



# Caseload Standards for Indigent Defenders in Michigan

Final Project Report for the Michigan Indigent  
Defense Commission

Nicholas M. Pace, Dulani Woods, Shamena Anwar,  
Roberto Guevara, Chau Pham, Karin Liu

For more information on this publication, visit [www.rand.org/t/RR2988](http://www.rand.org/t/RR2988)

**Library of Congress Cataloging-in-Publication Data** is available for this publication.

ISBN: 978-1-9774-0341-4

Published by the RAND Corporation, Santa Monica, Calif.

© Copyright 2019 RAND Corporation

**RAND®** is a registered trademark.

#### **Limited Print and Electronic Distribution Rights**

This document and trademark(s) contained herein are protected by law. This representation of RAND intellectual property is provided for noncommercial use only. Unauthorized posting of this publication online is prohibited. Permission is given to duplicate this document for personal use only, as long as it is unaltered and complete. Permission is required from RAND to reproduce, or reuse in another form, any of its research documents for commercial use. For information on reprint and linking permissions, please visit [www.rand.org/pubs/permissions](http://www.rand.org/pubs/permissions).

The RAND Corporation is a research organization that develops solutions to public policy challenges to help make communities throughout the world safer and more secure, healthier and more prosperous. RAND is nonprofit, nonpartisan, and committed to the public interest.

RAND's publications do not necessarily reflect the opinions of its research clients and sponsors.

#### **Support RAND**

Make a tax-deductible charitable contribution at  
[www.rand.org/giving/contribute](http://www.rand.org/giving/contribute)

[www.rand.org](http://www.rand.org)

## Preface

---

In 2017, the RAND Corporation was asked by the Michigan Indigent Defense Commission (MIDC) for assistance in determining maximum caseload standards for providers of indigent legal representation to adult defendants in the trial-level courts of the state of Michigan. Maximum caseload standards, typically expressed in terms of the number of cases of a particular type that can be reasonably handled by an attorney over the course of a specific time period (such as “no more than 150 felonies in a year”), give administrators of indigent defense programs, the courts that appoint indigent defense counsel, and policymakers who decide on funding allocations for such appointments a useful tool for determining both when caseloads are in danger of being excessive and the number of attorneys that may be needed to handle expected demand.

This report is intended to describe the results of work conducted by RAND on behalf of the MIDC. The project team conducted three data collection efforts to provide the empirical foundation for the standards. The first involved a time study of Michigan indigent defense attorneys that was intended to describe the average amount of time such counsel currently spend on trial court-level criminal matters within various case type categories. A survey of criminal defense attorneys followed, in which the results of the earlier time study were presented to participants as evidence of current time expenditures. Informed by those results, respondents then provided their opinions as to the average amount of time that an attorney should plan on spending on a particular type of case to deliver effective assistance of counsel. The final data collection effort was conducted as part of a conference held in September 2018. The purpose of the conference was to have experienced criminal defenders review available evidence regarding the state’s indigent defense bar (including the results of the two earlier data collections) and ultimately reach consensus on recommended average time expenditures for counsel representing indigent defendants in various categories of criminal matters proceeding in the Michigan trial courts. The decisions of the conference participants formed the basis for the recommended maximum caseload standards described in this report.

## 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](mailto:justicepolicy@rand.org).

# Contents

---

Preface .....	iii
Figures .....	vii
Tables .....	viii
Summary.....	x
Acknowledgments .....	xxv
Abbreviations .....	xxvi
1. Overview .....	1
Definitions .....	3
Calculating and Using Maximum Caseload Standards .....	3
Approach .....	5
Prior Work in This Area.....	5
Rationale Behind the Plan Chosen for the Michigan Caseload Standard Effort.....	18
Summary of Key Events .....	24
Organization of This Report.....	26
2. Attorney Time Study .....	27
The Indigent Attorney “Universe” in Michigan.....	27
Length of the Time Study.....	28
The Web-Based Timekeeping Application .....	29
Preliminary Matters.....	29
Application Structure .....	30
Participation .....	36
Estimating Unobserved Time Expenditures.....	38
Results .....	42
Average Attorney Hours by Case Type .....	42
Activities .....	46
3. Attorney Survey.....	48
Approach .....	48
Overview .....	48
Encouraging Participation.....	48
Survey Design .....	49
Results .....	49
Participation .....	49
Activities .....	51
Caseloads.....	54
Office Resources .....	57
Average Time Recommendations .....	58
Comments .....	61

4. The Caseload Standards Setting Conference.....	62
The Session .....	64
Measuring Consensus.....	67
Session Issues.....	68
Final Results.....	69
Case Type–Specific Discussion .....	70
5. Caseload Standards and Case Weights.....	71
Annual Case-Related Duty Hours .....	71
Calculating the Recommended Standards.....	72
Comparing the Recommended Standards with Those Adopted in Other Jurisdictions .....	74
Case Weights.....	79
Possible Impact of Recommended Standards on Current Caseloads .....	82
Going Forward .....	86
Appendix A. Comments from Participants in the Attorney Survey .....	88
Appendix B. Comments from Panelists at the Caseload Standards Setting Conference .....	102
References .....	106

## Figures

---

Figure 2.1. Attorney Information Screen .....	31
Figure 2.2. Time Study Home Page .....	32
Figure 2.3. Client Screen—Opening a New Case .....	32
Figure 2.4. Client Screen—Entering Time and Activity Information.....	33
Figure 2.5. Multicase Timesheet Screen .....	34
Figure 2.6. Client Screen—Entering Disposition Information.....	36
Figure 3.1. Survey Instructions .....	59
Figure 3.2. Survey Case Type Level Entry Form.....	60
Figure 4.1. Real-Time Delphi Panelist User Interface .....	66

## Tables

---

Table S.1. Case Type Classifications Used in the Final Recommended Standards .....	xi
Table S.2. Case-Level Time Study Results .....	xiii
Table S.3. Attorney Survey: Attorney Type Based on Indigent Defense Workload.....	xv
Table S.4. Attorney Survey: Workweek Activities by Workload Type.....	xv
Table S.5. Attorney Survey: Office Characteristics .....	xvi
Table S.6. Attorney Survey: Recommended Average Hours .....	xvi
Table S.7. Comparison of Recommended and Observed Average Hours, by Data Collection ...	xix
Table S.8. Recommended Caseload Standards .....	xxi
Table 1.1. Recent Indigent Defender Caseload Standard Setting Approaches .....	11
Table 1.2. Case Type Classifications Used in the Standards Development .....	25
Table 2.1. Activity Description Options.....	35
Table 2.2. Disposition Type Options.....	36
Table 2.3. Time Study Participation and Case Distribution: Attorney Type .....	37
Table 2.4. Time Study Participation and Case Distribution: Attorney Location .....	38
Table 2.5. Time Study Case Span .....	39
Table 2.6. Case-Level Time Study Results .....	43
Table 2.7. Berrien County Assignments: Cases Closed from March to August 2018 .....	44
Table 2.8. Estimated Attorney Time Expenditures for Misdemeanor Cases .....	45
Table 2.9. Estimated Attorney Time Expenditures for Felony Cases .....	46
Table 2.10. Percentage of Recorded Case-Related Time Spent, by Activity .....	47
Table 3.1. Attorney Survey Participation: Attorney Type .....	50
Table 3.2. Attorney Survey Participation: Attorney Location .....	51
Table 3.3. Attorney Survey: Typical Hours Worked per Week .....	51
Table 3.4. Attorney Survey: Workweek Activities .....	52
Table 3.5. Attorney Survey: Attorney Type Based on Indigent Defense Workload.....	53
Table 3.6. Attorney Survey: Workweek Activities, by Workload Type .....	53
Table 3.7. Attorney Survey: Average Annual Indigent Criminal Defense Caseloads .....	55
Table 3.8. Attorney Survey: 90th Percentile Values for Annual Indigent Criminal Defense Caseloads .....	56
Table 3.9. Attorney Survey: Average Annual Criminal Defense Caseloads, Appointments and Retained .....	57
Table 3.10. Attorney Survey: Office Characteristics .....	58
Table 3.11. Attorney Survey: Percentage in Agreement with Time Study Results .....	60
Table 3.12. Attorney Survey: Recommended Average Hours .....	61
Table 4.1. Level of Consensus .....	67



Table 4.2. Recommended Median Attorney Times.....	69
Table 4.3. Comparison of Recommended Average Hours, by Data Collection.....	70
Table 5.1. Case-Related Duty Hours Calculations .....	72
Table 5.2. Recommended Caseload Standards.....	73
Table 5.3. Statewide Maximum Caseload Standards for Felonies .....	76
Table 5.4. Statewide Maximum Caseload Standards for Misdemeanors .....	78
Table 5.5. Statewide Maximum Caseload Standards for Other Client Matters .....	79
Table 5.6. Example of Relative Weights Using One-Year Misdemeanors as Benchmark .....	82
Table 5.7. Weighted and Proportionally Adjusted Caseloads of Attorney Survey Respondents.....	85

## Summary

---

In 2017, the RAND Corporation was asked by the Michigan Indigent Defense Commission (MIDC) for assistance in determining maximum caseload standards for providers of indigent legal representation to adult defendants in the trial-level courts of the state of Michigan. Maximum caseload standards, typically expressed in terms of the number of cases of a particular type that can be reasonably handled by an attorney over the course of a specific time period (such as “no more than 150 felonies in a year”), give administrators of indigent defense programs, the courts that appoint indigent defense counsel, and the policymakers who decide on funding allocations for such appointments a useful tool for determining both when caseloads are in danger of being excessive and the number of attorneys that may be needed to handle expected demand.

Such standards are intended to act as one means—though certainly not the only one—of ensuring that indigent defenders will have sufficient time to effectively represent the clients whom they have been appointed to defend. Put another way, caseload standards provide a benchmark for gauging whether attorneys *generally* have a reasonable level of discretion when deciding how often to meet with the client and for how long; which witnesses should be interviewed; what motions and appeals should be filed; the breadth of issues to be explored in pleadings and oral arguments; the level of preparation necessary for an upcoming trial; the depth and intensity of settlement discussions with the prosecution; the amount of time that should be spent with a client’s family; or whether additional effort should be made to address issues that, left unresolved, would increase the likelihood of recidivism. If workloads rise uncontrollably and attorneys must increasingly make difficult decisions as to how to allocate their limited time, a type of battlefield triage can take place in which all but the most mission-critical, time-sensitive tasks are ignored, and, in the extreme, an attorney can find him or herself routinely delivering just the minimum effort necessary to avoid ethical sanctions while hoping for a quick plea deal.

Similar to previous studies in other states that have also addressed the question of reasonable caseloads, this project involved conducting three data collection efforts to provide the empirical foundation for the Michigan standards. The first involved an eight-week time study of Michigan indigent defense attorneys that was intended to describe the average amount of time such counsel currently spend on trial court–level criminal matters within various case type categories. Those categories, as defined in the final recommended caseload standards, are described in Table S.1.<sup>1</sup>

---

<sup>1</sup> Case type categories utilized in earlier aspects of the project differed slightly from the final set in that 4th-degree charges were also included in the criminal sexual conduct definition.

**Table S.1. Case Type Classifications Used in the Final Recommended Standards**

<b>Case Type</b>	<b>Explanation</b>
Murder or manslaughter	All degrees.
Criminal sexual conduct (CSC) (1st, 2nd, and 3rd degrees)	Includes only 1st degree (class A felony), 2nd degree (class C), and 3rd degree (class C).
Other class A offenses	Excludes all types of murder/manslaughter and CSC cases that are class A. Punishable by up to life in prison. Examples: assault with a deadly weapon with intent to rob or steal, kidnapping.
Other high-severity felonies	Felony classes B, C, and D not listed above. Punishable by up to 20 (B), 15 (C), or ten (D) years. Examples: 2nd-degree arson (B), human trafficking resulting in injury (C), larceny of property greater than or equal to \$20,000 (D).
Low-severity felonies and “two-year” high court misdemeanors	Includes felony classes E, F, G, and H, as well as certain types of misdemeanors that have a potential sentence of two years and are effectively treated as a type of felony. Punishable by up to five (E), four (F), or two (G and high court misdemeanors) years, or by various sentencing alternatives or jail time (H). Examples: carrying firearm with unlawful intent (E), intent to deliver less than 5 kilos of marijuana (F), passing bad checks greater than \$500 (G), use of stolen state identification card to commit a felony (H), 4th-degree CSC (high court misdemeanor).
“One-year” misdemeanors (potential sentences of over 93 days and up to one year)	Examples: larceny of property between \$200 and \$1,000, 2nd-degree shoplifting, intentional discharge of a firearm without intent to injure.
“93-day” misdemeanors (potential sentences of 93 days or less)	Examples: assault and battery, disturbing the peace, embezzlement of property or money valued at less than \$200.
Probation violations	Includes matters falling under Mich. Comp. Laws §§ 771.4, 771.4a, and 771.4b.
Other adult criminal indigent defense trial court–level matter	Does not include any case type already mentioned. Examples: extraditions, detainers, contempt proceedings.

A survey of criminal defense attorneys in the state followed, in which the results of the earlier time study were presented to participants as evidence of current time expenditures. Informed by those results, respondents then provided their opinions as to the average amount of time that an attorney should plan on spending on a particular type of case to deliver effective assistance of counsel. Information about each participant’s experience and practice was sought as well.

The final data collection effort was conducted as part of a conference held in September 2018. The purpose of the conference was to have experienced criminal defenders consider authoritative guidance related to the provision of indigent defense (such as the Michigan State Bar’s “The Eleven Principles of a Public Defense Delivery System” and the American Bar

Association's [ABA's] *ABA Standards for Criminal Justice: Providing Defense Services*),<sup>2</sup> review available evidence regarding the state's indigent defense bar (including the results of the two earlier data collections), and ultimately reach consensus on recommended average time expenditures for counsel representing indigent defendants in various categories of criminal matters proceeding in the Michigan trial courts. The decisions of the conference participants formed the basis for the recommended maximum caseload standards described in this report.

## The Time Study

### *Participation*

Invitations to participate in a voluntary time study were sent to all attorneys in the state of Michigan who had been identified in late 2017 by local indigent defense systems as ones who had agreed to accept court appointments to represent indigent clients and who had provided those systems with an email address for contact purposes. Attorneys who agreed to participate would utilize an online case management application for tracking all case-related time expenditures on adult indigent defense appointments during an eight-week period. The cases tracked would include those open at the time the study period began, as well as any new appointments taken on during the eight weeks. The attorneys would also use the application to record a variety of information about each case worked on during the time study window, such as its subject matter, the date the case file was opened, the court where the matter would be heard, and the manner in which the case was closed (if indeed the matter was disposed of prior to the end of the eight-week period). For cases that either began before the start of the eight-week window or were still open at the end, we imputed the expected amount of attorney hours over the life of the case based on information provided by participants for all study cases (Chapter 2 more fully describes our approach to imputation).

As is often true with voluntary time studies involving indigent defense counsel, participation is most likely when the attorney is a high-volume public defender and least likely when the attorney is in private practice. Indeed, the information we collected on 4,816 cases tracked during the reporting period was contributed by 78 Michigan attorneys, most of whom were public defenders (the remainder were attorneys receiving appointments either on a contract basis or as part of an assigned counsel program). It was also clear that the time study results would be heavily influenced by the experiences of attorneys located in the western and southeastern regions of the state. Time study participants generally were experienced practitioners, reporting a mean of 16.8 years (15 years median) practicing criminal law. They also indicated that they were working a mean of 46 hours each week (45 hours median), though a quarter (the 75th percentile)

---

<sup>2</sup> Michigan State Bar, 2002; ABA, 1992.

reported 50 or more hours worked, and 10 percent (the 90th percentile) reported 60 or more hours.

Despite the disproportionate contribution of public defenders, the concentration of participating attorneys in two regions of the state, and the low overall response rate, we believe that the time study results do help describe the current landscape of indigent defense in Michigan, especially for those attorneys with relatively high numbers of appointments. We are not aware of any other contemporary effort to track indigent defender time expenditures in multiple locations across the state, and thus the information collected from the nearly 5,000 cases represents the best available benchmark for assessing what attorneys with high-volume practices were doing in 2018 and the types of cases that they were handling.

### *Overall Expenditures*

Mean hours for attorney time expenditures in the cases included in the time study are described in Table S.2.

**Table S.2. Case-Level Time Study Results**

<b>Case Type</b>	<b>Cases in Time Study</b>	<b>Estimated Mean Attorney Hours</b>
Murder or manslaughter	22	69.5
CSC (1st through 4th degrees)	67	19.8
Other class A offenses	66	20.3
Other high-severity felonies	438	9.0
Low-severity felonies and two-year high court misdemeanors	1,423	6.9
One-year misdemeanors	737	3.6
93-day misdemeanors	1,505	2.7
Probation violations	426	2.9
Other adult criminal indigent defense trial court-level matter	132	3.1

### **The Survey of Attorneys**

Though the time study was intended to take a snapshot of current time expenditures for indigent criminal defense, its findings describe only what *is*, not what *ought to be*. To obtain insight into what experienced practitioners feel are the amounts of time necessary, on average, to deliver competent legal representation in each of the study case types, we again reached out to the attorneys in Michigan to seek their participation in a data collection effort. This survey would present the results of the time study that had concluded previously, and, with that information as background, respondents would give their recommendations as to the average amount of attorney time required to provide effective assistance of counsel for each case type of interest. They

would also provide detailed information about their practices, available support staff, and annual caseloads.

### *Participation*

Invitations again went out to the mailing addresses of individuals identified by local indigent defense systems. A total of 332 attorneys completed the online questionnaire, most confirming that they were accepting criminal defense appointments at the time of the survey, while just under 10 percent indicated that they had done so in the past. Of those currently providing indigent defense services, only about one out of five was a public defender, a much lower rate than was true for participants in the time study. Survey respondents more closely match up to what might be expected in terms of regional distributions than did those participating in the time study.<sup>3</sup>

### *Selected Results*

We asked the respondents to break out their typical workweek by the type of matters they usually work on (a 45-hour workweek was common among survey participants, though 10 percent reported that they typically worked 60 or more hours each week). Across all respondents, about 43 percent of their workweek was said to be spent on appointments involving adult criminal defense cases in Michigan trial courts.

To help interpret the results from the attorney survey, we hypothesized that there were essentially three types of indigent defenders: (1) public defenders (presumably working full time or close to it on appointments, of which most would involve trial court–level criminal defense), (2) private attorneys who could take on retained clients if desired but whose practice primarily consists of representing indigent defendants (essentially functioning as “private public defenders,” presumably as a result of high-volume contracts with local indigent defense systems), and (3) private attorneys for whom indigent defendants take up a relatively smaller part of their time. To distinguish the second attorney category from the third, we used the respondents’ own estimates of the amount of time they spend in a week handling appointments involving adult defendants in trial court. Non–public defender attorneys who spend at least half their time on such matters would be assigned to category 2, while all others would be assigned to category 3. As indicated in Table S.3, slightly more than half of the respondents can be categorized as attorneys for whom indigent defense is not the dominant focus for their practices.

---

<sup>3</sup> For example, 39 percent of the respondents were located in the Detroit metropolitan area, and, according to the U.S. Census Bureau, the tricounty area of Macomb, Oakland, and Wayne comprises 38.9 percent of the estimated 2017 Michigan population. Other regions in the state also have population proportions that are similar to the respondent group (for example, 5.1 percent of Michigan residents live in the Northern Lower Peninsula, 3.0 percent live in the Upper Peninsula, and 14.2 percent live in Western Michigan) (U.S. Bureau of the Census, undated).

**Table S.3. Attorney Survey: Attorney Type Based on Indigent Defense Workload**

Type	Percentage of Respondents
Public defender	17.2
Other attorney, with at least half of total work hours spent on adult criminal defense appointments in Michigan trial courts	28.6
Other attorney, with less than half of total work hours spent on adult criminal defense appointments in Michigan trial courts	54.2

NOTE: *N* = 332.

For the sake of clarity, Table S.4 and similar tables in this summary identify the public defender group as “PD”; the group consisting of private attorneys who are appointed through contract counsel programs, who are assigned counsel programs or other procedures, and who spend at least 50 percent of their time representing appointed adult criminal defendants as “Other–Heavy” (to acknowledge their relatively heavy indigent defense workload); and all other attorneys as “Other–Light.” The most diverse group in terms of the types of client matters taken on are the Other–Lights, with a mix of appointed and retained cases, as well as a substantial proportion of noncriminal cases. For these attorneys, indigent defense takes up, on average, about a single day of their workweek. We also asked about time not directly spent on individual client matters, and, for all attorneys taken together, 10.5 percent of the workweek was reported to involve what we characterized as non–case-related time.

**Table S.4. Attorney Survey: Workweek Activities by Workload Type**

Categorical Purpose	Percentage of Typical Workweek			
	PD	Other–Heavy	Other–Light	All Attorneys
Adult criminal defense in Michigan trial courts, appointments only	70.3	66.1	20.7	42.8
All adult criminal defense in Michigan trial courts (appointments and retained)	70.9	76.3	38.6	55.4
Criminal defense (all types, appointments and retained)	77.9	80.8	50.7	64.4
Appointed cases (all types)	81.1	74.4	35.7	55.1
Retained cases (all types)	2.3	18.1	54.2	34.4
Non–case-related time	16.6	7.5	10.1	10.5

NOTE: *N* = 288 for all attorneys, 48 for public defenders, 90 for Other–Heavy attorneys, and 150 for Other–Light attorneys.

Stark differences can be seen in the size of law firms or organizations and in support staff resources reported by attorneys in our three practice type groupings (Table S.5). Solo practices are by far the norm for attorneys working outside a public defender environment. Other–Heavy

group attorneys are much more likely than others to perform their responsibilities without the aid of any support staff whatsoever (including administrative staff, such as clerks, secretaries, or receptionists; investigators; paralegals or legal assistants; interns and externs; research attorneys; interpreters; social workers; mitigation specialists; and any other nonattorney staff members). Indeed, 37 percent of the Other–Heavy group attorneys might be characterized as “solo-solo,” in that there are no other attorneys in their practices and no support staff either.

**Table S.5. Attorney Survey: Office Characteristics**

Aspect	Percentage of Reporting Attorneys			
	PD	Other–Heavy	Other–Light	All Attorneys
Solo practitioner	0.0	72.6	65.2	57.1
Three or more attorneys in office	89.7	13.7	17.8	27.9
No support staff	2.6	42.6	24.2	26.1
Solo practitioner without support staff	0.0	36.8	20.8	22.1
Any investigators	34.2	5.9	4.2	9.7
Any legal assistance (paralegals, legal assistants, interns, externs, research attorneys)	79.0	23.5	50.9	47.4

NOTE: *N* for all attorneys = 247 for rows 1 and 2, 226 for rows 3 through 6; *N* for public defenders = 39 for rows 1 and 2, 38 for rows 3 through 6; *N* for Other–Heavy attorneys = 73 for rows 1 and 2, 68 for rows 3 through 6; *N* for Other–Light attorneys = 135 for rows 1 and 2, 120 for rows 3 through 6.

Table S.6 presents the recommendations of the participating attorneys, in total and by practice group. All three types of indigent defense attorneys recommended average time expenditures that were greater than the results of the time study; with one case type being the exception, public defenders recommended the most amount of time and the Other–Heavy group recommended the least.

**Table S.6. Attorney Survey: Recommended Average Hours**

Case Type	Time Study Results	All Attorneys	PD	Other–Heavy	Other–Light
Murder or manslaughter	69.5	92.5	105.9	83.6	91.6
CSC	19.8	40.3	43.0	34.6	42.4
Other class A offenses	20.3	32.4	34.6	29.6	33.0
Other high-severity felonies	9.0	18.2	22.5	15.4	18.2
Low-severity felonies and two-year high court misdemeanors	6.9	11.9	14.2	10.1	12.3
One-year misdemeanors	3.6	6.7	7.7	5.2	7.2
93-day misdemeanors	2.7	4.7	5.0	3.4	5.3
Probation violations	2.9	3.5	3.8	3.1	3.6
Other adult criminal indigent defense trial court–level matter	3.1	4.5	4.8	3.5	5.0

NOTE: Depending on the case type category, *N*s for all attorneys range from 103 to 170, 22 to 31 for public defenders, 27 to 53 for Other–Heavy attorneys, and 54 to 93 for Other–Light attorneys.



# The Caseload Standards Setting Conference

## *Overview*

The MIDC recruited a panel of experienced criminal defense attorneys who agreed to participate in an effort to reach consensus on the average hours necessary to deliver effective representation. Their deliberations would be informed by the results of the earlier data collections, as well as by current guidance as to the ethical and practice standards for criminal defense. The assembled panel represented a diverse mix of contract counsel, assigned counsel, and public defenders from every region in Michigan. A one-day, in-person group session with the 29 panelists was held in Lansing on September 13, 2018.

Though the information we sought to elicit from the expert panel paralleled that of the attorney survey (panel members were also asked to provide an opinion as to the average amount of time required for representing a client in one of the study case types), the approach used here was quite different. We employed the Delphi Method, a feedback consensus method first developed by RAND as a way to systematically coalesce expert opinions on complex questions that are otherwise difficult or impossible to answer with certainty. The Delphi Method involves a group of experts answering the same questions (often anonymously), with the results (usually in terms of distributions, such as means and medians) being shared with the group, which may then engage in discussions with an eye toward achieving consensus. The expert responses can include comments that are shared with the panel anonymously. The experts are then given the choice to change any of their answers after reviewing the group results. When they conduct the method in person, facilitators typically focus on responses where there is a relative lack of agreement and attempt to encourage the group to discuss the differing perspectives in an effort to drive members toward a narrower consensus.

Prior to the session, panel members were sent a description of what we hoped to accomplish, a copy of selected slides from a background briefing that would be given at the session, links to guidance as to how to think about some key issues, and a collection of comments submitted by participants as part of the attorney survey. The legal and ethical foundations for the panel were provided in the form of an address by an MIDC commissioner who spoke about various standards for indigent defense that the commissioners had already adopted and about the critical need to provide attorneys with enough time to fully discharge their responsibilities in light of evolving notions of what constitutes an effective defense.

A member of the RAND project team then gave an overview of important concepts involving caseloads, workloads, standards, and case weights generally and discussed what other jurisdictions have done in this regard. Detailed information about the two data collection efforts was also provided, covering such topics as approach, participation rates, and the characteristics of the attorneys who were involved in the time study or took the survey. But it is important to note that before discussing the results of the data collection that related to attorney time expenditures (both actual and recommended), the speaker asked the panelists to write down their

assumptions about the amount of time now spent on average for different case types and their own recommendations about necessary average hours on a paper form we provided. This was done to help the panelists minimize the effects of anchoring bias by first using self-generated anchors (their own assumptions) rather than relying solely on externally provided ones (the data collections). After that point, we described the earlier results of the time study and attorney survey in detail before proceeding with other aspects of the Delphi session.

Another member of the RAND research team then took on the role of facilitator, led the discussion of each round's results and, as needed throughout the remainder of the day, helped guide the session toward consensus. We utilized a RAND-developed web-based application to collect panelist estimates and display the results. The panelists then made their entries anonymously, and, if they so chose, they could add explanatory comments to their submission.

When the panelists had responded to all of the questions, we projected a graphic and statistical summary of their responses on to a screen in the meeting room. The summaries were updated periodically as new responses were submitted. Direct discussions between the panelists about each of the case types in turn were initiated by the facilitator. Each panelist was free to change his or her answers at any time until the conference ended, including while discussions were taking place, when results were being displayed, or even during session breaks.

The coefficient of variance (CoV, standard deviation divided by the mean) for the distribution of recommended attorney hours for each study case type was chosen as both the consensus measure and stability statistic. We adopted a rule common in many Delphi sessions in which a CoV of less than 0.5 indicated an acceptable level of consensus. The RAND facilitator focused the group discussion on those case types with CoVs greater than 0.5, in part by seeking panelists to make arguments for the low end of the range for each case type, as well as the high end. Some would describe representing clients charged with a specific case type in their jurisdictions as being a relatively straightforward process when the client was desirous of a quick resolution, while others recounted instances where unexpected circumstances required far more effort than expected. More-general views were exchanged about the state of indigent defense in Michigan; variations in local legal culture, practices, and procedures; and the availability of support staff resources. CoVs for all of the study case types eventually dropped below 0.5 with one exception (by group consensus, debate over the category for "other adult criminal indigent defense trial court-level matter" was terminated with a CoV of 0.65).<sup>4</sup>

### *Final Results*

Table S.7 presents the expert panel's recommendations and the final CoV values, comparing the results with those of the time study and the attorney survey. The median of the expert panel's responses, rather than the mean, was chosen as the statistic to report the group's consensus

---

<sup>4</sup> See Chapter 4.

estimate as to average times. The median has the advantage of not being affected by extreme values that might be preferred by a small number of panelists.<sup>5</sup> In each instance save one, the expert panel's recommendation for average hours for each case type equaled or, more commonly, exceeded that reported in the attorney survey.

**Table S.7. Comparison of Recommended and Observed Average Hours, by Data Collection**

Case Type	Expert Panel	Attorney Survey		Time Study
	Final CoV	Hours	Hours	Hours
Murder or manslaughter	0.38	120	92.5	69.5
CSC (1st, 2nd, and 3rd degrees) <sup>a</sup>	0.36	80	40.3	19.8
Other class A offenses	0.45	50	32.4	20.3
Other high-severity felonies	0.41	40	18.2	9.0
Low-severity felonies and two-year high court misdemeanors	0.38	25	11.9	6.9
One-year misdemeanors	0.39	8	6.7	3.6
93-day misdemeanors	0.43	7	4.7	2.7
Probation violations	0.44	3.5	3.5	2.9
Other adult criminal indigent defense trial court–level matter	0.65	3	4.5	3.1

<sup>a</sup> The final case type categories considered by the expert panel differed from those used by the attorneys who participated in the time study or survey in that 4th-degree CSC was moved during the session from the general CSC category into the low-severity felony and two-year high court misdemeanor case type. As a result, the panelists were providing estimates for a CSC category that would, at least according to the discussion during the session, have a higher proportion of cases requiring extensive investigation, discovery, and expert consultation than a category in which 4th-degree CSCs were included. Also, the shift of 4th-degree cases into the category with other two-year high court misdemeanors may have shifted some of the panelists' estimates for that category upward as well.

## Recommended Caseload Standards and Case Weights

### *Annual Case-Related Duty Hours*

To develop caseload standards, we first need to decide on a value that represents the amount of time an indigent defender would typically have available annually to handle case-related work. Obviously, that value can vary from year to year, attorney to attorney, law firm (or organization) to law firm, and location to location, but for the purpose of calculating recommended caseload maximums, we needed to make a number of assumptions, as described below.

---

<sup>5</sup> It should be kept in mind that though 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.

First would be the expected hours worked each week on average. Based on consultation with the MIDC staff, we used an assumption of 45 hours per week, based on five workdays at nine hours per day. A second involves what might be characterized as absence days, which we have assumed to include two weeks of vacation (ten business days), eight business days of sick leave or other personal leave, and a 12.5-day annual holiday schedule based on Michigan Civil Service Commission (MCSC) Regulation 5.08. A final assumption arises from the fact that not all business time can be spent handling client matters. We use the results of the attorney survey in which participants reported spending an average of 10.5 percent of their workweek in the practice of law but not working on specific cases. When these assumptions are plugged into the formula represented in Table 5.1 (see Chapter 5), a total of 1,855.8 hours are estimated to be available for handling indigent defense cases. It should be emphasized that this value, which we characterize as *annual case-related duty hours*, is provisional, as it will be up to the commissioners to decide whether the assumptions set forth above make sense for Michigan attorneys accepting criminal case appointments.

### *Calculating the Recommended Standards*

Recommended standards are simply the result of dividing the Delphi results into the annual case-related duty hours value for each case type (Table S.8). For cases in the “other high-severity felonies” category (felony classes B, C, and D), for example, a local indigent defense system that wishes to make sure that attorneys accepting appointments do not exceed the standard would not, absent other information that would inform the decision, plan to assign more than 46 such cases to any single attorney in a single year ( $1,855.8 \text{ annual case-related duty hours} \div 40 \text{ recommended average attorney hours} = 46 \text{ cases maximum when rounded to the nearest whole number}$ ). Could any individual attorney adequately and effectively represent more than 46 defendants charged with class B, C, or D felonies over the course of a year? Absolutely. It is certainly possible, under the right circumstances, for an attorney to be assigned 46 other high-severity felony cases at the start of January but nevertheless have little work left to do by the end of April. It is also possible that 20 particularly difficult cases of this type might consume most of an attorney’s working hours in a year. But if the consensus estimates of average attorney hours yielded by the expert panel are taken at face value, an indigent defense system must, at least for planning and budgetary purposes, make sure that enough attorneys are on hand to handle the likely projected incoming caseload using these standards as a first-order benchmark.

**Table S.8. Recommended Caseload Standards**

<b>Case Type</b>	<b>Delphi Panel Median Recommended Minimum Hours</b>	<b>Maximum Caseload Standard</b>
Murder or manslaughter	120	15
CSC (1st, 2nd, and 3rd degrees)	80	23
Other class A offenses	50	37
Other high-severity felonies	40	46
Low-severity felonies and two-year high court misdemeanors	25	74
One-year misdemeanors	8	232
93-day misdemeanors	7	265
Probation violations	3.5	530
Other adult criminal indigent defense trial court–level matter	3	619

It is important to note that these recommended caseload standards make no distinction between indigent defense appointments and private representations. Many of the panelists at the September 2018 session had criminal defense practices that included both appointments and paying clients at the time, and the same was true for many of the participants in both the time study and the attorney survey. Though experience in indigent defense no doubt informed much of the input we received from attorneys in all three data collection efforts, we attempted to have the participants step out of their current roles as indigent defenders (if indeed that was what they were primarily doing at the time) and think more broadly about Michigan criminal defense. For example, those answering the attorney survey’s questions on recommended minimum average times were provided with these instructions (the expert panel participants were given similar guidance):

Please also note that the questions pertain to any criminal representation, and not just those involving indigent defendants. It should also make no difference whether counsel is in private practice, is a member of a public defender office or legal aid society, or is on an assigned counsel or contract counsel panel or program.

That said, the standards were not developed as limitations on Michigan criminal law practitioners generally. They reflect only specific needs of the MIDC in executing its legislatively mandated responsibilities to “guarantee the right of indigent defendants to the assistance of counsel,”<sup>6</sup> and consequently apply only to attorneys serving such defendants. But in regard to how caseloads of indigent defenders are assessed when applying the standards, an attorney with 50 “other class A” felony representations could be considered to have exceeded the threshold, regardless of the extent to which those cases involve paying clients or court appointments.

---

<sup>6</sup> Mich. Comp. Laws § 780.991(2).

## Case Weights

There are essentially two types of time-based case weights: *absolute* (the weight reflects the average time measured for a particular type of case) and *relative* (the weight reflects how the average time measured for a particular type of case compares with the average for all cases taken together). The information needed to generate both types is exactly the same. For example, an analysis of time records might determine that cases classified as type A required an average of 200 hours of personnel time to process, those of type B required an average of 20 hours, and all cases taken together (defined here as the total of all cases of types A and B) required an average of 50 hours. Therefore, the absolute case weights for types A and B would be 200 and 20, respectively (essentially just the average hours for each of the two types), while the relative case weights for the two categories would be 4.0 (200 hours for type A cases divided by the 50-hour average for all cases) and 0.4 (20 hours for type B divided by 50 hours for all cases), respectively.

