



Seven Keys to Understanding the National Public Defense Workload Study

National Association for Public Defense, September 2023

A new, [national workload study](#) has been released. The study was funded by Arnold Ventures, and conducted by collaborators who worked on previous, local-level workload studies: the RAND Corporation, the National Center for State Courts (NCSC), the American Bar Association's (ABA) Standing Committee on Legal Aid and Indigent Defendants (ABA-SCLAID), and Lawyer Stephen F. Hanlon.

NAPD did not write the study but offers this guide to understanding its methodology and findings.

1. Workload standards are benchmarks for constitutional compliance.

Under the Sixth Amendment to the U.S. Constitution, a person has the right not just to a criminal defense attorney, but an effective attorney whose practice meets professional standards. That is, a public defender, like any lawyer, must do their due diligence by performing tasks like talking with their clients, reviewing discovery, investigating evidence and talking to witnesses, and preparing legal arguments, all of which take time. When defenders have too many cases, as many do, it is hard to accomplish each of these tasks.

The study's recommendations focus on the necessary defense work to meet the constitutional standard for being "reasonably effective." They are not aspirational, in that they do not account for any imaginable work an attorney could do on a case, but rather what amount of time gives defenders a "realistic" opportunity to meet the constitutional standard. They estimate the average time needed for a particular case type – across hundreds of instances of that case type, from the most complex to the most brief representation needed – and factor in existing support staff levels and the likelihood of a trial.

2. Compared to the previous national standards from 50 years ago, the study is more detailed, data-driven, and up-to-date.

Public defense systems have previously used caseload standards from a 1973 report by the National Advisory Commission (NAC) on Criminal Justice Standards and Goals, which recommended annual totals for five case types; for example, no more than 400 misdemeanors per attorney, per year. The standards were based on "educated guesses" by leaders at the time.

The new study's approach is more defensible. First, it is more granular, based on time estimates for eight activity types for eleven case types. These time estimates (or "case weights") are more easily applied to mixed or variable caseloads than are annual maximums. Second, it used the Delphi Method, in which a panel of 33 criminal defense experts from around the country were selected from a pool of more than 100 nominees from NAPD and other national groups. The panel reviewed relevant standards and studies, gave anonymous estimates, then had a structured discussion to reach consensus. Finally, the study accounted for parts of modern practice that were not required in 1973, like time for digital evidence review, problem-solving courts, and more extensive preparation for sentencing due to higher penalties.

The following chart compares the 1973 standards to the standards from recent jurisdiction-based workload studies and this National Study.

Comparison of Maximum Recommended Cases per Attorney, per Year
(Based on 2,080 casework hours per year)

| Case Type | Possible Sentence | 1973 National Standards | 2005-2022 State Studies Median | 2023 National Study |
|--|-------------------|-------------------------|--------------------------------|---------------------|
| Felony – High – LWOP | LWOP | 150 | 8 | 7 |
| Felony – High – Murder | Up to LWOP | | 7 | 8 |
| Felony – High – Sex | Over 15 yrs. | | 13 | 12 |
| Felony – High – Other | Over 15 yrs. | | 27 | 21 |
| Felony – Middle | 3-15 yrs. | | 30 | 36 |
| Felony – Low | Up to 2 yrs. | | 84 | 59 |
| DUI – High | Over 2 yrs. | N/A | 83 | 63 |
| DUI – Low | Up to 2 yrs. | | 171 | 109 |
| Misdemeanor – High | Any | 400 | 100 | 93 |
| Misdemeanor – Low | Any | | 260 | 150 |
| Probation/Parole Violation | Any | N/A | 346 | 154 |
| <p>This table is derived from Table 7.2 of National Public Defense Workload Study (pre-publication version). Case Types are defined in the study. Associated sentence lengths are not absolute, but meant to guide relative category distinctions.</p> <p>A “case” is all charges filed against a client arising out of a single event or series of events, categorized by the highest charge.</p> | | | | |

3. The study’s standards are far lower than the previous national standards, suggesting that public defense workloads are even more excessive than previously described.

It is well known that public defense caseloads are too high, and most offices’ caseloads exceed the NAC standards. Given that this study recommends far fewer cases than the NAC standards, it appears that workloads are even more excessive, and actual resources fall shorter than what the Constitution and modern legal systems demand.

Assuming attorneys can complete 2,080 casework hours per year, the 1973 NAC standards would allow attorneys to handle over twice as many cases as the current study recommends, and over 7 times as many high-level felony cases (see below for why 2,080 hours is a conservative estimate; fewer casework hours would make the differences from the NAC standards more extreme). Put another way, whereas the NAC standards recommend, for example, spending about 5.2 hours on a misdemeanor (again, using a 2,080-hours total), the new study recommends 13.8-22.3 hours.

4. The standards are largely consistent with standards from 17 state workload studies.

The new study uses a similar methodology to 17 jurisdiction-specific studies from around the country, conducted from 2005-2022. Its time recommendations are about in the middle of what those studies found, neither the highest nor lowest recommendation for each case type, and similar to the median for each study. On average, the state studies recommend, for example, spending 8-20.7 hours on a misdemeanor, and the new study recommends 13.8-22.3 hours.

5. The study did not examine all roles in public defense.

The study's recommendations are for lawyers and apply to both public defenders and assigned counsel, often private attorneys.

It does not have time recommendations for other defense team members, like investigators, paralegals, or social workers, but the time estimates for attorneys assume existing levels of support staff (based on the panelists' own practices). Support staff are essential to Constitutional representation, and future studies must account for their work. [NAPD standards](#) recommend minimum staffing ratios of core staff to attorneys, which can guide budgeting for these roles.

The study does not cover juvenile delinquency, appeals, capital cases, or other legal matters.

6. Defenders must determine sustainable annual casework hours limits.

The study does not determine how many casework hours an attorney can reasonably complete in a year. Rather, the study's annual caseload recommendations are based on a default of 2,080 casework hours per attorney, per year, or 40 hours per week, 52 weeks per year, with no allowance for paid time off, administrative work, or professional development. That workload would be contrary to [NAPD standards](#), which call for supervision, training, and sustainable working conditions for public defenders.

The study provides other annual caseload standards based on as few as 1,742 casework hours per year. Alternatively, [Washington state standards](#) account for paid time off, administrative work, and professional development, and recommend no more than 1,650 casework hours per year. Using the National Study's case weights (time estimates), a 1,650-hour-year would limit an attorney to 47 low-level felony cases or 119 low-level misdemeanor cases per year.

7. The study's findings can be used for caseload relief measures, including expanding public defender staffing and shrinking criminal case volume. Its recommendations must be mapped to local practice.

This study is meant to help state and local offices make more accurate budget requests, and help federal policymakers set benchmarks for assistance.

Ideally, a jurisdiction will conduct its own workload study. To use the national study to set annual caseload standards (how many cases an attorney or office can handle in a year), a jurisdiction must map the study's case weights (hours per case activity) on to local case definitions, case volume, and casework hours.

A [New Mexico workload study](#), for example, found it needed more than twice as many attorneys to meet current demand. It used the study to create a 5-year [implementation plan](#) to address the shortage through both hiring and reallocation (supply) and targeted decriminalization (demand) efforts.

[NAPD standards](#) recommend strategies to reduce demand for public defense, including diversion and decriminalization. NAPD will continue to develop training, standards, and movement-building to implement workload standards through its Workload Committee.