

Joe Lombardo
Governor



Marcie Ryba
Executive Director

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

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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)

A handwritten signature in blue ink that reads "Marcie Ryba".

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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Memorandum

DATE: February 26, 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 to comply with workload standards (Work program C67455)

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 **\$1,236,236** from Assembly Bill 518(2023), Section 7, for Fiscal Year 2025 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 area: Compliance with Workload Standards. This request is to achieve compliance by the November 1, 2024 deadline with the “Rural Nevada Indigent Defense Services Weighted Caseload Study” Final Report which was released October 2023.

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Compliance with Workload Standards

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 on 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

Increasing 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.

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.

In 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 2025 for the following positions and associated costs totaling **\$910,928**. This allocation would fund 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.

Establishing a Satellite Office in Clark County

As explained in Fiscal Year 2024 Work Program C67438, the NSPD has had limited success in recruitment and is hopeful a nationwide recruitment campaign will assist with finding qualified candidates.

However, the NSPD also has a challenge with the lack of available housing in White Pine County for new employees.

The Department believes that establishing a satellite office in Clark County will increase the applicant pool of indigent defense attorneys and provide the necessary housing opportunities for the new employees. The Department is working with the Administrative Services Department to facilitate office space in Clark County.

Once the satellite office is established in Clark County, the duty station of the NSPD employees could either be Ely or Las Vegas. Adding a duty station in Clark County will necessitate an appropriation of funding for travel expenses for NSPD employees to travel to Ely, Nevada from Las Vegas, Nevada for weekly court. On average, all four attorney employees will need to be available to attend Law and Motion in District Court on Monday mornings at 9 am, as well as cover the weekly calendar through Friday.

It is believed that the establishment of a duty station in Clark County may improve the ability of the NSPD to recruit staff and provide the necessary housing opportunities for staff. Therefore, an NSPD travel budget of **\$325,308** is requested to allow the four attorneys and the investigator to be reimbursed for their travel expenses from Clark County to White Pine County in compliance with the workload study.

Conclusion

In conclusion, the Department respectfully requests a total allocation of **\$1,236,236** from the AB518(2023), Section 7 appropriation to be used during Fiscal Year 2025 to comply with the *Davis* Stipulated Consent Judgment to cover costs of compliance with workload standards.

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MEMORANDUM

To: Bridgette Mackey-Garrison, Executive Branch Budget Officer

From: Marcie Ryba, Department of Indigent Defense

Date: 03/15/2024

Re: Request for authority to collect fees from the city of Ely, Nevada in FY2025.

The Nevada State Public Defender is requesting authority to collect fees from the city of Ely, Nevada, for costs incurred for the NSPD appearing in municipal court as provided by NRS 171.188(5). Pursuant to NRS 171.188(5), the Nevada State Public Defender must be reimbursed by the city for costs incurred in appearing in municipal court.

The hourly rate for appearance is set NRS 7.135 and regulation of the Board on Indigent Defense Services contained within NAC 180. See LCB File No. R033-23, Section 1. The appointed hourly rates are as follows:

As of January 1, 2024 to present: \$172 per hour for non-capital cases.

For work completed between December 15, 2023-December 31, 2023, \$163 per hour for non-capital cases.

For work completed prior to December 15, 2023, \$100 per hour for non-capital cases.

The NSPD requests that this fee collection be deposited in Category 01.

The Department projects a reimbursement amount of \$27,491 in FY25. See NSPD Ely Municipal Reimbursement Projection FY2024 and FY2025.



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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 *Marcie Ryba*

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.