Case weights are extremely useful for planning purposes, but they are best (or at least most easily) developed in an environment in which there is general consensus that things are working well. The example above assumed that the absolute weights were the product of an “analysis of time records,” which might describe the eight-week time study we conducted in the summer of 2018. But to the extent that the information we gathered reflected an unfortunate mismatch between workloads and staff availability, that mismatch would be enshrined at the local office level by the unadjusted use of absolute weights going forward. The typical workaround utilized by justice system organization researchers in such a situation is to conduct the same sort of qualitative data collection RAND and the MIDC performed in holding the September 13, 2018, meeting in Lansing. An assessment of current conditions is first conducted (such as by a time study), then a panel of experts reviews those findings and reaches some level of agreement about what the optimal values might be. In other words, the panel considers the way things are now, but then recommends what is needed to achieve the key objectives of the justice system organization going forward. Accordingly, Michigan already has the absolute case weights it needs, because these are exactly the same as the Delphi panelists’ recommendations for average attorney time allocations described in Table S.7. The absolute case weight for CSC (1st, 2nd, and 3rd degrees) is 80, the absolute caseweight for one-year misdemeanors is 8, and so on.

Absolute case weights can be used to determine maximum caseloads when a mix of client matters is being handled. Assume that a solo practitioner who works only on indigent appointments receives a contract to take on 150 one-year misdemeanors over the course of a year. For planning purposes, it might be expected that the attorney will wind up spending 1,200 hours handling these cases ( $150 \text{ cases} \times \text{an absolute weight of } 8 \text{ hours}$ ). Using our working estimate of 1,855.8 annual case-related duty hours, this leaves the attorney 655.8 hours theoretically available that year for all other client-related matters. That residual could consist of, for example, 94 93-day misdemeanors ( $655.8 \div 7\text{-hour case weight}$ ), or 16 other high-severity

(B, C, D) felonies ( $655.8 \div 40\text{-hour case weight}$ ), or three murder/manslaughter cases *and* seven CSC cases ( $[3 \times 120\text{-hour case weight}] + [7 \times 40\text{-hour case weight}] = 640 \text{ expected hours}$ ).

What about a situation where an attorney devotes less than full time to handling adult criminal matters? As Table S.4 suggested, attorneys who participated in the survey varied greatly as to the amount of time they typically spent each week representing adult defendants. Let us assume that the solo practitioner with the 150 one-year misdemeanor contract described in the preceding example had certified to the local indigent defense system that he or she would devote about 75 percent of his or her time to adult criminal matters (it does not matter whether these are appointments or retained clients). That means only three-quarters of the 1,855.8 annual case-related duty hours in our assumptions would be available for adult defendants and their legal needs. So rather than 655.8 hours remaining for additional cases beyond the 150 one-year misdemeanors, only 191.8 hours would be available ( $[1,855.8 \text{ annual case-related duty hours} \times 0.75 \text{ full-time equivalent (FTE)}] - [150 \text{ cases} \times \text{an absolute weight of 8 hours}]$ ), and instead of as many as 94 93-day misdemeanors potentially added to the solo practitioner's caseload, just 27 of such cases could be represented ( $191.8 \div 7\text{-hour case weight}$ ).

Absolute case weights can also be used for estimating required staff levels. Assume it is projected that, over the next year, a public defender office with attorneys working full time on adult indigent defendant clients at the trial-court level will be called on to handle five murder/manslaughter cases, 30 CSC 1-2-3 (1st, 2nd, 3rd degree) cases, 77 other class A felonies, 100 low-severity felonies, 600 one-year misdemeanors, and 800 93-day misdemeanors. The estimated number of total hours necessary for this work would be 19,750 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 (1,855.8) suggests that about 10.6 attorney FTEs will be needed by this office.

### *Going Forward*

Many of the comments submitted in conjunction with the attorney survey described the current situation in Michigan indigent defense as one in which the sheer volume of representations has reached the point where the quality of the services rendered to the client suffers. Some respondents, for example, noted that public defender offices were operating under caseloads that were "oppressive," resulting in pressure to "to plead people out and not file motions," while, for assigned or contract counsel, the existing compensation structure forced lawyers "to work on volume to earn a living, which leads to inadequate preparation time and substandard legal representation."<sup>7</sup> Some media reports and studies have reached similar

---

<sup>7</sup> It should be noted that not all of the attorneys submitting survey comments indicated that controls on caseload volume were needed. One respondent claimed that if "I were limited to 150 cases I would spend half of my time reading the newspaper."

conclusions.<sup>8</sup> To the extent that indigent defender caseloads in this state are indeed excessive, such problems cannot be made to disappear simply through the adoption of maximum caseload standards. Far better information about indigent defender caseloads, both at the local system level and at the individual attorney level, will be needed going forward to make sure that the standards continue to accurately reflect the evolving challenges and the unique local legal cultures facing defenders in every jurisdiction in the state. Most importantly, adequate funding must be made available to increase the pool of public defenders to reduce their caseloads below threshold levels, and similarly adequate funding must be made available to compensate private counsel in a manner that would make it financially viable for them to include indigent defense as a substantial part of their practices, despite receiving fewer appointments over the course of a year. Without the provision of sufficient resources to both public and private counsel, it is not possible to fully guard against the “[e]conomic disincentives or incentives that impair defense counsel’s ability to provide effective representation” that were sources of concern for the Michigan legislature in its original charge to the MIDC.<sup>9</sup>

It is our understanding that the MIDC intends to regularly revisit the issue of caseload standards in the future. If so, we applaud the decision. Standard-development efforts going forward will be far less daunting and, frankly, far less expensive. If, indeed, attorney levels in local indigent defense systems are adjusted to account for new standards, and if CMSs are improved so that more-reliable and more-easily accessed data on caseloads and attorney time expenditures are made available for planners, there will be better information available for future Delphi sessions than could be utilized for the one RAND and the MIDC conducted in 2018. Ultimately, the recommended standards presented in Chapter 5 are simply a starting point in a continuing, long-term process. As additional time is made available for indigent defenders to effectively address the needs of their clients, stakeholders will have enhanced opportunities to evaluate the best and most-efficient ways to “guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the Constitution of the United States and section 20 of article I of the state constitution of 1963.”<sup>10</sup> The optimal time to conduct caseload assessments is during periods of relative calm and adequate resources, and not when the system is in crisis, which is when the development of caseload standards and case weights runs a risk of entrenching existing problems.

---

<sup>8</sup> Samilton, 2018; National Legal Aid and Defender Association, 2008.

<sup>9</sup> Mich. Comp. Laws § 780.991(2).

<sup>10</sup> Mich. Comp. Laws § 780.991(2)(b).



## Acknowledgments

---

We would like to express our appreciation to those indigent defense attorneys across Michigan who volunteered to participate in a time study designed to track their case-related activities. We are well aware of the significant burden they shouldered during the data collection period and are in their debt. Our thanks also go out to those attorneys who responded to our invitations to take part in a lengthy online survey. Their frank and honest answers to our questions helped inform the direction of our research. And the considerable effort made by members of our expert panel to travel to Lansing in September 2018 and engage in hours of sometimes vigorous debate with their fellow members of the criminal defense bar over the best means for delivering an effective defense is testimony to their dedication to the citizens of Michigan.

Members of Justice Works of Centerville, Utah, once again were stellar partners in the development and deployment of a customized timekeeping application for our time study. They have contributed their talents and resources to a number of caseload standards projects overseen by RAND and other researchers in the past as part of their obvious commitment to the betterment of indigent defense in this country.

Dr. Jonah Siegel and Chris A. Sadler of the Michigan Indigent Defense Commission were highly effective and affable research colleagues, and at every step of this project we appreciated their enthusiasm, insight, and patience.

We would also like to thank our formal reviewers, Dr. Joseph W. Doherty and Samantha Cherney, for their extremely thoughtful reviews and constructive comments. It goes without saying that the authors retain full responsibility for any remaining errors.

Samantha Bennett performed a highly professional and thorough job of editing and organizing the final version of the report. Jayne Gordon provided invaluable administrative support throughout this effort. Timothy McDannold and Orlando Pinto were also instrumental in the delivery of this report.

## Abbreviations

---

ABA	American Bar Association
CMS	case management system
CoV	coefficient of variance
CPS	Child Protective Services
CSC	criminal sexual conduct
FLSA	Fair Labor Standards Act
FTE	full-time equivalent
JDW	Judicial Data Warehouse
JIS	Judicial Information Services
MCSC	Michigan Civil Service Commission
MIDC	Michigan Indigent Defense Commission
NAC	National Advisory Commission on Criminal Justice Standards and Goals
NCSC	National Center for State Courts
NLADA	National Legal Aid and Defender Association
PAG	Project Advisory Group
PD	public defender
PPO	personal protection order
SADO	State Appellate Defender Office
SCAO	State Court Administrative Office
SCLAID	Standing Committee on Legal Aid and Indigent Defendants

# 1. Overview

---

In 2017, the RAND Corporation was asked by the Michigan Indigent Defense Commission (MIDC) for assistance in determining maximum caseload standards for providers of indigent legal representation to adult defendants in the trial-level courts of the state of Michigan. A “maximum caseload standard,” typically expressed in terms of the number of cases of a particular type that can be reasonably handled by an attorney over the course of a specific time period (such as “150 felonies in a year”), is one way to flag instances when an attorney’s overall caseload may be excessive. The MIDC had been charged by the Michigan legislature with ensuring that the workload assigned to indigent defense counsel would not reach the point where effective representation is jeopardized:

(2) The MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the Constitution of the United States and section 20 of article I of the state constitution of 1963. In establishing minimum standards, rules, and procedures, the MIDC shall adhere to the following principles:

... (b) Defense counsel’s workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel’s ability to provide effective representation must be avoided. The MIDC may develop workload controls to enhance defense counsel’s ability to provide effective representation.<sup>11</sup>

Legislation establishing the MIDC characterized such effective representation as “legal representation that is compliant with standards established by the appellate courts of this state and the United States supreme court.”<sup>12</sup> *Strickland v. Washington* is perhaps the leading opinion on such standards,<sup>13</sup> but its two-pronged test (examining whether an attorney’s actions were reasonable and, if not, whether the outcome of the case was prejudiced as a result) is of retrospective application and says little about what an indigent defense attorney or provider organization ought to do in future cases. The tests in *United States v. Cronin* are forward-looking (presence of counsel at critical stages, counsel must be qualified, etc.),<sup>14</sup> as are the American Bar Association’s (ABA’s) *Ten Principles of a Public Defense Delivery System* (independence, assignment as soon as feasible, parity between defense counsel and prosecution, etc.),<sup>15</sup> the

---

<sup>11</sup> Mich. Comp. Laws § 780.991.

<sup>12</sup> Michigan House Bill 5842, Section c, signed into law January 4, 2017.

<sup>13</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>14</sup> *United States v. Cronin*, 466 U.S. 648 (1984).

<sup>15</sup> ABA, 2002.

related Michigan State Bar’s “The Eleven Principles of a Public Defense Delivery System,”<sup>16</sup> and the ABA’s *Eight Guidelines of Public Defense Related to Excessive Workloads*,<sup>17</sup> though these important guideposts lean toward the aspirational rather than providing specific examples of when effective representations are unlikely to be delivered. A more functional set of principles can be found in the MIDC’s first four standards for indigent defense delivery systems, covering such areas as the training and education of indigent defense attorneys, the initial client interview, the use of investigation and experts, and the availability of counsel at first appearance and other critical stages.<sup>18</sup> The ABA’s *ABA Standards for Criminal Justice* related to defense services also contains concrete guidance for attorneys and organizations when representing indigent defendants.<sup>19</sup> But none of these important resources provides a practical means for identifying instances when the number and mix of criminal defense cases assigned to an attorney are likely to result in workload demands that adversely affect that attorney’s ability to adequately provide effective assistance of counsel to his or her clients. Maximum caseload standards, on the other hand, give administrators of indigent defense programs, the courts that appoint indigent defense counsel, and policymakers who decide on funding allocations for such appointments a useful tool for determining both when caseloads are in danger of being excessive and the number of attorneys that may be needed to handle expected demand.

This report is intended to describe the results of work conducted by RAND on behalf of the MIDC to develop a set of recommended caseload standards for the commission’s consideration. The standards would be applicable to all providers of indigent legal representation in the state of Michigan. In consultation with the MIDC, RAND performed three data collection efforts to provide the empirical foundation for the standards. The first involved a voluntary time study of Michigan indigent defense attorneys that was intended to describe the average amount of time such counsel currently spend on trial court–level criminal matters within various case type categories. A voluntary survey of attorneys followed, in which the results of the earlier time study were presented to participants as evidence of current time expenditures. Informed by those results, respondents then provided their opinions as to the average amount of time that an attorney should plan on spending on a particular type of case to deliver effective assistance of counsel. The final data collection effort was conducted as part of a conference held in Lansing, Michigan, on September 13, 2018. The purpose of the conference was to have experienced criminal defenders review available evidence regarding the state’s indigent defense bar (including the results of the two earlier data collections) and ultimately reach consensus on recommended average time expenditures for counsel representing indigent defendants in various

---

<sup>16</sup> Michigan State Bar, 2002.

<sup>17</sup> ABA, 2009.

<sup>18</sup> MIDC, 2018.

<sup>19</sup> ABA, 1992.

categories of criminal matters proceeding in the Michigan trial courts. The decisions of the conference participants formed the basis for the recommended maximum caseload standards subsequently described in this report.

It should be emphasized that RAND's ultimate task in this work was to deliver the final results of the September 2018 conference to the MIDC and describe how the participants' recommendations translate into maximum caseload levels. RAND was not charged with developing final caseload standards; that important responsibility remains in the hands of the MIDC. Thus, we offer only *recommended* caseload standards for the commissioners' review.

## Definitions

We use the term *indigent defendant* to describe an individual who has counsel appointed on his or her behalf regarding an adult criminal case in the trial-level courts of Michigan as mandated by the U.S. Constitution, the Michigan Constitution, statutes, regulations, or court rules and policies (the adjective *indigent* as used in this report simply refers to a person's overall eligibility for appointed counsel, and not necessarily in regard to his or her financial status). The terms *indigent defense attorney*, *indigent defender*, and *defender* interchangeably describe any attorney who provides such representation at any time, even if the bulk of his or her practice does not involve indigent defendants. *Indigent defense system* refers to any combination of counties or courts that utilize the same funding streams for indigent defense and employ the same mechanisms for appointing attorneys. *Indigent defense program* refers to the specific manner in which attorneys are selected and compensated by an indigent defense system. Examples include *assigned counsel programs* (in which a roster of attorneys who are paid by the hour, by each case, or by each event in a case are appointed as needed), *contract defender programs* (utilizing individual attorneys or law firms that are paid a set amount of money to handle up to a specific number or percentage of indigent defense representations over a period of time), and *public defender offices* (governmental agencies or nonprofit nongovernmental organizations that typically utilize salaried attorneys; the term *public defender organization* is also used). Note that we reserve the term *public defender* to refer specifically to attorneys who are employees of public defender offices, though, in a larger sense all indigent defense attorneys fill the role of a public defender. Finally, the term *indigent defense provider* describes any law firm, nonprofit organization, solo practitioner, or government agency that directly operates under a formal agreement or understanding to provide indigent defense services to an indigent defense system.

## Calculating and Using Maximum Caseload Standards

The caseload standards that are the subject of this report simply describe a recommended maximum number of cases of a particular type that an indigent defender would be appointed to over the course of a year, assuming that the attorney in question represented only cases of that

one type (calculating recommended maximum caseloads in instances where the attorney handles more than one type of case is accomplished through the use of *case weights*, which are offered in Chapter 5 of this report for the commission’s consideration as well). Such standards are intended to act as one means—though certainly not the only one—of ensuring that indigent defenders generally have sufficient time to effectively represent the clients whom they have been appointed to defend. Put another way, caseload standards provide a benchmark for gauging whether attorneys *generally* have a reasonable level of discretion when deciding how often to meet with the client and for how long; which witnesses should be interviewed; what motions and appeals should be filed; the breadth of issues to be explored in pleadings and oral arguments; the level of preparation necessary for an upcoming trial; the depth and intensity of settlement discussions with the prosecution; the amount of time that should be spent with a client’s family; or whether additional effort should be made to address issues that, left unresolved, would increase the likelihood of recidivism. If workloads rise uncontrollably and attorneys must increasingly make difficult decisions as to how to allocate their limited time, a type of battlefield triage can take place in which all but the most mission-critical, time-sensitive tasks are ignored, and, in the extreme, an attorney can find him or herself routinely delivering just the minimum effort necessary to avoid ethical sanctions while hoping for a quick plea deal.

Two aspects should always be kept in mind regarding caseload standards. First, they describe only what might be thought of as “estimated average maximums”—in other words, an estimate of the maximum number of cases of one type that all attorneys within some particular grouping (perhaps within the same indigent defense provider, within the same court system, within the same county, within the same region, or within the same state) could be expected to handle in the aggregate, divided by the number of attorneys in that grouping. Thus, they represent an upper bound to what individual attorneys in that grouping ought to be assigned, *on average*, in regard to a caseload. Second, the standards assume that the only information known about such cases is their case types and the general identity of attorneys who will be appointed to them. It may well be that a very experienced and well-resourced attorney would have no problem being assigned far more cases of a particular type than the systemwide average would suggest, or that far fewer cases than a standard’s maximum should be assigned to attorneys who regularly appear in one idiosyncratic judge’s courtroom, or that the standards have reduced utility when applied to attorneys in a particular region of the state due to unpredictable variations in weather and road conditions in that area or chronic shortages in support staff availability. No single set of caseload standards can account for such departures from what might be thought of as the aggregate norm, and it is up to the entity utilizing the standards to take a very close look at what they mean for individual attorneys, programs, and jurisdictions, even if, at the state level, the standards work reasonably well.

An important aspect of the work involves the manner in which members of the indigent defense bar and others provide their input about the relationship between attorney time expenditures and effective representations. This is generally couched in two different ways. One

is to simply ask what maximum number of indigent defense appointments of a particular type an attorney could handle over the course of a year and still expect to effectively represent his or her clients. The other is to ask what amount of attorney time, on average, ought to be planned for when handling a typical case of a particular type to facilitate the delivery of effective assistance of counsel. The two concepts are mathematically related, but the choice of approach is important, because people think about reasonable workloads in different ways and are influenced by how information is presented to them. We chose the latter approach to focus on the individual client's needs, determining maximum caseload standards by comparing the recommended amount of attorney time for a typical case with the total amount of time counsel might have available over the course of a year to handle all case-related duties. Chapter 5 provides a more detailed explanation of these calculations.

## Approach

### *Prior Work in This Area*

Michigan is not alone in seeking to develop standards for maximum indigent defense caseloads. Perhaps the earliest effort of note that attempted to produce quantitative metrics for identifying excessive workloads was that made by the National Advisory Commission on Criminal Justice Standards and Goals (NAC) in the early 1970s. The NAC was funded by the Law Enforcement Assistance Administration (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, and as part of its mission, one NAC task force focusing on state and federal courts addressed a number of issues related to publicly financed representations in criminal cases, most famously in regard to defender caseloads. The standards published by the NAC in 1973 have been repeatedly used by policymakers as a basis for their efforts to set upper bounds for the number and mix of indigent defender cases:

#### **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.

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.<sup>20</sup>

These nearly five decade-old NAC public defender workload standards have received considerable attention since their publication and were often adopted with little modification by various state and national organizations.<sup>21</sup> Given that there were few other authoritative and independent statements at the time that likewise described numerical limits on caseloads, the NAC standards would have been welcome news to an indigent defender operating in an urban court where caseloads reportedly exceed 2,000 per year.<sup>22</sup> Nevertheless, such standards have received criticism of late because of their age in light of the marked transformation in American criminal law and procedure over the last half century, their attempt to describe a one-size-fits-all national standard for professional activities that are highly affected by local legal cultures and rules, and their apparent lack of any documented basis (empirical or otherwise) for the recommended caseload maximums.<sup>23</sup>

In the 1980s and 1990s an increasing number of jurisdictions took steps to set indigent defender caseload standards tailored to their own unique conditions.<sup>24</sup> Though many simply tweaked the NAC recommendations somewhat, some conducted research (often utilizing the services of outside consultants) that sought to use empirically derived information as a starting point for developing caseload limits and assessing workload levels.<sup>25</sup> The earliest of these efforts were relatively unsophisticated, with one observer noting that “the state of the art” of the methods employed for setting standards at the time “was extremely low,” with many appearing to be “based upon guesswork of the chief public defender.”<sup>26</sup> Subsequent research, however, began to draw on the rich body of literature that had already developed as a result of many

---

<sup>20</sup> The full text for Standard 13.12, as well as other indigent defense-related standards arising out of the work of the NAC court task force, can be found in National Legal Aid and Defender Association, undated.

<sup>21</sup> See, e.g., ABA, 2002 (“National caseload standards should in no event be exceeded,” citing the numbers in NAC Standard 13.12); Washington Supreme Court Standards for Indigent Defense, Standard 3.4; American Council of Chief Defenders, 2007 (“The [American Council of Chief Defenders] recommends that public defender and assigned counsel caseloads not exceed the NAC recommended levels”).

<sup>22</sup> See, e.g., National Legal Aid and Defender Association, 2008 (describing a Detroit law firm with a contract counsel arrangement handling a total of between 12,000 and 14,000 misdemeanors per year with five attorneys), and Eckholm, 2008 (reporting that misdemeanor caseloads assigned to Miami-Dade public defenders had reached an average of 2,250 cases per attorney per year). A defender with a 45-hour workweek would be able to devote only an average of about one hour to each of 2,000 cases in a year (see Chapter 5 for more information about annual case-related time availability).

<sup>23</sup> A detailed critique of the NAC standard development can be found in Lefstein, 2011, pp. 43–49.

<sup>24</sup> Carroll, Schaefer, and Spangenberg, 1998; The Spangenberg Group, 2001.

<sup>25</sup> See Table 2 in The Spangenberg Group, 2001, which describes standards set in eight states that adhere closely to the NAC guidelines.

<sup>26</sup> D’Amico and Spangenberg, 1989, p. 50, quoting Robert Spangenberg from a 1983 National Institute for Justice study entitled *Maximizing Public Defender Resources: A Management Report*.



decades of work in assessing the caseloads and workloads of federal and state judges. The Administrative Office of the U.S. Courts' caseload studies for federal district court judges, for example, were first conducted in 1962, though similar studies of the federal courts date back to the 1940s.<sup>27</sup> Judicial workload studies had long utilized empirical research techniques to measure the amount of time judges spent on cases of different types and then employed that information as the basis for transforming raw caseload counts into more-useful estimates of workload. Depending on the approach, the underlying bases for some of the workload estimates might be subjected to a "judgmental adjustment" made by those with direct knowledge of real-world conditions, such as a committee made up of judges within the court system being studied.<sup>28</sup>

By the 2000s, two organizations that already had extensive experience in judicial caseload studies—The Spangenberg Group and the National Center for State Courts (NCSC)—were at the forefront of this new wave of research involving indigent defender workloads. The precise approach utilized by the two entities for conducting workload studies differed from each other, evolved over time, and changed somewhat depending on the site being studied. That said, the projects usually involved first determining the average amount of hours being spent by indigent defenders on different types of cases using special time studies, fielding a survey in which indigent defenders within the jurisdiction being examined review those averages and weigh in as to whether they felt that sufficient amounts of time were being spent on those cases (either personally or for defenders as a whole), and finally having experts or advisory committees consider the information collected during the earlier phases of the work and adjusting those results as necessary to result in measures that reflected the resources needed to provide effective representations and other policy considerations. These case type-specific measures typically were expressed in one of two ways: either as a recommended average amount of attorney time per case to be used in calculations of required staff levels or as an absolute numerical limit on the number of cases an attorney should handle over the course of a year.<sup>29</sup>

One notable feature of some of the NCSC studies was that they focused their data collection efforts not on the average amount of time attorneys were spending on cases within different case type categories, but instead on the average amount of time spent on different tasks or activities undertaken in such cases. A time study might, for example, reveal that defenders were conducting investigatory tasks in 65 percent of class D felonies and were spending an average of 100 minutes on such tasks whenever performed in those cases. If similar detail was available for every other conceivable task category relevant to an indigent defender when representing a client's interests (e.g., legal research, client communication, plea negotiation), a relatively

---

<sup>27</sup> Gillespie, 1974, p. 38; Bermant, Lombard, and Wiggins, 1991, p. 495.

<sup>28</sup> See, e.g., Flanders, 1980, pp. 35–39.

<sup>29</sup> For a sometimes-critical description of the workload studies performed by these two organizations, see Burkhart, 2017, pp. 416–419.

straightforward calculation would yield the overall average time expenditure for individual cases within each type. The key purpose of breaking down time expenditures in this way was to facilitate the subsequent input of experts or advisory committees. The experts might feel, for example, that to meet legal and ethical requirements related to representing indigent defendants, an attorney handling a class D felony should instead plan on conducting investigatory activities in 80 percent of such cases (up from 65 percent) and also plan on spending an average of two hours (up from 100 minutes). The methodological assumption here is that making such adjustments to the calculations at the task level would produce an overall average amount of attorney time per class D case that better reflects policy considerations regarding the need for effective representation.

A variation of the NCSC approach has been employed by the ABA's Standing Committee on Legal Aid and Indigent Defendants (ABA-SCLAID) in a cluster of studies conducted over the past five years. These studies also utilize what might be characterized as a *task-based* approach, where a defender's case-related time is broken down by its activity category components, adjustments are made at the activity level, then a revised total average is produced. The ABA-SCLAID studies differ notably in that they generally prevent the experts or advisory committee tasked with making policy adjustments from considering the results of any prior time study or attorney survey. The assumption here is that information about actual time expenditures or the views of attorneys who have long operated under excessive workloads and have come to believe that such conditions are normal would taint the deliberations of the experts.<sup>30</sup> Instead, they would independently decide (a "de novo" decision, as characterized by one researcher describing this approach) on how much time should be spent on average for each task within each case type. If there were eight case type categories and 20 different task categories, a total of 160 individual decisions would be needed, rather than simply modifying specific values from the earlier data collection phases that were felt to be insufficient in some way. The previously collected time study and attorney survey results would then be used only for comparing the expert or committee estimates with actual expenditures (using the time study) and the recommendations of the indigent defense bar (using the attorney survey). Indeed, many of the ABA-SCLAID studies dispense with the attorney survey altogether.

---

<sup>30</sup> Burkhardt, 2017, pp. 441–442.

Table 1.1 presents a summary of some of the key features of recent caseload standard setting studies involving defenders in Colorado,<sup>31</sup> Louisiana,<sup>32</sup> Idaho,<sup>33</sup> Maryland,<sup>34</sup> Massachusetts,<sup>35</sup> Missouri,<sup>36</sup> New Mexico,<sup>37</sup> New York (for five representative counties),<sup>38</sup> North Carolina,<sup>39</sup> Rhode Island,<sup>40</sup> Texas,<sup>41</sup> and Virginia.<sup>42</sup> The information contained in the table serves to illustrate contemporary research methods employed for studies similar to the one requested by the MIDC. It should be noted that organizations conducting studies in more than one state do not always follow the same approach each time. It should also 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 be spent to achieve a particular goal. Each study defined that goal in a slightly different manner, such as “providing reasonably effective representation,”<sup>43</sup> perform a task with “reasonably effective assistance of counsel pursuant to prevailing professional norms,”<sup>44</sup> “provide a client adequate and effective defense,”<sup>45</sup> “ensure the effective representation of counsel,”<sup>46</sup> “perform the duty effectively,”<sup>47</sup> complete the task “with reasonable effectiveness,”<sup>48</sup> “provide reasonably effective

---

<sup>31</sup> RubinBrown and ABA-SCLAID, 2017.

<sup>32</sup> Postlethwaite & Netterville and ABA-SCLAID, 2017.

<sup>33</sup> Crossgrove Fry et al., 2018.

<sup>34</sup> Ostrom, Kleiman, and Ryan, 2005.

<sup>35</sup> Labriola and Hopkins, 2014.

<sup>36</sup> RubinBrown, 2014.

<sup>37</sup> Hall, 2007.

<sup>38</sup> Pace et al., 2016.

<sup>39</sup> Lee, Hamblin, and Via, 2019.

<sup>40</sup> BlumShapiro, ABA-SCLAID, and the National Association of Criminal Defense Lawyers, 2017.

<sup>41</sup> Public Policy Research Institute, 2015.

<sup>42</sup> Kleiman and Lee, 2010.

<sup>43</sup> RubinBrown and ABA-SCLAID, 2017, p. 18.

<sup>44</sup> 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”).

<sup>45</sup> Crossgrove Fry et al., 2018, p. 15. See also Pace et al., 2016, p. 36 (“provide an adequate and effective defense”).

<sup>46</sup> Ostrom, Kleiman, and Ryan, 2005, p. 27. See also Public Policy Research Institute, 2015, p. 19 (“ensure effective assistance of counsel”).

<sup>47</sup> Labriola and Hopkins, 2014, p. 16.

<sup>48</sup> RubinBrown, 2014, p. 16; Public Policy Research Institute, 2015, Appendix H, p. 1.

assistance of counsel,”<sup>49</sup> “ensure effective representation,”<sup>50</sup> or achieve an “effective defense.”<sup>51</sup> Despite the variation in the language used, ultimately each state’s standards setting effort was intended to set caseload limits that would facilitate an indigent defender’s opportunity to render, as described in *Strickland*, “reasonably effective assistance” to his or her client as defined under “prevailing professional norms.”<sup>52</sup>

---

<sup>49</sup> RubinBrown, 2014, p. 17.

<sup>50</sup> Hall, 2007, p. 35. See also Kleiman and Lee, 2010, p. 18 (avoiding insufficient time for “effective representation”).

<sup>51</sup> Pace et al., 2016, p. 52.

<sup>52</sup> *Strickland*, 466 U.S. 668 at 688.

**Table 1.1. Recent Indigent Defender Caseload Standard Setting Approaches**

<b>Jurisdiction— Researchers or Sponsors (Publication Year)</b>	<b>Subjects</b>	<b>Case Types</b>	<b>Time Study</b>	<b>Task-Based Approach</b>	<b>Time Sufficiency Survey Inquiry</b>	<b>Expert Panels</b>	<b>Expert Decisions or Adjustments</b>
<b>Colorado</b> ABA-SCLAID (2017)	Statewide public defender system	18	Mandatory; 16 weeks	Yes, using 26 task types	None	“Criminal defense experts (private, as well as public defense practitioners)”	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type in which each task should take place
<b>Idaho</b> Idaho Policy Institute (2018)	Mix of private bar and public defenders across state	15 at start; 8 at end	Voluntary; 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 in which each task should take place
<b>Louisiana</b> ABA-SCLAID (2017)	Statewide public defender system	11	Mandatory; six months	Yes, using 11 task types	None	“65 private defense practitioners and 60 public defenders” at start, 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 in which each task should take place

<b>Jurisdiction— Researchers or Sponsors (Publication Year)</b>	<b>Subjects</b>	<b>Case Types</b>	<b>Time Study</b>	<b>Task-Based Approach</b>	<b>Time Sufficiency Survey Inquiry</b>	<b>Expert Panels</b>	<b>Expert Decisions or Adjustments</b>
<b>Maryland</b> NCSC (2005)	Statewide public defender system	12 to 17	Voluntary; four to six weeks	Yes, using 15 task types at start, collapsed to 8 at end	Likert scale to indicate how frequently 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 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.
<b>Massachusetts</b> The Committee for Public Counsel Services (2014)	Mix of private bar and public defenders	19	None; used existing billing data from private bar appointments for 1 year of closed cases as proxy	No, task data only informed focus group decisions	Likert scale to indicate how frequently attorney generally had enough time for each task within broad practice area (e.g., youth advocacy, mental health)	Five focus groups, each considering a broad practice area, “made up of attorneys from across the state”	For each case type, focus groups specified both the amount of additional time needed per case and the percentage of cases for which this additional time was required.
<b>Missouri</b> ABA-SCLAID (2014)	Statewide public defender system	8	Not needed; used existing timekeeping data covering 25 weeks	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	“Criminal defense experts (private, as well as public defense practitioners)”	Amount of time required, on average, to accomplish each task within each case type

<b>Jurisdiction— Researchers or Sponsors (Publication Year)</b>	<b>Subjects</b>	<b>Case Types</b>	<b>Time Study</b>	<b>Task-Based Approach</b>	<b>Time Sufficiency Survey Inquiry</b>	<b>Expert Panels</b>	<b>Expert Decisions or Adjustments</b>
<b>New Mexico</b> NCSC (2007)	Statewide public defender system	11	Voluntary; six weeks	Yes, using 51 task types	Likert scale to indicate how frequently attorney generally had enough time for each task across all cases	Focus group: “A select group of seasoned” public defenders, contract attorneys, and advocacy organization representatives 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.
<b>New York</b> RAND (2016)	Mix of private bar and public defenders in 5 counties	8	Voluntary; eight weeks	No	Average amount of time that should be spent on cases within each case type	28 panelists representing “a diverse mix of indigent defense attorneys and retained client-only attorney”	Average amount of time that should be spent on cases within each case type
<b>North Carolina</b> NCSC (2019)	Statewide public defender system	18	Mandatory; seven weeks	Yes, using 35 task types	Whether or not 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 in which additional time was needed

<b>Jurisdiction— Researchers or Sponsors (Publication Year)</b>	<b>Subjects</b>	<b>Case Types</b>	<b>Time Study</b>	<b>Task-Based Approach</b>	<b>Time Sufficiency Survey Inquiry</b>	<b>Expert Panels</b>	<b>Expert Decisions or Adjustments</b>
<b>Rhode Island</b> ABA-SCLAID (2017)	Statewide public defender system	9	Not needed; used existing timekeeping data covering six months	Yes, using 12 task types	None	22 private practice attorneys and 21 public defenders at start, 15 public defenders and 8 private attorneys at end	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type in which each task should take place
<b>Texas</b> Public Policy Research Institute (2015)	Mix of private bar and public defenders across state	6	Voluntary; 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 in which 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.
<b>Virginia</b> NCSC (2010)	Statewide public defender system	13	Mandatory; eight weeks	Yes, using 56 task types	Likert scale to indicate how frequently attorney generally had enough time for each task across all cases	Three attorney groups drawn from defender field offices, capital defender offices, and the appellate defender office	When more time spent on a task within a case type was believed to be necessary, (1) revised time needed to complete task; (2) revised percentage of cases within case type in which task should take place



The discussions that follow describe each of the areas covered by the columns in Table 1.1 and present additional background on these key aspects of standards development efforts, drawing on our review of the relevant literature.

**Subjects.** *For what type of defender population 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 eight of the 12 illustrative studies, a single statewide public defender system was the subject of the research, while in only four others were the standards developed for both public defenders and private attorneys accepting indigent defense appointments.<sup>53</sup> Experience has shown that the level of cooperation for data collection activities is very high when public defenders are concerned, and very low for private attorneys. 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 course of the project are relatively straightforward tasks, while many private indigent defenders are solo practitioners, some of whom are known only to the local courts that appoint them.

