Research Report

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National Public Defense Workload Study

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About This Report

This report describes a collaboration between the RAND Corporation; the National Center for State Courts (NCSC); the American Bar Association (ABA) Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID); and Stephen F. Hanlon, Principal, Law Office of Lawyer Hanlon, to assist governmental bodies, attorneys, policymakers, and other stakeholders when they plan for or manage the provision of counsel to represent adults who have been accused of criminal offenses in state trial courts but who cannot afford to engage an attorney (such provision is commonly referred to as *public defense*). This work, which was funded by the philanthropic organization Arnold Ventures, is intended to facilitate the use of functional metrics known as *case weights* and *caseload standards* (which are collectively described as *workload standards*) to help in estimating the numbers of criminal defense attorneys who should be made available for appointments as the nature and size of noncapital adult criminal caseloads change over time. The metrics are also intended to identify instances when caseloads for those lawyers have risen to the point at which those lawyers may be unable to adequately discharge their professional duties. A foundational underpinning of our research is the assumption that, to comply with controlling legal authorities, public defense workload standards must always reflect attorney responsibilities mandated by the ethics rules applicable to all criminal defense counsel in every state and be consistent with other practice standards that describe prevailing norms of effective representation.

Work developing similar metrics for the provision of public defense in certain states and localities has been conducted by various governmental agencies, research entities, and stakeholder organizations. Therefore, the results of our study are primarily applicable to locations or for purposes where jurisdictionally focused workload standards have not already been produced, in situations where earlier work did not adequately consider applicable ethics rules and practice standards, or in situations where existing studies may be outdated or otherwise flawed.

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American Bar Association Standing Committee on Legal Aid and Indigent Defense

ABA SCLAID serves the ABA by examining issues related to the delivery of civil legal assistance and criminal defense services to the poor. It maintains close relationships with state and local bar and legal aid and defender leaders, providing information and developing policy on civil legal aid and indigent defense. The Committee also advocates for and works to ensure the availability of legal aid and defender services for indigent persons. ABA SCLAID is the ABA's oldest standing committee; it was established in 1920 under the leadership of Charles Evans Hughes. For more information on ABA SCLAID, please visit the Committee's website at www.americanbar.org/groups/legal_aid_indigent_defense.

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Law Office of Lawyer Hanlon

Stephen F. Hanlon is the Principal of the Law Office of Lawyer Hanlon in St. Louis, Missouri. He has a long history of handling public interest and civil rights cases. In 1989, he founded the Community Services Team (CST) at Holland & Knight and, for the next 23 years, served as the Partner in Charge of the CST, which was the largest full-time private practice pro bono department in the country during Hanlon's tenure. In 1997, Holland & Knight received the ABA Pro Bono Publico Award. *The American Lawyer* described Holland & Knight as a "pro bono champion." In 2006, Hanlon received the Chesterfield Smith Award from Holland & Knight, the firm's highest individual recognition given to a firm partner. Since his retirement from Holland & Knight at the end of 2012, Hanlon has confined his practice to assisting and representing public defenders with excessive caseloads. As part of this work, Hanlon was ABA SCLAID's project director for seven groundbreaking state-level public defense workload studies. For more information, see www.lawyerhanlon.com or email stephen@lawyerhanlon.com.

RAND Justice Policy Program

RAND Social and Economic Well-Being is a division of the RAND Corporation that seeks to actively improve the health and social and economic well-being of populations and communities throughout the world. This research was conducted in the Justice Policy Program within RAND Social and Economic Well-Being. The program focuses on such topics as access to justice, policing, corrections, drug policy, and court system reform, as well as other policy concerns pertaining to public safety and criminal and civil justice. For more information, email justicepolicy@rand.org.

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We would like to express our deep-felt appreciation to the 33 criminal defense attorneys from across the country who agreed to participate in this study as members of our expert panel. In addition to taking time out of their busy schedules to prepare for and travel to the Williamsburg, Virginia, conference held on April 28, 2022, the panelists gave this study the incalculable benefits of both their frank opinions and their considerable experience in defending the rights of the accused. The panel was selected from more than 100 nominations of highly regarded attorneys with outstanding competence in adult criminal defense in state trial-level courts and a track record of good practice. Those recommendations came from Gideon's Promise, the National Association for Public Defense, the National Association of Criminal Defense Lawyers, the National Criminal Defense College, and the National Legal Aid & Defender Association. We thank these organizations for identifying such a stellar group of defense counsel.

We express our special thanks to Brian Ostrom of NCSC for contributing his expertise. We also thank NCSC for hosting the project's expert panel session at its Williamsburg, Virginia, headquarters. Tracey Johnson, Travis Hansford, and Mark Wenger at NCSC provided invaluable logistical support.

We would like to thank the members and staff of ABA SCLAID for their support of this study. Particular thanks is owed to the late professor Norm Lefstein, the longtime special adviser to ABA SCLAID on public defense, who championed the need for caseload controls and, specifically, for new national workload standards. Lefstein was the driving force behind many of the standards and studies on which this project relied. We would also like to thank Mark Pickett and Jason Vail, counsel for ABA SCLAID, for their editorial contributions. Counsel for the ABA's Center for Professional Responsibility also reviewed this report, and we appreciate their comments and suggestions.

Dulani Woods of RAND designed the online Delphi application used in this project and acted as the chief facilitator at the expert panel conference in Williamsburg, Virginia. We are indebted to him for offering his services, expertise, and insight to this effort. Blair Smith and Babitha Balan of RAND performed a highly professional and thorough job of editing, organizing, and producing the final version of this report. Laurie Martin supervised RAND's quality assurance (QA) process for this study, and Ninna Gudgell managed the QA workflow; both executed these responsibilities in their usual competent and timely manner. Beth Seitzinger at RAND did a wonderful job of coordinating the sometimes complicated travel plans of our expert panelists.

Jon Gould, dean of the University of California Irvine's School of Social Ecology, and Stephanie Walsh, policy analyst at RAND Corporation, provided helpful criticism and contributions in their formal reviews of this report. We value their suggestions and hope that we have responded appropriately. Any errors in methodology, data collection, or conclusions are, of course, solely the authors' responsibility.

Summary

The rules of professional conduct require lawyers to limit their workloads to ensure competent representation.[1] But what should those limits be? Clear standards for public defender workloads are essential to policymakers' ability to fund and staff the defense function at appropriate levels, to public defense authorities' ability to monitor and manage caseloads, and to attorneys' ability to provide their clients with effective assistance of counsel as guaranteed by the Sixth Amendment to the U.S. Constitution.

To create such standards, we conducted a comprehensive review and analysis of the 17 state-level public defense workload studies conducted between 2005 and 2022, and then employed the Delphi method (a quantitative research technique used for the elicitation of expert opinions) to facilitate the efforts of a panel of expert criminal defense attorneys to come to a consensus on the average amount of time needed to provide reasonably effective assistance of counsel in an array of adult criminal cases. The results of this study are new national public defense workload standards, which are intended to assist governmental bodies, public defense attorneys, policymakers, and other stakeholders in evaluating defender workloads and ensuring adequate representation. Our results are primarily applicable to locations or for purposes where jurisdictionally focused workload standards have not already been produced, in situations where earlier work did not adequately consider applicable ethics rules and practice standards, or in situations where existing studies may be outdated or otherwise flawed.

These new standards build on the methods developed in, and data gleaned from, prior state-level workload studies. The standards also reflect the expert attorneys' experience with modern criminal defense practice, including the tremendous expansion of digital discovery from body-worn cameras, cell phone data, and social media data; the increasing use of forensic evidence; and the expanding scope of a criminal defense lawyer's obligations, such as advising clients on the collateral consequences that attend criminal convictions.

[1] See Model Rules 1.1 and 1.3 in American Bar Association [ABA], *Model Rules of Professional Conduct*, 2023, and American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation*, May 13, 2006 (hereafter ABA Formal Opinion 06-441). See also "The Demands on a Defender's Time" section in Chapter 2.

Historical Background

Recognizing the need for clear standards for public defense workloads, in the early 1970s, a group of public defense leaders came up with the following estimate of the maximum number of cases a defense attorney could handle per year:[2]

- felonies: 150 cases per year
- misdemeanors: 400 cases per year
- mental health cases: 200 cases per year
- juvenile cases: 200 cases per year
- appeals: 25 cases per year.

In 1973, these estimates were adopted and incorporated into a report by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). These estimates have since been referred to as the *NAC standards*.[3]

The NAC standards have been criticized for being overly broad. They fail to differentiate among types of felonies, giving equal weight to a burglary, a sexual assault, and a homicide. They have also been criticized for being developed without a defensible methodology. Additionally, there has always been concern that the NAC standards are simply too high. As early as 1978, a study noted that "one is hard put to imagine carefully investigating every case, as is required by [prevailing standards of criminal defense practice], if the lawyers are handling 150 felony cases per year, or 400 misdemeanors per year."[4] Even assuming that the lawyer is working 40 hours per week, 52 weeks per year on cases (2,080 hours per year), caseloads at the maximum sizes allowed under the NAC standards would permit an average of only 13.9 hours to be spent by that attorney on each felony case or 5.2 hours on each misdemeanor case.

Despite these weaknesses and in the absence of any other reliable, data-driven method of understanding the number of cases a lawyer can handle, the NAC standards have remained the default maximum for public defense attorney caseloads for almost 50 years.[5]

Recognizing the shortcomings of the NAC standards, over the past few decades, individual jurisdictions have sought to improve upon them by establishing more-realistic workload limits using more structured, defensible methodologies. These more recent studies all used some form

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[2] For a complete history of the development and utilization of these standards as well as related criticism, see "The National Advisory Commission Caseload Standards" section in Chapter 2.

[3] National Advisory Commission on Criminal Justice Standards and Goals, *Courts*, 1973, p. 276.

[4] Shelvin Singer, Beth Lynch, and Karen Smith, *Indigent Defense Systems Analysis (IDSA)*, National Legal Aid and Defender Association, 1978, p. 52. Also see "The Emergence of Public Defense Workload Standards" in Chapter 2.

[5] See "The Emergence of Public Defense Workload Standards" in Chapter 2. Specifically, despite being a product of the early 1970s (and arguably with roots that go back to the mid-1960s), the NAC standards remain the default option for many policymakers considering limits on defender caseloads. For example, the felony and misdemeanor ceilings were adopted, reaffirmed, or used as a foundation for caseload assignments by state public defense commissions, state public defender offices, state bar associations, or the judiciary in Washington (2015), Indiana (2016), Wyoming (2016), Ohio (2019), Oregon (2021), Michigan (2021), and New York (2021).

of the Delphi method to achieve a consensus among a group of experts—usually public defenders only or a mix of private and public defense attorneys—on the average amount of time needed for cases of various types.[6] Furthermore, these efforts were grounded in jurisdiction-specific conditions and took account of current criminal defense practice obligations.

Over the years, these public defense workload studies became increasingly granular, dividing attorney work into more-specific case type categories and tasks. These workload studies primarily expressed their results in the form of a case weight (i.e., average attorney time needed per case of a particular case type) rather than an annualized caseload. The use of case weights allows for easier application to mixed caseloads (i.e., a lawyer taking cases of multiple case types). It also allows for adjustment for different amounts of time available for case work; for example, for supervisors who might carry half caseloads or attorneys in rural offices who must travel to multiple courthouses.[7]

The gold standard for analyzing attorney need is a weighted caseload model.[8] The case weights are applied to the caseload in the jurisdiction to generate estimates of the number of attorneys needed to handle the jurisdiction's current or projected workload. In comparison with other budget or resource allocation models based on such factors as population or raw caseloads, weighted caseload analyses provide a more accurate and nuanced account of attorney workload that reflects variations in caseload composition across offices and over time. Many state legislative and funding bodies across the United States are already familiar with the concept of a weighted caseload; states often use weighted caseload studies to analyze the need for judges.[9] In the world of public defense, there were 17 state-level workload studies using a weighted caseload model conducted between 2005 and 2022.

Substantive law and court rules and procedures have an impact on the amount of time attorneys require to represent their clients. Because these factors can vary substantially from jurisdiction to jurisdiction, the most accurate weighted caseload model is developed specifically for an individual state or jurisdiction. For fiscal or practical reasons, most jurisdictions have not had the opportunity to conduct such research.

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[6] See the "Weighted Caseload Analyses" section in Chapter 2.

[7] See the "Case Weights and Caseload Standards" section in Chapter 2; see also Chapter 5.

[8] This statement applies only to efforts intended to help in the estimation of necessary attorney levels in a public defense delivery system, such as a statewide public defender office or a county's contract defender program. Examinations of defender practices and techniques, support staff levels, case assignment strategies, holistic defense services, attorney education and training programs, office management policies, and other important aspects of public defense would require quantitative and qualitative research approaches that are very different from those used in a weighted caseload analysis. But if the purpose of the effort is to move away from using such metrics as raw caseload counts, prosecutor office size, or population size as a means for estimating required numbers of defenders, weighted caseload studies are arguably the tools most commonly used by justice system organizations.

[9] More than 30 states use judicial weighted caseload studies. See Matthew Kleiman, Cynthia G. Lee, Brian J. Ostrom, and Richard Y. Schauffler, "Case Weighting as a Common Yardstick: A Comparative Review of Current Uses and Future Directions," *Oñati Socio-Legal Series*, Vol. 7, No. 4, 2017, p. 646.

While having a specific state or local workload study remains the ideal approach for public defense resource planning, in the absence of a jurisdiction-specific study, nationally applicable workload standards are needed to provide benchmarks and assist administrators in assessing system needs. For the past 50 years, the NAC standards have filled that void, despite their age and flaws. New nationally applicable workload standards are needed to better reflect present criminal defense practice and contemporary professional and ethical responsibilities.

The National Public Defense Workload Study Approach

In this research effort, the National Public Defense Workload Study (NPDWS), we sought to capitalize on the methods used in the state-level public defense studies to develop new national workload standards.

Drawing from our review of those state-level studies, we identified and defined a set of 11 case types and eight activity types that reflect the work that defense attorneys conduct on behalf of adults accused of crimes in a state trial court (a *case* is defined as all charges filed against a client arising out of a single event or series of events and being prosecuted together).[10]

The 11 case types are

- Felony–High–Life Without Parole (LWOP)
- Felony–High–Murder
- Felony–High–Sex
- Felony–High–Other
- Felony–Mid
- Felony–Low
- Driving Under the Influence (DUI)–High
- DUI–Low
- Misdemeanor–High
- Misdemeanor–Low
- Probation and Parole Violations.

The eight activity types are

- Client Communication and Care
- Discovery and Investigation
- Experts
- Legal Research, Motions Practice, and Other Writing
- Negotiations
- Court Preparation
- Court Time
- Sentencing and Mitigation and Postadjudication.

[10] See the "Case Type and Activity Type Categories Development" section in Chapter 3.

Death penalty prosecutions were outside the scope of the NPDWS, which meant that felonies with a potential sentence of LWOP would be the study case type with the highest severity.

We then assembled an expert panel of 33 highly regarded attorneys with extensive experience in adult criminal defense in state trial-level courts and a track record of good practice.[11] Through two online webinars and their review of NPDWS written materials, the expert panel received

- detailed information on applicable ethics rules and other professional standards
- background on case weights and caseload standards
- an overview of the methods and results of the 17 state-level public defense workload studies.[12]

Following this preparation, the panel was provided an initial response form, which asked for their preliminary best estimate of the average time needed to provide reasonably effective assistance of counsel pursuant to prevailing professional norms for each activity type within each case type.[13]

After filling out the initial response form, the expert panel met for a one-day in-person Delphi session. At the beginning of this meeting, the panelists entered their independent estimates from the initial response form into an online Delphi application that allowed panelist entries to remain anonymous. The application compiled and charted results, providing participants with the median total time estimate for each case type and a graph of response distributions.

The expert panel then engaged in a roundless (sometimes referred to as *real-time* or *continuous*) Delphi session with the goal of achieving a reasonable consensus of the group's professional judgment.[14] Panelists were free to discuss the reasons for their professional judgments or submit anonymous comments through the Delphi application to be viewed by other panelists. At any point, panelists could change their responses and view updated statistics based on the entire group's submissions. Discussion continued until the panel reached a predefined level of consensus on the total time required for all of the case types.[15]

The expert panel's consensus on hours needed to provide reasonably effective assistance of counsel pursuant to prevailing professional norms for each case type constitute the study's final

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[11] Recommendations for expert panel members came from Gideon's Promise, the National Association for Public Defense, the National Association of Criminal Defense Lawyers, the National Criminal Defense College, and the National Legal Aid & Defender Association. For details on the selection process, see the section titled "Expert Panel Selection" in Chapter 3. For the names of the panelists and their positions at the time of the Williamsburg conference, see Table 3.5 in Chapter 3.

[12] See the section titled "Expert Panel Preparation" in Chapter 4.

[13] See Figure 4.1 and accompanying text in Chapter 4.

[14] See the section titled "Session Procedures" in Chapter 4.

[15] For details on what constituted a consensus and the level of consensus achieved by case type, see "Session Procedures" in Chapter 4.

case weights. Table S.1 presents those results and provides an illustrative example of what a caseload standard would be for each case type. The caseload standard represents the maximum number of cases of that type that should be assigned to a public defense attorney in a year, assuming that the attorney takes only cases of that one case type. The caseload standards presented in Table S.1 assume that each attorney has 2,080 hours per year available for all case-related work. It should be noted that the calculation of an annual caseload standard requires jurisdiction-specific information about annual attorney hours available for case-related work; the values shown in the table are for illustrative purposes only.[16]

Table S.1. Final Results of the Expert Panel Session with Example Caseload Standards

Case Type	Case Weight (Hours per Case)	Annual Caseload Standard
Felony–High–LWOP	286.0	7
Felony–High–Murder	248.0	8
Felony–High–Sex	167.0	12
Felony–High–Other	99.0	21
Felony–Mid	57.0	36
Felony–Low	35.0	59
DUI–High	33.0	63
DUI–Low	19.0	109
Misdemeanor–High	22.3	93
Misdemeanor–Low	13.8	150
Probation/Parole Violations	13.5	154

NOTE: Annual caseload standards were calculated using an assumption of 2,080 hours available annually to a defender for case-related work.

Using the National Public Defense Workload Standards

These case weights provide a basis for any public defense system or provider to reliably assess overall caseloads and staffing, as well as plan for anticipated future needs. Applying the

[16] The 2,080 annual hours assumption is an extremely high estimate because it does not account for work time spent on activities not related to representing clients in adult criminal cases. The calculation of annual caseload standards is based on an assumption of the average annual hours available to defenders for case-related work. That assumption will vary from jurisdiction to jurisdiction, so our use of 2,080 hours (essentially 52 weeks each year of 40 case-related work hours) is simply for illustrative purposes. If such adjustments were made to the hours assumption we use for illustrative purposes only, the annualized caseload standards would be lower.

case weights for this purpose requires additional jurisdiction- or provider-specific data on both caseloads and staffing.[17]

Hours Needed

A system or provider will need to map its annual caseload, by highest charge, to the 11 case types in this study. Mapping the caseload by case types and applying the appropriate case weights allow the system or provider to estimate the total attorney workload associated with each case type, as follows:

cases (by case type) × case weight (by case type) = total hours needed (by case type).

Assume, for example, that a public defense system had 100 new Felony–High–Sex cases in one year. Multiplying 100 cases by the Felony–High–Sex case weight of 167 hours determines the estimate of total attorney hours needed for Felony–High–Sex cases for that year, as follows:

100 cases × 167 hours per case = 16,700 hours needed per year for Felony–High–Sex cases.

A jurisdiction would perform the same calculation for all 11 case types and sum them to determine the estimate of total attorney hours needed for adult criminal cases of all types.

Hours Available

The jurisdiction or provider must also determine or estimate the total number of hours attorneys are available to work on adult criminal cases annually. This requires subtracting leave and holidays, along with work not directly attributable to the representation of a specific client (e.g., administration, supervision, professional development, travel), from each attorney's annual available hours. When attorneys handle other case types, such as juvenile delinquency or dependency matters, time spent on these cases must also be deducted from their availability for adult criminal defense work. Deductions would also be required for circumstances specific to individual attorneys, such as working on a half-time basis. When such adjustments are made, the result can be thought of as *annual case-related duty hours*. The product of that value and the number of full-time equivalent (FTE) attorneys in the jurisdiction or with the provider yields total attorney hour availability:

FTE attorneys × annual case-related duty hours per attorney = total attorney hours available annually.

Assume, for example, that a public defense system has 50 full-time attorneys. Also assume that each attorney has 40 hours per week, 52 weeks per year (2,080 hours per year) to devote to

[17] For a detailed description of how to use case weights, see Chapter 5.

case-related work. In this simplistic example of 2,080 annual case-related duty hours, we make no adjustment for time spent for vacations, professional development, supervision, administration, etc.:

50 attorneys × 2,080 annual case-related duty hours = 104,000 total attorney hours available annually.

However, if two of the FTE attorneys in this system are full-time administrators without an adult criminal defense caseload, and another five FTE attorneys are supervisors with only 50 percent of their time allocated to case-related work, annual attorney hour availability in this system is reduced:

(43 attorneys × 2,080 annual case-related duty hours) + (2 attorney administrators × 0 annual case-related duty hours) + (5 attorney supervisors × 1,040 annual case-related duty hours) = 94,640 total attorney hours available annually.

Caseload Standards Calculations

The NPDWS was focused on the development of new default national case weights and leaves the calculation of annual case-related duty hours to individual jurisdictions. A jurisdiction seeking to use the NPDWS case weights as the basis of caseload standards must first determine an appropriate annual case-related duty hours assumption based on conditions specific to the jurisdiction. Annual maximum caseload standards, which are similar in form to the NAC standards, can then be calculated using the NPDWS case weights by simply dividing the jurisdiction's estimate of annual case-related duty hours by the case weight for each case type. For example, assuming 2,080 case-related duty hours available annually, the NPDWS case weight of 33.0 hours for DUI–High cases suggests a caseload standard of 63 new cases each year (2,080 ÷ 33.0, rounded downward to the nearest whole number).

Staffing Need Analysis

Comparing the total time needed to represent the annual caseload (hours needed) with the total attorney hours available to work on cases for the year (hours available) allows a system or provider to assess whether attorney staffing levels are appropriate, as follows:

Total hours needed – total hours available = deficient or surplus hours.

If this calculation shows a deficiency, the jurisdiction can further calculate additional FTE needed:

Deficient hours ÷ annual case-related duty hours per attorney FTE = additional FTE needed.

For example, if, based on the NPDWS case weights, a provider required 20,725 attorney hours to provide reasonably effective assistance of counsel for its annual caseload and the provider's current staffing levels equated to 16,870 hours of annual attorney time for case-related work, the provider would have a deficiency of 3,945 hours. Assuming that each of the provider's FTEs has 2,080 case-related duty hours available each year, the provider can estimate that it needs roughly two additional FTEs:

20,725 total hours needed – 16,780 total hours available = 3,945 hours deficient

3,945 hours deficient ÷ 2,080 annual case-related duty hours per attorney FTE = 1.9 FTE needed.

Conclusion

Excessive caseloads are proscribed by ethics rules because they inevitably cause harm.[18] Overloaded public defense attorneys simply cannot give appropriate time and attention to each client.[19] They cannot investigate in a timely manner or fully. They cannot file the motions they should. Instead, attorneys are forced to triage cases, choosing which cases to focus attention on while allowing others to be resolved without appropriate diligence. A justice system burdened by triage risks unreliability, denying all people who rely on it—victims, witnesses, defendants, and their families and communities—efficient, equal, and accurate justice.

To avoid these harms and ensure that public defense attorneys have the time needed to provide their clients with effective assistance, providers, administrators, and policymakers must have a reliable means of estimating necessary staffing levels. This study will permit stakeholders in jurisdictions across the country to review their caseloads using a more justifiable, evidence-based set of case weights than those implied by the NAC standards and allow them to better estimate and plan for the attorney time needed for adult criminal cases to avoid overload, as required under the ethics rules.[20] To use this study effectively, jurisdictions should begin by gathering basic data on their providers' caseloads and attorney hours available and then go through the process described earlier to assess whether attorney staffing levels are appropriate; and establish standards, limits, or review processes to avoid overload.

Significant evidence exists that many public defense providers are overloaded, even when judged against the 1973 NAC standards. In validating the concerns that the NAC standards are outdated, the results of this study strongly suggest that the caseloads of public defense attorneys

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[18] See the section titled "The Requirement to Limit Workloads" in Chapter 2.

[19] In 2019, *The New York Times* published a detailed profile of one public defender in Louisiana who was assigned almost 200 felony cases, noting the impact that this case overload had on his clients. See Richard A. Oppel, Jr., and Jugal K. Patel, "One Lawyer, 194 Felony Cases, and No Time," *New York Times*, January 31, 2019.

[20] ABA Formal Opinion 06-441, 2006. See also "The Requirement to Limit Workloads" in Chapter 2.

are more excessive than previously thought and that decisive action is needed to ensure that public defense clients receive the effective assistance of counsel required by the Constitution.

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Chapter 1. Introduction

Overview

The Sixth Amendment to the U.S. Constitution gives those accused in criminal prosecutions the right to "have the Assistance of Counsel" for their defense. The Supreme Court made clear in *Gideon v. Wainwright* that in "our adversary system of criminal justice, any person [hauled] into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided."[21] Moreover, the right is not satisfied merely by having a lawyer present alongside the defendant; instead, the Supreme Court has also held in *Strickland v. Washington* that counsel must render "reasonably effective assistance" under "prevailing professional norms."[22]

In response to this clear mandate, state and local governments and judicial systems have taken steps in varying degrees to provide the accused, either wholly or partially at public expense, with attorneys appointed by the court to represent those involved in criminal cases, juvenile delinquency proceedings, or other legal matters. Despite such efforts, a governmental body may nevertheless be challenged to ensure that there are enough qualified members of the bar hired, contracted with, or otherwise committed to address the never-ending stream of new arrests and criminal case filings each day. When there are shortfalls in the supply of criminal defense attorneys available to represent those in need of Sixth Amendment assistance of counsel, too often appointments continue unabated, which in turn means that the number of open cases shouldered by each such attorney rises. Ultimately, counsel with caseloads that reach excessive levels can find themselves without sufficient time to present a professionally competent defense for each of their clients.

This report documents the results of a research collaboration among the RAND Corporation;[23] the National Center for State Courts (NCSC);[24] the American Bar Association (ABA) Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID);[25] and Stephen F. Hanlon, Principal, Law Office of Lawyer Hanlon. This collaboration, which was funded by the philanthropic organization Arnold Ventures, is intended to facilitate the use of functional metrics known as *case weights* and *caseload standards*. Such metrics, collectively described as *workload standards*, can be used to estimate the numbers of criminal defense

[21] *Gideon v. Wainwright*, 372 U.S. 335, 344, 1963.

[22] *Strickland v. Washington*, 466 U.S. 668, 687-688, 1984.

[23] RAND's participation in this project was led by Nicholas M. Pace with contributions by Dulani Woods.

[24] NCSC's participation in this project was led by Cynthia G. Lee with contributions by Brian Ostrom.

[25] ABA SCLAID's participation in this project was led by Malia Brink with contributions by Mark Pickett and Jason Vail.

attorneys who should be made available for appointments as the nature and size of noncapital adult criminal caseloads change over time.[26] The standards can also be used to identify when caseloads for those lawyers have risen to the point that they may be unable to adequately discharge their ethics duties or meet professional standards.

Workload standards are used by government bodies when planning for or managing the provision of counsel in state trial courts to represent adults who have been accused of criminal offenses but who cannot afford to engage an attorney (such provision is commonly referred to as *public defense*, and the attorneys themselves are often referred to as *defenders*, although the term *public defender* is usually reserved for a defender employed by a governmental entity).[27] A foundational underpinning of our research is the assumption that, to be in compliance with controlling legal authorities, public defense workload standards must always reflect attorney responsibilities mandated by the ethics rules currently applicable to all criminal defense counsel in every state and be consistent with other practice standards that describe prevailing norms of effective representation.

To accomplish the goals we set for our National Public Defense Workload Study (NPDWS), we revisited the considerable body of research on public defense workload standards intended for use in specific states and developed a tailored approach for our work that drew from the methods and findings in these prior studies. We also reviewed the applicable ethics rules and opinions relevant to a defense attorney's duties, as well as the detailed guidelines promulgated by influential organizations that describe the basic requirements for representing clients in criminal proceedings. With the input of five major national associations whose focus is on the provision of effective assistance of counsel in criminal cases, we assembled an expert panel of 33 highly regarded practitioners with considerable experience in representing adult clients in state trial court criminal proceedings. After the panel reviewed the key findings of prior public defense workload studies and considered the practice implications of applicable ethical and professional principles, they met in Williamsburg, Virginia, in April 2022.

At the Williamsburg conference, we employed the Delphi method—a feedback technique first developed by RAND researchers to systematically coalesce expert opinion on complex questions that are otherwise difficult to answer—to assist the panelists in reaching a consensus on what their experience and insight suggested should be the *average* hours necessary to deliver reasonably effective representation as defined by prevailing professional norms in various adult criminal case type categories. The results of the Williamsburg conference were used to develop workload standards grounded in both quantitative and qualitative empirical data.

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[26] This study's scope excludes criminal proceedings where the sentence upon conviction could result in capital punishment.

[27] A commonly employed synonym for *public defense* is *indigent defense*, and attorneys who are appointed for such representations are often referred to as *indigent defenders.* We use these terms interchangeably with *public defense* and *defenders*, respectively. It should be noted that the adjective *indigent* as used here simply refers to overall eligibility for appointed counsel and not necessarily to the person's financial status.

Work developing similar metrics for the provision of public defense has been conducted previously in certain states and localities by various governmental agencies, research entities, and stakeholder organizations. Therefore, the results of the NPDWS would be primarily applicable to locations where jurisdictionally focused workload standards have not already been produced, to situations in which earlier work did not adequately consider applicable ethics rules and practice standards, or to situations in which existing studies may be outdated or otherwise flawed.

Organization of This Report

Chapter 2 provides background information on the problem of excessive public defense caseloads, on applicable ethics rules and practice standards relevant to the practice of criminal defense, on strategies for determining when attorneys are laboring under appointment volumes that may result in inadequate attention being paid to those clients, and on how workload standards are developed. The chapter also discusses why a nationally applicable set of public defense workload standards reflecting current conditions is necessary. In Chapter 3, we provide a closer look at the methods employed to produce our recommended set of national public defense workload standards. Chapter 4 describes the structure and results of the expert panel conference that took place in Williamsburg, Virginia, on April 28, 2022. In Chapter 5, we discuss how the national workload standards can be used. Chapter 6 summarizes what we heard from our expert panelists as to their rationales behind the Delphi session voting at the Williamsburg conference. Chapter 7 presents some concluding thoughts as to the future direction of public defense. Appendix A contains brief biographies for each member of the expert panel. Appendix B presents a detailed comparison of the 17 state-level public defense workload studies that informed our research approach. Finally, Appendix C contains graphical representations of the development of an expert panel consensus at the Williamsburg conference.

Chapter 2. Background and Justification

Statement of the Problem

Excessive Caseloads in Public Defense

Despite the Supreme Court's insistence that counsel must render reasonably effective assistance to criminal defendants, it is difficult to imagine any public defense attorney providing all clients with constitutionally appropriate representation if that defender's workload has reached unreasonable levels. Excessive caseloads are pervasive in public defense across the country, and reports of defenders being appointed to far more criminal defense cases than they can shoulder competently are common in the media.[28] In one widely reported instance, for example, attorneys assigned to a misdemeanor caseload at a metropolitan office providing public defense were each appointed to an average of 2,225 cases per year.[29] Assuming that 40 hours each week of the year were devoted to nothing but client representation, this caseload would allow an attorney to spend an average of about 56 minutes on each client's case. In that same office, attorneys assigned to a felony caseload were appointed to an annual average of more than 436 noncapital felonies, effectively allowing for only 4 hours and 47 minutes, on average, to defend clients facing decades in prison.[30] Under such circumstances, the assistance of counsel might consist of little more than meeting the client and immediately entering a guilty plea.

The examples given above are likely to be outliers,[31] but defenders with far fewer cases annually can also lack enough time to fully address their clients' interests. Comprehensive and consistently available data on public defense attorney annual appointments can be difficult to

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[28] See, e.g., Andrew Cohen, "Eric Holder: A 'State of Crisis' for the Right to Counsel," *The Atlantic*, March 15, 2013; Phil McCausland, "Public Defenders Nationwide Say They're Overworked and Underfunded," NBC News, December 11, 2017; Richard A. Oppel, Jr., and Jugal K. Patel, "One Lawyer, 194 Felony Cases, and No Time," *New York Times*, January 31, 2019; Nomin Ujiyediin, "Kan. Public Defender Agency 'On Fire,' Struggling to Keep Staff," Hays Post, webpage, March 12, 2020; Lisa C. Wood, Daniel T. Goyette, and Geoffrey T. Burkhart, "Meet-and-Plead: The Inevitable Consequence of Crushing Defender Workloads," *Litigation*, Vol. 42, No. 2, 2016; and John Yang and Frank Carlson, "Missouri Public Defenders Are Overloaded with Hundreds of Cases While Defendants Wait in Jail," PBS NewsHour, May 2, 2018.

[29] Tonya Alanez and Missy Diaz, "Public Defenders May Begin Refusing Cases," *South Florida Sun Sentinel*, November 17, 2008.

[30] *Public Defender, Eleventh Judicial Circuit of Florida, et al., v. The State of Florida*, initial brief on the merits, cases SC09-1181 and SC10-1349, Supreme Court of Florida, filed December 27, 2011, p. 11.

[31] But see *Phillips et al., v. State of California et al.*, Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief Under Cal. Const. Art. I § 15, U.S. Const. Amds. 6 and 14, Cal. Penal Code §§ 987, 1382, 859B, case 15 CE CG 02201, Superior Court of the State of California, County of Fresno, filed July 14, 2015, p. 2, in which it was alleged that felony defenders in a California public defender office annually handled an average of 418 felony cases (612 if supervised release cases are included) and misdemeanor attorneys handled an annual average of 1,375 misdemeanor cases (1,462 including supervised release cases).

come by, but looking at some reported *active* case counts (i.e., the number of client matters that a defender has open at any single point in time) rather than total annual appointments illustrates the problem well:

- 120 open cases, on average, for defenders in a large urban Midwestern county[32]
- 265 open cases for the sole public defender serving two rural Southern counties[33]
- "more than a hundred open cases," on average, for a quarter of public defenders in a Northeastern state[34]
- more than 120 open cases for a public defender in a large Northeastern city[35]
- 169 open cases for a public defender in a large Western city[36]
- 206 open cases for a public defender in a large Northwestern city[37]
- 168 open cases for a public defender in a large Midwestern city[38]
- 300 open cases for the sole public defender in a rural Southwestern county.[39]

Not all of these active cases required expenditures of a public defense attorney's time on each day they remained open. Nevertheless, their cumulative demands on a defender's finite availability means that a type of triage would be needed. In such situations, all but the most mission-critical, time-sensitive tasks must be ignored, and effort must be minimized as much as possible on cases that appear more likely to result in an adverse outcome for the client. It is

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[32] "In Hennepin County, home to the state's biggest city, approximately 100 public defenders are currently handling 12,000 open cases" (Andy Monserud, "Minnesota Public Defenders Vote to Authorize Strike," Courthouse News Service, March 10, 2022).

[33] "'I'm the only full-time employee with the public defenders' office,' explains Rhonda Covington, the public defender for East and West Feliciana—two mostly rural parishes. Covington says she's got 265 open cases" (Debbie Elliott, "Public Defenders Hard to Come by in Louisiana," NPR, March 10, 2017).

[34] "Today a quarter of all public defenders in the state have more than a hundred open cases" (Scott Merrill, "NH Supreme Court Task Force Addresses Shortage of Public Defenders," Manchester Ink Link, webpage, November 13, 2021).

[35] According to Jocelyn Simonson, a criminal staff attorney with Bronx Defenders in New York, "I have over 120 active cases at any given time, and have represented more than 3,000 clients during my three years so far in the Bronx" (Lisa D. Williams, *Careers in Indigent Defense: A Guide to Public Defender Programs*, President and Fellows of Harvard College, 2012).

[36] "'As of today, I have 169 open cases and 1,297 closed cases,' said Kara Simmons, a Clark County deputy public defender of three and a half years" (Sean Golonka, "Lawmakers Considering Bill to Ensure Rural Counties Appoint Public Defenders Independently from the Judiciary," The Nevada Independent, webpage, May 24, 2021).

[37] "Charles Peirson, who has worked at Multnomah Defenders for the past five years, currently is working 206 open cases, some felony but most misdemeanor" (Aimee Green, "Portland Public Defenders Toil under Crushing Caseloads, Stage Work Stoppage to Draw Attention," *The Oregonian*, June 11, 2019).

[38] "On one day in September, an attorney had 168 active cases" in the public defender office for St. Louis County, Missouri (Lauren Gill, "In Missouri, Public Defenders Push to Put Poor Defendants on Wait List in Attempt to Improve Their Legal Representation," The Appeal, webpage, November 26, 2019).

[39] "In Utah's rapidly-growing St. George area, a single public defender, Edward Flint, has around 300 active cases; the county pays him a $58,000 salary with no benefits" (Leia Larsen, "With Caseloads Skyrocketing, Public Defense Lawyers Are Desperate for Reform," *Bitterroot Magazine*, August 9, 2019).

certainly possible that some of these attorneys' clients could receive an appropriate level of attention from their appointed legal counsel, but all of them certainly could not.

The causes of excessive workloads for attorneys providing public defense representation vary. In *public defender offices* (government agencies or nonprofit law firms with practices exclusively focused on public defense appointments and with attorneys who work on a salaried basis), for example, shortfalls in financial support may prevent hiring enough practitioners to handle current or expected caseloads. For private practice defenders who may contract with a court system or governmental body to receive a single payment in exchange for representing all new defendants in a jurisdiction over the course of a year (a type of *contract counsel program*), an unexpected increase in prosecutions might turn a reasonable workload into an unmanageable one. And for private counsel who are chosen for appointments as needed from a panel of prequalified attorneys (an *assigned counsel program*), the compensation received for each representation may be so low that accepting far too many cases than is reasonable might be the only way to sustain the financial viability of their legal practices.

The Demands on a Defender's Time

What defines *sufficient time* in the context of representing someone accused of a criminal offense? Looming large in the definition is the fact that lawyers, like doctors, engineers, architects, and accountants, must adhere to ethics rules and practice standards in the performance of their duties. In the United States, these rules are adopted by each jurisdiction's supreme court, as those courts possess regulatory authority over the legal profession, including in licensing and discipline. Typically, the jurisdiction's rules are based on the ABA's *Model Rules of Professional Conduct* (hereafter referred to as the Model Rules).[40] Such rules apply to all attorneys representing those accused of criminal law violations, regardless of whether the representation was the result of a court appointment or whether the client hired the attorney.[41] Ethics opinions interpreting the jurisdiction's rules or the Model Rules also provide guidance. Professional performance is also informed by influential guidance in the form of such practice standards as the ABA's *Criminal Justice Standards for the Defense Function* (hereafter referred to as Defense Function Standards),[42] *Ten Principles of a Public Defense Delivery System*,[43] *Eight Guidelines of Public Defense Related to Excessive Workloads*,[44] and *ABA Standards for*

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[40] ABA, *Model Rules of Professional Conduct*, 2023.

[41] "The Rules provide no exception for lawyers who represent indigent persons charged with crimes" (American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation*, May 13, 2006 (hereafter ABA Formal Opinion 06-441).

[42] Standards 4-1.1 to 4-9.6 (Chapter 4) in ABA, *Criminal Justice Standards*, 4th ed., 2017.

[43] ABA, *Ten Principles of a Public Defense Delivery System*, February 2002.

[44] ABA, *Eight Guidelines of Public Defense Related to Excessive Workloads*, August 2009.

Criminal Justice: Providing Defense Services,[45] as well as the National Legal Aid & Defender Association's (NLADA's) *Performance Guidelines for Criminal Defense Representation* and *Guidelines for Legal Defense Systems in the United States.*[46]

These ethics rules and practice standards impose substantial duties upon defenders when representing any client accused of violating the law. For example, authoritative guidance requires the attorney to meet with the client often in the early stages to establish ground rules; assess the possibility of pretrial release and take steps to obtain the least restrictive release; determine whether there is a sufficient factual basis for criminal charges; interview the client as many times as necessary; hold frank and comprehensive discussions with the client about the short- and long-term consequences of various strategies, decisions, and potential outcomes; and promptly commence and complete an investigation to explore all reasonable avenues that could lead to relevant information.[47] The attorney must also seek and review all relevant materials in the possession of the prosecution, law enforcement, and other sources; retest the prosecution's physical, forensic, and expert evidence when needed; evaluate the client's mental state at the time of the alleged offense and in regard to the client's participation in the adjudication process; analyze relevant law; and fully prepare for all court proceedings and anticipate any possible issues that might arise. Such responsibilities arise in every representation, no matter how it is resolved, and represent only foundational activities prior to disposition.

Adding to these responsibilities are the professional standards and ethics rules that come into play when cases move toward the end stage. In cases in which a plea is offered, for example, standards prohibit counsel from recommending the acceptance of an offer unless a thorough investigation and study of the matter has been completed and the prosecution has been moved to disclose any information that may negate guilt, mitigate the offense, or potentially reduce punishment. In cases that are on a path to trial, a defender's level of effort rises dramatically, and relevant professional guidelines address additional duties that arise from activities related to voir dire through closing argument and, if necessary, post-trial motions. And if sentencing becomes part of the picture, the defender is required to conduct investigations into the background of the client, any possible grounds for mitigation, any collateral consequences that could result from a conviction, the court's usual sentencing practices, and any available potential alternatives to incarceration (if possible, the attorney should also accompany the client to all probation officer interviews related to the sentencing process).

Reading across the practice standards and rules of professional conduct described above, it is clear that "sufficient time" for a defender means more than just being able to appear in court

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[45] ABA, *ABA Standards for Criminal Justice: Providing Defense Services*, 3rd ed., 1992.

[46] National Legal Aid & Defender Association, *Performance Guidelines for Criminal Defense Representation*, 2006; National Legal Aid & Defender Association, *Guidelines for Legal Defense Systems in the United States: Report of the National Study Commission on Defense Services—Final Report*, 1976.

[47] The descriptions of defender responsibilities in this section are largely drawn from the Defense Function Standards (ABA, 2017).

when required to do so, meet with the client only just before key events, skim through the police reports, and discuss possible case resolutions with prosecutors. Importantly, it is simply not possible for a defender to adhere to all the dictates of these mandatory principles in every client matter when that attorney's desk is stacked to the ceiling with the case files of far too many active representations. In these situations, the criminal justice system becomes a zero-sum game, as time spent to fully comply with the letter and spirit of ethics rules and practice standards in one case can mean that the attorney must scale back or completely skip equally important activities in another.

The Requirement to Limit Workloads

To ensure that attorneys have sufficient time to provide each client with representation that meets the ethics rules and practice standards, the Model Rules require all lawyers to limit their workload. Specifically, Rule 1.1 of the Model Rules requires all attorneys to act with competence, while Rule 1.3 requires that all lawyers act with diligence in representing a client.[48] Competence requires not only legal knowledge and skill, but the "thoroughness and preparation reasonably necessary for the representation."[49] In other words, an essential element of competence is time to allow for adequate preparation.[50] For this reason, Comment 2 to Model Rule 1.3 notes that a "lawyer's workload must be controlled so that each matter may be handled competently."[51]

An ABA Formal Ethics Opinion makes clear that these ethics rules apply to public defense attorneys and require them to limit workloads to ensure that they can represent each client with the competence and diligence required.[52] Similarly, the Defense Function Standards state that criminal defense attorneys "should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client's interest in independent, thorough, or speedy representation, or has the potential to lead to the breach of professional obligations."[53] For this same reason, the ABA's *Ten Principles of a Public Defense*

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[48] Model Rule 1.1 is "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation," while Model Rule 1.3 is "A lawyer shall act with reasonable diligence and promptness in representing a client" (ABA, 2023).

[49] Model Rule 1.1 (ABA, 2023).

[50] Model Rule 1.1, Comment 5 (ABA, 2023).

[51] Model Rule 1.3, Comment 2 (ABA, 2023).

[52] "The Rules provide no exception for lawyers who represent indigent persons charged with crimes" (ABA Formal Opinion 06-441, 2006).

[53] Defense Function Standard 4-1.8 (ABA, 2017).

Delivery System require that "[d]efense counsel's workload is controlled to permit the rendering of quality representation."[54]

When an excessive caseload forces a lawyer to choose among the interests of clients, depriving some—if not all—of them of competent and diligent defense services, the situation constitutes a conflict of interest, according to the Model Rules. Although the lawyer may be able to provide reasonably effective assistance of counsel and meet ethical obligations for some clients, doing so requires the lawyer to sacrifice duties owed and the provision of effective assistance to other clients. In this situation, "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client."[55]

The rules of professional conduct adopted by a jurisdiction are binding and enforceable. Failure to meet these obligations can result in damaged reputations; professional discipline, including suspension or disbarment; or court sanctions.[56] Practice standards, on the other hand, are not binding, but neither are they solely aspirational, as they have been cited by the U.S. Supreme Court as "important guides" in evaluating claims of ineffective assistance of counsel.[57] Indeed, the U.S. Supreme Court has specifically identified the Defense Function Standards as "valuable measures" of prevailing professional norms.[58] Failing to provide effective assistance of counsel can also result in lawsuits for civil damages for legal malpractice and/or the unjust punishment of a client who deserved nothing less than competent and dedicated counsel but instead received substandard representation.

Addressing Excessive Caseloads

The Model Rules, ethics opinions interpreting them, and practice standards all address what must be done when the volume of appointments rises to critical levels. ABA Ethics Opinion 06-441, for example, describes the steps an attorney must take to address an excessive caseload as follows:

> If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is

[54] Principle 5 in ABA, 2002, p. 2.

[55] Model Rule 1.7(a)(2) (ABA, 2023).

[56] See, e.g., Order, *In re Karl William Hinkebein*, No. SC96089, Mo. September 12, 2017, which suspended a public defender for missing multiple deadlines due to excessive workload, staying suspension and placing the public defender on probation for one year.

[57] *Missouri v. Frye*, 566 U.S. 134, 145, 2012.

