

**Seventh Report of the Monitor**  
**Davis v. State, Case No. 170C002271B**  
**February 16, 2023**

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## Introduction

This Monitor’s Report to the First Judicial District Court of Carson City summarizes the Defendants’ compliance with the terms of the *Davis v. State* Stipulated Consent Judgment (hereinafter “the Judgment”) from November 11, 2022, to February 15, 2023.<sup>1</sup>

## Summary Points

The Nevada Department of Indigent Defense (hereinafter “the Department”) continues to take significant steps toward compliance with the Judgment, in terms of training, oversight, data collection, and managing attorney selection, compensation and county reimbursements.

At the same time, this Report notes some challenges to compliance, including a complicated and inefficient reimbursement process for the counties, a limited budget to comply with the Judgment’s oversight requirements, a limited budget for training and resources, and a shortage of qualified attorneys willing to engage in public defense in some of the rural counties. Moreover, workload limits still await the results of the weighted case study being conducted by the National Center for State Court’s (NCSC).

## Achievements

The Department’s compliance-related achievements include the following:

- **Proposed legislative changes to streamline attorney payment, reimbursement, and ensure a fair hourly rate of compensation**

The Department submitted several bill draft requests aimed at improving the process for attorneys to receive payment and reimbursement, and a bill draft request to bring the process of setting a minimum hourly rate for appointed attorneys under the purview of the Board of Indigent Defense Services (hereinafter the “Board”).<sup>2</sup>

- **Presentation to lawmakers**

The Department gave a presentation about the Department’s mission and the *Davis* Judgment to the Judiciary Committee of the Nevada Assembly on February 8, 2023, and to the Judiciary Committee of the Nevada Senate on February 9, 2023.<sup>3</sup>

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<sup>1</sup> By agreement, this report was delayed awaiting the Governor’s Executive Budget. The Monitor filed a preliminary report on budgetary issues on February 8, 2023.

<sup>2</sup> The bill draft requests are discussed in the Monitor’s Sixth Report, 3-4.

<sup>3</sup> The recordings are available here: <https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/9593/Overview>.

- **Statutory protection for the confidentiality of client information**

The Department submitted a bill draft request to protect the confidentiality of client information in the reimbursement and payment process is currently under consideration in the Senate Judiciary Committee as SB 39 (2023).<sup>4</sup>

- **Reimbursement**

The Department successfully reimbursed all *Davis* counties in full for their FY22 indigent defense expenditures over their maximum contributions. The final reimbursement was made after the Department secured a final \$38,916 from the Interim Finance Committee for Douglas and White Pine counties.

The Department awaits decision on its bill draft request to streamline the process of reimbursing counties for their indigent defense expenses by including the reimbursement amount in the Department's budget (rather than in earmarked funds that cannot be disbursed without approval from the Governor's Finance Office, the Board of Examiners, or the Interim Finance Committee).

- **Oversight**

The Department continued to engage in remote oversight, including conducting a review of 48-hour first appearance hearings in the rural counties, an analysis of Legal Server data, as-needed conversations with the judiciary and county officials, and attorney selection, compensation, and reimbursement.

- **Securing counsel**

The Department worked directly with counties struggling to secure qualified attorneys to assume contracts and accept appointments as conflict counsel. The Department continued to work with counties to encourage contracts for first- and second-tier conflicts to ensure that conflict counsel is promptly appointed. Lander and Lyon counties now have contracted conflict counsel for at least some of their conflict cases.

- **Addressing attorney shortages**

The Department continued to work to address the deficit of attorneys willing to engage in public defense in the rural counties, including strengthening the Department's relationship with the UNLV William S. Boyd School of Law and promoting internship and externship opportunities to law students. Initially funded through a grant that the Department secured from the Nevada State Bar, the externship stipend for law students was featured in the December 2022 issue of the Nevada

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<sup>4</sup> SB39 (2023) is attached to this Report as Appendix A.

Lawyer, in an article titled, *Stipend Takes Summer Interns on the Road, Offers Real World Experience with A View*.<sup>5</sup>

- **Training**

The Department offered regular CLE trainings free of charge to all public defenders and indigent defense providers in the state, and continued to plan the annual, statewide training conference that will be held in Reno in May.

- **Data collection on attorney workload**

The Department collected and reported another quarter of workload data (FY23, Q2, ending December 31, 2022). Almost all attorneys reported hours using Legal Server.<sup>6</sup>

## **Areas of Concern**

The areas of concern discussed in this Report are not failures of the Department but represent obstacles posed by budget limitations or external factors outside the Department's direct control. The Department is actively working to resolve these issues but is limited by fiscal and other external factors.

- **Governor's order limiting regulations**

Executive Order 2023-1002, that mandates that each state agency recommend ten regulations "for removal, ranking them in descending order of priority," and that, absent an enumerated exemption, "no new regulations shall be proposed, approved or acted on...until such time as this Executive Order is rescinded."<sup>7</sup> A failure to exempt the Board's regulations from this order likely would result in violation of the Judgment.

- **Insufficient department budget for oversight and training**

The Department's current budget presents serious challenges to complying with the Judgment. Some of the required activities require substantial resources and staff, such as in-person oversight visits to all counties, annual review of all attorneys providing indigent defense, and support, training, and mentorship for attorneys.<sup>8</sup>

The Department submitted a proposed budget to the Governor's office that addressed staffing and resource limitations that impact the state's ability to comply with the Judgment.

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<sup>5</sup> Thomas Qualls, *Stipend Takes Summer Interns on the Road, Offers Real World Experience with A View* 16-18 (December 2022). A copy of the article is attached to this Report as Appendix B.

<sup>6</sup> Discussed *infra* in Section III. The Department's Workload Report is available here: [https://dids.nv.gov/Annual\\_Report/home/](https://dids.nv.gov/Annual_Report/home/).

<sup>7</sup> Executive Order 2023-003 is attached to this Report as Appendix C.

<sup>8</sup> Discussed *infra* in Section II.

However, as discussed in the Monitor's Preliminary Report on Budgetary Concerns (February 8, 2023) the Governor's Executive Budget largely maintains the status quo for the Department, although it adds one position for billing/finance. In this regard, the recommended budget does not account for the requirements of the Judgment and its Sixth Amendment concerns.

- **Cumbersome reimbursement process**

Both the current process of requesting reimbursement for the counties from the Interim Finance Committee, and the Governor's proposed plan for the Department to request the funds from the Governor's Finance Office, are inefficient for the Department and risk destroying the counties' trust in the state's commitment to rapid and certain reimbursement for the expenses over the maximum contribution. Moreover, because the Attorney General serves on the Board of Examiners, any reimbursement process that requires the approval of the Board of Examiners may compromise the independence of the defense function.

- **Pay parity with prosecutors and/or insufficient compensation to attract attorneys**

Existing comparisons between the compensation of employees in the Office of the Attorney General and the Nevada State Public Defender and the Department demonstrate a lack of pay parity.<sup>9</sup>

More data is needed on the salaries and benefits of county prosecutors in the *Davis* counties to determine whether compensation for attorneys providing indigent defense is comparable, taking into account overhead and expenses. Dr. Mitch Herian, the consultant from Soval Solutions, is working on a report analyzing both the compensation packages for county district attorneys and their deputies and the best practices for attracting attorneys to practice public defense in the rural counties. The report is expected within the next month.

Attorneys continue to be drawn to the higher public defender salaries and hourly rates for indigent defense in Clark and Washoe counties.

- **Delayed workload standards**

The National Center for State Courts (NCSC) has not completed the workload study. As a result, county-provider contracts do not yet contain workload limits.<sup>10</sup>

- **Insufficient reporting of private workload**

Timekeeping through Legal Server has improved but attorneys are not uniformly reporting hours spent on private casework. Reporting of hours spent on private cases is required by the

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<sup>9</sup> Discussed *infra* in Section II. The Soval Solutions Reports addressing pay parity are discussed in and attached to the Monitor's Sixth Report.

<sup>10</sup> Discussed *infra* in Section II.

Judgment and, without this information, as well as time spent on other indigent defense work in other jurisdictions, it is impossible to assess the complete workload of individual attorneys.<sup>11</sup>

## Summary of Recommendations

- Reimbursement for county expenses over their maximum contribution should continue to be rapid and reliable. Ideally, the Department should control disbursements to ensure prompt reimbursement for providers and the counties. Having to repeatedly request portions of the earmarked funds from the Governor's Finance Office, the Board of Examiners, or Interim Finance Committee causes delays for the counties and additional work for the Department's limited staff.
- The State should clarify that Executive Order 2023-003, prohibiting the promulgation of new regulations, exempts new regulations that are necessary to comply with the *Davis* Judgment and the Sixth Amendment right to counsel.
- The Department's staff should be increased per the data analyst's recommendation to include policy analyst/oversight position(s) for in-person oversight in the counties.
- Adequately fund the Department's training and resources budget to ensure that it can offer hosted, annual conferences and a variety of training and resources throughout the year to ensure the effectiveness of attorneys practicing indigent defense.
- The Department should, through its consultant/analyst, determine the salary and benefits of prosecutors in the *Davis* counties so that pay parity can be analyzed.
- The Soval Solutions' analysis of cost-of-living adjustments to the hourly rate should be implemented, whether through direct legislation or by giving the Board the authority to set the hourly rate in its regulations.
- The Defendants should ensure that the State Public Defender is adequately funded and staffed to meet the public defense needs of the counties opting into the state system for some or all of their indigent cases.
- The Department should continue to assist counties in considering options for attracting attorneys to rural practice, such as increasing hourly and contract compensation, forming a county public defender, or opting into the Nevada State Public Defender system.
- The parties should determine whether remote appearances at initial appearance satisfy the Judgment, and, if so, set standards for remote appearances. If remote appearance does not

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<sup>11</sup> Discussed *infra* in Section III.

satisfy the Judgment, the Department should determine what resources would be required to assure in-person representation at first appearance.

- The parties should clarify goal of the client surveys and consider periodic surveys conducted by the Department.
- The parties may wish to determine whether this level of detail should be included in the quarterly and annual reports, or provided in some other format. Per the Judgment, the Department should provide a breakdown of cases by attorney.
- Section 44(1)(e) of the regulations requires that attorneys report total private workload, which should be read to include time spent on indigent defense in other jurisdictions, especially in municipalities. This expectation should be clarified in the regulations and in attorney contracts.
- The state should compensate attorneys or otherwise incentivize contemporaneous timekeeping and prompt dispositional reporting through Legal Server. The contracts require compliance with the reporting requirements, but incentives may help ensure thoroughness.

## **Compliance to Date**

The Judgment creates three categories of obligation:

- (I) Removing economic disincentives and ensuring independence
- (II) Setting and ensuring performance standards
- (III) Uniform data collection

This Report uses this tripartite structure to analyze compliance.

### **Preliminary Issue: Executive Order 2023-003**

As a preliminary matter, this Report calls attention to a recent executive order that could affect the State's compliance with the Judgment through repeal of the Board's existing regulations and prohibition against the promulgation of new regulations. Executive Order 2023-1002, that mandates that each state agency recommend ten regulations "for removal, ranking them in descending order of priority," and that, absent an enumerated exemption, "no new regulations shall be proposed, approved or acted on...until such time as this Executive Order is rescinded."<sup>12</sup>

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<sup>12</sup> Executive Order 2023-003 is attached to this Report as Appendix C.



In preparation for a February 2, 2023, Board workshop on Executive Order 2023-003, the Department conducted a required small business survey and created a report analyzing the existing regulations. The small business survey received few responses, but two attorneys voiced their support for the existing regulations because they result in prompter payment than the previous payment system.<sup>13</sup> In addition, Plaintiffs' counsel submitted public comment stating that the Board's regulations—existing and those that will be promulgated to set workload limits—should be exempt from Executive Order 2023-003.<sup>14</sup>

At the February 2, 2023, workshop, the Board voted unanimously to request an exemption from Executive Order 2023. First, the existing regulations are lean. They consist of 45 numbered regulations that create a framework for constitutional compliance with the structural and attorney requirements for effective assistance of counsel. Less than two years old, these regulations are necessary for compliance with the Judgment and contain no fat that can be cut.

Second, the Board identified the need for an exemption from the portion of the Order that prohibits the promulgation of new regulations. The Judgment requires compliance with the workload limits within 12 months of the completion of the NCSC weighted caseload study. The new workload limits should be promulgated as regulations. Section 5 of the Order makes exemptions from the prohibition against new regulations for, among other things, regulations that “affect public safety and security,” “affect pending judicial deadlines,” or that are “necessary to comply with federal law.”<sup>15</sup>

The Monitor agrees with the Board's decision to request an exemption from Executive Order 2023-003. It is difficult to see any regulation that could be proposed for removal without violating the terms of the Judgment. Furthermore, regulations governing workload limits must be promulgated after the completion of the NCSC weighted caseload study.

## **I. Removing Financial Disincentives & Ensuring Independence of the Defense**

Two developments related to financial disincentives and ensuring independence occurred during the last quarter.<sup>16</sup>

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<sup>13</sup> The Small Business Impact Statement Regarding Proposed Repeal of NAC 180 Regulations (Executive Order 2023-003) is attached to this Report as Appendix D.

<sup>14</sup> Plaintiffs' letter of public comment is attached to this Report as Appendix E.

<sup>15</sup> Executive Order 2023-003, Sections 5 (e) and (f). The Letter and Information Sheet Requesting Exemption are attached to this Report as Appendix F.

<sup>16</sup> Additionally, the Department continues to monitor compliance with the Judgment and subsequent statutory changes to ensure independence in the selection of counsel.

- A. The Governor's recommended executive budget does not sufficiently increase funding for the salaries of state-level public defense to create pay parity with prosecutors or ensure fair compensation.
- B. The Governor's recommended method of reimbursement for the counties requires the Department to request the reimbursement from the Governor's Finance Office budget. The Department proposes that reimbursement funds should be allotted to the Department's budget instead.

#### A. Fair Compensation

The Judgment requires the state to ensure that providers receive a "reasonable hourly rate that takes into account overhead and expenses, including costs related to significant attorney travel time."<sup>17</sup> The compensation should be comparable to prosecutors in the same county, considering that prosecutors do not pay overhead and expenses.<sup>18</sup>

##### 1. Parity in compensation with prosecutorial counterparts

As previously reported, Dr. Herian of Soval Solutions provided a report titled "Hourly Rate Recommendations for Contract Attorneys in Rural Nevada," on August 8, 2022.<sup>19</sup> From his survey of Nevada attorneys, Dr. Herian determined that solo practitioners spend an average of \$86,427 on overhead and expenses per year, with the most expensive areas of overhead being, "non-attorney compensation, office space, office supplies, ... attorney benefits and health care." This number, or a number derived from a survey particular to the county, should be considered in setting the contract amount.