**Case Types.** *How many case type categories were used to group client matters represented by the defender population?* The entity commissioning the research generally identifies what cases would be the subject of the research and how those cases are to be grouped.

**Time Study.** *Was a data collection conducted to obtain information on attorney time expenditures, and, if so, how many weeks of information were collected and was participation in the time study voluntary or mandatory?* Relatively few indigent defense providers in the United States require their attorneys to perform timekeeping duties in a detailed manner similar to that done by many members of the civil bar, where such time tracking is conducted in the ordinary course of business. That situation is slowly changing, as such providers see the benefits of timekeeping for a variety of management and policy purposes, even when there is no client to bill. The ideal situation for a research study is an existing timekeeping process already implemented many months before the need for the data exists. When that process is in place, attorney time information necessary for caseload standards setting can be quickly and inexpensively extracted from the provider's case management system (CMS). The only practical alternative when timekeeping is not routine is to conduct a costly and often disruptive special 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 collection period.<sup>54</sup>

---

<sup>53</sup> Even in states that are characterized as relying exclusively on a network of public defender offices for delivering defender services, a small number of assigned counsel and contract defenders are often required for representing clients when the public defender has a legal or resource conflict. Typically, studies that focus on a single statewide public defender system do not include those conflict attorneys in the data collections, analyses, or standards.

<sup>54</sup> One other option involves using invoices submitted to the indigent defense system by private counsel in assigned contract programs that are compensated on an hourly basis. See, e.g., Labriola and Hopkins, 2014, pp. 4–6.

One advantage of a new time study is that the specifics of how cases and tasks are defined and categorized are determined by the research project and not limited to the procedures already utilized in an existing timekeeping system. Longer data collection periods in new time studies result in more-accurate and -nuanced information about case-level time expenditures, but there is an unavoidable trade-off in terms of compliance, with some attorneys dropping out as the weeks or months drag on. Exploiting existing timekeeping processes obviously avoids this problem, and the data extract can include defender activities taking place over many months or even years.

Participation in time studies where timekeeping is not already in place is generally voluntary, though studies involving a single public defender provider system may be able to convince management to require the provider's attorneys to take part. Some studies adjust their research timelines to match up with the provider's adoption of new and permanent timekeeping procedures, so that the first day of the study's data collection happens to be the first day that attorneys in that system begin recording their time as a matter of routine (knowing that timekeeping is an ongoing requirement of the job incentivizes the attorney to do a better job for the standards development work).

**Task-Based Approach.** *Are the standards developed by focusing on attorney time expenditures at the individual task category level, and, if so, how many categories are employed?* Examining and adjusting time expenditures at the task level does allow for addressing specific shortfalls in 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 such an approach requires that the individual providing the estimates or adjustments can recall individual events in cases of a particular type with a sufficient degree of accuracy. There is also a greater burden on participants if they are asked to make dozens or even hundreds of decisions about time and frequency as opposed to just one per case type.

A task-based approach mandates that any new time study collect detailed information about time expenditures across a relatively granulated list of task categories. This can lead to a decreased number of participants completing the time study, as attorneys recording their time often find the effort to break down eight hours of work into many discrete units frustrating, especially when they simply worked on a single client's case over the course of a day. In addition, breaking out an attorney's workday into discrete task categories can be problematic when there is overlap of purpose (is listening to wiretap recordings while driving across the state to a hearing "travel" or "discovery review"? ) or overly broad definitions (is "client communication" any discussion with the client, even while chatting during trial recess?). Note that just about every study attempts to collect and report at least some information about attorney time at the individual task level, but only those employing a task-based approach use those building blocks of information to calculate recommended average attorney time.

**Attorney Time Sufficiency Survey Inquiry.** *Were members of the indigent defense bar surveyed to obtain information to directly inform the calculation or consideration of standards (or serve as a basis of comparison), and, if so, what information were they asked to provide?*

Nine of the 12 illustrative studies included an attorney survey, though the main purpose of those surveys differed. In studies that were not task-based, the key inquiry involved having the participant estimate the average amount of attorney time that should be spent on cases within each case type. The reports for the illustrative studies are not always clear as to whether the participant was made aware of the time study results prior to making those estimates. When such information is provided, the participant typically is given the option to agree with the time study value or modify it as desired. In the task-based studies, one of two lines of inquiry are usually employed. One asks as to how often the participant had sufficient time to complete each task. This information might be captured by asking the participant (a) for an estimate of the percentage of cases when sufficient time was available, (b) to check off the appropriate box that indicates the desired range of percentages (such as “20–39% of your caseload”), or (c) to select the appropriate expression of relative frequency from a Likert scale (such as “almost never”). The other task-based approach asks the participant to estimate the average time needed to complete each task (a companion question often included asks the participant to estimate the percentage of cases in which the task should be performed). Task-based studies vary as to whether such questions drill down to the case type level (so, for example, individual estimates of average time needed would be required for each task type within each case type) or simply ask for answers that reflect the participant’s general experience for each task across all case types. And as was true for studies involving non-task-based projects, the final published reports do not always indicate whether the participant had the time study results available to inform his or her answers.

**Expert Panels.** *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?* Though the precise title used varied (e.g., “experts,” “focus group participants,” “Delphi panelists,” “luminaries,” “advisors,” or “committee members”), all of the illustrative studies selected individuals external to the project team to make various decisions that directly led to the development of caseload standards. Depending on the study, these panels were created either solely by the sponsor of the study or by the sponsor in conjunction with the researchers. Typically, the panels are primarily composed of indigent defenders drawn from the same population as the subjects of the study (e.g., public defenders who represent clients in trial court-level criminal matters if the standards will apply to those same types of public defenders), though the panel might also include indigent defense provider supervisors and managers who do not represent clients themselves, academics (law professors, for example), criminal law practitioners not part of the subject population (e.g., those with practices exclusively involving paying clients or those who handle appeals, 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 some instances, a second group of experts is used to review the decisions of the

initial expert panel and, if desired, change them in some way. When this oversight mechanism is utilized, the makeup of the second group often includes a smaller proportion of actual indigent defense practitioners than the first group and skews somewhat toward what are described as respected members of the criminal justice community regardless of their day-to-day experience in representing indigent defendants. It should be noted that regardless of whether a second set of experts is utilized, the standards that arise out of this development process are typically characterized as “recommended,” “interim,” or “provisional.” It is not until some sort of policymaking body (the state legislature, a state commission with oversight of all indigent defense services, the state supreme court, etc.) considers and adopts the proposed standards (sometimes after making various adjustments that the body considers prudent) that the 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?* Generally, the experts are tasked with one of two responsibilities: (a) decide on the average amount of time required for cases within each case type or (b) decide on the average amount of time required for a particular type of task in cases within each case type (in some versions of the second option, the experts also decide on the percentage of cases within each case type in which the particular task should take place). Under the second option, the experts’ decisions regarding individual tasks are used to calculate the average amount required for cases within each case type. As mentioned previously, some studies present the results of the earlier data collection efforts for the experts’ consideration (the experts then can either let the individual results stand as is or modify them as desired), while other studies embargo the results until after the experts’ deliberations are complete.

### *Rationale Behind the Plan Chosen for the Michigan Caseload Standard Effort*

We felt that the studies described in Table 1.1 generally provided well-tested models for the work we would conduct on behalf of the MIDC. Obtaining information on current attorney time expenditures, asking members of the indigent defense bar whether they had sufficient time available in different types of cases for delivering reasonably effective representations, and then having a group of experts familiar with Michigan criminal practice and procedure reach consensus on questions that would define the caseload standards all appeared to be appropriate components of a study designed to achieve the MIDC’s goals in this area. That said, the precise approach we would adopt as part of our project planning would depend on a number of important considerations.

First was the overall scope of the study. We would be examining caseloads both for public defenders and for private counsel who received appointments through contract defender and assigned counsel programs. This meant that our target population would be widely distributed throughout the state and operating out of a mix of solo practitioner offices, larger law firms, government agencies, and nonprofit organizations, as opposed to being located only in a

relatively small number of public defender offices (just eight of Michigan's 83 counties have a public defender).

Next was the manner in which services for indigent representations are arranged. Michigan has historically been a state where indigent defense is the responsibility of individual counties, in terms of financing and structure, and the responsibility of local circuit and district courts in terms of operations and oversight (in regard to criminal matters, the circuit courts primarily handle felonies, while the district courts primarily handle misdemeanors). There are some exceptions, but generally the jurisdiction covered by each circuit or district court constitutes a separate indigent defense system. In these systems, court staff manage appointments, while the county decides on what sort of mix of contract defenders, assigned counsel, and public defenders will be utilized and how much compensation will be paid to private attorneys (or how much funding will be allocated to the public defenders' offices in the eight counties with such programs).

Each of the more than 160 Michigan indigent defense systems has operated with a high degree of independence and a relatively low level of state-level oversight, and each has developed its own guidelines for determining the eligibility of defendants for appointed counsel, chosen the manner in and the extent to which information about such appointments would be recorded and managed, created its own rules about whether appointed counsel needed to appear at the bail hearing or at arraignment, crafted its own guidelines as to whether counsel was required to participate in continuing legal education programs, and maintained its own rosters of attorneys accepting appointments.<sup>55</sup> Though the creation of the MIDC in 2013 has begun a process toward more-centralized oversight of the provision of indigent defense in the state, a 2008 National Legal Aid and Defender Association (NLADA) report asserted that this long-standing practice of local autonomy had led to a situation in Michigan where "each of these systems has become institutionally Balkanized over time."<sup>56</sup>

This locally controlled aspect of indigent defense in the state had a number of implications for our work. Michigan trial courts have long utilized computerized CMSs for the purpose of tracking matters before their circuit and district court judges, though there is considerable variation in the exact nature of the CMS being used. Some courts have implemented a standard CMS developed by the Judicial Information Services (JIS) division of the State Court Administrative Office (SCAO; the administrative agency of the Michigan Supreme Court), while others use systems purchased from a variety of private vendors. There is no uniform rule across all local courts to set some sort of flag in their primary CMS data to indicate that a criminal case before the judges of the court involved appointed counsel. The JIS CMS does have a field for that purpose, but reportedly many of the Michigan trial courts with this system in place are not utilizing it. Most courts, but not all, send extracts of the information they collect to the Judicial

---

<sup>55</sup> See, e.g., MIDC, 2016.

<sup>56</sup> NLADA, 2008, p. 2.

Data Warehouse, a centralized electronic repository for court records in civil and criminal cases maintained by SCAO. But without the consistent use of an indicator for appointed counsel, Judicial Data Warehouse cannot tally the number, types, outcomes, or case lengths of indigent defense cases across the state. Obviously, individual indigent defense systems need to keep track of these appointments in some way, if for no other reasons than for considering requests for payment submitted by private attorneys accepting appointments and for supporting annual budget requests submitted by the system to the local funding source. Some public defender offices now appear to be moving toward implementing contemporary commercial caseload software specifically designed for these types of providers, but Michigan indigent defense systems can use whatever recordkeeping procedures that they feel to be most appropriate for the task, even if those procedures constitute little more than making handwritten notes in a paper ledger. While each system might have few or no problems managing its caseload with its preferred tracking approach, the lack of universal requirement to routinely report the same types of information using the same definitions about indigent representations to a centralized body makes obtaining accurate statewide numbers on the types of cases handled by indigent defenders a daunting task. Doing so would require a special voluntary data call to each local system in Michigan, and it is possible that many such systems would be unable to organize their data in the required way without performing an eyes-on review of their records.<sup>57</sup>

Another factor was that timekeeping is not normal business practice for Michigan indigent defenders, other than for roster attorneys in some assigned counsel programs who must submit invoices for hourly payments. We learned that even when such timekeeping was required, these invoices were relatively lean in terms of recorded information. None of the eight public defender offices was known to track time as a matter of routine at the time the project began, though we later learned that one office was asking its attorneys to make estimates of total time expenditures when cases were closed.

A final consideration was whether we might be able to utilize earlier research either to inform the current work (and hopefully avoid the need to perform one or more new data collections) or to serve as a basis of comparison for our findings. It turned out, however, that at the time the project started, no prior time study (at least not as comprehensive as the one we were considering) or other quantitative data collection focusing on indigent defenders operating in Michigan trial-level courts had been performed. The 2008 NLADA report (*Evaluation of Trial-Level Indigent Defense Systems in Michigan*) provided a comprehensive look at the structure and operation of indigent defense systems in the state and highlighted serious problems with

---

<sup>57</sup> It should be noted that many of these issues do not arise in the context of criminal appeals, as providing indigent defense services in those cases is the responsibility of the State Appellate Defender Office (SADO), which maintains a CMS intended to capture detailed information about each representation by the attorneys in its offices.

caseloads and financing, but that study did not gather time expenditure data and provided only illustrative information about per-attorney caseloads.

In light of these issues, we made a number of important decisions. Because routine timekeeping was not already the norm, we knew we would have to conduct a new time study. We also knew that because of the mix of indigent defense delivery approaches in the state, there was no possibility that we could require (or, more precisely, ask indigent defense system administrators, public defender supervisors, and private law firm principals to require) attorneys accepting appointments to participate in the time study. It would have to be on a voluntary basis, which meant that an overly long data collection period would be unrealistic.

Our next decision involved the time study period. Self-reported time studies place significant burden on participants, even those who enthusiastically support the idea of caseload standards development. They must learn unfamiliar procedures, keep track of essentially everything they do during the day, and sit down each evening and input time and activity information into an online application. Regardless of how often participants are encouraged to maintain good habits and continue to faithfully record their time, a form of study fatigue can set in when what was once an interesting diversion from routine begins to seem like a never-ending chore. Given the voluntary nature of the data collection, we needed to “sell” the idea to the indigent defense bar not just by emphasizing how important it was, but by describing procedures that would require a relatively tolerable commitment, albeit a less than pleasant one. The fact that the overwhelming number of indigent defenders in the state were private attorneys rather than employees of a public defender office was also a consideration. We knew that we could personally reach out to the office supervisors in public defender offices to keep their staff focused on timekeeping for an extended period of time, but a similar channel of communication linking researchers with individual attorneys would not be possible when dealing with large numbers of private law firms. Based on these considerations, we felt that we would maximize the number of participants who consistently kept time throughout the entire study period if the project asked for no more than two months of effort. Eight weeks is roughly the average timekeeping period utilized in recent indigent defense time studies conducted on a voluntary basis.<sup>58</sup>

We also needed to decide whether to employ a task-based approach for producing maximum caseload standards. Under such an approach, attorneys participating in time sufficiency surveys and experts sitting on standards panels would be asked to recommend average time expenditures for various activities in cases within each case type category. For example, they might conclude that for a class B felony, an average of 15 minutes should be spent on client communication, two hours be spent for courtroom time, 30 minutes be spent for sentencing work, and so on for each of the case-related activity types defined by the project’s sponsor (during the design phase of this

---

<sup>58</sup> Of the six voluntary time studies described in Table 1.1, two were of a six-week duration, one was for seven weeks, one for eight weeks, and two were for 12 weeks.

study, the MIDC had originally proposed that time expenditures would be tracked by 12 different activity categories, though later these distinctions were collapsed into seven groups). The recommended average time expenditure for all class B felonies would be the sum of the individual recommendations at the activity task level. In order to properly inform those conclusions, any earlier time study would similarly need to report its findings on attorney time expenditures at the activity level. In contrast, a case-based approach would simply ask experts (and participants in the time sufficiency surveys) to provide recommended average total hours for cases within each case type category. And while time studies conducted within a case-based approach might also report how attorneys spent their time by various activity categories, the most important information produced from a time study for the benefit of the caseload standards process would be average total hours by case type.

We were concerned about basing the 2018 Michigan caseload maximum standards on activity-level information and ultimately decided against such an approach. One reason involved the time study, in which participating attorneys would be utilizing an unfamiliar timekeeping system over a relatively short eight-week period. We believed that they would be able to adequately report the amount of time they spent on a specific case on a specific day, but not so much in their ability to break up those workdays into much smaller blocks and consistently use the right activity code for each task performed for a client—plus consistently enter the right amount of minutes that were spent on those tasks. In addition, we know from our prior work with indigent defense timekeeping that many attorneys routinely submit their time entries based on nothing more than what they recall from memory as to what they did the day or even weeks before. Real-time reporting (defined here as completing a task and then immediately recording time and activity information for that task) is relatively rare, even when mobile timekeeping applications have been installed on attorneys' cell phones. Given the likely lag time between a specific service for a client and when it would be reported, we felt that memories could fade, leading to less accurate reporting of individual events. We had greater confidence in what the time study would report for an entire case in terms of total attorney time expenditures, however, which is the only information that a case-based approach requires.

The other basis for our decision involved how task-based approaches require that the recommendations of attorneys and experts be limited to individual activities within each of the study case types. We felt, for example, that it would be difficult for even a highly experienced attorney to come up with a meaningful recommendation for the average amount of attorney time that should be spent in a misdemeanor case for the proposed activity categories of “travel” or “other.” Moreover, we believed that utilizing highly granulated information about individual activities to build a complete picture of a workday is best accomplished when the subject of the study performs tasks in an environment that is generally characterized by structured, reliable schedules. The Federal Judicial Center's 2003–2004 study of case weights for federal district judges, for example, drilled down to the individual activity level to better understand what judges



do and how long it takes them to do it, and then used that information as building blocks for calculating overall time expenditures for different types of cases.<sup>59</sup> Estimates for time expenditures for some of those blocks used an expert consensus-building exercise similar to one we anticipated conducting for this project. But most judges have predictable schedules, they rarely leave the courthouse when discharging their case-related duties, and there is a relatively accurate log of what they did on any particular day that can be utilized for recalling specific activities (the minutes of the court, typically maintained by a clerk observing in-courtroom activity, essentially provides a road map to what happened). Some indigent defenders might also have preset days each week in which they are assigned to a courtroom, but the rest of their time is likely to be spent on a varied set of tasks in a varied set of locations. Indeed, it would not be impossible for an attorney to travel, conduct a witness interview, perform legal research, contact a client, and negotiate with a prosecutor all within the same hour. A task-based approach certainly has merit, but we felt that it would be most effectively employed when detailed timekeeping had become a routine business practice for indigent defenders and highly reliable time data would be the norm for any standards development effort. That was certainly not the case for the Michigan indigent defense community in 2018.

Another key decision involved whether to have the expert panel review the results of the time study and attorney survey *before* conducting their deliberations. Providing such information to decisionmakers undoubtedly runs the risk of anchoring bias, where judgments (such as estimates of the average amount of attorney time needed for effective representations) are excessively influenced by initial values presented to those decisionmakers (such as findings of a time study showing the average amount of attorney time currently spent on cases). Warning the decisionmakers about the potential for anchoring bias can be helpful in reducing its effect but will still not eliminate it entirely.<sup>60</sup> Advocates of embargoing the data collection results might argue that if experts deciding on necessary expenditures of time are presented with such data, they will produce estimates skewing inappropriately toward the anchors, which would be either information about current expenditures in a state where excessive caseloads are said to be rampant (leading to reduced time available for each client) or information about attorney opinions as to whether there is sufficient time available—when, in fact, such opinions are held by members of an indigent defense bar who are believed to have incorrectly assumed that what they have experienced each day in their overloaded practices is normal and appropriate.

Though anchoring bias was indeed a concern in our planning, we felt that the benefits of presenting what was known about attorney time expenditures to the decisionmakers outweighed the risks of bias. The NAC standards have been criticized as not evidence-based, and presumably

---

<sup>59</sup> Lombard and Krafka, 2005, pp. 10–12.

<sup>60</sup> See, e.g., Block and Harper, 1991.

the committee developing these caseload limitations in the early 1970s did so without benefit of empirical information collected from indigent defenders about how much time was then being spent on felonies, misdemeanors, and other case types and about whether these defenders felt that they had sufficient time to discharge their duties.<sup>61</sup> We believe that there is little reason to conduct expensive and highly intrusive time studies and attorney surveys if the sole use for doing so is to simply compare their results with standards that have already been recommended. That said, we did take some steps to address anchoring bias by, to some degree, having the experts record their own estimates of average attorney time and sufficiency before being formally presented with the data collection results. Armed with both their original estimates and with the data collection results they subsequently received, the experts then entered into the consensus phase of the work with as much relevant information as possible.

A similar research design question involved whether to display the results of the time study to the attorneys participating in the survey before they submitted their own time estimates. As was true for the expert panel, we chose to provide the results because we wanted the participants to make their decisions in light of the best information available regarding current practices.

### *Summary of Key Events*

At the start of the study, RAND researchers worked with the MIDC to gather as much information as was then available about Michigan indigent defense systems' caseloads and resources. A project plan was drafted for the MIDC's review and, once it was finalized, we consulted with RAND's institutional review board with the goal of adopting a practical and legally compliant approach for addressing individually identifiable information and other sensitive data.

The MIDC then formed the Project Advisory Group (PAG) of experts and stakeholders from across the state for consultation about our approach and to inform the indigent defense community as to how the ensuing work would be conducted. One important task facing the PAG was to define the set of case types that would be the focus of the time study, the attorney survey, and the caseload standard conference. The categories utilized during this project are set forth in Table 1.2.<sup>62</sup> It should be noted that the panelists at the September 2018 caseload standards conference modified the "criminal sexual conduct" (CSC) category definition slightly from that used in the two earlier data collection efforts (see Chapter 4), and the table reflects the effect of that change.

---

<sup>61</sup> Burkhart, 2017, p. 413, describing Lefstein and Spangenberg, 2009, p. 66 ("Because the NAC standards are 35 years old and were never empirically based, they should be viewed with considerable caution").

<sup>62</sup> The list of study case types developed initially by our PAG differed slightly from the descriptions noted in Table 1.2. The "murder or manslaughter" category was originally described by the PAG as "homicide (including felony murder)," and the "other class A offenses" category was originally described as "other class A offenses not involving felony murder or sexual assault." The original descriptions were used in the initial rollout of the time study but were later revised for the sake of clarity in light of questions posed to RAND by some participants during the initial weeks of the study. We do not believe that these changes had any meaningful effect on how participants self-categorized the cases they wished to track in the time study.

**Table 1.2. Case Type Classifications Used in the Standards Development**

<b>Case Type</b>	<b>Explanation</b>
Murder or manslaughter	All degrees
CSC	<i>Time study and attorney survey:</i> includes 1st degree (class A felony), 2nd degree (class C), 3rd degree (class C), and 4th degree (two-year high court misdemeanor). <i>Caseload standards conference (and final recommended standards):</i> includes 1st degree (class A felony), 2nd degree (class C), and 3rd degree (class C).
Other class A offenses	Excludes all types of murder/manslaughter and CSC cases that are class A. Punishable by up to life in prison. Examples: assault with a deadly weapon with intent to rob or steal, kidnapping.
Other high-severity felonies	Felony classes B, C, and D not listed above. Punishable by up to 20 (B), 15 (C), or ten (D) years. Examples: second-degree arson (B), human trafficking resulting in injury (C), larceny of property greater than or equal to \$20,000 (D).
Low-severity felonies and “two-year” high court misdemeanors	Includes felony classes E, F, G, and H, as well as certain types of misdemeanors that have a potential sentence of two years and are effectively treated as a type of felony. Punishable by up to five (E), four (F), or two (G and high court misdemeanors) years, or by various sentencing alternatives or jail time (H). Examples: carrying firearm with unlawful intent (E), intent to deliver less than 5 kilos of marijuana (F), passing bad checks more than \$500 (G), use of stolen state identification card to commit a felony (H), indecent exposure (high court misdemeanor).
“One-year” misdemeanors (potential sentences of over 93 days and up to one year)	Examples: larceny of property between \$200 and \$1,000, 2nd-degree shoplifting, intentional discharge of a firearm without intent to injure.
“93-day” misdemeanors (potential sentences of 93 days or less)	Examples: assault and battery, disturbing the peace, embezzlement of property or money valued at less than \$200.
Probation violations	Includes matters falling under Mich. Comp. Laws §§ 771.4, 771.4a, and 771.4b.
Other adult criminal indigent defense trial court–level matter	Does not include any case type already mentioned. Examples: extraditions, detainers, contempt proceedings.

The next step involved working with the MIDC to obtain important information about criminal case processing in the trial courts of the state of Michigan. Based on both what we learned about available statewide data and the fact that the MIDC had recently compiled a contact list of attorneys said to be accepting Michigan court appointments, we chose to target as many individual indigent defense attorneys as possible as the focus of our follow-on data collection efforts rather than selecting a small number of indigent defense systems as representative sites (a site-based approach was part of our original project place). The MIDC compiled its list in November 2017 from submissions by indigent defense systems across the state as part of other work the commission was conducting at the time.

As indicated previously, a time study of indigent defense attorneys was followed by an attorney survey (additional information about the time study and survey are described in Chapter 2 and Chapter 3, respectively). As these data collection efforts were being implemented, the MIDC put together a panel of experienced criminal defense attorneys who would eventually meet at a session designed to consider the data collection results and, in turn, recommend maximum annual caseloads for full-time attorneys handling various case types (see Chapter 4). A preliminary version of those recommended standards was submitted to the MIDC in October 2018.

This document submits the final recommended maximum caseloads and case weights to the MIDC to facilitate the commission's responsibilities in promulgating system-wide standards. At this point it will be up to the commission to decide how to utilize the recommended results in furtherance of its work.

## Organization of This Report

Chapter 2 summarizes the design and results of a time study conducted in the early summer of 2018. Chapter 3 summarizes the design and results of an attorney survey fielded in August 2018. Chapter 4 describes the September 13, 2018, caseload standards conference. Chapter 5 presents recommended maximum caseload standards for the commission's consideration. Appendix A presents the comments about aspects of Michigan indigent defense that were submitted by participants in the attorney survey. And finally, Appendix B lists comments that were shared by the panelists at the caseload standards conference during the group discussions.

## 2. Attorney Time Study

---

### The Indigent Attorney “Universe” in Michigan

As indicated earlier, it was jointly decided by RAND and the MIDC to direct our data collection efforts to all attorneys in the state of Michigan who had been identified by local indigent defense systems as accepting court appointments. The master list compiled by the MIDC and provided to RAND contained 2,160 entries, of which about 92 percent included the last known email address for the attorney (99 percent of the entries had a postal mailing address).

We decided to limit the invitation to participate in the time study to just those attorneys in the MIDC list with email addresses, primarily because we needed to get an array of instructional materials out to potential recipients early in the invitation cycle (each attorney’s decision to participate needed to be made in full realization of the considerable effort that would be required during the time study period). We were also concerned that the attorney entries lacking email addresses were less likely than others to have up-to-date contact information and therefore more likely to refer to individuals who were no longer accepting indigent appointments, no longer practicing law, or no longer receiving mail at those addresses.

Invitations for the time study went out to 1,979 attorney email addresses. We learned from the fielding of those invitations and subsequent follow-up communications that 44 addresses were faulty in some way (including blocked inboxes). Forty-nine invitees informed us that they were not currently accepting indigent criminal appointments for adult defendants in Michigan trial courts. The reasons for their decision varied markedly and included attorneys who had retired, had stopped taking appointments due to insufficient remuneration or other issues, were handling only probate appointments, were taking on only juvenile matters or appeals, were working for a federal defender office, had never practiced criminal law, had become a judge or a prosecutor, or had moved out of the state. Another 78 invited recipients indicated that they were not interested in participating in any of the data collections related to the MIDC caseload standards development. Usually, no reason was given, but some indicated that work pressures were a factor, while others were quite clear in expressing that they wanted nothing to do with the project. It should be noted that email domain names for some of those not providing a reason for their request to end any potential participation appeared to be associated with large corporations, suggesting that such individuals were not currently practicing criminal law. Finally, 81 of the invitees reported that while they would be unable to perform any timekeeping responsibilities as requested, they nevertheless wished to be notified when the follow-up attorney survey was fielded. All of these exclusions resulted in a core group of 1,727 email addresses for attorneys who never expressly declined to participate, and it was this group who received periodic requests

to take part in the time study. The number of attorneys who in fact did join the time study is reported later in this chapter.

Estimating the total number of attorneys who actually represented indigent clients in the criminal courts of Michigan at the time we distributed the invitations is problematic. The contact lists submitted to the MIDC by local indigent defense systems in November 2017 provide no information as to the number of representations handled by the listed attorneys at any single point in time or over the course of a year. Nor was there information about when each attorney was added to the rosters by the local system or when the last appointment took place. We know from the responses to the time study invitations that some on the list did not consider themselves active members of the indigent defense bar, and we cannot assume that all of the ones who never responded are currently representing indigent clients. Moreover, some on the list may receive an appointment only rarely, perhaps only when the attorneys who handle the bulk of the indigent caseload in the county or the court have conflicts, either ethical in nature or in regard to scheduling. Public defenders and contract counsel program attorneys are likely to have a relatively constant stream of appointments, compared with those in assigned counsel programs, but the lists do not indicate the type of indigent defense system each entry was associated with (we do know that about 80 attorneys work for the small number of public defender offices scattered around the state). For estimating purposes, we can assume that 2,100 represents an extreme upper bound for active indigent defenders, though it is certainly possible that perhaps one-quarter of the attorneys on the MIDC list do not currently represent adult indigent defendants in Michigan trial courts or do so only rarely (and thus 1,575 attorneys could be considered a possible lower bound for an estimate).

## Length of the Time Study

A threshold question for this project involved the period in which live data collection would be conducted. Ideally, time studies are of the continuous variety, in which subjects report their time expenditures on a daily basis and have been doing so long before the initiation of the caseload standards setting effort. That approach was not possible here. Nor could we design a data collection window wide enough within our anticipated project schedule so that nearly all of the cases being tracked would have been both initiated and disposed of during the time study. Michigan Supreme Court Administrative Order No. 2013-12, for example, indicates that “70% of all felony cases should be adjudicated within 91 days from the date of entry of the order binding the defendant over to the circuit court; 85% within 154 days; and 98% within 301 days.”<sup>63</sup> Assuming that local courts were actually meeting these guidelines, we would have needed to keep the data collection open for the better part of a year. Given the extremely tight timelines required in this work, and our sense that it was unlikely we could maintain a high level

---

<sup>63</sup> Michigan Supreme Court, Administrative Order No. 2013-12, 2013.

of compliance among participating attorneys for any appreciable length of time, we believed that eight weeks of data collection represented the widest practical window in which final results could be delivered in a timely manner for informing the subsequent time sufficiency study and the standards development. The data collection period opened on Monday, June 25, and closed on Sunday, August 19.

All time studies of limited duration run the risk of capturing information that may not be adequately representative of attorney hour expenditures within a system over the course of a year. One possible concern is that our recording period began during a time in which many schools are closed for the summer. It may well be, for example, that we had fewer relatively younger defenders participating than we might have with a different data collection period because these attorneys are more likely to take their families on vacation at this time than older (and possibly more experienced) members of the bar with children in high school or adulthood. Judges may well schedule their annual vacations during summer to take advantage of the weather, which in turn might cause courtrooms to go dark temporarily and reduce the proportion of time recorded for in-court events, such as hearings and trials. Other calendar-related scenarios that might adversely affect the generalizability of the results are certainly possible and should be considered by the reader when reviewing our findings.

## The Web-Based Timekeeping Application

### *Preliminary Matters*

Justice Works, a case management technology provider to public defender offices across the country, was our first choice to develop the timekeeping application necessary for this work. Justice Works also has considerable experience in assisting researchers with caseload standards development efforts, primarily in regard to timekeeping services. We believed that adapting its existing electronic timekeeping platform, one that can also be employed on handheld mobile devices, would provide the most convenient way for busy attorneys to track their time in 2018. Sole reliance on paper timekeeping forms or an approach that required the use of desktop computers was believed to increase the risk that work outside the office—such as court appearances and jailhouse interviews—would be missed (the overall costs of the data collection would be increased as well).

RAND and the MIDC worked with Justice Works to shape the data elements that would be collected by a modified version of the vendor’s existing “defenderData Prime” application. We felt that utilizing an existing interface already rolled out to indigent defender offices in many other jurisdictions, including federal defender organizations in every state, made more sense than designing something from scratch. Justice Works assured us that the timekeeping software would be accessible via all major desktop browsers, tablets, and smartphones. All server and system hosting would be provided out of the Justice Works data center, which eliminated the need for

the participating attorneys to maintain individual databases or address any technological issues from their end.

Justice Works used our attorney contact database to generate a unique user ID and a temporary password for all 1,979 initial invitees, as well as a unique URL for each attorney to be used whenever he or she logged on to the timekeeping site. We included these credentials and the web addresses in our initial time study announcements.<sup>64</sup>

### *Application Structure*

This section describes some of the basic features of the time study application we fielded. As originally designed, defenderData Prime is a very powerful case manager platform for defender organizations, with, for example, extensive capabilities for scheduling upcoming appearances, processing vouchers, note taking, and report production. In the interest of lessening the learning curve for participating attorneys, we asked Justice Works to remove a number of such tools we felt were unlikely to be utilized during the time study.

The first time an attorney who wished to participate logged on to the system, he or she would be taken to the *Attorney Information Screen* (Figure 2.1). That screen requested background information as to the number of years the attorney had practiced law generally and criminal defense specifically. This screen was also an opportunity for the attorney to provide an estimate of the total number of hours he or she typically worked each week. That total was broken out (either in the form of actual hours or percentages, whichever the participant preferred) by different types of indigent defense appointments, privately retained representations, and non-case-related time.

---

<sup>64</sup> The application user was required to change the temporary password when first logging on to the system at the start of the time study.



**Figure 2.1. Attorney Information Screen**

Home
 Refresh
 Save

Email Address:

Total years practicing:

Years practicing criminal law:

About how many hours do you work in a typical week (include all matters you represent, regardless of type, and include all hours worked, even if non case-related):

Of those hours, please give the approximate typical breakout by area:

	Average Hours Per Work Week	-or-	Average Percent of Work Week
<b>CASE-RELATED TIME</b>			
<b>(a) Indigent Defense Appointments</b>			
1. Adult criminal indigent defense cases in Michigan trial courts:	<input type="text"/>	-or-	<input type="text"/> %
2. Other criminal indigent defense cases (e.g., Michigan criminal appeals, juvenile matters, federal criminal appointments):	<input type="text"/>	-or-	<input type="text"/> %
3. Probate appointments:	<input type="text"/>	-or-	<input type="text"/> %
4. All other indigent appointments (e.g., family cases):	<input type="text"/>	-or-	<input type="text"/> %
<b>(b) Privately Retained Representations</b>			
1. Adult criminal defense cases in Michigan trial courts:	<input type="text"/>	-or-	<input type="text"/> %
2. Other criminal defense cases (e.g., Michigan criminal appeals, juvenile matters, federal criminal matters):	<input type="text"/>	-or-	<input type="text"/> %
3. Probate cases:	<input type="text"/>	-or-	<input type="text"/> %
4. Civil cases:	<input type="text"/>	-or-	<input type="text"/> %
5. All other privately retained representations:	<input type="text"/>	-or-	<input type="text"/> %
<b>NON-CASE-RELATED TIME</b>			
All other time not spent related to direct casework (reading advance sheets, professional development, admin. tasks, supervising non-case-related work of others, timekeeping, etc.)	<input type="text"/>	-or-	<input type="text"/> %

Please make sure that the total hours entered in this section equal your response to the question "About how many hours do you work in a typical week?" above -OR- that the percentages entered above add up to 100%

After completing the *Attorney Information Page* during his or her initial use of the online application, the participant would always be taken to the *Home Page* (Figure 2.2) when subsequently logging in, as this was the primary portal to all of the features available on the timekeeping platform.

