

12th 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 22, 2024, to May 17, 2024. The Monitor notes developments since the last report of February 23, 2024, summarizes accomplishments, and discusses ongoing compliance concerns.

Achievements

The Department continues to take significant steps toward compliance with the Judgment in terms of implementing workload standards, improving county plans for the provision of indigent defense, setting practice standards, providing training, engaging in oversight, and collecting and reporting data. In the past quarter, compliance-related achievements include the following:

- **Implementation of the oversight plan**

With funds secured pursuant to AB 518 (7) (2023),¹ the Department contracted three experienced attorneys to provide oversight in the rural counties. The Department’s new oversight staff have visited all the *Davis* counties in the past quarter.²

- **Implementation of the workload study**

The Department worked with the counties to develop indigent defense plans that comply with the workload standards, identifying the number of attorneys, investigators, and support staff needed for each county and methods of addressing shortages.³

- **Social work services**

The Department secured funding through the Nevada Public Health Foundation for social workers to assist public defense providers in Douglas, Eureka, Lincoln and White Pine County. Budgeted at \$32,996, the social workers will be used to identify the clients’ substance abuse and mental health issues and locate appropriate services.

- **Training opportunities**

The Department took steps toward a “systematic and comprehensive training program.”⁴ It selected and funded five (5) rural attorneys to attend the week-long Mountain West Trial College in Salt Lake City, a program modeled after the National Criminal Defense College. In addition, the Department is funding seven (7) attorneys to attend the National Association of Criminal Defense Lawyers (NACDL) Forensic Science & the Law training; one (1) attorney to attend the

¹ AB 518 (7) (2023) appropriated \$6,306,880 in FY 2023-2024 from the State General Fund to the Interim Finance Committee and \$6,613,033 in FY 2024-2025 to be allocated to the Department to fund (a) reimbursement to the counties, taking into account the “costs of compliance with workload standards; (b) the “costs of the Department related to compliance with [the *Davis* Judgment];” (c) the costs of the State Public Defender in contracting for complex litigation; and (d) the “costs for training and pay parity for attorneys who provide indigent defense services.”

² Discussed *infra* at Section II.A. The Quarterly Oversight Report is attached to this Report as Appendix A.

³ Discussed *infra* at Section II.C.

⁴ Judgment, 16.

Nevada State Bar’s training on Advanced Legal Writing; and offered four (4) public defender office leaders to attend the State Bar Conference.

- **Building a pipeline to rural indigent defense**

The Department applied for and received state funds to implement a comprehensive recruitment program for law students to become rural public defenders. The Law Student Supervision Operation (LASSO) provides stipends for first- and second-year law students to work with rural public defenders over the summer or during the semester, and larger stipends for law school graduates who commit to working in rural indigent defense.⁵

- **Third quarter workload report**

The Department collected and analyzed attorney workload reporting for January 1 through March 31, 2024. The report demonstrates improved workload reporting, possibly due to the incentive provided by free Westlaw access, funded through AB 518(7).⁶

Areas of Concern

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

- **Understaffed Nevada State Public Defender**

The Nevada State Public Defender (NSPD) now provides first-tier public defense in White Pine County and appellate and death penalty defense in several *Davis* counties. More counties are considering transferring parole, appellate, and death penalty litigation to the NSPD. Yet, the state has been unable to fully staff this agency, especially—but not solely—in the White Pine County office.

The Department’s attempts to fund recruitment and retention strategies for the NSPD have been denied or postponed.⁷ Either the state must have a functional NSPD, adequately staffed to provide effective assistance of counsel in the rural counties that elect to use its services, or the state must limit the counties’ ability to opt-in to the NSPD and find a different way to ensure that each county has sufficient, competent counsel.

- **High turnover and insufficient number of local attorneys in White Pine County**

As of October 1, 2023, White Pine County elected to have the NSPD provide first tier representation and did not renew the contracts of the private attorneys then holding contracts for full-time indigent defense. The heavy caseloads of the contract attorneys transferred to an NSPD system unequipped to manage the workload. Since that time, the NSPD has had two changes in leadership at the state level, and three changes in the position of chief deputy attorney for White Pine County. Of great concern is the impact on clients caused by the multiple changes of counsel,

⁵ A description of the LASSO program is attached to this Report as Appendix B.

⁶ The Department’s quarterly workload reports are available on the Department’s website at https://dids.nv.gov/Annual_Report/home/.

⁷ Discussed *infra* at pp. 6-9.

the unfamiliarity of the current attorneys with White Pine County, and the lack of public defense leadership experience of the current deputy chief defender in the county.⁸

- **Uncertainty regarding FY 2025 funding for compliance with the Judgment**

Over the past quarter, the Department’s requests for AB 518 (7) funds to comply with the Judgment have not been scheduled for hearing before the Interim Finance Committee (IFC). Because funding in many areas only extends through the FY 2024 fiscal year, it is critical that the Department have the opportunity to present to the IFC the work programs requesting funding earmarked for *Davis* compliance activities.⁹

- **Standards for remote appearance of incarcerated defendants**

In some counties, incarcerated defendants appear remotely for otherwise in-person hearings at which substantial rights are determined, such as guilty plea colloquies and sentencing.¹⁰ The Department’s oversight staff should document the frequency and variation in this practice, and the Department should set standards for determining which hearings require the defendant to appear in-person and how confidential attorney-client communication can be facilitated when defense counsel is in the courtroom and the defendant appears remotely.

Summary of Recommendations

- The Monitor anticipates that the IFC funding for oversight, training, and other compliance activities will continue for FY 2025. If this process proves too cumbersome, the state may wish to consider including the funding currently earmarked in AB 518 (7) in the Department’s next biennium budget.
- The state should either build up the NSPD through incentivized recruitment and retention efforts or change the statutory scheme that allows counties to opt into the NSPD for all or part of their indigent defense cases, perhaps conditioning the “opt-in” provision on adequate NSPD resources.
- The Department should continue to reduce attorney workload within the limits set by the new workload standards by assisting with recruitment, and hiring social workers and mitigation specialists who could be deployed statewide to assist attorneys in the *Davis* counties.
- The Department should continue its efforts to account for municipal court caseloads in its total workload numbers for counties with municipal courts.

⁸ *Id.*; *infra* at Section II.A.

⁹ Discussed *infra* at pp. 5-6.

¹⁰ See discussion of White Pine County, *infra* at Section II.A.

- The state should consider additional funds for a conference for the newly recruited public defenders, whether hired or contracted, to comply with the workload standards.

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. Owing to the concerns raised by the understaffed NSPD and the difficulty the Department faces in securing AB 518 funds, the first section of this Report will address these issues.

Difficulty Accessing Earmarked AB 518 (7) Funds

As discussed in the Monitor’s Eleventh Report, AB 518 (7) (2023) appropriates \$6,306,880 in FY 2023-2024 and \$6,613,033 in FY 2024-2025 from the State General Fund to the Interim Finance Committee (IFC) to be allocated to the Department to fund:

- (a) reimbursement to the counties, taking into account the “costs of compliance with workload standards;
- (b) the “costs of the Department related to compliance with [the *Davis* Judgment];”
- (c) the costs of the State Public Defender in contracting for complex litigation; and
- (d) the “costs for training and pay parity for attorneys who provide indigent defense services.”

Prior to the past quarter, the Department’s requests for AB 518 (7) funds for FY2024 training opportunities, oversight, recruitment, data collection, and incentives had been largely successful. In the past quarter, however, the Department’s requests have not been scheduled for a hearing before the IFC.

In February of this year, the Department submitted a work program (C67456) for \$1,526,433, which included \$1,043,135 for the ongoing contracts with three oversight attorneys, \$400,544 for training; \$13,000 for attorney recruitment, and \$69,754 for data collection and reporting requirements.¹¹ This funding request has not been put on the calendar for the IFC to consider. As a result, the Department cannot determine whether it will have funds for the contracts with the oversight attorneys, training, recruitment, and data collection incentives for FY2025, which begins on July 1, 2024.

¹¹ The Department’s February 25, 2024, Memorandum in support of work program C67456 is attached to this Report as Appendix C. The full work program packet is available through the Department or the Monitor.

Nevada State Public Defender: Insufficiently Staffed

The shortage of attorneys in the office of the Nevada State Public Defender (NSPD) presents serious compliance issues for the state. Its main office in Carson City is currently staffed by the chief public defender, Patricia Caffereta, and the appellate chief, Jim Hoffman, as well as one investigator and an office manager.

White Pine County elected to have the NSPD serve as the county's public defender as of October 1, 2023. As discussed in the Monitor's Eleventh Report, efforts to staff the White Pine County public defender's office have proved very difficult. Initially, the position postings received no applications. The former chief public defender, Chris Arabia, agreed to head the White Pine Office in Ely, pending the hiring of a deputy chief. Two successive attorneys were hired for the deputy public defender position in Ely, but resigned or were terminated. With the inability to recruit and retain attorneys, the NSPD withdrew from cases already set for trial.

On March 26, 2024, Patricia Caffereta became the new head of the NSPD. An experienced state public defender and former deputy chief, Caffereta continued the efforts to hire attorneys, especially for the Ely office in White Pine. The NSPD and Department eventually hired Derrick Penney as the deputy chief. He is based in Las Vegas and commutes to Ely. A second attorney, Nicholas Pitaro, was hired, as well as a legal secretary who is based in Ely. Given the travel time of the chief deputy, at least one additional attorney is needed to comply with workload standards.

The NSPD attempted to manage its outsized caseload in White Pine County by withdrawing from some cases in the District Court, and by requesting that public defense in Ely Municipal Court be handled by Jane Eberhardy, former contract counsel and current conflict counsel. Withdrawing from cases in which one cannot provide effective assistance of counsel due to workload is the correct course of action to ensure the Sixth Amendment right to counsel in every case. The requests, however, were not granted. Thus, the NSPD remains the lead public defense counsel for all cases in the Ely Municipal Court as well as in the Justice and District courts, barring conflicts.

Both Caffereta, and the NSPD's chief appellate defender, Jim Hoffman, have been traveling to Ely to provide first-line representation due to the shortage of attorneys in the Ely office. This is unsustainable given their leadership positions and the fact that the Carson City office is responsible for appeals, complex litigation, and parole revocation proceedings for an increasing number of rural counties. Four (4) *Davis* counties have opted to have the NSPD handle appellate representation—Esmeralda, Lander, Lincoln, and White Pine counties. Three (3) *Davis* counties—Churchill, Lander, and White Pine—have opted to have the NSPD handle death penalty cases, for which the NPSD is contracting with private attorneys. Five (5) *Davis* counties—Churchill, Esmeralda, Lincoln, Lyon and White Pine—have opted to transfer parole and pardons cases to the NSPD. And Douglas County is considering transferring some case types to the NSPD as well.

The Monitor visited White Pine County on May 13, 2024, and while a day observing court and talking to stakeholders in no way constitutes an adequate sample from which to draw firm conclusions, a few indicators of the upheaval in representation were apparent. The Justice of the Peace complained that no NSPD attorney appeared to represent defendants for their 48-hour

hearings on May 12, 2024, even though the hearings occur remotely, and counsel has the opportunity to meet with the client over Zoom and appear at the hearing via Zoom as well.

Additionally, the deputy chief did not have complete information on clients appearing for sentencing in some cases. This is perhaps a function of caseloads or case file management issues related to the transfer of cases from private counsel to the original NSPD deputy chief to the current NSPD attorneys. In one case, no file could be found. In another case, the pre-sentencing report indicated substance abuse problems that qualified the defendant for diversion to drug treatment, but no notice of intent for diversion had been filed. In another case, the defendant—incarcerated in the jail next door—objected on Zoom to the disposition agreed upon by defense counsel and the prosecution. The deputy chief had just returned from a five-day trial college training in Salt Lake City, and so may have been less prepared for the day’s cases than usual. The NSPD White Pine County office has a relatively new administrative assistant, and perhaps case management will improve as well. But it is also possible that attorneys traveling from Las Vegas to Ely for court will find the working arrangements unsustainable, resulting in more disruptions in representation.

The concerns about the understaffed NSPD were raised before and during the 2023 legislative session, but salaries were not significantly increased nor were any additional incentives built into the NSPD budget.

Efforts to fund recruitment and retention of NSPD Attorneys

The Department has made numerous attempts to secure funds to improve the NSPD so that it can fulfill the obligations of the *Davis* Judgment. While the NSPD employee salaries are set by the legislature, the Department has attempted to secure funds for recruitment incentives, such as providing reimbursement for travel, a satellite office in Las Vegas, salary stipends, and other means of increasing pay parity. The Department’s proposals have been removed from the Interim Finance Committee (IFC) agenda or simply never forwarded for IFC consideration.

As reported in the Monitor’s Eleventh Report, on December 19, 2023, the Department submitted an amended memorandum to the Budget Office, requesting an allocation of \$130,066 from AB 518 (7) (2023) to provide NSPD attorneys with a stipend that would make their total compensation comparable to the compensation offered by the larger county offices of the public defender.¹² The Department also requested a travel reimbursement for NSPD attorneys who provide representation in White Pine and other rural counties. A travel stipend of \$7,068 was secured, but the Department’s request for a stipend to increase total compensation was not heard by the Interim Finance Committee on the scheduled date of February 8, 2024. As a result, the Department was hamstrung in its attempts to breathe life into the NSPD through incentives and work arrangements that accommodate Las Vegas based attorneys who would be willing to travel to White Pine and other rural counties so long as they can maintain home offices in Las Vegas.