In January, the Monitor met with the Department and Dr. Herian to discuss the issue of pay parity with prosecutorial counterparts. Given that the contract amounts and the average overhead for a private attorney have been established, the missing part of the analysis is determining the salary and benefits of the District Attorney and Deputy District Attorneys in the *Davis* counties. Once this amount is determined—and it may vary by county—it will be possible to subtract the defense attorney's average overhead from the contract amount and determine whether annual compensation is in parity with the local prosecutors or whether the contract amount should be increased.

The role of the State Public Defender in *Davis* counties is increasing. In FY2024-25, the State Public Defender will provide all indigent defense services in White Pine County, as well as death penalty representation in Churchill, Humboldt, and Lander counties, and appellate representation in Esmeralda, Humboldt, Lander, and Lincoln counties. Thus, pay parity between

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<sup>17</sup> Judgment, 11.

<sup>18</sup> See also Regulation 40(10). Per AB81, the Department's standards must guard against financial disincentives to provide effective representation.

<sup>19</sup> The *Hourly Rate Recommendations* report is attached to the Monitor's Sixth Report.

the assistant public defenders in the State Public Defender and their prosecutorial counterparts will be subject to the *Davis* Judgment.

## 2. Insufficient compensation and/or resources

The Department appears to be in constant interaction with county officials about the hourly rate for appointed counsel and the amount offered for indigent defense contracts. Several counties, like Nye County, have incrementally raised their contract amount to attract attorneys. Other counties, like Lyon County, have increased their hourly rate above the minimum \$100/hour required by statute. Yet, some counties still have difficulty recruiting attorneys willing to take appointments or enter into contracts. Indeed, the attorneys may be attracted to the public defender salaries in Washoe and Clark counties, or the hourly rate of \$150 just instituted in Washoe county.

As previously reported, the Department submitted a bill draft request to place the authority to set hourly rates under the purview of the Board. In addition, the Department and State Public Defender budgets should include salary increases that create both parity with their prosecutorial counterparts and fair compensation. Notably, however, the Governor's executive budget did not significantly increase the salaries of the State Public Defender or the Department. This may result in an inability of the State Public Defender to staff its public defender positions in the *Davis* counties, a situation that would cause the state to be out of compliance with the Judgment. Currently, the State Public Defender has a 30 percent vacancy rate, suggesting that it is having difficulty recruiting attorneys.

A secondary compliance issue will occur if the *Davis* counties contracting with the State Public Defender have death penalty cases. The Governor's budget allocates \$100,000 to the State Public Defender for death penalty cases, which are notoriously labor and resource intensive. Indeed, Lyon County currently has a death penalty case that has totaled \$86,000 in defense expenses in the first two quarters of FY2023.<sup>20</sup> A limited budget of \$100,000 could result in a violation of the terms of the Judgment, which require that the state provide a "funding mechanism for excess, unusual, or complex cases."<sup>21</sup> It is unclear what will happen if the State Public Defender requires funds above the \$100,000 amount allotted to defend clients facing the death penalty.

### **Recommendations:**

- The Department should, through its consultant/analyst, determine the salary and benefits of prosecutors in the *Davis* counties so that pay parity can be analyzed.
- Hourly rates should be increased accordingly.
- The state must provide adequate salaries to state employees engaged in indigent defense in the *Davis* counties so that they have pay parity with their prosecutorial counterparts.

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<sup>20</sup> Lyon County's indigent defense expenditure reports for both quarters are attached to this Report as Appendix G.

<sup>21</sup> Judgment, 11.

## **B. Reimbursement for county expenses**

### **1. Inefficiencies and delays in reimbursement**

As previously reported, the current process of petitioning the Interim Finance Committee for release of funds on an ad hoc basis is a drain on resources and often causes delays in reimbursement. Each request for reimbursement is dependent on the meeting schedule of the Interim Finance Committee, with the Department functioning as an intermediary, helping the county prepare its general ledger of expenditures and making the case for reimbursement to the Committee. For example, The Department secured the approval, first from the Board of Examiners on January 10, and then from the Interim Finance Committee, on January 31, of reimbursement for expenses over the maximum county contribution in the amount of \$38, 916 for Douglas and White Pine counties.

The Governor's proposed reimbursement method for FY24-25 places the funds for reimbursement with the Governor's Finance Office rather than in the state's contingency account. It is the Monitor's understanding that this means that the Department would be required to request reimbursement on an ad hoc basis from the GFO, and also from the Board of Examiners, depending on the amount required.

This proposed process continues the inefficiencies and uncertainties of the contingency fund approach. Moreover, the continued involvement of the Board of Examiners raises an issue related to the independence of the defense function. The Attorney General sits on the Board as a voting member.

As discussed in the Monitor's Sixth Report, the Department has proposed a variety of ways in which the reimbursement process for the counties could be made more independent, efficient, prompt, and certain. In particular, the estimated amount of the state's contribution could be included in the Department's budget.<sup>22</sup>

## **Recommendation**

- Reimbursement for county expenses over their maximum contribution should continue to be rapid and reliable. Ideally, the Department should control disbursements to ensure prompt reimbursement for providers and the counties. Having to repeatedly request portions of the earmarked funds from the Governor's Finance Office, the Board of Examiners, or Interim Finance Committee causes delays for the counties and additional work for the Department's limited staff.

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<sup>22</sup> For a complete list of the budgetary bill draft requests submitted by the Department, see the Monitor's Sixth Report, 3-4.

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

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

- Prompt screening for indigency; representation at initial appearance/arraignment without delay; argument for release or affordable bail; counsel against waiving substantive rights.<sup>23</sup>
- 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.<sup>24</sup>
- Systems to identify and remove conflicts.<sup>25</sup>
- Establishment of performance standards.<sup>26</sup>
- Establishment of workload standards.<sup>27</sup>
- Qualifications for attorneys.<sup>28</sup>
- A system of oversight.<sup>29</sup>
- Attorney training and resources.<sup>30</sup>

Part A addresses budgetary concerns related to the minimum standards required by the Judgment. Part B addresses the Department's compliance activities and outstanding issues.

### **A. Budgetary Issues Impacting Compliance with the Minimum Standards Set by the Judgment**

Funding is an overarching issue for many of the Judgment's terms. The Department has successfully set up—and assisted counties in setting up—systems for ensuring that attorneys are qualified by case type, and that conflicts are identified and removed. But oversight, training, and recruiting qualified attorneys requires sufficient funding.

#### **1. Funding for Oversight**

Oversight requires both remote and on-the-ground activities. The Department can glean oversight information remotely through Legal Server, conversations with attorneys, judges, and other courtroom professionals, client surveys (discussed later), and by observing virtual hearings conducted remotely. But other oversight activities require spending time in every courthouse in

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<sup>23</sup> Judgment, 14.

<sup>24</sup> *Id.* at 14-15.

<sup>25</sup> *Id.* at 12.

<sup>26</sup> *Id.* at 16.

<sup>27</sup> *Id.* at 17.

<sup>28</sup> *Id.* at 15.

<sup>29</sup> *Id.* at 16-17.

<sup>30</sup> *Id.* at 16.

the ten counties to ensure that the minimum standards of representation are being uniformly met. This on-the-ground engagement must be adequately staffed, and the Department must have an adequate budget to support year-round travel within the state.

As previously reported, Soval Solutions provided the Department with a recommendation for oversight,<sup>31</sup> taking into consideration the oversight responsibilities set forth in the Judgment, statutory scheme and in the Board's regulations.<sup>32</sup> Accordingly, the report recommends the creation of two positions, described as Senior Policy Counsel and classified as Program Officer II positions. Approximately 40 percent of the job responsibilities would involve travel to the rural counties. As listed in the Monitor's last report, Soval solutions notes the following oversight responsibilities:

- Provide in-depth policy analysis by observing court procedures, reviewing client feedback, etc.
- Make determinations as to whether each county is in compliance with regulations.
- Perform both in-depth policy analysis and "quick response" research on a broad variety of subjects.
- Prepare in-depth research papers, reports, policy publications, and recommendations to leadership.
- Conduct statistical analyses.
- Compile other written products and research memoranda as required.

Concerningly, the Governor's Executive Budget does not contain funding for these positions or for any additional funding for oversight. Without these resources, it is unlikely that the Department will be able to fulfill the oversight requirements of the Judgment.

## **Recommendation**

- Increase Department staff to include policy counsel/oversight position(s) for in-person oversight in the counties.

## **2. Funding for Attorney Resources and Training<sup>33</sup>**

The Department has a slim budget for training and resources, which the Judgment requires the state provide to the attorneys in the rural counties. In fact, the Department has had to request grants to pay for its annual training and to defray the cost of attending for rural attorneys.

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<sup>31</sup> See Sixth Report of the Monitor, 11-12. Soval Solutions, *Recommendations for Senior Policy Positions* (August 30, 2022) is attached to this Report as Appendix H.

<sup>32</sup> NRS 7.115-7.145; NRS 171.188; Regulation Sec. 38

<sup>33</sup> Judgment, 16.

For the second year, the Department secured \$38,000 from an Edward Byrne Memorial Justice Access Grant for the travel expenses of rural indigent defense attorneys and five students to attend the annual conference, which will be held in Reno in Spring 2023. However, the Department does not have a host budget, so it cannot provide food and beverages at training events. This limitation results in fewer opportunities for attorneys to socialize, developing the kinds of relationships that lead to peer sharing of knowledge and mentorship relationships.

As noted in the Monitor's Preliminary Report on Budgetary Issues, the Department's limited training budget pales in comparison to the state's budget for training prosecutors. The Attorney General's Council of Prosecuting Attorneys is tasked with training the state's prosecutors and coordinating the development of policies that facilitate prosecution. Since 2001, the Council has been funded with administrative assessments pursuant to NRS 176.059. Its recommended budget for 2023-24 is \$309,451, more than ten times the budget of for training and resources of the Department of Indigent Defense, which is \$25,000 per year in the Governor's budget.

**Recommendation:**

- Adequately fund the Department's training and resources budget to ensure that it can offer hosted, annual conferences and a variety of training and resources throughout the year to ensure the effectiveness of attorneys practicing indigent defense.

**3. Funding for Pay Parity; Sufficient Pay to Attract Attorneys to Rural Practice**

The issue of fair compensation also relates to the ability of the state to provide effective assistance of counsel. The result of insufficient attorneys in the rural counties can be unconstitutional delays in appointment and appearance of counsel. This is especially true in counties without first- and second-tier conflict attorneys, where a conflict attorney must accept appointment. Recently, for example, Nye County lost several contract attorneys in quick succession. While the county solicited more applications for the contracts, dozens of clients were left without counsel until the Department located substitute counsel qualified and willing to accept appointment.

**Recommendations**

- Assist counties in considering options for attracting attorneys to rural practice, such as increasing hourly and contract compensation, forming a county public defender, as Churchill County did, or opting into the Nevada State Public Defender system, as White Pine is in the process of doing.

## **B. Compliance Issues and Activities**

### **1. First appearances: promptness, confidential client communications, arguments for release on bail**

The Deputy Director conducted oversight on first appearances—prompt appointment and bail hearing within 48 hours of arrest, memorialized in an Oversight Report dated February 7, 2023<sup>34</sup> This involved speaking with the attorneys contracting for indigent defense cases in the counties. All attorneys reported that first appearances occur within 48 hours, sometimes remotely. In the *Davis* counties, only Churchill provides additional compensation for weekend, holiday, and evening hearings. Attorneys in Douglas, Eureka, and Mineral counties expressed interest in having the State Public Defender handle some holiday hearings or initial appearance court when the attorneys have pressing matters in their existing caseload.

However, delays in appointment of counsel occur in conflict cases. As the Department has previously noted, the absence of designated conflict counsel impacts a county's ability to assure prompt representation of counsel.<sup>35</sup> Without contracted conflict counsel, the Department or its county designee must find a qualified attorney willing to accept the appointment on a case-by-case basis. This process is inefficient and often results in delays in representation.<sup>36</sup> In 2022, the Department selected counsel for the rural counties in 2,155 cases.

There has been some improvement in securing contracts for conflict representation. Lander County now has three tiers of counsel and conflict counsel. Lyon county has two attorneys for first and second tier attorneys. This is especially important in Lyon, where the Department responded to more than 200 requests for conflict counsel between September 2021 and August 2022. The Department expects that these conflict attorneys will be appointed in approximately two-thirds of the conflict cases, and that the Department will continue to select counsel for the remaining third.

An unanswered question—discussed in the Monitor's fifth and sixth reports—is whether remote hearings satisfy the Judgment. The Judgment requires that all indigent defendants be “represented by counsel *in person* at his or her initial appearance/arraignment.”<sup>37</sup> All counties have a plan in place to screen promptly for indigency to comply with AB424 (2021), which entitles all defendants an initial appearance and release hearing within 48 hours of arrest. Many attorneys appear remotely for a client's first appearance, and remote appearances are likely to become more common now that the 48-hour rule is in effect.<sup>38</sup>

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<sup>34</sup> The Department's Oversight Report: Status of 48-hour Hearings in Rural Nevada Counties (February 7, 2023) is attached to this Report as Appendix I.

<sup>35</sup> See the Department's Oversight Report p. 6. (August 16, 2022), attached to the Monitor's Sixth Report as Appendix J.

<sup>36</sup> The Department's Oversight Report, Lyon County: Yerington (October 20, 2022) is attached to the Monitor's Sixth Report as Appendix F.

<sup>37</sup> Judgment, 14 (emphasis added).

<sup>38</sup> AB 424 permits the defendant's remote initial appearance and is silent as to the presence of counsel, although it is highly likely that the defendant has a right to the presence of counsel at this critical stage of the proceedings. See



The Monitor observed remote initial appearances in the Ely Justice Court on January 10, 2023. The hearings were conducted on Zoom, and one day beyond the 48-hour limit. Both defendants had appeared on Zoom within 48-hours, but their bail hearings were delayed because conflicts were discovered necessitating the appointment of conflict counsel. In general, the quality of the remote technology was good. All participants were in separate places, appearing as “tiles” in the Zoom meeting. The defendants appeared from the jail. The visual image of the defendant was identical to the lawyers and judge, meaning that the defendant’s face appeared as a Zoom tile. Importantly, the defense attorneys had adequate time and ability to conduct a confidential client meeting in a separate “breakout” room on Zoom. Both defense attorneys provided relevant information and argument for release.

From the Monitor’s perspective, the quality of remote hearings like those held in the Ely Justice Court can be distinguished from remote hearings with inadequate design, such as when the following conditions are present:

- (1) defendants displayed in a crowded room in the jail with poor visuals and acoustics;
- (2) inadequate technology for the attorney to meet confidentially with the client before the hearing and to consult with the client during the hearing if necessary;
- (3) poor internet connection;
- (4) hybrid court hearings where a strategic disadvantage attaches to being remote from the courtroom.

