

13th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 19, 2024

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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 May 17, 2024, to August 19, 2024.

More broadly, the Monitor would like to take this opportunity to summarize compliance since the Monitor’s first report on July 1, 2021, and to point out two substantial impediments to *final* compliance with the Judgment. Looking ahead, the impediments to compliance are:

- Insufficient funding in the budget of the Department of Indigent Defense Services (hereinafter “the Department”) to ensure ongoing compliance with the Judgment’s terms. In areas of training, oversight, and data collection, the Department relies on approval for allocation of earmarked funds on an *ad hoc* basis from the Interim Finance Committee (IFC). While the IFC granted the Department’s most recent request, future delays or denials may cause the state to quickly fall out of compliance with the Judgment.
- Insufficient number of attorneys to comply with the workload limits, whether through the Nevada State Public Defender or county-level contracts and county public defender offices. Compliance is required by November 2, 2024, per the Judgment.¹

Achievements

The Board of Indigent Defense Services (hereinafter “the Board”) and the Department have developed systems of compliance with many of the requirements of the Judgment, some of which, as stated above, rely on *ad hoc* funding requests to the Interim Finance Committee for earmarked funds. To review the compliance achievements:

- All the *Davis* **counties have plans for public defense**, including prompt screening for indigency, selection of counsel independent of the prosecution or judiciary,² compensation and reimbursement for experts and investigators independent of the judiciary,³ prompt appointment of counsel, 48-hour pretrial release hearings. The county plans also set forth the qualifications, performance standards, and specific requirements, such as confidential spaces for attorney-client communication, that are required for effective representation. Each county plan provides for first line and conflict public defense, as well as for second tier conflicts, and a system for identifying conflicts.⁴

¹ Judgment, 17.

² Judgment, 12-13.

³ Judgment, 11-12.

⁴ Judgment, 12-16.

- **Contracts** between counties and public defense providers are **reviewed by the Department** to ensure that they include all requirements of the Judgment.⁵
- The state enacted in statute a **formula to reimburse the counties** for expenses over their maximum contribution for indigent defense, previously set forth in the Board's regulations.⁶ By all accounts, reimbursement has been reliable and thus a success.
- The Department developed and implemented a system of **qualification and selection** for public defense providers and, on an ongoing basis, selects appointed counsel directly or through its county-level delegates.⁷
- The Department has developed a **system of oversight** in which three attorneys, compensated on a contract basis, report on compliance activities required by the Judgment, including the prompt screening for indigence and appointment of counsel, appearance at initial arraignment, bail arguments, client communication, confidential meeting rooms, and the discouragement of waivers of rights at arraignment. Oversight attorneys using the standards set forth in ADKT 411 and the ABA Standards for the Defense Function can address compliance issues on an ongoing basis.⁸ The Department issues oversight reports on a regular basis.⁹
- The Department has developed a framework for **training and resources**, including an annual conference and opportunities for attorneys to attend trial colleges and other out-of-state training opportunities.¹⁰
- The Department has adopted **standards of practice** for indigent defense and requires their inclusion in all county contracts.¹¹
- The Board has set regulations for, and the Department has acted upon, the statutory procedure for **corrective action plans** with counties or attorneys failing to comply with the terms of the Judgment.¹²
- The Department has implemented a **universal case and workload reporting system**, incentivized through Westlaw subscriptions. When compliance issues emerge, the

⁵ Judgment, 11.

⁶ Judgment, 12-13.

⁷ Judgment, 15.

⁸ Judgment, 13-16.

⁹ The oversight reports are available on the Department's website here: <https://dids.nv.gov/litigation/Davis/>.

¹⁰ Judgment, 16.

¹¹ Judgment, 16.

¹² Judgment, 17. NRS 180.450 (setting forth the procedure for corrective action plans authorized by the Board).

Department's oversight attorneys have begun working directly with contract attorneys to ensure cases and hours are reported completely.¹³

- The Department produces **quarterly case and workload reports**, as well as an **annual report** regarding the state of indigent defense services.¹⁴

Case and workload standards

- After completing the National Center for State Courts' workload study, the Board set **workload standards**, which the Department applied in each county, determining the number of attorneys, investigators, and support staff needed.¹⁵ Then, the Department began working with **county leadership to develop the plan for complying with the workload limits**.
- The new **contracts** for indigent defense **specify the workload expected** and contain provisions for appointing conflict counsel or providing extra, hourly remuneration when the workload exceeds the limits.¹⁶

To address the shortage of attorneys and excessively high workloads of some attorneys, the Board and/or Department:

- **Increased the hourly rate** for appointed counsel to track the federal rate.¹⁷
- Secured \$32,996 in funding for **social work services** through the Nevada Public Health Foundation for Douglas, Eureka, Lincoln, and White Pine counties.
- Provided a **reprieve for attorneys with excessive workloads**, especially in Nye County where the Department is selecting appointed counsel for all new cases for at least sixty days or until the caseloads of the contract attorneys fall within the workload standards.
- **Selected appointed counsel** on an ongoing basis for counties with insufficient numbers of contract attorneys or conflict counsel.
- Engages in **ongoing recruitment**, including the LASSO program that provides stipends for first- and second-year law students to work with rural public defenders over the summer

¹³ Judgment, 16.

¹⁴ Judgment, 18. The quarterly and annual reports can be found on the Department's website at https://dids.nv.gov/Annual_Report/home/.

¹⁵ Judgment, 16.

¹⁶ Judgment, 13.

¹⁷ Judgment, 11 (the state must ensure attorneys are compensated at a "reasonable hourly rate that takes into account overhead and expenses" ... "comparable on an hourly basis to that of prosecutors in the same county with comparable experience").

or during the semester, and larger stipends for law school graduates who commit to working in rural indigent defense.

Areas of Concern

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

- **Instability of ongoing funding for Judgment-mandated activities**¹⁸

Crucial activities necessary for compliance with the Judgment and instituted by the Department are funded all or in part through *ad hoc* disbursement requests to the Interim Finance Committee to release funds earmarked pursuant to AB 518 (7) (2023), for FY 2024 and FY 2025.¹⁹ These include but are not limited to oversight and evaluation, training and resources, and universal reporting. The Monitor’s concern is how the state can ensure compliance with the Judgment when the Department’s budget does not independently cover its fundamental compliance activities. A delay or denial of necessary funding could cause the state to quickly fall out of compliance with the Judgment.

- **Insufficient attorneys to comply with workload limits**²⁰

Compliance with the workload limits requires increasing the number of full-time attorneys, but there are simply not enough attorneys applying for the contracts or positions. Moreover, the compensation and/or workload offered by some counties may be insufficient to attract new attorneys.

- **County contracts that create economic disincentives**²¹

Some county contracts with defense attorneys create economic disincentives prohibited by the Judgment.²² They require hours in excess of full-time employment at a rate of compensation well below the hourly rate for appointed counsel and insufficient to cover the cost of additional attorneys and staff.

- **Confidential meeting spaces**²³

Some courthouses and jails still lack reliably accessible places for confidential attorney-client meetings.

¹⁸ Discussed *infra* at pp. 6-8.

¹⁹ 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.”

²⁰ Discussed *infra* at pp. 16-22.

²¹ Discussed *infra* at pp. 8-11.

²² Judgment, 11.

²³ Discussed *infra* at pp. 13-15.

- **Standards for remote appearance of incarcerated defendants; jail practices²⁴**

Decisions made by jail personnel often determine whether defendants are brought to court, and there is great variety in whether and when they are brought to court and whether their attorney is in the courthouse or jail during the hearing. This raises the issue of whether the client can adequately consult with the attorney during the hearing.

Summary of Recommendations

- To ensure ongoing compliance with the *Davis* Judgment, the state should consider including in the Department's next biennium budget the funding that is currently earmarked in AB 518 (7) for oversight, training, and universal data collection and reporting.
- The state should intervene — through collective action plans or otherwise — if the contract terms between a county and an attorney disincentivize effective assistance of counsel by requiring substantially more than full time employment without providing adequate compensation to support more than one attorney and any necessary support staff.
- The state should either build up the Nevada State Public Defender's (NSPD) office 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, through its oversight attorneys, document the remote practices of the courts and set standards for determining which hearings require a 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. Because it appears that remote defendant appearances and difficulty communicating with incarcerated clients stem partly from jail practices, the Department's oversight report should describe the jail practices in each county regarding in-person and remote attorney-client meeting spaces, and the oversight report should discuss whether and when defendants are transported to court.

Compliance to Date

The Judgment creates three categories of obligation:

- (I) Removing economic disincentives and ensuring independence
- (II) Setting and ensuring performance standards

²⁴ *Id.*

(III) Uniform data collection

This Report uses this tripartite structure to analyze compliance. Owing to the concerns raised concerning the delays the Department faced in securing an allocation from the AB 518 (2023) earmarked funds until August 15, 2024, this Report will first address how budgetary issues put compliance with the Judgment at risk, and then move into the three-part structure.

Ongoing Uncertainty about Access to Funds for Compliance

As reported in the Monitor’s 12th Report, the Department went through a period where it was difficult to get placed on the agenda of the Interim Finance Committee, a necessary step in securing access to the funds earmarked in AB 518 (2023) for compliance with the Judgment, including but not limited to funds for training opportunities, oversight, recruitment, and data collection. The delays do not appear to have been willful on anyone’s part but, rather, due to miscommunication and procedural issues that have been resolved. At a hearing on August 15, 2024, the Interim Finance Committee granted the Department’s requests in Work Programs C67456 and C69492, and authorized the transfer of funds budgeted for personnel into the overhead budget so that the state could contract with a private attorney for case coverage in White Pine County.²⁵

The period from February 25, 2024, to August 15, 2024, however, was one of great precarity with regard to compliance with the Judgment. The Department could not know whether it would have funds for the contracts with the oversight attorneys, training, recruitment, and data collection incentives for FY2025, which began on July 1, 2024. To restate the broader issue: Crucial activities necessary for compliance with the Judgment and instituted by the Department are funded all or in part through *ad hoc* disbursement requests to the Interim Finance Committee to release funds earmarked pursuant to AB 518 (7) (2023), for FY 2024 and FY 2025. These include:

- a. **Oversight and evaluation:** The Department contracted with three experienced attorneys to provide oversight in the rural counties. Their payment is dependent on the Department’s successful applications to the Interim Finance Committee to release funds earmarked pursuant to AB 518 (7). On August 15, 2024, the Interim Finance Committee approved the Department’s request for FY 2025 funding for training. The Monitor’s concern is how the state intends to ensure ongoing oversight beyond the current biennium.
- b. **Training and resources:** The Department’s budget for “Davis Compliance—Training” is insufficient to cover the costs of ongoing training activities for the rural public defense attorneys. As a result, the Department requests AB 518(7) funds from the Interim Finance Committee as needed. As noted above, on August 15, 2024, the Interim Finance Committee approved requested funds for attorney training to comply

²⁵ The Department’s revised memorandum in support of Work Program C67456 (August 5, 2024) is attached to this Report as Appendix A.

with the Judgment. If, however, a hearing before the Interim Finance Committee is delayed, or, if the funds are denied, the state likely would fall out of compliance with the Judgment's requirement to provide ongoing training. The Monitor's concern is how the state intends to ensure that the Department can continue and augment its training opportunities for rural attorneys beyond the current biennium.

- c. **Universal case and time reporting:** Maintaining the Legal Server software used for the case and workload reporting requires sufficient budget for the provider's fees as well as for training. In the past year, Department increased the attorneys' compliance with reporting requirements by providing free access to Westlaw, but this funding is dependent on the Department's successful applications to the Interim Finance Committee to release funds earmarked pursuant to AB 518 (7) (2023). The Monitor's concern is how the state intends to ensure ongoing funding for data collection through Legal Server—as well as Westlaw subscriptions for rural indigent defense attorneys—beyond the current biennium.

A significant portion of this Monitor's recent reporting has been an edge-of-the-seat query as to whether the Interim Finance Committee would fund various Davis requirements for another quarter or another fiscal year, or whether the state would fall out of compliance. At present, there is no assurance that sufficient funds will be earmarked for the next biennium. Nor is there assurance that the Department will reliably succeed in its numerous expected requests for access to the earmarked funds, in submitting work programs and in securing a place at the Interim Finance Committee meetings, and ultimately receiving a favorable vote.

Recommendation

Build the above costs of compliance with the Judgment into the Department's budget.

I. Removing Economic Disincentives and Ensuring Independence

The Judgment contains several requirements to ensure independence of the defense function and removal of economic disincentives.²⁶ While there are some outstanding questions about pay parity with prosecutors, especially for attorneys in the office of the Nevada State Public Defender, this report highlights an issue coming to the forefront in light of the counties' efforts to comply with workload standards. The Judgment requires that:

Counsel with whom counties contract with to provide public defense services shall be compensated with a reasonable hourly rate that takes into account overhead and expenses, including costs relating to significant travel time. Contracts for public defense services shall specify performance requirements and anticipated workload, provide a funding mechanism for excess, unusual, or complex cases that does not

²⁶ Judgment, 11-13.

require judicial approval, and separately fund expert, investigative, appellate work, and other litigation support services.²⁷

The contracts reviewed by the Monitor contain provisions for extra compensation for extraordinary expenses, as well as a requirement that the attorneys comply with workload standards. However, the number of hours of attorney time required by some county contracts, combined with an unreasonably low hourly rate, serves as an economic disincentive to devote sufficient time to public defense. These rate of compensation appears too low to permit the contracting attorney or firm to hire sufficient staff to cover the hours required. This Report analyzes Douglas and Lyon County contracts, but the problem is not necessarily limited to these counties.