[58] *Padilla v Kentucky*, 559 U.S. 356, 367, 2010. See also Defense Function Standard 4-1.1(b): These standards "may be relevant in judicial evaluation of constitutional claims regarding the right to counsel" (ABA, 2017).

> representing a client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation.[59]

The Defense Function Standards similarly warn counsel to stop accepting new appointments when workloads become problematic:

> Defense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client's interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations. A defense counsel whose workload prevents competent representation should not accept additional matters until the workload is reduced and should work to ensure competent representation in counsel's existing matters. Defense counsel within a supervisory structure should notify supervisors when counsel's workload is approaching or exceeds professionally appropriate levels.[60]

And to the extent that time spent on one case reduces the time available to spend on another, the Model Rules mandate that a "lawyer shall not represent a client if the representation involves a concurrent conflict of interest," defining such conflicts to include situations in which "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."[61] When concurrent conflicts of interest do arise, the lawyer is required to ask the court for leave to withdraw from the representation.[62]

Despite these clear ethical and performance mandates, relatively few public defense attorneys laboring under excessive workloads have taken the corrective steps available to them to rapidly reduce the size of their caseloads.[63] There may be many reasons for this. For example, attorneys working in legal environments in which overload has been the norm for years may not recognize those workloads as excessive or realize that there are systemic professional and ethical shortcomings in the way they have been providing public defense services to their clients. If receiving offers and urging clients to plead at first appearance before investigation has been the norm, attorneys in the system may not recognize the practice as problematic. Attorneys may also believe that there are no competent counsel who can be appointed in their stead. For example, in smaller counties, the supply of attorneys with adequate criminal defense experience who could accept appointments may be limited. Even if qualified replacement counsel might eventually be found, public defense attorneys may be hesitant to suspend appointments or withdraw when the

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[59] ABA Formal Opinion 06-441, 2006, p. 1.

[60] Defense Function Standard 4-1.8, Appropriate Workload (ABA, 2017).

[61] Model Rule 1.7(a)(2) (ABA, 2023).

[62] Model Rule 1.16(a)(1) (ABA, 2023).

[63] Stephen F. Hanlon, "Case Refusal: A Duty for a Public Defender and a Remedy for All of a Public Defender's Clients," *Indiana Law Review*, Vol. 51, 2018. But see also Conrad Wilson, "Oregon's Largest Public Defense Firm Stops Taking Washington County Cases as Crisis Deepens," Oregon Public Broadcasting, March 2, 2022.

impact may be increased numbers of defendants who languish in custody without the assistance of an advocate and whose case dispositions are unjustly delayed.

Regardless of the reasons why grossly overworked defenders fail to control their caseloads, such inaction runs afoul of ethics rules and professional guidelines. At the same time, efforts of individual overworked defenders to decline new appointments or to withdraw from existing ones are often analogous to applying tourniquets to injuries suffered in an automobile collision: Although the emergency aid certainly stops the bleeding during a crisis and helps keep the victim alive, the far better strategy would have been to *prevent* the accident in the first place.

In the context of public defense delivery systems,[64] a strategy to prevent excessive caseloads will succeed only if such systems have reliable means for estimating the numbers of attorneys that will be needed to provide competent and effective representation given the frequency and nature of existing and future case appointments.[65] Predicting necessary attorney levels long before actual need is required because the funds for supporting the provision of public defense counsel are governmental in origin and therefore are likely tied to rigid budget cycles that can require long-range advance planning and discourage mid–fiscal year financial and personnel augmentations. In addition, it can take months to identify appropriate candidates for positions with public defender offices or private law firms specializing in public defense, navigate the hiring process, and onboard the new attorneys; the lengthy process makes on-the-fly adjustments to office size impractical. Only by employing functional tools for making such predictions can a public defense delivery system "inform governmental officials of the workload of their offices, and request funding and personnel that are adequate to meet the defense caseload" as required by the Defense Function Standards.[66]

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[64] We define a *public defense delivery system* as the authority or group of authorities that define the means and mechanisms of how counsel are to be appointed at full or partial public expense to represent individuals within a defined geographical or jurisdictional area, as well as the management and staff in government agencies, law firms, and solo practices that supply such counsel. An example would be a system addressing the right to counsel in the trial courts of a single county. This would include the Board of Supervisors that established and funds the public defender office charged with providing most of the county's public defense services, the public defender office itself, the courts that appoint and compensate private counsel as needed from a panel of attorneys when the county's public defender office has a conflict or is unavailable for any other reason, the county bar association that manages the conflict panel membership and assignments, and the attorneys themselves who accept appointments. All of these individuals and entities have a shared responsibility for ensuring that appointed counsels' caseloads are not excessive and for reporting when they are, although in this example, the Board of Supervisors (by determining the size of the public defender office's annual budget) and the courts (by setting the fee schedule for panel appointments) would have primary control over the system's resource availability.

[65] To be precise, the estimates would be for the number of full-time equivalent (FTE) attorneys and not simply the number of individual defenders.

[66] Defense Function Standard 4-1.8(c) (ABA, 2017).

Case Weights and Caseload Standards

The modern approach to estimating future public defense counsel needs begins with calculating *case weights*. Such weights express attorney workload in terms of the average amount of time required to represent clients in cases of a particular type, such as second-degree homicides. The averages are based on all cases regardless of disposition, including, for example, those that went to trial, those in which a plea was entered, and those that were dismissed. For example, the weight for high-severity felony cases might be 40 hours, which would be the sum of all defense attorney time likely to be needed for all high-severity felony appointments accepted over a single year divided by the number of those appointments. With such information, a public defense system can estimate how much attorney effort might be needed over the course of a year. Assume that a system projects to receive an annual caseload of 1,000 high-severity felony appointments. A case weight of 40 hours for those cases indicates a need to have enough attorneys to provide 40,000 hours (1,000 × 40) of case-related time. Similarly, if low-level misdemeanors have a weight of ten hours and a projected annual caseload of 3,000 appointments in this same system, the projected weighted caseload of 30,000 for these types of cases would still be less than that of the high-severity felonies in this example, despite having three times as many appointments.

It should be noted that the focus here is on time that is *likely to be needed* rather than *likely to be expended*, which is an important distinction in the context of public defense. Although a relatively rare practice at the state trial court level, some defenders keep detailed records of their case-related time expenditures.[67] An analysis of such information for the purpose of calculating average hours spent in distinct types of representations would be a straightforward task, but the averages that result may reflect constraints on practitioners arising from excessive workload levels. If used for personnel planning, case weights that simply mirror existing conditions could lock in imbalances between caseload demands and attorney availability for years to come. As we will discuss more fully later, one of the primary challenges of creating functional public defense case weights is to move away from simply documenting current time expenditures, and instead develop values that truly reflect time necessary to provide assistance of counsel in a manner that complies with applicable ethics rules and practice standards.

Even with sufficient attention paid to both estimating need and arranging for the necessary attorney supply, the provision of legal services is never completely predictable. Prosecutorial initiatives, changes in substantive and procedural laws, shifting law enforcement priorities and

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[67] In assigned counsel programs where panel attorneys can be compensated on an hourly basis, submitting vouchers containing information about hours expended is common, although such submissions many be required only in instances where the attorney is seeking reimbursement in excess of a presumptive fee cap. See, e.g., 94-649-301 Maine Administrative Code § 4. Even if every assigned counsel appointment produced detailed information about time expenditures, the nature of the cases to which such attorneys are typically appointed may be quite different from what others, such as attorneys in the local public defender office, in the same jurisdiction handle. Case weights are best calculated using information obtained from *all* public defense counsel in the jurisdiction of interest.

resources, and other factors can influence the number and types of new case filings over the course of a year, which, in turn, influence how many defenders need to be available to accept the appointments that result and be able to provide competent and effective representation to their clients. Moreover, the additional workloads that arise from fluctuations in new appointments are unlikely to be evenly distributed across a state, can vary greatly across defense providers within a county, and may not be balanced across individual defenders within a public defender office or private law firm. Furthermore, the supply of attorneys available to provide professional public defense services in a region or in a provider organization can change unexpectedly over time because of retirements, health absences, career shifts, law firm dissolutions, and other reasons. The result may be that a public defense delivery system that did its due diligence, realistically estimated future demands for services that met ethics rules and professional standards, and made all necessary financial and personnel arrangements in advance can still wind up with excessive caseloads systemwide, in certain regions or offices, or for individual attorneys.

For these reasons, a public defense delivery system also requires a means for determining whether current caseloads may be reaching potentially troublesome levels. A useful way to compare how the nature and frequency of representations relate to a defender's available time is through the use of *caseload standards*, which specify the maximum number of appointments recommended for a single type of case over a period of time, usually a 12-month span. The use of caseload standards is based on the premise that new cases beyond that maximum are likely to impede the delivery of representations that meet current professional and ethical guidance. Such standards may be applied to individual attorneys (e.g., no more than 46 high-severity felonies or 100 low-severity felonies or 280 misdemeanors per year) or to an entire public defender office, law firm, or other provider organization (e.g., no more than an average of 46 high-severity felonies per attorney). Although caseload standards appear simple in isolation, more-complicated analyses are required to implement them in the real world, where an attorney or a public defense organization handles many types of cases and where appointments are constantly accepted. A crude example of such an application might involve a set of standards in which the maximums limit annual appointments to 46 high-severity felonies or 100 low-severity felonies or 280 misdemeanors. Proportional application of these example standards would mean that an attorney who received a total of 23 high-severity felonies (50 percent of the annual standard for these types of cases), 20 low-severity felonies (20 percent of the standard), and 84 misdemeanors (30 percent of the standard) had reached the caseload cap.

It is important to keep in mind that caseload standards are simply one means of identifying when workload levels may be negatively affecting representations. Attorneys with particularly challenging cases and clients or attorneys with relatively modest levels of experience, for example, may be shouldering excessive workloads despite having caseload counts that are far under the recommended ceilings. Knowing when this point may have been reached requires attorneys to freely communicate their concerns to office management; in turn, such management needs to monitor staff morale, work closely with attorneys who may need additional guidance

and support, and regularly inquire as to whether staff are reducing or deferring potentially helpful activities and strategies for the simple reason that not enough time is available. It is also possible that a seasoned attorney who has a caseload consisting of relatively straightforward matters can exceed the annual standard but still be able to faithfully adhere to all prevailing professional norms in each case. The standard serves as a canary in a coal mine, a warning to supervisors to review and assess the attorney's caseload more closely. It should be noted that caseload standards are sometimes misinterpreted as a sort of case count "target" for defenders to strive for when accepting new clients. Rather, they are presumptive caps on appointments, not a measure of optimal caseload levels; they also are not tools for evaluating attorney quality, competency, or efficiency.

Together, case weights and caseload standards in the context of public defense can be thought of as examples of *workload standards* because they both involve measurements related to the amount of work (usually in terms of hours of time spent) defenders perform in the furtherance of their duties. In the following section, we describe early attempts to develop workload standards for public defense delivery systems and how such efforts have evolved over the ensuing years.

The Emergence of Public Defense Workload Standards

Early Development

Court systems appear to have been the first justice system organizations to employ the concept of case weights to assess staffing needs (here, the weights would be based on average time expenditures when judges are assigned to distinct types of cases, such as trademark disputes, personal injury torts, or bank robbery prosecutions). For example, the first studies of the federal courts that used case weights for assessing workload date back to 1946, and the Administrative Office of the U.S. Courts has relied on weighted caseload analyses for indicating when new federal district court judgeships might be needed since 1962.[68]

Use of case weighting approaches in public defense during the 1960s, 1970s, and early 1980s was far more muted, in part because, at the time, a key component of the information needed to develop case weights—reliable case-level data on attorney time expenditures—did not exist (routine defender timekeeping requirements were rare) or because collecting these data would require the expenditure of financial resources and staff time that thinly budgeted systems did not possess. Assessments of defender services were certainly conducted during this period, but the focus was usually on refining practices and procedures to make the provision of counsel more efficient and cost-effective (i.e., less expensive for the funding entity) rather than on estimating

[68] Gordon Bermant, Patricia A. Lombard, and Elizabeth C. Wiggins, "A Day in the Life: The Federal Judicial Center's 1988–1989 Bankruptcy Court Time Study," *American Bankruptcy Law Journal*, Vol. 65, 1991, pp. 495–496; Robert W. Gillespie, "Measuring the Demand for Court Services: A Critique of the Federal District Courts Case Weights," *Journal of the American Statistical Association*, Vol. 69, No. 345, 1974, p. 38.

necessary attorney levels.[69] Although there was academic discussion about how statistical techniques that had been developed for court planning could be applied to public defense, there were not many examples of actual use.[70] Even by the mid-1980s, the technical capabilities of such providers to make use of case weights were called into question by a team of experts in justice system organizations who noted that the lawyers usually in charge were "not trained as managers and administrators" and, in the team's experience, "weighted caseload formulas, complex procedures for monitoring caseload, and complicated data collection and maintenance processes are often too sophisticated for use in the typical defender agency."[71]

The National Advisory Commission Caseload Standards

Given the relative inexperience of system administrators with case weighting and other sophisticated planning tools, the publication in 1973 of a proposed set of caseload standards for defenders would have been welcomed by public defense delivery systems looking for some sort of easy-to-use guidance in controlling workloads. The National Advisory Commission on Criminal Justice Standards and Goals (NAC) was funded by the Law Enforcement Assistance Administration (LEAA), a unit of the U.S. Department of Justice at the time, to conduct a comprehensive review of the criminal justice system in the United States. The NAC's work was the combined product of 12 task forces, each of which was focused on a single subject-matter area, such as the police, corrections, drug abuse, or juvenile delinquency. One such working group (the Courts Task Force) explored a variety of issues related to criminal case processing in state and federal courts. One of the 15 chapters of its final report described the standards the Courts Task Force had adopted for publicly financed representations in criminal cases, perhaps most famously regarding a set of presumptive limits on defender caseloads:

> Standard 13.12 Workload of Public Defenders
>
> The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

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[69] For a comprehensive list of public defense delivery system studies conducted during the 1970s and early 1980s, see the annotated bibliography in Section VI, "State-by-State Listing of Technical Assistance Reports, Evaluations, and Studies of Defense Services," in Richard J. Wilson, *Indigent Defense Resources: An Annotated Bibliography of Materials on Indigent Defense Systems, Including a State-by-State Listing of Reports and Studies*, American Bar Association, undated.

[70] See, e.g., Harold S. Jacobson, *Forecasting Caseload, Workload, Costs: A Primer for Defenders*, National Center for Defense Management, 1979. This source describes judge-focused methods employed by the Federal Judicial Center, California's Administrative Office of the Courts and its Judicial Council, and the Michigan Circuit Courts, as well as some experimental applications in the public defense context.

[71] Robert L. Spangenberg, Patricia A. Smith, Nancy Ames, Ronald L. Brandt, A. David Davis, Kathleen Floyd, and Robert Rosenblum, *Maximizing Public Defender Resources: Management Report*, Abt Associates Criminal Defense Group, July 1983, pp. 2, 4.

> For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for postjudgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.[72]

The NAC did not independently develop these caseload limits, but instead acknowledged that it had adopted a set previously agreed to by a defender committee at a 1972 NLADA conference.[73] The specific process that yielded the caseload standards was not well documented, but however they were developed, the NAC standards were not without precedent. The Commission noted in its commentary to Standard 13.12 that there had been prior attempts to estimate maximum defender caseloads, identifying the 1966 Airlie House report that described a survey-based estimate of an upper bound of 150 annual felonies for what were characterized as "efficient appearances," while estimates for misdemeanors ranged from about 300 to 1,000 maximum cases.[74] The commentary also described the findings of a 1967 report from the Johnson Administration's President's Commission on Law Enforcement and Administration of Justice that suggested that lawyers with adequate investigational capacity could effectively represent 150 to 200 felonies per year or 300 to 400 serious misdemeanors.[75] Not mentioned in

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[72] NAC, *Courts*, 1973, p. 276.

[73] NAC, 1973, p. 277.

[74] For example,

> On the basis of a crude survey of present practice, it is estimated that a public defender (meaning someone who works full-time on the defense of criminal cases) can efficiently appear in 150 felony cases per year, although some thought that optimally this figure should be substantially lower. Estimates of the number of misdemeanor cases which a defender could handle efficiently ranged from less than 300 per year to nearly 1,000 per year depending on local circumstances (*Report of the Conference on Legal Manpower Needs of Criminal Law*, 41 F.R.D. 389, 393, 1966).

[75] According to the Task Force on Administration of Justice, The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Courts*, U.S. Department of Justice, 1967, pp. 55–56,

> The experience of several defender offices that restrict their caseloads to ensure thorough preparation of cases indicates that a full-time lawyer with the support of adequate investigative services could effectively represent between 150 and 200 felony defendants each year. . . . Using the Airlie House estimates as a starting point, one may assume that each year a single lawyer working full time could provide representation in 300 to 400 serious misdemeanor cases, in 1,200 social nuisance cases, or in 600 of the remaining misdemeanor cases.

The felony estimates appear to be drawn from a separate paper in Appendix D of the Task Force report:

> Limited available information on the actual caseloads of defender offices indicates that one lawyer can handle 150 felony cases a year with a fair degree of thoroughness, at least in an office located in a large city where the staff consists of several full-time lawyers. Indeed, some defender offices have case loads considerably larger than this figure (Lee Silverstein, "Manpower Requirements in

the Court Task Force's report but presumably known to those with a keen interest in public defense policy at the time were the early findings of the 1972 NLADA-led and LEAA-funded National Defender Survey. This survey collected information from 650 state court-level defender agencies and offices in such areas as attorney resources and availability, average attorney caseload size, and the opinions of chief public defenders as to "maximum effective caseloads" for full-time felony or misdemeanor defenders.[76]

It is difficult to overstate the impact that the NAC standards have had on public defense, even if decades later it remains easy to identify many delivery systems where appointed counsel have caseloads far above the recommended limits.[77] Three notable events helped cement the NAC standards into the foundation of public defense planning: their implicit approval by the NLADA-convened National Study Commission on Defense Services in 1976,[78] their citation by the ABA in 2002,[79] and their utilization by the American Council of Chief Defenders (ACCD) in its workload policy in 2007.[80] These actions not only provided an imprimatur of authority to the NAC caseload maximums but also generated some confusion about their actual origin. (References to the "NLADA standards," "ABA standards," or "ACCD standards" in regard to the 150 felony and 400 nontraffic misdemeanor annual caseload caps originally adopted by the NAC are common in public defense-related literature.)

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the Administration of Criminal Justice" in Task Force on Administration of Justice, The President's Commission on Law Enforcement and Administration of Justice, 1967).

This paper was also submitted to the 1966 Conference on Legal Manpower Needs of Criminal Law convened at Airlie House in Warrenton, Virginia.

[76] The final report of the survey can be found in Laurence A. Benner and Beth Lynch-Neary, *The Other Face of Justice: A Report of the National Defender Survey Funded by the Law Enforcement Assistance Administration of the U.S. Department of Justice*, National Legal Aid and Defender Association, 1973. See also Singer, Lynch, and Smith, 1978, for selected results from the National Defender Survey.

[77] Studies suggest that many public defense delivery systems are not in compliance with NAC standards. For example, a major survey of nearly 1,000 public defense offices concluded that if the standards are used as the benchmark, 73 percent of the county-based organizations had insufficient numbers of litigating attorneys to handle the cases received in 2007 (Donald J. Farole, Jr., and Lynn Langton, *Census of Public Defender Offices, 2007: County-Based and Local Public Defender Offices, 2007*, Bureau of Justice Statistics, September 2010, pp. 8–10).

[78] According to National Legal Aid & Defender Association, 1976, Guideline 5.1, Establishing Maximum Pending Workload Levels for Individual Attorneys, "Caseloads should reflect national standards and guidelines." Given that there were no national caseload standards other than the NAC maximums at the time, this National Study Commission on Defense Services' guideline effectively constituted a de facto adoption. See also National Legal Aid & Defender Association, *Model Contract for Public Defense Services*, February 2000, Section VII.E: "It is agreed that the Agency will maintain average annual caseloads per full time attorney or full time equivalent (FTE) no greater than the following: Felony Cases 150 Misdemeanor Cases 400 . . . ."

[79] "National caseload standards should in no event be exceeded" (ABA, 2002, Principle 5, Defense Counsel's Workload is Controlled to Permit the Rendering of Quality Representation; citing the numbers in NAC Standard 13.12).

[80] "The ACCD recommends that public defender and assigned counsel caseloads not exceed the NAC recommended levels of 150 felonies, 400 non-traffic misdemeanors, 200 juvenile court cases, 200 Mental Health Act cases, or 25 non-capital appeals per attorney per year" (American Council of Chief Defenders, *American Council of Chief Defenders Statement on Caseloads and Workloads*, August 24, 2007).

The NAC standards received considerable attention following their original publication and were often adopted with minor modifications by organizations and governmental agencies involved in making public defense policy.[81] Given that there were few other authoritative statements at the time that likewise described numerical limits on caseloads, the NAC standards were welcome news in the 1970s and beyond to defenders dealing with the consequences of excessive workloads.[82] The standards also greatly simplified the mathematics of resource planning in the absence of more-nuanced information about case type–specific workload. As a first-order approximation, a public defense delivery system that projected an annual felony caseload of 3,000 appointments and that considered the NAC standards instructive could assume that at least 20 full-time attorneys would be needed for those new cases (3,000 ÷ 150 felonies per year).[83] A public defense delivery system without the resources to perform more-complex resource assessments would find the new standards to be an attractive alternative.[84]

Despite being a product of the early 1970s (and arguably with roots that go back to the mid-1960s), the NAC standards remain the default option for many policymakers considering limits on defender caseloads. Within the past decade, for example, the felony and misdemeanor ceilings were adopted, reaffirmed, or used as a foundation for caseload assignments by state public defense commissions, state public defender offices, state bar associations, or the judiciary in Washington (2015), Indiana (2016), Wyoming (2016), Ohio (2019), Oregon (2021), Michigan (2021), and New York (2021).[85] And even in states where the NAC standards have no formal

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[81] See, e.g., Appendix K, Public Defender Workload Standards, in Robert L. Spangenberg, Jennifer W. Riggs, Jennifer M. Saubermann, David J. Newhouse, and Marea L. Beeman, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services*, The Spangenberg Group, June 16, 2006. This appendix describes NAC-like standards adopted in Arizona, Florida, Georgia, Indiana, Louisiana, Massachusetts, Minnesota, New York City, Vermont, Washington, and Wisconsin between 1984 and 1996. Some guidelines were later dropped or revised.

[82] The 1972 National Defender Survey reported that average caseloads of full-time attorneys with exclusive felony practices in 29 percent of responding public defender offices exceeded 200 cases per year, and in 7 percent of the offices, the averages exceeded 300 annual cases. A similar survey conducted in 1975 indicated that 18 percent of the responding public defender offices reported annual averages for full-time felony attorneys exceeding 200 cases, and annual averages for full-time misdemeanor attorneys exceeded 400 cases in 29 percent of the offices (almost half of the offices reported that at least one attorney had an annual misdemeanor caseload of more than 900 cases). Singer, Lynch, and Smith, 1978, pp. 50–53.

[83] *At least* is an important modifier because resource planning that uses the upper bounds for caseloads as the target values for attorney assignments is at immediate risk of excessive workloads. A public defense delivery system with 20 attorneys shouldering an annual caseload of 3,000 felonies would already be at the NAC ceiling with no room to spare.

[84] It should be noted that there were public defense delivery systems during the 1970s and 1980s that embraced the idea of caseload standards but chose to develop their own rather than adopting a version of the NAC limits. A 1983 review of some of the homegrown standards that were in effect in 1981 led the authors of the review to conclude that where "standards do exist, many appear to be informal and based upon guesswork of the chief public defender" (Spangenberg et al., 1983, p. 67).

[85] The values shown here are for annual felony and misdemeanor limits on full-time attorneys (either for individuals or for per-attorney averages across an organization). The limits for Washington are 150 felonies or 300 or 400 misdemeanors depending on the jurisdiction (*Washington State Superior Court Criminal Rules*, Rule 3.1 Stds,

standing, media articles discussing workload pressures in public defense and statements made by public defense administrators repeatedly imply that they remain the generally accepted upper bounds defining when the number and types of cases a defender represents are clearly excessive, although as noted previously, the source of the standards is variously attributed to the NAC, NLADA, ABA, ACCD, or simply described as "national."[86] Clearly, the half-century-old NAC caseload standards are still very much in play in 2023.

Standards for Indigent Defense, Standard 3.4, 2015). For Indiana, the limits are 150 felonies or 400 misdemeanors for offices with "adequate support staff," 120 felonies or 300 misdemeanors for office without (Indiana Public Defender Commission, *Standards for Indigent Defense Services in Non-Capital Cases*, Standard J, 2016). For Wyoming, the standards are 150 felonies or 400 misdemeanors (Office of the Wyoming State Public Defender, *Office of the State Public Defender Excessive Caseload Policy*, adopted June 20, 2016). For Ohio, the standards are 150 felonies or 400 nontraffic misdemeanors (Ohio Administrative Code Rule 120-1-07, 2019). For Oregon, the limits are as follows:

> Each FTE contract attorney is obligated to take an annual caseload consistent with 115% of the 1973 ABA caseload standards, which provide that an attorney can handle 400 misdemeanors per year or 150 felonies per year, thus obligating our attorneys to provide legal services in 460 misdemeanors per year, 173 felonies per year, or some combination thereof. (Oregon Public Defense Services Commission, *Public Defense Services Commission Legislatively Adopted Budget: 2021–23 Biennium*, undated, p. 321)

For Michigan, the limits are 150 felonies or 400 nontraffic misdemeanors until more Michigan-specific standards are approved (Michigan Indigent Defense Commission, *Minimum Standards for Indigent Criminal Defense Services*, Proposed Standard 6, Indigent Defense Workloads, 2021. In New York, local workload standards shall not exceed the NAC "national workload standards" of 150 felonies or 400 misdemeanors (Committee on Mandated Representation, *2021 Revised Standards for Providing Mandated Representation*, New York State Bar Association, Standard G-2, 2021). See also *Rules of the Chief Administrative Judge* Section 127.7, 2010: 150 felonies or 400 misdemeanors for New York City defenders.

[86] Some examples are as follows: "The National Advisory Commission on Criminal Justice Standards and Goals recommends each public defender handle no more than 150 felonies per year" (Will Langhorne, "Covid, Chronic Underfunding Pose Ethical Dilemmas for Arkansas' Public Defenders," *Arkansas Democrat Gazette*, February 6, 2022); "That's above a national recommendation of 150 felony cases per year" (Titus Wu, "Kansas' Public Defenders, Already Overburdened, Adapt to Pandemic," *Topeka Capital-Journal*, October 19, 2022); "It creates another obstacle in the system's adhering to guidelines of the National Legal Aid and Defender Association, which recommends that no one attorney handle more than 150 felony cases or more than 400 misdemeanor and traffic cases in any given year" (Trevor Brown, "Law Giving More Defendants Lawyers Has Downside," Oklahoma Watch, webpage, October 28, 2019); "National standards recommend that public defenders handle no more than 150 felony cases in a year" (Deirnesa Jefferson, "Overworked and Underpaid: a Public Defender Crisis," CBS 4 News, February 12, 2019); "The [NAC] suggests each lawyer should have no more than 150 felony cases or 400 misdemeanor cases per year. Crowell said his attorneys average about 150 cases at a time" (Ashley Zavala, "KRCG 13 Investigates: Some Rural Judges Are Resistant to State Public Defender Problems," CBS 13 KRCG, May 21, 2018); "The American Bar Association recommends 150 felony cases or 400 misdemeanor cases per full-time attorney" (Danielle Ferguson, "As Murder Cases Mount, County Attorneys Struggle to Keep Up," *Argus Leader*, March 3, 2018); "The Executive Director [of the State Board of Indigent Defense Services] stated the most immediate problem is caseloads. The standard set by the [NAC] is to have no more than 150 felony cases, 400 misdemeanor cases, or 25 appeals per year per attorney. . . . The Executive Director stated in [fiscal year] 2020, the public defender offices had to turn down new cases in order to maintain a caseload of 150 felony cases per attorney per year" (Kansas Criminal Justice Reform Commission, *Report of the Kansas Criminal Justice Reform Commission to the 2021 Kansas Legislature*, November 2020); and "In 1973 the [NAC] recommended that public defender caseloads be set at no more than 150 felonies, or 400 misdemeanors. . . . [New Hampshire Public Defender] subscribes to [the ABA's] position that, while those 'national guidelines' should never be exceeded, defense counsel's workload should be controlled in such a way as to permit the rendering of quality defense." (New Hampshire Public Defender, *Proposal to Provide Statewide Public Defender Service*, March 28, 2019).

At the same time, the NAC standards have been the subject of continuing criticism, almost from the moment they were published.[87] A 1978 study of indigent defense systems in the United States, for example, suggested that the thresholds seemed high: "Indeed, one is hard put to imagine carefully investigating every case, as is required by American Bar Association Standards Relating to the Defense Function, if the lawyers are handling 150 felony cases per year, or 400 misdemeanors per year."[88] Decades later, many modern observers have also asserted, based on their own experience working in public defense, that many of the NAC caseload limitations are simply too high and permit a defender to take on an excessive workload.[89]

The NAC standards have also been criticized for dividing all public defense representations into just a handful of overly broad categories, an approach that in the context of the felony standard, for example, would presumably ignore significant differences between defending a client on a charge of aggravated homicide and a simple accusation that a motor vehicle's odometer was intentionally altered. Additionally, other common case types, such as probation violations, are not listed at all.

Besides their age, the most pertinent criticism of the NAC standards is that they lack any formally documented basis for the recommended caseload maximums, which have been variously described as the product of "educated guesses,"[90] "loosely" based on the elicitation of expert opinion,[91] and a reflection of the "wisdom of the elders."[92] It is not quite true that the standards were without any foundation; as described previously, they were informed to some unknown degree by prior estimates of recommended caseload maximums. But evidence exists that the final numbers adopted by the NAC were at least partly shaped by considerations of how

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[87] A detailed critique of the NAC standards' development can be found in Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, American Bar Association, 2011, pp. 43–49. Lefstein later explicitly recommended that "[p]ublic defender agencies and programs that furnish private lawyers to provide indigent defense representation should not rely" on the NAC standards (Norman Lefstein, *Executive Summary and Recommendations: Securing Reasonable Caseloads—Ethics and Law in Public Defense*, American Bar Association, 2012, p. 34). He also noted that "the Missouri State Auditor recently rejected as invalid the Missouri State Public Defender's caseload crisis protocol based substantially on caseload numbers recommended by the NAC" (Lefstein, 2012, p. 35). For more information about the State Auditor's decision, see Thomas A. Schweich, *Missouri State Public Defende*r, October, 2012, pp. 11–21.

[88] Singer, Lynch, and Smith, 1978, p. 52.

[89] For example, "[m]any of us don't consider [the standards] to be realistic if you expect quality representation" (John Gross, National Association of Criminal Defense Lawyers, as quoted in Jaeah Lee, Hannah Levintova, and Brett Brownell, "Charts: Why You're in Deep Trouble If You Can't Afford a Lawyer," *Mother Jones*, May 6, 2013).

[90] State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems*, Office of Legal Services, Access and Fairness Programs, 2006, p. 26.

[91] The Spangenberg Group and the Center for Justice, Law, and Society, George Mason University, *Assessment of the Washoe and Clark County, Nevada Public Defender Offices: Final Report*, July 1, 2009, p. 21.

[92] Hunter Hurst III, "Workload Measurement for Juvenile Justice System Personnel: Practices and Needs," Juvenile Accountability Incentive Block Grants Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, November 1999, p. 4.

the standards would be accepted by the larger criminal justice community.

Marshall Hartman, one of the drafters of the section of the NAC report that contained the standards related to indigent defense and NLADA's National Director of Defender Services at the time, later described in an interview how the caseload standards came to be after the NAC Courts Task Force (with just one defender among its 15 members) indicated that it would independently decide on a set of recommended numerical limits (we have lightly edited the transcript of the following interview for clarity):[93]

> Marshall Hartman: There was some caseload standards and the [Courts Task Force] was going to vote on what the caseload standards ought to be for us. I said to the task force people . . . gentlemen, 'you've approved the concept, why are you now voting on the numbers? I'll tell you what the numbers ought to be.' They said well, how can you do that? I said well, I met with the defender committee of NLADA just a month ago and reviewed with them what the numbers of the caseload ought to be and they are nine people from all over the country and they all had some experience in the field and what I will present to you is not my figures but what the defender committee of NLADA has approved.
>
> At that point, I dictated to the task force the numbers of 150 felonies per lawyer per year as a maximum, 400 misdemeanors, 200 juvenile, 25 appeal. And that's how those went right in. I just dictated it right to the task force, they wrote it down. I think chutzpah is the word that comes to mind . . . gall.
>
> Interviewer: . . . off the top of your head at that point did you . . .
>
> MH: No, I had really, I told the truth, I had brought that to the [NLADA] defender committee a month or two before the defender committee meeting, however, I had made them up in the first place based upon some earlier things that I read. For example, there had been some conference at [Airlie House] where they had talked about 150 felonies—no empirical data for it—and 1,000 misdemeanors. I thought that was ridiculous, 1,000 misdemeanors and I thought 400 was high, plus we had figures from the [1972 NLADA National Defender Survey] that came in and that survey talked about what people did in the country and actually . . . it was pretty close, what people were doing was about 142 felonies per year per lawyer and somewhere between 300–500 misdemeanors if I remember exactly. They[94] said there ought to be . . . 100 felonies per year per lawyer and 300 misdemeanors per lawyer but I used the higher figures figuring I could justify [using the findings of the Airlie House Report] and I couldn't sell anything better. And on 25 appeals I made that up based on my experience in Cook County as head of the appeals division. Nobody could do two appeals per month in Cook County. . . . But there is [a] goal we could work for. Some other people talked about 90 appeals per lawyer per year, people who had never done it.
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> INT: Who was on the defender committee at that time?

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[93] James Neuhard, *National Equal Justice Library Oral History Collection Interview with Marshall Hartman, Parts 1 and 2*, Georgetown University Law Library, 1990.

[94] *They* likely refers to those involved in the 1972 NLADA National Defender Survey.

> MH: Jim Dougherty from Cook County, Rollie Rogers from Denver, Colorado, a very fine defense lawyer, Terry McCarthy who is a federal defender may have been on at that time. . . .
>
> INT: What year?
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> MH: Ah '72. Because the advisory commission conference was in '73. In any event, they all approved it and so I had some basis.

As the transcript suggests, the empirical foundations of the NAC caseload standards are not compelling ones. But it should be kept in mind that the recommended case ceilings were the product of an era when only very limited information was available to policymakers and public defense administrators about the state of indigent defense in this country. In the absence of reliable, comprehensive information that would inform the development of caseload standards, and especially in the absence of any rigorously conducted standards efforts in the past to draw on, an "educated guess" approach managed by a knowledgeable and experienced leader may have been seen as an efficient and expedient means for producing a much-desired set of numerical limits. That said, continued reliance on the NAC standards is clearly misplaced in an age where more defensible approaches for measuring workload requirements exist.

Weighted Caseload Analyses

Analyses of state court trial-level public defense delivery system data that at least discussed the use of a weighted caseload approach were published in the late 1970s and 1980s, although they were generally quasi-experimental in design, were performed only for demonstration purposes, or were not intended to be used by a specific defense system for its resource planning.[95] While there may have been unreported applications of weighting models by public defense systems, perhaps the earliest published reports of workload studies clearly based on a case weighting model arose out of work led by Robert L. Spangenberg and conducted for the offices of the state public defenders in Wisconsin (1990) and Minnesota (1991),[96] as well as for the New York Legal Aid Society's Criminal Division (1989).[97] In the years that followed, the

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[95] See, e.g., William M. Rhodes, Richard Hildenbrand, Jack Hausner, and Terence Dungworth, *Case Weights for the Prosecution and Defense of Felony Cases in Los Angeles County (California)—Final Report*, Institute for Law and Social Research, 1979. That source describes an attempt to use attorney timekeeping information and data maintained in a computerized case management system to develop case weights for both prosecutors and public defenders. The values derived for the defense weights were felt to be questionable because of a lack of cooperation from the public defenders in the data collection phase. See also Joan E. Jacoby, *Case Weighting Systems for the Public Defender: A Handbook for Budget Preparation*, National Legal Aid and Defender Association, 1985, which used data from public defender agencies in Honolulu, Hawaii; Lincoln, Nebraska; and Nashville, Tennessee, to describe how weighted caseload analyses could work. Also see Paul Ligda, "Defender Workloads: The Numbers Game," *NLADA Briefcase*, Vol. 34, No. 1, 1976, pp. 23–25, which analyzed work-hour data from a county public defender office for comparison with estimates from other jurisdictions.

[96] The Spangenberg Group, *Caseload/Workload Study for the State Public Defender of Wisconsin*, 1990; The Spangenberg Group, *Weighted Caseload Study for the State of Minnesota Board of Public Defense*, 1991.

[97] Spangenberg et al., 2006, p. 2.

idea of using weights for documenting the need for defenders became more commonplace. Technical assessments of public defense delivery systems in the 1990s, which had previously focused on structural and procedural issues, such as office management organization, funding models, and attorney assignment strategies, began to also include discussions about average time expenditures in distinct types of appointments and how that information could be used to support budget requests.[98]

The key input for these weighted caseload studies was information about recent defender time expenditures. In those relatively rare public defense delivery systems where defenders routinely recorded time spent working, similar to the fashion in which private practice attorneys track their hours when billing clients, such timekeeping data would serve as the basis of the case weight calculations. More commonly, a special time study of limited duration would be conducted in which defenders would be asked or required to participate by tracking their time expenditures in all of their active cases during a defined data collection period of a few weeks or months (because some time study cases would begin or end outside the collection period, various statistical techniques would be employed for estimating unreported time information). Both continuous and temporary time data collection approaches often had the reporting defender also segment out expenditures by a set of activity type categories, such as "investigation," "client conferences," or "travel."

Public defense case weighting studies during this era essentially assumed that the primary purpose for gathering information about current or past attorney time expenditures was to ensure that the balance between attorneys and caseloads in the future would be about the same as it was at the time of the study. If current data suggested that defenders were spending an average of 15 hours on each felony representation, for example, then next year's budget should anticipate supporting enough attorneys to be able to devote an average of 15 hours per felony as well.

An important change in this assumption had its roots in judiciary-focused research. A highly influential 1996 treatise on assessing the need for judge and court staff suggested that one shortcoming of case weights was that they could "enshrine inefficiency" when used for personnel planning if they considered only current time expenditures:

> An underlying goal of case weights is to measure not just workload, but work done in an efficient manner. From this perspective, case weights should be realistic and, to a degree, aspirational. If the weights simply codify current practice, whether it be sound or not, the weights lose credibility.[99]

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[98] See, e.g., The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study: Final Draft Report*, 1999, p. 56. This report discusses how to use current weights to determine the number of cases an attorney should be assigned in a future year: "Once attorney-hours-per-disposition have been calculated, the equation to determine workload is fairly simple. First, determine the available hours the average attorney can work per year. Next, divide the total available attorney hours by the attorney-hours-per-disposition figure."

[99] Victor E. Flango and Brian J. Ostrom, *Assessing the Need for Judges and Court Support Staff*, National Center for State Courts, 1996, p. 22.

The idea that case weights should be aspirational—and not enshrine or codify bad practice—was an important foundation of a 2000 NCSC workload study of the Florida state judiciary. The stated purpose of the work was to calculate "optimum" judge caseloads, and in that light, a judicial committee directing the study defined a "reasonable" caseload as the number of "weighted cases that allow sufficient time for a judge to deal with the average case in a satisfactory and timely manner."[100]

This approach was a departure from many prior workload studies in which weighted caseload analyses were ostensibly performed with the goals of predictability and continuity in mind, which could be achieved by essentially calculating future resource needs based almost exclusively on what was needed in the past. Now the focus would move away from simply having enough judges in the courthouse so that the current pace of case dispositions could be maintained next year and beyond. Instead, the objective would be to make sure enough judges were available so that each had "sufficient" time to work on the matters before them in a manner that would be both "satisfactory" and "timely."

The challenge in the Florida judiciary study was to incorporate these normative concepts into the weight values. To do this, the researchers employed a two-pronged approach. There would be a traditional time study in which more than 100 judges would track the time they spent in each case before them, but in parallel to that data collection effort, a qualitative research technique known as the Delphi method would be used to elicit the opinions of another set of judges as to their estimates of the "typical amount of judicial time" needed to process cases of different types and complexities.[101] In the researchers' view, the time study would document the "what is" aspect of current case processing practices, while the Delphi estimates would describe the "what ought to be" in terms of judicial perceptions as to necessary time expenditures.[102] The project's design anticipated that the results of the Delphi assessment would be used to inform a reconciliation process designed to modify, if necessary, the preliminary weights derived from the time study information alone into what were characterized as "reasonable" weights to be recommended to the Supreme Court of Florida for adoption.

The NCSC study's use of the Delphi method for eliciting expert opinion (in this instance, from judges who were actively presiding over Florida state trial court civil and criminal cases) was not unprecedented. Since it was originally developed by RAND during the 1950s to forecast the effect of technology on warfare, the Delphi method has been employed in a variety of public policy research settings, covering topics as diverse as national security, health care, information

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[100] Brian J. Ostrom, Charles W. Ostrom, Daniel Hall, William E. Hewitt, and Timothy Fautsko, *Florida Delphi-Based Weighted Caseload Project: Final Report*, National Center for State Courts, 2000, p. 1.

[101] See discussion of the Delphi-based data collection in Ostrom et al., 2000, pp. 34–40.

[102] Ostrom et al., 2000, pp. 34–40.

science, education, and criminal justice.[103] The underlying principle of Delphi is that "'pooled intelligence' enhances individual judgment and captures the collective opinion of experts" in a group setting.[104] For a purpose that essentially required estimates of time that *should* have been available to judges when overseeing the cases before them, a tool like Delphi would have been a reasonable choice, given that its purpose is to address a "problem that does not lend itself to precise analytical techniques but can benefit from subjective judgments on a collective basis."[105]

The typical Delphi session involves a group (typically referred to as a *panel*) of experts answering the same questions, with the answers being sought numeric in nature, such as amounts, time durations, or values on a Likert scale.[106] The use of carefully selected experts to answer these questions rather than a sample of the general population is a defining characteristic of the Delphi method. Although the identity of the expert panel members may not always be secret, the answers themselves are submitted anonymously to avoid counterproductive group dynamics. The results of the initial responses are then shared with the panel, usually framed in terms of distributions, such as means, medians, and ranges. Depending on the session's design, the panelists may then submit anonymous written comments about why they voted as they did (which are then shared with the rest of the group), or they can engage in open discussions. The panelists are then given the choice to change any of their individual answers. The provision of

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[103] See, e.g., Norman Crolee Dalkey and Olaf Helmer-Hirschberg, *The Use of Experts for the Estimation of Bombing Requirements: A Project Delphi Experiment*, RAND Corporation, RM-0727, 1951; Harold A. Linstone and Murray Turoff, eds., *The Delphi Method: Techniques and Applications*, Addison-Wesley, 1975; Norman Crolee Dalkey, *The Delphi Method: An Experimental Study of Group Opinion*, RAND Corporation, RM-5888-PR, 1969; Marietjie R. de Villiers, Pierre J.T. de Villiers, and Athol P. Kent, "The Delphi Technique in Health Sciences Education Research," *Medical Teacher*, Vol. 27, No. 7, 2005, pp. 639–643; Dolores Gallego and Salvador Bueno, "Exploring the Application of the Delphi Method as a Forecasting Tool in Information Systems and Technologies Research," *Technology Analysis and Strategic Management*, Vol. 26, No. 9, 2014, pp. 987–999; Ravonne A. Green, "The Delphi Technique in Educational Research," *SAGE Open*, April–June 2014, pp. 1–8; Kim Loyens, Jeroen Maesschalck, and Geert Bouckaert, "Delphi in Criminal Justice Policy: A Case Study on Judgmental Forecasting," *The Qualitative Report*, Vol. 16, No. 6, 2011, pp. 1477–1495.

[104] de Villiers, de Villiers, and Kent, 2005, p. 639.

[105] Erio Ziglio, "The Delphi Method and Its Contribution to Decision-Making," in Michael Adler and Erio Ziglio, eds., *Gazing into the Oracle: The Delphi Method and Its Application to Social Policy and Public Health*, Jessica Kingsley Publishers, 1996, p. 1.

[106] As originally designed, Delphi sessions would typically begin with an initial round of open-ended questions posed to the expert panel to generate ideas about the subject of interest. The answers to those questions would be reviewed by the researchers to define a more tailored inquiry for subsequent rounds in which numeric responses were sought. For the sake of efficiency, many current Delphi applications have already determined what questions the panelists will consider throughout the process. For example,

> Instead of the traditional Delphi approach of starting the first round with open-ended questions, the first round in the present study was modified to begin with a pre-selected list of items. It has been deemed acceptable to modify the first round if it is based on literature and prior knowledge; is a common approach to the first round and may increase response rate. (Anika Wuestefeld et al., "Towards Reporting Guidelines of Research Using Whole-Body Vibration as Training or Treatment Regimen in Human Subjects—A Delphi Consensus Study," *PLoS One*, Vol. 15, No. 7, 2020, p. 4 [citations omitted])

controlled feedback to the panelists in the form of information about the group's collective opinions and the ability of panelists to modify their answers if desired are also defining characteristics of the method. The goal of the process is to reach a point where the group answers approach a satisfactory level of consensus.

Some Delphi processes have the panelists contributing without physical or virtual contact with each other; in such instances, postal or electronic mail is often used both for receiving panel input and for sharing information about responses. Other approaches use in-person or remote video sessions. Traditionally, Delphi sessions consisted of distinct rounds, each of which began with the panelists submitting their responses (or changing prior ones) during a preset period, followed by the tabulation of the entries and then the presentation of the distributions of the results to the group for its consideration prior to the start of the next round. A popular alternative method moves away from the concept of rounds and uses a computer application to permit panelists to make or change their submissions at any time during the session and receive continuous updates about how the distributions are changing,

When there is an opportunity for immediate interaction, facilitators can be employed to focus the panel's attention on questions to which there is a relative lack of agreement and attempt to encourage the group to discuss their differing perspectives in an effort to drive members toward a narrower consensus. The process continues until, depending on design, the distributions of answers submitted by the expert panel have clustered around a single value with a predetermined level of "tightness" (for example, a coefficient of variation [CoV]). Usually there are rules for terminating the session if the desired level of consensus is never achieved, such as when the answers being submitted are stable and have not changed in many rounds, when a predetermined number of rounds have taken place, or when a predetermined period has elapsed since the start of the session.