The quality of remote appearances can vary. For example, the Department’s February 7, 2023, Oversight Report notes that first appearance hearings are held by phone in Lander County. This is a far cry from a video conference where the defendant can see the attorneys and the judge, and the software provides for a separate “room” for confidential attorney-client consultations. The Department is in the process of determining the quality of remote hearings occurring in the *Davis* counties.

In August 2021, the Nevada Supreme Court convened the Commission to Study Best Practices in Virtual Advocacy in Nevada’s Courts. Pursuant to ADKT 0581, the Commission is evaluating rules and potential rule changes related to remote technology in courts. However, criminal cases raise unique issues of due process, confrontation rights, compulsory process, and other trial rights that necessitate careful analysis of remote appearances and proceedings.

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*Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 212-213 (2008) (stating that first appearance is a “critical stage” of the proceedings).

## **Recommendation**

- Determine whether remote appearances at initial appearance satisfy the Judgment, and, if so, set standards for remote appearances. If remote appearance does not satisfy the Judgment, the Department should determine what resources would be required to assure in-person representation at first appearance.

### **2. Establishment of Workload Standards**

The Judgment requires that the Defendants contract with an outside provider within 12 months of the effective date of the Judgment to complete a workload study.<sup>39</sup> All timekeeping data collection and Delphi panels have been completed.

While it was anticipated that the conclusions of the NCSC workload study would be available by January 2023, it now appears that the study will not be complete for several months. The NCSC awaits the results of a nationwide RAND study of public defender caseloads as an important source of findings against which to check—and potentially adjust—the NCSC’s findings for rural public defenders in Nevada. It appears that the RAND study is in the process of a peer review and has not yet been released to the public.

While waiting for the results of the NCSC study, an additional problem emerged. The Governor’s Executive Order 2023-003 prohibits consideration and promulgation of new regulations. As noted above, the Board unanimously voted to request an exemption based on the timeline of the Judgment in this case and the need to comply with federal constitutional law—the Sixth Amendment right to counsel.

## **Recommendation**

- The State should clarify that Executive Order 2023-003, prohibiting the promulgation of new regulations, exempts new regulations that are necessary to comply with the *Davis* Judgment and the Sixth Amendment right to counsel.

### **3. Training for attorneys**

The Department continues to offer regular trainings and resources for attorneys, as well as to plan for its annual conference.

- On December 7, 2022, the Department organized a two-credit CLE on defense ethics.
- On November 16 and December 14, 2022, the Department hosted the final two CLE classes of the State of Nevada First Annual Defenders Homicide Conference, offered in conjunction with the public defender and alternate public defender offices of Clark and Washoe counties.

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<sup>39</sup> Judgment, 17.

- On February 10, 2023, the Department organized a 1-credit CLE How to Deal with the Press When They Call.

Additional trainings offered:

- November 30, 2022, CLE on the 2022 Appellate Year Review (Clark County Public Defender)
- December 12, 2022, CLE on Coping with Depression (Clark County Office of the Special Public Defender)
- December 19, 2022, CLE on THC/Cannabis: Recognizing Impairment

#### **4. Client surveys**

The Department rarely receives a completed client survey despite providing methods of response electronically and through the state prison system. As mentioned in the Monitor's last report, it would be helpful for the parties to discuss whether the purpose of the survey is to provide a clear channel of communication between indigent defendants and the Department or, instead, to gather comprehensive information about client experiences. If the goal is the former, then the Department has fulfilled this requirement of the Judgment so long as it ensures that the surveys continue to be made available to clients. If it is the latter, then other techniques of eliciting client feedback should be explored.

The Judgment includes a model survey as Exhibit C, which is the 2018 Client Satisfaction Survey for the Public Defender Service (PDS) of the District of Columbia. The general practice at PDS is to conduct periodic, comprehensive surveys rather than asking individual attorneys to provide their clients with the survey on an ongoing basis. To conduct the survey, PDS mails the Client Satisfaction Survey form to former PDS clients who were incarcerated after conviction, whether after trial or through acceptance of a plea offer.<sup>40</sup> Approximately 1/3 of former clients respond to the survey.

Of course, it is easier to mail a survey to the former clients of a unified public defender office than to the clients of a variety of contract and appointed counsel in ten different counties. If the location of incarcerated clients is entered into the Legal Server database, perhaps it would be possible to conduct a similar survey to assess client satisfaction.

#### **Recommendation**

- Clarify goal of the client surveys and consider periodic surveys conducted by the Department.
- Consider whether the data collected on Legal Server will permit the Department to survey former clients of attorneys providing public defense in the *Davis* counties.

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<sup>40</sup> The D.C. Public Defender Service surveys only incarcerated former clients because those who are not incarcerated prove too difficult to locate.

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

#### **A. Attorney Workload Reporting**

This section tracks progress in workload reporting from the first to the second quarter of FY23.<sup>41</sup>

The Judgment requires that indigent defense providers report data in a uniform fashion, including case numbers, type, outcome, the number of motions to suppress filed and litigated, the number of trials, the attorney's private workload, if any, and the hours worked by attorneys, staff, investigators, and experts. The Judgment further requires that the Department provide the data collected on rural indigent defense systems to the Plaintiffs and the public on a quarterly basis.<sup>42</sup> The Board's regulations follow the Judgment's requirements.<sup>43</sup>

The reader will see continued improvement in timekeeping data for the October 1, 2022-December 31, 2022, quarter. Most attorneys provided some timekeeping data, with some attorneys reporting for the first time. This is due in part to continued efforts of the Department to encourage and support attorney timekeeping on Legal Server.

Finally, the Department submitted a bill draft request to ensure that case and client information submitted by attorneys to the Department remains confidential and protected from public records requests, SB 39 (2023).<sup>44</sup> This should reassure attorneys that their confidential client information will not be compromised by reporting case, workload, and other required information to the Department.

Nevertheless, as in prior reports, the Monitor remains concerned about the following reporting issues:

- Possible underreporting of attorney hours;
- Possible underreporting of investigator or expert hours;
- Not reporting hours spent on private cases or other indigent defense contracts; and
- Understanding the caseload of individual attorneys.

The chart below includes only part of the workload data reported and is designed to compare the two quarters.

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<sup>41</sup> The quarterly reports are available on the Department's website at [https://dids.nv.gov/Annual\\_Report/home/](https://dids.nv.gov/Annual_Report/home/).

<sup>42</sup> Judgment, 18.

<sup>43</sup> Section 43 of the Regulations require 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 also 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.

<sup>44</sup> SB39 as enrolled is attached to this Report as Appendix A.

**Comparison of Workload Reporting in FY23 1<sup>st</sup> and 2<sup>nd</sup> Quarters**

<b>County</b>	<b>FY23 1<sup>st</sup> Quarter July 1 – September 30</b>	<b>FY23 2<sup>nd</sup> Quarter October 1-December 31</b>	<b>Reporting Issues &amp; Cases Open as of 12/31/22</b>
Churchill	<p>Public defender (1 attorney) reported 752.5 hours, 11.5 expert hours.</p> <p>Alt. public defender (1 attorney) reported 514.8 hours, 740.1 expert hours.<sup>45</sup></p> <p>Appointed counsel attorneys reported 26.9 and 67.8 hours, respectively. Both reported expert hours.</p> <p>No investigation hours reported, but some staff hours.</p>	<p>Public defender (1 attorney) reported 893.6 hours, 5 expert hours.</p> <p>Alt. public defender (1 attorney) reported 242.5 hours, no expert hours.</p> <p>Appointed counsel attorney reported 115.4 hours, no expert hours.</p> <p>Nevada Appointed Counsel reported 96.9 hours.</p>	<p>No reporting of hours spent on private cases or other contract/appointed cases (although some reporting of civil cases).</p> <p>No reporting of investigative hours.</p> <p>18 category A (and high B felonies; 136 B-E felonies; 24 DUI or DV misdemeanors; 66 misdemeanors; 22 other criminal/juvenile, including 1 appeal; 60 civil.</p>
Douglas	<p>All 5 contracting attorneys reported hours.</p> <p>Filter: 486.1 hours</p> <p>Ence: 573 hours (+10 hours private work)</p> <p>Hart: 27.5 hours</p> <p>Stovall: 320.3 hours (+ 66.4 hours private work)</p> <p>Morton: 381.1 hours</p> <p>No investigation or expert hours reported.</p>	<p>All 5 contracting attorneys reported hours.</p> <p>Filter: 341.9, 0.4 expert hours</p> <p>Ence: 517.8 hours</p> <p>Hart: 11.1 hours</p> <p>Stovall: 647.3 hours</p> <p>Morton 489.5 hours</p>	<p>No reporting of hours spent on private cases or other contract/appointed cases (although some reporting of civil cases).</p> <p>No reporting of investigative hours.</p> <p>27 category A (and high B) felonies; 252 B-E felonies; 131 DUI or DV misdemeanors; 295 misdemeanors; 58 other criminal; 21 civil.</p>
Esmeralda	<p>1 attorney total: 10.4 hours reported. The graphic does</p>	<p>1 attorney total: 11.4 hours</p>	<p>No reporting of hours spent on private cases or other contract/appointed</p>

<sup>45</sup> Possibly an error in reporting expert hours.

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	<p>not give the number of cases open during this period.</p> <p>Same attorney contracts in Nye County.</p> <p>No private practice hours reported.</p> <p>No investigation or expert hours reported.</p>	<p>17 open cases, including one appeal.</p> <p>Same attorney contracts in Nye County.</p> <p>No private practice hours reported.</p> <p>No investigation or expert hours reported.</p>	<p>cases (although the attorney's hours for this Nye County contract captured in the data)</p> <p>No reporting of investigative or expert hours.</p> <p>2 category A (and high B) felonies; 6 category B-E felonies; 4 DUI or DV misdemeanors; 4 misdemeanors; 2 appeals.</p>
Eureka	<p>1 attorney total: 148.6 hours</p> <p>No private practice hours reported.</p> <p>No investigation or expert hours reported.</p>	<p>1 attorney total: 120.1 hours</p> <p>No private practice hours reported.</p> <p>No investigation or expert hours reported.</p>	<p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>No reporting of investigative or expert hours.</p> <p>8 category B-E felonies; 7 DUI or DV misdemeanors; 6 misdemeanors; 4 civil.</p>
Lander	<p>1 attorney: 113.6 hours reported</p> <p>No private hours reported.</p> <p>Alternate defender reported no hours.</p> <p>Expert hours: 15</p>	<p>Primary contract: 102.6 hours, 0.7 staff hours</p> <p>Conflict counsel: 0.5 hours</p> <p>No expert hours reported.</p> <p>No investigator hours reported.</p>	<p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>No reporting of investigative or expert hours.</p> <p>29 category B-E felonies; 7 DUI and DV misdemeanors; 23 misdemeanors; 10 other criminal; 1 civil.</p>
Lincoln	<p>1 attorney: 323.7 hours</p>	<p>1 attorney: 302.1 hours</p>	<p>No reporting of hours spent on private cases or</p>

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	<p>Alternate defender: 42.7 hours</p> <p>No private workload reported.</p> <p>No investigation or expert hours reported.</p>	<p>Alternative defender: 47.7 hours</p>	<p>other contract/appointed cases.</p> <p>No reporting of investigative or expert hours.</p> <p>3 category A (and high B) felonies, 78 category B-E felonies; 28 misdemeanors, and several juvenile, parole/probation, and specialty court cases.</p>
Lyon	<p>Same law firm: 1,655.2 hours</p> <p>No private workload hours reported.</p> <p>Investigation hours: 208.2</p> <p>Expert hours: 11</p> <p>Appt. counsel: 179.4 hours</p>	<p>Same law firm: 737.9 hours</p> <p>Investigation hours: 35.3</p> <p>Expert hours: 4.0</p> <p>Staff hours: 147.7</p> <p>Appt. counsel: 409.6 hours</p> <p>Staff hours: 5</p>	<p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>11 category A felonies; 357 category B-E felonies; 190 DUI and DV misdemeanors; 374 misdemeanors; 163 other criminal/juvenile, including 2 appeals; 50 civil.</p>
Mineral	<p>New contract attorney: 142 hours reported</p> <p>No private workload reported.</p> <p>No investigation or expert hours reported.</p> <p>Conflict counsel: Karl Hylin – no hours reported. He is taking few cases but mentoring the new contract attorney on higher felonies.</p>	<p>Main contract attorney: 164.6 hours</p> <p>Expert hours: 2</p> <p>Staff hours: 1.5</p> <p>Conflict counsel: 89.1 hours</p> <p>Nevada Appointed Conflict Attorneys: 29.2</p> <p>Staff: 23.0</p>	<p>Improvement in conflict counsel reporting.</p> <p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>No reporting of investigative hours.</p> <p>1 category A (or high B) felony; 58 B-E felonies; 9 DUI or DV misdemeanors; 11 misdemeanors; 4 other criminal/juvenile; 4 civil.</p>

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Nye	<p>Gent: 390.4</p> <p>Boskovich: 4.9</p> <p>Shahani: 20.7</p> <p>Jason Earnest: 101.0</p> <p>Andrew Coates: no reporting</p> <p>The report does not include open cases per attorney.</p> <p>No private hours reported.</p> <p>No investigation or expert hours reported.</p>	<p>Gent: 100.2</p> <p>Boskovich: 0.8</p> <p>Shahani: None</p> <p>Earnest: 143.8 (2 hours investigation)</p> <p>Nevada Appointed Conflict Attorneys: 78.1</p> <p>No other investigation or expert hours reported.</p>	<p>Underreporting/no reporting by two attorneys</p> <p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>22 category A (and high B) felonies; 683 category B-E felonies; 244 DUI or DV misdemeanors; 509 other misdemeanors; 22 other criminal/juvenile; 50 civil.</p>
White Pine	<p>Cole: 501.5 hours (includes 62.3 civil). No expert or investigator hours reported.</p> <p>Eberhardy: 678.3 (includes 39.6 civil). No expert or investigator hours reported.</p> <p>Pickering: 659.9. No expert or investigator hours reported.</p> <p>(It appears that Eberhardy and Pickering merged all their casework—county and NV state prison cases—into their total reported for this quarter.)</p> <p>No hours reported for conflict counsel, perhaps because Cole absorbed that category of cases.</p>	<p>Cole: 467.9 hours. No expert or investigator.</p> <p>Eberhardy: 475.6. 5 hours expert; no investigative hours.</p> <p>Pickering: 415.5. No expert or investigator (includes 16.1 hours civil).</p> <p>Nevada Appointed Conflict Attorneys: 33.4 hours</p>	<p>No reporting of hours spent on private cases or other contract/appointed cases.</p> <p>No reporting of investigative hours.</p> <p>9 category A (and high B) felonies; 152 category B felonies; 14 DUI or DV misdemeanors; 13 misdemeanors; 31 other criminal/juvenile; 14 civil.</p>
<b>Motions to suppress filed</b>	3 in Lyon	None in <i>Davis</i> counties.	



