**WASHOE COUNTY***"Dedicated to Excellence in Public Service"*

OFFICE OF THE COUNTY MANAGER

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September 29, 2008

**FILED**

SEP 30 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

Honorable Supreme Court Justice Hardesty  
Nevada Supreme Court  
201 South Carson Street  
Carson City, NV 89701

Re: ADKT No. 411

Dear Supreme Court Justice Hardesty:

This additional information is being submitted per your recent request to Washoe County Manager Katy Simon to provide additional information as to the methodology and analysis used in the preparation of the February 2008 staff report to the Board of County Commissioners, a copy of which was filed earlier with the Court.

The submission of this additional information and the February report, are made in response to a question you posed to me during the September 5, 2008 hearing of the Court in ADKT No. 411.

Specifically, your question to me was whether or not Washoe County had done any analysis on the fiscal impact of the Court's adoption of the proposed Version A of the Performance Standards. My response was that the only analysis available was presented to the Washoe County Board of Commissioners in February 2008. This report and its analysis were based on the Court's original order issued January 4, 2008. I further stated that if the report would satisfy the Justice's request, I would forward the report to the Court. Accordingly, the report was forwarded to John McCormick on September 8, 2008 and is attached hereto.

Subsequently, in a recent conversation with County Manager Katy Simon, you requested additional information as to the methodology and analysis used to develop the fiscal impact described in the report, which is the purpose for this letter. To be clear on this matter, no analysis has been completed as to the potential fiscal impact of the adoption by the Court of Version A of the Standards as currently proposed.

**RECEIVED**

SEP 30 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
CHIEF DEPUTY CLERKWASHOE COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER  
PRINTED ON RECYCLED PAPER

08-33206

Honorable Supreme Court Justice Hardesty  
September 29, 2008  
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The fiscal representations of the February report require some background/explanation as to their origin. During the extended work of the Indigent Defense Commission (IDC), County staff developed analyses to estimate the potential fiscal impact should the Court adopt the caseloads limits that were under consideration and eventually proposed by the majority of the Commission to the Court for adoption.

Then, on January 4, 2008 the Court issued the Order requiring that the Performance Standards within the Order be summarily and completely implemented by April 1, 2008. Upon receiving the Order, the County's IDC team completed its comprehensive review and concluded that the adoption of the proposed Performance Standards would have the same effect as if the caseload limits were adopted. In other words, if attorneys were to comply with the proposed standards, this would reduce the number of cases that any attorney could effectively handle and process, which would have the same effect as adopting the caseload limits.

I believe the Court may have reached the same conclusion as to the potential future operational impacts the adoption of the Standards would create, as the Order specifically requires the Public Defenders (in Clark and Washoe Counties) to advise the County Commissioners "when they are unavailable to accept further appointments based on ethical considerations relating to their ability to comply with the performance standards...". I believe this language clearly contemplates the Order's direct affect on the current collective capacity of the public defense system with the implementation of the Standards.

Getting back to the February report, with that explanation understood, the report then uses the analysis used to measure the implementation of the caseload limits as a surrogate for measuring the impact of the implementation of the Performance Standards.

With that as a basis, arguably the methodology that staff used and the analysis developed is somewhat simplistic, but is so by necessity, given the far-reaching impacts the Order would have had on all the operational elements of the County's criminal justice system.

For this reason, I chose to put forward a range for the potential fiscal impact (\$7-\$10 million). While this estimate includes calculations for the Order's impacts on the Detention Center and the Bell Conflict Contract, it relies more confidently on the more extensive analysis provided by the Public Defender and the Alternate Public Defender.

Honorable Supreme Court Justice Hardesty

September 29, 2008

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Finally, it should be noted that this summary does not include cost estimates for the likely impacts on the Courts due to the anticipated increase in motions and requests for discovery, as well as the expected added costs of increased transports by the Sheriff's Office. The attached summary includes cost estimates for the following elements as described below and included in the detailed attachments:

**Public Defense** - To facilitate some analysis of the Court's original order, the various public defense offices used the proposed caseload limits to calculate the incremental staff resources necessary to attain the proposed caseload limits, which would then allow enough time per case to comply with the Performance Standards as proposed.

This analysis was developed by each of the three defense offices as follows:

- **Public Defender** - see the attached analysis prepared and submitted by Jeremy Bosler which estimates a total net annual impact of \$2,600,000.
- **Alternate Public Defender** - see the attached analysis prepared and submitted by Jennifer Lunt which estimates a total net annual impact of \$1,800,000.
- **Robert Bell, Esq.** - Mr. Bell was the sole respondent to Washoe County's Request for Proposal for the provision of tiered indigent defense. At the County's request, Mr. Bell agreed to provide counsel under a direct agreement with the County using a small group of associated attorneys who provided defense counsel at a fixed rate/cost per case. This is important to note as it was more challenging to estimate the cost of the standards/caseload limits on this level of counsel. To that end, staff relied upon the professional experience/expertise of Mr. Bell who has had extensive experience under this contract and has provided independent criminal/juvenile/family legal counsel for several years. Accordingly, the net effect was estimated at \$750,000 annually as is shown in the attached schedule.

**Sheriff's Office** - The most significant impact on this office is the termination of the Early Case Resolution Program, whereby historically approximately 30% of the criminal cases were resolved within the first 72 hours of arrest.

Staff estimated these costs to be approximately \$3 million per year (2,435 cases [2007 total dispositions] times the average length of stay 15.4 days [2007] yields a total of 37,500 jail days times the daily detention rate of \$83 per day produces a total cost of \$3,112,417 per year).

This does not include an estimate for the additional number of defendant transports which is expected to be significant.

Honorable Supreme Court Justice Hardesty

September 29, 2008

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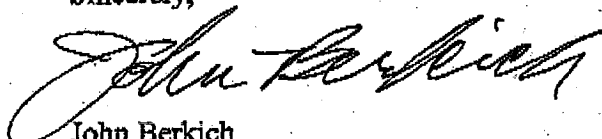
**District Attorney -** As to the fiscal impact on this office, estimated at \$3 million annually, staff relied upon the department's own internal analysis of the Order and its estimate of the need/cost of the additional resources required to respond to the expected increase in defense requests for additional data and the new volume of motions that would logically be filed pursuant to compliance with the proposed Performance Standards.

In conclusion, at the request of the Court, staff submitted the February report to the Commission and submits this background and explanation of the assumptions, methodology and analysis used for the report.

As interpreted, the Order was anticipated to create systemic, procedural and substantive changes in the criminal justice system. These changes were both difficult to describe and measure. Furthermore, it was the consensus assumption that the adoption of the Standards would have the same operational impact/affect as the adoption of the caseload limits. This premise was then used as the basis to calculate the projected cost impacts of the Order as expressed in the February report.

I trust that this narrative, together with the data and analysis, satisfy your request. Please contact me with any additional questions or requests you may have.

Sincerely,



John Berkich

Assistant Washoe County Manager

JB/an  
Encls.



Sep-28-08

08:41am

From-WASHOE COUNTY MANAGERS OFFICE

7753282037

T-327 P.006/022 F-719

**WASHOE COUNTY***"Dedicated To Excellence in Public Service"*

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CM/ACM \_\_\_\_\_

Finance \_\_\_\_\_

DA \_\_\_\_\_

Risk Mgt. \_\_\_\_\_

HR \_\_\_\_\_

Other \_\_\_\_\_

**STAFF REPORT****BOARD MEETING DATE: February 26, 2008**

**DATE:** February 21, 2008  
**TO:** Board of County Commissioners  
**FROM:** John Berkich, Assistant County Manager  
**THRU:** Katy Singlaub, County Manager

**SUBJECT:** Status report and possible direction to staff regarding Nevada Supreme Court Order (ADKT No. 411) dated January 4, 2008, in the matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases

**SUMMARY**

Recently, the Nevada Supreme Court issued an order (ADKT No. 411) regarding indigent public defense. The Order was based upon the work of the Indigent Public Defense Commission, which was created by the Court to conduct hearings and study the issues and concerns with respect to the selection, appointment, compensation, and qualifications of counsel assigned to represent indigent defendants in criminal and juvenile delinquency cases throughout Nevada. The Court further directed the Commission to recommend appropriate changes for the Court's consideration. The order was issued on January 4, 2008, and immediately became the center of intense focus by the criminal justice system across the State of Nevada and certainly here in Washoe County. It arguably will create profound changes to our criminal justice system which will be systemic, procedural and substantive, with a fiscal impact projected to range from \$7 to \$10 million. Specifically, the Order requires, among other things, that as of April 1, 2008, public defense attorneys representing indigent defendants adhere to detailed performance standards which will make present caseloads unsustainable. Staff seeks the Commission's direction to communicate Washoe County's concerns to the Court and to seek a delay in the implementation date of the standards to allow the County to develop and implement a plan to achieve the standards over the next three fiscal years.

**BACKGROUND****WASHOE COUNTY'S CURRENT PUBLIC DEFENSE SYSTEM:**

Washoe County employs a range of defender services to handle indigent cases in its urban and rural courts.

## **PUBLIC DEFENDER**

This office has primary responsibility for indigent cases, including all felonies and gross misdemeanors. The office also represents indigent defendants, outside the incorporated cities of Reno and Sparks, who are charged with misdemeanors in which appointed counsel is required. The office also represents juvenile delinquency cases, including representation in Juvenile Drug Court, juvenile dependency and parental rights termination cases, Family Drug Court, and involuntary commitment proceedings. The office also represents clients on appeal, and in parole hearings.

