

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**July 1, 2021**

Provided by:

M. Eve Hanan, Esq., Associate Professor of Law  
UNLV Boyd School of Law  
*eve.hanan@unlv.edu*

Cynthia Johnston, J.D. Candidate  
UNLV Boyd School of Law

Provided to:

The Honorable James E. Wilson, Jr.  
First Judicial District Court, Dept. II

Representatives of the Plaintiff Class:

Franny Forsman, Esq., Plaintiffs' counsel  
*f.forsman@cox.net*

Margaret Carter, Esq., Plaintiffs' counsel  
*mcarter@omm.com*

Matt Cowan, Esq. Plaintiffs' counsel  
*mcowan@omm.com*

Emma Andersson, Esq., ACLU Plaintiffs' counsel  
*eandersson@aclu.org*

Representatives of the Defendants, State of Nevada and Governor Sisolak:  
Assistant Attorney General Craig Newby  
*CNewby@ag.nv.gov*

The Department of Indigent Defense Services:  
Marcie Ryba, Esq., Director of the Department of Indigent Defense  
*mryba@dids.nv.gov*

The Board of Indigent Defense Services:  
Anne Traum, Esq., Chair of the Board of Indigent Defense  
*anne.traum@unlv.edu*

## Table of Contents

Introduction.....	2
Summary Points .....	2
Background on Rural Indigent Defense in Nevada .....	5
Efforts to Document and Improve Issues in Rural Indigent Defense .....	5
Initiation of the Davis v. State Lawsuit.....	9
The Creation of the Board and Department of Indigent Defense Services .....	9
Compliance to Date.....	10
The Requirements of the Davis v. State Consent Judgment .....	10
The Adoption of Temporary Regulations .....	11
I.    Independence of the Defense Function and the Removal of Economic Disincentives .....	11
A. Ensuring standardized contracting in compliance with the Judgment.....	13
B. Successful recommendations for statutory changes.....	18
Issues and Recommendations.....	19
II.   Establishment of Minimum Standards.....	21
A. Appointment, appearance without delay, and advocacy at initial appearance and bail hearings.....	23
Issues and Recommendations.....	24
B. Client Communication .....	25
Issues and Recommendations.....	25
C. Conflicts .....	25
D. Workload Standards .....	26
Issues and Recommendations.....	28
E. Establishment of Performance Standards.....	29
Issues and Recommendations.....	29
F. Attorney Qualifications .....	30
G. Oversight .....	32
Issues and Recommendations.....	34
H. Training and Resources.....	35
Issues and Recommendations.....	37
III.  Uniform Data Collection and Reporting .....	38
Conclusion .....	40

## 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 from the effective date of the Judgment to July 1, 2021.

On October 15, 2018, the Plaintiffs filed a complaint against the Defendants, who include the Governor and the State of Nevada. Certified as a class on June 14, 2019, the Plaintiffs are the class of indigent people charged with crimes carrying potential penalties of incarceration who appear in state court in the following ten rural counties: Churchill, Douglas, Eureka, Esmeralda, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine.<sup>1</sup> The Complaint alleged, *inter alia*, that the Defendants' policies and practices for providing indigent defense in these counties violated the right to counsel provisions of the federal and state constitutions.<sup>2</sup>

Before the parties reached a settlement agreement, the Nevada legislature passed Assembly Bill (AB) 81, establishing a Board of Indigent Defense (the Board) and a Department of Indigent Defense (the Department), now codified at NRS 180.002 et seq. The Department and Board are the entities responsible for oversight of indigent defense services in Nevada.

On August 11, 2020, this Court approved a proposed settlement agreement between the parties memorialized in a Stipulated Consent Judgment (the Judgment) that sets forth terms of agreement regarding the (1) elimination of economic disincentives, (2) the establishment of minimum standards, (3) uniform data collection and reporting, and (4) the appointment of a monitor. The terms of the Judgment remain in effect until the Defendants demonstrate substantial compliance.<sup>3</sup>

This initial report of the Monitor covers the Defendants' compliance from the date of the Judgment to July 1, 2021.

## Summary Points

The Department, which is charged with implementing the Judgment, has taken significant steps toward compliance.

The Judgment set interim deadlines from its effective date.<sup>4</sup> As discussed below, some of the deadlines laid out in the Judgment proved unworkable given the newly formed Department's resource constraints, the restrictions imposed in response to the Covid-19 pandemic, and the need for the Board to take necessary preliminary steps such as promulgating regulations.

---

<sup>1</sup> Davis v. State Case No. 170C02271B, Stipulated Consent Judgment, 2 n. 1 (filed June 4, 2020) [hereinafter "Judgment"].

<sup>2</sup> Davis v. State Case No. 170C02271B, Amended Complaint P 4 (filed October 15, 2018), citing Amendments XV and XIV of the U.S. Constitution; Nev. Const. Art 5 §§ 1, 7.

<sup>3</sup> Judgment, 7. The Court shall not dismiss the case before June 30, 2023. *Id.* at 9.

<sup>4</sup>

To date, the Department has completed the following:

- Annual report: Published its first and second annual reports on the status of indigent defense in Nevada on July 1, 2020, and in June of 2021.<sup>5</sup>
- Temporary regulations: Promulgated temporary regulations to address the maximum contribution formula and financial reporting requirements of the counties, requirements for county plans, requirements for contracts between counties and attorneys providing indigent defense services, attorney qualifications by case type, procedures for reviews and audits of county indigent defense services, and data collection requirements.<sup>6</sup>
- Independence and reduced financial disincentives: Established a maximum contribution funding formula as required by NRS 180.320(3); established a means of reimbursing expenses for experts and investigators that does not require judicial approval; and successfully proposed legislative amendments that remove monetary caps for compensation and case-related expenses and distinguish the task of selecting qualified providers from the judicial function of appointing counsel.
- Contracts for providers: Established a model contract for the provision of indigent services, available on the Department's website, and temporary regulations stating the required terms.<sup>7</sup>
- Client surveys: Developed a required client survey for counties with populations of fewer than 100,000 people.<sup>8</sup>
- Workload study: Contracted and initiated a Delphi workload study administered by the National Council of State Courts (NCSC).
- County plans: Created a plan template for the counties,<sup>9</sup> and met with county officials to assist in developing each county's plan to provide indigent defense services in line with the temporary regulations.
- Data collection software: Selected, adopted, and began to train attorneys on the required Legal Server case management software.

---

<sup>5</sup> The Department's Annual Reports for Fiscal Years 2020 and 2021 are available on its website at [https://dids.nv.gov/Annual\\_Report/home/](https://dids.nv.gov/Annual_Report/home/)

<sup>6</sup> The Temporary Regulations of the Board on Indigent Defense Services (March 5, 2021) [hereinafter "Temporary Regulations"] are attached to this report as Appendix A.

<sup>7</sup> The model contract is attached as Appendix B.

<sup>8</sup> The client survey is attached as Appendix C.

<sup>9</sup> The county plan template is attached as Appendix D.

- Training: Developed and implemented a training, resource, and mentorship structure for contract attorneys and public defenders.
- Oversight: Engaged a consultant to assist in data analysis and an oversight plan, which includes client surveys, stakeholder feedback, on-site observations, and analysis of qualitative and quantitative county data.
- Qualifications and performance standards: Established an application and acceptance process for attorneys wishing to provide indigent defense services; created a roster of approved attorneys; drafted and adopted temporary regulations addressing (1) access to applications for indigent defense services; (2) yearly CLE requirements; (3) screenings for indigence within 48 hours; and (4) representation at initial appearance/arraignment.
- Funding: Requested and received approval for \$1.2 million in earmarked funds to comply with the Judgment, including funding of the counties' indigent defense services that exceed each county's maximum contribution.

Given the above steps, combined with the Department's active engagement with county governments and the rural defense bar, it is anticipated that the counties will have plans for the provision of indigent defense services that comply with the terms of the Judgment by Fall of 2021. The county plans are an essential step to overall compliance because they establish how each county will comply with requirements laid out in the temporary regulations. The Monitor further anticipates that, upon completion of the plans, all future contracts between counties and contract attorneys will contain the terms required by the Judgment.

However, the Monitor notes several issues that may result in compliance issues in the future. First, the data from the workload study performed by the National Center of State Courts (NCSC) is significantly skewed because it was gathered during the Covid-19 pandemic when courts, jails, and prisons were closed to in-person activities and all trials were suspended. As a result, travel time, court time, preparation for trials, and jail and prison visits will be significantly undercounted in the data. Rural attorneys who travel long distances to meet with clients and attend court need more time per case than other attorneys. The administrators of the study recommended and have agreed to provide further data collection and analysis post-pandemic. This follow-up information-gathering and analysis is an essential component of compliance with the Judgment's requirement to establish clear workload limits.

Second, the Monitor notes that developing and offering trainings, assisting with county planning, conducting oversight through review and corrective action plans, and managing technical issues related to using new case management software all require significant time commitments from the Department staff of six, including the Executive Director, two deputy directors, two management analysts, and an executive assistant. These same staff members are also responsible for overseeing all indigent defense in the state, including counties with public defender offices. Moreover, county governments may hesitate to make improvements that increase the cost of indigent defense services if they are not confident the state will fully fund expenses exceeding

the county's maximum contribution. Reimbursing county expenditures from the earmarked funds requires approval from the Interim Finance Committee. The success of the Defendants in complying with the Judgment thus depends on adequate state funding for the Department and the counties.

## **Background on Rural Indigent Defense in Nevada**

Nevada has a constitutional and statutory obligation to provide effective assistance of counsel to every indigent person accused of a crime who faces a potential loss of liberty.<sup>10</sup> The right to counsel in criminal cases is protected by the Sixth and Fourteenth amendments to the U.S. Constitution, Article I of the Nevada Constitution, and NRS 171.188 and 178.397.<sup>11</sup> "The Constitution's guarantee of assistance of counsel cannot be satisfied by mere, formal appointment."<sup>12</sup> Defendants in criminal cases have the right to effective assistance of counsel.<sup>13</sup>

The Sixth Amendment's right to counsel provision can be violated by structural or systemic inadequacies in a state's public defense system.<sup>14</sup> The absence of certain fundamental markers of representation will lead to a presumption of ineffectiveness.<sup>15</sup> The Judgment notes that "traditional markers of representation" include "frequent nonattendance during critical stages of the criminal proceedings; minimally adequate communication with clients; and/or failure to conduct sufficient investigation."<sup>16</sup> Furthermore, an attorney cannot provide effective assistance of counsel if the attorney's loyalty to the client is compromised by a conflict of interest.<sup>17</sup>

### **Efforts to Document and Improve Issues in Rural Indigent Defense**

Nevada has a long history of providing legal assistance to poor defendants accused of crimes that might deprive them of their liberty. As early as 1877, decades before the U.S. Supreme Court established a right to counsel for indigent defendants, the Nevada Supreme Court reached a similar conclusion. It noted in *In re Wixom* that "a failure to assign professional counsel for a poor defendant would be deemed a fatal error on appeal."<sup>18</sup>

---

<sup>10</sup> *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). Nevada's right to counsel for indigent defendants is of considerably older vintage than the federal right. *In re Wixom*, 12 Nev. 219, 224 (1877) (holding that "a failure to assign professional counsel for a poor defendant would be deemed a fatal error on appeal").

<sup>11</sup> Nev. Const. art. I, § 8; NRS 171.188; NRS 178.397.

<sup>12</sup> *Avery v. Alabama*, 308 U.S. 444, 446 (1940).

<sup>13</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>14</sup> See, e.g., *Tucker v. State*, 394 P.3d 54, 62 (Idaho 2017) (systemic inadequacies in a public defense system can result in actual or constructive denials of counsel at critical stages of the prosecution, thus demonstrating sufficient injury in fact to establish standing in lawsuit alleging violation of the Sixth Amendment right to counsel).

<sup>15</sup> *United States v. Chronic*, 466 U.S. 468 (1984), Citing *Powell v. Alabama*, 287 U.S. 45, 58 (1932).

<sup>16</sup> Judgment, 6. See *Chronic*, 466 U.S. 648, 656 (1984); *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>17</sup> *Holloway v. Arkansas*, 435 U.S. 475, 484 (1978).

<sup>18</sup> 12 Nev. 219, 224 (1877).

But the path to a fully funded, fair and accountable system of indigent defense in the state's rural counties has been riddled with speed bumps and false starts. As the courts and legislature expanded the right to counsel, so too did they expand the burdens placed on counties.

In 1965, Nevada lawmakers tried to impose some regulatory order on an increasingly unwieldy system, authorizing counties to create their own public defender offices.<sup>19</sup> If they failed to do so, the courts would continue a system of appointing private attorneys at county expense.<sup>20</sup> Four years later, the state required its two biggest counties, Washoe and Clark, to establish and pay for county public defender offices.<sup>21</sup>

Then, in 1971, the legislature created an Office of State Public Defender, appropriating a small amount of state funds to manage indigent defense in rural counties that lacked a public defender office. The office would also handle appeals and other post-conviction proceedings in all counties.<sup>22</sup>

These rules essentially gave rural counties, distinguished from Washoe and Clark, a choice of how to manage indigent defense. They could create and pay for their own public defender systems, they could rely on judges to appoint private attorneys to represent indigent defendants and pick up the tab, or they could turn to the state public defender.

Although the creation of the Office of the State Public Defender represented an important step toward ensuring the right to counsel, it was not a free service offered by the state. By 2007, the counties funded 80 percent of the cost of State Public Defender services.<sup>23</sup> Many counties, even those that had experimented with using the State Public Defender system, eventually opted to go their own way, opting to use contract counsel, or to create their own public defender systems to control expenses and delivery of services.<sup>24</sup> Meanwhile, concerns grew about equitable access to justice in rural counties.

In 2007, the Nevada Supreme Court established an Indigent Defense Commission (IDC) to study and propose recommendations for indigent defense in Nevada.<sup>25</sup> The IDC formed subcommittees, including a Rural Subcommittee, which issued reports in 2008 and 2014. The Rural Subcommittee's 2008 report found, *inter alia*, uneven provision of indigent defense services with unacceptably high caseloads in some counties, a lack of oversight, and inadequate funding. The report stressed the importance of and need for state funding for public defense in the

---

<sup>19</sup> 1965 Nev. Stat. 597.

<sup>20</sup> 1965 Nev. Stat. 598.

<sup>21</sup> 1965 Nev. Stat. 1466, AB 804.

<sup>22</sup> 1971 Nev. Stat. 1410, AB 720; 1971 Nev. Stat. 1413, AB 720.

<sup>23</sup> Comments of the Rural Subcommittee to the Indigent Defense Commission (November 20, 2007).

<sup>24</sup> Sixth Amendment Center, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services* 30-31 (September 2018), available at [https://sixthamendment.org/6AC/6AC\\_NV\\_report\\_2018.pdf](https://sixthamendment.org/6AC/6AC_NV_report_2018.pdf) [hereinafter "6AC Report"].

<sup>25</sup> *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT No. 411 (Oct. 16, 2008) (hereinafter, "ADKT411").

counties.<sup>26</sup> The 2014 report of the Rural Subcommittee once again emphasized the need for state funding of indigent defense in the counties. It observed impediments to zealous defense resulting from flat fee contracts and a lack of both funding and oversight. The 2014 report said the state should fully fund indigent defense, sought an end to flat fee contracts, and recommended creating a permanent indigent defense oversight body.<sup>27</sup>

Pursuant to the formation of the IDC, the Nevada Supreme Court adopted performance standards for defending indigent clients in 2008, referred to in this report as ADKT411 performance standards. The adoption of performance standards represented a watershed moment for indigent defense in Nevada.

In 2015, the Nevada Supreme Court issued an administrative order recommending that the rural counties which contract with private attorneys for indigent defense “shall not use a totally flat fee contract but, instead, execute contracts that allow for a modification of fees for extraordinary cases, and allow for investigative fees and expert witness fees.”<sup>28</sup> The same order recommended the creation of a permanent oversight body for indigent defense in the state.

In 2017, the Chief Justice of the Nevada Supreme Court, Michael Cherry, urged the legislature to enact comprehensive reforms to improve indigent defense services in rural areas. He also called for an independent Indigent Defense Commission.<sup>29</sup>

Yet, even as the Nevada Supreme Court took steps to strengthen indigent defense, the legislature hesitated. Proposed legislation in 2017 aimed to create an Office of Indigent Legal Services to oversee services statewide. If passed, it would have given counties a choice to cap their costs and cede authority to the state or keep their autonomy and continue providing their own services while meeting statewide standards.<sup>30</sup> But not all lawmakers agreed, and as a compromise the bill was amended to study the matter.<sup>31</sup>

The tweaked legislation in SB 377 created a Nevada Right to Counsel Commission to study public defense services in rural Nevada. The commission was to recommend minimum standards for the provision of indigent defense, caseload standards, and the funding of a system of representation in rural counties.<sup>32</sup> The resulting report by the Sixth Amendment Center outlined

---

<sup>26</sup> Nevada Supreme Court Indigent Defense Commission Rural Subcommittee Report and Recommendations 4, 10, 21 (2008) [hereinafter “the 2008 Report”].

<sup>27</sup> Rural Subcommittee Report on the Status of Indigent Defense in the 15 Rural Counties and Recommendations to Improve Service to Indigent Defendants 2 (2014) [hereinafter “the 2014 report”].

<sup>28</sup> Order in ADKT411 (July 23, 2015). available at <https://nvcourts.gov/AOC/Templates/documents.aspx?folderID=9993>

<sup>29</sup> 6AC Report, 39.

<sup>30</sup> *Id.* at 40-41.

<sup>31</sup> *Id.*

<sup>32</sup> 2017 Nevada Senate Bill No. 377.



systemic problems in the provision of indigent defense in Nevada. It described a system that lacked adequate oversight, accountability, training, or standards, to the detriment of rural defendants.

Across the rural areas, the report found a pervasive absence of attorneys at initial appearances. Defendants sometimes languished in jail as attorneys, often battling excessive caseloads, failed to advocate rigorously for pretrial release. Few attorneys enlisted the assistance of investigators or sought expert opinions that could help their clients in all but the most serious felony cases. Lawyer turnover was high. Support, in the form of paraprofessionals or translators, was low. Furthermore, contract counsel were often paid by fixed fees regardless of caseload, offering scant incentive for lawyers to spend time on individual cases. Some contracts even required attorneys to pay for conflict counsel, when needed, out of their own compensation.<sup>33</sup>

The report found that these deficiencies, among others, caused delays in legal proceedings even for defendants who remained behind bars.<sup>34</sup> In some cases, desperate defendants negotiated directly with prosecutors and pleaded guilty to misdemeanors, often at initial appearances or arraignments, rather than depend on their court-appointed counsel. Data and reporting were inadequate.<sup>35</sup>

Meanwhile, the report found, procedural problems abounded. Some judges failed to adhere to procedures to determine indigence or whether charges warranted court-appointed counsel. Sometimes, fees to recoup defense costs were imposed on defendants without determining ability to pay.<sup>36</sup>

In its report, the Sixth Amendment Center made seven recommendations to rectify systemic problems with indigent defense in Nevada.<sup>37</sup> Among the recommendations relevant to the Judgment are:

1. Create a Board of Indigent Defense Services and executive Office of Indigent Defense Services (the Office), to oversee the provision of indigent defense.
2. Authorize the Office to announce standards for indigent defense.
3. Permit counties to select how to provide services; new funding comes from the state.
4. Authorize the Office to qualify, train and supervise contracted attorneys, conduct system evaluations, manage and fund requests for trial-related expenses, collect data, and oversee the State Public Defender Office, whose responsibilities should include direct appeals.

---

<sup>33</sup> 6AC Report, 164-165.

<sup>34</sup> *Id.* at 165.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 166-180.

### **Initiation of the Davis v. State Lawsuit**

Just a month after the Sixth Amendment Center report came out, the American Civil Liberties Union filed the class action lawsuit in the instant case, alleging that Nevada was failing to meet its obligations to provide meaningful representation to indigent defendants.<sup>38</sup> It argued that the state's system of publicly appointed defense attorneys in rural counties had structural deficiencies that created a "patchwork approach" to representation which made access to justice dependent on geography.<sup>39</sup>

The lawsuit sought injunctive relief in the form of implementing a plan for a statewide public defense system consistent with state and federal law. It also asked for a proposal on workload, performance, and training standards, and to ban flat fee defense contracts.<sup>40</sup>

The parties reached a settlement, memorialized in the August 11, 2020, stipulated consent judgment (the Judgment) that is the subject of this monitorship.

### **The Creation of the Board and Department of Indigent Defense Services**

As the lawsuit was pending, and before the stipulated consent judgment, the Nevada legislature agreed in 2019 to establish the Department of Indigent Defense Services to oversee service provision in counties with populations of under 100,000 people. A supervising Board of Indigent Defense Services would set minimum standards, establish compliance procedures, and adopt regulations for determining the maximum amount counties must pay for indigent defense.<sup>41</sup>

The duties of the Board include establishing minimum standards for the delivery of indigent defense services; adopting regulations for performance standards, compensation, and reporting; and establishing a formula to determine the maximum amount a county may be required to pay for indigent defense.<sup>42</sup>

To ensure accountability, the Department must prepare an annual report on defense services, and may make budget requests to the state for funds to provide required services. Counties out of compliance with the rules may be subject to a corrective action plan, and could be required to transfer provision of services to the State Public Defender.<sup>43</sup>

Within the Department, the Executive Director bears overall responsibility for provision of indigent defense services in the state. The Executive Director must assist with establishing and

---

<sup>38</sup> Judgment, 9, 50.

<sup>39</sup> *Id.* at 3.

<sup>40</sup> *Id.* at 52.

<sup>41</sup> AB81, 8-13; codified at NRS 180.010 et seq.

<sup>42</sup> NRS 180.320.

<sup>43</sup> NRS 180.450(5).

enforcing regulations, deal with budget issues, prepare an annual report, and take any actions needed to ensure adequate services.<sup>44</sup>

One deputy director must oversee indigent defense in rural counties, offer training, and assist counties in revising their indigent defense service plans.<sup>45</sup> The other deputy director must review the provision of indigent defense in the counties, collecting data about caseloads, salary, and performance, and carrying out on-site visits of court proceedings. This deputy director may recommend corrective action plans for counties that fail to meet minimum standards of indigent defense.<sup>46</sup>

When a corrective action plan is needed, the deputy director creates it in collaboration with the county, and it is reviewed by the Board.<sup>47</sup> If the corrective plan will cost the county more in inflation-adjusted dollars than its prior year budget for indigent defense services, the Department will include the additional amount in the next budget or request a Contingency Account allocation from the Interim Finance Committee.<sup>48</sup>

Should the county fail to comply with the corrective action plan within the prescribed period, the Department may recommend an extension, a new plan, or ask that responsibility for the county's indigent defense services be turned over to the State Public Defender.<sup>49</sup> Upon Board approval, the State Public Defender shall provide indigent defense services for the county, whose contribution shall not exceed the formula set forth in the Board regulations.<sup>50</sup>

## **Compliance to Date**

### **The Requirements of the Davis v. State Consent Judgment**

The August 11, 2020, stipulated consent judgment (the Judgment) between the parties is the subject of this Monitorship. This Report will follow the structure of the Judgment, which creates three categories of obligation:

- (I) removing economic disincentives and ensuring independence
- (II) setting and ensuring performance standards
- (III) uniform data collection

---

<sup>44</sup> NRS 180.410.

<sup>45</sup> NRS 180.430.

<sup>46</sup> NRS 180.440.

<sup>47</sup> NRS 180.450.

<sup>48</sup> NRS 180.450.

<sup>49</sup> NRS 180.450(5).

<sup>50</sup> NRS 180.450.

Accordingly, this report is divided into three sections, each beginning with an outline of the obligations established in the Judgment and concluding with issues and recommendations related to compliance concerns, if any.

Finally, the Judgment requires the appointment of a monitor to oversee compliance. The Monitor notes that the Executive Director, deputy directors, and staff of the Department have made themselves available to the Monitor on a regular basis and have provided all information requested. The Department has also taken the initiative to keep the Monitor informed about compliance developments and challenges as they emerge.<sup>51</sup>

### **The Adoption of Temporary Regulations**

Before analyzing compliance in the three categories, the Monitor notes the significant achievement of the adoption of temporary regulations governing the provision of indigent defense services on March 5, 2021. The passage of the regulations was a crucial and significant accomplishment that deserves separate mention. The regulations, referred to throughout this report, are an essential step to implementing the Davis commitments in all three categories.

The 2019 legislation establishing the Department of Indigent Defense Services requires the Board to adopt regulations “it deems necessary or convenient to carry out the duties of the Board and the provisions” of the 2019 legislation. It also requires the Board to “establish minimum standards for the delivery of indigent defense services to ensure that such services meet the constitutional requirements and do not create any type of economic disincentive or impair the ability of the defense attorney to provide effective representation.”<sup>52</sup>

The Executive Director of the Department is required to assist in the promulgation of regulations.<sup>53</sup> To that end, the Department consulted with rural county officials and attorneys, soliciting their feedback about the proposed regulations. Key features of the regulations are discussed as they relate to the Defendants’ obligations pursuant to the Judgment. They include requirements for county plans, contracts for defense services, workload reporting, and minimum standards of performance.

#### **I. Independence of the Defense Function and the Removal of Economic Disincentives**

The Judgment contains the following requirements to ensure independence of the defense function and removal of economic disincentives.<sup>54</sup>

---

<sup>51</sup> Initial delays in reporting by the Monitor were due to funding delays that have now been resolved.

<sup>52</sup> NRS 180.320(4); NRS 180.320(2)(a).

<sup>53</sup> NRS 180.410.

<sup>54</sup> Judgment, 11-13.

- A. The Department shall create a standardized contract between the county and the provider of indigent defense services within six months of the Judgment's effective date. The contract must ensure that:
  - 1. Selection is independent of the District Attorney and the judiciary.
  - 2. Compensation is set at a reasonable, hourly rate commensurate with the compensation of prosecutors in the county while taking into account that prosecutors do not pay for overhead and expenses.
  - 3. Funding is provided for investigators, experts, and other litigation support.
  - 4. Maximum workload is specified, with compensation for excess, unusual or complex cases that does not require judicial approval.
  - 5. The county checks for conflicts and ensures that the contracting attorney did not serve as a prosecutor in the same county during the prior 18 months (without an exception granted from the Department).
- B. The Department shall analyze the constitutionality of certain sections of the Nevada Revised Statutes that might impinge upon independence and create economic disincentives in the following sections of the Nevada Revised Statutes:
  - 1. NRS § 171.188 (4)
  - 2. NRS §§ 7.115-7.175

The Department's efforts to remove economic disincentives and protect the independence of the defense function involve three key advances: the temporary regulations, the county-provider contract, and the county plan for the provision of indigent defense services. In addition, the Department proposed legislation, which advanced as AB480, was signed into law on June 4, 2021 and will go into effect on October 1, 2021. AB480 removes caps on compensation and reimbursement and permits funding for case-related expenses to be disbursed through the Department. The legislation also distinguishes the judicial role of appointing counsel from the separate non-judicial process of selecting qualified indigent defense providers.

Independence in selecting attorneys to provide indigent defense has at least two key components: (1) limiting the role of judicial and prosecutorial influence over the selection and compensation of public defense providers and (2) avoiding payment structures that create economic disincentives to zealous advocacy. The Department has taken steps in both areas through the regulations, county plan templates, and model contract, in addition to engaging in an ongoing, iterative process of meeting with county officials, stakeholders, and contracting attorneys to assist with compliance.