Work Program C67437

On February 20, 2024, the Department requested in the amount of \$139,546, for the NSPD, which lost revenue from Carson City and Storey counties when both jurisdictions transferred

¹² The Department’s amended memorandum to the Budget Office is attached to this Report as Appendix D.

responsibility for indigent defense services to the Carson City Public Defender, effective July 1, 2023.¹³ The NSPD has experienced retirements, resignations, and difficulty hiring during the pandemic, and lost attorneys to the newly formed Carson City Office. Recouped revenue could be used to incentivize hiring for the *Davis* counties. The Department was told, however, that there was insufficient ARPA funding for this request.

Work Program C67438

The Department submitted a work program requesting \$111,570 for (1) additional NSPD attorneys or attorney hours to cover appeals and parole violation cases transferred to the NSPD and for representation in White Pine County, (2) a recruitment campaign, and (3) a satellite office for the NSPD in Las Vegas and additional travel funds.¹⁴ The total amount requested was \$111,570. The Executive Branch Budget Office did not move the work program forward to the IFC.

On April 9, 2024, the Department learned that the Governor’s Office approved weekly reimbursements for travel to White Pine County without providing a mechanism to access the AB 518 funds for this purpose. Second, the Department was instructed to request funding for recruitment through the Division of Human Resource Management (DHRM), which manages an “All-Star Recruitment campaign.” Between April 10 and May 1, 2024, both the Department and the NSPD contacted DHRM to request funds for a recruitment initiative. DHRM responded by stating that the funding for recruitment was already dedicated to other initiatives. The Department shared their concern over salary disparity as a hurdle to NSPD recruitment but has received no response.¹⁵

Work Program C68379

On May 3, 2024, the Department submitted another work program on May 6, 2024, requesting a “revenue swap” to allow the Department to transfer funding to the Nevada State Public Defender from funds earmarked for county reimbursement. The requested \$217,040 would allow the Nevada State Public Defender to increase staffing to comply with workload, cover travel expenses, and cover a shortfall in its IT services.¹⁶ As of the writing of this report, the work program request has received no response.

Discussion

It is difficult to know how the NSPD can grow into an agency with the capacity to effectively represent clients within the workload limits. To increase the capacity of the NSPD, the Department has proposed and requested stipends to supplement salaries, travel expenses, and a

¹³ The Departments February 20, 2024 ARPA Memorandum is attached to this Report as Appendix E.

¹⁴ The Work Program request is too voluminous to append to this report, but the March 13, 2024, Amended Memorandum to the Executive Branch Budget Office is attached as Appendix F.

¹⁵ The email exchange is on file with the Monitor and the Department.

¹⁶ The Work Program request is too voluminous to append to this Report, but the Memorandum to the Executive Branch Budget Office (May 3, 2024) is attached as Appendix G.

satellite office in Las Vegas. It is unclear whether these proposals are failing due to substantive or procedural problems, or simply to delay.

The current statutory scheme permits counties to opt into the NSPD. This makes sense because it is the state—not the counties—that is constitutionally obligated to provide effective assistance of counsel in criminal cases in which the defendant is unable to afford an attorney. Moreover, in a general sense, it should be easier for the state to ensure effective assistance of counsel from its own employees in a state-wide public defender office than through monitoring a patchwork of attorneys who enter into contracts with the counties. But this will not be the case if the state is unable to adequately fund and recruit for its state public defender office.

The Department is considering a bill draft request mandating parity between the salaries of NSPD attorneys and their Assistant Attorney General counterparts, based partially on the federal bill, HR 1408 (2021), referred to as the Equal Defense Act.¹⁷ The Department has created a chart comparing the salaries at the NSPD with both the Nevada Office of the Attorney General and local District Attorney offices.¹⁸ The issue of parity is highlighted by a recent three-grade increase in pay for legal secretaries at the Nevada Office of the Attorney General, which does not apply to legal secretaries at the NSPD.¹⁹

Parity with prosecutorial counterparts is required by the Judgment, but so is the presence of adequate numbers of competent attorneys to provide public defense under the workload standards.²⁰ The state must set the conditions necessary for recruitment and retention, even if those conditions go beyond parity with the prosecution.

Recommendation

There is no easy answer to the problem of NSPD recruitment and funding. One path forward is to build up the NSPD so that it can fulfill the mandate given to it under the current statutory and regulatory framework, which was designed to comply with the terms of the *Davis* Judgment. Because the state is solely responsible for ensuring that Nevada provides effective assistance of counsel in criminal cases, regardless of the county where the case is heard, the state must ensure that public defense services are effective on a state-wide level.

Thus, the state must either find a way to recruit and retain qualified attorneys for the NSPD or find an alternative, which would require changing the statutory scheme that permits opting in to the NSPD, recruiting additional private attorneys, or incentivizing the creation of public defender offices at the county level. To comply with *Davis*, the state must either breathe new life into the NSPD through recruitment and retention efforts, or place limits on the counties' ability to opt in to the NSPD based on its limited resources.

¹⁷ Available here: <https://www.congress.gov/bill/117th-congress/house-bill/1408>

¹⁸ The Department's spreadsheet on pay parity is attached to this Report as Appendix H.

¹⁹ April 17, 2024, Memorandum from the Division of Human Resource Management (on file with Monitor).

²⁰ Judgment, 11 (“Compensation for public defense services provided by rural counties shall be comparable on an hourly basis to that of prosecutors in the same county with comparable experience” taking into account overhead); Judgment 17 (requiring compliance with the workload standards).

I. Removing Economic Disincentives and Ensuring Independence

The Judgment contains several requirements to ensure independence of the defense function and removal of economic disincentives.²¹

A. Pay Parity

As noted above, the Department is analyzing the pay parity issue, which will be discussed further in the next Monitor Report.

B. Selection of death-penalty-qualified attorneys

The state is currently in the midst of two initiatives that impact the selection and qualification of death-penalty-qualified defense attorneys. First, as previously reported, the Nevada Supreme Court convened a commission to study Supreme Court Rule 250, which governs procedures in capital cases. Second, the Department has proposed new regulations on the selection and qualification of death penalty-qualified defense attorneys. The Board held a workshop on the proposed regulations, which will be modified and resubmitted to the Board for final vote during the Board's June 14, 2024, meeting.²²

Recommendation

- The Department should continue to monitor pay parity with prosecutors, as well as independence in the selection process for attorneys, and ensure that both selection and appointment of conflict counsel occurs reliably and without delay.

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.²³
- 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.²⁴

²¹ Judgment, 11-13.

²² The Department's proposed regulation is available on its website as an attachment to the documents for the May 2, 2024, Board Meeting here: https://dids.nv.gov/Meetings/2024/2024_Meetings/. It is not attached to this Report given the proposed revisions that the Department is currently incorporating before the vote at the Board meeting in June.

²³ Judgment, 14.

²⁴ *Id.* at 14-15.

- Systems to identify and remove conflicts.²⁵
- Establishment of performance standards.²⁶
- Establishment of workload standards.²⁷
- Qualifications for attorneys.²⁸
- A system of oversight.²⁹
- Attorney training and resources.³⁰

This Report addresses (A) oversight, (B) training, and (C) implementation of workload standards.

A. Oversight

The Judgment requires that, “[c]onsistent with the ABA Ten Principles, Defendants through the Board, shall ensure that public defense counsel are systematically reviewed on an annual basis for quality and efficiency according to nationally and locally adopted standards, including, but not limited to, the ABA Criminal Justice Standards.³¹ To satisfy this provision of the Judgment, the Department contracted with three experienced attorneys to provide part-time oversight: David Shiek, John Kadlic, and Derrick Lopez, using funds secured for FY 2024 through AB 518 (7) (b).

In the past quarter, Shiek conducted oversight visits in Eureka, Esmeralda, Lincoln, Nye, and White Pine counties. John Kadlic conducted oversight visits in Churchill, Lyon, and Mineral counties (in addition to non-*Davis* counties), and Derrick Lopez conducted oversight visits to Douglas and Lander counties (in addition to non-*Davis* counties).³²

For the purpose of this Report, the Monitor flags two issues:

1. Jail practices that compromise a defendant’s ability to appear in court and engage in confidential attorney-client communication

There appears to be wide variety in the use and quality of remote appearances. First appearance, or 48-hour hearings, and arraignments frequently occur remotely. In Lyon County, one attorney (Mansfield) “appeared via Zoom for all 29 of his cases one day.”³³ But of particular concern is the remote appearance of the incarcerated defendant in otherwise in-person court proceedings, meaning everyone is in the courtroom except the defendant. Of the District Court hearings that the Monitor observed in White Pine County on May 13, 2024, no defendants were brought in from the jail—even for sentencing hearings and plea colloquies—even though ADKT

²⁵ *Id.* at 12.

²⁶ *Id.* at 16.

²⁷ *Id.* at 17.

²⁸ *Id.* at 15.

²⁹ *Id.* at 16-17.

³⁰ *Id.* at 16.

³¹ *Id.* at 16 (emphasis added).

³² The Department’s Quarterly Oversight Report (May 1, 2024) is attached to this Report as Appendix A.

³³ Quarterly Oversight Report, 5.

0581 states that substantive hearings in District court cases should be presumptively in-person. While the defendants were visible and audible on Zoom, there was no mechanism for the defense attorney—who was in court—to speak confidentially with clients during the hearing.

It would be helpful for the Department’s oversight staff to document the uses of remote appearances, whether everyone is remote or only the defendant is appearing remotely from the jail. Does the arrangement permit the attorney and client to have a confidential communication in the same manner as when, for example, a defendant in court during a sentencing hearing might whisper in her attorney’s ear some relevant, mitigating information that should be shared with the court? What is the quality of the waiver of the right to be present, if such a waiver is made? What methods exist for the attorney to share documents with the remote defendant during the hearings?

The prevalence and acceptability of in-court proceedings in which the defendant appears remotely from the jail contributes to more serious issues regarding attorney-client communication and the quality of bail hearings. The Department’s oversight staff observed that defendants arrested in Eureka County are taken to jails in Lander or White Pine counties because Eureka closed its jail. The contract public defender for Eureka County, Kelly Brown, cannot access his Eureka clients when they are taken to a jail in Lander County. Although Mr. Brown’s office is in White Pine County, he has difficulty seeing his Eureka County clients housed there because the jail is understaffed and prioritizes White Pine County defendants. The jail forbids Mr. Brown from visiting his Eureka County defendants in the White Pine County jail during court hours or without an appointment.³⁴ The practice of transferring Eureka defendants to other counties where they are unable to meet with their attorneys violates the Judgment’s requirement that the state provide spaces for confidential attorney-client meetings, and that attorneys make all reasonable efforts to have confidential attorney-client meetings before the initial appearance.³⁵

2. Oversight staff should have clear metrics for assessing the quality of indigent defense

While the oversight staff are experienced attorneys sure to pick up on issues in representation, and comprehensive standards for representation set forth by the ABA and ADKT 411, it would be helpful for them to have clear metrics to apply to court observation and issues of remote appearance. Examples of easily assessed metrics are questions like, did the attorneys show up, have their files, appear to know information about the client and the case in addition to what was presented by the prosecutor? In a sentencing hearing, for example, did the defense counsel present mitigating information or elaboration on the pre-sentencing report? Such yes or no questions do not tell the whole story of representation but increase objectivity and can help in deciphering patterns over time. Objective, yes-or-no metrics assessed over time may help the Department get a sense of what additional training or interventions are necessary.

Recommendations

- The Department should work with the oversight staff to develop a set of questions and/or metrics to assess observable courtroom performance indicators.

³⁴ Quarterly Oversight Report, 1.

³⁵ *Id.* at 14-15.

- The Department should ask the oversight staff to provide comprehensive information about the types and quality of remote appearances occurring in each county.

B. Training and resources

The Judgment states that the Defendants must offer “a systematic and comprehensive training program.”³⁶

As previously reported, the Department secured \$89,340 from AB 518 funds from the IFC to increase training opportunities in FY 2024. With these funds, the Department was able to:

- Send six (6) attorneys to the Mountain West Trial Skills Academy, which occurred April 28 to May 3, 2024. The training includes trial skills practice, individual performance, and trainer feedback. The attorneys attending practice in Churchill, Douglas, Lincoln, Nye, Pershing, and White Pine counties. For those who were not awarded spots, the Department is taking steps to offer them enrollment in a different trial academy.
- Fund two (2) attorneys to attend the National Criminal Defense College Trial Practice Institute.
- Fund seven (7) attorneys to attend the National Association of Criminal Defense Lawyers (NACDL) Forensic Science & the Law training.
- Fund one (1) attorney to attend the Nevada State Bar’s training on Advanced Legal Writing.
- Plan to fund four (4) office leaders to attend the State Bar Conference.
- Continue plans to host an annual state-wide public defender conference with nationally recognized trainers, and reimburse *Davis* county attorneys for their travel expenses.³⁷

The Department is fielding requests from attorneys to attend trainings in FY 2025, which will depend on a continuation of funding from AB 518 (2023). One attorney was accepted into the prestigious National College for Criminal Defense (NCCD) for their summer 2025 program, but the Department is unable to provide assurances that his expenses will be covered due to the delays in IFC consideration of work program C67456.³⁸

As stated in the Monitor’s previous report, the state must recruit new attorneys for indigent defense representation in the *Davis* counties by November 2, 2024 (one year after the implementation of the workload standards). It would be prudent to offer training specific to a new public defender cohort, perhaps in early 2025. Attorneys new to public defense will require comprehensive training in these areas to prepare them to represent indigent clients, especially in rural counties where contract and appointed attorneys may lack access to day-to-day mentorship.