All indigent defense cases are first assigned to the Public Defender's Office, which screens the cases for conflicts. If a conflict is evident, the case is referred to the Alternate Public Defender's Office.

## **ALTERNATE PUBLIC DEFENDER**

This is a new full-service office opened July 1, 2007, designed to absorb all types of cases when conflicts exist at the Public Defender's Office.

## **CONTRACT ATTORNEYS**

In the event that conflicts exist at both public defender offices, the County has contracted with Robert Bell, Esq. for a flat fee (\$250,000 for FY08) to provide legal representation for indigent defendants in a variety of cases. The contract attorney subcontracts with other attorneys for the actual courtroom representation of defendants. Cases are limited to felonies that do not carry a potential life sentence (Class A felonies) and misdemeanors.

The County also appropriated \$50,000 for defense costs such as interpreters, investigators, etc.

## **HOURLY APPOINTMENTS**

When conflicts exist at the Public Defender and Alternate Public Defender offices that cannot be covered by a contract attorney, attorneys may be appointed on an hourly basis in complex cases or for cases involving trials.

## **NEVADA SUPREME COURT- INDIGENT DEFENSE COMMISSION:**

When a person charged with a serious crime cannot afford the services of an attorney, it falls to Nevada's courts and government entities to provide legal representation. It is a system that levels the field and ensures that the rights of defendants are preserved and protected. It is an integral piece of our nation's system of justice, a basic right.

Nevada, however, continues to grow rapidly and its indigent defense structure is challenged. As the fastest growing state in the union, Nevada has experienced a corresponding increase in criminal court cases and governments in the state have struggled to continue providing adequate indigent defense services. This is particularly true in the urban centers of Clark and Washoe Counties, where county public defender offices represent the vast majority of indigent defendants. The Public Defenders of those offices have admitted their deputies' caseloads are so high that adequate defense services for their clients is extremely challenging. Caseloads for both offices are well above the National Advisory Commission's recommended limit of 150 felony cases per attorney.

On April 26, 2007, the Nevada Supreme Court established a study committee to be known as the Indigent Defense Commission and appointed Justice Cherry as chairman. The court directed the Commission to conduct hearings and study the issue and concerns with respect to the selection, appointment, compensation, and qualifications of counsel assigned to represent indigent defendants in criminal and juvenile delinquency cases throughout Nevada. The court further directed the Commission to recommend appropriate changes for the court's consideration.

The effectiveness of indigent defense across Nevada has been the subject of recent debate and some controversy, involving such issues as:

- How many cases can a public defender be assigned and still effectively represent the clients;
- What performance standards should apply to ensure indigent defendants receive all necessary legal representation;
- Should judges be involved in appointing and assigning attorneys to represent indigent defendants when those attorneys will be appearing in the judges courtrooms; and
- What is the most efficient way for rural communities to provide indigent defense when so few attorneys are available to provide such services.

Following the completion of the Commission's work and the receipt of its recommendations, the Nevada Supreme Court, on January 4, 2008, issued a comprehensive Order which addresses some of the issues listed above and requires certain actions on the part of the public defender offices in Washoe and Clark Counties. As issued by the Court, the following are the relevant elements of the Order:

- Determination of Indigency - Effective January 4, 2008, the Supreme Court prescribed a financial threshold or standard for determining indigency for public defense purposes.
- Independence of the Court-appointed Public Defense System from the Judiciary - The Supreme Court ordered that each judicial district formulate and submit to the Court by May 1, 2008, an administrative plan that excludes the judge or justice of the peace hearing the case from appointment of defense counsel and provides a mechanism for appointment of counsel; the approval of all defense costs; and the determination of indigency.
- Performance Standards - The Supreme Court adopted performance standards for criminal indigent defense counsel, which take effect April 1, 2008. The public defenders in Washoe and Clark Counties are ordered to advise the county commission when they are unavailable to accept further appointments based on compliance to the performance standards or from the additional workload of conducting a weighted caseload study (as discussed below).
- Weighted Caseload Study - Clark and Washoe Public Defenders are required to perform a weighted caseload study based on the performance standards by July 15,

2008. The Court will consider implementation of the caseload standards on September 5, 2008.

Among the elements of the Order, the performance standards and weighted caseload study will have the most immediate systemic effect in Washoe County and will potentially create the greatest fiscal impact on our criminal justice system. Clearly the Court foresaw the fiscal impacts of these provisions, particularly the performance standards, as it further directed in the Order that the Washoe and Clark County Public Defenders notify their Commissions that their offices can no longer accept cases because they are unable to perform to the standards required by the Court.

During the course of the meetings held by the Commission, Clark and Washoe shared like positions which supported the adoption the performance standards while strenuously arguing against the imposition of caseload limits based on standards developed in 1973. To that end, the Commission accepted a "Minority Report" co-authored by Clark and Washoe County staff which is attached along with the complete order.

#### *PERFORMANCE STANDARDS*

While Washoe and Clark did in fact support the adoption of performance standards, the Court chose to make all the standards effective April 1, 2008, rather than issuing the standards as guidance or allowing an adequate period of time for implementation to enable the Counties to develop a funding plan and a plan to acquire the resources necessary. Both the Clark and Washoe County Public Defenders have expressed that their existing staff can and will meet the performance standards; however, it is their opinion that it will not be possible for their offices to meet these standards and maintain existing caseloads. They also believe that it is neither possible nor practical to recruit, hire and train an adequate number of qualified attorneys by the implementation date.

Compliance with the performance standards adopted by the Order will have a cascading affect on the criminal justice system in Washoe County, including:

- The standards will require that indigent defense attorneys devote more effort and time to each case to which they are assigned. This will result in the individual attorneys handling fewer cases.
- This reduction in caseload will then translate into a need to devote additional resources to servicing the total caseload within the system, by either hiring new staff attorneys in the defender offices or by contracting with or appointing additional attorneys.
- The Early Case Resolution program is no longer functional under the new performance standards, due to the specific requirements imposed upon defense counsel prior to recommending that clients accept guilty pleas. The Early Case Resolution program resulted in the resolution of approximately 30% of criminal cases within the first 72 hours. The program afforded defendants the opportunity to plead to a lesser charge in exchange for early release, which resulted in significant efficiencies/economies within the system such as avoiding some 35,000 jail days and an avoided cost of over \$3 million per year in detention costs.



- The performance standards will generate new and numerous requests for continuances as attorneys seek to comply with the requirements of the standards. These requests will unavoidably delay the functioning of the judicial system, particularly at the Justice Court level and create additional burdens and cost on witnesses and law enforcement.
- Under the adopted performance standards, indigent defense attorneys will be filing additional motions on a number of issues during the course of a criminal case. These motions will require responses by prosecutors, as well as additional court resources to resolve them.
- The imposition of the standards will have a direct and immediate impact on defendants as defense attorneys are precluded from providing counsel regarding case resolution offers received from the prosecutor until they have completed an investigation of the case.

The net affect of the adoption of the standards will clearly have a multiplier affect on the entire judicial system in Washoe County, which without question will require additional staff time and significant out-of-pocket costs, while attempting to improve the quality of public defense to the indigent. Statewide, the impacts of the Order are causing major concerns in all counties. To that end, the Nevada Association of Counties has placed an action item on its February 22, 2008 Board Meeting Agenda to discuss and possibly take action to file a motion requesting the Court to reconsider the Order. Pershing County has filed an objection to the Order, arguing that the Nevada Supreme Court is requiring a higher level of indigent defense than that mandated by the United State Supreme Court in its decision in 1984 decision in Strickland v. Washington. The Las Vegas City Attorney's Criminal Division has written a letter to Justice Hardesty suggesting changes to the Order to clarify that the right to appointed counsel accrues to those criminal defendants who are facing jail time and to add language to the standards for felony and misdemeanor trial cases that presently only exists in the standards for capital cases.

Finally, while the Court's stated goal for adopting performance standards was to "promote effective representation by appointed counsel", it is well-worth noting that in Washoe County, our system of providing indigent defense has not been challenged or found wanting in any judicial proceeding and there have been findings of ineffective assistance in only a handful of post-conviction cases over the past five years.

#### ***WEIGHTED CASELOAD STUDY***

Staff is working with Clark County on the development of a joint request for proposals for the weighted caseload study. When the work on that item is completed, staff will come back to the Commission for its action.

#### **POTENTIAL FISCAL IMPACTS OF THE ORDER ON WASHOE COUNTY**

The following is a summary of the projected fiscal impacts of the Order and performance standards on the Public Defender's Office (PD), Alternate Public Defender (APD), and contract conflict counsel:

	Budget	<u>CURRENT</u>		Budget	FTE	<u>PROPOSED</u>		Budget	FTE	<u>DIFFERENCE</u>	
		FTE	Cases			Budget	FTE			Budget	FTE
PD	\$7.1M	59	13000	\$9.5M	81			\$2.4M	22		
APD	1.6M	15	2100	3.4M	18			1.8M	18		
Contract	.3M*	n/a	500	.75M				.45M			
TOTAL	\$9.0M	74	15,600	\$13.65M	99			\$4.65M	40		

\* The original amount of the contract with secondary conflict counsel was \$150,000 for 300 cases. In December of 2007, the contract was amended for an additional \$100,000 for 200 additional cases for a total of \$250,000 for 500 cases through the end of fiscal year 2008.