<b>Motions to suppress litigated</b>	3 in Lyon	None in <i>Davis</i> counties.	
<b>Trials</b>	1 in Eureka 1 in Lyon 1 in White Pine	None in <i>Davis</i> counties.	

## B. Outstanding reporting issues

### 1. Underreporting

The Department confirms that some attorneys are underreporting. In the past quarter, one attorney underreported, and another did not report hours, largely because of a lack of time. This explanation tracks with the high case numbers in Nye County. In the past quarter, the Department reported that the county had the following numbers of open cases: 22 category A (or high category B) felonies; 683 categories B-E felonies; 244 serious misdemeanors (domestic violence or driving under the influence); 509 other misdemeanors; 22 other criminal or juvenile; 50 civil. Nye County is considering hiring an administrator to assign cases and open them in Legal Server. Attorneys would then only be responsible for entering hours and disposition.

Of course, the alternate explanation is that some attorneys are spending an inadequate amount of time on their indigent defense casework. Because there is no secondary source to check against reported attorney hours, it is not possible to distinguish underreporting from insufficient time spent on casework. Such a determination would be gleaned from the oversight process in individual counties.

### 2. Investigation and Expert Hours

Few attorneys report investigation and expert hours. Indeed, only Lyon County's contracting law firm reported any investigator hours.

The question is whether attorneys are not using experts and investigators or whether they are merely underreporting. In comparing requests for funds/reimbursement for experts and investigators, the Department notes both scenarios are probably occurring. Some attorneys are failing to enter their expert and investigator hours in Legal Server, but others are rarely or never using experts and investigators in their cases. The latter is an issue of minimum standards of representation that must be addressed through training, resources, and oversight.

3. No reporting of private workload and other indigent defense contracts

It appears that no attorneys are reporting their private workload or time spent on other indigent defense contracts and appointments in, for example, municipal courts. The Judgment requires that the Defendants “ensure” that indigent defense providers supply both their “attorney and staff hours spent per public defense case,” and their “private workload, if any, measured in attorney hours.”<sup>46</sup> For some attorneys, their indigent defense contract is a de facto, full-time job because it leaves no time for other cases. But for all other contract attorneys, the failure to report private workload hours violates the Judgment and compromises the Department’s ability to set workload standards (after the caseload study is complete). Without knowing their private workload, it will not be possible to prevent an excessive workload, to adjust caseloads, and to adjust compensation to avoid the necessity of taking on too many private cases.

4. Understanding the caseload of individual attorneys

The Judgment requires quarterly reporting of workload data, including caseload by case type, attorney, staff, investigator, and expert hours per case, private workload, and totals for motions to suppress and trials.<sup>47</sup> Because the Department’s quarterly reports open and closed cases for the whole county rather than by attorney, the report does not tell us the individual attorney’s caseload in counties with more than one attorney.

The Department has the capability to generate reports on Legal Server that show the total number of cases (by case type) for each attorney. This information is required by the Judgment, and it will be necessary when the weighted caseload study is complete and workload limits are put in place.

**Recommendations**

- Per the Judgment, the Department should provide a breakdown of cases by attorney. The parties may wish to determine whether this level of detail should be included in the quarterly and annual reports, or provided in some other format.
- Section 44(1)(e) of the regulations requires that attorneys report total private workload, which should be read to include time spent on indigent defense in other jurisdictions, especially in municipalities. This expectation should be clarified in the regulations and in attorney contracts.
- The state should compensate attorneys or otherwise incentivize contemporaneous timekeeping and prompt dispositional reporting through Legal Server. The contracts

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<sup>46</sup> Judgment, 18.

<sup>47</sup> Judgment, 18. The Board’s Regulation, Sec. 43 requires an annual report of cases by type and status per county. Section 44 requires an annual report of attorney workload similar to the quarterly reporting in the Judgment, which includes attorney, staff, investigator, and expert hours per case.

require compliance with the reporting requirements, but incentives may help ensure thoroughness.

- The budget and staff for oversight should contemplate the Department's obligation to ensure that attorneys report expert and investigator hours *and* to ensure that attorneys use investigators and experts when appropriate.

## Looking ahead

- **The Budget and Process for County Reimbursement**

The legislature will determine the budget for the Department of Indigent Defense and the Nevada State Public Defender. It is hoped that the budgets will be sufficient to fund the oversight and training required by the Judgment, and to provide adequate resources, attorneys, and fair compensation for the State Public Defender's growing obligation to provide public defense in *Davis* counties.

- **Addressing attorney shortage and adjusting systems of public defense**

Of primary concern to the Department is the overall shortage of attorneys willing to accept appointments or contracts to provide indigent defense in the rural counties. The data analyst/consultant, Dr. Herian, is currently analyzing the issue and preparing a report on strategies to attract and retain rural attorneys, as well as a review of the compensation rates of district attorneys and their deputies in the *Davis* counties. The Department awaits the outcome of its bill draft requests to give the Board authority to set a minimum hourly rate of compensation as well as the final budget for the Department and State Public Defender.

The Department continues to explore ways to increase interest in rural public defense among law students and practicing attorneys. Other states lacking attorneys in rural areas incentivize rural practice with law school debt forgiveness, payment of bar classes and bar exam costs for new attorneys, stipends for practicing attorneys, and reciprocity for out-of-state attorneys. Some of these incentives may be necessary to ensure that rural defendants have access to qualified counsel and, thus, to comply with the Judgment.

- **Data collection compliance**

The next quarter of workload reporting is due on April 15, 2023.

- **Workload study**

The NCSC study awaits release of the RAND study and is anticipated later in 2023.

## **Next steps for the Monitor**

As the Department continues to conduct training, support, and oversight, while collecting data on cases, workload, and expenditures for the counties, the Monitor will analyze and report on:

- Budgetary developments.
- The Board's request for an exemption from Executive Order 2023-003.
- The legislative session, including the Department's Bill Draft Requests and other legislation that impacts the Judgment.
- Soval Solutions' analysis of parity with local prosecutors.
- The Department's oversight activities and plans.
- The Department's efforts to increase the number of attorneys working in indigent defense in the rural counties.
- The Monitor will also schedule and conduct visits to several counties in coordination with the Department.

**Appendix A**

**SB39**

SENATE BILL NO. 39—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DEPARTMENT OF  
INDIGENT DEFENSE SERVICES)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Judiciary

**SUMMARY**—Provides that certain records received, obtained and compiled by the Board on Indigent Defense Services in the Department of Indigent Defense Services and the Department are confidential under certain circumstances. (BDR 14-215)

**FISCAL NOTE:** Effect on Local Government: No.  
Effect on the State: No.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets {omitted material} is material to be omitted.

AN ACT relating to indigent services; providing that certain records received by the Board on Indigent Defense Services in the Department of Indigent Defense Services or the Department which are protected by the attorney-client privilege are confidential; providing that certain records received by the Board or the Department relating to the conduct of an attorney are confidential under certain circumstances; providing that certain records which are voluntarily disclosed to the Department remain protected by the attorney-client privilege under certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law: (1) creates the Board on Indigent Defense Services and the  
2 Department of Indigent Defense Services; and (2) requires the Board and the  
3 Department to perform certain duties related to the oversight of indigent defense  
4 services in this State. (NRS 180.300, 180.320, 180.400, 180.410)

5 **Section 1** of this bill provides that all records received by the Board, the  
6 Department or a designee of the Department that are protected by the attorney-  
7 client privilege are confidential. **Section 1** also provides that all records obtained or  
8 compiled during or after an investigation arising from a complaint related to the



\* S B 3 9 \*

conduct of an attorney are confidential, unless releasing such records is necessary for the performance of the oversight functions or duties of the Department. Additionally, section 1 clarifies that the Board and Department may, at their discretion, communicate or cooperate with, or provide records to, any professional licensing board or any other governmental agency that is investigating a person, except to the extent that such records are protected by the attorney-client privilege.

Existing law establishes a privilege for confidential communication between a client and the client's attorney. (NRS 49.035-49.115) However, existing law also provides that the privilege is waived if a person who holds the privilege voluntarily discloses or consents to disclosure of any significant part of the matter, unless the disclosure is itself a privileged communication or made to an interpreter employed merely to facilitate communications. (NRS 49.385) Section 2 of this bill provides that the privilege is additionally not waived if a disclosure is made to the Department or its designee for the purpose of: (1) requesting prior approval of a claim for compensation for certain legal expenses; (2) submitting a claim for compensation of certain legal fees or expenses reasonably incurred by an attorney providing indigent defense services; or (3) submitting a complaint against an attorney providing indigent defense services.

Section 3 of this bill makes a conforming change to reflect that certain records are confidential pursuant to section 1.

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

**Section 1.** Chapter 180 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in this section and NRS 239.0115, all records received by the Board, the Department or a designee of the Department that are protected by the attorney-client privilege are confidential. Such records may include, without limitation, any records relating to the case file of a client or a claim for compensation or expenses made by an attorney pursuant to NRS 7.125 or 7.135.*

*2. Except as otherwise provided in this section and NRS 239.0115, all records obtained or compiled during or after an investigation arising from a complaint received by the Board or the Department that are related to the conduct of an attorney are confidential, unless releasing such records is determined to be necessary for the oversight functions or duties of the Department.*

*3. The provisions of this section do not prohibit the Board or the Department, at its discretion, from communicating or cooperating with, or providing any records to, any professional licensing board or any other governmental agency that is investigating a person, except to the extent that such records are protected by the attorney-client privilege.*

*4. As used in this section, "records" means any records, files, books, documents, papers, information or data that is inscribed on*



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1 *a tangible medium or that is stored in an electronic or other*  
2 *medium and is retrievable in perceivable form.*

3 **Sec. 2.** NRS 49.385 is hereby amended to read as follows:

4 49.385 1. A person upon whom these rules confer a privilege  
5 against disclosure of a confidential matter waives the privilege if the  
6 person or the person's predecessor while holder of the privilege  
7 voluntarily discloses or consents to disclosure of any significant part  
8 of the matter.

9 2. This section does not apply if the disclosure is:

10 (a) Itself a privileged communication; ~~or~~

11 (b) Made to an interpreter employed merely to facilitate  
12 communications ~~to~~; or

13 (c) *Made to the Department of Indigent Defense Services or a*  
14 *designee of the Department for the purpose of:*

15 (1) *Requesting prior approval of a claim pursuant to*  
16 *paragraph (a) of subsection 1 of NRS 7.135;*

17 (2) *Submitting a claim for compensation or expenses*  
18 *pursuant to NRS 7.125 or 7.135; or*

19 (3) *Submitting a complaint against an attorney providing*  
20 *indigent defense services pursuant to NRS 180.320.*

21 **Sec. 3.** NRS 239.010 is hereby amended to read as follows:

22 239.010 1. Except as otherwise provided in this section and  
23 NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.0397, 41.071, 49.095,  
24 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030,  
25 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152,  
26 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,  
27 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,  
28 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,  
29 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280,  
30 119A.280, 119A.653, 119A.677, 119B.370, 119B.382, 120A.640,  
31 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730,  
32 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312,  
33 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.015,  
34 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715,  
35 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771,  
36 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392,  
37 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140,  
38 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,  
39 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240,  
40 218G.350, 224.240, 226.300, 228.270, 228.450, 228.495, 228.570,  
41 231.069, 231.1473, 232.1369, 233.190, 237.300, 239.0105,  
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44 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335,  
45 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150,



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6 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335,  
7 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420,  
8 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100,  
9 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.2242,  
10 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080,  
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24 439A.124, 439B.420, 439B.754, 439B.760, 439B.845, 440.170,  
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35 598A.110, 598A.420, 599B.090, 603.070, 603A.210, 604A.303,  
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42 633.301, 633.4715, 633.4716, 633.4717, 633.524, 634.055,  
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16 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536,  
17 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550,  
18 696C.120, 703.196, 704B.325, 706.1725, 706A.230, 710.159,  
19 711.600, *and section 1 of this act*, sections 35, 38 and 41 of chapter  
20 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes  
21 of Nevada 2013 and unless otherwise declared by law to be  
22 confidential, all public books and public records of a governmental  
23 entity must be open at all times during office hours to inspection by  
24 any person, and may be fully copied or an abstract or memorandum  
25 may be prepared from those public books and public records. Any  
26 such copies, abstracts or memoranda may be used to supply the  
27 general public with copies, abstracts or memoranda of the records or  
28 may be used in any other way to the advantage of the governmental  
29 entity or of the general public. This section does not supersede or in  
30 any manner affect the federal laws governing copyrights or enlarge,  
31 diminish or affect in any other manner the rights of a person in any  
32 written book or record which is copyrighted pursuant to federal law.  
33 2. A governmental entity may not reject a book or record  
34 which is copyrighted solely because it is copyrighted.  
35 3. A governmental entity that has legal custody or control of a  
36 public book or record shall not deny a request made pursuant to  
37 subsection 1 to inspect or copy or receive a copy of a public book or  
38 record on the basis that the requested public book or record contains  
39 information that is confidential if the governmental entity can  
40 redact, delete, conceal or separate, including, without limitation,  
41 electronically, the confidential information from the information  
42 included in the public book or record that is not otherwise  
43 confidential.  
44 4. If requested, a governmental entity shall provide a copy of a  
45 public record in an electronic format by means of an electronic



\* S B 3 9 \*

1 medium. Nothing in this subsection requires a governmental entity  
2 to provide a copy of a public record in an electronic format or by  
3 means of an electronic medium if:

4 (a) The public record:

5 (1) Was not created or prepared in an electronic format; and

6 (2) Is not available in an electronic format; or

7 (b) Providing the public record in an electronic format or by  
8 means of an electronic medium would:

9 (1) Give access to proprietary software; or

10 (2) Require the production of information that is confidential  
11 and that cannot be redacted, deleted, concealed or separated from  
12 information that is not otherwise confidential.

13 5. An officer, employee or agent of a governmental entity who  
14 has legal custody or control of a public record:

15 (a) Shall not refuse to provide a copy of that public record in the  
16 medium that is requested because the officer, employee or agent has  
17 already prepared or would prefer to provide the copy in a different  
18 medium.

19 (b) Except as otherwise provided in NRS 239.030, shall, upon  
20 request, prepare the copy of the public record and shall not require  
21 the person who has requested the copy to prepare the copy himself  
22 or herself.

23 **Sec. 4.** This act becomes effective upon passage and approval.

50



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**Appendix B**

**Article from the Nevada Lawyer (December 2022)**

# Stipend Takes Summer Interns on Road, Offers Real World Experience with a View

BY THOMAS QUALLS, ESQ.



