

16th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 5, 2025

Provided by:

M. Eve Hanan, Esq., Professor of Law, UNLV Boyd School of Law
Serving as the Monitor in her private capacity
evehanan@gmail.com; eve.hanan@unlv.edu

Provided to:

The Honorable Kristin Luis
First Judicial District Court, Dept. II

Representatives of the Plaintiff Class:

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

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

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

Chris Peterson, ACLU-NV Plaintiffs' counsel
peterson@aclunv.org

Representatives of the Defendants, State of Nevada:

Assistant Attorney General Craig Newby
CNewby@ag.nv.gov

Assistant Attorney General Jeffrey Conner
JConner@ag.nv.gov

The Department of Indigent Defense Services:

Peter Handy, Esq., Executive Director of the Department of Indigent Defense
p.handy@dids.nv.gov

The Board of Indigent Defense Services:

Kate Thomas, Chair of the Board of Indigent Defense

Contents

| | |
|--|----|
| Contents | 1 |
| Introduction | 2 |
| Executive Summary | 2 |
| Amendment to the Consent Judgment (July 24, 2025) | 3 |
| I. Statutory Change: Independence of Defense Function | 4 |
| II. Workload Standards | 5 |
| Nye County | 6 |
| Recommendations | 9 |
| Churchill County | 10 |
| Lyon County | 10 |
| Delegation Issues | 11 |
| Recommendations | 12 |
| Douglas County | 12 |
| Nevada State Public Defender: Workload & Capacity Building | 13 |
| Recommendation | 15 |
| III. Oversight; Compliance with Performance Standards | 15 |
| The Board's Role in Oversight | 16 |
| Evidence of Representation Below Performance Standards | 16 |
| Inferences from the Department's 2025 Annual Report | 17 |
| Recommendations | 18 |
| IV. Uniform Data Collection and Reporting | 19 |
| Workload Reporting by County | 19 |
| Looking Ahead | 21 |
| Next Steps for the Monitor | 22 |

Introduction

This Monitor’s Report to the First Judicial District Court of Carson City summarizes the Defendants’ compliance with the terms of the *Davis v. State* Stipulated Consent Judgment (hereinafter “the Judgment”) from February 20, 2025, to August 5, 2025.

Executive Summary

The Department of Indigent Defense (“the Department”) continues to take steps to comply with the Judgment, including, among other things, ensuring the qualifications of attorneys, managing the selection and reimbursement of counsel, managing payment for experts and investigators, working with counties to develop and improve their indigent defense plans, securing funds to reimburse counties for expenditures on indigent defense over their maximum contribution, providing free training and resources, and collecting and reporting on case and workload data. Moreover, during the past two quarters:

- The State enacted statutory changes that improve the independence in the defense function.¹
- The State approved expanded funding for the Department’s biennial budget, including funds for training programs, additional attorneys and their support staff, experts, investigators and appellate support, and operational funds for the Department to monitor caseloads, administer client surveys, and engage in other compliance activities. The state also approved a budget for reimbursing the counties for public defense expenditures over their maximum contribution.
- The Department published its annual report on July 1, 2025.²
- The Department hosted its fifth annual training conference April 2-4, 2025, in Reno, on the topic of defending people charged with violent crimes. The conference featured 12 speakers, five of whom were from out of state. All rural attorneys were reimbursed for travel expenses. Fifteen attorneys who provide indigent defense in the Davis counties attended.³
- The Department took steps to collect more accurate data on the private workload of contracting attorneys and law firms in the rural counties.⁴

¹ Discussed below in Section I.

² Available on the Department’s website here: https://dids.nv.gov/Annual_Report/home/.

³ The schedule for the training conference is attached to this Report as Appendix A.

⁴ Discussed below in Section IV.

- The Nevada State Public Defender’s Office hired an additional attorney for White Pine County and began hiring for its office in Humboldt County.⁵

This Report discusses the following compliance issues:

- **Failure to comply with the workload standards due to insufficient attorneys,** particularly in Nye and Churchill counties and likely in Douglas and Lyon counties as well, and in the office of the Nevada State Public Defender. The deadline for compliance, however, has been extended to August 30, 2026.
- **Oversight to ensure compliance with performance standards.** While the oversight attorneys are collecting and reporting on attorney performance in the *Davis* counties, the Department lacked a Deputy Director tasked with systematically analyzing and responding to concerns from the field.⁶ The Department recently hired Homa Sayyar for this position, and thus the Department should be able to improve its oversight protocol. Additionally, the Board does not appear to be taking the active role in oversight that is contemplated by the statute.⁷
- **Delegation and stand-in counsel.** In Lyon County, some contract holders are delegating cases to attorneys not listed in their contract with the county. In Nye County, stand-in counsel is appearing on behalf of other attorneys in matters that may affect the substantive rights of their clients.⁸
- **Uniform workload reporting.** Most attorneys are reporting their indigent defense caseloads and hours worked, but several appear to have stopped reporting their hours. Many still do not report hours spent on private cases even when they are prompted by the Department.⁹

Amendment to the Consent Judgment (July 24, 2025)

The parties agreed to amend the August 11, 2020, Judgment. Per the Court’s July 24, 2025, order, the Judgment was modified in the following ways:

⁵ Discussed below in Section II.

⁶ The Judgment directs the Defendants to create and maintain a system of oversight; ensure prompt screening for indigency; ensure that representation at initial appearance/arraignment occurs without delay and that attorneys argue for release or affordable bail; counsel against waiving substantive rights; ensure that client communication occurs per the standards set in ADKT 411; ensure that courts and jails provide space for confidential attorney-client meetings; ensure that all reasonable efforts to have confidential attorney-client meetings before an initial appearance. Judgment, 14-17.

⁷ Discussed below in Section III.

⁸ Discussed below in Sections II and III.

⁹ Discussed below in Section IV.

- The amendment **extends the deadline for compliance with workload standards** from November 2, 2024, to **August 30, 2026**. If the State has not complied with the workload standards by that date, “the Parties agree to confer on any appropriate actions that could be undertaken at the forthcoming 2027 Legislature to address compliance.”¹⁰
- The amendment requires the Department to take a more active role in **monitoring and managing the caseloads of attorneys working for the Nevada State Public Defender** by conducting quarterly caseload reviews and ensuring compliance with the workload standards. If caseloads exceed the workload limits, the Department is required to take action, which may include a corrective action plan.¹¹

The amendment is conditioned upon two occurrences:

1. The passage of SB 407 (2025), which improves the independence of the defense function. SB 407 was signed into law, and is discussed below in Section I.
2. The Department’s submission of an agreed-upon work program to the Interim Finance Committee (IFC) that will address outstanding compliance needs.¹² The Department plans to submit this work program for consideration at the October IFC meeting.

I. Statutory Change: Independence of Defense Function

The Monitor’s prior report described impediments to the independence of the defense function, all related to the Governor’s authority to appoint and remove both the Executive Director of the Department of Indigent Defense and the State Public Defender. Nevada’s statutory scheme has been amended to improve the independence of the defense function.¹³

Independence of the State Public Defender

SB 407 (16) (2025) amends NRS 180.010 so that the State Public Defender is appointed by the Executive Director of the Department of Indigent Defense Services rather than by the Governor. Further, the qualifications for the position of State Public Defender were amended to include not only members of the State Bar of Nevada in good standing, but also attorneys who are “otherwise authorized to practice law in the State of Nevada.” This expands the applicant pool for future candidates for the position.

¹⁰ Amendment to Stipulated Consent Judgment, 3 [hereinafter “Amendment”]. Based on this new timeline, the amended judgment states that the earliest possible date for dismissal of this action is extended until June 30, 2028. *Id.*

¹¹ Amendment, 5. The Amended Judgment also requires that the Monitor report quarterly on the NSPD case monitoring data and any corrective action plans. *Id.*

¹² Amendment, 2-3.

¹³ SB 407 (2025) is attached to this Report as Appendix B.

Independence of the Executive Director of the Department of Indigent Defense

Pursuant to NRS 180.400, the Executive Director of the Department of Indigent Defense will continue to be appointed by the Governor from a list of three people recommended by the Board. However, SB 407 (25.5) improves the independence of the Executive Director by:

- setting “a term of 4 years, and until a successor is appointed and qualified,” and permitting reappointment;
- stating that the Executive Director “serves at the pleasure of the Board,” rather than the Governor, and can only be removed for good cause;
- limiting the circumstances under which the Governor may remove the Executive Director to “extraordinary circumstances,” including criminal conduct or malfeasance/nonfeasance in office that is outside of the scope of the Executive Director’s duties.

Finally, SB 407 states:

The Legislature declares that the purpose of this subsection is to uphold the public policy that an indigent defense system must be independent in order to provide constitutionally adequate representation, as recognized by the American Bar Association Ten Principles of a Public Defense Delivery System, as published on November 9, 2023.

II. Workload Standards

As discussed in detail in the Monitor’s prior reports, the State failed to comply with the workload standards by the November 2024 deadline. The Amended Judgment extends the deadline for compliance to August 20, 2026.

The following shortages remain, and are discussed in more detail below this list:

- **Nye County** requires 12 full-time attorneys and currently has 7 full-time attorneys. Moreover, constant turnover makes continuity of representation almost impossible.
- **Churchill County** requires 7.4 full-time attorneys. It established a public defender office and an alternative public defender office, staffed with 2 full-time attorneys and one full-time attorney, respectively. Other cases are handled a full-time contract for an alternate public defender and appointed counsel.

- **Lyon County** requires 12 full-time attorneys and is short an undetermined number of attorneys due to the award of contracts to small law firms that have not adequately disclosed the number and qualifications of their attorneys dedicated full-time to the contract.
- **Douglas County** requires 8.8 full-time attorneys and is short 3 attorneys but the county contends that it needs fewer attorneys because its contracting attorneys commit to work hours far exceeding the workload standards' definition of full-time employees.
- The **Nevada State Public Defender**, which now provides first-line public defense in both Humboldt and White Pine counties, has an insufficient number of attorneys to comply with the workload standards.

Nye County

Nye County requires 12 attorneys and has only 7 attorneys. At the time of the Monitor's February 19, 2025, report, the county contracted with 9 attorneys, having entered into 3 new contracts with Christopher Harrison, Angela Lizada, and Karen Hanks, respectively. Since February, Harrison and Lizada left their contracts and two new attorneys accepted contracts, Thomas Wells and Phillip Brown. Also in the past few months, two long-time contract holders left their contracts, Alexis Duecker and Kelly Blatnik-Ford. In short, the county has lost 2 full-time contract attorneys since February 2025. The current contracts for full-time indigent defense are held by: Nathan Gent, Karl Shelton, Jhernia Shahani, Karen Hanks, Thomas Wells, and Phillip Brown. Jason Earnest contracts for Tonopah and takes some cases in Pahrump. The Department is reassigning the cases of the former contract holders to new contract holders and also assigning some cases to appointed counsel to reduce the caseloads of the remaining contract attorneys.

The county's indigent defense is characterized by constant upheaval as attorneys leave their contracts. Observing court on July 30, 2025, the Monitor saw defendants with cases that had been reassigned to appointed counsel who did not have the file or contact information for their clients, as well as defendants whose attorneys were not present, their cases postponed by stand-in counsel. The inability of Nye County to fully staff its indigent defense system, coupled with the disruptions in the continuity of counsel caused by the high turnover rate, is untenable and has not improved since the workload standards took effect. Yet the Nye County plan, approved by the county's Board of County Commissioners on March 18, 2025, and effective on May 1, 2025, explicitly states its objection to the workload standards.¹⁴

The Department has tried several interventions to improve compliance with workload standards in Nye County. First, the Department recommended a plan administrator to assign cases evenly and select appointed counsel when appropriate. The county's new plan for indigent defense

¹⁴ The Nye County plan is attached to this Report as Appendix C.

includes such a plan administrator, and the Department is currently working with the county to identify a suitable person for the position.