The use of the Delphi method in the development of justice system organization weights was by no means unknown prior to the Florida judiciary study. In 1979, for example, the Georgia Administrative Office of the Courts used the Delphi method for estimating the median amount of time the state's Superior Court judges actually spent on different types of cases.[107] By 1996, at least six other states were also using Delphi in a similar manner for judgeship calculations.[108] In this context, however, the procedure was used as a *substitute* for direct measurement of judicial time expenditures. Such values could conceivably have been determined with greater precision than might be possible with Delphi by, for example, the requirement for judges to engage in case-based timekeeping as a routine business practice; the launch of a short-term, self-reported time study; the use of courtroom observers to record the time judges spent on the matters before them; or the employment of some other long-established management science technique for

[107] Judicial Council of Georgia, Administrative Office of the Courts, *Seventh Annual Report Regarding the Need for Additional Superior Court Judgeships in Georgia*, 1979, pp. 30–36.

[108] Flango and Ostrom, 1996, Table 1, p. 9.

collecting personnel time data. The use of Delphi for this purpose undoubtably avoids what has been described as the "time and cost problem" of traditional time measurement approaches, which are expensive to conduct, can take a long time to complete, and, when being updated, usually require the original process to be repeated in its entirety.[109] But simply being cheaper or quicker than other data collection methods is not, in and of itself, a sufficient reason to employ Delphi, especially if practical means for obtaining information with greater reliability are available. As a noted researcher who had been involved in Delphi's earliest civilian applications described the difference, "The primary strength of Delphi is its ability to explore, coolly and objectively, issues that require judgment; a weakness of Delphi is the ease with which questions can be asked for which better techniques exist."[110]

The Florida NCSC study drew from Delphi's "primary strength" in that the qualitative research technique was used to elicit the *subjective* judgments of participating judges and facilitate a consensus about *necessary* time expenditures. The researchers avoided a Delphi "weakness" by instead employing a time study for gathering precise information about *actual* time expenditures. This idea of viewing the subject of interest (here, time spent by judges on their cases) through two different lenses (subjective and objective) to yield a more functional weight set resonated among researchers in this field. Although a 2003 NCSC study of the Minnesota state judiciary employed what it described as a "a multi-round structured Delphi process" that differed from the Florida approach, as did the manner in which a final set of weights would be derived from that information, the researchers in this later work adhered to the same basic premise of having quantitatively based weights "adjusted for quality" to incorporate normative qualities into a needs assessment:

> The preferred approach is to calculate the case weight based on current judicial practice (as determined by a time study) and then review, and potentially adjust, particular weights to ensure judges have sufficient time to handle cases in a reasonable and satisfactory manner.[111]

Given NCSC's shift toward the use of a qualitative adjustment approach when calculating case weights for judicial needs assessments, it is not surprising that a similar strategy was later adopted for its public defense work as well. Weighted caseload analyses conducted by NCSC for the statewide public defender systems in Maryland (2005), New Mexico (2007), and Virginia

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[109] Beatrice Hoffman, *Determination and Justification of Judgeship Needs in the State Courts*, Institute for Advanced Studies in Justice, Washington College of Law, American University, 1981, pp. 28–29.

[110] Theodore J. Gordon, "The Delphi Method," in Jerome C. Glenn and Theodore J. Gordon, eds., *Futures Research Methodology: Version 3.0*, The Millennium Project, 2009, p. 10.

[111] Brian J. Ostrom, Charles W. Ostrom, William E. Hewitt, Neal B. Kauder, Robert C. LaFountain, Matthew Kleiman, and Brenda Otto, *Minnesota Judicial Workload Assessment, 2002*, National Center for State Courts, 2003, pp. 12, 43.

(2010) all followed the same basic pattern:[112]

1. A self-reported time study gathered information about actual defender time expenditures broken out at the activity level (e.g., "Legal Research," "Client Contact," "Sentencing/Post-Trial Activities") for distinct categories of cases.
2. A survey of public defenders asked the respondents to estimate the relative frequency of cases within each case type category in which they felt that enough time was generally available to complete each activity (e.g., "Almost Never," "Frequently," "Almost Always").
3. A qualitative research process asked selected practitioners to consider the time study and survey information and, drawing on their own knowledge and experience, adjust the preliminary weights as needed to incorporate sufficient time for effective representation.

As would be expected given that they were conducted over a five-year period and in jurisdictions with distinct indigent defense systems and expectations, the three studies differed somewhat in their approaches. Most notably, the 2005 and 2007 studies employed structured focus groups for their qualitative data collection components, while the 2010 study used the Delphi method with expert panels meeting in person for the same purpose. In actuality, structured focus groups and the Delphi method are both examples of consensus methods, which "attempt to assess the extent of agreement (consensus measurement) and to resolve disagreement (consensus development)."[113] Although there are differences in the way the desired degree of agreement is determined, the give and take between in-person Delphi participants (versus the classical approach of relying exclusively on remote voting by anonymous panelists) can be similar to the group dynamics that characterize structured focused group discussions. Both approaches also rely on facilitators to focus decisionmaking on a narrow set of issues. But regardless of the distinguishing characteristics of either method, the important takeaway is that all three studies used *experts* (attorneys intimately familiar with the practice of criminal defense in a jurisdiction) to yield *consensus-based subjective judgments* as to the average amount of time needed for effective representations.

In the years that followed, all widely reported statewide public defense weighted caseload studies have used a variation on these methods, although for the past 12 years, the sole choice of qualitative weight adjustment has been the Delphi method. Table 2.1 lists these studies in publication year order.[114]

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[112] Brian J. Ostrom, Matthew Kleiman, and Christopher Ryan, *Maryland Attorney and Staff Workload Assessment, 2005*, National Center for State Courts, 2005; Daniel J. Hall, *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorneys' Offices, and the New Mexico Public Defender Department: Final Report*, National Center for State Courts, June 2007; Matthew Kleiman and Cynthia G. Lee, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment: Final Report*, National Center for State Courts, March 2010.

[113] Jeremy Jones and Duncan Hunter, "Consensus Methods for Medical and Health Services Research," *BMJ*, Vol. 311, No. 7001, 1995, p. 377.

[114] We include unpublished work performed by RAND researchers Nicholas M. Pace, Shamena Anwar, Dulani Woods, Thomas Bogdon, Chau Pham, and Karen C. Lui for the New York State Office of Indigent Legal Services

Table 2.1. State-Level Qualitatively Adjusted Public Defense Weighted Caseload Studies

Study State and Publication Year	Primary Research Organization	Study Bibliographic Description
Maryland, 2005	NCSC	Brian J. Ostrom, Matthew Kleiman, and Christopher Ryan, *Maryland Attorney and Staff Workload Assessment, 2005*, National Center for State Courts, 2005.
New Mexico, 2007	NCSC	Daniel J. Hall, *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorneys' Offices, and New Mexico Public Defender Department: Final Report*, National Center for State Courts, June 2007.
Virginia, 2010	NCSC	Matthew Kleiman and Cynthia G. Lee, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment: Final Report*, National Center for State Courts, March 2010.
Massachusetts, 2014	Center for Court Innovation	Melissa Labriola and Ziyad Hopkins, *Answering Gideon's Call Project (2012-DB-BX-0010) Attorney Workload Assessment*, Committee for Public Counsel Services and Center for Court Innovation, October 2014.
Missouri, 2014	ABA SCLAID	RubinBrown and the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards—With a National Blueprint*, June 2014.
Texas, 2015	Public Policy Research Institute	Dottie Carmichael, Austin Clemens, Heather Caspers, Miner P. Marchbanks, and Steve Wood, *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission*, Public Policy Research Institute, Texas A&M University, January 2015.
New York (five counties), 2016	RAND	Unpublished 2016 project memorandum provided to the New York State Office of Indigent Legal Services by Nicholas M. Pace, Shamena Anwar, Dulani Woods, Thomas Bogdon, Chau Pham, and Karen C. Lui.
Colorado, 2017	ABA SCLAID	RubinBrown and the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, *The Colorado Project: A Study of the Colorado Public Defender System and Attorney Workload Standards*, August 2017.

(ILS) in 2016 as a "state-level" weighted caseload study even though the research was ostensibly focused only on defenders in five counties outside New York City. The study was conducted to address provisions in a class action settlement agreement between the State of New York and the New York Civil Liberties Union that required ILS to determine "the appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender, legal aid society, assigned counsel program, or conflict defender, in each [of the five counties], for representation in both trial- and appellate-level cases." "Stipulation and Order of Settlement," *Hurrell-Harring v. State of New York*, Supreme Court of the State of New York, County of Albany, Index No. 8867-07, executed October 21, 2014.

Nevertheless, there was wide expectation that the standards arising out of the settlement would later form the basis for an extension to the remainder of the state. See, e.g., David Carroll, "New York Caseload Standards Announced and Their Importance to Statewide Reform Explained," Sixth Amendment Center, May 8, 2017. At the end of 2017, ILS issued a legislatively mandated report, laying "out a process for the implementation of those standards in the fifty-two counties outside of New York City where the Hurrell-Harring settlement did not apply, and in New York City itself" (New York State Office of Indigent Legal Services, *Plan for Implementation of Caseload Standards in New York State*, December 1, 2017, p. 4). See also New York State Office of Indigent Legal Services, *A Determination of Caseload Standards Pursuant to § IV of the* Hurrell-Harring v. The State of New York *Settlement*, December 8, 2016.

Study State and Publication Year	Primary Research Organization	Study Bibliographic Description
Louisiana, 2017	ABA SCLAID	Postlethwaite & Netterville and the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, *The Louisiana Project: A Study of the Louisiana Public Defender System and Attorney Workload Standards*, February 2017.
Rhode Island, 2017	ABA SCLAID	BlumShapiro, American Bar Association Standing Committee on Legal Aid and Indigent Defendants, and the National Association of Criminal Defense Lawyers, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards*, November 2017.
Idaho, 2018	Idaho Policy Institute	Vanessa Crossgrove Fry, Sally Sargeant-Hu, Lantz McGinnis-Brown, and Greg Hill, *Idaho Public Defense Workload Study 2018*, Boise, Idaho: Idaho Policy Institute, Boise State University, 2018.
Michigan, 2019	RAND	Nicholas M. Pace, Dulani Woods, Shamena Anwar, Roberto Guevara, Chau Pham, and Karin Liu, *Caseload Standards for Indigent Defenders in Michigan: Final Project Report for the Michigan Indigent Defense Commission*, RAND Corporation, RR-2988-MIDC, 2019.
North Carolina, 2019	NCSC	Cynthia G. Lee, Lydia E. Hamblin, and Brittney Via, *North Carolina Office of Indigent Defense Services Workload Assessment*, National Center for State Courts, February 2019.
Indiana, 2020	ABA SCLAID	American Bar Association Standing Committee on Legal Aid and Indigent Defendants and Crowe LLP, *The Indiana Project: An Analysis of the Indiana Public Defense System and Attorney Workload Standards*, July 2020.
Utah, 2021	RAND	Nicholas M. Pace, Dulani Woods, Roberto Guevara, Chau Pham, and Shamena Anwar, *Provisional Caseload Standards for the Indigent Defense of Adult Criminal and Juvenile Delinquency Cases in Utah: Report for the Utah Indigent Defense Commission*, RAND Corporation, RR-A1241-1, 2021.
New Mexico, 2022	ABA SCLAID	American Bar Association Standing Committee on Legal Aid and Indigent Defense and Moss Adams LLP, *The New Mexico Project: An Analysis of the New Mexico Public Defense System and Attorney Workload Standards*, January 2022a.
Oregon, 2022	ABA SCLAID	American Bar Association Standing Committee on Legal Aid and Indigent Defense and Moss Adams LLP, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, January 2022b.

Each of these 17 studies (conducted in 16 different states) produced a set of public defense case weights that were informed by the deliberations of expert practitioners with the goal of basing attorney resource planning on the assumption that clients who are unable to afford counsel nevertheless deserve constitutional representation. While challenges remain in convincing legislatures, courts, and other stakeholders of the need to provide funding that is adequate for supporting defender availability to the degree the case weights suggest, the studies constitute the best available assessments of public defense delivery system attorney requirements in the states where the research was conducted.[115]

[115] Weighted caseload studies that share many of the characteristics of those listed in Table 2.1 have been conducted at the substate level. We have not included them here because our primary interest is in describing case weight development methods that have been used for defenders in a single state, which, given the substantial expense of these efforts, is likely to be the most common scope of future research. For examples of locally focused studies, see, e.g., Melissa Labriola, Erin J. Farley, Michael Rempel, Valerie Raine, and Margaret Martin, *Indigent Defense*

The Need for Updated National Guidance

Despite representing the state of the art in public defense weighted caseload analyses, the studies listed in Table 2.1 share some important challenges. First and foremost, they are expensive to conduct in a rigorous manner. Federal grants and philanthropic generosity can offset some of the financial pain, but without such external support, the allocation of limited budget dollars for research in a system where funds for addressing excessive workloads are already in short supply can be a difficult sell to stakeholders. A related concern is that such studies can be beyond the financial reach of local systems. In many states, public defense is primarily a local responsibility in terms of funding streams, control over major decisions, or both. Economies of scale that reduce the proportionate impact of a statewide weighted caseload analysis on the system's finances may not be available to administrators contemplating a similar study for defenders in a single county or city.

The analyses can also be quite disruptive. A special self-reported time study, for example, requires attorneys to turn some of their daily attention to a task that has no direct benefit to their existing clients, even if the duration of the data collection period is relatively short. In addition, these studies are often conducted in systems that are already experiencing excessive workloads. Although the qualitative adjustments to preliminary weights that are based on current conditions help offset some of the potential for locking in existing problems, the preferred approach would be to perform the analysis during a time of relative stability, which facilitates the identification of systemic issues unrelated to budget shortfalls.

Another aspect is that the analyses are typically conducted by outside researchers. Many public defense delivery systems have developed impressive research capabilities, but ramping up for internally conducted time studies, surveys, and Delphi sessions that are needed only infrequently may not be practical. The analyses can also take considerable time to complete. Even in a rapid turnaround effort, more than a year can transpire between soliciting the assistance of external researchers and the delivery of final case weights, a lengthy wait for a system already under stress.

Finally, the analyses can be perceived as self-serving. Although engaging the services of independent, well-regarded research organizations can help, some stakeholders may dismiss the findings of a weighted caseload analysis as suspect if the public defense delivery system itself was involved in the study's funding, design, or implementation, which is almost always the case.

Many of the issues described above undoubtably contributed to the rapid acceptance of the NAC caseload standards by indigent defense systems across the country in the years following their publication in 1973. Those standards were easy to use (the mathematics were not complicated), were already available (no lengthy, disruptive, or expensive research study would

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Reforms in Brooklyn, New York: An Analysis of Mandatory Case Caps and Attorney Workload, Center for Court Innovation, April 2015; and Elizabeth Neeley, *Lancaster County Public Defender Workload Assessment*, University of Nebraska Public Policy Center, July 2008.

be required), could be applied to average defender caseloads across entire statewide public defender agencies or in a single branch office or law firm (offering universal applicability), and had the imprimatur of being embraced by well-respected national organizations (thus undercutting any potential claim of self-interest when employing them as the basis for budget requests). Such features have continued to attract public defense delivery systems that are looking for alternatives to conducting qualitatively adjusted weighted caseload studies, as evidenced by recent use of the NAC thresholds in Ohio, Oregon, Michigan, and New York.[116] But as we have already discussed, continued reliance on public defense workload standards that were created half a century ago, especially in light of the ad hoc manner in which they were developed, makes little logical or practical sense.

Despite such challenges, the gold standard for public defense resource planning related to attorney staffing levels continues to be a carefully planned, rigorously conducted weighted caseload study in which the focus is on defenders at the state or local level.[117] Nevertheless, many jurisdictions have not had the opportunity or resources to conduct such research, and, as a result, an informational vacuum clearly exists. For the past 50 years, the NAC caseload standards have filled that void, providing benchmarks—however flawed they may be—for system administrators to use when they required a simple-to-employ, high-level view for assessing whether defender workloads have become excessive. The problem is that the NAC standards reflect a criminal justice system that no longer exists and professional responsibilities that have since been greatly expanded. To the extent that the NAC annual caseload maximums continue to influence budgetary and personnel decisions for indigent defense providers in jurisdictions across the United States, the potential exists for defenders whose caseloads are under the NAC thresholds in these locations to nevertheless be operating in conditions that make it impossible to render reasonably effective assistance under prevailing professional norms to all of their clients.

Because it is not realistic to assume that qualitatively adjusted public defense weighted caseload studies are likely to be conducted in the near future in a majority of the states other than the 16 noted in Table 2.1, updated default workload standards are needed to fill the vacuum described above. Absent a compelling alternative to the NAC standards, administrators in systems without the means, time, or existing data for a rigorous assessment will have little choice but to use the 1973 thresholds or continue to rely on instinct when planning for the future.

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[116] Ohio Administrative Code Rule 120-1-07, 2019; Oregon Public Defense Services Commission, undated, p. 321; Michigan Indigent Defense Commission, 2021; Committee on Mandated Representation, 2021.

[117] This statement applies only to efforts intended to help in the estimation of necessary attorney levels in a public defense delivery system, such as a statewide public defender office or a county's contract defender program. Examinations of defender practices and techniques, support staff levels, case assignment strategies, holistic defense services, attorney education and training programs, office management policies, and other important aspects of public defense would require very different quantitative and qualitative research approaches that are not focused on a weighted caseload analysis. But if the purpose of the effort is to move away from using such metrics as raw caseload counts, prosecutor office size, or population size as a means for estimating required numbers of defenders, weighted caseload studies are arguably the tools most commonly used by justice system organizations.

Such updated workload standards that can be applied nationally should be in the form of a set of case weights for adult criminal representations that are more granular than the simple NAC felony-misdemeanor split but sufficiently generalizable to be applied to the criminal code in every state. Weights in such a form would provide a straightforward means for translating what is known or predicted for a public defense delivery system's caseload numbers and types of appointments into values that appropriately estimate the number of FTE attorneys necessary to meet that expected demand. Importantly, the weights should reflect modern expectations about defender responsibilities, incorporating sufficient time to allow counsel a realistic opportunity to meet *Strickland*'s reasonably effective assistance standard.

A default set of weights informed by prevailing professional norms can also be used to create jurisdiction-specific annual caseload standards to mirror the form in which the NAC metrics were presented. In addition to the weight itself, a value that represents the average amount of time defenders are likely to have available annually for performing case-related work is needed to calculate such caseload standards. This value (variously described in weighted caseload studies as the annual "hours allotment,"[118] annual "FTE hours,"[119] "annual case-related duty hours,"[120] "year value,"[121] or "hours/work-year"[122]) can be derived from assumptions about the average annual hours defenders within a system are expected to devote to their practices, subtracting time necessary to address non–case-specific needs, such as office administration or continuing legal education. For example, the value might be based on expectations for salaried attorneys in state government for weekly work hours, sick leave, vacation days, and holidays, as well as survey data on the allocation of time spent by defenders for different work-related activities.[123] It might be derived instead by a simple conservative assumption of 40 hours per week for 52 weeks each year (2,080 total hours).[124] Ultimately, the annual available hours assumption is a jurisdiction-dependent decision but, using 2,080 hours as an example, a case weight of ten hours for a specific type of misdemeanor offense yields a caseload standard of no more than 208 such cases annually.

Whether in the form of default national case weights or default national caseload standards,

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[118] ABA SCLAID and Moss Adams LLP, 2022b, p. 28.

[119] ABA SCLAID and Moss Adams LLP, 2022a, p. 29.

[120] Pace et al., 2021, p. 51.

[121] Lee, Hamblin, and Via, 2019, p. 24.

[122] Carmichael et al., 2015, p. 29.

[123] See, e.g., Pace et al., 2021, pp. 51–52.

[124] American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, and Crowe LLP, 2020, p. 15, fn. 80. The 2,080 annual hours assumption is extremely conservative; it does not account for time not spent working during normal business hours (such as legal holidays, vacation time, sick leave, and other absences) or for work time spent on non–case-related activities (such as travel time, training time, administrative time, and supervisory time). If such adjustments were made to the 2,080 hours assumption, additional public defense attorneys would be required in the examples shown here.

updated workload guidance could also provide useful benchmarks for federal funding decisions regarding the delivery of public defense at the state and local levels. Some limited assistance in this area already exists (e.g., the Edward Byrne Memorial Justice Assistance Grant Program), but a significant expansion of federal assistance to state and local public defense systems to reduce defender workloads will inevitably require some common metric, first for identifying the level of assistance needed, and later for measuring the degree to which resource enhancements have improved the public defense system.

Given the foregoing, we believed that an effort to develop a set of nationally applicable workload standards was necessary. Such standards should not necessarily replace those already developed in jurisdictions that have conducted their own studies to establish limits on the numbers and types of adult criminal case appointments or to perform needs assessments. When based on empirical evidence and grounded in the *Strickland* performance standard of reasonably effective assistance of counsel pursuant to prevailing professional norms, state or local workload standards can provide more-tailored benchmarks for identifying excessive workloads or for estimating future attorney needs than could any national measures. But for those jurisdictions where a state or locally focused study is not feasible at this time or an existing study is flawed or outdated, the case weights yielded from this study can serve as a major upgrade from continued use of the NAC caseload standards.

Chapter 3. Approach

Overview

The goal of this study was to produce a set of case weights for adult criminal matters in state trial courts that could serve as default workload metrics for public defense delivery systems throughout the United States. The case weights could also be used by those systems to calculate annual caseload standards when informed by localized information about annual attorney availability. Although the need to develop a realistic alternative to the NAC standards was obvious, the method for developing the case weights required consideration. Nationally representative data on current defender time expenditures for distinct types of cases were not available, and the costs of conducting a special large-scale time study to gather such data from public defender offices and private law firms across the country in a reliable and generalizable way would be beyond the resources available to this effort. Moreover, such information, if used as the sole basis of updated weights, would simply document the existing state of public defense, a world in which excessive workloads (and, as a result, depressed average time expenditures) appear too often to be the norm. An important concern for our research team was to make sure that whatever case weights emerged from this study properly took into account all relevant ethics rules and professional guidelines. Time information from a region or a law firm in which defenders typically "carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client's interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations" inherently reflects a departure from those rules and guidelines and therefore would be unsuitable for our purposes.[125]

An alternative approach would have involved gathering time data from a purposely selected set of jurisdictions for which there was general agreement within the public defense community that the defenders operating in those locations all were doing so under reasonable resource conditions and in full compliance with applicable guidance. Although there is merit in such an idea, the number of such jurisdictions was believed to be small and skewed toward environments that might not reflect caseload compositions and client needs addressed by defenders nationally.

Instead, we chose to draw on the considerable body of research conducted in the workload studies listed in Table 2.1 to be the foundation for our work. The 17 studies all relied on the elicitation of expert opinion and the utilization of their consensus judgments to develop recommended necessary average time expenditures in about 140 different adult criminal case type categories in 16 states. Those findings reflect the experiences of defenders in large urban

[125] Defense Function Standard 4-1.8 (ABA, 2017).

settings, in suburbs, and in remote rural jurisdictions. They encompass a multitude of delivery systems, including contract counsel, assigned counsel programs, and public defender offices. And they are drawn from jurisdictions with different methods of funding public defense, including those where funding is a county or local court responsibility and those where the state provides the funding, as well as hybrids of these two models. In short, the information forming the basis of these studies reflects the varied landscape of state trial court public defense throughout the United States.

We also decided that the results of those studies would be used to inform our work, but not actually be used as the basis for our final case weights. We believed that the subjective nature of the questions we would seek to answer called for the use of an expert knowledge elicitation technique, as was used in one form or another in each of the state-level studies. The experts sitting on a panel assembled for this purpose would independently exercise their respective professional judgment as to the average amount of attorney time that indigent defense systems should plan on spending for distinct categories of representations, primarily drawing from their expertise, knowledge, and insight, but also considering the results of the state-level studies. Their initial estimates would be at the activity level, describing average times for different tasks that are commonly performed in the case types of interest (the results of the state-level studies were generally reported at the case level only). Most critically, we would make sure that each panel member's familiarity with the ethics rules and professional standards applicable to criminal defense had been refreshed just prior to the group session so that their deliberations could reflect those principles.

Key aspects of the approach we adopted for this work are outlined in the list that follows and described in greater detail in the remainder of this chapter. We

- reviewed all empirically based, qualitatively adjusted state-level public defense weighted caseload studies conducted in the United States since 2005 (a detailed comparison of the studies can be found in Appendix B)
- chose the Delphi method as our group communication process
- identified, reviewed, and summarized the key ethics rules and professional standards—including controlling case law and authoritative guidelines—related to the representation of the accused in adult criminal cases proceeding in state trial-level courts
- defined a set of case type and activity type categories to use for all subsequent data collection work
- assembled an expert panel of highly regarded attorneys with expertise in adult criminal defense in state trial-level courts and a track record of good practice
- provided the expert panel with detailed information about applicable ethics rules and professional standards, background on case weights and caseload standards, and an overview of the results of the 17 studies (Information about these project activities can be found in Chapter 4.)
- convened an in-person meeting in which the expert panel would submit their initial estimates of average time and then engage in a Delphi session with the goal of achieving a reasonable convergence of the group's opinions; the results of this meeting constitute

the basis of our proposed national public defense workload standards. (Information about these project activities can be found in Chapter 4.)

Review of Leading State-Level Studies in This Field

Scope and Purpose

Our review of the 17 state-level workload studies was performed for three main purposes.[126] First, it provided our research team with information about prior approaches for categorizing case types and case-related activities for adult criminal representations in state trial-level courts. Second, it described the models that have been employed in the past for eliciting expert opinion for the purpose of estimating average attorney time needed to provide reasonably effective representations pursuant to prevailing professional norms. And, finally, it served as the basis for a cross-jurisdictional comparison of those average time per case type estimates.

Although additional research partners have been involved in some of these efforts, it is helpful to group them by the lead organization for each: ABA SCLAID (Chicago, Illinois; seven studies), the Center for Court Innovation (New York, New York; one study), the Idaho Policy Institute (Boise, Idaho; one study); NCSC (Williamsburg, Virginia; four studies), the Public Policy Research Institute (College Station, Texas; one study), and RAND (Santa Monica, California; three studies). Selected members of our research team were involved with most of the ABA SCLAID, NCSC, and RAND projects. Table B.1 in Appendix B presents an overview of the key features in all 17 studies. It should be noted that there are many references in the table to decisions made by various actors as to what might be a *sufficient* or *adequate* or *necessary* amount of time that should be spent or was needed to achieve a particular goal. Each study defined that goal in a slightly different manner, such as "providing reasonably effective representation,"[127] rendering "reasonably effective assistance of counsel pursuant to prevailing professional norms,"[128] providing "a client adequate and effective defense,"[129] ensuring "the effective representation of counsel,"[130] performing "the duty effectively,"[131] completing the task

[126] It should be noted that inclusion in this review does not necessarily constitute an endorsement of these studies or their methods by any of the authors or the organizations they represent.

[127] RubinBrown and ABA SCLAID, 2017, p. 18.

[128] Postlethwaite & Netterville and ABA SCLAID, 2017, p. 17. See also BlumShapiro, ABA SCLAID, and the National Association of Criminal Defense Lawyers, 2017, p. 20 ("provide reasonably effective assistance of counsel pursuant to prevailing professional norms").

[129] Fry et al., 2018, p. 15.

[130] Ostrom, Kleiman, and Ryan, 2005, p. 27. See also Carmichael et al., 2015, p. 19 ("ensure effective assistance of counsel").

[131] Labriola and Hopkins, 2014, p. 16.

"with reasonable effectiveness,"[132] providing "reasonably effective assistance of counsel,"[133] or ensuring "effective representation."[134] Despite variation in the language used, ultimately all of the states' standards-setting efforts shared a common goal of creating functional case weights that were not simply a mirror of current time expenditures.

Our research approach, summarized in the introduction to this chapter, drew from common themes found in the earlier studies, as will be apparent from a review of Appendix B. That said, we adapted those methods as needed to address the challenges of developing recommended default national case weights rather than ones intended for a specific state. We also took steps to enhance our approach in two areas that were sometimes given reduced attention in the past. One involved the selection of the expert panel. In some studies, the identification of the experts was largely left to the discretion of the administrators of the public defense systems that were the subjects of the research. As will be described subsequently in this chapter, we reached out to five national organizations that we believed were well situated to identify a pool of potential panelists who were regarded for their skills and experience in defending adult defendants. Another area we addressed was transparency. The studies varied in the degree to which the "black box" of the process was described. In contrast, we decided to use this report for documenting, in fine detail, our methods, the information provided to the panelists, the nature of the Delphi process, the manner in which a consensus was reached, the process by which those results were translated into recommended default national case weights, and how those weights compare with similar work done at the state level. Because the findings of the earlier studies were a key aspect of our current work, we briefly describe them in the section that follows.

Case Weights Recommended by the State-Level Studies

The tables in this section present the final case weights in hours for adult criminal case types from each of the state-level studies. In addition, we have included an illustrative caseload standard based on a simple annual case-related duty hours assumption of 2,080 hours (40-hour workweek and 52 workweeks per year) to facilitate cross-study comparisons, while being mindful of the fact that the value we chose was simply for the purpose of providing an example. Most studies did not calculate a caseload standard, presumably leaving the task of converting recommended case weights into annual maximums to the policymakers within the state being studied, given that annual case-related duty hours assumptions require localized information about state personnel practices and public defense provider expectations. The studies that did report a recommended caseload standard may have used annual case-related duty hours

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[132] RubinBrown and ABA SCLAID, 2014, p. 16; Carmichael et al., 2015, Appendix H, p. 1.

[133] RubinBrown and ABA SCLAID, 2014, p. 17.

[134] Hall, 2007, p. 35. See also Kleiman and Lee, 2010, p. 18 (avoiding insufficient time for "effective representation").

assumptions that differ from the ones underlying the tables and, if so, their published standards will differ from the values shown here.

It should be noted that the relative differences in calculated caseload maximums across the 17 studies remain constant no matter what annual case-related duty hours assumption was chosen for the tables. Assume, for example, that when 2,080 hours is used as the assumption, the table describes an annual maximum of 88 felonies for state A and 44 felonies for state B. If 1,040 annual hours was instead used for the assumption, the maximums for states A and B would be 44 and 22 felonies, respectively. Under either assumption, the caseload maximums for state A are twice the value calculated for state B.

In addition, we used the weights as published in each study's final project report and rounded the values to the tenth of an hour prior to performing any further calculations for our work generally and this report specifically. In addition, our calculated annual caseload maximums are rounded down to the nearest integer. The combined effect of the two conventions may also result in values that differ somewhat from those found in the original study reports.

Table 3.1 presents the studies' adult criminal results ordered alphabetically by jurisdiction and study publication year, with case types within each jurisdiction ordered by decreasing weight size. Table 3.2 is ordered by decreasing case weight size across all studies and also contains entries for the 1973 NAC annual felony and misdemeanor recommendations for comparison.

Table 3.1. Study Case Weights in Jurisdiction and Publication Year Order

Study	Case Type	Effective Case Weight in Hours	Annual Caseload Standard Using 2,080 Hours
Colorado, 2017	Class 1 felony	427.3	4
	Class 2 felony	134.5	15
	Sexual assault felony, Class 2, 3, 4, 5, or 6	98.9	21
	Violent felony, Class 3 or 4	87.1	23
	Nonviolent felony, Class 3 or 4	47.0	44
	Misdemeanor sex offense	33.8	61
	Driving under the influence (DUI) felony, Class 4	29.9	69
	Drug felony, Class 1, 2, 3, or 4	28.6	72
	Class 5 or 6 felony	28.3	73
	Misdemeanor Class 1	16.3	127
	Misdemeanor DUI	15.5	134
	Misdemeanor Class 2 or 3	11.4	182
	Felony probation revocation	7.4	281
	Misdemeanor traffic or other	6.9	301
	Misdemeanor probation revocation	4.3	483

Study	Case Type	Effective Case Weight in Hours	Annual Caseload Standard Using 2,080 Hours
Idaho, 2018	Felony	67.2	30
	Misdemeanor	22.0	94
	Contempt	15.5	133
	Probation violation	10.4	200
	Other matter	9.7	215
Indiana, 2020	Noncapital murder (life without parole [LWOP])	311.3	6
	Noncapital murder (non-LWOP)	232.1	8
	High-level felony (levels 1–2)	68.2	30
	Mid-level felony (levels 3–4)	42.6	48
	Low-level felony (levels 5–6)	22.0	94
	Misdemeanor	12.6	165
	Probation or community corrections revocation	8.5	244
Louisiana, 2017	Felony, LWOP	200.7	10
	High-level felony	69.8	29
	Mid-level felony	41.1	50
	Low-level felony	22.0	94
	Enhanceable misdemeanor	12.1	172
	Revocation	8.5	245
	Misdemeanor or city parish ordinance	7.9	261
Maryland, 2005	Capital (death notice filed)	1,464.0	1
	Capital (death notice not filed)	429.0	4
	Homicide (average)	107.0	19
	Violent felony (average)	25.3	82
	Drug treatment court (urban)	15.2	136
	Nonviolent felony (average)	14.0	148
	Misdemeanor jury trial demand or appeal (average)	3.6	575
	District court criminal (average)	2.3	910
	Modifications or sentence reviews, circuit (average)	1.6	1,273
	District court traffic (average)	1.6	1,341
	Violations of probation, circuit	1.5	1,386
	Modifications or sentence review, district (average)	1.1	1,835
	Violations of probation, district	0.8	2,773
	Preliminary hearings, district (average)	0.2	12,480
Massachusetts, 2014	Superior nonconcurrent felony–chapter 265 crime against person	76.4	27
	Superior nonconcurrent felony–not chapter 265 crime against person	42.3	49
	District concurrent felony–crime against person	24.1	86

Study	Case Type	Effective Case Weight in Hours	Annual Caseload Standard Using 2,080 Hours
	Operating under the influence	19.7	105
	District concurrent felony–not crime against person	19.1	108
	Misdemeanor	16.8	123
	Superior court probation	9.2	226
	District court probation	8.3	251
	District court bail only	2.2	949
Michigan, 2019	Murder or manslaughter	120.0	17
	Criminal sexual conduct (1, 2, or 3)	80.0	26
	Other Class A felony	50.0	41
	Class B, C, D felony	40.0	52
	Class E, F, G, H felony or two-year misdemeanor	25.0	83
	One-year misdemeanor	8.0	260
	93-day misdemeanor	7.0	297
	Probation violation	3.5	594
	Other matter	3.0	693
Missouri, 2014	Murder or homicide	106.6	19
	Sex felony	63.8	32
	A/B felony	47.6	43
	C/D felony	25.0	83
	Misdemeanor	11.7	177
	Probation violation	9.8	212
New Mexico, 2007	Capital offense	492.4	4
	Murder	202.6	10
	Violent felony	29.6	70
	Drug court	14.4	144
	Nonviolent felony	8.5	245
	Driving while intoxicated	7.3	284
	Misdemeanor	3.8	554
	Probation violation	2.2	967
	Extradition	1.0	2,151
New Mexico, 2022	Murder including child abuse resulting in death (CARD)	391.0	5
	Child pornography with actual victim	177.4	11
	Child abuse or child sex crime (not including CARD or child pornography)	126.5	16
	Crime against person (adult victim)	50.7	41
	Drug crime, property crime, or status offense	32.5	63
	Driving while intoxicated	21.7	95
	Traffic or other minor crime	7.6	273

Study	Case Type	Effective Case Weight in Hours	Annual Caseload Standard Using 2,080 Hours
	Probation violation	5.2	402
New York (five counties), 2016	Violent felony	75.0	27
	Nonviolent felony	50.0	41
	Misdemeanor	21.0	99
	Probation revocation	15.0	138
	Postdisposition matter (other than probation revocation)	15.0	138
	Violation (sentence not more than 15 days)	10.0	208
North Carolina, 2016	First-degree murder (includes capital)	136.5	15
	Felony A, B1, and B2	75.3	27
	Felony C, D, E, and F	26.0	80
	Specialized court (any)	10.3	201
	Driving while impaired	8.8	236
	Felony G, H, and I	8.7	238
	Misdemeanor (includes traffic)	4.1	507
	Probation violation	3.2	660
	Other criminal	2.5	826
Oregon, 2022	Homicide or sex case	552.5	3
	High-level felony	149.0	13
	Mid-level felony	47.7	43
	Low-level felony	39.8	52
	Complex misdemeanor	37.0	56
	Low-level misdemeanor	22.3	93
	Probation violation	8.3	249
Rhode Island, 2017	Murder	181.6	11
	Nonmurder with possible life sentence	108.1	19
	Felony, more than ten years imprisonment	51.9	40
	Felony, up to ten years imprisonment	28.3	73
	Probation violation	16.9	123
	Misdemeanor	12.7	163
Texas, 2015	Felony, first degree	27.1	76
	Felony, second degree	19.9	104
	Felony, third degree	14.5	143
	State jail felony	12.0	173
	Class A misdemeanor	9.7	214
	Class B misdemeanor	8.9	233
Utah, 2021	Noncapital murder	300.0	6
	Mandatory sex or kidnap registration felony	150.0	13

Study	Case Type	Effective Case Weight in Hours	Annual Caseload Standard Using 2,080 Hours
	Other non-DUI felony	37.0	56
	Felony DUIs	25.0	83
	Class A misdemeanor	25.0	83
	Misdemeanor DUI	20.0	104
	Class B & C misdemeanor	12.0	173
	Probation violation, felony	6.0	346
	Probation violation, misdemeanor	5.0	416
Virginia, 2010	Capital crime	1,135.2	1
	Murder or homicide (noncapital)	41.2	50
	Violent felony	12.8	162
	Nonviolent felony	7.2	288
	Driving while intoxicated	3.2	653
	Probation violation, felony	2.5	826
	Misdemeanor	2.5	848
	Probation violation, misdemeanor	0.9	2,311

Table 3.2. Study Case Weights in Decreasing Case Weight Size Order

Study	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
Maryland, 2005	Capital (death notice filed)	1,464.0	1
Virginia, 2010	Capital crime	1,135.2	1
Oregon, 2022	Homicide or sex case	552.5	3
New Mexico, 2007	Capital offense	492.4	4
Maryland, 2005	Capital (death notice not filed)	429.0	4
Colorado, 2017	Class 1 felony	427.3	4
New Mexico, 2022	Murder including CARD	391.0	5
Indiana, 2020	Noncapital murder (LWOP)	311.3	6
Utah, 2021	Noncapital murder	300.0	6
Indiana, 2020	Noncapital murder (non-LWOP)	232.1	8
New Mexico, 2007	Murder	202.6	10
Louisiana, 2017	Felony–LWOP	200.7	10
Rhode Island, 2017	Murder	181.6	11
New Mexico, 2022	Child pornography with actual victim	177.4	11
Utah, 2021	Mandatory sex or kidnap registration felony	150.0	13
Oregon, 2022	High-level felony	149.0	13
North Carolina, 2016	First-degree murder (includes capital)	136.5	15
Colorado, 2017	Class 2 felony	134.5	15

Study	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
New Mexico, 2022	Child abuse or child sex crime (not including CARD or child pornography)	126.5	16
Michigan, 2019	Murder or manslaughter	120.0	17
Rhode Island, 2017	Nonmurder with possible life sentence	108.1	19
Maryland, 2005	Homicide (average)	107.0	19
Missouri, 2014	Murder or homicide	106.6	19
Colorado, 2017	Sexual assault felony, Class 2, 3, 4, 5, or 6	98.9	21
Colorado, 2017	Violent felony, Class 3 or 4	87.1	23
Michigan, 2019	Criminal sexual conduct (1, 2, or 3)	80.0	26
Massachusetts, 2014	Superior nonconcurrent felony-chapter 265 crime against person	76.4	27
North Carolina, 2016	Felony A, B1, and B2	75.3	27
New York (five counties), 2016	Violent felony	75.0	27
Louisiana, 2017	High-level felony	69.8	29
Indiana, 2020	High-level felony (levels 1–2)	68.2	30
Idaho, 2018	Felony	67.2	30
Missouri, 2014	Sex felony	63.8	32
Rhode Island, 2017	Felony, more than ten years imprisonment	51.9	40
New Mexico, 2022	Crime against person (adult victim)	50.7	41
Michigan, 2019	Other Class A felony	50.0	41
New York (five counties), 2016	Nonviolent felony	50.0	41
Oregon, 2022	Mid-level felony	47.7	43
Missouri, 2014	A/B felony	47.6	43
Colorado, 2017	Nonviolent felony, Class 3 or 4	47.0	44
Indiana, 2020	Mid-level felony (levels 3–4)	42.6	48
Massachusetts, 2014	Superior nonconcurrent felony–not chapter 265 crime against person	42.3	49
Virginia, 2010	Murder or homicide (noncapital)	41.2	50
Louisiana, 2017	Mid-level felony	41.1	50
Michigan, 2019	Class B, C, D felony	40.0	52
Oregon, 2022	Low-level felony	39.8	52
Oregon, 2022	Complex misdemeanor	37.0	56
Utah, 2021	Other non-DUI felony	37.0	56
Colorado, 2017	Misdemeanor sex offense	33.8	61
New Mexico, 2022	Drug crime, property crime, or status offense	32.5	63
Colorado, 2017	DUI felony, Class 4	29.9	69
New Mexico, 2007	Violent felony	29.6	70
Colorado, 2017	Drug felony Class 1, 2, 3, or 4	28.6	72
Rhode Island, 2017	Felony, up to ten years imprisonment	28.3	73

Study	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
Colorado, 2017	Class 5 or 6 felony	28.3	73
Texas, 2015	Felony, first degree	27.1	76
North Carolina, 2016	Felony C, D, E, and F	26.0	80
Maryland, 2005	Violent felony (average)	25.3	82
Michigan, 2019	Class E, F, G, H felony or two-year misdemeanor	25.0	83
Missouri, 2014	C/D felony	25.0	83
Utah, 2021	Class A misdemeanor	25.0	83
Utah, 2021	Felony DUIs	25.0	83
Massachusetts, 2014	District concurrent felony–crime against person	24.1	86
Oregon, 2022	Low-level misdemeanor	22.3	93
Idaho, 2018	Misdemeanor	22.0	94
Indiana, 2020	Low-level felony (levels 5–6)	22.0	94
Louisiana, 2017	Low-level felony	22.0	94
New Mexico, 2022	Driving while intoxicated	21.7	95
New York (five counties), 2016	Misdemeanor	21.0	99
Utah, 2021	Misdemeanor DUI	20.0	104
Texas, 2015	Felony, second degree	19.9	104
Massachusetts, 2014	Operating under the influence	19.7	105
Massachusetts, 2014	District concurrent felony–not crime against person	19.1	108
Rhode Island, 2017	Probation violation	16.9	123
Massachusetts, 2014	Misdemeanor	16.8	123
Colorado, 2017	Misdemeanor Class 1	16.3	127
Idaho, 2018	Contempt	15.5	133
Colorado, 2017	Misdemeanor DUI	15.5	134
Maryland, 2005	Drug treatment court (urban)	15.2	136
New York (five counties), 2016	Postdisposition matter (other than probation revocation)	15.0	138
New York (five counties), 2016	Probation revocation	15.0	138
Texas, 2015	Felony, third degree	14.5	143
New Mexico, 2007	Drug court	14.4	144
Maryland, 2005	Nonviolent felony (average)	14.0	148
NAC	Felonies	13.9	150
Virginia, 2010	Violent felony	12.8	162
Rhode Island, 2017	Misdemeanor	12.7	163
Indiana, 2020	Misdemeanor	12.6	165
Louisiana, 2017	Enhanceable misdemeanor	12.1	172
Texas, 2015	State jail felony	12.0	173
Utah, 2021	Class B and C misdemeanor	12.0	173
Missouri, 2014	Misdemeanor	11.7	177

Study	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
Colorado, 2017	Misdemeanor Class 2 or 3	11.4	182
Idaho, 2018	Probation violation	10.4	200
North Carolina, 2016	Specialized court (any)	10.3	201
New York (five counties), 2016	Violation (sentence not more than 15 days)	10.0	208
Missouri, 2014	Probation violation	9.8	212
Idaho, 2018	Other matter	9.7	215
Texas, 2015	Class A misdemeanor	9.7	214
Massachusetts, 2014	Superior court probation	9.2	226
Texas, 2015	Class B misdemeanor	8.9	233
North Carolina, 2016	Driving while impaired	8.8	236
North Carolina, 2016	Felony G, H, and I	8.7	238
Indiana, 2020	Probation or community corrections revocation	8.5	244
Louisiana, 2017	Revocation	8.5	245
New Mexico, 2007	Nonviolent felony	8.5	245
Massachusetts, 2014	District court probation	8.3	251
Oregon, 2022	Probation violation	8.3	249
Michigan, 2019	One-year misdemeanor	8.0	260
Louisiana, 2017	Misdemeanor or city parish ordinance	7.9	261
New Mexico, 2022	Traffic or other minor crime	7.6	273
Colorado, 2017	Felony probation revocation	7.4	281
New Mexico, 2007	Driving while intoxicated	7.3	284
Virginia, 2010	Nonviolent felony	7.2	288
Michigan, 2019	93-day misdemeanor	7.0	297
Colorado, 2017	Misdemeanor traffic or other	6.9	301
Utah, 2021	Probation violation, felony	6.0	346
NAC	Misdemeanors	5.2	400
New Mexico, 2022	Probation violation	5.2	402
Utah, 2021	Probation violation, misdemeanor	5.0	416
Colorado, 2017	Misdemeanor probation revocation	4.3	483
North Carolina, 2016	Misdemeanor (includes traffic)	4.1	507
New Mexico, 2007	Misdemeanor	3.8	554
Maryland, 2005	Misdemeanor jury trial demand or appeal (average)	3.6	575
Michigan, 2019	Probation violation	3.5	594
North Carolina, 2016	Probation violation	3.2	660
Virginia, 2010	Driving while intoxicated	3.2	653
Michigan, 2019	Other matter	3.0	693
North Carolina, 2016	Other criminal	2.5	826
Virginia, 2010	Misdemeanor	2.5	848
Virginia, 2010	Probation violation, felony	2.5	826

Study	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
Maryland, 2005	District court criminal (average)	2.3	910
Massachusetts, 2014	District court bail only	2.2	949
New Mexico, 2007	Probation violation	2.2	967
Maryland, 2005	District court traffic (average)	1.6	1,341
Maryland, 2005	Modifications or sentence reviews, circuit (average)	1.6	1,273
Maryland, 2005	Violations of probation, circuit	1.5	1,386
Maryland, 2005	Modifications or sentence review, district (average)	1.1	1,835
New Mexico, 2007	Extradition	1.0	2,151
Virginia, 2010	Probation violation, misdemeanor	0.9	2,311
Maryland, 2005	Violations of probation, district	0.8	2,773
Maryland, 2005	Preliminary hearings, district (average)	0.2	12,480

Use of the Delphi Method

As noted previously, a key decision for this study was to use the consensus judgments of a group of experts in adult criminal defense as the basis for recommended necessary average attorney time expenditures in different types of cases. Our first task following that decision was to identify the manner in which we would elicit the experts' opinions and synthesize the results into a usable form.