Jesse Larsen

**Unique summer internships created in partnership between the Department of Indigent Defense Services (DIDS) and the William S. Boyd School of Law at the University of Nevada, Las Vegas offer law students the ability to be student practitioners in rural Nevada courtrooms. DIDS was created by the Nevada Legislature in 2019 to assist counties in creating more effective and sustainable indigent defense systems. As part of its mission, DIDS has been working with Boyd to create pipeline programs that introduce law students to the judicial systems in rural Nevada counties, where access was previously limited.**

The first program to launch features a choice of externships (in which students earn academic credits) or internships (in which students do not earn credits) that are designed to engage law students in the practice of indigent defense, including the opportunity for some rare hands-on courtroom experience that will serve them for years to come. The students also reap the benefits of working in the beautiful rural areas of the state. The program officially began in summer 2022 and will continue in summer 2023. Students who are chosen will receive a stipend to help cover living expenses.

## Money for Food and Lodging

A generous grant from the State Bar of Nevada has allowed DIDS to offer these opportunities for law students. The program currently selects two Boyd law students per summer to receive a stipend of \$6,500 to work in an organized public defender's office in one of Nevada's rural communities.

## The Travelers

The inaugural interns for summer 2022 were Mia Perez and Jesse Larsen, both third-year law students at Boyd. We caught up with them recently and had the chance to ask a few questions about their experiences.

## The Destinations

The program gives big-city law students a taste of life in a different environment. Perez and Larsen both loved getting out of the Las Vegas heat and spending time in nature in Northern Nevada.

**Perez:** "I grew up in extremely large urban areas. I am originally from Central New Jersey, about 30 minutes away from New York City. My internship in Elko was the first time in my life that I lived in a rural area. I admit there was some culture shock at first (Elko does not have a Chick-fil-A, for instance), but I was surprised how quickly I began to enjoy the environment, including the beautiful mountain ranges surrounding the city. I started going hiking for the first time in my life and discovered I love being out in nature."

**Larsen:** "I grew up in a somewhat mixed urban/rural environment nestled in the



Dollar Lakes at Ruby Mountain, Nevada



Mia Perez

Virginia Foothills between Reno and Carson City. My small neighborhood was close to Reno, but far enough away that we still had wild horses and deer in our front yard. I also spent a lot of my childhood camping in Nevada's backcountry. In this way, working with the State Public Defender's Office in Carson City and Storey County during this internship was somewhat nostalgic for me."

### Reasons to Embark

**Larsen:** "I chose this internship because it offered an opportunity to work with experienced criminal defense attorneys and represent clients who are in genuine need. I plan on working in public defense after I graduate, so this internship was a great opportunity to network and gain experience that I will use to jump-start my career. As an added benefit, this internship gave me the chance to escape the summer heat of Las Vegas for the comparatively cool climate of Northern Nevada."

**Perez:** "I chose this internship because it allowed me to obtain Student Practitioner status, which gives me the ability to try cases under a supervised attorney, and it provided many opportunities that no other internship would. Very few law students can say they tried an actual bench or jury trial, or negotiated with prosecutors, and zealously advocated for clients. Larger cities like Las Vegas could not have provided me with this level of hands-on attention and autonomy that I received while in Elko."

### Highlights of the Journey

**Perez:** "One of the highlights of my experience as an intern was the guidance I received in how to handle bench and jury trials, and also the autonomy I was given. Even though the bench trials I prepped eventually pled out, the experience of formulating a trial plan was challenging and exciting. Appearing in front of a judge, in an actual case, as the defense counsel for indigent clients was extremely rewarding. After one hearing, a client asked if she could hug me. It made me feel really good that I had the ability to positively impact her life."

**Larsen:** "One of the most interesting experiences I had over the summer was working with child defendants. In the ivory tower of law school, it is often easy to overlook the realities of our legal system, especially as it concerns children in the criminal justice system. It was interesting and exciting to see how professional attorneys and judges interacted with children in juvenile court, and how they created as non-threatening an environment as possible. I was also able to see first-hand how different it is to represent a child compared to an adult."

### Mapping the Future

One of DIDS' goals is to bring new and energetic practitioners into Nevada's rural communities. We hope that the experience, and the communities in which the students live and work, will sell themselves.

**Larsen:** "I do want to work in indigent defense."

**Perez:** "I plan on working with indigent litigants, but on the civil side. My post-graduation plans are to pursue a career in civil rights and impact litigation for marginalized communities."

### Travel Reviews

DIDS intends to continue the rural pipeline program. It was important for us, then, to get feedback from our first round of students on what they thought of their experiences.



**Perez:** "I enjoyed working in the Elko Public Defender's Office. I would definitely recommend this program to other law students! My internship was in Elko, which is a lot cooler in temperature than Las Vegas, plus it has amazing views. All of the experienced attorneys were incredibly

kind, and they provided mentorship and lifelong professional connections. My supervising attorney was a rockstar and was really hands-on when it came to teaching me about criminal defense work, including how to complete client intakes, prepare trial plans, formulate concise arguments, negotiate with the prosecution, draft motions, and more. All of these experiences will translate well into any legal position, whether students are considering criminal defense work or not."

CONTINUED ON PAGE 18

CONTINUED FROM PAGE 17

# Stipend Takes Summer Interns on Road, Offers Real World Experience with a View

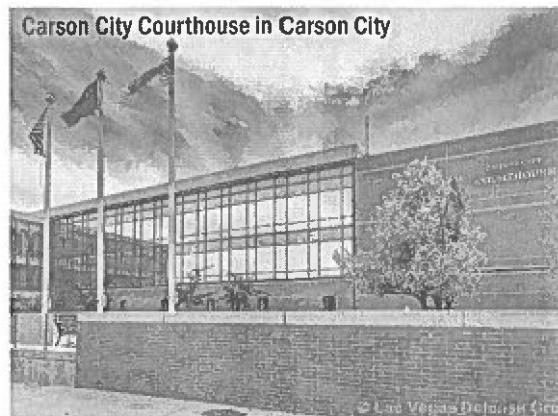
**Larsen:** "I would absolutely recommend the program to another law student! Especially if they even had a vague idea of working in public defense. I really enjoyed my time with the State Public Defender's office. All the attorneys and office staff are super nice and helpful. Carson City is a beautiful place, and it is very close to Lake Tahoe (not to mention much cooler than Las Vegas in the summer). This internship offered me invaluable experience in not just criminal defense, but also general legal skills, from client counseling and negotiations to jury venire and trial prep. All of these skills and experiences would be useful to any law student, regardless of what career path they intend to take."

"After one hearing, a client asked if she could hug me."

Elko County Courthouse in Elko



Carson City Courthouse in Carson City



## The Return

DIDS wishes to thank the State Bar for its generous contribution that makes this externship/internship program possible, and also Dawn Nielsen and the Boyd School of Law for their continued collaboration in this effort. DIDS is excited for next year's program. For more information on DIDS, please visit the website at [dids.nv.gov](http://dids.nv.gov). If you or someone you know would be interested in participating in this program in the future, please contact Dawn Nielsen, Esq., director of the law school's externship program, at [dawn.nielsen@unlv.edu](mailto:dawn.nielsen@unlv.edu) or 702-895-2403.

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**THOMAS L. QUALLS** serves as a deputy director for the Department of Indigent Defense Services. He was in private practice from 2003 until he joined DIDS in April 2021. Qualls previously served on the Washoe County Indigent Defense Conflict Panel, as well as the federal Criminal Justice Act panel, and he is SCR 250 qualified for capital appellate cases. He is also an award-winning author of three books.



**Appendix C**  
**Executive Order 2023-003**





## EXECUTIVE ORDER 2023-003

### **Order Freezing the Issuance of New Regulations and Requiring a Review of Existing Regulations by All Executive Branch Agencies, Departments, Boards and Commissions**

**WHEREAS**, state regulations should protect workers, consumers and the environment, while promoting entrepreneurship and economic growth; and

**WHEREAS**, state regulations can become outdated, result in unintended consequences, create conflicts or impose an unnecessary burden on citizens, businesses or government entities; and

**WHEREAS**, it is in the best interest of the state of Nevada that its regulatory environment be concise, transparent, stable, balanced, predictable and thoughtfully constructed; and

**WHEREAS**, Nevada's current regulatory structure is too often unfocused and inefficient, contains regulations that are obsolete and includes regulations that are unnecessarily onerous, thereby limiting the economic potential of the State; and

**WHEREAS**, Article 5, Section 1 of the Nevada Constitution provides that, "The Supreme Executive Power of this State shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and laws of the State of Nevada, it is hereby ordered as follows:

#### **SECTION 1**

Every executive branch department, agency, board and commission shall undertake a comprehensive review of the regulations subject to its enforcement. On or before, May 1, 2023 each department, agency, board and commission shall provide a report to the Governor's office detailing how the regulation subject to its enforcement can be streamlined, clarified, reduced or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth.

#### **SECTION 2:**

As part of its report, every executive branch department, agency, board and commission shall provide a list of not less than ten (10) regulations recommended for removal, ranking them in descending order of priority.

#### **SECTION 3:**

Prior to submitting their respective reports, every executive branch department, agency, board and commission shall hold a public hearing, after having provided reasonable notice consistent with Chapter 233B of the Nevada Revised Statutes, to key industry stakeholders, to: (i) vet their recommended changes; (ii) solicit input as to the merits of those changes and (iii) identify other regulatory changes stakeholders feel are worthy of consideration. Stakeholder input shall be reflected in the summary of findings and recommendations included in each submitted report.

#### **SECTION 4:**

Unless specifically exempt from this Executive Order as set forth in Section 5, no new regulations shall be proposed, approved or acted on by any executive branch agency, department, board or commission until such time as this Executive Order is rescinded.

#### **SECTION 5:**

The following regulations are not subject to the suspension set forth in Section 4:


- (a) Regulations that affect public health;


- (b) Regulations that affect public safety and security;
- (c) Regulations that are necessary in the pursuit of federal funds and certifications;
- (d) Regulations that affect the application of powers, functions and duties essential to the operation of the executive branch agency, department, board or commission at issue;
- (e) Regulations that affect pending judicial deadlines; and
- (f) Regulations necessary to comply with federal law.

Until the suspension of this Executive Order, each executive branch department, agency, board and commission that intends to continue with the enactment of a proposed regulation under an exception to the freeze set forth in Section 4 shall submit a report to the Governor's office identifying which exemption the proposed regulation falls within and detailing the problem the regulation addresses or the value to the public of the regulation, how the regulation addresses the problem or the benefits provided by the regulation, why alternate forms of regulation are insufficient to address the problem and whether other regulations currently address the problem.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 12th day of January, in the year two thousand twenty-three.



  
\_\_\_\_\_  
Governor

  
\_\_\_\_\_  
Secretary of State

  
\_\_\_\_\_  
Deputy

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**Appendix D**  
**Small Business Impact Statement**  
**(Executive Order 2023-003)**



**Department of Indigent Defense Services**  
896 W Nye Lane, Suite 202  
Carson City, NV 89703  
(775) 431-0527  
<http://dids.nv.gov>

**SMALL BUSINESS IMPACT STATEMENT REGARDING PROPOSED  
REPEAL OF NAC 180 REGULATIONS (Executive Order 2023-003)**

- 1. A description of the manner in which comment was solicited from affected small business, a summary of their responses, and explanation of the manner in which other interested persons may obtain a copy of the summary:**

The Department of Indigent Defense Services requested input from private attorneys, law firms, and related businesses via an e-mailed survey link.

The survey asked for input on economic effects on small businesses with space to elaborate on responses.

The Department received 4 completed surveys.

- 2. The manner in which the analysis was conducted:**

The Department has reviewed the 4 responses, which are provided in substantive part as follows:

1. The repeal of regulations contained in NAC 180 would not affect their small business.
2. Nearly 60 percent of the firm's cases opened during 2022 were indigent-defense matters. Changes to NAC 180 that would limit access to counsel for indigent defendants or which would decrease the incentives to provide zealous representation would affect our small business by making BIDS representation less viable. Due to economic uncertainty, it is not clear that the firm would be able to make up for the loss of business by emphasizing other practice areas. Additionally, the firm recently entered a contract--in which both parties contemplated the current BIDS regime--with Lyon County to be the tertiary public defender; changes to the regulatory scheme could impact performance of that contract.
3. I believe this will have a tremendous negative impact on small Nevada law firms. Currently there is a shortage of public defenders in the state of Nevada in particular the rural counties. Part of the shortage is due to the compensation. These lawyers are paid and living in the rural part of Nevada is not for everyone. Based on my limited understanding the goal is to change the law and bring lawyers from other states that make less money Than the

current public defenders in Nevada. This would defeat the whole concept of the Davis lawsuit and would take jobs from licensed Nevada lawyers, who have small businesses in the state and who employ citizens of the state. I am against bringing in unlicensed, Nevada lawyers to take the jobs from qualified Nevada licensed attorneys. Thank you for your consideration.

4. [The repeal of regulations c]ould slow down needs and payments for investigative use.

The Department has not received enough data to determine in a statistically significant way whether a direct or significant economic burden would be imposed upon small businesses.

3. **The estimated economic effect of the proposed regulation on the small business which it is to regulate, including, without limitation both adverse and beneficial effects; and both direct and indirect effects.**

There are no reasonably foreseen potential economic impacts to small business.

4. **A description of the methods that the agency considered to reduce the impact of the proposed regulations on small businesses and a statement regarding whether the agency actually used any of those methods.**

The agency has not utilized any impact-reduction methods due to the very short timeframe imposed on the agency by Executive Order 2023-003 and the limited data available.

5. **The estimated cost to the agency for the enforcement of the proposed regulation.**

The estimated cost to the agency is unknown at this time.

6. **If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect, and the manner in which the money will be used.**

The proposed repeal of regulations necessarily does not involve an increase to existing fees or create any new fees.

7. **If the Proposed Regulation Included Provisions Which Duplicate or Are More Stringent Than Federal, State or Local Standards Regulating the Same Activity, an Explanation of Why Such Duplicative or More Stringent Provisions Are Necessary.**

N/A.

///

**8. The Reasons For the Conclusions of the Agency Regarding the Impact of a Regulation on Small Businesses.**

As indicated above, there was not enough data collected from small businesses to come to a conclusion that the proposed repeal of regulations would impose a direct and significant economic burden upon small businesses.

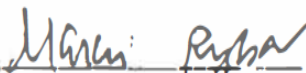
**a. Does the Proposed Regulation Impose a Direct and Significant Economic Burden Upon Small Businesses?**

The proposed repeal of regulations does not impose a direct or significant economic burden upon small businesses.

**b. Will the Proposed Regulation Directly Restrict the Formation, Operation or Expansion of a Small Business?**

The proposed repeal of regulations will not directly restrict the formation, operation or expansion of a small business.

Signed and effective this 13 day of January, 2023.

