working on an hourly basis. Hourly rates should be increased accordingly, a task that will be easier if the Board is granted authority to set the minimum hourly rate in AB454.

¹⁴ These numbers were accessed through Transparent Nevada <https://transparentnevada.com/salaries/2019/nye/> (last visited April 29, 2023).

¹⁵ The Soval Solutions March 5, 2023, report goes on to compare the total cost of the District Attorney and Public Defender offices of Churchill County, but this may be an unnecessary step when assessing pay parity for private attorneys with contracts or hourly appointments.

¹⁶ Washoe County is considering a 30 percent increase in the salaries of its public defender office, for example.

¹⁷ On February 6, 2023, Soval Solutions provided an additional report on how to address the shortage of public defenders in rural counties. Addressed in other reports, the Department continues to promote rural practice, but more may be needed. This will be discussed at greater length after the caseload standards are established through the NCSC study.

- The State should compensate State Public Defender attorneys in the Davis counties at a rate on par with their county-level prosecutorial counterparts.

C. Reimbursement for county expenses

A major concern of the Monitor has been addressed by the Joint Committee's vote to place \$3.5 million in the Department's budget so the Department can promptly reimburse counties for expenditures over their maximum contributions. This removes the inefficiencies and uncertainties of the contingency-fund approach.

At the same time, the Monitor notes that \$3.5 million is likely to be insufficient to reimburse the counties due to dynamic factors. First, market forces are increasing the compensation that counties must offer to attract appointed and conflict counsel. Second, inadequate funding of the State Public Defender could force some rural counties to rely on contact and appointed counsel for appeals and complex litigation, causing expenditures well in excess of what was anticipated in their county plans.¹⁸ Third, the NCSC caseload study is likely to conclude that more attorneys are required, especially in Nye County, to ensure that workloads permit attorneys to provide effective assistance of counsel.

Recommendation

- The State should, with the assistance of the Department, estimate the increased cost of indigent defense due to the factors listed above, and earmark sufficient funds to reimburse the counties.
- The State should provide adequate resources to the State Public Defender so that it can meet its obligations to provide indigent defense in the Davis counties that have elected to use its services.

II. Establishment of Minimum Standards

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

- Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.¹⁹
- 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 an initial appearance.²⁰

¹⁸ The Monitor's Seventh Report and Preliminary Report on the Executive Budget both contain discussions of the 2024-2025 executive budget that sets just \$100,000 for the complex litigation expenses of the State Public Defender.

¹⁹ Judgment, 14.

²⁰ *Id.* at 14-15.

- Systems to identify and remove conflicts.²¹
- Establishment of performance standards.²²
- Establishment of workload standards.²³
- Qualifications for attorneys.²⁴
- A system of oversight.²⁵
- Attorney training and resources.²⁶

Part A below emphasizes ongoing budgetary concerns related to the minimum standards required by the Judgment. Part B discusses the Department’s compliance activities and outstanding issues.

A. Budgetary Issues Impacting Compliance with the Minimum Standards

Funding is an overarching issue for many of the Judgment’s terms. The Department has successfully set up—and assisted counties in setting up—systems for ensuring that attorneys are qualified by case type, and that conflicts are identified and removed. But oversight, training, and recruiting qualified attorneys appears to require additional funding.

Funding for Oversight

Oversight requires both remote and on-the-ground activities. At present, the Department cannot fulfill its oversight obligations required by the Judgment at its current level of staffing and resources. On-the-ground engagement must be adequately staffed, and the Department must have an adequate budget to support year-round travel within the state.

To clarify the compliance issues at stake in failing to fund the Department’s oversight, below are the provisions of the Judgment that set the standards for effective assistance of counsel and the Department’s obligations to make sure that rural defendants receive effective assistance of counsel. The 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**

²¹ *Id.* at 12.

²² *Id.* at 16.

²³ *Id.* at 17.

²⁴ *Id.* at 15.

²⁵ *Id.* at 16-17.

²⁶ *Id.* at 16.

basis for quality and efficiency according to nationally and locally adopted standards, including, but not limited to, the ABA Criminal Justice Standards.²⁷

This review is mandated by AB81, Section 13, which states that the Department’s deputy director shall, among other things, “**Conduct on-site visits of court proceedings throughout the state** to determine the manner in which indigent defense services are provided, including, without limitation, whether ... [r]epresentation of indigent defendants is being provided in an effective manner.”²⁸

Should the Department find ineffective assistance of counsel or violations of the standards of representation, the Judgment directs the Department as follows:

Defendants shall **timely and uniformly report to Plaintiffs all Board and/or Department determinations** made pursuant to AB81 Sections 13 and 14 that a specific Rural County is **not meeting minimum standards and shall share the corrective action plan to address any deficiencies.**²⁹

The Judgment further states:

In implementing AB 81 Section 13, Defendants shall incorporate the performance guidelines set forth in the ABA Criminal Justice Standards and the Nevada Indigent Defense Standards of Performance ordered implemented by the Nevada Supreme Court in [ADKT 411].³⁰

Some of the standards for indigent defense are specifically listed in the Judgment, such as prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights; 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 an initial appearance.³¹

To be sure, the Department has taken steps to assess the counties. The Department has visited every county at least once to ensure that the county plans are compliant with the Judgment, and has built relationships with local government authorities, defense attorneys, and the bench to ensure that concerns are addressed promptly. But the Judgment requires more. It requires annual determinations of whether defense counsel are meeting standards agreed upon in the Judgment. Assessment of attorney performance requires significant time spent in the counties observing court and talking to the attorneys and others in the courtroom. It requires attention to client and other feedback that the Department might receive, and to the requests—or lack thereof—for experts and

²⁷ *Id.* at 16 (emphasis added).

²⁸ NRS 180.440 (1) (emphasis added).

²⁹ Judgment, 17 (emphasis added).

³⁰ *Id.* at 16.

³¹ *Id.* at 14-15.

investigation funds made by individual attorneys. The Department must be able to answer the following questions about attorneys providing public defense in the rural counties.

- Did the attorney have a substantive, confidential meeting with the client upon appointment?³²
- Did the attorney argue for pretrial release, or for no or reasonable bail?³³
- Did the attorney counsel the client to refrain from recommending a plea or trial until the attorney completed investigation of the case?³⁴
- Did the attorney counsel the client to refrain from waiving any rights at arraignment?³⁵
- Did the attorney investigate and engage investigators to determine if there was “sufficient factual basis for criminal charges?”³⁶
- Did the attorney thoroughly prepare and investigate the case?³⁷
- Does the attorney adequately advise clients of the consequences of accepting a guilty plea or going to trial, including the collateral consequences?³⁸
- Does the attorney move to withdraw if accepting an additional case would cause a conflict with an existing client due to time constraints or conflicting interests?³⁹
- Does the attorney perform other essential lawyering tasks according to the adopted standards, such as negotiation,⁴⁰ ongoing client communication,⁴¹ preliminary hearings,⁴² legal research and motions practice,⁴³ trial preparation and trial,⁴⁴ sentencing and mitigation, including collateral consequences,⁴⁵ and postconviction proceedings?⁴⁶

³² ADKT 411 Standard 4-4; ABA Standard 4-3.3.

³³ ADKT 411 Standard 4-5; ABA Standard 4-3.2.

³⁴ ADKT 411 Standard 4-9 (a); ABA Standard 4-5.1.

³⁵ Judgment, 14.

³⁶ ABA Standard 4-4.2.

³⁷ ADKT 411 Standard 4-7; ABA Standard 4-4.1.

³⁸ ADKT 411 Standard 4-9; ABA Standard 4-5.1.

³⁹ Nevada Rule of Professional Conduct 1.7 (a) (2).

⁴⁰ ADKT 411 Standard 4-9; ABA Standards 4-6.2, 4-6.3.

⁴¹ ABA Standard 4-3.9,

⁴² ADKT Standard 4-6.

⁴³ ADKT 411 Standard 4-8.

⁴⁴ ADKT 411 Standards 4-10 through 4-15.

⁴⁵ ADKT 411 Standards 4-16 through 4-19. ABA Standards 4-5.4, 4-5.5, 4-8.3.

⁴⁶ ADKT 411 Standard 4-20.

- Overall, does the attorney represent clients with the requisite diligence, promptness, and punctuality?⁴⁷

It seems clear that annual assessment of whether attorneys meet the above standards is not possible with the Department's current staffing. There are several solutions. The first, proposed by Soval Solutions, is the creation of two staff positions dedicated to oversight.⁴⁸ Alternatively, staff positions could be created to assume the administrative duties now carried by the Deputy Director tasked with oversight, freeing the Deputy Director to travel to the rural counties and conduct attorney evaluations. But it is likely that the Department will still require an additional staff person to help with oversight. The Deputy Director may, for example, arrive at a justice court in one of the rural counties and find that there are simply no hearings or trials taking place that week. The distances traveled and the infrequency of court hearings in some of the smaller counties result in oversight simply taking more time than it would in a densely populated urban area.

Alarming, the Department's current budget for the 2024-25 biennium does not contain funding for these positions or for any additional funding for oversight other than a necessary increase in the Department's travel budget. Without these resources, the Department likely will be unable to fulfill the oversight requirements of the Judgment.

Recommendation

- Increase Department staff to include policy counsel/oversight position(s) for in-person oversight in the counties.

Funding for Attorney Resources and Training⁴⁹

As discussed in previous reports, the Department has a slim budget for training and resources. To host an annual training conference in Reno on May 4-5, the Department again secured \$38,000 from an Edward Byrne Memorial Justice Access Grant for the travel expenses of rural indigent defense attorneys to attend. In addition, the Department serves as an access point for CLE courses specific to indigent defense, both creating content and ensuring that all public defense providers have access to the online CLEs of the various county public defender offices in the state.

It is the Monitor's impression that 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 public defender's office. 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)

⁴⁷ ADKT Standard 4-1; ABA Standard 4-1.9.

⁴⁸ See Sixth Report of the Monitor, 11-12. Soval Solutions, *Recommendations for Senior Policy Positions* (August 30, 2022) is attached to this Report as Appendix C.