³⁶ Judgment, 16.

³⁷ The total includes \$20,000 to reimburse rural attorneys for their travel expenses for the annual conference; \$21,500 for a conference manager; \$10,500 for presenters at the annual conference.

³⁸ See Department’s Memorandum (February 25, 2024), attached as Appendix C. It is also available on the Department’s website at https://dids.nv.gov/Weighted_Caseload_Study/Weighted_Caseload_Study/.

Recommendations

- The state should consider including all training funds for ongoing and annual training into the Department’s budget rather than requiring the Department to apply for an allocation of interim funds on an ad hoc basis. Given the Department’s current difficulties accessing the AB 518 funds earmarked for *Davis* compliance, it is even more critical that funds for training be assured in the Department’s budget.
- The state should consider additional funds for a conference for the newly recruited public defenders, hired or contracted by November 2, 2024, to comply with the workload standards.

C. Workload standards

The Judgment requires that the Defendants implement workload standards in the rural counties within twelve months of the completion of the Delphi-based workload study.³⁹ The study was completed and unanimously adopted at the Board on November 2, 2023. Thus, the deadline for compliance with the workload standards is November 2, 2024. Compliance with workload limits must occur on two levels: the number of attorneys needed per county and the workload of each individual attorney. This Report addresses the first issue, the number of attorneys needed per county.

As described in the previous Monitor’s Report, the total number of legal professionals needed can be calculated based on the historical data of the number and types of cases in the county. Per the NCSC study, each case has a “weight” assigned that represents “the average amount of time required to handle [the type of case, measured] over the life of the case.”⁴⁰ An annual workload for a full-time equivalent (FTE) attorney can be “calculated by multiplying the annual new cases for each case type by the corresponding case weight, then summing the workload across all case types.”⁴¹ This annual workload, expressed in hours, can be measured against the number of FTE attorneys available. Using the existing trends in case number and type in each of the rural counties, the NCSC Study calculates existing caseloads by type, existing numbers of FTE attorneys, assistants, and investigators, and determines need.⁴² The study recommends one investigator per four FTE attorneys and one administrative assistant per one-to-two FTE attorneys in the same practice.⁴³

As reported in the Monitor’s Eleventh Report, the Department has calculated the numbers needed and has met with county leadership to discuss how to address shortages. The Nevada NCSC study demonstrates the need for additional staff in the *Davis* counties. Below are three tables

³⁹ Judgment at 17.

⁴⁰ NCSC Study, 6. Please see the Monitor’s Tenth Report for a discussion of concerns around methodology and final case weights. Those concerns notwithstanding, the adoption of workload standards represents a significant accomplishment and set toward compliance with the Judgment.

⁴¹ NCSC Study, 6.

⁴² *Id.* at 20-23.

⁴³ *Id.* at 20.

showing the total number of attorneys needed, the existing number of FTE attorneys, and the current shortage.

County	Total number of FTE attorneys needed	Current number of FTE attorneys	Shortage of FTE attorneys
Churchill	7.4	2.4	5
Douglas	8.8	5	3.8
Esmeralda	0.3	0.3	0 Note: The Esmeralda contract attorney also holds a FTE contract in Nye.
Eureka	0.3	0.3	0
Lander	1.3	1.0 (3 contracts for part time) 2 contracted conflict attorneys	0
Lincoln	1.1	2 contracts for 800 hours each = 1.15 attorneys	0
Lyon	12	6	6
Mineral	2.1	1 plus part time coverage from a law firm	1 (possibly)
Nye	12.0	6	6
White Pine	3.3 however need additional attorneys due to travel time (no local attorneys in NSPD)	2 NSPD attorneys; 2 on-call NSPD attorneys (temporary) 1 conflict attorney	Taking into account travel time to Las Vegas, 1 additional FTE attorney, perhaps.
Appeals and death penalty representation through NSPD	Department is reassessing the number of attorneys needed in the NSPD to stay within workload limits for appeals and potential death penalty cases for the <i>Davis</i> counties opting in to NSPD	1 FTE chief defender 1 FTE appellate attorney Death penalty litigation provided by contract attorneys.	At least one additional appellate attorney but note that additional counties are considering transferring cases to the NSPD.

	representation in these areas.		
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A few points should be made about the data. First, additional investigators and staff are needed to comply with the workload limits. The workload of the attorneys calculated above depends on attorneys having adequate staff and investigative services. Subsequent reports will analyze progress on investigative and support staff.

In addition, the NCSC study recommends social workers and mitigation specialists to reduce the attorney workload.⁴⁴ The Department secured funding through the Nevada Public Health Foundation for social workers that it can assist public defense providers in Douglas, Eureka, Lincoln and White Pine County. Budgeted at \$32,996, the social workers will be used to identify substance abuse and mental health issues and locate appropriate services.

Finally, the NCSC caseload data does not include municipal court cases. Of the *Davis* counties, Churchill, Lincoln, Lyon, and White Pine have municipal courts. The additional criminal cases litigated in these municipal courts increase the total workload numbers, requiring additional attorneys.

Compliance efforts by county

The Department is actively working with the counties to address shortages of attorneys, often traveling to the counties for in-person meetings with county leadership. The highlights of the Department’s recent efforts are listed below.

Churchill County (short 5 attorneys)

Under Churchill County’s new plan, the public defender, Jacob Sommer, will become the Chief Public Defender, and the office will hire four (4) deputy public defenders, two (2) assistants, and one (1) investigator. The Alternate Public Defender, Wright Noel, will become Chief Alternate Public Defender, and will hire one (1) deputy alternate public defender, one (1) assistant, and one (1) investigator. The plan was approved on May 5, 2024, and the county intends to staff both offices by July 1, 2024. The Churchill County Public Defender will also host a law school student intern this summer, and the Alternate Public Defender will host a LASSO-funded law school student.

Douglas County (short 3.8 attorneys)

Douglas County has not developed a plan to meet the workload standards. The Department has conducted outreach with the county government on at least five (5) occasions since November 2023, with the last effort on April 30, 2024. Douglas will host two LASSO-funded students this summer.

⁴⁴ *Id.* at ii.

Esmeralda County (short 0.3 attorneys)

Esmeralda County will modify its contract with its primary public defender to comply with the workload limits, and, in response to outreach from the Department, add a contract for conflict counsel, and address issues related to representation in death penalty cases. It is possible that the county will transfer death penalty cases to the Nevada State Public Defender.

Eureka County (no shortage, provided contracting attorney can devote 1/3 FTE to the contract)

Eureka County is amending its contract with Kelly Brown to clarify workload limits. The Department will discuss whether the county wishes to transfer responsibility for appeals, and parole violation hearings to the Nevada State Public Defender.

Lander County (short 0.3 attorneys, or a contract for 1/3 FTE of an attorney's time)

Lander County is finalizing a new indigent defense plan, adding a first and second-tier conflict counsel, Debra Amens and Dave Neidert, respectively. The primary contract, held by Kyle Swanson, has been amended to reflect that he agrees to provide one (1) FTE attorney and one (1) assistant. The county has set aside adequate funds for investigation (which is set at 0.3 FTE hours).

Lincoln County (short 1.1 attorneys)

Lincoln County updated its contracts to include workload limits, and contracted with a second attorney, Shain Manuele.

Lyon County (short 6 attorneys)

Lyon County will add two additional contracts. Its primary contract for indigent defense is with the Walther Law Firm, which currently consists of two attorneys. A three-contract system would contract with three separate law firms (Walther and two others), requiring each law firm to commit to providing three (3) FTE attorneys to the contract. A fourth contract for juvenile and 432B cases would account for 1 FTE, and conflict counsel would handle the remaining two (2) FTE attorneys.

Mineral County (short 1 attorney)

Mineral County is updating its county plan to add a second full-time contract and has identified the attorney for the second contract. Both contracts will be in place by July 1, 2024. The contract public defender will host a LASSO-funded law student this summer.

Nye County (short 6 attorneys)

Nye County needs six (6) additional full-time attorneys and appears to be hesitating due to budget concerns, given that the county must pay the contracting attorneys up front and then seek reimbursement from the state. The Department is working with the county leadership to develop a plan.

White Pine County (short 1 attorney, given travel time)

As discussed at length above, White Pine County opted to use the NSPD for its primary public defender services. The Department has submitted multiple work programs to the state to add staff to comply with the workload limits and is considering a Bill Draft Request to increase

the salaries of the NSPD attorneys to bring them into parity with the Nevada Attorney General's Office.

Summary

The reader can see that Churchill, Douglas, Lyon, and Nye counties have the greatest need for additional attorneys. Churchill and Lyon have a plan in place, provided they are successful in recruiting. Douglas and Nye counties have not yet developed a plans.

Recruiting attorneys

As discussed earlier in this Report, the Department continues to work toward competitive salaries for the Nevada State Public Defender to attract and retain attorneys. Because state salary increases can only be accomplished through legislative action, the Department has proposed stipends and travel reimbursement as potential incentives to state practice.

Another avenue for recruitment is out-of-state attorneys with criminal defense experience. Proposed Supreme Court Rule 49.1 (7) (a) would remove the two-year cap on certificate of limited practice for out-of-state attorneys at public defender offices in rural counties. The State Bar of Nevada submitted a petition advocating for the elimination of the two-year cap. ADKT 0616. The hearing was held on February 22, 2024, but no decision has been made.

Law student /recent graduate recruitment

The Department continues to work with the UNLV Boyd School of Law to introduce the idea of rural indigent defense to law students. A landmark success for the Department in building a pipeline to rural indigent defense is the funding of Law Student Supervision Operation (LASSO) program. With the funds, the Department is funding up to twenty (20) law students to work with rural public defenders during the summer or for a semester of law school, and additional stipends and bar preparation materials for up to fifteen (15) new rural indigent defense hires who are studying for the Nevada bar. The LASSO program provides incentive stipends for the following:

- Ten (10) first-year law students interning in rural indigent defense receive a \$6,500 stipend.
- Ten (10) second-year law students interning in rural indigent defense receive a \$10,500 stipend.
- Ten (1) law school graduates with limited-practice status receive a \$15,500 stipend.⁴⁵

To promote the LASSO program and begin recruitment, the Department hosted an event at the Boyd School of Law on April 22, 2024. The headliner for the event was Jerome Buting, the attorney featured in the "Making a Murderer" series on Netflix. After Buting's talk, the law students met with public defenders from the rural counties, including Matthew Ence (Douglas), Jennifer Meredith (Carson City), Jacob Sommer (Churchill), Kale Brock (Lyon), Mary Brown (Minden), and Joe Goodnight (Washoe County). Most law students have committed to summer internships and employment by late April, but the LASSO program is likely to increase the number

⁴⁵ A description of the LASSO program is attached to this Report as Appendix B, and also available on the Department's website at https://dids.nv.gov/Job_Training/Job_Training/.

of law students interested in rural internships in future years. This summer, both Churchill and Elko counties will host law student interns. LASSO students will be interning in Churchill, Carson, Douglas (2), and Mineral counties.

As previously noted, recruiting attorneys to rural practice may take multiple strategies and initiatives. Some states have instituted financial incentives, such as law school loan forgiveness or repayment, and higher compensation. Moreover, the state may choose to adopt strategies to increase the number of people currently living in rural counties who have law degrees. This has been done in Kansas and Nebraska, for example, through the state law schools. With a declared intent of returning to their communities, rural students receive undergraduate scholarships, funding for LSAT prep courses, and pre-acceptance to the state’s law school. The Department is considering a bill draft authorizing student loan forgiveness for law school graduates who commit to a certain number of years of rural indigent defense practice. Such an initiative seems promising.

Recommendations

- The state should calculate caseloads taking into account municipal court cases.
- The state should consider additional measures to increase the number of defense attorneys in rural counties. This can take a variety of forms, including recruiting out-of-state attorneys, or student loan forgiveness in exchange for a commitment to work for a certain number of years in rural counties.

III. Uniform Data Collection and Reporting

The Judgment requires that attorneys providing indigent defense in the relevant counties document time for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases, and that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.⁴⁶ The Board’s regulations follow the Judgment’s requirements.⁴⁷

The Department published its third quarter report on workload data, for January 1 – March 31, 2024.⁴⁸ Below is a table summarizing the second quarter reporting of attorneys based on the Department’s quarterly report, and the Monitor’s notes on reporting issues in the right-hand column.