A. Douglas County

Douglas County currently has four contracts with attorneys. Each contract requires 2,200 hours of casework annually.²⁸ The contract explicitly takes issue with the state’s definition of the number of billable (or case-related) hours per year that constituted full-time employment. The contract states:

Although the County believes the BIDS Adopted Weighted Caseload Study is defective and requires additional study and revisions, for the purpose of this Contract, according to the BIDS Adopted Weighted Caseload Study, the case-related annual attorney year value is 1,392.6 hours per 1.0 full time equivalent (“FTE”) attorney. Firm promises and agrees to commit up to **2,200 hours per year** for Firm and Firm’s attorneys, associates and employees to provide services under this Contract.²⁹

The contract contains provisions requiring the attorney to refuse new cases if the attorney does not have “sufficient time,” but the terms of the contract stand in contradiction to that requirement.

It is doubtful that a solo practitioner could consistently work the number of hours required by the contract. Assuming two-weeks of vacation per year, no other holidays, and *no sick or personal time off*, the attorney must work exclusively on clients’ cases 44 hours per week to reach 2,200 hours. In addition, they must travel to various courthouses and jails, report their cases and hours, take regular CLE training, and conduct other business required to manage a law firm.

It appears that all four attorneys who hold contracts with Douglas County are solo practitioners. Their contracts make no mention of requiring additional attorney or support staff to accomplish a workload of 2,200 hours per year of casework. In any case, the rate of compensation makes it unlikely that a solo practitioner would recruit another attorney to help with the workload. The compensation for the yearly contract is \$265,000, and an additional \$450 per day for serving as the on-duty attorney for weekend arraignment/pretrial release hearings, as well as a clause allowing for compensation for extraordinary expenses. For 2,200 hours, this amounts to substantially less than the hourly rate for appointed counsel.

²⁷ Judgment, 11.

²⁸ A Douglas County contract is attached to this Report as Appendix B.

²⁹ Douglas County Contract, 3.

The Board amended its regulations to set the minimum hourly rate for appointed counsel at the current rate for federal Criminal Justice Act (CJA) attorneys, which is \$172 per hour for non-capital cases, and \$220 per hour for capital cases, as of January 1, 2024.³⁰ At the appointed counsel rate of \$172 per hour, a full-time attorney, defined as 1,392.6 hours per year, would be compensated at \$239,527.20. This would be a “reasonable hourly rate,” as the Judgment requires, because it matches the hourly rate for appointed counsel.

A contract for 2,200 hours of direct case-related representation at \$172 per hour would amount to \$378,400, but the Douglas County contract requires 2,200 hours of work for \$265,000—more than \$100,000 less for the total the attorney would receive if counsel took the cases by appointment at the minimum hourly rate set by the Board. This is the type of low-ball defense contracting that the Judgment prohibits. It creates a disincentive to devote adequate time and number of attorneys to the attorney’s indigent defense caseload and puts attorneys in a position where they must focus on private cases to pay for their office overhead and staffing expenses. In Douglas as in the other counties, full-time contract holders are permitted to engage in private practice, but it would be impossible to engage in private practice on top of 2,200 hours of indigent defense work per year.

B. Lyon County

Lyon County is offering three contracts, each of which requires the contracting law firm to commit to provide three (3) full-time attorneys and two (2) support staff to the contract. All told, and as discussed below in Section II.D. on Workload Standards, the county intends to use these three contracts to provide nine of the attorneys required by the workload study.³¹

The compensation for each contract is \$480,000, an amount which must cover full-time compensation for three attorneys, two support staff, and overhead. Again, if the hourly rate of compensation set by the Board for appointed counsel is used as a metric of the reasonableness of the hourly rate for contract counsel, a full-time attorney working 1,392.6 hours per year on indigent defense cases should be compensated \$239,527.20. If the contract requires the firm to provide three full time attorneys, the combined compensation for the three attorneys would be \$718,581.60.

The most likely scenario is that the firms accepting contracts in Lyon County will dedicate less than the required number of full-time employees to their indigent clients so that they can take private cases to keep the lights on and pay their employees. Although the contracting firm must provide a list of attorneys, the Monitor has been unable to confirm that any of the three firms are dedicating three attorneys each to the contract. Moreover, since the contracts permit private casework, there is a serious economic disincentive to devoting three full time attorneys to indigent defense work at such a low hourly rate.³² Indeed, one law firm holding a contract in Lyon County

³⁰ Assembly Bill 454 (2) (2023) requires the Board to adopt regulations establishing rates of hourly compensation for appointed counsel in counties whose population is less than 100,000, and in any county in which a private attorney is appointed to represent a petitioner in a post-conviction petition for habeas corpus.

³¹ A Lyon County contract is attached as Appendix C.

³² There is no prohibition against the private practice of law, even for attorneys who accept full-time contracts for the provision of indigent defense services. The Judgment appears to contemplate the private practice of law by requiring the state to collect data on attorney hours spent on private cases. Judgment, 18.

also holds a full-time contract in Mineral County, but there is no documentation that the firm has four full-time attorneys for indigent defense.

Recommendations

- To avoid financial disincentives for contracting attorneys otherwise engaged in private practice, the state should define the reasonableness of hourly compensation for contract counsel as comparable to the appointed counsel rate.
- To avoid financial disincentives, all contracts should reflect the workload standard's determination that a full-time attorney dedicates 1,392.6 hours to casework per year. Of course, many attorneys work more than this. When the solo practitioner exceeds 1,392.6 hours, they should be paid at the hourly appointed counsel.
- The state must ensure that attorneys accepting contracts that require more than one full time attorney—either explicitly or due to the number of hours of work expected—are adequately staffed to comply with workload limits and ensure effective assistance of counsel.

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.³³
- 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.³⁴
- Systems to identify and remove conflicts.³⁵
- Establishment of performance standards.³⁶
- Establishment of workload standards.³⁷
- Qualifications for attorneys.³⁸

³³ Judgment, 14.

³⁴ *Id.* at 14-15.

³⁵ *Id.* at 12.

³⁶ *Id.* at 16.

³⁷ *Id.* at 17.

³⁸ *Id.* at 15.

- A system of oversight.³⁹
- Attorney training and resources.⁴⁰

This Report addresses (A) oversight, (B) confidential client communication and in-person courtroom appearance; (C) training, and (D) 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.⁴¹ To satisfy this provision of the Judgment, the Department contracted with three experienced attorneys to provide part-time oversight - David Schieck, John Kadlic, and Derrick Lopez - using funds secured for FY 2024 through AB 518 (7) (b).

The oversight attorneys are in the field. They can monitor the conditions of the Judgment that relate to attorney performance, screening for indigency, appointment of counsel, and other aspects of compliance with the Judgment. The Monitor has met with each of them in their respective, assigned counties. Of the *Davis* counties, David Schieck conducts oversight in Eureka, Esmeralda, Lincoln, Nye, and White Pine counties. John Kadlic conducts oversight in Churchill, Lyon, and Mineral counties, as well as two non-*Davis* counties. Derrick Lopez conducts oversight in Douglas, Lander, and several non-*Davis* counties.

The Department is in the process of finalizing a quarterly oversight report, for May 1 to July 31, 2024. In the meantime, the Monitor spoke with Schieck by telephone, and met in person with Lopez in Douglas County, and Kadlic in Lyon County, and reviewed the Department’s new oversight metrics and court observation form.

The Department’s metrics and a court observation form for oversight/evaluation

The Department’s new Oversight Protocol for Indigent Defense Systems in Rural Nevada Counties sets forth the statutory mandate for on-site visits to determine compliance with minimum standards, court rules, and other rules, statutes, and constitutional provisions, and to generally ensure that “[r]epresentation of indigent defendants is being provided in an effective manner.” NRS 180.440(2)(1).⁴² It requires the oversight attorneys to schedule court visits and coordinate with local authorities. It provides an observation checklist for courtroom observations, and describes other required tasks, including conducting interviews/discussions with attorneys and observing whether attorneys have the opportunity for confidential communication with their clients. Oversight attorneys assess the effectiveness of representation, including the impact of workloads, and verify that the attorneys have access to the resources they need to prepare their

³⁹ *Id.* at 16-17.

⁴⁰ *Id.* at 16.

⁴¹ *Id.* at 16 (emphasis added).

⁴² The Oversight Protocol for Indigent Defense Systems in Rural Nevada Counties is attached to this Report as Appendix D.

cases. The oversight attorneys are also asked to evaluate systemic issues that impact the fairness of the proceedings against indigent defendants. Finally, the oversight attorneys meet with the Deputy Director of the Department, providing reports, and establishing a plan for next steps in their oversight.

The Department has been improving its standardized court observation form, the final version of which allows for oversight attorneys to note all relevant information for each case, using one form per case called in court.⁴³ A second page provides room for comments on issues not captured by the fillable form. The most recent version of the form prompts the court observer to note remote and in-person appearances.

Summary

It is the Monitor's view that the oversight protocol and court observation form put the Department in an excellent position to gather information on an ongoing basis about compliance with the Judgment and the adequacy of indigent defense in the rural counties. Indeed, without the oversight attorneys, the Department cannot conduct oversight and evaluation of the quality of public defense in Nevada's 83 rural courthouses.

The oversight attorneys are paid by contract, the cost of which is requested on an as-needed basis from the Interim Finance Committee. In the Monitor's last report, it was uncertain whether the Department would be heard by the Interim Finance Committee in time to maintain payments on the oversight attorneys' contracts. Fortunately, on August 15, 2024, the Interim Finance Committee granted the Department's request for additional funds in the amount of \$496,010 to pay the oversight attorneys.⁴⁴

Recommendation

- The state should build funding for oversight attorneys into the Department's budget. It may be the case that contracting at an hourly rate is preferable to salaried positions, allowing for maximum flexibility so that experienced attorneys familiar with the county in question can provide oversight as needed. For the stability of the state's compliance with the Judgment, however, it may be prudent to ensure that the Department can compensate oversight attorneys from its budget.

⁴³ The court observation form is attached to this Report as Appendix E.

⁴⁴ The initial amount requested was \$916,439 but the total requested was reduced in the Department's revised workplan (August 5, 2024).

B. Confidential client communication and in-person courtroom appearance

1. Confidential meeting space in courthouses and jails

The Judgment states that the “Defendants shall take appropriate legal steps to ensure that county jails and state prisons are in compliance with all existing laws and rules regarding access to counsel and the privacy of client communication.”⁴⁵ Indeed, The Judgment makes repeated references to the importance of confidential attorney-client communication.⁴⁶

Nevertheless, there are courthouses and jails that are not providing such confidential spaces. For example, the Stateline Justice Court in Douglas County has no room dedicated to attorney-client meetings.⁴⁷ All conversations between out-of-custody clients and their attorneys can be heard by anyone sitting in the atrium outside of the courtroom. During the Monitor’s visit, there were at least five other people seated in the atrium where an attorney and his client were having a completely audible conversation.⁴⁸ Likewise, the oversight attorney for Lyon County reports that, while the courthouse in Yerington has a confidential meeting room, the justice courts in Dayton and Fernley do not.

2. Remote versus in-person appearance of jailed defendants

It is the Monitor’s understanding that defendants are now being transported in-person from the jail to the courthouse for their substantive hearings (change of plea, sentencing) in White Pine County, but not, for example, in jurisdictions where the courthouse is located in a different town from the jail, such as to the Fernley courthouse from the Yerington jail in Lyon County, or to the Stateline Justice Court from the Minden jail in Douglas County. In Eureka County, the contract attorney reports that his clients are being jailed in Battle Mountain in Lander County, or Ely in White Pine County. The jails do not reliably permit him to speak remotely with his clients, and the distance results in significant travel time for him to meet with them in person. Moreover, it appears—although this should be confirmed by the oversight attorney—that the clients are not brought to court in Eureka County for their hearings.

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. When the defendants are appearing remotely from the jail while their attorneys are in court, there may be no effective way for the defense attorney—physically present in court—to speak confidentially with remote clients during the hearing. (The same problem is less pronounced for an out-of-

⁴⁵ Judgment, 15.

⁴⁶ *Id.* at 14 (contracts with public defense providers must require that the attorneys “make all reasonable efforts to meet with the client, in a private confidential space, prior to the initial appearance, and that in-court discussions with clients supplement, not supplant such meetings”); *id.* at 15 (the Department must hold attorneys to performance standards, including “making all reasonable efforts to conduct an initial interview with the client in a confidential setting”).

⁴⁷ In contrast, the Douglas County justice court in Minden has at least two confidential meeting rooms.

⁴⁸ Monitor’s visit on August 6, 2024. Several rooms in the courthouse have been identified as possible locations for an attorney-client meeting room but require modifications.

custody defendant who can text or call their attorney.) On the other hand, when the defense attorney is at the jail with the client during the hearing, the attorney may be able to have a spontaneous and confidential conversation with the client but will not have the benefit of being in the courtroom with the judge and prosecutor.

The most pressing issue is thus the absence of easy attorney-client communication during hearings where either the defendant or the defense attorney is appearing remotely. This issue is more pressing when a defendant is waiving substantive rights or being sentenced to punishment without an attorney standing next to the defendant ready to answer last minute questions and to provide in-the-moment counsel. But perhaps there is also a larger issue that the parties wish to discuss: When defendants are entitled to appear in court in person.

Summary

The oversight attorneys are well-positioned to document whether and when defendants are brought to court from the jail, and whether and when attorneys and defendants appear for the hearing together or apart (one remote, one in person or both remote). They are also well-positioned to report on the availability and quality of confidential spaces in the courthouses and jails.

Recommendations

- The Department should tally the courthouses and jails lacking adequate confidential and available space for confidential attorney-client meetings.
- The state should consider whether building improvements are needed to ensure that every courthouse and jail in the *Davis* counties has adequate, confidential meeting space.
- Per the Monitor’s last report, the Department should ask the oversight staff to provide comprehensive information about the types and quality of remote appearances occurring in each county.