⁴⁹ Judgment, 16.

investigation; (6) filing and responding to pre- and post-trial motions; (7) plea and sentencing outcome negotiations; (8) trial advocacy; and (9) appeals; and (10) special issues regarding the representation of juveniles.”⁵⁰ This provision of the Judgment suggests a systematic approach to ensuring that the attorneys have training in all areas crucial to public defense.

The Department has several proposals to increase the availability and substance of its training program. For example, the Department could offer more in-person, intensive training opportunities or provide funding to send a few rural attorneys to attend a national trial college on a rotating, yearly basis. The Department’s estimates that it would require additional amount of approximately \$35,000 per year would be required to send five rural attorneys to the National College of Criminal Defense, the gold standard in public defender training. As noted in prior reports, the Department’s training budget is less than a tenth of the Attorney General’s budget to train the state’s prosecutors.⁵¹

Recommendation

- Adequately fund the Department’s training and resources budget to ensure that it can offer regular, in-person training opportunities where attorneys practice defense-related skills and receive feedback. This could be accomplished, for example, by sending five rural attorneys to a national trial advocacy college each year.
- Consider adding to the Department’s budget funds to reimburse rural attorneys for their expenses related to attending the Department’s annual training conference (currently funded by an Edward Byrne Memorial Justice Access Grant)

B. Compliance Issues and Activities

Oversight

In addition to responding to ad hoc requests and concerns, the Department generated two reports since February 15, 2023. The first is an update on 48-hour first appearances and bail hearings. The second is a report on the Department’s oversight visit to Nye County.

First appearances and confidential client communications

On March 9, 2023, the Department updated its prior report on 48-hour hearings in the rural counties.⁵² In particular, the Monitor requested additional information about whether attorneys

⁵⁰ Judgment, 16.

⁵¹ The Attorney General’s Council of Prosecuting Attorneys is tasked with training the state’s prosecutors and coordinating the development of policies that facilitate prosecution. Since 2001, the Council has been funded with administrative assessments pursuant to NRS 176.059. Its recommended budget for 2023-24 is \$309,451, more than ten times the budget of for training and resources of the Department of Indigent Defense, which is \$25,000 per year in the Governor’s budget.

⁵² The March 9, 2023 updated oversight report is attached to this Report as Appendix D.

were able to meet in a confidential setting with their clients prior to and during bail hearings. Attorneys reported that, in video-conferenced hearings, most counties provided attorneys with a way to have confidential conversations with their clients using a breakout room in the virtual hearing software. If the defendant appears in-person in court or at the jail and the defense counsel appears remotely, however, it may be more difficult. During Sunday first appearance hearings in Lander County, for example, the in-person defendant does not have an easy way to contact the defense counsel appearing remotely.

In terms of confidential spaces to meet, a recent oversight report from Nye County suggests some backsliding.⁵³ The Director and Deputy Director conducted a two-day oversight visit to Nye County, where they met with five contract attorneys. A structural change—the removal of a wall—in the courthouse means that attorneys must meet with clients in a room shared with law enforcement and jurors. Another concern raised by the Nye County contract attorneys was the inability to have confidential conversations at the Pahrump jail. Attorneys relayed experiences that suggested that attorney-client conversations had been overheard or recorded. Attorneys were likewise unconvinced that their videoconferences with jailed clients were confidential. All of these reports suggest that the Department must conduct more oversight on the in-person and remote availability of confidential meeting spaces for attorneys and their clients.

An unanswered question—discussed in the Monitor’s prior three reports—is whether remote hearings satisfy the Judgment. The Judgment requires that all indigent defendants be “represented by counsel *in person* at his or her initial appearance/arraignment.”⁵⁴ As discussed in the Seventh Monitor’s Report, the quality of remote hearings varies greatly, with some virtual hearings providing an opportunity for the defendant to appear clearly, hear and be heard, and meet in confidential break-out rooms with defense counsel. The parties may wish to determine whether remote hearings ever satisfy the Judgment, perhaps after findings from the ADKT 0581 Commission, which is evaluating rules and potential rule changes related to remote technology in courts.

Nye County Visit

As mentioned above, the Department conducted a two-day visit to Nye County. In many ways, this visit was part of the Department’s ongoing efforts to respond to crises. The caseloads in Nye County are extremely high and the compensation is lower than in several other counties. As a result, there is a high turnover in contract attorneys, which results in the constant reassignment of cases. With the Department’s encouragement, Nye County increased the contract amount by \$25,000 and added an additional contract. The Department is now in the process of reassigning cases to even out the caseloads among the attorneys, a process that requires evaluating the severity and complexity of the cases to ensure that all contracting attorneys are treated fairly. In addition,

⁵³ The Nye County oversight report is attached to this Report as Appendix E.

⁵⁴ Judgment, 14 (emphasis added).

the Department is assessing the barriers to timekeeping, including the lack of time to record time spent on case activities and the general sense that uncompensated timekeeping is too much to ask when workloads are so high. Finally, the Department continues to work with the Nye County government to explore whether a public defender office would provide better coverage and continuity for cases, or whether a plan administrator could assist the attorneys in timekeeping.

The Monitor commends the Department on its in-person efforts to respond to crises in various counties. But the Nye County oversight report also highlights the resource needs of the Department. Before even getting to a point where the Department can assess effective assistance of each attorney and their compliance with performance standards, it is immersed in tasks like reassigning all cases carried by a former contract attorney to appointed attorneys, or meeting with county authorities to discuss the option of forming a public defender office. These foundational issues—like ensuring that everyone charged with a crime in a rural county has counsel—take up a significant portion of the Department’s time.

Recommendations

- Determine whether remote appearances at initial appearance satisfy the Judgment, and, if so, set standards for remote appearances. If remote appearance does not satisfy the Judgment, the Department should determine what resources would be required to assure in-person representation at first appearance.
- Additional site visits and attendance of remote hearings will be necessary to ensure that all defendants have the ability to have confidential meetings with their attorneys, whether remotely or in person.

C. Establishment of Workload Standards

The Judgment requires that the Defendants contract with an outside provider within 12 months of the effective date of the Judgment to complete a workload study.⁵⁵ The study, conducted by the National Center for State Courts (NCSC), awaits the results of a nationwide RAND study of public defender caseloads as an important source of findings against which to check—and potentially adjust—the NCSC’s findings for rural public defenders in Nevada. It appears that the RAND study is in the process of peer review and has not yet been released to the public.

Once the NCSC workload study is complete, the Defendants will have 12 months to implement workload standards in the rural counties. Two potential issues should be noted. First, the implementation of workload limits will likely require the promulgation of regulations. Executive Order 2023-003 prohibits consideration and promulgation of new regulations. As noted above, the Board unanimously voted to request an exemption based on the timeline of the

⁵⁵ Judgment, 17.

Judgment in this case and the need to comply with federal constitutional law—the Sixth Amendment right to counsel.⁵⁶

Second, the workload study results are likely to indicate the need for more attorneys in some counties, with compliance required within twelve months. This compliance deadline is likely to occur after the budget for the 2024-25 biennium is set. Counties that must contract with additional attorneys will be entitled to reimbursement, yet the state might have insufficient funds earmarked for reimbursement under the forthcoming workload limits. While it is difficult to predict the number of additional attorney hours that may be required under new workload standards, it seems likely that counties such as Nye, where some attorneys carry more than 400 open cases, will add additional contracts to comply.

Recommendations

- The State should clarify that Executive Order 2023-003, prohibiting the promulgation of new regulations, exempts new regulations that are necessary to comply with the *Davis* Judgment and the Sixth Amendment right to counsel.
- The State should, in consultation with the Department, anticipate the additional funds required to reimburse counties for their additional expenses under the forthcoming workload standards.

D. Training for attorneys

Since February 15, 2023, the Department made available training on Adolescent Brain Development and Emerging Adults as well as two CLEs on appellate advocacy, hosted by the Federal Public Defender and the Appellate Section of the Nevada State Bar.

The Department’s two-day annual conference will take place in Reno on May 4-5. In addition to prominent defense attorneys, speakers include three Nevada Supreme Court justices. Workshops focus on creating and implementing narrative in defense advocacy.

E. Client surveys

The Department continues to receive few surveys from clients of the rural public defense providers. Over the past quarter, the Department received ten client surveys. One possibility, discussed in the Monitor’s Seventh Report, is to survey incarcerated clients at set intervals, using the surveys created by the Department. If the Department elects this option, it is likely to require additional funding to identify the identity and location of the former clients, and mail them the feedback form with a postage pre-paid envelope.

⁵⁶ Section 5 of the Order makes exemptions from the prohibition against new regulations for, among other things, regulations that “affect public safety and security,” “affect pending judicial deadlines,” or that are “necessary to comply with federal law.” Executive Order 2023-003 (5) (e)-(f).

Recommendations

- Clarify the goal of the client surveys and consider periodic surveys conducted by the Department, which would require additional funding.
- Consider whether the data collected on Legal Server will permit the Department to survey former clients of attorneys providing public defense in the *Davis* counties.

III. Uniform Data Collection and Reporting

A. Attorney Workload Reporting

This section tracks progress in workload reporting from the second to the third quarter of FY23.⁵⁷

The Judgment requires that indigent defense 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, the attorney’s private workload, if any, and 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.⁵⁸ The Board’s regulations follow the Judgment’s requirements.⁵⁹

Reporting appears to have reached stasis. The time keeping in the second and third quarters is similar. As in prior reports, the Monitor remains concerned about the following reporting issues:

- Possible underreporting of attorney hours
- Possible underreporting of investigator or expert hours
- No reporting of hours spent on private cases or other indigent defense contracts
- Difficulty understanding the caseload of individual attorneys.

The chart below includes a column on the left for reporting issues previously noted and a column on the right indicating any changes.

Changes in Workload Reporting in the FY23 3rd Quarter

| County | Past Reporting Issues | FY23 3 rd Quarter January 1-March 31 |
|--------|-----------------------|--|
|--------|-----------------------|--|

⁵⁷ The quarterly reports are available on the Department’s website at https://dids.nv.gov/Annual_Report/home/.

