

PDAP NPDWS Working Group Proposed Resolution

TO: the Board of the Public Defender Association of Pennsylvania (PDAP)

FROM: PDAP National Public Defense Workload Study Working Group - Jordan Barnett (Philly), Julie Burke (Blair), Dave Crowley (Centre), Katy Houtman (York), Autumn Johnson (Mercer), Paul Levy (Carbon), Kim Makoul (Lehigh), Marissa Stewart (Greene), Steven Tehovnik (Allegheny), and Elizabeth Wood Bennett (PDAP)

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INTRODUCTION

The members of the PDAP National Public Defense Workload Study Working Group request the PDAP Board adopt the below resolution, setting statewide policy on how Pennsylvania's criminal offenses should be categorized for use in conjunction with [the National Public Defense Workload Study \(NPDWS\)](#). This will permit all Pennsylvania Public Defender offices to use the same metrics when determining whether they have sufficient attorneys to provide effective assistance of counsel for their adult clients facing criminal charges.

THE NPDWS

The NPDWS was released in September of 2023. It was developed collaboratively by 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." It provides an objective, external formula, reached through a clear methodology, to help offices calculate of the number of full-time attorneys (referred to as full-time equivalents or FTEs in the report) needed to handle a caseload in adult criminal court. It is the first update to national public defense workload standards in half a century.

While the NPDWS has limitations, as discussed further below, it enables important analysis of Public Defender workloads. To enable Pennsylvania PD offices to conduct analysis of workloads in each office in a uniform way, PDAP's NPDWS Working Group met to determine how PA criminal offenses should be categorized in the NPDWS.

The NPDWS includes the below chart on calculating the limits on the number of cases Public Defenders can handle in adult cases, to provide effective assistance of counsel.

NATIONAL PUBLIC DEFENSE WORKLOAD STUDY FINAL RESULTS CHART

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.

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What it does not do is determine how offenses in any state slot into these categories. After a series of meetings where we discussed the study, offenses in the Pennsylvania crimes code, and whether any offenses should be considered “outlier offenses” and be categorized independently from their gradation, the Working Group came to the below conclusion.

THE WORKING GROUP PROPOSED OFFENSE CATEGORIZATION

¹ https://www.rand.org/pubs/research_reports/RRA2559-1.html

NPDWS PENNSYLVANIA OFFENSE CATEGORIES CHART

NPDWS CASE TYPE	PENNSYLVANIA OFFENSE CATEGORIES	CASE WEIGHT (HOURS PER CASE)	ANNUAL CASELOAD STANDARD
FELONY-HIGH-LWOP	Anything charged as a general homicide that is not capitally charged	286.0	7
FELONY-HIGH-MURDER	Juveniles charged with homicide, 3 rd degree Murder, or manslaughter	248.0	8
FELONY-HIGH-SEX	Any Felony offense charging a SORNA crime	167.0	12
FELONY-HIGH-OTHER	1 st degree Felony offenses	99.0	21
FELONY-OTHER	2 nd degree Felony offenses & possession with intent to deliver	57.0	36
FELONY-LOW	3 rd degree Felony offenses	35.0	59
DUI-HIGH	3 rd degree Felony or 1 st degree Misdemeanor DUI offenses	33.0	63
DUI-LOW	2 nd degree misdemeanor and 3 rd degree misdemeanor DUI offenses	19.0	109
MISDEMEANOR-HIGH	1 st degree misdemeanor offenses	22.3	93
MISDEMEANOR-LOW	2 nd and 3 rd degree misdemeanor offenses, , any summary offense to which a PD is appointed.	13.8	150
PROBATION/PAROLE VIOLATIONS	State and county revocations	13.5	154

In creating this proposal we are cognizant that while some offices have access to case management software, many do not. Even offices that do have case management software face data use and access challenges, so our proposal is straightforward, with that in mind.

CONSERVATIVE ESTIMATES

These are conservative estimates because of the annual hours available to work used by the NPDWS, and because of the types of Public Defender work the NPDWS does not include.

Note that the annual caseload standards reached by the NPDWS were based on the assumption that each attorney has 2,080 hours available per year to work. That number was reached by multiplying 52 weeks by 40 hours per week of case work. That assumes no vacation, no illness

and none of the holidays set by the Pennsylvania Supreme Court.² That makes the annual caseload standards reached, conservative calculations. It also does not include many kinds of cases that Public Defenders handle as required by the Public Defender Act and individual county contracts.

HOW TO USE THE CHART

To use the above chart to calculate whether an office has sufficient attorneys to provide effective assistance of counsel in adult cases, an office would need to map its annual cases, by highest offense charged, with the above categories. If multiple offenses are charged in a single case, that case would be tracked using only one offense- that with the highest gradation. The office would then multiply that number by the corresponding case weight to determine the number of case hours needed.

$$\text{cases (by case type)} \times \text{case weight (by case type)} = \text{total hours needed (by case type)}$$

The offices would do this for each offense category and add up the categories to determine the total number of hours needed to provide effective assistance of counsel for the office's adult caseload.

To determine the total number of attorney hours available to do the work, the NPDWS recommends multiplying the number of attorneys available to provide adult representation across these categories, what the study calls Full Time Equivalent (FTEs) by hours available to do the work. Using the conservative, arguably unrealistic, number of hours used in the NPDWS, that calculation would look like this.

$$\text{FTEs} \times 2,080 \text{ (hours available to work)} = \text{total attorney hours available}$$

Offices do not need to use the 2,080 hours number used here. They could, instead, choose a number of hours that reflects realities like court holidays, vacation, and even contemplates sick days.