**Figure 2.2. Time Study Home Page**

<div> <div>Home Refresh Search New Case Options Sign Out</div> <div>Recent Clients Time Entries</div> </div>					
My Clients			Nick Pace		
Accessed			hrs		
Taft, Billy H			06/14/2018 3LD		
30CA			Taft, Billy H - CR-2016-3234 (Open/Active Case)		
Pace, Nick			06/17/2018 SCT		
Open/Active			Taft, Billy H - CR-2016-3234 (Open/Active Case)		
Taft, Billy H			05/30/2018 2DI		
7M93			Taft, Billy H - CR-2016-3234 (Open/Active Case)		
Pace, Nick			04/10/2018 7OT		
Open/Active			Taft, Billy H - CR-2016-3234 (Open/Active Case)		
Kennedy, Jack			04/01/2018 SCT		
5LSE			Taft, Billy H - CR-135 (Open/Active Case)		
Pace, Nick			03/05/2018 3LD		
Open/Active			Taft, Billy H - CR-135 (Open/Active Case)		
Bush, Georgie W.			05/02/2018 2DI		
8PV			Nixon, Dick - HF-1234-A(SC) (Open/Active Case)		
Pace, Nick			02/05/2018 4PP		
Open/Active			Nixon, Dick - HF-1234-A(SC) (Open/Active Case)		
Nixon, Dick			04/03/2012 4PP		
4OHF			Bush, Georgie W. - KL-123 (Open/Active Case)		
Pace, Nick			05/03/2018 2DI		
Open/Active			Bush, Georgie W. - KL-123 (Open/Active Case)		
Open			06/01/2018 SCT		
			Bush, Georgie W. - KL-123 (Open/Active Case)		
			06/02/2018 2DI		
			Bush, Georgie W. - KL-123 (Open/Active Case)		
			06/18/2018 7OT		
			Taft, Billy H - CR-135 (Open/Active Case)		
			03/02/2018 3LD		
			Kennedy, Jack - MD-235 (Open/Active Case)		
Reports					

Before being able to track any time in regard to a specific case, the participating attorney would need to register that case with the application. Once some summary information about the case, such as the case number, case type (from the nine study types), date the attorney (or office) was originally appointed, and court location, was entered into the *Client Screen* (Figure 2.3), as well as the type of appointment, the attorney would be able to easily access that case when entering information about time expenditures.

**Figure 2.3. Client Screen—Opening a New Case**

<div> <div>Home Refresh Search New Case Save</div> <div>Case Information</div> </div>			
<div>Bertie Hoover</div> <div></div>		Case ID:	
<div>Case Information</div> <div>Case Number: <input type="text"/></div> <div>Case Type: <input type="text"/></div>		<div>Attorney</div> <div>Name: <input type="text" value="Pace, Nick"/></div> <div>Appt. Type: <input type="text"/></div> <div><input type="checkbox"/> I am NOT the lead attorney on this case; my role is generally limited to assisting, advising, supervising, or consulting with the cases lead attorney</div>	
<div>Court Information</div> <div>Court: <input type="text"/></div>		<div>Case Status</div> <div>Opened: <input type="text" value="06/19/2018"/></div> <div>Status: <input type="text" value="Open/Active"/></div>	

It should be noted that our original plan contemplated reaching out to indigent defense systems across the state before the start of the time study to obtain extracts from their CMSs for the purpose of prepopulating the Justice Works application with information about existing representations. Doing so would have allowed participating attorneys to simply call up cases from the system and enter time information immediately, beginning on the very first day of the study, dispensing with the need for them to first enter and save a new case record as described above. Though new cases would have to be opened up eventually as attorneys received new appointments during the time study period, having a reservoir of existing cases in the system would have been a significant time saver for participants, especially during the early weeks of the time study. Unfortunately, there are about 134 separate indigent defense systems in the state, each operating more or less independently, with wide variation in case management systems, practices, and policies. It would have been impractical (and not particularly successful, we believe) to request uniform data extracts from those CMSs in time for the launch of the time study.

To enter time and activity information, the attorney accessed the *Client Screen* and, after selecting the case to report on and clicking on the time entry tab (Figure 2.4), he or she could then indicate what type of activity took place, the date the activity occurred, and the amount of time (in hours and minutes) that elapsed.

**Figure 2.4. Client Screen—Entering Time and Activity Information**

The screenshot displays the 'Client Screen' interface. On the left, a sidebar shows the user 'Bertie Hoover' and a list of cases. The selected case is 'DC-78453 (HK)' with a date of '12/12/2017' and a status of 'Open/Active Case'. The main area shows a table with columns: 'Date', 'Task Code', 'Hrs.Mins', and 'Another attorney from your program worked with you'. A single entry is visible for '06/03/2018' with a task code of '3LD' and a duration of '01:05'. The total time entered is '01:05'. At the bottom, there are tabs for 'Case' and 'Time'.

Date	Task Code	Hrs.Mins	Another attorney from your program worked with you
06/03/2018	3LD	01:05	
Total:		01:05	

Time entries could also be made for multiple cases at one time using the *Multicase Timesheet Screen* (Figure 2.5). Case selection was facilitated by a feature that allowed an attorney to begin typing the client's first, middle, or last name or the case number, and, as characters were entered, a dropdown box would display possible matches.

**Figure 2.5. Multicase Timesheet Screen**

<div> <div>Home Refresh Recent Entries Select Dates Save New Delete Print</div> <div>Help</div> </div>					
Date	Case	Task Code	Hrs:Mins	Check box below if another attorney from your program worked with you on this specific activity	
06/02/2018	Bush, George W. - PV-18-0001 (Closed)	2DI	00:54	<input type="checkbox"/>	
06/03/2018	Hoover, Bertie - 4OHF-17-0002 (Open)	3LD	01:05	<input type="checkbox"/>	
06/04/2018	Bush, George W. - PV-18-0001 (Closed)	3LD	00:25	<input type="checkbox"/>	
06/05/2018	Kennedy, Jack - LSF-18-0002 (Open/Ar)	3LD	00:55	<input type="checkbox"/>	
06/05/2018	Kennedy, Jack - 2CSC-18-0003 (Open/Ar)	3LD	00:55	<input type="checkbox"/>	
06/13/2018	Kennedy, Jack - 2CSC-18-0003 (Open/Ar)	3LD	08:30	<input type="checkbox"/>	
06/14/2018	Taft, Billy H - LSF-18-0001 (Open/Activ)	3LD	00:12	<input type="checkbox"/>	
06/14/2018	Ruthie, B Hayes - 8PV-18-0002 (Open/Ar)	3LD	01:05	<input type="checkbox"/>	
06/17/2018	Taft, Billy H - LSF-18-0001 (Open/Activ)	5CT	01:33	<input type="checkbox"/>	
06/17/2018	Hoover, Bertie - 4OHF-17-0002 (Open/Ar)	1CC	00:34	<input checked="" type="checkbox"/>	
06/17/2018	Nixon, Dick - OHF-17-0001 (Open/Activ)	5CT	00:30	<input type="checkbox"/>	
06/17/2018	Nixon, Patty - 5LSF-18-0003 (Open/Activ)	1CC	00:30	<input type="checkbox"/>	
06/18/2018	Taft, Billy H - M93-18-0001 (Open/Activ)	7OT	01:29	<input type="checkbox"/>	
06/19/2018	Taft, Billy H - M93-18-0001 (Open/Activ)	3LD	01:20	<input type="checkbox"/>	
06/19/2018	Nixon, Dick - 2CSC-18-0002 (Open/Activ)	6TR	01:09	<input type="checkbox"/>	
06/20/2018	Nixon, Patty - 5LSF-18-0004 (Open/Activ)	4PP	02:30	<input type="checkbox"/>	
06/20/2018	Nixon, Patty - 5LSF-18-0003 (Open/Activ)	4PP	00:35	<input type="checkbox"/>	
Total:			24:11		

The task dropdown boxes shown in Figure 2.4 and Figure 2.5 were also an important aspect of the application's design. The options available to the attorney are set forth in Table 2.1. The categories and explanations were developed by the PAG.

When a case was concluded during the time study (such as by an acquittal at trial), the attorney accessed the *Client Screen* again to provide some information about when it ended and the manner of its disposition (Figure 2.6). The date of disposition and the broad category of the method in which the case concluded (Table 2.2) were recorded. When the time study period ended, attorneys were asked to revisit the application and call up all of their cases that had not already been flagged as concluded. If the case was still pending as of the end of the collection period, they indicated as much in the disposition type field.

**Table 2.1. Activity Description Options**

Description	Explanation
Client communication	<ul style="list-style-type: none"> <li>Any direct communication with clients, including in-person visits in jails, prisons, or holding facilities; can also be by phone, letter, email, or video.</li> <li>If client is in custody, this includes all waiting time in the facility, including going through security and waiting to see client.</li> <li>Includes meetings with clients in court.</li> </ul>
Discovery review or independent investigation	<ul style="list-style-type: none"> <li>Reviewing discovery in whatever form provided.</li> <li>Requesting and reviewing other records received through independent investigation, including public data, treatment, criminal history, adoption, and HHS or CPS.</li> <li>Drafting discovery and independent investigation requests and memos of review of information received.</li> <li>Other active independent investigation, including research and identification of potential witnesses; correspondence with and interviews of lay witnesses, consulting and testifying experts, and other third parties.</li> <li>Any additional communication with anyone other than clients for the purposes of discovery review and independent investigation.</li> </ul>
Legal research or drafting and review of court documents	<ul style="list-style-type: none"> <li>Researching legal issues and questions relevant to case.</li> <li>Reviewing statutes, case law, court rules, or other legal authority relevant to case.</li> <li>Drafting, editing, reviewing, and filing legal documents, including motions, briefs, stipulations, subpoenas, witness lists, notices, and legal memoranda.</li> <li>Any communication with anyone other than clients for the purposes of legal research or drafting and review of court documents.</li> </ul>
Plea negotiations or preparation for motion hearings, trials, and sentencings	<ul style="list-style-type: none"> <li>Negotiation with prosecutors that occurs outside court.</li> <li>Preparation for an appearance in court, including reviewing motions, briefs and exhibits, and other court file documents.</li> <li>Preparing outlines or notes for argument.</li> <li>Practice arguments, moot courts.</li> <li>Witness preparation.</li> <li>Any additional communication with anyone other than clients for the purposes of plea negotiation or preparation for hearings, trials, and sentencings.</li> </ul>
Court time	<ul style="list-style-type: none"> <li>Time spent in court for hearings and court-ordered conferences or meetings, including waiting time.</li> <li>Attending presentence interviews.</li> </ul>
Travel	<ul style="list-style-type: none"> <li>All case-related travel, including to/from court, visits with clients, other case-related meetings, research, or investigation events.</li> </ul>
Other	<ul style="list-style-type: none"> <li>Any other case-specific activity, such as clerical work, media requests, property retrieval, postsentence/appeals advice, open/closing of cases, and supervision.</li> </ul>

NOTE: CPS = Child Protective Services; HHS = U.S. Department of Health and Human Services.

**Figure 2.6. Client Screen—Entering Disposition Information**

**Table 2.2. Disposition Type Options**

Manner of Disposition	Explanation
Pending matter (as of time study conclusion)	The case was still open as of the end of the time study at 11:59 p.m. on Sunday, August 19.
Representation ended before resolution	The attorney appointed to represent the indigent defendant withdrew from the case prior to the resolution of the client's legal issues (for example, the client hired private counsel).
Resolution	The case was resolved, and the attorney's representation ended (for example, the client was sentenced).
Other type of outcome (not described above)	Another outcome not described above occurred before the end of the time study.

## Participation

A key concern at the outset was the likely level of attorney participation given the voluntary nature of the time study. One initial step to address that concern was to have the MIDC's staff reach out to the known contacts for each of the indigent defense systems in the state to announce the launch of the caseload standards data collection efforts and request that attorneys operating within those systems be encouraged to participate. Similar communications were sent by the MIDC to various bar association and stakeholder groups. RAND was responsible for direct contacts with the attorneys listed on the MIDC's indigent defense roster, and a series of emails provided advance notice of the pending time study. Our initial contacts included a letter from the MIDC's executive director attesting to the importance of the work. Emails directly related to the time study contained both an abbreviated "quick start" guide and more-detailed instructions, and a website was set up under the MIDC domain to provide additional information if desired. Reminder emails with updated instructions and corrections were regularly sent to attorney contacts who had not informed us that they were ineligible or unwilling to perform timekeeping duties. Staff at both RAND and Justice Works attempted to promptly respond to any end-user problems throughout the course of the time study.

Based on our past experience in fielding attorney surveys and time studies and informed by similar experiences of other justice system researchers in this field, we expected a relatively low participation rate, in which the pool of volunteers would skew heavily toward those working at public defender offices and larger private law firms. The commitment required to track time for eight weeks is not trivial, and attorneys representing indigent defendants typically lack a considerable amount of spare time at the end of the workday to painstakingly enter hours and activity codes. While attorneys across Michigan might have been generally sympathetic to the need to limit workloads to ensure that clients receive effective and adequate representation, an invitation to take on the burden of timekeeping for such a long period of time (particularly when time tracking is not the norm for indigent defenders unless already compensated on an hourly basis) will have reduced impact coming from a research organization in California that they may have never heard of or from a government agency in Lansing that does not sign their paychecks or compensate them directly for their appointments.

A far more effective means for increasing voluntary participation rates is for organization managers to directly encourage staff to sign up. The fact that the nonmandatory request is coming from someone within the organization who knows firsthand about competing demands on time carries great weight with staff members, and such a person is in the best position to explain the importance of the data collection to the future of the organization and its clients. This sort of gentle pressure is most likely to be available in public defender offices (and, to some degree, in relatively larger private law firms), and such encouragement signals that management considers participation to be a legitimate part of one's job. Attorneys working in assigned counsel or contract counsel programs (and especially those in smaller firms), on the other hand, may perceive every minute spent timekeeping as essentially a form of lost income or missed time with family and friends.

It was, therefore, not a surprise that when the time study was concluded, the data extract we received from Justice Works revealed that 4,816 cases were tracked during the time study by just 78 volunteer attorneys, of whom most were public defenders (Table 2.3). Even if we use the previously discussed low-side estimate for the number of active members of the indigent defense bar (1,575), our overall response rate would be only about 5 percent.

**Table 2.3. Time Study Participation and Case Distribution: Attorney Type**

<b>Appointment Type</b>	<b>Percentage of Participating Attorneys</b>	<b>Percentage of Reported Cases</b>
Public defender	73.2	89.4
Contract or assigned counsel program	23.9	10.3
Other means for appointment	2.8	0.3

NOTE: *N* = 4,816 cases, 71 lead attorneys (some participating attorneys were not indicated as the lead attorney for any time study case). Columns may not sum to 100 percent due to rounding.

It was also clear that the time study results would be heavily influenced by the experiences of attorneys located in the western and southeastern regions of the state (Table 2.4).

**Table 2.4. Time Study Participation and Case Distribution: Attorney Location**

Region	Percentage of Participating Attorneys	Percentage of Reported Cases
Mid-Michigan—Flint/Tri-Cities	8.4	10.3
Mid-Michigan—Lansing area	1.4	0.3
Mid-Michigan—the Thumb	2.8	0.3
Northern Lower Peninsula	5.6	2.9
Southeast—Detroit metro	33.8	13.7
Southeast—other Southeast	19.7	29.7
Southwest	1.4	2.4
Upper Peninsula	7.0	8.3
Western	19.7	32.1

NOTE: *N* = 4,816 cases, 71 lead attorneys (some participating attorneys were not indicated as the lead attorney for any time study case). Columns may not sum to 100 percent due to rounding.

Time study participants were experienced practitioners, reporting a mean of 16.8 years (15 years median) practicing criminal law. They also indicated that they were working a mean of 46 hours each week (45 hours median), though a quarter (the 75th percentile) reported 50 or more hours worked and 10 percent (the 90th percentile) reported 60 or more hours.

Despite the disproportionate contribution of public defenders, the concentration of participating attorneys in two regions of the state, and the low overall response rate, we believe that the time study results do help describe the current landscape of indigent defense in Michigan, especially for those attorneys with relatively high numbers of appointments (as described in the next chapter, public defenders report that they handle significantly more indigent defense cases annually than private counsel). We are not aware of any other contemporary effort to track indigent defender time expenditures in multiple locations across the state, and, therefore, the information collected from the nearly 5,000 cases represents the best available benchmark for assessing what such attorneys were doing in 2018 and the types of cases that they were handling. It should be kept in mind that the time study was just one aspect of the overall caseload standards development, despite the time and expense required to administer the timekeeping exercise, and despite the considerable and much-appreciated effort on the part of the attorneys who so generously volunteered to help.

## Estimating Unobserved Time Expenditures

If our only goal was to present a snapshot of what indigent defense attorneys do and the types of cases they work on during a specific time span, the raw results of the time study would be sufficient. But we needed to be able to describe average time expenditures for specific types of



cases over their lifetime, and, as described previously, criminal cases can take far longer than eight weeks to move from initiation to final disposition.

There were four possible scenarios for cases tracked in the time study regarding initiation and disposition: (1) the case will have started and finished within the data collection period, (2) the case started before launch but finished during the collection, (3) the case started during the collection but was pending at the end, and (4) the case started before the collection and was pending at the end (Table 2.5). As a result, we had at least some incomplete time expenditure information for cases falling under scenarios 2, 3, and 4, and so the total amount of attorney time required for such cases had to be imputed.

**Table 2.5. Time Study Case Span**

<b>Scenario</b>	<b>Percentage of Time Study Cases</b>
1: Started and ended within study period	15.8
2: Started before launch but finished during study period	21.9
3: Started during study period but was pending at the end	32.4
4: Started before launch and was pending at the end	29.9
NOTE: <i>N</i> = 4,816.	

We examined a number of possible solutions to this problem, but the most desirable approaches required reliable information about attorney time expenditures over the lives of cases similar to those in our time study. The only cases in which we had complete information were the matters that started and ended during the study period (cases of such brevity were likely to be dissimilar to much more complex matters that take many months to resolve), and, as far as could be determined, no similar time study of criminal cases across Michigan had been performed. Absent tallying large number of assigned counsel program voucher records by hand, which was beyond the resources and time frame of this study, such information was not available to us.

Another option would be to utilize imputation methods that closely compare the cases reported on during the time study with the far larger population of indigent defense cases in Michigan generally. Regression analysis might have been able to help us estimate unobserved attorney time by matching up cases on various characteristics, such as the type of attorney (e.g., assigned counsel), whether a trial had begun, the number of separate charges and counts alleged by the prosecution, and the outcome of the cases. But our early research indicated that such detailed information was not only unavailable for indigent defense cases specifically, but it was also unavailable for Michigan criminal cases generally. Indeed, we were unsuccessful in obtaining relatively simple information regarding the mean and median number of days that criminal cases in each of the various categories utilized for the time study remain open in Michigan trial-level courts.

We chose instead a relatively simple approach that we felt would provide reasonable estimates of time expenditures in the aggregate for time study cases, even if its application in any specific case would be misleading. The underlying assumption was that time expenditures we observed during the time study in cases of similar type would have occurred at the same rate before the start of the study period in those cases that were already open when the data collection began, and would continue at the same rate after the end in those cases that were pending when the data collection period came to a close. Obviously, that would not be true in real life, but given that we had some cases with a flurry of activity during our eight-week window, while others within the same case type were ticking along in relative quiet, the average across them all would provide a useful indication of the total.<sup>65</sup> But to be able to extrapolate our observed hours in this manner, we needed to know how long a time study case was open during its entire life span.

For those cases that terminated during the time study (scenarios 1 and 2), this value is known because participating attorneys reported the original day the case was assigned to them or their office. But for cases that were pending at the end of the time study (scenarios 3 and 4), we needed a reliable means of calculating average case life. As mentioned previously, this information was not available from the state court system. But there was a source readily available to us, one that would allow us to conduct necessary analyses without relying on external parties for data: the time study cases in scenarios 1 and 2. As indicated in Table 2.5, such cases represented about 38 percent of all time study cases and provide accurate information about time to disposition for adult criminal defense appointments in the state.

We used scenario 1 and 2 cases to calculate median days from appointment to disposition for cases that remained open past different time periods. In addition to calculating median days to disposition for all scenario 1 and 2 cases, we calculated similar medians for cases that were open for at least three days, for cases open for at least ten days, and so on for additional minimum thresholds (at least 17 days, at least 24 days, at least 31 days, etc.), with a final threshold of at least 1,200 days open.<sup>66</sup>

The expected life of a scenario 3 or 4 case that was pending as of 11:59 p.m. on Sunday, August 19 (the end of data collection), was estimated using the median associated with the number of days the case was known to have been open. Thus, a case open for 54 days from

---

<sup>65</sup> For an example of a similar approach to estimating average attorney time expenditures for cases starting or ending outside of a time study, see Appendix C in Public Policy Research Institute, 2015.

<sup>66</sup> These median values were calculated on a version of the time study data that was somewhat larger than reported in Table 2.5. Many cases were manually logged into the timekeeping system by attorneys who, quite admirably we believe, wanted to be prepared for the moment that they would actually need to open the application and record their hours for those cases, though that need never arose (e.g., the case ended without any further effort on the part of the indigent defense attorney, as would be true if the client hired his or her own counsel). While such cases lacked any attorney time information, they did contain both the opening date and the disposition date, which is what we needed for the “days open” analysis. These cases were not included in the data set used to calculate average total time expenditures.

assignment to the close of the data collection was given an estimated life span based on the median number of days (102) we calculated for scenario 1 and 2 cases that remained open past the 52-day-or-more threshold.

It should be noted that our original intent was to use scenario 1 and 2 cases to calculate median open days within each of the nine case types, but because some of the categories had relatively few scenario 1 and 2 cases tracked by the time study (thus leading to greater uncertainty when using the median values for imputation), it made more sense to use all case types taken together. We recommend that, should the MIDC conduct a similar time study in the future, it first take steps to work with state court administrators to produce an extract from CMSs in local courts, allowing for a more sophisticated approach for imputation (at a minimum, sufficient numbers of comparison cases are needed to help calculate open days at the case type and regional level).

We then calculated two values for every time study case: (1) “recording days,” or the number of days in which it was active within the time study data collection period (i.e., the number of days that a participating attorney would be able to enter time information), and (2) “total open days,” which was either the actual number of days the case was active or an estimate based on median days open for scenario 1 and 2 cases. These values were calculated as follows:

1. For time study cases that both started and ended within the data collection period:
  - a. recording days = disposition date – assignment date + 1
  - b. total open days = disposition date – assignment date + 1
2. For time study cases that started before the data collection period but ended within the data collection period:
  - a. recording days = disposition date – first day of data collection + 1
  - b. total open days = disposition date – assignment date + 1
3. For time study cases that started within the data collection period but were pending at the end:
  - a. recording days = last day of data collection – assignment date + 1
  - b. total open days = our estimate based on the number of known active days as described above
4. For time study cases that started prior to the data collection period but were pending at the end:
  - a. recording days = last day of data collection – first day of data collection + 1
  - b. total open days = our estimate based on the number of known active days as described above.

For all of these scenarios, imputed total hours based on estimated or actual total open days were calculated as follows:<sup>67</sup>

$$\text{Imputed total hours} = \text{actual hours recorded} \times (\text{total open days} \div \text{recording days})$$

It should be remembered that the sole purpose of imputing total hours for each of the scenario 2, 3, and 4 cases was to facilitate the calculation of mean attorney hours per case within each of the study case types, and not to estimate the amount of attorney time spent in any specific case. Though the method we chose for imputation at the case type level was felt to be a reasonable one given the minimal information available to us regarding attorney time expenditures and court processing in Michigan adult criminal cases, more-sophisticated approaches using more-comprehensive information would have yielded more-accurate results. All time studies of limited duration face similar challenges in estimating unobserved time expenditures, and the results of our time study should be viewed simply as approximations of average attorney time rather than precise reflections of reality. We recommend that, until regular timekeeping becomes widespread among indigent defense providers across the state, the MIDC take steps to work with local indigent defense systems and the Michigan courts to track appointments more closely and report how they progress using the case type categories adopted for this standards effort. Doing so will enhance the utility of any future temporary time studies should they be needed for understanding how the world of Michigan indigent defense might be changing and for updating whatever standards are adopted at this time.

We then calculated mean and median hours for each of the nine study case types, using a mild form of Winsorization to address outliers in which total hours for each case were capped at the 99th percentile for all cases within the same case type.

## Results

### *Average Attorney Hours by Case Type*

#### Time Study Cases

Mean hours for attorney time expenditures in the cases included in the time study are described in Table 2.6.

---

<sup>67</sup> For scenario 1 cases, imputed hours and actual hours are the same because total open days and recording days are the same.

**Table 2.6. Case-Level Time Study Results**

<b>Case Type</b>	<b>Cases in Time Study</b>	<b>Estimated Mean Attorney Hours</b>
Murder or manslaughter	22	69.5
CSC	67	19.8
Other class A offenses	66	20.3
Other high-severity felonies	438	9.0
Low-severity felonies and two-year high court misdemeanors	1,423	6.9
One-year misdemeanors	737	3.6
93-day misdemeanors	1,505	2.7
Probation violations	426	2.9
Other adult criminal indigent defense trial court-level matter	132	3.1

### Comparison with Berrien County

Assessing whether the values in Table 2.6 accurately reflect reality is problematic because no similar time study of criminal defense attorneys across Michigan is available. That said, we do have a source for average time expenditures that can be used as a comparison, albeit one that is specific to a single location and delivery system. The Berrien County Public Defender’s Office is a relatively new organization, opening its doors in January 2017. The system put into place at the time might be thought of as a “hybrid” indigent defense model, one in which the chief public defender is responsible for assigning new indigent defense cases both to attorneys in the Public Defender’s Office and to private attorneys on a contract plan (typically misdemeanors) or an assigned counsel plan (typically as the result of conflicts or workload issues). A policy was adopted from the very beginning in which all appointed attorneys in all cases administered by the Public Defender’s Office would be required to track their time expenditures throughout the life of a case, allocating such time to one of three different categories (client communication, preparation time, and court time), and entering the totals for the case into the office’s CMS when the case was closed from the standpoint of the indigent defender. Thus, the office would have information on attorney time expenditures for essentially all criminal matters prosecuted in the county that involved an indigent defendant, regardless of whether the client was one represented by a public defender or by private counsel.

We learned of this practice before the launch of the time study and decided that the Berrien County data could serve as a cross-check on our calculated case type averages. We reached an agreement with the office wherein RAND would be provided with an extract of its CMS data conforming to our needs, and, in exchange, the office’s employees would not have to participate in the time study, primarily to avoid asking attorneys to track their time using two separate timekeeping systems for two separate purposes.

We asked for and received an extract in mid-August that included all of the indigent defense cases closed in the prior six months by the public defenders and private attorneys. The extract

contained detailed information about the nature of the case, so we had a member of the MIDC’s legal staff translate the individual charges into one of the nine case type categories used for our study. We were warned by the Public Defender’s Office that the Berrien County extract would contain fewer murder or manslaughter and CSC cases than might be expected, due to an unusual number of such cases that were still pending at the time of the extract (unlike the time study, where we used pending cases in our analysis, only closed cases in the Berrien County data contain time expenditure information). After data processing on our end, we generated average attorney hour values for each of the nine study case types.

As can be seen in Table 2.7, the mean hours for Berrien County attorneys in category 1 (murder or manslaughter) and 2 (CSC) cases differ markedly from the time study results. But for the other categories in the table, the Berrien County data and the time study set share similarities, though time study values are somewhat larger.

**Table 2.7. Berrien County Assignments: Cases Closed from March to August 2018**

Case Type	Analysis Cases Closed	Mean Attorney Hours	Time Study Results
Murder or manslaughter	2	145.5	69.5
CSC	21	8.25	19.8
Other class A offenses	10	19.8	20.3
Other high-severity felonies	193	6.8	9.0
Low-severity felonies and two-year high court misdemeanors	548	4.5	6.9
One-year misdemeanors	368	1.5	3.6
93-day misdemeanors	506	1.6	2.7
Probation violations	287	1.9	2.9
Other adult criminal indigent defense trial court–level matter	16	2.0	3.1

## Other Jurisdictions

How do these numbers compare with the results of similar research in other states? While cross-jurisdictional comparisons are risky due to different legal standards and different local legal environments, estimated hours for Michigan misdemeanors (Table 2.8) are somewhat on the low side of a range informed by research involving statewide public defender services in Missouri<sup>68</sup> and North Carolina,<sup>69</sup> a mix of public defender and private counsel providers in

<sup>68</sup> RubinBrown, 2014, at p. 15.

<sup>69</sup> Lee, Hamblin, and Via, 2019, at p. 12.

Massachusetts<sup>70</sup> and New York (five counties only),<sup>71</sup> and two indigent defender providers in Brooklyn.<sup>72</sup> However, average estimated hours for different types of Michigan felony cases are generally similar to what has been reported elsewhere (Table 2.9).

**Table 2.8. Estimated Attorney Time Expenditures for Misdemeanor Cases**

<b>Program</b>	<b>Case Type</b>	<b>Estimated Mean Attorney Hours</b>
North Carolina public defenders	Misdemeanors (including traffic)	2.1
Missouri public defenders	Misdemeanors	2.3
<b>Michigan</b>	<b>93-day misdemeanors</b>	<b>2.7</b>
<b>Michigan</b>	<b>One-year misdemeanors</b>	<b>3.6</b>
Brooklyn Legal Aid Society & Brooklyn Defender Services	Misdemeanors	5.0
New York (five counties)	Criminal misdemeanors	7.0
Massachusetts	District Court misdemeanors	12.0

<sup>70</sup> Labriola and Hopkins, 2014, at p. 18.

<sup>71</sup> Pace et al., 2016, at p. 30.

<sup>72</sup> Labriola et al., 2015, at p. 32.

**Table 2.9. Estimated Attorney Time Expenditures for Felony Cases**

<b>Program</b>	<b>Case Type</b>	<b>Estimated Mean Attorney Hours</b>
Missouri public defenders	C/D felonies	4.4
North Carolina public defenders	G, H, and I felonies	5.3
<b>Michigan</b>	<b>Low-severity felonies and two-year high court misdemeanors</b>	<b>6.9</b>
Missouri public defenders	A/B felonies	8.7
<b>Michigan</b>	<b>Other high-severity felonies</b>	<b>9.0</b>
New York (five counties)	Criminal other felonies	12.7
North Carolina public defenders	Felony C, D, E, and F	12.7
Massachusetts	District Court concurrent, non-265 felonies	12.8
Brooklyn Legal Aid Society & Brooklyn Defender Services	Unindicted felonies	16.0
Massachusetts	District Court concurrent, 265 felonies	16.2
New York (five counties)	Criminal violent felonies	19.2
<b>Michigan</b>	<b>CSC</b>	<b>19.8</b>
<b>Michigan</b>	<b>Other Class A felonies</b>	<b>20.3</b>
Missouri public defenders	Sex felonies	25.6
Massachusetts	Superior Court nonconcurrent, non-265 felonies	29.7
Brooklyn Legal Aid Society & Brooklyn Defender Services	Indicted nonviolent felonies	35.0
North Carolina public defenders	Felony A, B1, and B2	42.0
Massachusetts	Superior Court nonconcurrent, 265 felonies	54.6
Brooklyn Legal Aid Society & Brooklyn Defender Services	Indicted violent felonies	67.0
<b>Michigan</b>	<b>Murder or manslaughter</b>	<b>69.5</b>
Missouri public defenders	Murder/homicide	84.5
North Carolina public defenders	1st-degree murder (including capital)	103.8

### *Activities*

Individual time entries made with the Justice Works application also required the participating attorney to indicate the type of activity undertaken. Our primary interest here is how indigent defender time is spent generally, so we use the information to understand only what attorneys did during the eight-week study period, rather than examining the distribution of activities over the known and estimated total life span of all time study cases.

As our time study data are heavily skewed toward the contributions of public defenders, it might be useful to consider the distribution of activities by the appointment mechanism to see whether there are any significant differences between the attorney categories (Table 2.10). One striking difference is the proportion of time spent by contract and assigned counsel for travel,



perhaps reflecting the fact that each of the eight public defender offices primarily serves a single location, while the members of the private bar might have cases spread across multiple counties.

**Table 2.10. Percentage of Recorded Case-Related Time Spent, by Activity**

<b>Activity Type</b>	<b>Public Defenders</b>	<b>Contract or Assigned Counsel</b>	<b>All Attorneys</b>
Client communication	27.6	22.8	26.9
Discovery review or independent investigation	11.1	8.2	10.7
Legal research or drafting and review of court documents	6.2	12.5	7.2
Plea negotiations or preparation for motion hearings, trials, and sentencings	16.0	5.9	14.5
Court time	35.1	31.3	34.5
Travel	1.2	15.2	3.3
Other	2.8	4.0	3.0

NOTE: *N* = 4,816 cases and 8,645 hours for all attorneys, 4,305 cases and 7,344 hours for public defenders, and 511 cases and 407 hours for contract or assigned counsel program attorneys.

### 3. Attorney Survey

---

#### Approach

##### *Overview*

Though the time study was intended to take a snapshot of current time expenditures for indigent criminal defense, its findings describe only what *is*, not what *ought to be*. To obtain insight into what experienced practitioners feel are the amounts of time necessary, on average, to deliver competent legal representation in the study case types, we again reached out to the attorneys in Michigan to seek their participation in a data collection effort. Our survey would present the results of the recently concluded time study, and, with that information as background, respondents would give their recommendations as to the average amounts of attorney time required to provide effective assistance of counsel in an average case of that type.

The survey was administered by the RAND Survey Research Group, which provides an experienced in-house capability for conducting primary data collection. Survey Research Group staff consulted with the research team in regard to instrument design and translated our requests into a web-based survey form.

##### *Encouraging Participation*

Our primary targets for participating in the survey were the indigent defense attorneys named in the original roster we received from the MIDC. We considered issuing unique access codes for each of the invitees, which is a standard method for managing online surveys because it restricts access to the questionnaire to a selected population, prevents someone from taking the survey more than once, and provides the survey administrator the option of not sending reminders to those who have already completed the survey. But the MIDC and RAND decided to avoid adding identity management controls to simplify the invitation process.