C. Training and resources

The Judgment states that the Defendants must offer “a systematic and comprehensive training program.”⁴⁹ In FY 2024, the Department secured \$89,340 from AB 518 funds to send at least some rural defense providers to nationally recognized trial colleges, a national conference on forensics, a legal writing program, and the State Bar Conference. The Department was also able to host an annual conference, reimbursing rural indigent defense providers for their travel expenses.

Although FY 2025 began on July 1, 2024, the Department awaited a hearing before the Interim Finance Committee for its request of \$113,239 for attorney attendance at trial colleges;

⁴⁹ Judgment, 16.

conference reimbursement; speaker travel and fees; the annual conference; and a conference manager.⁵⁰ The request was granted by the IFC on August 15, 2024.

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.
- As stated in the Monitor’s previous reports, 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.

D. Workload standards

The major problems with compliance with workload standards in the *Davis* counties are in Douglas, Churchill, Lyon, Nye, and White Pine.

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.⁵¹ 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.

As described in the previous Monitor’s previous reports, 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.”⁵² 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 adding up the workload across all case types.”⁵³ 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.⁵⁴ The study

⁵⁰ The Department’s Amended Memorandum for Work Program C67456 (August 5, 2024) is attached to this Report as Appendix A.

⁵¹ Judgment at 17.

⁵² 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.

⁵³ NCSC Study, 6.

⁵⁴ *Id.* at 20-23.

recommends one investigator per four FTE attorneys and one administrative assistant per one-to-two FTE attorneys in the same practice.⁵⁵

The reader should note that 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. The NCSC study recommends social workers and mitigation specialists to reduce the attorney workload by assisting with tasks like identifying substance abuse and mental health issues and locating appropriate services.⁵⁶ As noted above, the Department secured \$32,996 through the Nevada Public Health Foundation for social workers that it can assist public defense providers in Douglas, Eureka, Lincoln and White Pine County.

Below is a table that focuses on the five counties with significant or intractable shortages. A discussion of each county follows the table. Note that an FTE is the equivalent of 1,392.6 hours per year (to account for sick and personal days, as well as time spent on ministerial tasks, travel, personal and sick time).

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	4 (lost one attorney)	4.8 (County disagrees, setting FTE hours at 2,200 per year per attorney)
Lyon	12	Unclear	Unclear
Nye	12.0 (Department reviewing case data)	6	6 (depending on review of case data)
White Pine	3.3 (perhaps additional attorney hours needed if attorneys travel from Carson City and Las Vegas)	1 NSPD attorney; 2 on-call NSPD attorneys (temporary) 1 FTE+ contract (1,800 hours) 1 conflict attorney	< 1 FTE (Note: NSPD received permission for an 800-hour contract)

Please note that 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.

⁵⁵ *Id.* at 20.

⁵⁶ *Id.* at ii.

Churchill County

Five (5) additional attorneys are needed in Churchill County to comply with the workload standards, four for the office of the public defender and one for the office of the alternate public defender. Each office is fully furnished with adequate room and supplies for the five new attorneys. The county set the pay for these Deputy Public Defender I positions at a salary of \$88,171 on July 15, 2024.⁵⁷ When I visited on August 8, 2024, *no* attorneys had applied for any of the positions.

The salary of \$88,171 is probably too low to attract applicants. The Churchill County public defender offices are approximately a one-hour drive from Reno. Yet, in Reno, the Washoe County Public Defender is offering a salary range of \$107,723.20 - \$230,859.20, according to a current job posting.⁵⁸ At a salary of \$88,171, it is unlikely that Churchill County will hire five additional attorneys by the workload compliance deadline of November 2, 2024.

Douglas County

The Department calculated that Douglas County required 8.8 FTE attorneys to comply with the workload standards. Given that the county then had five contracting attorneys, the Department calculated that it was short 3.8 attorneys. Since the Monitor's last report, one attorney passed away, leaving the county with a shortage of 4.8 FTE attorneys.

As discussed above, the county leadership views the workload standards as "defective" and rejects the definition of an FTE attorney as performing 1,392.6 hours of casework per year.⁵⁹ Instead, the county is requiring contract attorneys to commit to 2,200 hours per year. Thus, the county calculates, it needs fewer attorneys than required by the workload study, so long as each attorney works commits to working 807.4 hours more per year than a full-time attorney as defined by the Board.

As discussed above in relation to economic disincentives, requiring 2,200 hours per year puts attorneys in a position where they are unlikely to have adequate time to devote to public defense. Bringing a second attorney into the firm to assist is not an option given that the total compensation for the contract is \$265,000, and the workload standards require support staff as well. It is the Monitor's opinion that 2,200 hours per year is simply unrealistic and, with compensation set so far below the \$172 hourly rate for appointed counsel, these contracts create a financial disincentive prohibited by the Judgment.⁶⁰ Moreover, counties should not simply require an attorney to do the job of two attorneys to get around the workload limits.

⁵⁷ A copy of the Churchill County job posting is available here: <https://www.governmentjobs.com/careers/churchill/jobs/4577494/deputy-public-defender-i?pagetype=jobOpportunitiesJobs>.

⁵⁸ A listing for public defender jobs can be found on the Department's website at <https://dids.nv.gov/JobListings/JobListings/>.

⁵⁹ Douglas County Contract, 3.

⁶⁰ Judgment, 11-12.

Lyon County

For Lyon County, the number of full-time attorneys needed to comply with the workload standards is twelve (12). Lyon County’s plan relies on three law firms providing three attorneys each to cover criminal cases; one lawyer to cover juvenile cases; and two additional lawyers contracted as conflict counsel.⁶¹

To date, the law firms have not confirmed that they each have three attorneys assigned to full-time public defense. This may be a clerical oversight, or it may be that they do not have the staff. It is difficult to see how the compensation of \$480,000 per contract would sustain three attorneys and two support staff. The most likely scenario is that the firm will accept the contract but dedicate less than the required number of full-time employees to their indigent clients so that they can take private cases to keep the lights on and pay their employees. Indeed, one of the three contracting firms also holds a contract for full-time public defense in Mineral County.

When the Monitor observed arraignments at the Canal Justice Court in Fernley, no attorney was present. The defendants were out-of-custody—no one was held on bail—and the Justice of the Peace was careful to admonish them not to speak other than to provide information for the indigency determination. The judge then put the cases on for a status date, explaining that a public defender would be appointed. While caution was taken not to prejudice the defendants’ rights, the practice does not comply with the Judgment, which requires that defendants “who are eligible for publicly funded legal representation are represented by counsel in person at his or her initial appearance/arraignment.”⁶² Perhaps the law firm assigned to the Canal Justice Court does not have sufficient staff to appear for the arraignment calendar if no one is in custody.

Nye County

According to the workload standards, Nye County needs six (6) additional full-time attorneys, in addition to the six (6) currently under contract. The Department is working with county leadership to develop a plan.

In the meantime, the Department has granted the current contract attorneys a reprieve from taking new cases, initially for 30 days and extended to 60 days. The Department successfully selected appointed counsel to take new cases and is optimistic about the county’s ability to attract qualified attorneys for the remaining six contracts.

Finally, the workload limits for Nye County may require adjustment. The Department’s oversight attorney for Nye County, David Schieck, is working with the attorneys to ensure that the case numbers are accurate. With support from the Department, the attorneys closed approximately 800 cases last month, many of which had not been active for some time. After the backlog of inactive cases have been closed, the Department will reassess the workload standards for the county.

⁶¹ The Lyon County Plan is attached to this Report as Appendix F.

⁶² Judgment, 14.

White Pine County

White Pine County opted to use the NSPD for its primary public defender services. Since the Monitor’s last report discussing the NSPD’s difficulty hiring and retaining attorneys, the crisis became worse and then a bit better. One of the two public defenders responsible for representation in White Pine County resigned. His resignation left the White Pine office of the NSPD with Deputy Director Derrick Penney, and the occasional assistance of the Chief Public Defender, Patricia Cafferata, and Chief Appellate Defender, Jim Hoffman.

In response, the Department contracted with Jane Eberhardy—an Ely attorney who previously held a full-time contract for public defense in White Pine County—to provide up to 1,800 hours at an hourly rate, with a total not to exceed \$309,600. On August 15, 2024, the Interim Finance Committee approved a budgetary transfer from personnel to operating to pay for Eberhardy’s services.⁶³ The NSPD recently obtained approval to contract with a second attorney for 800 hours of casework. The second attorney should put the county in compliance with the workload standards. The repeated upheaval, caused by substitution of counsel as one attorney resigns and another steps in, remains a cause for concern.

Discussion

Whether through hourly appointment, contract, county public defender office, or state public defender office, the state must comply with the workload limits by November 2, 2024, less than three months from today. As the above discussion makes clear, there are significant shortages.

To the extent that the shortages are caused by counties unwilling to set terms and compensation that would attract new attorneys, the state runs the risk of violating both the Judgment and the Sixth Amendment. The Ninth Circuit recently upheld a preliminary injunction requiring Oregon to release pretrial detainees who, due to attorney shortages, had not been appointed an attorney within seven days.⁶⁴ The Ninth Circuit laid the blame for the Sixth Amendment violation squarely on the state of Oregon’s “uncharted refusal to adequately pay lawyers.”⁶⁵ The court further stated, “Consistent with the Sixth Amendment, Oregon could solve this problem overnight simply by paying appointed counsel a better wage.”⁶⁶ Ultimately, it is the state’s responsibility in Nevada as well to ensure a sufficient number of qualified attorneys.

Given the Judgment and this constitutional framework, the state must intervene when counties set rates of compensation and terms of work that do not attract and retain qualified attorneys to public defender service. Moreover, as this Monitor has previously cautioned, the

⁶³ The NSPD contracts with private attorneys, both for complex litigation and, now for first-line representation in White Pine County. NRS 180.050 (“The State Public Defender may contract with attorneys licensed to practice law in the State of Nevada and with county public defenders to provide services required by this chapter if it is impracticable for the State Public Defender or the State Public Defender’s deputies to provide such services for any reason,” and “[a]ll such contract services shall be performed under the supervision and control of the State Public Defender”).

⁶⁴ *Betschart et al. v. State of Oregon*, 103 F.4th 607, 614 (9th Cir. 2024).

⁶⁵ 103 F.4th at 622.

⁶⁶ 103 F.4th at 628.

shortage of attorneys in the NSPD presents serious compliance issues for the state. Any rural county can opt-in to the NSPD for public defense services at the trial level, or for complex litigation, appeals, and parole and pardons.⁶⁷ Indeed, counties that are failing to provide adequate public defense and effective assistance of counsel may be required to use the NSPD.⁶⁸

Recommendations

- The Department should calculate caseload and workload standards considering municipal court cases.
- The Department should forbid county plans that rely on attorneys committing significantly more hours than what is considered “full-time,” and strictly monitor the number of attorneys handling cases through the contract, the hours they spend on private cases, and the time and effort spent on their public defense caseloads.
- If a county is offering a position, contract, or compensation package that is not competitive enough to attract and retain enough attorneys to meet workload standards, the state should intervene with a corrective action plan to set a competitive rate or provide appointed counsel. (Although a corrective action plan could include the substitution of the NSPD, the NSPD is insufficiently staffed to step in when a county’s indigent defense system fails.)
- The state must either find a way to recruit and retain sufficient attorneys to the NSPD or limit the counties’ ability to opt-in to the NSPD and find a different way to ensure that each county has sufficient, competent counsel.
- The Department should continue to explore ways to reduce attorney workload through investing in support services. The Department’s recent securing of funds for social workers to assist with mental health and addiction treatment placements is an excellent example of a service that reduces attorney workload while adding expertise. More recently, the Department began exploring whether rural indigent defense attorneys would benefit from a service like JusticeText, which transcribes video from body-worn camera footage and other recordings. If this service is effective, it could reduce the massive amounts of time that attorneys currently spend reviewing body-worn camera footage.⁶⁹

E. Recruiting attorneys

The Department continues to take steps to incentivize rural public defense. In addition to creating a pathway to indigent defense through the LASSO program, which provides progressively

⁶⁷ Of the *Davis* counties, White Pine County opted for the NSPD to serve as the public defender. Esmeralda, Lander, Lincoln, and White Pine counties have opted to have NSPD handle appellate representation, and Churchill, Lander, and White Pine have opted to have the NSPD handle death penalty cases. 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.

⁶⁸ NRS 180.450 (describing the voluntary and required mechanisms for transferring responsibility for a county’s indigent defense system to the NSPD).

⁶⁹ Information about this service provider can be found at <https://justicetext.com/>.

higher stipends for law students and recent graduates,⁷⁰ the Department continues to host events at the UNLV Boyd School of Law where law students can learn more about public defense and interact with attending rural attorneys. In October, the Department will host a lunchtime talk at the law school with Stephen Bright, the longtime director of the Southern Center for Human Rights who has won multiple capital cases in the Supreme Court.

The Department also continues to explore strategies for recruitment and retention of attorneys in the NSPD, but to date the NSPD has attracted no new attorneys. Quite the contrary, it had one resignation in the last quarter. Without competitive salaries—or perhaps a satellite office in Las Vegas—the NSPD seems unable to attract candidates.

The recruitment of out-of-state attorneys should be easier after the Nevada Supreme Court’s order in ADKT 0616 removing the two-year cap on the certificate of limited practice for out-of-state attorneys at public defender offices in rural counties.

It should be stressed, however, that the Department is not in a position to recruit for the counties. All the *Davis* counties except for White Pine contract directly with private attorneys or, in Churchill County, directly hire for the county’s public defender office. The Department can continue to build incentives to rural practice, but the counties must do the recruiting for county-level indigent defense.