⁵⁸ Judgment, 18.

⁵⁹ Section 43 of the Regulations require an annual report of the number and type of cases, their disposition, whether motions to suppress were filed, and the number of trials. Section 44 requires that attorneys providing indigent defense in the relevant counties document their time in increments to the tenth of an hour, the number of hours for attorneys, investigators, experts, staff, and also the total number of hours the attorneys spent working on private cases. Section 45 requires attorneys providing indigent defense to use the Department’s data collection system.

| | | |
|-----------|---|--|
| Churchill | <p>No reporting of investigative hours.</p> <p>No reporting of hours spent on private cases or other contract/appointed cases by alternate counsel.</p> | No change |
| Douglas | <p>No reporting of hours spent on private cases or other contract/appointed cases (although some reporting of civil cases).</p> <p>No reporting of investigative hours.</p> | <p>Higher number of hours reported, suggesting better timekeeping for one of the five contract attorneys.</p> <p>Of concern: more than full-time hours reported; high caseloads.</p> |
| Esmeralda | <p>No reporting of hours spent on private cases or other contract/appointed cases (the attorney's hours for this Nye County contract captured in the data)</p> <p>No reporting of investigative or expert</p> | No change |
| Eureka | <p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>No reporting of investigative or expert hours.</p> | No change |
| Lander | <p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>No reporting of investigative or expert hours.</p> | No change |
| Lincoln | <p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>No reporting of investigative or expert hours.</p> | <p>Reported more hours of indigent defense work</p> <p>No other changes</p> |

| | | |
|---------|--|--|
| | 3 category A (and high B) felonies, 78 category B-E felonies; 28 misdemeanors, and several juvenile, parole/probation, and specialty court cases. | |
| Lyon | No reporting of hours spent on private cases or other contract/appointed cases. 11 category A felonies; 357 category B-E felonies; 190 DUI and DV misdemeanors; 374 misdemeanors; 163 other criminal/juvenile, including 2 appeals; 50 civil. | Reported more hours of indigent defense work Reported more investigative hours (for first tier defender) |
| Mineral | Improvement in conflict counsel reporting. No reporting of hours spent on private cases or other contract/appointed cases. No reporting of investigative hours. | Fewer hours reported by first tier (-84 hours) and appointed, conflict counsel. Unclear if this reflects a change in workload or less reporting. No other changes |
| Nye | Underreporting/no reporting by two attorneys No reporting of hours spent on private cases or other contract/appointed cases. | Gent: Improved reporting (421.8 hours of attorney time) Blatnik: 305 hours Dueker: 192 hours * Earnest: 123.8 hours* Shahani: No hours* Coates: No hours* Conflict counsel: 151 hours *Likely reporting failures. |

| | | |
|--------------------------------------|---|---|
| White Pine | No reporting of hours spent on private cases or other contract/appointed cases. No reporting of investigative hours. | Continued reporting of attorney hours No investigative hours reported. |
| Motions to suppress filed | None in <i>Davis</i> counties | 1 in Lyon |
| Motions to suppress litigated | None in <i>Davis</i> counties | 1 in Lyon |
| Trials | None in <i>Davis</i> counties | 1 in Douglas 1 in Lander 1 in Nye |

B. Outstanding Reporting Issues

Underreporting

Timekeeping is essential to understanding how much time attorneys spend doing tasks that could be done by investigators, social workers, paralegals, and other assistant staff. It is also essential to understand when attorneys are overloaded, requiring incoming cases to be diverted to appointed counsel or a new contract position. In Nye County, at least two attorneys are not reporting, and two others are likely underreporting. This may be due to their high workload and lack of support staff, but it is difficult for the Department to advocate for a reduced caseload or other remedy without the workload data that the attorney must provide.

As stated in the previous Monitor’s report, the alternate explanation is that some attorneys are spending an inadequate amount of time on their indigent defense casework. Because there is no secondary source to check against reported attorney hours, it is not possible to distinguish underreporting from insufficient time spent on casework. Such a determination would be gleaned from the oversight process in individual counties.

Investigation and expert hours

Few attorneys report investigation and expert hours. Indeed, only Lyon County’s contracting law firm reported any investigator hours.

The question is whether attorneys are not using experts and investigators or whether they are merely underreporting. In comparing requests for funds/reimbursement for experts and investigators, the Department notes both scenarios are probably occurring. A more robust oversight process—provided the Department has the staff and resources—would permit a comparison of reimbursement requests with workload reporting data, followed by conversations with the attorneys, to determine whether and when they are using investigators and, if they are not using investigators, the reasons why not.

No reporting of private workload and other indigent defense contracts

It appears that no attorneys are reporting their private workload or time spent on other indigent defense contracts and appointments in, for example, municipal courts. The Judgment requires that the Defendants “ensure” that indigent defense providers supply both their “attorney and staff hours spent per public defense case,” and their “private workload, if any, measured in attorney hours.”⁶⁰

The parties may wish to consider an alternative: Each contract attorney could report the percentage of their practice devoted to the contract. So, for example, an attorney who devotes 75% of their work hours to the contract and 25% to private clients of a second indigent defense contract in another jurisdiction. This would provide enough information to calculate workload limits but may not meet other objectives of the parties.

Understanding the caseload of individual attorneys

Because the Department’s quarterly reports detail open and closed cases for the whole county rather than by attorney, the reports do not tell us the individual attorney’s caseload in counties with more than one attorney. The Department has the capability to generate reports on Legal Server that show the total number of cases (by case type) for each attorney. This information is required by the Judgment, and it will be necessary when the weighted caseload study is complete and workload limits are put in place.

Recommendations

The Monitor’s recommendations remain the same as those in the Seventh Report:

- Per the Judgment, the Department should provide a breakdown of cases by attorney. The parties may wish to determine whether this level of detail should be included in the quarterly and annual reports, or provided in some other format.
- Section 44(1)(e) of the regulations requires that attorneys report total private workload, which should be read to include time spent on indigent defense in other jurisdictions,

⁶⁰ Judgment, 18.

especially in municipalities. This expectation should be clarified in the regulations and in attorney contracts.

- The state should compensate attorneys or otherwise incentivize contemporaneous timekeeping and prompt dispositional reporting through Legal Server. The contracts require compliance with the reporting requirements, but incentives may help ensure thoroughness.
- The budget and staff for oversight should consider the Department's obligation to ensure that attorneys report expert and investigator hours *and* to ensure that attorneys use investigators and experts when appropriate.

Looking ahead

The Monitor's forward-looking points are largely the same as in the Seventh Report.

- **The Budget and Process for County Reimbursement**

The legislature will determine the budget for the Department of Indigent Defense and the Nevada State Public Defender. It is hoped that the budgets will be sufficient to fund the oversight and training required by the Judgment, and to provide adequate resources, attorneys, and fair compensation for the State Public Defender's growing obligation to provide public defense in *Davis* counties.

- **Addressing attorney shortages and adjusting systems of public defense**

The Department continues to explore ways to increase interest in rural public defense among law students and practicing attorneys. Other states lacking attorneys in rural areas incentivize rural practice with law school debt forgiveness, payment of bar classes and bar exam costs for new attorneys, stipends for practicing attorneys, and reciprocity for out-of-state attorneys. Some of these incentives may be necessary to ensure that rural defendants have access to qualified counsel and, thus, to comply with the Judgment.

- **Data collection compliance**

The next quarter of workload reporting will be released in July 2023.

- **Workload study**

The NCSC study awaits release of the RAND study, which is anticipated later in 2023.

For the parties to consider:

- The parties should determine whether remote appearances at initial appearance may satisfy the Judgment, and, if so, set standards for remote appearances. If remote appearances do not satisfy the Judgment, the Department should determine what resources would be required to ensure in-person representation at first appearance.
- The parties should clarify the goal of the client surveys and consider periodic surveys conducted by the Department.
- Per the Judgment, the Department should provide the Plaintiffs with a breakdown of cases by attorney on a quarterly basis.⁶¹ The Parties should decide whether this information should be included in the Department's quarterly workload reports or in a different document.

Next steps for the Monitor

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

- Budgetary developments.
- The Board's request for an exemption from Executive Order 2023-003.
- The legislative session, including the Department's Bill Draft Requests and other legislation that impacts the Judgment.
- The Department's training events, including the annual training conference
- The Department's oversight activities and plans.
- The Department's efforts to increase the number of attorneys working in indigent defense in the rural counties.
- The Monitor will also schedule and conduct visits to several counties in coordination with the Department.

⁶¹ Judgment, [REDACTED].

Appendix A

Soval Solutions, *Analysis of Rural Attorney Rates* (March 5, 2023)

Soval Solutions, LLC

Analysis of Rural Attorney Hourly Rates

Prepared for the Nevada Department of
Indigent Defense Services

5 March 2023

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Summary

The Nevada Department of Indigent Defense Services (DIDS) helps provide critical representation for indigent defendants in the State of Nevada. In order for DIDS to carry out its functions, it is necessary for the organization to have the ability to attract and retain talent. Currently, contracting with qualified defense attorneys in rural areas may be difficult, as hourly rates are typically below those offered to prosecuting attorneys in those same areas. This document provides evidence of the rates paid to county prosecutors, and focuses on the hourly cost to maintain the Churchill County District Attorneys Office, which is akin to a small law practice. The analysis shows that the hourly rate for the Churchill County District Attorneys Office is over \$200/hour, which is more than double the current hourly rate for non-capital defense cases. This information can be used to inform decisions related to adequate pay rates for contract and conflict defense providers in rural parts of Nevada.