A. Ensuring standardized contracting in compliance with the Judgment

Requirements of the County Plans

The primary foundations of compliance are the county plans, due on September 3, 2021, which must set forth how each county will provide indigent defense services.<sup>55</sup> The Department posted an approved template for county plans on its website.<sup>56</sup> The Department will post the new county plans on its website and encourage counties to use approved plans as a model. To date, no contract-based county has submitted a plan, but several counties are actively drafting plans with the Department's assistance.

Section 22 of the regulations requires counties to contact the Department at least 90 days before the plan is due if they would like to receive assistance in plan creation. However, the Executive Director and deputy directors have proactively traveled to several counties to build rapport and assist in the planning process. The Department has contacted all ten counties and traveled to many of them to encourage them to create realistic plans that adhere to the constitutional, statutory, and regulatory requirements.<sup>57</sup> The task is complicated by the absence in some counties of an official designated to coordinate indigent defense services.

Assisting counties may involve attending both county commission meetings and workshops with stakeholders, as well as help drafting the plans. This process will increase the likelihood that counties with minimal or no staff charged with overseeing indigent defense will be able to create realistic and compliant plans.

Section 23 of the regulations requires that county plans for providing indigent defense services be “free from political and undue budgetary influence and be subjected to judicial supervision only in the same manner and to the same extent as retained counsel and the prosecuting attorney.” County plans for selecting indigent defense attorneys should involve “stakeholders concerned with the integrity of indigent defense services,” but exclude prosecution and law enforcement, and limit judicial involvement to “input.”

The Monitor notes that the temporary regulations permit judicial input into – but not decision-making authority over – the selection of attorneys to provide indigent defense.<sup>58</sup> The

---

<sup>55</sup> Sections 22-29 of the regulations address the requirements of the county plans. Section 22 requires the counties to submit a yearly plan for the provision of indigent defense services, due by May 1st of the year, although the first plan will be due 180 days after the regulations took effect, which is September 3, 2021.

<sup>56</sup> The template for the county plans is attached to this Report as Appendix D and available at <https://dids.nv.gov/CountyResource/CountyResources/>.

<sup>57</sup> As of the writing of this report, the Department spoken with representatives of all ten counties, met with Churchill, Douglas, Esmeralda, Eureka, Lincoln, Lyon, Nye, and White Pine, scheduled to meet with Mineral, Lander, and scheduled follow up meetings with some of the counties in the process of drafting their plans. Churchill formed a public defender in 2020. The Monitor anticipates a broader discussion of the county plans in the next report.

<sup>58</sup> See Temporary Regulations, sec. 23 (stating that the county plan must be “subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney”); *Id.* at sec. 24 (stating that the “[j]udicial input in the hiring process may be considered by should not be the sole basis for selection”); *Id.* at 40

distinction between input and decision-making authority is essential because the Judgment specifies that attorney selection should be independent of both the prosecution and the judiciary.<sup>59</sup> Admittedly, it will be easier to evaluate adherence to the regulatory distinction between input and decision-making authority after the county plans have been submitted to the Department for approval.

Further, the regulations require counties to select providers who have been vetted by the Department and placed on an approved roster based on their experience, qualifications, past performance, and ability to comply with the regulations and terms of the contract.<sup>60</sup> The existence of objective, qualification factors should improve the independence of the selection process as well. For example, the Monitor attended a June 2, 2021, meeting of the Nye County Commission at which the commissioners voted on whether to approve or reject applications of attorneys seeking to provide indigent defense. The Monitor noted that the attorneys who spoke to the commission emphasized their qualifications and additional steps they were taking to obtain mentorship and training with the Department's assistance. The emphasis on quality over contract price was notable.

The Judgment requires that contracts set compensation at a "reasonable hourly rate taking into account overhead and expenses, including ... significant travel time."<sup>61</sup> Payment must be comparable to prosecutors, taking into account that prosecutors working for a county district attorney do not pay overhead.<sup>62</sup> The contract must specify the funding mechanism for "excess, unusual, or complex cases that does not require judicial approval," and "[s]eparately fund investigative, appellate work, and other litigation support services."<sup>63</sup> Future monitor reports will include an analysis of the counties' compensation plans.

The Department has taken steps to reduce reliance on the judiciary in accessing funds for the services of an investigator and expert. A critical requirement of each county's plan is that it describes how to ensure that contracting attorneys can access resources to investigate each case and hire experts when necessary.<sup>64</sup> To this end, the regulations recommend, but do not require, the counties to exclude the judiciary and provide a separate budget administered by the Department or its designee.<sup>65</sup> The regulations further recommend "provisions for automatic approval of case-related expenses up to \$2,500."<sup>66</sup> As discussed below, AB480 also addresses funding for expenses.

---

(stating that the Department may "obtain information" about attorney performance from a variety of sources including the bench).

<sup>59</sup> Judgment, 11-12.

<sup>60</sup> Temporary Regulations, sec. 24.

<sup>61</sup> Judgment, 11.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Temporary Regulations, sec. 27.

<sup>65</sup> Temporary Regulations, sec. 27(2)(a)(1)(ii); NRS 7.135 currently provides that the District court may dispense expert and investigation funds upon an ex parte motion by defense counsel. AB480 (7) amends NRS 7.135 to provide a process for reimbursement "subject to the prior approval of the Department or its designee and in compliance with the plan for the county".

<sup>66</sup> Temporary Regulations, sec. 27(2)(a)(2).

### *The Model Contract*

The Judgment requires the Defendants ensure that counties use a standardized contract for services with private attorneys who provide indigent defense, based on the National Legal Aid and Defender Association (NLADA) model contract.<sup>67</sup> To that end, the Defendants have adopted a model contract template and informed county officials that contracts must both comply with the temporary regulations and be based on the template. The contract template incorporates provisions that protect against economic disincentives, assure that attorneys are qualified, protect the quality of services through workload limitations and ongoing training and supervision, and ensure uniform caseload information is reported to the Department.<sup>68</sup>

The Department's model contract is virtually identical to the NLADA contract in many sections, to the extent that word-for-word similarities across multiple sections of contract show that the Department actively based its contract on the NLADA model. Where the documents diverge is primarily in the sections that discuss the minimum qualifications for attorneys, staffing requirements and caseload limits.

The Department's model contract requires less experience of its attorneys, typically requiring them to have had fewer years of service and fewer completed cases in the practice area for which they are contracted.<sup>69</sup> The Department's model contract, by contrast, includes the qualifications required by the regulations in Sections 32 through 38 of the regulations, informed by the qualifications required by the Clark and Washoe County public defender offices and the Performance Standards ordered in ADKT411.

Second, the Department contract does not include specific caseload limits by category of case, which is a major component of the NLADA model.<sup>70</sup> The Department model does, however, note that contracting agencies will participate in any Department workload study to determine an appropriate caseload, and that in the meantime attorneys will reasonably comply with workload guidelines determined by the Board. After the completion of the weighted caseload study, discussed below, the Department's model contract will be amended to include caseload limits.

Third, the NLADA model contract explicitly sets out requirements to hire specific support staff, including requirements for full time legal assistants, social service caseworkers, and

---

<sup>67</sup> Judgment, 11.

<sup>68</sup> The Department has posted a Board Approved Contract Template on its website in a section titled "County Resources" at <https://dids.nv.gov/CountyResource/CountyResources/> and is attached to this Report as Appendix B. The template for the contract is based on the NLADA model contract, which is available at <https://www.nlada.org/defender-standards/model-contract>.

<sup>69</sup> Additionally, the NLADA model contract includes a discussion of required levels of staffing for different categories of cases, such as for capital or complex cases. The Department's model contract lacks such language, and does not include a discussion of complex litigation cases more broadly, although it does differentiate between felony cases with penalties of more or less than 10 years.

<sup>70</sup> Not only does the NLADA model include caseload maximums by category, it also goes into explicit detail regarding how to regulate caseload for attorneys splitting time between multiple types of cases, and allows for a maximum allowed variance of the caseload - not to exceed 5 percent for the year.



investigators based on attorney staff numbers and caseload. This is absent from the Department's model contract and could not be included absent the findings of a weighted caseload study.

The Department's model contract instead mirrors the language of the temporary regulations, which requires that the contract "avoid any actual or apparent financial disincentives" to the provision of competent legal services.<sup>71</sup> The contract must "[p]rovide compensation at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and [takes into account] overhead, expenses, and costs relating to significant attorney travel."<sup>72</sup>

The Department's model contract has parallel language, with blank fields for the hourly rate times the number of hours of anticipated work for the term of the contract.<sup>73</sup> The model provides for additional compensation, investigation, and expert expenses to be reimbursed pursuant to the county's plan.<sup>74</sup> The model also provides contracting attorneys a means to request modifications to cover additional expenses.<sup>75</sup>

Several other provisions in the regulations discourage financial disincentives. For example, Section 41 requires that the rates of compensation for indigent defense be comparable to the rates paid by county district attorneys, the Nevada Attorney General, and other county and state offices.

Per the Department's Annual Report for fiscal year 2020, contract terms vary widely in the ten counties at issue. Many contracts do not require attorneys to report hours, set caseload limits, or provide for funding for overages or reimbursement for expert and investigative services other than through the statutory means of judicial approval. Nor do many of the existing contracts set qualifications in line with the Board's minimum standards or set minimum CLE requirements.

Given that the Board's temporary regulations went into effect on March 5, 2021, and the counties' plans are not due until September 3, 2021, it is unlikely that the counties will adopt contracts that meet the requirements of the Judgment before 2022. However, the Department is contacting each county individually to request that any contracts renewed or established before the county plans are complete should conform to the template and the regulations as closely as possible.

#### County funding and economic disincentives

The rollout of county plans and standardized contracts that comply with the Judgment depends on county cooperation. Counties understandably may be hesitant to commit to plans and contracts that will increase their costs. As discussed above, the counties historically have operated

---

<sup>71</sup> Temporary Regulations, sec.42(I).

<sup>72</sup> *Id.* (rates of compensation of prosecution "must serve as guidance for reasonable compensation" of indigent defense providers).

<sup>73</sup> Model Contract, 8.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

under economic disincentives to provide effective indigent defense services. Past reports document how counties paid increasingly high percentages of the cost of indigent defense.

The 2019 legislation tasks the Board with limiting the contributions of counties by adopting “regulations to establish a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services.”<sup>76</sup> The Board’s temporary regulations do just that.

For counties with populations of less than 100,000, the maximum contribution for the county must not exceed the sum of (1) “the actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases, calculated as the average of the total of such costs for [the two prior fiscal years]” and (2) the percentage equal to the lesser of the cost of inflation or the cost of living increase negotiated by unions for employees of the county.<sup>77</sup>

The counties may also transfer responsibility for direct appeals to the State Public Defender, the expense of which would be limited to the county’s maximum contribution.<sup>78</sup> The counties may transfer responsibility for death penalty cases to the State Public Defender, and although the county will be required to pay 25 percent of the estimated cost, the amount will count toward the county’s maximum contribution for the fiscal year.<sup>79</sup>

In counties of under 100,000 where public defense is provided by independent contractors, Board regulations recommend the county plan provide a budget for experts and investigators. The budget will be administered by the Department, with an automatic approval of \$2,500 per case.<sup>80</sup>

The state contribution amount is calculated using each county’s annual report that contains its plan for providing indigent defense services,<sup>81</sup> and when necessary in accordance with the county’s corrective action plan pursuant to NRS 353.266. Counties must submit quarterly financial reports to the Department.<sup>82</sup>

If the mandate to cap the counties’ maximum contributions is adequately funded, counties will have less incentive to award a public defense contract to the lowest bidder. Likewise, attorneys seeking work as public defense providers will have less incentive to set their fees and costs so low that they are unable to offer adequate representation. If, on the other hand, the state does not adequately fund the Department’s mandate to reimburse counties for expenditures over the

---

<sup>76</sup> NRS 180.320(3).

<sup>77</sup> Temporary Regulations, sec. 18(1)(a).

<sup>78</sup> *Id.* at sec. 18 (1)(a)(4).

<sup>79</sup> *Id.* at sec. 18 (1)(a)(5); see also sec. 21 (procedure for transferring responsibility for direct appeals and death penalty cases to the State Public Defender).

<sup>80</sup> *Id.* at sec. 27(2)(a).

<sup>81</sup> *Id.* at sec. 19 (1)(a).

<sup>82</sup> *Id.* at sec. 19 (1)(b); see also Section 20 (discussing reimbursement quarterly financial reports and reimbursement for corrective action plans).

maximum contribution, the counties are unlikely to adopt plans and select attorneys that might increase the costs of indigent defense services.

As of the writing of this report, the Interim Finance Committee has earmarked \$1.2 million to fund compliance with the Judgment in the counties. To receive reimbursement for indigent defense expenses above their maximum contribution, counties must submit quarterly financial status reports that adequately document their expenses.<sup>83</sup> The process of approval can be time consuming and requires multiple steps. The Department tracks the county expenditures to note when they exceed the maximum contribution amount. A Work Program then must be submitted to the Interim Finance Committee (IFC), which usually meets every two months. Assuming the Work Program is placed on the next IFC meeting agenda, and the IFC approves the funding request, the Department requests that the Governor's Finance Office approve the request and forward it to the Administrative Services Department for payment.

In addition to possible delays in processing reimbursements, the IFC may deny requests deemed to inadequately document expenses. The Department is taking steps to assist the counties in documenting their indigent expenses, both to request adequate funding and to receive reimbursement for extraordinary expenses. The Department has emphasized the importance of tracking expenses and has offered to assist the counties in tracking expenses. If the required funds were part of the Department's budget, the process of reimbursing the counties that exceed their maximum contributions would be less cumbersome and could ensure prompt reimbursement for the counties.

Moreover, as the counties began drafting their plans, it started becoming clear to the Department that some had underestimated the costs of complying with the new regulations. For example, some counties were creating the position of an "Appointed Counsel Administrator" to assist with the changes brought about by AB480. Other counties provided estimates for the total cost of indigent defense that were less than the current costs of their indigent defense contracts.<sup>84</sup> As a result, it is possible that the \$1.2 million will not adequately cover the amount the state will be required to reimburse the counties for the 2022 fiscal year.

#### B. Successful recommendations for statutory changes

The Department's 2020 Annual Report does not include a stand-alone analysis of the statutory provisions, as required by the Judgment, but does refer the reader to the Department's submitted bill draft requests (BDRs).<sup>85</sup> The statutory changes requested in the BDRs were largely intact in AB480, which passed both the Assembly and Senate, was approved by the Governor on June 4, 2021, and will go into effect on October 1, 2021.

---

<sup>83</sup> Section 19 (3) (stating that a county seeking reimbursement "must submit to the Department a financial status report certified by the board of county commissioners or its designee no later than 15 days after the end of each quarter").

<sup>84</sup> Moreover, the AB480 requires the counties to set aside money for expert and investigative expenses that is currently in the budget for the judiciary.

<sup>85</sup> FY 2020 Annual Report of the Department, 42-43.

The statutory changes are as follows:

- Chapter 7 of the NRS is amended to clarify that the “selection” of an attorney “means the choosing of an attorney to provide representational services for a person.”<sup>86</sup> This draws an important definitional distinction between the appointment of counsel by a judge and the selection of counsel pursuant to county plans approved by the Department.
- The amendment to NRS 7.115 clarifies that after a judge has determined that a public defender is disqualified from a case, the judge shall refer the matter to the Department so an attorney may be selected in compliance with the county’s approved plan.
- The amendment to NRS 171.188(4)(a) clarifies that, in rural counties, while the judge orders the appointment of an attorney to represent an indigent defendant, the judge refers the selection of that attorney to the Department in compliance with the county’s plan for the provision of indigent defense services.
- The amendment to NRS 171.188(4) removes a \$75 cap on reimbursement for a private attorney appointed in justice or municipal court.
- The amendment to NRS 7.125 removes a cap on compensation for attorneys who provide indigent defense service on a contract basis.
- The amendments to NRS 7.135(1) remove monetary caps on reimbursement for expenses, including investigation, expert, and other nonlegal services; (2) remove language requiring “prior approval of a magistrate or district court” for such expenses, and provide for the prior approval of funds through the Department or its designee in compliance with county plans. The amended statute still contains a method of judicial review – certification or approval of the claim if the request for funds is denied.
- The amendments to NRS 7.135 remove language requiring submission to the court of requests for compensation and expenses while adding language that the claims in rural counties may be submitted to the Department or its designee pursuant to county plans. The amendments further remove reference to claims that exceed the monetary caps and provide for review of the Department’s denials to the trial court.

#### Issues and Recommendations

While the Department has taken substantial steps to ensure independence and remove financial disincentives, several issues of concern remain. First, the possibility of competitive bidding resulting in a county prioritizing cost over quality continues to be a concern. NRS

---

<sup>86</sup> The current bill draft of AB480 is attached as Appendix E.

7.125 permits competitive bidding.<sup>87</sup> The regulations permit the county to consider cost as one factor in deciding whom to award an indigent defense contract.<sup>88</sup> Both statute and regulations may defeat the purpose of encouraging attorneys to provide zealous representation because their hourly rates may exceed that of another bidder.

Ideally, the establishment of workload limits, discussed later in this report, should help the Department set an expected payment range for each contract that is fairly stable, based on the anticipated number and types of cases, the estimated hours of work at an hourly rate with provisions for reimbursement for additional hours and case-related expenses. Future reports will analyze the dynamics of attorney selection after adoption of the county plans and model contracts, and in light of the results of the workload study.

Second, the statutory rate of \$100/hour may be inadequate depending on whether it permits rural indigent defense providers to be compensated with parity to their prosecutorial counterparts, and to pay for support services necessary to their practice. The current statutory hourly amount is \$100, and the yearly contract amount must take into consideration a workload based on anticipated case numbers, overhead, and expenses not borne by the attorney's prosecutorial counterpart. As such, assessment of the adequacy of compensation also requires an accurate count of average cases and the anticipated time per case based on the yet-to-be completed weighted caseload study.

Dr. Mitchell Herian, a data analyst who contracted with the Department in September 2020 through June 2021, began the process of developing a wage/salary survey but was unable to complete the project due to the expiration of his contract. According to his report, the survey would require comparing Nevada hourly rates to other jurisdictions, surveying Nevada jurisdictions, and adjusting for inflation and cost of living increases. As a preliminary matter, he noted that the \$100 per hour rate set in 2003 would be worth \$148.15 in 2021. Extending Dr. Herian's contract for an additional year would permit him to fully develop the survey and assist the Department in recommending adequate hourly rates. Extending his contract would require additional funding for the Department.

Finally, many of the existing contracts expire on June 30, 2021. As noted above, the Department is contacting each county individually to request that any contracts renewed or established before the county plans are complete should conform to the template and the regulations as closely as possible. Counties should follow the regulations for new contracts, but the renewal occurs before the county plans are due on September 3, 2021.

Some required provisions of the new contracts are contingent on the county plans, such as how expenses for experts and investigation will be paid and whether the attorneys will be handling

---

<sup>87</sup> NRS 7.125 states: "Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, this section does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation."

<sup>88</sup> Temporary Regulations, sec. 24(1)(v).

complex litigation. Nevertheless, the monitor recommends that the required performance guidelines and conflict provisions should be part of the contract.

Finally, although the Nevada workload study is not complete, the Department might consider requiring contracts entered into before the weighted caseload study is complete to include workload limits based on the guidance of the ABA and the National Center for State Courts, which is conducting the current weighted caseload study. At the same time, the Monitor notes serious drawbacks with using generic workload standards such as those published by the ABA, which set a higher caseload than should be permissible for a rural attorney who has additional travel hours to court and locked facilities.<sup>89</sup>

## **II. Establishment of Minimum Standards**

The Judgment requires that, within six months of the effective date of the Judgment, the Defendants shall ensure minimum standards for representation in the following ways:

### **A. Appointment, appearance without delay, and advocacy at initial appearance and bail hearings.**

- Ensure that class members have access to applications for indigent defense services, including at the jails.
- Ensure prompt screening for indigence after arrest.
- Ensure that those eligible for public defender services have an attorney present at their initial appearance/arraignment without delaying the hearing.
- Ensure that the model contract between providers and the counties explicitly requires the providers to make all reasonable efforts to meet confidentially with clients prior to a first appearance, argue for release at the first appearance, and maintain contact at least every 30 days thereafter unless there are no significant updates in the cases. Providers shall also advise clients not to waive any substantive rights or plead guilty at the initial appearance.<sup>90</sup>

### **B. Client communication**

- Ensure that all providers comply with the performance standards regarding client communication that are laid out in the performance standards ordered in ADKT411 (Oct. 16, 2008).

---

<sup>89</sup> In a letter to the Nevada Supreme Court and the Indigent Defense Commission, an ABA representative stated that the National Advisory Commission on Criminal Justice Standards and Goals (NAC) had not been formally adopted by the ABA, and that the NAC set extremely high maximum caseloads. Norman Lefstein's Letter on Behalf of the ABA, filed in ADKT411 on December 19, 2007. The letter notes that the NAC was completed in 1973 and that the defense function has increased in complexity since then as attorneys must address complicated forensic issues, complex sentencing schemes, and collateral consequences of convictions. *Id.*

<sup>90</sup> Judgment, 14.

- Engage in reasonable efforts to ensure that providers have a means through which incarcerated clients can contact them and take steps to ensure that prisons and jails comply with the law regarding access and privacy of attorney-client communications.<sup>91</sup>

#### C. Conflicts

- The contracting process “shall include a check for conflicts of interest.”
- A person who has served as a county prosecutor in the same county during the prior 18 months shall not be eligible to provide indigent defense services.
- The Department shall evaluate potential conflicts, obtain waivers, and make an exception to the 18-month bar on former prosecutors in “exceptional circumstances.”<sup>92</sup>

#### D. Establishment of Performance Standards

In their oversight role under NRS 180.440, the Department’s Deputy Director shall incorporate the performance guidelines set forth in the ABA Criminal Justice Standards for the Defense Function and ADKT411.

#### E. Workload Standards

The Defendants shall commission a workload study within 12 months of the effective date of the Judgment. Within 6 months of completion of the study, the Defendants shall ensure that the contracts between counties and providers set workloads consistent with the study’s findings and recommendations. Compliance with the workload recommendations must occur within 12 months of completion of the study.<sup>93</sup>

#### F. Attorney Qualifications

The Defendants agree to ensure that indigent defense provider qualifications match the complexity of the case.<sup>94</sup>

#### G. Oversight

---

<sup>91</sup> *Id.* at 14-15.

<sup>92</sup> *Id.* at 12.

<sup>93</sup> *Id.* at 17.

<sup>94</sup> *Id.* at 15.

- The Defendants agree to enforce the minimum standards through oversight, review, and corrective action plans, when necessary.<sup>95</sup>
- The Defendants agree to systematically review the indigent defense system of each of the rural counties on an annual basis.<sup>96</sup> The review shall include a system for obtaining client feedback through surveys, established within 12 months of the effective date of the Judgment.<sup>97</sup>

#### H. Attorney Training and Resources

The Department shall provide CLE training and resources which shall include, at a minimum (1) client interviewing; (2) client communication; (3) pretrial release; (4) preparation for arraignment and discovery requests; (5) investigation; (6) motions practice; (7) plea and sentencing outcome negotiations; (8) trial advocacy; (9) appeals; and (10) juvenile defense.<sup>98</sup>

Compliance with each section is discussed below.

##### A. Appointment, appearance without delay, and advocacy at initial appearance and bail hearings

The department is working with each county to ensure their plans provide for applications for appointed counsel, prompt screening for indigency, and the presence of counsel to advocate for release and advise against waivers of rights at first appearance. The temporary regulations require a screening process for indigency within 48 hours, the prompt appointment of counsel, and the presence of counsel at initial appearance/arraignment.<sup>99</sup> The Monitor will provide detailed information about the county plans in the next report.

Pursuant to the temporary regulations, plans must provide a process for determining which defendants are indigent, and thus eligible for counsel, no later than 48 hours after arrest and must “describe the person(s) or agency responsible,” excluding the judiciary.<sup>100</sup> Regardless of whether an indigency determination has been made, the plan must provide for representation at initial appearance and arraignment so that pretrial release can be litigated without delay.<sup>101</sup>

The plan must also provide for “presence of counsel at all other critical stages,” whether in or out of court.”<sup>102</sup> It must provide for “consistency in representation,” sometimes referred to as vertical representation, with the exception of first appearances.<sup>103</sup> The plan must furthermore

---

<sup>95</sup> *Id.* at 17-18.

<sup>96</sup> *Id.* at 16.

<sup>97</sup> *Id.* at 16-17.

<sup>98</sup> *Id.* at 16.

<sup>99</sup> Temporary Regulations, sec. 25.

<sup>100</sup> *Id.* at sec. 25(1).

<sup>101</sup> *Id.* at sec. 25(4).

<sup>102</sup> *Id.* at sec. 25(5).

<sup>103</sup> *Id.* at sec. 28.



ensure that attorneys have the ability to meet confidentially with their clients in “courthouses, jails, prisons, detention centers, and other places.”<sup>104</sup>

In the meantime, the Department has discussed with county officials the necessity of providing applications and screening for indigency promptly, and of ensuring that counsel is present at first appearances in the ten counties. Per information provided to the Department, all counties except for Lander County currently have an attorney available at first appearances. However, the Department has been informed that Lander County was developing a plan to ensure counsel at first appearance to be implemented by the effective date of AB424 (2021).<sup>105</sup> The timing of first appearances and the quality of client interviewing and pretrial release arguments made on clients’ behalf must be analyzed by the Department in its oversight function.

The Monitor further notes that the Department conducted three CLE training sessions on how to argue for pretrial release using the *Valdez-Jimenez* case and the risk assessment instrument.<sup>106</sup> The training was offered on three dates, with a maximum of eight attorneys permitted to attend each training. Eleven attorneys with contracts in the *Davis* counties participated in the training. The Department notes that, in observing remote bail hearings, attorneys who completed the training made effective arguments for release.

The model contract refers to the requirement in the regulations that all contracts include language requiring “attorneys to advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is in the client’s best interest and require indigent defense providers to make all reasonable efforts to meet with each client within the first seven days following the assignment of the case, as well as every 30 days thereafter, unless there are no significant updates in the client’s case.”<sup>107</sup>

### Issues and Recommendations

The model contract currently specifies all of the required performance standards in the Judgment except two. It does not specify that client meetings should be confidential, although the Department’s template for the county plan includes a section on how the county intends to facilitate confidential communication between attorneys and their clients. Second, the model contract does not explicitly state that attorneys must argue for release at first appearance, as the Judgment requires. The Judgment requires that the model contract include both these elements.<sup>108</sup>

The Monitor suggests that the parties clarify the degree to which the inclusion in the contract of the requirements of confidential meetings and pretrial release advocacy is essential to compliance with the Judgment. The Department correctly notes that the requirement of confidential meetings and pre-trial release advocacy appear in the text of the performance

---

<sup>104</sup> *Id.* at sec. 26.

<sup>105</sup> AB424 (2021) requires a pretrial release hearing within 48 hours of arrest.

<sup>106</sup> *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155 (2020).

<sup>107</sup> Model Contract, 4, *citing* Temporary Regulations, sec. 29(2).

<sup>108</sup> Judgment, 14. Section 25(4) of the regulations require the county plan to require the attorney to be present and prepared to address release at initial appearance/arraignment.

standards cited in the model contract and the county plans. Moreover, counties have expressed concern to the Department about whether the specificity of performance requirements in the contract could convert the status of attorneys from independent contractors to employees.