Second, the Department has encouraged the county to increase the compensation for its full-time contracts. The county raised the contract amount from \$175,000 to \$200,000 and solicited letters of intent to be submitted by July 25, 2025. Three attorneys submitted letters of interest: Joseph Iarussi Esq.; Diana S. Cline, Esq.; Brent D. Percival, Esq., (a former prosecutor in Nye County).¹⁵ The Board of County Commissioners will consider their applications on August 5, 2025.

Failure to comply with the workload standards continues to compromise effective assistance of counsel. As the oversight attorney assigned to Nye County reported:

The sheer volume of cases being assigned to each of the contract public defenders makes it impossible to comply with the above standards of performance. My observations convince me that the attorneys are attempting to provide the best defense possible and any shortfalls are due to lack of time to devote to each client as opposed to lack of effort. Hopefully the new contracts will ease this caseload problem and the inherent problems caused by the number of cases.¹⁶

Underworked cases

According to the Department's annual report, excerpted below, the caseload in Nye County requires approximately 39,650.5 hours of annual attorney hours.¹⁷ Under the National Center for State Court (NCSC) Workload standards adopted by the Board, this would require 28.5 FTE attorneys working 1,392 billable hours per year. The Nye County plan (effective May 1, 2025) states that "Nye County has significant concerns" particularly with the 1,392 hours used to define FTE employment. But, even if FTE employment were defined as 2,000 billable hours per year (which it is not), Nye County would require 19.5 FTE attorneys.

¹⁵ See Nye County Board of Commissioners Agenda for August 5, 2025, available at <https://www.nyecountynv.gov/AgendaCenter/ViewFile/Agenda/08052025-4951>.

¹⁶ April 22, 2025, Oversight Report, 3. The Oversight Report is attached to this Report as Appendix D.

¹⁷ Multiply the "Weighted Caseload Value" in the left-hand column with the "# Cases" column and then add the sum of the resulting column.

| NYE COUNTY | Weighted Caseload Value * | # Cases | Attorney Calculated Equivalent | Recorded # Hours ^ | Recorded Time Attorney Calculated Equivalent |
|---|---------------------------|---------|--------------------------------|--------------------|--|
| Appeals (Felony & GM) | 50 | 2 | 0.1 | 233.4 | 0.2 |
| Cat. A (non-capital) felonies and cat. B felonies (max. > 10 years) | 50 | 55 | 2.0 | 2,403.9 | 1.7 |
| Cat. B Felonies (max. <= 10 years), C, D, E felonies, and GM) | 20 | 1412 | 20.3 | 6,580.6 | 4.7 |
| Juvenile (delinquency, supervision, & appeals) | 7.5 | 95 | 0.5 | 442.7 | 0.3 |
| Juvenile (probation/parole violations) | 26 | 1 | 0.0 | 11.4 | 0.0 |
| Misdemeanor (all other & appeals) | 6 | 626 | 2.7 | 1,593.1 | 1.1 |
| Misdemeanor (DUI & DV) | 10 | 401 | 2.9 | 1,306.9 | 0.9 |
| Probation/Parole Violation | 4 | 14 | 0.0 | 71.1 | 0.1 |
| | | | 28.5 | | 9.1 |

* NV Rural Workload Assessment Final Report 11.2 (figure 6 pg 18)

^ Recorded hours entered into LegalServer.

Image copied from the Department's 2025 Annual Report.¹⁸

It is possible that the case numbers are artificially high due to several variables. Cases that are arraigned first in Justice Court and then in District Court often are counted as two cases, for example. The Department is working to clarify and improve the data. Even allowing for a high margin of error in case numbers, the data suggest that the cases are underworked.¹⁹ In the category of gross misdemeanors through low-level B felonies, for example, the Department reports 1,412 cases, with a weighted caseload value of 20 hours. This adds up to an estimated 28,240 hours of attorney time. Yet Nye defenders logged only 6,580.6 hours. Similarly, for misdemeanors, 626 cases requiring an average of 6 hours per case amounts to 3,756 hours, but Nye defenders logged only 1,593.1 hours. For DUI and DV misdemeanors, 401 cases require 4,010 hours, but Nye defenders logged only 1,310 hours.

Lack of continuity of counsel; overuse of stand-in counsel

The Monitor observed both sessions of the Pahrump Justice Court on July 30, 2025. (Oversight Attorney Derrick Lopez also observed court that day.) In addition to observing a highly competent attorney represent her client in a bench trial, I observed issues that I associate with high caseloads and high turnover rates. Many defendants had multiple cases with a different attorney assigned for each case. Some defendants had substitute counsel whom they had never spoken to before and who did not have a copy of the casefile. Several attorneys who had been appointed to cases previously assigned to contract attorneys stated that they did not receive the file, the discovery, or even up-to-date contact information for the client. From statements made via Zoom, it was clear that that one attorney accepting appointment from prior contract counsel had no information about the case, including the charge. This defendant had the waiver of speedy trial rights explained to her by a different attorney in the courtroom—not her lawyer—and waived her

¹⁸ The Department's Annual Report is available at https://dids.nv.gov/Annual_Report/home/.

¹⁹ The weighted caseload values represent an average that takes into account that some cases may be resolved quickly while others require extensive review of digital discovery, expert consultations, motions practice, mitigation development, trial preparation and so forth.

rights without ever having spoken to her newly appointed counsel. I was told of cases in which the attorney of record simply did not appear, and another attorney stood in for a change of plea without the client having spoken with his lawyer. This is a substantive—perhaps the most substantive—decision about a waiver of constitutional rights, and it was made without the benefit of the person’s attorney.

The State’s statutory scheme addresses the risks of delegation of duties from the attorney of record in public defense. NRS 180.320 (2) (d) (5) states that:

[The Board shall adopt regulations] requiring the Department of Indigent Defense Services and each county that employs or contracts for the provision of indigent defense services to 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. A provision must be included in each employment or other contract of an attorney providing indigent defense services to require compliance with the regulations.²⁰

Yet, the use of stand-in counsel appeared to be widespread, and the stand-in attorneys are not part of the same office or firm. The presence of stand-in counsel only raises concerns if it implicates substantive rights, but that is not easy to determine, especially if the attorney of record has not counseled the client. Even a simple continuance or postponement implicates the constitutional right to a speedy trial.²¹ The widespread use of stand-in counsel has further implications related to the lawyer’s obligation to competent representation,²² and the duty of confidentiality.²³ Finally, because stand-in counsel is not a member of the same office or firm, there is a real risk of undetected conflicts of interest.²⁴

Recommendations

- The Department should continue to pursue improvements in Nye County, including the selection of a plan administrator. The Department is also proposing a tracking arrangement from the justice to district court to assist with scheduling.
- The Department should develop and disseminate guidelines for stand-in counsel, especially when the stand-in attorney is not a member of the same firm or agency.

²⁰ See Section 40 (1) (e) of the Board’s regulations.

²¹ *State v. Inzunza*, 454 P.3d 727, 732 (2019) (stating that the defendant’s assertion of the right to a speedy trial is one of four factors to consider in determining whether the right has been violated).

²² Nevada Rule of Professional Conduct (NRPC) 1.1 (“Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation”).

²³ NRPC 1.6 (no disclosure of confidential information without informed consent).

²⁴ NRPC 1.7-1.10.

- The Department and Board should consider a corrective action plan for Nye County.

Churchill County

Churchill County requires 7.4 full-time attorneys to comply with the workload standards. Assuming that 1.4 full-time attorney hours are covered by the contract for alternate public defense and appointed counsel, the county needs to hire 3 additional public defenders—two for the Office of the Public Defender and one for the Office of the Alternate Public Defender.

Since the last monitor’s report, the Churchill Public Defender hired one deputy public defender. As previously reported, it is likely that the salary range is not competitive enough to draw applicants. The salary for Deputy Public Defender I is posted as \$88,171.20,²⁵ and the salary range for Deputy Public Defender II is posted as \$97,323.20 to \$112,860.80. Churchill’s public defender offices are in Fallon, which is a one-hour drive from Reno, where the Washoe County Public Defender offers a salary range of \$110,947.20 - \$237,785.60 for deputy public defenders.

Lyon County

Lyon County requires 12 full-time attorneys. It is difficult to ascertain how many attorneys are engaged in full-time provision of indigent defense because the contracts are held by small law firms/offices rather than by individual attorneys. This presents the additional problem of determining whether the attorneys not listed in the contract are qualified by the Department for the type of cases to which they are assigned.

The county contracts with two law firms, Mansfield & Mayo and Brock Law, to provide first-tier public defense, and a third law firm, Walther Law, to provide first-tier representation in juvenile cases, to provide representation in specialty courts, and to serve as conflict counsel in some situations. Another law firm, Silver State Law, now consists of one attorney, Christopher Day, who provides conflict counsel in Lyon County. One additional attorney is also contracted to provide conflict counsel.

Brock Law Ltd.

Brock Law is required to provide 5 FTE attorneys. The firm consists of Kale Brock, who subcontracts with Carl Hylin and Ray Areshenko,²⁶ although the Department has not been shown the subcontractor agreements. If all 3 attorneys were full-time defenders in Lyon County, Brock Law would still be short 2 attorneys for its contract with the county. These 3 attorneys logged

²⁵ The Churchill Public Defender job posting is available here: <https://dids.nv.gov/JobListings/JobListings/>.

²⁶ Moria Desmarais also subcontracted with Brock Law but is temporarily suspended from the list of qualified counsel for not submitting proof that she attended the required CLE credits.

2,532 hours in Q3 and 1,875 hours in Q4 in Lyon County alone.²⁷ Hylin is also listed as appointed counsel in Lyon County, separate from his work with Brock Law, and Areshenko accepts appointments in Humboldt County.

Mansfield & Mayo Law Firm

Mansfield and Mayo agreed to provide 3 FTE attorneys in Lyon County, and to solicit for a fourth attorney. In Q3, two attorneys were listed as counsel in contract cases in Lyon County, Patrick Mansfield and Massey Mayo.²⁸ In Q4, Jeremy Rausch began taking misdemeanor cases under the contract. This appears to put the firm at 3 full-time attorneys. However, the firm also has a contract in Humboldt County to provide 2 FTE attorneys, at least until the NSPD fully staffs its new Humboldt office.

At various points, Mansfield and Mayo have listed Nester Marcial Martinez, Michelle Rodriguez, and Stevie DeSomber as providing representation under their contract. Martinez is joining the public defender office in Elko. Rodriguez handles only for civil and juvenile cases. DeSomber fills in as needed, but she has significant workload outside of the firm.

Walther Law Firm

Walther Law has modified its contract, and the new contract does not specify the number of FTE attorneys required. Walther Law covers up to 210 hours in specialty courts, all drug court and juvenile court appointments, as well as cases in which Brock Law has a conflict. Two attorneys from the firm recorded hours on contract cases in Lyon County during Q3 and Q4.

Delegation Issues

The statutory scheme and regulations are designed to limit delegation of representation from one attorney to another.²⁹ The Board's regulations state that the contract between the county and the attorney must include the "*identification of each attorney who will provide legal representation in each category of case covered by the contract, including, without limitation, any attorney providing such representation as a subcontractor*, and a provision that ensures consistency in presentation...."³⁰ The Lyon County contracts do not do this, and this lack of transparency makes it difficult to ascertain whether there are sufficient attorneys to comply with the workload standards and whether the attorneys of record are qualified by the Department for the case type.

