

Provisional Caseload Standards for the Indigent Defense of Adult Criminal and Juvenile Delinquency Cases in Utah

Report for the Utah Indigent Defense Commission

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SOCIAL AND ECONOMIC WELL-BEING

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Preface

In 2019, the RAND Corporation was asked by the Utah Indigent Defense Commission (IDC) for assistance in determining maximum caseload standards for providers of indigent legal representation to defendants in trial-level courts and to minors in juvenile courts of the state of Utah. 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”), are a useful tool that administrators of indigent defense programs, the courts that appoint indigent defense counsel, and policymakers who decide on funding allocations for such appointments can use in determining both when caseloads are in danger of being excessive and the number of attorneys who may be needed to handle expected demand.

This report describes the results of work conducted by RAND on behalf of the IDC. The project involved three focused efforts to provide the empirical foundation for provisional adult criminal and juvenile delinquency caseload standards:

- The first effort involved an analysis of attorney time records maintained by two large public defender offices in Salt Lake County. This analysis was intended to identify the average amount of time such counsel spend on criminal and delinquency matters within various case type categories.
- The second effort was a survey of attorneys who had previously been identified as indigent defenders practicing in Utah. In the survey, the results of the first effort’s time analysis were presented to survey participants as evidence of current time expenditures. Informed by those results, respondents provided their opinions as to the average amount of time that an attorney should plan on spending on a particular type of case to ensure that sufficient time is available to deliver effective assistance of counsel across all cases of that type. The survey also asked about each respondent’s experience and practice.
- The final data collection effort was conducted as part of a conference held in December 2019. The purpose of the conference was to have selected experienced counsel consider authoritative guidance related to the provision of indigent defense, available evidence regarding the state’s indigent defense bar, and the results of the two earlier data collections. With that information supplementing what they already were aware of in regard to the practice of criminal and juvenile defense in Utah, the experts on the panel reached consensus on recommended average time expenditures for counsel representing indigent defendants in various categories of adult criminal and juvenile delinquency matters proceeding in the Utah courts.

Using the expert panel’s recommendations, RAND researchers calculated provisional caseload standards for the IDC’s consideration.

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.

Contents

Preface.....	iii
Tables.....	vi
Summary.....	viii
Acknowledgments.....	xxvii
Abbreviations.....	xxviii
1. Introduction.....	1
Background.....	1
Definitions.....	8
Key Components of the Research.....	9
Other Research Activities.....	17
Organization of This Report.....	24
2. Attorney Time Expenditure Analysis.....	25
Approach Used for Adult Criminal Cases.....	25
Approach Used for Juvenile Delinquency Cases.....	28
Estimated Attorney Hours by Case Type.....	30
Caveats.....	31
3. The Attorney Survey.....	33
Overview.....	33
Participation.....	33
Appointment Mechanisms.....	34
Practice Characteristics and Resources.....	35
Caseloads.....	37
Recommended Average Hours.....	41
4. The Caseload Standards Setting Conference.....	44
Overview.....	44
Final Results.....	49
5. Provisional Caseload Standards and Case Weights.....	51
Annual Case-Related Duty Hours.....	51
Calculating the Provisional Standards.....	52
Case Weights.....	54
Comparing the Provisional Standards to Other Jurisdictions.....	56
6. Going Forward.....	62
Potential Impact of Provisional Standards on Defender Need.....	62
Next Steps.....	64
Appendix. Comments Submitted with the Attorney Survey.....	67
References.....	76

Tables

Table S.1. Case Type Classifications Used in This Study	xiii
Table S.2. Results of Analysis of Case-Level Attorney Hours.....	xvi
Table S.3. Recommended Average Hours from the Attorney Survey.....	xix
Table S.4. Expert Panel Recommended Hours Compared with Time Analysis and Survey.....	xxii
Table S.5. Provisional Caseload Standards.....	xxiv
Table 1.1. Recent Indigent Defender Caseload Standards-Setting Approaches.....	13
Table 1.2. Original Recommended Adult Criminal Case Type Categories.....	20
Table 1.3. Original Recommended Juvenile Delinquency Case Type Categories	21
Table 1.4. Interim Case Type Classifications Used Only for Initial Time Analysis and the Attorney Survey	22
Table 1.5. Final Case Type Classifications Used in the Provisional Standards	23
Table 2.1. Results of Analysis of Case-Level Attorney Hours.....	31
Table 3.1. Distribution of Identified Indigent Defenders and Survey Respondents, by County Type	34
Table 3.2. Types of Appointment Mechanisms	34
Table 3.3. Average Hours Each Week.....	35
Table 3.4. Time Expenditures During Typical Workweek.....	35
Table 3.5. Primary Practice Focus	36
Table 3.6. Office Resources.....	36
Table 3.7. Reported Annual Adult Criminal and Juvenile Delinquency Caseloads.....	37
Table 3.8. Reported Annual Caseloads for Attorneys with Adult Criminal Focus and Half or More of Workweek Devoted to Criminal or Juvenile Work	38
Table 3.9. Reported Annual Caseloads for Attorneys with Juvenile Delinquency Focus and Half or More of Workweek Devoted to Criminal or Juvenile Work	39
Table 3.10. <i>Adjusted</i> Annual Caseloads for Attorneys with Adult Criminal Focus and Half or More of Workweek Devoted to Criminal or Juvenile Work	41
Table 3.11. <i>Adjusted</i> Annual Caseloads for Attorneys with Juvenile Delinquency Focus and Half or More of Workweek Devoted to Criminal or Juvenile Work	41
Table 3.12. Recommended Average Hours from the Attorney Survey.....	43
Table 4.1. Caseload Standards Session Panelists.....	44
Table 4.2. Expert Panel Session Recommended Hours Compared with Time Analysis and Survey	50
Table 5.1. Case-Related Duty Hours Calculations	52
Table 5.2. Provisional Caseload Standards.....	53
Table 5.3. Statewide Maximum Caseload Standards for Adult Criminal Felonies	57