  
\_\_\_\_\_  
Marcie Ryba, Executive Director  
Nevada State Department of Indigent Defense Services

**Appendix E**

**Public Comment: Plaintiffs' Counsel**

**(Executive Order 2023-003)**



O'Melveny & Myers LLP  
400 South Hope Street  
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Los Angeles, CA 90071-2899

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File Number:  
3,001,003-2

January 27, 2023

Matt Cowan  
D: +1 213 430 7604  
mcowan@omm.com

**VIA E-MAIL**

Marcie Ryba  
Executive Director  
Department of Indigent Defense Services  
896 W. Nye Lane, Suite 202  
Carson City, NV 89703

Re: **Workshop for the Possible Repeal of Regulations of the Nevada State Board on Indigent Defense Services**

Dear Ms. Ryba:

As you know, undersigned counsel represent the certified Plaintiff class in *Davis v. Nevada*, in which our clients challenged the State and Governor's failure to provide constitutionally sufficient representation to indigent criminal defendants in certain of Nevada's rural counties. We write regarding the Department of Indigent Defense Services' ("DIDS" or "the Department") January 13, 2023 Notice of Workshop for the Possible Repeal of Regulations of the Nevada State Board on Indigent Defense Services ("Workshop").

We understand that the Workshop was scheduled in response to the Governor's Executive Order 2023-003 ("the EO"), which requires state agencies to recommend at least 10 existing regulations for repeal (Section 2), and cease promulgation of new regulations (Section 4) unless certain exceptions are met (Section 5). Compliance with Sections 2 and 4 of the EO would set back DIDS' efforts, on behalf of the State and the Governor, to comply with the Consent Judgment in *Davis v. Nevada* ("Consent Judgment" or "Judgment"). However, we believe that DIDS may continue to issue new regulations despite the EO because the DIDS's regulations fall within the EO's exceptions.

**The Judgment in *Davis v. Nevada* Requires Maintenance of DIDS' Existing Regulations and the Promulgation of New Regulations.**

Complying with Sections 2 and 4 of the EO would interfere with the State and Governor's judicially enforceable obligations as set forth in the Judgment. Many of the State and Governor's obligations under the Judgment are executed by DIDS and the Executive Director through the promulgation of regulations. Since its creation in 2019, DIDS has promulgated regulations that are narrowly tailored to accomplish its statutory charge and to comply with the terms of the Judgment. For example, as required by the Judgment, the DIDS Board adopted regulations establishing a formula to determine the maximum amount that a county may be required to pay for indigent defense services (*see* NAC R042-20 § 16), establishing requirements for continuing education and experience of attorneys providing indigent defense (*see* NAC R042-20 §§ 30-38), and establishing guidelines to be used to determine the maximum number of cases for

an attorney providing indigent defense services (*see* NAC R042-20 § 42). However, as the latest Independent Monitor's Report highlights, many of these regulations do not go far enough to meet the Judgment's requirements and require either amendments or additional clarifying regulations. *See generally* Sixth Report of the Monitor, *Davis v. State*, Case No. 170C002271B (November 11, 2022) [*hereinafter* IMR Six].

Accordingly, DIDS cannot comply with Sections 2 and 4 of the EO without breaching the State and Governor's judicially enforceable obligations under the Judgment. The independent monitor, who is tasked with documenting the State and Governor's progress towards fulfillment of the Judgment's terms, has issued six reports. All six independent reports reflect that there are outstanding Judgment terms that the State and Governor have not yet satisfied. The State and Governor have not raised any objections to the accuracy or conclusions of these six reports. Unless and until the terms of the Judgment are satisfied, the Judgment will remain in effect and the court will retain jurisdiction over the case. Compliance with Sections 2 and 4 of the EO will only prolong the court's monitoring and potentially lead to an enforcement action.

We therefore urge you, on behalf of DIDS, to request a waiver from the EO in its entirety so as to avoid repealing any existing regulations or face any obstacle to promulgating new regulations.

### **DIDS May Continue to Promulgate New Regulations Because the EO's Own Exceptions To the Ban Apply.**

In addition to maintaining DIDS's existing regulations, the State and Governor's outstanding obligations under the Judgment require new DIDS regulations. For example, the Judgment requires that indigent defense providers accurately report attorney and staff hours spent on each public defense case as well as their private workload. *See Davis v. Nevada* Judgment; Section IX. However, the Independent Monitor's Sixth Report explains that the current regulations are not accomplishing this requirement and recommended that DIDS provide further regulatory clarification in order to meet compliance. *See* IMR Six at 26. This form of systematic clarification is most successfully achieved through the enactment of additional regulations. Regardless of whether or not the Governor issues DIDS a waiver from the EO in its entirety, the EO's Section 4 ban on new regulations does not apply to DIDS: all future DIDS regulations will fall under at least one of the Section 5 exceptions.

Specifically, we believe that three of these exceptions are relevant to future DIDS regulations: "affect public safety and security," "affect pending judicial deadlines," or are "necessary to comply with federal law." Section 5(b), (e), and (f).

#### **Affect Public Safety and Security**

Public defense systems promote public safety. The absence of quality public defense hampers the State's ability to deliver justice. Inadequate public defense systems can result in innocent indigent people being convicted of crimes they did not commit and a failure to ensure accountability for people who have committed crimes. Moreover, the federal and state constitutional guarantees to meaningful counsel do not turn on innocence or guilt: every accused person is entitled to a criminal process that comports with our constitutional rights against unreasonable searches and seizures, against excessive bail, to confront one's accusers, to have prosecutors disclose exculpatory evidence before trial, and to punishment that is not

cruel and unusual. Functioning public defense systems are necessary to uphold these cherished rights. When the government can routinely trample these rights, all of us are less safe and less secure.

### **Affect Pending Judicial Deadlines**

The Judgment in *Davis v. Nevada* requires that the State and Governor, through DIDS, enact regulations that create an adequate system of indigent defense in Nevada. The Judge cannot dismiss the case until the State and Governor demonstrate that DIDS has promulgated regulations that meet all of the requirements set out in the Judgment. Repeal of any regulations promulgated in response to the Judgment, or failure to continue promulgating additional regulations, would violate the requirements of the Judgment and its mandated progress.

### **Necessary to Comply with Federal Law**

To ensure that Nevada adequately protects the constitutional rights of indigent defendants, specifically the Sixth Amendment obligation to provide effective representation (the adequacy of which was challenged in *Davis v. Nevada*), DIDS must keep in place the current regulatory protections and continue passing regulations that improve indigent defense throughout the state.

Accordingly, we believe DIDS may continue promulgating regulations, as the EO's own exceptions permit.

We plan to attend the February 2, 2023 Workshop and we respectfully request time to speak so that we can explain our position to all relevant stakeholders. We look forward to continuing to work with DIDS to ensure that Nevada meets its constitutional obligations to indigent criminal defendants throughout the state. We are always available should you have any questions about our position on these matters.

Sincerely,

Matt Cowan  
Partner  
O'Melveny & Myers LLP

Emma Andersson  
Deputy Director, Criminal Law Reform Project  
American Civil Liberties Union

Christopher Peterson  
Legal Director  
American Civil Liberties Union of Nevada

Franny Forsman  
Attorney  
Law Office of Franny Forsman

*Attorneys for the Davis v. Nevada Plaintiff Class*

**Appendix F**

**Request for Exemption from Executive Order 2023-003**

Joe Lombardo  
Governor



Marcie Ryba  
Executive Director

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

896 West Nye Lane, Suite 202 | Carson City, NV 89703-1578  
Phone: (775) 687-8490 | [dids.nv.gov](http://dids.nv.gov)

**Board Members**

Dave Mendiola  
*Chair*  
*Humboldt County*

Laura Fitzsimmons  
*Vice-Chair*  
*Carson City*

Drew Christensen  
*Clark County*

Joni Eastley  
*Nye County*

Chris Giunchigliani  
*Clark County*

Kate Thomas  
*Washoe County*

Jeff Wells  
*Clark County*

Cassandra Hall  
*Mineral County*

Lorina Dellinger  
*Nye County*

Allison Joffe  
*Carson City*

Harriett Cummings  
*Douglas County*

Jarrod Hickman  
*Washoe County*

Justice Maupin (Retired)  
*Non-Voting Member*  
*Clark County*

February 2, 2023

Dear Governor Joe Lombardo,

We would like to begin by offering a heartfelt congratulations to being elected Governor of the great state of Nevada. Our Board looks forward to working with your staff moving forward.

The Board on Indigent Defense Services ("BIDS") applauds the Governor's desire to eliminate needless bureaucracy and to streamline, clarify, and reduce regulations to ensure Nevada's regulatory scheme provides for the general welfare of the State without unnecessarily inhibiting economic growth. Further, BIDS is statutorily required to ensure its own regulations do not economically disincentivize indigent defense attorneys from providing effective representation.

The Department of Indigent Defense Services ("DIDS") was only recently created, in 2019. Accordingly, its regulations are not dated. Further, BIDS crafted its newly-minted regulations as conservatively as possible, to provide exactly what EO 2023-003 requires. In short, the regulations in NAC 180 in no way impede the economic growth of the state, and instead are the most efficient and effective means of complying with state and federal law, while streamlining the processes of providing the constitutionally required right to counsel.

**Background**

Before moving into the results of our public hearing, I'd like to take the opportunity to provide you with some background on indigent defense and the creation of DIDS.

Almost sixty years ago, in *Gideon v. Wainwright*, the U.S. Supreme Court held that the Sixth Amendment to the United States Constitution, which applies to Nevada through the Fourteenth Amendment, guarantees the right to competent counsel to be provided to people accused of felony crimes in state court who cannot afford to privately retain an attorney. Since *Gideon*, the right to counsel now applies to direct appeals, juvenile delinquency proceedings, and misdemeanors.

But, nearly 90 years before *Gideon*, Nevada had a long-standing commitment to equal justice that began in the 1870s when the Nevada Legislature passed Assembly Bill 122 (1875) which authorized the appointment and payment of defense counsel to assist those accused of crimes who could not afford an attorney. Further, the Nevada Supreme Court, in *In re Wixom*, held that “[p]robably since this statute [Chapter 86 (1875)], if not before, a failure to assign professional counsel for a poor defendant would be deemed a fatal error on appeal.” (12 Nev. 219, 224 (1877)). In 1909, the right to counsel was formally codified in Nevada in Section 10883 of the Nevada code which marked the right to appointed counsel for indigent persons charged with crimes in Nevada.

According to the Sixth Amendment Center, “Nevada’s commitment to equal justice that began in the 1870s reached its zenith in 1971.” Sixth Amendment Center, Reclaiming Justice 25 (2013). However, according to the Sixth Amendment Center, a series of actions since the 1970s have placed rural Nevada in an Indigent Defense Crisis because the rural counties were unable to shoulder the financial responsibilities under *Gideon* and its progeny. The entire report can be found here:

[https://sixthamendment.org/6ac/nvreport\\_reclaimingjustice\\_032013.pdf](https://sixthamendment.org/6ac/nvreport_reclaimingjustice_032013.pdf)

In 2018, the lawsuit of *Davis v. Nevada* was filed in the First Judicial District Court, wherein the plaintiffs challenged the constitutionality of the indigent defense systems in the rural counties of Churchill, Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye and White Pine. In 2019, in answer to the *Davis* suit, the Nevada Legislature passed AB81 creating the Department of Indigent Defense Services. AB81 was codified by the Nevada Revised Statutes Sections 180.002 *et seq.* AB81 charged DIDS with oversight and regulation of indigent defense services throughout the state.

Specifically, as it relates to EO 2023-003, BIDS was tasked to adopt regulations establishing standards for the provision of indigent defense services as contained in NRS 180.320.

Further, the State entered into a “Stipulated Consent Judgement” in the *Davis* action and DIDS was tasked with implementing measures to ensure the State of Nevada’s compliance with the terms of that judgment. See Attachment A.

### **Nevada Administrative Code 180 Regulations**

Although slightly delayed by the pandemic, DIDS successfully crafted and the Legislature passed 45 permanent regulations of the Board on Indigent Defense Services, which became effective on October 25, 2021. As noted, DIDS took this requirement seriously and worked to create as conservative a list of regulations as possible, within the statutory requirements of NRS 180.

On January 12, 2023, at little over a year after our regulations became permanent, EO 2023-003 ordered DIDS to hold a public hearing and provide a ranked list of not less than ten (10) regulations recommended for removal.

Prior to conducting the workshop, DIDS performed a small business survey as required. Respondents reported they were concerned that removal of the regulations could negatively affect their business. Below are summaries of three responses:

1. Nearly 60 percent of the firm's cases opened during 2022 were indigent-defense matters. Changes to NAC 180 that would limit access to counsel for indigent defendants or which would decrease the incentives to provide zealous representation would affect our small business by making BIDS representation less viable. Due to economic uncertainty, it is not clear that the firm would be able to make up for the loss of business by emphasizing other practice areas. Additionally, the firm recently entered a contract--in which both parties contemplated the current BIDS regime--with Lyon County to be the tertiary public defender; changes to the regulatory scheme could impact performance of that contract.
2. I believe this will have a tremendous negative impact on small Nevada law firms. Currently there is a shortage of public defenders in the state of Nevada in particular the rural counties. Part of the shortage is due to the compensation. These lawyers are paid and living in the rural part of Nevada is not for everyone. Based on my limited understanding the goal is to change the law and bring lawyers from other states that make less money Than the current public defenders in Nevada. This would defeat the whole concept of the Davis lawsuit and would take jobs from licensed Nevada lawyers, who have small businesses in the state and who employ citizens of the state. I am against bringing in unlicensed, Nevada lawyers to take the jobs from qualified Nevada licensed attorneys. Thank you for your consideration.
3. [The repeal of regulations c]ould slow down needs and payments for investigative use.

A public hearing in the form of a workshop was held on February 2, 2023.

### **Recommendations Pursuant to Executive Order 2023-003 for Possible Removal**

The Board on Indigent Defense Services [BIDS] is statutorily mandated to create regulations as set forth in NRS 180.320. BIDS took a very conservative approach and only created 45 regulations, which do not inhibit economic growth, but appear to do the opposite by ensuring prompt payment of appointed counsel and supporting small businesses.

During the public hearing on EO 2023-003, the Board heard public comment from Franny Foresman, representative for Plaintiff's counsel in the *Davis* matter. Her concerns highlighted those contained within the written public comment, Attachment B.

Concerned by the public comment and the possible ramifications that repeal of any regulation could create in the *Davis v. State* "Stipulated Consent Judgment," the Board sought guidance from the Deputy Attorney General assigned to the Board as to whether

the Board could vote to not repeal any regulations. The Board was informed they could vote to not repeal any regulations.

Next, the Board requested review of NRS 180.320 which sets forth regulations which must be created by the Board:

Pursuant to NRS 180.320(2)(d), the Board shall: adopt regulations establishing standards for the provision of indigent defense services including, without limitation:

(1) Establishing requirements for specific continuing education and experience for attorneys who provide indigent defense services.

- **Contained in Sections 28-37.**

(2) Requiring attorneys who provide indigent defense services to track their time and provide reports, and requiring the State Public Defender and counties that employ attorneys or otherwise contract for the provision of indigent defense services to require or include a provision in the employment or other contract requiring compliance with the regulations.