Although such qualitative research methods as structured focus groups, nominal group technique, consensus development conferences, and brainstorming can be used for the elicitation of expert opinion in a group setting, we concluded that the Delphi method offered the most appropriate vehicle for measuring collective agreement among our panel members and for developing a consensus on recommended average time expenditures in distinct types of cases. Such recommendations require the consideration of a wide variety of normative principles (a Delphi strength), such as "reasonably effective assistance," "prevailing professional norms," "quality representation," "ethical obligations" and the like, but the judgments themselves would take the form of numerical values, which lends itself to the way a consensus is typically measured with Delphi. Choosing a Delphi-based approach for this task made sense, given that the technique is considered to be "practical in problematic areas where either statistical model-based evidence is not available, knowledge is uncertain and incomplete, and human expert judgment is better than individual opinion."[135] The previous chapter provided a summary of commonly employed features of the Delphi method, and later in this report we describe specific details of how we used Delphi at the Williamsburg conference, but it is important to

[135] Prashant Nasa, Ravi Jain, and Deven Juneja, "Delphi Methodology in Healthcare Research: How to Decide Its Appropriateness," *World Journal of Methodology*, Vol. 11, No. 4, 2021, p. 118.

acknowledge here that this qualitative research technique needs to be employed with care. There certainly are instances in which Delphi may not be the most appropriate tool for eliciting and coalescing group opinions, even when the questions are subjective in nature. For example, Delphi might not be appropriate if the information sought is available through other means after reasonable expenditures of time and resources. In this case, however, we did not believe that a practical alternative approach to answering our research questions existed.

It should also be noted that some researchers have called into question various aspects of the Delphi method, including the manner in which the experts are identified and the associated potential for selection bias; an inability to provide the experts with complete anonymity when cloaking the identity of fellow panel members and their submissions is thought to be necessary to facilitate open and truthful responses; the potential for experts to drop out of the process if it is extended over too long a period; and instances where researchers have modified Delphi's original design to suit their specific project needs without adequately considering the consequences of such changes.[136] Such concerns are important considerations, but all expert elicitation methods, and indeed, all quantitative research techniques, have their own sets of strengths and weaknesses. The challenge for researchers is not to identify the "best" elicitation method of all (if indeed one exists), but instead to choose the one that makes the most sense given the specific needs of the study and to shape the process so that known concerns are minimized.

We felt that our research team's considerable experience both in the use of Delphi generally and in its specific application to public defense workload standards development would help ensure the stability and success of the process and address some of the criticism of the research technique. For example, we took steps to prevent individual responses from being associated with the identity of the submitting party, although we actively encouraged panel members to openly discuss the reasoning behind their thinking if they felt comfortable doing so. We believed that panel member dropout would not be an issue during an in-person session taking place in a single day. And the process we employed adhered to the foundational principles of the Delphi method that have been in place for seven decades, even if some modern adaptations (such as the use of a web-based tool for collecting panel decisions and for sharing aggregate response information with the panel) were used.

As indicated at the outset of this chapter, we assembled a Delphi panel composed of well-regarded and experienced criminal defense attorneys. We discuss panelist selection more fully in a subsequent section, but a potential for bias exists as a function of the nomination process (organizations with varying degrees of interest in supporting the work of defenders were asked for panelist recommendations) and in the manner in which panel membership was determined

[136] For useful overviews of such criticisms, see Sinead Keeney, Felicity Hasson, and Hugh P. McKenna, "A Critical Review of the Delphi Technique as a Research Methodology for Nursing," *International Journal of Nursing Studies*, Vol. 38, No. 2, 2001; and Chia-Chien Hsu and Brian A. Sandford, "Delphi Technique," in Neil J. Salkind, ed., *Encyclopedia of Research Design*, SAGE Publications, Inc., 2010.

(nominees were free to accept or decline our invitation). One way we could have reduced the risk of bias would have been to select panelists on a random basis (perhaps using a sampling frame of attorneys who were members of the criminal law sections of their state bars and stratifying for geography and practice type), but we believed that assembling an expert panel with a set of knowledgeable and experienced defenders who were respected by their peers was our first priority.

The use of a panel composed entirely of experienced criminal defense attorneys can also raise questions of potential bias. One set of potential biases relates to the exclusive use of criminal defense attorneys. The second set relates to the attorneys' experience levels. First, such attorneys might have an incentive to inflate their estimates of the amount of time required to represent clients because the attorneys would directly benefit from reduced caseloads and increased funding for public defense. On the other hand, defense attorneys might be reluctant to acknowledge inadequacies in current practice, biasing their time estimates downward. Second, highly experienced attorneys, particularly private defense counsel, might ground their time estimates in an unreasonably high standard of practice, again inflating those estimates. On the other hand, experienced attorneys might also be more efficient, which would bias their estimates of the amount of time required by the average attorney downward.

One potential solution to the perceived incentive problem would be to include other criminal justice professionals, such as judges and prosecutors, in the panel, whether as full participants or in an advisory role without the power to enter time estimates. We chose to limit the panel to practicing criminal defense attorneys for multiple reasons. Most important, much of a defense attorney's work takes place outside the courtroom, is largely invisible to other participants in the proceedings, and has no direct analog on the prosecution side. Examples of such work include communicating with and supporting clients and their families; finding program placements to support alternative disposition plans; waiting to see clients in jail; investigating the client's social, educational, and health history; addressing collateral consequences; and preparing mitigation information. Prosecutors and judges do not possess the knowledge to weigh in on how much of this work is required to provide a constitutionally adequate defense, nor on how long it should take. Additionally, including prosecutors and judges in the Delphi process as advisory members or discussants might also have a chilling effect on the discussion, especially on conversations regarding practices that may not always be constitutionally adequate as a result of resource constraints. The decision to include in the Delphi panels only persons who do the type of work under discussion is in line with decisions made in previous public defender and judicial workload studies. All 17 previous state-level public defense workload studies conducted by six different organizations used current or former defense attorneys exclusively for an initial qualitative adjustment process involving Delphi panels or focus groups. Similarly, modern state-level judicial workload studies use judges and judicial officers exclusively for making similar adjustments.

With regard to the countervailing biases that may be introduced by including only experienced criminal defense attorneys with a reputation for high performance, it should be noted that many of the selected attorneys had experience training and supervising junior attorneys, giving them a close familiarity with both the activities performed and the time required by attorneys of a variety of experience levels. Indeed, during the Delphi panel discussions, panelists noted the need to not assume their own level of experience in formulating their time estimates but also to consider the time needs of attorneys of average experience. The instruction for panelists to ground their time estimates in a reasonable interpretation of the relevant professional standards rather than an ideal world in which time and resources were unlimited was also designed to counter any potential biases.

An issue sometimes raised about the Delphi method concerns reliability, and it is often framed in two distinct ways: (1) whether the accuracy of the consensus opinions elicited from the expert panels can be assessed and (2) whether the results of the process can be replicated if repeated. While these are legitimate concerns, they are less relevant when considering a research technique designed to answer questions for which hard data are unavailable or impractical to obtain and in which professional judgment is at the heart of the inquiry. As one observer noted:

> Sackman (1975), in his critical review of the method, notes that Delphi studies are often oblivious to reliability measurements and scientific validation of the findings. Because the technique is intended to correct for lack of conclusive data by drawing on, and sharing, the knowledge and experience of experts (Fink et al. 1991), it should not be open to the same validation criteria as hard science. Murphy et al. (1998) note that the Delphi technique and other consensus development methods should not be viewed as a scientific method for creating new knowledge, but rather as processes for making the best use of available information, be that scientific data or the collective wisdom of participants. As Pill (1971, p. 62) suggested:
>
> > It is the questions of intuitive judgements, the marshalling of subconscious processes, dredging of half-formed ideas from the group memory that Delphi is most useful and as such, one cannot judge it on the same basis as a concrete measurement.[137]

For example, one notable use of Delphi has been for forecasting, often by calling on leading experts in a particular field to contemplate the likelihood of events or developments taking place in the future. Although it is certainly possible to assess the accuracy of such findings by waiting an appropriate length of time to determine the percentage of predictions that actually come true, the reality is that when the forecasts were made there likely was not a more practical means than Delphi (or a similar group communication process) for utilizing the best information available (in this instance, expert knowledge and insight) to contemplate what the future might hold. An analogous situation exists in the context of public defense workload standard development. No

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[137] Catherine Powell, "The Delphi Technique: Myths and Realities," *Journal of Advanced Nursing*, Vol. 41, No. 4, 2003, p. 380.

purely objective measurement currently exists for determining the exact number of witness interviews an attorney should conduct to provide effective assistance of counsel. In the absence of such information, a reasonable way to move forward to develop these critically necessary workload standards is by eliciting the group judgments reached by highly experienced practitioners who are well informed of controlling ethical and professional considerations. One of Delphi's most common applications is in needs assessment, which is the very type of question this study proposed to answer.[138]

As for replicability, repeating a Delphi session using a different set of panelists can yield results that differ to some extent from those produced in an earlier session conducted in the same manner. The purpose of Delphi is to coalesce group opinion, and if the composition of the group changes, then changes in the group consensus are certainly possible. Research suggests that larger panel sizes reduce replicability concerns somewhat.[139] Larger panel sizes also allow greater heterogeneity across panel members, which in turn makes "the results more meaningful to a more varied population."[140] While one source has estimated that there were about 250,000 criminal defense attorneys employed in the United States in 2022, our pool of target participants was far smaller.[141] As will be described subsequently (see the section titled "Expert Panel Selection" later in this chapter), the pool constituted the set of 105 attorneys recommended to us by five national organizations concerned with issues related to criminal defense in general and public defense in particular. The 33 panelists who participated in the Williamsburg conference made up about a third of that pool, a proportion that would help address replicability concerns, but they were self-selected, not randomly chosen. Essentially all recommended attorneys were invited, but the 33 were the only ones who accepted the invitation and were available to travel and attend the April 2022 conference (to be precise, a total of 55 recommended candidates accepted our invitation, although 22 later withdrew because of scheduling or health conflicts or were dropped for technical reasons).

We believe, however, that utilizing the national organizations' insight and knowledge of the backgrounds of all potential participants provided us with external objective evidence of the necessary expertise of all pool members, regardless of whether they volunteered or not. Separate from the question of expertise is the issue of whether the volunteers from the pool differed from

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[138] See, e.g., Chia-Chien Hsu and Brian A. Sandford, "The Delphi Technique: Making Sense of Consensus," *Practical Assessment, Research, and Evaluation*, Vol. 12, No. 10, 2007; Harriett S. Chaney, "Needs Assessment: A Delphi Approach," *Journal of Nursing Staff Development*, April 1987.

[139] According to Wuestefeld et al., 2020, p. 20,

> Small panel sizes and response rates may distort validity of the results of a Delphi study. There is little data on panel size and its effect on validity of reaching consensus. Yet, the reliability is thought to increase with panel size, while differences may be small with a panel of more than 12 experts. (citations omitted)

[140] Jane Chalmers and Mike Armour, "The Delphi Technique," in Pranee Liamputtong, ed., *Handbook of Research Methods in Health Social Sciences*, Springer, 2019.

[141] Zippia, Inc., "Defense Attorney Demographics and Statistics in the US," webpage, September 9, 2022.

those who declined our invitation in ways that could interject bias into the results. Because we know little about the decliners other than that they had been recommended by the five national organizations, we are not in a position to assess this issue. The obvious need here is for the researchers to carefully choose the membership of the panel so that the experts included represent experienced thinking about the subject and are highly regarded by others in the same field. We believe we took such steps in our panel membership identification and recruitment stage.

One repeated criticism found in the literature regarding Delphi focuses not on the method itself but instead on researchers who have used the technique for their work and have failed to document their approach or appear to have addressed important design issues during the study on an ad hoc basis. A recent review of 34 Delphi studies seeking consensus recommendations from medical practitioners regarding pathophysiology, infection transmission or control, and management of coronavirus disease 2019 (COVID-19) during the early days of the pandemic (when quality information on such subjects was lacking and Delphi was an obvious choice for eliciting the opinions of these experts) concluded that all of the published reports were deficient in some way. The shortcomings noted included a lack of reported details on expert panel selection, measures used for gauging a consensus, and the criteria employed for signaling the end of the session.[142]

Although we more fully describe some important aspects of our chosen Delphi process later in this chapter (see the "Expert Panel Selection" section) and in the next (see "Expert Panel Preparation and Session Procedures" in Chapter 4), the list that follows uses the quality assessment evaluation criteria employed in the COVID-19 study review as a framework for determining the appropriateness of our approach.[143]

1. **Was the problem area to be studied explicitly defined and communicated to the panel members?** The panelists received written materials and participated in videoconferences providing background on the research and the key issues in play.
2. **Was the selection of panelists based on objective and predefined criteria and related to the problem under study?** We developed a selection strategy that asked national organizations for recommendations of attorneys skilled in adult criminal defense, the subject matter of this study. Only attorneys so recommended would receive an invitation to participate. Although the specific criteria for membership were predefined, some subjective considerations were included in our request to the national organizations.
3. **Did the Delphi session include iterative discussions among panelists, provide controlled feedback of response statistics to the panel, and maintain strict anonymity of the panel members and their responses?** We used a roundless Delphi approach and an in-person session. Panelist discussions were continuous and largely unstructured, although they were eventually focused on case types in which measures of consensus were less favorable. Participants received real-time updates of multiple

[142] Nasa, Jain, and Juneja, 2021.

[143] Nasa, Jain, and Juneja, 2021, pp. 118–121.

summary statistics for submitted responses as values changed. Anonymity of responses was complete (neither the panelists nor the research team knew who submitted each estimate), but as is true for all in-person Delphi sessions, the identities of the panelists was not a secret. Although any open discussion would not be anonymous, the panelists could submit text comments and questions anonymously that would be immediately displayed to the group.

4. **Were the criteria for stopping the Delphi rounds based on consensus or stability and identified *a priori*? Were there alternative plans or methods to drop items if consensus was used as a stopping criterion of Delphi rounds?** In advance of the Delphi session, we chose the CoV for the distribution of recommended attorney hours for each study case type as both the consensus measure and the stability statistic. Group discussions would be focused on case types with consensus measures exceeding 0.5. Submissions of recommended average hours for case types would not be halted until the overall session itself was ended, although in actuality there were few submissions once a case type's consensus measure dropped below 0.5. Session end was defined as the earlier of either the predetermined cutoff time (5:00 p.m. Eastern) or when there were no meaning changes across all case types' stability statistics.

Summary of Key Ethics Rules and Professional Guidance

The purpose of this study is to produce a reliable professional consensus of the amount of time it should take, on average, for a lawyer to meet the *Strickland* standard for criminal defense services in different types of cases. In preparing the expert panel, we emphasized that "reasonably effective assistance of counsel" does not mean ideal or unlimited assistance, nor does it require pursuing every legal theory or every investigatory lead imaginable no matter how improbable. Rather, the panel should simply draw on the "prevailing professional norms" of practice and applicable ethics rules for understanding what a criminal defense attorney needs to do for each and every client.

Throughout the progeny of *Strickland*, the Supreme Court has repeatedly looked to various ABA practice standards as indicators of what those norms are. In *Padilla v. Kentucky*, for example, the Court noted,

> We long have recognized that "[p]revailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable . . . ." Although they are "only guides," and not "inexorable commands," these standards may be valuable measures of the prevailing professional norms of effective representation. . . .[144]

Strickland specifically referred to the ABA's Defense Function Standards as an example of such guidance.[145] Another source for prevailing norms is the ABA's Model Rules, which have been adopted outright by most states and with minor modifications in all others. Accordingly,

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[144] *Padilla v. Kentucky*, 559 U.S. 356, 366–67, 2010 (citations omitted).

[145] *Strickland v. Washington*, 466 U.S. 688, 1984.

our study uses both the Model Rules and the Defense Function Standards as our key sources for defining prevailing professional norms for determining reasonably effective assistance of counsel.[146]

Our research team asked the panelists to refer to these key sources as they considered the attorney work needed and the time it would take to perform such work in each activity type and case type. Panelists participated in a webinar review of the applicable guidance in this area and received a written summary of those sources of prevailing professional norms to be referenced while completing the initial response chart and throughout the Delphi session.[147] In this way, authoritative ethics rules and practice standards anchor this study. In the next section, we briefly summarize the guidance presented to the panelists.

ABA Model Rules of Professional Conduct

The Model Rules address both the responsibilities of lawyers in representing a particular client and also situations in which a lawyer is not permitted to represent a client or must withdraw. The Model Rules are direct and straightforward, and, when adopted at a jurisdictional level, they apply with equal weight to both public defense providers and criminal defense attorneys who have paying clients.[148] The Model Rules have important implications for public defenders facing excessive caseloads.

The Model Rules require lawyers to provide competent representation, exercise diligence, and communicate with the client concerning the subject of the representation, as follows:

- Rule 1.1 Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- Rule 1.3 Diligence: A lawyer shall not neglect a legal matter entrusted to the lawyer.[149]

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[146] As noted earlier, the Model Rules used in this inquiry have been adopted in some form in all 50 states, and the U.S. Supreme Court has held that the Defense Function Standards are "valuable measures" for determining what is reasonably effective assistance of counsel pursuant to prevailing professional norms. These two bodies of law, therefore, are appropriate sources of prevailing professional norms to determine workload standards to be applicable in every state in the country.

[147] The specific materials provided to panelists are on file with the authors and are available on request. They can also be found at ABA SCLAID, "National Public Defense Workloads Standards," webpage, July 20, 2023. As of July 24, 2023: https://www.americanbar.org/content/aba-cms-dotorg/en/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/natl-pub-def-standards/

[148] "The Rules provide no exception for lawyers who represent indigent persons charged with crimes" (ABA Formal Opinion 06-441, 2006).

[149] The Defense Function Standards similarly provide that

> Defense counsel should act with diligence and promptness in representing a client . . . [b]ut defense counsel should not act with such haste that quality representation is compromised. Defense counsel and publicly funded defense entities should be organized and supported with adequate staff and facilities to enable them to represent clients effective and efficiently" (Defense Function Standard 4-1.9(a) [ABA, 2017]).

- Rule 1.4 Client-Lawyer Relationship: (a) A lawyer shall . . . (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information . . . (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.[150]

Additionally, the Model Rules create clear obligations for attorneys, including

> the responsibilities to keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; control workload so each matter can be handled competently; and, if a lawyer is not experienced with or knowledgeable about a specific area of the law, either associate with counsel who is knowledgeable in the area or educate herself about the area.[151]

Excessive workloads create conflicts for lawyers in violation of their ethical obligations. Model Rule 1.7(a)(2) provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. According to the rule, a concurrent conflict exists when there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. That is exactly what happens when a lawyer represents more clients than he or she can competently represent. Model Rule 1.16(a) requires a lawyer to withdraw from the representation of a client if the representation will result in a violation of the rules of professional conduct.

Model Rule 5.1 provides that a lawyer with supervisory or managerial authority in the organization is responsible for another lawyer's violation of the Rules of Professional Conduct if he or she orders, or with knowledge of the specific conduct, ratifies the conduct involved, or if he or she knows of the conduct at a time when its consequences can be avoided or mitigated and fails to take reasonable remedial action. Accordingly, the responsibility for violations of Model Rule 1.16(a) and 1.7(a)(2) caused by excessive caseloads may fall squarely on the shoulders of the supervising or lead attorney within the public defense provider.

ABA Criminal Justice Standards

The ABA Standards for Criminal Justice (otherwise known as the Criminal Justice Standards) are the preeminent substantive practice standards on all aspects of criminal law and the operations of the criminal justice system. These standards "are the result of the considered judgment of prosecutors, defense lawyers, judges and academics who have been deeply involved in the process."[152] The Criminal Justice Standards have been cited by federal courts in more than

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[150] ABA, 2023.

[151] ABA Formal Opinion 06-441, 2006, p. 3.

[152] Martin Marcus, "The Making of the ABA Criminal Justice Standards," *Criminal Justice*, Vol. 23, No. 4, 2009, p. 15.

700 opinions.[153] They cover every aspect of criminal justice, including separate volumes on criminal appeals, the defense function, discovery, DNA evidence, guilty pleas, mental health, pretrial release, the provision of public defense services, the prosecution function, prosecutorial investigations, sentencing, speedy trial issues, and the treatment of prisoners, among others.

The Defense Function Standards are the sections of the ABA Criminal Justice Standards that comprehensively address the duties of a criminal defense lawyer. The Defense Function Standards are the result of a lengthy process that began in 1964 and culminated with the approval and publication of a fourth edition of the standards by the ABA in 2015.[154] They are the most relevant standards to reference in reaching a professional consensus about what a criminal defense lawyer should do to provide reasonably effective assistance of counsel.

As noted above, prior to the in-person meeting in Williamsburg, each study participant was asked to review a summary of the applicable ethics rules and Defense Function Standards and attend a webinar presentation at which the rules and standards would be discussed.[155] Both the written summary and the review focused on rules and standards governing fundamental aspects of defense lawyer practice, including

- communications with clients[156]
- pretrial release determinations[157]
- discovery and investigations[158]
- clients with mental disorders[159]
- activities required before recommending a plea to a client[160]
- hearings and trials[161]
- sentencing.[162]

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[153] Marcus, 2009, p. 2.

[154] Rory K. Little, "ABA's Project to Revise the Criminal Justice Standards for the Prosecution and Defense Functions," *Hastings Law Journal*, Vol. 62, 2011.

[155] The discussion focused on the Defense Function Standards but also included discussion of relevant portions of other Criminal Justice Standards, including the Standards on Mental Health, Discovery, Guilty Pleas, and Pretrial Release.

[156] See, e.g., Defense Function Standard 4-3.1, 4-3.3, 4-3.9, 4-5.1(b), and 4-5.2(b) (ABA, 2017).

[157] See, e.g., Defense Function Standard 4-3.2 (ABA, 2017).

[158] See, e.g., Defense Function Standard 4-3.7(b), 4-4.1, and 4-4.5 (ABA, 2017).

[159] See, e.g., ABA Criminal Justice Standards on Mental Health 7-1.4 (ABA, *Criminal Justice Standards on Mental Health*, August 8, 2016).

[160] See, e.g., Defense Function Standard 4-6.1 (ABA, 2017); ABA Criminal Justice Standards on Guilty Pleas Standard 14-3.2(b) (ABA, 2016).

[161] See, e.g., Defense Function Standard 4-4.6 (ABA, 2017).

[162] See, e.g., Defense Function Standard 4-8.3 (ABA, 2017).

Because more than 90 percent of state court criminal cases resolve prior to trial,[163] we placed particular emphasis on standards that are applicable before recommending a plea to a client. For example, defense counsel has a duty to explore disposition without trial and to "promptly communicate to the client every plea offer."[164] In addressing pleas with clients, defense counsel must be candid; "not intentionally understat[ing] or overstat[ing] the risks, hazards, or prospects of the case or exert[ing] undue influence on the client's decisions regarding a plea." For this reason, the Defense Function Standards directly address the duties a defense lawyer must fulfil prior to a plea being recommended. Standard 4-6.1(b) provides as follows:

> In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client and should not recommend to a client acceptance of a disposition offer [plea] *unless and until appropriate investigation and study of the matter has been completed*. Such study should include discussion with the client and analysis of the relevant law, the prosecution's evidence, and potential dispositions and relevant collateral consequences. Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.[165]

The Defense Function Standards further state that defense counsel "should not recommend to a defendant acceptance of a disposition without appropriate investigation. Before accepting or advising a disposition, defense counsel should request that the prosecution disclose any information that tends to negate guilt, mitigates the offense or is likely to reduce punishment."[166]

Case Type and Activity Type Category Development

Case Types

Drawing from similar work conducted in the state-level workload studies, we developed a set of case type categories that capture the bulk of public defense representations in adult criminal

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[163] An NCSC analysis of 91 state court jurisdictions in 21 states (nearly all of which were located within the 300 most populous counties in the country) found that just 8 percent of misdemeanor cases and 5 percent of felony cases reached the trial stage (Brian J. Ostrom, Lydia E. Hamblin, Richard Y. Schauffler, and Nial Raaen, *Timely Justice in Criminal Cases: What the Data Tells Us*, National Center for State Courts, August 2020, p. 24).

[164] Defense Function Standard 4-6.1(a) and 4-5.1(c) (ABA, 2017).

[165] Defense Function Standard 4-6.1(b) (emphasis added) (ABA, 2017). Also see the following: "The court should not accept the plea where it appears the defendant has not had the effective assistance of counsel" (ABA Criminal Justice Standards, Guilty Pleas, Standard 14-1.4[d]); ABA Criminal Justice Standard 14-2.1, which notes that a defendant should be permitted to withdraw a plea if the defendant was denied the effective assistance of counsel; and "To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and address considerations deemed important by defense counsel or the defendant in reaching a decision. Defense counsel should not recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed" (ABA Criminal Justice Standard 14-3.2[b]) (ABA, 2017).

[166] Defense Function Standard 4-6.2(d) (ABA, 2017).

cases at the state trial-court level. These categories were the ones used by our expert panel as they considered questions related to average attorney hour estimates in different types of cases. In the development of these categories, we were mindful of three needs: (1) the categories must be defined in a way that would translate into various state criminal codes in a straightforward manner, (2) they must reflect reasonable assumptions about relative differences between necessary average attorney time expenditures, and (3) they must make intuitive sense to experienced defenders when asked to consider their own caseloads without requiring them to refer to a detailed list of statute citations. The case types chosen for this study encompass representations arising out of probation and parole violation proceedings, DUIs, non-DUI misdemeanor prosecutions with a potential for incarceration, and noncapital/non-DUI felony prosecutions (Table 3.3).

Using the combined experiences of our research team members in conducting public defense weighted caseload studies, we believe that defenders with extensive backgrounds in representing clients in a variety of state trial-level court cases would be able to divide their felony representations into three relative severity groups (High, Mid, and Low), misdemeanors into two groups (High and Low), and DUIs (including both those charged as felonies and those charged as misdemeanors) into two groups (High and Low). The Felony–High categories were further divided by carving out offenses with a potential for LWOP, intentional homicide offenses, and sex offenses, distinguishing those specific subcategories from a catchall Felony–High–Other grouping.

Table 3.3. NPDWS Case Types

Case Type	Description	Sentencing Range	Examples
01: Felony–High–LWOP	Felonies with possible sentences of LWOP	LWOP	
02: Felony–High–Murder	Non-LWOP felonies involving intentional killing of a person	Up to life with possibility of parole	First-degree murder, malice murder, second-degree murder, felony murder
03: Felony–High–Sex	Non-LWOP felonies involving serious sex offenses	More than 15 years (including life with possibility of parole)	Rape, aggravated sexual assault, child sex abuse, child pornography with victim
04: Felony–High–Other	Non-LWOP felonies (including DUIs resulting in death) other than charges falling into the high felony categories for murder or serious sex offenses	More than 15 years (including life with possibility of parole)	Negligent homicide, manslaughter, aggravated assault, assault with a deadly weapon, kidnapping
05: Felony–Mid	Felonies (including DUIs resulting in death) including serious property crimes, serious drug distribution crimes, and less serious violent crimes	Possible sentences of 3 to 15 years	Arson, armed robbery, grand theft, breaking and entering, drug distribution or manufacturing, battery

Case Type	Description	Sentencing Range	Examples
06: Felony–Low	Felonies (including DUIs resulting in death) including less serious property crimes, less serious drug felonies, and minor crimes of violence	Possible sentences of up to 2 years	Theft, larceny, burglary, simple assault
07: DUI–High	Repeat DUIs, serious DUIs, and DUIs causing nonfatal injuries (can be a felony or misdemeanor)	Possible sentences of more than 2 years	
08: DUI–Low	First or successive DUIs (typically misdemeanors)	Possible sentences of up to 2 years	
09: Misdemeanor–High	Serious misdemeanors (other than DUIs) involving enhanceable misdemeanors (such as misdemeanors triggering repeat offender sentencing), sex misdemeanors, or violent misdemeanors	Any	Domestic violence, misdemeanor assault, misdemeanor animal cruelty, exposure
10: Misdemeanor–Low	Less serious misdemeanors (other than DUIs or those falling into the high misdemeanor category)	Any	Petty theft, drug possession, drug paraphernalia, trespass, status offenses, criminal traffic offenses
11: Probation or **Parole Violations**	Probation or parole violations derived from either felony or misdemeanor offenses	Any	

The "Sentencing Range" and "Examples" columns in Table 3.3 are intended to illustrate relative differences between categories within the felony and misdemeanor divisions. Many states use indeterminate sentencing, which means that workload standards categories based solely on potential sentence length at the time of arrest or when the charging document is filed would present challenges to administrators trying to map the case types to specific sections of a state's criminal code. A related problem would even apply in states with determinate sentencing because there are no universally accepted rules for defining, for example, high-, medium-, and low-severity felonies on the basis of potential jail or prison time. The ranges provided in Table 3.3 are simply a way to help panelists think about the high, mid, and low types in terms of those involving the highest-severity sentences, those with the lowest, and a middle group with "typical" consequences for a felony conviction. The same applies to the examples shown in the table. Misdemeanor animal cruelty is commonly punishable by up to one year in jail, and we included it in the table to illustrate what might constitute a Misdemeanor–High "serious misdemeanor" case. But there certainly are states where a first conviction would be limited to about three months imprisonment, which would likely be considered a low-level misdemeanor by defenders practicing in those jurisdictions. Our intent was for panelists to focus on relative severity rather than on the examples provided, which may or may not be a good fit as applied to their practice states' legal regimes. This further allows for flexibility to account for jurisdictional differences when applying these case types.

Mandatory sentencing enhancements, three-strikes laws, and multiple counts can turn an ostensibly low-level criminal case (as defined in our case type table) into a prosecution with decades of imprisonment on the line. We asked the panelists to focus only on the most serious charge in a case for the purpose of case type assignment. For example, if they have had Felony–Low cases with life sentences as potential consequences because of some sort of enhancement, they were instructed to nevertheless include such representations in their estimates for the Felony–Low category proportional to the relative frequency in which such situations were actually encountered.

We did not include capital crimes, in part because defendants in such matters are often represented by specialized counsel, private law firms, or units within public defender offices that have funding streams and compensation policies that are distinct from those applicable to traditional public defense providers. Another reason for carving out capital cases is that this specialized practice has long been the subject of close scrutiny by researchers, public defense administrators, advocacy organizations, and policymakers, thus reducing (although certainly not eliminating) concerns over excessive caseloads and resource shortfalls when compared with the situation arising from the far greater numbers of misdemeanor and noncapital felony prosecutions in this country.[167]

It should also be noted that public defense counsel routinely represent adult clients in matters that fall outside the 11 categories listed in Table 3.3. Such matters can include, for example, extradition hearings, the seeking of postconviction relief, contempt proceedings, sentence modifications and reviews, witness representations, and civil commitments. We did not include these types of representations because of the significant diversity between states in the procedural and substantive law applicable to such proceedings and because local public defense delivery system policies differ markedly as to whether defenders would be appointed to represent clients in matters not directly related to a current prosecution.

The members of the expert panel were asked to consider a case as involving all charges filed against a client arising out of a single event or series of events and being prosecuted together. They were further asked to remember that the classification of that case for the purposes of this exercise would be by highest charge. Thus, if any charge in a case involved a felony with a possible sentence of LWOP, then the case would be classified as a Felony–High–LWOP regardless of what the other charges were; if no Felony–High–LWOP charges were present but the prosecution involved an allegation of intentionally killing a person, the case would be classified as a Felony–High–Murder regardless of what the other charges were, and so on. This sort of hierarchy based on both sentence severity and offense subject matter for the purpose of assigning a single case type designation to multicharge appointments is common in case management systems used by courts and indigent defense providers.

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[167] See, e.g., ABA, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, February 2003.

Activity Types

As was done in the majority of the public defense workload studies we reviewed, we developed a set of eight activity type categories to capture panelists' estimates at the task level (Table 3.4). We kept the total number of categories to a minimum to reduce any burden on the panelists when developing their estimates. We instructed the panelists to consider only attorney time. For example, they were asked not to include time a staff member or outside investigator spends investigating one of their cases, but they would include the time an attorney spends supervising and meeting with the investigator, going over the investigator's work, and any additional follow-up work conducted directly by the attorney. In addition, only time directly spent on individual cases was sought, which would exclude time spent, for example, in general team or office meetings, professional training, travel, or waiting.

Table 3.4. NPDWS Activity Types

Activity Type	Definition	Includes	Excludes
Client communication and care	Time spent communicating with client or arranging care, support, or other personal and social services for the client	• All out-of-court communication with clients (mail, phone, video call, in person, etc.) as well as communication with client family members related to the criminal case • Client care and support activities performed by the trial attorney, including working with social services, treatment providers, or outside agencies on behalf of clients, as well as handling medical, family, or other issues affecting the client during a criminal case	• Meetings or communications to prepare client or family members for court hearings, which falls under Court Preparation • Arranging services exclusively related to Sentencing and Mitigation, which falls under Sentencing and Mitigation • Time spent traveling or waiting to meet with client.
Discovery and investigation	Time spent on investigation of the case and exchange of discovery with the prosecution	• Requesting and reviewing discovery materials and other case-related documents, materials, recordings, or other evidence • Case-related investigation activities conducted by the attorney, such as viewing the scene and physical evidence, canvassing for witnesses, preparing for witness interviews, and interviewing witnesses, preparing subpoenas, taking photos or videos, and working with and supervising investigators • Reviewing, analyzing, and organizing case-related materials and evidence; case file documentation • Drafting memos or notes related to discovery and investigation	
Experts	Time spent hiring and working with pretrial and trial experts (but	• Locating, interviewing, corresponding with, consulting with, and reviewing reports of experts for the defense, including experts related to competency	• Experts exclusively related to Sentencing and Mitigation, which

Activity Type	Definition	Includes	Excludes
	excluding experts exclusively related to sentencing)	and other pretrial matters, as well as trial experts	falls under Sentencing and Mitigation
Legal research, motions practice, other writing	Time spent on legal research and writing	• Research; drafting of motions, pleadings, briefs, etc. related to pretrial, motions, or trial, including any written submission to the prosecutor related to negotiations	• Research or writing exclusively related to Sentencing and Mitigation, which falls under Sentencing and Mitigation
Negotiations	Time spent on resolving the matter or any part of the matter by agreement	• Discussions with a prosecutor or officer to dismiss a case or resolve by plea bargain	
Court preparation	Time spent preparing for any and all pretrial hearings, as well as trial	• Preparing for factual and legal arguments at hearings • Preparing for direct examinations, cross-examinations, voir dire, etc. • Client and\or family preparation for hearing and trial • Subpoenaing and preparing witnesses • Preparing materials for court, including exhibits and presentations • Defense team meetings or other consultation with colleagues specifically in preparation for hearing or trial • Moot arguments and mock examinations	• Preparation for hearings exclusively related to Sentencing and Mitigation, which falls under Sentencing and Mitigation
Court time	Time spent in court for pretrial hearing and trial	• Attending pretrial hearings, such as initial appearance, bail hearings, status hearings, competency proceedings, motions hearings, etc. • Trial (bench or jury)	• Travel time and waiting time • Court time related to Sentencing and Mitigation, which falls under Sentencing and Mitigation
Sentencing and mitigation and post-adjudication	Time spent preparing for sentencing, attending sentencing hearing(s), and on any postadjudication activities	• Developing or collecting evidence to be used in sentencing • Witness preparation for sentencing hearings • Consulting with sentencing and mitigation experts • Preparing for sentencing, including review and rebuttal of prosecutorial sentencing materials • Preparing for and attending sentencing hearings • Addressing fines, fees, and restitution • Filing postadjudication motions or notices, e.g., notice of intent to appeal or waiver of appeal, motion or request for appellate counsel, motion for DNA expungement • Preparing and filing any required documentation for appeal, e.g., statement of issues • Preparing file for appeal or transition to appellate attorney • Communication with appellate attorney	

Expert Panel Selection

When using the Delphi method to structure a group communication process, "choosing the appropriate subjects [to serve as experts] is the most important step in the entire process because it directly relates to the quality of the results generated."[168] To help us in our expert panel selection, we reached out to five major national organizations with a focus on the provision of effective assistance of counsel in criminal cases: Gideon's Promise,[169] the National Association for Public Defense (NAPD),[170] the National Association of Criminal Defense Lawyers (NACDL),[171] the National Criminal Defense College (NCDC),[172] and NLADA.[173] All five organizations were asked to nominate several attorneys with expertise in adult criminal defense in state trial-level courts and a track record of good practice. The research team requested that each group identify a diverse group of criminal defense lawyers, in terms of gender identity, race, and ethnicity, as well as geography and practice type (e.g., public defenders, appointed private counsel, private counsel with contracts to provide indigent defense, and private counsel who primarily or exclusively represent paying clients). We further asked that the nominated attorneys have significant experience in misdemeanor cases, in felony cases, or in a mix of both. Importantly, we asked the organizations to identify attorneys "to whom you would send a beloved family member if he/she/they found themselves in the unfortunate circumstance of being charged with a crime."

We discouraged the nomination of expert panelists who primarily or exclusively handle white-collar crimes (not a particular focus for indigent defenders) or case types outside the scope of this project (e.g., appeals, juvenile, or death penalty prosecutions). We further discouraged the nomination of those who primarily serve as public defense system administrators or supervisors

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[168] Hsu and Sandford, 2007, p. 3.

[169] Gideon's Promise describes itself as "a nonprofit public defender organization whose mission is to transform the criminal justice system by building a movement of public defenders who provide equal justice for marginalized communities" (Gideon's Promise, "What We Do" webpage, undated).

[170] NAPD's stated purpose is to engage "all public defense professionals into a clear and focused voice to address the systemic failure to provide the constitutional right to counsel, and to collaborate with diverse partners for solutions that bring meaningful access to justice for poor people" (NAPD, "Statement of Purpose ," webpage, undated.)

[171] NACDL's self-described mission "is to serve as a leader, alongside diverse coalitions, in identifying and reforming flaws and inequities in the criminal legal system, and redressing systemic racism, and ensuring that its members and others in the criminal defense bar are fully equipped to serve all accused persons at the highest level" (NACDL, homepage, undated).

[172] NCDC indicates that it has provided "over 9,000 defense attorneys with transformative trial-skills training through its comprehensive Trial Practice Institute and shorter weekend programs on specific trial skills topics, all staffed by faculty who are talented and successful courtroom lawyers, trainers and coaches" (NCDC, "History of NCDC," webpage, undated).

[173] NLADA states that it "leads a broad network of advocates on the frontlines to advance justice and expand opportunity for all by promoting excellence in the delivery of legal services for people who cannot afford counsel" (NLADA, "About NLADA," webpage, undated).

unless they also retain a significant trial caseload. And we emphasized the importance of significant experience in the state courts rather than federal courts only.

In total, we received 119 nominations from the five organizations identifying 105 attorneys (some nominees had been recommended by more than one organization). We then drafted a letter to the nominees explaining the study's purpose and approach and informing them that they had been nominated to participate as an expert panelist. We explained that we anticipated that the expert panel conference would be held in person and that the project would cover reasonable travel expenses. The inclusion of an assurance to cover nearly all travel expenses was an important part of our outreach. We were aiming for a diverse panel of experts from across the country, including rural and urban jurisdictions. Covering travel expenses ensured that no individual was precluded from participation based on financial resources or remoteness of practice.

Because the study was still underway during what we hoped to be the waning days of the coronavirus pandemic, we required proof of COVID-19 vaccination as a condition of participation, along with the wearing of masks if required:

> It should be also noted that at the present time, we anticipate that the Delphi panelists will meet in an all day, in-person session at the National Center for State Courts in Williamsburg, VA on February 3, 2022. . . . **In addition, panelists will be required to provide proof of full vaccination against COVID- 19 before admission to the in-person session and, if NCSC or local health authorities require them to do so, wear masks at all times indoors during the session unless actively eating or drinking.** Please note that should public health considerations or other factors make an in-person session impractical, the Delphi session will still take place on February 2–4, 2022, but as a virtual event instead.

In addition, we required certain commitments from the candidates if they wished to be considered for panel membership:

> This study will require the participant to: (1) review background materials provided by the project team on criminal defense and ethical standards, as well as summary data regarding existing public defense workload studies; (2) virtually attend background webinars (up to 2); and (3) attend an in-person session in Williamsburg, VA on February 3, 2022 (air travel is likely to take place on February 2 and 4) with proof of full vaccination against COVID-19 and agree to wear masks if asked to do so. Will you be willing to participate in this study if selected, including traveling to Williamsburg for the in-person session as described as well as reviewing project materials and viewing the webinars?

A total of 54 attorneys agreed to the above requirements. We then assessed the degree to which each of the candidates possessed extensive state trial-level court criminal defense experience, excluding those whose career was primarily based in the federal courts, specialty courts, or in organizational leadership (the candidate's current position, such as working for a federal defender office or in an advocacy organization, would not serve as a basis for exclusion

as long as the requisite state court defense experience was present). Six candidates were excluded as a result of that review.

Reported uses of the Delphi method have described panels as small as seven members and some exceeding 1,000 members. According to the experiences of our research team in using Delphi for expert opinion elicitation, we believed that having between 30 and 40 panelists would strike a reasonable balance between enhanced expert diversity, stability of the results, and the logistical and organizational challenges of having many people in a single room trying to engage in meaningful discussions.[174] Accordingly, we divided the 49 potential panelists into two groups, one set of candidates to whom we would immediately offer panel membership, and another group that would be kept in reserve in the event that any of the initial set withdrew or were removed because of a failure to comply with the mandatory requirements set forth above. Nearly all who received our initial offer to join the panel accepted, although we later deemed two invitees to be ineligible because of noncompliance with project requirements.

By the end of December, however, the delta variant of COVID-19 was grabbing headlines and causing major disruptions in air travel. A virtual conference was initially considered as a possible alternative, but we continued to believe that an in-person session would offer the best opportunity for facilitating group consensus on our research questions. Out of an abundance of caution, we moved the February 3 event to April 28, 2022, but kept all other aspects of panel requirements and activities the same. Unfortunately, the change in date caused several of our original panelists to withdraw because of work conflicts. Thankfully, we had our reserve of equally qualified candidates on which to draw and eventually received 35 commitments to the new date from both the original invitees and from the reserve candidates who agreed to participate. With two last-minute withdrawals because of injury or workload pressures, 33 panelists ultimately made up our expert panel. (Table 3.5 lists the final panelists and their positions at the time of the conference.) Short biographies for these panelists can be found in Appendix A.

[174] See discussion of the relationship between sample size and stability in Anthony F. Jorm, "Using the Delphi Expert Consensus Method in Mental Health Research," *Australian and New Zealand Journal of Psychiatry*, Vol. 49, No. 10, 2015, p. 891.

Table 3.5. Expert Panelists for the NPDWS

Panelist Name	Title and Organization
Jenny P. Andrews	Director of Training, Indigent Defense Improvement Division, Office of the State Public Defender, Oakland, California
Tamar R. Birckhead	Attorney, Parrett Porto Parese and Coldwell PC, Hamden, Connecticut
Alison Bloomquist	Vice President of Strategic Alliances and Innovation, National Legal Aid and Defender Association, Washington, D.C.
Carmen Brooks	Assistant Federal Defender, Federal Defender Program, Inc. (Northern District, Georgia), Atlanta, Georgia
Jason H. Broth	Assistant Public Defender, DeKalb County Public Defenders, Atlanta, Georgia
Thomas Carver	Attorney, Carver & Associates, Springfield, Missouri
Eric J. Davis	Chief of the Felony Trial Division, Harris County Public Defender's Office, Houston, Texas
C. Dawn Deaner	Attorney & Executive Director, Choosing Justice Initiative, Nashville, Tennessee
Damaris Del Valle	Deputy Chief of Felonies, Law Offices of the Public Defender, Carlos J. Martinez, Miami, Florida
Carrie Ellis	Misdemeanor Chief and Training Director, Harris County Office of Managed Assigned Counsel, Houston, Texas
Karl Fenske	Deputy Public Defender IV, Los Angeles County Public Defender's Office, Los Angeles, California
Carey Haughwout	Public Defender for Palm Beach County, Office of the Public Defender, 15th Judicial District, West Palm Beach, Florida
Aaron Hawbaker	Supervisor, Iowa Adult Public Defender Office, Waterloo, Iowa
Gemayel Haynes	Team Lead, Senior Litigator, Harris County Public Defender's Office, Houston, Texas
Bryan Kennedy	Senior Assistant Public Defender, Office of the Public Defender, Fairfax, Virginia
Andrea Konow	Senior Trial Attorney, Defender Association of Philadelphia, Philadelphia, Pennsylvania
Rick Kroeger	Associate Attorney, Simmons Hanly Conroy, LLC, Alton, Illinois
La Mer Kyle-Griffiths	Assistant Public Defender, Santa Barbara County Office of the Public Defender, Santa Barbara, California
Elizabeth Lashley-Haynes	Deputy Public Defender IV, Los Angeles County Office of the Public Defender, Los Angeles, California
Corrie-Ann Mainville	Public Defender, Connecticut Division of Public Defender Services, Litchfield, Connecticut
Alexzandria Poole	Director of Defender Initiatives, Zealous, Detroit, Michigan
Diane DePietropaolo Price	Assistant Deputy Public Defender, New Jersey Office of the Public Defender, Camden, New Jersey
Heather Rogers	Public Defender, Santa Cruz County Office of the Public Defender, Santa Cruz, California
Jamie C. Schickler	Managing Attorney of the Behavioral Health Division and Co-Director of the Intern/Extern Program, Law Office of the DeKalb County Public Defender, Atlanta, Georgia
Georgia L. Sims	Assistant Deputy Public Defender, Public Defender of Metropolitan Nashville & Davidson County, Nashville, Tennessee
S. Christie Smith IV	Senior Partner, Smith Advocates LLC, Leesville, Louisiana

Panelist Name	Title and Organization
Ryan Swingle	Attorney, Ryan J. Swingle Attorney at Law, Athens, Georgia
Amber L. Tucker	Owner/Principal, The Law Office of Amber L. Tucker, LLC, Portland, Maine
Colette Tvedt	Attorney, Law Firm of Colette Tvedt LLC, Denver, Colorado
Andre Vitale	First Assistant Deputy Public Defender, Trial Chief, New Jersey Office of the Public Defender, Jersey City, New Jersey
Nanzella Whitfield	Managing Director, Northern Region, Public Defender Division, Massachusetts Committee for Public Counsel Services, Boston, Massachusetts
Glover Wright	Assistant Public Defender, Law Office of the Shelby County Public Defender, Memphis, Tennessee
Lorinda Youngcourt	Trial Attorney, Federal Defenders of Eastern Washington and Idaho, Spokane, Washington

Our original target for the size of the panel was about 35 members, but with a pool of 105 recommended attorneys at the start of the selection process that was reduced to just the 54 who accepted our invitation to participate, we had few options for selecting a panel that could be stratified along gender, racial, ethnic, age, state, urban versus rural, or practice type lines to better represent the demographics of defenders in the United States. We did not collect information from the final panelists as to their gender, race, or ethnicity. We do know that there was at least one panelist from 19 different states, with California, Texas, and Tennessee contributing a total of 11 panelists. State breakdowns are as follows: California: five panelists, Colorado: one, Connecticut: two, District of Columbia: one, Florida: two, Georgia: four, Iowa: one, Illinois: one, Louisiana: one, Massachusetts: one, Maine: one, Michigan: one, Missouri: one, New Jersey: two, Pennsylvania: one, Tennessee: three, Texas: three, Virginia: one, Washington: one.[175] The state identification reflected here may not correspond to the location where a panelist spent the majority of his or her career as a state trial court-level defense attorney.