Table 5.4. Statewide Maximum Caseload Standards for Adult Criminal Misdemeanors 59
Table 5.5. Statewide Maximum Caseload Standards for Other Adult Criminal Client Matters .. 60
Table 5.6. Statewide Maximum Caseload Standards for Juvenile Delinquency 61
Table 6.1. Expert Panel Recommended Average Hours and Annual Utah Caseload..... 63

Summary

Background

In 2019, the Utah Indigent Defense Commission (IDC) asked the RAND Corporation for assistance in developing a provisional set of maximum caseload standards for providers of indigent legal representation in the courts of the state of Utah.¹ 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”), are a useful tool that administrators of indigent defense programs, the courts that appoint indigent defense counsel, and policymakers who decide on funding allocations for such appointments can use in determining both when caseloads are in danger of being excessive and the number of attorneys who may be needed to handle expected demand.

An important distinction for understanding how such standards are derived is that between the terms *caseloads* and *workloads*. In the context of indigent legal representations, a caseload is simply a description of the number and types of cases in which an attorney provides legal services (for example, at the start of a month, an attorney might have a caseload consisting of six third-degree felony cases, ten Class B misdemeanor cases, and six probation violation proceedings). Caseloads can be measured in different ways, such as by active representations at a specific point in time or by cases opened (i.e., new appointments accepted), closed, or active during a specific period (maximum caseload standards are typically couched in terms of the numbers and types of cases opened during a year). Workloads, on the other hand, represent the totality of effort necessary to complete whatever tasks or discharge whatever responsibilities are required by a particular caseload. Workloads are often expressed in terms of estimated total time expenditures. For example, if a Class C misdemeanor is assumed to require, on average, 10 hours of attorney time to complete in a satisfactory manner, then the workload associated with a caseload consisting of 25 Class C misdemeanors would be 250 hours. A maximum caseload standard that cautions against an attorney accepting, for example, more than 150 felony appointments in a year essentially indicates that the workload associated with 151 or more such felonies risks exceeding the amount of time realistically available to an attorney to devote to those cases over the course of a year.

Utah is not alone in its desire to develop caseload-based metrics for identifying excessive workloads. Other states, including Colorado, Idaho, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Mexico, New York, North Carolina, Rhode Island,

¹ *Indigent legal representation* refers to services provided by attorneys appointed to represent clients involved in criminal cases, juvenile delinquency proceedings, or other legal matters; the adjective *indigent* as used here simply refers to a person’s overall eligibility for appointed counsel, and not necessarily to their financial status.

Texas, and Virginia, have conducted rigorous studies intended to develop indigent defense caseload standards that reflect each state's unique circumstances. Generally, these studies have used a combination of empirical data collections and the opinions of experts (in both local legal practice and in the applicable legal and ethical requirements for delivering effective representation) to develop estimates of *average* attorney time expenditures in different types of cases, to be used by indigent defense systems when planning for the number of attorneys required to handle expected numbers of annual appointments.

Where these studies depart from work that simply measures current mean time expenditures is in the use of expert opinion to develop *recommended* averages that account for all effort needed to deliver effective assistance of counsel conducted pursuant to prevailing professional norms. Choosing a recommended average is a normative decision, one that draws on authoritative guidance from sources such as the U.S. Supreme Court, the American Bar Association (ABA), and the National Legal Aid & Defender Association (NLADA). The decision also draws on the experts' personal knowledge of the challenges currently facing indigent defenders in the courts being studied, the experts' extensive experience in representing clients in local criminal and juvenile proceedings, and their familiarity with standards developed for counsel in their own state. In Utah, such standards might arise from case law, such as *State v. Hales*² and *State v. J.A.L.*;³ recently issued standards from the IDC, such as its *Core Principles for Appointed Attorneys Representing Youth in Delinquency Proceedings*;⁴ and various mandates from the Utah Legislature, the Utah courts, and the Utah State Bar.⁵

As a simplistic example of how the experts in these studies might reach a decision regarding a recommended average, assume that an effort measuring attorney time expenditures finds that an average of 10 hours was spent across all misdemeanor charges of driving under the influence (DUI). The experts would consider such findings in light of the guidance and their knowledge described previously, and might conclude that an additional 10 percent of time, on average, would yield a more comfortable cushion for defenders to provide services that were often being neglected or minimized in favor of more immediate needs and that, with such time available, counsel would be more likely to deliver effective assistance conducted pursuant to prevailing professional norms. The average increase of one hour might, for example, allow for increased time for the counsel to work with the client to review the prosecution's evidence, to appear with the defendant when the defendant is informed of the filed charges at the initial court appearance, or to address collateral consequences, such as suspension of driving privileges. The recommended average of 11 hours of attorney time across all misdemeanor DUIs could be

² 2007 UT 14 (2007).

³ 2011 UT 27 (2011).

⁴ Utah Indigent Defense Commission, *Core Principles for Appointed Attorneys Representing Youth in Delinquency Proceedings*, 2018.

⁵ See, e.g., Utah Code § 77-32-804.

considered a *case weight*, a relatively straightforward means for calculating total attorney demand. If in the indigent defense system in question a total of 500 misdemeanor DUI cases have counsel appointed to represent the defendants annually, then system administrators would need to have enough attorneys to devote 5,500 hours (11×500) over the course of a year for this particular type of case.