Offices should not include every attorney in the office as a FTE for this calculation. Attorneys who are part time, are not FTEs. Attorneys doing juvenile delinquency work or dependency work, are not FTEs for this calculation. Attorneys doing administrative work, either solely or splitting administrative work are not FTEs. The NPDWS only contemplates client representation in adult criminal court. It does not include large swaths of Public Defender work,³ and anyone

² In both 2023 and 2024, the Pennsylvania Supreme Court set aside 13 days as holidays. On those days courts across the Commonwealth are closed. <https://www.pacourts.us/courts/supreme-court/calendar>

³ The NPDWS does not include Defenders who represent clients in capital cases, appeals, juvenile cases, dependency cases, mental health commitment hearings, extradition hearings, indirect criminal contempt hearings, or in many specialty courts including: drug treatment courts, mental health diversion courts, veterans courts, and, in some cases, Accelerated Rehabilitation Disposition (ARD) and arraignment hearings.

spending time doing work not contemplated by the NPDWS should not be counted as an FTE for the purpose of calculating office staffing needs.

To calculate for attorneys who are splitting time between work not included in the NPDWS and work that is included, factor that into the calculation by reducing the number of hours attributed to them. If 2,080 is used as the basis for FTES, an attorney who represents adults in criminal court 50% of the time is calculated as having 1,040 hours available. An attorney who represents adults in criminal court 25% of the time is calculated as having 520 hours available. Attorneys whose work does not include adult criminal cases should not be included as FTEs at all for these calculations. To find the total number of attorney hours available, add as follows:

*# of FTEs x 2,080 hours available +
of attorneys handling adult cases as half of their work x 1,040 hours available +
of attorneys handling adult cases as a quarter of their work x 520 hours available
Number of hours available overall for adult caseload work*

By subtracting the number of hours available from the number of hours needed, offices will find how many additional attorneys are needed.

*Number of hours needed -
Number of hours available overall for adult caseload work
Number of hours needed to be filled ÷ 2,080 per FTE = # of FTEs needed*

We acknowledge that it may not be easy to implement the changes called for once these calculations are done. In 2022, a New Mexico specific Public Defender workload study found that New Mexico needed more than 50% more Public Defenders than it had. Counties may find it useful to look at New Mexico's five-year plan to reduce their representation deficiency as a roadmap as to what to do once counties calculate their true needs.⁴

LIMITATIONS OF THE NPDWS

The NPDWS is limited in scope. It does not contemplate time attorneys spend in training. It does not include work done by non-attorney staff, meaning that it does not speak to the need for support staff, paralegals, social workers, investigators, or mitigators.⁵ It does not include attorneys doing work on cases that carry the death penalty or work spent on special projects

⁴ Scott Simpson, CPA, Partner, and Jenna McRae, *The New Mexico Public Defense System 5-Year Plan to Reduce Representation Deficiency*, JFA Institute (January, 2022). Available at: <https://www.lopdnm.us/wp-content/uploads/2022/10/Final-Draft-LOPD-5-Year-Plan.pdf>.

⁵ A 2020 policy paper by the National Association for Public Defense (NAPD) recommends "Until empirical studies are further able to determine the number of staff necessary to support the lawyer, public defense systems, at a minimum, should provide one investigator for every three lawyers, one mental health professional, often a social worker, 3 for every three lawyers, and one supervisor for every 10 lawyers. Additionally, there should be one paralegal and one administrative assistant for every 4 lawyers. Public defense organizations must have adequate staff or have access to adequate staff who perform necessary financial, IT, and human resource services." National Association for Public Defense, *NAPD Policy Statement on Public Defense Staffing*, May, 2020. Available at: https://www.publicdefenders.us/files/NAPD_Policy%20Statement%20on%20Public%20Defense%20Staffing.pdf.

like the juvenile lifer re-sentencing hearings following *Miller v. Alabama* or like investigating past cases when police misconduct is discovered.

These limitations do not harm the credibility of the NPDWS; instead, they mean that Public Defender offices, both in Pennsylvania and across the nation, need far *more* attorneys than the NPDWS models to do the entirety of their work ethically.

CONCLUSION

Gideon was a call, and is a Constitutional obligation, to provide due process and to ensure that Pennsylvania's criminal courtrooms are fair, just places. The obligation to provide effective assistance of counsel – to communicate with clients, to make informed determinations about pretrial release, to review discovery and conduct any requisite investigation, to assess and factor in the special needs of clients with mental health needs or facing potential immigration consequences, to conduct activities required before recommending a plea to a client, to advocate for clients at hearings and trial, and to advocate for clients at sentencing⁶ – is one every Pennsylvania Defender strives to meet. We cannot meet our Constitutional or ethical obligations without adequate resources. Public Defenders do not shoulder these Constitutional obligations alone. Each Pennsylvania county and ultimately the Commonwealth have the Constitutional obligation to provide effective assistance of counsel to anyone charged with a crime who cannot afford to hire an attorney. The NPDWS and, we hope, PDAP's offense category chart, will help counties ascertain whether we are living up to what the Constitution requires and what Pennsylvanian's deserve.

⁶ See NPDWS report at p. 56.