The District Attorney's Office has advised that the fiscal impact of the Order on that office is projected at \$3 million, including the expansion of the Family Court.

With the closure of the Early Case Resolution program and the corresponding number of cases and defendants remaining a longer period of time in the system, the Sheriff's Office is projecting a significant increase in the number of jail days and an associated significant increase in the number of transports. As mentioned above, Early Case Resolution provided approximately \$3 million in avoided jail costs, much of which will now be lost. Further, the number of transports may possibly increase by the thousands over the next year.

Both the Reno and Sparks Justice Courts report:

- The performance standards are already being observed by defense counsel and are causing an increase in continuances and an increase in motions and discovery. This causes additional work for the court's staff.
- There will be a significant increase in traffic within the facilities due to a measurable increase in the level of court activity. This increase in traffic will create capacity and security issues for the justice's courts.
- The elimination of Early Case Resolution will likely cause a decrease in the volume of fines and fees received. This will be further impacted should the District Attorney no longer have the resources to prosecute certain charges.

In summary, while many costs have yet to be determined, staff projects that the implementation of the Order and performance standards will cost Washoe County a minimum of approximately \$7-10 million.

In conclusion, the impacts of the Nevada Supreme Court's Order on the criminal justice system in Washoe County will be profound. These impacts will be systemic, both procedural and substantive, and will have a significant fiscal effect on the County. While it is undisputed that the Court has full authority to adopt standards of performance for the attorneys it licenses, the standards adopted in the Order exceed the legal standard for ineffective assistance of counsel adopted by the United States Supreme Court and are in

excess of those provided by retained counsel. Thus, they require a change in the way indigent defense counsel practices law.

Unfortunately, the Order comes at a time and a cost which ignores the state's weakened economy and the shrinking resources of the counties. Given the early implementation date for the performance standards, coming only three months after the issuance of the Order, counties have not had the opportunity to develop a practical plan to fund and acquire the necessary resources to meet its mandate. Further, the Order fails to recognize the limitations within the statewide "marketplace" for such resources.

### **RECOMMENDATION**

It is recommended that the Commission direct staff to:

1. Explore the development of compliant alternative programs like the Early Case Resolution program in this fiscal year, including procedures, staffing and/or contract resources and report back to the Commission on or before its March 25, 2008 meeting.
2. Prepare for the Chairman's signature, a letter to the Supreme Court to:
  - a. Request a delay in the effective date of the performance standards until July 1, 2009, to allow the Order and its impacts to be considered in the 2009 Legislature.
  - b. Commit Washoe County to filing with the Court by July 1, 2008, a proposed three-year implementation program, conditioned on possible action by the 2009 Legislature. This program would include both a detailed funding plan and a resource-acquisition plan.
  - c. Commit Washoe County to filing an annual report with the Court detailing its progress to completing the implementation program.
3. Partner with Clark County and the Nevada Association of Counties to develop a shared strategy for the 2009 Legislature to consider the Order, its impacts, and ideas for fiscal relief for the counties.

### **MOTION**

If the Commission agrees with staff's recommendation, a possible motion would be: "Move to direct staff to 1) explore the development of compliant alternative programs like the Early Case Resolution program in this fiscal year, including procedures, staffing and/or contract resources and report back to the Commission on or before its March 25, 2008 meeting; 2) prepare for the Chairman's signature, a letter to the Supreme Court to request a delay in the effective date of the performance standards until July 1, 2009, to allow the Order and its impacts to be considered in the 2009 Legislature, commit Washoe County to officially filing with the Court by July 1, 2008, a proposed three-year implementation program, conditioned on possible action by the 2009 Legislature which would include both a detailed funding plan and a resource-acquisition plan, and commit Washoe County to filing an annual report with the Court detailing its progress to completing the implementation program, and 3) partner with Clark County and the Nevada Association of Counties to develop a shared strategy for the 2009 Legislature to consider the Order, its impacts, and ideas for fiscal relief for the counties."

24 - 2.614

NEVADA SUPREME COURT  
INDIGENT DEFENSE COMMITTEE  
FISCAL NOTE

This fiscal note is done in an effort to estimate the staffing necessary for the Washoe County Public Defender's Office to reach NAC/ABA maximum caseload compliance. Issues regarding Records staff, adequate supervision levels, equipment, space needs, and other support services, including social worker positions are not part of this analysis.

It can be reasonably estimated that the additional attorney, secretary, and investigator positions will require the Washoe County Public Defender's Office to reorganize and increase the number of supervisory positions in relation to the staff increases. There is no numerical standard represented in the NAC/ABA material speaking to that issue.

ATTORNEY STAFF

**Additional attorney staff: 15**

Felonies:

The NAC/ABA recommends a maximum of 150 felony cases per attorney/per year. The current Nevada Supreme Court Indigent Defense Commission (IDC) proposal for a range 150-192 felony cases was made in recognition of unique local practice in Clark County that completely resolves a significant number of felony and gross misdemeanor cases in justice court. No similar practice was identified in Washoe County. This estimate, therefore, is based upon the NAC/ABA 150 maximum felony case number. At this point, it should also be noted that all the Supervising Chief Deputies carry full caseloads.

In FY 2006-07, 3,968 new felony cases were assigned amongst the 16 felony trial deputies. The average of new felony cases was 248 per attorney/per year. A maximum caseload limit of 150 cases per attorney/per year would require staffing of 26.45 attorneys. Compliance with NAC/ABA maximum caseload standards would require 10 (10.45) additional felony trial attorneys.

\*It should be noted in Washoe County, felony trial attorneys also provide representation in gross misdemeanor cases. Under Nevada law, gross misdemeanor cases must provide for a full jury trial. ABA/NAC standards do not consider this unique aspect of Nevada practice. The analysis above does not include the 608 new gross misdemeanor cases that were assigned to felony deputies. Without an applicable NAC/ABA numerical standard, and in an effort to provide a reasonably conservative estimate, the gross misdemeanor cases will be considered as simple misdemeanors.

Misdemeanors:

The NAC/ABA recommends a maximum of 400 misdemeanor cases per attorney/per year. This number is identical to the maximum caseload currently recommended by the IDC.

In FY 2006-07, 608 new gross misdemeanor and 1,564 misdemeanor cases were assigned to the Washoe County Public Defender's Office. The total number of cases equals 2,172. There are currently 4 attorneys handling misdemeanor cases. A maximum caseload limit of 400 cases per attorney/per year would require 5.43 attorneys. Compliance with NAC/ABA maximum caseload standards would require 1 (1.43) additional misdemeanor deputy.

Juvenile Cases:

The NAC/ABA recommends a maximum of 200 juvenile cases per attorney/per year. This maximum caseload is identical to the maximum caseload currently recommended by the IDC.

In FY 2006-07, 1332 new juvenile cases were assigned to the Washoe County Public Defender's Office. There are currently 3 attorneys providing representation in juvenile cases. A maximum caseload limit of 200 cases per attorney/per year would require 6.66 deputies. Compliance with NAC/ABA maximum caseload standards would require 4 (3.66) additional juvenile deputies.

### INVESTIGATORS

**Additional Investigators: 4**

There are no numerical standards for support services specifically identified by the NAC/ABA. Instead, the Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services direct that "defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office." The Guidelines further prescribe precise numeric ratios of attorneys to non-attorney staff. These Guidelines prescribe a ratio of 1 Investigator for every 450 Felony cases; 1 Investigator for every 600 Juvenile cases; and 1 Investigator for every 1,200 misdemeanor cases. For the sake of consistency, the caseload-based staffing directives are used below.

The Washoe County Public Defender's Office currently has 9 full-time Investigators. Two of those Investigators are assigned to our Family Court Division. There are no current recommendations from the IDC regarding maximum caseload limits, and this fiscal note will assume that the felony, misdemeanor, and juvenile cases would be accommodated by the 7 remaining Investigators.

Based upon the case statistics and Guidelines identified above:

Felonies: 3,968	=	9 Investigators (8.81)
Misdemeanors: 2,172	=	2 Investigators (2.22)
Juvenile: 1,332	=	2 Investigators (1.8)
Total	=	13 (12.83)

Compliance with the recommended guidelines would require 6 (5.83) additional Investigators.

### LEGAL SECRETARIES

#### Additional Legal Secretaries: 3

There are no numerical standards for support services specifically identified by the NAC/ABA. Instead, the Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services direct that defender offices should employ a ration of 1 Legal Secretary for every 4 full-time attorneys.

Under that analysis, the addition of 15 new attorney positions would result in a total attorney staffing of 47 full-time attorneys. The Public Defender, who doesn't currently maintain an active caseload is not considered as part of this analysis.

The Washoe County Public Defender's Office currently employs 9 full-time Legal Secretaries. The recommended guidelines require 11.75 (12) Legal Secretaries. Compliance with the Guidelines would require 3 (2.75) additional Legal Secretaries.

Please see Excel spread sheet below for detailed expenses.