Recommendations

- 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 state should explore additional incentive structures for rural practice, such as undergraduate scholarships, funding for LSAT prep courses, and pre-acceptance to the state’s law school for rural residents interested in returning home with their law degree, as well as loan forgiveness for law students who commit to several years of rural indigent defense practice.
- The state should consider how to assist rural counties in building the budgets for their public defender offices and in recruiting new indigent defense attorneys.

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

⁷⁰ The LASSO Program was discussed in detail in the Monitor’s 12th Report, 18-19.

rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.⁷¹ The Board's regulations follow the Judgment's requirements.⁷²

The Department published its fourth quarter report on workload data, for April 1 – June 30, 2024.⁷³ There are no significant changes in reporting. Most attorneys are reporting some hours. Some attorneys do not report any hours on private casework, an important requirement of the Judgment, especially for attorneys providing public defense through a contract and managing a high caseload.

In sum, Churchill's Public Defender and Alternate Public Defender still appear to report low numbers of hours. From the Monitor's visit to Churchill County and conversations with the attorneys, she has the impression they work long hours with high caseloads, and that the issue is consistently using the Legal Server system in addition to their own case management software. (Churchill public defenders cannot engage in the private practice of law.) In Douglas County, all five attorneys reported hours, and three of the five attorneys reported hours spent on private casework. The attorney for Esmeralda County reported 9.5 hours, and also has a full-time contract in Nye County. The attorneys for Eureka and Lander counties reported hours spent on the indigent defense contract cases and on private casework. The attorneys for Lincoln County reported hours spent on the indigent defense contract cases but did not report private casework.

It is difficult to compare Lyon County's reporting to the last quarter because the law firm contracting to provide first-line indigent defense broke into three firms, Mansfield & Mayo, Brock Law, and Walther Law. All three reported indigent defense hours, as did Silver State Law and appointed counsel. None reported hours on private cases. Brock Law also has a full-time contract in Mineral County, where the law firm reported indigent defense hours, as did conflict counsel. In other words, the Brock Law Firm is contracting to provide four (4) attorneys for full-time indigent defense, but there is no documentation that the Brock Law Firm has four attorneys who are full-time public defense providers.

In Nye County, all attorneys except for Shahani Law are reporting their hours spent on indigent defense. Two are reporting hours spent on private casework. The major development in Nye County is that the Department's oversight attorney is working directly with the contracting attorneys to ensure complete reporting, including the closure of cases. This should help the Department get a better sense of caseload.

The Department received funds for FY 2025 from AB518 to continue to incentivize timekeeping by providing free Westlaw subscriptions.

⁷¹ Judgment, 18.

⁷² 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.

⁷³ Available at https://dids.nv.gov/Annual_Report/county-reports/.

Recommendations

- 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. This funding should be secure, through the Department's budget or otherwise, so that attorneys do not find that their ability to conduct research has suddenly disappeared.
- The Department, perhaps through its oversight attorneys, should initiate discussions with contract attorneys to confirm the amount of time they spend on private casework. Understanding the amount of time contract attorneys spend on private casework and other indigent defense contracts is crucial to understanding financial disincentives prohibited by the Judgment, and the consequent workload issues.

Looking ahead

- **Securing funding for ongoing compliance activities**

The state will continue to prepare budgets for the 2026-2027 biennium, including a budget for the Department to comply with the *Davis* Judgment.

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

The state should implement a comprehensive plan for recruitment and retention to the Nevada State Public Defender, or, in the alternative, 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. Additional funding for out-of-state recruitment efforts may be necessary.

- **Workload limits**

The Department will continue to work with counties to develop plans to comply with the workload limits by the November 2, 2024, deadline.

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 Department will complete a quarterly report on oversight based on the reports submitted by the three oversight attorneys.

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:

- Whether the state has complied with the workload standards by the November 2, 2024, deadline set by the Judgment.
- The terms of contracts between counties and providers, particularly with regard to compensation and workload.
- The Department's bill draft requests for the next legislative session.
- The Department's oversight activities and, in particular, the oversight attorneys' reporting on remote appearances, confidential meeting spaces, and jail practices that might interfere with attorney-client communication or in-person presence at substantive hearings.

13th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 19, 2024

Appendix A

Revised 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: August 5, 2024

TO: Budd Milazzo, 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 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 **\$686,103** 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, was approved at 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 would total \$916,439, in Fiscal Year 2025. NEBS210, NEBS 130, and backup documentation are attached. Work Program C69238 balanced forward to Fiscal Year 2025 the unspent Fiscal Year 2024 authority in the amount of \$364,743 (BA 1008, Category 36). An additional work program will be processed to balance forward unspent Fiscal Year 2024 Oversight Funds in the amount of \$55,686 (BA 1008, Category 01: \$35,261 and BA 1008, Category 04: \$20,425).

Total Funding Request for Oversight: Fiscal Year 2025: \$496,010.

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

³ Judgment, 16.

regarding the representation of juveniles.”⁴ This provision of the Judgment suggests a 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.

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 having expired, 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: \$39,989
- Funding to reimburse nationally accepted trainers for travel expenses and compensation to provide training at the Annual Conference:
 - Estimated Cost: Fiscal Year 2025: \$28,789
- 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

⁴ Judgment, 16

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/>.

for stakeholders, serve as a key point of contact for the event, market the training 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.

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

The total estimated cost for compliance with *Davis* Training Requirements is \$163,668. Work Program C69238 balanced forward to Fiscal Year 2025 the unspent Fiscal Year 2024 authority in the amount of \$9,940 (BA 1008, Category 37). An additional work program will be processed to balance forward unspent Fiscal Year 2024 Training Funds in the amount of \$40,489 (BA 1008, Category 37).

Total Funding Request for Compliance with Davis Training Requirements:
Fiscal Year 2025: **\$113,239.**

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.⁷ 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 continue 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

Second, the Department is requesting \$7,100 to enable the vouchering module within the LegalServer case management system. Enabling the vouchering module will increase attorney efficiency, reduce the amount of time spent by DIDS's staff to input data, and it will improve data collection efforts and incentivize attorneys to use the LegalServer system. The cost is \$3,500 to enable the module and a fee of \$300 a month for use of the module.

- Estimated Cost: Fiscal Year 2025: \$7,100.

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

⁷ Judgment, 18

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 Funding Request for Data Collection Compliance: Fiscal Year 2025 \$76,854.

Conclusion

In conclusion, the Department respectfully requests a total allocation of **\$686,103** 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; and (3) Compliance with the Data Collection and Reporting Requirements.

13th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 19, 2024

Appendix B

Douglas County's Contract for Indigent Defense

CONTRACT FOR INDIGENT LEGAL SERVICES

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

Filter Law, Chartered

This Contract for Indigent Legal Services (the “Contract”) is entered into by and between Douglas County, a political subdivision of the State of Nevada (“County”), and Filter Law, Chartered (“Firm”). The County and Firm are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

WHEREAS, County, from time to time, requires the professional services of independent contractors; and

WHEREAS, it is deemed that the services of Firm are both necessary and desirable and in the best interests of County; and

WHEREAS, Firm represents that Firm’s attorneys are licensed to practice law in the State of Nevada, are in good standing with the State Bar of Nevada, and Firm duly qualified, equipped, staffed, ready, willing and able to perform and render the legal services required by the County.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein made, the County and Firm mutually agree as follows:

1. TERM AND EFFECTIVE DATE OF CONTRACT. The Contract will become effective July 1, 2024, and will remain in effect until **June 30, 2025**, unless earlier terminated pursuant to the terms of this Contract.

2. INDEPENDENT CONTRACTOR STATUS. The Parties agree that Firm, Firm’s attorneys, associates and employees shall have the status of an independent contractors and that this Contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted, to the parties, including that the Firm’s attorneys are not Douglas County employees and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the independent contractor or the County to the public employees’ retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Firm and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Firm has the right to perform services for others during the term of this Agreement.
- b. Firm has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Firm shall not be assigned a work location on County premises.
- d. Firm, at Firm's sole expense, will furnish all equipment and materials used to provide the services required by this Contract.
- e. Firm, at Firm's sole expense, has the right to hire associates and assistants as subcontractors, or to use Firm's employees to provide the services required by this Agreement.
- f. Firm or Firm's employees or contract personnel shall perform the services required by this Agreement, and Firm agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Firm.
- g. Neither Firm nor the Firm's attorneys, employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Firm or Firm's employees or contract personnel to devote full time to performing the services required by this Agreement.

Firm further certifies the following:

- i. Contactor is licensed by the State Bar of Nevada to provide legal services to members of the public and agrees to maintain the required professional license to practice law in active status and in good standing for the State of Nevada.
- j. Firm understands that Firm is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Firm understands that an IRS Form 1099 will be filed by County for all payments County makes to Firm.

3. INDUSTRIAL INSURANCE. Firm agrees, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the County to make any payment under this Contract, Firm must provide an affidavit indicating that Firm is a sole proprietor and that:

A. In accordance with the provisions of NRS 616B.659, Attorney has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and

B. Is otherwise in compliance with those terms, conditions and provisions.

4. SERVICES TO BE PERFORMED. On an as-needed basis, the Firm will provide professional legal services including the following:

A. Firm will represent adult criminal defendants that a court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including bail hearings and other court appearances, appeals and revocation of probation or parole, but not post-conviction proceedings.

B. Firm will provide legal representation for a child alleged to be delinquent or in need of supervision where a court orders the appointment in accordance with NRS Chapter 62A.

C. Firm agrees to perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the court orders the appointment of Firm pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.

D. If at any time during the representation of a person the Firm has reason to believe the person is not indigent, Firm must immediately notify the court.

E. If, at any time during the representation of a person, the Firm has reason to believe that there is a legal ethical conflict with that representation, Firm must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Firm concerning retaining that Firm for representation, that Firm will not be obligated to accept that appointed case. Firm must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next law firm in the rotation will be appointed.

G. Firm shall perform all duties required under the Nevada Revised Statutes and by the Nevada Department of Indigent Defense Services ("DIDS") and Board of Indigent Defense Services ("BIDS"), including standards of performance, record keeping, time keeping and reporting requirements. However, in no event shall Firm be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any eligible client or violate any provision of the Nevada Rules of Professional Conduct.

H. Firm understands that DIDS, in collaboration with the National Center for State Courts ("NCSC"), performed a Rural Nevada Indigent Defense Services Weighted Caseload Study and submitted a Final Report in October 2023 that was subsequently adopted by BIDS on November 2, 2023. Although the County believes the BIDS Adopted Weighted Caseload Study is defective and requires additional study and revisions, for the purpose of this Contract, according to the BIDS Adopted Weighted Caseload Study, the case-related annual attorney year value is 1,392.6 hours per 1.0 full-time equivalent ("FTE") attorney. Firm promises and agrees to commit up to **2,200 hours per year** for Firm and Firm's attorneys, associates and employees to provide services under this Contract.

5. Standard Of Work.

A. In providing legal representation as set forth in Paragraph Four, Firm and Firm's attorneys, associates and employees must provide those services in a professional, competent, and effective manner. This includes, but is not limited to, interviewing the client, appearing at all court hearings or providing coverage for those court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations.

Firm shall:

- (1) Provide zealous, competent representational services in all cases;
- (2) Comply with the requirements of the DIDS Standards of Performance;

- (3) Comply with the Nevada Indigent Defense Standards of Performance set forth in ADKT No. 41 of the Nevada Supreme Court;
- (4) Comply with all applicable laws and regulations;
- (5) Comply with the Nevada Rules of Professional Conduct (“NRPC”);
- (6) Comply with the Douglas County Plan for the Provision of Indigent Defense Services (attached as Exhibit “A”);
- (7) Agree to not accept cases for which the Firm is not approved by DIDS; and
- (8) Agree to not accept any case if Firm’s attorneys do not have the experience, qualifications, and sufficient time to accept the appointment or is otherwise unable to provide competent legal representation in compliance with NRPC, ADKT No. 41, DIDS Standards of Performance, and the requirements of this Contract.

B. Firm agrees to staff and maintain an office in Douglas County, Nevada. Firm agrees to furnish a telephone number for use after normal office hours in any emergency that may arise where Firm’s services are requested pursuant to the terms of this Contract to the Justice Courts, District Courts and District Attorney. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of Firm’s practice as required by this Contract are the sole responsibility of Firm and are a part of Firm’s compensation pursuant to Paragraph 6 of the Contract.

C. Firm’s attorneys may engage in the private practice of law which does not conflict with Firm’s professional services required pursuant to this contract.

D. Because Firm is an independent contractor for Douglas County, the Firm’s attorneys and employees promise and agree to not sue, be a party to, or assist in any lawsuit against Douglas County.

E. Firm agrees to furnish to County a copy of the DIDS Eligible Provider Approval Letter (Exhibit “B”) verifying the category of cases each of the Firm’s attorneys are authorized to accept.

6. PAYMENT FOR SERVICES.

A. Firm agrees to provide the services set forth in Paragraph 4 at a cost not to exceed **Two Hundred and Sixty-Five Thousand Dollars** (\$265,000) through the term of this Contract (“Base Compensation”). Payment of Firm’s base pay will be made by the County to the Firm in four quarterly payments of \$66,250.00 to be paid on or before July 1, 2024, October 1, 2024, January 1, 2025 and April 1, 2025.

B. In addition to Firm’s Base Compensation, Firm will be compensated for any weekend or holiday that a Firm attorney attends, or is required to be available (i.e., on standby), to attend weekend arraignment/pretrial release hearings at the rate of \$450.00 per day.

C. For legal services related to a child’s welfare when a parent or other person is alleged to have abused or neglected a child, and the Court orders the appointment of Firm pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128, Firm will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours per case for appointments pursuant to NRS 128.100.