At the same time, the contract serves a unique function because it is reviewed and signed by the attorney. Inclusion of the requirements in the county plans may not serve the same function of alerting the providers to their obligations. Soliciting a legal opinion as to which terms of the contract might transform the relationship from independent contractor to employee may be a useful first step.

#### B. Client Communication

Compliance with the Judgment's terms regarding client communication will occur through the county plans, the template for which includes sections in which each county must describe its plan to ensure confidential communication between attorneys and clients. The Monitor notes that the model contract requires prompt communication, followed by monthly communication.<sup>109</sup>

#### Issues and Recommendations

The Monitor recommends that the parties discuss whether the Department's model contract must include language that specifies the necessary topics to be covered in an initial client meeting as these are specifically listed in the Judgment.<sup>110</sup> The Monitor notes that the counties may have the same concerns regarding the status of providers as independent contractors, described above, in relation to this recommendation.

#### C. Conflicts

The adopted regulations require that the contract between the county and the provider contain a provision that addresses conflicts.<sup>111</sup> The Department's template defines conflicts and requires the contractor-provider to screen for conflicts.<sup>112</sup>

The 18-month bar on former prosecutors serving as indigent defense providers in the same county is not included in the regulations or the model contract. Instead, the Department identifies former prosecutors in its screening process for attorneys seeking to be included in the Department's roster of qualified attorneys.

---

<sup>109</sup> Model Contract, 4, *citing* Temporary Regulations, sec. 29(2).

<sup>110</sup> Judgment, 15 (the initial interview "shall include, at a minimum, an explanation of the charges," penalties, attorney-client privilege, an overview of procedure, and a discussion of pretrial release). Alternatively, the Department could include language in the model contract that incorporates ADKT411's Performance Standard 4-4. While ADKT411's Performance Standards are meant to serve as guides, Standard 4-4 reflects the Judgment's requirement that initial client meetings cover particular topics.

<sup>111</sup> Temporary Regulations, sec. 42(1)(h).

<sup>112</sup> County Plan Template, 6.

#### D. Workload Standards

Workload limits are an essential component of ensuring effective and zealous assistance of defense counsel. The temporary regulations state that a provider of indigent defense services “shall not accept a workload that ... interferes with the attorney’s competence, diligence, and/or representation of clients.”<sup>113</sup>

The regulations also require the contract to include a way to monitor and cap workload. Per Section 42(1)(f), the contract must require the contracting attorney to report workload data described in Sections 46 and 47. The keeping of records and reporting of workload and expenses is elaborated upon in the county plan template, which makes clear that the provider must maintain adequate records that reflect case information, hours, and expenses.<sup>114</sup> The template contains a provision requiring the provider to provide the county with an annual financial statement on the last working day of March of each year, so that the county can include the information in its May 1 annual report to the Department pursuant to NRS 260.070.

The county must commit to a maximum workload amount for each attorney, the amount of which will be determined by the Board in accordance with Section 44 of the regulations.<sup>115</sup> While counties are not obliged to use the template for the contract, they are required to use contracts with their indigent defense providers that conform to the requirements of Section 42 of the temporary regulations.

The Judgment requires a weighted caseload study. Section 44 of the temporary regulations requires the Board to direct the Department to conduct separate workload studies for counties with populations of over and under 100,000. Section 44 further requires counties to ensure that the attorneys providing indigent defense services participate in the workload studies. The results of each study shall be used by the Board to determine maximum workloads, pursuant with NRS 180.320(2)(d)(4).

On June 7, 2020, the Department entered into a contract with the National Center of State Courts to administer a Delphi Workload Study.

Delphi studies usually have the following components: (1) actions to familiarize the study administrators with the context-dependent factors, including cases, attorneys, staff, and procedures; (2) a time study in which attorneys log their work activities and hours; (3) a time sufficiency survey in which attorneys and support staff complete a survey about barriers to effective representation; (4) site visits to the offices to meet with attorneys and staff; (5) focus groups or panels with attorneys and support staff; and (6) a consensus process between the contracting agency and the study administrators to establish final case weights.<sup>116</sup>

---

<sup>113</sup> Temporary Regulations, sec. 44.

<sup>114</sup> County Plan Template, 9-10.

<sup>115</sup> Temporary Regulations, sec. 42(1)(f).

<sup>116</sup> See, e.g., National Center for State Courts, *Maryland Attorney and Staff Workload Assessment* 8-9 (2005).

In January 2021, the NCSC conducted three focus groups consisting of rural attorneys who practiced as public defenders, contract attorneys, and conflict attorneys. While public defenders tended to agree that they did not have enough time to complete their work, contract and conflict attorneys were more likely to say that their workload was manageable. All three groups agreed that four areas of work posed significant demands on their time: (1) locating services for clients; (2) jail visits; (3) traveling to and waiting in court; and (4) reviewing electronic data like body camera footage. The NCSC found variety in the rural counties' Covid-19 protocols but did not describe how the pandemic was affecting attorney workloads.<sup>117</sup>

The second phase of the study was a six-week, online data collection period set from January 5 to March 25, 2021. By January 28, 2021, 44 attorneys had logged in. However, all case processing times were recorded during the height of pandemic closures when jury trials were postponed, courts were closed to in-person appearances, and attorneys were often unable to visit clients in custody. The Monitor's concerns about the relevance of the six-week data to non-pandemic case processing times was confirmed in a conversation with the NCSC study administrators on May 11, 2021. The study administrators stated that they hoped to review data collected by the providers' new case management server in six months.

Also because of pandemic-related closures, the Delphi study did not include any site visits.

In its fourth stage, the NCSC study administrators conducted five interview panels: (1) investigators, (2) staff, (3) contract attorneys, (4) staff attorneys, and (5) death-qualified attorneys. The Monitor observed the contract attorney panel, which consisted of two attorneys who practice in Davis-involved counties. The NCSC facilitators probed certain areas of practice, such as the use of investigators, but did not ask specific questions about preparation and court time for experts, bail hearings, plea negotiations, and sentencing advocacy.

In later discussions with the NCSC study administrators, the Monitor learned that the panel questions are often specific to the six-week data that attorneys report. Because the attorneys had not had the opportunity to visit in-custody clients or prepare for in-person hearings or trials, for example, the six-week data set was inadequate. The distorted data limited the types of questions asked during the panel.

In June 2021, the NCSC completed a preliminary report for the Department.<sup>118</sup> In it, the NCSC made clear that the circumstances of the pandemic affected the qualitative data on typical work activities.<sup>119</sup> As a result, the preliminary report makes only one recommendation: that "[i]ndigent defense providers should begin entering caseload data along with hours worked into the Legal Server system no later than October 1, 2021."<sup>120</sup> Once the Department has determined

---

<sup>117</sup> The NCSC report on the focus groups, *Rural Nevada Indigent Defense Services Weighted Caseload Study Focus Group Summary* (January 2021), is attached to this Report as Appendix F.

<sup>118</sup> The NCSC preliminary report is attached to this Report as Appendix G.

<sup>119</sup> *Id.* at 3.

<sup>120</sup> *Id.* at 6.

that six to nine months of data has been entered, the NCSC will use the data to develop new case weights. The NCSC has agreed to complete this additional analysis without additional charges.

At the June 23, 2021, meeting of the Board, a representative from NCSC confirmed that the study will continue to June 2022 without additional charge, and will include analysis of data collected on Legal Server as well as additional Delphi panels, conducted remotely.

### Issues and Recommendations

The continuation of data collection and analysis is essential to developing caseload standards in compliance with the Judgment. The quantitative data gathered from Legal Server will demonstrate current practices, meaning the “average amount of time required to handle cases of each type over the life of the case.”<sup>121</sup> In the Delphi panels, study administrators engage in a structured review of that data as part of a “quality adjustment process to ensure that the final weighted caseload model incorporates sufficient time for effective representation.”<sup>122</sup> For example, they ask probing questions of the Delphi participants to determine what additional work the attorneys would complete if they had the time. The Delphi panels assist in interpreting the quantitative data. As such, the Monitor stresses the importance of the NCSC’s commitment to conduct additional Delphi panels after the quantitative data from Legal Server has been collected.

A related issue is whether the attorneys who provide quantitative data and qualitative responses in the panels reflect the level of practice required by the Judgment. While the study administrators anticipate this issue and compare the data collected here to prior workload studies in other jurisdictions, the Monitor recommends that additional attorneys be invited to participate, particularly private attorneys who may be able to provide insight into the workload in cases in which they engage an investigator and prepare for evidentiary or other substantive hearings. Because the lawsuit is predicated on allegations that some rural indigent defense providers are spending inadequate time on casework, data from the same attorneys might underestimate the number of hours each case requires if the case is worked according to the performance standards set forth in ADKT411.

An open issue is whether the county plans and contracts entered into before the completion of the weighted caseload study should contain generic workload standards in the interim period before the NCSC study is completed. The Monitor understands that the NCSC study administrators can employ existing research from Delphi studies conducted in other states to estimate appropriate workloads. Understanding that generic caseload standards have drawbacks, the Department is hesitant to adopt them while awaiting the results of the studies. The parties may wish to discuss the merits and drawbacks of requiring generic caseload standards in the interim period before the NCSC study is completed.

The Monitor notes that the Department complied with the Judgment by entering into a contract with NCSC within twelve months of the effective date of the Judgment, and that the

---

<sup>121</sup> *Id.* at 4.

<sup>122</sup> *Id.*

caseload standards must be included in indigent defense contracts six months after completion of the study, which is anticipated to be completed by June 2022.<sup>123</sup>

#### E. Establishment of Performance Standards

The Judgment requires compliance in performance and evaluation with two ABA sources in addition to the performance standards of ADKT411: the ABA 10 Principles of a Public Defense Delivery System and the ABA Criminal Justice Standards for the Defense Function.<sup>124</sup> Both ABA sources should be referenced in the county plans and contracts, particularly because the ABA's Defense Function guidelines contain several provisions not included in ADKT 411.

To that end, the Defendants have adopted regulations that require representation, through the county plans, to be provided in a "skilled manner guided by applicable regulations; laws; Rules of Professional Conduct; and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2008, Supreme Court Order in Administrative Docket 411, or the same as may be amended."<sup>125</sup> The Department's template for a county plan, in turn, states that ADKT411 and the Judgment in Davis are sources of guidance for determining the duties of defense counsel.<sup>126</sup> Compliance with the performance standards is also set forth in the model contract, quoting Section 29(1) language about the relevance of ADKT411.

In addition, the Department has made the ADKT411 performance standards, the ABA's Ten Principles, and the ABA Standards for the Defense Function – as well as other sources for standards and guidelines – readily available on its website.<sup>127</sup>

#### Issues and Recommendations

Because the ABA sources do not match perfectly with the performance standards in ADKT411, the Monitor suggests that the Department (1) include specific mention of the ABA sources in both the template for the county plans and the model contract; (2) create a unified document that sets forth the expected performance standards.

The Department has informed the Monitor of its plan to conduct a comprehensive review of the various sources of defense standards in the fall of 2021, with the assistance of law student externs from Boyd Law School.

The Department's review is sure to uncover other variations among the guidelines and standards, but a few crucial differences are noted here. While the performance standards in ADKT411 are quite thorough, they do not include certain ABA standards. For example, ADKT411 only briefly mentions expert consultation in the context of misdemeanor and felony representation. The ABA, however, goes into great detail about how defense counsel should

---

<sup>123</sup> Judgment, 9.

<sup>124</sup> Judgment, 16.

<sup>125</sup> Temporary Regulations, sec. 29(1)

<sup>126</sup> County Plan Template, 3-4.

<sup>127</sup> Available at <https://dids.nv.gov/Resources/Resources/>.

work with experts, where this would serve a client's interests, and that counsel may seek resources from the court to pay for such services.<sup>128</sup> Defense counsel should investigate an expert's credentials prior to retaining that expert, and then respect their expertise during the investigation.<sup>129</sup>

There is a similar mismatch on the issue of collateral consequences, as ADKT411 is mostly silent on this issue other than for juvenile cases. By contrast, the ABA specifically recommends that defense counsel pay special attention to possible immigration consequences, and should investigate and identify any such potential consequences and jointly decide a best course of action with the client.<sup>130</sup> More broadly, clients should be advised on possible consequences in a timely enough manner that they may use such information in the decision-making process, including in mitigating or avoiding such consequences.<sup>131</sup>

A document summarizing the standards from the various sources will greatly assist the counties and providers who may have difficulty determining the appropriate guidelines given the multiple sources, and may erroneously assume that performing according to ADKT411 standards is all that is relevant to evaluation. To address this concern, the Monitor recommends that the review planned for the Fall 2021 culminate in a comprehensive list of performance standards that refer to the specific sources (ADKT411, ABA Guidelines) when necessary. This will also address the concern that ADKT411 does not include more recent developments in criminal defense guidelines, such as counseling on immigration and other collateral consequences of conviction, negotiation skills in plea bargaining, and the appropriate use of experts.

It should also be noted that the Department is planning to create a resource guide on immigration issues in criminal cases in the near future.

#### F. Attorney Qualifications

Section 32 of the regulations requires attorneys to apply to the Department to be eligible to provide specific areas of indigent defense services according to case type.<sup>132</sup> Once approved, the attorney is placed on a roster from which the counties select attorneys. The Section provides a means of contesting a determination that the attorney is not qualified and a means for the

---

<sup>128</sup> American Bar Association. *Criminal Justice Standards for the Defense Function, Fourth Edition* (2017). [https://www.americanbar.org/groups/criminal\\_justice/standards/DefenseFunctionFourthEdition/?q=&wt=json&start=0](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/?q=&wt=json&start=0).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* ADKT411 advises that counsel in juvenile cases should consider collateral consequences to any sentencing, including immigration, sex offender registry, and schooling, housing, or driving consequences. The performance standards, however, make little mention of collateral consequences in adult felony or misdemeanor cases, but do advise that defense counsel should explain to the client the implications of conviction and penalty as well as advantages and disadvantages of any plea agreement and "other direct consequences" that the client may be exposed to by entering a plea. *Id.* at 30.

<sup>132</sup> Note that Sections 32-39 of the temporary regulations apply to rural counties. See Section 30(2) (stating that Sections 32-39 apply only to counties with a population of under 100,000).

Department to exclude or remove an attorney for failing to apply or to limit practice to approved areas.<sup>133</sup>

Sections 33 to 38 set forth the qualifications based on case type – misdemeanors, gross misdemeanors, felonies carrying a penalty of less than 10 years, felonies carrying a penalty of 10 years or more, death penalty cases, appeals, and juvenile representation.

Section 39 of the temporary regulations sets forth general requirements for indigent defense providers, including knowledge of the law, procedures, and ethical rules, the forensic issues that arise in criminal cases, and the ability to use technology associated with the practice of litigation. In addition, to qualify for the roster, attorneys must complete at least five CLE credits relevant to indigent defense every year. As described below in the Section addressing training, the Department provides free CLE classes on a regular basis.

The qualification requirements must be included in the county's plan.<sup>134</sup> The plan must require that representation of indigent defendants be provided in a manner that is "guided by applicable regulations; laws; 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."<sup>135</sup> The regulations require that the model contract specify the category of cases and the qualification requirements.<sup>136</sup> The model contract template contains fields based on case type and qualifications. The county plan template requires a description of how cases are assigned to attorneys with matching qualifications.

To assure that attorneys providing indigent defense services are qualified, the Department developed an approval process by which attorneys apply to be included on a roster of qualified attorneys by case type. The Executive Director has notified county managers about the requirement that contract attorneys apply for inclusion on this roster.

The 24 attorneys currently providing indigent defense services in the Davis counties must apply before their contracts are considered for renewal.<sup>137</sup> Most have applied, and the Deputy Director has contacted those who have not completed applications.

If an attorney does not have the requisite qualifications – usually because of insufficient trial experience – the Department offers an alternate path for inclusion in the roster through supervision. Conditions include (1) supervision and mentorship by an attorney meeting the relevant experience requirement and (2) that the supervising/mentoring attorney appear as co-counsel in any critical hearing for cases in the relevant offense category. In Nye County, one of the contract public defenders required conditional approval for the Category A and high B offense category. In Lyon County, two attorneys working under existing public defense contracts were

---

<sup>133</sup> *Id.*

<sup>134</sup> Section 24(1)(c)(i).

<sup>135</sup> Section 29.

<sup>136</sup> Section 42(1).

<sup>137</sup> Counties must select attorneys from the Department's roster of eligible providers. Temporary Regulations, sec. 24(1)(c)(i).



conditionally approved for the same offense category and same conditions discussed above. It is anticipated that an additional attorney in Lyon County may also require a conditional approval.

The Department has made great strides in screening attorneys, determining qualifications, and developing a roster. State-wide, 62 attorneys have applied and only three applications remain pending.

#### G. Oversight

The Defendants have taken steps toward oversight through the promulgation of temporary regulations, the retention of a consultant on data analysis, the creation of a client survey, the creation of a complaint/recommendation process, and initial efforts to consult with stakeholders and observe attorneys in court. The Monitor notes that in-person oversight has been delayed due to both pandemic-related restrictions and the absence of regulations prior to March 5, 2021.

The Department retained a consultant, Dr. Mitchell Herian of Soval Solutions, LLC to guide data and policy analysis, including the development of oversight mechanisms.<sup>138</sup> His contributions will be discussed as they apply.

Pursuant to NRS 180.440, the Deputy Director of the Department shall obtain information regarding caseloads, payment, and performance, and shall also conduct on-site visits to determine whether indigent defense is effective and in compliance with minimum standards set forth by the Board. Should the Deputy Director determine that a county is failing to provide adequate and effective indigent defense services, the deputy will recommend a corrective action plan.

The Board's temporary regulations provide for oversight and review, conducted by the Department's Deputy Director, culminating in corrective action plans and audits should counties be out of compliance. Section 40 requires the Department to monitor and assess compliance with the regulations and with minimum standards of performance through a variety of sources. Per Section 40, "[t]he Department shall monitor and regularly assess whether counties and attorneys meet [the standards set forth in the regulations] and whether indigent defense services are being provided in a constitutional manner." The regulations state that the Department may gather information from a variety of sources, including client feedback and surveys, attorneys, staff, and members of the judiciary, direct observation, workload data and financial reporting from the attorneys and county as well as the attorney contracts, and information obtained through the complaint and recommendation process.<sup>139</sup>

A review process provided for in Section 40 of the regulations includes prior notice regarding the time and place at least 10 days prior to a review and the issuance of a report within 30 days of the review's completion.<sup>140</sup> Should the review process reveal that a county is not in

---

<sup>138</sup> Dr. Herian also assisted in creating the Quarterly Financial Status Report for the counties and developing county-level budget data to determine past expenses for indigent defense.

<sup>139</sup> Section 40(1).

<sup>140</sup> Section 40(2)(a); 40(2)(b).

compliance with the regulations or is deficient in providing indigent defense services, the Department will recommend a corrective action plan.<sup>141</sup>

The regulations provide a process for resolving disputes about the corrective action plan as well as the requirement of the Board's approval.<sup>142</sup> Likewise, the regulations provide a process through which the Department may alert the provider and county when the provider is failing to provide effective indigent defense services.<sup>143</sup> The provider will be offered training opportunities, and failure to remedy the issue may result in a corrective action plan.

The regulations also detail the process for a second tier of audit, review, or investigation at the direction of the Board pursuant to NRS 180.320(1)(c).<sup>144</sup> Failure of the county or provider to respond or take remedial action may result in a corrective action plan pursuant to NRS 180.540 or removal from the roster of eligible providers pursuant to NRS 180.430.<sup>145</sup>

Significant work in consultation with Dr. Herian went into developing mechanisms for collecting feedback as part of the oversight process, but the work was not completed before the expiration of Dr. Herian's contract in June 2021.

Dr. Herian completed the instruments for the following:

- The client survey
- The attorney self-assessment

Dr. Herian began but was unable to complete the instruments for:

- Court observation forms
- The wage/salary survey

The client survey is posted on the Department's website and will be accessible to clients with access to texting or email via Legal Server. It will be provided to incarcerated clients in paper form, along with a postage-prepaid envelope.

Additional components of oversight are (1) review of the county plans, (2) review of the contracts, (3) and review of the workload data for inclusion in the Department's annual report. These requirements are discussed elsewhere in this report.

In addition to the regulations and the steps the Department has taken to assist counties in completing their plans and adopting a compliant contract, the Deputy Director observed online court appearances, including arraignments and bail hearings, to determine whether defense counsel was present and making arguments pursuant to *Valdez-Jimenez*.

---

<sup>141</sup> Section 40(2)(c)(1).

<sup>142</sup> *Id.*

<sup>143</sup> Section (40)(2).

<sup>144</sup> Section 40(3).

<sup>145</sup> *Id.*

### Issues and Recommendations

With regard to oversight capacity, the Monitor notes that the Judgment requires annual review of the counties' indigent defense systems, and that oversight is comprised of multiple components. The Monitor wonders whether ten annual reviews are feasible with the resources at the Department's disposal. After the courts reopen, oversight will require significant travel for the Deputy Director, to say nothing of analysis of the information and data and the formulation of corrective action plans when necessary. The Department's travel budget is \$10,000, significantly lower than what may be required.

In response to the Monitor's request, the Department provided a rough estimate of the cost of two Department staff conducting reviews of all ten counties in one year. Assuming that the Department would spend two days in closer counties and three days in counties farther away to account for time in transit, the Department estimates that per diem, hotel, airfare/car expenses, and incidentals would exceed the Department's \$10,000 budget for in-state travel.

Moreover, assisting counties in complying with the Judgment and regulations requires more than formal reviews. As the Department has already demonstrated through its accomplishments, routine visits are vital to developing trusting relationships with county officials, attorneys, and other stakeholders. Physical presence to assist in developing and improving county plans is foundational to compliance with the terms of the Judgment. The Department's budget does not permit the necessary travel expenses to do it all.

Regarding Section 40's review process, Dr. Herian recommended a more flexible process of information gathering and oversight. It is the Monitor's opinion that the regulations should make clear that the Department is obligated to oversee the counties on an ongoing basis and thus may glean information from sources, including those listed in Section 40(1)(a-j), at any time rather than just during the formal, annual review. This is the intent of the regulation, but it may be subject to misreading. However, proposing a change in the regulations may delay the process of adopting permanent regulations. The temporary regulations expire on November 1, 2021. Given time constraints, revisions to Section 40 may be better made at a later date to ensure that the temporary regulations do not lapse with no permanent regulations in place.

With regard to the client survey, the Monitor observes that the survey does not contain a place for the client to comment on the attorney's performance in narrative form. The quantitative data is useful, but the absence of a field for general comments limits the range of information the Department receives. If, for example, survey respondents consistently commented on an aspect of representation not captured in the existing Likert-scale questions, the Department might amend the survey to capture data on the new topic.

Nonetheless, clients have a means of commenting more broadly in the complaint/recommendation form on the Department's website.<sup>146</sup> The client survey mentions this form. Incarcerated people, however, will not be able to access the complaint/recommendation form

---

<sup>146</sup> Available at [https://dids.nv.gov/Complaints/Complaints\\_or\\_Recommendations/](https://dids.nv.gov/Complaints/Complaints_or_Recommendations/).

and may lack envelopes and postage to return it to the Department. The Monitor suggests that it may be helpful to include the complaint/recommendation form along with the survey to incarcerated people.<sup>147</sup>

Finally, the Monitor notes the special circumstance of Churchill County, which established a public defender office in 2020. The chief public defender is a former contract attorney for the county. While shifting from a system of contract attorneys to a public defender institution shifts some of the county's obligations under the temporary regulations, the county plan for Churchill should comply with the requirements of the Judgment in terms of workload limits, uniform data reporting, performance standards, qualifications, training, resources, and removal of economic disincentives.

#### H. Training and Resources

The Department has produced an impressive array of training, resources, and mentorship options while operating under a limited budget. The temporary regulations require private attorneys who accept contracts to provide indigent defense to complete five CLE hours related to indigent criminal defense every year.<sup>148</sup>

With a budget of \$15,817 in FY2020, the Department conducted a series of CLE courses as well as a 1.5-day defense training institute. The programs did not require travel because they occurred online, and the CLEs remain available on demand to attorneys on the Department website.<sup>149</sup>

Moving forward, the Department has a higher training budget of \$35,653 in FY2021, which includes a one-off addition of \$19,836 from state contingency funds. In the following two years, the Department has a budget of \$28,166 per year, including \$25,000 annually allocated by the state legislature for both FY2022 and FY2023.

In the future, the Department plans to and should also offer in-person CLE courses. In-person events facilitate peer learning and relationships that are essential to developing a culture of excellence among public defense providers.

The Department's annual training drew more than 100 attendees and offered 10 CLE credits. Rural attorneys were well-represented among CLE attendees. Thirty-three of the 99 defense attorneys who attended the Anatomy of a Case CLE practiced in rural counties, including 20 from Davis counties. In one segment of the training, featuring cross-examination with Larry Pozner, 32 of the 110 attendees practiced in rural counties. Here again, 20 of these were from the Davis counties. The Department reports similar attendance at other CLE events.

---

<sup>147</sup> As a threshold matter, it is unclear whether the Department has the authority to act on complaints in any manner other than considering the information as part of its review of whether the indigent defense services in the rural counties are being provided in a manner consistent with the Judgment. The question of the Department's authority to act on complaints will be discussed at the Board's meeting in July of 2021.

<sup>148</sup> Temporary Regulations, sec. 39.

<sup>149</sup> Available at <https://dids.nv.gov/Training/Resources/>.

All CLE courses are free to public defense providers. The Clark County Public Defender and Office of the Special Public Defender have offered trainings for the Department as well. The Department is striving to offer at least one free CLE per month. The Department created a centralized CLE calendar on its website where it posts CLEs offered by the Federal Public Defender, the Clark County Public Defender, and the Clark County Special Public Defender.

**The Department has offered the following CLEs:**

- **June/July 2020:** On three dates, the Department hosted a two-credit CLE on how to argue for pretrial release using the standard set in *Valdez-Jimenez*<sup>150</sup> and Nevada's pretrial risk assessment instrument. Sessions were limited to eight attorneys per class, and eleven of the attendees were from the rural counties covered in Davis.
- **August 2020:** The Department held a one-credit ethics CLE on the interplay between Strickland's deficiency prong and the rules of professional responsibility.
- **September 2020:** The Department held a 1.5 credit CLE on Breath Alcohol Testing.
- **October 2020:** The Department held a CLE on Maintaining Control of the Craft: Problem Gambling and the Law.
- **November 2020:** The Department held a CLE on Navigating the Practice of Law, and a Pandemic, while Endeavoring to Maintain Well-Being.
- **January 2021:** The Department offered a CLE on DUI defense basics.
- **February 2021:** The Department offered a CLE on the new Nevada Rules of Criminal Procedure.
- **March 2021:** The Department offered a CLE on Juvenile Law in Nevada.
- **April 2021:** Anatomy of a Case – Fighting the Good Fight from Appointment to Trial; Representing the Challenged Client – Identifying, Raising, and Challenging Competency; Pozner on Cross: Advanced techniques using the Chapter Method.
- **May 2021:** The Department offered a 2-hour CLE on peer support and wellness for indigent defense providers.
- **June 2021:** No CLEs offered due to Legal Server training on eight dates.

The Department notes that future CLEs in 2021 will include pretrial write practice, appellate practice, post-conviction writ practice, search and seizure, DNA basics, and ethics.

While exploring CLE options, the Department learned that Colorado provides caselaw updates to attorneys via podcast, and is considering such a method in the future.

The Department has established two mentorship and support resources: First Friday meetings and Support Outreach Assistance Resource (SOAR). The Department conducts "First Friday" brown bag case-rounds with attorneys interested in support. This is an opportunity to foster

---

<sup>150</sup> *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155 (2020).

collegiality, support, and a culture of zealous advocacy among rural attorneys who may be otherwise isolated from their peers.