Such case weights are translated into maximum caseload standards by using assumptions about the annual amount of time attorneys have available to devote to case-related representations (in other words, annual work time not used for administrative purposes, professional development, vacations, client development, sick leave, and the like). If the annual case-related available assumption is, for example, 1,870 hours, and if, for example, an average of 11 hours should be planned on for devoting to misdemeanor DUI cases to help ensure that effective representations are being delivered across the case type, then the maximum caseload standard for an individual attorney would be 170 misdemeanor DUI cases per year ($1,870 \div 11$). These standards assume full-time practices involved in the subject matter area. If, for example, an attorney spent 40 percent of each workweek practicing criminal defense and the remaining 60 percent of the workweek as an estate attorney (or as an accountant or not working at all), then the maximum caseload standard for misdemeanor DUI cases would be exceeded by this attorney should they accept more than 68 such cases in a year ($170 \times 40\%$).

Overview of Approach

Drawing from approaches utilized in other state-level caseload standards studies conducted by the ABA's Standing Committee on Legal Aid and Indigent Defendants, the National Center for State Courts, RAND, and others, we conducted three data collection efforts to provide the empirical foundation for the provisional criminal and delinquency standards.

The first effort involved an analysis of attorney time records maintained by the two large public defender offices in Salt Lake County. The computerized case management systems (CMSs) in place at the Salt Lake Legal Defender Association (LDA) and the Utah Juvenile Defender Attorneys (UJDA) provided the information used to calculate the average amount of time such counsel currently spend on criminal and delinquency matters within various case type categories.

The second effort was a survey of attorneys who had previously been identified as indigent defenders practicing in Utah. In the survey, the results of the first effort's time analysis were presented to participants as evidence of current time expenditures. Informed by those results, respondents provided their opinions as to the average amount of time that an attorney should plan on spending on a particular type of case to ensure sufficient time is available to deliver effective assistance of counsel across all cases of that type. The survey also asked about each participant's experience and practice.

The final data collection effort was conducted as part of a conference held in December 2019. The purpose of the conference was to have experienced counsel review authoritative guidance related to the provision of indigent defense, examine available evidence regarding the state’s indigent defense bar, and consider the results of the two earlier data collections. With such information supplementing what they already were aware of—both personally and professionally—in regard to the practice of criminal and juvenile defense in Utah, the experts on this panel reached consensus on recommended average time expenditures for counsel representing indigent defendants in various categories of adult criminal and juvenile delinquency matters proceeding in the Utah courts. The decisions of the conference participants formed the basis for the provisional maximum caseload standards that we calculated for the IDC’s consideration.

It should be emphasized that RAND’s final task in this work was to describe how the participants’ recommendations at the December 2019 conference to the IDC translate into provisional maximum caseload levels. RAND was not charged with issuing *final* caseload standards; that important responsibility remains in the hands of the IDC. Factors outside the scope of the RAND project are likely to be considered when the commission decides on final standards. For example, the IDC may perceive a need to adjust the maximums upward or downward for certain jurisdictions with specialized courts; unusual demands on counsel, such as extensive travel time; or issues with support staff availability. This statewide body regulating indigent defense in Utah might, for example, decide to phase in the implementation of the standards over time because of budgetary considerations, or modify them on the basis of assumptions related to anticipated changes in substantive or procedural rules or impending changes in state financial support for local defender resources, such as funding for investigators. Thus, we offer only *provisional* caseload standards for the commissioners’ review.

Indigent Defense in Utah

Indigent defenders in Utah can generally be differentiated by the arrangements under which they receive appointments and are compensated for their services. Those who participate in *assigned counsel programs* are listed on a roster of available defenders, and, if appointed by the court to represent an indigent defendant, they might be paid by the hour, by the case, or by each event in a case. Defenders who participate in *contract defender programs* are paid (or their law firm is paid) an agreed amount of money to handle up to a preset number or percentage of indigent defense representations of an agreed-to type over a period of time (e.g., “up to 200 misdemeanor cases per year”). Those who work in *public defender offices* (law firms that are part of governmental agencies or nonprofit nongovernmental organizations) are typically salaried employees, and the primary focus of these entities is on the delivery of indigent defense. In 2019, when the bulk of the research for this project was conducted, the only three entities in Utah meeting this definition of a public defender office were the LDA, the UJDA, and the Utah

County Public Defender Association, which is based in Provo. All three are nonprofit private law firms. In this report, we reserve the term *public defender* exclusively for attorneys associated with the LDA, the UJDA, or the Utah County Public Defender Association.

Case Type Categories

One important task was to choose the case type categories that would be used as a template for our data collections and for the development of the provisional caseload standards. We created what might be thought of as an interim set of study case types, one that could be successfully applied to the cases as categorized in the CMS applications in use at the LDA and the UJDA. These interim types would be used to frame the inquiry for the time analysis and the attorney survey, which would then inform the deliberations of the panel of experts who would ultimately make the decisions leading to maximum caseload standards.

Important changes were subsequently made to the interim case type set at the expert session in December 2019. At the behest of the expert panel, a new category for felonies potentially requiring a convicted defendant to register as a sex or kidnap offender was carved out of the interim case type for adult criminal “Other Felonies,” and a new category for Class A misdemeanors was carved out of the interim case type for adult criminal “Other Misdemeanors.” These changes were made by the expert panel to better reflect members’ understanding of the differences in average attorney time requirements for the offenses in question. Similarly, the panel voted to drop the interim case type for juvenile delinquency “Status Offenses” as a stand-alone category because of its decreased importance for Utahan practitioners, and to carve out a new category for sex offense–related felonies from the interim case type for juvenile delinquency “Felonies” (expected attorney time was in play here as well).

Both the interim case types and the final set of categories ultimately utilized by the expert panel, along with detailed descriptions of the relevant defining statutes, are set forth in Table S.1. It should also be noted that the categories exclude criminal cases involving charges of capital murder, because the IDC plans to develop maximum caseload standards for these relatively rare but resource-intensive representations through a process outside the RAND project.