D. The Firm may secure payment for investigative costs, expert witness fees, forensic services, translators, laboratory analysis, or other legally necessary services if authorized in advance by the Douglas County Indigent Defense Services Coordinator. Firm understands and agrees that the reimbursement of these costs is subject to the limits and requirements of NRS 7.135. Firm agrees to submit invoices within ten days of the end of the prior month in which any costs or other expenses were incurred and for which reimbursement is requested from the County. County will pay invoices it receives within a reasonable time. However, in no event will Firm be reimbursed or receive payment for travel expenses or any form of per diem expense.

E. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4), award extraordinary fees to Firm in a particular matter, which are over and above the compensation specified provided that the statutorily prescribed procedures contained in Nevada law, including NRS 7.125(4), are complied with.

F. Firm agrees to submit invoices within ten days of the end of the prior month for the legal services provided to County, including any weekend or holiday hearings for which Firm seeks payment. County will pay invoices it receives within a reasonable time. A 1099 Miscellaneous Income Form will be issued by County to Firm at year-end for all amounts paid by County to Firm.

7. TERMINATION OF CONTRACT.

A. Either Party may terminate this Contract without cause, provided that a termination shall not be effective until 90 calendar days after the Party has served written notice upon the other Party. All monies due and owing up to the point of termination of the Contract shall be paid by County, and all pending cases that were produced for this Contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Firm will be reduced to the proportionate number of days worked by the Firm. The Firm must reimburse the County for any funds received to which Firm is not entitled due to the termination of the Contract.

B. If Firm should be unable to perform any or all of the duties required by reason of illness, accident or other cause beyond Firm's control, and the disability exists for a period beyond ten (10) judicial days, Firm must provide, at Firm's own expense, a substitute attorney (which could include other contract attorneys) to perform the duties of the Firm during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of the Firm's duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this Contract, and the respective duties, rights and obligations of this Contract will terminate.

8. PROFESSIONAL LICENSE. Firm agrees to maintain the Firm's attorneys' professional license to practice law in active status and in good standing with the State of Nevada. Firm promises and agrees to notify the County Manager and the Douglas County Appointed Counsel Program Coordinator if an attorney with the Firm is brought before the State Bar of Nevada on any ethics charge or if a Firm attorney is arrested for any crime. Failure to maintain this license to practice law will result in the immediate termination of this Contract.

9. GENERAL LIABILITY INSURANCE. Douglas County's liability coverage will not extend to the Firm and Firm is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Firm's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

10. LEGAL MALPRACTICE INSURANCE. Firm agrees to acquire and maintain malpractice insurance in the minimum amount of \$250,000 per claim and \$500,000 aggregate claims during the term of this Contract at Firm's sole expense. Proof of malpractice insurance must be sent to the County within five (5) business days upon request. Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such malpractice insurance.

11. NONAPPROPRIATION. Nothing in the Contract will be construed to provide Firm with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Firm will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Firm. Firm will have no claim of any sort to the unexpended funds.

12. CONSTRUCTION OF CONTRACT. The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court. The Parties mutually agree to not seek punitive damages against either Party. The Contract Documents consist of this document, and Attachment A. The Parties agree to be bound by the terms, conditions and specifications set forth in all Contract Documents, except as specifically modified or amended. The terms of the Contract shall, to the extent reasonably practical, be read as complimentary to one another. In the event of an irreconcilable conflict between the terms of the Contract Documents, the terms of this document shall prevail, thereafter the terms of Attachment A.

13. COMPLIANCE WITH APPLICABLE LAWS. Firm promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

14. ASSIGNMENT. Firm will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the Douglas County Appointed Counsel Program Coordinator and must meet the qualifications under the Nevada Department of Indigent Services to represent the charged individual. If the

Firm wishes to have a substitute attorney appear for the Firm due to vacation, illness or personal family matter, then the Firm may do so and is responsible for paying the substitute attorney. There is no requirement to have the Douglas County Appointed Counsel Program Coordinator approve such substitution if the substitution is for less than twenty-five judicial days per calendar year.

15. COUNTY INSPECTION. The accounting records and expense invoices of Firm related to the Contract will be subject to inspection, examination and audit by the County, including by the County Manager and Chief Financial Officer, to audit and verify the expenses claimed by Firm.

16. DELEGATION OF AUTHORITY. The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this Contract. Such designations include the development of factors for determining whether a person is indigent and all other properly related matters related to the appointment of indigent defense counsel. The Douglas County Appointed Counsel Program Coordinator is expressly designated the authority to oversee and implement the provisions of this Contract. This authority includes the assigning of cases on a rotating basis among attorneys to ensure an equitable distribution, ordering/requiring monthly time summaries from attorneys, and preparing vouchers for the quarterly payments due to Firm. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

17. INDEMNIFICATION OF COUNTY. To the fullest extent permitted by law, Firm and its principals shall indemnify, hold harmless and defend County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Firm, its officers, employees and agents arising from or relating to this Contract. Firm will defend, hold harmless and/or indemnify County against such claims. Notwithstanding the obligation of Firm to defend County as set forth in this paragraph, County may elect to participate in the defense of any claim brought against County because of the conduct of Firm, its officers, employees and agents. Such participation shall be at County's own expense and County shall be responsible for the payment of its own attorney's fees it incurs in participating in its own defense.

18. MODIFICATION OF CONTRACT. The Contract and any attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

19. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this Contract.

20. STANDARD OF CARE. Firm, its attorneys, agents and employees will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of the legal profession currently practicing under similar conditions and in compliance with the standards established by the Nevada Department of Indigent Defense Services and as required under the terms of this Contract.

21. THIRD PARTY BENEFICIARY. Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party, or to otherwise allow a third party to assert a cause of action against either Firm or County.

22. NOTICES. All formal notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

To County: Douglas County
Attn. County Manager
Post Office Box 218
Minden, Nevada 89423
Telephone: (775) 782-9821

To Firm: Brian Filter, Esq.
Filter Law, Chartered
1662 U.S. Hwy 395 N., Suite 105
Minden, NV 89423
Telephone (775) 392-4774

IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

Filter Law, Chartered

By: _____
Brian Filter, Esq. (Date)

Douglas County

By: _____
Jennifer Davidson (Date)
County Manager

13th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 19, 2024

Appendix C

Lyon County's Contract for Indigent Defense

AGREEMENT FOR PUBLIC DEFENDER SERVICES

This Agreement by and between LYON COUNTY (hereinafter “Contracting Authority”) and WALTHER LAW OFFICES, PLLC (hereinafter “Contractor”) shall take effect on the 1st day of July, 2024 (“Effective Date”).

WHEREAS, the right to counsel in certain criminal matters is guaranteed by the United States Constitution, the Nevada Constitution, and the Nevada Revised Statutes (NRS); and

WHEREAS, the Contracting Authority is required by law to appoint a public defender to provide counsel in such matters to eligible indigent persons; and

WHEREAS, the Contracting Authority desires to contract with a private law firm to serve as one of three firms providing public defender services; and

WHEREAS, the Contractor is a private law firm that desires to serve as one of the Contracting Authority’s public defender firms and warrants that it has the means and ability to do so in a competent manner; and

WHEREAS, both parties desire to reduce the entirety of their agreement to writing in this document (hereinafter “this Agreement”), and intend for all funds paid under this Agreement to be used for the sole purpose of providing indigent defense services to eligible clients of the Contractor;

NOW, THEREOFRE, the parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the underlined words below shall have the following meanings:

1. Appointing Authority: The judge, justice, or master presiding over a Case arising in a court of law within Lyon County.
2. Case: A “Case” shall have the meaning prescribed to it in Sec. 5 of the Regulations.
 - a. Misdemeanor Case: A Case in which the highest charge is a Misdemeanor.
 - b. Category B, C, D, or E Felony or Gross Misdemeanor Case: A Case in which the highest charge is a gross misdemeanor or a Category B, C, D, or E Felony for which the maximum penalty is less than ten (10) years imprisonment.
 - c. Category B Felony (10+ year maximum): A Case in which the highest charge is a Category B felony for which the maximum penalty is greater than ten (10) years imprisonment.

- d. Non-Capital Category A Case: A Case in which the highest charge is a non-capital Category A Felony.
 - e. Capital Case: A Case in which the highest charge is a capital Category A felony.
 - f. Appeal: Any appeal of an interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
3. Cause: Cause for immediate termination of this Agreement. Cause for such termination shall exist in the event of:
- a. A material breach of this Agreement by the Contractor, including without limitation failure to provide Representational Services to Eligible Clients; failure to comply with reporting obligations; failure to utilize qualified attorneys; failure to meet performance standards; failure to adhere to the Nevada Rules of Professional Conduct; or any other failure from which it could reasonably be discerned that public funds are not being responsibly used for the provision of indigent defense services as required in this Agreement and in compliance with all applicable laws, rules, and regulations.
 - b. A material breach of this Agreement by the Contracting Authority, such as non-payment of compensation without justification; failure to provide reimbursement for reasonable Case-Related Expenses; or failure to obtain additional counsel or negotiate additional compensation in good faith in the event of a Substantial Workload Increase.
4. Department: The Nevada Department of Indigent Defense Services.
- Eligible Client: An adult indigent person whom an Appointing Authority has determined to be eligible for a court-appointed attorney pursuant to Section 8 of the Temporary Regulations of the Board of Indigent Defense Services, in a Case arising in a court of law within Lyon County.
5. Final Adjudication: “Final Adjudication” shall have the meaning prescribed to it in Section 43(4)(d) of the Regulations.
6. Fiscal Year: July 1st through June 30th.
7. Case-Related Expenses: Expenses for professional services reasonably needed to provide an effective defense of Eligible Clients under this Agreement. This includes reasonable fees for investigators, translators, expert witnesses, laboratory analysis, and other forensic services.
8. Plan: Lyon County’s Plan for the Provision of Indigent Defense Services.

9. Regulations or Reg.: The Permanent Regulations of the Board of Indigent Defense Services.
10. Representational Services: All services part and parcel of the Contractor's delivery of competent, zealous legal representation to Eligible Clients under this Agreement. Such services may include, without limitation: investigation; interviews of clients and potential witnesses; review of physical evidence; legal research; preparation of pleadings, briefs, correspondence, exhibits, or other documents; preparation for and attendance at hearings and conferences; expert witness selection, discovery, and preparation; pretrial advocacy; trial advocacy; sentencing advocacy; appellate advocacy; plea bargaining; and any and all other services needed to provide competent, zealous legal representation from the beginning of a Case through Final Adjudication and, if applicable, through Appeal.
11. Significant Workload Increase: An increase in the number of Cases in a Fiscal Year that exceeds ten percent (10%) of the average number of Cases per Fiscal Year in the preceding three Fiscal Years.

II. APPOINTMENT OF PUBLIC DEFENDER; TERM OF APPOINTMENT

Pursuant to NRS 260.010(2) and Title 1, Chapter 9 of Lyon County Code, the Contractor shall be appointed as public defender for the Contracting Authority. The term of the Contractor's appointment shall be three (3) months, commencing on the Effective Date of this Agreement. This term may be extended by written agreement of the parties. This term may be terminated early by either party without Cause upon ninety (90) days written notice. This term may be terminated early by either party for Cause at any time. In the event of any early termination, with or without Cause, the Contractor shall take all professionally-responsible action to ensure an orderly transition of counsel that does not prejudice the rights or defense of Eligible Clients. The Contractor will be primarily responsible for public defender services for the Walker River Justice Court, Drug Court, and as conflict council for: the Canal Township and Dayton Justice Courts and in Juvenile cases. The Contractor will also be responsible for providing public defender services at the District Court.

III. SCOPE OF SERVICES

Except as expressly limited in this Section, the Contractor shall provide Representational Services as follows:

1. Misdemeanor Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
2. Category B, C, D, E Felony and Gross Misdemeanor Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
3. Category B Felony (10+ year maximum) Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.

4. Non-Capital Category A Cases: The Contractor shall provide Representational Services to all Eligible Clients in this category of Cases.
5. Capital Cases: In the event the Contractor is appointed as co-counsel in a Capital Case two (2) or more times in a Fiscal Year, the Contractor may, at its option, provide Representative Services in the additional Cases after the first one. For all Capital Case appointments in excess of one (1) per Fiscal Year, the Contractor will receive additional compensation in accordance with Section IX below. In the event an attorney of the Contractor becomes qualified to serve as lead counsel in Capital Cases pursuant to SCR 250, the Contracting Authority and Contractor may negotiate the terms of such representation in a separate Agreement or a written modification of this Agreement.
6. Appeals: The Contractor shall represent Eligible Clients on any Appeal of an interlocutory adjudication or Final Adjudication to the Third Judicial District Court or the Nevada Supreme Court.
7. Juvenile Proceedings: The Contractor shall provide Conflict Council Representational Services to all Eligible Clients in this category of Cases.
8. Conflicts: The Contractor understands that there will be two other public defender firms who will have executed a similar agreement and agrees to cooperate with the other attorneys to ensure that all courts are adequately covered. Contractor shall cooperate with the other two public defender firms to ensure, to the extent possible under ethical considerations, that all cases are covered and that any conflicts are resolved by the three public defender firms. Conflict cases will be rotated between the three primary public defender firms as set forth in the Plan. Attorney is not entitled to additional compensation for conflict cases. Attorney is not obligated to provide additional attorneys should a case arise where there is an insufficient number of public defenders to ethically represent all defendants.
9. Bail Hearings: The Contractor will work on a rotating schedule, set by the County, with the other two public defender firms to provide coverage for bail hearings.

By way of express limited exception, the Contractor shall not provide the Representational Services otherwise required above to the extent doing so would violate any provision of the Nevada Rules of Professional Conduct, including but not limited to the provisions concerning conflicts of interest. The Contractor will refer to the Nevada Rules of Professional Conduct, as interpreted by the State Bar of Nevada and/or opinions of the State judiciary, and to the American Bar Association Standards for Criminal Justice to determine the existence and appropriate resolution of conflicts of interest. If a conflict of interest exists, the Contractor will promptly file an appropriate motion or follow the procedure for handling conflicts of interest provided in the Contracting Authority's Plan.