The Department applied for and was awarded a \$3,000 grant for implementation of SOAR from the National Association of Public Defenders (NAPD). The SOAR program works in partnership with the UNLV Boyd School of Law to offer support, research, and assistance to attorneys practicing in rural areas. Law students and attorneys offer research, and the Department offers services and guidance. The Department also connects attorneys with other lawyers who are experienced in the same issues they are grappling with. A secondary goal of SOAR is to generate interest among law students for rural practice.

The Department also has a number of resources it has either provided to attorneys or is in the process of developing or providing.

**Resources Provided:**

- National Association of Criminal Defense Lawyers (NACDL) 2019 and 2020 Sample Motions Collections (50 copies purchased and mailed to attorneys practicing in rural jurisdictions)
- An expert directory that contains curriculum vitae and contact information, which is available to indigent defense providers upon request
- A quick reference sheet titled Common Objections and Statutes
- Larry Pozner's book, Cross Examination: Science and Techniques

**Resources in Development:**

- Nevada Appellate Practice Manual – 2021 Edition
- NACDL 2021 Sample Motions Collection, to supplement the 2019 and 2020 collections previously purchased
- UNLV Boyd School of Law students are creating a resource manual of Nevada cases embedded in an issue spotting outline. This practice guide follows the format of the checklist in Nevada Supreme Court Rule 250.

**Issues and Recommendations**

The training and resources provided by the Department are an impressive development and substantial asset to all indigent defense providers in Nevada.

As the pandemic restrictions lift and more events occur in-person, the existing budget may limit the ability of the Department to host in-person trainings, purchase resources, and recruit presenters. Future reports will address these issues as needed.

### **III. Uniform Data Collection and Reporting**

The Judgment sets forth data collection and reporting requirements in three areas.<sup>151</sup>

- The Defendants shall ensure that 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 Defendants shall ensure that the data collected on rural indigent defense systems is provided to the Plaintiffs and made publicly available on a quarterly basis, commencing no later than May 1, 2020.
- The Department will issue an annual, public report commencing no later than July 1, 2020, that contains workload and case disposition data from the rural counties and any costs related to the provision of indigent defense services.

The Defendants have taken steps to comply with the uniform data collection and reporting provisions in the temporary regulations, model contracts, and selection of a uniform platform for data collection to be used by indigent defense providers by July 1, 2021. The Department issued annual reports by the July 1, 2020, and July 1, 2021, deadlines, respectively. However, reporting from the providers and counties to the Department is not uniform as of the writing of this report due to the earlier absence of regulations and compliant county plans and contracts. The attorneys are currently being trained in workload reporting using Legal Server, and new contracts between providers and the counties will require attorneys to collect and report using Legal Server.

Legislative changes in 2019 required the newly created Board to adopt and promulgate uniform reporting requirements through regulations.<sup>152</sup> And NRS 260.010 requires counties to cooperate with the Board and the Department by ensuring that the data and other information that the Board and Department requests are collected, maintained, and reported.

In addition to the workload study discussed above and mandated by Section 44 of the temporary regulations, workload data is monitored through the regular collection of data regarding cases, activity, and time for each provider.

Section 45 of the regulations requires providers in counties of less than 100,000 people to collect data using the case management system provided by the Department. Section 46 requires the county plans to require caseload reporting from all providers and specifies the types of information that must be recorded. Finally, Section 47 requires that the counties submit an annual report that includes hours for attorneys, investigators, staff, and experts, as well as the private workload of attorneys who have contracts to provide indigent defense services.

The model contract requires providers to comply with the county's plan and cooperate with the Department in accordance with Sections 44-47 of the temporary regulations, and lists failing

---

<sup>151</sup> Judgment, 18.

<sup>152</sup> NRS 180.320(2)(d)(2).

to submit required reports as a potential breach of contract. The contract also contains terms requiring the maintenance and collection of financial and workload data and the preparation of an annual financial statement to be provided to the county for inclusion in the county's annual May 1 Report to the Department pursuant to NRS 260.070.

The Department obtained the software system, Legal Server, in September 2020. Prior to selecting Legal Server, the Department explored other options, including Odyssey, JustWare, and DataDefender. Additionally, the Department explored the possibility of a fully customized system developed by Enterprise Information Technology Systems (EITS). Based on research with current system users, Legal Server was determined to be the most cost-effective solution.

Legal Server is a software system that captures data on the type of case, and the time worked by the attorney as well as non-attorney actors, including investigators, experts, office support staff, and interpreters. The software allows tracking of the length of time to close a case, the motions filed, and so forth. The Department created a checklist of the requirements of both the Judgment and Section 46 of the regulations, and added fields for recording time spent to prepare for plea bargaining and sentencing.

The client surveys are included as a feature of Legal Server. The software sends and receives the survey via text or email.

After extensive outreach and encouragement to the counties and contracting providers, the Department went into full gear in June 2021, offering trainings twice a week. The eight training sessions are available to indigent defense providers on the Department's YouTube channel.<sup>153</sup> Topics include case intake, calendaring, basic reports, managing cases, time, and activity, with advanced trainings scheduled for July 2021. In addition, both the deputy director and staff were responding to frequent email questions from new users of Legal Server and were making adjustments to the system as needed.

Given that attorneys are currently training on Legal Server, while many contracts do not yet contain a term requiring collection and reporting of workload data, the Department's Annual Report for FY2021 does not contain the data required in the Judgment.

### Issues and Recommendations

The importance of the workload data cannot be stressed enough. It is essential not only to assuring workload limits necessary for effective representation, but also for documenting the work that requires reimbursement and additional funding for the counties.

It should be noted that transitioning attorneys to new case management systems is a significant undertaking. Compliance will require an iterative process of contacting, assisting, and encouraging attorneys unfamiliar with the software and unused to recording their work in such

---

<sup>153</sup> The trainings can be viewed here: <https://www.youtube.com/channel/UCAGEFbVylncGBI2zzaB4uqw/featured>.



detail. The Department surely will need to continue to speak with contract attorneys individually and assist them with any technical problems and other compliance issues that arise.

The Monitor suggests that the parties clarify the expectations regarding the substance and format of reports generated from Legal Server. The Legal Server system can generate reports in a variety of formats based on individual attorneys, case type, county totals, and so forth. While the Judgment states the categories of information to be recorded in defense provider reports,<sup>154</sup> a discussion of the Plaintiffs' expectations for the presentation of the workload data would be helpful.

## Conclusion

The Defendants have made significant progress in laying the foundation for compliance with the Judgment. The Department has:

- Become a fully operational, staffed agency responsive to concerns
- Drafted temporary regulations responsive to the Judgment's terms, which were adopted by the Board
- Successfully proposed legislation to increase the independence of the defense function
- Developed a template for county plans and reached out to all ten counties to assist in planning
- Developed materials and assisted counties in understanding their quarterly financial reporting obligations
- Developed a model contract for providers
- Contracted for a weighted caseload study
- Created training, mentorship, and other resources for attorneys
- Created a roster of qualified attorneys and screened over 60 applications
- Contracted with a data analyst to develop systematic oversight methods and forms
- Adopted a client survey
- Selected, adopted, and trained legal providers on a case management/data collection system

The list does not adequately capture the day-to-day tasks of the Department, including responding to attorney and county requests, questions, and concerns.

Given the restrictions of the Covid-19 pandemic and the threshold need for regulations, it is understandable that certain benchmarks have not yet been met. Meanwhile, the Executive Director and Deputy Directors continue to meet with county leadership, stakeholders, and attorneys to encourage and assist with compliance, often traveling to the counties to develop rapport and working relationships.

---

<sup>154</sup> Judgment, 18.

Some issues that the parties may wish to discuss or clarify are (1) the specificity of terms in the model contract and the degree to which counties may deviate from the model contract; (2) whether the contracts or county plans should adopt temporary, generic caseload limits in the interim period before the NCSC weighted caseload study is complete; and (3) the substance and format for data reports generated from Legal Server.

Other issues discussed in this report concern the adequacy of funding to fulfill the Defendants' obligations under the Judgment. First, adequately funding indigent defense in the counties requires the Department to seek IFC approval for the \$1.2 million earmarked for that purpose. If approval is delayed, counties will be hesitant to implement changes that increase their costs. Moreover, the actual cost of implementing the Judgment in the counties this year may require more than the currently estimated \$1.2 million over the counties' maximum contributions.

Second, the Department has a budget of \$10,000 for in-state travel, which it must use for expenses relating to its obligation to conduct reviews of all ten counties and respond to counties needing other assistance. The Department has no budget for out-of-state travel, making it difficult for the Executive Director and deputies to attend conferences like Nevada's Annual Bar Conference or national conferences and training designed for state indigent defense agencies.

Third, the Department is now without the assistance of the data analyst who had been assisting in the creation of the instruments and process for the annual reviews of the counties' indigent defense systems as well as the wage/salary survey. Renewal of his contract would allow the data analyst to complete his work on the oversight process and wage/salary survey. However, the Department's budget does not currently allow for this expense.

#### Next steps for the Monitor

As the Department continues to work with the counties to develop their plans and with individual attorneys to ensure uniform data collection, the Monitor will:

- Review county plans submitted by the September 3, 2021, deadline
- Review new county contracts, if any are created before the county plan deadline
- Discuss the developing oversight process with the Department
- Discuss with the Department any issues with adoption of Legal Server
- Document trainings and resources as they are offered
- Attend or observe the recordings of the Board meetings and the workshop for the regulations
- Confirm that the NCSC intends to conduct Delphi studies after it receives the quantitative data from Legal Server
- Meet regularly with the Department to keep up to date on its efforts and challenges
- Facilitate meetings and conversations between the parties as needed.

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**July 1, 2021**

**APPENDIX A**  
**TEMPORARY REGULATIONS (MARCH 5, 2021).**

**Temporary Regulation of the Board on Indigent Defense Services.**

**Adopted January 28, 2021. Effective Date March 5, 2021.**

**Table of Contents**

---

Sections 2 – 10: Definitions	p. 2
Sections 11 – 17: Declaratory Rulings and Petitions for Decision Making	p. 3
Sections 18– 21: Maximum Contribution Formula and Financial Reporting	p. 5
Sections 22 – 29: Plans for the Provision of Indigent Defense Services	p. 7
Sections 30 – 39: Attorney Qualifications, Training, and Education	p. 10
Section 40: Audit, Investigation, or Review	p. 13
Sections 41– 42: Economic Disincentives and Contract Terms	p. 15
Sections 43 – 47: Uniform Data Collection	p. 16

**AUTHORITY:** §§1 – 47, NRS 180.320

**Section 1.**

Chapter 180 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 50, inclusive, of this regulation.

**Sec. 2.**

As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.

**Sec. 3.**

“Attorney” means an attorney who provides indigent defense services as defined by NRS 180.004.

**Sec. 4.**

“Board” means the Board of Indigent Defense Services.

**Sec. 5.**

“Case” means:

1. A single adult defendant on a single charging document, regardless of the number of counts alleged, in a felony, gross misdemeanor or misdemeanor matter; or
  2. A single juvenile defendant on a single petition, regardless of the number of counts alleged, in a juvenile delinquency or in need of supervision matter.
- For a case in which multiple charges are involved, the case is classified by the highest offense charged at the time of the appointment.

**Sec. 6.**

“Department” means the Department of Indigent Defense Services.

**Sec. 7 .**

“Expert witness” means a person who is qualified by knowledge, skill, experience, training or education to render an opinion on scientific, technical or other specialized matters.

**Sec. 8.**

“Indigency” means the inability of a defendant, without causing the defendant or any of his or her dependents to have substantial hardship, to obtain competent, qualified legal counsel on his or her own. As used in this section, a defendant is presumed to have “substantial hardship” if the defendant:

1. Receives public assistance, as that term is defined in NRS 422A.065;
2. Resides in public housing, as that term is defined in NRS 315.021;
3. Has a household income that is less than 200 percent of the federally designated level signifying poverty;
4. Is serving a sentence in a correctional institution; or
5. Is housed in a mental health facility.

Defendants not falling below the presumptive threshold will be subject to a more rigorous screening process to determine if their particular circumstances, including seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship were they to seek to retain private counsel.

**Sec. 9.**

“Investigator” means a person who is qualified to secure evidence and subpoena witnesses to be used in the preparation and trial of criminal cases and who is:

1. Licensed by the Private Investigator’s Licensing Board;
2. An employee of a person who is licensed by the Private Investigator’s Licensing Board; or
3. An employee of an attorney or an office of public defender.

**Sec. 10.**

“Plan for the provision of indigent defense services” or “plan” means the processes established by a county for the provision of indigent defense service in accordance with these regulations and applicable laws.

**Sec. 11.**

The provisions of this chapter govern the provision of indigent defense services as defined by NRS 180.004.

**Sec. 12.**

1. An interested person who wishes to petition the Board for the adoption, filing, amendment or repeal of a regulation of the Board must file with the Department the original and one copy of the petition.
2. The petition must include:
  - (a) The name and address of the petitioner;
  - (b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;
  - (c) The reason for the adoption, filing, amendment or repeal of the regulation;
  - (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation; and
  - (e) The name of the Board.

**Sec. 13.**

1. The Board may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if the requirements set forth in Section 12 of this regulation are not met.
2. The Board may require the Department to review a petition filed pursuant to Section 12 of this regulation.
3. The Department shall notify the petitioner in writing of the decision of the Board or Department, as applicable, not later than 30 days after a petition is filed.

**Sec. 14.**

1. Except as otherwise provided in subsection 4, an interested person may petition the Executive Director to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department.
2. The original and one copy of the petition must be filed with:
  - (a) The deputy director selected by the Executive Director pursuant to NRS180.420 who is authorized to administer or enforce the statute or regulation or to issue the decision; or
  - (b) The Executive Director, if the statute, regulation or decision is administered or enforced by the Executive Director.
3. The petition must include:
  - (a) The name and address of the petitioner;
  - (b) The reason for requesting the declaratory order or advisory opinion;
  - (c) A statement of the facts that support the petition; and
  - (d) A clear and concise statement of the question to be decided by the Executive Director or deputy director and the relief sought by the petitioner.
4. An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.

**Sec. 15.**

1. The Executive Director may refuse to review a petition filed pursuant to Section 14 of this regulation that requests the issuance of a declaratory order or advisory opinion if the requirements set forth in that section are not met.
2. The Executive Director may, or may designate a deputy director to:
  - (a) Conduct an informal hearing to determine issues of fact or hear arguments relating to a petition and enter reasonable orders that govern the conduct of such a hearing;
  - (b) Request a petitioner to provide additional information or arguments relating to a petition;
  - (c) Issue a declaratory order or an advisory opinion based upon the contents of a petition and any materials submitted with the petition;
  - (d) Consider relevant decisions that have been issued by the Department that apply or interpret the statute, regulation or decision in question; and
  - (e) Enter any reasonable order to assist his or her review of a petition.
3. The Executive Director or deputy director shall:
  - (a) Mail a copy of any declaratory order or advisory opinion that is issued to a petitioner not later than 60 days after whichever of the following events is the last to occur:
    - (1) The petition is filed;
    - (2) The petition is referred to the Executive Director for a decision;
    - (3) An informal hearing is conducted; or
    - (4) The Executive Director or deputy director receives any additional information or written arguments; and
  - (b) Maintain a record of each declaratory order and advisory opinion that is issued and index such records by subject matter.

**Sec. 16.**

1. After receiving a declaratory order or advisory opinion from a deputy director concerning the applicability or interpretation of a statute, regulation or decision of the Department, the petitioner may request that the Executive Director review the decision.
2. A request made pursuant to subsection 1 must:
  - (a) Be in writing;
  - (b) Contain the information required by subsection 3 of Section 14 of this regulation; and
  - (c) Be filed with the Executive Director not later than 30 days after the date the declaratory order or advisory opinion is issued.
3. The Executive Director shall review any request made pursuant to subsection 1 in accordance with the provisions of Section 15 of this regulation.

**Sec. 17.**

The Executive Director, a deputy director or any other staff member of the Department shall not render an oral response, including, without limitation, a response over the telephone, to a request for an advisory opinion. Any oral response is not a decision or an advisory opinion of the Department.

**Sec. 18.**

1. The maximum amount that a county is required to pay for the provision of indigent defense services during a fiscal year must not exceed the sum of:
  - (a) In counties whose population is less than 100,000:
    - (1) The actual costs to the county for providing indigent defense services, minus any expenses relating to capital offenses and murder cases, calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and
    - (2) The percentage equal to the lesser of:
      - (i) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or
      - (ii) The lowest union-negotiated cost of living increase for employees for that county.
  - (3) If a county, in its plan for the provision of indigent defense services, follows the recommendation of Section 27 pertaining to the payment of case-related expenses, such expenses must be a charge against the State and reimbursed to the county pursuant to Section 19.
  - (4) If a county chooses, pursuant to Section 21 of this regulation, to transfer to the State Public Defender the responsibility of representation in direct appeals to the appellate court of competent jurisdiction, the costs of providing the appellate representation in those cases is a charge against the State and excluded from the required maximum contribution of the county.



(5) If a county chooses, pursuant to Section 21 of this regulation, to transfer to the State Public Defender the responsibility for representation in death penalty cases, the State Public Defender shall submit to the county an estimate for the representation. The county shall be required to pay 25% (twenty-five percent) of the estimate and payment will be collected pursuant to NRS 180.110. Such payments to the Nevada State Public Defender which are paid by the county will count towards the maximum contribution a county may be required to pay during a fiscal year.

(b) In counties whose population is more than 100,000:

(1) The actual costs to the county for providing indigent defense services calculated as the average of the total of such costs for Fiscal Year 2017-2018 and Fiscal Year 2018-2019; and

(2) The percentage equal to the lesser of:

(i) The cost of inflation, as measured by the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor for the immediately preceding calendar year or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the Department; or

(ii) The lowest union-negotiated cost of living increase for employees for that county.

#### **Sec. 19.**

1. A county may seek state contributions for the provision of indigent defense services in excess of the maximum county contribution, as calculated pursuant to Section 18 of this regulation, through:

(a) The submission of the annual report containing the plan for the provision of indigent defense services for the county for the next fiscal year as required pursuant to subsection 2 of NRS 260.070; or

(b) In accordance with NRS 180.450, a request by the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to address immediate needs in a corrective action plan.

2. In accordance with the duty of the Board to review and approve the budget for the Department pursuant to paragraph (f) of subsection 1 of NRS 180.320, any state contribution requested by a county is subject to the approval of the Board. Disagreements with respect to plans for the provision of indigent defense services and/or state contributions necessary to comply with these regulations will be resolved by the Board.

3. A county seeking reimbursement pursuant to Section 19(1) must submit to the Department a financial status report certified by the board of county commissioners or its designee no later than 15 days after the end of each quarter. The financial status report shall be in the form approved by the Department.

#### **Sec. 20.**

1. Any state contributions for the provision of indigent defense services are provided for:

(a) One fiscal year; and

(b) The express purpose of complying with applicable indigent defense standards or regulations or improving the provision of indigent defense services in a county.

2. Once a county reaches its maximum contribution for the provision of indigent defense services determined in accordance with Section 18, state contributions for the provision of indigent defense services will be provided to the county treasury by reimbursement upon the quarterly submission of a county's financial status report up to the amount approved by the Board and Legislature in the county's plan for indigent defense services.

3. If a county exceeds the Board approved state contribution as provided in Section 19, any additional state contribution necessary for the provision of indigent defense services must be sought by corrective action plan in accordance with NRS 180.450, by a request from the Executive Director to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266.

4. Any unencumbered or unexpended balance of state contributions remaining at the end of the fiscal year lapses and reverts to the available balance of the fund from which it was appropriated.

5. As used in this section, "fiscal year" means the period beginning on July 1 of a given year and ending on June 30 of the following year.

#### **Sec. 21.**

1. Upon request of a county whose population is less than 100,000, the State Public Defender may handle for the county all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction.

2. If a county wishes to have the State Public Defender handle all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction, the board of county commissioners for the county shall notify the State Public Defender, and such responsibility must be transferred, in accordance with the procedure set forth in subsection 6 of NRS 180.450.

3. After the responsibility of handling all death penalty cases and/or direct appeals to the appellate court of competent jurisdiction for a county is transferred to the State Public Defender, such responsibility shall not be transferred back to the county unless the county receives the approval of the Executive Director of the Department pursuant to NRS 180.460.

#### **Sec. 22.**

1. A plan for the provision of indigent defense services must include, without limitation, the processes for providing indigent defense services consistent with these regulations and applicable law.

2. A county shall provide its initial plan for the provision of indigent defense services to the Department not later than 180 days after the date on which this section becomes effective or on the next occurring May 1, as determined by the Department.

(a) If a county elects to receive assistance from the Department in creation of its plan pursuant to NRS 180.430(4), the county must notify the Department at least 90 days before the plan is due.

(b) To assess local needs, counties should consult with local providers of indigent defense services in formulating its plan.

(c) If a county joins with one or more other counties to establish an office of the public defender to serve those counties in accordance with NRS 260.020, the joining counties may submit a single, joint plan for the provision of indigent defense services.

3. Plans for the provision of indigent defense services approved pursuant to the Nevada Supreme Court Administrative Docket 411 will satisfy the requirements of this section.

#### **Sec. 23.**

1. A plan for the provision of indigent defense services must be designed to promote the integrity of the relationship between an attorney and a client. The plan and any attorneys providing indigent defense services pursuant to the plan must be free from political and undue budgetary influence and be subject to judicial supervision only in the same manner and to the same extent as retained counsel or a prosecuting attorney.

#### **Sec. 24.**

1. A plan for the provision of indigent defense services must provide a county's process for hiring independent contractor attorneys and panels of appointed attorneys.

(a) The process must be designed to provide notice of the opportunity to apply and provide interested parties with a reasonable opportunity to respond.

(b) Consistent with Section 23 of these regulations, the process should exclude the prosecution and law enforcement officials. The Board recommends creation of a selection committee that utilizes stakeholders concerned with the integrity of indigent defense services, which may include the Department. Judicial input in the hiring process may be considered but should not be the sole basis for selection.

(c) The process shall include, without limitation, the following factors when evaluating applications:

(i) In counties whose population is less than 100,000, ensuring that the applicant is on the Department's roster of eligible providers;

(ii) Experience and qualifications of the applicant;

(iii) Applicant's past performance in representing defendants in criminal cases;

(iv) Applicant's ability to comply with these regulations and/or terms of a contract; and

(v) If an independent contractor, the cost of the service under the contract.

#### **Sec. 25.**

1. A plan for the provision of indigent defense services must provide the indigency screening process necessary for the judicial determination of eligibility for an appointed counsel. The process of screening for indigency must occur not later than 48 hours after arrest, exclude the judiciary, and describe the person(s) or agency responsible.

2. After such screening and upon a judge, justice or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, the plan must provide for prompt appointment of counsel. If a public defender is disqualified from providing representation, a plan must provide for the appointment of another attorney in accordance with NRS 7.115 and 171.188.

3. If a county uses independent contractor attorneys in lieu of an office of the public defender or where the public defender is disqualified, the plan must describe how

attorneys are assigned cases. Distribution of cases may be on a rotational basis or other method that ensures fair distribution of cases.

4. Plans for indigent defense services must require that an attorney be present at initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with relevant statute, rule of criminal procedure, and caselaw. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. Plans should ensure the presence of counsel at all other critical stages, whether in or out of court.

5. This section must not be construed to preclude a defendant from waiving the appointment of an attorney in accordance with subsection 1 of NRS 171.188.

#### **Sec. 26.**

1. A plan shall, through cooperation with local agencies, seek to provide necessary resources and accommodations for private discussions between an attorney and a client in courthouses, jails, prisons, detention centers and other places where a client must confer with an attorney, and provide a description of such resources and accommodations.

#### **Sec. 27.**

1. A plan for the provision of indigent defense services must ensure that an attorney has the resources to:

(a) Conduct an independent investigation of the charges filed against the client as promptly as practicable and, if appropriate, retain an investigator to assist with the defense of the client; and

(b) Request the assistance of experts when such assistance is reasonably necessary to prepare the defense of an indigent defendant.

2. Pursuant to NRS 180.320(2)(e), the Board recommends that plans provide for the payment of expenses related to trial, including, without limitation, expenses for expert witnesses and investigators, in the following manner:

(a) In counties with a population less than 100,000,

(1) Exclude the judiciary from the payment of reasonably necessary investigative, expert, or other case-related expenses for indigent defense providers.

(i) Where the office of the public defender is created pursuant to NRS Chapter 180 or 260, the county shall provide a budget for investigative, expert, and other case-related expenses that is administered by the public defender.

(ii) Where public defense services are provided by independent contractor, the county shall provide a budget for case-related expenses that is administered by the Department or its designee and include a mechanism for judicial review of any modified or denied requests.

(iii) Where the public defender has been disqualified, the county shall provide a budget for case-related expenses that is administered by the Department or its designee and include a mechanism for judicial review. Budgets pursuant to paragraphs (2)(a)(1)(ii) and (2)(a)(1)(iii) may be the same budget.

(2) To ensure prompt approval of frequent, necessary case-related expenses, the Board recommends provisions for automatic approval of case-related expenses up to \$2,500.00.

(b) In counties with a population more than 100,000, pursuant to the county's plan for the provision of indigent defense services.

**Sec. 28.**

1. A county's plan for the provision of indigent defense services shall ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative and other tasks which do not affect the rights of the defendant may be delegated.

2. The provisions of subsection 1 do not preclude a county from using a single attorney or rotation of attorneys to provide representation to an indigent defendant at an initial appearance or arraignment, but any such attorney should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest.

**Sec. 29.**

1. Plans for the provision of indigent defense services must require that representation be provided in a professional, skilled manner guided by applicable regulations; laws; 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.

2. Plans and/or contracts must require attorneys to advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is in the client's best interest and require indigent defense providers to make all reasonable efforts to meet with each client within the first seven days following the assignment of the case, as well as every 30 days thereafter, unless there are no significant updates in the client's case.

3. Plans for the provision of indigent defense services in counties whose population is less than 100,000 must ensure that any client surveys authorized by the Board are provided to a client at the conclusion of his or her representation by an attorney.

**Sec. 30.**

1. As used in Sections 32 to 39, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in Section 31 of this regulation have the meanings ascribed to them in those sections.

2. Sections 32 to 39, inclusive, of this regulation apply only to counties whose population is less than 100,000.

**Sec. 31.**

"CLE" means continuing legal education as discussed in Nevada Supreme Court Rules 205 to 215, inclusive.

**Sec. 32.**

1. To ensure that the ability, training, and experience of an attorney in a criminal matter matches the complexity of a case, an attorney must demonstrate compliance with the standards and regulations of the Board pertaining to training, education and qualifications by submitting an application to the Department on a form approved by the Department. The application must be submitted:

- (a) By mail; or
- (b) Electronically, as provided on the website of the Department.

2. The Department shall, not later than 30 days after receiving an application:

(a) Review the application and determine the area of indigent defense services for which the attorney is qualified; and

(b) Provide written notice of the determination of the Department to the attorney.

3. After an attorney submits an application pursuant to this section, the attorney may continue practicing in the areas of indigent defense for which the attorney is seeking the determination of the Department until the attorney receives written notice of the determination.

4. If the Department determines that an attorney is qualified to provide indigent defense services, the Department shall place the name of the attorney and areas of qualification on a roster of attorneys who are eligible to provide indigent defense services that will be used by boards of county commissioners to select the attorneys who will provide indigent defense services for a county. An attorney may seek qualification for different or other areas of indigent defense services by further application demonstrating the additional qualifications at any time.