- **Contained in Sections 38-45.**

(3) Establishing standards to ensure that attorneys who provide indigent defense services track and report information in a uniform manner.

- **Contained in Sections 43-45.**

(4) Establishing guidelines to be used to determine the maximum caseloads for attorneys who provide indigent defense services.

- **Initially contained in Section 42, however this is incomplete until the weighted caseload study is completed by the National Center for State Courts. Once the study is completed, the Board is expected to adopt a maximum caseload guideline.**

(5) 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.

- **Contained in Sections 20-27.**

(e) Establish recommendations for the manner in which an attorney who is appointed to provide indigent defense services may request and receive reimbursement for expenses related to trial, including, without limitation, expenses for expert witnesses and investigators.

- **Contained in Sections 25 and 16-19.**



3. The Board shall adopt regulations to establish a formula for determining the maximum amount that a county may be required to pay for the provision of indigent defense services.

- **Contained in Sections 16-19.**

Further, NRS 233B.100(1) requires each agency to prescribe by regulation the form and process for petitions for adopting, filing, amending or repealing a regulation.

- **Sections 10-15 provide this process.**

Finally, **Sections 1-10** contain definitions for ease in understanding the regulations.

By unanimous vote, the Board voted to request an exemption from EO 2023-003 so that none of the regulations would be repealed.

### **Request for Exception from Executive Order 2023-003**

BIDS respectfully requests an exception to the regulation freeze set forth in Executive Order 2023-003. BIDS believes that the regulations created by the Board fall under the following exceptions:

- Regulations that affect public safety and security: *Indigent defense services counsel ensure the constitutional right to due process in the judicial system.*
- Regulations that affect the application of powers, functions, and duties essential to the operation of the executive branch agency, department, board, or commission at issue: *DIDS has been statutorily required to implement certain regulations. With the Davis Stipulated Consent Judgment, the implementation of the regulations must be done within a certain time frame.*
- Regulations which affect pending judicial deadlines: *With the Davis Stipulated Consent Judgment, the implementation of the regulations must be drafted and enacted within a certain time frame.*
- Regulations necessary to comply with federal law: *the right to competent counsel is secured by the Sixth and Fourteenth Amendments of the United States Constitution. The regulations ensure this right.*

The first set of permanent regulations have been in existence for a little over a year. Over this year, DIDS has had the opportunity to observe and evaluate what parts of the regulations need slight reworking to streamline and clarify the regulations. DIDS would like permission to continue with these revisions in this legislative cycle.

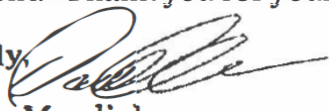
DIDS also has more work to do to comply with the *Davis Stipulated Consent Judgment*. To that end, DIDS has entered into a contract with the National Center for State Courts to recommend a workload standard for our indigent defense providers in the rural counties. Within 6 months of the completion of a Delphi study, the Board on Indigent Defense Services must adopt the standards and ensure they are included in future indigent defense contract. Also, within 12 months of the completion of this study, the Board must ensure the counties' compliance with the workload standard. See *Davis "Stipulated Consent Judgment,"* p. 9. To fully comply with this requirement of *Davis*,

DIDS would respectfully request permission to move forward with its rule-making authority under its mandate, so that it may craft and put forth regulations related to the forthcoming workload standards.

## **Conclusion**

This March marks the sixtieth anniversary of the *Gideon* decision. We hope that it will mark the year that Nevada will reaffirm its commitment to being a strong advocate for the right to counsel and to ensuring that all citizens of Nevada are treated fairly in the justice systems throughout the state. DIDS respectfully requests an exception to Executive Order 2023-003, so that DIDS can further its mission to improve indigent defense in the rural counties and to comply with the *Davis* "Stipulated Consent Judgment." Thank you for your consideration of these important factors.

Sincerely,



/s/ Dave Mendiola

Dave Mendiola

Chair, Board of Indigent Defense Service

## **Informational Report – Executive Order 2023-003**

Name of department, agency, board, or commission: **Board on Indigent Defense Services**

Address: **896 W. Nye, Suite 202**

City: **Carson City**

Zip: **89703**

Telephone: **775-687-8490**

Name of Director: **Marcie Ryba**

Director Email: [mryba@dids.nv.gov](mailto:mryba@dids.nv.gov)

### **Section 1 - Comprehensive Review of Regulations / Section 3 – Mandatory Meeting and Report**

The above-named department, agency, board, or commission conducted a comprehensive review of the regulations subject to its enforcement that can be streamlined, clarified, reduced, or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth. The regulations identified for Section 1 of Executive Order 2023-03 are listed below with the information as required on page 1 of the instruction sheet on the following pages of the report:

<b>Regulation/ Information as required on page 1</b>	<b>Page number</b>
1. See Request for Exemption	Regulation Reduction Letter and attachments

### **Section 2 – Regulation for Removal/ Section 3 – Mandatory Meeting and Report**

The above-named department, agency, board or commission conducted a comprehensive review of the regulations subject to its enforcement and identified the following ten (10) or more regulations recommended for removal. The regulations identified for Section 2 of Executive Order 2023-03, ranked in descending order of priority, are listed below with the information as required on page 1 of the instruction sheet on the following pages of the report:

<b>Regulation/Information as required on page 1</b>	<b>Page number</b>
1. See Request for Exemption	Regulation Reduction Letter and attachments

1. Information for each public meeting held to discuss the proposed regulation change, as mandated by Section 3 of Executive Order 2023-003, which must include:
  - a. The date of the meeting(s): **February 2, 2023 at 1 pm.**
  - b. Number of persons who attended: **21**
  - c. Information for each person who provided public oral or written comment or testimony on the regulation:
    - i. **Franny Forsman, O'Melveny & Myers LLP, and the ACLU (written and oral)**
    - ii. **Attorneys for the *Davis v. Nevada* Plaintiff Class**
    - iii. **Reiterated the written public comment from O'Melveny calling to request an exemption from EO 2023-003 as compliance with Sections 2 and 4 of the EO would set back DIDS' efforts, on behalf of the State and the Governor, to comply with the Consent Judgment in *Davis v. Nevada* (Consent Judgment)**
2. The estimated impact on any business, person, or agency if the change is to occur, which must include:
  - a. **See attached Small Business Impact Statement**
  - b. **See attached Small Business Impact Statement**
  - c. **N/A**
3. In the event your agency has sufficient justification for an exemption to this Executive Order, as described below and in Section 5, please submit a list of requests for any such exemption to [dktedford@gov.nv.gov](mailto:dktedford@gov.nv.gov).
  - a. The Board on Indigent Defense Services requests an exemption for the following qualifying purposes:
    - i. **Regulations that affect public safety and security;**
    - ii. **Regulations that affect pending judicial deadlines; and**
    - iii. **Regulations necessary to comply with federal law.**
  - b. **Please see the attached letter from the Board on Indigent Defense Services requesting the exemption, which is signed by the Chair Dave Mendiola.**

**Appendix G**

**Lyon County: Quarterly Financial Statements**

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# Nevada Department of Indigent Defense Services

## Financial Status Report

COUNTY: Lyon FISCAL YEAR: 2023

### Section 1

Name and Address of Individual Completing Report:

Name: Josh Foli

Address/Contact Information: 27 S Main Street, Yerington, NV 89447

### Section 2

Report Period:

Select Reporting Quarter: Q1: July-Sept Q2: Oct-Dec Q3: Jan-Mar Q4: April-June

### Section 3

Expenditure Categories:

#### Public Defender Expenses

Nevada State Public Defender Charges (NRS 180.110)	\$ -	\$ -
County Public Defender Costs (county office) (NRS 260.010)	\$ -	\$ -
Contract Public Defender Costs	\$ 316,441.47	\$ 20,418.84
Indigent Defense Appointed Attorneys Cost (NRS 7.115)	\$ 30,617.13	\$ 12,112.50

#### Additional Indigent Defense Expenses

Appointed Indigent Defense Counsel Administrator	\$ -	\$ -
Mitigation Specialists (non-salary)	\$ -	\$ -
Interpreter (Other than court expenses NRS 50.045(5), NRS 50.0545)	\$ -	\$ -
Investigators (non-salary)	\$ 10,056.14	\$ 9,395.74
Experts (non-salary)	\$ 400.00	\$ -
Evaluations (other than court or P&P costs under NRS)	\$ -	\$ -
Social Workers (non-salary)	\$ -	\$ -
Transcripts (other than NRS 3.370(4))	\$ -	\$ -
Travel (appointed counsel only)	\$ -	\$ -
Other (please describe below in Remarks/Notes)	\$ -	\$ -

Total \$ 357,514.74 \$ 41,927.08

Reimbursement of Indigent Defense Expenses:

Reimbursement from Municipal Court (NRS 171.188)	\$ -	\$ -
Reimbursement of Attorney Fees from Defendants	\$ -	\$ 6,982.00
Other Reimbursement -- Describe in Remarks/Notes	\$ -	\$ -

Total \$ 6,982.00

Total Spent on Indigent Defense this Quarter:

Total Expenditures (All Indigent Defense Expenditures)	\$ 399,441.82
Total Reimbursement	\$ 6,982.00
Grand Total	\$ 392,459.82

### Section 4

Remarks/Notes:

### Section 5

Certification: I certify that to the best of my knowledge and belief this report is correct and complete and that all expenditures are for the purposes of indigent defense services as defined in NRS 180.004.

I certify I have reduced salaried/contract expenses for time spent on non-indigent defense casework services.



12/9/2022

jfoli@lyon-county.org

Authorizing Signature

Date

Email

Comptroller

775-463-6510

Position or Title

Phone

# Nevada Department of Indigent Defense Services

## Financial Status Report

COUNTY: Lyon FISCAL YEAR: 2023

### Section 1

Name and Address of Individual Completing Report:

Name: Josh Foli

Address/Contact Information: 27 S Main Street, Yerington, NV 89447

### Section 2

Report Period:

Select Reporting Quarter: Q1: July - Sept Q2: Oct-Nov Dec Q3: Jan-Mar Q4: April-June

### Section 3

Expenditure Categories:

#### Public Defender Expenses

	Indigent Defense Expenditures (Excluding Death Penalty)	Death Penalty Indigent Defense Expenditures
Nevada State Public Defender Charges (NRS 180.110)	\$ -	\$ -
County Public Defender Costs (county office) (NRS 260.010)	\$ -	\$ -
Contract Public Defender Costs	\$ 261,205.40	\$ 2,284.29
Indigent Defense Appointed Attorneys Cost (NRS 7.115)	\$ 53,958.50	\$ 40,656.25

#### Additional Indigent Defense Expenses

Appointed Indigent Defense Counsel Administrator	\$ -	\$ -
Mitigation Specialists (non-salary)	\$ -	\$ -
Interpreter (Other than court expenses NRS 50.045(5), NRS 50.0545)	\$ -	\$ -
Investigators (non-salary)	\$ 5,807.43	\$ -
Experts (non-salary)	\$ -	\$ -
Evaluations (other than court or P&P costs under NRS)	\$ -	\$ -
Social Workers (non-salary)	\$ -	\$ -
Transcripts (other than NRS 3.370(4))	\$ -	\$ 374.00
Travel (appointed counsel only)	\$ -	\$ -
Other (please describe below in Remarks/Notes)	\$ -	\$ -

**Total \$ 320,971.33 \$ 43,314.54**

Reimbursement of Indigent Defense Expenses:

Reimbursement from Municipal Court (NRS 171.188)	\$ -
Reimbursement of Attorney Fees from Defendants	\$ 4,274.17
Other Reimbursement- Describe in Remarks/Notes	\$ -

**Total \$ 4,274.17**

Total Spent on Indigent Defense this Quarter:

Total Expenditures (All Indigent Defense Expenditures)	\$ 364,285.87
Total Reimbursement	\$ 4,274.17
<b>Grand Total</b>	<b>\$ 360,011.70</b>

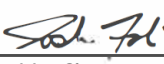
### Section 4

Remarks/Notes:

### Section 5

Certification: I certify that to the best of my knowledge and belief this report is correct and complete and that all expenditures are for the purposes of indigent defense services as defined in NRS 180.004.

I certify I have reduced salaried/contract expenses for time spent on non-indigent defense casework services.

	1/12/2023	jfoli@lyon-county.org
Authorizing Signature	Date	Email

Comptroller	775-463-6510
Position or Title	Phone

**Appendix H**

**Soval Solutions, *Recommendations for Senior Policy Positions* (August 30, 2022)**

# Soval Solutions, LLC

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## Recommendations for Senior Policy Counsel Positions

Prepared for the Nevada  
Department of Indigent Defense Services

30 August 2022

Soval Solutions, LLC  
1406 Veterans Drive, #212  
Omaha, NE 68022  
Dr. Mitchell N. Herian, Owner  
[mitch@sovalsolutions.com](mailto:mitch@sovalsolutions.com)  
402-651-6329



## Summary

Soval solutions has been working closely with the Nevada Department of Indigent Defense Services (DIDS) for over a year to determine the optimal methods for conducting oversight within those counties that are affected by the settlement consent judgment in *Davis v. Nevada*. Initially, in 2021, Soval Solutions and DIDS conceptualized a system whereby DIDS personnel would seek to collect self-reported data from attorneys, judges, and other actors within the judicial branch that are involved in providing indigent defense services. The approach would have provided basic information about the delivery of justice for indigent criminal defendants, as well as other individuals who rely upon court-appointed attorneys, in those rural counties.

As time has passed and the full scope of oversight tasks has come into view, two things have become clear. First, the initial conceptualizations of DIDS oversight functions were much too narrow. Second, DIDS cannot effectively carry out its oversight responsibilities with current staffing levels in place. What is needed, specifically, are two Senior Policy Counsel positions and a reclassified Program Officer II position that will allow DIDS to carry out its required oversight functions pursuant to NRS 7.115–7.145, NRS 171.188.

The Senior Policy Counsel positions will have several responsibilities that will enhance the ability of DIDS to effectively monitor the administration of indigent defense service in rural Nevada counties. The positions will have the following responsibilities:

- Provide in-depth policy analysis by observing court procedures, reviewing client feedback, etc.
- Make determinations as to whether the county is in compliance with regulations.
- Perform both in-depth policy analysis and “quick response” research on a broad variety of subjects.
- Prepare in-depth research papers, reports, policy publications, and recommendations to leadership.
- Conduct statistical analyses.
- Compile other written products and research memoranda as required.

The positions will require an estimated 40% of travel to rural counties in Nevada. This travel is necessary for the Policy Counsels to actively observe court procedures, review client feedback, and other related tasks at the local level. Remaining time will be spent reporting back to the DIDS Deputy Director regarding counties compliance with existing regulations.