IV. ATTORNEYS; ATTORNEY QUALIFICATIONS; PERFORMANCE STANDARDS; TRAINING

1. Attorneys: The Contractor shall maintain a list of all attorneys who will perform Representational Services under this Agreement. The list shall specify, for each attorney, the category(ies) of Case(s) in which the attorney is qualified to provide Representational Services. The Contractor shall provide a copy of this list to the Contracting Authority within thirty (30) days of the Effective Date and in the event of any subsequent change to the list.
2. Attorney Qualifications: It shall be the sole responsibility of the Contractor to ensure all attorneys providing Representational Services to Eligible Clients under this Agreement maintain all requisite qualifications for the category(ies) of Case(s) in which they are providing Representational Services. To ensure the ability, training, and experience of an attorney match the complexity of a given Case, the Contractor shall demonstrate compliance with the standards and regulations of the Department pertaining to training, education, and qualifications. The Contractor shall further ensure attorneys performing Representational Services in a particular category of Case under this Agreement are qualified by the Department to perform such services in that category of Case.
3. Performance Standards: It shall be the sole responsibility of the Contractor to ensure the attorneys whom it employs or with whom it contracts to perform its obligations under this Agreement:
 - a. Provide zealous, competent Representational Services in all Cases;
 - b. Comply with the requirements of the Department and the Nevada Indigent Defense Standards of Performance;
 - c. Comply with all applicable laws and regulations (including the Reg., as may be amended);
 - d. Comply with the Nevada Rules of Professional Conduct; and
 - e. Comply with the Contracting Authority's Plan.

The Contractor shall also ensure, to the greatest extent practicable, consistency in the representation of Eligible Clients such that the same attorney represents an Eligible Client through every stage of a Case. Nothing in this paragraph shall be construed to prohibit the Contractor from delegating appropriate administrative tasks to support staff, or to prohibit the Contractor from assigning more than one (1) attorney to represent an Eligible Client as necessary provided it would not prejudice the rights or defense of the Eligible Client.

4. Training: Ongoing professional training is a necessity for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Contractor shall ensure attorneys providing Representational Services under this Agreement annually complete a minimum of five

(5) hours of continuing legal education relevant to the areas in which they practice and satisfy any other training requirements mandated by the Department.

V. WORKLOAD

The Contractor will initially supply at least three attorneys and two support staff. The Contractor shall also obtain the services of an investigator. The investigator shall be approved by the County and is anticipated to be paid directly by the County outside of this contract.

The Contractor shall continue to ensure sufficient staffing to comply with the workload guidelines as determined by the Department. A temporary variance may be approved during a period in which the Contractor is actively recruiting qualified staff.

In the event of a Significant Workload Increase, the Contracting Authority shall be responsible for retaining the services of additional counsel to provide Representational Services to cover the amount of the Significant Workload Increase. Alternatively, the Contracting Authority and the Contractor may negotiate additional compensation to allow the Contractor to acquire additional personnel and/or resources needed to cover the Significant Workload Increase.

VI. OFFICES AND STAFFING

The Contractor shall have staff available to answer telephone calls to the office during business hours and agrees to furnish to the Justice Courts, District Courts, Lyon County Sheriff's Office, and the Lyon County District Attorney a telephone number for use after hours in any emergency that may arise. The expense of office space, furniture, equipment, technology, software, legal research database access, supplies, and support staff services suitable for conduct of the Contractor's practice of law are the sole responsibility of the Contractor. The Contractor's expenses described in this paragraph are not a charge against the County as provided in NRS 260.040(5) and are not considered Case-Related Expenses. The Contractor may at its discretion use legal interns as part of its staffing, provided such usage complies with SCR 49.5

VII. REPORTING

The Contractor shall report quarterly to the Lyon County Manager and Board of Commissioners any information the Contracting Authority reasonably deems pertinent, including, without limitation, any information required under the Plan and/or the Regulations. The Contracting Authority shall approve the format in which such quarterly reports are provided.

The Contractor shall report to the Department any information necessary for the oversight of indigent defense services in Lyon County, as required and specified in the Regulations. This also includes entering case information, conflicts/conflict assignments, and hours worked into the Department's case management system (currently LegalServer).

In no event shall the Contractor be required to provide any information that would compromise client confidentiality, prejudice the rights or defense of any Eligible Client, or violate any provision of the Nevada Rules of Professional Conduct.

VIII. INSURANCE

The Contractor will maintain adequate liability insurance, including errors and omissions coverage and general liability coverage, in policy limits of at least five hundred thousand dollars (\$500,000.00) per occurrence during the term of this Agreement. The Contractor shall also maintain workers compensation insurance for its personnel as required by Nevada Law. The Contractor shall provide proof of all such insurance coverage to the Contracting Authority within thirty (30) days of the Effective Date of this Agreement. The insurance policies must be written by an insurance carrier authorized to issue the policies in the State of Nevada. The premium expense for all insurance coverage required in this Section is the sole responsibility of the Contractor.

IX. COMPENSATION

Except as otherwise expressly stated in this Section, the Contractor's full compensation for the performance of all Representational Services and all other obligations under this Agreement shall be the sum of:

Four hundred and eighty thousand dollars (\$480,000) per Fiscal Year, paid at the rate of forty thousand dollars (\$40,000) per month, due on or before the fifth (5th) of each month. The second and third year increases may be negotiated with the County and any increases will need to be formally approved by the Board of Commissioners.

Nine hundred dollars (\$900) per full weekend worked for bail hearings, payable each month, based upon a schedule maintained by Lyon County. The schedule is expected to rotate coverage between three contracted public defender attorney firms, each assigned for seven days at a time. This additional pay is only available as funding is available from the State of Nevada.

By way of express exception:

1. In the event the Contractor wishes to accept more than one appointment as co-counsel in a Capital Case in any Fiscal Year as is its prerogative under Section III, the Contractor shall receive two hundred dollars (\$200.00) per hour for all attorney time reasonably spent providing Representational Services in such Cases. The Contractor shall submit monthly invoices to the Contracting Authority, with time entries for Representational Services rounded to the nearest one-tenth (1/10) of an hour.
2. In the event the Contractor determines it is for any reason unable to meet its obligations under this Agreement, it may submit a written application to the Contracting Authority for modification of compensation and/or workload. The application shall state, with specificity, all reasons for the Contractor's request. Upon receipt of the application, the Contracting Authority may submit questions or requests for additional information to the Contractor, and the Contractor shall

respond promptly and in good faith. The Contracting Authority may take any appropriate action to ensure its obligations to provide public defense services are met, including, without limitation, authorizing additional compensation for the Contractor, modifying the Contractor's workload, and/or amending or terminating this Agreement, as appropriate.

3. In the event of early termination without Cause, the Contractor shall continue to receive its monthly payment of forty thousand dollars (\$40,000) until the end of the ninety (90) day notice period. In the event the notice period ends part way through a month, the Contractor shall receive a pro rated payment for that month. By way of example, if the notice period ends on the fifteenth (15th) day of a thirty (30) day month, the Contractor would receive one half of its monthly fee for that month (i.e., \$20,000). The Contracting Authority shall owe no further compensation after that, except that if the Contractor must provide continued Representational Services after the end of the notice period to ensure an orderly transition of counsel, the Contractor will receive compensation at the rate of one hundred seventy five dollars (\$175.00) per hour for all attorney time reasonably needed to ensure such transition. The Contractor shall submit an invoice for these services, with time entries rounded to the nearest one tenth (1/10) hour, after all Eligible Clients have been transitioned to other counsel.
4. In the event of early termination for Cause, the Contractor shall receive its monthly payment of forty thousand dollars (\$40,000) through the month in which termination occurs. The Contracting Authority shall owe no further compensation after that, except that if the Contractor must provide continued Representational Services in a subsequent month to ensure an orderly transition of counsel, the Contractor shall receive compensation at the rate of one hundred seventy five dollars (\$175.00) per hour for all attorney time reasonably needed to ensure such transition. The Contractor shall submit an invoice for these services, with time entries rounded to the nearest one tenth (1/10) hour, after all Eligible Clients have been transitioned to other counsel.

The Contractor acknowledges and agrees the provisions of NRS 7.125 do not apply, and the Contractor is not entitled to any compensation or reimbursement pursuant to NRS 7.125. The compensation provided for in this Section is in lieu of the statutorily prescribed fees under NRS 7.125.

X. REIMBURSEMENT OF CASE-RELATED EXPENSES

The Contractor may secure reimbursement for Case-Related Expenses in the manner set forth under the Contracting Authority's Plan and applicable law. All other expenses the Contractor incurs in providing Representational Services under this Agreement are the sole responsibility of the Contractor. Expenses for which the Contractor is solely responsible include, without limitation: travel and meal expenses of Contractor's personnel; wages, benefits, or other compensation of Contractor's personnel; costs associated with procuring office space; office

supplies, technology, software, and equipment; and all other costs attendant to operating a private law practice.

XI. INDEPENDENT CONTRACTOR; PRIVATE LAW PRACTICE

This Agreement is for professional services as an independent contractor and does not create any employer/employee relationship between the Contracting Authority and the Contractor, its employees, or its affiliates. The Contracting Authority does not control the means by which the Contractor provides services. The Contracting Authority is not responsible for withholding income tax or other taxes in payments to the Contractor, procuring workers' compensation insurance for the Contractor, or providing group insurance, retirement, and other benefits available to Lyon County employees.

The Contractor may maintain a private law practice and may engage in the private practice of law which does not conflict with its obligations under this Agreement. The Contractor agrees not to file, or represent clients in, any lawsuits against Lyon County, its officers, employees, or agents, or entities in which the Board of County Commissioners act as a governing body.

XII. ASSIGNMENT AND DELEGATION

The Contractor's rights and obligations under this Agreement are not assignable to any other law firm or third party without the express approval of the Contracting Authority.

XIII. DEFENSE AND INDEMNIFICATION

The Contractor shall defend, indemnify, and hold harmless the Contracting Authority, its officers, agents, and employees from and against all claims, suits, or asserted damages arising from the Contractor's provision of Representational Services under this Agreement.

XIV. ENTIRE AGREEMENT; MODIFICATIONS

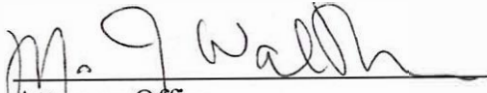
This Agreement constitutes the entire agreement between the parties. This Agreement supersedes all prior agreements and understandings related to the Contractor's appointment as Lyon County's public defender, whether oral or written, and whether express or implied.

This Agreement may be amended or modified only by a written modification duly executed by both parties.

XV. GOVERNING LAW; CHOICE OF FORUM

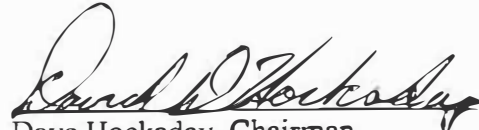
This Agreement shall be interpreted in accordance with the laws of the State of Nevada. Because both parties have participated in drafting of this Agreement, it shall not be construed against either drafter. Any action to enforce any provision in this Agreement shall be brought in the Third Judicial District Court in Lyon County, Nevada.

Agreed:



Attorney Office

Date: 5/29/2024



Dave Hockaday, Chairman
Lyon County Board of
Commissioners

Date: 6/6/2024

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Appendix D

The Oversight Protocol for Indigent Defense Systems in Rural Nevada Counties

Oversight Protocol for Indigent Defense Systems in Rural Nevada Counties

I. Objective.

To ensure the provision of constitutionally mandated effective assistance of counsel for indigent defendants in rural Nevada counties by overseeing and improving the indigent defense systems.

II. Statutory Mandate.

1. NRS 180.440(2) requires the Department to:

Conduct on-site visits of court proceedings throughout the State to determine the manner in which indigent defense services are provided, including, without limitation, whether:

(a) Minimum standards for the provision of indigent defense services established by the Board on Indigent Defense Services are being followed;

(b) Court rules regarding the provision of indigent defense services are being followed;

(c) Indigent defendants are being asked to provide reimbursement for their representation or to take any other actions that violate the constitution, any law, a court rule or a regulation of the Board; and

(d) Representation of indigent defendants is being provided in an effective manner.

2. The Deputy Director in charge of oversight, pursuant to NRS 180.440 will directly supervise the oversight contractors. This will include bi-weekly focused contacts with each contractor, as well as reviewing the contractors' reports, and meetings with the contractors.

III. Recommendations of *Davis* Monitor & Data Analyst

1. The Monitor has repeatedly reiterated that the *Davis* Judgment contemplates oversight by the Department that would necessarily include both remote and on-the-ground activities, as part of the Department's mandate to "systematically reviewed on an annual basis for quality and efficiency according to national and locally adopted standards..."
2. The Monitor has reasoned that, "Given the time and expertise required to conduct comprehensive annual oversight for each of the counties' indigent defense providers, the Department requires assistance of experienced defense attorneys who can analyze compliance with the Judgment's standards."
3. The Department previously engaged Dr. Mitch Herian of Soval Solutions to consult on how best to comply with the *Davis* Judgment's oversight requirement, given the challenges of geographical distance and the time needed to ensure that all

attorneys are providing effective assistance of counsel. Herian concluded that two full-time positions would be necessary for compliance.

IV. Pre-Visit Preparation.

1. Review Each County's Indigent Defense Plan before visiting

Obtain and review policies and procedures related to indigent defense in each county.

Identify any existing oversight issues or questions which require follow-up.

2. Schedule Court Visits.

Develop a schedule for each policy analyst to visit each of the various courts in each rural county, covering all 83 rural courts. See attached **Exhibit A** for a list of courts and their distance from Carson City.