5. If an attorney disagrees with the determination of the Department regarding the areas for which the attorney is qualified to provide indigent defense services, the attorney may submit a request for reconsideration to the Department not later than 30 days after receiving the determination of the Department. The Board will review any request for reconsideration that is submitted to the Department.

6. Failure to provide the application or failure to practice within a classification in which the attorney is qualified may result in exclusion or removal from the list of eligible providers.

**Sec. 33.**

1. An attorney who seeks to provide indigent defense services to a person charged with a misdemeanor must:

- (a) Be licensed to practice law in the State of Nevada; and
- (b) Have sufficient training or experience to provide competent representation.

2. An attorney who is beginning to provide indigent defense services in misdemeanor matters is encouraged to consider seeking the participation of a supervising or more experienced attorney before undertaking representation in a jury trial involving a misdemeanor offense or a misdemeanor offense for which the penalty can be enhanced and, if applicable, make a motion for the appointment of such an additional attorney pursuant to NRS 260.060.

**Sec. 34.**

An attorney who seeks to provide indigent defense services to a person charged with a category B felony for which the maximum penalty is less than 10 years, a category C, D or E felony or a gross misdemeanor must:

1. Meet the following requirements:

- (a) Be licensed to practice law in the State of Nevada; and
  - (b) Have been trial counsel, alone or with other trial counsel, in two or more bench or jury trials that were tried to completion; or
2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1.

**Sec. 35.**

An attorney who seeks to provide indigent defense services to a person charged with a non-capital category A felony or a category B felony for which the maximum penalty is 10 years or more must:

1. Meet the following requirements:

- (a) Be licensed to practice law in the State of Nevada;
  - (b) Have practiced criminal law for three full years, either as a prosecutor, provider of indigent defense services or retained counsel; and
  - (c) Have been trial counsel, alone or with other trial counsel, and handled a significant portion of three felony jury trials that were tried to completion; or
2. As determined by the Department, demonstrate experience and skills that are equivalent to the requirements set forth in subsection 1, have a significant record of quality representation in criminal trials and have the ability to handle complex felony matters.

**Sec. 36.**

An attorney who seeks to provide indigent defense services to a person charged with or convicted of a category A felony in which the death penalty is or may be sought or has been imposed must meet the criteria established in Supreme Court Rule 250.

**Sec. 37.**

An attorney who seeks to represent a person in a direct appeal of a non-capital felony must:

- 1. Be licensed to practice law in the State of Nevada; and
- 2. Have sufficient training or experience to provide competent representation.

**Sec. 38.**

1. An attorney who seeks to represent a juvenile alleged to be delinquent or in need of supervision must:

- (a) Be licensed to practice law in the State of Nevada;
- (b) Have the knowledge and skills necessary to represent a child diligently and effectively; and
- (c) Be familiar with:
  - (i) The department of juvenile justice services in the county and other relevant state and local programs;

- (ii) Issues concerning competency and child development;
  - (iii) Issues concerning the interaction between an attorney and a client; and
  - (iv) Issues concerning school-related conduct and zero-tolerance policies specific to juvenile representation.
2. An attorney who seeks to represent a child in a certification proceeding in accordance with NRS 62B.390 must additionally have litigated at least two criminal jury trials or be assisted by other counsel with requisite experience.
3. As used in this section, “department of juvenile justice services” has the meaning ascribed to it in NRS 201.555.

### **Sec. 39.**

1. In addition to any other requirements provided by law or this chapter, an attorney must:

(a) Have reasonable knowledge of substantive Nevada and federal law, constitutional law, criminal law and criminal procedure, the rules of evidence, the rules of appellate procedure, ethical rules, local rules and practices and changes and developments in the law. As used in this paragraph, “reasonable knowledge” means knowledge possessed by an attorney who provides competent representation to a client in accordance with Rule 1.1 of the Nevada Rules of Professional Conduct;

(b) Have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case and the legal issues concerning defenses to a crime and be reasonably able to litigate such issues effectively; and

(c) Be reasonably able to use the office technology that is commonly used in the legal community and the technology that is used within the applicable court system and thoroughly review materials that are provided in an electronic format.

2. An attorney shall:

(a) Complete on an annual basis a minimum of 5 hours of CLE courses relevant to indigent defense services;

(b) Submit proof of compliance with such CLE requirements to the Department before January 1 each year by submitting a copy of the annual transcript from the State of Nevada Board of Continuing Legal Education:

(1) By mail; or

(2) Electronically, as provided on the website of the Department; and

(c) Follow the minimum standards of the Board in determining CLE courses relevant to the provision of indigent defense services.

(d) Any CLE credit(s) offered by the Department will count toward satisfaction of the annual requirements. If an attorney satisfies the annual CLE requirement through CLE provided by the Department, the annual submission of proof of CLE compliance is waived.

### **Sec. 40.**

1. The Department shall monitor and regularly assess whether counties and attorneys meet these regulations and whether indigent defense services are being provided in a constitutional manner. In conducting an assessment, the Department may obtain information from a variety of sources, including, without limitation:

(a) Client feedback;



- (b) Client surveys;
- (c) Other providers of indigent defense services;
- (d) Office staff;
- (e) Judicial personnel;
- (f) Observations of a deputy director of the Department;
- (g) Data provided to the Department pertaining to attorney workload;
- (h) Attorney contracts;
- (i) Financial information pertaining to the provision of indigent defense services;

and

- (j) Information obtained through the Complaint and Recommendation process.

2. Pursuant to NRS 180.440, the Department must review the manner in which indigent defense services is provided throughout the State.

(a) Prior to an on-site review, the Department will contact the county, court, and/or attorney(s) to identify a convenient time and/or location for which the review will take place and identify any information necessary to the review.

(b) Once a convenient time and/or location is selected, or in the event that no agreement can be reached, the Department will notify the subject of the review at least 10 days before the review.

(c) The Department will issue a report within 30 days of the review detailing its findings.

(1) If a county is not in compliance with these regulations or deficient in the provision of indigent defense services in any other manner, the report will recommend a corrective action plan for the county.

(i) No later than 30 days after recommending a corrective action plan, the Department will seek to identify a convenient time for which to collaborate on the manner in which the county will meet these regulations and the time by which the corrective action plan must be executed.

(ii) Upon agreement as to the contents of a corrective action plan and time in which it must be executed, the corrective action plan will be submitted to the Board for approval at the next scheduled Board meeting. Disputes as to the contents of the plan or the time in which it must be executed will be submitted to the Board for resolution at the next scheduled Board meeting.

(2) In counties less than 100,000, if the Department determines that any person is providing indigent defense services in an ineffective or otherwise inappropriate manner, the report will be issued to the person; entity that employs or contracts with the person; and the other deputy director of the Department pursuant to NRS 180.430.

(i) The other deputy director of the Department will collaborate with the person to provide training and/or educational opportunities consistent with Section 39 and best practices for delivering effective indigent defense services.

(ii) Upon completion of, or refusal to participate in, training and/or educational opportunities, the deputy director will provide notice to the entity that employs or otherwise contracts with the person. Refusal to

participate in training or educational opportunities may result in the recommendation of a corrective action plan to a county.

3. Pursuant to NRS 180.320(1)(c), the Board may direct the Executive Director to perform any additional audit, investigation, or review the Board deems necessary to determine whether its regulations are being followed and indigent defense services are being provided in a constitutional manner.

(a) Upon such direction, the Executive Director will work with the subject of the audit, investigation, or review to identify a convenient period for which to conduct the audit, investigation, or review.

(b) Once a convenient time is selected, or in the event that no agreement can be reached, the Executive Director will notify the subject of the audit, investigation, or review at least 10 days before the audit, investigation, or review is to take place.

(c) The Executive Director will issue a report to the subject of the audit, investigation, or review no later than 30 days upon completion of the audit, investigation, or review.

(d) If the Executive Director finds that the subject of the audit, investigation, or review is not in compliance with the regulations for the provision of indigent defense or that indigent defense services are not being provided in a constitutional manner, the subject will have 60 days from the date of the report to respond in writing to each finding of non-compliance and steps taken to remedy such findings. The subject of the audit, investigation, or review may request additional time to respond to the inquiry, if necessary. Such request must be directed to the Executive Director.

(e) The Executive Director's report and response from the subject of the audit, investigation, or review, if any, shall be provided to the Board at the next scheduled meeting. Failure to respond or to take remedial action may result in a corrective action plan in accordance with NRS 180.450 or removal from the list of eligible indigent defense provider maintained in accordance with NRS 180.430.

#### **Sec. 41.**

1. An attorney who receives a salary for providing indigent defense services is entitled to receive a reasonable salary, benefits and resources. The rates of compensation paid by county district attorneys, the Nevada Attorney General and other county or state offices must serve as guidance for reasonable compensation.

#### **Sec. 42.**

1. The terms of any contract between a county and independent contract attorney must avoid any actual or apparent financial disincentives to the obligation of an attorney to provide clients with competent legal services. Such a contract must include, but is not limited to, the following terms:

- (a) Identify the appointing authority, contracting authority, and contractor;
- (b) Specify the terms of the contract, including duration, any provision for renewal, and a provision for terminating the contract by either party;
- (c) Specify the category of cases in which the contractor is to provide services;
- (d) Specify the minimum qualifications for attorneys covered by the contract and require such attorneys to maintain the qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in these regulations. If a

contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to maintain only those qualifications established for the offense level(s) for which the attorney is approved to provide indigent defense services;

(e) Identify the attorney(s) who will perform legal representation in each category of case covered by the contract and include a provision that ensures consistency in representation in accordance with Section 28 of these regulations;

(f) Set the maximum workload each attorney may be required to handle pursuant to the contract based upon the applicable workload guidelines determined by the Board in accordance with Section 44 and require the reporting of indigent defense data in accordance with Sections 46 and 47;

(g) In accordance with Section 29, require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable regulations, laws, 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;

(h) State a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest;

(i) Specify how investigative services, expert witnesses, and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with applicable regulations and laws; and

(j) Provide compensation at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and considers overhead, expenses, and costs relating to significant attorney travel.

### **Sec. 43.**

If a public defender is disqualified from providing indigent defense services and another attorney is appointed in accordance with NRS 7.115:

1. The appointed attorney must receive prompt compensation in accordance with NRS 7.125. Activities outside of court appearances, including, without limitation, directing investigations, negotiating or tactical planning are equally important to quality representation and must be included in the compensation of the appointed attorney, subject to the limitations set forth in subsection 2 of NRS 7.125.

2. A plan for the provision of indigent defense services must provide the county's process for payment of counsel appointed pursuant to NRS 7.115.

### **Sec. 44.**

1. The workload of an attorney must allow the attorney to give each client the time and effort necessary to ensure effective representation. Any office, organization or 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 under the Nevada Rules of Professional Conduct.

2. At the direction of the Board, the Department shall conduct separate, specific workload study for:

- (a) counties whose population is less than 100,000, and
- (b) counties whose population is more than 100,000

to determine workload guidelines and requirements for attorneys. Counties must ensure that all attorneys providing indigent defense services participate in workload studies. Consistent with NRS 180.320(2)(d)(4), results of each study shall be a recommendation to the Board in determining maximum workloads for attorneys providing indigent defense services.

**Sec. 45.**

In counties whose population is less than 100,000, providers of indigent defense services shall use the data collection and case management system provided by the Department at State expense for caseload and time reporting.

**Sec. 46.**

1. In counties whose population is less than 100,000, each plan shall require caseload reporting by the county's indigent defense providers. The plan shall specify whether the reporting will be done by attorney or collectively by office of a public defender. The plan shall require such reporting on an annual basis that details, without limitation, the total number of:

- (a) Beginning pending cases;
- (b) New appointments;
- (c) Cases returned from warrant or re-activated;
- (d) Cases adjudicated, disposed or closed and:
  - (i) The manner in which each case was adjudicated, disposed or closed, including, pursuant to a plea, dismissal or verdict at trial;
- (e) Warrant or placed on inactive status cases;
- (f) Cases set for review;
- (g) End pending cases.
- (h) Total number of motions to suppress (i) filed and (ii) litigated; and
- (e) Number of trials over the reporting period.

2. The cases included in a report required pursuant to subsection 1 must be further arranged by the following case type:

- (a) Death penalty cases;
- (b) Non-capital category A felonies and category B felonies for which the maximum penalty is 10 years or more;
- (c) Category B felonies for which the maximum penalty is less than 10 years and category C, D, E felonies and gross misdemeanors;
- (d) Misdemeanor driving under the influence and domestic violence cases;
- (e) Other misdemeanors, including misdemeanor direct appeals;
- (f) Probation and parole violations;
- (g) Direct appeals of capital convictions;
- (h) Direct appeals of non-capital felony and gross misdemeanor convictions;
- (i) Juvenile cases including delinquency, child in need of supervision, and appeals;
- (j) Juvenile probation and parole violations, and
- (k) Specialty court cases.

3. If the independent contractor attorney or office of a public defender provides representation beyond those services provided in NRS 180.004, reports should also include case totals for:

- (a) NRS Chapter 128 cases;
- (b) NRS Chapter 432B cases;
- (c) NRS Chapter 433A cases; and/or
- (d) NRS Chapter 159 cases.

4. As used in this section:

(a) "Adjudicated, disposed or closed" means a case in which an original entry of final adjudication has been entered.

(b) "Beginning pending" means a case which, at the start of the reporting period, is awaiting disposition.

(c) "End pending" means a case which, at the end of the reporting period, is awaiting disposition.

(d) "Final adjudication" means an entry of judgment or adjudication, an order of dismissal or the end of the appointment of an attorney regardless of adjudicatory status.

(e) "Juvenile case" means a matter involving an allegation of a juvenile in need of supervision or an act committed by a juvenile which, if committed by an adult, would result in criminal prosecution and over which a juvenile court has statutory original or concurrent jurisdiction.

(f) "New appointment" means a case in which a defendant has been assigned counsel for the first time.

(g) "Returned from warrant or re-activated" means a case re-opened because a defendant has been arrested on a warrant for failure to appear and has appeared before the court or has returned from a diversion program or another similar event has occurred that reactivates a case.

(h) "Set for review" means a case that, after an initial entry of judgment during the reporting period, is awaiting regularly scheduled reviews involving a hearing before a judicial officer.

(i) "Warrant or placed on inactive status" means a case closed because a warrant for failure to appear has been issued, the defendant has been ordered to participate in a diversion program or another similar incident has occurred to make the case not active.

**Sec. 47.**

1. Each county whose population is less than 100,000 shall require time reporting by indigent defense attorneys in their plan. The plan shall require reporting on an annual basis that details:

- (a) attorney hours per case;
- (b) investigator hours per case;
- (c) staff hours per case;
- (d) expert hours per case; and
- (e) private workload, if any, measured in attorney hours.

2. Time entries should be kept as close to contemporaneous as reasonably practicable to ensure accuracy of time reporting and the ability of the Department to generate quarterly reports.

3. As used in this section, "staff" means a paralegal, or similar employee, as defined by the Bylaws of the Paralegal Division of the State Bar of Nevada, adopted on November 11, 1994 or the same as they may be amended.

4. In each county whose population is over 100,000, time records must be kept only during periods in which weighted caseload studies, pursuant to Section 44, are conducted.

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**July 1, 2021**

**APPENDIX B**  
**MODEL CONTRACT FOR PROVIDERS**



## **STANDARD CONTRACT FOR INDIGENT DEFENSE SERVICES**

The terms of any contract between a county and independent contract attorney must avoid any actual or apparent financial disincentives to the obligation of an attorney to provide clients with competent legal services. The terms of any contract between the county must "identify the appointing authority, contracting authority, and contractor." Reg. Sec. 42(1)(a).

The [City, County, State], referred to as "the Contracting Authority," and [law firm or non-profit organization], referred to hereafter as "the Contractor," agree to the provisions of public defense services as outlined below for the period [date] to [date].

The Contracting Authority Administrator is [ ], and the Managing Director of the Contractor is [ ].

Following are the underlining bases for the Contract:

1. The right to counsel in criminal cases is protected by the Sixth and Fourteenth Amendments to the United State Constitution; Article 1, Section 8 of the Nevada Constitution, and Nevada Revised Statutes (hereinafter "NRS") §§ 171.188 and 178.397.
2. The Contracting Authority desires to have legal services performed for eligible persons entitled to public representation in \_\_\_\_\_ [City, County, State] by the Contractor, as authorized by law.
3. The Contractor agrees to provide, and the Contracting Authority agrees to pay for, competent, zealous representation to its clients as required by Nevada Rules of Professional Responsibility and the Regulations of the Board of Indigent Defense Services.
4. The Contracting Authority and the Contractor agree that all funds provided pursuant to this Contract are provided for the sole purpose of provision of indigent defense services to eligible clients of the Contractor.

The Parties agree as follows:



## **I. DEFINITIONS**

The following definitions control the interpretation of this Contract:

- A. Appointing Authority: means the judge, justice or master of a court of law.
- B. Eligible client: means a defendant, juvenile, or parent has been determined by a finding by the Appointing Authority to be entitled to a court-appointed attorney pursuant to NRS 62D.030, 62D.100, 171.188.
- C. Case; Final Adjudication: “Case” shall have the meaning prescribed to it in Temporary Regulations of Board of Indigent Defense Services [“Reg.”] Sec. 5. Completion of a case occurs upon final adjudication. “Final adjudication” shall have the meaning prescribed to it in Reg. Sec. 46(4)(d).
- D. Representational Services: The services for which the Contracting Authority is to pay the Contractor are “representational services,” including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other Contractor and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Contractor do not include capital cases; cases in which the most serious crime is a felony punishable by life, with or without the possibility of parole; or extraordinary expenses incurred in the representation of eligible clients.
- E. Other Litigation Expenses: “Other Litigation Expenses” shall mean those expenses which are not part of the contract with the Contractor, including investigations, expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be provided as set forth in the County’s Model Plan for the Provision of Indigent Defense Services.
- F. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but not obtained.

## **II. DURATION OF CONTRACT**

The contract terms must “specify the terms of the contract, including duration, any provision for renewal, and a provision for terminating the contract by either party.” Reg. Sec. 42(1)(b).

This Contract shall commence on [DATE] and terminate on [DATE], unless extended or terminated earlier in a manner allowed by this Contract.

A contract may be extended or renewed in the following manner:

### **III. INDEPENDENT CONTRACTOR**

The Contractor is, for all purposes arising out of this Contract, an independent contractor, and neither the Agency nor its employees shall be deemed employees of the Contracting Authority. The Contractor shall complete the requirements of this Contract according to the Contractor's own means and methods of work, which shall be in the exclusive charge and control of the Contractor and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

### **IV. CONTRACTOR'S EMPLOYEES AND EQUIPMENT**

The Contractor agrees that it has secured or will secure at the Contractor's own expense, all person, employees, and equipment required to perform the services contemplated/required under this Contract.

## **V. MINIMUM QUALIFICATION FOR CONTRACTOR ATTORNEYS AND PERFORMANCE REQUIREMENTS**

The terms of the contract must:

- Specify the category of cases in which the contractor is to provide services. Reg. Sec. 42(1)(c).
- Specify the minimum qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in the regulations of the Board of Indigent Defense Services. If a contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to maintain only those qualifications establish for the offense level(s) for which the attorney is approved to provide indigent defense services. Reg. Sec. 42(1)(d).
- Identify the attorney(s) who will perform legal representation in each category of case covered by the contract and include a provision that ensures consistency in representation. Reg. Sec. 42(1)(e).
- Set the maximum workload each attorney may be required to handle pursuant to the contract based upon the applicable workload guidelines determined by the Board in accordance with Section 44 and require the reporting of indigent defense data in accordance with Sections 46 and 47. Reg. Sec. 42(1)(f).
- In accordance with Section 29, require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable regulations, laws, 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. Reg. Sec. 42(1)(g).
- The Plans and/or contracts must require attorneys to advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless to do otherwise is in the client's best interest and require indigent defense providers to make all reasonable efforts to meet with each client within the first seven days following the assignment of the case, as well as every 30 days thereafter, unless there are no significant updates in the client's case. Reg. Sec. 29(2).
- State a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest. Reg. Sec. 42(1)(h).

- A. To ensure that the ability, training, and experience of a Contractor Attorney in a matter matches the complexity of a case, a Contractor Attorney must demonstrate compliance with the standards and regulations of the Board of Indigent Defense

Services pertaining to training, education, and qualifications. A Contractor Attorney may only practice in the areas of indigent defense for which the Contracting Attorney is qualified by the Department of Indigent Defense Services.

- B. The Contractor agrees to provide representational services in the following categories of cases. (The Contractor must identify the attorney(s) who will perform legal representation in each category of case covered by the contract.)

Misdemeanor Proceedings:

---

Category B offense for which the maximum penalty is less than 10 years, C, D, E felony or Gross Misdemeanor proceedings:

---

Category B offenses for which the maximum penalty is 10 years or more.

---

Non-capital category A offenses, to be paid the statutory hourly rate in accordance with NRS 7.125.

---

Capital cases, to be paid the statutory hourly rate in accordance with NRS 7.125

---

Appeals

---

Capital Appeals

---

Juvenile Delinquency and In Need of Supervision Proceedings

---

- C. Failure on the part of the Contractor Attorney to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.
- D. The Contractor agrees to staff its cases according to the following provisions:
- a. As set forth in the County's Plan for the Provision of Indigent Defense Services, the Contractor may receive assistance from associate attorneys, mentees, or other approved attorneys in carrying out his/her responsibilities however, the Contractor shall ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative or other tasks which do not affect the rights of the defendant may be delegated.
  - b. The Contractor agrees to comply with the County's Plan for the Provision of Indigent Defense Services and the Regulations, including Section 29 and 39.
  - c. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. 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 Standard for Criminal Justice in order to determine the existence and appropriate resolution of conflicts. If a conflict is determined to exist, counsel will promptly file a Motion to Withdraw with the Court pursuant to NRS 7.115 or follow the procedure for handling conflicts of interest provided in the plan for provision of indigent defense services.
  - d. It is agreed that the Contractor will participate in any Department workload study to determine an appropriate caseload. Prior to the completion of a workload study, the Contractor shall reasonably comply with the workload guidelines as determined by the Board of Indigent Defense Services.
  - e. The Contractor may use legal interns. If legal interns are used, they will be used in accordance with Nevada Supreme Court Rule (hereinafter "SCR") 49.5.
  - f. The Contractor agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all its staff.

- g. The Contractor agrees to conduct an independent investigation of the charges as promptly as practicable and, if appropriate, retain an investigator to assist with the defense of the client as set forth in the County's Plan for the Provision of Indigent Defense Services.
- h. If the Contractor is to be responsible for representing defendants in capital litigation, the following provisions apply: Appointment of attorneys to represent defendants charged in capital cases shall comport with SCR 250 and ADKT 0411. Two lawyers must be appointed as soon as possible in all open murder cases which are reasonably believed to result in a capital charge. Capital cases typically require the full-time equivalent of one investigator and mitigation specialist. See ADKT 0411, Standard 2-1.
- i. The Contractor will provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable regulations, laws, Rules of Professional Conduct, and the Nevada Indigent Defense Standards of Performance adopted by the October 16, 2009 and Nevada Supreme Court Order in Administrative Docket 411.

#### **E. Significant Changes.**

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Contractor's responsibility within the terms of this Contract. Any request by the courts/appointing authority for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the Contractor and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

### **VI. ATTORNEY TRAINING**

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. Attorneys providing indigent defense services shall annually complete a minimum of five (5) hours of CLE courses relevant to the areas of indigent defense services in which they practice.

### **VII. ATTORNEY EVALUATION**

Oversight of the Contracting Authority and Contractor in matters such as interpretation of indigent defense standards, recommendation of compensation and reasonable caseloads, and response to community and client concerns, shall be provided by the Contracting authority and Department of Indigent Defense Services [hereinafter "the Department"] as set forth in NRS 180.400, et. seq.

In conducting the review, the Department may obtain information from a variety of sources including client feedback, client surveys, other providers of indigent defense services, office staff, judicial personnel, observation of a deputy director of the Department, and statistical data provided to the Department pertaining to attorney workload. The Contractor will ensure that any client-surveys authorized by the Board are provided to clients at the conclusion of the representation.

## VIII. COMPENSATION AND METHOD OF PAYMENT

The terms of the contract must:

- Specify how investigative services, expert witnesses, and other case-related expenses that are reasonably necessary to provide competent representation will be made in accordance with applicable regulations and laws. Reg. Sec. 42(1)(i).
- Provide compensation at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and considers overhead, expenses, and costs relating to significant attorney travel. Reg. Sec. 42 (j).

- A. Compensation will be provided at a reasonable hourly rate that is comparable to the hourly rate provided to local prosecutors with similar experience and considers overhead, expenses, and costs relating to significant attorney travel. Reg. Sec. 42(1)(j). (See Exhibit A, if appropriate).
- B. For the term of this contract, the Contracting Authority shall pay the Contractor a rate of \$\_\_\_\_\_ (\_\_\_\_\_ hours times \$\_\_\_\_\_ per hour) for work performed, excepting capital cases and cases in which the most serious charge may be punished by life imprisonment. Payments will be made on a monthly basis.
- C. Capital and Life Cases: Capital cases or cases where the most serious crime is punishable by life imprisonment, with or without the possibility of parole, shall be paid the appropriate statutory hourly rate. *Id.* Workloads under this contract should be adjusted in accordance with the Board's regulation pertaining to attorney workloads when the Contractor undertakes a capital case or case where the most serious crime is punishable by life imprisonment. The Contractor and Contracting Authority may agree to a reduction in other cases in lieu of additional compensation for capital or life cases.

- D. Additional Compensation: The Contractor may seek additional compensation where the attorney/legal assistant/ support staff hours exceed the hours specified in this agreement. Requests for additional compensation must be submitted as set forth in the County's Model Plan for the Provision of Indigent Defense Services.
- E. Other Litigation Expenses: The defendant has the right to proper investigation of his/her case and for the appointment of expert witnesses when necessary for the reasonable defense of his/her case. Requests for other litigation expenses shall be submitted/paid as set forth in the County's Plan for the Provision of Indigent Defense Services.
- F. In the event of Contractor failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination of this Contract.

#### **IX. REQUEST FOR CONTRACT MODIFICATIONS**

The Contractor may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Contractor finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Contractor budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such a request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Contractor within 30 days of the finding of the request that the supplemental funds shall not be available.

#### **X. REPORTS AND INSPECTIONS**

This Contractor agrees to comply with the County's Plan for the Provision of Indigent Defense Services and cooperate with the Department as set forth in Reg. Sec. 44-47. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures.

#### **XI. ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Contractor agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Contractor on each case.



- B. The Contractor agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Contractor for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Contractor shall prepare an annual financial statement relating to this Contract and shall provide the Contracting Authority with a copy no later than the last working day in March for inclusion in the County's May 1 Annual Report to the Department pursuant to NRS 260.070. The Contractor agrees to comply with any audit that the Contracting Authority wants to perform.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

## **XII. HOLD HARMLESS AND INDEMNIFICATION**

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Contractor to Contractor employees or others by reason of the Contract. The Contractor shall protect, indemnify, and save harmless the Contracting Authority, the Department, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, offering or resulting from Contractor's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.
- B. The Contractor agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Contractor, its officers, employees, representatives or agents.