²⁷ This information can be found in the 2025 quarterly workload reports here: https://dids.nv.gov/Annual_Report/county-reportsFY25/.

²⁸ Two other names appear in the quarterly reporting: Collette Zahniser and Selina Cota, but they do not appear to be Nevada attorneys, and may be support staff.

²⁹ NRS 180.320 (2) (d) (5).

³⁰ Section 10 of amendment, amending Section 40 (1) (e) (emphasis added).

Recommendations

- The new oversight attorney for Lyon County should work with the Department and the contracting firms to ensure compliance with workload standards and qualifications of counsel appointed in individual cases.
- The contracts between the county and the attorneys providing indigent defense should list all attorneys providing representation and the percentage of their time that is dedicated to providing representation under the contract.

Douglas County

Douglas County requires 8.8 FTE attorneys to comply with the workload standards. The County contracts with Justin Clouser, Alexis Duecker, Matt Ence, Max Stovall, and Matt Stermitz, as well as 2 additional part-time attorneys for initial appearance and specialty court hearings for an estimated 456-612 hours per year.³¹ Brian Filter is the new Director of Indigent Defense Services, a county employee who also serves as the Department's designee for the selection of counsel.

The outstanding issue, discussed in prior reports from the Monitor, is whether 5 attorneys can agree to do the work of 8.8 attorneys and thereby meet the workload standards without adding additional contracts. The Douglas County contracts for first-tier public defense state, "Firm promises and agrees to commit up to 2,200 hours per year for Firm and Firm's attorneys, associates and employees to provide services under this Contract." The contract contains provisions requiring the attorney to refuse new cases if the attorney does not have "sufficient time." For a solo practitioner, assuming two weeks of vacation per year, no other holidays, and no sick or personal time off, the attorney must work exclusively on their clients' cases for 44 hours per week to reach 2,200 hours. In addition, the attorney must travel to various courthouses and jails, report their cases and hours, take regular CLE training, and conduct other business required to manage a law firm.³²

As discussed at length in the Monitor's previous reports, it is the Monitor's position that, regardless of a contract clause permitting attorneys to refuse cases, these contracts create economic disincentives to effective representation and therefore do not comply with the Judgment. Attorneys are assigned casework that may take up to 2,200 hours per year and thus are incentivized to spend less time on each case.³³

³¹ Of concern is that the hourly rate of compensation for 48-hour hearings is set in the contract at \$150 per hour, and \$125 per hour for specialty court representation. This is below the \$175 per hour rate set in the Board, although the regulations permit attorneys to contract for less than the hourly rate.

³² A Douglas County contract is attached to the Monitor's 15th Report as Appendix C.

³³ Judgment, 11-12 (prohibiting financial disincentives).

Nevada State Public Defender: Workload & Capacity Building

A fully staffed NSPD is essential to compliance with the Judgment. When a county is unable to assure that indigent defendants are represented by qualified, competent attorneys in compliance with workload standards, then the State must find another way to fulfill its obligations under this Judgment and under the Sixth Amendment’s right to counsel clause. If the corrective action plan for the county fails, “the Executive Director may ... 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.”³⁴

Salaries at the NSPD are simply not competitive with public defender salaries in Washoe County or with the rates for appointed and contract counsel. The 2025 legislative session did not result in any changes to the salaries or incentives for the NSPD. The State could, for example, set up an NSPD office in Law Vegas from which staff public defenders could be deployed to the *Davis* counties when necessary, or develop a system of financial, housing, or other incentives for attorneys to accept positions in rural NSPD offices. This did not happen, and it remains to be seen whether the office can recruit sufficient attorneys to meet the State’s obligations under the Judgment. To the extent that the attorney shortages are caused by insufficient funding and low salaries, the State runs the risk of violating both the Judgment and the Sixth Amendment.³⁵

Workload compliance

The amendment to the Judgment requires the Executive Director to “monitor and manage caseloads at the State Public Defender’s office to ensure compliance with the Right to Counsel Requirements” in light of the NSPD’s shifting responsibilities in the rural counties.³⁶ The Department anticipates reporting on NSPD’s current workload in its next quarterly report.

In addition to providing appellate representation, death penalty cases, and parole and pardons cases for several of the *Davis* counties,³⁷ NSPD now provided first-line public defense in both White Pine and Humboldt counties.

³⁴ NRS 180.450 (5). Note that the transfer to the NSPD requires significant lead-time. It must be decided in an even-numbered year, to be implemented on July 1st of the next odd-numbered year, presumably to account for the increased staffing needs of the NSPD during the legislative session. NRS 180.450 (6).

³⁵ *Betschart et al. v. State of Oregon*, 103 F.4th 607, 628 (9th Cir. 2024) (stating that, “[c]onsistent with the Sixth Amendment, Oregon could solve this problem [of indigent defendants lacking representation] overnight simply by paying appointed counsel a better wage.”)

³⁶ Amendment, 5.

³⁷ Of the *Davis* counties, Esmeralda, Lander, Lincoln, and White Pine counties have opted to have NSPD handle appellate representation, and Churchill, Lander, and White Pine have opted to have the NSPD handle death penalty cases. Churchill, Esmeralda, Lincoln, Lyon and White Pine—have opted to transfer parole and pardons cases to the NSPD.

The NSPD remains understaffed and unable to fill all vacancies. Under the leadership of Andrew Coates, who is primarily tasked with leadership of the office, the NSPD has (1) Chief Appellate Attorney Jim Hoffman, (2) Derrick Penney, serving as the Chief Deputy Public Defender in White Pine County, (3) Robert Melcic, serving as a Deputy Public Defender in White Pine County, (4) Kristy Kendell, serving as the Chief Deputy Public Defender in Humboldt County, and (5) a newly hired Deputy Public Defender in Humboldt County who is qualified to handle misdemeanors.

The NSPD also contracts with a private attorney, Justin Clouser, to provide representation in parole and probation cases. It should be noted that, in addition to providing representation in parole and probation cases for the NSPD, Clouser serves as appointed counsel in Douglas County where he accepted reassignment of all cases previously assigned to an FTE contract holder (save a handful of Category A felonies which he is not yet qualified to take) and reports a private workload. Oversight reports from Douglas County document occasions on which he had cases in which he was providing indigent defense on the docket and he did not appear or contact the court.³⁸

Per AB 541 (2025), the Department, rather than the NSPD, is now responsible of paying post-conviction counsel. This should relieve the NSPD of some of its administrative duties and improve its capacity for providing direct representation.

White Pine County

In White Pine County, the NSPD contracts with two attorneys to meet the workload standards and ensure adequate case coverage. Jane Eberhardy—an Ely-based attorney who previously held a full-time contract for public defense in White Pine County—provides up to 1,800 hours at an hourly rate, with a total not to exceed \$309,600, and Julie Cavanaugh Bill—an Elko-based attorney—provides up to 800 hours to cover juvenile cases. With two full-time NSPD attorneys, Derrick Penney and Robert Melcic, White Pine County is in compliance with the workload standards, and the NSPD’s appellate counsel is no longer being deployed to White Pine County to take new cases.

Humboldt County

To stay within workload limits, the new Humboldt County office of the NSPD needs 4.9 attorneys, 2 investigators, and 2 legal secretaries. The office currently has a supervising chief deputy, Kristy Kindell, and a recently hired attorney from Washington state who is qualified to represent clients in misdemeanors, as well as a legal secretary and two investigators. This leaves a deficit of about 3 attorneys. As a stop gap measure, the law firm of Mansfield and Mayo will keep a contract for their current cases, and potentially take future cases, up to the equivalent of 2 FTEs. As discussed above, Mansfield and Mayo also holds a contract in Lyon County to provide 3 FTE

³⁸ These oversight forms are attached to this Report as Appendix E.

attorneys, and the firm has only 3 attorneys total (Mansfield, Mayo, and Rausch, the latter qualified for misdemeanors only).

Recommendation

- The State should build up the NSPD through incentivized recruitment and retention efforts.

III. Oversight; Compliance with Performance Standards

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

1. Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.³⁹
2. Client communication per the standards set in ADKT 411; provision of space for confidential attorney-client meetings; all reasonable efforts to have confidential attorney-client meetings before an initial appearance.⁴⁰
3. Systems to identify and remove conflicts.⁴¹
4. Establishment of performance standards.⁴²
5. Establishment of workload standards.⁴³
6. Qualifications for attorneys.⁴⁴
7. A system of oversight.⁴⁵
8. Attorney training and resources.⁴⁶

This section focuses on oversight because it provides the critical mechanism for determining whether items 1-3 above are occurring, and for tailoring training and resources to ensure effective assistance of counsel.

³⁹ Judgment, 14.

⁴⁰ *Id.* at 14-15.

⁴¹ *Id.* at 12.

⁴² *Id.* at 16.

⁴³ *Id.* at 17.

⁴⁴ *Id.* at 15.

⁴⁵ *Id.* at 16-17.

⁴⁶ *Id.* at 16.

As reported in the Monitor’s prior reports, the oversight system appears to be stalled in data collection, without much analysis and intervention. The last comprehensive oversight report from the Department was posted May 1, 2024, by then Deputy Director Thomas Qualls. Since that time, the three contracting oversight attorneys—called “oversight and compliance advisors”—continued to visit counties and submit forms, as well as some reports. While the Department has the capacity to respond to individual complaints against specific attorneys, it has not had sufficient staff to review the materials submitted by the oversight attorneys, determine which issues need to be addressed for compliance, and then develop and implement a plan to address the compliance issues. Now that the position of second Deputy Director has been filled by Homa Sayyar, there is an opportunity to correct this problem.

The Board’s Role in Oversight

NRS 180.320 describes the duties of the Board. Among other things, the Board shall:

Receive reports from the Executive Director and *provide direction* to the Executive Director concerning measures to be taken by the Department to ensure that indigent defense services are provided in an effective manner throughout this State. NRS 180.320 (1) (a) (emphasis added).

Direct the Executive Director to conduct any *additional audit, investigation or review* the Board deems *necessary to determine whether minimum standards* in the provision of indigent defense services are being followed and provided in compliance with constitutional requirements. NRS 180.320 (c) (emphasis added).

Currently, the Board is not serving these statutory functions. Per the Board’s November 21, 2024, request, the Department provided all forms and reports from the oversight attorneys to the Board. Both the February 6th and June 26th Board meetings included on the agenda, “Reports from Outreach Advisors” as an item for “discussion and possible action.” Yet the Board did not engage in a substantive discussion of the oversight data during either Board meeting. Indeed, only one member of the Board expressed interest in a more substantive discussion and inquired about the Board’s role in oversight.⁴⁷

Evidence of Representation Below Performance Standards

As detailed in the Monitor’s previous reports, oversight attorney David Schieck has expressed serious concerns about the quality of representation in Nye County.⁴⁸ He highlights critical failures, including:

⁴⁷ The court observation forms and reports are attachments to the Board’s February 6, 2025, and June 26, 2025, meetings, available here: https://dids.nv.gov/Meetings/2025/2025_Meetings/.

⁴⁸ This information was detailed and documented in the Monitor’s 15th Report and its appendices E, F, I, J, and K. Schieck’s April 22, 2025, summary report is attached to this Report as Appendix D.