This model has been used in other jurisdictions with remote areas that are required to adhere to specific standards in the delivery of indigent defense services. The State of Texas, in particular, has a robust system of oversight delivered through the Texas Indigent Defense Commission (TIDC). The TIDC employs 15 policy and fiscal analysts to examine: access to counsel, quality of counsel, and engage in data collection and reporting. This work is in response to requirements put forth by the Texas Task Force on Indigent Defense, created over 20 years ago. In short, the TIDC carry out many of the same functions as would a Senior Policy Counsel under the current proposal. The creation of the proposed positions would, therefore, not only enhance the ability of DIDS to carry out its responsibilities within Nevada, but it would also bring Nevada closer to providing the same oversight of indigent defense service providers that is being provided in peer states.

**Appendix I**

**Oversight Report: 48-Hour Hearings**



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

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

**OVERSIGHT REPORT**

***Status of 48-hour hearings in rural Nevada counties***

February 07, 2023

I reached out to the public defenders in the rural counties to get a status check on 48-hour hearings. Based upon their feedback, it appears that these hearings are happening in all 15 rural counties, including weekends and holidays.

In two counties, Elko and Churchill, the attorneys are paid extra for weekend or holiday work. In all other counties, it is considered part of their contract or salary. In Douglas, Eureka, and Mineral counties, the attorneys expressed interest in having the NSPD cover these hearings, if possible, although they were presenting handling the additional caseload. Finally, it appears that the judges in rural counties are being flexible in allowing virtual hearings whenever possible for weekends and holidays. Here is a breakdown of each county's responses.

**Carson City:**

- The NSPD handles all 48-hour hearings

**Churchill:**

- The Churchill County PD handles all 48-hr hearings during the week.
- For weekends and holidays, the PD and the Alternate PD trade off.
- They are a combination of virtual and in-person, depending on court schedules
- Weekend hearings are typically virtual
- The attorneys are paid extra for the weekend work.
- They do not wish for the NSPD to assist in covering the hearings

**Douglas:**

- The 5 contract public defenders rotate covering 48-hr hearings Wed-Sat
- Hearings are held on both Saturday and Sunday
- Hearings are in person on Saturday and virtual on Sunday
- They are not paid extra for the weekend work
- Assistance from the NSPD would be welcome

**Elko:**

- The attorneys in the Elko PD rotate the hearings on a weekly basis.
- Weekend hearings held only on Saturdays
- Attorneys are paid additional wages when working on weekends or holidays, pursuant to a collective bargaining agreement
- They do not wish to have the NSPD cover these hearings

**Esmeralda:**

- It is our understanding that due to the very low volume of cases in Esmeralda, there are very few hearings, especially on weekends
- They are held virtually
- The contract PD covers them
- No response as to whether the NSPD's coverage would be welcome

**Eureka:**

- 48-hr hearings are all covered by the contract PD
- If necessary (rarely) these hearings are held at 4pm on Saturdays
- The contract PD would welcome the NSPD's assistance

**Humboldt:**

- The Alternate PD covers all 48-hr hearings
- Weekend hearings are conducted most Sundays at 10am
- The attorney may appear in-person or virtually
- The APD received no extra compensation for these hearings
- If necessary, the Humboldt PD will cover the hearings for the APD

**Lander:**

- The Lander County PD covers all 48-hr hearings
- Hearings are held Sundays, Mondays, Wednesdays, and Fridays
- They are generally held by phone, sometimes in person if the attorney is in court already
- The PD is not compensated extra for the hearings
- There is not an interest in the NSPD covering the hearings

**Lincoln:**

- The contract PD covers all hearings unless he is out of town, in which case he will arrange for the contract conflict counsel to cover them
- All hearings are virtual
- Weekend hearings are held on Sunday afternoons
- The attorney is not compensated extra for the work
- There is not an interest in the NSPD covering the hearings

**Lyon:**

- The contract PD covers all hearings on rotation in his office
- Hearings are virtual or in person
- Weekend hearings are generally virtual
- Additional compensation was added to the contract to cover the additional work
- There is not currently an interest in the NSPD covering the hearings

**Mineral:**

- The contract public defender covers all 48-hr hearings
- Weekend hearings are held on Saturday mornings
- The hearings are virtual
- No additional compensation is provided
- The contract PD is not opposed to the NSPD assisting with these hearings

**Nye:**

- The 5 contract public defenders in Pahrump rotate covering these hearings weekly
- The hearings are in-person during the week, virtual on Saturdays
- The contract PD in Tonopah covers all hearings there. They are virtual
- No additional compensation is paid for the hearings

**Pershing:**

- No response to our current inquiry, although the Department is otherwise informed that the county PD is covering all hearings

**Storey:**

- Covered by the NSPD

**White Pine:**

- Hearings are held every day, including Saturdays, Sundays, and holidays
- The 3 contract PDs rotate the coverage of these hearings on a weekly basis
- They appear virtually and in person, depending on the circumstances
- No additional compensation is provided
- Beginning in July, the NSPD will be providing all primary PD services in White Pine

As always, please let us know if you have any questions.

/s/ Thomas Qualls

**Appendix J**  
**Oversight Report: Multi-County Update**



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

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**OVERSIGHT REPORT**

**Multi-County Update**

Report date: January 11, 2023

**I. Carson City.**

Christopher Arabia was appointed to be the new head of the Nevada State Public Defender's Office. The appointment, on December 30, 2022, follows the retirement of Karen Kreizenbeck and marks the first new appointment to the head position at the NSPD in over a decade.

Arabia has a diverse background, having worked as both a public defender and a prosecutor. He received his Juris Doctorate from the UCLA School of Law in 1996 and has been licensed in Nevada since 2006. Over the past decade and a half, Arabia has served as the Esmeralda County Public Defender, Northern Nye County Public Defender, and most recently as District Attorney in Nye County.

Arabia will be the first appointment to the position of State Public Defender since the creation of DIDS. His insight from having worked in leadership roles on both sides of the aisle, allows him to bring a unique perspective to the position.

In other news, the voluntary mentor for conflict contract attorney Daniel Spence has resigned her position. As noted in an earlier report, Daniel Spence is not qualified by our office to handle Category A or high B felonies, as he does not have sufficient jury trial experience. DIDS has written to county management to find out what the county intends to do to remedy the situation. The Department has not received a response.

**II. Churchill.**

Nothing new to report.

**III. Douglas.**

Nothing new to report.

#### **IV. Elko.**

As discussed previously, Elko County currently has a single-tiered system: the Elko County Public Defender's office. There is not currently a second-tier/conflict office nor contracted conflict counsel. DIDS currently serves as the county's Appointed Counsel Program Administrator, even though the county's indigent defense plan states that Elko will contract with an attorney to fill this position.

As also previously noted, the lack of a second tier in the system to handle conflict cases and the lack of a contracted Appointed Counsel Program Administrator combine to create strain on the appointment system and to place a disproportionate burden on the limited staff at DIDS. DIDS either needs additional staff to manage the appointment of counsel in counties like Elko, or for these counties to create their own Appointed Counsel Administrator positions.

Finally, the statewide shortage of indigent defense attorneys continues to affect the Elko County PDs Office. The office recently lost two deputies to Washoe County, whose PD office can afford to pay higher salaries and has been offering signing bonuses to fill its own open positions. (A third attorney passed away.) This latest loss caused Elko County PD Matt Pennell to begin to conflict off all higher-level cases -- a move that echoed recent Washoe County PD procedures -- due to insufficient staffing to adequately handle the office's caseload.

The better news is that in the wake of this recent crisis, DIDS recently met with Elko County management. The county is taking immediate steps to create a second tier to its system by seeking to contract with at least one conflict attorney to handle the overflow from the Elko PD's office. Elko is also planning to move forward to contract with its own Appointed Counsel Administrator. DIDS provided Elko County with several examples of conflict contracts from other counties. Finally, to cover the sudden increase of high-level conflict cases (many of which were set for trial), Elko County has agreed to increase (at least temporarily) the hourly appointed rate to \$150/hr.

There is a question as to whether a county Appointed Counsel Administrator in counties like Elko would allow DIDS to continue to monitor any issues with the functioning of the county's indigent defense plan. To address this, moving forward, DIDS has resolved to hold regular meetings (possibly twice a month) with each of its Appointed Counsel designees in the counties where they have been established.

Finally, DIDS is still working with Elko County management and IT, the Elko County PD office, and Tyler/Odyssey, as well as EITS, to create a digital bridge from the Elko Co. Tyler/Odyssey case management system into the LegalServer case management system. And to be able to transfer conflict cases through LS to DIDS or conflict counsel.

#### **V. Esmeralda County.**



Esmeralda reported caseload and time data last quarter, for the first time. DIDS is pretty excited about this development. (In fact, last quarter DIDS finally received reporting from all counties.)

#### **VI. Eureka.**

Nothing to report.

#### **VII. Humboldt.**

Director Marcie Ryba and Deputy Director Thomas Qualls traveled to Winnemucca on November 14, 2022 to meet with Humboldt County Public Defender Matt Stermitz and new Alternate Public Defender, Maureen McQuillan. Both meetings were informative and productive. Of some concern is the backlog of domestic violence cases which the APD has that are apparently backlogged for trial. We encouraged Maureen to start filing motions to dismiss in cases that have been delayed too long. We made some inquiries into this situation and will update the progress in our next report.

#### **VIII. Lander.**

Lander County has contracted with a new conflict attorney, Diana Hillewaert. Lander now has three tiers, including a contract PD, Kyle Swanson, and another conflict contract attorney, Debra Amens.

#### **IX. Lincoln.**

No new information to report.

#### **X. Lyon.**

Lyon is another county that only has a single tier system and has relied solely upon appointed conflict counsel to take up all the slack in the system. The average number of conflict cases in Lyon has been in excess of 18 cases a month. I have previously documented the problems this has caused, as well as the fact that the Department has been ordered into court twice to discuss the issue.

I'm happy to report that as of January 1, 2023, Lyon County has contracted with Christopher Day and Silver State Law to provide conflict counsel services for Lyon County. Silver State Law has committed to taking an average of at least 6 Lyon County conflict cases a month. Additionally, beginning March 1, 2023, Kyle Edgerton has contracted with Lyon County to provide similar services regarding juvenile and misdemeanor cases. With two counsel committed to taking an average of 12 conflict cases a month, that takes care of approximately two-thirds of Lyon's historical monthly conflict case count.

Also, Kale Brock has become a partner in Mario Walther's Firm. This has positive implications for Mineral County, as it solves the fact that Kale was not otherwise qualified to handle Cat A and high B cases, as Mario is qualified to mentor Kale.

#### **XI. Mineral.**

We are happy to report that we have data reporting from Mineral County Public Defender Kale Brock for last quarter in Mineral County. This is a pretty big deal, bringing all counties into at least substantial compliance with reporting.

#### **XII. Nye.**

As noted previously, Nye County recently increased the amount of its public defender contracts, from \$150,000 to \$175,000. And while the Department is encouraged that the Nye County Commissioners recognized the need to increase the value of the contract, other circumstances indicate that the increase was not sufficient to attract attorneys from nearby Clark County.

Nye County is still working on a plan for a county public defender's office. In the meantime, the County Commissioners are expected to vote to add another public defender contract at their meeting this week, bringing the total number of contracts to 6. This will help significantly in spreading out the caseload between 5 frontline public defenders and one conflict public defender. DIDS is advocating that the county choose a candidate who is fully qualified, as two of the current contract holders cannot take Cat A or high B cases. We will continue to monitor the situation.

Also, Ronni Boskovich, who currently holds one of the public defender contracts, is resigning her position this week. There have been several applicants for her spot, one of whom should be approved at this week's meeting and likely start on next Monday. This means Ronni's entire caseload will be transferred to the new contract holder. This is a much better scenario than the last round of resignation(s) and applications, in which there was a significant gap in time in which DIDS had to figure out how to reassign a significant number of cases.

#### **XIII. Pershing.**

No new information to report.

#### **XIV. Storey.**

DIDS met with Storey County officials on January 9, 2023, including Judge Eileen Herrington, Jim Hindle, County Clerk/Treasurer, and Austin Osborne, County Manager. We discussed the need for office space for the NSPD in Storey County (Virginia City). It is difficult for public defenders to effectively meet with their clients in Storey County when their nearest office is in Carson City. It is also nearly impossible for

an NSPD attorney to put on a trial in Storey County without an office there. County officials seemed amenable to the idea and were going to investigate the options.

We also discussed the possibility of a conflict contract that could provide a second-tier to the county's current system (though Storey County does not currently have a high number of conflicts, they could increase as the industrial areas on USA Parkway increase in population density). Finally, they seemed willing to offer conflict counsel \$150/hr to ensure they are able to compete for appointed counsel with surrounding counties.

## **XV. Washoe.**

Though Washoe County is neither rural nor a named *Davis* county, it is worth mentioning that they have been experiencing significant shortages of indigent defense counsel, as well. The Washoe County Public Defender's Office has suffered significant attrition in the last year, causing the head of the office to begin conflicting off an unusual number of cases, similar to Elko County PD, because they did not have to staff to cover them. As a result, a larger than usual amount of cases ended up on the Washoe Appointed Counsel Administrator's desk for assignment.

Additionally, as mentioned, the Washoe PD has been recruiting in the rurals, recently taking at least two attorneys from the Elko PDs Office and another one from Carson City's NSPD office. Washoe PD is able to offer higher salaries than some rural counties, in response to the statewide shortage. (Also, Clark County recently started advertising for openings in its Public Defender's office. This could impact the rural counties, as well.)

The Washoe ACA reports that she was having difficulty finding enough attorneys to cover the cases. In part, this shortage was also caused by Washoe appointed conflict counsel opting for appointments in nearby Lyon County, where they began offering \$125/hr for Misdo and Juvie cases and \$150 and hour for Gross Misdo and Felony cases.

Washoe County management has responded by raising the hourly rate on all cases to \$150/hr. We suspect this will cause yet another ripple effect on the availability of appointed counsel in rural counties who have not yet raised their hourly rates above the statutory \$100/hr. (Note: The Federal CJA panel currently pays \$158/hr., and that rate will be increased this year. Accordingly, \$150/hr. seems to be in the ballpark of the current market rate.)

## **XVI. White Pine.**

White Pine County has officially opted into the State Public Defender system. The county is also aware of the need for at least a two-tiered system, to cover conflicts. DIDS has discussed the options for conflict coverage. DIDS has also discussed the possibility of housing the SPD office in the old courthouse in Ely. The new head of the State Public Defender's Office, Mr. Arabia, along with DIDS, will continue its work with White Pine

county on the complete buildout of an SPD office in Ely, NV, as soon as the State's budget is finalized.

### **Next Steps.**

We are currently reviewing all county plans and planning to make recommendations for changes/amendments, including second tiers, counsel administrators, municipal court processes, and other adjustments where needed.

As noted previously, beginning in May of this year, county plans will need to include a plan for Municipal Courts, where applicable (not all counties have muni courts). Though the county public defender, by statute, is supposed to handle Muni Court cases, the plans must include a plan for handling conflict counsel.

As always, if there are any question, feel free to reach out to us.