Table S.1. Case Type Classifications Used in This Study

Subject Area	Interim Case Type Category (Time Analysis and Attorney Survey)	Final Case Type Category (Expert Panel and Provisional Standards)	Explanation
Adult Criminal	Non-Capital Murder		First-degree felony charges under Utah Code § 76-5-203, potentially resulting in imprisonment for an indeterminate term of not less than 15 years and up to life. Does not include charges of aggravated murder under Utah Code § 76-5-202, nor homicides not constituting murder under Utah Code § 76-5-203.
Adult Criminal	Other Felonies (not murder, not DUI)	Mandatory Sex and Kidnap Registration Felonies	Felony charges alleging violations of crimes (including attempting, soliciting, or conspiring) listed in Utah Code §§ 77-41-102(9) and (17) that upon conviction require registration as either a kidnap offender or a sex offender. Examples include aggravated kidnapping (§ 76-5-302), rape of a child (§ 76-5-402.1), and sexual exploitation of a vulnerable adult (§ 76-5b-202).
Adult Criminal		Other Non-DUI Felonies	All first-, second-, and third-degree felony charges not described above, excluding DUI charges for violations of Utah Code § 41-6a-502. Examples include aggravated arson of a habitable structure or vehicle (§ 76-6-103(2)), burglary of a dwelling (§ 76-6-202(2)), and odometer violation with intent to defraud (§ 41-1a-1319).
Adult Criminal	Felony DUIs		Third-degree felony charges for violations of Utah Code § 41-6a-502 with circumstances described in § 41-6a-503(2): infliction of serious bodily injury; two or more prior convictions within ten years for various crimes (such as DUI or driving with illegal controlled substance in body) defined in § 41-6a-501(2); or a prior conviction for felony DUI or automobile homicide.
Adult Criminal	Misdemeanor DUIs		All misdemeanor DUI charges for violations of Utah Code § 41-6a-502.
Adult Criminal	Other Misdemeanors (non-DUI)	Class A Misdemeanors	Misdemeanor charges with potential incarceration of up to one year. Excludes DUI charges. Examples include threats to influence official or political action (§ 76-8-104(1)), theft of property valued at between \$500 and \$1,500 (§ 76-6-412(1)(c)(i)), and negligent homicide (§ 76-5-206(2)).
Adult Criminal		Class B and C Misdemeanors	Misdemeanor charges with potential incarceration of up to six months (Class B) or up to 90 days (Class C). Excludes DUI charges. Examples include making a false alarm (§ 76-9-105(2)(c)), criminal defamation (§ 76-9-404(2)), and providing tobacco to a minor (§ 76-10-104).
Adult Criminal	Probation Violations—Felonies		Proceedings in which a violation of the terms of probation is alleged and the conviction for which probation was originally ordered involved at least one felony charge.
Adult Criminal	Probation Violations—Misdemeanors		Proceedings in which a violation of the terms of probation is alleged and the conviction for which probation was originally ordered only involved misdemeanor charges.

Subject Area	Interim Case Type Category (Time Analysis and Attorney Survey)	Final Case Type Category (Expert Panel and Provisional Standards)	Explanation
Juvenile Delinquency	Felonies	Sex Felonies	Felony charges found in Part 4 (Sexual Offenses), Chapter 5 (Offenses Against the Person), in Title 76 (Utah Criminal Code) of the Utah Code. Examples include forcible sexual abuse (§ 76-5-404), rape of a child (§ 76-5-402.1), and unlawful adolescent sexual activity by a 17-year-old with a victim of 12 or 13 years of age (§ 76-5-401.3(2)(a)).
Juvenile Delinquency		Other Felonies	All first-, second-, and third-degree felony charges other than sex felonies described above. Examples include aggravated kidnapping (§ 76-5-302), burglary of a dwelling (§ 76-6-202(2)), and odometer violation with intent to defraud (§ 41-1a-1319).
Juvenile Delinquency	Misdemeanors		All Class A, B, and C misdemeanor charges. Examples include assault on a school employee (§ 76-5-102.3(1)), making a false alarm (§ 76-9-105(2)(c)), and providing tobacco to a minor (§ 76-10-104).
Juvenile Delinquency	Probation Violations and Contempts		Proceedings involving allegations of violations of the terms of probation or of willful violation or refusal to obey any order of the court.
Juvenile Delinquency	Orders to Show Cause		Hearings to determine whether a juvenile has violated some condition or failed to meet some requirement previously imposed by the court.
Juvenile Delinquency	Status Offenses	[Not Used]	Allegations that the juvenile is ungovernable, is a runaway, or is committing violations of the law that would not be a violation but for the age of the offender.

Attorney Time Expenditure Analysis

Approach

To estimate average attorney time expenditures in adult criminal cases, we analyzed an extract of data taken from the transactional database utilized by the LDA for tracking indigent representations handled by that office. The LDA CMS application had been in place for many years, but office staff did not start routine timekeeping until the beginning of 2019. Given the ramp-up time needed to successfully implement time tracking in an office that had not previously done so, we limited our analysis to only those cases that were active (meaning that at least some attorney time was recorded) at some point during the five-month period from June 2019 through October 2019 (the “study period”). A total of 11,703 adult criminal cases active during the study period and involving one of the client matters listed in the interim case type set were used.

A complicating issue was that not all of the active cases had complete time information. About 27 percent of the cases defined as active both began and ended within the study period (and we did have complete information for these cases), but the remainder started before June 2019 but finished within the study period (22 percent), started during the study period but were still pending as of the end of October 2019 (30 percent), or both started before and were pending at the end of the study period (21 percent). Because we chose to base our analysis only on time

recorded starting in June 2019, we needed a means for imputing attorney time not recorded before June 2019 for those cases with a start date prior to the beginning of the study period, and for imputing attorney time for cases that were still pending at the time of the analysis. To do so, we used a relatively simple imputation technique for estimating total time expenditures for all cases based on the known or expected life of each individual case.