- inadequately counseled waivers of trial rights and entry of guilt pleas
- attorney absenteeism and heavy reliance on “stand-in” counsel
- absenteeism of supervising attorneys on cases in which the less experienced attorney is not yet qualified for the case type
- failure to present mitigation arguments at sentencing
- failure to adequately review the Presentencing Report Investigation
- insufficient time to litigate issues that prejudice clients
- failure to subpoena a witness
- uncounseled or otherwise inexplicable waivers of rights

The oversight attorney also documented structural issues, including the lack of technology in the Pahrump jail for attorneys to review digital discovery with their clients, and the eight-week delay in District Court arraignment for defendants bound over from the Justice Court. Adding to these concerns is the recent closure of the jail in Tonopah. The Monitor has been informed that defendants with cases pending in Tonopah are driven back-and-forth to detention in Pahrump and often released without their belongings, wallet, or identification. The Monitor has been unable to determine whether these transfers interfere with access to counsel.

The oversight for several other counties is less detailed. Better direction and coordination among oversight attorneys might result in more consistent oversight information. Indeed, oversight attorney Derrick Lopez (whose court observation forms are very thorough) expressed interest in receiving guidance from the Department about what he should be focusing on during oversight visits, and in coordinating among the three oversight attorneys.⁴⁹

Inferences from the Department’s 2025 Annual Report

In the meantime, it is possible to gather some information about the amount of work being done on indigent defense cases from the Department’s Annual Report for FY 2025. For many categories of cases in most counties, the amount of time worked is significantly less than the average amount of time that the Delphi panels concluded would be necessary to provide competent representation. For example, Lyon County recorded 959 misdemeanors, excluding more serious DUI and DV cases. Per the workload standards, the average time to provide competent representation in a misdemeanor case is six (6) hours. This would amount to 5,754 hours of attorney time per year for 959 misdemeanor cases. According to the annual report, attorneys in Lyon County spent 2,195.5 hours on misdemeanor cases, which is an average per case of less 2.5 hours per misdemeanor case.

⁴⁹ Statement made during the June 26, 2025, Board Meeting.

| LYON COUNTY | Weighted Caseload Value * | # Cases | Attorney Calculated Equivalent | Recorded # Hours ^ | Recorded Time Attorney Calculated Equivalent |
|---|---------------------------------|---------|--------------------------------------|-----------------------|--|
| Appeals (Felony & GM) | 50 | 4 | 0.1 | 180.4 | 0.1 |
| Cat. A (non-capital) felonies and cat. B felonies (max. > 10 years) | 50 | 37 | 1.3 | 2,715.1 | 1.9 |
| Cat. B Felonies (max. <= 10 years), C, D, E felonies, and GM) | 20 | 614 | 8.8 | 10,190.3 | 7.3 |
| Juvenile (delinquency, supervision, & appeals) | 7.5 | 186 | 1.0 | 684.1 | 0.5 |
| Juvenile (probation/parole violations) | 26 | 21 | 0.4 | 111.0 | 0.1 |
| Misdemeanor (all other & appeals) | 6 | 959 | 4.1 | 3,452.7 | 2.5 |
| Misdemeanor (DUI & DV) | 10 | 417 | 3.0 | 2,195.5 | 1.6 |
| Probation/Parole Violation | 4 | 59 | 0.2 | 119.9 | 0.1 |
| | | | 19.0 | | 14.1 |

* NV Rural Workload Assessment Final Report 11.2 (figure 6 pg 18)

^ Recorded hours entered into LegalServer.

Table copied from the Department's 2025 Annual Report.

Another striking example is provided by the data from Nye County, discussed above, in Section II. According to the annual report, Nye County attorneys documented 1,412 cases in the category of gross misdemeanor through low-B felonies. The workload standards set an average for time per case in this broad category at 20 hours, which amounts to 28,240 attorney hours to competently represent people charged in 1,412 cases in this range of seriousness. Nye County attorneys, however, recorded just 6,580.6 hours spent on these cases—approximately 4.7 hours per case, on average—less than one quarter of the average time estimated by the Delphi panels. Even if the cases are overcounted, the gap between the average time spent per case and the Delphi caseload values is significant.

Recommendations

- The Executive and Deputy Directors, as well as the oversight attorneys, may benefit from consultation with experienced public defender trainers who have built oversight systems in other states with hybrid defender systems (i.e., county-based public defenders, contract and appointed counsel, etc.). Organizations such as the National Association for Public Defense provide customized training and technical assistance.⁵⁰
- The Judgment states that the Defendants must offer “a systematic and comprehensive training program.”⁵¹ The Department should tailor the training and mentorship programs to the oversight concerns and perhaps include small group and interactive CLEs in consultation with the oversight attorneys.
- The Board should consider its statutory role in oversight and request the documents or expertise necessary to fulfill this role.

⁵⁰ National Association for Public Defense, available at <https://publicdefenders.us/technical-assistance/>.

⁵¹ Judgment, 16.

IV. Uniform Data Collection and Reporting

The Judgment requires that attorneys who provide public defense in the relevant counties document time for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases, and that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.⁵² The Board's regulations follow the Judgment's requirements.⁵³ The Department published quarterly workload data for all four quarters of FY 2025. For this Report, the Monitor reviewed the Department's workload data reports for the third quarter (Q3) (January 1, 2025-March 31, 2025) and the fourth quarter (Q4) (April 1, 2025-June 30, 2025).⁵⁴

For Q3 and Q4, the Department's quarterly reports include a spreadsheet with responses from attorneys to these specific questions: number of full and part-time attorneys in the firm, number of legal assistants, paralegals, investigators and social workers, and the number of hours spent on private caseload. For Q3, 29 attorneys responded. For Q4, only 13 attorneys responded. While incomplete due to the failure of some attorneys to respond, this format provides insight into the overall capacity and practice of attorneys providing indigent defense, some of whom hold full-time contracts as solo practitioners. Troublingly, responses to the Department's request for this information appear to have fallen by half for Q4.

Also missing from this data are (1) the names of the other attorneys in the firm so that the Department can ensure that they are qualified to represent clients in the types of cases they are appointed to, and (2) the number of contracts for indigent defense held by each attorney or firm.

Workload Reporting by County

Churchill County

Both the county's Public Defender Office and the Alternate Public Defender Office reported their hours. It is possible that they are underreporting hours, but this cannot be independently determined.

Douglas County

⁵² Judgment, 18.

⁵³ Section 43 of the Regulations requires an annual report of the number and type of cases, their disposition, whether motions to suppress were filed, and the number of trials. Section 44 requires that attorneys providing indigent defense in the relevant counties document their time in increments to the tenth of an hour, the number of hours for attorneys, investigators, experts, staff, and the total number of hours the attorneys spent working on private cases. Section 45 requires attorneys providing indigent defense to use the Department's data collection system.

⁵⁴ Available at https://dids.nv.gov/Annual_Report/county-reportsFY25/.

All attorneys are reporting their hours. All but one attorney reported hours spent on private workload.

Esmeralda County

The contract attorney reported hours spent on indigent defense. He reported hours spent on his private caseload for Q3 but not for Q4.

Eureka County

The contract attorney reported hours spent on indigent defense in the county as well as his private caseload for both Q3 and Q4.

Lander County

Attorneys reported their hours spent on indigent defense. One reported hours spent on private casework.

Lincoln County

The two attorneys holding contracts for Lincoln County appear to have stopped reporting. One reported private caseload in Q3, but neither reported hours spent on indigent defense or private caseload hours for Q4. The Department is working with both attorneys to resolve this situation.

Mineral County

The primary contract holder reported indigent defense hours, and reported private casework hours for Q3 but not for Q4. Conflicts are assigned to Brock Law, who also holds a contract in Lyon County. Brock Law (Carl Hylin) reported indigent defense hours in Q3 but none in Q4. It is unclear whether this reflects no new casework or a drop in reporting.

Lyon County

Walther Law Offices reported hours spent on indigent defense as well as private casework hours for Q4. Brock Law reported both indigent defense and private casework hours for both Q3 and Q4. Mansfield & Mayo Law Firm reported indigent defense hours for both Q3 and Q4, but not hours spent on private casework. Silver State Law reported in Q3 but did not report any hours in Q4, but it is possible that the firm had no new casework in Q4.

Nye County

Workload reporting in Nye County remains challenging, particularly because one attorney holding a full-time contract, Jherna Shahani, does not report any hours. She does not appear to use

Legal Server. The other attorneys who have held contracts in Q3 and Q4 reported hours spent on indigent defense under their contracts. Two attorneys per quarter reported their hours on private casework.

White Pine County

The NSPD and the contract attorneys reported their hours. The contract attorneys also reported their hours on private casework.

General note: Investigation and Experts

Some attorneys report hours for investigators and experts. The only way to determine whether attorneys are underreporting their use of investigators and experts is to compare these reports to invoices submitted by investigators and experts. It is unclear whether the Department has the capacity to do this work given their present staffing.

General note: Private workload reporting

The Judgment requires attorneys to report the total number of hours spent on private cases, and the Department has secured some improvement in this area. The Deputy Director is reaching out to attorneys individually and through the reporting form to improve compliance.

Looking Ahead

- The NSPD will consider its recruitment efforts, and the Department will collect and report the NSPD workload data in its next quarterly report.
- The Department may consider next steps for bringing Nye County into compliance with workload and performance standards, taking into account any new contracts.
- The Department will be working on its oversight protocol and contracting with a new oversight attorney as well.
- The Department will continue to work on collecting caseload data from contract attorneys, including hours spent on private cases.
- The Department will be submitting an agreed-upon work program to the Interim Finance Committee (IFC) for consideration in the IFC's October meeting.

Next Steps for the Monitor

The Monitor will prepare to report on:

- The Department's oversight activities and the Board's directives on ensuring compliance with performance standards.
- The State's efforts and initiatives to recruit more attorneys to the rural counties.
- The Department's training and mentorship program.
- The impact of excessive workloads on the quality of representation, particularly in Nye County.
- Changes to caseload and workload reporting among the contract attorneys.

16th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 5, 2025

Appendix A
Schedule for DIDS Annual Training Conference

DIDS 5th Annual Conference Agenda

April 2-4, 2025

| Date/Time | Topic | Speaker |
|-----------------------|--|--|
| Wed, April 2 | | |
| 12:30-1:00 | Check-in | |
| 1:00-1:15 | Program Welcome and Intro | DIDS |
| 1:15-2:15 | <u>Evidentiary Issues in Violent Crime Cases</u> Handout: <u>Rules and Key Cases</u> | Rene Valladares, JoNell Thomas Las Vegas NV |
| 2:15-3:15 | <u>Did the Dude Deserve to Die: Winning Self Defense Cases</u> Handout: <u>Trying Self Defense Cases</u> | Deja Vishny Milwaukee WI |
| 3:15-3:30 | Break - Snacks Provided | |
| 3:30-4:30 | <u>Defending Firearms Cases</u> | Kate Berry Reno NV |
| 4:30-5:30 | <u>Rape Shield Litigation in Nevada</u> | Julia Murray Las Vegas NV |
| 6:00-8:00 | NACJ Sponsored Reception | |
| Thurs, April 3 | | |
| 8:00-9:00 | Breakfast Buffet | |
| 9:00-10:30 | <u>Police Misconduct: Investigation & Pretrial Litigation to Win</u> Handout: <u>How to Use Police Misconduct in Criminal Trials</u> | Debbie Levi Baltimore MD |
| 10:30-10:45 | Break | |
| 10:45-12:15 | Defending Child Sex Cases Handouts: <u>Conquer Your Fear</u> & <u>Cross-Examining the Child Witness</u> | Kathleen Stilling Brookfield WI |
| 12:15-1:15 | Lunch Buffet | |
| 1:15-2:15 | <u>Working With & Cross Examining Forensic Pathologists</u> Handout: <u>Preparing to Cross a Forensic Pathologist</u> | Deja Vishny Milwaukee WI |
| 2:15-3:15 | <u>Making the Most of Defense Experts in Your Case</u> | Elizabeth Vasquez New Jersey |
| 3:15-3:30 | Break - Snacks Provided | |
| 3:30-5:00 | <u>Defending Child Abuse & Neglect Cases</u> Handouts: <u>Motion of Competency</u> , <u>Motion to Dismiss</u> , <u>Motion to Preclude</u> | Kate Hickman Reno NV |
| 6:30 | Restaurant Dining | |
| Fri, April 4 | | |
| 7:45-8:45 | Breakfast Buffet | |
| 8:45-9:45 | <u>You Had One Job: Litigating Prosecutorial Delay with Inzunza, Barker, & Doggett</u> | David Westbrook Las Vegas NV |
| 9:45-10:45 | <u>Modern DNA Defense: Probabilistic Genotyping</u> Handout: <u>Intro to Complex Mixtures and Prob Gen</u> | Elizabeth Vasquez New Jersey |
| 10:45-11:00 | Break | |
| 11:00-12:00 | <u>Building a Mitigation Case for Sentencing</u> | Emily Reeder Las Vegas NV |

16th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 5, 2025

Appendix B
SB 407 (2025)

CHAPTER.....