PD Sheriff's ABA compliance

A	B	C	D	E	F	G	H	I	J	K	L
1	Starting Salary	Top Job Wage	Average Job Wage	Annual Salary	Group Insurance*	Retirement	Medicare	Position	# positions	Fry year cost	2nd Year inc 8%
2				70110	76510	70310	24310	Good			
3				120000	\$5,500/yr	Salary x .3333	Salary x .0145				
4	Positions										
5											
6	Det/Cor P.O. III	33.55	41.35	58,250	5,500	20,147	1,425	125,792	15	1,455,201	
7											
8	Investigator	21.32	28.12	60,250	5,500	12,417	878	78,263	6	478,552	
9											
10	Legal Secretary	11.53	22.92	47,651	5,500	9,771	691	64,025	3	192,016	
11											
12	Grand total								24	2,456,550	2,761,507

2-6-08

19- #1.841

To: John Berkich, Assistant County Manager  
From: Jennifer Lunt, Alternate Public Defender  
Date: August 13, 2007

**Re: Fiscal Impact of ABA Caseload Standards**

The Nevada Supreme Court has formed a Commission to Study Indigent Defense. The Commission will, I expect, ask the Nevada Supreme Court to adopt Standards of Performance and case loads in accordance with those standards. If the American Bar Association case load standards are adopted, it could have a significant financial impact on Washoe County.

Currently, the APD has a staff of 15. There are nine lawyers, including myself, two investigators, two legal secretaries and two support staff. Under current projections, the attorneys would be handling case loads well in excess of the ABA standards.

The ABA recommends the following case loads:

- Capital cases: 3
- Charges Carrying Life sentences: 15
- Non-life felonies: 150
- Misdemeanors: 400
- Capital Appeals: 3
- Non-Capital Felony Appeals: 25
- Juvenile Cases: 200

There are no specific guidelines for family court, although the accepted number is generally 80.

Before discussing the potential impact of imposition of the case load standards, I want to make note of two important distinctions. First, the APD office does not break the criminal case assignments down by category. The criminal lawyers handle all felonies, up to and including capital murder cases, felonies carrying life sentences, gross misdemeanors and misdemeanors.

Secondly, although the ABA recommends no more than 150 felony cases per attorney, Clark County has agreed the defense lawyers can handle 192. There are significant differences between Washoe and Clark County, specifically that Clark County has defense teams set up to handle homicides and sexual assaults. Washoe County does not. Because in Washoe County the criminal lawyers' cases would *include* homicides, sexual assaults, third level trafficking, lewdness with a child, and kidnapping - crimes carrying potential life sentences or imposition of the death penalty - it would not be feasible for the attorneys to agree to take on 192 cases.

For the reasons noted above, the financial impact assumes that the APD criminal lawyers will handle 150 cases, in accordance with the ABA standards.

**Criminal Case Projections:** In 2006-2007, the Public Defender's conflicted off on 1,047 criminal cases. If the Public Defender's conflicts off on 1,200 cases in 07-08, the four APD criminal lawyers will be handling 300 cases apiece. This includes murder



cases (including capital cases), Category A felonies, and misdemeanors. The attorneys also are responsible for filing their own appeals. This is more than double the ABA standard, when you take into account the range of the criminal cases handled.

**Juvenile Case Projections:** In 2006-2007, the Public Defenders conflicted off 517 juvenile cases. There is one juvenile attorney in the APD office. If there are 550 cases in the coming year, the juvenile deputy will be handling almost three times the ABA caseload standard.

**Family Court Case Projections:** In 2006-2007, the Public Defender's conflicted off 210 family court cases. In addition to the cases received from the Public Defender's office, the APD office has assumed representation on existing family court cases from the previous conflict lawyers. There may be 150 cases, ultimately, where the APD's will be assuming the representation of the family court clients. There are currently two family court deputies in the APD's office. If the PD's conflict off of 240 cases and 150 cases come to the office from the existing conflict case load, the family court lawyers will be handling more than double the recommended case load.

**Specialty Court:** There are no recommended case load guidelines from the ABA regarding the specialty courts of drug, diversion and mental health. While currently one attorney is specifically assigned to the specialty court, that lawyer's case load is exorbitant and unmanageable. The assigned attorney makes 300 appearances a week, and there are approximately 1,200 open cases. At a minimum, two and a half attorneys are necessary to handle the case load.

**Support Staff:** Attorneys cannot be added to the staff without also adding the necessary support staff. Although there are national recommendations regarding the number of investigators and secretaries necessary, those recommendations do not stem specifically from the American Bar Association. Because of that, I have estimated the number of support staff necessary based upon experience.

Because this is a new office and we only have one month of statistics to rely on, it is difficult to make projections on how many cases will be sent to the tertiary conflict group. My best estimate of the staff necessary in order to be compliant with ABA case load standards is as follows:

**Currently:**

1 APD  
0 Supervising Attorneys  
4 Criminal Lawyers  
2 Family Court Lawyers  
1 Juvenile lawyer  
1 Specialty Court lawyer  
0 Appellate Attorney  
0 Administrative Assistant  
0 lead investigator  
2 investigators  
0 social workers  
2 secretaries  
2 office support specialists

**Required:**

1 APD  
3 Supervising Attorneys  
6 criminal lawyers  
4 Family Court lawyers  
2.5 Juvenile lawyers  
2.5 Specialty Court lawyers  
1 Appellate Attorney  
1 Administrative Assistant  
1 Lead Investigator  
2 Investigators  
2 family court investigators/social workers  
5 secretaries  
2 office support specialists

0 office assistant  
Total: 15

1 office assistant  
Total: 34

This would add 19 staff members, including 13 lawyers, one administrative assistant, one investigator, two family court investigators or social workers, 3 legal secretaries and one office assistant. Kim Carlson has run a spread sheet with the financial impact of the staffing necessary to comply with ABA standards. I have attached it for review.

The current budget for the APD office is \$1,601,633.16. There would be an increase of \$1,778,658, for staffing alone. There would also be the additional expenses associated with the necessary equipment for the staff, i.e. computers, phones, furniture and supplies. With five investigators, at least one additional car would be necessary. Add in the professional dues, training and seminars, and books, and the additional cost would be about \$100,000. This does not take into account the additional space that would be necessary to house a staff of this size; the current location of the APD's would not be sufficient for that kind of expansion. Nor does it take into account the addition of a mitigation specialist, which also may soon be mandated by the Nevada Supreme Court.

If you have any questions, please let me know.

PD Staff inc ABA compliance

	A	B	C	D	E	F	G	H	I	J	K	L
1	Starting hrly wage Top hrly wage Average hrly wage Annual Salary Group Insurance* Retirement Medicare Position #positions 1st year cost 2nd year											
2					701110	705110	705210	705230	Cost			inc 8%
3					(2080 hrs)	\$5,900/each	salary x .2050	salary x .0145				
4	Positions											
5	Deputy Alternate P.D. I	28.78	38.65	33.72	70,127	5,900	14,376	1,017	91,420	4	365,680	
6	Deputy Alternate P.D. II	32.90	44.39	38.65	80,382	5,900	16,478	1,166	103,925	3	311,776	
7	Deputy Alternate P.D. III	38.58	55.92	47.25	98,280	5,900	20,147	1,426	125,752	1	125,752	
8	Deputy Alternate P.D. IV	43.17	60.78	51.98	108,108	5,900	22,162	1,568	137,738	3	413,213	
9												
10	Administrative Assistant	22.53	29.32	25.93	53,924	5,900	11,054	782	71,660	1	71,660	
11	Legal Secretary	19.93	26.90	22.92	47,663	5,900	9,771	691	64,025	3	192,076	
12	Office Assistant II	16.04	20.84	18.44	38,355	5,900	7,863	556	52,674	1	52,674	
13												
14	Family Court Invest Spec	24.10	31.31	27.71	57,628	5,900	11,813	838	76,175	2	152,351	
15	Chief Investigator	30.03	39.02	34.53	71,812	5,900	14,721	1,041	93,475	1	93,475	
16												
17	Grand total										1,778,658	1,920,951

**Supreme Court Order  
ADKT No. 411  
Estimated Cost Impact on Contract Counsel**

**Assumptions:**

- Current approximate cost paid per case under the existing Bell Contract - \$500
- Estimated cost impact on indigent defense:

Department	Current	Proposed	Percent Change
Public Defender	\$7.1m	\$9.5m	
Alternate PD	1.6m	3.4m	
<b>TOTAL</b>	<b>\$8.7m</b>	<b>\$12.9m</b>	<b>Approx. 150%</b>

Therefore, the impact of the adoption of the proposed caseload limits on the contract attorneys would be:

\$500 per case  
x 150 % (PD and APD total change in costs)  
\$750 per case

x 850 cases (500 cases increased by 1.7x based on the experienced increase  
since the start of the Bell contract)

\$650,000 total approximate cost of counsel

100,000 other defense costs

**\$750,000 TOTAL ESTIMATED COSTS**

**ESTIMATED ANNUAL COSTS  
OF THE  
IMPLEMENTATION  
OF  
SUPREME COURT ORDER ADKT NO. 411**

**Estimated Annual Impact by Department**

Public Defender	\$2,600,000.00
Alternate Public Defender	1,800,000.00
Contract Counsel	750,000.00
Sheriff's Office (Detention costs of ECR)	3,000,000.00
District Attorney	<u>3,000,000.00</u>
Total	<b>\$11,150,000.00</b>

**WASHOE COUNTY***"Dedicated to Excellence in Public Service"*

OFFICE OF THE COUNTY MANAGER

1001 E. 9th Street

P.O. Box 11130

Reno, Nevada 89520-0027

Phone: (775) 328-2000

Fax: (775) 328-2037

www.washoecounty.us

September 29, 2008

**FILED**

SEP 30 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

Honorable Supreme Court Justice Hardesty  
Nevada Supreme Court  
201 South Carson Street  
Carson City, NV 89701

Re: ADKT No. 411

Dear Supreme Court Justice Hardesty:

This additional information is being submitted per your recent request to Washoe County Manager Katy Simon to provide additional information as to the methodology and analysis used in the preparation of the February 2008 staff report to the Board of County Commissioners, a copy of which was filed earlier with the Court.