We employed a different strategy to calculate average attorney time expenditures in juvenile delinquency cases. We analyzed an extract of data taken from the transactional database utilized by the UJDA for tracking indigent representations handled by that office, but in this instance both case and time information had been recorded in the UJDA's CMS for many years. As a result, there was no need for any imputation of unrecorded attorney time expenditures because cases that had recently been closed by the office would have complete information for all hours spent during the representation. Before the analysis could begin, however, a decision had to be made regarding what would constitute a juvenile delinquency "case" for the purpose of this standards-setting effort. In Juvenile Court, the first time a minor is subjected to the jurisdiction of the court (for example, as the result of an arrest for joyriding), a new and unique case number is assigned. But unlike the situation with defendants in adult criminal matters, that same court case number will remain associated with that minor for all further proceedings in Juvenile Court. In the joyriding example, if the juvenile is arrested again on different charges after the disposition of the initial joyriding charge, even years later, the same court case number will apply.

To deal with this issue, we reviewed the UJDA data to identify individual "incidents" that approximate the manner in which cases are defined in adult criminal courts. Adjudications in Juvenile Court and their subsequent dispositional hearings can be thought of as the functional equivalent of trials and subsequent sentencings in District and Justice Courts. Such adjudications result in a finding by the court as to whether a petition's allegations that a juvenile committed acts constituting a crime if committed by an adult have been proved true or not true. Thus, the efforts of an indigent defender to represent a juvenile in legal proceedings during the period between the alleged acts and the adjudication are essentially similar to what a defender would do for a client in an adult criminal prosecution from arrest through trial or plea. Complicating this model is the fact that a single adjudication can cover multiple "episodes," each of which includes all offenses occurring on the same calendar day. We followed a rule used by the Utah Sentencing Commission in its *Juvenile Disposition Guidelines* in which the episode with the greatest potential sentence severity at the adjudication is considered the "presenting," or lead, episode for all episodes being adjudicated that day, and we used that episode to define the case type.⁶ For the calculation of attorney time, we summed all timekeeping data between the earliest date of all episodes considered at an adjudication and the date of that adjudication. We then calculated total attorney hours and case types for each of the 3,332 incidents that were adjudicated at any point

⁶ Utah Sentencing Commission, *2015 Juvenile Disposition Guidelines*, January 2015.

from 2017 through mid-November 2019. For expositional purposes, juvenile delinquency *incidents* as we have defined them will be referred to as juvenile delinquency *cases*.

Estimated Attorney Hours

Mean hours for attorney time expenditures in the cases included in the time analysis are set forth in Table S.2. As would be true with any mathematical analysis, as the size of a sample grows, its mean gets closer to the average of the whole population. Thus, we have the most confidence in the mean hour estimates for the case types with the largest count of records in the analysis and the least confidence for the case types with relatively smaller counts.

Table S.2. Results of Analysis of Case-Level Attorney Hours

Study Area	Interim Case Type	Cases in Analysis	Estimated Mean Attorney Hours
Adult Criminal	Non-Capital Murder	74	206.0
Adult Criminal	Felony DUIs	102	8.5
Adult Criminal	Other Felonies	4,351	8.4
Adult Criminal	Misdemeanor DUIs	36	12.4
Adult Criminal	Other Misdemeanors	4,352	5.5
Adult Criminal	Probation Violations—Felonies	1,568	1.9
Adult Criminal	Probation Violations—Misdemeanors	1,220	1.9
Juvenile Delinquency	Felonies	1,252	8.4
Juvenile Delinquency	Misdemeanors	1,636	4.9
Juvenile Delinquency	Status Offenses	17	3.4
Juvenile Delinquency	Orders to Show Cause	397	2.7
Juvenile Delinquency	Probation Violations and Contempts	30	2.8

Caveats

The averages described in Table S.2 reflect the experiences of a specific segment of the Utah indigent defense bar: attorneys working for the two public defender offices in the state’s most populous and densely populated county. As such, the nature of their practices, the size of their caseloads, and the level and breadth of in-house resources available to these attorneys may well result in average time expenditures that differ in some unknown degree from the experiences of counsel in private law firms operating within contract counsel and assigned counsel programs or in regions outside the more urbanized areas of the Wasatch Front. But though we estimate that attorneys in these two offices constitute just 27 percent of all identified indigent defenders in the state, they are likely to be involved in much more than 27 percent of all indigent cases, because essentially all cases they represent are the result of appointments (in contrast, most other

attorneys identified as accepting appointments in Utah likely have paying clients as a substantial part of their practices). And as far as we are aware, the type of information found in Table S.2 is not currently available from any other source in terms of the number of cases included and the span of time that detailed recordkeeping was practiced. Because the Utah indigent defense bar is likely to utilize more sophisticated CMSs in the future as a result of IDC initiatives, and because timekeeping is also likely to become a more routine part of everyday practice for indigent defenders as a management tool, better opportunities will exist in subsequent years for assessing the changing nature of defender time expenditures, particularly in regard to private attorneys, attorneys outside Salt Lake County, and attorneys in small and medium-sized offices. Until that point is reached, however, we must rely on Table S.2 for providing some sense of how much time appointed counsel in Utah are currently able to devote to their clients.

The Attorney Survey

Overview

Though the time analysis was intended to report on current time expenditures for indigent criminal and juvenile defense, its findings describe only what *is*, not what *ought to be*. To obtain insight into what practitioners across the state feel are the amounts of time necessary, on average, that should be planned on to deliver competent legal representation on matters within each of the study case types, we reached out to indigent defenders in Utah to seek their participation in a confidential online survey. The questionnaire presented the results of the time analysis described previously, and, with that information as background, respondents entered their recommendations. They also provided detailed information about their practices, available support staff, and annual caseloads (Chapter 2 in this report describes those findings).

Email invitations to take the confidential online survey were sent to all 355 attorneys who had been identified by the IDC as accepting indigent defense appointments. A total of 183 respondents began the survey and 141 completed the questionnaire to the end, yielding a response and completion rate of about 40 percent. The distribution of the reported county locations of the survey respondents roughly matched that of the full list of invitees in terms of the U.S. Office of Management and Budget's designations for Utah statistical areas.