AN ACT relating to indigent services; revising provisions governing the Executive Director of the Department of Indigent Defense Services and the State Public Defender; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates the Department of Indigent Defense Services and requires the Governor to appoint the Executive Director of the Department, who serves at the pleasure of the Governor. (NRS 180.400) **Section 25.5** of this bill instead: (1) requires the Executive Director to serve at the pleasure of the Board on Indigent Defense Services; and (2) authorizes the Board to remove the Executive Director only for good cause, unless an exception applies. **Section 25.5** also specifies that the Executive Director serves a term of 4 years and may be reappointed.

Existing law creates the Office of the State Public Defender within the Department and requires the Governor to appoint the State Public Defender. (NRS 180.010) **Section 16** of this bill instead requires the Executive Director to appoint the State Public Defender. **Section 16** also authorizes the Executive Director to reappoint the State Public Defender.

Existing law requires the Executive Director and the State Public Defender to be licensed to practice law in this State. (NRS 180.010, 180.400) **Sections 16 and 25.5** instead require each such person to be a member of the State Bar of Nevada or otherwise authorized to practice law in this State under the rules of the Supreme Court.

Section 25.7 of this bill authorizes the person serving as the State Public Defender on the effective date of this bill to serve the remainder of the term for which he or she was appointed. **Section 25.7** also provides that the person serving as the Executive Director on the effective date of this bill is deemed to have been appointed to a term of 4 years beginning on that date.

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:

Sections 1-15. (Deleted by amendment.)

Sec. 16. NRS 180.010 is hereby amended to read as follows:

180.010 1. The Office of State Public Defender is hereby created within the Department of Indigent Defense Services.

2. The ~~[Governor]~~ *Executive Director* shall appoint the State Public Defender for a term of 4 years, and until a successor is appointed and qualified. *The State Public Defender may be reappointed.*

3. The State Public Defender is responsible to the Executive Director.

4. The State Public Defender:



(a) Must be ~~{an attorney licensed}~~ *a member of the State Bar of Nevada in good standing or otherwise authorized* to practice law in the State of Nevada ~~{;} pursuant to the rules of the Supreme Court.~~

(b) Is in the unclassified service of the State and serves at the pleasure of the Executive Director.

(c) Except as otherwise provided in NRS 7.065, shall not engage in the private practice of law.

5. No officer or agency of the State, other than the Executive Director and the deputy director selected by the Executive Director pursuant to NRS 180.420 who is responsible for carrying out the duties provided in NRS 180.430 may supervise the State Public Defender. No officer or agency of the State, other than the Executive Director or deputy director selected by the Executive Director pursuant to NRS 180.420 who is responsible for carrying out the duties provided in NRS 180.430 may assign the State Public Defender duties in addition to those prescribed by this chapter.

Secs. 17-25. (Deleted by amendment.)

Sec. 25.5. NRS 180.400 is hereby amended to read as follows:

180.400 1. The Department of Indigent Defense Services is hereby created.

2. The *Governor shall appoint the* Executive Director of the Department ~~{must be appointed by the Governor}~~ from a list of three persons recommended by the Board. *The Executive Director serves a term of 4 years, and until a successor is appointed and qualified. The Executive Director may be reappointed.*

3. ~~{The}~~ *Except as otherwise provided in subsection 5, the* Executive Director:

(a) Is in the unclassified service of this State;

(b) Serves at the pleasure of the ~~{Governor,}~~ *Board*, except that the Executive Director may only be removed ~~{upon a finding of incompetence, neglect of duty, commission of an act that constitutes moral turpitude, misfeasance, malfeasance or nonfeasance in office or}~~ for ~~{any other}~~ good cause;

(c) Must be ~~{an attorney licensed}~~ *a member of the State Bar of Nevada in good standing or otherwise authorized* to practice law in the State of Nevada ~~{;} pursuant to the rules of the Supreme Court;~~ and

(d) Must devote his or her entire time to his or her duties and shall not engage in any other gainful employment or occupation.

4. The Executive Director may, within the limits of money available for this purpose, employ or enter into a contract for the services of such employees or consultants as is necessary to carry out the provisions of this chapter.



5. In extraordinary circumstances, the Governor may remove the Executive Director upon a finding that the Executive Director:

(a) Engaged in criminal conduct, whether or not the conduct occurred in office; or

(b) Committed an act that constitutes malfeasance or nonfeasance in office. For the purposes of this paragraph, an otherwise lawful action taken within the scope of the statutory authority of the Executive Director does not constitute malfeasance or nonfeasance.

↪ The Legislature declares that the purpose of this subsection is to uphold the public policy that an indigent defense system must be independent in order to provide constitutionally adequate representation, as recognized by the American Bar Association Ten Principles of a Public Defense Delivery System, as published on November 9, 2023.

Sec. 25.7. Notwithstanding the amendatory provisions of this act:

1. The State Public Defender who was appointed pursuant to NRS 180.010 as that section existed on June 30, 2025, and who is serving a term on July 1, 2025, is entitled to serve the remainder of the term for which he or she was appointed.

2. The Executive Director who was appointed pursuant to NRS 180.400 as that section existed on June 30, 2025, shall be deemed to have been appointed to a term of 4 years on July 1, 2026.

Sec. 26. This act becomes effective on July 1, 2025.



16th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 5, 2025

Appendix C
Nye County Plan for Indigent Defense



Nye County

Plan for the Provision of Indigent Defense Services



Nye County Plan for the Provision of Indigent Defense Services

Document and Contact Information

| | |
|--|--|
| Guidelines Manager: | Lorina Dellinger, Assistant County Manager (775) 482-8191 / (775) 751-7075 ldellinger@nyecountynv.gov |
| File Name: | Nye County Plan for the Provision of Indigent Defense |
| To obtain this document or to make inquiries: | Tonopah Administration Office (775) 482-8191 ldellinger@nyecountynv.gov Pahrump Administration Office (775) 751-7075 ldellinger@nyecountynv.gov |
| Requirements for Document acceptance and changes: | Acceptance of, and changes to this document must be reviewed and approved by the Nye County Assistant County Manager and subsequently the Nye County Board of County Commissioners (BOCC). |

History of Revision

| Date | Version | Comments |
|-----------------|---------|-------------------------------|
| August 17, 2021 | 1-2021 | Approved and accepted by BOCC |
| May 26, 2022 | 2-2022 | Approved and accepted by BOCC |
| April 18, 2023 | 3-2023 | Approved and accepted by BOCC |
| March 18, 2025 | 4-2025 | Approved and accepted by BOCC |
| | | |
| | | |
| | | |



1. RECITALS

- A. The Board of Indigent Defense Services (BIDS) requires Nye County to amend its adopted Plan for Indigent Defense Services to include a plan for how the County intends to comply with BIDS' National Center for State Courts (NCSC) Workload Study by November 1, 2024. Nye County has significant concerns regarding the methodology used and the conclusions reached in the NCSC Workload Study. Rather than basing the adopted standards on an independent review and evaluation of the quality of legal services provided in each jurisdiction, the BIDS instead chose to adopt a maximum workload standard of 1,392 hours per full time equivalent (FTE) contract attorney and to set a minimum number of FTE units for each county.
- B. Nye County also has significant concerns about a state agency having the power to authorize and expenditure of county funds or dictate or override the autonomy of the elected or appointed officials of a Nevada county. As such, this plan is not intended to authorize any expenditures of county funds that are not authorized by an elected or appointed person in Nye County. It is not the desire or purpose of the Nye County Board of County Commissioners to authorize a state agency to expend county monies.
- C. Portions of this plan are contingent upon the State of Nevada paying for the increases in the budgetary amounts caused by the adoption of this Plan. In the event the State of Nevada does not authorize the increase in expenditures, portions of this plan may be eliminated.

2. STATEMENT OF POLICY

- A. Objectives
 - i. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services of appointed counsel, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
 - ii. The further objective of this Plan is to implement the requirements set forth in the Order entered by the Supreme Court of Nevada on January 4, 2008 in ADKT 411: "In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases."



3. DEFINITIONS

- A. "Appointed Attorney" includes private attorneys, both contracted and hourly.
- B. "Appointed Counsel Program Coordinator" performs such duties and responsibilities as assigned by the Assistant County Manager as are reasonably necessary to oversee the program including assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; monitoring case reporting requirements from attorneys; approving of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. This position will work in coordination with the Department of Indigent Defense Services to ensure requested data is provided to the Department.
- C. "Department" The Nevada Department of Indigent Defense Services.
- D. "Representation" includes counsel and investigative, expert and other services.
- E. "Regulations" The Permanent Regulations of the Board of Indigent Defense Services.

4. PROVISIONS OF REPRESENTATION

- A. Mandatory: Nye County shall provide representation for any financially eligible person who:
 - i. is charged with a felony or gross misdemeanor;
 - ii. is charged with a misdemeanor where jail time is mandatory or the prosecutor is seeking jail time;
 - iii. is alleged to have violated probation or other court supervision and jail time or a sentence of confinement may be imposed;
 - iv. is a juvenile alleged to have committed an act of delinquency or alleged to be a child in need of supervision;
 - v. is in custody as a material witness;
 - vi. is entitled to appointment of counsel under the Sixth Amendment to the U.S. Constitution or any provision of the Nevada Constitution, or when due process requires the appointment, or the judge is likely to impose jail time;
 - vii. faces loss of liberty in a case and Nevada law requires the appointment of counsel;



- viii. faces loss of liberty for criminal contempt;
 - ix. has received notice that a grand jury is considering charges against him or her and requests appointment of counsel.
- B. Discretionary: Whenever a court determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- i. is charged with a misdemeanor, infraction or code violation for which a sentence of confinement is authorized;
 - ii. has been called as a witness before a grand jury, a court, or any agency which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - iii. any other case in which the court determines in the interest of justice appointment of counsel is appropriate.
- C. Timing of Appointment of Counsel: Counsel shall be provided to eligible persons:
- i. within 72 hours;
 - ii. at their first appearance before a judge;
 - iii. when they are formally charged or notified of charges if formal charges are sealed; or
 - iv. when a Justice of the Peace or District Judge otherwise considers appointment of counsel appropriate.
- D. Number and Qualifications of Appointed Counsel:
- i. one attorney shall be appointed consistent with Section 4 and 5 herein, except Capital Cases;
 - ii. two attorneys shall be appointed consistent with Section 4 and 5 herein, as soon as possible in all open murder cases which are reasonably believed to result in a Capital Case;
 - iii. at least one of the two attorneys appointed to represent defendants charged in Capital Cases must meet the minimum standard for lead counsel pursuant to Nevada Supreme Court Rule 250 and both attorneys appointed must conform to the performance guidelines or standards as adopted by the Nevada Supreme Court for Capital Cases.