Work with the Department to develop and implement a schedule that allows for observation of individual practitioners, as well as different types of hearings before each court.

3. Coordinate with Local Authorities.

Notify relevant court administrators, public defenders, and other stakeholders about your visit.

Seek cooperation to ensure access to courtrooms, documents, and personnel.

V. On-Site Visits.

1. Observation Checklist.

Use the Court Observation report (**Exhibit B**), which includes the *Davis* Monitor's checklist, to assess the quality of representation, including attorney-client communication, knowledge of the case, and courtroom advocacy skills.

2. Interviews and Discussions with Attorneys.

Conduct interviews with indigent defense attorneys to discuss their caseload, challenges, and strategies for effective representation. Use the Attorney Interview Report (**Exhibit C**), to report on your findings.

Inform them about DIDS training and professional development opportunities.

3. Attorney-Client Privilege / Communication.

Observe and ensure that private communication spaces are provided for confidential discussions between attorneys and clients. (This is part of the Monitor's Checklist, including in the Court Observation Report.)

VI. Assessment and Evaluation.

1. Quality of Representation.

Evaluate the effectiveness of indigent defense services in each county, as set forth above.

Including assessing the sustainability of attorney caseloads.

2. Access to Resources.

Verify that indigent defense attorneys have access to necessary resources, including investigators and expert witnesses.

3. Fair Judicial Treatment.

Assess the fairness and impartiality of judicial proceedings.

Identify any systemic issues affecting fair treatment.

VII. Reporting and Recommendations / Deliverables.

1. Each contractor shall meet in person with the Department's Deputy Director in charge of the Oversight Program (pursuant to NRS 180.440) before beginning their oversight process to establish which counties they will be assessing and to develop a schedule of oversight visits and stakeholder meetings (attorneys and their staff, judges, and county personnel).
2. Each contractor will have bi-weekly contact with the Deputy Director, either in person or virtually.
3. Each contractor will prepare and submit monthly reports to the Department regarding their observations, assessments, and suggestions, as set forth more fully herein.
4. Each contractor will also submit monthly billing, unless otherwise agreed.
5. Additionally, each contractor shall meet with Department Director(s) in person at least once a quarter to discuss their progress, discuss more in-depth evaluations of current county systems, and establish plans for next steps in these counties. The quarterly meetings will be scheduled on a mutually agreeable date near the first week of every quarter.

VIII. Documentation.

1. Prepare detailed reports summarizing findings from each county visit.

Document any observed strengths, weaknesses, and areas for improvement.

Submit to Deputy Director for review, discussion, follow-up, and quarterly reporting to the *Davis Monitor*

2. Recommendations.

Provide actionable recommendations, where appropriate, for enhancing the indigent defense system in each county.

3. Follow-Up.

Establish a mechanism for follow-up visits to track the implementation of recommendations.

Maintain open communication with relevant stakeholders in the counties to address ongoing challenges.

IX. Collaboration.

1. Stakeholder Engagement.

Continue to foster collaboration with local indigent defense providers, the judiciary, and county management, where appropriate. (Much of the contact with county management will be through the Deputy Director.)

2. Public Awareness.

Where appropriate, in collaboration with the Department, promote public awareness of indigent defense issues and the importance of a robust defense system to the public safety, and economic and social health of the communities.

X. Continuous Improvement.

1. Monitoring and Evaluation.

Establish a continuous monitoring and evaluation process.

Adapt the oversight protocol based on evolving needs and legal standards.

2. Policy Advocacy.

Based upon the contractors' feedback, the Department will continue to advocate for policy changes at the state and county levels to address systemic issues and improve the overall quality, effectiveness, and sustainability of indigent defense systems in Nevada.

EXHIBIT A

Nevada Courts by County

83 Rural Courts Total

(not including specialty courts)

(34 rural courts are more than 4 hours from Carson City)

Statewide:

9 Judicial Districts – with 82 District Court Judges

43 Justice Courts – with 63 Justices of the Peace

18 Municipal Courts – with 30 Judges

42 Specialty Courts – with 16 in rural counties

(175 courts statewide, not including specialty courts)

Carson

Municipal:

Carson City Muni Court

Justice Courts:

Carson City Justice Court (2 Departments)

District Court:

First Judicial District Court (2 Departments)

Churchill

Municipal:

Fallon Muni Court

(1:15 from Carson City)

Justice Courts:

New River Township (1 Department)

(1:15 from Carson City)

District Court:

Tenth Judicial District Court (1 Department)

(1:15 from Carson City)

Douglas

Justice Courts:

East Fork Township

(30 min from Carson City)

Tahoe Township

(45 minutes from Carson City)

District Court:

Ninth Judicial District Court (2 Departments)
(30 min from Carson City)

Elko

Municipal:

Carlin Muni Court
Elko Muni Court
Wells Muni Court
West Wendover Muni Court

Justice Courts:

Carlin Township
(4:17 from Carson City)
Elko Township
(4:36 from Carson City)
Jackpot Township
(6:17 from Carson City)
Wells Township
(5:15 from Carson City)

District Court:

Fourth Judicial District Court (3 Departments)
(4:35 from Carson City)

Esmeralda

Justice Courts:

Esmeralda Township
(4:05 from Carson City)

District Court:

Fifth Judicial District Court (2 Departments)
(4:05 from Carson City)

Eureka

Justice Courts:

Beowawe Dept of Eureka Township
(4:17 from Carson City)
Eureka Township
(4 hours from Carson City)

District Court:

Seventh Judicial District Court (2 Departments)
(4 hours from Carson City)

Humboldt

Justice Courts:

Union Township
(2:51 minutes from Carson City)

District Court:

Sixth Judicial District Court (1 Department)
(2:51 minutes from Carson City)

Lander

Justice Courts:

Argenta Township
(3:32 from Carson City)

Austin Township
(2:49 from Carson City)

District Court:

Eleventh Judicial District Court (1 Department)
(3:32 from Carson City)

Lincoln

Municipal:

Caliente Muni Court
(6:33 from Carson City)

Justice Courts:

Meadow Valley Township
(6:57 from Carson City)

Pahrnagat Valley Township
(6:05 from Carson City)

District Court:

Seventh Judicial District Court (2 Departments)
(6:53 from Carson City)

Lyon

Municipal:

Fernley Muni Court
(1 hour from Carson City)
Yerington Muni Court
(1:11 from Carson City)

Justice Courts:

Canal Township
(1 hour from Carson City)
Dayton Township
(20 minutes from Carson City)
Walker River Township
(1:11 from Carson City)

District Court:

Third Judicial District Court (2 Departments)
(1:11 from Carson City)

Mineral

Justice Courts:

Hawthorne Township
(2:03 from Carson City)

District Court:

Eleventh Judicial District Court (1 Department)
(2:03 from Carson City)

Nye

Justice Courts:

Beatty Township
(5:02 from Carson City)

Justice Courts:

Pahrump Township (2 Departments)
(6:10 from Carson City)
Tonopah Township
(3:38 from Carson City)

District Court:

Fifth Judicial District Court (2 Departments)

(3:38 or 6:10 from Carson City)

Pershing

Justice Courts:

Lake Township

(1:49 from Carson City)

District Court:

Eleventh Judicial District Court (1 Department)

(1:49 from Carson City)

Storey

Justice Courts:

Virginia Township

(30 minutes from Carson City)

District Court:

First Judicial District Court (2 Departments)

(30 minutes from Carson City)

White Pine

Municipal:

Ely Muni Court

(5:15 from Carson City)

Justice Courts:

Ely Township

(5:15 from Carson City)

Lund Township

(5:47 from Carson City)

District Court:

Seventh Judicial District Court (2 Departments)

(5:15 from Carson City)

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Appendix E

Court Oversight Form

DIDS Attorney Observation Report		Reviewer	
Date		County	
Court		Judge	
Defense Attorney		Prosecutor(s)	
Attorney Present	In Person / Virtual / w/Client	Number of Clients	
Defendants Present	In Person / Virtual / Off-Site	Custodial Status	IC / OOC / Blend
Hearing Types			
Attorney's Preparedness			
Did the Attorney appear for court?		Yes / No / N/A	
Did the Attorney have the file?		Yes / No / N/A	
Did the Attorney appear to have had a substantive, confidential meeting with each client before court?		Yes / No / N/A	
Did the Attorney appear prepared to handle their clients' cases?		Yes / No / N/A	
How prepared did the Attorney appear?			
How knowledgeable was the Attorney about their cases?			
The Attorney's courtroom advocacy skills were:			
How was the Attorney/client communication?			
Case Stage-Specific Issues			
Did the Attorney argue for pretrial release/OR, or for reasonable bail?		Yes / No / N/A	
Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case?		Yes / No / N/A	
Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment?		Yes / No / N/A	
Did the Attorney appear to adequately advise clients of the consequences of accepting a plea or going to trial, including any collateral consequences?		Yes / No / N/A	
Did the Attorney present mitigating evidence and provide argument at sentencing?		Yes / No / N/A	
Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately?		Yes / No / N/A	
Did the court require defendant(s) to reimburse the entity for representation?		Yes / No / N/A	
Overall Assessments			
Does the Attorney appear to have a sustainable workload?		Yes / No / N/A	
Overall, does the Attorney appear to be providing effective representation to their clients?		Yes / No / N/A	
Remarks/Recommendations/Notes (continue on reverse):			

Remarks/Recommendations/Notes, continued:

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Appendix F

Lyon County Plan for Indigent Defense



PLAN FOR THE PROVISION OF INDIGENT DEFENSE SERVICES

Fiscal Year 2024-2025

I. PLAN OBJECTIVE

The objective of this plan is to ensure competent, zealous legal representation for indigent persons eligible for the services of court-appointed counsel. To that end, this plan establishes guidelines and procedures for, among other things, the appointment, duties, compensation, and oversight of the attorneys with whom Lyon County contracts to serve as its public defenders.

II. DEFINITIONS

- A. Appointing Authority: The Judge, Justice, or Master presiding over a case arising in a court of law within Lyon County.
- B. Case-Related Expenses: Expenses, other than attorneys' fees, reasonably necessary to provide an appropriate defense. Such expenses may include, without limitation, fees for investigators, expert witnesses, forensic services, photocopying, and transcription.
- C. Department: The Nevada Department of Indigent Defense Services.
- D. Eligible Client: An indigent person whom an Appointing Authority has determined to be eligible for the services of a public defender.
- E. Fiscal Year: July 1st through June 30th.
- F. Qualified Attorney: An attorney approved by the Department to provide indigent defense services within certain categories of cases as set forth in the Regulations.
- G. Regulations: The Permanent Regulations of the Board of Indigent Defense Services.

III. APPOINTMENT OF PUBLIC DEFENDERS

Lyon County shall appoint only Qualified Attorneys as public defenders. Lyon County may contract with as many Qualified Attorneys as necessary to ensure adequate representation for all Eligible Clients. All contracts with Qualified Attorneys shall be consistent with this plan and the Regulations, and shall be approved by the Lyon County Board of Commissioners.

A. Selection Process

In seeking out Qualified Attorneys to serve as public defenders, Lyon County shall use a selection committee composed of the County Manager and the Comptroller. The selection committee may, through a formal request for proposals or through other means, request information from Qualified Attorneys regarding their experience, workload capacity, fee structure,

and any other material information. The selection committee shall weigh these and other relevant factors (including those set forth under Sec. 22(3) of the Regulations) in identifying the Qualified Attorneys with whom it would be in Lyon County's best interest to contract, and the terms of such contracts. The selection committee may utilize outside counsel for assistance during any portion of the selection process, and during the drafting and negotiation of contracts with Qualified Attorneys. In addition, the selection committee may seek input from the Department. The selection committee shall present all proposed contracts to the Board of County Commissioners for approval. No contract shall be effective unless and until it is approved by the Board of County Commissioners.

Any Qualified Attorneys interested in consideration by the selection committee are encouraged to contact the Lyon County Manager.

B. Compensation

The terms of compensation shall be set forth in each Qualified Attorney's approved contract. The compensation shall reflect the Qualified Attorneys' experience, competency, credentials, and amount of work performed. Compensation may be in the form of flat fees, piece rates, hourly rates, or any combination thereof, provided that the compensation is ultimately reasonable and consistent with the Regulations.

C. Independent Contractors; Private Practice of Law

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be independent contractors, not employees of Lyon County. Qualified Attorneys may engage in the private practice of law outside the scope of their approved contracts provided that: (i) such practice does not conflict with obligations to Lyon County under the Qualified Attorney's approved contract; (ii) such practice does not conflict with the Qualified Attorney's ability to provide zealous, competent representation to Eligible Clients; and (iii) the Qualified Attorney agrees not to represent clients in any lawsuits against Lyon County, its officers, employees, or agents, or entities in which the Board of County Commissioners act as a governing body.

IV. ELIGIBLE CLIENTS

Consistent with the Regulations and applicable law, the Appointing Authority shall be responsible for determining whether a person is indigent and is eligible for the services of a public defender in the following categories of cases:

1. Misdemeanor Cases: A case in which the highest charge is a misdemeanor.
2. Category B, C, D, or E Felony or Gross Misdemeanor Cases: A case in which the highest charge is a gross misdemeanor or a Category B, C, D, or E felony for which the maximum penalty is ten (10) or fewer years imprisonment.

3. Category B Felony Cases (10+ year maximum): A case in which the highest charge is a Category B felony for which the maximum penalty is greater than ten (10) years imprisonment.
4. Non-Capital Category A Cases: A case in which the highest charge is a non-capital Category A felony.
5. Capital Cases: A case in which the highest charge is a capital Category A felony.
6. Juvenile Proceedings: A case in which a juvenile is alleged to be delinquent or need of supervision.
7. Appeals: Any appeal of an interlocutory adjudication or Final Adjudication in a Case to the Third Judicial District or the Nevada Supreme Court.
8. Other Cases: Any other case in which the assignment of court-appointed counsel is required or permitted by law.