County	Q3 hours by attorney	Notes
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⁴⁶ Judgment, 18.

⁴⁷ Section 43 of the Regulations requires 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 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.

⁴⁸ Available at https://dids.nv.gov/Annual_Report/county-reports/.

Churchill	<u>Public Defender</u> 439.9 57.3 (432B) <u>Alt Public Defender</u> 272.6 18.3 (432B) <u>Appointed</u> 146.6 Private: 160 <u>Conflict</u> 123.9	The Public Defender and Alternative Public Defender may be underreporting their hours. No investigative or expert hours were reported, except 0.3 expert for conflict counsel.
Douglas	<u>Ence</u> 552.4 14.1 (432B) Private: 32 <u>Filter</u> 349.2 18.9 (432B) Private: 30 <u>Hart</u> 281.1 Private: 10 <u>Stovall</u> 495.6 6.8 (432B) Private: 65.9 <u>Clouser Group</u> 22.8 Private: 25	Hart and the Clouser firm are now reporting hours. Stovall reported the following: Invest: 16.6 Expert: 23.5
Esmeralda	<u>Earnest</u> 11.7 Private: 60	Earnest has a full-time contract in Nye County.
Eureka	<u>Brown</u> 168.1 Private: 10 <u>Conflict</u>	

	10.5	
Lander	<u>Swanson</u> 102.1 Private: 43 <u>Amens</u> none	Amens did not report hours but reported 54.8 hours in the second quarter. She is first-tier conflict counsel.
Lincoln	<u>Katschke</u> 181.4 20.4 (432B) Private: 20 <u>Manuele</u> 11.7 Private: 20	Manuele reported a lower workload than in the second quarter.
Lyon	<u>Walther firm</u> 1530.39 29 (432B) Private: 15 <u>Arrascada</u> 13 Private: 300 <u>Pence</u> 84.7 No private hours reported. <u>Silver State Law</u> 142.7 plus 50 travel 5.6 (432B) Private: 10-15 <u>Appointed conflict</u> 461.2 Travel: 76.8	Other times noted for Walther firm: Investigator: 170.4 Expert: 8
Mineral	<u>Walther firm</u> 255.8 Private: 10 <u>Hyelin</u> 2.4 plus 10.6 travel <u>Appointed conflict</u>	Walther firm reported 6 expert hours.

	57.6 plus 51.3 travel	
Nye	<u>Earnest</u> 73.8 No private hours reported. <u>Blatnik</u> 655.7 Private: 20 <u>Duecker</u> 201.8 Private: 40 <u>Gent</u> 370.5 14.5 (432B) Private: 30 <u>Shelton</u> 171.2 Private: 25-40 <u>Morton</u> 430 No private hours reported. <u>Swanson</u> No hours reported except private workload of 43 hours. <u>Shahani</u> 0 <u>Appointed conflict</u> 97.0 plus 23.6 travel	Earnest’s hours fell but no private hours were reported. Blatnik reported 15.5 expert hours. Duecker reported 10 expert hours. Shelton reported 2 expert hours. Morton reported 87.6 expert hours. Appointed conflict attorneys reported 96.4 expert hours. It appears that Shahani is still not reporting hours. It is unclear whether others are underreporting hours, but it’s possible given their high caseloads. Private hour reporting has improved.
White Pine	NSPD 632.8 1.9 (432B) <u>Eberhardy</u> 87.5 Private: 10	NSPD reported 56.6 investigator hours, and 0.8 expert hours. No travel hours were reported despite the deputy chief residing in Las Vegas, and the need for the NSPD chief and appellate chief to travel to White Pine for case coverage. The failure to report travel hours is likely due

	<u>Pickering</u> 68.5 No private workload reported <u>Appointed conflict</u> 96.2 hours plus 36.1 travel	to the fact that the NSPD attorneys are not being reimbursed for travel.
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Reporting appears to have improved, including the reporting of private workloads. It is not possible to confirm hours with an independent source and, as a result, the accuracy of reporting can only be estimated. However, all attorneys are reporting some hours, with the exception of one attorney in Nye County.

The Department received funds for FY 2024 from AB518 to incentivize timekeeping by providing free Westlaw subscriptions. The state should continue to fund this incentive structure in FY 2025 as it appears to be correlated to better time and case reporting. However, it should be noted that the funding for Westlaw subscriptions expires on June 30, 2024.

Recommendations

- The Department should continue to gather and analyze the private workloads of attorneys, especially for those attorneys who hold full-time contracts, and ensure that the attorneys have adequate time for indigent defense cases under the contract.
- The state should continue to fund the Westlaw subscription program as an incentive for timekeeping as it appears to be effective in securing compliance with the Judgment and more accurate assessments of workload.

Looking ahead

- **Securing AB 518 (7) funding**

The Department will learn when its work program requests to secure FY 2025 funding for compliance with the Judgment will be heard by the IFC.

- **Recruitment and retention of attorneys for the Nevada State Public Defender**

If the state is unable to recruit and retain attorneys for the Nevada State Public Defender (NSPD), whether through incentives or a new legislative salary structure, the state may need to change the statutory and regulatory framework to limit the counties' ability to opt into the NSPD.

- **Recruitment to rural practice**

The Department will continue to recruit attorneys to rural public defense from law schools and attorney recruitment. Particularly promising is the Department's LASSO program to recruit, train, and incentivize law students and recent graduates. Additional funding for out-of-state recruitment efforts may be necessary.

- **Workload limits**

The Department will continue to work with Nye and Douglas counties to develop plans to comply with the workload limits (six additional attorneys in Nye and five additional attorneys for Douglas). Other counties with high shortages (Churchill and Lyon) have a plan and must now recruit new attorneys.

In addition to recruiting more attorneys, the workload limits must be implemented at the level of the individual attorney. Attorneys who hold full-time contracts and also accept conflict appointments as well as private casework must be both committed to dedicating adequate time to their indigent defense work and feel empowered to reject appointments when the additional cases would compromise their ability to adequately represent their existing clients.

- **Oversight**

The two newly contracted oversight attorneys will continue to provide assessment of indigent defense practice on the ground in the rural counties. The funding for the oversight attorneys runs out on June 30, 2024, unless a new funding request is approved.

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:

- The status of the Department's efforts to secure earmarked AB 518 (7) funds for compliance with the Judgment.

- The Department's bill draft requests for the next legislative session.
- The state's steps to address the crisis in the Nevada State Public Defender, and its responsibility for providing appellate and complex litigation to many of the *Davis* counties, as well as first line public defense in White Pine County. In particular, the Monitor will report on efforts to incentivize NSPD employment.
- The status of workload compliance plans in Douglas and Nye counties.
- The status of recruitment efforts to meet the workload standards.
- The comparison between the existing numbers of investigators and support staff in the rural counties and the total number required under the new workload standards, and the Department's plans to address shortages.
- The system and metrics of oversight conducted by the Department's newly contracted oversight staff.

12th Report of the Monitor
Davis v. State, Case No. 170C002271B
May 17, 2024

Appendix A
Quarterly Oversight Report



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

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QUARTERLY OVERSIGHT REPORT

Outreach & Compliance Advisors Summary #1

Report date: May 1, 2024

I. Zone 1 – David Schieck

Eureka

On his first visit, David observed the facilities and met with contract PD Kelly Brown, DA Ted Beutel, and Justice of the Peace Rowley. He reports that the Eureka Justice Court had a room available for attorney-client communication, but that the District Court had no such space. Bown advised that he had used the jury deliberation room or the court room in the past.

The primary issue in Eureka County appears to be that the Sheriff has closed the jail in attempt to save money. In his interviews with each, the decision was criticized by the DA, the Justice of the Peace, and Mr. Brown. Clients must be housed in either Lander County or White Pine County, as a result. If they are in Lander County, they are virtually inaccessible to Brown, whose office is in Ely, NV. If they are in White Pine for a hearing, the jail personnel reportedly favors all White Pine detainees first, and often refuses to bring Eureka defendants to the remote hearing room at all. Also, they will not allow Brown to see his clients at all if court is in session. They require him to make appointments to see clients and often won't make any availability until after hours.

As with other rural counties, transportation of defendants is also an issue. The Sheriff reportedly has not brought defendants housed in other counties to court, even if directed to do so. And if a defendant is housed in White Pine County, and then released in Ely, they are forced to find their own transport back to Eureka.

Judge Rowley and the DA stated that the 48 hour hearings were going smoothly. Usually they are remote. Only issues are, again, due to transfer of detainees and their unavailability due to issues stated above. Additional visits and interviews are scheduled to follow up on these matters and for court observation.

Esmeralda

David met with Justice of the Peace Danielle Johnson and contract public defender Jason Earnest, as well as DA Robert Glennen. Meeting space in Goldfield is questionable, as we have reported in the past, but Judge Johnson says she can make her courtroom available. Also, the district court courtroom is rarely used, so that is available. (There is also a room near the jail, but it is in an attic and difficult to access.)

David reports that Jason Earnest is providing competent representation across the board. He also reports Judge Johnson to be fair and impartial.

Judge Johnson reports 48 hour hearings being held as necessary. The DA and Earnest generally appear via zoom.

The biggest issue has also to do with the Sherrif, who is not technically qualified to hold the office, as I believe he reportedly has a domestic violence conviction, and therefore cannot carry a firearm. Due to the DA's position on this matter, that the Sheriff isn't qualified, there is currently a recall effort against the DA.

Lincoln

David traveled to Pioche, Panaca, and Pahrnagat Valley to observe the courthouses and meet with stakeholders. He met with Justice of the Peace Mike Crowley, DA Dylan Freher, and contract PD Franklin Katschke.

Lincoln County courthouse does not have a dedicated attorney room, but there is a room on the bottom floor of the courthouse that can be used for this. Katschke confirmed this. In Pahrnagat Valley Justice Court, there is a room built adjacent to the courtroom for this purpose.

The judge reported no problems with 48 hour hearings. Katsche also stated they were timely and he was appearing for them.

David later watched court in Pioche, a law and motion calendar before Judge Debrescu. He reports that Katschke was prepared, including for a difficult sentencing hearing.

Lincoln County appears to be working smoothly and effectively with the two PD contracts with Franklin Katschke and Shain Manuele.

Nye

David has visited Tonopah, Beatty, and Pahrump multiple times. He has met with all justices of the peace, both district court judges, the district attorney, and all contract counsel, as well as a few conflict appointed counsel.

The attorneys have not reported any issues with 48-hour hearings. Judge Vitto said the hearings are going smoothly, with attorneys generally appearing by video, but that they are free to attend in person.

There are a number of spaces in the Nye County Courthouse in Pahrump that can be used for attorney client meeting spaces. Judge Wanker's courtroom has been remodeled to include two meeting rooms at the rear of the courtroom, there is also a jury room between the two justice courts, and there is a public defender room off the rotunda of the justice courts.

Upon further inspection, it appears that the anterooms to Dept 1 are not sound proof. Further, the room at the rear of the justice courts is often occupied by state's witnesses or law enforcement. Some of the attorneys are unwilling to ask these people to clear out if they need to use to room. Finally, the room off the rotunda was described by attorneys as not sound-proof and therefore not confidential.

Two contract attorneys noted a discovery problem regarding body-cam videos. They report not being able to download the videos to view as needed or be able to show clients, investigators, or experts. David thinks this is a violation of discovery rules and should be addressed via discovery motions to the court. The attorneys also report that they have to wait several weeks for discovery.

Attorneys report that covering parole hearings are a huge waste of time and resources. The county could opt in to the NSPD for these hearings, and that would alleviate this.

Attorneys complain about the size of the caseload and the judges acknowledge that all contract attorneys have too many cases.

Overall, David reports that all contract attorneys are doing a good job under difficult circumstances. After numerous in-court and online observations, he notes the attorneys are prepared, competent, and effective.

In summary, he reports there are several other issues in Nye County that likely need to be addressed, including:

1. Reduction of caseload for all contract attorneys through new additional contracts;
2. Requests for Settlement Conferences are being delayed for 60 to 90 days or longer. He suggests the county obtain Settlement Conference Judges to help settle cases;
3. There is a need to expedite the filing of cases in District Court after Justice Court bind-overs;
4. He suggests entering into a second northern Nye contract to alleviate caseload and travel issues and insure conflict attorney presence at Tonopah proceedings;
5. He suggests entering into a specialized contract for Drug Court, Abuse/Neglect, Termination of Parental rights and Mental Health court or other specialty court;

6. He suggests the county obtain a Court Management System that allows attorneys to access court records on-line or to file on-line (I do not believe a CMS is going to happen, but the state is still working on the statewide roll out of eflex, an electronic filing system that would allow attorneys to see all their cases and access the documents in them.);

7. Investigate PSI preparation. See if it is possible to implement the use of a gross misdemeanor work sheet instead of a full PSI on most gross misdemeanor cases; and

8. Consider dividing the existing and planned new contract attorneys by Department, in order to reduce the number of District Court appearance days for the attorneys. (It will require more information to determine if this is possible.)

White Pine

Since David's initial observations in White Pine County, he reports that the changes in White Pine County have been dramatic. There was originally upheaval due to the resignation of the State Public Defender, and the subsequent loss of other staff caused David serious concerns, under **Davis** and as referenced in the Eleventh Report of Monitor.