## **XIII. INSURANCE**

Without limiting the Contractor's indemnification, it is agreed that the Contractor shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

### **A. General Liability Insurance**

The Contractor shall maintain continuously public liability insurance with limits of liability not less than: \$\_\_\_\_\_ for each person, personal injury, \$\_\_\_\_\_ for each

occurrence, property damage, liability, or a combined single limit of \$\_\_\_\_\_ for each occurrence, personal injury and/or property damage liability.

**B. Professional Liability Insurance**

The Contractor shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Contractor which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than \$\_\_\_\_\_ combined single limit per claim/aggregate. The Contractor further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Contractor shall not be required to make any payments for professional liability if such liability is occasioned by the sole negligence of the Contracting Authority. The Contractor shall not be required to make payments other than its judicially determined percentage, of any professional liability which is determined by a court of competent jurisdiction to be the result of a comparative negligence of the Contractor and the Contract Authority.

Such insurance shall not be reduced or canceled without 30 days prior written notice to the Contracting Authority. The Contractor shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

**C. Automobile Insurance**

The Contractor shall maintain in force at all times during the performance of this contract a policy or policies of insurance covering any automobiles owned, leased, hired, borrowed or used by any employee, agent, subcontractor or designee of the Contractor to transport clients of the Contractor.

Such insurance policy or policies shall specifically name the Contracting Authority as an additional insured. Said insurance coverage shall be primary insurance with respect to the Contracting Authority, and any insurance, regardless of the form, maintained by the Contracting Authority shall be excess of any insurance coverage which the Contractor is required to maintain pursuant to this contract.

Automobile liability as stated herein shall be maintained at \$\_\_\_\_\_ combined single limit per accident for bodily injury and property damage.

**D. Workers' Compensation**

The Contractor shall maintain Workers' Compensation coverage as required by the state of Nevada. The Contractor shall provide a certificate of insurance or, upon written request of the Contracting Authority, a certified copy of the policy as evidence of insurance protection.

**XIV. EVALUATION GUIDELINES**

The Contracting Authority and/or the Department will review information obtained from the Contractor to monitor Contractor activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

**XV. CORRECTIVE ACTION**

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective actions, the following sequential procedure shall apply:

A. The Contracting Authority will notify the Contractor and the Department in writing of the nature of the breach.

B. The Contractor shall respond to the Contracting Authority and the Department in writing within five (5) working days of its receipt of such notification. The response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.

C. The Contracting Authority will notify the Contractor and the Department in writing of the Contracting Authority's determination as to the sufficiency of the Contractor's corrective measures. The determination of the sufficiency of the Contractor's corrective measures will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective measures in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole.

D. The Department may assist in the resolution of any material breach and provide ameliorative advice to the Contractor.

In the event that the Contractor does not respond to the Contracting Authority's notification within the appropriate time, or the Contractor's corrective measures for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part.

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Contractor which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken of completed.

## **XVI. TERMINATION AND SUSPENSION**

The contract must “specify the terms of the contract, including duration, any provision for renewal, and a provision for terminating the contract by either party.” Reg. Sec. 42(1)(b).

A. The Contracting Authority may terminate this Contract in whole or in part upon 10 days’ written notice to the Contractor in the event that:

1. The Contractor substantially breaches any duty, obligation, or services required pursuant to this Contract;
2. The Contractor engages in misappropriation of funds; or
3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract, the Contracting Authority shall provide the Contractor written notice of termination, which shall include the reasons for termination and the effective date of termination. The Contractor shall have the opportunity to submit a written response to the Contracting Authority within 10 working days from the date of the Contracting Authority’s notice. If the Contractor elects to submit a written response, the Department will review the response and make a determination within 10 days after receipt of the Contractor’s response. In the event the Department affirms termination, the Contract shall terminate in 10 days from the date of the final decision of the Department. The Contract will remain in full force pending communication of the Department to the Contractor. A decision by the Department affirming termination shall become effective 10 days after it is communicated to the Contractor. If the Department does not affirm the decision to terminate the contract in light of the Contractor’s response, the Department shall submit a written basis for the decision to the Contract Authority and Contractor within 10 days.

B. The Contractor reserves the right to terminate this Contract with cause with 30 days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Contractor terminates this Contract for reason other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Contractor shall be liable for damages, including the excess costs of the procurement of similar service from another source, unless it is determined by the Department that (i) no default actually occurred, or (ii) the failure to perform was without the Contractor’s control, fault or negligence.

C. In the event of termination or suspension of this Contract, the Contractor shall, if requested by the Contracting Authority, continue to represent clients that were previously assigned, unless the Contractor is prohibited from doing so by law, conflict of interest or the Rules of Professional Responsibility. If, in accordance with this section the Contractor continues to represent a client or clients previously assigned, the Contracting Authority will be liable for any payments owed Contractor for the completion of that work. The Contractor will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Department may request that the Contractor attempt to withdraw from any case assigned and not completed. Should a court require, after the Contractor has attempted to withdraw, the appearance by the Contractor where such representation is no longer the obligation of the Contractor pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Contractor upon judicial verification that continued representation is required.

D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Contractor shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Contractor by the Contracting Authority.

E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.

F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees.

## **XVII. ASSIGNMENT/SUBCONTRACTING**

The Contractor shall not assign or subcontract any portion of this Contract without notice to the Contracting Authority and consent from the Contracting Authority. Any consent sought must be requested by the Contractor in writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal services contracts with individuals to perform work under the direct supervision and control of the Contractor. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience and reporting requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.

The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under that Contract to clients of the Contractor.

The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but not limited to counseling service, consulting services, social work services, investigator services and legal services.

#### **XVIII. RENEGOTIATION**

Either party may request that the provision of this Contract be subject to renegotiation. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

#### **XIX. ATTORNEYS' FEES**

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

#### **XX. NOTICES**

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be in writing and directed to the Chief Executive Officer of the Contractor and the director/manager of the Contracting Authority specified on page one (1) of this contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

#### **XXI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT**

These parties agree that this Contract is the complete expression of the terms hereto and any oral representation of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

#### **XXII. NONDISCRIMINATION**

During the performance of this Contract, neither the Contractor nor any party subcontracting with the Contractor under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment

or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Contractor shall comply fully with applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibits such discrimination.

### **XXIII. CONFLICT OF INTEREST**

#### **A. Interest of Members of Contracting Authority and Contractor**

No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any function or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Contractor.

#### **B. Interests of Contractor Directors, Officers, and Employees**

The following expenditures of Contract funds shall be considered conflict of interest expenditures and prima facie evidence of misappropriation of Contract funds without prior disclosure and approval by the Department: employment of an individual, either as an employee of the Contractor or as an independent consultant, who is either: (a) related to a director of the Contractor; (b) employed by a corporation owned by a director of the Contractor, or relative of a director of the Contractor. This provision shall not apply when the total salary is paid to the individual pursuant to his employment agreement or employment contract would be less than \$1500 per annum.

Agreed:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Contracting Authority

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### **Worksheet A**

The Contractor agrees to accept the following cases from the Contracting Authority for the duration of this Contract for the rates show, subject to the terms of this Agreement:

<b><u>Case Type</u></b>	<b><u>Annual Caseload</u></b>	<b><u>Monthly Caseload</u></b>	<b><u>Payment</u></b>
<b>Adult Felony</b>			
<b>Adult Misdemeanor</b>			
<b>Juvenile Offender</b>			
<b>Juvenile Dependency</b>			
<b>Civil Commitment</b>			
<b>Misdemeanor Appeal</b>			
<b>[Specialty Courts; Other]</b>			
<b><u>Total:</u></b>			

The Contractor agrees to provide the following other services for the Contracting Authority for the rate shown, subject to the terms of this agreement:

<b><u>Service</u></b>	<b><u>Payment</u></b>
<b>Complex Litigation</b>	
<b>24 Hour Advisory Service</b>	
<b>In Custody Arraignments</b>	
<b>[Other]</b>	
<b><u>Total:</u></b>	



**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**July 1, 2021**

**APPENDIX C**  
**CLIENT SURVEY**

## **Nevada Department of Indigent Defense Services**

### **DIDS Client Satisfaction Survey Cover Letter**

The Nevada Department of Indigent Defense Services (DIDS) provides Nevada counties with assistance in delivering constitutionally protected defense services to indigent defendants. To ensure that public defenders are providing optimal representation to clients across Nevada, it is beneficial to gauge the satisfaction of clients who are provided with indigent defense services. Consequently, DIDS has partnered with Soval Solutions to develop the DIDS Client Satisfaction Survey.

As with any client-facing organization, accurately measuring client satisfaction will help agencies identify potential areas of improvement in delivering services to clients. To accurately measure client satisfaction through a survey or questionnaire, it is important to carefully consider how questions are worded, and whether questions in fact target client attitudes about concepts of interest. Once the survey is properly developed, the next important consideration is the administration of the survey. Finally, an analytic strategy is needed to properly analyze the data collected from the surveys.

#### **Survey Development**

There are multiple strategies an agency might pursue in developing a satisfaction survey of this nature. First, developing a survey in-house using facially valid questions is a cost-effective way to potentially measure client satisfaction. However, the limitation of this approach lies in the fact that survey development requires expertise to ensure that one is accurately measuring concepts and constructs of interest. Most public defender offices or equivalent offices lack this in-house expertise.

An alternative to developing a novel survey instrument is utilizing an already-existing survey that has been previously utilized by outside agencies. Doing so may provide greater confidence that the survey tool has been vetted and that it measures concepts of interest. An agency such as DIDS might choose to simply apply a survey developed by an analogous agency in another jurisdiction, or it might choose to adapt the survey for its own use. While this approach may increase confidence that survey questions more accurately measure constructs of interest, it does not guarantee that the survey tool in use by another jurisdiction has been properly validated against objective criteria, or that it has been thoroughly reviewed by experts in the field.

Using a survey instrument that has been peer-reviewed and validated offers the greatest chance that the survey will accurately measure the constructs of interest, and that responses to the survey will correlate with objective criteria. With this consideration in mind, we recommend relying upon a set of client satisfaction questions that has appeared in a peer-reviewed academic journal. In particular, we recommend including 10 questions from the article by Campbell, Moore, Maier, and Gaffney (2015).<sup>1</sup>

The questions put forth by Campbell et al. (2015) cover the conceptual areas of: satisfaction with attorney (one question); clients feel listened to (participation/voice; three questions); attorneys are investigating clients' cases (two questions); time is used efficiently (two questions); and attorneys

---

<sup>1</sup> Campbell, C., Moore, J., Maier, W., & Gaffney, M. (2015). Unnoticed, untapped, and underappreciated: Clients' perceptions of their public defenders. *Behavioral Sciences and the Law*, 33, 751-770.

explain all possible outcomes to clients (two questions). An analysis of the data show that each of the nine non-satisfaction questions is correlated with satisfaction with the defendants' attorneys. This provides confidence that the questions are associated with defendants' satisfaction with their court appointed attorneys.

An added benefit of this set of questions is that it is relatively short. There are several other peer-reviewed (and non-peer reviewed) instruments that assess client satisfaction with attorneys. However, many of these instruments contain upwards of 25 or 30 questions. Surveys of such length risk leading to "survey fatigue" whereby survey respondents do not complete the entire survey, "satisfice" responses by selecting the same response to every question, or even fail to begin the survey when they see its length. The ten questions found in Campbell et al. (2015), therefore provide a relatively brief assessment of client survey with a low risk of response fatigue. A complete draft of the survey is included on pages 4 and 5 of this document.

### **Survey Administration**

The Nevada DIDS Satisfaction Survey will be distributed in two ways. First, postage-paid paper copies will be made available to clients via public defenders' offices and contract attorneys. The satisfaction survey will be provided to clients to complete once their case has been disposed and are no longer in need of assistance from their attorney. For clients who are serving jail terms, a copy of the survey will be delivered to them in the jail. Clients can complete the survey and simply drop it in the mail. Second, an electronic version of the survey will be made available to clients. The electronic survey will be developed by Legal Server, the same company that has developed the case management software to be used by DIDS and select county offices. Once a client's case has been disposed, he or she can receive an invitation via text message or email to complete the survey online. The survey results will be stored on Legal Server databases and will be linked to the client records related to that case. DIDS may want to consider translating the survey into Spanish to make it more accessible to the broader population of clients.

### **Analytic Strategy**

To utilize the results of the Satisfaction Survey to inform decision-making at the organizational level, it is important to take the proper steps to score and analyze the survey. Doing so will allow DIDS to identify specific areas in which clients communicate dissatisfaction with services, and will allow DIDS to take corrective action at the individual or organizational level. Below is some guidance on how to score and analyze the DIDS Satisfaction Survey.

**Scoring.** To quantitatively analyze the data from the DIDS Satisfaction Survey it is necessary to first convert categorical responses to numeric values. For example, on Question 3 of the survey: "Were you in custody when you first met with your attorney?", it is appropriate to score a "Yes" response a "1", and score a "No" response a "0". The same approach should be taken for other "Yes/No" questions, as well as Questions 4, 17, and 18.

For Questions 6 through 15, responses should be re-scored on a 1-5 scale. That is, a response of "Strongly Disagree" should be scored a "1", and a response of "Strongly Agree" should be scored a "5". Similarly, Question 16 should be scored such that a response of "Very Unfair" should be scored a "1", and a response of "Very Fair" should be scored a "5". Questions 6 through 16 are worded in such a way,

that higher response values on these questions represent higher levels of agreement that attorneys are effectively representing clients.

***Descriptive Statistics.*** Questions 6 to 16 represent the key evaluative questions of the survey. These questions will allow DIDS to evaluate the extent to which clients agree that they are being effectively represented by their public defender, are satisfied with their public defender, and view the outcome of their case as fair. By converting responses to these questions to numeric values as described above, it is possible to conduct a quantitative analysis of these questions. In particular, mean scores (and standard deviations) can be computed on each of these questions. This will allow DIDS to see those questions on which clients score attorneys relatively high or low, and allow for comparisons across questions.

***Comparison of Mean Scores.*** The quantification of responses allows for a wide range of comparisons to be made. For example, after a sufficient number of Satisfaction Surveys have been collected, DIDS can compare responses to Question 6 across age categories, across attorneys, or even across offices/counties. A t-test or analysis of variance (ANOVA) can be utilized to make these comparisons. These statistical tests provide mean scores for various groups (e.g., compare mean scores on Question 6 across those under 30 versus those over 30), as well as a statistical test to determine whether such differences are statistically significant. Such a test can provide DIDS with an understanding of whether different groups of clients view their interactions with public defenders differently. Once again, corrective actions can be taken if differences are found.

***Correlation Analysis.*** The final analytic strategy recommended here is a correlation analysis. Correlation is a statistical technique used to describe the relationship between two variables. The correlation coefficient will range between a score of -1 (a perfect negative relationship) and 1 (a perfect positive relationship). A correlation coefficient of 0 indicates that there is no relationship between two variables.

To provide an example, it is likely that there will be a high level of correlation between one's agreement that "My attorney asked for my opinion on issues regarding my case", and "My attorney listened carefully to what I said". Upon collecting a sufficient number of surveys, and after converting variables to numeric scores, a Pearson Correlation can be computed to assess the positive relationship between these two variables. Often, public opinion researchers will conduct large correlational analysis of many relevant variables included in a dataset. This approach can yield a large correlation matrix that allows researchers to see patterns in the relationships between many variables at one time. It is important to keep in mind the Pearson Correlation is appropriate with scaled variables such as Questions 6 through 16 on the Satisfaction Survey. If scaled questions are correlated with categorical variables (e.g., Yes/No questions or binary variables related to race/ethnicity/gender), Point Biserial Correlations are more appropriate. In many statistical packages, Person Correlations and Point Biserial Correlations are executed in the same way. The interpretation of the output will differ slightly, however.

## Nevada Department of Indigent Defense Services Satisfaction Survey

The Nevada Department of Indigent Defense Services wants to learn more about your experiences with your appointed public defender. The responses you give to the survey will be confidential and will not be shared with your attorney or anyone else. The results will help us improve representation for indigent defendants in Nevada. Please fill in the blank or circle your response.

1. What was the name of your appointed attorney? (paper version only)  
Name: \_\_\_\_\_

2. After your arrest, how many days was it until you saw your attorney?  
\_\_\_\_\_ Days

3. Were you in custody when you first met with your attorney?  
Yes                      No

4. How was your case resolved?  
Plea      Trial      Case was Dismissed      Other

Describe Other: \_\_\_\_\_  
\_\_\_\_\_

5. Are you currently incarcerated?  
Yes                      No

We would now like to ask you some questions about your satisfaction with your attorney. Please circle whether you agree or disagree with the following statements.

6. My attorney wanted to know all of the details of my case.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

7. My attorney asked for my opinion on issues regarding my case.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

8. My attorney listened carefully to what I said.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

9. My attorney investigated my case.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

10. My attorney looked into the prosecutor's evidence.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

11. Every time my attorney met with me, we focused on my case.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

12. My attorney always used our meeting time efficiently.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

13. My attorney told me about everything that could happen with my case.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

14. My attorney explained what the consequences were for each possible outcome of my case.  
Strongly Agree      Agree      Neutral      Disagree      Strongly Disagree

15. Overall, I am satisfied with the way my attorney handled my case.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
-------------------	-------	---------	----------	----------------------

16. How fair or unfair was the outcome of your case?

Very Fair	Fair	Neutral	Unfair	Very Unfair
--------------	------	---------	--------	----------------

Finally, we would like to know some information about you.

17. I would identify my gender as: (paper version only)

Female	Male	Other
--------	------	-------

18. I would describe my race as: (paper version only)

African American/ Black	Asian or Pacific Islander	American Indian or Native American	Caucasian/ White	Other (please specify below)
-------------------------------	---------------------------------	---	---------------------	---------------------------------------

19. Are you of Hispanic/Latino origin? (paper version only)

Yes	No
-----	----

20. What is your age? (paper version only)

\_\_\_\_\_

Please note that The Department of Indigent Defense has established a separate form for submitting recommendations or complaints to the Board of Indigent Defense. The Complaints or Recommendations may be submitted anonymously here:

[https://hal.nv.gov/form/DIDs/Complaint or Recommendation Form](https://hal.nv.gov/form/DIDs/Complaint_or_Recommendation_Form)

When completed, please fold along the black line, allowing the mailing address to show. Tape or staple the top edge of the postcard and place in the mail.

CLERK OF COURT

Indigent Department of  
Defense Services

No Postage Needed if  
WI US

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**July 1, 2021**

**APPENDIX D**  
**COUNTY PLAN TEMPLATE**

# **Plan for the Provision of Indigent Defense Services Template**

1. The Plan for Provision of Indigent Defense Services Template (“Template”) is meant to be a guide. The Template provides the overall structure and identifies the sections that must be included in a county plan. Instructions within each section provide guidance as to the topics that must be covered within a section. Finally, the box at the end of each section provides specific reference to applicable statutes, regulations, and other guidance that will be useful in completing the sections.
2. Attached as **Appendix A** are copies of the Ninth Circuit’s *Model Plan for Implementation and Administration of the Criminal Justice Act* and the *Nevada Supreme Court Model Plan for the Provision of Appointed Counsel for Urban Courts in Nevada*. Both are intended to be examples only. Based upon existing temporary regulations, the content of one or both examples will be different from each county’s plan for the provision of indigent defense services. As counties develop their plans, the contents of Appendix A will be updated to reflect plans specific to non-urban counties.
3. The Department of Indigent Defense Services will assist counties in creating plans for the provision of indigent defense services. Although the Department will conduct individual outreach to county leadership, please do not hesitate to call, write, or email to schedule assistance.

Department of Indigent Defense Services  
896 West Nye Lane, Suite 202  
Carson City, Nevada 89703  
(775) 687-8490

[didscontact@dids.nv.gov](mailto:didscontact@dids.nv.gov)

Marcie Ryba, Executive Director: [mryba@dids.nv.gov](mailto:mryba@dids.nv.gov)  
Jarrod Hickman, Deputy Director: [jarrod.hickman@dids.nv.gov](mailto:jarrod.hickman@dids.nv.gov)  
Patrick McGinnis, Deputy Director: [pmcginnis@dids.nv.gov](mailto:pmcginnis@dids.nv.gov)



# **Plan for the Provision of Indigent Defense Services Template**

## **I. STATEMENT OF POLICY**

*Instructions.* Provide the objective of the county's plan for the provision of indigent defense services.

*Applicable Statute(s):* NRS 180.320(2)

*Applicable Regulation(s):* Sec. 23.

*Other Guidance:* In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT No. 411 (Model Plan for the Provision of Appointed Counsel For Urban Courts, filed June 24, 2008) (hereinafter "ADKT No. 411 (Model Plan)").

## **II. DEFINITIONS**

## **III. PROVISIONS OF REPRESENTATION**

*Instructions.* This section should describe:

- A. The types of cases in which appointment of indigent defense providers is required.
- B. The types of cases in which appointment is discretionary.
- C. When appointed counsel shall be provided.
- D. The financial eligibility requirements for representation at public expense.
- E. How persons are screened for indigency.

*Applicable Statute(s):* NRS 178.397, NRS 178.3971, NRS 180.060, NRS 260.030, NRS 260.050.

*Applicable Regulation(s):* Sec. 8, Sec. 25.

*Other Guidance:* ADKT No. 411 (Model Plan); ADKT No. 411 (Order, January 4, 2008) (providing the standard for determining indigency); SCR 250 (number and qualification of counsel in capital cases); *Valdez-Jimenez v. Dist. Ct.*, 136 Nev. 155, 460 P.3d 976 (2020) (incarcerated defendant right to prompt, counseled, adversarial bail hearing); *Fairchild v. Warden*, 89 Nev. 524, 516 P.2d 106 (1973) (right to counsel at probation revocation); Stipulated Consent Judgment at 8, *Davis v. State*, No. 170C02271B (Nev. 1st J. Dist. Ct. Aug. 20, 2020).

#### **IV. APPOINTMENT OF PUBLIC DEFENDER**

*Instructions.* If the county uses an institutional public defender office or offices, this section should be used. Otherwise, it may be omitted. Provisions within this section should include:

- A. A requirement that the office(s) conduct a timely conflict of interest check upon appointment and the procedure for apprising the court and re-assigning the case.
- B. A description of how cases are assigned within the public defender office(s).
- C. A description of how the public defender office's case-related expenses are provided.
- D. A description of resources and accommodations for confidential client communications.
- E. This section should also include an explanation for how the Department of Indigent Defense Services Complaint and Recommendation process made available to clients and the office's internal procedures for receipt and review of complaints, if any.

**OPTIONAL** If a county chooses to use the State Public Defender for a limited service, such as death penalty cases and/or direct appeals, this section should also include a provision that elects the specified service(s) and the procedure for transferring the matter.

*Applicable statute(s):* NRS 7.115; NRS 171.188(3)

*Applicable regulation(s):* Sec. 21, Sec. 23, Sec. 25, Sec. 26, Sec. 27

*Other Guidance:* ADKT No. 411 (Model Plan)

#### **V. APPOINTMENT OF PRIVATE ATTORNEYS**

*Instructions:* Where a county uses independent contractor attorneys and/or panels of private attorneys to provide indigent defense services, this section will be used. This section should include:

- A. The county's process for hiring independent contractor attorneys and/or panels of appointed attorneys. If selection committees are used, this section should include the composition of the committee.
- B. A description of how cases are assigned to independent contractor and/or panel attorneys with matching qualifications. A county may require that the attorney(s) be qualified for all case types or may choose to create specific lists by case type.
- C. Where appropriate, a section describing the compensation of independent contractor attorneys.

D. A requirement that the assigned attorney conduct a timely conflict of interest check upon assignment. The procedure should also include the process by which the court is notified of any conflict and the case re-assigned to conflict free counsel.

E. A section describing how the independent contractor and/or panel attorney's case-related expenses are provided.

F. A description of resources and accommodations for confidential client communications.

G. A section describing how the Department of Indigent Defense Service's Complaint and Recommendation process will be utilized and made available to indigent defendants represented by the county's indigent defense providers.

*Applicable Statute(s):* NRS 7.115 – 7.145, NRS 171.188(3)

*Applicable Regulation(s):* Sec. 23 – 27; Sec. 33 – 38; Sec. 42 – 43.

*Other Guidance:* ADKT No. 411 (Model Plan)

## **VI. TRAINING**

*Instructions.* This section should include the county's training requirements for indigent defense providers to ensure that counsel has reasonable knowledge of applicable law and rules, forensic and scientific issues, and technology commonly used in the legal community. This section may require participation in CLE and training programs or resources provided by the Department of Indigent Defense Services.

*Applicable Regulation(s):* Sec. 39; Sec. 42

*Other Guidance:* ADKT No. 411 (Model Plan); ADKT No. 411 (Nevada Indigent Defense Standards of Performance, Order Oct. 16, 2008).

## **VII. DUTIES OF INDIGENT DEFENSE COUNSEL**

*Instructions.* This section will include:

A. Standards of Performance. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel privately employed by a person. Representation shall be provided in a professional, skilled manner guided by applicable regulations; laws; 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. Additionally, attorneys must advise all clients not to waive any substantive rights or plead guilty at the initial appearance, unless doing so is the client's best interest. Attorneys must make all reasonable efforts to meet with the client within seven days following the assignment of the case and every 30 days thereafter unless there are no significant updates in the client's matter.

B. **Continuity in Representation.** The provider must ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative and other tasks which do not affect the rights of the defendant may be delegated.

C. **Workload Standard.** The workload of an attorney 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. This section will also provide the maximum workload guidelines as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.

D. **No Receipt of Other Payment.** Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment unless such payment is approved by order of the court.

E. **Private Practice of Law.** This section should also provide whether the county public defender, independent contract attorney, and/or panel of appointed attorneys may also engage in the private practice of law.

F. **Use of Client Surveys.** This section should also provide how client surveys authorized by the Board are provided to clients at the conclusion of his or her representation by an attorney and returned to the Department.

*Applicable Statutes:* NRS 180.010, NRS 260.040

*Applicable Regulation(s):* Sec. 28 – 29; Sec. 42; Sec. 44t- 47

*Other Guidance:* ADKT No. 411 (Model Plan); ADKT No. 411 (Nevada Indigent Defense Standards of Performance, Order October 16, 2008); Stipulated Consent Judgment at 14, 16-17, *Davis v. State*, No. 170C02271B (Nev. 1st J. Dist. Ct. Aug. 20, 2020).

## **VIII. APPOINTED COUNSEL ADMINISTRATOR**

*Instructions:* If a county chooses to utilize an appointed counsel administrator to administer contract or panels of appointed attorneys, this section should be included to describe how the administrator is selected in accordance with the regulations. Additionally, the section should describe the specific duties of the position.

*Applicable Regulation(s):* Sec. 24 – 25, 27.

*Other Guidance:* ADKT No. 411 (Model Plan); ADKT No. 411 (Clark County Administrative Plan for Appointment of Counsel, filed April 30, 2008); ADKT No. 411 (The Second Judicial District Court– Indigent Defense Report, filed May 5, 2008).

## **IX. EFFECTIVE DATE**

*Instructions:* Include the effective date of the county plan for the provision of indigent defense services. A county's plan is due May 1 of each year and is for the next fiscal year. NRS 260.070(2).

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**July 1, 2021**

APPENDIX E

AB 480 (2021)

CHAPTER.....