Once again, we sent email invitations to those attorneys with valid email addresses, though we excluded those who had already reported to us that they did not practice criminal law or who requested that the project not contact them. We also mailed 600 invitations to the known postal addresses of all roster attorneys who lacked an email address, to all attorneys located in the Upper Peninsula and the Northern Lower Peninsula, and to a random selection of 322 other attorneys in the roster who were not identified as public defenders. The decision to make a special effort to reach out to members of the indigent defense bar in areas of the state with low population densities and to non-public defenders was made as a hedge against a participation profile similar to what resulted with the time study. The email and postal invitations described the overall caseload standards setting effort, requested the recipient's help in identifying the

average time an attorney should be able to devote to a client's needs, provided the URL for the questionnaire and indicated that the survey would be available from Wednesday, August 29, through Wednesday, September 5 (at the request of a number of respondents, we later extended the submission period until Thursday, September 6), noted that participation in the time study was not a prerequisite for completing the survey, and explained that the answers given during the survey would not be distributed outside RAND in a manner in which the participant would be identifiable. Survey announcements were also distributed by the MIDC to bar associations and stakeholder groups, as was done for the time study. It should be noted that we did not restrict participation to attorneys who accept indigent defendant appointments (anyone with a criminal law background was welcome to take the survey), but some of the initial questions in the survey were designed to distinguish those with indigent defense experience from those whose practices consisted of only retained clients. As it turned out, all of the respondents were either currently accepting appointments or had done so in the past.

### *Survey Design*

The layout of the survey was a relatively simple one. The initial screens collected information about each participant's experience and practice, such as length of time practicing law in general and criminal law in particular; the primary means for indigent defense appointments (if any); the county where the respondent primarily practiced criminal defense; the number of hours worked in a typical week; how those weekly hours break out by work performed on various types of cases (such as adult criminal indigent defense cases in Michigan trial courts, privately retained criminal defense cases, civil case, non-case related time); the estimated 12-month caseloads for indigent appointments and fee-based clients in each of the nine MIDC standards categories; the number of other attorneys who work at the same office; and the number of support staff in the office, broken out by role (e.g., investigators, interpreters, administrative staff). We then asked the attorneys what they believed would be the amounts of time needed, on average, for each of the study case types, providing the results of the time study for comparison purposes. The survey concluded with a free-text field that asked the respondent to provide any comments related to caseloads, indigent defense issues in Michigan, or ways in which attorney resources affect the delivery of an adequate and effective defense to indigent clients.

## **Results**

### *Participation*

A total of 332 attorneys completed the online questionnaire, most confirming that they were accepting appointments at the time of the survey, while just under 10 percent indicated that they had done so in the past (Table 3.1). Those participants accepting appointments arguably consist

of between 14 and 19 percent of the Michigan indigent defense bar (given our estimated range of 1,575 to 2,100 attorneys total).

**Table 3.1. Attorney Survey Participation: Attorney Type**

<b>Appointment Type</b>	<b>Percentage of Participating Attorneys</b>
Public defender	17.4
Contract or assigned counsel program	54.6
Direct assignment by judges	17.1
Other means for appointment	1.2
Not currently accepting appointments, but did previously	9.8

NOTE: *N* = 328. Columns may not sum to 100 percent due to rounding.

The respondents for this data collection appear to more closely track the expected distribution of indigent defense attorneys in the state. The proportion of respondents who are public defenders is far lower than in the time study, though still larger than what might be true for the universe of indigent defenders. The other categories (contract or assigned, direct assignment, and other) reflect the fact that the means for utilizing the services of indigent defenders in Michigan at the system level is more complex than simply always public defender versus assigned counsel versus contract counsel.<sup>73</sup> It is possible, however, that many of those who indicated that their assignments came directly from judges are actually listed on a traditional assigned counsel roster.

Survey respondents more closely match up to what might be expected in terms of regional distributions than did those participating in the time study (Table 3.2). For example, 39 percent of the respondents were located in the Detroit metropolitan area, and, according to the U.S. Census Bureau, the tricounty area of Macomb, Oakland, and Wayne contains 38.9 percent of the estimated 2017 Michigan population.<sup>74</sup> Other regions in the state also have population proportions that are similar to the respondent group (for example, 5.1 percent of Michigan residents live in the Northern Lower Peninsula, 3.0 percent live in the Upper Peninsula, and 14.2 percent live in Western Michigan).

<sup>73</sup> See, e.g., MIDC, 2016, pp. 9–10.

<sup>74</sup> U.S. Bureau of the Census, undated.

**Table 3.2. Attorney Survey Participation: Attorney Location**

Region	Percentage of Participating Attorneys
Mid-Michigan—Flint/Tri-Cities	9.6
Mid-Michigan—Lansing area	3.7
Mid-Michigan—the Thumb	5.9
Northern Lower Peninsula	6.5
Southeast—Detroit metro	39.0
Southeast—other Southeast	9.3
Southwest	9.3
Upper Peninsula	3.7
Western	13.0

NOTE: *N* = 323.

### *Activities*

A 45-hour workweek is common among survey participants, though 10 percent reported that they typically work 60 or more hours each week (Table 3.3).

**Table 3.3. Attorney Survey: Typical Hours Worked per Week**

Mean	Median	25th Percentile	75th Percentile	90th Percentile
45.5	45	40	50	60

NOTE: *N* = 318.

As indicated previously, we asked the respondents to break out a typical workweek by the type of matters they usually work on. They could provide those answers either in percentages or by hours, as they preferred, though we converted all of the percentage responses into absolute time values based on their entry for total hours worked per week. Across all respondents, about 43 percent of the workweek was said to be spent on appointments involving adult criminal defense cases in Michigan trial courts (Table 3.4)—in other words, the subject matter of the MIDC caseload standards development effort. We also asked about time not directly spent on individual client matters, and overall 10.5 percent of the workweek involved what we characterized as non-case-related time. This could include, for example, professional development activities, administrative tasks, supervising the non-case-related work of others (such as information technology staff), social events, timekeeping, and client development.

**Table 3.4. Attorney Survey: Workweek Activities**

<b>Specific Activity</b>		<b>Percentage of Typical Workweek</b>
Appointed cases	Adult criminal defense in Michigan trial courts	42.8
	Other criminal defense	6.9
	Probate	1.9
	Other	3.5
Retained cases	Adult criminal defense in Michigan trial courts	12.6
	Other criminal defense	2.1
	Probate	2.2
	Civil	10.5
	Other retained matters	7.0
Non–case-related time		10.5
<b>Categorical Purpose</b>		<b>Percentage of Typical Workweek</b>
All adult criminal defense in Michigan trial courts (appointments and retained)		55.4
Criminal defense (all types, appointments and retained)		64.4
Appointed cases (all types)		55.1
Retained cases (all types)		34.4

NOTE: *N* = 288.

The results shown in Table 3.4 are misleading, to some degree, because they present averages across attorneys with very different types of practices. A public defender, for example, is unlikely to take on any retained civil cases, and some attorneys who receive appointments through a contract or assigned counsel program may represent indigent defendants only on occasion. To help interpret the results from the attorney survey, we hypothesized that there were essentially three types of indigent defenders: (1) public defenders (presumably working full time or close to it on appointments, of which most would involve trial court–level criminal defense), (2) private attorneys who could take on retained clients if desired, but whose practice primarily consists of representing indigent defendants (essentially functioning as “private public defenders,” presumably as a result of high volume contracts with local indigent defense systems), and (3) private attorneys for whom indigent defendants take up a relatively smaller part of their time. To distinguish the second attorney category from the third, we used the respondents’ own estimates of the amount of time they spend in a week handling appointments involving adult defendants in trial court. Non–public defender attorneys who spend at least half their time on such matters would be assigned to category 2, while all others would be assigned to category 3. As indicated in Table 3.5, slightly more than half of the respondents can be categorized as attorneys for whom indigent defense is not the dominant focus for their practices.

**Table 3.5. Attorney Survey: Attorney Type Based on Indigent Defense Workload**

Type	Percentage of Respondents
Public defender	17.2
Other attorney, with at least half of total work hours spent on adult criminal defense appointments in Michigan trial courts	28.6
Other attorney, with less than half of total work hours spent on adult criminal defense appointments in Michigan trial courts	54.2

NOTE: *N* = 332.

These distinctions help put the survey results into perspective. For the sake of clarity, Table 3.6 and similar tables in this chapter identify the public defender group as “PD”; the group consisting of private attorneys who are appointed through contract counsel programs, assigned counsel programs, or assigned through other procedures and who spend at least 50 percent of their time representing appointed adult criminal defendants as “Other–Heavy” (to acknowledge their relatively heavy indigent defense workload); and all other attorneys as “Other–Light.” The most diverse group in terms of the types of client matters taken on are the Other–Lights, with a mix of appointed and retained cases, as well as a substantial proportion of noncriminal cases. For these attorneys, indigent defense takes up, on average, about a single day of their workweek. The public defenders and the Other–Heavy attorneys have somewhat similar proportions of their time spent on indigent defense and on criminal defense generally, though one important area in which they differ is in the allocation of non–case-related time. Public defenders reported that they spend twice as much time in a workweek on activities not directly involving a specific case, as do Other–Heavy attorneys. We do not have information on the specific non–case-related activities that either attorney group performs.

**Table 3.6. Attorney Survey: Workweek Activities, by Workload Type**

Categorical Purpose	Percentage of Typical Workweek		
	PD	Other–Heavy	Other–Light
Adult criminal defense in Michigan trial courts, appointments only	70.3	66.1	20.7
All adult criminal defense in Michigan trial courts (appointments and retained)	70.9	76.3	38.6
Criminal defense (all types, appointments and retained)	77.9	80.8	50.7
Appointed cases (all types)	81.1	74.4	35.7
Retained cases (all types)	2.3	18.1	54.2
Non–case-related time	16.6	7.5	10.1

NOTE: *N* = 48 for public defenders, 90 for Other–Heavy attorneys, and 150 for Other–Light attorneys.

## *Caseloads*

As far as we know, information about caseload levels of Michigan indigent defenders generally is not available publicly. Ideally, this sort of information could be obtained from the courts where the appointments are made, since even rudimentary judicial CMSs keep track of the name and contact information for lead defense counsel. However, we are given to understand that distinguishing cases with appointments from cases where the defendant engaged the services of counsel independently is not a feature typically available on the wide variety of CMSs in use at the circuit and district courts in Michigan's 83 counties. An organizational approach to data collection did not seem promising either. While some law firms and public defender offices certainly keep internal records in this regard, many do not.

Thus, the most obvious way for this project to get a sense of the caseload distributions was to simply request that attorneys participating in the survey self-report the information, though we were aware that, for many, the survey might have been the first time they had any reason to report the size and nature of their overall caseloads. Because such disclosures had not been a routine responsibility in the past, there would be a good chance that the sole source for the information would be the attorney's off-the-cuff recollection. We asked participating attorneys to "estimate the number of adult indigent criminal defense appointments you handled in Michigan trial-level courts within a recent 12 month period," and we explained that "rough estimates or best guesses are acceptable" to avoid a situation where a respondent declined to answer at all because of a belief that an answer based solely on recall would be imprecise or misleading.

If one bases an assessment only on the means shown in Table 3.7, the "average" attorney in each of the three practice groupings does not appear to shoulder caseloads that are egregiously larger than the 1973 NAC maximum caseload standards. For public defenders, at least, the first five case type categories—which cover all felonies and the felony-like two-year high court misdemeanors—taken together, total 179 cases, on average. The count is certainly more than the 150–felony case cap recommended by the NAC, but not quite to the level of some of the widely reported horror stories about defender workloads in courts across the country. Felonies are not the only type of case handled by this average public defender, but the total of 128 misdemeanors is markedly less than the NAC 400-case cap (given that the "weight" of an NAC misdemeanor is 0.375 relative to an NAC felony, using a 150-to-400 ratio, the 128 misdemeanors would count as an extra 48 felonies on top of the 179 average felonies for Michigan public defenders). The average counts for the other two practice groups are definitely below the NAC standards. It should be kept in mind, however, that Table 3.7 does not take into account any other work performed by the participating attorneys, such as civil cases, juvenile matters, or fee-based representations.



**Table 3.7. Attorney Survey: Average Annual Indigent Criminal Defense Caseloads**

<b>Case Type</b>		<b>PD</b>	<b>Other–Heavy</b>	<b>Other–Light</b>	<b>All Attorneys</b>
Murder or manslaughter		1	2	1	1
CSC		9	4	9	7
Other class A offenses		11	4	3	5
Other high-severity felonies		40	12	11	15
Low-severity felonies and two-year high court misdemeanors		118	28	18	35
One-year misdemeanors		64	29	21	29
93-day misdemeanors		64	63	25	42
Probation violations		77	22	12	24
Other adult criminal indigent defense trial court–level matter		2	4	2	3
All case types	Mean	386	168	100	161
	Median	275	113	69	100
	75th percentile	480	191	105	190
	90th percentile	850	323	207	415

NOTE: Caseloads rounded to the nearest whole number. *N* = 255 for all attorneys, 35 for public defenders, 81 for Other–Heavy attorneys, and 139 for Other–Light attorneys.

But excessive caseloads need to be assessed at the individual attorney level, not simply on the basis of whether a hypothetical average attorney exceeds a particular threshold. The 90th percentile for total cases handled by public defenders moves the comparison from the hypothetical to the actual (Table 3.7). While all public defenders taken together report an average total caseload of 386 cases, 10 percent report at least 850 cases, suggesting that these particular defenders are likely to greatly exceed the NAC standards, even if some of their colleagues do not. The potential for excessive caseloads is perhaps better illustrated in Table 3.8. Instead of means, 90th percentiles are reported, suggesting that at least 10 percent of the public defenders would greatly exceed the NAC standards. It should be noted that adding 90th percentiles when the goal is to collapse different case types may be misleading; an attorney with a reported annual caseload of 100 “other high-severity felonies,” for example, might not have handled any other type of felonies or misdemeanors during the reporting period. A better approach would be to examine the reported caseloads of attorneys individually and compare those counts with standards appropriate for the state of Michigan, which is what we do in Chapter 5.

**Table 3.8. Attorney Survey: 90th Percentile Values for Annual Indigent Criminal Defense Caseloads**

Case Type	PD	Other–Heavy	Other–Light	All Attorneys
Murder or manslaughter	4	5	2	3
CSC	20	10	10	10
Other class A offenses	20	15	12	15
Other high-severity felonies	100	35	30	40
Low-severity felonies and two-year high court misdemeanors	200	50	44	75
One-year misdemeanors	200	75	50	75
93-day misdemeanors	200	200	50	100
Probation violations	150	50	25	61
Other adult criminal indigent defense trial court–level matter	10	7	5	6
Total	850	323	207	415

NOTE: Caseloads rounded to the nearest whole number. *N* = 255 for all attorneys, 35 for public defenders, 81 for Other–Heavy attorneys, and 139 for Other–Light attorneys.

We also asked the attorneys to provide similar estimates for their total criminal defense caseload, regardless of whether they were appointed to the case or retained by the client. The results are shown in Table 3.9. It should be noted that fewer participating attorneys (228) provided this type of information than did those reporting on indigent criminal appointments (255). One possible explanation comes from what we heard from two attorneys who contacted RAND directly to ask for clarification on various aspects of the survey. Both indicated that, while they were confident about their indigent caseload estimates because of a specific need to track such cases in their practice, they were unsure about their counts for cases in which they were retained. Another reason might be the result of survey fatigue; having made an effort to count and report indigent appointments, some may have declined to perform a similar exercise for criminal matters of all types. The drop-off in the number of survey participants completing this section of the questionnaire compared to the ones who previously reported their indigent criminal appointments resulted in a situation where average total criminal defense caseloads are similar to and (sometimes) less than the average caseloads for indigent clients only.

**Table 3.9. Attorney Survey: Average Annual Criminal Defense Caseloads, Appointments and Retained**

Case Type		PD	Other–Heavy	Other–Light	All Attorneys
Murder or manslaughter		2	2	1	1
CSC		9	5	10	9
Other class A offenses		11	4	4	5
Other high-severity felonies		41	14	14	18
Low-severity felonies and two-year high court misdemeanors		116	29	21	36
One-year misdemeanors		69	28	29	34
93-day misdemeanors		72	65	33	48
Probation violations		80	21	13	24
Other adult criminal indigent defense trial court–level matter		3	3	3	3
All case types	Mean	402	171	128	178
	Median	274	118	93	109
	75th percentile	503	210	145	204
	90th percentile	894	299	240	467

NOTE: Caseloads rounded to the nearest whole number. *N* = 228 for all attorneys, 31 for public defenders, 70 for Other–Heavy attorneys, and 127 for Other–Light attorneys.

### Office Resources

Stark differences can be seen in the size of law firms or organizations and in support staff resources reported by attorneys in our three practice type groupings (Table 3.10). Solo practices are by far the norm for attorneys working outside a public defender environment. Other–Heavy group attorneys are much more likely than others to perform their responsibilities without the aid of any support staff whatsoever (administrative staff, such as clerks, secretaries, or receptionists; investigators; paralegals or legal assistants; interns and externs; research attorneys; interpreters; social workers; mitigation specialists; and any other nonattorney staff members). Indeed, 37 percent of the Other–Heavy group attorneys might be characterized as *solo-solo*, in that there are no other attorneys in their practice and no support staff either.

**Table 3.10. Attorney Survey: Office Characteristics**

Aspect	Percentage of Reporting Attorneys			
	PD	Other–Heavy	Other–Light	All Attorneys
Solo practitioner	0.0	72.6	65.2	57.1
Three or more attorneys in office	89.7	13.7	17.8	27.9
No support staff	2.6	42.6	24.2	26.1
Solo practitioner without support staff	0.0	36.8	20.8	22.1
Any investigators	34.2	5.9	4.2	9.7
Any legal assistance (paralegals, legal assistants, interns, externs, research attorneys)	79.0	23.5	50.9	47.4

NOTE: *N* for all attorneys = 247 for rows 1 and 2, 226 for rows 3 through 6; *N* for public defenders = 39 for rows 1 and 2, 38 for rows 3 through 6; *N* for Other–Heavy attorneys = 73 for rows 1 and 2, 68 for rows 3 through 6; *N* for Other–Light attorneys = 135 for rows 1 and 2, 120 for rows 3 through 6.

Only a small percentage of non–public defenders work in an office with a staff investigator. A more common source of support are members of the office who provide what can be thought of as “legal assistance,” colleagues who can perform at least some functions traditionally thought to be the responsibility of attorneys, such as interviewing clients, doing legal research, drafting correspondence, reviewing discovery, or writing briefs.

Two points should be made about any assessment of support staff levels. First, we asked the participating attorneys to “provide an estimate of the number of support staff in your firm or organization in each category.” The operative words here are “in your firm or organization.” It is very possible that some attorneys rely heavily on “outsourcing” support staff resource needs, particularly in regard to investigators. An attorney might not be financially able to hire a professional investigator on a full-time basis but instead contracts with one on an as-needed basis (or when given authorization or funds to do so by the local indigent defense system). Second, the line between staff who perform strictly administrative duties and those who provide attorney-like functions may be a blurry one. An attorney who reported having no staff members acting as legal assistance may well employ a receptionist who routinely does initial case intake and a secretary well skilled in crafting certain motions and other pleadings that are routinely filed.

### *Average Time Recommendations*

The instructions we provided to the participating attorneys for interpreting the results of the time study and providing their own recommendations are shown in Figure 3.1. Essentially, we asked them to decide on the amount of time that they “believe an attorney should plan on spending for a particular type of case in order to provide an adequate and effective defense, mindful of the fact that each individual case can differ markedly in its needs, complexities, and challenges.” The recommended average should be “the average of all cases of that type taken together, including those that are pled out at an early stage with only modest time expenditures, those that require more extensive pre-trial preparation and investigation but also are resolved

without trial, and those that end with a jury or bench verdict.” We suggested that they should not “focus on just one case; think instead about 100 cases of a particular type and what might be the average amount of time you would want to plan to spend on each if possible.” The instructions also cautioned that the time study results were “offered solely as a guide for your consideration,” noting that the respondent could conclude that they “appear to provide a comfortable margin for most cases of that type” or that they were “insufficient to allow an attorney to provide effective assistance of counsel.”

**Figure 3.1. Survey Instructions**

**SECTION 2: YOUR ESTIMATES OF MINIMUM AVERAGE TIME BY CASE TYPE**

In this Section we will be asking you to estimate what we are calling the “minimum average time” necessary for an attorney to adequately represent a client on various types of criminal matters (such as criminal sexual conduct prosecutions or probation violations). Put another way, what we are looking for is the minimum amount of time, on average, that you believe an attorney should plan on spending for a particular type of case in order to provide an adequate and effective defense, mindful of the fact that each individual case can differ markedly in its needs, complexities, and challenges. If the idea of estimating the minimum average hours that a case of a particular type may require seems unusual to you, keep in mind that attorneys often make similar mental calculations when a new client is taken on for the purpose of deciding the likely impact on one’s personal workload or that of the office as a whole.

Please note that the questions only address the issue of attorney time. You can assume that an attorney in this hypothetical will have support staff resources similar to the levels in your own practice (or former practice if no longer active).

Please also note that the questions pertain to any criminal representation, and not just those involving indigent defendants. It should also make no difference whether counsel is in private practice, is a member of a public defender office or legal aid society, or is on an assigned counsel or contract counsel panel or program.

The table below presents the results of a recent time study involving attorneys representing adult indigent defendants in the district and circuit courts of the state. Those results reflect observed and imputed average attorney time expenditures for different case types and activities, but they are offered solely as a guide for your consideration. It may well be that you conclude the amount of time reported by the time study would be insufficient to allow an attorney to provide effective assistance of counsel for the average case of a specific type. In contrast, you might conclude that the time study results appear to provide a comfortable margin for most cases of that type. Whatever your determination, please base your entries on your personal experience and upon what you believe to be the minimum amount of lawyer time that would be required to afford a client adequate and effective aid in the defense of an average case of that type.

Obviously time expenditures will vary markedly in actual cases, and a case that goes to trial will consume far more hours of your time than one resolved soon after arrest, even if all other aspects of the two cases are the same. But it may help to keep in mind that trials are relatively infrequent, and the minimum averages we are asking you to provide should factor in the likelihood of trial. In other words, the average for a specific category of cases should be the average of all cases of that type taken together, including those that are pled out at an early stage with only modest time expenditures, those that require more extensive pre-trial preparation and investigation but also are resolved without trial, and those that end with a jury or bench verdict. Don’t focus on just one case; think instead about 100 cases of a particular type and what might be the average amount of time you would want to plan to spend on each if possible.

You have three choices for each case type:

- 1) If you feel that the time study results describe a sufficient minimum amount of time, on average, to provide adequate and effective assistance of counsel, check the box in Column One.

--OR--

- 2) If you feel that the time study results reflect an insufficient amount of time on average, enter what you think is more realistic minimum for adequate and effective assistance of counsel in Column Two. When making entries, if you believe that 6 hours and 4 minutes (6.04) is a reasonable value for minimum average time, for example, please enter 6 in the Hours field and 4 in the Minutes field.

--OR--

- 3) If you feel that your experience handling a particular type of case is insufficient for you to make an estimate of minimum average time, check the box in Column Three and leave that row blank.

Figure 3.2 displays the manner in which the survey sought the respondents’ recommendations for average times at the case type level. The respondent could check a box indicating that the results of the time study reflected a sufficient amount time for representations for a specific case type on average. If not, the respondent could submit recommendations by entering the preferred hours and minutes. Because criminal defense attorneys may focus on some specific types of cases to the exclusion of others, an option was also provided for declining to provide an answer for one or more individual case types, if desired.

**Figure 3.2. Survey Case Type Level Entry Form**

Case Type	Time Study Results (average hours and minutes reported for each case type)	Column One: Check box if you believe the time study results provide a sufficient minimum amount of time on average for a case of this type	Column Two: If you disagree with the time study results, enter your minimum average time recommendation in hours and minutes	Column Three: Check box if you decline to make an entry for this case type
Murder or Manslaughter, all degrees	69:30	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>
Criminal Sexual Conduct (1st, 2nd, 3rd, or 4th degrees)	19:48	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>
Other Class A Offenses not in the above two categories	20:18	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>
Other High-Severity Felonies (B, C, D)	09:00	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>
Low-Severity Felonies (E, F, G, H) & 2 Year High Court Misdemeanors	06:54	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>
Misdemeanors with Potential Sentences of over 93 Days (except 2 Year High Court Misdemeanors)	03:36	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>
Misdemeanors with Potential Sentences of 93 Days or Less	02:42	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>
Probation Violations	02:54	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>
Other adult criminal indigent defense trial court-level matter not in above categories	03:06	<input type="checkbox"/>	hours : minutes	<input type="checkbox"/>

Back Next

Questions about this survey or how to answer?  
 Contact Nick Pace at RAND (1-310-393-0411 ext. 6176; [nickpace@rand.org](mailto:nickpace@rand.org)),  
 or Jonah Siegel at MIDC (1-517-657-3062; [jsiegel@michiganidc.gov](mailto:jsiegel@michiganidc.gov))  
 Technical issues? Email [argwebtech@rand.org](mailto:argwebtech@rand.org).

Depending on the case type of interest, responding attorneys who provided their recommendations for average attorney hours agreed with the existing result of the time study anywhere from 32 percent to 82 percent of the time (Table 3.11). But the rate of agreement varied by defender group, with Other–Heavy attorneys most likely to agree in seven out of the nine case type categories.

**Table 3.11. Attorney Survey: Percentage in Agreement with Time Study Results**

Case Type	PD	Other–Heavy	Other–Light	All Attorneys
Murder or manslaughter	40.9	59.3	38.9	44.7
CSC	30.8	41.0	27.4	31.9
Other class A offenses	52.0	55.9	47.1	50.4
Other high-severity felonies	40.7	48.8	39.8	42.5
Low-severity felonies and two-year high court misdemeanors	53.9	54.7	37.8	45.6
One-year misdemeanors	63.3	60.9	31.2	45.0
93-day misdemeanors	60.0	72.3	36.6	50.6
Probation violations	67.7	79.2	65.6	69.8
Other adult criminal indigent defense trial court–level matter	86.4	85.3	78.2	82.0

NOTE: Depending on the case type category, *N*s for all attorneys range from 103 to 170, 22 to 31 for public defenders, 27 to 53 for Other–Heavy attorneys, and 54 to 93 for Other–Light attorneys.

Table 3.12 presents the recommendations of the participating attorneys, in total and by practice group. All three types of indigent defense attorneys recommended average time expenditures that were greater than the results of the time study, though, with one exception, the public defenders recommended the most time and the Other–Heavy group recommended the least (the exception was the “other adult criminal indigent defense trial court–level matter” case type, in which the public defenders had the second-largest recommended time).

**Table 3.12. Attorney Survey: Recommended Average Hours**

<b>Case Type</b>	<b>Time Study Results</b>	<b>All Attorneys</b>	<b>PD</b>	<b>Other–Heavy</b>	<b>Other–Light</b>
Murder or manslaughter	69.5	92.5	105.9	83.6	91.6
CSC	19.8	40.3	43.0	34.6	42.4
Other class A offenses	20.3	32.4	34.6	29.6	33.0
Other high-severity felonies	9.0	18.2	22.5	15.4	18.2
Low-severity felonies and two-year high court misdemeanors	6.9	11.9	14.2	10.1	12.3
One-year misdemeanors	3.6	6.7	7.7	5.2	7.2
93-day misdemeanors	2.7	4.7	5.0	3.4	5.3
Probation violations	2.9	3.5	3.8	3.1	3.6
Other adult criminal indigent defense trial court–level matter	3.1	4.5	4.8	3.5	5.0

NOTE: Depending on the case type category, *N*s for all attorneys range from 103 to 170, 22 to 31 for public defenders, 27 to 53 for Other–Heavy attorneys, and 54 to 93 for Other–Light attorneys.

### *Comments*

Comments submitted by the participating attorneys for the commission’s consideration can be found in Appendix A.

## 4. The Caseload Standards Setting Conference

---

The MIDC recruited a panel of experienced criminal defense attorneys who agreed to participate in an effort to reach consensus on the average hours necessary to deliver effective representation. The assembled panel represented a diverse mix of contract counsel, assigned counsel, and public defenders from every region in Michigan. The most practical option available to the MIDC-RAND project team was to hold a one-day, in-person session in Lansing, a location that would be equally convenient (or inconvenient, as the case may be) for most attorneys traveling from other locations in Michigan. The MIDC arranged for a meeting space to hold the event (the most important requirement for the space was wireless internet access for all attendees, as we planned to utilize a web-based tool as a means for rapid collection of individual decisions). The session was held on September 13, 2018.

Though the information we sought to elicit from the expert panel paralleled that of the attorney survey (panel members were also asked to provide an opinion as to the average amount of time required for representing a client in one of the study case types), the approach was quite different. We employed the Delphi Method, a feedback consensus method first developed by RAND in the aftermath of World War II as a way to systematically coalesce expert opinions on complex questions that are otherwise difficult or impossible to answer with certainty.<sup>75</sup> For more than six decades, RAND has utilized Delphi (which can be thought of as an early form of crowdsourcing) in a variety of public policy research settings, covering topics as diverse as national security, health care, and criminal justice.<sup>76</sup> Simply put, Delphi's approach involves a group of experts answering the same questions (often anonymously), and the results (usually in terms of distributions, such as means and medians) are shared with the group, which may then (depending on design) engage in discussions with an eye toward achieving consensus. The expert responses can include comments that are shared with the panel anonymously. The experts are then given the choice to change any of their answers after reviewing the group results. When the process is conducted in person, facilitators typically focus on responses where there is a relative lack of agreement and encourage the group to discuss the differing perspectives in an effort to drive members toward a narrower consensus.

One Delphi approach has the process repeated over distinct rounds in which all the experts submit answers at the same time, the group results are then displayed, discussion ensues, and the next round of *answering–results display–discussion* begins. Another Delphi approach dispenses with formal rounds, allowing the experts to modify their answers whenever they choose during

---

<sup>75</sup> See, e.g., Dalkey, 1969.

<sup>76</sup> See, e.g., Dalkey and Helmer-Hirschberg, 1951; Helmer-Hirschberg, 1964; Wong et al., 2015; Silberglitt et al., 2015.



the discussion phase, with the group results updated and shared with the panel in real time. With most Delphi sessions, the process is halted when the distribution of answers submitted by the panel has clustered around a single value with a predetermined level of “tightness” (for example, within one standard deviation from the mean), the answers are stable and have not changed in many rounds, or a predetermined number of rounds have taken place.

We considered, but ultimately rejected, an alternative web-based-only approach (sometimes referred to as “i-Delphi”) in which all panel members participate remotely and anonymously throughout the process. While virtual attendance would be less costly to those conducting the session, as well as to potential participants scattered around Michigan’s complicated geography, we believed that an in-person session would be most conducive to a lively discussion, fostering collaboration, and facilitating buy-in to the results among stakeholders. That said, one panelist was unable to attend in person, so we set up a speakerphone for audio participation, and an Adobe Connect web meeting so that the panelist could see what was displayed at the session, and our Delphi tool was hosted on a website that could be accessed from anywhere.

The 29 panelists (16 private criminal practitioners, nine public defenders, two appellate attorneys, and two federal public defenders) who took part in the event (28 in person and one remote) are listed in Box 4.1.

#### Box 4.1. Delphi Session Attendees

##### Name and Affiliation

Keeley Blanchard, Attorney-at-Law, Blanchard Law, Keeley (Montcalm County)  
Michael Carter, Assistant Federal Defender, Federal Defender Office, Detroit (Wayne County)  
Chad D. Catalino, Director–Misdemeanor Division, Muskegon County Public Defender, Muskegon (Muskegon County)  
Arni Chambers, Attorney-at-Law, Law Offices of Arni Chambers, Detroit (Wayne County)  
Alan A. Crawford, Attorney-at-Law, Law Offices of Alan A. Crawford PLLC, Saginaw (Saginaw County)  
Troy B. Daniel, Attorney-at-Law, Hess, Hess & Daniel, P.C., Roscommon (Roscommon County)  
Brett DeGross, Assistant Defender, State Appellate Defender Office, Lansing (Ingham County)  
Kellen Dotson, Assistant Public Defender, Kent County Office of the Defender, Grand Rapids (Kent County)  
Walter Downes, Chief Defender, Ionia County Public Defender, Ionia (Ionia County)  
Jennifer France, Chief Public Defender, Chippewa County Public Defender, Sault Ste. Marie (Chippewa County)  
David M. Gemignani, Attorney-at-Law, David M. Gemignani, P.C., Houghton (Houghton County)  
Bradley R. Hall, Administrator, Michigan Appellate Assigned Counsel System, Lansing (Ingham County)  
Andrea LaBean, Director, Bay County Department of Criminal Defense, Bay City (Bay County)  
Charles Longstreet II, Attorney-at-Law, Longstreet Law Firm PLLC, Detroit (Wayne County)  
Elisha M. Oakes, Attorney-at-Law, The Law Office of Elisha M. Oakes, PLLC, Saint Clair Shores (Macomb County)  
Kurt D. Peterson, Attorney-at-Law, Peterson Legal Services, PLC, Greenville (Montcalm County)  
Brandy Y. Robinson, Assistant Federal Defender, Federal Defender Office, Detroit (Wayne County)  
Jeffrey Rupp, Attorney-at-Law, Law Offices of Jeffrey Rupp, Saginaw (Saginaw County)  
James R. Samuels, Attorney-at-Law, Samuels Law Office, Big Rapids (Mecosta County)  
Ryan Seale, Assistant Public Defender, Berrien County Public Defender Office, St. Joseph (Berrien County)  
Alona Sharon, Attorney-at-Law, Alona Sharon, P.C., Royal Oak (Oakland County)  
Delphia Simpson, Chief Public Defender, Washtenaw County Public Defender, Ann Arbor (Washtenaw County)  
Frederick M. Snider, Attorney-at-Law, Frederick M. Snider Law Firm, Port Huron (St. Clair County)  
Sara Spencer-Noggle, Attorney-at-Law, Spencer Law Group, PLLC, Mount Pleasant (Isabella County)  
Dawn Van Dusen, Chief Public Defender, Lenawee County Public Defender, Adrian (Lenawee County)  
Dawn K. Walton, Attorney-at-Law, Law Offices of Walton & Scally, PC, Utica (Macomb County)  
Melissa K. Wangler, Attorney-at-Law, The Law Office of Melissa K. Wangler, PLLC, West Branch (Ogemaw County)  
Christopher B. Wickman, Attorney-at-Law, Nichols Law Firm, Lansing (Ingham County)  
Elizabeth Young, Deputy Defender, Metropolitan Justice Center of Southeast Michigan, Detroit (Wayne County)

#### The Session

Before the September 13, 2018, session, panel members were sent a description of what we hoped to accomplish, a copy of selected slides from the background briefing that would be given at the session, links to guidance on how to think about some key issues (such as the Michigan State Bar’s “The Eleven Principles of a Public Defense Delivery System” and the ABA’s *ABA Standards for Criminal Justice: Providing Defense Services*),<sup>77</sup> and the collection of comments submitted by participating attorneys as part of the attorney survey. We opted not to inundate the

---

<sup>77</sup> Michigan State Bar, 2002; ABA, 1992.

panelists with overly detailed materials, preferring instead to rely heavily on their experience as practitioners and on their commitment to addressing the need for practical caseload standards.

At the outset of the session, the panelists were requested not to share the results of the day's activities until the MIDC had made its final decisions as to the recommended caseload standards. There was also a request not to discuss comments made at the session with those not in attendance if doing so would reveal the identity or association of the speaker. The idea behind the request was to facilitate open discussion to the greatest degree possible and to reduce any panelist concerns about speaking freely and frankly.