Rural Indigent Defense Services Hourly Rates

The Department of Indigent Defense Services (DIDS) was established by AB 81 in 2019 and charged with oversight and regulation of indigent defense services throughout the state. The primary mission of DIDS is to “to assist Nevada counties in developing quality, equitable, and sustainable indigent defense systems that strengthen local communities and meet or exceed the state and federal constitutional guarantees that protect each of us.” In order to effectively pursue this mission, it is imperative that DIDS personnel, and the indigent defense community in Nevada, receive adequate pay in relation to the critical work that they do. Appropriate pay structures will ensure that DIDS and the indigent defense community can attract and retain the talent needed to provide vigorous representation of indigent defendants throughout the State of Nevada.

Currently, Nevada faces a challenge related to rural defense attorney pay. Specifically, the hourly rates for contract and conflict rural indigent defense providers are not sufficient to cover attorney pay, in addition to overhead costs associated with running a law practice. Nevada last set its hourly contract rate for non-capital cases at \$100/hour and \$125/hour for capital cases in 2003. This represents a nearly 20-year time span in which the costs of living have increased dramatically in Nevada. During this time, the cost of doing business for solo practitioner and small law firms has also increased considerably.

In July, 2022, DIDS and Soval Solutions collaborated on the development of a survey to determine approximate overhead costs for contract indigent defense service providers. Attorneys were notified of the survey through various list serves, as well as through the Nevada State Bar Association weekly newsletter. A total of 136 attorneys completed the survey, including 56 who indicated that they currently work as a contracted or appointed criminal indigent defense service provider, or serve as a civil court-appointed attorney. The survey asked respondents to indicate the amount of overhead expenses incurred during a typical year, as well as the categories of overhead expenses that are most common. The survey asked several questions about the type of law firm at which attorneys are employed.

Among the 56 attorneys who serve as contracted or appointed criminal indigent defense service providers, or serve as a civil court-appointed attorneys, the results of the survey showed that 38 attorneys work as solo practitioners. Another 13 work in firms that range from 2-5 attorneys. The majority of attorneys indicated that they are solely responsible for overhead costs. Attorneys were asked to indicate the total amount of overhead costs for their firm/organization. The average overhead cost per attorney was \$86,427. The cost categories that comprise the greatest percentage of overhead costs were: non-attorney compensation, office space, office supplies, and attorney benefits and health care.

To understand how overhead costs might impact the take-home pay of contract attorneys who receive the current \$100/hour rate for their work, we can use data from the attorney overhead survey to develop estimates. Assuming that there are 220 working days in a typical year, and that there are seven working hours in a day, we arrive at a total of 1,540 work hours per year. An attorney who works the full 1,540 hours at an hourly rate of \$100/hour would gross a total of \$154,000 in a typical year. Assuming that an attorney incurs average overhead costs, this would net that an attorney \$67,573 per year.

Comparison to Rural District Attorney Hourly Rates

To begin to compare rural public defender hourly rates to rural prosecutor rates, data from Transparent Nevada are used to obtain salary and benefit information on prosecutors in rural counties. These data provide a picture of hourly rates paid to prosecutors in those counties, but do not account for the costs associated with running a law practice. The table in the appendix presents this information.

As the table indicates, individual attorneys receive a wide range of hourly rates, based the total dollar value of salary and benefits, and assuming a 1,540 hour work-year. In Carson City, Churchill, Douglas, Humboldt, and Lyon Counties, many prosecutors average over \$100/hour for pay and benefits.

Perhaps a more appropriate estimate of the hourly rates for prosecutors in rural areas can be generated by examining the total cost of a District Attorney’s office in a rural county. Examining the total annual cost of an office—including payroll, benefits, and the cost of services and supplies—in relation to the number of attorneys in the office and the total number of hours worked may yield an hourly rate estimate that more approximates the cost of defense attorneys in private practice.

To provide an example, costs for the Churchill County District Attorneys Office are examined. The table below breaks down the total cost of that office for the 2022-2023 Fiscal Year. Much like a typical law practice, Salaries and Wages, and Employee Benefits go to support attorneys as well as any administrative and support staff in the office. Service and Supply costs likely go toward items necessary for the production and delivery of legal documents.

| Churchill County District Attorney Budget, FY 2022-2023 | |
|---|--------------|
| Salary and Wages | \$1,797,024 |
| Employee Benefits | \$855,845 |
| Services and Supplies | \$170,747 |
| Total | \$2,823,616 |
| Cost Per Attorney | \$403,734 |
| Cost Per Attorney Hour | \$202 |
| Source: https://www.churchillcountynv.gov/DocumentCenter/View/16533/FY-2022-to-2023-Budget | |

As of March, 2023, there were seven attorneys working in Churchill County. This equates to a cost of \$403,734 per attorney. Assuming a 2,000 hour work/year for those 7 attorneys (likely covering time for legal and non-legal work within the office) we see an hourly rate of \$202. This is more than double the current rate for contract attorneys in Nevada.

This preliminary analysis shows that contract attorney rates for indigent defense service providers are well below the basic hourly rates for salary and benefits for many district attorneys in the state. Notably, these rates do not account for the overhead costs incurred by private indigent defense service providers.

| Appendix: Rural District Attorney Pay in Nevada, 2021 | | | | |
|--|---------------------------------|---------------------|-------------|--|
| Job title | Total pay & benefits | County, Year | Rate | |
| ASSISTANT DISTRICT ATTORNEY | \$241,610.14 | Carson City | \$157 | |
| DISTRICT ATTORNEY | \$211,478.93 | Carson City | \$137 | |
| CHIEF DEPUTY DISTRICT ATTORNEY | \$200,178.64 | Carson City | \$130 | |
| SUP DEPUTY DISTRICT ATTORNEY | \$160,476.75 | Carson City | \$104 | |
| CHIEF DEPUTY DISTRICT ATTORNEY | \$156,856.45 | Carson City | \$102 | |
| DEPUTY DISTRICT ATTORNEY | \$148,367.66 | Carson City | \$96 | |
| SR DEPUTY DISTRICT ATTORNEY | \$147,773.31 | Carson City | \$96 | |
| SR DEPUTY DISTRICT ATTORNEY | \$144,218.14 | Carson City | \$94 | |
| SR DEPUTY DISTRICT ATTORNEY | \$134,584.76 | Carson City | \$87 | |
| SUP DEPUTY DISTRICT ATTORNEY | \$113,671.91 | Carson City | \$74 | |
| SR DEPUTY DISTRICT ATTORNEY | \$107,699.29 | Carson City | \$70 | |
| SR DEPUTY DISTRICT ATTORNEY | \$105,508.85 | Carson City | \$69 | |
| DEPUTY DISTRICT ATTORNEY | \$68,093.55 | Carson City | \$44 | |
| DISTRICT ATTORNEY | \$212,937.04 | Churchill | \$138 | |
| CHIEF DEPUTY DISTRICT ATTORNEY | \$203,128.89 | Churchill | \$132 | |
| CHIEF DEPUTY DISTRICT ATTORNEY-CIVIL | \$197,845.41 | Churchill | \$128 | |
| SENIOR DEPUTY DISTRICT ATTORNEY | \$149,090.49 | Churchill | \$97 | |
| SENIOR DEPUTY DISTRICT ATTORNEY | \$143,880.71 | Churchill | \$93 | |
| SENIOR DEPUTY DISTRICT ATTORNEY | \$136,411.75 | Churchill | \$89 | |
| DEPUTY DISTRICT ATTORNEY II | \$130,444.12 | Churchill | \$85 | |
| DISTRICT ATTORNEY | \$225,681.28 | Douglas | \$147 | |
| DEPUTY DISTRICT ATTORNEY III | \$187,966.44 | Douglas | \$122 | |
| DEPUTY DISTRICT ATTORNEY III | \$182,933.99 | Douglas | \$119 | |
| DEPUTY DISTRICT ATTORNEY III | \$162,913.78 | Douglas | \$106 | |
| DEPUTY DISTRICT ATTORNEY III | \$149,108.59 | Douglas | \$97 | |
| DEPUTY DISTRICT ATTORNEY III | \$145,594.08 | Douglas | \$95 | |
| DEPUTY DISTRICT ATTORNEY III | \$136,232.13 | Douglas | \$88 | |
| DEPUTY DISTRICT ATTORNEY II | \$135,372.51 | Douglas | \$88 | |
| DEPUTY DISTRICT ATTORNEY III | \$126,267.36 | Douglas | \$82 | |
| DEPUTY DISTRICT ATTORNEY I | \$101,761.26 | Douglas | \$66 | |
| DISTRICT ATTORNEY | \$149,170.77 | Elko | \$97 | |
| CHIEF DEPUTY DISTRICT ATTORNEY | \$121,687.31 | Elko | \$79 | |
| DEPUTY DISTRICT ATTORNEY | \$111,769.60 | Elko | \$73 | |
| DEPUTY DISTRICT ATTORNEY | \$94,639.68 | Elko | \$61 | |
| DEPUTY DISTRICT ATTORNEY | \$94,339.27 | Elko | \$61 | |
| DEPUTY DISTRICT ATTORNEY | \$86,482.44 | Elko | \$56 | |
| DEPUTY DISTRICT ATTORNEY | \$79,135.80 | Elko | \$51 | |
| DEPUTY DISTRICT ATTORNEY | \$59,250.85 | Elko | \$38 | |