E. Eligibility for Appointed Representation:

i. Financial Eligibility:

- a. a person shall be deemed "indigent" who is unable, without "substantial hardship" to himself or his dependents, to obtain competent, qualified legal counsel on his or her own;
- b. "substantial hardship" is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline;
- c. a defendant is presumed to have a "substantial hardship" if he or she is currently serving a sentence in a correctional institution or housed in a mental health facility or is a minor;
- d. defendants not falling below the presumptive threshold for indigency will be subject to a more rigorous screening process to determine if his or her particular circumstances, including seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a "substantial hardship" were they required to retain private counsel.

- ii. Screening for Eligibility: Appointed Counsel Program Coordinator, or Court Administration when applicable, shall conduct screening no later than 48 hours after arrest for financial eligibility and provide a recommendation to the court with regard to eligibility of the defendant for the services of appointed counsel based upon the provisions set forth above. Appointed Counsel may assist in supplying information during the screening but shall not be asked to decide or recommend eligibility. After screening and upon a judge or master finding that a defendant is eligible for appointed counsel in accordance with subsection 3 of NRS 171.188, counsel will be appointed promptly. The matter will be referred to the Appointed Counsel Program Coordinator for selection of appointed counsel.

- iii. Automatic Eligibility: A minor alleged to have committed a crime, an act of juvenile delinquency, or alleged to be a child in need of supervision is automatically eligible for appointed counsel because the presumption of indigency always accompanies any charges filed against a minor.

5. APPOINTMENT OF PRIVATE ATTORNEYS

A. System of Selection for Court Appointed Counsel Attorneys



- i. As required, but not less than every two years, Nye County will recruit attorneys to provide indigent defense services on a contract basis.
- ii. Recruitment will take place during the spring of each year, with annual contracts beginning July 1st of each fiscal year.
- iii. Attorneys interested in providing indigent defense services on a contract basis will provide Letters of Interest for consideration.
- iv. Attorneys will be responsible for the performance of all the obligations under contract in conformance with the Nevada State Bar Association Rules of Professional Conduct, the ABA Model Rules of Professional Conduct and must demonstrate compliance with the standards and regulations of the Board of Indigent Defense Services pertaining to training, education, and qualifications by submitting an application to the Department of Indigent Defense Services.
- v. The Appointed Counsel Program Coordinator shall establish an Appointed Counsel Selection Committee to review the qualifications of applicants for contract or hourly appointments, to review the list of attorneys from which appointments are made in hourly cases, to determine which attorneys shall be recommended for appointments.
- vi. The Committee shall be made up of five (5) members who:
 - a. have no pecuniary interest in the outcome of the attorney selection or performance evaluation process;
 - b. have no legal, financial or familial relationship to any attorney whose qualification or performance will be evaluated;
 - c. are not directly related to the judiciary or any prosecution function; and
 - d. have an interest in the variety of types of cases that are represented by the appointed counsel lists to be selected by the Committee.
- vii. On an ongoing basis, the Committee shall:
 - a. meet at least once a year and shall solicit input from judges, and others familiar with the practice of criminal defense, juvenile and family law where appointed counsel are utilized;
 - b. review any complaints from clients;



- c. review the history of participation in training of each applicant and each contract or hourly attorney receiving appointments; and
 - d. determine eligibility and recommendation of appointed counsel for new and continued participation.
- viii. While appointed counsel may receive assistance from associate attorneys, participants in a mentorship program, or other attorneys deemed qualified by the Committee, in carrying out his/her responsibilities, appointed counsel cannot delegate responsibilities for representation to another attorney. All substantive court appearances must be made by an attorney who has been determined to be qualified by the Committee.
- ix. Complaints from clients, judges or the public about representation by appointed counsel shall be transmitted to the Appointed Counsel Program Coordinator for consideration by the Committee in evaluation of appointed counsel.

B. Contract Attorneys

- i. Nye County shall contract for appointment of counsel;
- ii. Nye County contract attorney compensation may be based on an hourly basis, a modified flat fee basis, or a combination of both.

If the contract is based on a flat fee basis, the contract should consider, but not be limited to, the following factors:

- a. the average overhead for criminal defense practitioners in the locality;
 - b. the number of assignments expected under the contract;
 - c. the hourly rate paid for all appointed counsel; and
 - d. the ability of the appointed attorney to comply with the Performance Standards for Appointed Counsel as adopted and amended by the Nevada Supreme Court.
- iii. Nye County shall contract with attorneys as appointed counsel only after the attorney has been qualified to enter into such a contract by the Committee; and
- iv. the contract must be subject to termination annually or sooner, if determined by the Committee that a contract attorney is not abiding by the standard guidelines for qualification of appointed counsel; and



- v. the payment of fees and expenses of contracted appointed counsel by Nye County shall be governed by contract between counsel and Nye County.
- vi. the contract shall exclude appointment in cases with the potential of a life sentence and capital cases.

C. Hourly and Capital Case Attorneys:

- i. Appointed counsel will be selected by the Appointed Counsel Program Coordinator as follows:
 - a. the Appointed Counsel Program Coordinator shall select the appointed counsel, in consecutive order, from the Appointed Contract Counsel list, except
 - b. if the nature of the case requires lead counsel be selected from the Capital Case list, the Appointed Counsel Program Coordinator, in consecutive order, shall select from the Capital Case list;
 - c. the Appointed Counsel Program Coordinator shall select Second Chair counsel for a capital case: counsel may be selected next in order from the Appointed Contract Counsel list, if the attorney qualifies under Supreme Court Rule 250 for second chair selection, or the Capital Case list.
- ii. The payment of fees and expenses of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Counsel Program Coordinator.
 - a. Such invoices shall be submitted on the Requests for Attorneys Fees form attached hereto as Appendix B, with appropriate backup, no later than ten (10) days after the end of the month in which the services were rendered. The backup shall contain time entries rounded to the nearest one-tenth (1/10th) of an hour, describing with specificity the work performed and identifying the attorney who performed it.¹
 - b. The Coordinator shall approve for payment all reasonable attorney's fees reflected on the Requests for Attorneys' Fees and backup. In reviewing for reasonableness, the Coordinator may consider factors such as: (i)

¹ For invoicing purposes, Qualified Attorneys are encouraged to use LegalServer for invoice backup. An example of a time slip generated through LegalServer with sufficient detail is included with Appendix B. If a Qualified Attorney does not wish to use LegalServer, the Qualified Attorney may submit an alternative form of backup provided it contains a breakdown of services rendered in comparable detail.



average case times as determined by workload analysis; (ii) time and skill required; (iii) complexity of the case; and (iv) experience and ability of the Qualified Attorney(s). The Coordinator may request additional information or explanation where necessary. In the event the Coordinator denies or modifies a Request for Attorneys' Fees, it shall provide an explanation to the Qualified Attorney, with a copy to the Nye County Assistant County Manager and the Department, as to why the denied portion was not reasonable. Such denials shall be subject to judicial review pursuant to NRS 7.135.

- c. Payment for all approved attorneys' fees shall be issued by the Nye County Comptroller's Office. The Coordinator shall notify the Comptroller's Office of all approved Requests for Attorneys' Fees, attaching a copy of the invoice and backup. The Comptroller's Office shall issue payment within ten (10) days of receipt.
- iii. If contract counsel cannot handle the case; or the Appointed Counsel Program Coordinator determines the case is not appropriate for contract counsel to handle, alternative counsel will be selected by the Appointed Counsel Program Coordinator as follows:
 - a. the Appointed Counsel Program Coordinator shall select the alternative appointed counsel, in consecutive order, from the hourly list, except
 - b. if the nature of the case requires lead counsel be selected from the Capital Case list, the Appointed Counsel Program Coordinator, in consecutive order, shall select from the Capital Case list;
 - c. the Appointed Counsel Program Coordinator shall select Second Chair counsel for a capital case: counsel may be selected next in order from the Hourly list, if the attorney qualifies under Supreme Court Rule 250 for second chair selection, or the Capital Case list.
- iv. The payment of fees and expenses of Hourly and Capital Case appointed attorneys shall be approved by the Appointed Counsel Program Coordinator.

D. Compensation of Court Appointed Counsel:

Nye County agrees to pay contract attorneys and/or panels of private attorneys up to the sum of Two Hundred Thousand Dollars (\$200,000.00) per year. The County will make the payment to contract attorneys and/or panels of private attorneys on a quarterly basis in advance on the first day of July, October, January and April.



E. Conflict of Interest Checks:

Appointed Counsel shall, as soon as practicable, upon appointment, conduct a conflict check determining if any conflict of interest exists that would prevent representation of the defendant. If appointed, counsel determines that such a conflict exists, the appointed counsel shall bring this information as soon as possible to the relevant court. In no instance, shall a single attorney or law firm be appointed to represent co-defendants in a case. The Nye County District Attorney's office shall have no authority to determine or recommend whether or not the appointed counsel has a conflict of interest. Conflict assignment is handled in accordance with Section 4 of this Plan.

F. Payment of Fees and Expenses of Appointed Counsel:

Nye County agrees to budget for case-related expenses in the amount of \$100,000. Attorneys may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services if so approved by the Appointed Counsel Program Coordinator. Any payment for extraordinary costs or fees shall be paid only when submitted and approved by the Appointed Counsel Program Coordinator.

- i. Insofar as Case-Related Expenses are incurred in providing services to Eligible Clients, the following procedures shall apply:
 1. Pre-Authorization: Case-Related Expenses expected to exceed two thousand five hundred dollars (\$2,500) shall be submitted to the Coordinator for pre-authorization before they are incurred. The Qualified Attorney shall submit the request for pre-authorization to the Coordinator by email at ZZZZZZZ@ZZZZZ.com. The request shall include an explanation of why the expense is reasonably necessary to provide Representational Services.
 2. Reasonableness Review: All Case-Related Expenses, whether or not they are subject to pre-authorization, are subject to the Coordinator's review for reasonableness. Invoices for Case-Related Expenses shall be submitted to the Department for such review no later than thirty (30) days following the termination of the representation. Any requests for expenses not timely submitted shall be waived. The Coordinator shall approve all reasonable and necessary Case-Related Expenses, and shall notify the Nye County Comptroller's Office of all approved expenses and provide a copy of the invoice.



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

G. Reimbursement for Payments Exceeding the Maximum County Contribution

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

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

H. Privileged Communications:

County facilities housing or holding indigent defendants or criminal detainees will provide accommodations for confidential or otherwise privileged communications between indigent criminal defense client and appointed counsel.

- i. Within the Ian Deutch Government Complex in Pahrump, the Ante Room which is a room off the vestibule to the courtroom, is reserved for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.
- ii. Within the William P. Beko Government Complex in Tonopah, the Administration Conference Room which is in the Administration Office, is reserved for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.



- iii. Within the Beatty Courthouse in Beatty, the Conference Room, which is a room off the lobby, is reserved for meetings between counsel and clients that is not monitored or recorded, surreptitiously, accidentally, or in any fashion, that would violate attorney-client privilege.

I. Complaints by Clients:

Appointed Counsel shall maintain a system for receipt and review of written complaints made by clients. Appointed Counsel shall make publicly available the policy and procedure for receiving and reviewing written complaints. This system shall not interfere with a person's ability to avail themselves of the complaint process provided by the Department of Indigent Defense Services (DIDS) or Nevada State Bar.