The legal and ethical foundations for the panel were then provided in the form of an address by Brandy Y. Robinson, an MIDC commissioner and an assistant defender at the Federal Defender Office in Detroit. She spoke about the standards for indigent defense that the commissioners had already adopted and about the critical need to provide attorneys with enough time to fully discharge their responsibilities in light of evolving notions of what constitutes an effective defense.

A member of the RAND project team then gave an overview of important concepts involving caseloads, workloads, standards, and case weights generally, and discussed what other jurisdictions have done in this regard. Detailed information about the two data collection efforts was also provided, covering such topics as approach, participation rates, and the characteristics of the attorneys (workweek hours, caseload composition, support staff levels, etc.) who were involved in the time study or took the survey. But it is important to note that before discussing the results of the data collection that related to attorney time expenditures (both actual and recommended), the speaker asked the panelists to write down their assumptions about the amount of time now spent on average for different case types and their own recommendations about necessary average hours on a paper form we provided. This was done to help the panelists minimize the effects of anchoring bias by first using self-generated anchors (their own assumptions) rather than relying solely on externally provided ones (the data collections). After that point, we described the earlier results of the time study and attorney survey in detail before proceeding with other aspects of the Delphi session.

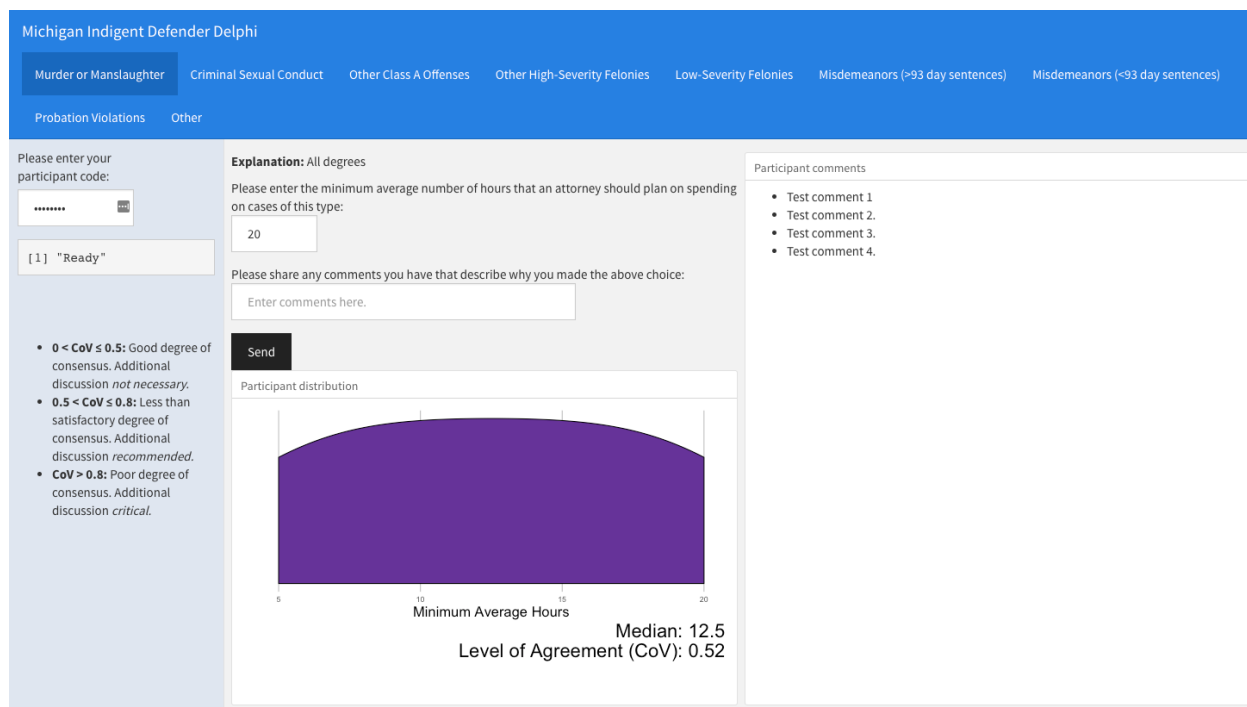
Another member of the RAND research team then took on the role of facilitator, introduced the panelists to the history of and typical procedure for conducting a Delphi panel, explained the process that would be followed, led the discussion of each round's results, and, as needed throughout the remainder of the day, helped guide the session toward consensus. A supply of Wi-Fi-enabled tablets had been obtained for the event and were distributed to those in attendance who did not bring their own laptop or mobile device.

We utilized a RAND-developed web-based application to collect panelist estimates and display the results. Just before the start of the data collection phase, each panelist received a blind assignment of an ID phrase to use instead of his or her name on the application website. While maintaining anonymity, this phrase was useful to tie subsequent responses together and to allow panelists to log in again if their web connection dropped or some other problem arose. The

panelists then made their entries anonymously, and, if they so chose, they could add explanatory comments to their submissions. We had a procedure in place for a panelist to decline to provide an estimate for a particular case type, because not all indigent defense attorneys would be equally familiar with all nine study case types.

Our approach could be considered a “roundless” or “real-time” Delphi.<sup>78</sup> Instead of distinct rounds, the panel was initially given a considerable amount of time to provide estimates for each case type. These first estimates were presumably informed by both the self-generated assumptions they had previously recorded on paper and their exposure to all of the time study and attorney survey results. When a panelist had completed a particular question and at least three other panelists had submitted responses to the same question, the “dashboard” of the Delphi application running on his or her laptop or mobile device displayed a graphic and statistical summary of the group’s responses, as well as all of the panel’s comments. Figure 4.1 is an example screenshot of the panelist’s user interface. At this point, a panelist could choose to revise his or her response or move on to the next question.

**Figure 4.1. Real-Time Delphi Panelist User Interface**



NOTE: CoV = coefficient of variance (standard deviation divided by the mean).

When the panelists had responded to all of the questions, we projected a similar graphic and statistical summary of their responses on to a screen in the meeting room. The summaries were

<sup>78</sup> Zipfing, 2007.

updated periodically as new responses were submitted. Direct discussions between the panelists about each of the case types in turn were initiated by the facilitator. Each panelist was free to change his or her answers at any time until the conference ended, including while discussions were taking place, when results were being displayed, or even during session breaks.

### *Measuring Consensus*

The CoV was chosen as both the consensus measure and stability statistic.<sup>79</sup> The rules set forth in Table 4.1 were used to determine the group's level of convergence and therefore the acceptability of the group's median estimate.<sup>80</sup>

**Table 4.1. Level of Consensus**

<b>CoV</b>	<b>Decision Rule</b>
<0.5	Good degree of consensus. Additional discussion <i>not</i> necessary.
≤0.8	Less than satisfactory degree of consensus. Additional discussion <i>recommended</i> .
>0.8	Poor degree of consensus. Additional discussion <i>critical</i> .

Much of the focus of the discussions was driven by the CoV for a case type. Those with relatively high CoVs (i.e., greater than 0.8) received the most attention, with the RAND facilitator prompting the group to discuss the results, in part by seeking panelists to make arguments for the low end of the range for each case type, as well as the high end. Some would describe representing clients charged with a specific case type in their jurisdictions as being a relatively straightforward process when the client was desirous of a quick resolution, while others recounted instances where unexpected circumstances required far more effort than expected. As will be discussed subsequently, some of the panelists argued that one or more subtypes within a general case type category were fundamentally different from other prosecutions of the same type in regard to expected attorney hours. More-general views were exchanged across the room about the state of indigent defense in Michigan; variations in local legal culture, practices, and procedures; and the availability of support staff resources.

<sup>79</sup> A standard deviation is a measure of how “spread out” numbers (here, the panelists’ recommendations for average attorney hours needed) are. It is calculated by taking the square root of the average squared difference between a number and the mean. If each of five experts respectively decided on 2, 10, 12, 15, and 16 hours, the mean would be 11 hours (median hours, where half the values were higher and half were lower, would be 12). The differences between the expert decisions and the mean would be -9, -1, 1, 4, and 5. Those differences squared would be 81, 1, 1, 16, and 25. The mean of those differences would be 24.8, and taking the square root of that mean yields a standard deviation of 4.98 (rounded). The CoV is the standard deviation divided by the mean of the original distribution of numbers, or, in other words, 4.98 divided by 11 (0.45, rounded).

<sup>80</sup> See Gracht, 2012, and Kalaian and Kasmin, 2012.

As indicated previously, panelists were free to change their answers at any time, and all displays changed accordingly. As the CoVs for specific case types dropped below 0.5, more attention during the discussions was paid to other case types that had not yet met the predetermined standard for consensus. We did not, however, prevent panelists from submitting revised estimates for case types with CoVs that were under the thresholds.

### *Session Issues*

We needed to diverge from our planned approach in two areas. The first involved the case type described as “other adult criminal indigent defense trial court–level matter.” This case type was created by the PAG as a type of catchall category to cover any sort of client matter not already described in the other eight categories. Its CoV remained above 0.6 despite extensive discussion, with many of the panelists asking the fundamental question of what specific types of client matters were included in the category. The group was asked to provide examples of what might be an “other” case type, but the panelists could offer only extraditions, detainers, and contempt hearings as clearly fitting the definition, and there was considerable disagreement about what might else be included. Rather than forcing the panel to deliberate any further on a case type that many could not describe with confidence, and given that the survey results suggested that the average indigent defense attorney might handle no more than three such client matters a year, we decided to accept the existing results that were reflecting a 0.65 CoV and move on to other case types that occur more frequently and that involve more attorney hours on average. Given the uncertainty as to what this category actually means in practice, the MIDC might consider giving less weight to “other” case types when assessing the size of attorney workloads, at least until there is a shared understanding as to what sorts of client matters are involved.

The second issue arose in the context of the CSC category. It will be recalled that CSCs include 1st-degree class A felonies punishable by up to life imprisonment, 2nd-degree class C felonies punishable by up to 15 years in prison, 3rd-degree class C felonies also punishable by up to 15 years, and 4th-degree “high court” misdemeanors, which are essentially treated as felonies under Michigan criminal procedure and are punishable by up to two years’ imprisonment. It was suggested by a number of panelists that 3rd- and 4th-degree CSCs were very different types of cases from 1st- and 2nd-degree matters. The strongest arguments came from those who asserted that the first three CSC degrees typically required an attorney to fully investigate the behavior of the alleged victim, while the 4th-degree cases often lacked that particularly difficult aspect. There appeared to be general consensus that the CSC category was overbroad, so the following proposal was offered by the RAND team for the panel’s consideration: The definition of the CSC category would be limited to just the first three degrees, and the 4th-degree charge, a two-year high court misdemeanor, would be moved to the “low-severity felonies and two-year high court misdemeanors” category. The panel assented to the proposal and, once the change was made to the online application and the in-room displays, the panel members revisited their votes. There

was little change in the low-severity felony and two-year misdemeanor category in terms of panelist estimates of necessary average attorney time, but the CSC category rapidly moved toward consensus, as measured by its CoV.

## Final Results

Table 4.2 describes the expert panels' recommendations and the final CoV values. The median of the group's responses, rather than the mean, was chosen as the statistic to report the group's consensus estimate. The median has the advantage of not being affected by extreme values that might be preferred by a small number of panelists.<sup>81</sup>

**Table 4.2. Recommended Median Attorney Times**

Case Type	CoV	Median Hours
Murder or manslaughter	0.38	120
CSC (1st, 2nd, and 3rd degrees)	0.36	80
Other class A offenses	0.45	50
Other high-severity felonies	0.41	40
Low-severity felonies and two-year high court misdemeanors	0.38	25
One-year misdemeanors	0.39	8
93-day misdemeanors	0.43	7
Probation violations	0.44	3.5
Other adult criminal indigent defense trial court-level matter	0.65	3

Table 4.3 presents the results of the time study and the attorney survey for comparison with those of the expert panel. In each instance save one, the expert panel's recommendation for average hours for each case type equaled or, more commonly, exceeded that reported in the attorney survey. As described previously, the final case type categories considered by the expert panel differed from those used by the attorneys who participated in the time study or survey in that 4th-degree CSC was moved during the session from the general CSC category into the low-severity felony and two-year high court misdemeanor case type. As a result, the panelists were providing estimates for a CSC category that would, at least according to the discussion during the session, have a higher proportion of cases requiring extensive investigation, discovery, and expert consultation than a category in which 4th-degree CSCs were included. Also, the shift of 4th-degree cases into the category with other two-year high court misdemeanors may have shifted some of the panelists' estimates for that category upward (one commonly voiced comment about 4th-degree CSC cases was that such matters, as is true for all CSC cases, require

<sup>81</sup> It should be kept in mind that though 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.

a convicted defendant's name to be placed on the Michigan Sexual Offenders Registration Act roster, an outcome that has consequences lasting far longer than any time spent incarcerated or on supervised release).

**Table 4.3. Comparison of Recommended Average Hours, by Data Collection**

<b>Case Type</b>	<b>Time Study Results</b>	<b>Attorney Survey</b>	<b>Expert Panel</b>
Murder or manslaughter	69.5	92.5	120
CSC (1st, 2nd, and 3rd degrees)	19.8	40.3	80
Other class A offenses	20.3	32.4	50
Other high-severity felonies	9.0	18.2	40
Low-severity felonies and two-year high court misdemeanors	6.9	11.9	25
One-year misdemeanors	3.6	6.7	8
93-day misdemeanors	2.7	4.7	7
Probation violations	2.9	3.5	3.5
Other adult criminal indigent defense trial court-level matter	3.1	4.5	3

## Case Type–Specific Discussion

A number of panelists entered brief comments into the Delphi application, and a review of those statements can help provide insight into the factors that were being taken into consideration during the session. Those comments can be found in Appendix B.



## 5. Caseload Standards and Case Weights

---

In this chapter, we discuss the utilization of the expert panel’s consensus opinions, focusing on the development of recommended maximum annual caseloads for full-time attorneys for different types of cases (to flag instances when caseload volume may be excessive), as well as the calculation of case weights for planning purposes (such as estimating the number of attorneys needed to handle a particular caseload). At the outset, it should be made clear that RAND’s primary task in this work is to deliver the final results of the Delphi session to the MIDC. RAND is not developing final caseload standards; that important responsibility remains in the hands of the MIDC. Thus, we offer only *recommended* caseload standards for the commissioners’ review.

### Annual Case-Related Duty Hours

To develop caseload standards, we first need to decide on a value that represents the amount of time an indigent defender would typically have available annually to handle case-related work. Obviously, that value can vary from year to year, attorney to attorney, law firm (or organization) to law firm, and location to location, but for the purpose of calculating recommended caseload maximums, we needed to make a number of assumptions, as described below.

First would be the expected hours worked each week, on average. Under the federal Fair Labor Standards Act (FLSA), nonexempt employees must be paid overtime if they work more than 40 hours over a seven-day period, a legal standard that has helped make the 40-hour workweek part of the ideal conception of the American way of life.<sup>82</sup> But attorneys are likely to be classified as salaried professionals under FLSA and, as such, would receive no additional compensation for time worked beyond that threshold. Indeed, the FLSA would not apply at all to solo practitioners or law firm partners. Our survey reported that 45 hours per week was the most common norm for participating attorneys, though 10 percent of the respondents told us that they worked at least 60 hours per week. It will be up to the Commission to decide what makes sense to use as an hours-per-workweek assumption, perhaps by consulting with the Michigan SADO to learn what SADO requires of its staff attorneys, or perhaps by reviewing weekly hour assumptions used in other caseload standards projects for indigent defense counsel, prosecutors, and law enforcement. Based on consultation with the MIDC staff, in this chapter we use an assumption of 45 hours per week, based on five workdays at nine hours per day.

---

<sup>82</sup> 29 U.S.C. § 207. Indeed, the federal government uses a 40-hour workweek as the standard for nearly all employees in the executive branch. See 5 U.S.C. § 5504(b)(1).

A second assumption is that even a busy attorney entrusted with upholding the Sixth Amendment and protecting the rights of the accused should be able to take a reasonable amount of vacation time off each year, stay home sick on occasion, serve on a jury, and enjoy holidays with family and friends. Again, the Commission will have to come up with the most-appropriate values, but for the instant purpose, we assume two weeks of vacation (ten business days), eight business days of sick leave or other personal leave, and a 12.5-day annual holiday schedule based on MCSC Regulation 5.08, effective January 1, 2017 (12 days each year and an additional one day in even years for general election day).

A final assumption arises from the fact that not all business time can be spent handling client matters. It will be recalled that in the attorney survey, participants reported spending an average of 10.5 percent of their workweek in the practice of law but not working on specific cases.

When these assumptions are plugged into the formula represented in Table 5.1, a total of 1,855.8 hours is estimated to be available for handling indigent defense cases. It will be up to the Commissioners to decide whether these values make sense for Michigan attorneys accepting criminal case appointments.

**Table 5.1. Case-Related Duty Hours Calculations**

<b>Description</b>	<b>Value</b>	<b>Category</b>	<b>Basis</b>
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	10	F	
Personal leave days per year	8	G	
Holidays per year	12.5	H	MCSC Reg. 5.08
Total leave days per year	30.5	I	(= F + G + H)
Duty days per year	230.4	J	(= E – I)
Work hours per day	9	K	
Total duty hours per year	2,073.5	L	(= J × K)
Average reported non–case-related percentage of workweek	10.5%	M	Attorney survey
Non–case-related duty hours	217.7	N	(= L × M)
<b>ANNUAL CASE-RELATED DUTY HOURS</b>	<b>1,855.8</b>	<b>O</b>	<b>(= L – N)</b>

## Calculating the Recommended Standards

The next step is not challenging per se. Recommended standards are simply the result of dividing the Delphi results into the annual case-related duty hours value for each case type (Table 5.2). For cases in the other high-severity felony category (felony classes B, C, and D), for example, a local indigent defense system that wishes to make sure that attorneys accepting

appointments do not exceed the standard would not, absent other information that would inform the decision, plan to assign more than 46 such cases to any single attorney in a single year ( $1,855.8 \text{ annual case-related duty hours} \div 40 \text{ recommended average attorney hours} = 46 \text{ cases maximum}$ , when rounded to the nearest whole number). Could any individual attorney adequately and effectively represent more than 46 defendants charged with class B, C, or D felonies over the course of a year? Absolutely. It is certainly possible, under the right circumstances, for an attorney to be assigned 46 other high-severity felony cases at the start of January but nevertheless have little work left to do by the end of April. It is also possible that 20 particularly difficult cases of this type might consume most of an attorney's working hours in a year. But if the consensus estimates of average attorney hours yielded by the expert panel at the September 13 session in Lansing are taken at face value, an indigent defense system must, at least for planning and budgetary purposes, make sure that enough attorneys are on hand to handle the likely projected incoming caseload using these standards as a first-order benchmark.

**Table 5.2. Recommended Caseload Standards**

<b>Case Type</b>	<b>Delphi Panel Median Recommended Minimum Hours</b>	<b>Maximum Caseload Standard</b>
Murder or manslaughter	120	15
CSC (1st, 2nd, and 3rd degrees)	80	23
Other class A offenses	50	37
Other high-severity felonies	40	46
Low-severity felonies and two-year high court misdemeanors	25	74
One-year misdemeanors	8	232
93-day misdemeanors	7	265
Probation violations	3.5	530
Other adult criminal indigent defense trial court-level matter	3	619

It is important to note that these recommended caseload standards make no distinction between indigent defense appointments and private representations. Many of the panelists at the September 2018 session had criminal defense practices that included both appointments and paying clients at the time, and the same was true for many of the participants in both the time study and the attorney survey. Though experience in indigent defense no doubt informed much of the input we received from attorneys in all three data collection efforts, we attempted to have the participants step out of their current roles as indigent defenders (if indeed that was what they were primarily doing at the time) and think more broadly about Michigan criminal defense in general. For example, those answering the attorney survey's questions on recommended

minimum average times were provided with these instructions (the expert panel participants were given similar guidance):

Please also note that the questions pertain to any criminal representation, and not just those involving indigent defendants. It should also make no difference whether counsel is in private practice, is a member of a public defender office or legal aid society, or is on an assigned counsel or contract counsel panel or program.

That said, the standards were not developed as limitations on Michigan criminal law practitioners generally. They reflect only specific needs of the MIDC in executing its legislatively mandated responsibilities to “guarantee the right of indigent defendants to the assistance of counsel,”<sup>83</sup> and thus apply only to attorneys serving such defendants. But in regard to how caseloads of indigent defenders are assessed when applying the standards, an attorney with 50 “other class A” felony representations could be considered to have exceeded the threshold, regardless of the extent to which those cases involve paying clients or court appointments.

## Comparing the Recommended Standards with Those Adopted in Other Jurisdictions

As indicated in Chapter 1, other states (Colorado,<sup>84</sup> Idaho,<sup>85</sup> Louisiana,<sup>86</sup> Maryland,<sup>87</sup> Massachusetts,<sup>88</sup> Missouri,<sup>89</sup> New Mexico,<sup>90</sup> New York for five representative counties,<sup>91</sup> North Carolina,<sup>92</sup> Rhode Island,<sup>93</sup> Texas,<sup>94</sup> Virginia,<sup>95</sup> and Washington<sup>96</sup>) have also taken steps to develop case type–specific recommendations for either the average amount of attorney time policymakers should use in their planning or as a numerical limit on the number of cases an attorney should handle

---

<sup>83</sup> Mich. Comp. Laws § 780.991(2).

<sup>84</sup> RubinBrown and the ABA-SCLAID, 2017.

<sup>85</sup> Crossgrove Fry et al., 2018.

<sup>86</sup> Postlethwaite & Netterville and the ABA-SCLAID, 2017.

<sup>87</sup> Ostrom, Kleiman, and Ryan, 2005.

<sup>88</sup> Labriola and Hopkins, 2014.

<sup>89</sup> RubinBrown, 2014.

<sup>90</sup> Hall, 2007.

<sup>91</sup> New York State Office of Indigent Legal Services, 2016 (final standards adopted by the Office of Indigent Legal Services were based on recommended levels described in Pace et al., 2016).

<sup>92</sup> Lee, Hamblin, and Via, 2019.

<sup>93</sup> BlumShapiro, the ABA-SCLAID, and the National Association of Criminal Defense Lawyers, 2017.

<sup>94</sup> Public Policy Research Institute, 2015.

<sup>95</sup> Kleiman and Lee, 2010.

<sup>96</sup> Washington Supreme Court Standards for Indigent Defense, Standard 3.4: Caseload Limits, adopted effective October 1, 2013 except for paragraph 3, misdemeanor caseload limits, adopted effective January 1, 2015.

in a year. As suggested by the calculations above, the two values—average time needed (often referred to as a case weight) and a maximum annual caseload—are related to each other mathematically by whatever estimate is used for annual case-related duty hours.

It might be helpful to place the recommended Michigan caseload standards into perspective by comparing those values with what other jurisdictions have done elsewhere. Before we turn to such a comparison, it is important to note that cross-jurisdictional comparisons of average attorney hours (either actual or recommended), caseload maximums, times to disposition, outcomes, or anything else related to criminal prosecutions or other client matters need to be viewed with caution. Even if two states define, for example, the crime of assault with a deadly weapon with same black-letter law, if the appellate courts in each state have interpreted those statutes in the same way, if the potential sentences for convicted defendants are the same, and if the rules of criminal procedure mirror each other perfectly, myriad other factors at the state and local levels (e.g., prosecutorial policies regarding discovery, travel times to courthouses and jails, support staff levels) can arguably move such a comparison uncomfortably into the world of apples and oranges. That said, viewing what other states have done can serve as one way to assess whether the Michigan recommended standards appear to reflect current thinking about indigent attorney workloads.

The three tables below list the case types that have been examined in the 13 states mentioned earlier, grouped by felony-level offenses (Table 5.3), misdemeanor-level offenses (Table 5.4), and all other client matters (Table 5.5). Michigan’s recommended standards are presented as well and are highlighted for ease of reference. The 1973 NAC standards are included for comparison. We have excluded case types that involve juvenile representations, appeals, civil commitments (mental health), and other matters that do not appear to involve adult defendants in trial-level courts, given the focus of the work we conducted in Michigan. Case types that were described only as a driving-under-the-influence offense or a similar charge were classified as misdemeanors. At least some of the values in 12 of the states arose from attorney workload studies similar to the effort described in this report, though typically the final standards adopted by whatever state authority that has the power to do so reflect policy considerations as well as the results of data collection efforts in the underlying studies.<sup>97</sup> Some states did not issue standards per se but instead only calculated absolute case weights that reflect average time expenditures. Such weights are very useful in that they can help in determining the number of full-time equivalent (FTE) attorneys needed to handle an expected caseload and to do so with enough time to deliver effective defenses. To calculate the equivalent of an annual maximum caseload in such instances, we divided those absolute case weights into 1,855.8 hours or 111,348 minutes, depending on how they were expressed. Because we occasionally needed to make judgment calls on how to interpret the findings of the studies that led to the case weights or

---

<sup>97</sup> The standards for the state of Washington were set by its Supreme Court to closely adhere to the recommendations made in 1973 by the NAC.

annual standards for all of the states in the tables, the reader is urged to refer to the original reports if intending to utilize the information presented in the tables for other purposes.

**Table 5.3. Statewide Maximum Caseload Standards for Felonies**

<b>Jurisdiction</b>	<b>Case Type</b>	<b>Measure</b>	<b>Effective Annual Maximum</b>
Maryland	Capital (death notice filed)	Case weight (87,840 min.)	1
Washington	Death penalty case	Standard (at any one time)	1
Virginia	Capital crime	Case weight (68,113 min.)	2
New Mexico	Capital offense	Case weight (29,544 min.)	4
Maryland	Capital (death notice not filed)	Case weight (25,740 min.)	4
Louisiana	Felony—life without parole	Case weight (200.67 hrs.)	9
New Mexico	Murder	Case weight (12,154 min.)	9
Rhode Island	Murder	Case weight (181.6 hrs.)	10
North Carolina	1st-degree murder (includes capital)	Case weight (8,189 min.)	14
<b>Michigan (recommended)</b>	<b>Murder/manslaughter</b>	<b>Standard</b>	<b>15</b>
Colorado	Felony 1	Standard	15
Missouri	Murder/homicide	Case weight (106.6 hrs.)	17
Rhode Island	Nonmurder with possible life sentence	Case weight (108.1 hrs.)	17
Maryland	Homicide (average)	Case weight (6,420 min.)	17
<b>Michigan (recommended)</b>	<b>CSC (1, 2, 3)</b>	<b>Standard</b>	<b>23</b>
Massachusetts	Superior nonconcurrent felony-265	Case weight (76.36 hrs.)	24
North Carolina	Felony A, B1, and B2	Case weight (4,519 min.)	25
Louisiana	High-level felony	Case weight (69.79 hrs.)	27
Idaho	Felony	Case weight (67.19 hrs.)	28
Missouri	Sex felony	Case weight (63.8 hrs.)	29
Colorado	Sexual assault felony 2, 3, 4, 5, or 6	Standard	30
Rhode Island	Felonies, more than 10 years imprisonment	Case weight (51.9 hrs.)	36
<b>Michigan (recommended)</b>	<b>Other class A felony</b>	<b>Standard</b>	<b>37</b>
Missouri	A/B felony	Case weight (47.6 hrs.)	39
Missouri	Class A/B felonies	Case weight (47.6 hrs.)	39
Massachusetts	Superior nonconcurrent felony—not 265	Case weight (42.25 hrs.)	44
Louisiana	Midlevel felony	Case weight (41.11 hrs.)	45
Virginia	Murder/homicide (noncapital)	Case weight (2,471 min.)	45
<b>Michigan (recommended)</b>	<b>Class B, C, D felony</b>	<b>Standard</b>	<b>46</b>
New York (5 counties)	Violent felony	Standard	50
New Mexico	Violent felony	Case weight (1,774 min.)	63

<b>Jurisdiction</b>	<b>Case Type</b>	<b>Measure</b>	<b>Effective Annual Maximum</b>
Colorado	Felony 2	Standard	64
Rhode Island	Felonies, up to 10 years imprisonment	Case weight (28.3 hrs.)	66
North Carolina	Felony C, D, E, and F	Case weight (1,560 min.)	71
Maryland	Violent felony (average)	Case weight (1,515 min.)	73
<b>Michigan (recommended)</b>	<b>Class E, F, G, H felony or two-year misdemeanors</b>	<b>Standard</b>	<b>74</b>
Missouri	C/D felony	Case weight (25 hrs.)	74
Massachusetts	District concurrent felony—265	Case weight (24.13 hrs.)	77
Texas	Felony, 1st degree	Standard	77
Texas	Class 1 felony	Standard	77
Louisiana	Low-level felony	Case weight (21.99 hrs.)	84
Massachusetts	District concurrent felony—not 265	Case weight (19.12 hrs.)	97
New York (5 counties)	Nonviolent felony	Standard	100
New York (5 counties)	Nonviolent felony	Standard	100
Texas	Felony, 2nd degree	Standard	105
Colorado	Driving under the influence felony 4	Standard	115
Maryland	Nonviolent felony (average)	Case weight (838 min.)	133
Colorado	Nonviolent felony 3 or 4	Standard	142
Texas	Felony, 3rd degree	Standard	144
Virginia	Violent felony	Case weight (766 min.)	145
Washington	Felony	Standard	150
Texas	State jail felony	Standard	174
NAC, 1973	Felony	Standard	150
Colorado	Felony 5 or 6	Standard	199
North Carolina	Felony G, H, and I	Case weight (524 min.)	212
New Mexico	Nonviolent felony	Case weight (509 min.)	219
Colorado	Drug-related felony 1, 2, 3, or 4	Standard	241
Virginia	Nonviolent felony	Case weight (433 min.)	257

**Table 5.4. Statewide Maximum Caseload Standards for Misdemeanors**

<b>Jurisdiction</b>	<b>Case Type</b>	<b>Measure</b>	<b>Effective Annual Maximum</b>
Idaho	Misdemeanor	Case weight (21.95 hrs.)	85
Massachusetts	Operating under the influence	Case weight (19.69 hrs.)	94
Massachusetts	Misdemeanor	Case weight (16.78 hrs.)	111
Colorado	Misdemeanor sex offense	Standard	125
Rhode Island	Misdemeanor	Case weight (12.7 hrs.)	146
Louisiana	Enhanceable misdemeanor	Case weight (12.06 hrs.)	154
Missouri	Misdemeanor	Case weight (11.7 hrs.)	159
North Carolina	Driving while impaired	Case weight (527 min.)	211
Texas	Class A misdemeanor	Standard	216
<b>Michigan (recommended)</b>	<b>One-year misdemeanor</b>	<b>Standard</b>	<b>232</b>
Louisiana	Misdemeanor or city parish ordinance	Case weight (7.94 hrs.)	234
Colorado	Misdemeanor driving under the influence	Standard	234
Texas	Class B misdemeanor	Standard	236
New Mexico	Driving while intoxicated	Case weight (439 min.)	254
<b>Michigan (recommended)</b>	<b>93-day misdemeanor</b>	<b>Standard</b>	<b>265</b>
New York (five counties)	Misdemeanors and violations	Standard	300
Washington	Misdemeanor (with case weighting)	Standard	300
Colorado	Misdemeanor 1	Standard	310
Washington	Misdemeanor (without case weighting)	Standard	400
NAC, 1973	Nontraffic misdemeanor	Standard	400
Colorado	Misdemeanor 2 or 3	Standard	411
North Carolina	Misdemeanor (includes traffic)	Case weight (246 min.)	453
New Mexico	Misdemeanor	Case weight (225 min.)	495
Maryland	Misdemeanor jury trial demands/appeals (average)	Case weight (217 min.)	513
Virginia	Driving while intoxicated	Case weight (191 min.)	583
Colorado	Misdemeanor traffic/other	Standard	672
Virginia	Misdemeanor	Case weight (147 min.)	757
Maryland	District court criminal (average)	Case weight (137 min.)	813
Maryland	District court traffic (average)	Case weight (93 min.)	1,197



**Table 5.5. Statewide Maximum Caseload Standards for Other Client Matters**

<b>Jurisdiction</b>	<b>Case Type</b>	<b>Measure</b>	<b>Effective Annual Maximum</b>
Rhode Island	Probation violation	Case weight (16.9 hrs.)	110
Idaho	Contempt	Case weight (15.53 hrs.)	119
Maryland	Drug treatment court	Case weight (912 min.)	122
New Mexico	Drug court	Case weight (861 min.)	129
Idaho	Probation violation	Case weight (10.37 hrs.)	179
North Carolina	Specialized court (any)	Case weight (620 min.)	180
Missouri	Probation violation	Case weight (9.8 hrs.)	189
Idaho	Other matter	Case weight (9.67 hrs.)	192
New York (5 counties)	Probation revocation or other postdisposition matter	Standard	200
Massachusetts	Superior Court probation	Case weight (9.17 hrs.)	202
Louisiana	Revocation	Case weight (8.47 hrs.)	219
Massachusetts	District Court probation	Case weight (8.26 hrs.)	225
<b>Michigan (recommended)</b>	<b>Probation violation</b>	<b>Standard</b>	<b>530</b>
North Carolina	Probation violation	Case weight (189 min.)	737
Colorado	Felony probation revocation	Standard	617
<b>Michigan (recommended)</b>	<b>Other matter</b>	<b>Standard</b>	<b>619</b>
Virginia	Probation violation, felony	Case weight (151 min.)	675
North Carolina	Other criminal	Case weight (189 min.)	589
Massachusetts	District Court bail only	Case weight (2.19 hrs.)	847
New Mexico	Probation violation	Case weight (129 min.)	863
Colorado	Misdemeanor probation revocation	Standard	1,014
Maryland	Modifications/sentence reviews, circuit (average)	Case weight (98 min.)	1,136
Maryland	Violations of probation, circuit	Case weight (90 min.)	1,237
Maryland	Modifications/sentence reviews, district (average)	Case weight (68 min.)	1,637
New Mexico	Extradition	Case weight (58 min.)	1,920
Virginia	Probation violation, misdemeanor	Case weight (54 min.)	2,062
Maryland	Violations of probation, district	Case weight (45 min.)	2,474
Maryland	Preliminary hearings, district (average)	Case weight (10 min.)	11,135

## Case Weights

There are essentially two types of time-based case weights: *absolute* (the weight reflects the average time measured for a particular type of case) and *relative* (the weight reflects how the

average time measured for a particular type of case compares with the average for all cases taken together). The information needed to generate both types is exactly the same. For example, an analysis of time records might determine that cases classified as type A required an average of 200 hours of personnel time to process, those of type B required an average of 20 hours, and all cases taken together (defined here as the total of all cases of types A and B) required an average of 50 hours. Therefore, the absolute case weights for types A and B would be 200 and 20, respectively (essentially just the average hours for each of the two types), while the relative case weights for the two categories would be 4.0 (200 hours for type A cases divided by the 50-hour average for all cases) and 0.4 (20 hours for type B divided by 50 hours for all cases), respectively. There are, of course, variations on these case-weighting approaches. Some absolute weights are expressed in minutes rather than hours, and some relative weights are benchmarked using a fixed number (such as the average time consumption for a specific type of case) rather than the average of all cases taken together.