He reports that the difference between his Onsite visit on February 26, 2024 and the proceedings he has viewed recently is reportedly significant. His initial Onsite Report dated March 4, 2024, stated:

“My overall impression is that the lack of continuity in attorney staffing is a major obstacle to quality representation. ADKT 411 and the **Davis** holding do not contemplate a constant change of counsel. A competent legal secretary and support staff can alleviate many of the problems. For instance, no PSI in the file before the sentencing date and no record of transmission of the PSI to a locally incarcerated client could have been avoided. Or inability to contact an out of custody client who resides locally and knows her plea hearing date but had not been provided a copy of the plea agreement.”

The Department and the NSPD staff have rallied to correct these issues. Patty Cafferata has officially been appointed by the Governor to head the office. And a little over a month after his first report, his observations are that the shortcomings have been addressed and many of the problems corrected. His recent meeting with Judge Fairman in Pioche on March 22, 2024 confirmed positive improvements.

There is one potential issue outstanding. There appears to be imperfect communication between the Justice Court and the NSPD's office, resulting in inadequate notice of some hearings. On March 28, 2024, at least one prison case was set for arraignment. No attorney was present. The Judge conducted the arraignment anyway and set a preliminary hearing within 15 days without counsel.

II. Zone 2 – John Kadlic

Carson

No information available yet on 48-hr hearings or facilities for confidential attorney-client meetings. John has conducted onsite court visits, to both Justice Court Department 1 & 2, Judge Armstrong, and Judge Tatro. John observed contract conflict public defender attorney Maria Pence and Carson City Deputy Public Defender Scott McKenna. He did not report any concerns with their preparedness or effectiveness.

Churchill

John has observed multiple hearings in New River Township Justice Court in Fallon. He reports that there are adequate facilities for confidential attorney-client meetings. John observed Churchill County PD Jacob Sommer and Churchill County Alternate PD Wright Noel in court proceedings. He did not report any concerns with their preparedness or effectiveness. John believes a social worker would be beneficial to defendants in Churchill County.

Lyon

He reports that Judge Kassebaum does his 48 hour hearings via zoom in Yerington. And Judge Vecchiarelli does her 48 hour hearings from the courtroom in Dayton. The defendants were in custody in Yerington. Judge Vecchiarelli informed him that she and Judge Matheus, in Canal Township Justice Court alternate weekly in doing the hearings. The hearings are 7 days a week (where necessary), at noon on weekdays and at 9am on weekends.

John has observed multiple hearings in Lyon County, including Walker River Township Justice Court in Yerington, Dayton Township Justice Court in Dayton, and Canal Township Justice Court in Fernley. He reports that there are adequate facilities for confidential attorney-client meetings. John observed Lyon County contract PD Mario Walther and his deputies Olga Walther, Kale Brock, and Patrick Mansfield, as well as appointed counsel Ryan McPhee and Ray Areshenko in court proceedings. He did not report any concerns with their preparedness or effectiveness. He did express some concern that Mansfield appeared via Zoom for all 29 of his cases one day.

John believes a social worker would be beneficial to defendants in Lyon County.

Storey

No reporting on Storey County yet.

Mineral

John conducted an observation visit to Hawthorne Township Justice Court and observed contract public defender Kale Brock in court proceedings. He did not report any concerns with their preparedness or effectiveness.

III. Zone 3 – Derrick Lopez

Douglas

Derrick has observed court in all courtrooms and locations, including: East Fork Justice Court and the Ninth Judicial District Court in Minden, and Tahoe Justice Court in Stateline, NV, as well as West.

Additionally, the Advisor has met with all the contract public defenders and all the judges in the county. He has also met with the District Attorney.

Derrick consistently reports that the attorneys are meeting with their clients before court, and that they are consistently prepared and knowledgeable of their clients and cases. It appears all clients are adequately advised of their rights by counsel. Overall, the contract attorneys appear to have sustainable workloads and are providing effective representation.

The courts are not seeking reimbursement from defendants for representation. And from his observations, each of the judges appear to be fair and impartial and to treat all parties respectfully.

When interviewed, each attorney stated that their caseloads were heavy, but manageable. Uniformly, they all would like there to be an additional contract attorney to reduce their caseloads a little. Finally, they each commented that there needs to be a space for confidential attorney-client meetings at the Tahoe Justice Court.

Elko

Derrick has interviewed all the attorneys in the Elko PDs Office. He has also spoken with Deputy DA Justin Barainca.

Derrick has observed court in Elko Justice Court, Wells Justice Court, Eastline Justice Court, and Carlin Justice Court, as well as West Wendover Municipal Court. He has also toured each of these facilities. He met with Judge Kenneth Quirk, who presides in West Wendover Municipal Court and Eastline Justice Court, as well as Carline Justice Court Judge Dee Primeaux. He observed 48 hour hearings before Elko Justice Court Judge Bryce Drake, who appeared to be fair and impartial, and to give thoughtful consideration to the requests. He noted that there needs to be a confidential attorney-client meeting space at the Elko Justice Court.

In his observations so far, judges all appear to be fair and impartial, and no public defenders expressed concerns about the judiciary.

Consistent requests from the public defenders are that there be a space created in the jail for confidential attorney-client communications prior to the 48 hour hearings and/or during court recesses in those hearings. They would also like for the 48 hr hearings to be scheduled in a way to allow them to interview the detainees prior to the hearings. (The way it currently works, the DA is allowed to state their position, then a recess is allowed for counsel to discuss the matter with the defendant before making an argument. The PDs are in the jail with the defendants, and everyone else is on video, so the sound can be muted.) They also think a sound machine would be helpful for the jail, so jail staff are unable to overhear the conversation. They would also like a confidential attorney-client meeting space at the Elko Justice Court.

Of primary concern in Elko is the understaffing of the Elko PDs office, and their inability to staff and keep deputies, due to the salaries, which are not competitive. As a result, the PDs office conflicts off a substantial number of cases every month (averaging around 55 cases). This has been ongoing since November of 2022. This puts considerable strain on the Department every month to assign cases to attorneys from the appointed counsel list. The attorneys in the PDs office generally state that their caseloads are manageable. But the strain on the system is downstream.

DIDS Directors have been engaged in an ongoing conversation with Elko County management over this issue. Elko County is reluctant to raise PD salaries, even though they will be reimbursed for the increases by the State, because they are in a collective bargaining agreement with the PD and DA offices, and they would have to raise DA salaries, as well. And they wouldn't get reimbursed for that.

We have discussed numerous incentives with Matt Pennell at the PDs office and with County management, including stipends, student loan payments, and other recruitment efforts. The Department has secured substantial funding for student intern and employment recruitments through its LASSO program. So far, we have not seen movement from the county on this matter.

Humboldt

Derrick toured the Humboldt County Courthouse, including the Union Justice Court and the Sixth Judicial District Court. He noted a room designated for attorney-client communications.

He also interviewed Matt Stermitz, the current Humboldt County PD, as well as Robert Dolan, an attorney who regularly takes appointed cases in Humboldt County. Additionally, he met with Union Justice Court Judge Jim Loveless and District Attorney Kevin Pasquale.

Finally, Derrick observed court in Union Justice Court, observing Matt Stermitz, as well as appointed counsel Ray Areshenko and Ryan McPhee. His observations were that the attorneys appearing during his observations were prepared and had sustainable workloads. Due to the recent resignation of the APD, McPhee was recently appointed to take over two of his cases, as a result he appeared somewhat unfamiliar with the full history of the cases. He still reported that all three attorneys appeared to be providing effective representation. He also reported that Judge Loveless appeared to be fair and impartial.

There are a few concerns in Humboldt County right now. While the county management and the Board of Commissioners have been cooperative and receptive to complying with the workload study, they have a shortage of attorneys in the short term. Matt Stermitz stated in his interview that his primary concern is getting the county to hire a deputy for his office, to help manage the caseload. Recently the Alternate PD resigned. And so all cases are either going to the PDs office or to the appointed counsel list.

The plan that DIDS has developed with county management is for them to hire another deputy for Matt's office, and to contract with a local firm for 2 FTE under the workload, and then to possibly contract with another firm to act as conflict counsel. The system would work as two primary PD offices, and cases would be assigned in rotation to the Humboldt County PD and to the contract PD, unless both have a conflict, then it would go to the contract conflict counsel. That plan is in the works. And there is a firm that is willing to sign the primary contract, the county is just trying to get it finalized. To add a layer of difficulty to this, Matt is going on vacation for a month starting May 13. So DIDS will need to manage all assignments for new cases during this time or until the contract is signed with the firm for primary representation.

Lander

Derrick toured the Lander County Courthouse in Battle Mountain, NV. He met with the Justice Court and District Court clerks, as well as the DA William Schaeffer and Chief Criminal Deputy DA, Michael MacDonald. Neither DA expressed any concerns about the quality of defense representation in the county. No court observation or attorney interviews have occurred yet. (Derrick was contracted with approximately one month later than the other two advisors, so he has not had the opportunity to complete a full round of observations yet. Also, one of his counties, Elko, takes up proportionately more time due to the number of courts and its geographic remote location.)

Pershing

Derrick also toured the Pershing County Courthouse in Lovelock, NV. He met with the Justice Court and District Court clerks, as well as the DA Bryce Shields, Pershing County Public Defender Steve Cochran, and Justice of the Peace Karen Stephens. No concerns were expressed about the quality of representation by the public defender. No court observation has occurred yet.

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Davis v. State, Case No. 170C002271B
May 17, 2024

Appendix B

LASSO Summary



STATE OF NEVADA
DEPARTMENT OF INDIGENT DEFENSE SERVICES

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

I. Executive Summary

The lack of availability of public defense attorneys is an increasing problem in Nevada and neighboring states which threatens the ability of court systems to process criminal filings, particularly within rural areas. The State of Nevada Department of Indigent Defense Services ("Department") is specifically tasked with determining incentives to recommend offering to law students and attorneys to encourage them to provide indigent defense services, especially in the rural areas of the state. (NRS 180.320(2)(f)(2) & Stipulated Consent Judgment in *Davis v. State*). Specifically, a path needs to be created to encourage law students to enter into the practice of indigent defense services and remove barriers to practice in underserved and rural areas of the state. To this end, the Department believes that it is necessary to establish Law Student Supervision Operation ("LASSO") to provide support for job training programs in the public sectors for training, retaining and/or improving the skills of persons employed in this State that are training to practice law in Nevada.

Recognizing that addressing unrepresented persons will require creative solutions, the Department is requesting innovative strategies directed at increasing the number of attorneys practicing in the area of indigent defense services and reducing the number of persons who do not have the court-appointed counsel to which they are entitled. The public defender crisis, which is a national issue, has left hundreds of people languishing in jails or in the community awaiting legal representation. This proposal request to the Nevada Department of Employment, Training and Rehabilitation accomplishes that by requesting training funding, training supports and retention incentives to mitigate the significant gap of public defense attorneys in Nevada's underserved and rural areas.

The Department has offered job training stipends in the past which have successfully encouraged individuals to accept employment in rural counties providing indigent defense services. The Department hopes to continue this positive forward momentum with LASSO.

With LASSO, the Department will coordinate with one or more law schools to place law students in a training programs with experienced public defense attorneys located in underserved and/or rural areas of the state. LASSO will also encourage recent graduates to take employment in a rural public defender office to gain indigent defense services experience by practicing law immediately upon graduation. LASSO will strive to provide real-world and hands-on public defense experience under the mentorship of

the experienced public defense attorneys, including active representation and litigation opportunities, with the purpose of encouraging the student to consider employment opportunities in the practice of indigent defense services in underserved and/or rural areas of Nevada.

Finally, LASSO will provide a stipend for training materials to individuals that have accepted employment at a qualifying office to take the Nevada Bar Exam and continue their practice in providing indigent defense services.

The Department is requesting **\$465,647** from the Nevada Department of Employment, Training and Rehabilitation's (DETR) Career Enhancement Program (CEP) to further expand this training program as allowable under NRS 612.605-612.610.

II. Definitions:

"Qualifying Office": Office at the state or unit of local government who provides legal representation as defined in NRS 180.004. This term can include indigent defense services providers that have a contract to provide first-line primary indigent defense services for a county. Federal and municipal offices are not eligible. The office also must be able to provide supervision for the limited practice of law under Supreme Court Rule (SCR) 49.1, 49.3, or 49.5.

"Rural county" is defined as a county with a population of less than 100,000 people. An individual seeking to practice in a rural county under SCR 49.3 shall have priority in receiving the stipend.

"Underserved county" is defined as a county within Nevada which the Department has determined is struggling to fill indigent defense services vacancies in their qualifying office(s) and would benefit from LASSO.

"Intermediate student" is defined as a student enrolled in a law school approved by the American Bar Association and who has completed at least thirty (30) semester credit hours, or the equivalent.

"Advanced student" is defined as a student enrolled in a law school approved by the American Bar Association who has completed at least forty-five (45) semester credit hours, or the equivalent.

A **"supervising lawyer"** shall be defined by SCR 49.3(4).

III. Term of Program

This request for funding is for a period of two years.