6. TRAINING

Appointed Counsel must meet all requirements for training and experience as promulgated in the Nevada Department of Indigent Defense Services regulations.

7. DUTIES OF INDIGENT DEFENSE COUNSEL

- A. Standards of Performance. Services rendered 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; Nevada 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, Appointed Counsel 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. Appointed Counsel must make all reasonable efforts to meet with the client within 72 hours, at client's first appearance before a judge, within seven days following the assignment of the case and every thirty days thereafter unless there are no significant updates in the client's case.
- B. Continuity of Representation: Nye County shall, to the greatest extent possible, provide consistency in the representation of indigent defendants so that the same Appointed Counsel represents a defendant through every stage of the case without delegating the representation to others, except that administrative and other tasks that do not affect the rights of the defendant may be delegated.
- C. Workload Standard: The workload of an Appointed Counsel must allow the Appointed Counsel to give each client the time and effort necessary to ensure effective representation. Any Appointed Counsel who provides indigent defense



services shall not accept a workload that, by reason of its excessive size, interferes with the Appointed Counsel's competence, diligence, or representation of clients. Nye County will also provide the maximum workload guidelines as determined by the Board of Indigent Defense Services and the data collection responsibilities of the attorney.

Nye County shall use the data and recommendations from the National center for State Courts' Nevada Indigent Defense Weighted Workload Study and the Board on Indigent Defense's workload standard to determine adequate numbers of attorneys.

To the extent required by the Department's board, attorneys providing indigent defense services under this plan shall maintain caseload data and track the time spent providing indigent defense services in accordance with the Regulations of the Department's board.

- D. In Custody Arraignments: The Appointed Counsel Program Coordinator shall provide Representational Services for all Eligible Clients who are in custody and require a bail hearing. The coordinator or other attorney must be present at initial appearances and arraignments and be prepared to address appropriate release conditions in accordance with relevant statute, rules of criminal procedure and caselaw. The Coordinator should, to the extent possible, discuss only matters pertaining to the initial appearance or arraignment to avoid creating a conflict of interest. A timely initial appearance or arraignment must not be delayed pending a determination of the indigency of a defendant. This plan ensures the presence of counsel at all other critical stages, whether in or out of court.
- E. 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.
- F. Private Practice of Law: Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to the contract.
- G. Use of Client Surveys: Appointed Counsel shall maintain a system for providing Client Surveys to their clients. Appointed Counsel shall make publicly available the policy and procedure for providing surveys. This system shall not interfere with a person's ability to avail themselves of the Client Survey form provided by the Department of Indigent Defense Services (DIDS).



- H. Caseload Reporting: Appointed Counsel shall report caseload data and time as promulgated in the Nevada Department of Indigent Defense Services regulations.

8. APPOINTED COUNSEL PROGRAM COORDINATOR

A. Selection:

Nye County will contract with a lawyer to serve as the Appointed Counsel Program Coordinator. The terms of this contract will be determined by this plan, Nye County, and the Appointed Counsel Program Coordinator, but in no event will this Appointed Counsel Program Coordinator be directly involved in direct representation in appointed counsel cases.

B. Duties:

- i. The Appointed Counsel Program Coordinator shall have all the duties and responsibilities stated in the various sections of this plan.
- ii. The Appointed Counsel Program Coordinator shall maintain the list of all attorneys approved by the Committee for contract, hourly, and capital case appointment. In addition, the Appointed Counsel Program Coordinator shall maintain appropriate records to reflect the cases and dates to which each attorney has been appointed.
- iii. When notified of the need for representation, the Appointed Counsel Program Coordinator, shall select, in order and as more fully described herein, the next available attorney from the list of those attorneys qualified to provide representation as approved by the Committee in accordance with Section 4 of this Plan. Upon confirmation of acceptance of assignment by Qualified Attorney(s), the Appointed Counsel Program Coordinator shall provide prompt notice and a proposed order confirming selection of counsel to the Appointing Authority—i.e., the Judge, Justice, or Master presiding over the court in which the Eligible Client's charges are pending.
- iv. The Appointed Counsel Program Coordinator shall be responsible for approving the claim for payment of each attorney and any expert or other service fees at the conclusion of appointed counsel's representation or, if appropriate, periodically during appointed counsel's representation, as specifically discussed herein.



- v. The Appointed Counsel Program Coordinator will work with the Department of Indigent Defense Services to provide any information requested.

9. EFFECTIVE DATE

The Nye County Plan for the Provision of Indigent Defense Services is approved on this the 18th day of March, 2025 and is effective on the 1st day of May 2025.

16th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 5, 2025

Appendix D
April 22, 2025, Oversight Report

FINAL MONTHLY REPORT FOR FISCAL YEAR 2024-2025

April 22, 2025

I. Observations and Contacts

I have spent a majority of my time over the last 14 months in Nye County, primarily in Pahrump but also including Beatty and Tonopah. This was required due to the caseload and staffing issues that persist in Nye County. Esmeralda, Lincoln and Eureka Counties continue to be low volume caseload and present no major issues at this time. Some concerns for these counties are described below. White Pine County seems to have settled into a workable program with the Nevada State Public Defender being augmented by Jane Eberhardy and hourly appointments as needed.

As a result of the amount of time spent on Nye County, I developed a working relationship with the contract public defenders. I have thereby, on occasion, been privy to attorney-client privileged information, and have often brain stormed ideas and theories of defense strategies with the attorneys. To my knowledge, I have not discussed or revealed any of this information in my Court Observation Reports or Onsite Visit Reports. I have been keenly aware of this issue as my reports were made available to the Board and the Monitor and posted on the DIDS webpage under documents submitted for scheduled meetings and thus converted into public records.

My reporting opinions, while my own, are often based on information that cannot be shared for public disclosure, and thus perhaps make them subject to second guessing or criticism by those not as fully aware of the underlying information that formed the basis of my reports.

During the month of April, 2025 I observed Nye County courts in person on April 9, 15 and 17. Observations in White Pine County were limited to observation via Zoom on April 14 and 21.

Additionally I attended the DIDS conference in Reno on April 2nd and 3rd and had numerous conversations with attendees that represent my assigned counties.

Finally, phone contact has been maintained with Kelly Brown (Eureka County) and Franklin Katschke (Lincoln County)

II. Assessments

Nye County

Nye County presents the largest challenge to the ***Davis*** mandates and I do not believe the situation has improved in the last 14 months since I began observing. I dare to say that I do not think that it has improved since the ***Davis*** judgment was entered. The problems are systemic and far reaching. There is not going to be a quick fix, and despite earlier opinions I have expressed, throwing more attorneys into the mix is not going to solve the problems for a couple of reasons. First, the issues are so glaring that most experienced attorneys are not willing to enter into contracts to provide public defender services. Second, adding non-experienced attorneys did not help and may have even made the situation worse. Third, the attorneys that are under contract are providing triage level representation in most cases as opposed to zealously litigating legitimate issues of constitutional magnitude and due to caseloads are prone to burn out and walk away. Fourth, the County seems to have no interest in moving into the 21st century with on-line file access. Fifth, the contracts for public defender services includes family court cases which is not contemplated by ***Davis*** and consumes an inordinate amount of time. Sixth, there is no accurate reporting of caseload numbers of appointed cases and a derth of information about the caseload for private practice cases.

My observations and time in Nye County was sufficient to only identify some of the problems and suggest possible solutions. In my opinion there must be a full time position funded and filled by Nye County to monitor, enforce, guide and regulate the public defender contracts. As an example, each of the public defender contracts requires the attorney to file an accounting every July concerning cases opened, closed and pending. This has never been done and each of the attorneys is in violation of their contracts. The Plan for Indigent Defense for Nye County specifically requires that there be a Court Appointed Counsel Coordinator. There is none-has never been one-making Nye County in non compliance with their ***Davis*** plan.

My January 5, 2025 Monthly Report was detailed as to problems plaguing Nye County Indigent Defense with suggestions on ways to address some of the issues, including the additional attorneys. Other than adding three attorneys positions none of the other issues have been addressed. The three positions were added in February and do not seem to have had any effect on the caseloads of the existing public defenders. In the report, I discussed the issues that I noted and these conditions have not improved:

“Caseload continues to be an issue across the board in southern Nye County. Over the course of the last ten months my observations lead me to believe that the Performance Standards adopted by the ***Davis*** judgement are

routinely not being met in several areas. When I met with the attorneys in December, I brought up the need to have substantial compliance with the performance standards, and that strict compliance is not expected. Areas of concern are:

1. Having a meaningful Initial Interview within 72 hours of appointment in a confidential setting and obtaining the information described in Standard 4-4 (b) and ©;
2. Conducting Case Preparation and Investigation prior to trial or entry of plea as described in Standard 4-7 (a) and (b);
3. Filing of Pretrial Motions under Standard 4-8;
4. Entering into plea negotiations in contravention of Standard 4-9 (a) which states in relevant part “under no circumstances should defense counsel recommend to a client acceptance of a plea offer unless the investigation and study of the case has been completed, including an analysis of controlling law and evidence likely to be introduced at trial”.

The sheer volume of cases being assigned to each of the contract public defenders makes it impossible to comply with the above standards of performance. My observations convince me that the attorneys are attempting to provide the best defense possible and any shortfalls are not due to lack of effort as opposed to lack of time to devote to each client. Hopefully the new contracts will ease this caseload problem and the inherent problems caused by the number of cases.”

I was occupied in a murder trial in Clark County for February and therefore had limited time in Nye County, but filed a report covering January and February dated March 2, 2025. The problems continued as did my recommendation to help the situation.

My March 2, 2025 Monthly Report stated:

“Many of the problems in Nye County concerning public defenders would be resolved if there was a Coordinator in place to address issues as they might arise. This would include insuring even distribution of cases, deciding conflicts of interest, scheduling rotating responsibilities, acting as a liaison with the Court and County Administration, policing caseloads, insuring that experts are timely retained and paid and various other areas. I have been informed that such a position is being created and will be a state funded position independent of Nye County Administration, the District

Court, the Justice Court, the Clerks's office and the Office of District Attorney."

The best efforts of the DIDS staff in Carson City cannot regulate and monitor the daily activity in the Pahrump Courthouse. There has to be coordination between the public defenders, Justice Court, District Court, judiciary and prosecution and the Coordinator position would greatly increase efficiency across the board.

Another concerning issue is the length of time that cases remain open. An example is routine Justice Court plea deals that have 180 days suspended sentence with a one year stay out of trouble order. Perpetual status checks for no reason then keeps the case open longer than reasonably necessary. The Court cannot be the overseer of all defendants with onerous restrictions during the informal probation period. It seems that some cases are never closed. Cases that are in warrant or the client has disappeared before charges are filed should also be removed from the list of open cases.

It has been reported that the Tonopah jail is closing, creating more logistical issues for Tonopah cases. Beatty arrests track into Tonopah so there is a significant number of in custody cases. We can expect to see clients arrested in Beatty or Tonopah, transported to Pahrump and then released in Parhump while their property or residence is way up north with no public transportation available. I have previously documented the same issue in Eureka County.

Esmeralda County

The District Attorney is still indicating the intention to proceed with a capital murder case. He may be having second counsel appointed or utilize the services of the Attorney General's office to assist with the litigation. The preliminary hearing is set for May 9, 2025. A mitigation trip was made to Michigan and plans are underway to view the evidence vault in Reno and the vehicle impound lot view. Mitigation/investigative trips are planned for Oklahoma and Sacramento in the future.