The submission of this additional information and the February report, are made in response to a question you posed to me during the September 5, 2008 hearing of the Court in ADKT No. 411.

Specifically, your question to me was whether or not Washoe County had done any analysis on the fiscal impact of the Court's adoption of the proposed Version A of the Performance Standards. My response was that the only analysis available was presented to the Washoe County Board of Commissioners in February 2008. This report and its analysis were based on the Court's original order issued January 4, 2008. I further stated that if the report would satisfy the Justice's request, I would forward the report to the Court. Accordingly, the report was forwarded to John McCormick on September 8, 2008 and is attached hereto.

Subsequently, in a recent conversation with County Manager Katy Simon, you requested additional information as to the methodology and analysis used to develop the fiscal impact described in the report, which is the purpose for this letter. To be clear on this matter, no analysis has been completed as to the potential fiscal impact of the adoption by the Court of Version A of the Standards as currently proposed.

**RECEIVED**

SEP 30 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
CHIEF DEPUTY CLERKWASHOE COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER  
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08-33206

Honorable Supreme Court Justice Hardesty

September 29, 2008

Page 2

The fiscal representations of the February report require some background/explanation as to their origin. During the extended work of the Indigent Defense Commission (IDC), County staff developed analyses to estimate the potential fiscal impact should the Court adopt the caseloads limits that were under consideration and eventually proposed by the majority of the Commission to the Court for adoption.

Then, on January 4, 2008 the Court issued the Order requiring that the Performance Standards within the Order be summarily and completely implemented by April 1, 2008. Upon receiving the Order, the County's IDC team completed its comprehensive review and concluded that the adoption of the proposed Performance Standards would have the same effect as if the caseload limits were adopted. In other words, if attorneys were to comply with the proposed standards, this would reduce the number of cases that any attorney could effectively handle and process, which would have the same effect as adopting the caseload limits.

I believe the Court may have reached the same conclusion as to the potential future operational impacts the adoption of the Standards would create, as the Order specifically requires the Public Defenders (in Clark and Washoe Counties) to advise the County Commissioners "when they are unavailable to accept further appointments based on ethical considerations relating to their ability to comply with the performance standards...". I believe this language clearly contemplates the Order's direct affect on the current collective capacity of the public defense system with the implementation of the Standards.

Getting back to the February report, with that explanation understood, the report then uses the analysis used to measure the implementation of the caseload limits as a surrogate for measuring the impact of the implementation of the Performance Standards.

With that as a basis, arguably the methodology that staff used and the analysis developed is somewhat simplistic, but is so by necessity, given the far-reaching impacts the Order would have had on all the operational elements of the County's criminal justice system.

For this reason, I chose to put forward a range for the potential fiscal impact (\$7-\$10 million). While this estimate includes calculations for the Order's impacts on the Detention Center and the Bell Conflict Contract, it relies more confidently on the more extensive analysis provided by the Public Defender and the Alternate Public Defender.

Honorable Supreme Court Justice Hardesty

September 29, 2008

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Finally, it should be noted that this summary does not include cost estimates for the likely impacts on the Courts due to the anticipated increase in motions and requests for discovery, as well as the expected added costs of increased transports by the Sheriff's Office. The attached summary includes cost estimates for the following elements as described below and included in the detailed attachments:

**Public Defense** - To facilitate some analysis of the Court's original order, the various public defense offices used the proposed caseload limits to calculate the incremental staff resources necessary to attain the proposed caseload limits, which would then allow enough time per case to comply with the Performance Standards as proposed.

This analysis was developed by each of the three defense offices as follows:

- **Public Defender** - see the attached analysis prepared and submitted by Jeremy Bosler which estimates a total net annual impact of \$2,600,000.
- **Alternate Public Defender** - see the attached analysis prepared and submitted by Jennifer Lunt which estimates a total net annual impact of \$1,800,000.
- **Robert Bell, Esq.** - Mr. Bell was the sole respondent to Washoe County's Request for Proposal for the provision of tiered indigent defense. At the County's request, Mr. Bell agreed to provide counsel under a direct agreement with the County using a small group of associated attorneys who provided defense counsel at a fixed rate/cost per case. This is important to note as it was more challenging to estimate the cost of the standards/caseload limits on this level of counsel. To that end, staff relied upon the professional experience/expertise of Mr. Bell who has had extensive experience under this contract and has provided independent criminal/juvenile/family legal counsel for several years. Accordingly, the net effect was estimated at \$750,000 annually as is shown in the attached schedule.

**Sheriff's Office** - The most significant impact on this office is the termination of the Early Case Resolution Program, whereby historically approximately 30% of the criminal cases were resolved within the first 72 hours of arrest.

Staff estimated these costs to be approximately \$3 million per year (2,435 cases [2007 total dispositions] times the average length of stay 15.4 days [2007] yields a total of 37,500 jail days times the daily detention rate of \$83 per day produces a total cost of \$3,112,417 per year).

This does not include an estimate for the additional number of defendant transports which is expected to be significant.



Honorable Supreme Court Justice Hardesty

September 29, 2008

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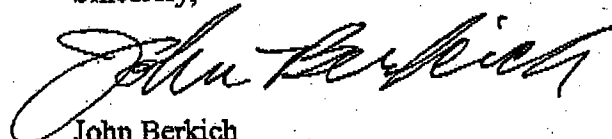
**District Attorney** - As to the fiscal impact on this office, estimated at \$3 million annually, staff relied upon the department's own internal analysis of the Order and its estimate of the need/cost of the additional resources required to respond to the expected increase in defense requests for additional data and the new volume of motions that would logically be filed pursuant to compliance with the proposed Performance Standards.

In conclusion, at the request of the Court, staff submitted the February report to the Commission and submits this background and explanation of the assumptions, methodology and analysis used for the report.

As interpreted, the Order was anticipated to create systemic, procedural and substantive changes in the criminal justice system. These changes were both difficult to describe and measure. Furthermore, it was the consensus assumption that the adoption of the Standards would have the same operational impact/affect as the adoption of the caseload limits. This premise was then used as the basis to calculate the projected cost impacts of the Order as expressed in the February report.

I trust that this narrative, together with the data and analysis, satisfy your request. Please contact me with any additional questions or requests you may have.

Sincerely,



John Berkich

Assistant Washoe County Manager

JB/an  
Encls.



Sep-29-08

08:41am

From-WASHOE COUNTY MANAGERS OFFICE

7753282037

T-327 P.006/022 F-719

**WASHOE COUNTY***"Dedicated To Excellence in Public Service"*

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CM/ACM \_\_\_\_\_

Finance \_\_\_\_\_

DA \_\_\_\_\_

Risk Mgt. \_\_\_\_\_

HR \_\_\_\_\_

Other \_\_\_\_\_

**STAFF REPORT****BOARD MEETING DATE: February 26, 2008**

**DATE:** February 21, 2008  
**TO:** Board of County Commissioners  
**FROM:** John Berkich, Assistant County Manager  
**THRU:** Katy Singlaub, County Manager

**SUBJECT:** Status report and possible direction to staff regarding Nevada Supreme Court Order (ADKT No. 411) dated January 4, 2008, in the matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases

**SUMMARY**

Recently, the Nevada Supreme Court issued an order (ADKT No. 411) regarding indigent public defense. The Order was based upon the work of the Indigent Public Defense Commission, which was created by the Court to conduct hearings and study the issues and concerns with respect to the selection, appointment, compensation, and qualifications of counsel assigned to represent indigent defendants in criminal and juvenile delinquency cases throughout Nevada. The Court further directed the Commission to recommend appropriate changes for the Court's consideration. The order was issued on January 4, 2008, and immediately became the center of intense focus by the criminal justice system across the State of Nevada and certainly here in Washoe County. It arguably will create profound changes to our criminal justice system which will be systemic, procedural and substantive, with a fiscal impact projected to range from \$7 to \$10 million. Specifically, the Order requires, among other things, that as of April 1, 2008, public defense attorneys representing indigent defendants adhere to detailed performance standards which will make present caseloads unsustainable. Staff seeks the Commission's direction to communicate Washoe County's concerns to the Court and to seek a delay in the implementation date of the standards to allow the County to develop and implement a plan to achieve the standards over the next three fiscal years.

**BACKGROUND****WASHOE COUNTY'S CURRENT PUBLIC DEFENSE SYSTEM:**

Washoe County employs a range of defender services to handle indigent cases in its urban and rural courts.