Recommended Average Hours

The questionnaire asked the respondents to provide their recommendations for average hours to be used for planning purposes. Specifically, we requested that the respondents consider the amount of time, on average, 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, such that each individual case will likely differ from the estimated average for its case type in the attorney time

actually expended. The results of the time analysis were presented for their consideration, and the respondents could simply accept those results as their recommendation for a specific case type, enter a different amount of time, or skip the case type altogether.

Table S.3 presents the recommendations of the respondents, by practice type and for all attorneys taken together. The percentages of respondents agreeing with the time analysis results, recommending an average hour estimate that was less than the analysis results, and recommending an average hour estimate that was greater are shown in the parentheses following the case type description. With a few exceptions (misdemeanor DUIs, status offenses, orders to show cause, and probation violations and contempts), the participating attorneys as a group felt that the time analysis results understated the amount of time needed, on average, for providing an adequate and effective defense. That said, between one-half and three-quarters of the respondents for each case type indicated that the average times reported in the analysis results were already sufficient.

For the adult criminal case types, public defenders recommended more hours than their contract and assigned counsel counterparts. That pattern was reversed somewhat for juvenile delinquency, in that public defenders' responses generally matched the time analysis results, whereas attorneys in other types of practices felt that additional time was needed for felony and misdemeanor representations in delinquency matters.

Table S.3. Recommended Average Hours from the Attorney Survey

Study Area	Interim Case Type (N; % Agreed/Less/More)	Time Analysis Results	Public Defenders	Other Appointment Models	All Attorneys
Adult Criminal	Non-Capital Murder (N = 53; 62%/4%/34%)	206.0	288.7	259.9	278.9
Adult Criminal	Felony DUIs (N = 88; 67%/3%/30%)	8.5	12.0	10.4	11.2
Adult Criminal	Other Felonies (N = 95; 52%/8%/40%)	8.4	12.7	12.1	12.4
Adult Criminal	Misdemeanor DUIs (N = 90; 50%/34%/16%)	12.4	13.1	10.3	11.6
Adult Criminal	Other Misdemeanors (N = 97; 60%/22%/19%)	5.5	7.3	5.3	6.3
Adult Criminal	Probation Violations—Felonies (N = 93; 61%/16%/23%)	1.9	2.3	2.1	2.2
Adult Criminal	Probation Violations—Misdemeanors (N = 92; 64%/21%/15%)	1.9	2.0	1.8	1.9
Juvenile Delinquency	Felonies (N = 52; 48%/8%/44%)	8.4	8.7	12.3	11.5
Juvenile Delinquency	Misdemeanors (N = 50; 72%/10%/18%)	4.9	4.9	5.6	5.5
Juvenile Delinquency	Status Offenses (N = 35; 77%/17%/6%)	3.4	3.2	3.3	3.2
Juvenile Delinquency	Orders to Show Cause (N = 36; 69%/19%/11%)	2.7	2.5	2.6	2.6
Juvenile Delinquency	Probation Violations and Contempts (N = 34; 71%/21%/9%)	2.8	2.6	2.6	2.6

The Caseload Standards Setting Conference

Overview

The IDC recruited a panel of 38 experienced adult criminal and juvenile delinquency attorneys who agreed to participate in an effort to reach consensus on the average hours necessary to deliver effective representation. Their deliberations were informed by the results of the earlier data collections, as well as by current guidance on the ethical and professional standards for criminal and juvenile defense. The assembled panel represented a diverse mix of Utah contract counsel, assigned counsel, and public defenders.

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, 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 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 for which 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 at the session, as well as links to suggested guidance for defining the provision of reasonably effective assistance under prevailing professional norms. At the beginning of the session, some of those legal and ethical foundations for the panel were described by two senior panel members, with a special focus on 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.

The inquiry only addressed the issue of attorney time. Although support staff resources ultimately play a major role in delivering an adequate defense, our interest for the instant work was solely focused on attorney time expenditures. The panel members were told that they could assume that any hypothetical attorney in this exercise would have support staff resources similar to the levels in their own practice (or former practice if no longer active). In addition, we attempted to make clear that the panel recommendations should pertain to any trial-level criminal or juvenile representation, and not just those involving indigent defendants.

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 entered into their laptops or mobile computing devices and display the results. The panelists then made their entries anonymously, and, if they chose to do so, could add explanatory comments to their submission. Importantly, options were provided for the attorneys to skip over a case type if they were uncomfortable with making a recommendation for that category.

After the panelists had entered their first sets of recommendations, we then projected a graphical and statistical summary of their responses onto a screen in the meeting room. The application on the computing devices also provided similar information in the form of a "dashboard" display. These summaries were updated periodically as new responses were submitted. Direct discussions among the panelists about each of the case types in turn were initiated by the facilitator. Each panelist was free to change their answers at any time until the conference ended, including while discussions were taking place, when results were being displayed, and even during session breaks. As described previously in this summary, the panel voted to modify the interim case type category lists for both adult criminal and juvenile delinquency cases in favor of a more granulated set.

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 the stability statistic. We adopted a rule common in many Delphi sessions in which a CoV of less than or equal to 0.5 indicated a good degree of consensus, making further discussion about the case type in question unnecessary. CoVs exceeding 0.5 but less than or equal to 0.8 would be considered less satisfactory, and additional discussion would

be recommended for the purpose of enhancing consensus as much as possible. CoVs at the lower part of this range could be considered acceptable if it was clear that no further discussion would be useful. CoVs exceeding 0.8 would indicate a poor degree of consensus, and, unless the range of results could be tightened, the case type would need to be dropped from the standards-setting process. The RAND facilitator focused the group discussion on those case types with CoVs greater than 0.5, in part by seeking panelists to voice arguments for the low end of the range for each case type, as well as the high end.