IV. Budget Detail and Narrative

Expense Budget Summary	
Line Item	Amount
A. Outreach	\$43,147
B. Training Materials	: \$97,500
C. Training and Retention	: \$325,000
Total Direct Charges (sum of A.-C.)	: \$465,647

A. Outreach

The Department requests a total of **\$43,147** for Outreach to promote the program. This would include:

- Funding for DIDS staff to travel to in-state and out-of-state law schools – approximate cost: \$18,736.
- Funding for rural attorneys to travel to Boyd School of Law to meet students – approximate cost: \$14,411.
- Funding for DIDS staff to purchase items to perform program outreach – approximately \$10,000.

B. Training Materials

The Department requests a total of **\$97,500** to serve up to **15** participants with preparation for the Nevada Bar Exam. Qualified individuals will receive a \$6,500 stipend to purchase training materials to prepare for the Nevada Bar Exam. As determined by DIDS, the individual must accept employment at a qualifying office in the State of Nevada and individuals employed by a rural county office will receive preference to receive the stipend.

C. Training and Retention

The Department requests a total of **\$ 325,000** to serve up to **30** participants with an opportunity to enhance legal education by learning through observation and hands-on learning experience while under the direct supervision of lawyers in a public defender setting, with a focus on maintaining service in Nevada's rural and underserved areas.

The program shall have three **funding tiers**:

1. **Scout Tier**:

Up to a total of **\$65,000** to serve up to **10** students @ **\$6,500** stipend per

student.

- a. Provide training opportunities and support for intermediate students to work and train in a rural and/or underserved Nevada qualifying office for at least 10 weeks (as agreed by the student and supervising lawyer).
 - i. Ten training opportunities with a Qualifying Office (“Public Defender”).
 - ii. The training opportunity shall be led by a supervising lawyer that is continuously and personally present through the following activities:
 1. Assisting and counseling the student in the activities and reviewing such activities with the student, to the extent necessary for the proper training of the student and protection of the client.
 2. Reading, approving, and personally signing any pleadings, briefs, or other papers prepared by the student before filing; reading and approving any documents prepared by the student for execution by any person before submission to that person; and reading and approving any correspondence prepared by the student before mailing.
 3. And being present for any appearance by a student before a court or administrative tribunal, if allowed.

2. Trigger Tier:

Up to a total of \$105,000 to serve up to **10** students @ **\$10,500 stipend** per student.

- a. Provide training opportunities and support for advanced students to work and train in an underserved and/or rural Nevada qualifying office for at least 10 weeks (as agreed by the student and supervising lawyer).
 - i. Ten training opportunities with a Qualifying Office (“Public Defender”).
 - ii. The training opportunity shall be in compliance with SCR 49.3 and led by a supervising lawyer that is continuously and personally present through the following activities:
 1. Assisting and counseling the student in legal practice activities and reviewing such activities with the student, to the extent necessary for the proper training of the student and protection of the client.
 2. Reading, approving, and personally signing any pleadings, briefs, or other papers prepared by the student before filing;

reading and approving any documents prepared by the student for execution by any person before submission to that person; and reading and approving any correspondence prepared by the student before mailing.

3. And being present for any appearance by a student before a court or administrative tribunal.

3. Silver Tier:

Up to a total of **\$155,000** to serve up to **10** limited practice practitioners @ **\$15,500** per training stipend.

- a. To qualify, individuals must accept employment at a rural public defender office and be qualified to practice law by either having either passed the Nevada bar or qualify for a limited practice certification under SCR 49.1 or 49.5.
 - i. Ten positions with qualifying offices in rural Nevada.
 - ii. New hires will be provided with hands-on practice opportunities in the rural public defender offices. The individuals will handle cases, learn local rules, and have an earlier opportunity to improve their skills in providing indigent defense services.

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Davis v. State, Case No. 170C002271B
May 17, 2024

Appendix C

Memorandum for Work Program C67456



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

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

Memorandum

DATE: February 25, 2024

TO: Bridgette Mackey-Garrison, Executive Branch Budget Officer – Team Lead
Don Carlson, Budget Advisor, ASD

FROM: Marcie Ryba, Executive Director, Department of Indigent Defense Services

SUBJECT: Fiscal Year 2025 Request for AB518, Section 7 Allocation (Work program C67456)

At the December 2023 Interim Finance Committee (“IFC”) meeting, funds were appropriated from AB518(2023)¹, Section 7 funding, to assist the Department with costs related to compliance with the Davis v. State (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgement. Herein is a request for an allocation of **\$1,433,191** from Assembly Bill 518(2023), Section 7 to continue the programs in Fiscal Year 2025.

Oversight Requirements

The *Davis* Stipulated Consent Judgment requires the following:
Consistent with the ABA Ten Principles, Defendants through the Board, shall ensure that public defense counsel are **systematically reviewed on an annual basis for quality and efficiency according to nationally and locally adopted standards**, including, but not limited to, the ABA Criminal Justice Standards.²

¹ AB518(2023), Section 7 appropriates funding to the IFC for allocation to the Department of Indigent Defense Services to fund:
(a) The reimbursement of counties for costs in excess of their maximum contribution amounts for the provision of indigent defense services, including, without limitation, the costs of compliance with workload standards;
(b) The costs of the Department related to compliance with the Davis v. State (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgement;
(c) The costs of the Office of State Public Defender for contracting for legal services for complex cases; and
(d) The costs for training and pay parity for attorneys who provide indigent defense services.

² Judgment, 16 (emphasis added).

To comply with these oversight requirements in the judgment, IFC historically approved \$626,335 in Fiscal Year 2024 at the December IFC meeting to allow the Department to contract with oversight analysts and employ an Administrative Assistant.

Contracts for two part-time oversight analysts were approved at the February Board of Examiners (“BOE”) meeting. A third contract, for a full-time contract oversight analyst, is scheduled for the March BOE meeting.

To continue the systematic review that is required by the consent judgment, the Department requests an allocation to continue to fund:

- (1) the salaried Administrative Assistant and associated costs,
- (2) one-full time and two-part time hourly contract attorneys that are contracted to provide oversight and their associated travel expenses to perform oversight.

As stated previously, the Department requested operating funds to contract with attorneys to serve as oversight analysts, rather than hire staff attorneys, because prevailing state salaries are substantially lower than the salaries offered at county public defender offices or compensation offered to contract attorneys; thus, the Department does not believe it will be able to fill staff attorney positions with attorneys possessing the requisite knowledge to provide oversight.

Costs associated with continuing the oversight positions would total **\$1,043,135**, in Fiscal Year 2025. NEBS210, NEBS 130, and Excel Travel Log are attached.

Total Estimated Cost for Oversight Requirements: Fiscal Year 2025: **\$1,043,135.**

Indigent Defense Services Training

The *Davis* Stipulated Consent Judgment requires the following:

Consistent with the ABA Ten Principles, Defendants through the Board and Executive Director, shall provide indigent defense providers with access to a systematic and comprehensive training program, specifically including a certain amount of CLE specific to criminal defense.³

The Judgment states that the Defendants must offer “a systematic and comprehensive training program,” which covers “at a minimum: (1) client intake interviews; (2) client communication; (3) securing pretrial release; (4) preparation for arraignment, including preservation of client’s rights and requests for formal and/or informal discovery; (5) investigation; (6) filing and responding to pre- and post-trial motions; (7) plea and sentencing outcome negotiations; (8) trial advocacy; (9) appeals; and (10) special issues regarding the representation of juveniles.”⁴ This provision of the Judgment suggests a

³ Judgment, 16.

⁴ Judgment, 16

systematic approach to ensuring that attorneys have training in all areas crucial to public defense.

At the December IFC, the Department was appropriated \$89,340 to ensure compliance with the training requirement of the consent judgment. In the Eleventh Report of the Davis Monitor, the Monitor represents that she is encouraged by the increase in training opportunities.⁵ The Department is requesting a similar appropriation for Fiscal Year 2025, plus funding to provide an Annual New Attorney Training Conference.

First, as previously approved at the December 2023 IFC meeting and based upon the recommendations of the *Davis* monitor for compliance with the *Davis* training requirements, the Department requests an allocation of \$37,340 per year of the biennium in additional training authority to offer increased CLE for indigent defense attorneys for the purpose of sending five rural attorneys per year to a national trial advocacy college (or similar training). This funding would allow 5 rural indigent defense services attorneys to attend National Trial College (NCDC) per year.⁶ The mission of the college is to provide the highest standard of trial skills training to criminal defense attorneys across the United States to ensure that people accused of crimes are represented by zealous counsel.

- Estimated Cost to Send Attorneys to Nationally Accepted Trainings: Fiscal Year 2025: \$ 37,340

Second, as previously approved at the December 2023 IFC meeting, and due to a subgrant from the Department of Public Safety expiring, the Department requests an allocation of AB 518 (7)(1)(d) funds to enhance the Annual Conference:

- Funding to reimburse rural attorneys to travel to annual conference:
 - Estimated Cost: Fiscal Year 2025: \$61,474
- Funding to reimburse nationally accepted trainers for travel expenses and compensation to provide training at the Annual Conference:
 - Estimated Cost: Fiscal Year 2025: \$28,788
- Funding to provide for event space, AV equipment, setup/teardown fees, service charges, and other miscellaneous venue expenses, needed to host the Annual Conference:
 - Estimated Cost: Fiscal Year 2025: \$36,050
- Funding to engage a professional conference manager. The conference manager will find conference space and negotiating the contract, holding planning meetings for stakeholders, serve as a key point of contact for the event, market the training

⁵ Eleventh Report of the Monitor, *Davis v. State*, Case No. 170C002271B, February 23, 2024, p. 13-14.

⁶ This estimate is based upon the following NCDC TPI Attendance Costs where the total cost per attorney to attend the training is approximately \$7,468.00, including tuition (\$2,700), housing (\$1,633), per diem (\$644), and airfare (\$620). Information was obtained from the NCDC website at <https://ncdc.net/trial-practice-institute/>.

to the rural offices and encourage participation, establish an online registration for the conference, secure speakers and make travel arrangements, assume responsibility for participate certificates and conference closure, and provide staff to facilitate the conference.

- Estimated Cost: Fiscal Year 2025: \$21,500

Third, the Department is requesting additional funding to provide a week-long training specifically for new indigent defense services lawyers. By November 1, 2024, all counties must set forth how they will achieve compliance with the National Center for State Courts (“NCSC”) Workload Recommendations (which were adopted by the Board on Indigent Defense Services). The NCSC Study increases the number of attorneys needed across the rural counties. Therefore, the Department is seeking funding to hold a New Lawyer Training.

The week-long training would differ from the Department’s Annual Training (discussed above) as it would be focused on providing the nuts-and-bolts basics for a new attorney and will cover topics like how to interview a client, how to argue bail, how to investigate a case, and other skills needed by these new attorneys to effectively complete their roles as indigent defense attorneys. To provide this training, the Department requests an appropriation for the following:

- Funding to engage a professional conference manager; pay for conference space, AV and set up fees; compensate trainers; and reimburse rural attorneys and trainers to attend the training conference.
 - Estimated Cost: Fiscal Year 2025: \$215,392

This New Lawyer Training should be provided yearly as rural areas have struggled with a high level of attrition. One factor contributing to the level of attrition is that the salary rates for rural areas are substantially lower than urban areas for indigent defense attorneys with experience. Also, due to their small size, most of the rural offices do not have an institutional training program and would benefit from the new lawyer training program.

The New Lawyer Training Program is specifically recommended in the Eleventh Report of the Davis Monitor.⁷

Total Estimated Cost for Compliance with Davis Training Requirements:
Fiscal Year 2025: **\$400,544**

Compliance with Anticipated Workload Standards

Pursuant to NRS 180.320(2), the Department shall work with Boyd School of Law to determine incentives to recommend offering to law students to encourage them to provide indigent defense services. In furtherance of this, two stipends of \$6,500 apiece were approved at the December 2023 IFC for funding in Fiscal Year 2024. The stipends

⁷ Eleventh Report of the Monitor, Davis v. State, Case No. 170C002271B, February 23, 2024, p. 13-14.

will allow two students to intern in a rural indigent defense services office over the summer. At the time of writing this report, the summer stipends have been filled.

The Department is requesting these funds be continued for Fiscal Year 2025.

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

Total Estimated Cost for Pipeline: Fiscal Year 2025: **\$13,000**

Data Collection and Reporting Requirements

The Judgment requires that indigent defense providers report data in a uniform fashion, including case numbers; type; outcome; the hours worked by attorneys, staff, investigators, and experts; the number of motions to suppress filed and litigated; the number of trials; and the attorney's private workload, if any. The Judgment further requires that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.⁸ This data is collected using a case management system.

First, as was previously approved at the December 2023 IFC, the Department is requesting \$4,186 to cover a shortfall created by the new contract for the data collection case management system. A failure to continue the case management system will result in a failure to comply with the data collection and reporting requirements.