## **PUBLIC DEFENDER**

This office has primary responsibility for indigent cases, including all felonies and gross misdemeanors. The office also represents indigent defendants, outside the incorporated cities of Reno and Sparks, who are charged with misdemeanors in which appointed counsel is required. The office also represents juvenile delinquency cases, including representation in Juvenile Drug Court, juvenile dependency and parental rights termination cases, Family Drug Court, and involuntary commitment proceedings. The office also represents clients on appeal, and in parole hearings.

All indigent defense cases are first assigned to the Public Defender's Office, which screens the cases for conflicts. If a conflict is evident, the case is referred to the Alternate Public Defender's Office.

## **ALTERNATE PUBLIC DEFENDER**

This is a new full-service office opened July 1, 2007, designed to absorb all types of cases when conflicts exist at the Public Defender's Office.

## **CONTRACT ATTORNEYS**

In the event that conflicts exist at both public defender offices, the County has contracted with Robert Bell, Esq. for a flat fee (\$250,000 for FY08) to provide legal representation for indigent defendants in a variety of cases. The contract attorney subcontracts with other attorneys for the actual courtroom representation of defendants. Cases are limited to felonies that do not carry a potential life sentence (Class A felonies) and misdemeanors.

The County also appropriated \$50,000 for defense costs such as interpreters, investigators, etc.

## **HOURLY APPOINTMENTS**

When conflicts exist at the Public Defender and Alternate Public Defender offices that cannot be covered by a contract attorney, attorneys may be appointed on an hourly basis in complex cases or for cases involving trials.

## **NEVADA SUPREME COURT- INDIGENT DEFENSE COMMISSION:**

When a person charged with a serious crime cannot afford the services of an attorney, it falls to Nevada's courts and government entities to provide legal representation. It is a system that levels the field and ensures that the rights of defendants are preserved and protected. It is an integral piece of our nation's system of justice, a basic right.

Nevada, however, continues to grow rapidly and its indigent defense structure is challenged. As the fastest growing state in the union, Nevada has experienced a corresponding increase in criminal court cases and governments in the state have struggled to continue providing adequate indigent defense services. This is particularly true in the urban centers of Clark and Washoe Counties, where county public defender offices represent the vast majority of indigent defendants. The Public Defenders of those offices have admitted their deputies' caseloads are so high that adequate defense services for their clients is extremely challenging. Caseloads for both offices are well above the National Advisory Commission's recommended limit of 150 felony cases per attorney.

On April 26, 2007, the Nevada Supreme Court established a study committee to be known as the Indigent Defense Commission and appointed Justice Cherry as chairman. The court directed the Commission to conduct hearings and study the issue and concerns with respect to the selection, appointment, compensation, and qualifications of counsel assigned to represent indigent defendants in criminal and juvenile delinquency cases throughout Nevada. The court further directed the Commission to recommend appropriate changes for the court's consideration.

The effectiveness of indigent defense across Nevada has been the subject of recent debate and some controversy, involving such issues as:

- How many cases can a public defender be assigned and still effectively represent the clients;
- What performance standards should apply to ensure indigent defendants receive all necessary legal representation;
- Should judges be involved in appointing and assigning attorneys to represent indigent defendants when those attorneys will be appearing in the judges courtrooms; and
- What is the most efficient way for rural communities to provide indigent defense when so few attorneys are available to provide such services.

Following the completion of the Commission's work and the receipt of its recommendations, the Nevada Supreme Court, on January 4, 2008, issued a comprehensive Order which addresses some of the issues listed above and requires certain actions on the part of the public defender offices in Washoe and Clark Counties. As issued by the Court, the following are the relevant elements of the Order:

- Determination of Indigency - Effective January 4, 2008, the Supreme Court prescribed a financial threshold or standard for determining indigency for public defense purposes.
- Independence of the Court-appointed Public Defense System from the Judiciary - The Supreme Court ordered that each judicial district formulate and submit to the Court by May 1, 2008, an administrative plan that excludes the judge or justice of the peace hearing the case from appointment of defense counsel and provides a mechanism for appointment of counsel; the approval of all defense costs; and the determination of indigency.
- Performance Standards - The Supreme Court adopted performance standards for criminal indigent defense counsel, which take effect April 1, 2008. The public defenders in Washoe and Clark Counties are ordered to advise the county commission when they are unavailable to accept further appointments based on compliance to the performance standards or from the additional workload of conducting a weighted caseload study (as discussed below).
- Weighted Caseload Study - Clark and Washoe Public Defenders are required to perform a weighted caseload study based on the performance standards by July 15,

2008. The Court will consider implementation of the caseload standards on September 5, 2008.

Among the elements of the Order, the performance standards and weighted caseload study will have the most immediate systemic effect in Washoe County and will potentially create the greatest fiscal impact on our criminal justice system. Clearly the Court foresaw the fiscal impacts of these provisions, particularly the performance standards, as it further directed in the Order that the Washoe and Clark County Public Defenders notify their Commissions that their offices can no longer accept cases because they are unable to perform to the standards required by the Court.

During the course of the meetings held by the Commission, Clark and Washoe shared like positions which supported the adoption the performance standards while strenuously arguing against the imposition of caseload limits based on standards developed in 1973. To that end, the Commission accepted a "Minority Report" co-authored by Clark and Washoe County staff which is attached along with the complete order.

#### *PERFORMANCE STANDARDS*

While Washoe and Clark did in fact support the adoption of performance standards, the Court chose to make all the standards effective April 1, 2008, rather than issuing the standards as guidance or allowing an adequate period of time for implementation to enable the Counties to develop a funding plan and a plan to acquire the resources necessary. Both the Clark and Washoe County Public Defenders have expressed that their existing staff can and will meet the performance standards; however, it is their opinion that it will not be possible for their offices to meet these standards and maintain existing caseloads. They also believe that it is neither possible nor practical to recruit, hire and train an adequate number of qualified attorneys by the implementation date.

Compliance with the performance standards adopted by the Order will have a cascading affect on the criminal justice system in Washoe County, including:

- The standards will require that indigent defense attorneys devote more effort and time to each case to which they are assigned. This will result in the individual attorneys handling fewer cases.
- This reduction in caseload will then translate into a need to devote additional resources to servicing the total caseload within the system, by either hiring new staff attorneys in the defender offices or by contracting with or appointing additional attorneys.
- The Early Case Resolution program is no longer functional under the new performance standards, due to the specific requirements imposed upon defense counsel prior to recommending that clients accept guilty pleas. The Early Case Resolution program resulted in the resolution of approximately 30% of criminal cases within the first 72 hours. The program afforded defendants the opportunity to plead to a lesser charge in exchange for early release, which resulted in significant efficiencies/economies within the system such as avoiding some 35,000 jail days and an avoided cost of over \$3 million per year in detention costs.

- The performance standards will generate new and numerous requests for continuances as attorneys seek to comply with the requirements of the standards. These requests will unavoidably delay the functioning of the judicial system, particularly at the Justice Court level and create additional burdens and cost on witnesses and law enforcement.
- Under the adopted performance standards, indigent defense attorneys will be filing additional motions on a number of issues during the course of a criminal case. These motions will require responses by prosecutors, as well as additional court resources to resolve them.
- The imposition of the standards will have a direct and immediate impact on defendants as defense attorneys are precluded from providing counsel regarding case resolution offers received from the prosecutor until they have completed an investigation of the case.

The net affect of the adoption of the standards will clearly have a multiplier affect on the entire judicial system in Washoe County, which without question will require additional staff time and significant out-of-pocket costs, while attempting to improve the quality of public defense to the indigent. Statewide, the impacts of the Order are causing major concerns in all counties. To that end, the Nevada Association of Counties has placed an action item on its February 22, 2008 Board Meeting Agenda to discuss and possibly take action to file a motion requesting the Court to reconsider the Order. Pershing County has filed an objection to the Order, arguing that the Nevada Supreme Court is requiring a higher level of indigent defense than that mandated by the United State Supreme Court in its decision in 1984 decision in Strickland v. Washington. The Las Vegas City Attorney's Criminal Division has written a letter to Justice Hardesty suggesting changes to the Order to clarify that the right to appointed counsel accrues to those criminal defendants who are facing jail time and to add language to the standards for felony and misdemeanor trial cases that presently only exists in the standards for capital cases.

Finally, while the Court's stated goal for adopting performance standards was to "promote effective representation by appointed counsel", it is well-worth noting that in Washoe County, our system of providing indigent defense has not been challenged or found wanting in any judicial proceeding and there have been findings of ineffective assistance in only a handful of post-conviction cases over the past five years.

#### ***WEIGHTED CASELOAD STUDY***

Staff is working with Clark County on the development of a joint request for proposals for the weighted caseload study. When the work on that item is completed, staff will come back to the Commission for its action.

#### **POTENTIAL FISCAL IMPACTS OF THE ORDER ON WASHOE COUNTY**

The following is a summary of the projected fiscal impacts of the Order and performance standards on the Public Defender's Office (PD), Alternate Public Defender (APD), and contract conflict counsel:

	Budget	<u>CURRENT</u>		<u>PROPOSED</u>		<u>DIFFERENCE</u>	
		FTE	Cases	Budget	FTE	Budget	FTE
PD	\$7.1M	59	13000	\$9.5M	81	\$2.4M	22
APD	1.6M	15	2100	3.4M	18	1.8M	18
Contract	.3M*	n/a	500	.75M		.45M	
<b>TOTAL</b>	<b>\$9.0M</b>	<b>74</b>	<b>15,600</b>	<b>\$13.65M</b>	<b>99</b>	<b>\$4.65M</b>	<b>40</b>

\* The original amount of the contract with secondary conflict counsel was \$150,000 for 300 cases. In December of 2007, the contract was amended for an additional \$100,000 for 200 additional cases for a total of \$250,000 for 500 cases through the end of fiscal year 2008.