The Appointing Authority shall make indigence determinations in the above categories of cases in accordance with applicable law. A Pretrial Services Officer may be utilized to assist with screening for indigence. The Pretrial Services Officer shall use the approved screening form. Such screening shall occur within forty eight (48) hours of arrest. Indigence determinations are ultimately the responsibility of the Appointing Authority.

V. ASSIGNMENT OF QUALIFIED ATTORNEYS TO ELIGIBLE CLIENTS

Lyon County plans on contracting with three primary public defender firms that shall serve as Lyon County's primary public defenders and conflict public defenders for adult cases. They will also serve as conflict counsel in juvenile cases. The three firms will be assigned so that each justice court has a unique firm as their primary public defender, with the other firms acting as conflict counsel for the justice courts where they are not primarily assigned. The primary public defender firm for a justice court will also serve as the primary counsel for the municipal court that is within the same jurisdiction as the justice court, with the other two public defender firms acting as conflict counsel for the municipal court. Drug Court cases will be assigned to the firm that represents the Walker River Justice Court. These firms will be responsible for inputting applicable information into the Department's case management system, including hours and conflicts.

There will be a separate contract with a fourth firm serving as the primary public defender for juvenile cases and 432B cases.

These four contracts will handle all eligible clients arising in all municipal, justice, and district courts within Lyon County except:

1. In the event that a firm has a conflict of interest or otherwise cannot represent all parties in a matter in accordance with the Nevada Rules of Professional Conduct;
2. As lead counsel in a capital case.

In the event that a firm has a conflict of interest or otherwise cannot represent all parties in a matter, a separate Qualified Attorney with whom Lyon County has an approved contract shall be assigned. The procedure for assignment is set forth below:

The firm primarily representing the Dayton Justice Court jurisdiction will be the primary conflict counsel for the Canal Township Justice Court and Walker River Justice Court jurisdictions and Juvenile cases in the Dayton Justice Court jurisdiction. The firm primarily representing the Canal Township Justice Court jurisdiction will be the primary conflict counsel for the Dayton Justice Court jurisdiction and Juvenile cases in the Canal Township Justice Court jurisdiction and secondary conflict counsel for the Walker River Justice Court. The firm primarily representing the Walker River Justice Court jurisdiction will be the primary conflict counsel for jurisdiction for Juvenile cases in the Walker River Township Justice Court jurisdiction and secondary conflict counsel for the Dayton Justice Court and the Canal Township Justice Court. Lyon County may change primary and secondary conflicts for certain cases based on complexity so that the workloads between the primary public defender firms are more equitable. The primary and secondary conflicts may be assigned by the courts administratively without notification to the Department.

For all other conflicts, the assignment will be as follows:

1. A firm shall provide immediate notice of its inability to represent Eligible Client(s) to the Department by email at didscontact@dids.nv.gov. the firm shall make this notification as soon as it determines that it intends to file a notice of conflict or a motion to withdraw, as applicable. The notification shall include the following information (if available): charging document, probable cause sheet or declaration, and the date and location of the next scheduled court appearance.
2. Upon receipt of the above notification, the Department shall select other Qualified Attorney(s) for assignment, starting with the three primary defender firms and then proceeding to the panel of Qualified Attorneys with whom Lyon County has an approved contract. The conflict cases assigned between the three primary public defender firms will take into consideration the complexity of the cases assigned so that the conflict work is assigned equitably between the three firms. The Department shall otherwise have discretion to make assignments on any legitimate basis, including, without limitation, qualifications, interest, track record of responsiveness and dependability in accepting assignments, feedback from Eligible Clients, feedback from Lyon County officials, and capacity to take on work.
3. The three primary defender firms will take any case assigned by the Department so long as there is no valid conflict. A Qualified Attorney contacted by the Department for an assignment may accept or reject the assignment. If the Qualified Attorney (or staff duly authorized to accept assignments on the Qualified Attorney's behalf) is not available during normal business hours when contacted by the Department, the assignment shall be deemed rejected. The Department shall contact other

Qualified Attorneys until it obtains acceptance from a sufficient number of Qualified Attorneys to represent all Eligible Clients.¹

4. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Department shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority—i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client’s charges are pending.

In the event of a capital case, Lyon County shall retain a Qualified Attorney authorized to serve as lead counsel under Supreme Court Rule 250 and shall pay reasonable compensation for such services. The primary public defender firms and/or other Qualified Attorneys may be assigned as co-counsel consistent with the terms of their approved contracts.

VI. DUTIES OF QUALIFIED ATTORNEYS

A. Standards of Performance

Qualified Attorneys providing services to Eligible Clients within Lyon County shall be responsible for providing such services in a professional, skilled manner. They shall comply with all applicable laws, regulations, Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008 Nevada Supreme Court Order in Administrative Docket 411, or the same as may be amended.

B. Continuity in Representation

Qualified Attorneys providing services to Eligible Clients within Lyon County shall ensure, to the extent practicable, consistency in representation such that the same attorney represents a defendant through every stage of the case; provided, however, that attorneys may delegate appropriate administrative tasks to support staff, or may assign more than one (1) attorney to represent an Eligible Client as necessary provided it would not prejudice the rights or defense of the Eligible Client. Courts may also group all of a defendant’s cases with a single attorney to enable continuity in representation.

C. Workload Standard

The workload of each Qualified Attorney providing services to Eligible Clients within Lyon County must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any attorney who provides indigent defense services shall not accept a workload that, by reason of its excessive size, interferes with the attorney’s competence, diligence, and/or representation of clients. The maximum workload guidelines as determined by the

¹ Nothing herein shall preclude Lyon County from entering into additional contracts to add more Qualified Attorneys to the panel after the effective date of this plan. In addition, nothing herein shall preclude the Department from exercising its authority to appoint counsel outside the panel pursuant to NRS 7.115 et seq. in the event there are not a sufficient number of Qualified Attorneys on the panel to accept assignments to represent all Eligible Clients.

Department are incorporated herein by reference and shall be followed to the greatest extent practicable. To the extent required by the Department's Board, Qualified Attorneys providing indigent defense services under this plan shall maintain caseload data and track time spent providing indigent defense services in accordance with Sections 44 and 45 of the Regulations. The County will require the four primary public defender firms to employ enough attorneys and support staff to meet caseload standards based on the workload standards. If the four primary public defenders are unable to hire enough attorneys due to a lack of qualified applicants, then the County will work with the Department on any other viable options for meeting the workload standards.

Lyon County plans to meet the workload standards by November 1, 2024 as follows: Each of the three primary public defender firms for adults will be required to have three attorneys and two support staff. The primary public defender firm for juveniles will be required to have one attorney. Additional conflict contracts are expected to supply two attorneys towards the workload standards. Investigations will continue to be contracted outside the attorney contracts in sufficient numbers to meet the DIDS requirements as well. Since the proposed three primary attorney system for adult cases is a new development, caseloads by firm will continue to be evaluated and contracts adjusted to meet proper staffing numbers based on the caseload analysis.

D. Conflicts of Interest

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be required to timely screen all case assignments for conflicts of interest. In the event of a conflict of interest, the Qualified Attorney shall file an appropriate motion or, as applicable, a notice of conflict with the Appointing Authority. Unless leave to withdraw is withheld by the Appointing Authority, the Qualified Attorney shall ensure prompt transfer of the Eligible Client's file to the Eligible Client's new attorney.

E. Training

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be required to comply with the training and continuing education requirements of the Department.

F. Other Responsibilities

All Qualified Attorneys providing services to Eligible Clients within Lyon County shall be responsible for ensuring:

1. Clients do not waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest.
2. Clients receive adequate and frequent communication from their attorney. As a guideline, Qualified Attorneys shall, where practicable, communicate with clients seven (7) days following the assignment of the case and every thirty (30) days thereafter unless there are no significant updates in the client's matter.

3. Clients are notified of and encouraged to participate in client surveys authorized by the Department.
4. Clients are appropriately notified of their right to utilize the Department's Complaint and Recommendation process.
5. Attorney-client privilege and client confidentiality are maintained.

G. Initial In-Custody Appearances

The County will establish a rotating coverage schedule for the three primary public defender firms so that Representational Services are provided for all eligible adult clients who are in custody and require a bail hearing. Insofar as any firm has a conflict of interest precluding the firm from continuing to provide Representational Services in connection with a substantive defense of the charges, that firm shall limit the scope of its representation. It shall only advocate for the Eligible Client's best interests at the bail hearing and shall advise the Eligible Client of the limited scope of such representation.

Notwithstanding any other provision herein, nothing shall preclude any firm from declining to represent an Eligible Client, even for the limited purpose described in the preceding paragraph, if it determines it cannot do so in a manner consistent with the Nevada Rules of Professional Conduct. In the event this occurs, the firm shall immediately notify the Department so the Department can assign alternative counsel from among the panel of Qualified Attorneys with whom Lyon County has an approved contract.

In accordance with NRS 178, all bail hearings shall occur within forty eight (48) hours after the Eligible Client has been taken into custody, unless continued for good cause.

VII. ACCOMMODATIONS FOR CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATIONS

The Lyon County Sheriff's Office offers the opportunity for Qualified Attorneys to meet confidentially with Eligible Clients in person or via video conference. Qualified Attorneys seeking a confidential meeting are encouraged to contact Lyon County Sheriff's Office staff at 775-463-6600 at least twenty four (24) hours in advance. The Lyon County Sheriff's Office will make every reasonable effort to ensure a Qualified Attorney is able to meet with an Eligible Client at the desired time. Absent twenty four (24) hours' notice, the Lyon County Sheriff's Office will still make every reasonable effort to arrange a meeting as requested by the Qualified Attorney, but Qualified Attorneys shall, for their part, demonstrate reasonable flexibility and mutual cooperation in such instances. Qualified Attorneys shall be responsible for compliance with all safety protocols and all reasonable instructions of jail personnel.

Questions or concerns with respect to accommodations for confidential meetings with Eligible Clients may, if not satisfactorily addressed by staff, be directed to the Lieutenant in charge of the jail.

VIII. INVOICING AND PAYMENT

A. Attorneys' Fees

Qualified Attorneys providing services to Eligible Clients within Lyon County in exchange for an hourly rate shall submit monthly invoices to the Department. Such invoices shall be submitted via LegalServer (or any other platform the Department may subsequently choose to utilize) no later than ten (10) days after the end of the month in which the services were rendered. Time entries shall be rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.

The Department shall approve for payment all reasonable attorney's fees. In reviewing for reasonableness, the Department may consider factors such as: (i) average case times as determined by workload analysis; (ii) time and skill required; (iii) complexity of the case; and (iv) experience and ability of the Qualified Attorney(s). The Department may request additional information or explanation where necessary. In the event the Department denies or modifies a request for attorneys' fees, it shall provide an explanation to the Qualified Attorney, with a copy to the Lyon County Manager, as to why the denied portion was not reasonable. Such denials shall be subject to judicial review pursuant to NRS 7.135.

Payment for all approved attorneys' fees shall be issued by the Lyon County Comptroller's Office. The Department shall notify the Comptroller's Office of all approved requests for attorneys' fees, attaching a copy of the invoice and any backup. The Comptroller's Office shall issue payment within ten (10) days of receipt.

B. Case-Related Expenses

Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:

1. **Pre-Authorization:** Case-Related Expenses expected to exceed two thousand five hundred dollars (\$2,500) shall be submitted to the Department for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization to the Department by email at didscontact@dids.nv.gov. The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services.
2. **Reasonableness Review:** All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the Department's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the Department no later than sixty (60) days following the termination of the representation. Any requests not timely submitted shall be waived. The Department shall approve all reasonable and necessary Requests for Case-Related Expenses, and shall notify the Lyon County Comptroller's Office of all approved expenses and provide a copy of the invoice.

3. Payment: The Lyon County Comptroller's Office shall issue payment for all approved Case-Related Expenses within ten (10) days of receipt of notice of the Department's approval and a copy of the invoice.

IX. REIMBURSEMENT FOR PAYMENTS EXCEEDING THE MAXIMUM COUNTY CONTRIBUTION

Pursuant to NRS 180.320(3), the Department's Board has promulgated under Section 16 of its Regulations a formula for establishing the maximum amount a county is required to pay for the provision of indigent defense services in a Fiscal Year. Lyon County shall not pay any amount in excess of that formula in any Fiscal Year.

Pursuant to Sections 16 - 19 of the Regulations, Lyon County shall be permitted to obtain reimbursement for costs associated with the provision of indigent defense services under this plan to the extent they exceed the maximum contribution in the preceding paragraph. Lyon County shall file financial status reports with the Department in a manner consistent with the Regulations, using the forms prescribed by the Department. The Lyon County Board of Commissioners hereby designates the Lyon County Comptroller as its designee to submit such reports to the Department. To the extent the financial status reports reflect costs in excess of the maximum contribution. In the event reimbursable costs exceed this amount, nothing herein shall be construed to preclude Lyon County from seeking additional reimbursement pursuant to NRS 353.266, NRS 180.450, or as otherwise permitted by law.

X. EFFECTIVE DATE; MODIFICATION

This plan is effective July 1, 2024 and shall remain in effect until June 30, 2025. This plan may be modified by formal action of the Board of County Commissioners.

XI. PLAN ADMINISTERATOR AND CONTACTS

The County Manager shall be the administrator of this plan and the contracts for the provision of indigent defense services. The County Manager shall report material breaches or other significant matters to the Board of County Commissioners. The Board of County Commissioners may take any lawful, situationally-appropriate action with respect to any contract.

Questions about the administration of this plan may be directed to the Lyon County Manager.