Case weights are extremely useful for planning purposes, but they are best (or at least most easily) developed in an environment in which there is general consensus that things are working well. The example above assumed that the absolute weights were the product of an “analysis of time records,” which might describe the eight-week time study we conducted in the summer of 2018. But to the extent that the information we gathered reflected an unfortunate mismatch between workloads and staff availability, that mismatch would be enshrined at the local office level by the unadjusted use of absolute weights going forward. The typical workaround utilized by justice system organization researchers in such a situation is to conduct the same sort of qualitative data collection RAND and the MIDC performed in holding the September 13 meeting in Lansing. An assessment of current conditions is first conducted (such as by a time study), then a panel of experts reviews those findings and reaches some level of agreement about what the optimal values might be. In other words, the panel considers the way things are now, but then recommends what is needed to achieve the key objectives of the justice system organization going forward. Accordingly, Michigan already has the absolute case weights it needs, because these are exactly the same as the Delphi panelists’ recommended average attorney times (see Table 4.2). The absolute case weight for CSC (1st, 2nd, and 3rd degrees) is 80, the absolute case weight for one-year misdemeanors is 8, and so on.

Absolute case weights can be used to determine maximum caseloads when a mix of client matters is being handled. Assume that a solo practitioner who works only on indigent appointments receives a contract to take on 150 one-year misdemeanors over the course of a year. For planning purposes, it might be expected that the attorney will wind up spending 1,200 hours handling these cases (*150 cases × an absolute weight of 8 hours*). Using our working estimate of 1,855.8 annual case-related duty hours, this leaves the attorney 655.8 hours theoretically available that year for all other client-related matters. That residual could consist of, for example, 94 93-day misdemeanors ( $655.8 \div 7\text{-hour case weight}$ ), or 16 other high-severity (B, C, D) felonies ( $655.8 \div 40\text{-hour case weight}$ ), or three murder or manslaughter cases *and*

seven CSC cases ( $[3 \times 120\text{-hour case weight}] + [7 \times 40\text{-hour case weight}] = 640 \text{ expected hours}$ ).

What about a situation where an attorney devotes less than full time to handling adult criminal matters? As Table 3.6 suggested, attorneys who participated in the survey varied greatly as to the amount of time they typically spent each week representing adult defendants. Let us assume that the solo practitioner with the 150 one-year misdemeanor contract described in the preceding example had certified to the local indigent defense system that he or she would devote about 75 percent of his or her time to adult criminal matters (it does not matter whether these are appointments or retained clients). That means only three-quarters of the 1,855.8 annual case-related duty hours in our assumptions would be available for adult defendants and their legal needs. So rather than 655.8 hours remaining for additional cases beyond the 150 one-year misdemeanors, only 191.8 hours would be available ( $[1,855.8 \text{ annual case-related duty hours} \times 0.75 \text{ FTE}] - [150 \text{ cases} \times \text{an absolute weight of 8 hours}]$ ), and instead of as many as 94 93-day misdemeanors potentially added to the solo practitioner's caseload, just 27 of such cases could be represented ( $191.8 \div 7\text{-hour case weight}$ ).

Absolute case weights can also be used for estimating required staff levels. Assume it is projected that over the next year, a public defender office with attorneys working full time on adult indigent defendant clients at the trial-court level will be called on to handle five murder or manslaughter cases, 30 CSC 1-2-3 (1st, 2nd, 3rd degree) cases, 77 other class A felonies, 100 low-severity felonies, 600 one-year misdemeanors, and 800 93-day misdemeanors. The estimated number of total hours necessary for this work would be 19,750 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 (1,855.8) suggests that about 10.6 attorney FTEs will be needed by this office.

Another way to assess caseload mixes is to use relative weights. We cannot use mean hours expended by all attorneys for all cases taken together as the benchmark for calculating relative weights (as does the Defender Services Office of the Administrative Office of the United States Courts when calculating attorney needs for federal defender organizations) because we do not know how many indigent defense cases were handled in Michigan over any particular period of time, nor do we know the relative distribution of those cases by the case types we employed for this study. As a workaround, we can arbitrarily characterize one-year misdemeanors (along with the Delphi panel's recommended eight minimum average hours for this case type) as the "typical" indigent defense case in Michigan.<sup>98</sup> Thus, a one-year misdemeanor has a relative

---

<sup>98</sup> There is some evidence from both the time study and the attorney survey that at least for the participants in these two data collection exercises, 93-day misdemeanors might be the most common study case type category handled by indigent defenders. More-granulated information from the Michigan court system about statewide caseloads could confirm whether this was true. For purposes of this report, it makes no difference what type of case is used for the benchmarking of relative weights as long as the recommended total weighted caseload maximum for utilized assessing excessive workloads is based on that same case type.

weight of 1.00, another high-severity felony has a relative weight of 5.00 (*40 hours ÷ 8-hour benchmark*), a probation violation has a relative weight of 0.38 (*3.5 hours ÷ 8-hour benchmark*), and so on (Table 5.6).

**Table 5.6. Example of Relative Weights Using One-Year Misdemeanors as Benchmark**

Case Type	Relative Weight
Murder or manslaughter	15.00
CSC (1st, 2nd, and 3rd degrees)	10.00
Other class A offenses	6.25
Other high-severity felonies	5.00
Low-severity felonies and two-year high court misdemeanors	3.13
One-year misdemeanors	1.00
93-day misdemeanors	0.88
Probation violations	0.44
Other adult criminal indigent defense trial court–level matter	0.38

Under such a scheme, the recommended maximum weighted caseload for a Michigan indigent defense attorney would be 232 (essentially the maximum recommended caseload for one-year misdemeanors as described in Table 5.2). To determine whether an attorney’s workload was potentially exceeding what might be thought to be reasonable in light of the need to deliver an effective defense, that attorney’s weighted caseload would be calculated as follows:

$$\begin{aligned}
 &\textit{Weighted caseload using relative weights benchmarked on one-year} \\
 &\textit{misdemeanors} = \\
 &(\textit{number of murder/manslaughter cases} \times 15) + (\textit{number of CSC cases} \times 10) + \\
 &(\textit{number of other class A cases} \times 6.25) + (\textit{number of other high-severity felonies} \\
 &\times 5) + (\textit{number of low-severity felonies and two-year misdemeanors} \times 3.13) + \\
 &(\textit{number of one-year misdemeanors}) + (\textit{number of 93-day misdemeanors} \times 0.88) \\
 &+ (\textit{number of probation violations} \times 0.44) + (\textit{number of other client matters} \times \\
 &0.38)
 \end{aligned}$$

Absent additional information about the precise nature of the matters being handled by an attorney and the influences on attorney time consumption generated by the local legal environment within which such cases exist, a policy could be adopted where a weighted caseload (using the one-year misdemeanor standard) exceeding 232 would be *prima facie* evidence of an excessive workload.

## Possible Impact of Recommended Standards on Current Caseloads

Without reliable information on the actual caseloads of all Michigan attorneys who are accepting indigent criminal appointments, we cannot say with certainty how many are currently handling a number and mix of cases that would exceed the recommended annual maximums. We

strongly urge the MIDC, local indigent defense systems across the state, and the Michigan trial courts to work together so that such granulated caseload counts are more readily available as the commission's standards setting work moves forward.

We can, however, attempt to provide some insight into this issue for the commission's consideration by using caseload counts reported by those participating in the attorney survey. Our basic approach involves weighting the questionnaires' answers for annual adult criminal defense cases (both indigent defense appointments and private representations) by the relative weights in Table 5.6 that are benchmarked on one-year misdemeanors and then determining whether the total weighted case count exceeds the 232 maximum. If, for example, an attorney reported that he or she handled an estimated 20 CSC cases and ten other class A felonies over a year, his or her total weighted caseload would be 262.5 ( $[20 \text{ CSC cases} \times 10 \text{ weight}] + [10 \text{ other class A cases} \times 6.25 \text{ weight}]$ ) or, put another way, a potential workload that is 13 percent greater than the recommended 232 weighted-case maximum.

While the math involved in identifying whether a participating attorney has a potentially excessive workload is straightforward, the attorney survey was primarily designed to gather the respondents' recommendations for average hours. As a result, there are a number of challenges when trying to use the survey for these calculations. First is the fact that the definition of one of our nine case type categories changed during the expert panel session. At the request of the panelists, 4th-degree CSC cases moved from the original CSC category to the low-severity felonies and two-year misdemeanors category. The survey respondents reported on their estimated annual caseload for all CSC cases but did not break those numbers out by the degree of the charges. The only information we have available to us to help estimate how many of the CSC cases reported in the survey should be shifted to the low-severity felonies and two-year misdemeanor category comes from the CMS extract obtained from the Berrien County Public Defender's Office. A total of 32 CSC cases were listed in the data extract we received. Not all were used for our analyses of attorney hours for reasons discussed previously, but as a group they do provide some idea of what proportion of CSC cases typically involve a 4th-degree charge. Because eight of the 32 were originally charged as 4th-degree CSCs, our calculations of weighted caseloads using survey data move 25 percent of all reported CSC cases for each survey respondent out of the sexual conduct category and add those cases to the low-severity felonies and two-year misdemeanors group.

Another challenge is that, based on what we learned in the survey, Michigan attorneys do not always limit their criminal law activities to just the nine categories of cases chosen for the caseload standards development effort. Indeed, with the exception of public defenders, they do not always restrict themselves to appointed cases. A mix of criminal, civil, and other types of legal matters can be handled as well. And some attorneys may work only part time, no matter what sorts of cases or clients they take on. These are important considerations, because the recommended caseload standards describe limitations for a hypothetical attorney who (a) works full time, (b) represents only appointed clients, and (c) handles only cases falling into the nine

study categories. Despite the fact that not all attorneys actually satisfy all three assumptions, these standards are nevertheless useful indicators of possibly excessive caseloads if there is sufficient information about an attorney's overall professional activities to make a reasonable assessment of estimated workload. For example, an attorney with a half-time practice would be considered to have an excessive caseload when he or she has taken on more than half of a recommended caseload maximum (e.g., instead of a full-time attorney being limited to 74 other high-severity felonies in a year, a half-time attorney would simply be limited to 37 such cases). Another example involves an attorney with a mix of criminal and civil client matters. If a full-time attorney spent one-fifth of his or her case-related time on 93-day misdemeanors appointments and the other four-fifths on divorce cases, he or she would be limited to handling 53 such misdemeanors (one-fifth of the 265 annual maximum for this case type category).

We did ask questions in the attorney survey that could help adjust individual practitioner caseload counts in a way that allows for comparison with that hypothetical full-time attorney with a practice exclusively involving appointments in the nine study case types. The participants answered questions that could, at least in theory, provide their estimates of annual counts for indigent appointments in adult criminal cases by the individual study case type; the amount of time they devote to indigent appointments in adult criminal cases as a percentage of all case-related time (regardless of purpose) spent by the attorney; annual counts for all adult criminal cases (regardless of whether involving appointments or paying clients) by the study case types, regardless of whether involving appointments or paying clients; and the amount of time they devote to all adult criminal cases as a percentage of all case-related time spent by the attorney. With such information, we could determine, for example, whether overall criminal caseload of an indigent defender who works only 10 percent of his or her time on such cases exceeds the recommended threshold.

As is true for any voluntary survey, however, not all participants answered all questions. Some, for example, provided information sufficient to calculate the percentage of all case-related time devoted to indigent defense appointments but failed to provide an estimate of their annual caseload related to such appointments. Others, for example, reported an estimate of annual indigent appointments but not of all adult criminal cases they handled. To address this problem, we first examined the individual case type counts (e.g., for probation violation) in the annual estimates for indigent criminal appointments and weighted those counts by the relative weights presented in Table 5.6 that are benchmarked on one-year misdemeanors. A total weighted caseload for indigent criminal appointments was then calculated as the sum of the individual weighted case type counts, and we adjusted that total upward proportionally as described previously when the attorney did not have a full-time practice exclusively involving such cases. Next, we performed the same exercise for estimates related to all adult criminal representations (which includes both paying clients and court appointments. With such information, we identified a respondent as an attorney with a criminal caseload that exceeds the recommended standards using the following rules:

1. If information about all adult criminal caseloads (both appointments and private clients) for the nine study case types is available, the caseload standard is exceeded when the adjusted total of weighted cases for these types of cases was greater than the 232 threshold.
2. If only information about indigent appointments is available, the caseload standard is exceeded when the adjusted total of weighted cases for these types of cases was greater than the 232 threshold.

As can be seen in Table 5.7, four out of five attorneys reporting caseload information appear to have exceeded the maximum caseload standards derived from the recommendations of the expert panel. This situation is most noticeable in the context of public defenders, with just 11 percent of those attorneys having total weighted caseloads under the combined standards. But perhaps more striking is that eight out of ten public defenders take on weighted caseloads that are at least double the recommended upper limit for allowing sufficient time to properly represent clients. The situation is less extreme for attorneys who are appointed through contract or assigned counsel programs, with about two out of ten under the caseload maximum. Attorneys in such programs who also spend at least half of their case-related time on criminal appointments (the Other–Heavy group) are the most likely of the three groups shown in the table to have caseloads within recommended limits, but more than one-third nevertheless have weighted caseloads at least double the maximum.

**Table 5.7. Weighted and Proportionally Adjusted Caseloads of Attorney Survey Respondents**

Level	Percentage of Reporting Attorneys			
	PD	Other–Heavy	Other–Light	All Attorneys
Does not exceed standard	11.4	22.2	20.1	19.6
Up to 24% over standard	0.0	11.1	6.5	7.1
25% to 49% over standard	0.0	9.9	8.6	7.8
50% to 74% over standard	2.9	8.6	8.6	7.8
75% to 99% over standard	2.9	9.9	4.3	5.9
100% or more over standard	82.9	38.3	51.8	51.8

NOTE: *N* = 255 for all attorneys, 35 for public defenders, 81 for Other–Heavy attorneys, and 139 for Other–Light attorneys.

We present these estimates with the following caveats. One is that the level of precision requested of the participating attorneys when providing their estimates of caseloads and allocation of working hours was fairly relaxed. This is a particular concern for the higher-weighted categories, such as murder or manslaughter, CSC, other class A, and other high-severity felonies. An extra 50 cases in the probation violation category will mean little for an attorney’s weighted caseload, but an inadvertent five more CSCs in the total might well be enough to exceed the recommended standard. In addition, a small underestimate of hours spent

handling criminal matters or a small overestimate of the total number of all hours spent on case-related tasks could also push a projected caseload over the maximum.

Another caveat to keep in mind is that any standard based on recommended average attorney hours that are *greater* than current expenditures (as measured by the time study) is likely to result in excessive weighted caseloads for most lawyers who already spend most of their case-related workweeks toiling away on criminal cases. Nevertheless, Table 5.7 does suggest that considerably more attorney resources will be required to address the statewide indigent defense workload if the expert panel's recommendations are to be realized.

## Going Forward

Many of the comments submitted in conjunction with the attorney survey described the current situation in Michigan indigent defense as one in which the sheer volume of representations has reached the point where the quality of the services rendered to the client suffers. Some respondents, for example, noted that public defender offices were operating under caseloads that were “oppressive,” resulting in pressure “to plead people out and not file motions,” while for assigned or contract counsel the existing compensation structure forced lawyers “to work on volume to earn a living, which leads to inadequate preparation time and substandard legal representation.”<sup>99</sup> Some media reports and studies have reached similar conclusions.<sup>100</sup> To the extent that indigent defender caseloads in this state are indeed excessive, such problems cannot be made to disappear simply through the adoption of maximum caseload standards. Far better information about indigent defender caseloads, at both the local system level and the individual attorney level, will be needed going forward to make sure that the standards continue to accurately reflect the evolving challenges and the unique local legal cultures facing defenders in every jurisdiction in the state. Most importantly, adequate funding must be made available to increase the pool of public defenders to reduce their caseloads below threshold levels, and similarly adequate funding must be made available to compensate private counsel in a manner that would make it financially viable for them to include indigent defense as a substantial part of their practices despite receiving fewer appointments over the course of a year. Without the provision of sufficient resources to both public and private counsel, it is not possible to fully guard against the “[e]conomic disincentives or incentives that impair defense counsel’s ability to provide effective representation” that were sources of concern for the Michigan legislature in its original charge to the MIDC.<sup>101</sup>

---

<sup>99</sup> It should be noted that not all of the attorneys submitting survey comments indicated that controls on caseload volume were needed. One respondent claimed that if “I were limited to 150 cases I would spend half of my time reading the newspaper.”

<sup>100</sup> Samilton, 2018; NLADA, 2008.

<sup>101</sup> Mich. Comp. Laws § 780.991(2).



It is our understanding that the MIDC intends to regularly revisit the issue of caseload standards in the future. If so, we applaud the decision. Standards development efforts going forward will be far less daunting and, frankly, far less expensive. If, indeed, attorney levels in local indigent defense systems are adjusted to account for new standards, and if CMSs are improved so that more-reliable and more-easily accessed data on caseloads and attorney time expenditures are made available for planners, there will be better information available for future Delphi sessions than could be utilized for the one RAND and the MIDC conducted in 2018. Ultimately, the recommended standards presented in this chapter are simply a starting point in a continuing, long-term process. As additional time is made available for indigent defenders to effectively address the needs of their clients, stakeholders will have enhanced opportunities to evaluate the best and most-efficient ways to “guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the Constitution of the United States and section 20 of article I of the state constitution of 1963.”<sup>102</sup> The optimal time to conduct caseload assessments is during periods of relative calm and adequate resources, and not when the system is in crisis, which is when the development of caseload standards and case weights runs a risk of entrenching existing problems.

---

<sup>102</sup> Mich. Comp. Laws § 780.991(2)(b).

## Appendix A. Comments from Participants in the Attorney Survey

---

The comments below were submitted by defenders responding to the attorney survey. The submissions, in alphabetical order, have been lightly edited for clarity and to avoid providing individually identifiable information.

- 
1. Additional funding either on the state or local level is critical and urgent. Caseloads are oppressive. Devoted public defenders spend personal time in or out of the office in order to satisfy personal integrity and provide the best quality representation of clients.
  2. Although higher-class felonies are often thought to require more time, misdemeanor and lower-class felonies can require a lot of time because the impact of convictions and the issues that bring the persons before the court are often the same.
  3. As all cases are unique, I find that I spend a lot of time working up the facts of the case. I see lots of details which can make a difference and are only flushed out through multiple interviews, discussions with involved parties, and careful review of all discovery materials.
  4. As court appointed attorneys, we should be on par with the resources available to the prosecutors' offices. This would include research materials and resources such as Westlaw; availability to investigators; access to CCH [Computerized Criminal History] and Michigan Law Enforcement Information Network (LEIN) records; trial aids utilizing IT; and our pay should be commensurate with that of Prosecutors. MIDC needs to stop all flat fee payment for court-appointed attorneys. MIDC needs to police these programs and get rid of the attorneys who do not dedicate the time each case deserves and/or those attorneys who give court-appointed attorneys a bad name. Require Prosecutor to be more timely with ALL discovery, not just a police report.
  5. Attorney fees in Macomb County are essentially at the same level they were in 1974. In fact, some district courts reduced their fees at which time I had enough and indicated that I simply cannot afford to take any indigent cases anymore.
  6. Attorneys that represent indigent defendants deserve to be paid more. My average fee in an indigent case is approximately 25–50 dollars per hour. It should be an average of 50–100 dollars per hour in my opinion.
  7. CASELOAD: This is a huge issue. In the public defender office, I was assigned 150 new felony files in 9 months and, by 10 months, my overall caseload was about 200 files (including felony PVs [parole violations] and misdemeanors); Four of the cases were capital cases. I was encouraged to plead people out and not file motions; the assigned caseload supported this mode of operation making it virtually impossible to provide adequate representation to all clients. I was directed to remember that we could not do everything for every client. This model did not comport with my ethics or personal standards as an attorney. Furthermore, in other counties, an appointed attorney is often required to be in more than one place at one time and judges should be understanding about that situation and/or not create such
-

---

conflicts to begin with (as far as practicable); some judges actually create conflict feeling that their time is more important than another judge. There should be a rule or common practice for judges, especially in court appointed cases, to give the attorneys some time to either make both appearances (within a reasonable time) or allow them to reschedule (even in advance so as to not cause anticipated delay). Otherwise, an attorney risks coming in to court late, with an upset Judge who may take it out on a court appointed client; unfair.

COMPENSATION: The PD office model was parity with the prosecutor's office; this is the correct model. The same amount of resources should be spent in both places. This is the only way to even come close to ensuring proper funding. In Ingham County, the rate for one full day of trial is something like \$130 FOR THE ENTIRE DAY. I love indigent defense but that is appalling and barely above minimum wage; it would COST a private attorney to even consider running a trial for that rate. Ridiculous. Jackson County pays better at something like \$250 per half day. I tried many cases there and was at least satisfied somewhat with that level of compensation. Judicial review of time entries and expenses also should be ended; let some independent party review time sheets. Judges have cut and slashed ridiculous amounts of time off of time sheets just because they can; they are often the ones who make the appointments to begin with and it is unfair. It has happened to me and many other attorneys I know. Also, the counties that do contracts or list rotations have not adjusted their rates of compensation in almost a decade. No increases. This is crazy.

TRAINING & OTHER RESOURCES: TRAINING DOLLARS. There should be affordable training. If an attorney accepts court appointed cases, there should be in the county/state/appropriate budget money for their training (proportionate to their number of cases). Criminal Defense Attorneys of Michigan (CDAM) training is great for defense attorneys and networking with other more experienced attorneys who can provide future guidance. Counties/state should subsidize the training for PD offices (and contract or conflict attorneys) and the amount of funding should be equal to that spent on prosecutor training.

WESTLAW/ONLINE RESEARCH. Also, PD and contract attorneys should have access to online legal research like Lexis or Westlaw (same as any prosecutor's office). Defense attorneys should be able to get an iChat print out (or be able to have a copy of a LEIN print out without violating the law) without having to incur any cost. It is necessary to know your client's prior record for negotiation, sentencing guidelines, and impeachment issues. Furthermore, Westlaw & Lexis allow for running background checks on potential witnesses which allows for the defense attorney to obtain impeachable information in order to do their jobs effectively. Note the prosecutor has superior access to this type of background info and gets an advantage (if they choose to use it).

PRIOR PSI REPORTS. If your client has had a pre-sentence investigation (PSI) report done by Michigan Department of Corrections (MDOC) in the past for circuit court sentencing, a client ought to be able to sign a waiver with MDOC, to allow the new appointed attorney access (even electronically so there is no printing cost involved). Access to a full prior PSI would really help with representation in felony probation violations because it gives the attorney a HUGE amount of information that may assist in their representation. These are dollars the state has already spent to investigate a person, why shouldn't their subsequent court appointed attorney have the

---

---

benefit of this information? The prosecutor has it stored in their file for the prior conviction (whether they choose to consult it is another thing). The appointed attorney would have the benefit of an overview of the client's background, mental health status, and other issues (including substance abuse and treatment) that could inform and assist counsel in defending a client at a subsequent time. MDOC should implement a procedure to release this information (with a waiver since it is confidential). In Berrien County, one judge liked to send all probation violators to prison, so it became necessary to request the prior/underlying PSI report (as opposed to a merely "updated PSI") in every case in front of this judge, in order to at least make a compelling record, if not to try to prevent a trip to prison for a technical violation. The probation department resisted providing copies of this report and created an overall hostile environment with the PD office as it pertained to any request for information. MDOC probation is, as I understand it, supposed to do their job in a neutral fashion. They are a state agency and the benefit of the dollars spent should serve to benefit the client contemporaneously or at a later date if needed (and a release is signed).

**ACCESS TO ONLINE COURT RECORDS/JIS/OTHER DATABASES:** Different counties use different software and allow different access. Licensed attorneys who do indigent defense work should have the same access to the same databases (except as prohibited by law like for LEIN). There is an abundant amount of information available simply by having access to the court's Register of Actions (ROAs) (like on Judicial Information Services [JIS] system—used in Jackson County). This is helpful for the defense to see what other cases defendant has been involved in (criminally or civilly—especially including PPOs, or personal protection orders). It also allows defense counsel access to the other public records and PPOs of potential witnesses or alleged victims—that may undercut their credibility and be used to impeach them (or to engage in additional investigation). By way of illustration, if a client has a pending NA [child protective proceeding] case (CPS child abuse or neglect file), it may have a BIG impact on their pending criminal matter; access to the same databases as the prosecutor would thereby allow the defense attorney to have access to the same information and more effectively represent the indigent defendant. For example, if the client is dropping for drugs for CPS, why duplicate the expense to the indigent client by making them pay for duplicate or additional drops in order to stay out of jail on bond? Also, it is pertinent to arguments for monetary bond reduction and affords the judge with some security of knowing that CPS is overseeing the defendant when they are released.

**INDEPENDENCE FROM JUDICIARY & OTHER OFFICIALS:** There are many fine judges in our state. There are also many judges who can overuse their power. Defense attorneys should not have to ask Judges for money approval for experts or investigations nor tip their hat to what defenses they are exploring. Defense strategy should be confidential (except when disclosure is required). Even in a PD office, some judges continued to exert influence over the PD office either directly or through higher county officials like county administrators. There should be also independence from undue interference into the PD office by county administrators. There should be some clear rules when you have the same administrator overseeing the Prosecutor's office (to the extent they do) and also the Public Defender's office. Maybe the PD should also be an elected position? Or maybe the county commission should play a larger role or someone else should review expenses or budgets, like someone who is not politically entrenched in

---

---

keeping the status quo up and running, (which in my experience unfairly favors law enforcement and the prosecutor's office).

INVESTIGATORS: There simply needs to be access to this resource. There should be more than one available for a PD office. If there is one full time, then there should be some hourly backups for when there are more investigations than one person can do. Contract and conflict attorneys also need to have access to investigative resources and hours. Ethics require an investigation. In my PD office sharing one investigator was not practicable; we needed more, at least 2 full time and one hourly. The prosecutor has unlimited access to investigation through law enforcement. They are not required to do follow up investigation for the defense which is why it is imperative to have access to investigators. Furthermore, an investigator is necessary in case they are needed to testify to impeach a witness. A defense attorney cannot conduct the investigation and later be both a witness and defense attorney; the ethics rules don't allow it.

PARALEGALS & INTERNS. They could be used to streamline costs if properly trained. They can help flag some legal issues and/or draft legal memoranda to assist the attorneys in addressing the constitutional issues (and other issues).

DISCOVERY VIOLATIONS & PROSECUTORIAL MISCONDUCT. There needs to be some teeth attached to Brady violations. Even if the prosecutor is not intentionally withholding exculpatory evidence, there needs to be a better method of discovery being provided and in response to requests that are made (a check & balance). The overly redacted versions of police reports and videos that are routinely given to defense attorneys creates extra obstacles for defense attorneys to simply get very basic and potentially exculpatory information. PD's do not have time to file a request to un-redact reports in all of their cases or get un-redacted videos. Something needs to be done in this area in order to assist public defenders in doing their job effectively.

APPEALS. If a case is appealed, trial counsel should receive notification. If there is ineffective assistance of counsel but the attorney who made a mistake is not informed, how will he or she ever improve. They should be notified upon the filing of an appeal, so they can elect to attend arguments, read the briefs or watch for an opinion. If an attorney knows there is an appeal pending, it also provides the attorney with the knowledge and opportunity to connect with the appellate attorney to provide any additional & supplemental information they may have.

---

8. Court appointed counsel often seek ways to dispose of cases without trials because trial fees are so low in comparison to the work required. It seems that many defendants are thereby neglected and/or defenses not fully developed because there is a higher incentive to plead cases out and close files. This seems especially true of court appointed counsel whose work is all/mostly comprised of court appointed work. Additionally, counties that have public defender's offices seem to carry much higher overhead expenses than court appointed attorneys without such an office, thereby increasing the costs of administration, etc., while not effectively increasing the actual attorney fees received by the practicing attorneys. This seems concerning when indigent defendants ultimately suffer as a result.

---

- 
9. Currently deviation requests are not paid for in indigent payment, however, most cases need these written along with sentencing memos. If these items were paid for hopefully more attorneys would submit them as they are needed.
- 
10. Each case is different—whether factually per the offense, the circumstances and/or defendant(s). Likewise, the same cannot be lump sum categorized by time; the time taken should be whatever is necessary to properly and thoroughly defend any client.
- 
11. Every case is different, of course; e.g., in the CSC 4th case I am handling now, the assistant prosecutor was able to leverage a plea out of me and my client by a threat of not only upping the current charge but charging him with a similar offense in another jurisdiction.
- 
12. Experts should not be constrained based on budgetary concerns. Defense counsel should have an equal voice with the decision and policy making of the court's programs (i.e. Veteran's court, drug court, mental health court, etc.). Defense counsel should be compensated on par with the prosecutors based on level of experience. An independent panel should decide appointments to assigned counsel excluding the prosecutor's office.
- 
13. Fees are too low.
- 
14. Find a way to pay an hourly fee to lawyers based on time actually worked.
- 
15. Generally, the assigned caseloads for indigent appointments is too high for the money paid to do the work.
- 
16. Given the current climate in society, it would be an injustice to account such a low time for Criminal Sexual Conduct cases. These cases are extremely difficult, require intense investigation, and are, in my experience, the most likely case type to go to trial.
- 
17. Good law library needed. I use the Institute of Continuing Legal Education (ICLE).
- 
18. Having a limit on the number of cases that each attorney should handle in a given year is a nonsense figure. The number of cases that any particular attorney can handle depends on factors that cannot be measured in a uniform manner. It depends on the experience and skill of the attorney, the flexibility of the particular prosecutor's office and the manner in which the court uses its time. The 150-case standard that is being suggested is therefore unrealistic, and as such I am opposed to this standard. If I were limited to 150 cases I would spend half of my time reading the newspaper, while others in my office might be overwhelmed with their allotment of cases. It is a draconian limit that serves no purpose.
- 
19. Having taken court appointments in the past, I can say the pay is WAY too low to allow sufficient time for a lawyer to properly prepare a case.
- 
20. Having the assistance of capable and thorough investigators is critical to the lawyer's ability to prepare witnesses, expose weak points in the defense and government case, and preparing for negotiations, hearings, and the like. Social workers are also key, as they provide ready access to a body of resources, research, and data that are relevant to developing mitigation for sentencing.
- 
21. I am assigned to the juvenile division representing primarily parents and children in child welfare cases. In the past year I have represented children in delinquency proceedings, defendants in PPO violation hearings, and defendants at show cause hearings for child support.
-

---

Our office has anywhere from 25–70 interns depending on the term. None of the interns are full-time. Many are not even half time, coming in only 1–2 days a week. Our office has one full-time support person. The remaining 4 are only part-time but again, some are not even half-time (because some are also students). I was not sure how to compute the numbers for the support and intern categories. My colleagues may have a better idea.

---

22. I do criminal appeals in Michigan. The problems I have deal with the Michigan Department of Corrections and their policy of attorney visits. Visits are not allowed on Tuesdays or Wednesdays, so even if I am in the area on a motion hearing, I would not be able to visit. Further, visits generally start at 2:30pm on Monday, Thursday, and Friday, and not until 4:30pm at the Reception and Guidance Center in Jackson. As an attorney, I should be allowed to visit any time during normal business hours.

---

23. I do not know how the times provided could possibly account for court time, attorney-client time, research and motion writing, consultation with an expert, plea negotiations and the myriad of behind the scenes action that comes with representation. I'm truly concerned about those taking the survey.

---

24. I have given you my responses to the various categories knowing that in some instances I have spent much more time, i.e., murder/felony murder up to over 200 hours.

---

25. I previously took on indigent defense work at a felony level, but (in Wayne County) the pay scale is so low it functionally cost me money and I could no longer do them, though I wished to.

---

26. I think it is insane that we are expected to effectively handle this many cases in a year. I am so grateful that caseload guidelines are being looked at. This will mean more time to effectively research and look over client files with more time and effort. I think it would also be effective for offices to be mandated to have some form of researching capabilities other than Google scholar, such as Westlaw or Lexis.

---

27. I think this is a very difficult thing to quantify with averages since each case can be so different and the time required so varied.

---

28. I would be more efficient if I could handle the case from start to finish—or at least if I were able to handle the PCC [probable cause conference]/Exams on cases that are continuing to circuit court. Our office treats me like a factory worker: I only get to put on the windshield wipers, never assembling the whole car. **THIS IS A BIG PROBLEM THAT WILL ONLY BE FIXED BY A STRONG POSITION FROM THE MIDC.**

---

29. I would like the survey to make clear that attorney hours include all attorney hours including those cases where there are multiple attorneys or add a question asking about the contribution of multiple (other than the primary) attorneys.

---

30. If there was a place to meet specifically for attorneys to research and print as well as other attorneys who work and can assist, that would be helpful.

---

31. In our office, all felony matters are handled by rotating judges in one central location. As a result, multiple attorneys may have worked on a single felony case. It seems that your system assumes vertical representation.

---

- 
32. Inadequate resources directly impact the ability to perform necessary services for indigent defendants. The proposed increase in resources helps but are still inadequate.
- 
33. Indigent defense resources should be compared to the resources allotted to the prosecution rather than being compared to other indigent defense programs. The prosecution has a nearly limitless investigative resource in local, state, and federal law enforcement, compared to the paltry amount of funding provided for the defense, even in serious felony cases.
- 
34. It is common place to think that high severity crimes necessarily and quite automatically require more hours than lesser felony cases. Such is not always the case. The type of case will determine the amount of hours required versus the severity of possible punishment upon conviction. A CSC 3rd (15 year maximum) will require many more hours than maintaining a methamphetamine laboratory (20 year maximum) as an example. The current model is flawed in that way.
- 
35. Judiciary should not have an active role in assigning attorneys to indigent clients like they do in Lapeer County.
- 
36. Lack of funds for private investigators and slow payment of attorney fees for services by Court.
- 
37. Legislation or court rule needed to protect from rocket docket approach in criminal cases, i.e. drop-dead dates set by the court on reduced plea's or arbitrager cut off's on acceptance of plea offers set by the prosecution. Courts and Prosecutors routinely give little of no time to review case and develop working relationship with client. State Court Administrator metrics is all that matters to courts. Bully tactics from prosecution scare clients sufficiently that they will not risk losing a plea reduction (many times on overcharged cases) when faced with an as charged threat if they take the time to assess potential defenses. It amounts to coercion or at the very least a practice meant to chill or diminish thoughtful consideration of all options including jury trial. Prosecution has weeks or months to work up and charge their case then they allow little or no time for the defense to do the same under the artificial deadline they create to coerce the defendant to plead quickly. Some attorneys will take advantage of this to get a quick plea and a quick pay check. Offers should be formalized (written) and made irrevocable for a reasonable time say 21 days before trial as an example.
- 
38. Let's get this done and implemented. Enough with the bureaucratic research. This isn't rocket science.
- 
39. Limitation on how many jail visits are compensated make it difficult to represent some clients when they do not comprehend the ramifications or impact to their life. Also the time necessary for forensic evaluations delays the ability to adequately communicate to clients.
- 
40. Low pay, entirely county-funded, and not subject to increase since the 1980s is bad for morale and factors into the expedited "McJustice"/assembly-line model of legal representation in Michigan. When pay is this low, lawyers tend to work on volume to earn a living, which leads to inadequate preparation time and substandard legal representation, including minimal and/or insufficient client contact.
-



---

41. Make sure the Judges stay out of the process. The Courts give great lip service to wanting quality representation for the indigent defendant, but always default to the cheapest person with a P [State Bar identification] number. Additionally, make sure the Counties spend their funds on the Attorneys and Investigators. There are already “rumors” that the Board of Commissioners are seeking ways to spend the money on everything other than paying the attorneys; i.e., plant and equipment, or not using the funds on anything related to the purpose for the funds. This may not be true; however, if you believe all local government wants additional funds to be spent on the representation, you may be mistaken.