It is important to note that taking into account organizational or institutional affiliations and recommendations by third parties when selecting experts is a commonly employed procedure in Delphi studies.[176] Our use of Gideon's Promise, NAPD, NACDL, NCDC, and NLADA for the identification of the initial pool of potential panelists was intended to remove the project team as the primary decisionmaker in the expert selection phase of our work and to capitalize on these organizations' national reach and far greater familiarity with individual members of the criminal defense bar across the country. But as a review of the mission statements of the referring organizations noted earlier suggests, these organizations are not disinterested observers of the

[175] Building a panel that accurately reflects state-level populations and where each state contributes at least one panelist would not have been practical. If, for example, a single panelist represented the population in Wyoming, the least populated state in the country, 67 panelists would be needed from California alone.

[176] Marlen Niederberger and Julia Spranger, "Delphi Technique in Health Sciences: A Map," *Frontiers in Public Health*, Vol. 8, No. 457, September 2020, p. 5.

criminal justice system; they are instead advocates for system improvement related to criminal defense specifically and the criminal justice system more broadly. This suggests at least the possibility that the nominations we received reflected certain organization biases that may have affected the final composition of the expert panel. We have no evidence that this was indeed the case and only note the possibility here as a factor to be used when interpreting the results.

Chapter 4. The Williamsburg Conference

Expert Panel Preparation

As described previously, each of the 33 panelists present in Williamsburg, Virginia, for the in-person conference was a highly regarded criminal defense attorney with considerable experience representing clients in state courts. Although we were confident that the panelists were extremely well versed in applicable law and procedures, as well as litigation strategy and courtroom tactics, we took steps in advance of the Delphi session to ensure that all participants understood what was required to properly fulfill the mandate of the Sixth Amendment as articulated by the Supreme Court in *Strickland v. Washington*.

We held a mandatory online video seminar to review ethical and practice standards as to prevailing professional norms for the purposes of defining *reasonably effective assistance of counsel*. The key sources referenced, both during the seminar and later at the Williamsburg conference, were the ABA's Model Rules and Defense Function Standards.[177] In addition, a document was provided to each panelist summarizing defense counsel's duties toward their clients in such areas as client communications, pretrial release determinations, discovery and investigations, and sentencing, as well as what is required before an attorney can recommend a proposed plea agreement.

We held a second mandatory videoconference to review the findings of prior public defense workload studies. This session also explained some of the concepts involved in the development of workload standards for counsel providing public defense services, including how case weights and annual caseload standards are used to determine attorney staffing needs based on expected caseloads and to identify instances where a public defense provider may have more cases than can be handled appropriately. As with the prior session, written materials providing additional detail about the topics covered in the videoconference were then sent to participants for their review prior to the in-person session.

The third pillar of our presession preparation for the expert panel conference was a set of instructions to the panelists describing the procedures for the Williamsburg meeting and what they should consider when addressing the core question of the average amount of attorney time required to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.[178] The instructions asked them to consider that question in the context of the 11 study

[177] As discussed previously, the discussion centered on the Defense Function Standards but also included relevant portions of other Criminal Justice Standards, including the Standards on Mental Health, Discovery, Guilty Pleas, and Pretrial Release. See ABA Criminal Justice Standards (ABA, 1992; ABA, 2016; ABA, 2023).

[178] As noted previously, the materials presented to the panelists are on file with the authors and are available on request. They can also be found at ABA SCLAID, 2023.

case types described in Chapter 3. For ease of reference, Table 4.1 summarizes those categories (complete definitions for these case types can be found in Table 3.3).

Table 4.1. Summary of NPDWS Case Types

Case Type
01: Felony–High–LWOP
02: Felony–High–Murder
03: Felony–High–Sex
04: Felony–High–Other
05: Felony–Mid
06: Felony–Low
07: DUI–High
08: DUI–Low
09: Misdemeanor–High
10: Misdemeanor–Low
11: Probation and Parole Violations

In addition, the panelists were instructed to further divide their average attorney time recommendations for each of the case types into eight activity type (or case task) categories, which are also described in Chapter 3. Again, for ease of reference, Table 4.2 summarizes those categories (complete definitions for these activity types can be found in Table 3.4).

Table 4.2. Summary of NPDWS Activity Types

Activity Type
1. Client Communication and Care
2. Discovery and Investigation
3. Experts
4. Legal Research, Motions Practice, Other Writing
5. Negotiations
6. Court Preparation
7. Court Time
8. Sentencing and Mitigation and Postadjudication

We explained to the panelists that the recommended averages at the activity type level, like the averages for entire cases, should reflect the frequency with which the activity would take place. For example, the "Court Time" activity type for "Felony–Low" case types would include time spent in trial in such cases, but only to the extent that trials actually take place. The sum of a panelist's recommended averages for each activity type for a particular case type should equal the panelist's recommended average for all attorney time expenditures in cases of that case type.

The panelists were asked to review the full set of results from the 17 prior studies as presented in Table 3.1 and Table 3.2 for the purpose of seeing the results that other research efforts have produced, albeit for specific states rather than for a default set of case weights that are not jurisdiction-specific. To provide the panelists with some sense of what we were asking them to do in this study, we attempted to map, to the extent possible, the case weights developed in those 17 studies into the 11 study case type categories. The mapping presented significant difficulties because many of the prior studies described their chosen case types in ways that were either more detailed (e.g., "superior nonconcurrent felony-chapter 265 crime against person") or less detailed (e.g., "misdemeanor") than our definitions. In addition, the prior studies combined various offenses to create each of their case type categories in a way that would not be repeated if a public defense delivery system administrator wished to use the workload standards arising out of our effort. Some of the past studies included case types that were overinclusive when compared with the case types chosen for the national study. For example, the Colorado study created a case type category in which all Class 2, 3, 4, 5, and 6 felony sexual assault cases would be grouped together. In our case type scheme, Class 2 sexual assault felonies, which are punishable by up to 24 years of imprisonment, would likely be placed in the Felony–High–Sex category, while Class 3, 4, and 5 sexual assault felonies (punishable by up to 12, six, and three years, respectively) would likely be mapped into the Felony–Mid category and Class 6 sexual assault felonies (punishable by up to 18 months) would likely be placed into our Felony–Low category.[179] Deciding where the combined 2-3-4-5-6 cluster should be placed in our matrix thus required a judgment call. Our solution was to simply place the Colorado study category into our Felony–High–Other group to split the difference. Table 4.3 presents the results while considering the limitations of this effort (only 110 of the possible 140 prior study results were able to be mapped, and we do not have high confidence about all of our assignment decisions). A version of this table was provided to the panelists for their review.[180] Table 4.3 also includes two additional case types (shaded in gray in the table) to capture the results of prior studies that used a generic Felony or Misdemeanor category. These two categories were not part of the Delphi session for our work, but instead were included as additional data points for the panelists to consider.

[179] The maximum sentences described here represent the normal presumptive range under Colorado law. But if the offense was found to constitute an act of violence under Colorado Revised Statutes Section 18-1.3-406, Class 3 and 4 sexual assaults would be placed in the Felony–High–Sex category, Class 5 sexual assaults would remain in Felony–Mid, and Class 6 sexual assaults would move into Felony–Mid.

[180] After the conclusion of the Williamsburg conference, it was discovered that the findings for the 2017 Colorado study as reported in versions of Table 3.1, Table 3.2, Table 4.3, and Table 4.4 provided to our panelists differed somewhat from the actual results produced by that study. Those values have been corrected for this report. We do not believe that the panelists' key takeaways from their review of prior studies results would have been meaningfully affected by the error.

Table 4.3. Prior Study Findings Grouped by NPDWS Case Type Categories

Current Categories	Prior Study and Year	Case Type	Recommended Average Attorney Hours
01: Felony–High–LWOP	Indiana, 2020	Noncapital murder (LWOP)	311.3
	Louisiana, 2017	Felony–LWOP	200.7
02: Felony–High–Murder	Oregon, 2022	Homicide or sex case	552.5
	New Mexico, 2022	Murder including CARD	391.0
	Utah, 2021	Noncapital murder	300.0
	Indiana, 2020	Noncapital murder (non-LWOP)	232.1
	New Mexico, 2007	Murder	202.6
	Rhode Island, 2017	Murder	181.6
03: Felony–High–Sex	New Mexico, 2022	Child pornography with actual victim	177.4
	Utah, 2021	Mandatory sex or kidnap registration felony	150.0
	New Mexico, 2022	Child abuse or child sex crime (not including CARD or child pornography)	126.5
04: Felony–High–Other	Oregon, 2022	High-level felony	149.0
	Colorado, 2017	Class 2 felony	134.5
	Michigan, 2019	Murder/manslaughter[a]	120.0
	Rhode Island, 2017	Nonmurder with possible life sentence	108.1
	Maryland, 2005	Homicide (average)[a]	107.0
	Missouri, 2014	Murder/homicide[a]	106.6
	Colorado, 2017	Sexual assault felony, Class 2, 3, 4, 5, or 6[b]	98.9
	Michigan, 2019	Criminal sexual conduct (1, 2, or 3)[c]	80.0
	Massachusetts, 2014	Superior nonconcurrent felony-chapter 265 crime against person	76.4
	North Carolina, 2016	Felony A, B1, and B2	75.3
	New York (five counties), 2016	Violent felony	75.0
	Louisiana, 2017	High-level felony	69.8
	Indiana, 2020	High-level felony (levels 1–2)	68.2

Current Categories	Prior Study and Year	Case Type	Recommended Average Attorney Hours
	Missouri, 2014	Sex felony[d]	63.8
	Michigan, 2019	Other Class A felony	50.0
	Missouri, 2014	A/B felony	47.6
	Virginia, 2010	Murder or homicide (noncapital)[a]	41.2
	Texas, 2015	Felony, first degree	27.1
	Texas, 2015	Felony, second degree	19.9
Felony–Unspecified	Idaho, 2018	Felony	67.2
05: Felony–Mid	Colorado, 2017	Violent felony, Class 3 or 4	87.1
	Rhode Island, 2017	Felony, more than ten years imprisonment	51.9
	New Mexico, 2022	Crime against person (adult victim)	50.7
	Oregon, 2022	Mid-level felony	47.7
	Indiana, 2020	Mid-level felony (levels 3–4)	42.6
	Massachusetts, 2014	Superior nonconcurrent felony–not chapter 265 crime against person	42.3
	Louisiana, 2017	Mid-level felony	41.1
	Michigan, 2019	Class B, C, D felony	40.0
	New Mexico, 2007	Violent felony	29.6
	Rhode Island, 2017	Felony, up to ten years imprisonment	28.3
	North Carolina, 2016	Felony C, D, E, and F	26.0
	Maryland, 2005	Violent felony (average)	25.3
	Texas, 2015	Felony, third degree	14.5
	Virginia, 2010	Violent felony	12.8
06: Felony–Low	New York (five counties), 2016	Nonviolent felony	50.0
	Colorado, 2017	Nonviolent felony, Class 3 or 4	47.0
	Oregon, 2022	Low-level felony	39.8
	Utah, 2021	Other non-DUI felony	37.0
	New Mexico, 2022	Drug crime, property crime, or status offense	32.5
	Colorado, 2017	Drug felony Class 1, 2, 3, or 4	28.6

Current Categories	Prior Study and Year	Case Type	Recommended Average Attorney Hours
	Colorado, 2017	Class 5 or 6 felony	28.3
	Michigan, 2019	Class E, F, G, H felony or two-year misdemeanor	25.0
	Missouri, 2014	C/D felony	25.0
	Massachusetts, 2014	District concurrent felony–crime against person	24.1
	Indiana, 2020	Low-level felony (levels 5–6)	22.0
	Louisiana, 2017	Low-level felony	22.0
	Massachusetts, 2014	District concurrent felony–not crime against person	19.1
	Maryland, 2005	Nonviolent felony (average)	14.0
	Texas, 2015	State jail felony	12.0
	North Carolina, 2016	Felony G, H, and I	8.7
	New Mexico, 2007	Nonviolent felony	8.5
	Virginia, 2010	Nonviolent felony	7.2
07: DUI–High	Colorado, 2017	DUI felony, Class 4	29.9
	Utah, 2021	Felony DUIs	25.0
	New Mexico, 2022	DWI	21.7
08: DUI–Low	Utah, 2021	Misdemeanor DUI	20.0
	Massachusetts, 2014	Operating under the influence	19.7
	Colorado, 2017	Misdemeanor DUI	15.5
	North Carolina, 2016	Driving while impaired	8.8
	New Mexico, 2007	Driving while intoxicated	7.3
	Virginia, 2010	Driving while intoxicated	3.2
09: Misdemeanor–High	Oregon, 2022	Complex misdemeanor	37.0
	Colorado, 2017	Misdemeanor sex offense	33.8
	Utah, 2021	Class A misdemeanor	25.0
	Colorado, 2017	Misdemeanor Class 1	16.3
	Louisiana, 2017	Enhanceable misdemeanor	12.1
	Texas, 2015	Class A misdemeanor	9.7

Current Categories	Prior Study and Year	Case Type	Recommended Average Attorney Hours
Misdemeanor–Unspecified	Idaho, 2018	Misdemeanor	22.0
	New York (five counties), 2016	Misdemeanor	21.0
	Massachusetts, 2014	Misdemeanor	16.8
	Rhode Island, 2017	Misdemeanor	12.7
	Indiana, 2020	Misdemeanor	12.6
	Missouri, 2014	Misdemeanor	11.7
	North Carolina, 2016	Misdemeanor (includes traffic)	4.1
	New Mexico, 2007	Misdemeanor	3.8
	Maryland, 2005	Misdemeanor jury trial demand or appeal (average)	3.6
	Virginia, 2010	Misdemeanor	2.5
10: Misdemeanor–Low	Oregon, 2022	Low-level misdemeanor	22.3
	Utah, 2021	Class B and C misdemeanor	12.0
	Colorado, 2017	Misdemeanor Class 2 or 3	11.4
	New York (five counties), 2016	Violation (sentence not more than 15 days)	10.0
	Texas, 2015	Class B misdemeanor	8.9
	Michigan, 2019	One-year misdemeanor	8.0
	Louisiana, 2017	Misdemeanor or city parish ordinance	7.9
	New Mexico, 2022	Traffic or other minor crime	7.6
	Michigan, 2019	93-day misdemeanor	7.0
	Colorado, 2017	Misdemeanor traffic and other	6.9
	Maryland, 2005	District court criminal (average)	2.3
	Maryland, 2005	District court traffic (average)	1.6
11: Probation and Parole Violations	Rhode Island, 2017	Probation violation	16.9
	New York (five counties), 2016	Probation revocation	15.0
	Idaho, 2018	Probation violation	10.4
	Missouri, 2014	Probation violation	9.8

Current Categories	Prior Study and Year	Case Type	Recommended Average Attorney Hours
	Massachusetts, 2014	Superior court probation	9.2
	Indiana, 2020	Probation and community corrections revocation	8.5
	Louisiana, 2017	Revocation	8.5
	Oregon, 2022	Probation violation	8.3
	Massachusetts, 2014	District court probation	8.3
	Colorado, 2017	Felony probation revocation	7.4
	Utah, 2021	Probation violation, felony	6.0
	New Mexico, 2022	Probation violation	5.2
	Utah, 2021	Probation violation, misdemeanor	5.0
	Colorado, 2017	Misdemeanor probation revocation	4.3
	Michigan, 2019	Probation violation	3.5
	North Carolina, 2016	Probation violation	3.2
	Virginia, 2010	Probation violation, felony	2.5
	New Mexico, 2007	Probation violation	2.2
	Maryland, 2005	Violations of probation, circuit	1.5
	Virginia, 2010	Probation violation, misdemeanor	0.9
	Maryland, 2005	Violations of probation, district	0.8

[a] Category appears to include involuntary manslaughter and other nonintentional homicides. Treated as Felony–High–Other rather than Felony–High–Murder.
[b] Class 6 sex crimes in Colorado punishable up to 18 months, Class 5 up to three years, Class 4 up to six years, Class 3 up to 12 years, and Class 2 up to 24 years. Treated as Felony–High–Other rather than Felony–High–Sex.
[c] Criminal Sexual Conduct degrees 2 and 3 in Michigan are punishable for up to 15 years, although first degree carries a 25-year mandatory. Treated as Felony–High–Other rather than Felony–High–Sex.
[d] Class E sex crimes in Missouri are punishable up to four years, Class D up to seven years, Class C up to ten years, Class B only up to 15 years, though Class A is 10 to 30 years. Treated as Felony–High–Other rather than Felony–High–Sex.

Another way to view prior study results in the context of the NPDWS is to examine the distributions within each case type category. The small counts of prior study findings in some of the case type categories is problematic; for example, we have only two case weight results that were clearly and solely focused on felonies in which LWOP was a potential sentence, only three case weights involving serious felony sex crimes, and just three high DUIs. The concern here is that what was observed in the studies that did separate such prosecutions from all others may not be generalizable to other jurisdictions in which workload analyses were also conducted.

In Table 4.4, we present prior study case weight distributions within our current categorization scheme, presenting information on the number of prior results, the median result, a mean, and, when there were more than three entries, a form of trimmed mean in which we simply dropped the lowest and highest values before calculating an average. As in the previous table, we include shaded entries for the generic groupings for unspecified felony and misdemeanor case types found in the prior studies.

Table 4.4. Distributions of Prior Study Results Grouped by NPDWS Case Type Categories

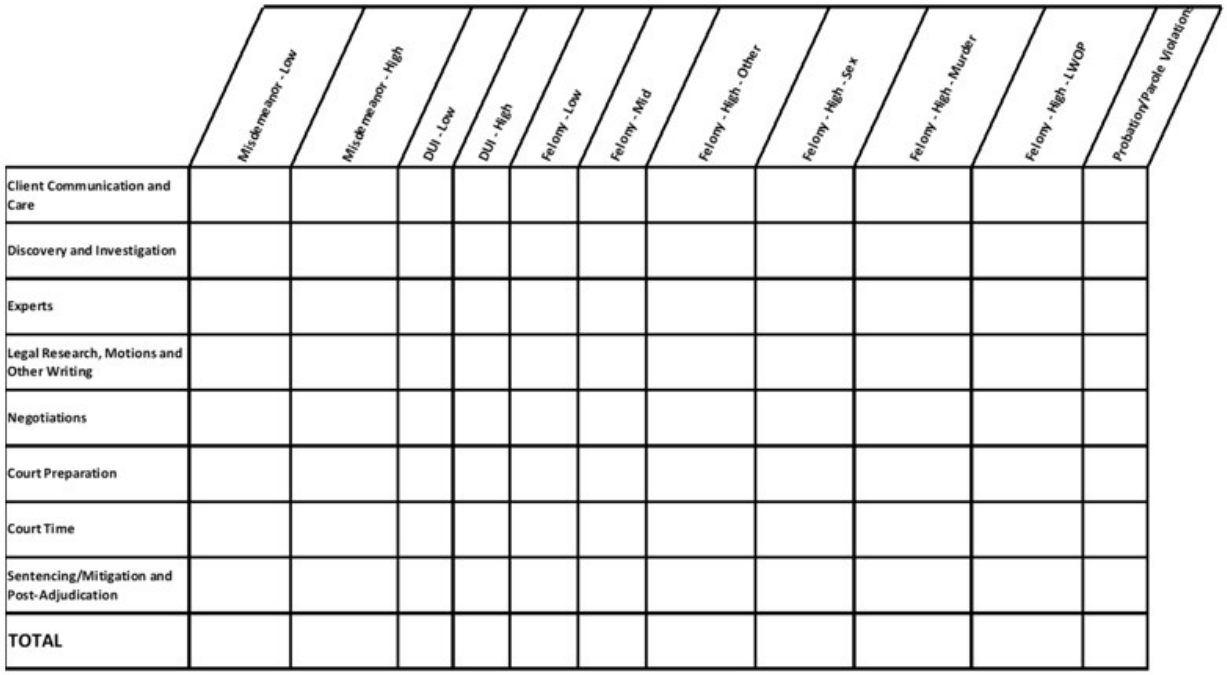
Current Categories	Prior Study Case Type Count	Highest Hours	Lowest Hours	Median	Mean	Trimmed Mean
01: Felony–High–LWOP	2	311.3	200.7	256.0	256.0	N/A
02: Felony–High–Murder	6	552.5	181.6	266.1	310.0	281.4
03: Felony–High–Sex	3	177.4	126.5	150.0	151.3	N/A
04: Felony–High–Other	19	149.0	19.9	75.3	79.9	79.4
05: Felony–Mid	1	67.2	67.2	67.2	67.2	N/A
Felony–Unspecified	14	87.1	12.8	40.6	38.6	36.7
06: Felony–Low	18	50.0	7.2	24.6	25.0	24.6
07: DUI–High	3	29.9	21.7	25.0	25.5	N/A
08: DUI–Low	6	20.0	3.2	12.1	12.4	12.8
09: Misdemeanor–High	6	37.0	9.7	20.7	22.3	21.8
Misdemeanor–Unspecified	10	22.0	2.5	9.5	11.1	10.8
10: Misdemeanor–Low	12	22.3	1.6	8.0	8.8	8.2
11: Probation and Parole Violations	21	16.9	0.8	6.0	6.5	3.1

The Initial Estimates

Prior to the expert panel meeting in Williamsburg, we asked the panelists to complete an initial response chart and bring it to the in-person session (Figure 4.1). The chart documented each panelist's first estimates of the average time needed (in hours and tenths of hours) for each activity type within each case type to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. Having the experts record their initial estimates in advance gave the panelists as much time as they felt necessary to consider the guidance provided over the

previous weeks as well as their own practice experiences when producing their first recommendations. Having this activity take place before the meeting also freed up considerable additional in-session time for discussions among panel members.

Figure 4.1. Initial Response Chart



To give the panelists a frame of reference for making these estimates, the guidance they were provided pointed out that the estimates are similar to the sorts of calculations of expected time expenditures that a supervising attorney must make to balance the incoming workload among staff attorneys. Experienced counsel are fully aware that every case presents unique challenges, no matter what charges or potential sentences are involved. However, for the purpose of estimating whether one has the time needed to take on a new client matter, prior representations of a particular case type provide a sense of the average amount of time required. The estimates, we explained, would be based on similar information.

The panelists were advised to consider only attorney time for case-related activities and not include time spent by others (e.g., investigators, social workers, paralegals) in the same office in support of the panelist's cases. They were asked to make their estimates assuming existing support staff levels in their own practices, to factor in trials and highly complex cases but only in relation to their likelihood, and to think about hundreds of cases of a particular type taken together rather than focusing on very brief or very lengthy representations. Importantly, we attempted to make clear that their recommendations should pertain to *all* state trial court adult

criminal case representations and not just those involving appointments to represent clients who are financially eligible for assistance of counsel at public expense.

We did not have information about the size of each panelist's current workload (or the workloads they faced in the past if they were no longer practicing state-level criminal defense), nor did we have information about whether the panelists were always in close compliance with their jurisdiction's ethics rules or were being guided by the Defense Function Standards when representing adult clients in state trial court criminal matters. Presumably, a panelist whose workload demands and practice resources provide a meaningful opportunity to adhere to prevailing professional norms in every case could simply draw on their own experiences and recommend an average time that mirrored their own average time expenditures. To address situations where that was not the case, we advised the panelists that, when they were making their individual estimates, to first think about how much time they currently spend, on average, for cases within each category. They were then to consider whether there were shortcomings in their representations or circumstances that negatively affect their ability to provide reasonably effective assistance. If they felt that such shortcomings existed, they were to estimate how much additional time would be needed, on average, to address such shortcomings and comply with applicable standards. They were told that the sum of their current average time expenditures and the additional average time they believed was required should be incorporated into recommended estimates. As an example, if a panelist was generally unable to meet with "a criminally accused person for consultation at or before any appearance before a judicial officer, including the first appearance" per Defense Function Standard 4-2.3, they could add an appropriate amount of time to their estimates for doing so.[181]

Finally, we cautioned the panelists not to artificially adjust their estimates to account for, for example, attorneys who may lack the panelist's level of expertise, offices with greater or lesser support staff or other resources, potential budget negotiations with state or local governments or other funding sources, offices in regions of a state that were different from where a panelist practices, or current and hopefully transitory problems related to court and office shutdowns and absences triggered by the COVID-19 pandemic.

Session Procedures

The Williamsburg conference began with a presentation by the project team that summarized the reasons for developing updated national workload standards for public defense counsel, the uses for such standards, and some key issues to consider when estimating necessary average times. It was emphasized that the estimates should be based solely on a constitutionally appropriate level of professional assistance to a client involved in adult criminal cases, i.e., reasonably effective assistance, and that they should refrain from veering into the realm of the

[181] ABA, 2017.

unrealistic ideal. There was also a recap of the pertinent professional standards that should be considered during the day's deliberation, with a particular focus on Defense Function Standard 4-6.1(b)'s mandate: "Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including analysis of controlling law and the evidence likely to be introduced."[182]

The panelists were then introduced to a RAND-developed web-based application to collect their estimates, which they could enter into their laptops, tablets, or other mobile computing devices. The use of the web application and the distribution of randomized credentials for the login process allowed the panelists to make their entries anonymously, and, if they chose to do so, add anonymous explanatory comments to their submissions. Importantly, options were provided for the experts to skip over a case type if they were uncomfortable with making a recommendation for that category, perhaps because of a lack of recent or extensive experience representing adult clients with such charges.

At this point, the panelists were asked to take the values from their initial response charts and enter them into the application. The process for doing so involved selecting a case type and then entering estimates for recommended average time at the activity type level for that case type. The application automatically summed a panelist's individual activity type entries to produce a case type–level estimate. Figure 4.2 provides an example of what a panelist would have viewed on the application display if the Felony–High–Sex category had been selected.

After the panelists entered their first set of recommendations, a statistical summary of their responses at the case type level was projected onto a screen in the meeting room. The display presented, for each of the 11 NPDWS case types, the number of panelists submitting entries for that case type, the minimum and maximum values entered by the panelists, and the median of all panelist entries (see Figure 4.3). The application on their computing devices provided similar information in the form of a dashboard display. The application also included a graphical representation of the distribution of all panelist estimates for each case type, along with a line indicating where the panelist's own estimate fit within that distribution (Figure 4.2). Providing the panelists with feedback about the group's estimates as they evolve is a defining feature of a Delphi session; doing so encourages the panelists to reassess their own submissions and, if desired, modify those estimates.

A member of the research team then took on the role of facilitator. A roundless (sometimes referred to as a *real-time* or *continuous*) Delphi session began at that point, one in which panelists were permitted to modify their responses on average time needed for any activity type within any case type and to do so at any point during the discussion. The facilitator encouraged the panelists to either openly discuss the reasoning behind their estimates or to submit anonymous comments that would be shared through the application. The panelists were also periodically reminded that they were free to change their estimates as often as they felt

[182] ABA, 2017.

appropriate, but that they were also free to make no changes at all. The data summaries projected onto the meeting room's screen and on panelist dashboards were updated periodically as new responses were submitted.

Figure 4.2. Example of Panelist's View of the Delphi Application

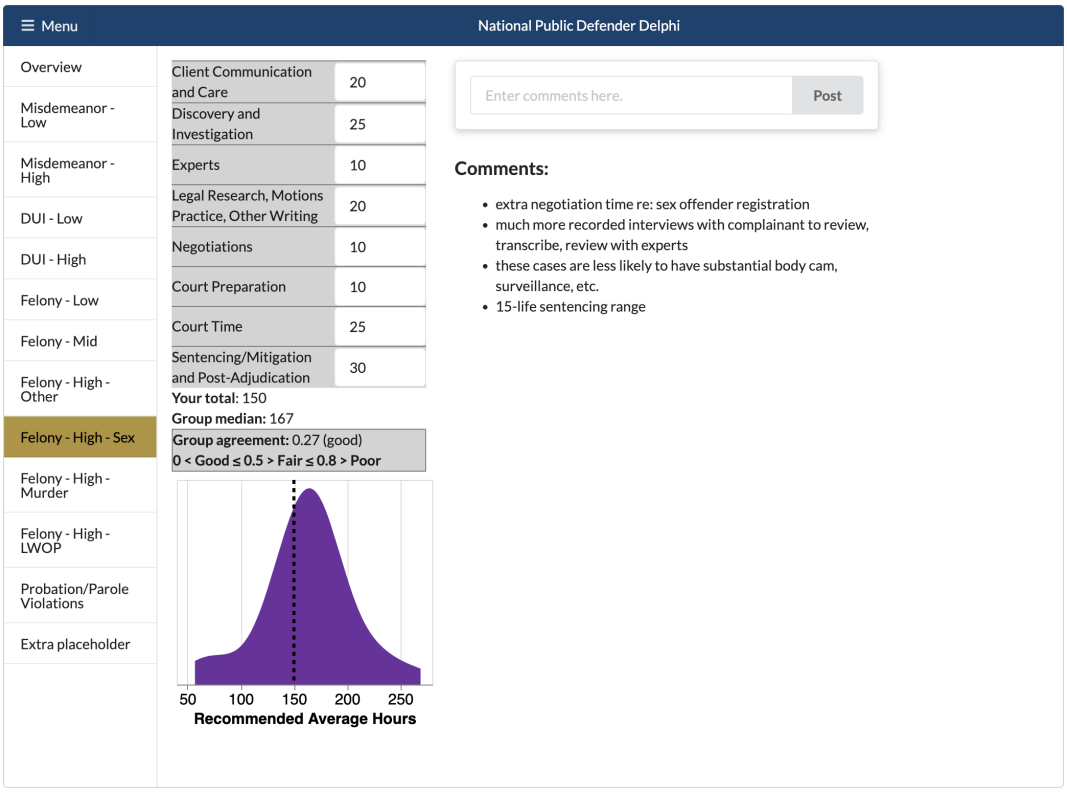
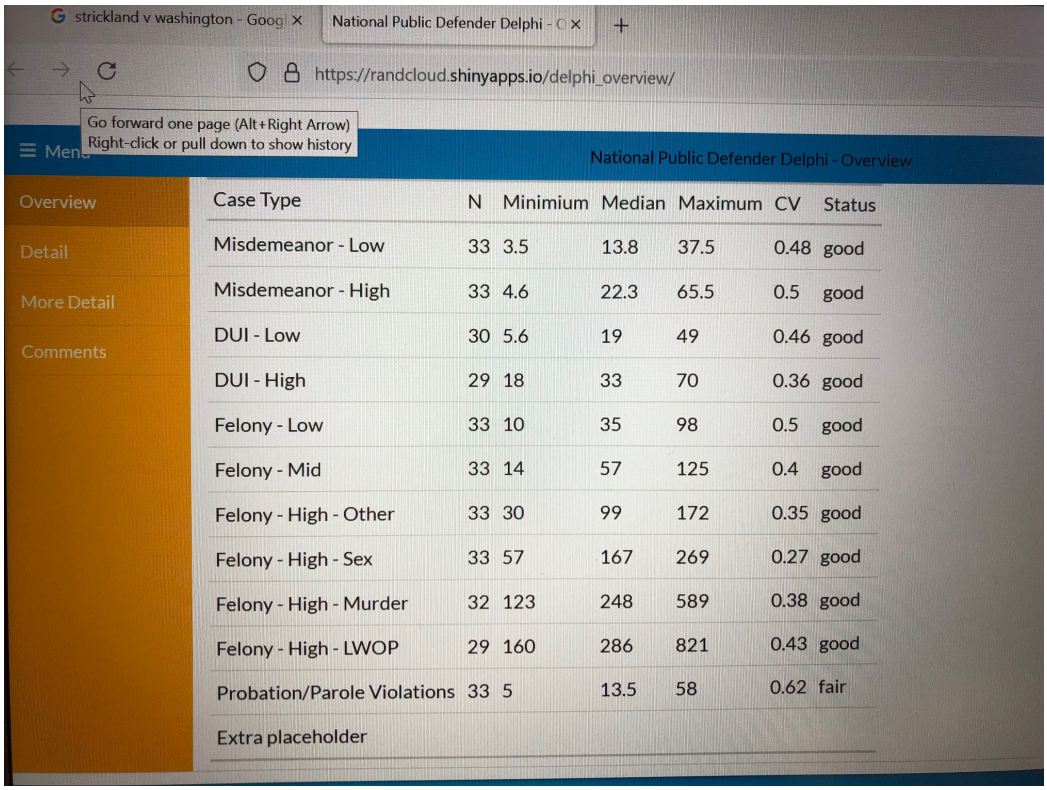


Figure 4.3. In-Room Projected Delphi Session Display



Two other items of information were included in the projected display and the individual computing device dashboard. The CoV (i.e., standard deviation divided by the mean) for the distribution of recommended attorney hours for each study case type had been chosen as both the consensus measure (i.e., how similar the panelists' estimates are at a specific point in time) and the stability statistic (i.e., when a reasonable cutoff point for further voting has been reached) for the Delphi session. We adopted a rule common in many research projects employing a Delphi strategy, in which a CoV of less than or equal to 0.5 indicated a good degree of consensus, making further discussion about the case type in question unnecessary.[183] CoVs exceeding 0.5 but less than or equal to 0.8 would be considered less satisfactory, and additional discussion would be recommended for the purpose of enhancing a consensus as much as possible. CoVs at the lower part of this range could be considered acceptable if it was clear that no further discussion would be useful. CoVs exceeding 0.8 would indicate a poor degree of consensus, and, unless the range of results could be tightened, the case type would need to be dropped from the standards-setting process. The summary statistics presented to the panelists included the CoVs

[183] These guidelines were originally described in J. Morley English and Gerard L. Kernan, "The Prediction of Air Travel and Aircraft Technology to the Year 2000 Using the Delphi Method," *Transportation Research*, Vol. 10, No. 1, 1976, and based on input from Delphi pioneer Norman Crolee Dalkey. The guidelines became a popular choice for Delphi researchers in subsequent years.

for each case type and a label describing the relative degree of consensus: “poor” (CoV greater than 0.8), “fair” (CoV greater than 0.5 and less than or equal to 0.8), and “good” (CoV less than or equal to 0.5).

As noted earlier, each panelist could change their activity type–level answers at any time until the day’s deliberations ended (which we had defined in advance as either the point at which the stability statistics for all case types showed no significant movement or 5:00 p.m. Eastern at the latest), even for case types with CoVs that had moved below the 0.5 mark. Therefore, entries could be made while discussions were taking place, when results were being displayed, and even during session coffee breaks. The facilitator typically focused the group dialogue on those case types with CoVs greater than 0.5, in part by seeking panelists to voice arguments for the low and high ends of the range for each case type. Another approach used by the facilitator was to steer the discussion toward activity types with the greatest spread in their estimates for those case types that had a fair or poor consensus at the case type level. Although the distributions of activity type estimates were not displayed to the panel as a group or in the individual panelists’ dashboards, that information was always available to the facilitator.

Results

Our project team consisted of representatives of organizations that have participated in 14 of the 17 major state-focused studies undertaken since 2005 to determine functional case weights (and, in some instances, appropriate caseload standards) for public defense appointments. One of our project team members also directed or participated in workload studies involving other justice system organizations, such as the judiciary and prosecuting attorney offices. In nearly all these studies, a key component involved the elicitation of expert judgments for the purpose of recommending time expenditures or adjusting estimates previously made by others. The elicitation was often accomplished using a Delphi session similar to the one employed here, although focus groups were also used on occasion. No matter what tool was used, our experience has generally (though not always) been that early in the process there is a very wide spread in the time estimates submitted by the experts for just about every case type category; narrowing that spread to the point where an appropriate degree of consensus has been reached can take many hours of debate and discussion.

A very different pattern was observed in the expert panel session held as part of the NPDWS. The initial panelist entries for some of the felony case types yielded CoVs that were already close to the 0.5 value used to indicate a good degree of consensus, even though some of the less severe case types (in terms of potential consequences) followed a more typical pattern of starting off in the poor range and not achieving a satisfactory degree of consensus until much later in the session. As can be seen in graphical representations of the movement toward consensus during the expert panel session shown in Appendix C, the four high-severity felony categories had CoVs at the start of the actual deliberations (i.e., after the initial data entry period) at about 0.6,

and, notably, Felony–High–Sex was just under 0.5. The consensus measures at the start for mid-level felonies was closer to 0.7, but low-level felonies and both misdemeanor categories began near or in the poor range of 0.8 and higher. After considerable discussion among panelists about the relative challenges of the various case types in terms of representation complexity and time demands, ten of the 11 case types eventually reached the good consensus threshold of 0.5, although that mark was hit last for low-level misdemeanors.

The Parole and Probations Violations category was associated with the lowest level of consensus of any of our case types, meriting only a fair rating (CoV = 0.62). The group discussion about this particular case category suggested that there were significant differences between states in exactly what is at stake in these proceedings, the ability of counsel to present a robust defense that would put the prosecution's assertions to the test, and the complexity of the issues in play. Because there was little movement in the CoV for probation and parole representations throughout much of the day and, in the facilitator's view, further discussion would not result in a meaningful change in that case type's consensus level even though all other case types were already at or under 0.5, we locked down all the results and ended all further deliberations. No other category in our study elicited quite the same level of asserted diversity of experiences and expectations on the part of panel members (save the situation where discovery is automatically available to defense counsel in misdemeanor cases in some states but not in others, as noted later). This indicates that our result for the probation and parole category should be taken as suggestive rather than as having the same confidence as our other ten case type groupings.

The comments offered by the panelists during both the deliberation period and a group discussion that took place after the end of the formal session may provide some insight as to the patterns observed for the consensus process (see Chapter 6). One interpretation of those conversations is that interstate differences in criminal defense practice at the most serious felony levels are far less pronounced than what takes place in misdemeanor courts. It is possible that the substantive and procedural laws concerning, for example, homicides, offenses requiring sex offender registration upon conviction, and serious violent crimes have a higher degree of uniformity across states than would be true for matters that might result in less than a year in jail. One example cited during the discussions related to misdemeanor case types was a rule in one jurisdiction that restricts discovery in many misdemeanor cases, which could affect the time spent by counsel for investigation compared with similar cases in other jurisdictions. This comment elicited considerable surprise from many panelists who practice in states where discovery would always be available in criminal proceedings.[184]

[184] Examples of cross-state differences in criminal procedures do not undercut the utility of a set of updated default national workload standards. All such standards, whether in the form of case weights or annual caseload maximums, should be carefully examined and adjusted as necessary by a jurisdiction before they are adopted. For example, in the jurisdiction mentioned earlier that restricts discovery in misdemeanor cases, additional time might be needed for the more difficult and time-consuming investigation required to provide adequate representation to each client in the

Table 4.5 presents the number of expert panelists submitting estimates for each of the study case types (*N*), the final CoV values for the distributions of panelists' estimates, and, as expressed in hours, the 25th percentile, median, and 75th percentile for those estimates. The median was chosen as the measure of central tendency statistic to report the group's consensus estimate as to average times because the median has the advantage over the mean of not being affected by extreme values that might be preferred by a small number of panelists.[185] Each of the median hour values shown in the table constitute our recommended case weight for the associated case type.

Table 4.5. Final Results of the Expert Panel Session

			Hours		
Case Type	***N***	**CoV**	**25th Percentile**	**Median**	**75th Percentile**
Felony–High–LWOP	29	0.43	251.0	**286.0**	427.4
Felony–High–Murder	32	0.38	193.3	**248.0**	331.0
Felony–High–Sex	33	0.27	145.0	**167.0**	180.0
Felony–High–Other	33	0.35	77.0	**99.0**	118.0
Felony–Mid	33	0.40	47.0	**57.0**	74.0
Felony–Low	33	0.50	27.5	**35.0**	52.0
DUI–High	29	0.36	27.2	**33.0**	44.0
DUI–Low	30	0.46	15.5	**19.0**	30.7
Misdemeanor–High	33	0.50	18.0	**22.3**	30.0
Misdemeanor–Low	33	0.48	10.0	**13.8**	18.5
Probation and Parole Violations	33	0.62	11.0	**13.5**	17.0

absence of discovery. Conversely, in the jurisdictions that provide open file discovery, a downward adjustment could be made to the time required for discovery.

[185] It should be kept in mind that, although the panelists were providing their estimates of *average* (mean) attorney hours, each value entered into the Delphi application was simply a number, and so the choice of statistic to use to report a typical result need not be limited to the mean. Although means, medians, and modes are commonly employed measures of central tendency in Delphi studies, medians and modes are favored as more-robust measures (Hsu and Sandford, 2007, p. 4). An interesting question is whether the CoV—the commonly used parametric statistical method for measuring stability and consensus in Delphi sessions involving 30 or more experts—would be the optimal choice for our purposes given that the median responses for each case type would determine our final results (CoV is related to the mean, not the median, of our expert panel's submissions). Quantile-based measures of relative dispersion have been employed in Delphi, but the CoV has both a long history of usage and the advantage of being associated with a set of widely accepted standards for determining when a consensus has been reached.

Chapter 5. Understanding and Using the Results

How Do the NPDWS Case Weights Compare with Those in Prior Studies?

Table 5.1 presents the final NPDWS case weights in hours for adult criminal representations (shaded in gray) against the backdrop of the 17 state-level workload studies results. Again, we include an example caseload standard based on a 2,080-hour work year for every case weight in the table (essentially just the case weight divided into 2,080, with the result rounded down to an integer value representing the recommended maximum cases per year). We believe that the key takeaway here is that the recommended national workload standards as expressed as case weights can be considered unremarkable. The weights for felonies involving the possibility of life imprisonment without parole or those including murder charges sit squarely within a collection of results from other studies for similar sorts of cases. The high-level felony sex case weight is shouldered on each side by particularly serious sex crime categories that were used in two different state studies. This pattern, in which an NPDWS result does not represent either the largest or the smallest case weight for a set of ostensibly similar case type categories used in prior studies is repeated throughout Table 5.1.