| | | | | |
|---|--------------|-------------|-------|--|
| DEPUTY DISTRICT ATTORNEY | \$51,862.50 | Elko | \$34 | |
| DEPUTY DISTRICT ATTORNEY | \$42,270.17 | Elko | \$27 | |
| DISTRICT ATTORNEY ELECTED | \$193,845.83 | Eureka | \$126 | |
| DISTRICT ATTORNEY | \$210,137.81 | Humboldt | \$136 | |
| CHIEF DEPUTY DISTRICT ATTORNEY | \$192,686.82 | Humboldt | \$125 | |
| DEPUTY DISTRICT ATTORNEY | \$157,038.41 | Humboldt | \$102 | |
| DEPUTY DISTRICT ATTORNEY | \$157,037.45 | Humboldt | \$102 | |
| DEPUTY DISTRICT ATTORNEY | \$140,878.28 | Humboldt | \$91 | |
| DEPUTY DISTRICT ATTORNEY | \$71,407.89 | Humboldt | \$46 | |
| DISTRICT ATTORNEY | \$203,416.10 | Lyon County | \$132 | |
| CHIEF DEPUTY DISTRICT ATTORNEY | \$155,352.01 | Lyon County | \$101 | |
| SR DEPUTY DISTRICT ATTORNEY | \$122,594.13 | Lyon County | \$80 | |
| DEPUTY DISTRICT ATTORNEY | \$114,670.29 | Lyon County | \$74 | |
| DEPUTY DISTRICT ATTORNEY | \$114,630.94 | Lyon | \$74 | |
| DEPUTY DISTRICT ATTORNEY | \$109,898.98 | Lyon | \$71 | |
| DEPUTY DISTRICT ATTORNEY | \$85,134.60 | Lyon | \$55 | |
| SR DEPUTY DISTRICT ATTORNEY | \$84,558.70 | Lyon | \$55 | |
| ELECTED DISTRICT ATTORNEY | \$129,579.97 | Pershing | \$84 | |
| DEPUTY DISTRICT ATTORNEY | \$90,540.48 | Pershing | \$59 | |
| DISTRICT ATTORNEY | \$184,888.21 | Storey | \$120 | |
| COUNTY DISTRICT ATTORNEY | \$139,117.14 | White Pine | \$90 | |
| CHIEF DEPUTY DISTRICT ATTORNEY | \$112,946.70 | White Pine | \$73 | |
| DEPUTY DISTRICT ATTORNEY 1 | \$105,331.60 | White Pine | \$68 | |
| DISTRICT ATTORNEY SPECIAL PROSECUTOR | \$67,377.87 | White Pine | \$44 | |
| CIVIL DEPUTY DISTRICT ATTORNEY | \$51,756.57 | White Pine | \$34 | |
| Source: https://transparentnevada.com/salaries/search/?q=district+attorney&y=2021 | | | | |

Appendix B

Soval Solutions, *Hourly Rate Recommendations for
Contract Attorneys in Rural Nevada* (August 8, 2022)

Soval Solutions, LLC

Hourly Rate Recommendations for Contract Attorneys in Rural Nevada

Prepared for the Nevada
Department of Indigent Defense Services

8 August 2022

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Summary

In rural Nevada counties, conflict and contract attorneys serve the critical role of providing indigent defense services to criminal defendants. If it were not for the presence of these individuals, indigent criminal defendants, in many cases, would not have local access to constitutionally-protected representation in court.

Current conditions in rural Nevada counties are making it less likely that local attorneys will be present to provide indigent defense services. In particular, current hourly contract rates are not always sufficient to cover the costs of providing criminal defense services for current attorneys. Furthermore, the stagnating value of current rates is likely making it less likely that rural Nevada counties will be able to attract the next generation of attorneys willing to live and provide indigent defense services in rural areas of the state.

Nevada last set its hourly contract rate for non-capital cases at \$100/hour and \$125/hour for capital cases in 2003. This represents a nearly 20-year time span in which the costs of living have increased dramatically in Nevada. During this time, the cost of doing business for solo practitioner and small law firms has also increased considerably.

It is recommended that the Nevada Department of Indigent Defense Services (DIDS) mandate a minimum hourly rate of \$163 for non-capital cases and \$204 for capital cases in rural counties in the state. This would represent a 63% increase from current rates for both non-capital and capital cases. This 63% increase is consistent with the increase in the cost of living between 2003 and 2022, as estimated by the Bureau of Labor Statistics Consumer Price Index calculator. Given current contracts in place within Nevada Counties for the provision of indigent defense services, these new rates would increase the costs for indigent defense by \$1,648,914 in FY 2023.

It is recommended that the state also consider setting regular increases, either through board regulations or legislative actions. The federal defender system, and many states, currently use a system where oversight bodies recommend or mandate regular increases in hourly rates for indigent service providers. It is recommended that periodic increases to hourly rates are tied to the cumulative percentage increase for Nevada state classified employees, as described in NRS 223.050.

Results from 2022 Attorney Overhead Survey

In July, 2022, DIDS and Soval Solutions collaborated on the development of a survey to determine approximate overhead costs for contract indigent defense service providers. Attorneys were notified of the survey through various list serves, as well as through the Nevada State Bar Association weekly newsletter. A total of 136 attorneys completed the survey, including 56 who indicated that they currently work as a contracted or appointed criminal indigent defense service provider, or serve as a civil court-appointed attorney. The survey asked respondents to indicate the amount of overhead expenses incurred during a typical year, as well as the categories of overhead expenses that are most common. The survey asked several questions about the type of law firm at which attorneys are employed.

Among the 65 attorneys who serve as contracted or appointed criminal indigent defense service providers, or serve as a civil court-appointed attorneys, the results of the survey showed that 38 attorneys work as solo practitioners. Another 13 work in firms that range from 2-5 attorneys. The majority of attorneys indicated that they are solely responsible for overhead costs. Attorneys were asked to indicate the total amount of overhead costs for their firm/organization. The average overhead cost per attorney was \$86,427. The cost categories that comprise the greatest percentage of overhead costs were: non-attorney compensation, office space, office supplies, and attorney benefits and health care.

To understand how overhead costs might impact the take-home pay of contract attorneys who receive the current \$100/hour rate for their work, we can use data from the attorney overhead survey to develop estimates. Assuming that there are 220 working days in a typical year, and that there are seven working hours in a day, we arrive at a total of 1,540 work hours per year. An attorney who works the full 1,540 hours at an hourly rate of \$100/hour would gross a total of \$154,000 in a typical year. Assuming that an attorney incurs average overhead costs, this would net that an attorney \$67,573 per year.

To further contextualize the situation for contact indigent defense service providers, attorneys had the opportunity to provide open-ended comments about their role as providers. Table 1 below presents relevant comments that were received from attorneys. These comments are presented verbatim, copied directly from the comments provided in the survey.

Table 1. Open-Ended Comments from Nevada Indigent Defense Services Providers

The cost of inflation is unbearable and if hourly rates are not raised, I will no longer be taking appointed work.

I work as a specialty court contracted public defender. The pay is not enough on it's own to dedicate my practice to just the specialty court. If you want an experienced attorney that can dedicate his/her practice to the Indigent then, Depending on case load Location , cost of living and expenses then a minimum of \$150,000.00 per year in Northern Nevada is close. Southern Nevada is closer to \$200,000.

Experts, investigators, mitigation specialists for death penalty work and life sentence cases where the jury sentences, secretarial, paralegal, copy, print, network, computer, smartphone, mitigation travel for death penalty work, death penalty specific CLE?ÇOs, filing fees, malpractice insurance

Training costs for Indigent Defense attorneys. It should be considered to make sure attorneys are current in the practice of indigent defense, especially when discussing indigent defense for the youth in our community.

Our admin staff costs have increased dramatically since the COVID pandemic. Positions that we used to pay in the \$14-\$16 range are now \$18-22 per hour. An admin supervisor position that used to be \$20 per hour is now \$25 per hour. These are substantial increases of not less than 25 percent. The hourly rates in Nevada have been the same for 20 years. During that time, all costs have increased, notably staff pay, rents and malpractice insurance and health insurance (this has gone way up in 20 years). I compared the salaries for DAs and Public Defenders over this same period and they have increased at least 42%. The CJA rates for appointed counsel have gone from \$90 to \$158 over this time period, a 75% increase.

I previously worked in private practice as appointed indigent defense counsel associated overhead costs: 1. office space (they need a safe and confidential place to meet with clients...this will cost at least \$1000 a month) 2. office services-phone, email, fax 3. malpractice insurance 4. mailing costs 5. it's very beneficial to have office staff 6. yearly bar fees 7. legal research such as westlaw lexis/nexis research 8. employment taxes 9. workers comp/premises liability 10. health insurance 11. retirement savings

I simply do not know all of these requested figures as I've only been with the firm for 18 months but only through 1 fiscal year. I do know that as crime rates increase, so do the level of severity of these cases. We are not getting appointed to lower level felonies and gross misdemeanors as much. But, rather, Murders, Attempt murders, sex assault and related sex crimes, drug trafficking and human trafficking. I believe that the base contract should be raised to \$6,000.00/month, and billable cases be allowed at \$150/hour. Moreover, certain category "B" case should be automatically billable cases instead of having to ask for special permission from the OAC, such as attempt murder.

With inflation, costs are rising.

increased rate of statutory compensation beyond \$100 per hour. should be based upon inflation cost of living increase each year.

| |
|---|
| It can be expensive to run all this stuff |
| Does DIDS require paying for case management software when most practitioners already have their own? Transfer that cost to the practitioners and use the money elsewhere |
| The administrative costs associated with inputting all the DIDS information should be noted. Category A and death penalty cases should pay more. It is not ethical to have flat fee contract attorneys expected to do direct appeals. A study needs to be done to determine the percentage of direct appeals that come out of Clark County and Washoe versus rurals. There is a big incentive for attorneys to never inquire to inmates whether they want to appeal a sentence ESPECIALLY FROM GUILTY PLEAS! There are still plenty of grounds to appeal even from a guilty plea, and I don't believe inmates are getting told those options like they should be. |
| I do not even have health insurance because I CANNOT afford it. |
| Often for the indigent defense tracks, the case load is high enough that to handle the volume extra staff is needed OR alternatively, the clients get ignored. I could no longer justify the overhead spent on the amount of work involved and that's why I gave up my track that I had for the past 8 years. |
| Cost of living and inflation. |
| Paying people a livable wage and having an office that my clients can access is not cheap. If I didn't have retained clients to cover a lot of my overhead, I could not take on an indigent contract, which is a passion of mine. |
| The monthly flat rate for attorneys hasn't been risen...ever. Need to look at that. I am in court way more often so some cases should be billable if it's beyond 4 appearances in court. |

Cost of Living Increases in Nevada

Since 2003, economic conditions within Nevada and the U.S. have changed. Recent data from the Bureau of Labor Statistics (BLS) have shown that just in the last year, the Producer Price Index for the provision of goods and services in the U.S. increased 17.9% from June, 2021 to June, 2022.¹ The Consumer Price Index (CPI) rose 9.1 percent during this same time.²

According to the Bureau of Labor Statistics Consumer Price Index calculator³, \$100 in 2003 dollars —the current hourly rate provided to indigent defense services providers in rural Nevada—would equate to about \$163 in June, 2022 dollars. The \$125/hour rate for capital cases would equate to about a \$204/hour rate in June, 2022 dollars. While the CPI index does not serve as a direct measure of “cost-of-living” increase, and therefore should not be the sole factor that determines whether rate increases are needed, the index does have validity as an indicator for public policy decisions.