The District Attorney's Office has advised that the fiscal impact of the Order on that office is projected at \$3 million, including the expansion of the Family Court.

With the closure of the Early Case Resolution program and the corresponding number of cases and defendants remaining a longer period of time in the system, the Sheriff's Office is projecting a significant increase in the number of jail days and an associated significant increase in the number of transports. As mentioned above, Early Case Resolution provided approximately \$3 million in avoided jail costs, much of which will now be lost. Further, the number of transports may possibly increase by the thousands over the next year.

Both the Reno and Sparks Justice Courts report:

- The performance standards are already being observed by defense counsel and are causing an increase in continuances and an increase in motions and discovery. This causes additional work for the court's staff.
- There will be a significant increase in traffic within the facilities due to a measurable increase in the level of court activity. This increase in traffic will create capacity and security issues for the justice's courts.
- The elimination of Early Case Resolution will likely cause a decrease in the volume of fines and fees received. This will be further impacted should the District Attorney no longer have the resources to prosecute certain charges.

In summary, while many costs have yet to be determined, staff projects that the implementation of the Order and performance standards will cost Washoe County a minimum of approximately \$7-10 million.

In conclusion, the impacts of the Nevada Supreme Court's Order on the criminal justice system in Washoe County will be profound. These impacts will be systemic, both procedural and substantive, and will have a significant fiscal effect on the County. While it is undisputed that the Court has full authority to adopt standards of performance for the attorneys it licenses, the standards adopted in the Order exceed the legal standard for ineffective assistance of counsel adopted by the United States Supreme Court and are in

excess of those provided by retained counsel. Thus, they require a change in the way indigent defense counsel practices law.

Unfortunately, the Order comes at a time and a cost which ignores the state's weakened economy and the shrinking resources of the counties. Given the early implementation date for the performance standards, coming only three months after the issuance of the Order, counties have not had the opportunity to develop a practical plan to fund and acquire the necessary resources to meet its mandate. Further, the Order fails to recognize the limitations within the statewide "marketplace" for such resources.

### **RECOMMENDATION**

It is recommended that the Commission direct staff to:

1. Explore the development of compliant alternative programs like the Early Case Resolution program in this fiscal year, including procedures, staffing and/or contract resources and report back to the Commission on or before its March 25, 2008 meeting.
2. Prepare for the Chairman's signature, a letter to the Supreme Court to:
  - a. Request a delay in the effective date of the performance standards until July 1, 2009, to allow the Order and its impacts to be considered in the 2009 Legislature.
  - b. Commit Washoe County to filing with the Court by July 1, 2008, a proposed three-year implementation program, conditioned on possible action by the 2009 Legislature. This program would include both a detailed funding plan and a resource-acquisition plan.
  - c. Commit Washoe County to filing an annual report with the Court detailing its progress to completing the implementation program.
3. Partner with Clark County and the Nevada Association of Counties to develop a shared strategy for the 2009 Legislature to consider the Order, its impacts, and ideas for fiscal relief for the counties.

### **MOTION**

If the Commission agrees with staff's recommendation, a possible motion would be: "Move to direct staff to 1) explore the development of compliant alternative programs like the Early Case Resolution program in this fiscal year, including procedures, staffing and/or contract resources and report back to the Commission on or before its March 25, 2008 meeting; 2) prepare for the Chairman's signature, a letter to the Supreme Court to request a delay in the effective date of the performance standards until July 1, 2009, to allow the Order and its impacts to be considered in the 2009 Legislature, commit Washoe County to officially filing with the Court by July 1, 2008, a proposed three-year implementation program, conditioned on possible action by the 2009 Legislature which would include both a detailed funding plan and a resource-acquisition plan, and commit Washoe County to filing an annual report with the Court detailing its progress to completing the implementation program, and 3) partner with Clark County and the Nevada Association of Counties to develop a shared strategy for the 2009 Legislature to consider the Order, its impacts, and ideas for fiscal relief for the counties."



24 - 2.6M

NEVADA SUPREME COURT  
INDIGENT DEFENSE COMMITTEE  
FISCAL NOTE

This fiscal note is done in an effort to estimate the staffing necessary for the Washoe County Public Defender's Office to reach NAC/ABA maximum caseload compliance. Issues regarding Records staff, adequate supervision levels, equipment, space needs, and other support services, including social worker positions are not part of this analysis.

It can be reasonably estimated that the additional attorney, secretary, and investigator positions will require the Washoe County Public Defender's Office to reorganize and increase the number of supervisory positions in relation to the staff increases. There is no numerical standard represented in the NAC/ABA material speaking to that issue.

ATTORNEY STAFF

Additional attorney staff: 15

Felonies:

The NAC/ABA recommends a maximum of 150 felony cases per attorney/per year. The current Nevada Supreme Court Indigent Defense Commission (IDC) proposal for a range 150-192 felony cases was made in recognition of unique local practice in Clark County that completely resolves a significant number of felony and gross misdemeanor cases in justice court. No similar practice was identified in Washoe County. This estimate, therefore, is based upon the NAC/ABA 150 maximum felony case number. At this point, it should also be noted that all the Supervising Chief Deputies carry full caseloads.

In FY 2006-07, 3,968 new felony cases were assigned amongst the 16 felony trial deputies. The average of new felony cases was 248 per attorney/per year. A maximum caseload limit of 150 cases per attorney/per year would require staffing of 26.45 attorneys. Compliance with NAC/ABA maximum caseload standards would require 10 (10.45) additional felony trial attorneys.

\*It should be noted in Washoe County, felony trial attorneys also provide representation in gross misdemeanor cases. Under Nevada law, gross misdemeanor cases must provide for a full jury trial. ABA/NAC standards do not consider this unique aspect of Nevada practice. The analysis above does not include the 608 new gross misdemeanor cases that were assigned to felony deputies. Without an applicable NAC/ABA numerical standard, and in an effort to provide a reasonably conservative estimate, the gross misdemeanor cases will be considered as simple misdemeanors.

Misdemeanors:

The NAC/ABA recommends a maximum of 400 misdemeanor cases per attorney/per year. This number is identical to the maximum caseload currently recommended by the IDC.

In FY 2006-07, 608 new gross misdemeanor and 1,564 misdemeanor cases were assigned to the Washoe County Public Defender's Office. The total number of cases equals 2,172. There are currently 4 attorneys handling misdemeanor cases. A maximum caseload limit of 400 cases per attorney/per year would require 5.43 attorneys. Compliance with NAC/ABA maximum caseload standards would require 1 (1.43) additional misdemeanor deputy.

Juvenile Cases:

The NAC/ABA recommends a maximum of 200 juvenile cases per attorney/per year. This maximum caseload is identical to the maximum caseload currently recommended by the IDC.

In FY 2006-07, 1332 new juvenile cases were assigned to the Washoe County Public Defender's Office. There are currently 3 attorneys providing representation in juvenile cases. A maximum caseload limit of 200 cases per attorney/per year would require 6.66 deputies. Compliance with NAC/ABA maximum caseload standards would require 4 (3.66) additional juvenile deputies.

## INVESTIGATORS

Additional Investigators: 4

There are no numerical standards for support services specifically identified by the NAC/ABA. Instead, the Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services direct that "defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office." The Guidelines further prescribe precise numeric ratios of attorneys to non-attorney staff. These Guidelines prescribe a ratio of 1 Investigator for every 450 Felony cases; 1 Investigator for every 600 Juvenile cases; and 1 Investigator for every 1,200 misdemeanor cases. For the sake of consistency, the caseload-based staffing directives are used below.

The Washoe County Public Defender's Office currently has 9 full-time Investigators. Two of those Investigators are assigned to our Family Court Division. There are no current recommendations from the IDC regarding maximum caseload limits, and this fiscal note will assume that the felony, misdemeanor, and juvenile cases would be accommodated by the 7 remaining Investigators.

Based upon the case statistics and Guidelines identified above:

Felonies: 3,968	=	9 Investigators (8.81)
Misdemeanors: 2,172	=	2 Investigators (2.22)
Juvenile: 1,332	=	2 Investigators (1.8)
Total	=	13 (12.83)

Compliance with the recommended guidelines would require 6 (5.83) additional Investigators.

#### LEGAL SECRETARIES

**Additional Legal Secretaries: 3**

There are no numerical standards for support services specifically identified by the NAC/ABA. Instead, the Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services direct that defender offices should employ a ration of 1 Legal Secretary for every 4 full-time attorneys.

Under that analysis, the addition of 15 new attorney positions would result in a total attorney staffing of 47 full-time attorneys. The Public Defender, who doesn't currently maintain an active caseload is not considered as part of this analysis.

The Washoe County Public Defender's Office currently employs 9 full-time Legal Secretaries. The recommended guidelines require 11.75 (12) Legal Secretaries. Compliance with the Guidelines would require 3 (2.75) additional Legal Secretaries.

Please see Excel spread sheet below for detailed expenses.