AN ACT relating to criminal defense; revising various provisions relating to the appointment of attorneys; removing limitations on fees earned by certain attorneys; revising provisions relating to claims for compensation and expenses made by certain attorneys; creating the Special Account for the Support of Indigent Defense Services; revising certain deadlines for requirements placed on boards of county commissioners relating to the transfer of responsibility for the provision of indigent defense services to the State Public Defender; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law prohibits a magistrate, master or district court from appointing an attorney other than a public defender to represent a person charged with any offense or delinquent act unless the magistrate, master or district court finds that the public defender is disqualified from providing representation and explains the reasons for the disqualification. (NRS 7.115) Section 5 of this bill provides that if the public defender is disqualified, the magistrate, master or district court is required to refer the selection of the attorney: (1) in a county whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties), to the Department of Indigent Defense Services (hereinafter "Department") or its designee in compliance with the plan of the county for the provision of indigent defense services; or (2) in a county whose population is 100,000 or more (currently Clark and Washoe Counties), in compliance with the plan of the county for the provision of indigent defense services. Sections 11 and 17 of this bill, respectively, make similar changes in cases where: (1) a county public defender or the State Public Defender is unable to represent an indigent defendant or other good cause appears; and (2) a magistrate or district court decides to appoint an attorney other than or in addition to a county public defender for an indigent person.

Existing law provides, in general, that an attorney other than a public defender who is appointed to represent or defend a person during any stage of a criminal proceeding is entitled to receive certain fees for his or her services. Existing law also places limits on the amount of the fee that such an attorney is able to receive but allows a court to grant a fee in excess of such limits in certain circumstances. (NRS 7.125) Section 6 of this bill removes such limits. Existing law further authorizes such an attorney to be reimbursed for certain expenses and employ persons to provide necessary investigative, expert or other services but places a limit on the compensation paid to any person providing those services. (NRS 7.135) Section 7 of this bill provides that an attorney may be reimbursed for such expenses and employ such persons: (1) in a county whose population is less than 100,000, subject to the prior approval of the Department or its designee and in compliance with the plan of the county for the provision of indigent defense services; or (2) in a county whose population is 100,000 or more, in compliance with the plan of the county for the provision of indigent defense services. Section 7 also provides that a claim for compensation and expenses may be certified and approved by a judge if the claim is denied. Existing law further requires a claim for compensation and expenses to be submitted to a magistrate or district court, as



applicable, not later than 60 days after the appointment of the attorney is terminated. (NRS 7.145) Section 8 of this bill instead requires such a claim to be submitted within 60 days after representation is terminated: (1) in a county whose population is less than 100,000, to the Department or its designee in compliance with the plan of the county for the provision of indigent defense services; or (2) in a county whose population is 100,000 or more, in compliance with the plan of the county for the provision of indigent defense services. Section 8 also: (1) requires each claim to be reviewed and, if necessary, modified, and paid in compliance with the plan of the applicable county for the provision of indigent defense services; and (2) authorizes any dispute regarding the approval, denial or modification of a claim to be reviewed by the trial court.

Section 9 of this bill requires, in general, the juvenile court to order the appointment of an attorney for a child who is alleged to be delinquent or in need of supervision and refer the selection of the attorney in the manner set forth in section 5 in cases where the parent or guardian of the child does not retain an attorney for the child and is not likely to retain an attorney for the child. Existing law authorizes the juvenile court to appoint an attorney for a parent or guardian of such a child in certain circumstances and provides that each appointed attorney, other than a public defender, is entitled to the same compensation and expenses as attorneys appointed to represent persons charged with criminal offenses. (NRS 62D.100) Section 10 of this bill removes the exclusion of public defenders. Section 18 of this bill makes the same change with regard to attorneys appointed in cases relating to children alleged to have been abused or neglected.

Section 12 of this bill creates the Special Account for the Support of Indigent Defense Services. Section 12 authorizes the Department to apply for and accept any available grants, bequests, devises, donations or gifts from any public or private source to carry out the duties of the Department and the Board on Indigent Defense Services (hereinafter "Board") and requires the Department to deposit any money received in the Account.

Existing law establishes certain requirements for the board of county commissioners of a county that is required to transfer or voluntarily transfers responsibility for the provision of all indigent defense services for the county to the State Public Defender. (NRS 180.450) Section 14 of this bill revises certain deadlines relating to such requirements.

Existing law requires the Board to adopt certain regulations, including regulations establishing standards for the provision of indigent defense services. (NRS 180.320) Existing law also requires the compensation of the public defender of a county to be fixed by the board of county commissioners. (NRS 260.040) Section 15 of this bill requires that in counties whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties), the compensation of the public defender of a county must comply with the regulations adopted by the Board.

Existing law provides that in a county whose population is 700,000 or more (currently Clark County), deputy public defenders are governed by the merit personnel system of the county. (NRS 260.040) Section 15 provides that the compensation of such deputy public defenders is not subject to the regulations adopted by the Board.

Existing law provides that a person who is alleged to be a person in a mental health crisis, or any relative or friend on behalf of the person, is entitled to retain counsel to represent the person in proceedings relating to the involuntary court-ordered admission of the person to a mental health facility or program of community-based or outpatient services. If the person fails or refuses to obtain counsel, the court is required to appoint counsel, who may be the public defender or





a deputy of the public defender. (NRS 433A.270) **Section 19** of this bill removes the provision requiring that such appointed counsel be the public defender or his or her deputy.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

---

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 7 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2.** *As used in NRS 7.115 to 7.175, inclusive, and sections 2, 3 and 4 of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Department" means the Department of Indigent Defense Services created by NRS 180.400.*

**Sec. 4.** *"Selection" means the choosing of an attorney to provide representational services for a person.*

**Sec. 5.** NRS 7.115 is hereby amended to read as follows:

7.115 A magistrate, master or ~~{a}~~ district court shall not ~~{appoint}~~ *order the appointment of* an attorney other than a public defender to represent a person charged with any offense or delinquent act by petition, indictment or information unless the magistrate, master or district court makes a finding, entered into the record of the case, that the public defender is disqualified from furnishing the representation and sets forth the ~~{reason or}~~ reasons for the disqualification. *If the public defender is disqualified, the magistrate, master or district court shall, after making a finding of the disqualification on the record and the reasons therefor, refer the selection of the attorney:*

*1. In a county whose population is less than 100,000, to the Department or its designee in compliance with the plan of the county for the provision of indigent defense services; or*

*2. In a county whose population is 100,000 or more, in compliance with the plan of the county for the provision of indigent defense services.*

**Sec. 6.** NRS 7.125 is hereby amended to read as follows:

7.125 ~~{1. Except as limited by subsections 2, 3 and 4, an}~~ *An* attorney, other than a public defender, who is ~~{appointed by a magistrate or a district court}~~ *selected pursuant to NRS 7.115* to represent or defend a defendant at any stage of the criminal proceedings from the defendant's initial appearance before the magistrate or the district court through the appeal, if any, is entitled



to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made of \$125 per hour in cases in which the death penalty is sought and \$100 per hour in all other cases. Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, this ~~[subsection]~~ *section* does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.

~~{2. Except as otherwise provided in subsection 4, the total fee for each attorney in any matter regardless of the number of offenses charged or ancillary matters pursued must not exceed:~~

~~— (a) If the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole; \$20,000;~~

~~— (b) If the most serious crime is a felony other than a felony included in paragraph (a) or is a gross misdemeanor; \$2,500;~~

~~— (c) If the most serious crime is a misdemeanor; \$750;~~

~~— (d) For an appeal of one or more misdemeanor convictions; \$750; or~~

~~— (e) For an appeal of one or more gross misdemeanor or felony convictions; \$2,500.~~

~~— 3. Except as otherwise provided in subsection 4, an attorney appointed by a district court to represent an indigent petitioner for a writ of habeas corpus or other postconviction relief, if the petitioner is imprisoned pursuant to a judgment of conviction of a gross misdemeanor or felony, is entitled to be paid a fee not to exceed \$750.~~

~~— 4. If the appointing court because of:~~

~~— (a) The complexity of a case or the number of its factual or legal issues;~~

~~— (b) The severity of the offense;~~

~~— (c) The time necessary to provide an adequate defense; or~~

~~— (d) Other special circumstances,~~

~~deems it appropriate to grant a fee in excess of the applicable maximum, the payment must be made, but only if the court in which the representation was rendered certifies that the amount of the excess payment is both reasonable and necessary and the payment is approved by the presiding judge of the judicial district in which the attorney was appointed, or if there is no such presiding judge or if he or she presided over the court in which the representation was rendered, then by the district judge who holds seniority in years of service in office.~~



~~§. Step-one The Court may, sit, in the District  
appointed attorney for another attorney of the  
proceedings. It is the total of fees granted to an  
attorney must not exceed those allowed for that  
attorney represented or defended the defendant at all  
stages of the criminal proceeding.~~

Sec. 7. NRS 7.135 is hereby amended to read as follows:

7.135 {The}

1. ~~An attorney appointed by a magistrate or district court who  
is selected pursuant to NRS 7.115 to represent a defendant is  
entitled, in addition to the fee provided by NRS 7.125 for the  
attorney's services, to be reimbursed for expenses reasonably  
incurred by the attorney in representing the defendant and may  
employ {, subject to the prior approval of the magistrate or the  
district court in an ex parte application,} such investigative, expert  
or other services as may be necessary for an adequate defense {.  
Compensation to any person furnishing such investigative, expert or  
other services must not exceed \$500, exclusive of reimbursement  
for expenses reasonably incurred, unless payment in excess of that  
limit is:~~

~~1. Certified} :~~

*(a) In a county whose population is less than 100,000, subject  
to the prior approval of the Department or its designee and in  
compliance with the plan of the county for the provision of  
indigent defense services; or*

*(b) In a county whose population is 100,000 or more, in  
compliance with the plan of the county for the provision of  
indigent defense services.*

2. *If a claim for compensation and expenses made pursuant  
to subsection 1 is denied, the claim may be:*

*(a) Certified* by the trial judge of the court, or by the magistrate  
if the services were rendered in connection with a case disposed of  
entirely before the magistrate, as necessary to provide fair  
compensation for services of an unusual character or duration; and

{20} *(b) Approved* by the presiding judge of the judicial district  
in which the attorney was appointed or, if there is no presiding  
judge, by the district judge who holds seniority in years of service in  
office.

Sec. 8. NRS 7.145 is hereby amended to read as follows:

7.145 1. A claim for compensation and expenses made  
pursuant to NRS 7.125 or 7.135 must not be paid unless it is  
submitted within 60 days after the {appointment} representation is  
terminated {to:



~~—(a) The magistrate in cases in which the representation was rendered exclusively before the magistrate; and~~

~~—(b) The district court in all other cases.:~~

*(a) In a county whose population is less than 100,000, to the Department or its designee in compliance with the plan of the county for the provision of indigent defense services; or*

*(b) In a county whose population is 100,000 or more, in compliance with the plan of the county for the provision of indigent defense services.*

2. Each claim must be ~~{supported}~~ :

*(a) Supported by a sworn statement specifying the time expended in court, the services rendered out of court and the time expended therein, the expenses incurred while the case was pending and the compensation and reimbursement applied for or received in the same case from any other source. ~~{Except as otherwise provided for the approval of payments in excess of the statutory limit, the magistrate or the court to which the claim is submitted shall fix and certify the compensation and expenses to be paid, and the amounts so certified must be paid in accordance with NRS 7.155.}~~*

*(b) Reviewed and, if necessary, modified, and paid in compliance with the plan of the county for the provision of indigent defense services.*

3. *Any dispute regarding the approval, denial or modification of a claim may be reviewed by the trial court based upon reasonable and necessary standards.*

Sec. 9. NRS 62D.030 is hereby amended to read as follows:

62D.030 1. If a child is alleged to be delinquent or in need of supervision, the juvenile court shall advise the child and the parent or guardian of the child that the child is entitled to be represented by an attorney at all stages of the proceedings.

2. If a parent or guardian of a child is indigent, the parent or guardian may request the appointment of an attorney to represent the child pursuant to the provisions in NRS 171.188.

3. Except as otherwise provided in this section, the juvenile court shall ~~{appoint}~~ *order the appointment of* an attorney for a child ~~and refer the selection of the attorney in the manner set forth in NRS 7.115~~ if the parent or guardian of the child does not retain an attorney for the child and is not likely to retain an attorney for the child.

4. A child may waive the right to be represented by an attorney if:

(a) A petition is not filed and the child is placed under informal supervision pursuant to NRS 62C.200; or



(b) A petition is filed and the record of the juvenile court shows that the waiver of the right to be represented by an attorney is made knowingly, intelligently, voluntarily and in accordance with any applicable standards established by the juvenile court.

5. Except as otherwise provided in NRS 424.085, if the juvenile court ~~{appoints}~~ ***orders the appointment of*** an attorney to represent a child ~~{,}~~ ***and refers the selection of the attorney in the manner set forth in NRS 7.115,*** the parent or guardian must not be required to pay the fees and expenses of the attorney.

6. Each attorney, other than a public defender, who is appointed under the provisions of this section is entitled to the same compensation and expenses from the county as is provided in NRS 7.125 and 7.135 for attorneys appointed to represent persons charged with criminal offenses.

**Sec. 10.** NRS 62D.100 is hereby amended to read as follows:

62D.100 1. A parent or guardian of a child who is alleged to be delinquent or in need of supervision may be represented by an attorney at all stages of the proceedings. The juvenile court may not appoint an attorney for a parent or guardian, unless the juvenile court:

(a) Finds that such an appointment is required in the interests of justice; and

(b) Specifies in the record the reasons for the appointment.

2. Each attorney ~~{, other than a public defender,}~~ who is appointed pursuant to subsection 1 is entitled to the same compensation and expenses from the county as is provided in NRS 7.125 and 7.135 for attorneys appointed to represent persons charged with criminal offenses.

**Sec. 11.** NRS 171.188 is hereby amended to read as follows:

171.188 1. Any defendant charged with a public offense who is an indigent may, by oral statement to the district judge, justice of the peace, municipal judge or master, request the appointment of an attorney to represent the defendant. The record in each such case must indicate that the defendant was provided an opportunity to make an oral statement and whether the defendant made such a statement or declined to request the appointment of an attorney. If the defendant declined to request the appointment of an attorney, the record must also indicate that the decision to decline was made knowingly and voluntarily and with an understanding of the consequences.

2. The request must be accompanied by the defendant's affidavit, which must state:



(a) That the defendant is without means of employing an attorney; and

(b) Facts with some particularity, definiteness and certainty concerning the defendant's financial disability.

3. The district judge, justice of the peace, municipal judge or master shall forthwith consider the application and shall make such further inquiry as he or she considers necessary. If the district judge, justice of the peace, municipal judge or master:

(a) Finds that the defendant is without means of employing an attorney; and

(b) Otherwise determines that representation is required,  
↳ the judge, justice or master shall designate the public defender of the county or the State Public Defender, as appropriate, to represent the defendant.

4. If the appropriate public defender is unable to represent the defendant, or other good cause appears, *the judge, justice or master shall order the appointment of another attorney ~~must be appointed~~* —4.} *and refer the selection of the attorney:*

(a) *In a county whose population is less than 100,000, to the Department of Indigent Defense Services or its designee in compliance with the plan of the county for the provision of indigent defense services; or*

(b) *In a county whose population is 100,000 or more, in compliance with the plan of the county for the provision of indigent defense services.*

5. The county or State Public Defender must be reimbursed by the city for costs incurred in appearing in municipal court. The county shall reimburse the State Public Defender for costs incurred in appearing in Justice Court, unless the county has transferred the responsibility to provide all indigent defense services for the county to the State Public Defender pursuant to NRS 180.450. If a private attorney is appointed as provided in this section, the private attorney must be reimbursed by the county for appearance in Justice Court or the city for appearance in municipal court. ~~in an amount not to exceed \$75 per case.~~

Sec. 12. Chapter 180 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *The Department may apply for and accept any available grants, bequests, devises, donations or gifts from any public or private source to carry out the duties of the Department and Board.*

2. *Any money received pursuant to subsection 1 must be deposited in the Special Account for the Support of Indigent*



***Defense Services, which is hereby created in the State General Fund. Interest and income earned on money in the Account must be credited to the Account. Money in the Account may only be used to carry out the duties of the Department and the Board.***

***3. Any money in the Account remaining at the end of a fiscal year does not revert to the State General Fund, and the balance in the Account must be carried forward to the next fiscal year.***

**Sec. 13.** NRS 180.060 is hereby amended to read as follows:

180.060 1. The State Public Defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when the indigent person has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.

2. The State Public Defender shall, when designated pursuant to NRS 62D.030 ~~{, 62D.100,}~~ or 171.188, ~~{or 432B.420,}~~ represent without charge each indigent person for whom the State Public Defender is appointed.

3. When representing an indigent person, the State Public Defender shall:

(a) Counsel and defend the indigent person at every stage of the proceedings, including , ***without limitation, during the initial appearance and proceedings relating to admission to bail or the revocation of probation or parole;*** and

(b) Prosecute any appeals or other remedies before or after conviction that the State Public Defender considers to be in the interests of justice.

4. In cases of postconviction proceedings and appeals arising in counties in which the office of public defender has been created pursuant to the provisions of chapter 260 of NRS, where the matter is to be presented to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, the State Public Defender shall prepare and present the case and the public defender of the county shall assist and cooperate with the State Public Defender.

5. The State Public Defender may contract with any county in which the office of public defender has been created to provide representation for indigent persons when the court, for cause, disqualifies the county public defender or when the county public defender is otherwise unable to provide representation.

**Sec. 14.** NRS 180.450 is hereby amended to read as follows:

180.450 1. If a corrective action plan is recommended pursuant to NRS 180.440, the deputy director and the board of county commissioners must collaborate on the manner in which the



county will meet the minimum standards for the provision of indigent defense services and the time by which the county must meet those minimum standards. Any disagreement must be resolved by the Board. Each corrective action plan must be submitted to and approved by the Board.

2. If the plan established pursuant to subsection 1 will cause the county to expend more money than budgeted by the county in the previous budget year plus inflation for the provision of indigent defense services, the Executive Director shall include the additional amount needed by the county in the next budget for the Department of Indigent Defense Services to help support the indigent defense services provided by the county. If additional money is needed to carry out the plan before the next budget cycle, the Executive Director shall submit a request to the Interim Finance Committee for an allocation from the Contingency Account pursuant to NRS 353.266 to cover the additional costs.

3. For any county that is not required to have an office of public defender pursuant to NRS 260.010, if the additional amount included in the budget of the Department pursuant to subsection 2 is not approved, the board of county commissioners for the county to which the amount applies may determine whether to continue providing indigent defense services for the county or enter into an agreement with the Executive Director to transfer responsibility for the provision of such services to the State Public Defender.

4. If a county does not meet the minimum standards for the provision of indigent defense services within the period established in the corrective action plan for the county, the deputy director shall inform the Executive Director.

5. Upon being informed by the deputy director pursuant to subsection 4 that a county has not complied with a corrective action plan, the Executive Director must review information regarding the provision of indigent defense services in the county and determine whether to recommend establishing another corrective action plan with the board of county commissioners of the county. For a county that is not required to have an office of public defender pursuant to NRS 260.010, the Executive Director may instead recommend requiring the board of county commissioners to transfer responsibility for the provision of all indigent defense services for the county to the State Public Defender. The recommendation of the Executive Director must be submitted to and approved by the Board. Once approved, the board of county commissioners shall comply with the decision of the Board.





6. If a county is required to transfer or voluntarily transfers responsibility for the provision of all indigent defense services for the county to the State Public Defender:

(a) The board of county commissioners for the county shall notify the State Public Defender in writing on or before ~~{March}~~ **November** 1 of the next ~~{odd}~~ **even**-numbered year and the responsibilities must transfer at a specified time on or after July 1 of the ~~{same}~~ **odd-numbered year following the year** in which the notice was given, as determined by the Executive Director.

(b) The board of county commissioners for the county shall pay the State Public Defender in the same manner and in an amount determined in the same manner as other counties for which the State Public Defender has responsibility for the provision of indigent defense services. The amount that a county may be required to pay must not exceed the maximum amount determined using the formula established by the Board pursuant to NRS 180.320.

**Sec. 15.** NRS 260.040 is hereby amended to read as follows:

260.040 1. The compensation of the public defender must be fixed by the board of county commissioners ~~{-}~~ **and, in counties whose population is less than 100,000, must comply with the regulations adopted by the Board on Indigent Defense Services pursuant to NRS 180.320.** The public defender of any two or more counties must be compensated and be permitted private civil practice of the law as determined by the boards of county commissioners of those counties, subject to the provisions of subsection 4 of this section and NRS 7.065.

2. The public defender may appoint as many deputies or assistant attorneys, clerks, investigators, stenographers and other employees as the public defender considers necessary to enable him or her to carry out his or her responsibilities, with the approval of the board of county commissioners. An assistant attorney must be a qualified attorney licensed to practice in this State and may be placed on a part-time or full-time basis. The appointment of a deputy, assistant attorney or other employee pursuant to this subsection must not be construed to confer upon that deputy, assistant attorney or other employee policymaking authority for the office of the public defender or the county or counties by which the deputy, assistant attorney or other employee is employed.

3. The compensation of persons appointed under subsection 2 must be fixed by the board of county commissioners of the county or counties so served.

4. The public defender and his or her deputies and assistant attorneys in a county whose population is less than 100,000 may



engage in the private practice of law. Except as otherwise provided in this subsection, in any other county, the public defender and his or her deputies and assistant attorneys shall not engage in the private practice of law except as otherwise provided in NRS 7.065. An attorney appointed to defend a person for a limited duration with limited jurisdiction may engage in private practice which does not present a conflict with his or her appointment.

5. The board of county commissioners shall provide office space, furniture, equipment and supplies for the use of the public defender suitable for the conduct of the business of his or her office. However, the board of county commissioners may provide for an allowance in place of facilities. Each of those items is a charge against the county in which public defender services are rendered. If the public defender serves more than one county, expenses that are properly allocable to the business of more than one of those counties must be prorated among the counties concerned.

6. In a county whose population is 700,000 or more, deputies are governed by the merit personnel system of the county ~~{-}~~ , ***and their compensation is not subject to the regulations adopted by the Board on Indigent Defense Services pursuant to NRS 180.320.***

**Sec. 16.** NRS 260.050 is hereby amended to read as follows:

260.050 1. The public defender may, before being designated as counsel for that person pursuant to NRS 171.188, interview an indigent person when he or she has been arrested and confined for a public offense or for questioning on suspicion of having committed a public offense.

2. The public defender shall, when designated pursuant to NRS 62D.030 ~~{-}~~ ***or 171.188 , {or-432B.420,}*** represent without charge each indigent person for whom ~~he or she is~~ appointed.

3. When representing an indigent person, the public defender shall:

(a) Counsel and defend the person at every stage of the proceedings, including , ***without limitation, during the initial appearance and proceedings relating to admission to bail and the revocation of probation or parole;*** and

(b) Prosecute, subject to the provisions of subsection 4 of NRS 180.060, any appeals or other remedies before or after conviction that he or she considers to be in the interests of justice.

**Sec. 17.** NRS 260.060 is hereby amended to read as follows:

260.060 For cause, the magistrate or district court may, on its own motion or upon motion of the public defender or the indigent person, ~~{appoint}~~ ***order the appointment of another attorney*** and



~~{compensate out of county funds}~~ *refer the selection of the attorney in the manner set forth in NRS 7.115. Such an attorney:*

1. *May be* other than, or in addition to, the public defender to represent such indigent person at any stage of the proceedings or on appeal in accordance with the laws of this state pertaining to the appointment of counsel to represent indigent criminal defendants.

2. *Must be compensated out of county funds.*

**Sec. 18.** NRS 432B.420 is hereby amended to read as follows:

432B.420 1. A parent or other person responsible for the welfare of a child who is alleged to have abused or neglected the child may be represented by an attorney at all stages of any proceedings under NRS 432B.410 to 432B.590, inclusive. Except as otherwise provided in subsection 3, if the person is indigent, the court may appoint an attorney to represent the person.

2. A child who is alleged to have been abused or neglected shall be deemed to be a party to any proceedings under NRS 432B.410 to 432B.590, inclusive. The court shall appoint an attorney to represent the child. The child must be represented by an attorney at all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive. The attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings.

3. If the court determines that the parent of an Indian child for whom protective custody is sought is indigent, the court:

(a) Shall appoint an attorney to represent the parent; and

(b) May apply to the Secretary of the Interior for the payment of the fees and expenses of such an attorney,

as provided in the Indian Child Welfare Act.

4. Each attorney, other than ~~{a public defender or}~~ an attorney compensated through a program for legal aid described in NRS 19.031 and 247.305, if appointed under the provisions of subsection 1 or 2, is entitled to the same compensation and payment for expenses from the county as provided in NRS 7.125 and 7.135 for an attorney appointed to represent a person charged with a crime.

**Sec. 19.** NRS 433A.270 is hereby amended to read as follows:

433A.270 1. The person alleged to be a person in a mental health crisis or any relative or friend on the person's behalf is entitled to retain counsel to represent the person in any proceeding before the district court relating to involuntary court-ordered admission, and if he or she fails or refuses to obtain counsel, the court shall advise the person and the person's guardian or next of kin, if known, of such right to counsel and shall appoint counsel. ~~{who may be the public defender or his or her deputy.}~~



2. Any counsel appointed pursuant to subsection 1 must be awarded compensation by the court for his or her services in an amount determined by it to be fair and reasonable. The compensation must be charged against the estate of the person for whom the counsel was appointed or, if the person is indigent, against the county where the person alleged to be a person in a mental health crisis last resided.

3. The court shall, at the request of counsel representing the person alleged to be a person in a mental health crisis in proceedings before the court relating to involuntary court-ordered admission, grant a recess in the proceedings for the shortest time possible, but for not more than 5 days, to give the counsel an opportunity to prepare his or her case.

4. If the person alleged to be a person in a mental health crisis is involuntarily admitted to a program of community-based or outpatient services, counsel shall continue to represent the person until the person is released from the program. The court shall serve notice upon such counsel of any action that is taken involving the person while the person is admitted to the program of community-based or outpatient services.

5. Each district attorney or his or her deputy shall appear and represent the State in all involuntary court-ordered admission proceedings in the district attorney's county. The district attorney is responsible for the presentation of evidence, if any, in support of the involuntary court-ordered admission of a person to a mental health facility or to a program of community-based or outpatient services in proceedings held pursuant to NRS 433A.200 and 433A.210.

**Sec. 20.** (Deleted by amendment.)



**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**July 1, 2021**

**APPENDIX F**  
**NCSC WEIGHTED CASELOAD STUDY FOCUS GROUP SUMMARY**

---

# Rural Nevada Indigent Defense Services Weighted Caseload Study Focus Group Summary

---

## PROJECT STAFF

*John Douglas*  
*Brian Ostrom*  
*Shannon Roth*  
*Suzanne Tallarico*

COURT CONSULTING DIVISION | NATIONAL CENTER FOR STATE  
COURTS

*January 2021*



## Introduction

As a precursor to the time study that will be conducted for the Rural Nevada indigent legal service providers, the National Center for State Courts conducted focus groups with three attorney groups, including rural public defenders, contract attorneys and conflict attorneys. A total of twenty-one attorneys participated in the focus groups, that were conducted via Zoom between December 10 and 18, 2020.

The purpose of the focus groups was to inform the NCSC about the variations in their workload demands, time constraints and whether and how responses to the COVID-19 pandemic has impacted their ability to adequately represent their clients. It is anticipated that the information from the focus groups will also help the NCSC project team better describe the data from the time study.

### Focus Group Themes

Three primary questions were posed to the focus group participants. First, we asked whether they feel they have sufficient time, without working overtime, to attend to all aspects of their job. Second, we asked what the greatest constraints on their time is; and third, we asked whether and how the COVID-19 pandemic has changed the way their work is conducted. The results are presented below.