Perhaps a more concrete measure of cost-of-living increases in Nevada can be obtained through housing prices. According to the 2020 American Community Survey (ACS) 5-year estimates the median home value in Nevada is \$290,200. The table below presents the top 15 states in terms of median home value. As the table shows, Nevada ranks 12th highest among the 50 states and the District of Columbia. It is important to note that the median home value is used here, rather than the mean. While the mean home value may show a much higher number for Nevada (and other states), the mean may be skewed upward by homes that have extremely high values. Therefore, it is common to see the median value used in analyses such as the one in Table 2.

| State | Median Home Value | State | Median Home Value |
|------------------|-------------------|-------------------|-------------------|
| 1) Hawaii | \$636,400 | 9) Maryland | \$325,400 |
| 2) D.C. | \$618,100 | 10) New York | \$325,000 |
| 3) California | \$538,500 | 11) Utah | \$305,400 |
| 4) Massachusetts | \$398,800 | 12) Nevada | \$290,200 |
| 5) Colorado | \$369,900 | 13) Virginia | \$282,800 |
| 6) Washington | \$366,800 | 14) Connecticut | \$279,700 |
| 7) New Jersey | \$343,500 | 15) Rhode Island | \$276,600 |
| 8) Oregon | \$336,700 | 43) Iowa | \$153,900 |

Source: American Community Survey, 2020, Table B25107

To get a sense of the extent to which Nevada homes are priced at very high levels, it is possible to examine the proportion of homes that are priced between \$500,000 and \$1 million. Using this metric, Nevada again ranks high in terms of home valuation in 2020. The table below shows that 11.3% of homes in Nevada were valued between \$500,000 and \$1 million in 2020. This places Nevada 14th out of the 50 states and the District of Columbia. The right-hand column presents the percent of homes that

¹ U.S. Bureau of Labor Statistics. <https://www.bls.gov/opub/ted/2022/producer-prices-for-goods-up-17-9-percent-from-june-2021-to-june-2022.htm>

² U.S. Bureau of Labor Statistics. <https://www.bls.gov/opub/ted/2022/consumer-prices-up-9-1-percent-over-the-year-ended-june-2022-largest-increase-in-40-years.htm>

³ U.S. Bureau of Labor Statistics. https://www.bls.gov/data/inflation_calculator.htm

fell into this valuation category in 2015. The table shows a considerable increase in Nevada since 2015, when only 4.5% of homes were valued in this range. It is notable that Nevada (and other Western states) experienced rapid growth in the percentage of high-value homes, in relation to many of the Eastern states on the list.

| Table 3. Percentage of Homes Valued between \$500,000 and \$1 million, 2015 to 2020 | | |
|--|--|--|
| | % of Homes Valued from \$500k to \$1 million in 2020 | % of Homes Valued from \$500k to \$1 million in 2015 |
| 1) Hawaii | 49.2% | 42.6% |
| 2) District of Columbia | 41.3% | 34.1% |
| 3) California | 37.0% | 26.9% |
| 4) Massachusetts | 27.8% | 18.0% |
| 5) Washington | 24.0% | 12.5% |
| 6) Colorado | 22.8% | 10.5% |
| 7) New York | 22.5% | 18.0% |
| 8) New Jersey | 20.9% | 16.9% |
| 9) Oregon | 18.8% | 8.8% |
| 10) Virginia | 18.0% | 14.1% |
| 11) Maryland | 17.8% | 14.8% |
| 12) Utah | 13.3% | 5.9% |
| 13) Connecticut | 12.1% | 11.8% |
| 14) Nevada | 11.3% | 4.5% |
| 15) Rhode Island | 10.4% | 7.5% |
| Source: American Community Survey, 2020, Table B25075 | | |

Federal Rates for Public Defenders

As noted, Nevada last set hourly rates for indigent service providers at \$100/hour for non-capital cases and \$125/hour for capital cases. At the time of this increase, the \$100/hour rate put Nevada ahead of the federal judiciary in potential rates paid to indigent defense providers. Since 2003, however, Nevada has fallen far behind the federal judiciary in this domain. As Table 4 indicates, the current maximum rate for federal public defenders is \$158/hour. This represents a 76% increase in the maximum hourly rate for public defenders since Nevada’s last rate increase. If the State of Nevada’s hourly rate had kept pace with federal increases, the current hourly rate would be \$176/hour for non-capital cases.

| If services were performed between... | The maximum hourly rate is... |
|---|-------------------------------|
| 01/01/2022 to present | \$158 |
| 01/01/2021 through 12/31/2021 | \$155 |
| 01/01/2020 through 12/31/2020 | \$152 |
| 02/15/2019 through 12/31/2019 | \$148 |
| 03/23/2018 through 02/14/2019 | \$140 |
| 05/05/2017 through 03/22/2018 | \$132 |
| 01/01/2016 through 05/04/2017 | \$129 |
| 01/01/2015 through 12/31/2015 | \$127 |
| 03/01/2014 through 12/31/2014 | \$126 |
| 09/01/2013 through 02/28/2014 | \$110 |
| 01/01/2010 through 08/31/2013 | \$125 |
| 03/11/2009 through 12/31/2009 | \$110 |
| 01/01/2008 through 03/10/2009 | \$100 |
| 05/20/2007 through 12/31/2007 | \$94 |
| 01/01/2006 through 05/19/2007 | \$92 |
| 05/01/2002 through 12/31/2005 | \$90 |
| Source: https://www.uscourts.gov/rules-policies/judiciary-policies/cja-guidelines/chapter-2-ss-230-compensation-and-expenses#a230_16 | |

It is important to note that while the federal judiciary does offer much higher hourly rates to contract public defenders, there are caps on the total sum of dollars that can be billed by attorneys for specific types of cases. It may be worthwhile to review those caps at the website contained in Table 3.

Potential Shortage of Attorneys

In rural Nevada and other rural parts of the U.S., a shortage of attorneys occurring. While the shortage of attorneys in rural areas cannot be attributed to the pay and hourly rates received by indigent defense service providers, it must be recognized that the attorney shortage may be exacerbated by low rates of pay for attorneys working in the public domain. At the end of the day, any attorney shortage hampers the ability of the criminal justice system to carry out its functions. Competitive pay structures for indigent defense service providers (and other attorneys working in the criminal justice system) can help attract new attorneys to rural parts of the state.

To provide initial evidence regarding a potential shortage of attorneys in rural areas of the state, data from the American Bar Association (ABA) and the American Community Survey (ACS) were obtained. Specifically, a recent ABA report provided the number of attorneys per county throughout the U.S. in 2020. The ACS provides 5-year estimates on the total population of each county. Using these data sources, an attorney rate can be computed for each county. As Table 5 indicates that the rate of attorneys in rural areas of the state is much lower than in urban counties. Carson City has 6.26

attorneys per 1,000 residents; Washoe County has 3.56 attorneys per 1,000 residents; and Clark County has 2.73 attorneys per 1,000 residents. Most other rural counties lag far behind in the availability of attorneys for indigent defense, and other, work. Again, more competitive pay structures may entice some newer attorneys to reside and work in rural areas and provide critical public services, including serving as indigent service providers.

| Table 5. Rate of Attorneys in Nevada Counties | | | |
|---|------------------|-------------------|--------------------------------------|
| County | Attorneys | Population | Attorneys per 1,000 Residents |
| Carson City | 346 | 55,244 | 6.26 |
| Churchill | 27 | 24,606 | 1.10 |
| Clark | 6,084 | 2,228,866 | 2.73 |
| Douglas | 101 | 48,486 | 2.08 |
| Elko | 92 | 52,537 | 1.75 |
| Esmeralda | 1 | 1,030 | 0.97 |
| Eureka | 2 | 1,839 | 1.09 |
| Humboldt | 23 | 16,834 | 1.37 |
| Lander | 4 | 5,565 | 0.72 |
| Lincoln | 6 | 5,177 | 1.16 |
| Lyon | 32 | 55,667 | 0.57 |
| Mineral | 3 | 4,487 | 0.67 |
| Nye | 31 | 45,514 | 0.68 |
| Pershing | 8 | 6,591 | 1.21 |
| Storey | 4 | 4,086 | 0.98 |
| Washoe | 1,654 | 464,182 | 3.56 |
| White Pine | 17 | 9,570 | 1.78 |
| Sources: American Bar Association, Profile of the Legal Profession, 2020; U.S. Census Bureau, American Community Survey | | | |

Appendix C

Soval Solutions, *Recommendations for Senior Policy Positions* (August 30, 2022)

Soval Solutions, LLC

Recommendations for Senior Policy Counsel Positions

Prepared for the Nevada
Department of Indigent Defense Services

30 August 2022

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Summary

Soval solutions has been working closely with the Nevada Department of Indigent Defense Services (DIDS) for over a year to determine the optimal methods for conducting oversight within those counties that are affected by the settlement consent judgment in *Davis v. Nevada*. Initially, in 2021, Soval Solutions and DIDS conceptualized a system whereby DIDS personnel would seek to collect self-reported data from attorneys, judges, and other actors within the judicial branch that are involved in providing indigent defense services. The approach would have provided basic information about the delivery of justice for indigent criminal defendants, as well as other individuals who rely upon court-appointed attorneys, in those rural counties.