- Estimated Cost: Fiscal Year 2025: \$4,186

Next, as recommended by the Davis Monitor, the December 2023 IFC approved funding for the Department to provide Westlaw EDGE to appointed attorneys that are providing indigent defense services in rural counties. As discussed at the December 2023 IFC, providing access to an online legal research service will incentivize attorneys to comply with the workload reporting requirements so that the State will be compliant with the uniform data collection requirements of the judgement because it would cost an attorney \$504 a month to have similar access. Also, prosecutors are routinely provided free access to online legal research systems and such an action would provide the same resources to indigent defense services attorneys as are provided to prosecutors.

Funding is requested to continue to provide an online legal research system to indigent defense services attorneys.

- Estimated Cost: Fiscal Year 2025: \$65,568 (12 months at \$5463.94 per month)

Total Estimated Cost for Data Collection Compliance: Fiscal Year 2025
\$69,754

⁸ Judgment, 18

Conclusion

In conclusion, the Department respectfully requests a total allocation of **\$1,526,433** from the AB518(2023), Section 7 appropriation to continue to comply with the *Davis* Stipulated Consent Judgment in the following areas: (1) Oversight; (2) Training; (3) Compliance with Workload Standards; and (4) Compliance with the Data Collection and Reporting Requirements.

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Davis v. State, Case No. 170C002271B
May 17, 2024

Appendix D

Amended Memorandum (December 19, 2023)



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

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

Amended Memorandum

DATE: December 19, 2023

TO: Bridgette Mackey-Garrison, Executive Branch Budget Officer – Team Lead
Don Carlson, Budget Advisor, ASD

FROM: Marcie Ryba, Executive Director, Department of Indigent Defense Services

SUBJECT: Request for AB518, Section 7 Allocation to Provide Pay Parity for Attorneys who Provide Indigent Defense Services

A handwritten signature in blue ink, appearing to be "MR", is written over the "FROM" line of the memorandum.

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

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

The Department requests an allocation of \$229,401 from Assembly Bill 518(2023), Section 7, for Fiscal Year 2024 to provide pay parity for attorneys in the Nevada State Public Defender's Office ("NSPD") who provide indigent defense services.

Pay Parity by Funding Stipend

The Department requests an allocation of \$130,066 from Assembly Bill 518(2023), Section 7, for Fiscal Year 2024 for purposes of creating a stipend to provide pay parity for attorneys in the Nevada State Public Defender's Office ("NSPD") who provide indigent defense services.

Pursuant to NRS 180.450, any county may transfer responsibility for the provision of indigent defense services to the NSPD. Several rural counties have transferred all or partial responsibility for indigent defense services to the NSPD. To provide coverage, the NSPD continues to have difficulty staffing the office with attorneys to provide indigent defense services. The *Davis* Monitor highlights lack of pay parity of the NSPD as an area of concern in her Ninth Oversight Report. Specifically, she notes that the NSPD is understaffed and having difficulty attracting qualified attorneys given that the salaries offered are lower than those of the public defender offices in the other counties and lower than the compensation offered to contract attorneys and this is a concern because several *Davis* counties have transferred all or part of the responsibility of indigent defense services to the NSPD. See Ninth Report of the Monitor, p. 7.

This concern of the Monitor is well-founded as the shortage of attorneys willing to work for the NSPD at prevailing state salaries resulted in corrective action plans in Carson City and Storey County wherein the responsibility of providing indigent defense services was transferred from the NSPD to a county public defender office. The county office that was opened in lieu of the state office was able to fully staff the office due to substantially higher salaries than could be offered by the NSPD.

As a solution to assist with staffing the NSPD, the Department requests an allocation of \$130,066 to pay NSPD attorneys who provide indigent defense services pay parity stipends on a quarterly basis. The purpose of the stipend is to provide pay parity with other indigent defense services attorneys and ensure the NSPD will be able to continue to provide indigent defense services. For the remaining part of Fiscal Year 2024, the stipend will be paid to each attorney employed with the Nevada State Public Defender's Office on March 31, 2024, and June 15, 2024.

Pay Parity by Funding Travel Reimbursement

The Nevada State Public Defender has opened an office located in White Pine County to provide primary representation for indigent defense services in that county. To date, NSPD Chris Arabia has struggled to staff the White Pine office. The *Davis* Monitor highlights the challenges that the NSPD is having to staff its office and recommends that the Department should ensure that the rates of compensation for rural public defense attorneys are sufficient to attract and retain qualified attorneys. See Tenth Report of the Monitor, p. 10. NSPD Arabia received no local applicants for his open attorney positions, so he turned to attorneys that live in urban areas, outside the White Pine County area, to staff the office, but the current budget does not have sufficient funding to reimburse travel from the attorney's home location to the courthouse. Failing to reimburse attorneys for their travel creates an economic disincentive and impairs the attorney's ability to provide effective representation, contrary to the direction in NRS 180.320(2)(a).

On November 9, 2023, the Nevada Supreme Court released in ADKT0581 a "Final Report and Recommendations of the Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts" which made recommendations regarding applicable rules to govern the unified use of remote technology in Nevada's general and limited

jurisdiction courts. Although some criminal hearing types were recommended as presumptively virtual, most criminal hearing types were recommended as presumptively in-person. See ADKT 0581.


Requested travel funds would allow staff to travel from their home to White Pine County to cover court, meet with clients, and investigate cases without creating an economic disincentive or impairing the ability of the defense attorney to provide effective representation.

The Department is requesting \$99,335 to reimburse Nevada State Public Defender employees for their weekly travel to White Pine County.

Conclusion

In conclusion, the Department respectfully requests a total allocation of \$ 229,401 from the AB518(2023), Section 7 appropriation to be used during Fiscal Year 2024 to provide pay parity for NSPD attorneys who provide indigent defense services.

Respectfully submitted,


Marcie Ryba
Executive Director

12th Report of the Monitor
Davis v. State, Case No. 170C002271B
May 17, 2024

Appendix E

ARPA Memorandum



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

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

Memorandum

DATE: February 20, 2024

TO: Bridgette Mackey-Garrison, Executive Branch Budget Officer – Team Lead
Don Carlson, Budget Advisor, ASD

FROM: Marcie Ryba, Executive Director, Department of Indigent Defense Services *Marcie Ryba*

SUBJECT: Fiscal Year 2024: Request for ARPA Fiscal Recovery Funds (FRF) to Cover Projected Shortfall Due to Revenue Loss (Work program C67437)

The Nevada State Public Defender (“NSPD”) is respectfully requesting **\$139,546** in ARPA Fiscal Recovery Funds (FRF) to cover the projected shortfall which was exacerbated by complications of the pandemic and the revenue loss the pandemic caused.

As a background for the request, the Nevada State Public Defender (“NSPD”) provides equal protection under the law in accordance with the United States Constitution and the Nevada Constitution by representing indigent adults and juveniles accused of committing crimes in certain rural counties. This representation is performed from arrest through trial, sentencing and appeal. In addition, the office also handles appeals for denial of post-conviction habeas corpus petitions for state prison inmates accused of a crime. Statutory Authority: Nevada Revised Statute Chapters 180 and 260.

Since the creation of the NSPD, Carson City and Storey County had transferred the responsibility to provide indigent defense services to the NSPD. However, in 2023, the NSPD began to suffer from, and continues to suffer from, a critical shortage of indigent defense attorneys and an inability to effectively recruit talent. This shortage was exacerbated by COVID wherein attorneys were retiring from the practice of indigent defense or changing fields to protect themselves from the pandemic. As a result of this critical shortage, the NSPD was unable to handle the Carson City and Storey County caseloads while still providing the level of representation required by the Sixth Amendment of the Constitution. As a result, the NSPD stopped accepting felony cases in Carson City on April 3, 2023. Although the NSPD attempted to staff the office by posting the positions for several months, no applications had been received. The

salaries for indigent defense attorneys in the NSPD appeared to be far below the market rate and led to an inability to attract qualified attorneys. It was believed the inability to staff the NSPD office was likely to continue for the foreseeable future.

As a result, Carson City and Storey County voluntarily entered a corrective action plan transferring the responsibility for indigent defense services from the NSPD to the Carson City Public Defender Office, effective Fiscal Year 2024.

At the time of the Legislative Session, it was not foreseen that Carson City and Storey County would enter a corrective action plan to transfer services from the NSPD to the Carson City Public Defender. Therefore, the NSPD budget was legislatively approved in 2023 with the understanding that the NSPD would be able to collect the following amounts from Carson City and Storey County for the use of the NSPD services:

	Fiscal Year 2023-2024	Fiscal Year 2024-2025
Carson City	\$1,423,965	\$1,441,297
Storey County	\$102,134	\$103,377
Totals	\$1,526,099	\$1,544,674

See SB504(2023), Section 9.

The NSPD did not collect the amounts listed above because the indigent defense services were transferred to the Carson City Public Defender. As such, the pandemic caused this loss in revenue.

The NSPD immediately took steps to mitigate the projected shortfall, such as not filling open positions. Even with these steps, the NSPD is projected to experience a shortfall.

Therefore, the Nevada State Public Defender is respectfully requesting **\$139,546** in ARPA Fiscal Recovery Funds (FRF) to cover the projected shortfall which was exacerbated by complications of the pandemic and the revenue loss the pandemic caused.

12th Report of the Monitor
Davis v. State, Case No. 170C002271B
May 17, 2024

Appendix F

Memorandum for Work Program C67438



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

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

Amended Memorandum

DATE: March 13, 2024

TO: Bridgette Mackey-Garrison, Executive Branch Budget Officer – Team Lead
Don Carlson, Budget Advisor, ASD

FROM: Marcie Ryba, Executive Director, Department of Indigent Defense Services *Marcie Ryba* es

SUBJECT: **Fiscal Year 2024**: Request for AB518, Section 7 Allocation of Funds for Workload Standards with workload standards (Work program C67438)

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

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

The Department requests an allocation of **\$ 111,570** from Assembly Bill 518(2023), Section 7, for Fiscal Year 2024 for the Department to comply with the *Davis v. State* (Nev. First Jud. Dist. Ct. Case No. 170C002271B (Aug. 11, 2020)) consent judgment in the following areas: Compliance with Workload Standards and Elimination of Economic Disincentives.

This request is to achieve compliance with the “Rural Nevada Indigent Defense Services Weighted Caseload Study” Final Report by the November 1, 2024, deadline, as well as the consent judgment.

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Background

The *Davis* Stipulated Consent Judgment requires the State of Nevada to “require compliance with workload standards established as a result of the Delphi study within 12 months of completion of the Delphi Study.”¹ The State of Nevada contracted with the National Center for State Courts (“NCSC”) to complete a Delphi Study making workload recommendations. The “Rural Nevada Indigent Defense Services Weighted Caseload Study” was completed October 2023 and approved by the Board on Indigent Defense Services on November 2, 2023.

Pursuant to the Adopted Regulation of the Board on Indigent Defense Services, LCB File No. R022-23, Section 42 requires that each county in their plan for the provision of indigent defense services must provide details regarding how the county will comply with any guidelines adopted by the Board which set forth the maximum workloads for attorneys providing indigent defense services. Pursuant to the consent judgment, the State of Nevada must require compliance with the workload study by November 2, 2024. The Davis Monitor has addressed the number of staff needed in her most recent report and will monitor the Department’s compliance in future reporting.²

Further, the consent judgment requires the elimination of any type of economic disincentives to providing effective indigent defense representation.

Allocating Funding to Increase Staff at the Nevada State Public Defender for Workload Compliance

Pursuant to the NCSC Study, the Nevada State Public Defender must increase staff to comply with the workload study. Specifically, the additional staff needed to cover the current workload for the Nevada State Public Defender will be:

- 2³ Full-time equivalent (“FTE”) attorneys
- 1 FTE Support Staff

One recommendation of the workload study is for counties to reduce the workload of their attorneys by partially transferring the responsibility for indigent defense services to the Nevada State Public Defender. In accordance with the workload recommendations, Carson City and Douglas County are seeking to transfer the responsibility to cover appeals and parole violations from the county to the Nevada State Public Defender. This transfer is permissible via corrective action in NRS 180.450. In

¹ Consent Judgment, *Davis v. State*, 170C002271B (August 11, 2020), p. 9, l. 13.

² See Eleventh Report of the Monitor, *Davis v. State*, Case No. 170C002271B, February 23, 2024, p. 14-19.

³ The initial workload recommended 3.3 FTE attorneys. However, the workload study only accounted for 40 minutes of travel per week. The NSPD has been unable to staff the White Pine County office with attorneys that live in White Pine County. Instead, indigent defense services attorney staff travel from their remote location in Clark County or Carson City to White Pine County to provide indigent defense services. This travel requirement accounts for an additional eight (8) to ten (10) hours of travel time per week traveled to White Pine County. Taking the increased travel into consideration, the actual need for attorneys is 3.8 FTE attorneys. Current staff at the NSPD for White Pine County is 1 Legal Secretary, 2 attorneys, and 1 investigator.

accordance with the workload study, the Nevada State Public Defender will need the following additional staff to handle the partially transferred workload:

- 2 Full-time equivalent attorneys
- 1 FTE Support Staff
- 1 FTE Investigator

To bring the Nevada State Public Defender into compliance with the workload study, funding is requested for Fiscal Year 2024 for costs associated with positions totaling **\$13,748**. This allocation would fund costs associated with the following positions:

- One (1) Supervising Public Defender (trial) position,
- Three (3) Deputy Public Defender positions,
- Two (2) Legal Secretary II positions, and
- One (1) Investigator.