***Is their sufficient time to engage in all aspects of your work without having to work overtime on a regular basis?***

All of the focus group participants indicated that the work ebbs and flows, so there is never a “typical week or month;” however, there were variations in perceptions of workload across the three groups. Public defender participants were

more likely to indicate feeling as though they are “never caught up.” These sentiments did not come from a defeatist attitude, but rather a realistic attitude. They all agreed that they do not have enough time in a day to get their work done, and they all described working long days and most weekends just to stay on top of the work. One participant summed up what all of the participants were saying this way: “When I first started, I worked all the time; now I work less; you just learn to be more efficient.” As a group, the public defenders noted that the high workload levels lead to frustration at not being able to do more for their clients. One participant noted that “Early on, I was stressed that I could not keep up with everything. You just need to learn to live with not getting everything done.”

Contract attorneys were more likely to indicate that their workloads are generally manageable, but that they can sometimes get out of hand. Depending on where they are located, these attorneys have contracts that amount to an approximate half-time job or a full-time job, which might account for their sentiment regarding their workload levels. To a person, contract attorneys all agreed that it is hard to predict when cases will be assigned, and they may come one at a time, or in groups. Given this, a contract attorney may find him/herself working seven days each week for ten to twelve hours per day; but when caseloads drop, they could be working much less. Overall, contract attorneys agreed their workloads are manageable.

Conflict attorneys saw their workloads more similarly to contract attorneys. Many of the conflict attorneys work in multiple jurisdictions, so their work may be impacted by virtue of the location of the case to which they have been assigned, often requiring more travel time to meet with a client and/or attend court hearings.

One attorney summed up the work in this way "As far as general workload is concerned, I feel that we are very busy and occasionally it can be overwhelming, but not to the extent of many other offices across the country that you hear horror stories about. We are fortunate to have the resources that we do, so I can understand why it has been and likely will continue to be difficult to find attorneys in the rural counties that are willing to take on indigent defense given the amount of work, lack of resources, and high expectations."

***When you think about your work, what are the greatest constraints on your time?***

Four major categories arose from the discussion of the greatest time constraints associated with representing indigent clients in the rural counties of Nevada, including: client services, jail visits and associated travel, court visits and associated travel, and reviewing electronic discovery data. Each issue will be discussed in order.

*Client Services.* Several the attorneys indicated that they spend more time on "social work" activities than they do on legal work. Contract attorneys and public defenders were the most likely to report spending a lot of their time tracking down and enrolling clients in services, such as mental health or substance abuse treatment programs. Similarly, attorneys work with clients ensuring they appear in court, helping to reinstate driver's licenses, having interlock systems installed in cars, connecting them with computers to attend virtual court hearings, obtaining transportation to work, meetings and other services and in simply helping their clients navigate the criminal justice system.

Focus group participants said they feel this aspect of the job is as important as the legal services they provide, because following terms and conditions of placement, such as obtaining a job or attending treatment is often the difference between living in the community and being locked up for a technical violation. Working to obtain services for clients is also extremely challenging for rural indigent attorneys, because services are limited, mass transportation is non-existent and many clients do not have adequate means of communication, including phone service or computer access. Some attorneys enlist the assistance of office workers, such as paralegals or secretarial support, but in the end, most of this work is done by the attorney.

*Jail Visits and Associated Travel.* All attorney groups listed jail visits and travel associated with them is an extremely time-consuming, but critical component of their job. Finding time to travel to the jail, locating clients, finding private places to meet and completing the necessary paperwork to meet with a client combine to make meeting with detained clients a time-consuming task.

Due to the COVID-19 restrictions, some jails are allowing detainees to meet with attorneys over Zoom or by telephone, but several of the participating attorneys expressed conflicting feelings about these options. As one attorney stated "Video visitation in rural jails would be really great and could increase the number of attorneys who could take a case. On balance though, I prefer to look people in the eyes when I talk to them and this is a big limitation of video interactions." Another participant made a strong case for meeting with clients in person at the jail, noting that the clients don't know the attorneys and have no reason to trust them, so meeting with them in person



provides the ability to begin establishing that trust relationship.

*Court Hearings and Associated Travel.* Similar to the discussion relating to jail visits and travel, rural indigent defense service providers spend a lot of time traveling to and from court and attending court hearings. At a minimum, all attorneys have to juggle hearing dates and times in district and justice courts; and in some cases, they cover more than two court locations. Most indigent defense service providers attend arraignments, initial appearances and bail/detention hearings, as these are the most likely places from which to obtain newly assigned cases. While this practice has significant benefits, including quickly connecting an attorney and client, it is also a time-consuming process. In one rural court location, each of the three attorneys spends a full week of their time in court, just to ensure that individuals to whom they might be assigned have their rights protected. And once a court session has ended, attorneys reported that they typically have a lot of phone calls to make and new cases for which to prepare, making court days very long days.

Attorneys indicated that it is difficult to get other work done while waiting in court, so much of the waiting time is lost. Courts also have different practices regarding the order in which they call cases. In one location, public defender cases are prioritized by the court, so attorneys in that court can get in and out of court in a reasonable amount of time; other attorneys indicated that courts in which they work are just the opposite and prioritize paid attorneys' cases over the indigent cases.

Another factor exacerbating the court schedule is that some jurisdictions have multiple justice and district courts. For example, in Douglas county there are two district courts and two justice courts,

so juggling court schedules can be very difficult. Several attorneys also noted that having clients in specialty courts can be difficult on both the attorney and the client. For clients, transportation is always an issue for indigent defendants as there is no public transportation available. Some attorneys indicated they give rides to clients to attend drug court and other treatment services, but this is not sustainable. It is not unusual for rural indigent clients to give up on drug court because of these transportation limitations.

Three public defender participants indicated that they regularly spend time in specialty court meetings and hearings. These participants noted that they really don't do anything for their clients during these sessions, and wondered aloud why non-lawyers could not participate instead.

*Reviewing Electronic Data.* Obtaining, storing and reviewing electronic data has become one of the most onerous tasks in which indigent defense attorneys engage. Not only does the review of electronic data take hours, but depending on the court, the information may be delivered to the attorney at the last minute, with little or no time to effectively review it. For example, watching police body camera footage is a necessary, but time-consuming task. The entire footage has to be reviewed at least once to determine what information is available, and then it has to be reviewed again, often several times, to clearly understand what evidence exists. In a single case, it is not unusual to have ten hours of body camera footage to review. Other types of digital data can also be time consuming to review, such as social media data and digital information such as text messages. As one attorney stated: "All pieces of data must be read or listened to and much of which will, in the end, not be useful but you don't know until you've reviewed the information." Another attorney agreed

with the degree of scrutiny needed to review electronic data: "Watching relevant footage is hard. First, you have to locate the relevant footage (on C-ROM), then watch everything that may be relevant. I may get questions if something occurs at arraignment; if the judge asks if I've reviewed the camera footage, I don't want to say 'no.' This takes a lot of time. This is true of body or police dashboard cameras, surveillance camera footage and cell phone data review (social media, text messages), especially used in probation violations."

***How, if at all, has your work changed as a result of COVID-19?***

There is significant variation in the way the rural courts have responded to the COVID-19 pandemic. Some counties have effectively closed courthouses and are doing most of their hearings via Zoom or other similar virtual meeting platforms; some counties have closed, reopened, then closed again and still others are conducting business as usual, with no changes implemented to address pandemic-related concerns. In some counties, the District Court has remained open for court business while the Justice Court is limited to Zoom hearings only.

Some courts closed in-person interactions for all but essential hearings in the early months of 2020, but then opened later in the summer; others closed later in the year and still others have not made changes to hearing and trial schedules at all. In terms of the in-person interactions, variation occurs here as well. In some courts, everyone is expected to wear a mask and social distance unless they are the attorney questioning a witness. In other courts, hearings and trials continue to be held in person with no social distancing requirements and no mask requirements. In still other locations, the court has essentially shut

down and all business is conducted via Zoom.

Holding hearings via Zoom has been met with mixed assessments by attorneys. Several attorneys raised concerns about holding hearings or trials virtually. First, they argue, it is difficult to see if a witness is being coached in their testimony. Second, if the attorney and client are in different locations, it is difficult to have a side conversation with the client, making representation that much more difficult. Third, many clients don't have computers or smart phones, so in locations where courts are limiting in-person hearings, attorneys have clients come to their offices to participate in Zoom hearings with the court. This is done at some peril to the health of all parties involved. The concern of contracting or spreading COVID-19 is exacerbated when clients are detained in one of the jails in which inmates are not required to wear masks. On the positive side, attorneys report that judges have made hearing schedules more flexible, so they spend less time in court and less time in hearings in general. Also, eliminating the need to travel to court, especially for status and other short-term hearings saves a lot of time for attorneys in large rural counties. Virtual hearings have also been beneficial to defendants who live outside of the county in which they have been charged with a crime as they can attend all court hearings without having to find transportation.

In some jails, sheriff's departments are prohibiting detained clients from being seen in person; so to engage with a client, the attorney must call the jail, ask for the defendant, and then wait for the defendant to call them back – all of which can take several hours, if not days. Once contact is made, holding case-related conversations over the phone can be challenging, time-consuming and of lower quality than meeting face-to-face. Some attorneys, and

defendants, worry that jail phone lines are not secure, so the information transfer is not complete. Also, competition for phone time in jails may put pressure on inmates to hurry a conversation, which is not always in their best interest. Finally, communicating by phone prohibits an attorney and his/her client from reviewing documents or other evidence and information.

In some jails where Zoom has been made available to inmates and their attorneys, communication is better, and time is saved by eliminating the need to travel to the jail.

In the end, rural courts in Nevada and the indigent defense providers who practice in those courts have found a range of ways in which to keep the criminal justice system moving during a more than one-year pandemic. While there are mixed reviews by attorneys on some of the work-arounds that have been implemented, many agree that some form of virtual court activity is likely to remain in the courts post-pandemic, which could be beneficial to everyone involved, by reducing the need to travel to court and by reducing waiting for your case (or cases) to be called.

## Summary

Focus group findings revealed that, while there are differences in the workload demands across the three groups of attorneys who provide indigent defense services in rural Nevada, the issues that demand most of their time, the biggest constraints to getting their work done and how the work has changed as a result of COVID-19 are all pretty consistent.

The public defenders appear to have the most onerous workload; however, even they indicated that it could

be much worse, when compared to public defenders in other locations across the country.

The attorneys participating in these focus groups indicated that there are four areas of work that take up most of their time: finding and coordinating client services, such as mental health or substance abuse treatment; conducting jail visits; time in court hearings and trials; and reviewing electronic data, such as police body camera footage and social media output. While they agree this is all part of their jobs, the amount of time some of these activities require is exacerbated by the fact that they practice in rural jurisdictions with limited services, far distances between court and jails and the explosion of forensic use of electronic data.

Finally, attorneys discussed the impact of the COVID-19 pandemic on their work. While varied across the state, courts, jails and attorneys are making concessions to keep work flowing during the pandemic. Some attorneys are concerned about issues of due process when engaging in virtual hearings and others are concerned about health safety issues related to being in close proximity with clients during Zoom meetings, but they are all finding ways to make the new normal work.

**First Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**July 1, 2021**

**APPENDIX G**  
**NCSC PRELIMINARY REPORT**

# Rural Nevada Indigent Defense Services Interim Weighted Caseload Study

Report  
June 2021

Suzanne Tallarico, M.A.  
Brian Ostrom, Ph.D.  
John Douglas, B.A.  
Shannon Roth

Court Consulting Division  
National Center for State Courts



---

# **Rural Nevada Indigent Defense Services**

## **Weighted Caseload Study**

### **Interim Report**

**June 2021**

The authors extend their sincere appreciation to the indigent defense service providers, including attorneys, investigators and administrative staff of rural Nevada, all of whom contributed their valuable time and insights during the time study, focus group, and quality adjustment panels. We also thank the members of the Study's Advisory Committee for their thoughtful guidance throughout the course of the project. Marcie Ryba, Jarrod Hickman, and Thomas Qualls from the Department of Indigent Defense Services (DIDS) and Mitch Herian from Soval Solutions were invaluable for providing leadership and data support. Thank you all for the serious attention you provided to this important project.

#### **Weighted Caseload Study Advisory Committee Members**

Colleen Brown, Office Manager  
Elko County

Kristine Brown, Contract Attorney  
Douglas County

Steve Cochran, Public Defender  
Pershing County

Lorina Dellinger, Asst. County Manager  
Nye County

Jason Earnest, Contract Attorney  
Esmeralda/Nye Counties

Mitch Herian, Data Analyst  
Soval Solutions, LLC

Margaret Judge, Investigator  
Nevada State Public Defender's Office

Karen Kreizenbeck, State Public Defender  
Nevada State Public Defender's Office

Maureen MacDonald, Legal Secretary  
Humboldt County

Dave Mendiola, DIDS Board Member/County  
Manager  
Humboldt County

Jeffery Page, County Manager  
Lyon County

Wayne Pederson, Contract Attorney  
Lyon County

Matthew Pennell, Public Defender  
Elko County

Tosca Renner, former Office Manager  
Nevada State Public Defender's Office

Marcie Ryba, Director  
Department of Indigent Defense Services

Richard Sears, Contract Attorney  
White Pine County

Jacob Sommer, Public Defender  
Churchill County

Matt Stermitz, Public Defender  
Humboldt County

## Table of Contents

<b><i>Introduction</i></b>	<b>1</b>
<b>A. Indigent Defense Services in Rural Nevada</b>	<b>3</b>
<b>B. About Weighted Caseload</b>	<b>4</b>
<b>C. Conducting a Time Study During COVID-19</b>	<b>5</b>
<b>D. Recommendation</b>	<b>6</b>

## Introduction

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.”<sup>1</sup> In 1963, the United States Supreme Court held that the Sixth Amendment requires states to provide counsel for criminal defendants who cannot afford to hire counsel for themselves.<sup>2</sup> Twenty-one years later, the Court held that the right to counsel is a right not merely to token representation, but to the effective assistance of counsel.<sup>3</sup>

For any criminal defense attorney, maintaining a manageable caseload is essential to the ability to provide effective assistance of counsel. According to the Model Rules of Professional Conduct, the requirement of diligence in representation includes the responsibility to control the lawyer’s workload “so that each matter can be handled competently.”<sup>4</sup> Similarly, the American Bar Association Standards for Criminal Justice assert that “[d]efense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client’s interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations”<sup>5</sup> Faced with an excessive workload, an attorney may not have sufficient time to

investigate the facts of the case, visit the crime scene, identify and interview witnesses, prepare mitigation information, address potential collateral consequences, explore the possibility of diversion or alternative sentencing, or maintain regular communication with the client.

Since the beginning of the twenty-first century, concern over excessive workloads among attorneys who represent indigent clients has grown. Forty years after *Gideon v. Wainwright* established the right to state-provided defense counsel, the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (SCLAID) held a series of hearings to determine whether that promise was being kept. SCLAID concluded that the defense function was systematically underfunded and that indigent defense providers in many states were chronically overworked and could not devote sufficient time to their cases.<sup>6</sup> Similarly, in 2009 the Constitution Project’s National Right to Counsel Committee found that inadequate funding and excessive workloads were “a problem virtually everywhere in public defense throughout the United States.”<sup>7</sup> In 2011, the Justice Policy Institute concluded that inadequate representation resulting from excessive indigent defense workloads leads to increased incarceration costs, reduces public trust and confidence in the judicial system, and has a disproportionate impact on people of color and low-income communities.<sup>8</sup>

---

<sup>1</sup> U.S. Constitution amend. VI.

<sup>2</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

<sup>4</sup> American Bar Association Model Rules of Professional Conduct Rule 1.3 comment. 4 (2007).

<sup>5</sup> ABA Standards for Criminal Justice: Defense Function, Standard 4-1.8(a) (4<sup>th</sup> ed. 2015).

<sup>6</sup> Standing Committee on Legal Aid and Indigent Defendants, American Bar Association, *Gideon’s*

*Broken Promise: America’s Continuing Quest for Equal Justice* (2004).

<sup>7</sup> National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel* 65 (2009).

<sup>8</sup> Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense* (2011).



In response to these concerns, the American Bar Association promulgated a series of guidelines related to indigent defense workloads. These guidelines direct providers to “avoid excessive workloads and the adverse impact that such workloads have on providing quality legal representation to all clients.” The guidelines also advise that public defense providers establish “a supervision program that continuously monitors the workloads of its lawyers to assure that all essential tasks on behalf of clients ... are performed.”<sup>9</sup>

To monitor workloads effectively, public defenders must first establish workload standards. The current workload assessment study is the beginning step that DIDS is taking in this effort. The only existing national public defender workload standards were established in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals and later adopted by the National Legal Aid and Defender Association. Assuming that each attorney handles only one case type, the standards call for limiting per-attorney caseloads to 150 felonies, 400 non-traffic misdemeanors, 200 juvenile

court cases, 200 Mental Health Act cases, or 25 appeals per year.<sup>10</sup> These standards have frequently been criticized on the grounds that they were not based upon empirical research, do not allow for the varying complexity of different types of cases within each of the broad categories (e.g., homicide, violent felonies, and nonviolent felonies), ignore variation among the states in criminal justice policies and procedures, and predate the widespread usage of information technology in courts and law offices.<sup>11</sup>

Over the past decade and a half, statewide public defender systems have increasingly begun to adopt state-specific weighted caseload systems for monitoring workload. Some of the earliest empirically based studies of public defender workload were conducted by National Center for State Courts (NCSC) in Maryland (2005), New Mexico (2007), and Virginia (2010).<sup>12</sup> More recently, the ABA has partnered with accounting firms to establish weighted caseload formulas in Missouri (2014), Louisiana (2017), Colorado (2017), and Rhode Island (2017).<sup>13</sup> Other organizations have conducted weighted

---

<sup>9</sup> American Bar Association, *Eight Guidelines of Public Defense Related to Excessive Workloads*, guidelines 1 – 2 (2009).

<sup>10</sup> Task Force on Courts, National Advisory Commission on Criminal Justice Standards and Goals, *Courts*, Standard 13.12 (1973).

<sup>11</sup> Matthew Kleiman & Cynthia G. Lee, *Public Defenders*, in *Encyclopedia of Criminology and Criminal Justice* 4134, 4139 (Gerben Bruinsma & David Weisburg eds., 2013).

<sup>12</sup> Matthew Kleiman & Cynthia G. Lee, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment* (2010); National Center for State Courts & American Prosecutors Research Institute, *A Workload Assessment Study for the New Mexico Trial Court Judiciary*, New Mexico District Attorneys’ Offices and New Mexico Public Defender Department (2007); Brian J. Ostrom, Matthew

Kleiman & Christopher Ryan, *Maryland Attorney and Staff Workload Assessment* (2005).

<sup>13</sup> Blum Shapiro & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards* (Nov. 2017); Rubin Brown & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Colorado Project: A Study of the Colorado Public Defender System and Attorney Workload Standards* (Aug. 2017); Postlethwaite & Netterville & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Louisiana Project: A Study of the Louisiana Public Defender System and Attorney Workload Standards* (Feb. 2017); Rubin Brown, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards* (June 2014).

caseload studies in Missouri (2014), Massachusetts (2014) Texas (2015), New York (2016), Maryland (2017) and Idaho (2017).<sup>14</sup> These studies uniformly find that public defender agencies do not have enough attorneys to effectively handle their workloads.

In 2019, the Board on Indigent Defense Services (BIDS) and the Department of Indigent Defense Services were established to oversee and improve criminal defense services provided to indigent persons in Nevada by providing state funding and guidance to local indigent defense services. Specifically, BIDS and DIDS have been tasked with developing minimum standards and regulations for the delivery of indigent services, developing guidelines for maximum caseload sizes and, once these are established, overseeing the rural indigent defense attorneys to ensure that the minimum standards and regulations are being followed.

The Department of Indigent Defense Services is currently working on developing practice standards, and they contracted with the National Center for State Courts to conduct a workload assessment study for indigent defense providers in the 15 rural counties of the state. The results of the workload assessment study, described in this report, will be used to create preliminary caseload standards for indigent defense attorneys in Nevada.<sup>15</sup> At the foundation of the workload assessment study is a time study, which, under normal working conditions, will provide an empirical profile of

the amount of time indigent defense providers currently spend working on the various types of cases to which they are assigned. As will be discussed later, for the current study, the empirical data obtained through the time study was supplemented with additional empirical and qualitative data to develop the current preliminary standards.

## A. Indigent Defense Services in Rural Nevada

Nevada is composed of 17 counties, 15 of which are considered to be rural.<sup>16</sup> Nevada law stipulates that counties with populations of 100,000 or more must provide a county-funded public defender office; counties with populations of less than 100,000 may make independent decisions about the structure and delivery of its indigent defense services. In these counties, indigent defense services may be provided through 1) contracting with the Nevada State Public Defender, 2) creating a county public defender's office or 3) by contracting with attorneys to provide the service.

Two rural counties, Carson City and Storey County contract with the Nevada State Public Defender. Four rural counties, including Elko, Humboldt, Pershing and Churchill Counties have established county public defender offices; the remaining nine rural counties contract with private attorneys to provide indigent defense

---

<sup>14</sup> Idaho Policy Institute, Boise State University, Idaho Public Defense Workload Study (2018); N.Y. State Office of Indigent Legal Services, A Determination of Caseload Standards Pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement (Dec. 2016); Dottie Carmichael et al., Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission (Jan. 2015).

<sup>15</sup> As will be described later in this report, the standards developed in this report should be viewed as preliminary, as the study was conducted during the midst of the COVID-19 pandemic, thus the accuracy of these standards may not adequately represent typical work activities.

<sup>16</sup> Clark and Washoe Counties are considered urban counties, so they were not included in this study.

services. Currently, in the rural counties, only the Nevada State Public Defender Office in Carson City employs full-time investigators to support the work of county-based indigent defense attorneys. In locations in which investigators are not permanently employed, attorneys are permitted to ask the court for additional fees for investigation or expert consultation when needed. Administrative staffing support also varies across the counties, ranging from county-employed administrative staff in public defender offices to contract attorneys who have no administrative support staff, leaving the attorneys to provide their own administrative support. Finally, all of the rural counties have contracts with private attorneys to provide indigent defense services in cases in which the public defender or contract attorney has a conflict of interest. In cases involving the death penalty, attorneys must meet specific training and experiential criteria, so most of these attorneys are appointed from a specific pool of such attorneys, often located in the larger counties, necessitating travel costs to meet clients in the rural locations.

## B. About Weighted Caseload

The weighted caseload method of workload analysis is grounded in the understanding that different types of cases vary in complexity, and consequently in the amount of work they generate for attorneys and staff. For example, a typical non-capital felony creates a greater need for attorney and staff resources than the average misdemeanor case, largely because the cases tend to be more complex and the potential consequences are greater in the higher-level cases, so they are more likely to either go through trial or stay in the system longer before a plea bargain has been offered and accepted.

The weighted caseload method calculates resource need based on the total workload of each office, while accounting for the variations in workload associated with different types of cases. The weighted caseload formula consists of three critical elements:

1. *New case counts*, or the number of cases of each type assigned indigent defense providers each year;
2. *Case weights*, which represent the average amount of time required to handle cases of each type over the life of the case; and
3. The *year value*, or the amount of time each attorney or staff member has available for case-related work in one year.

Total annual workload is calculated by multiplying the annual new cases for each case type by the corresponding case weight, then summing the workload across all case types. Each office's workload is then divided by the year value to determine the total number of full-time equivalent attorneys needed to handle the workload.

## Original Project Design

To provide oversight and guidance on matters of policy throughout the project, DIDS established the Indigent Defense Workload Standards Advisory Committee (the Advisory Committee) comprised of public defenders, contract indigent defense providers, administrative staff members, an investigator, a Board of Indigent Defense Services member, a County Manager, and an Assistant County Manager. The workload assessment was designed to be conducted in two phases:

1. A time study in which all rural public defender/contract attorneys, investigators and administrative staff were asked to record all case-related and non-case-related work, including evenings and weekends, over a six-week period. The time study provides an empirical description of the amount of time currently devoted to handling cases of each type, as well as the division of the workday between case-related and non-case-related activities. 100 percent of all expected participants entered data during the time study.
2. A quality adjustment process to ensure that the final weighted caseload model incorporates sufficient time for effective representation. Grounded in applicable professional standards, the quality adjustment process included:
  - Focus groups conducted by NCSC staff with attorneys to develop an in-depth understanding of indigent defense work across the rural counties and to identify challenges attorneys face in handling their workload;
  - Delphi panels, consisting of a structured review of the case weights by a set of experienced attorneys, investigators and administrative staff members;
  - Census survey of rural indigent defense attorneys; and
  - A review of past indigent defense provider weighted caseload studies to compare case weights for similar case types, which also accounted for adherence to ABA standards.

This two-stage quantitative/qualitative approach takes advantage of empirical data from the time study (“what is”) and relies upon expert opinion and data from other states only

to formulate the quality adjustments (“what should be”), resulting in a high degree of accuracy.

### C. Conducting a Time Study During COVID-19

In total, 100% percent of all primary participants (attorneys, investigators, and administrative staff) participated in the time study. This extremely high level of participation, if collected during “normal times” would ensure sufficient data to develop an accurate and reliable profile of the amount of time attorneys, investigators and administrative staff currently spend representing clients in each type of case, as well as time spent on non-case-specific and non-case-related work.

Despite engaging in all of the tasks that typically result in useable data, this study was conducted during the global COVID-19 pandemic, so courts were not running or functioning in a typical fashion. Largely due to the pandemic, fewer cases were filed, because fewer arrests were made; few, if any jury trials occurred, since many courts were either closed or were limiting trials due to the need to socially distance and ensure health safety, and limited travel to courts and jails took place, again, to ensure health and safety. All of this combined to provide an atypical picture of the work conducted by indigent defense providers, investigators and staff. Similarly, the development of case weights relies on the ability to accurately count the number of cases on which indigent defense providers work, but this data was also not available in a consistent manner.

Given the unusual circumstances under which the time study was conducted and the fact that

business was not being conducted as usual, the NCSC is going to work with DIDS to use data collected on Legal Server in the future to develop case weights using rural Nevada-specific case processing data.

The NCSC has extended their contract with DIDS – at no extra cost<sup>17</sup> – to develop case weights based on data collected and maintained by DIDS. The Legal Server system, set up to maintain data on the number and type of cases on which attorneys are working, along with the number of hours spent on those cases, is available for use now, but entering case-specific data into this system will become compulsory in October 2021. The NCSC will work with the Department again as soon as six to nine months of data have been collected, in order to update the case weights.

#### **D. Recommendation**

Given the challenges experienced through the process of conducting the weighted caseload study in the middle of a pandemic, the single recommendation made in this report concerns the ongoing reporting of data into the Legal Server system beginning no later than October 1, 2021. This data collected through focus groups and Delphi Panels suggests the need for more attorney and staff resources, but at this time, sufficient data does not exist to quantify those needs.

##### ***Recommendation 1***

Indigent defense providers should begin entering caseload data along with hours worked

into the Legal Server system no later than October 1, 2021.

DIDS should monitor the new case counts and hours expenditure database to ensure that attorneys are entering data in a consistent manner. Once DIDS staff have ensured the data are completely and consistently entered and that ample data (six to nine months' worth) have been entered, DIDS should work with the NCSC to develop new case weights for the case types explored in the current study.

---

<sup>17</sup> A no-cost extension to the NCSC's contract for this work has been signed, and the NCSC and DIDS will begin work on the development of new case weights

once sufficient data have been collected through the Legal Server system.