Table 5.1. NPDWS and Prior Study Case Weights in Decreasing Weight Size Order

Study and Year	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
Maryland, 2005	Capital (death notice filed)	1,464.0	1
Virginia, 2010	Capital crime	1,135.2	1
Oregon, 2022	Homicide or sex case	552.5	3
New Mexico, 2007	Capital offense	492.4	4
Maryland, 2005	Capital (death notice not filed)	429.0	4
Colorado, 2017	Class 1 felony	427.3	4
New Mexico, 2022	Murder including CARD	391.0	5
Indiana, 2020	Noncapital murder (LWOP)	311.3	6
Utah, 2021	Noncapital murder	300.0	6
NPDWS, 2023	Felony–High–LWOP	286.0	7
NPDWS, 2023	Felony–High–Murder	248.0	8
Indiana, 2020	Noncapital murder (non-LWOP)	232.1	8
New Mexico, 2007	Murder	202.6	10
Louisiana, 2017	Felony–LWOP	200.7	10
Rhode Island, 2017	Murder	181.6	11
New Mexico, 2022	Child pornography with actual victim	177.4	11
NPDWS, 2023	Felony–High–Sex	167.0	12

Study and Year	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
Utah, 2021	Mandatory sex or kidnap registration felony	150.0	13
Oregon, 2022	High-level felony	149.0	13
North Carolina, 2016	First-degree murder (includes capital)	136.5	15
Colorado, 2017	Class 2 felony	134.5	15
New Mexico, 2022	Child abuse or child sex crime (not including CARD or child pornography)	126.5	16
Michigan, 2019	Murder or manslaughter	120.0	17
Rhode Island, 2017	Nonmurder with possible life sentence	108.1	19
Maryland, 2005	Homicide (average)	107.0	19
Missouri, 2014	Murder or homicide	106.6	19
NPDWS, 2023	Felony–High–Other	99.0	21
Colorado, 2017	Sexual assault felony, Class 2, 3, 4, 5, or 6	98.9	21
Colorado, 2017	Violent felony, Class 3 or 4	87.1	23
Michigan, 2019	Criminal sexual conduct (1, 2, or 3)	80.0	26
Massachusetts, 2014	Superior nonconcurrent felony-chapter 265 crime against person	76.4	27
North Carolina, 2016	Felony A, B1, and B2	75.3	27
New York (five counties), 2016	Violent felony	75.0	27
Louisiana, 2017	High-level felony	69.8	29
Indiana, 2020	High-level felony (levels 1–2)	68.2	30
Idaho, 2018	Felony	67.2	30
Missouri, 2014	Sex felony	63.8	32
NPDWS, 2023	Felony–Mid	57.0	36
Rhode Island, 2017	Felony, more than ten years imprisonment	51.9	40
New Mexico, 2022	Crime against person (adult victim)	50.7	41
Michigan, 2019	Other Class A felony	50.0	41
New York (five counties), 2016	Nonviolent felony	50.0	41
Oregon, 2022	Mid-level felony	47.7	43
Missouri, 2014	A/B felony	47.6	43
Colorado, 2017	Nonviolent felony, Class 3 or 4	47.0	44
Indiana, 2020	Mid-level felony (levels 3–4)	42.6	48
Massachusetts, 2014	Superior nonconcurrent felony–not chapter 265 crime against person	42.3	49
Virginia, 2010	Murder or homicide (noncapital)	41.2	50
Louisiana, 2017	Mid-level felony	41.1	50
Michigan, 2019	Class B, C, D felony	40.0	52
Oregon, 2022	Low-level felony	39.8	52
Oregon, 2022	Complex misdemeanor	37.0	56
Utah, 2021	Other non-DUI felony	37.0	56
NPDWS, 2023	Felony–Low	35.0	59
Colorado, 2017	Misdemeanor sex offense	33.8	61

Study and Year	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
NPDWS, 2023	DUI–High	33.0	63
New Mexico, 2022	Drug crime, property crime, or status offense	32.5	63
Colorado, 2017	DUI felony, Class 4	29.9	69
New Mexico, 2007	Violent felony	29.6	70
Colorado, 2017	Drug felony Class 1, 2, 3, or 4	28.6	72
Rhode Island, 2017	Felony, up to ten years imprisonment	28.3	73
Colorado, 2017	Class 5 or 6 felony	28.3	73
Texas, 2015	Felony, first degree	27.1	76
North Carolina, 2016	Felony C, D, E, and F	26.0	80
Maryland, 2005	Violent felony (average)	25.3	82
Michigan, 2019	Class E, F, G, H felony or two-year misdemeanor	25.0	83
Missouri, 2014	C/D felony	25.0	83
Utah, 2021	Class A misdemeanor	25.0	83
Utah, 2021	Felony DUIs	25.0	83
Massachusetts, 2014	District concurrent felony–crime against person	24.1	86
Oregon, 2022	Low-level misdemeanor	22.3	93
NPDWS, 2023	Misdemeanor–High	22.3	93
Idaho, 2018	Misdemeanor	22.0	94
Indiana, 2020	Low-level felony (levels 5–6)	22.0	94
Louisiana, 2017	Low-level felony	22.0	94
New Mexico, 2022	Driving while intoxicated	21.7	95
New York (five counties), 2016	Misdemeanor	21.0	99
Utah, 2021	Misdemeanor DUI	20.0	104
Texas, 2015	Felony, second degree	19.9	104
Massachusetts, 2014	Operating under the influence	19.7	105
Massachusetts, 2014	District concurrent felony–not crime against person	19.1	108
NPDWS, 2023	DUI–Low	19.0	109
Rhode Island, 2017	Probation violation	16.9	123
Massachusetts, 2014	Misdemeanor	16.8	123
Colorado, 2017	Misdemeanor Class 1	16.3	127
Idaho, 2018	Contempt	15.5	133
Colorado, 2017	Misdemeanor DUI	15.5	134
Maryland, 2005	Drug treatment court (urban)	15.2	136
New York (five counties), 2016	Postdisposition matter (other than probation revocation)	15.0	138
New York (five counties), 2016	Probation revocation	15.0	138
Texas, 2015	Felony, third degree	14.5	143
New Mexico, 2007	Drug court	14.4	144
Maryland, 2005	Nonviolent felony (average)	14.0	148

Study and Year	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
NPDWS, 2023	Misdemeanor–Low	13.8	150
NPDWS, 2023	Probation or Parole Violations	13.5	154
Virginia, 2010	Violent felony	12.8	162
Rhode Island, 2017	Misdemeanor	12.7	163
Indiana, 2020	Misdemeanor	12.6	165
Louisiana, 2017	Enhanceable misdemeanor	12.1	172
Texas, 2015	State jail felony	12.0	173
Utah, 2021	Class B and C misdemeanor	12.0	173
Missouri, 2014	Misdemeanor	11.7	177
Colorado, 2017	Misdemeanor Class 2 or 3	11.4	182
Idaho, 2018	Probation violation	10.4	200
North Carolina, 2016	Specialized court (any)	10.3	201
New York (five counties), 2016	Violation (sentence not more than 15 days)	10.0	208
Missouri, 2014	Probation violation	9.8	212
Idaho, 2018	Other matter	9.7	215
Texas, 2015	Class A misdemeanor	9.7	214
Massachusetts, 2014	Superior court probation	9.2	226
Texas, 2015	Class B misdemeanor	8.9	233
North Carolina, 2016	Driving while impaired	8.8	236
North Carolina, 2016	Felony G, H, and I	8.7	238
Indiana, 2020	Probation or community corrections revocation	8.5	244
Louisiana, 2017	Revocation	8.5	245
New Mexico, 2007	Nonviolent felony	8.5	245
Massachusetts, 2014	District court probation	8.3	251
Oregon, 2022	Probation violation	8.3	249
Michigan, 2019	One-year misdemeanor	8.0	260
Louisiana, 2017	Misdemeanor or city parish ordinance	7.9	261
New Mexico, 2022	Traffic or other minor crime	7.6	273
Colorado, 2017	Felony probation revocation	7.4	281
New Mexico, 2007	Driving while intoxicated	7.3	284
Virginia, 2010	Nonviolent felony	7.2	288
Michigan, 2019	93-day misdemeanor	7.0	297
Colorado, 2017	Misdemeanor traffic or other	6.9	301
Utah, 2021	Probation violation, felony	6.0	346
New Mexico, 2022	Probation violation	5.2	402
Utah, 2021	Probation violation, misdemeanor	5.0	416
Colorado, 2017	Misdemeanor probation revocation	4.3	483
North Carolina, 2016	Misdemeanor (includes traffic)	4.1	507
New Mexico, 2007	Misdemeanor	3.8	554

Study and Year	Case Type	Effective Case Weight in Hours	Annual Standard Using 2,080 Hours
Maryland, 2005	Misdemeanor jury trial demand or appeal (average)	3.6	575
Michigan, 2019	Probation violation	3.5	594
North Carolina, 2016	Probation violation	3.2	660
Virginia, 2010	Driving while intoxicated	3.2	653
Michigan, 2019	Other matter	3.0	693
North Carolina, 2016	Other criminal	2.5	826
Virginia, 2010	Misdemeanor	2.5	848
Virginia, 2010	Probation violation, felony	2.5	826
Maryland, 2005	District court criminal (average)	2.3	910
Massachusetts, 2014	District court bail only	2.2	949
New Mexico, 2007	Probation violation	2.2	967
Maryland, 2005	District court traffic (average)	1.6	1,341
Maryland, 2005	Modifications or sentence review, circuit (average)	1.6	1,273
Maryland, 2005	Violations of probation, circuit	1.5	1,386
Maryland, 2005	Modifications or sentence review, district (average)	1.1	1,835
New Mexico, 2007	Extradition	1.0	2,151
Virginia, 2010	Probation violation, misdemeanor	0.9	2,311
Maryland, 2005	Violations of probation, district	0.8	2,773
Maryland, 2005	Preliminary hearings, district (average)	0.2	12,480

Notwithstanding the methodological challenges already described that relate to our earlier attempt to map categories used in the prior studies into the 11 NPDWS case types, we believe that there is value in examining where the new weights compare with those groupings. Table 5.2 shows the NPDWS results in that context and suggests that the new weights mostly fall in the middle of each pack, except for Felony–Mid, DUI–High, and Probation or Parole Violations.

Table 5.2. NPDWS and Prior Study Case Weights Grouped by NPDWS Case Type Categories

Current Categories	Prior Study	Case Type	Recommended Average Attorney Hours
01: Felony–High–LWOP	Indiana, 2020	Noncapital murder (LWOP)	311.3
	NPDWS, 2023	Felony–High–LWOP	286.0
	Louisiana, 2017	Felony–LWOP	200.7
02: Felony–High–Murder	Oregon, 2022	Homicide or sex case	552.5
	New Mexico, 2022	Murder including CARD	391.0
	Utah, 2021	Noncapital murder	300.0
	NPDWS, 2023	Felony–High–Murder	248.0
	Indiana, 2020	Noncapital murder (non-LWOP)	232.1
	New Mexico, 2007	Murder	202.6
	Rhode Island, 2017	Murder	181.6
03: Felony–High–Sex	New Mexico, 2022	Child pornography with actual victim	177.4
	NPDWS, 2023	Felony–High–Sex	167.0
	Utah, 2021	Mandatory sex or kidnap registration felony	150.0
	New Mexico, 2022	Child abuse or child sex crime (not including CARD or child pornography)	126.5
04: Felony–High–Other	Oregon, 2022	High-level felony	149.0
	Colorado, 2017	Class 2 felony	134.5
	Michigan, 2019	Murder or manslaughter[a]	120.0
	Rhode Island, 2017	Nonmurder with possible life sentence	108.1
	Maryland, 2005	Homicide (average)[a]	107.0
	Missouri, 2014	Murder or homicide[a]	106.6
	NPDWS, 2023	Felony–High–Other	99.0
	Colorado, 2017	Sexual assault felony: Class 2, 3, 4, 5, or 6[b]	98.9
	Michigan, 2019	Criminal sexual conduct (1, 2, or 3)[c]	80.0
	Massachusetts, 2014	Superior nonconcurrent felony-chapter 265 crime against person	76.4
	North Carolina, 2016	Felony A, B1, and B2	75.3

Current Categories	Prior Study	Case Type	Recommended Average Attorney Hours
	New York (five counties), 2016	Violent felony	75.0
	Louisiana, 2017	High-level felony	69.8
	Indiana, 2020	High-level felony (levels 1–2)	68.2
	Missouri, 2014	Sex felony[d]	63.8
	Michigan, 2019	Other Class A felony	50.0
	Missouri, 2014	A/B felony	47.6
	Virginia, 2010	Murder or homicide (noncapital)[a]	41.2
	Texas, 2015	Felony, first degree	27.1
	Texas, 2015	Felony, second degree	19.9
05: Felony–Mid	Colorado, 2017	Violent felony, Class 3 or 4	87.1
	NPDWS, 2023	Felony–Mid	57.0
	Rhode Island, 2017	Felony, more than ten years imprisonment	51.9
	New Mexico, 2022	Crime against person (adult victim)	50.7
	Oregon, 2022	Mid-level felony	47.7
	Indiana, 2020	Mid-level felony (levels 3–4)	42.6
	Massachusetts, 2014	Superior nonconcurrent felony–not chapter 265 crime against person	42.3
	Louisiana, 2017	Mid-level felony	41.1
	Michigan, 2019	Class B, C, D felony	40.0
	New Mexico, 2007	Violent felony	29.6
	Rhode Island, 2017	Felony, up to ten years imprisonment	28.3
	North Carolina, 2016	Felony C, D, E, and F	26.0
	Maryland, 2005	Violent felony (average)	25.3
	Texas, 2015	Felony, third degree	14.5
	Virginia, 2010	Violent felony	12.8
06: Felony–Low	New York (five counties), 2016	Nonviolent felony	50.0
	Colorado, 2017	Nonviolent felony, Class 3 or 4	47.0
	Oregon, 2022	Low-level felony	39.8

Current Categories	Prior Study	Case Type	Recommended Average Attorney Hours
	Utah, 2021	Other non-DUI felony	37.0
	NPDWS, 2023	Felony–Low	35.0
	New Mexico, 2022	Drug crime, property crime, or status offense	32.5
	Colorado, 2017	Drug felony Class 1, 2, 3, or 4	28.6
	Colorado, 2017	Class 5 or 6 felony	28.3
	Michigan, 2019	Class E, F, G, H felony or two-year misdemeanor	25.0
	Missouri, 2014	C/D felony	25.0
	Massachusetts, 2014	District concurrent felony–crime against person	24.1
	Indiana, 2020	Low-level felony (levels 5–6)	22.0
	Louisiana, 2017	Low-level felony	22.0
	Massachusetts, 2014	District concurrent felony–not crime against person	19.1
	Maryland, 2005	Nonviolent felony (average)	14.0
	Texas, 2015	State jail felony	12.0
	North Carolina, 2016	Felony G, H, and I	8.7
	New Mexico, 2007	Nonviolent felony	8.5
	Virginia, 2010	Nonviolent felony	7.2
07: DUI–High	NPDWS, 2023	DUI–High	33.0
	Colorado, 2017	DUI felony, Class 4	29.9
	Utah, 2021	Felony DUIs	25.0
	New Mexico, 2022	DWI	21.7
08: DUI–Low	Utah, 2021	Misdemeanor DUI	20.0
	Massachusetts, 2014	Operating under the influence	19.7
	NPDWS, 2023	DUI–Low	19.0
	Colorado, 2017	Misdemeanor DUI	15.5
	North Carolina, 2016	Driving while impaired	8.8
	New Mexico, 2007	Driving while intoxicated	7.3
	Virginia, 2010	Driving while intoxicated	3.2
09: Misdemeanor–High	Oregon, 2022	Complex misdemeanor	37.0

Current Categories	Prior Study	Case Type	Recommended Average Attorney Hours
	Colorado, 2017	Misdemeanor sex offense	33.8
	Utah, 2021	Class A misdemeanor	25.0
	NPDWS, 2023	Misdemeanor–High	22.3
	Colorado, 2017	Misdemeanor Class 1	16.3
	Louisiana, 2017	Enhanceable misdemeanor	12.1
	Texas, 2015	Class A misdemeanor	9.7
10: Misdemeanor–Low	Oregon, 2022	Low-level misdemeanor	22.3
	NPDWS, 2023	Misdemeanor–Low	13.8
	Utah, 2021	Class B and C misdemeanor	12.0
	Colorado, 2017	Misdemeanor Class 2 or 3	11.4
	New York (five counties), 2016	Violation (sentence not more than 15 days)	10.0
	Texas, 2015	Class B misdemeanor	8.9
	Michigan, 2019	One-year misdemeanor	8.0
	Louisiana, 2017	Misdemeanor or city parish ordinance	7.9
	New Mexico, 2022	Traffic or other minor crime	7.6
	Michigan, 2019	93-day misdemeanor	7.0
	Colorado, 2017	Misdemeanor traffic or other	6.9
	Maryland, 2005	District court criminal (average)	2.3
	Maryland, 2005	District court traffic (average)	1.6
11: Probation or Parole Violations	Rhode Island, 2017	Probation violation	16.9
	New York (five counties), 2016	Probation revocation	15.0
	NPDWS, 2023	Probation or parole violations	13.5
	Idaho, 2018	Probation violation	10.4
	Missouri, 2014	Probation violation	9.8
	Massachusetts, 2014	Superior court probation	9.2
	Indiana, 2020	Probation or community corrections revocation	8.5
	Louisiana, 2017	Revocation	8.5
	Oregon, 2022	Probation violation	8.3

Current Categories	Prior Study	Case Type	Recommended Average Attorney Hours
	Massachusetts, 2014	District court probation	8.3
	Colorado, 2017	Felony probation revocation	7.4
	Utah, 2021	Probation violation, felony	6.0
	New Mexico, 2022	Probation violation	5.2
	Utah, 2021	Probation violation, misdemeanor	5.0
	Colorado, 2017	Misdemeanor probation revocation	4.3
	Michigan, 2019	Probation violation	3.5
	North Carolina, 2016	Probation violation	3.2
	Virginia, 2010	Probation violation, felony	2.5
	New Mexico, 2007	Probation violation	2.2
	Maryland, 2005	Violations of probation, circuit	1.5
	Virginia, 2010	Probation violation, misdemeanor	0.9
	Maryland, 2005	Violations of probation, district	0.8

[a] Category appears to include involuntary manslaughter and other nonintentional homicides. Treated as Felony–High–Other rather than Felony–High–Murder.
[b] Class 6 sex crimes in Colorado punishable up to 18 months, Class 5 up to three years, Class 4 up to six years, Class 3 up to 12 years, and Class 2 up to 24 years. Treated as Felony–High–Other rather than Felony–High–Sex.
[c] Criminal Sexual Conduct degrees 2 and 3 in Michigan are punishable for up to 15 years, although first degree does carry a 25-year mandatory. Treated as Felony–High–Other rather than Felony–High–Sex.
[d] Class E sex crimes in Missouri are punishable up to four years, Class D up to seven years, Class C up to ten years, Class B only up to 15 years, although Class A is ten to 30 years. Treated as Felony–High–Other rather than Felony–High–Sex.

Utilizing the Weights

The median value from the expert panel recommendations in each of the study case types constitutes an *absolute case weight*, essentially the average amount of attorney time (reported in hours) that should be planned for when estimating resource requirements in light of expected numbers and types of adult criminal defense representations. If the incoming annual caseload is predicted to consist of 500 new mid-level felony prosecutions, for example, a public defense delivery system should take steps to ensure sufficient attorney availability to provide 28,500 hours of legal services (500 × the 57.0 hour NPDWS case weight for this case type) to deliver reasonably effective representations pursuant to prevailing professional norms. It is likely that more than 57 hours would be expended in many of these 500 cases, and it is equally likely that less than 57 hours would be expended in many others. The case weight, as articulated above, is simply an average. But taking the results of the expert panel at face value, a public defense system that fails to plan for the provision of 28,500 attorney hours for these cases runs an elevated risk of forcing available staff to operate under workloads that prevent adherence to ethics rules, practice standards, and other professional guidance in every client matter.

Another way to employ these results is by the use of *relative case weights*. Here, the products of the expert panel's deliberations are normalized to a standard value, which presents information from weight-based workload calculations in a more intuitive form. One approach for calculating a set of relative case weights involves choosing a case type considered the typical appointed representation for the jurisdiction. A misdemeanor case type is a common choice, because in terms of raw case counts, misdemeanors often dominate the annual caseloads of public defense delivery systems. Arbitrarily selecting Misdemeanor–High as an example, its 22.3 hours absolute weight would become the reference point or basis for the other ten case types. As indicated in Table 5.3, Misdemeanor–High would receive a relative weight of 1.00, while Felony–Low cases would be associated with a relative weight of 1.57, which indicates that about 60 percent more attorney hours should be planned for Felony–Low representations than Misdemeanor–High appointments.

Table 5.3. Relative Case Weights Based on Misdemeanor–High

Case Type	Absolute Weight	Relative Weight
Felony–High–LWOP	286.0	12.83
Felony–High–Murder	248.0	11.12
Felony–High–Sex	167.0	7.49
Felony–High–Other	99.0	4.44
Felony–Mid	57.0	2.56
Felony–Low	35.0	1.57
DUI–High	33.0	1.48

Case Type	Absolute Weight	Relative Weight
DUI–Low	19.0	0.85
Misdemeanor–High	**22.3**	**1.00**
Misdemeanor–Low	13.8	0.62
Probation or Parole Violations	13.5	0.61

Absolute and relative weights are two different ways of communicating the same information and lead to the same calculations of attorney need. But relative weights are sometimes considered a more intuitive means for presenting how changes in annual caseload distributions can affect expected workload. Table 5.4 presents an example of a state's public defense appointments over a two-year period. In Year 1, appointments based on raw (i.e., unadjusted) counts totaled 158,750 but dropped to 151,135 in Year 2. A weighted caseload analysis in which Misdemeanor–High weights are the baseline value suggests a different story, one in which the weighted caseload total in Year 1 was 142,695 and rose to 145,109 in Year 2, indicating that a 2-percent increase in attorney hours should be planned for in Year 2 despite a 5-percent drop in raw case counts. The same story is essentially told by the two rightmost columns in Table 5.4, which present Year 1 and Year 2 weighted caseloads based on the absolute weights and again suggests a 2-percent increase. It may be easier, however, to convey the impact of the second year by describing it as the equivalent of adding 2,414 Misdemeanor–High cases (using relative weights) to the workload of the state's public defense attorneys rather than as a jump from 3.18 million hours to 3.24 million hours (using absolute weights).

Table 5.4. Example of Year-to-Year Change in Weighted Caseloads

Case Type	Year 1 Raw Counts	Year 2 Raw Counts	Year 1 Relative Weighted Caseload	Year 2 Relative Weighted Caseload	Year 1 Absolute Weighted Caseload	Year 2 Absolute Weighted Caseload
Felony–High–LWOP	50	75	641	962	14,300	21,450
Felony–High–Murder	100	110	1,112	1,223	24,800	27,280
Felony–High–Sex	1,000	1,200	7,489	8,987	167,000	200,400
Felony–High–Other	2,000	2,500	8,879	11,099	198,000	247,500
Felony–Mid	5,000	6,000	12,780	15,336	285,000	342,000
Felony–Low	10,000	12,000	15,695	18,834	350,000	420,000
DUI–High	600	650	888	962	19,800	21,450
DUI–Low	6,000	5,700	5,112	4,857	114,000	108,300
Misdemeanor–High	**19,000**	**18,000**	**19,000**	**18,000**	**423,700**	**401,400**
Misdemeanor–Low	110,000	100,000	68,072	61,883	1,518,000	1,380,000
Probation and Parole Violations	5,000	4,900	3,027	2,966	67,500	66,150
Total	158,750	151,135	142,695	145,109	3,182,100	3,235,930

Creating Caseload Standards

As suggested in Chapter 2, using case weights to develop caseload standards (sometimes described as *annual caseload maximums*) requires deciding on a value that represents the amount of time an attorney providing public defense services would typically have available annually to handle case-related work. That value can vary from year to year, law firm to law firm, location to location, and even attorney to attorney.

For the purpose of calculating annual caseload maximums, several important but sometimes difficult assumptions are made, including (1) the hours public defense attorneys are expected or likely to work each week, on average; (2) the number of likely absence days, such as vacation time, sick leave days, and holidays; and (3) the amount of time an attorney is likely to spend at work that does not involve directly providing services related to representing adult clients in criminal justice matters (for example, professional development time, general meeting time, travel time, time spent working on nonadult criminal cases). Such assumptions can involve issues related to labor laws, collective bargaining agreements, local practices and traditions, labor market demands, and other factors that do not lend themselves to generalizations with national application.

Table 5.5 provides an example of one prior workload study's approach to calculating an annual case-related duty hours assumption.[186] The first component of the calculation is a value representing the hours a defender would be expected to work each week, on average. Drawing on consultation with public defense system administrators and survey results for median hours worked reported by responding defenders in the state, the researchers in the study used an assumption of 45 hours per week, based on five workdays at nine hours per day. A second assumption involved what might be characterized as absence days, which were based on benefits roughly equivalent to those available to state employees. This included 12 days of vacation (four vacation hours accrual for each 80 work hours per period and 26 pay periods per year, less two weeks not worked), 13 business days of sick leave or personal leave (four sick leave hours accrual for each pay period and 26 pay periods per year), and an 11-day annual holiday schedule. A final assumption arose from the fact that not all business time can be spent handling client matters. The researchers used the results of an attorney survey in which participants reported spending an average of 11.8 percent of their work week in the practice of law but not working on specific cases. When these assumptions were plugged into the formula represented in Table 5.5, a total of 1,785.2 hours were estimated to be available to defenders, on average, for representing clients in that state's public defense cases.

[186] Pace et al., 2021, pp. 51–52.

Table 5.5. Example of an Annual Case-Related Duty Hours Calculation

Description	Number	Category	Basis
Days per year (leap-year adjusted)	365.25	A	
Days per week	7	B	
Workweeks per year	52.2	C	(= A ÷ B)
Workdays per week	5	D	
Total workdays per year	260.9	E	(= C × D)
Vacation days per year	12	F	
Personal leave days per year	13	G	
Holidays per year	11	H	
Total leave days per year	36	I	(= F + G + H)
Duty days per year	224.9	J	(= E – I)
Work hours per day	9	K1	
Average work hours per week	45	K2	(= D × K1)
Total duty hours per year	2,024.0	L	(= J × K1)
Average reported non–case-related percentage of work week	11.8	M	Attorney survey
Non–case-related duty hours	238.8	N	(= L × M)
Annual case-related duty hours	**1,785.2**	O	(= L – N)

Other state-level workload standards studies have used annual case-related duty hour assumptions of, for example, 1,742 hours, 1,856 hours, 2,080 hours, and 2,087 hours, but it is beyond the scope of our work to develop a national value.[187] Rather, each jurisdiction seeking to use these case weights as the basis of caseload standards must determine an appropriate annual case duty hours assumption based on conditions specific to the jurisdiction. Using 2,080 available hours as an example (40 work hours per week for 52 weeks per year), a case weight of 33.0 hours for DUI–High cases suggests that an attorney working exclusively on such cases

[187] Judicial workload studies similarly use a unit of time available for case-related work per year, often called a *judicial year value*. In most judicial workload studies, this year value is reduced to allow for vacation time and sick leave, as well as training, administrative, and other non–case-related work. The judicial year value typically ranges from 1,100 hours to 1,400 hours per year for case-related work. See, e.g., Suzanne Tallarico and Alicia Davis, *Oregon Circuit Court Judicial Officer Workload Assessment Study, 2016*, National Center for State Courts, May 2016, p. 8 and Appendix E, Line 28 (annual available time for case-related work is calculated at 1,240–1,300 hours per year); Suzanne Tallarico, John Douglas, and Erika Friess, *Iowa District Court Judicial Workload Assessment Study,* National Center for State Courts, November 2008, pp. 9–12 (annual time available for case-related work calculated at between 1,037 and 1,325 hours per year); Brian J. Ostrom and Matthew Kleiman, *Minnesota Judicial Workload Assessment: Final Report*, National Center for State Courts, July 2010, p. 13 (annual available time for case-related work calculated at 1,108–1,262 hours per year); and Suzanne Tallarico, Erika Friess, Jane Macoubrie, and Brian Ostrom, *Tennessee Trial Courts Judicial Weighted Caseload Study, 2007*, National Center for State Courts, October 2007, pp. 14–19 (annual available time for case-related work calculated at 1,009–1,241 hours per year).

should not be assigned more than 63 new cases each year (2,080 ÷ 33.0, rounded downward to the nearest whole number), absent compelling additional information that would suggest otherwise about the individual cases, specific clients, prosecutorial policies, attorney experience and competency, and other factors. Table 5.6 presents examples of what caseload standards based on the NPDWS case weights might look like as a function of various assumptions used in some of the 17 prior studies for annual case-related duty hours.

Table 5.6. Illustrative NPDWS Caseload Standards Based on Attorney Availability Assumptions

	NPDWS	Annual Case-Related Duty Hour Assumption								
Case Type	Weight	1,742	1,785.2	1,800	1,856	1,900	1,950	2,000	2,080	2,087
Felony–High–LWOP	286	6	6	6	6	6	6	6	7	7
Felony–High–Murder	248	7	7	7	7	7	7	8	8	8
Felony–High–Sex	167	10	10	10	11	11	11	11	12	12
Felony–High–Other	99	17	18	18	18	19	19	20	21	21
Felony–Mid	57	30	31	31	32	33	34	35	36	36
Felony–Low	35	49	51	51	53	54	55	57	59	59
DUI–High	33	52	54	54	56	57	59	60	63	63
DUI–Low	19	91	93	94	97	100	102	105	109	109
Misdemeanor–High	22.3	78	80	80	83	85	87	89	93	93
Misdemeanor–Low	13.8	126	129	130	134	137	141	144	150	151
Probation and Parole Violations	13.5	129	132	133	137	140	144	148	154	154

Accounting for Practice Variations and Mixed Caseloads

Few attorneys exclusively represent clients who are facing prosecutions in only one of the 11 NPDWS case types. A more likely situation is that defenders handle a mix of client matters, which requires applying multiple case weights or caseload standards to assess overall workload. Assume that a solo practitioner who works only on adult criminal appointments receives a contract to represent clients in 60 Misdemeanor–High cases over the course of a year. For planning purposes, it might be expected that the attorney will spend 1,338 hours handling these cases (60 cases × an absolute weight of 22.3 hours). Using an illustrative assumption of 2,080 annual case-related duty hours, this leaves the attorney 742 hours theoretically available that year for all other client-related matters. That residual could consist of, for example, 21 Felony–Low cases (742 ÷ 35-hour case weight), or seven Felony–High–Other cases (742 ÷ 99-hour case weight), or 22 Misdemeanor–Low cases *and* 32 Probation and Parole Violations cases ([22 × 13.8-hour case weight] + [32 × 13.5-hour case weight] = 735.6 expected hours).

What about a situation in which an attorney devotes less than full time to handling adult criminal matters? Let us assume that the solo practitioner with the 60 Misdemeanor–High case contract described above had certified to local public defense that 90 percent of the practitioner's work time would be devoted to adult criminal matters (it does not matter whether these are appointments or retained clients, nor does it matter what the attorney is doing during the other 10 percent of the work week). That means that only 90 percent of the 2,080 annual case-related duty hours in our example would be available for clients and their legal needs. So, rather than 742 hours remaining for additional representations beyond the contracted Misdemeanor–High cases, only 534 hours would be available ([2,080 annual case-related duty hours × 0.90 FTE] ─ [60 cases × an absolute weight of 22.3 hours]). Therefore, instead of as many as 21 Felony–Low cases potentially added to the solo practitioner's caseload, just 15 of such cases could be represented (534 ÷ 35-hour case weight). Similar adjustments would be needed for attorneys working only part time on the practice of law, having reduced availability because of health reasons, spending a fixed portion of their days in an administrative or managerial capacity, or having caseloads that involve client matters outside the focus of their public defense appointments (such as personal injury cases or criminal appeals).

Measuring Need

Annual case-related duty hour assumptions can also be used for estimating required staff levels. Assume a projection that, over the next year, an office with attorneys working full-time on adult criminal appointments will be called on to handle 30 Felony–High–Murder cases, 40 Felony–High–Sex cases, 50 Felony–High–Other cases, 60 Felony–Mid cases, and 70 Felony–Low cases. The estimated number of total hours necessary for this work would be 24,290 when each of the projected case counts is multiplied by the absolute weight for its type. Dividing that estimate by the annual client-related duty hours value we are using solely for illustrative purposes (2,080) suggests that about 12 attorney FTEs will be needed by this office.

Another way to view attorney need calculations is to compare the total time needed to represent the annual caseload (hours needed) with the total attorney hours available to work on cases for the year (hours available). Doing so allows a system or provider to assess whether additional attorney resources are likely to be required, as follows:

Total hours needed – total hours available = deficient or surplus hours.

If this calculation shows a deficiency, the jurisdiction can further calculate additional FTE needed:

Deficient hours ÷ annual case-related duty hours per attorney FTE = additional FTE needed.

So, for example, if, based on the NPDWS case weights, a provider required 20,725 attorney hours to provide reasonably effective assistance of counsel for its annual caseload, while the provider's current staffing levels equated to 16,870 hours of annual attorney time for case-related work, the provider would have a deficiency of 3,945 hours. Assuming that each of the provider's FTE attorneys has 2,080 case-related duty hours available each year, the provider can estimate that it needs roughly two additional FTEs:

20,725 total hours needed – 16,780 total hours available = 3,945 hours deficient

3,945 hours deficient ÷ 2,080 annual case-related duty hours per attorney FTE = 1.9 FTE needed.

It should be noted that the use of absolute case weights for calculating attorney need provides estimates only for the case types contemplated by those weights. As indicated previously, the case types selected for this study together represent the vast majority of the adult criminal client matters that are believed to consume most of a defender's workday, but there were some exceptions. For example, extraditions, matters that involve the provision of advice unrelated to a prosecution, certain mental health proceedings, and expungements would not have informed the caseload standards and, therefore, any related absolute weights. Therefore, case weight–based estimates for attorney need should be viewed as minimum requirements and must be adjusted appropriately based on expectations about such supplemental duties.

Chapter 6. Insight into the Expert Panel's Deliberations

Overview

At the conclusion of the Delphi session, the research team conducted a focus group session with the participants. The session lasted approximately 90 minutes. The facilitator posed open-ended questions to stimulate group discussion on the activities and time needs of criminal defense attorneys and obtain insight as to what might have influenced the panelists' submissions during the Delphi session. Key questions posed to the group were as follows:

- Based on your experience, what are the most time-consuming aspects of representing defendants in the majority of adult criminal cases?
- Based on your experience, what types of cases require the greatest investment of attorney time, and what are the most time-consuming aspects in those cases?
- What changes, if any, have you observed in the practice of criminal defense during your career?
- What changes, if any, are you aware of in the practice of criminal defense over the past ten or 20 years?
- What types of challenges have you faced, if any, in adhering to ethical and professional standards during the practice of adult criminal defense, and what are the causes of any such challenges?

Qualitative analysis of the panelists' comments during the session suggest that five topic areas were of greatest concern:

- evidentiary issues
- the role of the public defense attorney
- aspects of criminal procedure and substantive law
- institutional issues
- the consideration of a plea offer.

A summary of the group dialogue in each of these areas follows. It should be noted that the discussion in this chapter is intended only to present commonly made assertions of the panelists and does not necessarily reflect the opinions of the authors, reflect the opinions of all panelists, or constitute factual statements.

Evidentiary Issues

There was near-universal agreement that the biggest change in criminal defense practice in recent years is also the most time-consuming aspect of defense practice. Media, technological, and scientific evidentiary issues, we were told, now dominate many criminal cases. A common refrain was that today's public defense attorney must not only identify whether such evidence

might exist but also understand how such material is created, authenticated, and challenged. As one participant lamented, “We have to become experts in everything.”

Media, Communication, and Other Technological Evidence

Panelists noted that, in many cases, criminal defense lawyers receive enormous amounts of evidence related to social media, communication, computers, and other technologically based sources. From the social media, text, and cell phone data of clients to traffic and doorbell camera footage, discovery in criminal cases today can sometimes be measured in terabytes rather than pages. For example, if the location of the accused is at issue in the criminal case, a public defense attorney must now not only consider who might have seen the accused but also whether there is video from traffic, store, or doorbell cameras or data from virtual home assistants (e.g., Alexa), car GPS, or cell phone towers that might identify the defendant’s movements. Social media posts would also be an area needing investigation. Understanding the evidentiary value of these data requires not only reviewing its substance, it was claimed, but also understanding its creation process (including analysis of metadata) to determine its reliability and the need for verification.

Focus group participants described seeking or receiving digital discovery in all types of cases, from misdemeanors to murder prosecutions. One participant noted that many misdemeanor cases, particularly domestic violence misdemeanors, have a considerable volume of social media evidence from such applications as Facebook, Twitter, and Instagram; text messages and chats; Alexa and other similar device data; and home security camera footage.

Several participants mentioned that tracking down and reviewing media evidence is essential to effective defense representation because it often results in helpful or even exculpatory evidence (“So much of the media stuff is good for our clients”). But many also noted that properly reviewing media evidence is time-consuming. One participant remarked that time is not spent only in reviewing the material; it is also spent in first figuring out how to transfer or upload it and deciding what software is needed to review it because media and digital evidence are produced in myriad formats. Time is also said to be consumed when manipulating technological evidence to better understand it.

Police and Jail Audio and Video Evidence

Panelists noted that in many of their jurisdictions, nearly all police interactions are now recorded. One participant remarked that defenders get “body-worn and dashcam [video] in . . . almost every case.” Interrogation-room cameras were described as another source of video evidence. Police video evidence is not just of a stop or arrest, it was asserted, but now has essentially replaced written documentation and reports as the primary evidence format involving searches, witness interviews, scene information, etc. As one participant stated, we get “recorded witness statements in every case with a human victim.”

Participants reported receiving police video evidence in most criminal cases and that there are often multiple police videos of the same event. For example, if five officers respond to a scene or incident, criminal defense lawyers receive five videos, all from different angles and perhaps talking to different people. To be effective, participants indicated, attorneys must watch and listen to all of the raw video to determine what, if anything, might be useful or harmful to the client's case. They may need to review portions of it several times to understand what is being said and who is saying it or watch portions of an incident over and over.

Much of the time spent reviewing police video may seem wasted in that there is nothing on the video of import, but most participants agreed that they still must review the video to determine its value. As one participant observed, the police may put the client in an interrogation room and leave the client there for 12 or even 24 hours:

> You have to watch and listen to the whole video. Maybe someone comes in to talk to them and they say something important or maybe you watch hours upon hours of video of them sitting alone not talking to anyone. But if that client has a mental health issue, you may see it while they are sitting in that room.

There was some debate among participants as to whether the defense attorney should be required to watch all police video evidence. One participant observed that if there are three officers standing around, then for at least two of them, it would be better to have a paralegal watch to confirm that there is nothing unusual. Several others disagreed, stating that they feel an obligation to review all available video evidence personally, particularly if the client is facing jail time. One noted that only by watching the video can an attorney catch a *Miranda* violation or some relevant side comment. Many other participants stated that they do not have the paraprofessional resources to assign to such work, even if it were appropriate to do so. Several participants also stressed the importance of reviewing any important video evidence with the client, although several noted that clients are often unwilling or unable to devote the time needed to do so.

Many participants noted that jail call audio recordings are produced for every client who is or was detained, regardless of charge, and that reviewing these calls to understand what, if anything, they said about their arrest and charges is critical. Participants also noted that jail call audio recordings often require audio manipulation because of poor recording quality. Some recordings require translation by a person who understands not only the language but also the dialect and slang of a particular region or group.

Scientific Evidence

A participant who has practiced criminal law for multiple decades noted that "science has advanced so far." These advancements have opened new avenues of investigation and new means of challenging existing evidence, but they have also expanded the workload for criminal defense attorneys. Participants mentioned an extraordinary list of scientific evidence that they must pursue or review in their criminal defense practice, including

- forensics, such as DNA and ballistics
- medicine, including shaken baby syndrome and fetal alcohol syndrome
- technology, such as geolocation and ShotSpotter data
- psychology, including false confessions and identification procedures.

Almost all participants agreed that the number of cases utilizing scientific evidence has expanded enormously. Multiple participants highlighted that DNA is no longer used only for identification in rape and homicide cases but is now relevant in lower-level prosecutions, such as gun possessions and robberies. Furthermore, the depth of knowledge needed in each of these disciplines has grown. One participant noted that criminal defense lawyers must not only understand the basics of DNA, but the differences between STR, Y-STR, and mitochondrial DNA testing, not to mention probabilistic genotyping and familial DNA results. Others noted the breadth of forensic disciplines that they must understand, covering evidence from bite marks, tire marks, and tool marks to arson forensics on accelerants and initiation points. When such evidence is at issue, they must research and investigate error rates, if any, for methods used by the prosecution so that they can challenge the introduction and reliability of evidence as appropriate.

Participants noted that some statewide and large city public defender offices have created specialized forensic units to litigate whether scientific evidence is reliable and to train defenders on how to approach such evidence. But most agreed that, in most offices, individual lawyers must independently acquire whatever expertise may be applicable to their cases.

Additionally, the need for expertise in psychology and brain science has expanded tremendously. Participants repeatedly observed that they must identify mental health, substance use, cognitive disabilities, and other influences on brain development (e.g., toxin exposure) and understand how these factors affect issues related to competency, culpability, or mitigation. One participant observed that these issues affect all criminal cases, noting that a significant portion of the population charged with low-level misdemeanors needs forensic and competency evaluations.

The Role of the Public Defense Attorney

The increased understanding of psychological and brain disorders and their impact on clients was said to have led to a concomitant increase in the role of criminal defense attorneys in helping clients address these issues as just one aspect of their overall criminal case. Panelists noted that if a client has a substance use disorder or mental health issue, the defense attorney must not only seek consulting expertise to diagnose it but also try to identify treatment placements and supports as part of arguing for release, diversion, or mitigation. Participants also mentioned

- trying to find housing for unhoused clients to facilitate release from detention
- seeking treatment placement or programs as part of mitigation or diversion
- identifying programs that will accept dual-diagnosis clients

- working with treatment providers and placements to show progress.

Participant examples suggested that even clients with no diagnosis sometimes require help navigating different systems to resolve issues that could lead to ongoing criminal justice involvement. Participants described unhoused clients needing not only housing but also help signing up for benefits, including food assistance, income assistance, and health care. Similarly, in many jurisdictions, an inordinate number of clients have suspended drivers' licenses from failure to pay fines, outstanding tickets, etc. We were told that, to avoid clients picking up pretrial release and probation violations from license issues, as well as additional charges, defenders often must help clients navigate the process for reinstating their drivers' licenses. Some public defenders' offices have hired social workers to assist with this type of work, but in many offices, this burden continues to fall primarily on the attorneys. Even in offices with social worker support, participants noted that the support level is often insufficient and that working with the social worker takes time.

Changes in Criminal Law and Process

Participants also cited several changes in criminal law and process that have increased the time that defense attorneys need to provide reasonably effective assistance of counsel:

- **Client Communication:** Many participants remarked that they spend more time establishing a relationship of trust with the client than in the past. One participant noted that the heightened awareness of cultural competency and the barriers to trust mean that they spend more time building rapport. Another participant noted that clients are generally younger than when they started as a criminal defense lawyer and that dealing with youthful clients requires more time and often requires parental involvement.
- **Discovery:** Multiple participants cited the need to pursue discovery as a time-consuming aspect of defense practice. One participant noted that their office needs to "fight tooth and nail" to ensure that they receive all of the discovery to which they are entitled.
- **Alternative Court Programs:** Several participants noted that clients in diversion, probation, and other court programs with supervision obligations require significant support to navigate program requirements. Multiple participants mentioned that problem-solving courts (e.g., drug courts, veterans' courts, homeless courts)[188] require far more attorney time than a typical criminal case involving similar charges. The programs often take a year or more to complete, and there are regular status or check-in hearings with clients during that period.
- **Trial and Motion Displays:** Advances in technology have entered the courtroom and changed the nature of courtroom presentations. One participant noted that she used to be able to write major points on a whiteboard during an opening, closing, or evidentiary hearing, but now, juries and judges expect video compilations and PowerPoint presentations.

[188] These courts are sometimes called *accountability courts*.

- **Sentencing:** Many participants noted that sentencing laws and practices have changed dramatically in the past 20 or even ten years. From mandatory minimums to sentencing guidelines, clients are facing far more time for the same crime than clients in the past with similar charges. Even when clients are not at risk of significant incarceration, the collateral consequences of conviction can have serious impacts, such as possible deportation and other immigration consequences; professional consequences, including licensing issues; and personal consequences, including loss of housing and other benefits. As a result, preparing for sentencing, whether through mitigation work or simply argument, takes far more time than in the past. As one participant noted, "Penalties have more than doubled in my years of practice for the exact same actions. More at risk for the client, more stress and strain on us."

Institutional Issues

Changes in the culture of the courtroom, as well as issues with retention of both defense attorneys and prosecutors, were also reported to add to the amount of time needed to defend cases.

Lack of Collegiality

Several participants mentioned that a general decline in civility and collegiality between prosecutors and defense attorneys creates extra work and decreases efficiency. This includes the need to file discovery motions to ensure that material required by law is produced, but also extends to other areas that result in wasted time, for example, prosecutors listing several cases for trial on the same day knowing that only one can proceed. Some participants stated that prosecutors refuse to make reasonable plea offers or will wait to make such offers until the day of trial. As a result, cases are proceeding far longer than might otherwise be necessary. One participant even asserted that they cannot recall the last time an offer from a prosecutor was accepted because they know the defense could do better with the judges.

Inexperienced Attorneys

Participants also asserted that both public defenders' and prosecutors' offices are finding it increasingly difficult to retain experienced attorneys, leading attorneys on both sides to take on more and more complex cases with less and less experience. New attorneys still developing critical lawyering skills require more time to handle every aspect of a case, as well as close attention from supervisors. Inexperienced prosecutors are often required to consult closely with their supervisors during the plea-bargaining process, drawing out negotiations. "We are lacking institutional knowledge," explained one attorney. "Public defenders and [prosecutors] are leaving at a rate we've never seen before. It benefits no one to have someone on the other side who doesn't know what's reasonable or doesn't know the law."

Tension Between Investigation and Quick Resolution

A recurring theme of the panelists' discussion during the expert panel deliberations and the focus group session was the frequent tension between a client's desire for a swift resolution and the attorney's need to gather the information necessary to allow the client to make an informed plea decision. The defense attorney's ethical obligation is to investigate the facts of the case before advising the client on a plea, enabling the client to assess the strength of the prosecution's evidence, the likely defenses, and the risk of trial before entering a plea. This applies even for clients contemplating diversion programs. Because diversion can be burdensome and costly for participants, a client should understand the strength of the case, including whether the case should more appropriately be dismissed, before agreeing to diversion.

Yet we were told that many clients do not have the time or desire to wait for their attorneys to conduct the type of investigation that would lead to a fully informed plea or diversion decision. A client with a low-level misdemeanor charge may not want to miss work for multiple court appearances and risk losing their job; a client who cannot make bond may prefer to accept a guilty plea with time served just to get home. Even clients who are not detained may have trouble arranging transportation, time off work, or child care to meet with their attorneys, or may simply be unwilling to do so. As a result, it was asserted, attorneys frequently meet a client for the first time on the court date, conduct a brief client interview in the hallway, and advise the client on a plea based on the limited information available.

Although client-centered lawyering demands that attorneys respect their clients' preferences, several focus group participants expressed concern that clients' preferences are being distorted by observing the substandard representation afforded by an underfunded public defense system. "A lot of clients are saying they want diversion or to plead because they don't have faith in the system," asserted one attorney. "If they saw lawyers standing up and getting cases dismissed because the bodycam doesn't look good for the officer, then clients might say they wanted different things than they do now." In other words, if defense attorneys had more time for fact investigation, clients would observe the fruit of those investigations in other cases and might be more willing to delay accepting a plea offer until the investigation in their own case was complete.

Summary of the Panelists' Comments

The panelists reported that many factors have led to the overall increase in the number of attorney hours needed to provide reasonably effective assistance of counsel in adult criminal cases. The most noteworthy change, according to our focus group, is the volume of technological and forensic evidence defense lawyers must address in even simple cases. Today's public defender must possess the skills and time to review police and public camera video, social media and cell phone data, and forensic evidence from DNA to chemical drug analysis. This increased complexity extends not only to the evidence they must investigate, understand, and question but

also to the law and criminal process. They must consider not only the potential for incarceration or probation but also a multitude of diversion and specialty court program options, as well as myriad collateral consequences of a guilty plea. They must evaluate the role of mental health and substance abuse issues in their clients' cases. And they must navigate these issues through a perceived decline in collegiality among officers of the court and a growing perception that the client community views them as too poorly resourced, trained, or skilled to be effective. Given panelists' concerns in all of these areas, the stark difference between the caseload limits as exemplified by the 50-year-old NAC standards and the results of our Delphi session becomes easier to understand.