Final Results

Table S.4 presents the expert panels' recommendations and the CoV values for each of the final case types, comparing the results with those of the time analysis and the attorney survey for the interim case types. The median of the expert panel's responses, rather than the mean, was chosen as the statistic to report the group's consensus 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.⁷

All of the expert panel's consensus decisions resulted in recommended average hours that were significantly greater than the results of the time analysis or attorney survey. Final CoV values for the adult criminal misdemeanor DUIs, Class A misdemeanors, and Classes B and C misdemeanors categories were slightly above the 0.5 threshold, but the session facilitator judged that additional discussion and voting for these categories were unlikely to result in any meaningful movement on the median score.

⁷ It should be kept in mind that, although the panelists were providing their estimates of *average* (mean) attorney hours, each value entered into the Delphi application was simply a number, and so the choice of statistic to use to report a typical result need not be limited to the mean.

Table S.4. Expert Panel Recommended Hours Compared with Time Analysis and Survey

Subject Area	Interim Case Type	Time Analysis Result (hours)	Attorney Survey Results (hours)	Final Case Type	Expert Panel Results (hours)	Expert Panel CoV
Adult Criminal	Non-Capital Murder	206.0	278.9	Non-Capital Murder	300	0.49
Adult Criminal	Other Felonies	8.4	12.4	Mandatory Sex and Kidnap Registration Felonies	150	0.35
				Other Non-DUI Felonies	37	0.49
Adult Criminal	Felony DUIs	8.5	11.2	Felony DUIs	25	0.45
Adult Criminal	Misdemeanor DUIs	12.4	11.6	Misdemeanor DUIs	20	0.52
Adult Criminal	Other Misdemeanors	5.5	6.3	Class A Misdemeanors	25	0.55
				Class B and C Misdemeanors	12	0.60
Adult Criminal	Probation Violations—Felonies	1.9	2.2	Probation Violations—Felonies	6	0.43
Adult Criminal	Probation Violations—Misdemeanors	1.9	1.9	Probation Violations—Misdemeanors	5	0.44
Juvenile Delinquency	Felonies	8.4	11.5	Sex Felonies	72.5	0.40
				Other Felonies	25	0.38
Juvenile Delinquency	Misdemeanors	4.9	5.5	Misdemeanors	20	0.42
Juvenile Delinquency	Probation Violations and Contempts	2.8	2.6	Probation Violations and Contempts	6	0.42
Juvenile Delinquency	Orders to Show Cause	2.7	2.6	Orders to Show Cause	5	0.36

Provisional 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. That value can vary from year to year, attorney to attorney, law firm to law firm, and location to location, but for the purpose of calculating provisional caseload maximums, we needed to make a number of general assumptions, as described below.

First would be the expected hours worked each week on average. Drawing on consultation with IDC staff, we used an assumption of 45 hours per week, assuming five workdays at nine hours per day. This value mirrors what survey respondents reported as the median workweek. A second assumption involves what might be characterized as absence days, which we base on benefits roughly equivalent to those available to Utah state employees. 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 11.8 percent of their workweek in the practice of law but not working on specific cases. When these assumptions are

used, a total of 1,785.2 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 IDC to decide whether the assumptions set forth above make sense for Utah attorneys accepting adult criminal and juvenile delinquency appointments.

Calculating the Provisional Standards

Our provisional standards are simply the result of dividing the results of the expert panel's deliberations into the annual case-related duty hours value for each case type (Table S.5). For cases in the Felony DUI category, 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 71 such cases to any single attorney in a single year ($1,785.2 \text{ annual case-related duty hours} \div 25 \text{ recommended average attorney hours} = 71 \text{ cases maximum when rounded to the nearest whole number}$). Could any individual attorney adequately and effectively represent more than 71 defendants charged with DUI felonies over the course of a year? Absolutely. It is certainly possible, under the right circumstances, for an attorney to be assigned 71 other DUI 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 40 particularly difficult cases of this type might consume most of an attorney's working hours over the course of 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.5. Provisional Caseload Standards

Subject Area	Final Case Type Category	Expert Panel Recommended Average Hours	Maximum Annual Caseload Standards
Adult Criminal	Non-Capital Murder	300	6
Adult Criminal	Mandatory Sex and Kidnap Registration Felonies	150	12
Adult Criminal	Other Non-DUI Felonies	37	48
Adult Criminal	Felony DUIs	25	71
Adult Criminal	Misdemeanor DUIs	20	89
Adult Criminal	Class A Misdemeanors	25	71
Adult Criminal	Class B and C Misdemeanors	12	149
Adult Criminal	Probation Violations—Felonies	6	298
Adult Criminal	Probation Violations—Misdemeanors	5	357
Juvenile Delinquency	Sex Felonies	72.5	25
Juvenile Delinquency	Other Felonies	25	71
Juvenile Delinquency	Misdemeanors	20	89
Juvenile Delinquency	Probation Violations and Contempts	6	298
Juvenile Delinquency	Orders to Show Cause	5	357

Going Forward

Potential Impact of Provisional Standards on Defender Need

Given the relative absence of detailed information about current defender caseloads and about the numbers and types of Utah court cases that involve appointed counsel annually, it is difficult to accurately predict how unmodified adoption of the provisional standards would affect the statewide demand for defender services. That said, we are confident that, absent any future changes in substantive or procedural law in the state, adoption would clearly require a sharp increase in the supply of annual attorney hours available for indigent defense. In every adult criminal and juvenile delinquency case type category listed in Table S.5, the average-hour recommendations issued by the expert panel exceeded the results of the analysis of average time expenditures in the two Salt Lake County public defender offices. Though a direct case-type-by-case-type comparison is hampered by the fact that the categories used by the expert panel differed somewhat from those used in the time analysis, the minimum increase beyond reported average attorney hours was 46 percent, and, depending on the category, the expert recommendations actually doubled, tripled, and even quadrupled what were reported as average time expenditures. Even employing the questionable assumption that the attorneys represented in the time analysis were somehow able to fully discharge their professional responsibilities in a manner that saved an extraordinary amount of their time compared with the activities of

attorneys in other offices and law firms across the state (and thus the dramatic increases over time expenditures arising from the experts' recommendations would be greatly reduced if we had better time information from the vast majority of indigent defenders in Utah), adoption of the provisional standards, if accompanied by a surge in attorney availability, will certainly cause a major sea change in the delivery of services to indigent defendants.