---

42. Making jails more lawyer-friendly. There is no enough space or privacy typically. Actually seeing clients other than in court. Answering phone calls.

---

43. Meth lab cases are a B grid. I have 2 new ones right now. I have well over 20 hours in on the one alone.

---

44. “Misdemeanors with Potential Sentences of over 93 Days (except 2 Year High Court Misdemeanors)” For the above category, and others like it, I find it incredulous that one spends 3.36 hours on it. Please! Typically, one must go to court twice for this type of case, because a presentencing or evaluation investigation must be done after conviction and before sentencing . . . even at the district court (misdemeanor) level. One waits HOURS for the case to get heard. WAITING is sometimes more than 3 hours, in and of itself. YOUR NUMBERS DON’T ADD UP. Also, at some point travel time has to be considered. Yes, I understand regular office workers don’t get paid to commute to work. But some of us are running to four courts a day, that are FAR APART! DO YOU KNOW HOW MUCH TIME IS EATEN AWAY BY DRIVING AND WAITING???? Yes, we try to keep busy answering texts, etc. in court (if we can), but that doesn’t go very far. THE SYSTEM IS INEFFICIENT. If you have not factored travel time in your questions, this survey is FAULTY!!! In my view, attorneys were not very accurate in building this in. Yet, I think that they must . . . if you are waiting two or more hours for your case to get called, YOU ARE WORKING ON THAT CASE. If you’re driving 2–3 hours a day, by the time you add it all up, YOU ARE WORKING. When smart-minded attorneys bill for a retained case, they charge by the hour for wait time.

Why are we broke? Hidden reasons. We run up miles on our car shockingly fast, and thus have to replace our vehicles more often. Where is that in your rubric? We have to volunteer endless weekends working on judicial campaigns or “donate” money to fundraisers. Don’t see that!!!! What is the social cost? We don’t pay enough attention to our kids, and at some point it dawns on us that our kids are “lacking” what other parents give their kids . . . our kids think we pay more attention to (i.e. care about) our clients than them. (Believe me, lawyers have these conversations.) Yes, we see different outcomes with our kids that we feel badly about. Were you hired just to look at financials? The toll of ill-health, early death, strained family relationships, drug and alcohol abuse, etc. is higher than the low pay. Higher pay would certainly go a long way in helping the social aspects, but you are severely mistaken to account for only the financials in this bean-counting exercise. It’s important, but not the only thing. Also, when you submit this, could you juxtapose our numbers with THE PAY OF OTHER COURT PERSONNEL? We make less than prosecutors, secretaries, security guards, and clerks, when one considers their benefits. WE GET NO BENEFITS, NO MEDICAL, NO NOTHING. PLEASE COMPARE THE PAY OF PROSECUTORS. WHY SHOULD WE NOT

---

---

BE ON PAY PARITY? (By the way, the Federal Defenders Office attorneys gets pay parity with federal prosecutors . . . how did that happen?) PLEASE COMPARE TO FEDERAL AND STATE ATTORNEYS IN OTHER AREAS ACROSS THE BOARD.

PLEASE include a chart of historic pay over time. Some places have had NO RAISES SINCE 1978! PAY HAS BEEN LOWERED IN MANY DISTRICT COURTS. Ten years ago, it was traditional for a judge to assign TWO CASES AT A TIME TO MAKE IT WORTH YOUR WHILE, now it is one case at a time, at about half the frequency. WHERE IS THAT IN YOUR SURVEY! You need a section on that how layoffs at courts, etc. have made it HARDER TO EARN A LIVING! A sad commentary is that we are considered bottom-of-the-barrel attorneys by other attorneys (such as business attorneys). As the training standards have been really low, it's considered where people go who can't find "real jobs." THAT IS SO INSULTING. Most of us take very seriously our job of defending our clients and the constitution. PAY PARITY should be the goal. NOTHING LESS IS FAIR!! Otherwise, nice survey that sheds light on the financials. Hope it helps us. THANK YOU. THANK YOU VERY MUCH! p.s. Even without my note, this survey took more than a few minutes . . . SNEAKY!

---

45. Money should equal prosecutor salary by state law. Also, should be required to do continuing legal education seminars (CLEs) to practice criminal law, and have malpractice insurance.

---

46. Murder cases require an extensive amount of preparation to appropriately provide effective and zealous counsel representation. At a minimum, counsel should allocate 350 hours to appropriate legal and factual investigation, in addition to preparation for trial. Counsel typically provides short shrift to the investigation portion. In my murder cases, which were under appointment, I've expended hundreds of hours in preparing for the sentencing/mitigation portion and found that having co-counsel provides a better division of labor across the guilt and penalty phases.

Additionally, given the increase of defendants that are non-citizens and the complexities and intersection of immigration law with criminal law, in addition to our responsibility under *Padilla*, we must provide additional time and counsel to our clients with such particular issues. Be it we co-counsel with an immigration attorney or receive counsel for specific immigration issues, we must be ready to do so in providing an effective defense. Michigan is drastically behind in providing translators and interpreters that meet rigorous standards (e.g., certified Interpreters are interpreters who are certified by the Administrative Office of the United States Courts (AO) as having passed the Federal Court Interpreter Certification test). I've observed many interpreters in Michigan courts, state and federal, that provide inadequate and confusing interpretation services to clients and counsel. This not only exacerbates the client-counsel relationship, it strains the client's ability to understand court and judicial officers and those testifying against him/her. We have much to do here in Michigan.

---

47. My office is woefully underfunded. We don't have paralegals, investigators, social workers, a working color copier, time/resources to go to conferences, sufficiently unlimited Westlaw access, unlimited iChat or access to other databases like Clear. There is so much more I could do if I had adequate resources. As it is, I can't do my job effectively. It would also be nice to get paid more than \$40,000 a year.

---

- 
48. Need an hourly fee like appellate work. Need investigators. Need to be reimbursed for time spent on cases period. Need easy access to experts.
- 
49. Need for investigators and support staff comparable to prosecutors' support personnel.
- 
50. Need funding for experts on par with prosecutor and police. Funding to comply with MIDC. Higher pay to compensate fairly for time spent. Less waiting around for cases to be called. We need better and more than ONE confidential meeting spaces at the jail. Allegan had 5!!!
- 
51. Need more experts, investigators, available to court appointed counsel. A list of available resources (not just go find someone). Attorneys with expertise in certain area to act as co-counsel in cases with unique issues; e.g., DNA computer phone technology etc. Maybe even sharing statewide for special issues.
- 
52. Not enough money for investigators, research, or other things that the state get but as defense attorneys we don't.
- 
53. Our lack of funding inhibits our access to experts and investigators. Adding arraignment hearings to our duties takes us away from handling the cases we already have.
- 
54. Pay is terrible, getting investigators and other help on a case is very difficult.
- 
55. Perhaps a survey of those who have received the services of an indigent defense lawyer is in order. Surveys could be distributed at random or administered online to reduce costs. Aside from caseload, the commission must focus on the quality of services that indigent defense lawyers provide. Perhaps the commission should consider a certification for lawyers who wish to represent indigent clients. The commission may also wish to consider a uniform fee schedule, and possibly a fund paid into by Michigan Courts, to fund indigent defense.
- 
56. Please be mindful that attorney times are presently likely artificially low as Wayne, Oakland, and Macomb counties pay on a per-hearing basis, effectively encouraging lawyers to work only during hearings, and at that, for the least amount of time possible.
- 
57. Please include postage, copies, medical records, photographs as additional costs often incurred to represent a client.
- 
58. Quantifying average hours completely ignores the variables and complexities of background of a case, evidence to review, witnesses to interview, pretrial motions to pursue, etc. It also ignores the reality that some clients can be extremely difficult to deal with and can cause an inordinate expenditure of time.
- 
59. Regarding the time estimates for representing clients in the different categories my estimates include trial time.
- 
60. Same old issue; Counties don't want to pay attorneys. The Prosecutors office has the bulk of the resources. Judges don't have the integrity to dismiss bad cases. The clients all watch too much TV and think we the attorneys have some secret trust-fund to pay for unlimited defense.
- 
61. Thank you for your work. I don't take court appointed cases these days but did as a young lawyer and what you are doing is important.
-

---

62. The amount of time spent on cases can vary from jurisdiction to jurisdiction. In some courts the prosecutors and or judges fight everything a defense attorney does to ethically and competently represent a client causing more time to be spent on cases. Furthermore, when a case is done, if the defense attorney has done their job the bills are cut to discourage competent representation and to personally degrade the defense attorney. It acts as punishment and it acts as a way for prosecutor and judges to supplement their incomes by not having to spend a proper amount of money on defense, i.e. the saving leaves more money around for them to spend on themselves be whatever form it comes in such as staff, equipment, etc.

---

63. The biggest problem is that there is not adequate compensation for attorneys accepting court appointments. The pay should be hourly, at least \$150.00 per hour and travel time and research should be compensated as well as client conferences and jail visits. It is impossible to deliver adequate representation for the current pay scale. This is why excellent defense attorneys cannot afford to take criminal assignments.

---

64. The complexity of the case is often not related to the level of offense, e.g., a felonious assault case with 15 witnesses.

---

65. The importance of support staff and access to funds for experts cannot be overstated.

---

66. The lack of experts and investigators for court appointed clients is atrocious and rarely granted ex-parte.

---

67. The main issue (I am on a court-appointed list) is that we are not paid enough per case or per hour. If I were being paid enough, I could devote a lot more time to my cases. As things stand, I have to maintain a private civil and criminal practice to pay the bills. This means that my court-appointed cases, of which there are many, due to low attorney interest, usually pay far too little for the time I put in to them, and I still cannot devote all the time I would like, because I would go broke, otherwise. Until society decides that paying attorneys enough for an indigent defense is necessary, cases will end up being worked by overloaded attorneys and things fall through the cracks. Besides which, many of the indigent clients have an entitlement mentality (on welfare, food stamps, free healthcare, etc.) and treat court-appointed attorneys as one more government person to be rude and abusive towards. As much as I love criminal defense, and helping poor people, it is thankless work, and should be better paid by the government.

---

I would also like to make one comment about the time estimates: some misdemeanors, such as Operating While Intoxicated (OWI), take far more time to prepare an adequate defense than say, an Assault With Intent to Commit Murder (AWIM) or Assault with intent to commit great bodily harm (GBH) case. Any assaultive case (absent unusual issues or alibi) hinges upon whether or not the alleged victim comes to court, and if he does, whether he is a credible witness. Any case involving potential expert testimony or tracking down and interviewing witnesses will take up the most time.

---

68. The time estimates are for trials. It is very difficult to estimate average times when some cases go to trial and most enter into plea agreements. The estimates go down significantly should plea agreements be reached.

---

69. There is some difficulty in estimating how much time a case should take and the very real issue of the time the Courts allow us to take.

---

---

70. There should be a private area to discuss indigent defendant case info with the defendant, rather than the public hallway outside the courtroom.

---

71. This time study should be modified into two separate categories. 1. Those offices that do not have vertical representation at the time of the study and; 2. those offices that do have vertical representation. In offices without vertical representation at the time of the study, the assigned trial attorney, most likely, did not factor in time to prep for the PPC or Preliminary Examination. These are additional time constraints up front, however may lead to less time at the Pretrial/Settlement/trial level. However, I submit that those non vertical representation offices would not have factored in the time for those additional responsibilities and thus, the time study's calculations may be underreported. As it relates to vertical representation, the caseload issue will become extremely difficult to deal with. One issue will be that offices with multiple attorneys will have several attorneys in the same courtroom at the same time which will potentially mean that other attorneys will be responsible for covering conflict hearings in other courts. This will add significant prep time for those coverage attorneys. I submit that the time study did not take into account this issue.

Additional issues relating to caseloads and vertical representation will revolve around the assignment of cases to attorneys within a given office. One proven method used in the Bronx PD Office revolves around the fact that you have a misdemeanor and felony duty lawyer for the day. They appear at arraignments and are assigned the respective felony and misdemeanor cases from their arraignment duty. However, in counties that have multiple arraignment courtrooms, this will require multiple sets of duty attorneys per day. This will not allow the duty attorneys to conduct other hearings for their previously assigned cases. Consequently, there will be a need for additional attorney resources to deal with coverage issues, which in turn will increase the time needed for prep for those coverage cases. There are additional ways to assign vertical representation, however all of those methods will require an increase in either, time spent in prep relating to coverage cases or additional attorneys needed to continue the current levels of representation. I submit that the time study has not taken into account this issue.

I submit that time is the most valuable commodity for an effective defense to indigent clients. Indigent clients are not always as invested in their cases as are retained clients. Thus, public defenders often spend a larger portion of time tracking down and utilizing creative methods to meet with clients and prepare for cases than their retained counterparts. It would be wise to consider this social factor in developing caseload standards as I submit there is not a quantifiable measure for the time public defender attorneys take in simply attempting to keep in touch with their clients. While I recognize that there are finite resources related to all publicly funded projects, including the delivery of indigent defense, the issue in developing caseload projections should revolve around providing additional time resources for assigned counsel. The major complaint regarding previous delivery systems was the burden on assigned counsel relating to the number of cases and the subsequent perception that short cuts were then being utilized to resolve cases. If the goal of the changes to indigent defense delivery is to provide the best legal representation available regardless of ability to pay, only providing attorneys time enough to conduct the normal research, writing and prep time, combined with the unique issues associated with the indigent client, will help provide those needed changes. Thus, over

---

---

estimating time for cases would seem a reasonable way to factor in these unique challenges. Thank you for your attention to this matter.

---

72. Time required for defense work varies greatly also depending on whether a client is lodged in jail or not. Time spent conducting jail visits takes much more time than a phone call to a client to discuss the same issues.

---

73. Time spent is also dependent on what court one is in and how long you have to spend waiting. The waiting for a case to be called takes up most time for an attorney.

---

74. To me, a “minimum amount of time” analysis is pointless. In most cases, the Defendant admits his or her guilt from the beginning and the analysis is limited, therefore, to protection of the client’s constitutional rights. The amount of time varies so much, given the differences in discovery practice or “policy” from prosecuting attorney’s office to prosecuting attorney’s office. Further, one case can and sometimes does take a vast amount of time, even beyond the attorney’s anticipated amount of time. I believe this is a pointless survey. The focus must be, always: what needs to be done and how do I go about getting it done?

---

75. Travel time to and from court can be high and should be included in this survey. Many attorneys practice in several counties and spend a great deal of time traveling to multiple courts daily and weekly. Experts are often necessary but adequate funds and court approval is lacking for appointed cases and very often retained clients do not have the additional funds for experts which restrict the ability to hire necessary support services and personnel.

---

76. Was trial time included in the time estimates? A week in trial is of course 40 hours alone.

---

77. Wayne County paying for indigent defense creates a culture of Attorneys who seek volume and pleas, placing adequate defense as a secondary consideration, if that. A simple study of cases assigned as compared to trials conducted by an individual will show this correlation. This is a racket, and I think you guys know about it. You must because the data exists. Why can’t this be talked about publicly?

---

78. We are given no resources or money for experts or additional testing. Our time is sucked away sitting in a judge’s courtroom asking for an adjournment at times. Cases take multiple appearances especially with district courts demanding payment upon sentencing or making you hold hearings to show indigency. You are also dealing with clients and their families with substance abuse or mental health issues. Extra time and attention have to be paid to these clients. Misdemeanors can take as much time as felonies. You are trying to change a person’s path in life before that path leads to felonies. Most district courts are paying rates to attorneys that are less than attorneys made in the 1980s.

---

79. We are under paid for the work necessary and do not have the necessary resources: investigator and forensic help. Thank you.

---

80. We should be compensated better in our appointments and also be given a more equal playing field by getting more funds for experts, consultants, etc. . . .

---

81. When your survey asks about the number of cases in an offense category, I answered for the most serious charge only, because there are usually multiple counts/multiple cases filed on

---

---

the same defendant. Also, your time estimates do not take into account travel to prisoners housed in other counties.

---

82. While I do not make this a way of my practice, due to the very low pay of assigned cases, it is clearly to the financial benefit of the attorney to move assigned cases along as quickly as possible. I know in reality, this causes attorneys to not spend the proper time on cases and to plea them out prematurely or when they shouldn't be pled out in the first place.

---

83. With criminal defense, I have not kept track of time for years. I ended up wasting time keeping track of time. I typically charge a flat fee for private cases and receive a set amount per month/case for indigents. Therefore, I have eliminated the timekeeping aspect of my practice and would only be guessing at times or percentages.

---

84. Your approximate time spent on felony cases omits whether or not the case goes to trial. An open murder or felony murder case can easily use up 100+ hours. A CSC 1 case, going to trial, again could approach 90 hours+. The appointed cases, in our county consists of two panels (A list and B list); nearly all of A list appointments are capital cases that require considerable time with jail visits, numerous motions, etc. Your prognostications regarding time spent on a case are way too low.

---

## Appendix B. Comments from Panelists at the Caseload Standards Setting Conference

---

The comments are listed below by case type and are in order within each case type by when submitted (thus the first comment list within a category was the first comment submitted in regard to that case type). We have edited the original comments for clarity and dropped some that appear to only have been notes intended for the sole use of the submitter.

### Murder or Manslaughter

- I expect a great deal of discovery in these cases, as well as an incarcerated defendant, trial, and motions to file.
- Discovery, Motions, Investigation, etc. all take often place before deciding whether to plea.
- Lots of discovery, experts, client interviews, etc.
- I was considering time expected to review a great deal of additional work (investigation, etc.) performed by others.
- Lots of investigation.
- With these charges there is often voluminous discovery and the possibility of consulting with experts.
- There is a lot of discovery and preliminary examinations, and trials last several days or weeks.
- I have no experience with that type of case. My answer is based on feedback I received from other attorneys in my area.
- Lots of discovery, potential for numerous motions.
- My 90-hour minimum is based on a case with 1,000 pages of discovery or less and a three-day trial.
- Frequent jail visits, considerable amount of discovery, independent investigation, preliminary hearing, plea negotiations, motion practice, and minimum of 4 days in trial.
- In my opinion one needs to have time to deal with all of the personal investigation as well as the intangibles of client and family confidence.
- I expect several jail visits, court appearances, much discovery to sift through, and investigation.
- I would expect to spend a significant amount of time interviewing the client, conducting witness interviews, reviewing discovery, doing investigations, and consulting with experts, regardless of outcome.
- Murder cases usually include a number of expert witnesses ranging from ballistics, blood spatter, medical examiners, and DNA. Learning the science behind these fields and securing your own expert is time consuming. Additionally, the investigation in murder cases and the mitigation is extensive.
- Lots of discovery and investigation.



- In my opinion, more murders will go to trial than manslaughter and will need more time. 100-150 Hours as average.
- My estimate is based on prior cases

## Criminal Sexual Conduct

- My estimate takes into consideration a lot of discovery.
- Voluminous discovery, possible need to consult with experts. I'm estimating numbers more relating to CSC 1 and CSC 2 cases.
- Cases have the possibility of needing expert and investigation.
- Consideration of Sex Offenders Registration Act (SORA) consequences with plea bargaining.
- Large amounts of discovery, consultation with experts, and possibly an investigator.
- A lot of discovery.
- I think the number of hours within this category would vary significantly more than any other category.
- More time equals better results.
- These are more intensive than murders due to having to deal with expert development.
- Will always conduct prelim, investigation, lots of discovery, and even if it is "just a CSC 4," there are still lifelong consequences.
- Need to deal with experts and tons of story development.
- Even within CSC 1, a child vs. adult complaining witness (CW) can result in more/less investigation.
- Same thing as with a murder case; I would expect a very fact-intensive inquiry and a fair amount of investigation, research, expert consultation, along with multiple client and witness interviews, and then would expect to spend a lot of effort on sentencing.
- Big difference between CSC 1 and 4.
- Lots of mental health issues with complainants and getting medical/mental health records; reviewing them is very time consuming.
- CSC cases are sometimes more complicated than homicides. Especially when dealing with a child complainant.
- SORA often creates lifelong consequences for defendants, and these types of cases are deserving of more time. There are complicated issues and often require as many or more experts than murder cases.
- Very often have an incarcerated client and need a good deal of time to conduct jail visits.
- These cases are more likely to end up in trial than any other felony case.

## Other Class A Offenses

- Typically more difficult clients and heavy discovery.
- Review of discovery, possibly several visits to jail, pretrial motions, and prelim.
- Heavy Discovery.
- Heavy Discovery.

- I feel like this category would be the same as a murder. Assault with intent to murder (AWIM) and armed robbery are still capital offenses. The trials are generally the same length, the discovery is similar, etc.
- This the equivalent of a full 2.5 weeks of work. Can't be sure, but would expect a fair amount of investigation, research, and preparation of defenses, along with client and witness prep. May also recover extensive discovery review and consultation with experts.
- Trials and hearings would last several days.

## Other High-Severity Felonies

- A wide variety of discovery in these cases.
- Average time for simple possession (D) is different than human trafficking.
- Investigation and discovery in these cases.
- These should be split in to Class B cases, Class C cases, and Class D cases. This is a wide range. On class B offenses there are typically larger discovery packets than class C or D.
- A lot of discovery.
- Heavy discovery. The classes should be separated.
- Answers will vary but there will still be significant discovery, client could likely be in jail, prelim, and investigation.
- Less extensive discovery review but still requires a significant amount of time.

## Low-Severity Felonies and Two-Year High Court Misdemeanors

- Typically an expectation of less complex investigation.
- Embezzlement—high dollar will skew the hours.
- Seem to have guideline ranges that are shaded and can take a lot of negotiation.
- Generally, a majority of time is meeting with client; typically less is for discovery.
- Usually not that complicated.
- Less discovery for most cases, easier to negotiate.
- Based on talking to client, investigation.
- Probably less intense discovery, client will most likely be on bond.
- Less discovery, less likely to go to trial.
- Remember that CSC 4th degree still requires SORA registration.

## One-Year Misdemeanors

- 1–2 hours meeting with client, 1 hour reviewing evidence, 1 hour in court, on average.
- Usually these types of cases have predetermined offers and resolutions.
- Less discovery, less time in negotiations and trials.
- Misdemeanor clients are often unrealistic.
- Less discovery, client on bond, often less investigation, but often can go to trial.
- More video (body camera) evidence is available than in the past.
- Need to look up witnesses, complaining witnesses, and law enforcement on social media, all of which takes time.

## 93-Day Misdemeanors

- Expecting less complex discovery and less investigation needed.
- Not as much discovery as felony cases and trials are very short.
- Less discovery.
- Less discovery, less time in trial.
- Need time on certain cases to look at investigation.
- Less discovery than a felony.
- Less discovery, and the client is on bond.

## Probation Violations

- Need time to talk to client and probation officer.
- Rarely much investigation required, review probation violation (PV) report with client, speak with probation officer (PO) to influence recommendation.
- These can be felony or misdemeanor cases and stakes are much higher in felony cases.
- Typically one hearing and done. Sometimes you need to gather proof, especially if client is incarcerated.
- These cases are often deceptively simple, but require a fair amount of work to mitigate a jail sentence.
- It is important to familiarize with underlying facts, especially on felony cases where guidelines (GLs) are relevant at sentencing and can be challenged at sentencing.

## Other Adult Criminal Indigent Defense Trial Court–Level Matters

- Sometimes you have to do investigation.
- Extraditions can take a bit longer.
- Only thing that I can think of that would fall within this category is extradition proceedings.
- Contempt hearings.
- Meeting with client and discovery.
- I have no idea what would fall into this category.

## References

---

ABA—*See* American Bar Association.

ABA-SCLAID—*See* American Bar Association Standing Committee on Legal Aid and Indigent Defendants.

American Bar Association, *ABA Standards for Criminal Justice: Providing Defense Services*, 3rd ed., 1992. As of September 7, 2018:  
[https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/providing\\_defense\\_services.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.authcheckdam.pdf)

———, *Eight Guidelines of Public Defense Related to Excessive Workloads*, August 2009. As of September 6, 2018:  
[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_train\\_eight\\_guidelines.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_train_eight_guidelines.authcheckdam.pdf)

———, *Ten Principles of a Public Defense Delivery System*, February 2002. As of September 8, 2018:  
[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf)

American Council of Chief Defenders, *American Council of Chief Defenders Statement on Caseloads and Workloads*, 2007. As of January 14, 2019:  
<https://pdc.idaho.gov/wp-content/uploads/sites/11/2016/08/ACCD-Statement-on-Caseloads.pdf>

Bermant, Gordon, 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, Summer 1991, pp. 491–511.

Block, Richard A., and David R. Harper, “Overconfidence in Estimation: Testing the Anchoring-and-Adjustment Hypothesis,” *Organizational Behavior and Human Decision Processes*, Vol. 49, 1991, pp. 188–207.

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.

Burkhart, Geoffrey T., “How to Leverage Public Defense Workload Studies,” *Ohio State Journal of Criminal Law*, Vol. 14, No. 2, 2017, pp. 403–429.

- Carroll, David J., Catherine L. Schaefer, and Robert L. Spangenberg, *Indigent Defense Standards and Guidelines Index*, The Spangenberg Group, May 1998.
- Crossgrove Fry, Vanessa, Sally Sargeant-Hu, Lantz McGinnis-Brown, and Greg Hill, *Idaho Public Defense Workload Study 2018*, Idaho Policy Institute, 2018.
- Dalkey, Norman Crolee, *The Delphi Method: An Experimental Study of Group Opinion*, Santa Monica, Calif.: RAND Corporation, RM-5888-PR, 1969. As of August 4, 2015: [https://www.rand.org/pubs/research\\_memoranda/RM5888.html](https://www.rand.org/pubs/research_memoranda/RM5888.html)
- Dalkey, Norman Crolee, and Olaf Helmer-Hirschberg, *The Use of Experts for the Estimation of Bombing Requirements: A Project Delphi Experiment*, Santa Monica, Calif.: RAND Corporation, RM-0727, 1951.
- D’Amico, Sheila, and Robert Spangenberg, *Workload and Productivity Standards: A Report to the Office of the State Public Defender*, National Center for State Courts, July 28, 1989.
- Eckholm, Erik, “Citing Workload Public Lawyers Reject New Cases,” *New York Times*, November 8, 2008. As of January 17, 2019: <https://www.nytimes.com/2008/11/09/us/09defender.html>
- Flanders, Steven, *The 1979 Federal District Court Time Study*, Federal Judicial Center, 1980.
- Gillespie, Robert W., “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, March 1974, pp. 38–43.
- Gracht, Heiko A. von der, “Consensus Measurement in Delphi Studies,” *Technological Forecasting and Social Change*, Vol. 79, No. 8, October 2012, pp. 1525–1536.
- Hall, Daniel J., *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*, Denver, Colo.: National Center for State Courts, June 2007.
- Helmer-Hirschberg, Olaf, *Convergence of Expert Consensus Through Feedback*, Santa Monica, Calif.: RAND Corporation, P-2973, 1964. As of July 11, 2019: <https://www.rand.org/pubs/papers/P2973.html>
- Kalaian, Sema A., and Rafa M. Kasim, “Terminating Sequential Delphi Survey Data Collection,” *Practical Assessment, Research & Evaluation*, Vol. 17, No. 5, January 2012.
- Kleiman, Matthew, and Cynthia G. Lee, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment: Final Report*, National Center for State Courts, March 2010.

- Labriola, Melissa, Erin J. Farley, Michael Rempel, Valerie Raine, and Margaret Martin, *Indigent Defense Reforms in Brooklyn, New York: An Analysis of Mandatory Case Caps and Attorney Workload*, Center for Court Innovation, April 2015.
- Labriola, Melissa, and Ziyad Hopkins, *Answering Gideon's Call Project (2012-DB-BX-0010)—Attorney Workload Assessment*, Committee for Public Counsel Services, October 2014.
- Lee, Cynthia G., Lydia E. Hamblin, and Brittney Via, *North Carolina Office of Indigent Defense Services Workload Assessment*, National Center for State Courts, February 2019.
- Lefstein, Norman, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, American Bar Association, 2011.
- Lefstein, Norman, and Robert L. Spangenberg, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, National Right to Counsel Committee, April 2009. As of January 28, 2019:  
<http://constitutionproject.org/wp-content/uploads/2012/10/139.pdf>
- Lombard, Patricia, and Carol Krafka, *2003–2004 District Court Case-Weighting Study: Final Report to the Subcommittee on Judicial Statistics of the Committee on Judicial Resources of the Judicial Conference of the United States*, Federal Judicial Center, 2005.
- Michigan Civil Service Commission, Regulation 5.08, Paid Holidays, undated.
- Michigan Indigent Defense Commission, *Snapshot of Indigent Defense Representation in Michigan's Adult Criminal Courts: The MIDC'S First Survey of Local Court Systems*, February 2016. As of September 1, 2018:  
<https://michiganidc.gov/wp-content/uploads/2015/04/MIDC-Court-Survey-Report-Feb-16.pdf>
- , *Minimum Standards for Indigent Criminal Defense Services*, September 2018. As of September 10, 2018:  
<https://michiganidc.gov/wp-content/uploads/2018/08/Standards-1-8-Fall-2018.pdf>
- Michigan Legislature, House Bill 5842, Section c, signed into law January 4, 2017.
- , Michigan Compiled Laws Complete Through PA 47 of 2019, Act 93, Michigan Indigent Defense Commission Act, 2013, 780.991, Sec. 11. As of August 9, 2019:  
[http://www.legislature.mi.gov/\(S\(jg54zfszmcj4flssj3ni5vgk\)\)/mileg.aspx?page=getObject&objectName=mcl-780-991](http://www.legislature.mi.gov/(S(jg54zfszmcj4flssj3ni5vgk))/mileg.aspx?page=getObject&objectName=mcl-780-991)
- Michigan State Bar, “The Eleven Principles of a Public Defense Delivery System,” 2002. As of September 9, 2018:  
[http://sbmblog.typepad.com/files/11\\_principles2.pdf](http://sbmblog.typepad.com/files/11_principles2.pdf)

Michigan Supreme Court, Administrative Order No. 2013-12, *Revised Caseflow Management Guidelines and Rescission of Administrative Order No. 2011-3*, October 2, 2013. As of July 12, 2019:

[https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2013-24\\_2013-10-02\\_formatted%20order\\_AO%20No%202013-12.pdf](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2013-24_2013-10-02_formatted%20order_AO%20No%202013-12.pdf)

MIDC—See Michigan Indigent Defense Commission.

National Legal Aid and Defender Association, *Evaluation of Trial-Level Indigent Defense Systems in Michigan*, June 2008. As of January 18, 2019:

<https://www.in.gov/publicdefender/files/NLADA%20Report%20-%20Michigan.pdf>

———, *National Advisory Commission on Criminal Justice Standards: The Defense (Chapter 13)*, undated. As of January 3, 2018:

[http://www.nlada.net/sites/default/files/nac\\_standardsforthedefense\\_1973.pdf](http://www.nlada.net/sites/default/files/nac_standardsforthedefense_1973.pdf)

National Institute for Justice, *Maximizing Public Defender Resources: A Management Report*, Washington, D.C.: U.S. Department of Justice, 1983.

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.

NLADA—See National Legal Aid and Defender Association.

Ostrom, Brian J., Matthew Kleiman, and Christopher Ryan, *Maryland Attorney and Staff Workload Assessment, 2005*, Williamsburg, Va.: National Center for State Courts, 2005.

Pace, Nicholas M., Shamena Anwar, Dulani Woods, Thomas Bogdon, Chau Pham, and Karen C. Lui, “Caseload Standards for Indigent Defenders in Five New York Counties,” unpublished project memorandum provided to the New York State Office of Indigent Legal Services; copy on file with the authors, 2016.

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.

Public Policy Research Institute, *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission*, 2015.

RubinBrown, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, June 2014.

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.

Samilton, Tracy, “Public Defenders in Wayne County Underfunded and Overworked,” Michigan Radio, April 26, 2018. As of January 20, 2019:  
<https://www.michiganradio.org/post/public-defenders-wayne-county-underfunded-and-overworked>

Silberglitt, Richard, Brian G. Chow, John S. Hollywood, Dulani Woods, Mikhail Zaydman, and Brian A. Jackson, *Visions of Law Enforcement Technology in the Period 2024–2034: Report of the Law Enforcement Futuring Workshop*, Santa Monica, Calif.: RAND Corporation, RR-908-NIJ, 2015. As of July 16, 2019:  
[https://www.rand.org/pubs/research\\_reports/RR908.html](https://www.rand.org/pubs/research_reports/RR908.html)

The Spangenberg Group, *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, Report NCJ-185632, January 2001.

U.S. Bureau of the Census, “Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2017 (Michigan),” undated. As of September 2, 2018 (no longer working):  
<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

Washington Supreme Court, Standards for Indigent Defense, CrRLJ 3.1, October 1, 2012.

Washington Supreme Court, Standards for Indigent Defense, Standard 3.4: Caseload Limits, adopted effective October 1, 2013, except for paragraph 3, misdemeanor caseload limits, adopted effective January 1, 2015.

Wong, Carolyn, Eyal Aharoni, Gursel Rafig oglu Aliyev, and Jacqueline Du Bois, *The Potential of Blind Collaborative Justice: Testing the Impact of Expert Blinding and Consensus Building on the Validity of Forensic Testimony*, Santa Monica, Calif.: RAND Corporation, RR-804-1-NIJ, 2015. As of July 16, 2019:  
[https://www.rand.org/pubs/research\\_reports/RR804-1.html](https://www.rand.org/pubs/research_reports/RR804-1.html)

Zipfinger, Sabine, *Computer-Aided Delphi: An Experimental Study of Comparing Round-Based with Real-Time Implementation of the Method*, Linz, Austria: Trauner, 2007.



In 2017, the Michigan Indigent Defense Commission (MIDC) asked the RAND Corporation for assistance in determining maximum caseload standards for providers of indigent legal representation to adult defendants in the trial-level courts of the state of Michigan. Such standards are intended to act as one means—though certainly not the only one—of ensuring that indigent defenders will have sufficient time to effectively represent the clients whom they have been appointed to defend. Similar to previous studies in other states that have also addressed the question of reasonable caseloads, this project conducted three data collection efforts to provide the empirical foundation for the Michigan standards: an eight-week time study, a survey of criminal defense attorneys, and a September 2018 conference where experienced criminal defenders reviewed the previously collected data and recommended average time expenditures for counsel representing indigent defendants in various categories of criminal matters in Michigan trial courts. The authors present for the MIDC’s consideration recommended caseload standards based on analysis of the collected data.



SOCIAL AND ECONOMIC WELL-BEING

[www.rand.org](http://www.rand.org)

\$37.00

ISBN-10 1-9774-0341-7  
ISBN-13 978-1-9774-0341-4