Chapter 7. Going Forward

The goal of this study is to establish new national public defense workload standards by utilizing the Delphi method with a panel of expert criminal defense attorneys and by building on approaches used by the 17 state-level public defense workload studies conducted between 2005 and 2022. The case weights resulting from the NPDWS Delphi session represent a significant departure from the 1973 NAC standards. Compare, for example, the NAC felony standard—150 felonies per year or 13.9 hours per felony case with an illustrative 2,080 annual case-related duty hours assumption[189]—with the Felony–Low case weight from this study: 35 hours per case or 59 cases per year. The NPDWS suggests that the NAC standards underestimate the time needed for Felony-Low cases by more than 20 hours per case. Put another way, an attorney representing only clients with Felony-Low cases and shouldering an annual caseload at the NAC maximum for felonies may have more than 2.5 times as many cases as this study suggests can reasonably be handled. Similarly, if one compares the 1973 NAC standard for misdemeanors—400 per year or 5.2 hours per case (based on 2,080 annual hours)—with the Misdemeanor–Low case weight from this study (13.8 hours or 150 cases per year), the hypothetical attorney working right at the NAC upper limits may have more than 2.6 times as many cases as likely would allow enough time to provide reasonably effective representation pursuant to prevailing professional norms. The differentials are even greater for the other case types.[190]

At the same time, as observed in Chapter 5, these results should not come as a surprise. When compared with the case weights from the 17 state-level workload studies conducted between 2005 and 2022, the case weights are unremarkable, often sitting squarely within a collection of results from similar case types.[191] Rather, this study further confirms what the state-level public defense workload studies have been suggesting for more than 15 years: The 1973 NAC standards are outdated and should not be applied to determine appropriate public defense workloads in 2023.

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[189] Assuming an attorney has 40 hours per week, 52 weeks per year available for case-related work, the total case-related work hours available per attorney is 2,080 hours. With a 150-felony-case annual maximum as described in the NAC standards, there would be 13.9 hours, on average, to devote to each case under that annual case-related work hour assumption (2,080 hours ÷ 150 cases = 13.9 average hours per case).

[190] Comparing the NAC standards with the NPDWS standards by case type, NAC standards consistently allow significantly greater caseloads. The NAC felony standard permits 20 times as many cases annually as the NPDWS Felony–High–LWOP standard does, 17.8 times as many Felony–High–Murder cases; 12 times as many Felony–High–Sex cases, seven times as many Felony–High–Other cases, four times as many Felony–Mid cases, and 2.5 times as many Felony–Low cases. In addition, the NAC misdemeanor standard permits four times as many cases annually as the NPDWS Misdemeanor–High standard does. All calculations compare NPDWS case weights with NAC standards after those standards are translated to case weights based on an assumption that an attorney would have 2,080 hours available for case-related work each year.

[191] See Table 5.1 in Chapter 5.

The two tables that follow compare the NAC standards with both the median results of the 17 state-level workload studies (see Table 4.4 in Chapter 4) and the results of the Delphi session conducted as part of this study.[192] Table 7.1 uses case weights as the comparison measure, calculating an example case weight for the NAC standards based on an illustrative assumption that an attorney with an annual caseload at the NAC limits has 2,080 hours available to devote to case-related work (the 1973 NAC standards did not include any discussion of an associated case weight). Table 7.2 examines how the maximum annual caseload standards compare, again using 2,080 simply as an example annual case-related duty hour assumption, but in this instance applying it to the case weights that resulted from the NPDWS Delphi session and to the median values observed in prior state-level workload studies that used case type designations approximating those in the NPDWS. It should be noted that the NPDWS did not produce any recommendations for annual caseload maximums because of the need for localized information about annual attorney availability. Therefore, the rightmost column in Table 7.2 presents illustrative examples of what caseload standards derived from the NPDWS case weights might look like if 2,080 hours was used as the availability assumption.[193]

[192] Two caveats should be mentioned here. First, the reader is urged to review the discussion accompanying Table 4.3 and Table 4.4 regarding the challenges we faced when trying to map the case types in the 17 studies with those in this effort. Second, the NPDWS result for probation and parole violations received only a fair level of consensus among the panelists (CoV = 0.62) and, therefore, we have less confidence in that category's recommended case weight compared with those of the other ten study case types.

[193] Similarly, the column in Table 7.2 for the state-level studies also presents illustrative examples of caseload standards based on a 2,080-annual-hour assumption.

Table 7.1. Case Weights Comparison

NPDWS Case Type	NAC Standard (illustrative hours)[a]	State-Level Study Medians (hours)[b]	NPDWS Results (hours)
Felony–High–LWOP	13.9 (all felonies)	256.0	286.0
Felony–High–Murder		266.1	248.0
Felony–High–Sex		150.0	167.0
Felony–High–Other		75.3	99.0
Felony–Mid		67.2	57.0
Felony–Low		24.6	35.0
DUI–High	N/A	25.0	33.0
DUI–Low		12.1	19.0
Misdemeanor–High	5.2 (all misdemeanors)	20.7	22.3
Misdemeanor–Low		8.0	13.8
Probation and Parole Violations	N/A	6.0	13.5

[a] Effective case weight based on 2,080 annual case-related duty hours assumption.
[b] Categorizations of the case types used in the 17 state-level workload studies for the purpose of comparison with the NPDWS case types are subject to the limitations described in the discussion accompanying Table 4.3 and Table 4.4.

Table 7.2. Caseload Standards Comparison

Case Type	NAC Standards (maximum cases per year)	State-Level Study Medians (illustrative maximum cases per year)[a, b]	NPDWS Results (illustrative maximum cases per year)[a]
Felony–High–LWOP	150 (all felonies)	8	7
Felony–High–Murder		7	8
Felony–High–Sex		13	12
Felony–High–Other		27	21
Felony–Mid		30	36
Felony–Low		84	59
DUI–High	N/A	83	63
DUI–Low		171	109
Misdemeanor–High	400 (all misdemeanors)	100	93
Misdemeanor–Low		260	150
Probation and Parole Violations	N/A	346	154

[a] Effective caseload standard based on 2,080 annual case-related duty hours assumption and result rounded down to the nearest whole number.
[b] Categorizations of the case types used in the 17 state-level workload studies for the purpose of comparison with the NPDWS case types are subject to the limitations described in the discussion accompanying Table 4.3 and Table 4.4.

Excessive caseloads are pervasive in public defense, even when judged against the 1973 NAC standards. In December 2022, the public defender office in St. Clair County, Illinois, reported caseloads of 350 felony cases per attorney per year.[194] In Luzerne County, Pennsylvania, public defenders are "juggling more than 300 felonies annually, or double the [NAC] recommended standards of 150 per year."[195] In validating the concerns raised over the past several decades that the NAC standards are outdated, the results of this study (as well as those of prior state-level weighted caseload research efforts) strongly suggest that these caseloads—along with those of countless other public defense providers across the county—are more excessive than previously thought.

Excessive caseloads are proscribed by legal ethics rules because they inevitably cause harm. Overloaded attorneys simply cannot give appropriate time and attention to each client.[196] They cannot investigate fully or in a timely manner. They cannot file the motions they should. Cases are delayed, and evidence and witnesses are lost. Almost no cases go to trial. They must triage, choosing which cases on which to focus, while allowing others to be resolved without appropriate diligence. Such difficult decisions not only negatively affect public defense clients and their families, they also negatively affect victims by contributing to delay and uncertainty in the process. Furthermore, systems burdened by triage risk unreliability, denying all people who rely on them efficient, equal, and accurate justice.

This study will permit public defense providers and jurisdictions across the country to review their caseloads against a more justifiable, data-driven set of standards and should allow them to better avoid overload, as required under the ethics rules.[197]

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[194] Dana Rieck and Steph Kukuljan, "St. Clair County Public Defenders Seek to Withdraw from New Cases, Citing Massive Caseloads," *St. Louis Post-Dispatch*, December 2, 2022. For more examples, see the section titled "Excessive Caseloads in Public Defense" in Chapter 1.

[195] Jennifer Learn-Andes, "ACLU Calls on Luzerne County to Address Public Defender's Office Staffing Shortages," *Times Leader*, December 5, 2022.

[196] In 2019, the *New York Times* published a detailed profile on one public defender in Louisiana who was assigned almost 200 felony cases, noting the impact that this case overload had on his clients. See Oppel and Patel, 2019.

[197] ABA Formal Opinion 06-441, 2006.

Appendix A. Expert Panel Biographies

The biographies that follow were submitted by the individual panelists and have been lightly edited for consistency.

Jenny P. Andrews

Director of Training, Indigent Defense Improvement Division, Office of the State Public Defender, Oakland, California

Jenny Andrews is the Director of Training at the Indigent Defense Improvement Division (IDID) of the Office of the State Public Defender in Oakland, California. Andrews is a graduate of Cornell University and Harvard Law School. Prior to joining IDID in 2022, she litigated trial cases for 23 years in the public defense offices in Alameda, Sonoma, and Santa Barbara Counties in California. Since 1996, she has worked on the front lines of California's criminal trial courts and has consistently and aggressively litigated trial cases, including misdemeanor, felony, three strikes, LWOP, juvenile, civil commitment (mentally disordered offender and sexually violent predator), mental competency, homicide, and multijurisdiction (and multijury) trials. She has carried specialized caseloads of complex, forensic, and capital litigation and has held a wide variety of positions, including Forensic Resource Counsel and Felony Team Leader in Sonoma County and Director of Training and Senior Deputy in Santa Barbara. She has taught on the faculty of Gideon's Promise; the NAPD; the NCDC; the Trial Advocacy Workshop at Harvard Law School; the California Public Defenders Association; and in public defense training programs in New York, New Jersey, Montana, Mississippi, Louisiana, Kentucky, Kansas, Tennessee, and Georgia. She has designed and presented training for public defenders working at all levels, from intern to leadership, and from basic trial skills to capital litigation, as well as in specialized areas, such as mentorship, challenging forensic evidence, and sustaining well-being.

Tamar R. Birckhead

Attorney, Parrett Porto Parese and Coldwell PC, Hamden, Connecticut

For more than 26 years, Tamar Birckhead has represented individuals charged with criminal offenses in the state and federal court systems at both the trial and appellate levels. Licensed to practice in Connecticut, Massachusetts, New York, and North Carolina, Birckhead has defended clients in a wide variety of criminal cases—from serious felonies in state court to alleged acts of terrorism in federal court. Among her clients was Richard Reid, the attempted Shoe Bomber prosecuted in the District of Massachusetts under the Patriot Act. In her Connecticut practice,

Birckhead regularly defends clients facing serious criminal charges in Connecticut's Superior Courts (both GA and Part A) located in Bridgeport, Manchester, Meriden, Middletown, Milford, New Britain, New Haven, New London, Norwalk, and Waterbury, although she has handled cases throughout the state. She also defends the rights of clients prosecuted in federal court in the Districts of Connecticut and Massachusetts.

Birckhead graduated *cum laude* from Yale University and Harvard Law School. After a decade as a public defender in Massachusetts, she taught criminal and juvenile defense as a tenured law professor at the University of North Carolina at Chapel Hill School of Law, where she also served as Director of Clinical Programs. Birckhead is the author of more than a dozen law review articles on topics related to criminal defense and an editor and contributor to several juvenile justice–related books.

Alison Bloomquist

Vice President of Strategic Alliances and Innovation, National Legal Aid & Defender Association, Washington, D.C.

Alison Bloomquist is an experienced and dedicated public defender. Bloomquist has been trying public defense cases in New England for nearly 20 years. She served for more than ten years as a staff public defender in greater Boston, two of them as Attorney-in-Charge of the Norfolk Superior Court office at the Committee for Public Counsel Services. She spent the next six years trying complex cases in Connecticut as the Director of Training and Education for the Office of Chief Public Defender. Now, in addition to taking special public defender appointments in Connecticut, Bloomquist serves as Vice President of Strategic Alliances and Innovation for NLADA. In this role, she directs and supervises NLADA's defender initiatives, including the provision of training and technical assistance to defenders and defender organizations across the country. She teaches nationally, including as faculty at the NCDC and has authored several trial skills publications. Bloomquist is a graduate of Northeastern University School of Law and Boston University College of Arts and Sciences. She lives in West Hartford with her wife, three children, and their silver Lab, Cooper.

Carmen Brooks

Assistant Federal Defender, Federal Defender Program, Inc. (Northern District, Georgia), Atlanta, Georgia

Carmen Brooks earned her B.A. and M.A. at Washington University in St. Louis. She fell in love with indigent defense during her criminal law clinic at Georgetown University Law Center. A member of the Gideon's Promise class of 2012, after graduating from law school, Brooks worked in the Nashville Public Defender's Office for a year before moving home to Denver,

Colorado. Following two years as a paralegal in death penalty postconviction matters, Brooks landed at a three-attorney firm committed to indigent clients. While at this firm, Brooks carried adult and juvenile conflict contracts with the Office of Alternate Defense Counsel and Office of Respondent Parents' Counsel. In May 2019, she returned to full-time indigent defense as a Deputy Public Defender for the Colorado Springs Office of the Colorado Office of the State Public Defender (COSPD). During her time at the COSPD, in addition to her caseload, Brooks was a faculty member for the statewide mandatory public defender trial advocacy program. Currently, she is an Assistant Federal Defender with the Federal Defender Program, Inc., in Atlanta, Georgia. She is also Alumni Faculty with Gideon's Promise and has taught for other systems, such as the Kentucky Office of Public Advocacy and the Davidson County Public Defender's Office in Nashville, Tennessee.

Jason H. Broth

Assistant Public Defender, DeKalb County Public Defenders, Atlanta, Georgia

Jason Broth has worked as a licensed attorney in California and Georgia for more than 25 years. His experience includes judicial clerkship, private litigation practice, and public defense. As a public defender in two different offices in Georgia, he has litigated thousands of felony and misdemeanor cases through trial. In addition, he has been first chair counsel for multiple murder trials during his tenure. Currently he is the DUI specialist for the DeKalb County Public Defender's Office. His duties include both the litigation of misdemeanor and felony DUI matters, including vehicular homicide, and the training and supervision of attorneys in the handling of all DUI cases in DeKalb County.

Thomas Carver

Attorney, Carver & Associates, Springfield, Missouri

Thomas Carver will soon enter his 50th year of practicing law in the state and federal courts of Missouri. His portfolio includes representation of more than 300 clients in federal cases and thousands of clients in Missouri state courts. He has faced the ultimate challenge in serious and life-changing cases on many occasions, including the representation and trial of individuals accused of capital murder in federal court. Aside from representing litigants in thousands of state court cases, he received the Robert Duncan Award for Appellate Excellence from the Missouri Association of Criminal Defense Lawyers. Recently, he was awarded the Bernard Edelman Tradition Award for mentoring young lawyers with an interest in criminal defense and is a past president of the Missouri Association of Criminal Defense Lawyers. Carver is admitted to practice in all Missouri courts and has been a member of the U.S. Supreme Court Bar since 1993.

He is also a member of the federal bars for the U.S. Eastern and Western Districts and the U.S. Eighth and Tenth Circuit Courts of Appeal.

Eric J. Davis

Chief of the Felony Trial Division, Harris County Public Defender's Office, Houston, Texas

Eric Davis has been the Chief of the Felony Trial Division of the Harris County Public Defender's Office since 2016. He is also a former prosecutor, having served in a child sex abuse unit and tried many violent offenses during his time prosecuting. As Chief of the Felony Trial Division, Davis supervises more than 75 lawyers, 13 investigators, and several other administrative employees. He oversees training in the division and still regularly defends and tries criminal cases, sitting first chair in multiple jury trials each year. As a defense lawyer, he has tried more than 100 cases to juries on charges including capital murder, federal Medicare fraud conspiracies, and misdemeanors. He graduated from Howard University with honors in 1991 and from Tulane University Law School with honors in 1994. He is also a graduate of Gerry Spence's Trial Lawyer's College, where he honed his trial skills by learning from some of the best trial lawyers in the country. Following graduation, Davis was asked to join the staff of the college, and he currently helps train lawyers from across the country. In 2021, he received the President's Award from the Texas Criminal Defense Lawyers Association. In 2020, he received the Mentor of the Year Award from the Harris County Criminal Lawyers Association for his efforts in mentoring and training lawyers. He received that same award from the Harris County Criminal Lawyers Association in 2016 as well. Davis regularly presents at Continuing Legal Education (CLE) courses and is routinely a top-rated speaker at those CLEs. In 2006, Davis received the Unsung Hero Award from the Harris County Criminal Lawyers Association and the Man of the Year Award from the Houston Business and Professional Women's Association.

C. Dawn Deaner

Attorney and Executive Director, Choosing Justice Initiative, Nashville, Tennessee

Dawn Deaner is the Executive Director of Choosing Justice Initiative (CJI), a nonprofit law firm in Nashville that provides free client-centered legal representation to people facing criminal charges who are seeking justice and fair treatment and cannot afford to hire a lawyer. Before launching CJI in 2018, Deaner was Nashville's elected Public Defender for ten years, and she was an Assistant Public Defender in Nashville for 11 years before that. During those years, Deaner represented thousands of people in General Sessions Court, Criminal Court, and in Tennessee's appellate courts, serving as lead counsel in approximately 50 felony jury trials. At

CJI, Deaner continues to represent people in criminal cases at all levels of court, using a holistic service model and offering people in need of appointed counsel the opportunity to obtain a lawyer of their choice. Deaner received her undergraduate degree from Columbia College and her law degree from George Washington University Law School.

Damaris Del Valle

Deputy Chief of Felonies, Law Offices of the Public Defender, Carlos J. Martinez, Miami, Florida

Damaris Del Valle is board certified in Criminal Trial Law by the Florida Bar and serves as the Deputy Chief of Felonies at the Law Offices of the Public Defender, Carlos J. Martinez. After graduating in 2009 from the University of Cincinnati with both a J.D. and an M.A. in women's studies, she began her legal career as an Assistant Public Defender in Miami-Dade County. Over the course of her tenure at the office, Del Valle has tried a wide array of cases, from cocaine possession to first-degree murder.

Carrie Ellis

Misdemeanor Chief and Training Director, Harris County Office of Managed Assigned Counsel, Houston, Texas

Carrie Ellis is the Misdemeanor Chief and Training Director at the Harris County Office of Managed Assigned Counsel (MAC). Prior to joining the MAC, she worked as the Training Director at the Orleans Public Defenders, where she started as a staff attorney in 2008. Following graduation from law school, Ellis served as an E. Barrett Prettyman Fellow at Georgetown Law. Ellis received her B.S. in mathematics and B.A. in Russian literature from the University of Texas at Austin, her J.D. from Columbia University, and an LL.M. in Advocacy from Georgetown Law.

Karl Fenske

Deputy Public Defender IV, Los Angeles County Public Defender's Office, Los Angeles, California

Karl Fenske has worked for the Office of the Los Angeles County Public Defender for more than 20 years. During that time, he has tried more than 100 adult criminal trials and dozens of juvenile adjudications and mental health–related jury trials. He is currently the Second Vice President on the board of the Los Angeles County Public Defender Union Local 148 and the lead steward. He has dedicated his work to serving the community by defending their constitutional rights in criminal court proceedings.

Carey Haughwout

Public Defender for Palm Beach County, Office of the Public Defender, 15th Judicial District, West Palm Beach, Florida

Carey Haughwout has been the Public Defender for Palm Beach County since 2001 and has practiced criminal defense since 1983. She is also the immediate past president of the Florida Association of Public Defenders. As part of her duties, Haughwout works with the legislature on criminal justice policy. She is a board-certified criminal trial lawyer and a fellow of the American College of Trial Lawyers. Haughwout's efforts have been recognized with the American Civil Liberty Union's Harriet S. Glasner Freedom Award, The Lord's Place Ending Homelessness Award, the Voter's Coalition of Palm Beach County, the March of Dimes Women of Distinction Award, the Palm Beach County Bar Association's Professionalism Award, and the Judge Barry M. Cohen Champion of Justice Award. She is a past president of the Florida Association of Criminal Defense Lawyers, served on the Board of Legal Specialization and Education, the Florida Bar Criminal Rules Committee, and on a variety of local committees dedicated to the improvement of the system of justice. She established and chairs the Reentry Task Force for the Palm Beach County Criminal Justice Commission, which has been credited with establishing services for ex-offenders to reduce recidivism. Besides the administrative duties of managing a 200-person law office, Haughwout maintains an active trial practice of serious cases and death penalty cases.

Aaron Hawbaker

Supervisor, Iowa Adult Public Defender Office, Waterloo, Iowa

Aaron Hawbaker graduated from Iowa Law School in 1994. He was in private practice until 2004 when he joined the State Public Defender and was first hired to work in the Waterloo Office. Hawbaker became the supervisor of the Marshalltown office in 2008 and the supervisor of the Waterloo Adult Office in 2010, where he remains. He has handled every type and level of offense in Iowa, from traffic tickets to Class A felonies, and has tried many cases involving every type and level of offense in Iowa to both juries and the court. He served several years as the president of the Public Defender Association of Iowa. He is a past member of the Iowa Bar Association Jury Instruction Committee. He is a member of the Iowa Supreme Court Advisory Committee for Criminal Procedure and a member of the Iowa Supreme Court Criminal Procedure Task Force. He is also a member of the Iowa Supreme Court Rules of Evidence Substantive Review Task Force. Hawbaker is a past Public Defender of the Year honoree and a recipient of the John Adams Award presented by the Iowa Association of Criminal Defense Lawyers.

Gemayel Haynes

Team Lead, Senior Litigator, Harris County Public Defender's Office, Houston, Texas

After graduating from law school, Gemayel Haynes became a prosecutor for the Harris County District Attorney's (DA's) Office, working in the Justice of the Peace, Misdemeanor, Juvenile, and Felony Trial Divisions. After leaving the DA's office, Haynes was in private practice for approximately five years, representing juvenile and adult clients charged with misdemeanors and felonies. He is currently an Assistant Public Defender serving as Senior Litigator and Team Lead in the Felony Trial Division of the Harris County Public Defender's Office. Haynes supervises and trains a team of eight lawyers, mentors other lawyers in the division, and represents indigent clients charged with first- and second-degree felonies. He is in trial, either as first chair on his own clients' cases or a second chair with younger lawyers, several times per year on everything from state jail felonies to first-degree murder and sex cases. He gives trainings to criminal lawyers locally and across the state on topics including bail, pretrial investigation, search and seizure, probation issues, trial preparation and strategy, and sentencing issues.

Bryan Kennedy

Senior Assistant Public Defender, Office of the Public Defender, Fairfax, Virginia

Bryan Kennedy has worked at the Office of the Public Defender in Fairfax, Virginia, since 2012. He has represented clients in all types of criminal cases and has tried cases from driving without a license to first-degree murder and serious sexual assault. He is a frequent lecturer at Continuing Legal Education programs at the local, state, and national levels. Kennedy serves as a supervisor in the office, where he is in charge of training new lawyers and overseeing their development as they practice in misdemeanor court. He has also represented clients on appeal to the Court of Appeals and Supreme Court of Virginia. Prior to joining the Public Defender's Office, Kennedy graduated from Georgetown University Law Center and was a clerk on the Superior Court for the District of Columbia.

Andrea Konow

Senior Trial Attorney, Defender Association of Philadelphia, Philadelphia, Pennsylvania

Andrea Konow is a Senior Trial Attorney at the Defender Association of Philadelphia. She is currently in the Homicide Unit, where she has spent the past 21 years handling a caseload that includes capital and noncapital homicides. Along with trial work, she is the forensics lead in her office. Konow has been a public defender since 1985 in several jurisdictions, including Philadelphia, Harrisburg, and Pittsburgh, Pennsylvania; and San Diego, California, and was on

the faculty of the Trial Lawyers College in Dubois, Wyoming, from 2000 to 2007. Konow is a graduate of Dickinson School of Law and holds an M.A. degree from California State University, Northridge, and a B.S. degree from Oregon State University. She lives in Philadelphia with her partner and two children.

Rick Kroeger

Associate Attorney, Simmons Hanly Conroy, LLC, Alton, Illinois

Rick Kroeger is an Associate Attorney at Simmons Hanly Conroy where he works on behalf of municipalities around the country in litigation against manufacturers, distributors, and pharmacies that flooded the country with opioids, as well as for victims of clergy sexual abuse. In addition to his current civil practice, he remains a special public defender in Missouri, where he was a full-time public defender with the Missouri State Public Defender for a decade in St. Louis. As a public defender, Kroeger handled trials at all levels, from misdemeanor charges to first-degree murder charges. Early in his career, he initiated procedures in St. Louis through which his office was able to identify police officers who had engaged in presenting false search warrant affidavits to the prosecutors and courts, which led to numerous cases being dismissed, as well as several police officers being removed from the force. In addition to handling cases from arrest to trial before judges and juries, Kroeger handled appeals and writs on behalf of his clients. During his last five years with the Missouri State Public Defender, Kroeger was at the St. Louis City Trial Office, where he was one of two managing attorneys responsible for training and overseeing 31 trial attorneys while handling his own clients' cases.

La Mer Kyle-Griffiths

Assistant Public Defender, Santa Barbara County Office of the Public Defender, Santa Barbara, California

La Mer Kyle-Griffiths is the recently appointed Assistant Public Defender of the Santa Barbara Public Defender's Office. Before that, she was the Director of Training and Complex Litigation with Still She Rises in Tulsa, Oklahoma. She has been a lifelong public defender amplifying the voices of the poor in Kentucky, Massachusetts, Oklahoma, Washington, and now California. In Seattle, she was responsible for designing, organizing, and facilitating training for the more than 400 team members of the Department of Public Defense. There, she gained an appreciation of the need for defense teams to actively engage with their own implicit bias. She became certified with King County to teach and facilitate issues of diversity, equity, and inclusion.

Earlier in her career, Kyle-Griffiths practiced for more than 17 years as a public defender in both Kentucky and Boston, Massachusetts. In Kentucky, she was part of the Capital Defense

Unit and litigated several death penalty cases. She has sat on many case reviews on death penalty cases and continues to teach nationally and at various state programs on capital litigation, voir dire, and mitigation. She has taught investigators, attorneys, mitigation specialists, and law students across the country in the areas of capital litigation, litigation with a racial and gender lens, investigation, sentencing, trial skills, and forensics. She has litigated juvenile, felony, and misdemeanor cases and has argued two cases before the Kentucky Supreme Court. She has been an adjunct professor at the Seattle University College of Law, the Iowa University of Law, and Boston College. Kyle-Griffiths currently teaches at the Darrow Baldus Death Penalty College, the NCDC, Gideon's Promise, and Harvard Law School's Trial Advocacy Workshop. She has taught in various organizations in the areas of diversity, equity, inclusion, and belonging, as well as leadership and supervision with an inclusive lens. A graduate of the University of Dayton School of Law, Kyle-Griffiths has been a lifelong advocate and is looking forward to her continuing adventure with Tom, her Chucks-wearing, crusading, capital defender husband and three young women who all learned to crow "acquittal" early!

Elizabeth Lashley-Haynes

Deputy Public Defender IV, Los Angeles County Office of the Public Defender, Los Angeles, California

Elizabeth Lashley-Haynes graduated from Syracuse University with degrees in sociology and African American studies and from Case Western Reserve University School of Law. After graduating from law school, she moved to Los Angeles to begin working for the Los Angeles County Public Defender's Office, where she has been employed for the past 20 years. There she has worked various assignments, including the Felony Trial Division, Juvenile Resource Attorney, and the Racial Justice Act Unit. She is the President of the Women's Defender Association, served on the Racial Justice Committee and on the National Legal Aid & Defenders Association's Defender Council. Lashley-Haynes is very active in the community, serving on the governing board of her church, in positions in her children's schools, and with the Lawyer Moms of Southern CA, where she hosts a holiday gift drive for hundreds of unaccompanied migrant children.

Corrie-Ann Mainville

Public Defender, Connecticut Division of Public Defender Services, Litchfield, Connecticut

Corrie-Ann Mainville earned her J.D. in 2005 from Western New England School of Law and after law school performed pro bono work for the Capital Defense Unit of the Connecticut Division of Public Defender Services, helping challenge the constitutionality of the state's lethal

injection protocol. In 2007, she was hired as a temporary attorney with the public defenders, achieving permanent status the following year. She has had a meteoric career trajectory as a public defender, starting off handling low-level misdemeanors and advancing to the most serious felony cases, including capital felonies. Mainville has worked in urban and rural jurisdictions across the state of Connecticut and has extensive litigation experience, including as co-counsel in the last capital case after the death penalty was abolished in the state. In 2016, Mainville was appointed as the head Public Defender of the Litchfield Judicial District, where she supervises an office that handles both low-level misdemeanors and serious felony cases while carrying a full caseload of her own. In 2018, the Connecticut Criminal Defense Lawyer's Association, which is made up of both public defenders and private criminal defense attorneys, recognized Mainville with the Diane "Cookie" Polan award, an annual recognition bestowed upon a rising female attorney fighting for civil rights in the spirit of legendary civil rights and criminal defense attorney Cookie Polan.

Alexzandria Poole

Director of Defender Initiatives, Zealous, Detroit, Michigan

Alexzandria Poole has spent her legal career serving as a public defender in New York City and Detroit. During her time as a public defender, she also played an integral role in several projects outside the courtroom, which include "Know Your Rights" training for both New York immigrant communities and for Detroit youth, educating on Certificates of Relief from Civil Disabilities for those directly affected, advocating for discovery reform in Albany, New York, and promoting data integrity in public defender office settings. As Director of Defender Initiatives for Zealous, Poole serves as the point person for public defender offices across the country to assist in establishing internal processes, policies, and training on nontraditional forms of advocacy. She also collaborates with the organization's communications practice to amplify public defender voices, codevelops and coteaches law school curriculum, and supervises law school clinical projects. She is currently based in Detroit, Michigan.

Diane DePietropaolo Price

Assistant Deputy Public Defender, New Jersey Office of the Public Defender, Camden, New Jersey

Diane DePietropaolo Price has been a trial attorney for the New Jersey State Office of the Public Defender in Camden, New Jersey, since 2017. Prior to her position in New Jersey, Price was an assistant public defender in Charlotte, North Carolina, from 2008 to 2014 and worked for the NACDL from 2014 to 2017. Price has extensive experience in misdemeanor and felony

courts, having represented hundreds of clients in criminal proceedings, including bench trials and jury trials.

Heather Rogers

Public Defender, Santa Cruz County Office of the Public Defender, Santa Cruz, California

Heather Rogers has been a public defender for more than 18 years in the state and federal courts. She has handled thousands of cases at every stage of litigation, from arraignment through trial and appeal. Rogers has represented clients accused of offenses from delinquency to homicide; defended detainees incarcerated at Naval Station Guantanamo Bay, Cuba; and argued cases in the Ninth Circuit Court of Appeals. Rogers is honored to serve as the first Public Defender of Santa Cruz County, her birthplace and home. Before her appointment, Rogers served as a public defender at Biggam, Christensen & Minsloff, the defense firm that provided public defense services for Santa Cruz County. Rogers is a faculty member of the NCDC; a lecturer in Legal Studies at the University of California, Santa Cruz; a frequent trainer at regional and national trial skills programs; and has taught at California Western School of Law and Monterey College of Law. She serves on the Board of Directors of the Housing for Health Partnership Policy Board, Community Corrections Partnership, Criminal Justice Council, Juvenile Justice Coordinating Council, Santa Cruz County Trial Lawyers Association, and Santa Cruz County Defense Bar. Rogers clerked for the Honorable M. Margaret McKeown on the Ninth Circuit Court of Appeals before starting her career in public defense at Federal Defenders of San Diego, Inc. She also served as a public defender in Monterey County and at the Federal Public Defender for the Northern District of California before coming home to Santa Cruz. Rogers has an A.B. in English language and literature from the University of Chicago and a J.D. from Stanford Law School. She lives in the Aptos mountains with her husband, children, and numerous pets.

Jamie C. Schickler

Managing Attorney of the Behavioral Health Division and Co-Director of the Intern/Extern Program, Law Office of the DeKalb County Public Defender, Atlanta, Georgia

Jamie Schickler is a Managing Attorney of the Behavioral Health Division and codirector of the Intern/Extern Program at the Law Office of the Public Defender in DeKalb County, Georgia. Prior to joining the Behavioral Health Division, Schickler spent nine years in trial work, including more than six years trying felony cases in Superior Court at the state level in Georgia. She also occasionally guest lectures in “crimmigration” law and is a member of the faculty of

Emory Law's annual Trial Techniques program. She attended Northwestern University, where she obtained her undergraduate degree, later graduating from Emory University School of Law in 2013 with honors. Schickler then became a public defender and has never looked back. She recognizes how her own life has been affected by privilege and strives to use her time, energy, and talent to confront the systems of oppression she sees every day in the world of public defense and beyond. She believes in the inherent dignity and worth of every human being, regardless of what he or she might have done. As a wife and a mom to both biological and foster children, Jamie spends most of her free time chasing people (and the dog) around the house.

Georgia L. Sims

Assistant Deputy Public Defender, Public Defender of Metropolitan Nashville & Davidson County, Nashville, Tennessee

Georgia Sims attended Vanderbilt University Law School, where she served as Executive Director of the Vanderbilt Legal Aid Society and as an editor for the Vanderbilt Law Review. She received the 2008–09 Damali A. Booker Award in recognition of her commitment to public service. Sims joined the Nashville Defenders upon her graduation from Vanderbilt in 2009 as an Assistant Public Defender. She has tried cases from DUIs to first-degree murder and served as a supervising attorney for one of the office's felony trial teams from 2014 to 2018. In 2018, she became the Training Director for the office, and in 2019 was sworn in as the Assistant Deputy Public Defender. She continues to directly represent clients and to serve as the office's Training Director in this role, and especially enjoys working with new lawyers on their trial cases. Sims is a graduate of the Gideon's Promise (formerly Southern Public Defender Training Center) Core 101 program and serves as a member of the Gideon's Promise faculty.

S. Christie Smith IV

Senior Partner, Smith Advocates LLC, Leesville, Louisiana

Christie Smith is the senior partner of SmithBush, LLP, a regional Louisiana law firm originally established in 1911 to represent laborers—and, too often, their widows and children—who were harmed by the burgeoning and unregulated timber industry in the rural South. Smith's work today is the modern extension of that century-old practice, in a broader, litigation-based platform. He defends individuals in the most serious types of criminal charges or in cases where their constitutional rights have been intentionally or systemically abridged. He has tried cases across the Gulf South, from personal injury and damage claims to first-degree murder and narcotics trafficking. He is one of the few lawyers dually board-certified in both civil and criminal trial advocacy by the National Board of Legal Specialty Certification, has been recognized in the Top 50 Louisiana SuperLawyers List, holds an AV—Preeminent rating (the

highest rating available from the Martindale-Hubbell Directory of Attorneys), and is listed in Best Lawyers in America. He is widely published and frequently lectures on emerging issues in trial and constitutional law.

Ryan Swingle

Attorney, Ryan J. Swingle Attorney at Law, Athens, Georgia

Ryan Swingle is a criminal defense attorney based in Athens, Georgia, who practices in both federal and state courts. He is a former state public defender and state capital defender. Swingle began his legal career in 2001 as an Athens public defender, and for 12 years dedicated himself to defending indigent defendants in cases from disorderly conduct to murder. During his five years as lead attorney for the Northeast Georgia Capital Defender Office, none of the office's clients were sentenced to death. Swingle's current private practice focuses 100 percent on criminal defense, and as experienced trial lawyer, he has tried all manner of misdemeanor and felony cases. Swingle is also a faculty member of the NCDC's Trial Practice Institute.

Amber L. Tucker

Owner/Principal, The Law Office of Amber L. Tucker, LLC, Portland, Maine

Amber Tucker is a Florida State University College of Law graduate and has actively represented the indigent accused since 2005. Initially, she practiced at the Hillsborough County Public Defender's Office in Tampa, Florida, and continued to do so for four years. Following her time at the Public Defender's Office, Tucker returned to her home state of Maine, where she spent several years as a prosecutor litigating felony drug crimes and then transitioned into private practice, where she has remained since 2012. She is the current President of the Maine Association of Criminal Defense Lawyers. In addition to her retained work, she represents the indigent accused through assignments from the Maine Commission of Indigent Legal Services and is a Criminal Justice Act panel attorney for appointed criminal matters in federal court. Tucker has represented thousands of defendants, litigated state and federal crimes from misdemeanors to life felonies (including murder), and has tried nearly 40 criminal jury trials to verdict.

Colette Tvedt

Attorney, Law Firm of Colette Tvedt LLC, Denver, Colorado

Colette Tvedt is the founder and owner of Tvedt Law, where she represents individuals in state and federal court charged with misdemeanors to first-degree murder. Prior to starting her law firm in Denver, she served as the Director of Public Defense Training and Reform for the

NACDL. In that capacity, she developed and delivered premier training programs for public defense providers nationwide, focusing on racism in the criminal justice system, police misconduct, pretrial detention, challenging forensic evidence, and trial skills. Tvedt also published reports regarding public defender workload studies, constitutional deficiencies in municipal courts, effective assistance of counsel and the right to counsel, and bail reform manuals. She has devoted her career over the past 25 years to representing poor people accused of crimes, spending 18 of those years as a public defender in Massachusetts and Washington State and seven years in private practice as a partner with the Seattle law firm Schroeter, Goldmark & Bender. She has organized training programs for thousands of defense lawyers and served for several years as a Clinical Professor of Law at Suffolk University Law School in Boston. She was also an adjunct professor at the University of Washington School of Law and at Seattle University Law School. She is a faculty member and board member of the NCDC, the Colorado National Representative for the federal Criminal Justice Act (CJA) Panel, and a member of the District of Colorado CJA Standing Committee. Tvedt is an honors graduate of Rutgers University, where she also attended law school.

Andre Vitale

First Assistant Deputy Public Defender, Trial Chief, New Jersey Office of the Public Defender, Jersey City, New Jersey

Andre Vitale has served as a public defense lawyer for more than 23 years as a trial lawyer, training director, educator, and mentor. He has extensive trial experience (taking more than 99 cases to verdict) while handling some of the most complex matters. He has developed an expertise in defending homicide and sex cases, with a proficiency in contesting forensic and other technical evidence, including DNA, fingerprints, child sexual abuse accommodation syndrome, and eyewitness identification. He is now Trial Chief for the Hudson County Office of the New Jersey Office of the Public Defender. He also designed a Defending a Child Sex Case advanced trial skills program that has been used by State Public Defender Offices in Montana, Missouri, and New Jersey. Because of his passion and commitment to client-centered representation, Vitale has received the Kevin Andersen Award from the New York State Defender's Association and the Denison Ray Award from the New York State Bar Association.

Nanzella Whitfield

Managing Director, Northern Region, Public Defender Division, Massachusetts Committee for Public Counsel Services, Boston, Massachusetts

Nan Whitfield is a career public defender who has earned a solid reputation as a brilliant trial lawyer. Serving as a trial lawyer in the office of the Los Angeles County Public Defender for

more than 30 years, Whitfield is now the Managing Director of the Northern region for Massachusetts' Committee for Public Counsel Services. She has been the lead trial lawyer in hundreds of jury trials, including more than 40 homicide jury trials. Throughout her career, she has received numerous accolades for her work, including recognition as Defense Attorney of the Year by the Los Angeles County Bar Association in 2011 and one of the Top 75 Female Litigators in the State of California in 2008. Whitfield has served as faculty at countless training programs for the NACDL, where she served as First Vice President and as Executive Officer on the Executive Committee. Recently, she was the chair for the Race Matters IV committee and has given several presentations highlighting the relevance of issues involving race in the criminal legal system. She has presented for the California Attorneys for Criminal Justice and for the Neighborhood Defender Service (the public defender agency in Detroit, Michigan), and it is her goal to elevate the standards of practice within the criminal defense bar. Whitfield earned her undergraduate degrees from the University of Illinois at Urbana-Champaign and her law degree from Northern Illinois University College of Law.

Glover Wright

Assistant Public Defender, Law Office of the Shelby County Public Defender, Memphis, Tennessee

Glover Wright is an assistant public defender at the Law Office of the Shelby County Public Defender in Memphis, Tennessee, where he represents clients charged with felonies. A graduate of Columbia College and Columbia Law School, he is originally from Humboldt, Tennessee. Wright is an alumni faculty member of Gideon's Promise, a nationwide public defender training program; sits on the Amicus Committee of the National Association for Public Defense; and is a former board member of the Tennessee Association of Criminal Defense Lawyers.

Lorinda Youngcourt

Trial Attorney, Federal Defenders of Eastern Washington and Idaho, Spokane, Washington

Lorinda Youngcourt has represented capital and noncapital clients in trial, direct appeal, state postconviction, and federal habeas corpus as a public defender and in private practice. She also serves as faculty at various trial programs around the country. She is the current Treasurer of the NAPD and a past chair of the Indiana Public Defender Council. Youngcourt was the first appointed King County (Seattle, Washington) Public Defender from 2015 to 2018, overseeing the unification of four nonprofit agencies into a single county department. She was also the first Lawrence County Indiana Public Defender from 2010 to 2014, creating a state- and county-funded agency to replace a contractual public defender system. In late 2018, Youngcourt

returned to her roots as a trial lawyer and is now practicing with the Federal Defenders of Eastern Washington and Idaho community defenders' program in Spokane, Washington.

Appendix B. Comparison of Prior State-Level Workload Studies

Overview

A detailed summary of the 17 state-level, qualitatively adjusted weighted caseload studies published since 2005 that we reviewed as part of our work is presented in Table B.1. The discussions that follow describe each of the study features described in the table's columns and present additional background on the methods that were employed to produce appropriate metrics for estimating attorney requirements.[198] Some of these studies were conducted in states where trial-level public defense is primarily provided through a statewide public defender agency, while others were conducted in states where defenders consist of a mix that includes both members of the private criminal bar (often working in relatively small firms and solo practices) and attorneys working in locally based public defender offices. In addition, some jurisdictions studied had extensive attorney time expenditure and case management data readily available to the researchers, while in others, there was a lack of even basic information, such as how many attorneys were appointed as counsel in the past year and what case types were the subjects in those appointments. Such considerations can affect study design, so the use of one approach over another should be viewed as the result of a conscious decision to employ methods that are most appropriate for the challenges being faced by the researchers at that time rather than any sort of strict adherence to a singular strategy.

Quoted passages contained within Table B.1 are taken from the final report for the study being described.

[198] Some of the descriptions of prior studies presented in this appendix have been drawn from Pace et al., 2019, pp. 7–18.

Table B.1. State-Level Public Defense Workload Studies Since 2005

Jurisdiction, Primary Research Organization, Year, and Source	Scopes	Case Types	Current Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Colorado ABA SCLAID, 2017 (RubinBrown and ABA SCLAID, 2017)	All attorneys providing public defense services in state	15 adult criminal, 3 juvenile delinquency	Mandatory time study over 16 weeks involving statewide public defender system; results not shared with expert panel	Yes, using 26 task types	None	"Criminal defense experts (private, as well as public defense practitioners)"	(1) Time needed to complete each task within each case type; (2) percentage of cases within each case type where that task should take place
Idaho Idaho Policy Institute, 2018 (Fry et al., 2018)	All attorneys providing public defense services in state	5 adult criminal, 1 juvenile delinquency, 1 appeal, 1 dependency	Voluntary time study over 12 weeks	Yes, using 13 task types	(1) Average amount of time that should be spent on cases within each case type; (2) average time needed to complete each task within each case type	Between 12 and 16 attorneys, depending on the round	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type where that task should take place
Indiana ABA SCLAID, 2020 (ABA SCLAID and Crowe LLP, 2020)	All attorneys providing public defense services in state	7 adult criminal, 6 juvenile delinquency, 7 appeals, 3 dependency	None	Yes, using 11 to 13 task types depending on case type	None	Experienced public defenders and private defense attorneys; for adult criminal, 27 attorneys completed the first round and 15 attorneys participated in the final session	For each case type: (1) percentages that should go to trial versus other resolution; (2) percentages in which each case task should be performed by disposition; and (3) cumulative time that should be spent on each case task by disposition

Jurisdiction, Primary Research Organization, Year, and Source	Scopes	Case Types	Current Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Louisiana ABA SCLAID, 2017 (Postlethwaite & Netterville and ABA SCLAID, 2017)	All attorneys providing public defense services in state	7 adult criminal, 1 juvenile delinquency, 2 dependency	Six-month time study of public defenders in four volunteer pilot districts; results not shared with expert panel	Yes, using 11 task types	None	Private defense attorneys, as well as public defense practitioners; 62 attorneys participated in the first round, 23 attorneys in final session	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type where that task should take place
Maryland NCSC, 2005 (Ostrom, Kleiman, and Ryan, 2005)	Statewide public defender system attorneys	District offices: 15 adult criminal, 2 juvenile delinquency Statewide divisions: 7 adult criminal, 3 appeals, 2 dependency	Voluntary time study over four to six weeks	Yes, using 15 task types at start, collapsed to 8 at end	Likert scale to indicate frequency in which attorney generally had enough time for each task across all cases	Three attorney focus groups, one each for urban, suburban, and rural cases Advisory Committee comprising statewide system management attorneys and attorney representatives from defender regions	Focus groups adjusted average time for each task within each case type upward when more time was believed to be necessary. Advisory Committee reviewed focus group adjustments and accepted, rejected, or made further changes.
Massachusetts Center for Court Innovation, 2014 (Labriola and Hopkins, 2014)	All attorneys providing public defense services in state	10 adult criminal, 4 juvenile delinquency, 2 dependency	Used existing billing data from private bar for 1 year of closed cases	No; some task data collected by survey but not basis of expert decisions	Likert scale to indicate frequency in which attorney generally had enough time for specified job duties within broad practice area	Five Delphi groups, each considering a broad practice area, made up of "purposively selected seasoned attorneys."	For each case type, Delphi groups specified both the amount of additional time needed per case and the percentage of cases in which this additional time was required.