Recruitment Campaign

Second, funds are requested to utilize All-Star Talent to assist the Nevada State Public Defender with recruitment. Since the pandemic, the NSPD has been unable to effectively recruit and retain attorney staff. Since 2023, the NSPD has attempted to fully staff their offices by posting positions for several months and receiving no applications. Possible explanations are that the salaries for indigent defense attorneys in the NSPD appeared to be far below the market rate which led to an inability to attract qualified attorneys and there is a shortage of indigent defense services counsel in our rural areas of Nevada.

Filling the new positions is essential to compliance with the workload study. To assist with recruitment, the NSPD is seeking **\$39,500** to utilize All-Star Talent to assist with an intensive recruiting campaign tailored to fill our four open attorney positions at the NSPD. Specifically, their game plan is to reach out to potential candidates who possess the necessary skills and would be willing to relocate or commute to Ely and Carson City. Filling the positions is essential to compliance with the workload and the assistance of nationwide recruitment is essential.

Establishing a Satellite Office in Clark County

Finally, as explained above, the NSPD has had limited success in recruitment. Challenges include a lack of available housing in White Pine County for new employees and a lack of attorneys available for hire in the rural county. The NSPD has had success in hiring attorneys from Clark County with the understanding that their duty station is in White Pine County. As travel to a duty station is not a reimbursable travel expense, NSPD staff were paying to travel to White Pine County out of their own pocket. This has created an economic disincentive to provide effective representation, which is explicitly prohibited by NRS 180.320(2)(a) and the *Davis* Stipulated Consent Judgment.⁴ Further, it has impacted the NSPD's ability to provide consistent indigent defense services in the manner required by the stipulated judgment, NRS 180 and NAC 180 because this financial impact to the employee has caused a high turnover rate.

⁴ Consent Judgment, *Davis v. State*, 170C002271B (August 11, 2020), p. 11-13.

The Department has worked with the Administrative Services Department to secure office space in Clark County for the purpose of establishing a satellite office in Clark County. The Department is in the process of changing the duty station for the majority of the NSPD staff from White Pine County to Clark County. Once this is complete, the NSPD will be able to reimburse travel expenses from the Clark County office to the White Pine County office. Further, an office in Clark County will increase the applicant pool of indigent defense attorneys and provide the necessary housing opportunities for new employees. Please note, this increase in travel time from Clark County to White Pine County was contemplated in the workload request above as explained in footnote 3.

The necessity of creating a Clark County Satellite Office was not foreseeable during the past legislative session, but it has proved to be required to provide consistent indigent defense services in the manner required by the stipulated judgment, NRS 180 and NAC 180. Currently, the travel budget in BA1499 is insufficient to allow travel reimbursement to White Pine County from the Clark County Satellite Office.

The NSPD is requesting **\$58,322** to allow four attorneys and an investigator to be reimbursed for their weekly travel expenses from Clark County to White Pine County for the performance of indigent defense services.

Conclusion

In conclusion, the Department respectfully requests a total allocation of **\$ 111,570** from the AB518(2023), Section 7 appropriation to be used during Fiscal Year 2024 to comply with the *Davis* Stipulated Consent Judgment and to cover costs of compliance with workload standards.

12th Report of the Monitor
Davis v. State, Case No. 170C002271B
May 17, 2024

Appendix G

Memorandum for Work Program C68379



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

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

Memorandum

DATE: May 3, 2024

TO: Bridgette Mackey-Garrison, Executive Branch Budget Officer – Team Lead
Don Carlson, Budget Advisor, ASD

FROM: Marcie Ryba, Executive Director, Department of Indigent Defense Services

SUBJECT: Fiscal Year 2024: Request Revenue Authority to Receive a Transfer to Cover Projected Shortfall Due to Revenue Loss (Work program **C68379**)

The Nevada State Public Defender (“NSPD”) is respectfully requesting revenue authority in BA1499 to receive a transfer in the amount of **\$217,040** from the Department of Indigent Defense Services (“DIDS”) BA1008.

AB454(2023), Section 1, provides that indigent defense services expenses are an obligation to the state when a county transfers responsibility for indigent defense services to the state or if a county has met the maximum contribution.

An increase in expenses for the Nevada State Public Defender are “state” expenses as the State Public Defender covers trial level cases for counties that have fully transferred responsibility to the state and have paid the county appropriation, as well as providing representation for case-types that are statutorily a state expense, like parole violations, appellate cases, and prison representation. See AB518(2023) and NRS 212.070.

As a background for the request, the Nevada State Public Defender (“NSPD”) provides equal protection under the law in accordance with the United States Constitution and the Nevada Constitution by representing indigent adults and juveniles accused of committing crimes in certain rural counties. This representation is performed from arrest through trial, sentencing and appeal. In addition, the office also handles appeals for denial of post-conviction habeas corpus petitions for state prison inmates accused of a crime. Statutory Authority: Nevada Revised Statute Chapters 180 and 260. Since the creation of the NSPD, Carson City and Storey County had transferred the responsibility to provide indigent defense services to the NSPD. However, in 2023, the NSPD began to suffer from, and continues to suffer from, a critical shortage of indigent defense attorneys and an inability to effectively recruit talent. This shortage was

exacerbated by COVID wherein attorneys were retiring from the practice of indigent defense or changing fields to protect themselves from the pandemic. As a result of this critical shortage, the NSPD was unable to handle the Carson City and Storey County caseloads while still providing the level of representation required by the Sixth Amendment of the Constitution. The NSPD stopped accepting felony cases in Carson City on April 3, 2023. Although the NSPD attempted to staff the office by posting the positions for several months, no applications had been received. It was believed the inability to staff the NSPD office was likely to continue for the foreseeable future.

During the legislative session, White Pine County transferred responsibility to provide indigent defense services to the NSPD in Fiscal Year 2024.

On July 7, 2023, Carson City voluntarily entered a corrective action plan transferring the responsibility for indigent defense services from the NSPD to the Carson City Public Defender Office. On August 3, 2023, Storey County voluntarily entered a corrective action plan transferring the responsibility for indigent defense services from the NSPD to the Carson City Public Defender Office.

At the time of the Legislative Session, it was not foreseen that Carson City and Storey County would enter a corrective action plan to transfer services from the NSPD to the Carson City Public Defender. Therefore, the NSPD budget was legislatively approved with the understanding that the NSPD would be able to collect the following amounts for the use of the NSPD services:

	Fiscal Year 2023-2024	Fiscal Year 2024-2025
Carson City	\$1,423,965	\$1,441,297
Storey County	\$102,134	\$103,377
White Pine County	\$432,329	\$409,656
Totals	\$1,958,428	\$1,954,331

See SB504(2023), Section 9.

The NSPD did not collect the amounts listed above from Carson City or Storey County because the indigent defense services were transferred to the Carson City Public Defender. The NSPD collected the amount from White Pine County, rendering further expenses for the provision of indigent defense services to the County state expenses.

Upon the transfer of responsibility of indigent defense services for Carson City and Storey County from the NSPD to the Carson City Public Defender, the NSPD immediately took steps to mitigate their expenses, such as not filling open positions and attempting to sublet a portion of their office space in Carson City. Even with these steps, the NSPD is projected to experience a shortfall.

The Nevada State Public Defender (“NSPD”) is respectfully requesting revenue authority in BA1499 to receive a transfer in the amount of **\$217,040** from the Department of

Indigent Defense Services (“DIDS”) BA1008. The transfer of funds is necessary to cover the projected shortfall, as these indigent defense services expenses are a state expense pursuant to AB454(2023), Section 1.

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Appendix H

Pay Parity Worksheet

Pay Parity Salary Comparison
Employer Paid Retirement Compensation Schedule

Location	Deputy District Attorney Salary (as of 5/1/24)	Deputy Public Defender NSPD (with 11% increase effective 7/1/24)*	Difference	Percentage Difference	Proposed Comparable DAG Salary (with 11% increase effective 7/1/24)*	Difference DA vs. AG	Percentage Difference of DA vs. AG	Chief Deputy District Attorney Salary (as of 5/1/24)	Chief Deputy NSPD Salary (with 11% increase effective 7/1/24)*	Difference	Percentage Difference	Proposed Comparable DAG Salary (with 11% increase effective 7/1/24)*	Difference DA vs. AG	Percentage Difference of DA vs. AG
Carson City	\$ 158,816.14	\$ 115,804.08	\$ (43,012.06)	-37%	\$ 129,428.22	\$ (29,387.92)	-23%	\$ 192,167.53	\$ 129,428.22	\$ (62,739.31)	-48%	\$ 154,632.99	\$ (37,534.54)	-24%
Churchill	\$ 144,476.80	\$ 115,804.08	\$ (28,672.72)	-25%	\$ 129,428.22	\$ (15,048.58)	-12%	\$ 159,473.60	\$ 129,428.22	\$ (30,045.38)	-23%	\$ 154,632.99	\$ (4,840.61)	-3%
Douglas	\$ 178,588.80	\$ 115,804.08	\$ (62,784.72)	-54%	\$ 129,428.22	\$ (49,160.58)	-38%	\$ 200,553.60	\$ 129,428.22	\$ (71,125.38)	-55%	\$ 154,632.99	\$ (45,920.61)	-30%
Elko	\$ 146,008.86	\$ 115,804.08	\$ (30,204.78)	-26%	\$ 129,428.22	\$ (16,580.64)	-13%	\$ 156,944.66	\$ 129,428.22	\$ (27,516.44)	-21%	\$ 154,632.99	\$ (2,311.67)	-1%
Eureka	\$ 120,000.00	\$ 115,804.08	\$ (4,195.92)	-4%	\$ 129,428.22	\$ 9,428.22	7%	N/A	\$ -					
Humboldt	\$ 122,937.88	\$ 115,804.08	\$ (7,133.80)	-6%	\$ 129,428.22	\$ 6,490.34	5%	\$ 149,498.91	\$ 129,428.22	\$ (20,070.69)	-16%	\$ 154,632.99	\$ 5,134.08	3%
Lyon	\$ 152,625.00	\$ 115,804.08	\$ (36,820.92)	-32%	\$ 129,428.22	\$ (23,196.78)	-18%	\$ 167,887.50	\$ 129,428.22	\$ (38,459.28)	-30%	\$ 154,632.99	\$ (13,254.51)	-9%
Storey	\$ 125,209.33	\$ 115,804.08	\$ (9,405.25)	-8%	\$ 129,428.22	\$ 4,218.89	3%	N/A						
White Pine	\$ 117,668.00	\$ 115,804.08	\$ (1,863.92)	-2%	\$ 129,428.22	\$ 11,760.22	9%	\$ 133,292.00	\$ 129,428.22	\$ (3,863.78)	-3%	\$ 154,632.99	\$ 21,340.99	14%
Average Salary	\$ 140,703.42	\$ 115,804.08	\$ (24,899.34)	-22%	\$ 129,428.22	\$ (11,275.20)	-9%	\$ 165,688.26	\$ 129,428.22	\$ (36,260.04)	-28%	\$ 154,632.99	\$ (11,055.27)	-7%

Employer Paid Retirement

Comparable State Salaries on Employer Paid Retirement to Deputy Positions as of 5/1/24		
U4536	Executive Director DIDS	\$ 136,239.00
U0968	Bureau Chief	\$ 139,309
U0930	General Counsel / solicitor General / Construction Law Counsel for DAG	\$ 144,631.00
U4681 /	General Counsel / Staff Counsel PUC	\$ 144,631.00
U0927	Assistant AG	\$ 153,423.00
U9087	SR Physician	\$ 169,744.00
U5307	Medical Epidemic	\$ 169,744.00

Position	Expected Salary 7/1/24*	Requested Match Salary to AG positions	Requested New Match Salary for DIDS with title of AG position	percentage increase to bring DIDS in line with AG	Proposed increase for pay parity between DA, AG and DIDS	Proposed Salary for Parity
Executive Director DIDS (U4536)	\$ 151,225.29	\$ 170,299.53	Assistant AG (U0927)	13%	9%	\$ 185,626.49
Deputy Director DIDS (2) (U4533)	\$ 149,864.43	\$ 170,299.53	Chief of Staff (U0910)	14%	9%	\$ 185,626.49
State Public Defender (1) (U4502)	\$ 143,052.36	\$ 160,540.41	Solicitor General (U0926)	12%	9%	\$ 174,989.05
Office -- Supervising Public Defender (4) (U4004)	\$ 129,428.22	\$ 154,632.99	Bureau Chief (U0968)	19%	9%	\$ 168,549.96
Supervising Deputy Public Defender (other than office)	\$ 129,428.22	\$ 143,052.36	Chief Deputy PD (U0934)	11%	9%	\$ 155,927.07
Deputy Public Defender	\$ 115,804.08	\$ 129,428.22	Senior Deputy PD (U0934)	12%	9%	\$ 141,076.76

*The salaries are determined by adding 11% to the current Unclassified Employees on Employer Paid Retirement Compensation Schedule. This does not take into consideration the unknown PERS increase.