As time has passed and the full scope of oversight tasks has come into view, two things have become clear. First, the initial conceptualizations of DIDS oversight functions were much too narrow. Second, DIDS cannot effectively carry out its oversight responsibilities with current staffing levels in place. What is needed, specifically, are two Senior Policy Counsel positions and a reclassified Program Officer II position that will allow DIDS to carry out its required oversight functions pursuant to NRS 7.115-7.145, NRS 171.188.

The Senior Policy Counsel positions will have several responsibilities that will enhance the ability of DIDS to effectively monitor the administration of indigent defense service in rural Nevada counties. The positions will have the following responsibilities:

- Provide in-depth policy analysis by observing court procedures, reviewing client feedback, etc.
- Make determinations as to whether the county is in compliance with regulations.
- Perform both in-depth policy analysis and “quick response” research on a broad variety of subjects.
- Prepare in-depth research papers, reports, policy publications, and recommendations to leadership.
- Conduct statistical analyses.
- Compile other written products and research memoranda as required.

The positions will require an estimated 40% of travel to rural counties in Nevada. This travel is necessary for the Policy Counsels to actively observe court procedures, review client feedback, and other related tasks at the local level. Remaining time will be spent reporting back to the DIDS Deputy Director regarding counties compliance with existing regulations.

This model has been used in other jurisdictions with remote areas that are required to adhere to specific standards in the delivery of indigent defense services. The State of Texas, in particular, has a robust system of oversight delivered through the Texas Indigent Defense Commission (TIDC). The TIDC employs 15 policy and fiscal analysts to examine: access to counsel, quality of counsel, and engage in data collection and reporting. This work is in response to requirements put forth by the Texas Task Force on Indigent Defense, created over 20 years ago. In short, the TIDC carry out many of the same functions as would a Senior Policy Counsel under the current proposal. The creation of the proposed positions would, therefore, not only enhance the ability of DIDS to carry out its responsibilities within Nevada, but it would also bring Nevada closer to providing the same oversight of indigent defense service providers that is being provided in peer states.

Appendix D

Oversight Report: 48-Hour Hearings (Amended)



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

896 W. Nye, Suite 202 | Carson City, NV 89703
(775) 687-8490 | www.dids.nv.gov

OVERSIGHT REPORT

**** AMENDED ****

Status of 48-hour hearings in rural Nevada counties

March 09, 2023

I reached out to the public defenders in the rural counties to get a status check on 48-hour hearings. Based upon their feedback, it appears that these hearings are happening in all 15 rural counties, including weekends and holidays.

In two counties, Elko and Churchill, the attorneys are paid extra for weekend or holiday work. In all other counties, it is considered part of their contract or salary. In Douglas, Eureka, and Mineral counties, the attorneys expressed interest in having the NSPD cover these hearings, if possible, although they were presenting handling the additional caseload. Finally, it appears that the judges in rural counties are being flexible in allowing virtual hearings whenever possible for weekends and holidays. Here is a breakdown of each county's responses.

This report is supplemented regarding answers to the additional questions from the Monitor regarding virtual hearings and whether there were adequate accommodations for private conversations with defendants (virtually or in person). If there is no highlighted section under the county, no new information was provided.

Carson City:

- The NSPD handles all 48-hour hearings

Churchill:

- The Churchill County PD handles all 48-hr hearings during the week.
- For weekends and holidays, the PD and the Alternate PD trade off.
- They are a combination of virtual and in-person, depending on court schedules
- Weekend hearings are typically virtual
- The attorneys are paid extra for the weekend work.
- They do not wish for the NSPD to assist in covering the hearings
- Regarding 48-hr hearings, for in-person arraignments, they have attorney rooms for communication (whether that is at the courthouse or at the detention center). For Zoom hearings, the attys can request a breakout room.

Douglas:

- The 5 contract public defenders rotate covering 48-hr hearings Wed-Sat
- Hearings are held on both Saturday and Sunday
- Hearings are in person on Saturday and virtual on Sunday
- They are not paid extra for the weekend work
- Assistance from the NSPD would be welcome
- The attorneys meet with the client in person in the jail. The hearings themselves are by Zoom from the jail to both justice courts.

Elko:

- The attorneys in the Elko PD rotate the hearings on a weekly basis.
- Weekend hearings held only on Saturdays
- Attorneys are paid additional wages when working on weekends or holidays, pursuant to a collective bargaining agreement
- They do not wish to have the NSPD cover these hearings

The hearings are virtual in that the Judge and the Prosecutor appear by video remotely. The Elko County Public Defender has a standing policy that the defense attorney representing its office must physically be down at the jail courtroom. They go off audio with the court and prosecutor if they need to talk with the defendant. Even if the judge and prosecutor were there, there is a side room they could use.

Esmeralda:

- It is our understanding that due to the very low volume of cases in Esmeralda, there are very few hearings, especially on weekends
- They are held virtually
- The contract PD covers them
- No response as to whether the NSPD's coverage would be welcome

Eureka:

- 48-hr hearings are all covered by the contract PD
- If necessary (rarely) these hearings are held at 4pm on Saturdays
- The contract PD would welcome the NSPD's assistance
- From the contract PD, regarding virtual hearings or private conversations: "My client might be in Ely where I don't have enough time to make an appointment to meet with them or Battle Mountain, 200 miles away. I try to contact them by phone prior to the hearing. If I am not able to speak by phone the Judge will put us in a private room to speak."

Humboldt:

- The Alternate PD covers all 48-hr hearings
- Weekend hearings are conducted most Sundays at 10am
- The attorney may appear in-person or virtually
- The APD received no extra compensation for these hearings
- If necessary, the Humboldt PD will cover the hearings for the APD
- Updated info from the APD: "I attend these hearings at the spur of the moment based on the probable cause affidavit, NPR risk factors assessment and *Valdez-Jeminez* case law. Sometimes I don't get these documents until 20 minutes before the hearing. I never talk to the clients ahead of time due to time constraints."

Lander:

- The Lander County PD covers all 48-hr hearings
- Hearings are held Sundays, Mondays, Wednesdays, and Fridays
- They are generally held by phone, sometimes in person if the attorney is in court already
- The PD is not compensated extra for the hearings
- There is not an interest in the NSPD covering the hearings
- Updated info from the Lander County contract PD: "No, there is really no way to conduct a confidential conversation. While I have a dedicated phone line with the jail, an inmate wouldn't know to contact me until he/she is in court and the judge invites me to advocate for them. And, with Sunday hearings, that phone line is useless because neither me nor my staff are physically present in the office to answer calls over the weekend."

Lincoln:

- The contract PD covers all hearings unless he is out of town, in which case he will arrange for the contract conflict counsel to cover them
- All hearings are virtual
- Weekend hearings are held on Sunday afternoons
- The attorney is not compensated extra for the work
- There is not an interest in the NSPD covering the hearings
- Regarding 48-hr hearings, if the hearing is virtual, they will put the atty and the defendant in a breakout room so they can discuss any matters.
- If the hearing is done in-person, everyone will clear the courtroom so the atty can discuss any matters with the defendant.

Lyon: (updated)

- The six attorneys are splitting zoom hearings. Bail is 7 days a week. They are virtual unless an attorney is already in district court or in walker river.
- They do have a breakout room to speak with their clients, and the deputies are pretty accommodating to let them step out to speak privately if needed.
- When the contract public defender re-negotiated the contract last year they took into account bail as a point for negotiations.
- Bail has become a pretty good first point of contact between the attys and their clients, and is pretty advantageous in a number of ways, so they don't really have an issue with it being on their workload.

Mineral:

- The contract public defender covers all 48-hr hearings
- Weekend hearings are held on Saturday mornings
- The hearings are virtual
- No additional compensation is provided
- The contract PD is not opposed to the NSPD assisting with these hearings

Nye:

- The 5 contract public defenders in Pahrump rotate covering these hearings weekly
- The hearings are in-person during the week, virtual on Saturdays
- The contract PD in Tonopah covers all hearings there. They are virtual
- No additional compensation is paid for the hearings
- Regarding 48-hr hearings, private meeting rooms and virtual break-out rooms are available as needed.

Pershing:

- No response to our current inquiry, although the Department is otherwise informed that the county PD is covering all hearings

Storey:

- Covered by the NSPD

White Pine:

- Hearings are held every day, including Saturdays, Sundays, and holidays
- The 3 contract PDs rotate the coverage of these hearings on a weekly basis
- They appear virtually and in person, depending on the circumstances
- No additional compensation is provided
- Beginning in July, the NSPD will be providing all primary PD services in White Pine
- The 48-hr hearings are both in-person and by zoom, depending on the defendant and the status. They give the attorneys a breakout room to speak to the defendants privately before the attorneys argue bail hearings.

As always, please let us know if you have any questions.

/s/ Thomas Qualls

Appendix E

Oversight Report: Nye County



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

ONSITE VISIT REPORT

Nye County (Pahrump)

Visit dates: April 17-18, 2023

I. Brief Narrative.

DIDS Deputy Director Thomas Qualls traveled to Pahrump, Nevada for an oversight visit, and to meet with contract attorneys Nathan Gent, Jherna Shahani, Alexis Duecker and her associate Karl Shelton, Andrew Coates, and Kelley Blatnik, as well as Assistant County Manager Lorina Dellinger, and Justices of the Peace Kirk Vitto and Michelle Fiore.

I first met with **Assistant County Manager Lorina Dellinger** on Monday, April 17, 2023. We discussed Nye's challenges regarding stability and consistency in the county's public defender system. Dellinger has been extremely proactive and responsive in her approach to the indigent defense plan. She has been instrumental in getting a \$25k increase in pay for the contracts and for adding a sixth contract last quarter.

The challenges in Nye County include regular turnover in the public defender contracts, sometimes with contractors leaving before their contract term has expired. This creates instabilities in the system, including harming defendants with delays in due process. It puts strain on Dellinger and other county officials, causes the expenditure of additional resources in repeated recruitment, interviewing, and installing new contractors. It requires additional work from the Department, as we have to reallocate cases in the interim, from the contractor(s) who left their positions to other available attorneys. This can result in additional expenditures for the county in paying individual appointed conflict attorneys an hourly rate to take up the slack until the open contract can be filled. And, finally, it causes chaos in the courts' schedules.