Eureka County

Kelly Brown reports that there is a continued increase in case numbers, somewhat surprisingly out of Crescent Valley. He has been logging hours above his quarterly contract amount and has been receiving hourly payment for the excess hours with no issues on receiving payment. There is a need for mental health services in Crescent Valley and a social worker would be helpful in resolving some of those issues. It appears that cases may be overcharged in order to deal with minor crimes related to mental health, for instance, stealing cigarettes is being charged as felony burglary and not petty larceny

and/or trespass. Eureka still does not have jail facilities and in custody defendants are held in either White Pine County or Lander County. Per Brown, the White Pine jail has made improvement for accessibility to clients.

Lincoln County

Lincoln County DA Dylan Frehner was appointed to the vacant 7th Judicial District Court position and applications are pending for a new Lincoln County DA. An interim DA has been handling current cases. As Judge Frehner will have numerous conflicts in Lincoln County it can be expected that Judge Dobrescu will be handling Lincoln County cases for some time. This will impact the prosecution in the John Chapman capital murder case. Judge Dobrescu may have a conflict on the case and, if so, a visiting or senior judge may be required. There has been no change with regard to the transport of the defendant to be present for a preliminary hearing so the case remains in a holding pattern. Contract public defenders Franklin Katschke and Shain Manuele continue to effectively handle the Lincoln County indigent cases. One case, the Amazon truck theft case, is set for trial in June, 2025 and bears watching due to the number of Lincoln County residents affected by the case.

An onsite visit was conducted on January 24, 2024. Indigent defense appears to proceeding on an even keel in Lincoln County. Both Franklin Katschke and Shain Manuele are consistent in their efforts. With regard to the pending Chapman capital trial, things seem to have stalled in a bureaucratic maze at the Federal Department of Corrections. No preliminary hearing date has been set and the client has been moved to yet another federal detention facility, necessitating new paperwork to secure his transport to Lincoln County.

White Pine County

I was able to converse with State Public Defender Coates at the DIDS Reno conference. White Pine County seems to have settled into a routine with Jane Eberhardy picking up a full caseload and hourly appointments filling any gaps. My observation of newly appointed Judge Frehner is that he has comfortably transitioned from DA to Judge and is reflective of his courtroom experience.

The multi-defendant prison murder case will not be a capital case and it has been discussed that the case will be taken to a grand jury as opposed to multiple preliminary hearings. It also appears that a number of defendants will be accepting negotiations in the case.

III. Suggestions

Work with Nye County to add more public defenders to bring caseload numbers into compliance, and fill the Coordinator position deal with all of the issues discussed herein and in previous reports.

Determine the most efficient way to have accurate entries into LegalServer for caseload and time from the Nye County Public Defenders.

Continue to monitor the status of capital cases in Esmeralda and Lincoln Counties.

Monitor and update on the White Pine County massive prison murder case.

IV. Schedule of Oversight Visits and Stakeholder Meetings

This is the last report for fiscal year 2024-2025. I will be out of Nevada traveling for the next several months and if a new or extended contract for Oversight and Compliance Analyst is available look forward to being able to continue with DIDS upon my return to Nevada in late summer 2025.

16th Report of the Monitor
Davis v. State, Case No. 170C002271B
August 5, 2025

Appendix E
Selected Court Observation/Oversight Forms

| | | | |
|--|-------------------------|----------------------------------|--|
| DIDS Attorney Observation Report | | Reviewer | Derrick Lopez |
| Date | February 5, 2025 | County | Douglas |
| Court | East Fork Justice Court | Judge | Laurie Trotter |
| Defense Attorney | Justin Clouser | Prosecutor(s) | William Murphy Deputy District Attorney |
| Attorney Present | Not Present | Number of Clients | 1 |
| Defendants Present | Not Present | Custodial Status | IC / OOC / Blend |
| Number of Clients In custody | 0 | Number of Clients Out-of-Custody | 1 |
| Cases Continued In Custody | 0 | Cases Continued Out-of-Custody | 1 |
| Hearing Types | Status Hearing | | |
| Attorney's Preparedness | | | |
| Did the Attorney appear for court? | | Yes / No / N/A | |
| Did the Attorney have the file? | | Yes / No / N/A | |
| Did the Attorney appear to have had a substantive, confidential meeting with each client before court? | | Yes / No / N/A | |
| Did the Attorney appear prepared to handle their clients' cases? | | Yes / No / N/A | |
| How prepared did the Attorney appear? N/A – Justin did not appear for court. | | | |
| How knowledgeable was the Attorney about their cases? N/A | | | |
| The Attorney's courtroom advocacy skills were: N/A | | | |
| How was the Attorney/client communication? N/A | | | |
| Case Stage-Specific Issues | | | |
| Did the Attorney argue for pretrial release/OR, or for reasonable bail? | | Yes / No / N/A | |
| Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case? | | Yes / No / N/A | |
| Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment? | | Yes / No / N/A | |
| Did the Attorney appear to adequately advise clients of the Consequences of accepting a plea or going to trial, including any collateral consequences? | | Yes / No / N/A | |
| Did the Attorney present mitigating evidence and provide argument at sentencing? | | Yes / No / N/A | |
| Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately? | | Yes / No / N/A | |
| Did the court require defendant(s) to reimburse the entity for representation? | | Yes / No / N/A | |
| Overall Assessments | | | |
| Does the Attorney appear to have a sustainable workload? | | Yes / No / N/A | |
| Overall, does the Attorney appear to be providing effective representation to their clients? | | Yes / No / N/A | |

Remarks/Recommendations/Notes:

Justin's client was on the calendar today for a status hearing. Neither Justin or the client appeared for court. The court issued an Order to Show Cause and set the matter for 3/5/2025.

| | | | |
|--|-------------------------|-------------------------------------|--|
| DIDS Attorney Observation Report | | Reviewer | Derrick Lopez |
| Date | April 30, 2025 | County | Douglas |
| Court | East Fork Justice Court | Judge | Laurie Trotter |
| Defense Attorney | Justin Clouser | Prosecutor(s) | William Murphy Deputy District Attorney |
| Attorney Present | Not present | Number of Clients | 1 |
| Defendants Present | Not present | Custodial Status | IC / OOO / Blend |
| Number of Clients In custody | 0 | Number of Clients Out-of-Custody | 1 |
| Cases Continued In Custody | 0 | Cases Continued Out-of-Custody | 1 |
| Hearing Types | Review hearing | | |
| Attorney's Preparedness | | | |
| Did the Attorney appear for court? | | Yes / No / N/A | |
| Did the Attorney have the file? | | Yes / No / N/A | |
| Did the Attorney appear to have had a substantive, confidential meeting with each client before court? | | Yes / No / N/A | |
| Did the Attorney appear prepared to handle their clients' cases? | | Yes / No / N/A | |
| How prepared did the Attorney appear? Justin did not appear in court. I do not know if he was aware of the Review hearing. | | | |
| How knowledgeable was the Attorney about their cases? N/A | | | |
| The Attorney's courtroom advocacy skills were: N/A | | | |
| How was the Attorney/client communication? N/A | | | |
| Case Stage-Specific Issues | | | |
| Did the Attorney argue for pretrial release/OR, or for reasonable bail? | | Yes / No / N/A | |
| Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case? | | Yes / No / N/A | |
| Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment? | | Yes / No / N/A | |
| Did the Attorney appear to adequately advise clients of the Consequences of accepting a plea or going to trial, including any collateral consequences? | | Yes / No / N/A | |
| Did the Attorney present mitigating evidence and provide argument at sentencing? | | Yes / No / N/A | |
| Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately? | | Yes / No / N/A | |
| Did the court require defendant(s) to reimburse the entity for representation? | | Yes / No / N/A | |
| Overall Assessments | | | |
| Does the Attorney appear to have a sustainable workload? | | Yes / No / N/A | |
| Overall, does the Attorney appear to be providing effective representation to their clients? | | Yes / No / N/A | |

Remarks/Recommendations/Notes:

Justin had 1 client on calendar today:

1. First client: Review hearing. The client is out-of-custody on this case. However, the client is in custody of the Nevada Department of Corrections serving a prison sentence from a different case. The client was not present in court. The State did not request a bench warrant or an Order to Show Cause. The court continued the Review hearing to 12/19/2025 at 9:00 a.m.

| | | | |
|---|---|-------------------------------------|---|
| DIDS Attorney Observation Report | | Reviewer | Derrick Lopez |
| Date | March 5, 2025 | County | Douglas |
| Court | East Fork Justice Court | Judge | Laurie Trotter |
| Defense Attorney | Justin Clouser | Prosecutor(s) | Aaron Thomas and William Murphy Deputy District Attorney |
| Attorney Present | In Person / Virtual / w/Client | Number of Clients | 2 |
| Defendants Present | In Person / Virtual / Off-Site | Custodial Status | IC / OOC / Blend |
| Number of Clients In custody | 1 | Number of Clients Out-of-Custody | 1 |
| Cases Continued In Custody | 0 | Cases Continued Out-of-Custody | 1 |
| Hearing Types | Status and Order to Show Cause hearings | | |
| Attorney's Preparedness | | | |
| Did the Attorney appear for court? | | Yes / No / N/A | |
| Did the Attorney have the file? | | Yes / No / N/A | |
| Did the Attorney appear to have had a substantive, confidential meeting with each client before court? | | Yes / No / N/A | |
| Did the Attorney appear prepared to handle their clients' cases? | | Yes / No / N/A | |
| How prepared did the Attorney appear? Justin appeared prepared for court for one of the clients but did not appear to be aware of the second client being on calendar. | | | |
| How knowledgeable was the Attorney about their cases? Justin appeared to be knowledgeable about one of his cases but was not present for the second hearing. | | | |
| The Attorney's courtroom advocacy skills were: Good. | | | |
| How was the Attorney/client communication? The attorney-client communication appeared to be good with one of the clients. I was unable to form an opinion regarding the other client. | | | |
| Case Stage-Specific Issues | | | |
| Did the Attorney argue for pretrial release/OR, or for reasonable bail? | | Yes / No / N/A | |
| Did the Attorney counsel each client to refrain from waiving trial rights until the attorney completed investigation of the case? | | Yes / No / N/A | |
| Did the Attorney appear to have counseled clients to refrain from waiving any rights at arraignment? | | Yes / No / N/A | |
| Did the Attorney appear to adequately advise clients of the Consequences of accepting a plea or going to trial, including any collateral consequences? | | Yes / No / N/A | |
| Did the Attorney present mitigating evidence and provide argument at sentencing? | | Yes / No / N/A | |
| Did the Attorney address the Presentence Investigation Report (PSI) and/or Psychosexual Evaluation/Risk Assessment appropriately? | | Yes / No / N/A | |
| Did the court require defendant(s) to reimburse the entity for representation? | | Yes / No / N/A | |
| Overall Assessments | | | |
| Does the Attorney appear to have a sustainable workload? | | Yes / No / N/A | |
| Overall, does the Attorney appear to be providing effective representation to their clients? | | Yes / No / N/A | |

Remarks/Recommendations/Notes:

Justin had two cases on calendar today.

1. First client: Status hearing. The client was in custody and present in person. The client is represented by Marc Picker. Justin was covering the hearing in Marc's absence. The parties had previously negotiated this case. If the client had complied with the terms of the agreement, this case would have been dismissed. Unfortunately, the client violated the agreement by committing a new crime. The parties set this case for a preliminary hearing on April 18, 2025, at 10:00 a.m.
2. Second client: Order to Show Cause. This client is out-of-custody on this East Fork Justice Court case. However, the client is currently serving a prison sentence with the Nevada Department of Corrections unrelated to this East Fork Justice Court case. The client was not transported from the prison and was not present in court. Justin had been in court for the first client but had left court prior to this case being called. The court ordered that this hearing be continued to a new date.