PD Staff Inc ABA compliance

A	B	C	D	E	F	G	H	I	J	K	L
1	Starting bty wage	Top bty wage	Average bty wage	Annual salary	Group Exemption	Efficient	Medicare	Position	# positions	Brd year cost	2nd year cost
2				101110	165110	70310	74310	Cost			
3				120000	\$5,500/tech	salary x 2389	salary x .0145				
4	Positions										
5											
6	Deputy P.D. III	31.50	50.92	98,280	5,500	20,147	1,425	125,751	19	1,855,201	
7											
8	Investigator	21.32	32.92	60,570	5,500	12,417	878	78,269	6	478,552	
9											
10	Legal Secretary	11.93	25.0	47,651	5,500	9,771	693	64,025	3	192,106	
11											
12	Grand total								24	2,455,859	2,761,507

8-6-08

19- #1.841

To: John Berkich, Assistant County Manager  
From: Jennifer Lunt, Alternate Public Defender  
Date: August 13, 2007

**Re: Fiscal Impact of ABA Caseload Standards**

The Nevada Supreme Court has formed a Commission to Study Indigent Defense. The Commission will, I expect, ask the Nevada Supreme Court to adopt Standards of Performance and case loads in accordance with those standards. If the American Bar Association case load standards are adopted, it could have a significant financial impact on Washoe County.

Currently, the APD has a staff of 15. There are nine lawyers, including myself, two investigators, two legal secretaries and two support staff. Under current projections, the attorneys would be handling case loads well in excess of the ABA standards.

The ABA recommends the following case loads:

- Capital cases: 3
- Charges Carrying Life sentences: 15
- Non-life felonies: 150
- Misdemeanors: 400
- Capital Appeals: 3
- Non-Capital Felony Appeals: 25
- Juvenile Cases: 200

There are no specific guidelines for family court, although the accepted number is generally 80.

Before discussing the potential impact of imposition of the case load standards, I want to make note of two important distinctions. First, the APD office does not break the criminal case assignments down by category. The criminal lawyers handle all felonies, up to and including capital murder cases, felonies carrying life sentences, gross misdemeanors and misdemeanors.

Secondly, although the ABA recommends no more than 150 felony cases per attorney, Clark County has agreed the defense lawyers can handle 192. There are significant differences between Washoe and Clark County, specifically that Clark County has defense teams set up to handle homicides and sexual assaults. Washoe County does not. Because in Washoe County the criminal lawyers' cases would *include* homicides, sexual assaults, third level trafficking, lewdness with a child, and kidnapping - crimes carrying potential life sentences or imposition of the death penalty - it would not be feasible for the attorneys to agree to take on 192 cases.

For the reasons noted above, the financial impact assumes that the APD criminal lawyers will handle 150 cases, in accordance with the ABA standards.

**Criminal Case Projections:** In 2006-2007, the Public Defender's conflicted off on 1,047 criminal cases. If the Public Defender's conflicts off on 1,200 cases in 07-08, the four APD criminal lawyers will be handling 300 cases apiece. This includes murder

cases (including capital cases), Category A felonies, and misdemeanors. The attorneys also are responsible for filing their own appeals. This is more than double the ABA standard, when you take into account the range of the criminal cases handled.

**Juvenile Case Projections:** In 2006-2007, the Public Defenders conflicted off 517 juvenile cases. There is one juvenile attorney in the APD office. If there are 550 cases in the coming year, the juvenile deputy will be handling almost three times the ABA caseload standard.

**Family Court Case Projections:** In 2006-2007, the Public Defender's conflicted off 210 family court cases. In addition to the cases received from the Public Defender's office, the APD office has assumed representation on existing family court cases from the previous conflict lawyers. There may be 150 cases, ultimately, where the APD's will be assuming the representation of the family court clients. There are currently two family court deputies in the APD's office. If the PD's conflict off of 240 cases and 150 cases come to the office from the existing conflict case load, the family court lawyers will be handling more than double the recommended case load.

**Specialty Court:** There are no recommended case load guidelines from the ABA regarding the specialty courts of drug, diversion and mental health. While currently one attorney is specifically assigned to the specialty court, that lawyer's case load is exorbitant and unmanageable. The assigned attorney makes 300 appearances a week, and there are approximately 1,200 open cases. At a minimum, two and a half attorneys are necessary to handle the case load.

**Support Staff:** Attorneys cannot be added to the staff without also adding the necessary support staff. Although there are national recommendations regarding the number of investigators and secretaries necessary, those recommendations do not stem specifically from the American Bar Association. Because of that, I have estimated the number of support staff necessary based upon experience.

Because this is a new office and we only have one month of statistics to rely on, it is difficult to make projections on how many cases will be sent to the tertiary conflict group. My best estimate of the staff necessary in order to be compliant with ABA case load standards is as follows:

**Currently:**

1 APD  
0 Supervising Attorneys  
4 Criminal Lawyers  
2 Family Court Lawyers  
1 Juvenile lawyer  
1 Specialty Court lawyer  
0 Appellate Attorney  
0 Administrative Assistant  
0 lead investigator  
2 investigators  
0 social workers  
2 secretaries  
2 office support specialists

**Required:**

1 APD  
3 Supervising Attorneys  
6 criminal lawyers  
4 Family Court lawyers  
2.5 Juvenile lawyers  
2.5 Specialty Court lawyers  
1 Appellate Attorney  
1 Administrative Assistant  
1 Lead Investigator  
2 Investigators  
2 family court investigators/social workers  
5 secretaries  
2 office support specialists

0 office assistant

Total: 15

1 office assistant

Total: 34

This would add 19 staff members, including 13 lawyers, one administrative assistant, one investigator, two family court investigators or social workers, 3 legal secretaries and one office assistant. Kim Carlson has run a spread sheet with the financial impact of the staffing necessary to comply with ABA standards. I have attached it for review.

The current budget for the APD office is \$1,601,633.16. There would be an increase of \$1,778,658, for staffing alone. There would also be the additional expenses associated with the necessary equipment for the staff, i.e. computers, phones, furniture and supplies. With five investigators, at least one additional car would be necessary. Add in the professional dues, training and seminars, and books, and the additional cost would be about \$100,000. This does not take into account the additional space that would be necessary to house a staff of this size; the current location of the APD's would not be sufficient for that kind of expansion. Nor does it take into account the addition of a mitigation specialist, which also may soon be mandated by the Nevada Supreme Court.

If you have any questions, please let me know.

PD Staff inc ABA compliance

	A	B	C	D	E	F	G	H	I	J	K	L
1	Starting hrly wage Top hrly wage Average hrly wage Annual Salary Group Insurance* Retirement Medicare Position # positions 1st year cost 2nd year											
2					701110	705110	705210	705230	Cost			inc 8%
3					(2080 hrs)	\$5,900/each	salary x .2058	salary x .0145				
4	Positions											
5	Deputy Alternate P.D. I	28.78	38.65	33.72	70,127	5,900	14,376	1,017	91,420	4	365,680	
6	Deputy Alternate P.D. II	32.90	44.39	38.65	80,382	5,900	16,478	1,166	103,925	3	311,776	
7	Deputy Alternate P.D. III	38.58	55.92	47.25	98,280	5,900	20,147	1,426	125,752	1	125,752	
8	Deputy Alternate P.D. IV	43.17	60.78	51.98	108,108	5,900	22,162	1,588	137,738	3	413,213	
9												
10	Administrative Assistant	22.53	29.32	25.93	53,924	5,900	11,054	782	71,660	1	71,660	
11	Legal Secretary	19.93	26.90	22.92	47,663	5,900	9,771	691	64,025	3	192,076	
12	Office Assistant II	16.04	20.84	18.44	38,355	5,900	7,863	556	52,674	1	52,674	
13												
14	Family Court Invest Spec	24.10	31.31	27.71	57,626	5,900	11,813	836	76,175	2	152,351	
15	Chief Investigator	30.03	39.02	34.53	71,812	5,900	14,721	1,041	93,475	1	93,475	
16												
17	Grand total										1,776,058	1,920,981



**Supreme Court Order  
ADKT No. 411  
Estimated Cost Impact on Contract Counsel**

**Assumptions:**

- Current approximate cost paid per case under the existing Bell Contract - \$500
- Estimated cost impact on indigent defense:

Department	Current	Proposed	Percent Change
Public Defender	\$7.1m	\$9.5m	
Alternate PD	1.6m	3.4m	
<b>TOTAL</b>	<b>\$8.7m</b>	<b>\$12.9m</b>	<b>Approx. 150%</b>

Therefore, the impact of the adoption of the proposed caseload limits on the contract attorneys would be:

\$500 per case

x 150 % (PD and APD total change in costs)

\$750 per case

x 850 cases (500 cases increased by 1.7x based on the experienced increase since the start of the Bell contract)

\$650,000 total approximate cost of counsel

100,000 other defense costs

**\$750,000 TOTAL ESTIMATED COSTS**

**ESTIMATED ANNUAL COSTS  
OF THE  
IMPLEMENTATION  
OF  
SUPREME COURT ORDER ADKT NO. 411**

**Estimated Annual Impact by Department**

Public Defender	\$2,600,000.00
Alternate Public Defender	1,800,000.00
Contract Counsel	750,000.00
Sheriff's Office (Detention costs of ECR)	3,000,000.00
District Attorney	<u>3,000,000.00</u>
<b>Total</b>	<b>\$11,150,000.00</b>