Another consistent challenge in Nye County is the large caseload each contracted public defender must carry. Between LegalServer reporting, personal reports from the contract attorneys, and information received from justice court, with the exception of the newest contract attorney, we estimate that contract counsel are carrying at least 350 active felony and misdemeanor cases, and up to 425 active and inactive (or *status check*) cases. This caseload includes approximately 10 category A felonies at a time each (complex murder and sex assault cases). This is an unsustainable caseload by any standard. Between the high caseload and the relatively low contract price (\$175k a year), it has been challenging

for Nye County to attract and keep contract public defenders. The addition of another practitioner will hopefully help alleviate some of the burden, but it is likely more efforts are needed.

To put the contract price matter in context, Carson City has 3 (second tier) conflict contract public defenders with dramatically lower caseloads, who are only reporting 10 hours a week at most in LegalServer. These contracts are also paid at the rate of \$175k a year. Another comparative example is Douglas County, which, similar to Nye, has 5 (first tier) contract public defenders with significantly smaller caseloads. The Douglas PD contracts are paid at \$265k a year each.

Dellinger and I continued our ongoing discussion of these matters. Additionally, we discussed the possibility / probability of a county public defenders office. (The Department believes this could provide more stability and consistency, offer a training ground for newer attorneys, and allow for attorneys to take time off for vacations or illness, among other benefits.) The two biggest hurdles to building such an office are: (1) the cost; and (2) the lack of available office space. The issue of cost can be alleviated by the state's reimbursement mandate regarding any expenses over the county's maximum contribution cap. But the County is still reluctant to extend itself that far, on the off chance that the state does not come through with the reimbursement. Since my meeting with Dellinger, the Department's budget closed, and the Legislature approved putting \$3.5 million a year into the Department's budget for reimbursements. This should help alleviate any concerns that the monies will not be reimbursed. Finding the space for an office remains a hurdle. It could be, as I concluded with Dellinger, that a county office needs to be built into something like a five-year plan.

Ms. Dellinger and I also discussed the difficulties in getting contract counsel to perform the mandatory reporting in Nye County (an ongoing conundrum, as high caseloads make it difficult for the attorneys to do this reporting), and the possibility of a county Appointed Counsel Administrator to manage rotation of contract counsel and selection of appointed counsel, as well as approval of billing and requests for experts/investigators. Additionally, an appointed counsel administrator could enter all cases into LegalServer. The county was planning on having an existing county employee do the LegalServer entries, in the interim, but then that person went on maternity leave.

Beyond these issues, of immediate concern in Nye County, and one of the primary reasons for the oversight visit, is the matter of needing to create equity between the contracts that pre-existed last quarter, and the new contract. The new contract holder (Kelley Blatnik) started with zero cases and we have been trying to figure out an equitable way for the other contract holders to transfer a certain number and type of cases to the new contract holder, to even out the caseloads as best we can. (In the interim, we have been doubling up on Blatnik's appointments in the rotation process.) This is a situation which has caused a little tension between contractors, because they are all being paid the same, but one of them currently has a third or less of the caseload. The original proposal from Nye County was for each of the existing contractors to transfer 75 cases to Blatnik immediately. This seemed inappropriate to the Department, as it would result in 300 cases being transferred

to Blatnik all at once, and there were no parameters as to how many of what level cases could be transferred. Still, it has become apparent that simply assigning Blatnik more cases in rotation is not going to solve the matter quickly enough.

On Monday, April 17, 2023, I also met with Nye County Contract Public Defenders **Nathan Gent, Jherna Shahani, Karl Shelton** (assoc. of Alexis Duecker), **Andrew Coates, and Kelley Blatnik**. We discussed a number of issues, and I sought input from them on various ideas to stabilize Nye County and make their jobs more manageable. We discussed the possibility of the implementation of a Nye County Appointed Counsel Administrator, a Nye County Public Defender's Office, additional money for the contracts, and the current need to transfer cases to Blatnik.

The current contractors were not necessarily in favor of a county public defenders office, in part due to the county's *no work from home* policy. They do like the idea of having other attorneys to cover their caseloads if they get sick and having staff to help them comply with LegalServer reporting.

In response to a request from Ms. Shahani, we also discussed that the state is in the process of implementing statewide electronic filing, which should improve the attorneys' ability to manage their cases and to file pleadings remotely. An added benefit of the statewide efile system will hopefully be that the system, *eflex*, will be able to automatically enter new cases into LegalServer when they are created, over a digital API bridge. We will be doing a test run of this sometime this summer. It is unclear, however, when the system will be available in Nye County. Hopefully within a year.

We discussed issues with them being able to conflict off cases. This has been a moving target. Originally, the process allowed the contractors to simply contact our office within a reasonable amount of time after they were appointed in justice court if they discovered a conflict. If the matter was in district court, they needed to move to withdraw and get a court order. Recently, however, sometimes the attorneys are conflicting off cases in justice court after they had them for months (reportedly, sometimes they do not get discovery for months, and would have no way to know some of the conflicts until that time). I told them I would discuss the matter with the justice court judges and with our office and then clarify the policy. I also advised that if they had any particular issue trying to get off a case, they could contact me and I would help to resolve it.

The attorneys also expressed concerns that, while there were attorney rooms in the Pahrump Jail, they believed they were not private / confidential. They stated that the jail staff had the ability to record conversations in the attorney rooms as well as the cells. There were several anecdotes regarding discussing matters with clients in their designated meeting rooms, and the state acting on that information immediately.

They also complained about the jail's technology for virtual meetings. Apparently, there is no ability to share a screen with a defendant, in order to go over discovery. Additionally, there are concerns about whether those conversations online are private.

The attorneys are also facing challenges regarding private meeting spaces in the courthouse. In the two rooms in justice court they used to use for client meetings, a wall has been removed, and so it is one big room, ostensibly for jurors, and law enforcement are often in those rooms during court times.

The attorneys would like there to be a room in the courthouse designated for public defenders. They want to be able to meet with clients there, go over documents, have them sign documents, and for there to be a printer, computer connections, and even a refrigerator / food and water station for days when they are at the courthouse all day long.

We discussed other matters including the matter of transfer of cases, fair amounts of cases, distribution of case types, and a timeframe for the same. Upon return to the office, and in multiple conversations with Director Ryba, we settled on a policy in which, contract attorneys Coates, Shahani, Gent, and Team Sofos (Duecker and Shelton) may each transfer 40 cases to Blatnik over the next 4 weeks (120 cases total), under these conditions:

- Each contract attorney may transfer 10 justice court cases a week for the next 4 weeks. (On the Monday of each week, starting April 25, 2023.)
- The cases must include a fair distribution of types of cases that looks something like: 5 regular misdo cases; 3 Misdo DV / DUI cases; and 2 gross/felony cases. (No high B/A cases at this time, as we show Blatnik having 8 of that category, which is approximately the same number we show for everyone.)
- With each week's transfer, the attys will be responsible for: (1) filing the substitution in the proper court; and (2) making sure the case and charges are in LegalServer, along with the next court date.

While this distribution will not immediately bring Blatnik's caseload even with the others, it allows for a more manageable transfer. Also, the Department will continue to assign more cases in the normal rotation to Blatnik than the other attorneys. (The Department believes this is a fair resolution as it is sure to not fully satisfy any participants.)

I also followed up on the need for a public defender space with **Ms. Dellinger**, who said it is in her master facilities plan, but that she is looking for a more short-term solution.

On Tuesday, April 18, I met again with **Nathan Gent**. We met in what used to be the two attorney meeting rooms, that have now been converted to one room, potentially for jurors. We went over some of the same issues again. And Gent reported that his wife, who is his assistant, went over his caseload the night before. Her count of the number of open cases was approximately 425 (LegalServer shows over 500 cases, which indicates a number of those still need to be closed in the system). Gent clarified that there could be as many as 75 of those cases that were clients for whom he regularly appears for status hearings. He stated that to the best of his information and belief, his numbers would be consistent for all existing contract holders except for Blatnik, making adjustments for the fact that some

resolve cases quicker than others. But the same numbers of cases are handled by all contract attorneys.

Also on Tuesday, April 18, 2023 I met with **Justices of the Peace Kirk Vitto and Michelle Fiore**.

We discussed the overall system, how the public defenders were doing, any issues they see with the process, and some of the attorneys' concerns, as well as transfer of cases. The judges expressed satisfaction with the performance of the public defenders and with their zealous representation.

We discussed the matter of the justices' practice of assigning matters from the bench where an attorney has other cases with the same defendant. I clarified what the statutes required, as far as our office being in charge of selection of counsel. And I clarified the circumstances in which we approve of grouping defendants with existing cases with the same attorneys, in the interest of efficiency and vertical representation. We requested that only defendants with existing cases be assigned to existing attorneys, and where an attorney previously represented the defendant, but does not presently, those cases be allowed to be assigned in the normal rotation.

I discussed the need for a space in the courthouse dedicated to public defenders. Both judges were fully on board and supportive of this. In fact, at the end of the meeting, the three of us walked around the courthouse and looked at potential spaces, including the Election Room. The Election Room is apparently to be used for an expansion of the clerk's office, however. The judges acknowledged the importance of the dedicated space and said they would continue to pursue this matter.

Finally, on Tuesday, April 18, 2023, I met with contract defender **Alexis Duecker** and her associate, **Karl Shelton**, in Las Vegas, Nevada. Primarily, this meeting was to cover the same matters with Ms. Duecker as I did with the other contract attorneys the day before. Duecker affirmed what the other attorneys had represented, added the concerns about the virtual meetings with clients, and expressed a concern to have the same access to the court's case management system as the prosecutors while in court.

II. Next Steps.

1. Monitor the transfer of cases to Blatnik over the next 4 weeks.
2. Follow up on the creation of a public defender space in the courthouse.
3. Follow up on confidential communications in the jail / on virtual meetings.
4. Follow up PD access to the court's case management system.