Jurisdiction, Primary Research Organization, Year, and Source	Scopes	Case Types	Current Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Michigan RAND, 2019 (Pace et al., 2019)	All attorneys providing public defense services in state	9 adult criminal	Voluntary time study over eight weeks	No	Average amount of time that should be spent on cases within each case type	29 panelists consisting of "16 private criminal practitioners, nine public defenders, two appellate attorneys, and two federal public defenders)"	Average amount of time that should be spent on cases within each case type
Missouri ABA SCLAID, 2014 (RubinBrown and ABA SCLAID, 2014)	All attorneys providing public defense services in state	6 adult criminal, 1 juvenile delinquency, 1 appeals	Used existing timekeeping data from statewide public defender system covering 25 weeks; results not shared with expert panel	Yes, using 11 task types	For each task within each case type: (1) percentage category of cases where sufficient time was available to accomplish task; (2) amount of time typically sufficient to accomplish each task; results not shared with expert panel	"Criminal defense experts (private, as well as public defense practitioners)"	(1) Time needed to complete each task within each case type; (2) percentage of cases within each case type that each task should take place
New Mexico NCSC, 2007 (Hall, 2007)	Statewide public defender system attorneys	District offices: 9 adult criminal, 1 juvenile delinquency, 1 appeals Statewide units: 2 adult criminal, 2 appeals	Voluntary time study over six weeks	Yes, using 51 task types	Likert scale to indicate frequency in which attorney generally had enough time for each task across all cases	Focus group: "seasoned experts from representative" state public defender offices Advisory committee: "judges, prosecutors and defense attorneys"	Focus group adjusted average time for each task in a case within each case type upward when more time was believed to be necessary. Advisory committee reviewed focus group adjustments and accepted, rejected, or made further changes.

Jurisdiction, Primary Research Organization, Year, and Source	Scopes	Case Types	Current Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
New Mexico ABA SCLAID, 2022 (ABA SCLAID and Moss Adams LLP, 2022a)	All attorneys providing public defense services in state	8 adult criminal, 5 juvenile delinquency, 7 appeals	Time data gathered from statewide public defender system; limited use; results not shared with expert panel	Yes, 9 to 12 task types depending on case type	None	A "mix of public defenders, contract attorneys and private practitioners;" for adult criminal, 60 attorneys participated in the first round and 29 participated in the final session	For each case type: (1) percentages that should go to trial versus other resolution; (2) percentages in which each case task should be performed by disposition, and (3) cumulative time that should be spent on each case task by disposition
New York (five counties) RAND, 2016 (Unpublished 2016 memorandum by Pace et al., provided to the New York State Office of Indigent Legal Services)	All attorneys providing public defense services in 5 counties	6 adult criminal, 2 appeals	Voluntary time study over eight weeks	No; some task data collected by survey but not basis of expert decisions	Average amount of time that should be spent on cases within each case type (selected information at the task level was collected as well)	28 panelists representing "a diverse mix of indigent defense attorneys and retained client-only attorneys"	Average amount of time that should be spent on cases within each case type
North Carolina NCSC, 2019 (Lee, Hamblin, and Via, 2019)	Statewide public defender system attorneys	12 adult criminal, 3 juvenile delinquency, 3 dependency	Mandatory time study over seven weeks	Yes, using 35 task types	Whether additional time was needed for performing each task within each case type	Four attorney panels, each focusing on a subset of case types (adult felonies, adult misdemeanors, juvenile, and parent representations) and drawn from "a representative variety of offices across the state."	When more time spent on a task within a case type was believed to be necessary, indicated (1) the percentage of additional time needed to complete task, and (2) the percentage of cases within case type where additional time was needed.

Jurisdiction, Primary Research Organization, Year, and Source	Scopes	Case Types	Current Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Oregon ABA SCLAID, 2022 (ABA SCLAID and Moss Adams LLP, 2022b)	All attorneys providing public defense services in state	7 adult criminal, 5 juvenile delinquency, dependency	None	Yes, 9 to 12 task types, depending on case type	None	A "mix of attorneys from a variety of contractor types, as well as private practice attorneys;" for adult criminal, 65 attorneys completed the first round and 30 attorneys participated in the final session.	For each case type: (1) percentages that should go to trial versus other resolution; (2) percentages in which each case task should be performed by disposition; and (3) cumulative time that should be spent on each case task by disposition
Rhode Island ABA SCLAID, 2017 (BlumShapiro, ABA SCLAID, and NACDL, 2017)	All attorneys providing public defense services in state	6 adult criminal, 2 juvenile delinquency, 1 dependency	Six-month mandatory time study of public defenders; results not shared with expert panel	Yes, using 12 task types	None	22 private practice attorneys and 21 public defenders completed the first round; 15 public defenders and 8 private attorneys participated in the final session	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type where each task should take place

Jurisdiction, Primary Research Organization, Year, and Source	Scopes	Case Types	Current Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Texas Public Policy Research Institute, 2015 (Carmichael et al., 2015)	All attorneys providing public defense services in state	6 adult criminal	Voluntary time study over 12 weeks	Yes, using nine task types	For each task within each of three collapsed case types: (1) percentage of cases where task should be performed; (2) average hours per case when task is performed	"18 highly experienced criminal defense practitioners"	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type where each task should take place; (3) percentage of cases within each case type that should go to trial NOTE: Results later split into cases going to trial and those resolved by other means.
Utah RAND, 2021 (Pace et al., 2021)	All attorneys providing public defense services in state	9 adult criminal, 5 juvenile delinquency	Used existing local public defender timekeeping data covering five months	No	Average amount of time that should be spent on cases within each case type	38 panelists consisting of "experienced adult criminal and juvenile delinquency" and "contract counsel, assigned counsel, and public defenders"	Average amount of time that should be spent on cases within each case type

Jurisdiction, Primary Research Organization, Year, and Source	Scopes	Case Types	Current Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Virginia NCSC, 2010 (Kleiman and Lee, 2010)	Statewide public defender system attorneys	Local offices: 8 adult criminal, 2 juvenile delinquency, 1 appeals Division offices: 1 adult criminal, 1 appeals	Mandatory time study over eight weeks	Yes, using 56 task types	Likert scale to indicate frequency in which attorney generally had enough time for each task across all cases	Delphi groups: Three attorney groups drawn from defender field offices, capital defender offices, and the appellate defender office Advisory committee: "chief Public Defenders and senior support staff from a representative set of offices across the state"	Delphi groups: When more or less time spent on a task within a case type believed to be necessary, (1) amount of time to be added or subtracted for the task; (2) percentage of cases within case type where adjustment should be applied Advisory committee reviewed Delphi group adjustments and accepted, rejected, or made further changes.

NOTE: As defined in this table, *adult criminal case types* in the above-referenced studies include all representations that do not clearly involve juvenile delinquency, appeals, or dependency matters (which can include related proceedings, such as terminations of parental rights, child in need of assistance matters, child welfare care and protection matters, and abuse or neglect adjudications).

Key Features

Scope

For what defender populations are the standards being developed? Most states have a mix of public defender offices, assigned counsel programs, and contract defender programs to address the needs of indigent defendants. In four of the 17 studies, a single statewide public defender system was the sole subject of the research, as well as any workload standards that resulted from the work, while in the 13 others, the standards were developed for both public defenders and private attorneys accepting indigent defense appointments.[199] In one of the 13 studies in which all types of defenders were included, the focus was on attorneys in only five counties.

Case Types

What case type categories were used to group client matters represented by the defender population? Generally, the entity that commissioned the research had already identified what broad types of representation would be the subject of the research, such as adult criminal cases, appeals, juvenile delinquency proceedings, such specialized matters as terminations of parental rights, or a combination of the same. More-granular categories (such as violent felonies) may also be predetermined, although generally, those performing the research have input in the final decision. In other studies, a focus group of defense attorneys was used to determine appropriate case types. In some instances, the choice is largely driven by existing categorization schemes used by local case management systems (both those operating within the courts and within provider organizations) because of the benefits of being able to integrate the results of the workload standards efforts with accurate information about current caseloads.

Current Time Analysis

Was information about current attorney time expenditures acquired for this study? In 15 studies, the researchers took steps to collect information about current attorney time expenditures in the case types of interest. Methods used by these studies for measuring such expenditures included analyzing timekeeping data already collected by public defender offices, conducting temporary time studies in which defenders are asked to keep track of their hours over a predetermined span of time, and examining vouchers submitted by private counsel seeking

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[199] Even in states that are characterized as relying exclusively on a network of public defender offices for delivering defender services, assigned counsel and contract defenders are often required for representing clients when the public defender has a legal or resource conflict or when specialized services are needed. Studies that focused on a single statewide public defender system may not have included those conflict attorneys in the data collections or analyses, although the standards that are produced may have been intended to apply to any attorney who accepts appointments.

compensation for services arising from court appointments. The data could be used for enhancing the general understanding of the current public defense environment, estimating necessary attorney levels if new workload standards were implemented, and informing other data collection tasks performed in the research, but in ten of the 15 data collections, supporting the panelists' deliberations was the key reason for the effort.

When time data are desired, the ideal source is an existing timekeeping process that has been in use for an extended period before the need for the data exists. When that practice is already in place, attorney time information felt necessary for caseload standards-setting can be quickly and inexpensively extracted from the provider's case management system. In addition, complete time information is available from appointment through case conclusion in all but the most recently commenced cases. But when timekeeping is not a routine practice systemwide, the usual alternative is to conduct a costly and often disruptive temporary time study in which defenders are asked to quickly learn new procedures for recording their time and then be faithful about those duties throughout the finite collection period.

The challenges involved in collecting time expenditure data required the researchers in the 15 studies that sought such information to make difficult choices. In four of the 15 studies, the scope of the standards-setting effort was limited to attorneys operating within a statewide public defender system, which made data collection relatively easier because the subjects are essentially state employees. Public defender office supervisors typically support the goals of the study and can encourage staff to participate (or, in some instances, order them to do so). Identification of and contact with public defenders during the project are relatively straightforward tasks (in contrast, many private indigent defenders are solo practitioners, some of whom are known only to the local courts that appoint them). In two of the four statewide public defender system studies, the researchers were able to make participation mandatory, although in the other two, public defenders were free to decline the invitation.

But in 11 of the 15 such studies, the standards arising out of the effort were intended to apply to all defenders accepting appointments in the state and not just a single statewide public defender system. No state requires all defenders within its borders to track their time as an ordinary business practice, so comprehensive existing information about both private counsel and public defender attorney time expenditures is not available. Moreover, no authority exists in any state that could require the participation of all defenders in any special time study, no matter how limited its duration. In four of the 11 studies applicable to all defenders, a voluntary time study was launched, which can be a hard sell to any attorney not already used to recording activities by client matter each and every day. Recruitment of an attorney pool that is large enough to produce results that can be generalizable to the larger population is only one hurdle to clear in a voluntary study. The other need is to maintain adequate participation levels over the course of the data collection period, which can be especially difficult in regard to the private attorney segment.

In light of such difficulties, the remaining seven studies seeking attorney time information chose to focus their efforts on specific types or specific locations of defenders despite the "all defenders in the state" scope of their standards-setting efforts, essentially using the information collected as proxies for the larger populations. Two of the seven studies conducted a mandatory time study, but involving only attorneys who were employees of a statewide public defender system. Existing timekeeping information available from statewide public defender systems was analyzed in two of the seven studies. One of the seven examined existing data in two of the three local public defender offices in the state, another conducted a voluntary time study in public defender offices in four counties, and the last of the seven examined invoices submitted by private attorneys in assigned counsel programs for hour-based compensation. None of these proxies was likely to have been viewed by the researchers involved as the ideal information source, but they may have been the most practical option at the time.

Task-Based Approach

Did the study obtain or use information about attorney time expenditures at the individual task level? An important distinction between the studies involved was whether the inquiry considered how much time attorneys were or should be spending performing specific activities (or tasks), such as client communication, fact investigation and discovery, and court time when representing clients in different types of cases. To be precise, all of the studies collected information about current time expenditures for different activities, conducted surveys designed to elicit attorney opinions about task-level effort, asked an expert panel to provide input for developing estimates of necessary average time expenditures at the task level (the estimates would then be aggregated to produce case-level values), or performed some combination of the foregoing. A true task-based approach, however, would also focus the expert panel's deliberations on a discrete set of task types. Thirteen of the 17 studies would satisfy that criterion, some utilizing more than 25 separate activity categories for this purpose. The remaining four studies chose to ask the panel to consider only average necessary time expenditures for cases within a case type category rather than individual tasks within those cases. We discuss the rationales behind each approach in a later section.

Attorney Time Sufficiency Survey Inquiry

Were members of the bar surveyed to obtain information to directly inform the calculation or consideration of standards? Eleven of the 17 studies included an attorney survey, although the main purpose of those surveys differed.[200] In the four studies with surveys

[200] The focus here is on questions presented to a sample of attorneys throughout the state that seek input as to whether sufficient time is available in their representations. But these surveys can also be used to gather important information about defender caseloads, characteristics, and practices, information that was often previously unavailable to policymakers at the state level.

that did not ask their expert panels to make task-level estimates, the key inquiry involved having the participant estimate the average amount of attorney time that should be spent on cases within each case type (two of these studies collected some task-level information as part of their surveys, although the primary interest was in the respondents' case-level estimates). In those four studies, the survey respondent was usually made aware of the time study results prior to making those estimates and was typically given the option to agree with the time study value or modify it as desired.

In the seven task-based studies with attorney surveys, one of two lines of inquiry was employed. Four of the studies asked how often the survey respondent had sufficient time to complete each task. This information might be captured by asking (1) for an estimate of the percentage of cases when sufficient time was available, (2) to check the appropriate box that indicates a desired range of percentages (such as 20–39 percent of your caseload), or (3) to select the appropriate expression of relative frequency from a Likert scale (such as Always, Sometimes, or Almost Never).

The other task-based approach (three studies) asked the respondent to estimate the average time needed to complete each task, with a frequently included companion question that sought an estimate of the percentage of cases in which the task should be performed (one of these three studies did not provide the results of its survey to the expert panel). For example, for a particular case type, such as a low-level felony, a participant would be asked about the percentage of low-level felony cases for which experts should be consulted. And then, when they consult such experts, how much time would be needed, on average, to do so. The time needed and frequency were subsequently combined to determine the overall time needed for expert consultation in an average case.

Task-based studies also varied as to whether such questions were specific to each case type category level (so, for example, individual estimates of average time needed would be required for each task category within each case type) or whether the questions simply sought information about the participant's generalized experience for each task across all case types. Some of the studies used the information from these surveys to reduce the scope of inquiry presented to the expert panel. For example, participant responses indicating that sufficient time was generally available for a particular task might have resulted in that task being removed from the expert panel's deliberations.

Expert Panel Composition

Who will serve as experts or knowledgeable actors on panels or committees for the purpose of setting standards and/or reviewing and adjusting the results of earlier data collections? Although the precise title used varied (e.g., experts, focus group participants, Delphi panelists, luminaries, advisers, committee members), all 17 studies selected individuals external to the project team to make key decisions that directly contributed to the development of caseload standards. Depending on the study, these panels were created solely by the sponsor of

the study, by the sponsor in conjunction with the researchers, or by a selection process informed by an independent group of local experts.

The panels generally contained a mix of attorneys with a heavy concentration of defenders, although there usually were some panelists who were attorneys in private practice with paying clients exclusively. A casual review of panel membership suggests that there was a strong bias toward the inclusion of public defenders, even in states where the majority of defenders appeared to receive their appointments through contract or assigned counsel programs. It should be noted that, while public defenders may be outnumbered by private defenders, the heavy caseloads of the former group and their typical concentration in larger cities may make public defender offices the primary providers in the state in terms of total representations. Some panels have included indigent defense provider supervisors and managers who do not represent clients themselves; academics, such as law professors; criminal law practitioners who are not part of the subject population (e.g., those who handle appeals even though the standards will apply only to trial court–level matters); representatives from the sponsor of the research (such as members of the commission overseeing indigent defense services in the state); representatives from the state bar or other legal associations; members of the judiciary; or representatives of community or advocacy organizations.

In most studies, panel membership reflected a heavy bias toward attorneys with extensive contemporary experience in the subject matter of the needs assessment (e.g., state trial-court representations if the focus is on trial court–level defense work) and minimal participation on the part of administrators and others who have less firsthand knowledge of current criminal defense conditions.

In some instances, a second body (often referred to as an *advisory committee*) was used to review the decisions of the initial expert panel, and, if desired, change them in some way. When this oversight mechanism was used, the makeup of the second group could reflect a smaller proportion of active criminal defense attorneys than the first group and include such parties as chief public defenders and judges. It should be noted that, regardless of whether a second deliberative group was used to review the expert panel's results, the standards that arose out of all of these development processes were often characterized as "recommended," "interim," or "provisional." It is not until some sort of policymaking body (e.g., the state legislature, a state commission with oversight of all indigent defense services, the state Supreme Court) considers and adopts the proposed standards (sometimes after making additional adjustments) that the case weights or annual caseload maximums have the force of authority.

Expert Decisions or Adjustments

What roles do the panels or committees play in the development of the standards? The Delphi method was the primary group communication method employed for expert opinion solicitation, although, as mentioned previously, a Delphi-like structured focus group was used in some of the earliest qualitatively adjusted public defense workload studies. Although some of the

studies that followed those early efforts involved Delphi deliberations that were conducted asynchronously and anonymously, contemporary workload studies typically rely on real-time, face-to-face or video deliberations that incorporate facilitated discussion about the reasoning behind the panelists' estimates.

The ultimate goal in all of these studies was the development of estimates of the average amount of time required for cases within each case type, but there were distinct differences in the information provided to the expert panel and what questions were asked. The discussion that follows describes three key characteristics of the process by which the final estimates were decided on, and Table B.2 reflects the fact that different research organizations leading the 17 studies had individualized preferences in their chosen approaches.

Table B.2. Expert Panel Approaches

Time Data Shared With Panel?	Task-Based?	Deliberation Method	Primary Research Organization	Study State and Publication Year
No	Yes	Estimated without explicit consideration of current time expenditures	ABA SCLAID	Colorado, 2017; Indiana, 2020; Louisiana, 2017; Missouri, 2014; New Mexico, 2022; Oregon, 2022; Rhode Island, 2017
		Identified case-related tasks needing additional time, then estimated amount and frequency of need (result added later to known time expenditures)	NCSC	North Carolina, 2019
Yes	Case-level only	Made adjustments to existing time expenditure information	Center for Court Innovation	Massachusetts, 2014
	Yes		NCSC	Maryland, 2005; New Mexico, 2007; Virginia, 2010
	Case-level only	Asked to estimate without explicit consideration of current time expenditures (panelists could refer to prior results if desired)	RAND	Michigan, 2019; New York (five counties), 2016; Utah, 2021
	Yes		Idaho Policy Institute	Idaho, 2018
			Public Policy Research Institute	Texas, 2015

One important distinction among the studies involved the *disclosure of data on current attorney time expenditures*. In nine of the 17 studies, the researchers had collected time expenditure information in the case types of interest for the primary purpose of providing the results of that work to the expert panel. A different approach was taken in the other eight studies. In six of these eight studies, at least some information regarding current attorney time expenditures was collected and used for various purposes (e.g., projecting additional attorneys needed if standards are implemented), but the results were not shared with the expert panel. In

the remaining two studies, no time data were sought and, therefore, none was available for the panel's consideration.

Seven of the eight studies in which no time data were provided to the panel were conducted by ABA SCLAID, and the remaining study was conducted by NCSC. ABA SCLAID's reasons behind this approach were discussed in its 2020 state-level workload standards report. While the authors acknowledged that "when possible, the analysis should include timekeeping data showing how current public defense attorneys are expending their time," they also noted that timekeeping "with sufficient accuracy and consistency to allow for reliable comparisons has proven difficult in several jurisdictions."[201] Finally, they noted that even if it were available, time expenditure data are "never shown to a Delphi panel under the research methodology" used by ABA SCLAID and its research partners.[202] The rationale for not doing so was that "applicable law and standards, not current practices evidenced by timekeeping, [should be] the principal grounding or 'anchor' for the consensus professional judgment of the Delphi panel."[203] A similar concern was voiced by NCSC in its most recent public defense workload study: "To avoid anchoring, a cognitive bias in which the decision-maker relies too heavily upon an initial piece of information, the panels were not presented with the preliminary case weights from the time study."[204]

In contrast, most studies conducted by NCSC, RAND, and others provided their expert panels with varying degrees of information about existing time expenditures and, when available, perceptions from the criminal defense bar as to whether defenders believe that sufficient time is available, and, if not, how much additional time is necessary, on average. Noting concerns voiced by ABA SCLAID in this regard, the authors of a RAND study asserted their belief "that the findings of the time studies and attorney surveys play an important role in informing the provisional standards, one that outweighs the risks of anchoring," and that steps could be taken to minimize undesired influences on an expert panel.[205]

Another distinction among the studies was whether the panels' deliberations were task-based. As indicated previously, in 13 studies, the focus of the panelists' deliberations was at the task or

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[201] ABA SCLAID and Crowe LLP, 2020, p. 15 and footnote 79. In an ABA SCLAID's review of its approach to conducting workload studies, the authors observed that time studies are rarely of sufficient duration to cover a case from opening to closing and asserted that the use of multipliers to estimate total case time is often inaccurate because of the different levels of attorney time needed at different points during a case (e.g., while awaiting discovery production versus immediately prior to trial). Furthermore, because most time studies rely on volunteers or have variable levels of compliance, the authors felt that the resulting time may be based on an inaccurate sample (Stephen F. Hanlon, Malia N. Brink, and Norman Lefstein, *Use of Delphi Method in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned*, American Bar Association Standing Committee on Legal Aid and Indigent Defense, 2021, pp. 22–23).

[202] ABA SCLAID and Crowe LLP, 2020, p. 15, footnote 79.

[203] ABA SCLAID and Crowe LLP, 2020, p. 15, footnote 79.

[204] Lee, Hamblin, and Via, 2019, p. 18.

[205] Pace et al., 2021, p. 17.

activity level rather than for cases as a whole. Most (11) of these task-focused inquiries also sought panelist input into the percentage of cases in which a task would need to be performed. The summed products of the time values and percentages would yield the overall average for each case type.[206] In four of those studies, the panelists provided separate information about task time and percentages for cases that went to trial and for cases that were disposed of by other means (the panelists in these studies also weighed in on the question of how often cases within each type should reach trial).[207] In contrast to these 13 task-focused approaches, four studies sought panel input only at the case level.

One reason for adopting an approach that involves estimating or adjusting time expenditures at the task level rather than at the case level is that doing so allows for addressing specific areas known to be problematic for overworked defenders, such as insufficient time to conduct investigations, visit with clients in person, or discuss collateral consequences. But perhaps the common reason for employing a task-based approach is the assumption that by deconstructing an attorney's time expenditures into various task categories, a more accurate picture of overall expenditures at the case level can be obtained. There is evidence to support the proposition that bias in recalling the length of time of an event can be reduced by "unpacking" what took place into individual components and making estimates for each prior to aggregation, although the reduction was "not due to there being less bias in the individual segments, but rather due to bias across the different segments canceling each other out when combined into a sum."[208]

But there are challenges to drilling down to individual events, particularly if a special temporary time study is used to gather baseline information about current time expenditures. Considerably more effort is involved for an attorney participating in a time study if timekeeping requires deconstructing the workday to the case and task level. This can lead to withdrawals from voluntary time studies or overuse of a generic "other" task category to avoid having to make more-detailed entries. Burnout could also affect expert panelists. A study with ten case types and 15 activity categories in which the experts were asked to estimate average time expenditures in

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[206] For example, for a case type in which the only possible activities are *client communication*, *fact investigation and discovery*, and *court time*, and where the expert consensus on average times and frequency percentages for each activity type are 2 hours and 90 percent, 3 hours and 95 percent, and 1 hour and 85 percent, respectively, the overall time estimate for the case type would be 5.5 hours ([*task1 time* × *task1 percent*] + [*task2 time* × *task2 percent*] + [*task3 time* × *task3 percent*]).

[207] Building on the example in the previous footnote, a task-based approach that uses panelists' recommendations for trial frequency within each case type would calculate the overall time estimate for a case type using the following formula:

> (*trial percent* × ([*trial task1 time* × *trial task1 percent*] + [*trial task2 time* × *trial task2 percent*] + [*trial task3 time* × *trial task3 percent*])) +
> (*non-trial percent* × ([(*non-trial task1 time* × *non-trial task1 percent*] + [*non-trial task2 time* × *non-trial task2 percent*] + [*non-trial task3 time* × *non-trial task3 percent*)])).

[208] Holly L. Gasper, Michael M. Roy, and Heather D. Flowe, "Improving Time Estimation in Witness Memory," *Frontiers in Psychology*, Vol. 10, June 2019.

each task type would require 300 separate submissions. Nevertheless, task-based estimates made by the expert panelists are the most common approach used in the 17 studies.

The studies could also differ in the process by which the experts' estimates were derived. In four studies, data on attorney time expenditures served as the explicit numerical foundation for the final case weights. The expert panel was charged with "adjusting" preliminary versions of those weights (essentially values derived from time studies) to allow attorneys sufficient time to discharge their professional responsibilities. Three of the four studies were task-based, and, as a result, panelists were first asked to identify specific activities that would require more (or infrequently, less) time than what prior time study data indicated and then come to a consensus on the recommended change in the time value. A similar adjustment would be needed for the percentage of cases in which each activity should be performed. The recommended adjustments were made to the time study case weights to produce the final case weights. The key assumption behind this design is that a time study or analysis of existing records, if properly conducted, is the most accurate way to quantify the work attorneys currently do, so the expert panel need only estimate the additional time required for work that is not already being performed.

In the other 13 public defender workload studies, the expert panel was charged with determining the total amount of attorney time required to deliver effective assistance of counsel in each case type without explicit reference to the results of any earlier data collection. That said, in five of these 13 studies, the panelists were able to review and consider time expenditure data if they chose to do so. In the remaining eight studies, existing data on time expenditures were not shown to the panel (although sometimes it had been collected as part of the research effort). Seven of those eight studies asked the panel for estimates that would directly yield the recommended case weight. The eighth study asked the panelists to identify specific activities for which more or less time than was currently spent would be required to provide effective assistance of counsel (as indicated, the panel did not know what the current expenditures were). Once the activities were identified, the panel would seek a consensus on the percentage of cases for which additional time was required and the amount of time required in each case. The product of that information was later added to the averages reported by the time study to yield the final case weight.

Appendix C. Consensus Trend Charts

The figures that follow show how the *CoV* for the attorney time estimates for each case type changed during the expert panel session deliberations, although in these figures, the proxy for time is each instance when the Delphi application performed a routine update of information displayed on the computing device dashboards and on the in-room projection by examining the panelists' entries and calculating summary statistics, such as medians and CoVs. Each iteration of this update cycle is simply when the application refreshed the data being displayed, not when a panelist made an entry. For the purpose of this discussion, we consider the start of the deliberations to be about the 250th to 300th iteration of the update cycle, which accounts for the fact that the panelists took a bit of time to become familiar with the application and then had to hand enter 88 values (eight estimates of recommended averages at the activity type level for each of the 11 case types) into the application, using their initial response charts as a reference. There was no group discussion during this prestart period (the yellow shaded areas in Figure C.1 through Figure C.11), and CoVs would have varied wildly depending on when any particular panelist began to enter values into the application for each case type. The trend lines to the right of the shaded areas of the figures represent when the Delphi session was in full swing. When comparing the trend lines across case types, note that the scale for the y-axis in these figures varies and that every 500 iterations shown on these charts represent about 44 minutes of deliberation time. In these figures, the y-axis represents the CoVs for the group's time estimates for each case type, and the x-axis represents the iterations of the update cycle of the Delphi application.

Figure C.1. CoV Trends for Felony–High–LWOP

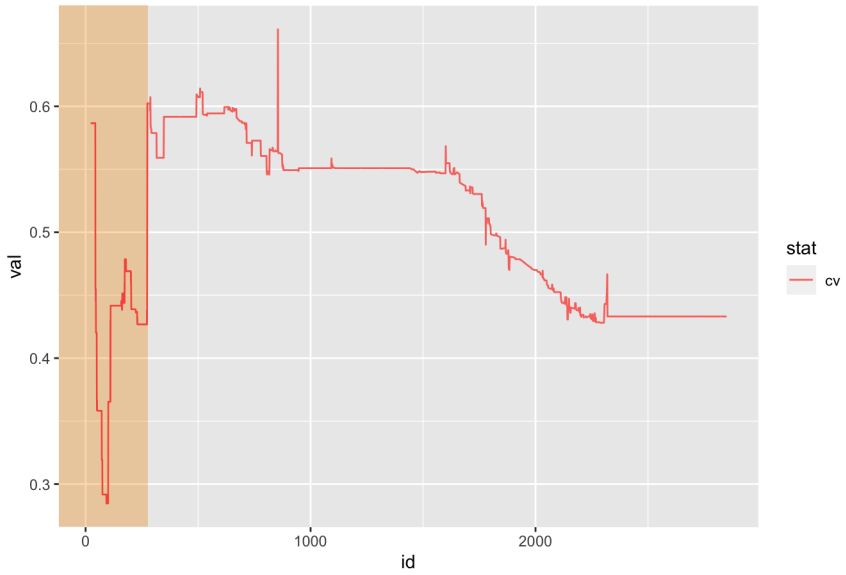


Figure C.2. CoV Trends for Felony–High–Murder

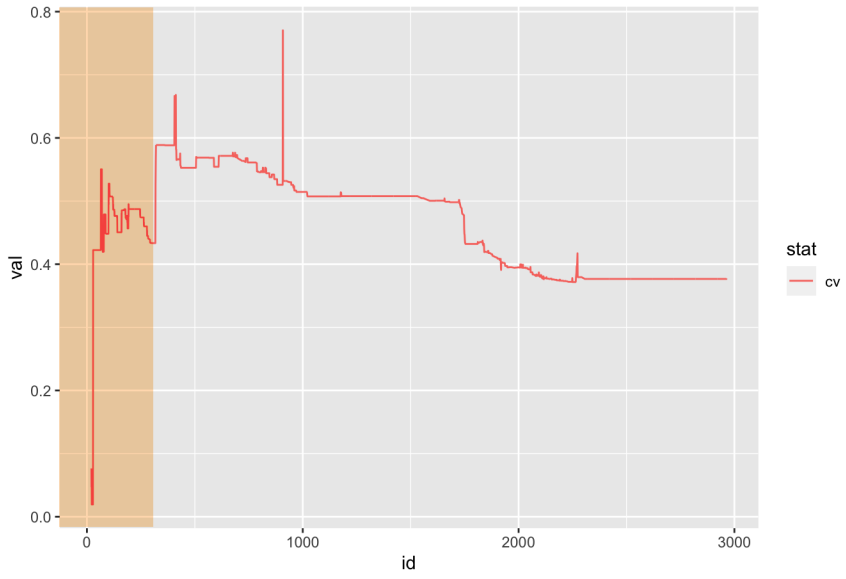


Figure C.3. CoV Trends for Felony–High–Sex

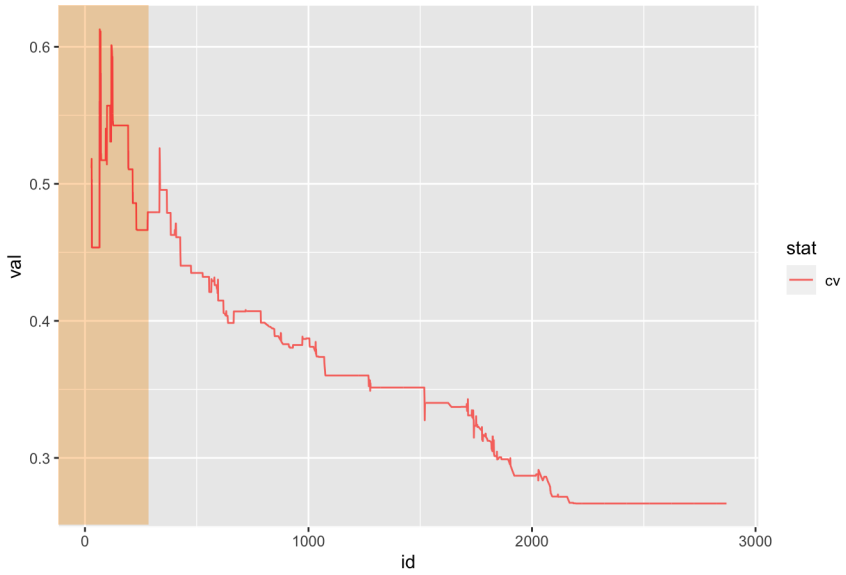


Figure C.4. CoV Trends for Felony–High–Other

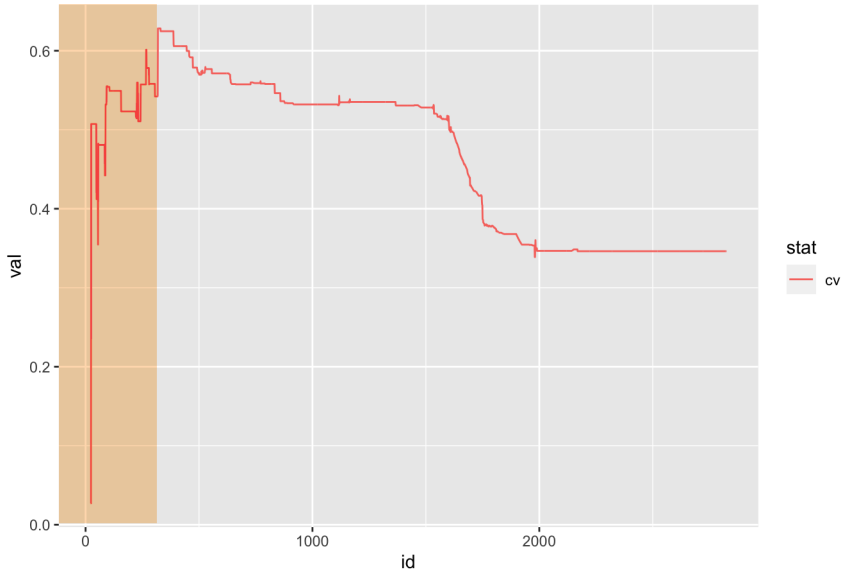


Figure C.5. CoV Trends for Felony–Mid

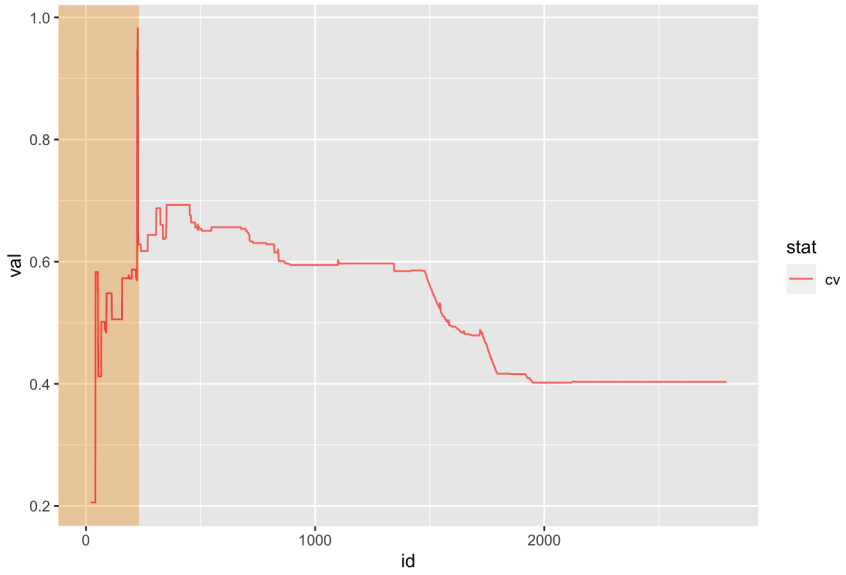


Figure C.6. CoV Trends for Felony–Low

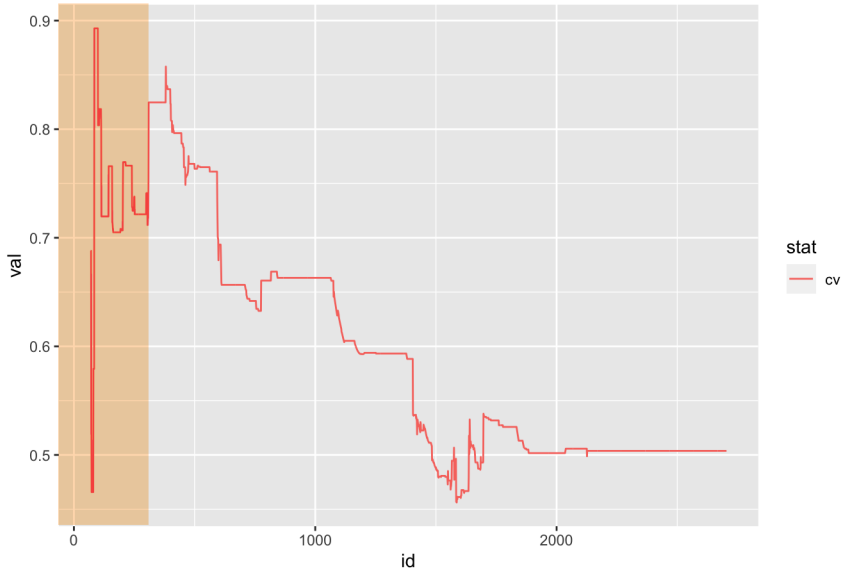


Figure C.7. CoV Trends for DUI–High

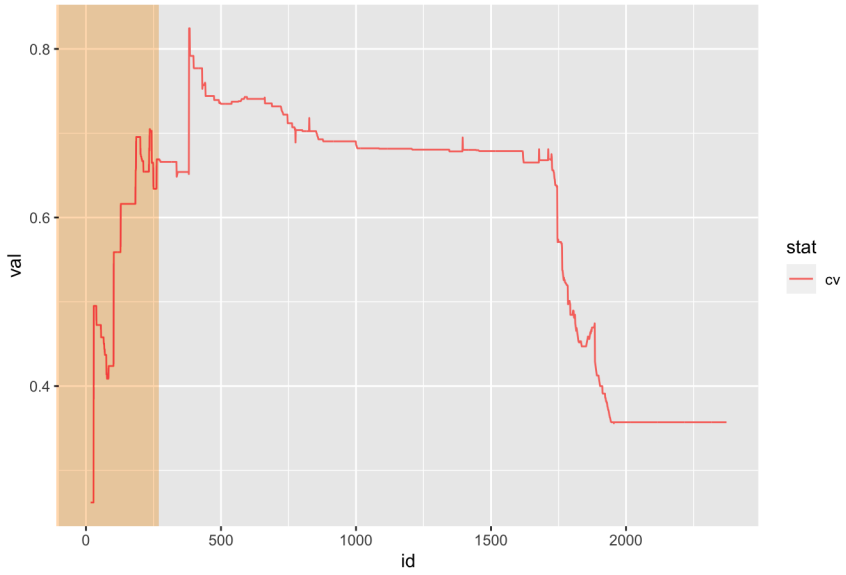


Figure C.8. CoV Trends for DUI–Low

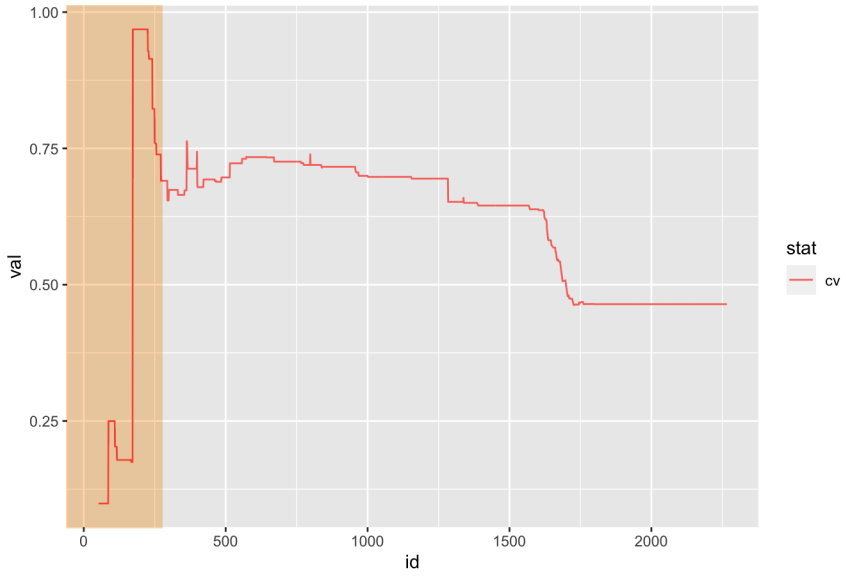


Figure C.9. CoV Trends for Misdemeanor–High

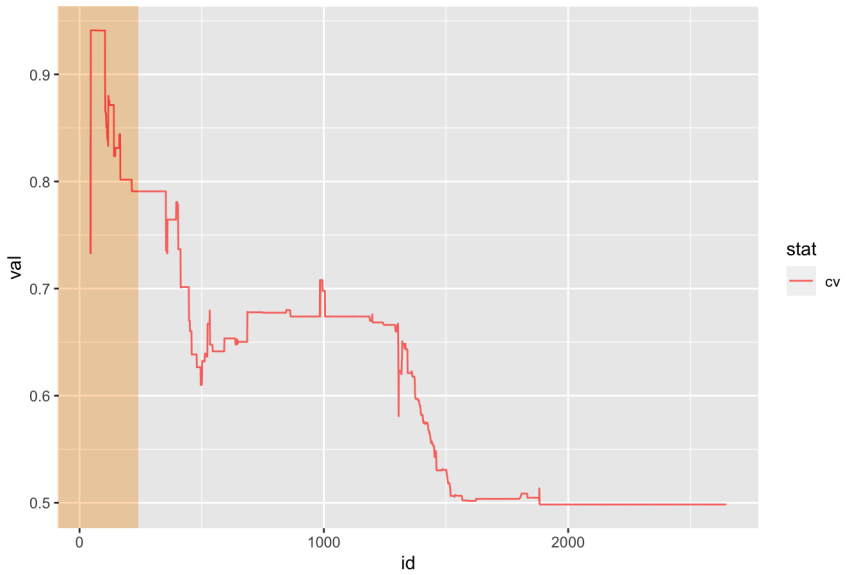


Figure C.10. CoV Trends for Misdemeanor–Low

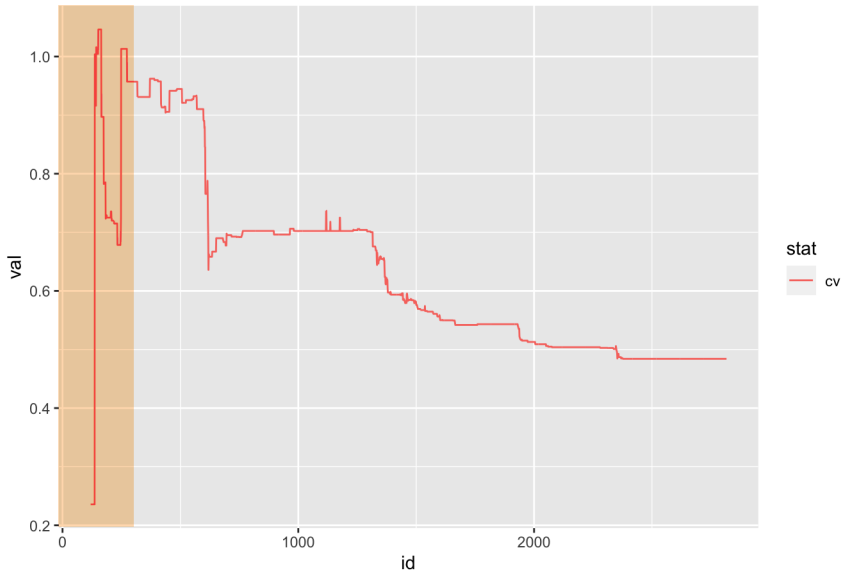
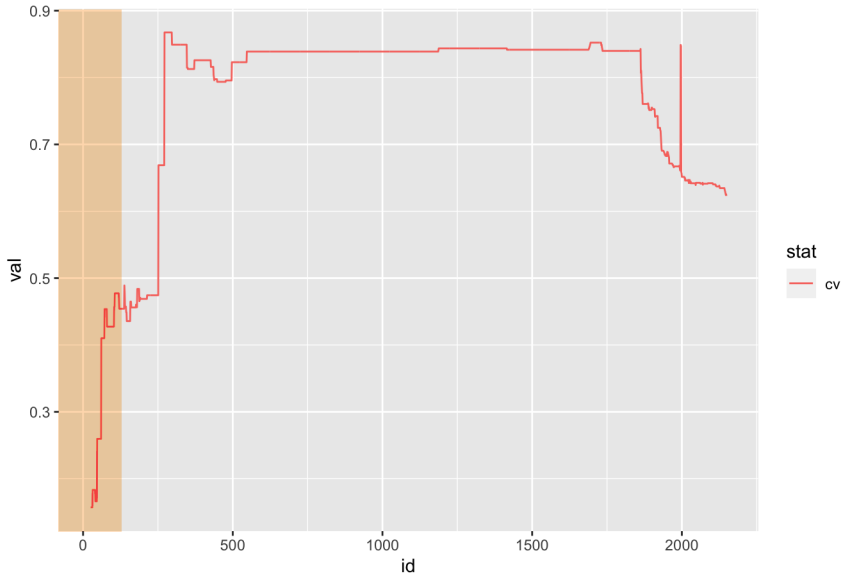


Figure C.11. CoV Trends for Probation or Parole Violations



Abbreviations

ABA	American Bar Association
ABA SCLAID	American Bar Association Standing Committee on Legal Aid and Indigent Defense (prior to 2020, this committee was known as the American Bar Association Standing Committee on Legal Aid and Indigent Defendants)
ACCD	American Council of Chief Defenders
CARD	child abuse resulting in death
CoV	coefficient of variation
COVID-19	coronavirus disease 2019
DUI	driving under the influence (sometimes referred to as *driving while intoxicated or impaired*)
FTE	full-time equivalent
ILS	New York State Office of Indigent Legal Services
LEAA	Law Enforcement Assistance Administration
LWOP	life without parole
NAC	National Advisory Commission on Criminal Justice Standards and Goals
NACDL	National Association of Criminal Defense Lawyers
NAPD	National Association for Public Defense
NCDC	National Criminal Defense College
NCSC	National Center for State Courts
NLADA	National Legal Aid & Defender Association
NPDWS	National Public Defense Workload Study

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