



## **Talking Points for Public Defenders on the National Public Defense Workload Study**

National Association for Public Defense, September 2023

The national workload study can be used in your local advocacy with legislators, media and community stakeholders. In conjunction with the *Seven Keys to Understanding the National Public Defense Workload Study*, these talking points aim to help you discuss and answer common questions about the study. These talking points should be supported with local data and stories, such as where points are [bracketed] below.

### ***Why do we need updated public defense workload standards?***

- The new national workload study marks a milestone for public defense reform. It's been 50 years since the last national public defender caseload standards were created.
  - The new study shows the time needed to practice criminal defense today. Investigation, discovery, and sentencing practices have changed.
    - Today we have body cameras, DNA testing tools, changes in “forensic” science, social media trails, cell phone technology, requirements to review more scientific and digital evidence, and challenge more punitive sentences, exorbitant fines and fees, and collateral consequences that accompany convictions.
  - Public defense today looks nothing like it did in 1973 – neither does policing or prosecuting. Imagine if the medical profession kept using standards from 1973. That would have life or death consequences, as does representing indigent defense clients.
    - Fifty years ago, the U.S. prison population was approximately 200,000 people. Today there are almost 2 million people in our prisons and jails.
- The 1973 standards were based on educated guesses of a few experts. The new study used a proven methodology to find consensus among 33 national criminal defense experts.
  - This type of study has been conducted in over a dozen states, which have yielded consistent results despite practice differences, showing that the national study's recommendations are defensible in various criminal legal systems.
- The 1973 standards have just a few general limits, like a maximum number of all felonies per year. The new study is more precise, providing time recommendations for eight activity types across eleven case types.
- [Our local standards/staffing are based on the 1973 standards, and we now have a more accurate measure of what we need. We will need to adjust local standards accordingly.]

### ***What are the new study's findings?***

- NAPD's *Seven Keys to Understanding the National Public Defense Workload Study* provides a brief overview. In sum, the study finds that effective public defense requires much more time than previously thought:
  - An extremely conservative application of the new study's time recommendations requires a maximum caseload of 59 low-level felonies or 150 low-level misdemeanors per attorney, per year, compared to the 1973 standards of 150 felonies or 400 misdemeanors.
    - Realistically, defenders need even lower caseload limits to allow for paid time off, office administration, and professional development.
  - The study recommends an attorney spend, on average, at least 13.8 hours on a low-level misdemeanor, and significantly more time on cases with higher penalties. An extremely conservative application of the 1973 standards would allow about 5.2 hours per misdemeanor, or less if we are realistic about attorneys' required non-casework time.
- The new study does not measure actual caseloads or compare them to its recommendations. That requires applying local data.
  - National data indicate that most states have workloads above the old standards. The new study suggests resources are even less adequate than previously known.

### ***How will our local public defender office use the study?***

- First, we will need to compare our local case definitions, case volume, and staffing availability to the study's findings. [We will follow up with you when our analysis is complete / we need to develop new ways of collecting and analyzing our data – because of complicated case definitions / mixed caseloads / outdated data systems].
- Once we have local data, we will need to develop local solutions to fix excessive caseloads. We didn't get into this crisis overnight; we don't expect a quick fix either.
  - We will [almost certainly] need to address both the demand for defenders and the supply of them. We should start by reducing the need for public defense services in the first place, such as through decriminalization/reclassification [of certain matters] and sentence reductions. We'd rather solve this by having fewer cases than more money.
  - We must also address our long-term recruitment and retention issues that have been made worse by the pandemic. [In our area, attorney turnover and shortages are at record highs, because pay is higher at other agencies / we lost experienced staff to retirement during the pandemic / case backlogs from pandemic court closures have resulted in unmanageable workloads / fewer new attorneys have passed the bar recently / new attorneys' debt loads are too high to accept our salaries / new attorneys demand sustainable working environments.] We need competitive pay and manageable workloads [and other incentives] for public defenders if we are going to have adequate staffing.
  - Another important piece of the workloads puzzle is examining work that attorneys are doing that could be shared among other defense team members, like investigators, social workers, and administrative support staff. Although the study addresses only attorney workloads, we need to think holistically about what defense requires.

***How do public defenders' workloads compare to staff of other criminal justice agencies, like prosecutors, judges, or police?***

- We would need to see their data. Other agencies have sometimes inaccurately applied public defense workload standards to their work. This is because we have the most precise and rigorous workload standards. The public defense program is the most transparent stakeholder in the criminal legal system and these workloads standards are evidence of this transparency.
- We can tell you that [local public defender staffing and budgets are much lower than those of prosecutors / many aspects of our criminal legal system are under-resourced].

***What's the problem with excessive workloads?***

- The Sixth Amendment to the United States Constitution guarantees the right to reasonably effective criminal defense for people who cannot afford it. Defenders who have excessive caseloads cannot provide effective defense.
- Excessive workloads can ultimately mean ineffective public defense, which harms everyone:
  - For our clients, ineffective public defense results in needless harm, wrongful convictions, and lost lives. These consequences ripple through families and our communities.
  - For the public, ineffective public defense results in an unchecked punishment system and less safety (since the wrong people are in our jails and prisons), at profound social and economic costs.
  - For our legal adversaries and system partners, ineffective public defense results in wasted time and unjust outcomes. Criminal courts depend on public defenders to function. In most jurisdictions, a majority of felony cases are handled by public defenders.
  - For our defense team colleagues (e.g., investigators and social workers) overburdened attorneys can prevent them from doing their jobs effectively and efficiently.
- All lawyers – no matter their practice area, or whether they have paying or appointed clients – take a common oath when they become members of the Bar. All lawyers have the same ethical obligations – there isn't a reduced standard when representing poor people. Most public defenders have never had control of their workloads and that has created workloads that far exceed what is reasonable for attorneys to take on and ethically defend people.

***How do your lawyers feel about these new workload standards?***

- It is difficult to quantify the failures of our criminal legal system because the harm is truly incalculable. But we know we must have clear facts and solutions, or else fear-based narratives and policymaking will continue to be the norm.
- It is hard to be reminded of how we fall short of the justice we seek even when we give our all. Public defenders become overworked because they are such passionate, creative, and hardworking advocates.
  - [Most of our lawyers went to law school explicitly to become public defenders / They do this work] because they are committed to defending and extending the protections in the Constitution to the most oppressed and vulnerable members of our community.
  - Public defenders are dedicated to serving their community, even when it means sacrificing their personal time and well-being. [We don't have a single lawyer on a single

case who wouldn't have wished for more time, more experts, more support. They lose sleep at night knowing that they could have done more but their workload doesn't allow them to.] But we need to change that and create more sustainable working environments, to better protect our staff and our clients.

- We aren't only failing our clients by not standing up for our lawyers, we are failing a generation of public service legal talent that we cannot go on without. Add crushing law school debt to crushing workloads, and it's almost impossible for us to fill attorney positions even with small budget gains to hire more staff. Solving the workload crisis requires that we change the culture of public defender work more radically to guarantee reasonable caseloads, work/life balance, and a living wage.