Next Steps

The comments submitted by many of the attorneys who participated in the survey evidenced deep frustration over a lack of resources and inadequate time to do the job that they believe is necessary for effectively fulfilling their professional responsibilities to their clients. But to the extent that indigent defender caseloads in Utah are indeed excessive, regardless of whether the problem is widespread or just limited to a handful of defenders, workload issues cannot be made to disappear simply through the adoption of maximum caseload standards. Without the tools in place for routinely monitoring caseloads and for enforcing compliance, such standards can be easily ignored. To avoid that outcome, far better information about indigent defender caseloads, both at the local system level and the individual attorney level, will be needed by the IDC and the Utah Office of Indigent Defense Services (OIDS) on a routine basis. The most obvious way to obtain the data necessary for planning purposes and for monitoring workloads would be the imposition of mandatory reporting requirements upon attorneys who wish to be considered for appointments, with perhaps monthly submissions regarding current caseloads, pending matters, support staff assistance, and conflicting demands on each attorney's availability. Instances where caseloads are approaching the maximum thresholds would result in throttling back the rate of new appointments for those defenders at risk of excessive levels, and instances where a defender failed to submit reports as required would result in a suspension of future appointments until the shortcomings are remedied. For such a system to be truly effective, OIDS and the Utah judiciary will need to establish new lines of communication, so that near-real-time information about the status of cases with appointed counsel is available to OIDS staff, and information about the identities of attorneys whose appointment eligibility is at risk of exceeding caseload maximums is at the fingertips of judges and court personnel.

Most important of all, 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 possibly receiving fewer appointments over the course of a year. Even in the smallest or least populated jurisdictions in the state, plans must be in place for alternative counsel to quickly and seamlessly absorb the flow of new appointments when indigent defenders are approaching maximum limits, much like when conflict counsel steps in as a substitute when the initially appointed attorney has potential conflicts of interest. Without such backups in place and ready to take over on a

moment's notice, courts will have little choice but to continue to appoint those who are at risk of excessive workloads.

The IDC must also regularly revisit the issue of caseload standards in the future, in part to make sure that caseload maximums continue to accurately reflect the evolving challenges and the unique local legal cultures facing defenders in every jurisdiction in the state. It may turn out, for example, that the provisional standards are too restrictive when applied to attorneys in some locations, and too generous in others. Taking steps to regularly assess where the utility of the standards appears to be less than optimal will help determine whether customization is needed and, hopefully, reduce the likelihood of negative blowback from disgruntled indigent defenders and local indigent defense systems. Thankfully, standards-development efforts going forward will be far less daunting and, frankly, far less expensive. Once attorney levels and availability in local indigent defense systems are appropriately adjusted for the purpose of compliance with any new standards, and once CMSs are more widely utilized by the indigent defense bar 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 expert panels than could be utilized for the one RAND and the IDC conducted in December 2019. Ultimately, the provisional standards presented in this report are simply a starting point in a continuing, long-term process, one that has critically important consequences for Utah's criminal justice system and the state's citizens.

Acknowledgments

We would like to express our deepfelt appreciation to those attorneys across Utah who responded to our invitation 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 effort made by members of our expert panel to travel to Provo in December 2019 and engage in hours of sometimes vigorous debate with their fellow members of the criminal and juvenile defense bar over the best means for delivering an effective defense is testimony to their dedication to the citizens of Utah.

Joanna Landau, executive director of the Utah Indigent Defense Commission, did a highly professional job of shepherding this project from conception to realization, and we are thankful for her thoughtful guidance and support at every step of the process. Commission staff members Leslie Howitt, Gregory Bates, Katriina Adair, Jojo Liu, and Darien Hickey also provided timely and much welcome assistance. Richard Mauro (executive director of the Salt Lake Legal Defender Association), Pamela Vickrey (executive director of Utah Juvenile Defender Attorneys, LLC), and Thomas Means (public defender, Utah County Public Defender Association) graciously extended our research team every courtesy possible, allowed us access to their extremely knowledgeable and dedicated staff, and provided detailed information regarding their offices' operations and the services provided to their clients. Justice Works of Centerville, Utah, put its extensive resources and experience at our disposal to assist in our efforts to analyze years of attorney timekeeping and case management data, and we greatly appreciated the help.

We would also like to thank our formal reviewers, Andrew Davies, director of research at the Deason Criminal Justice Reform Center, and James Anderson, director of the RAND Justice Policy Program, for their extremely thoughtful reviews and constructive comments. It goes without saying that the authors retain full responsibility for any remaining errors. James Torr performed a highly professional and thorough job of editing and organizing the final version of the report.

Abbreviations

ABA	American Bar Association
ABA-SCLAID	American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants
AOC	Utah Administrative Office of the Courts
CMS	case management system
CoV	coefficient of variance
CSA	combined statistical area
DUI	driving under the influence
FTE	full-time equivalent
IDC	Utah Indigent Defense Commission
LDA	Salt Lake Legal Defender Association
NAC	National Advisory Commission on Criminal Justice Standards and Goals
NCSC	National Center for State Courts
NLADA	National Legal Aid & Defender Association
OIDS	Utah Office of Indigent Defense Services
UJDA	Utah Juvenile Defender Attorneys

1. Introduction

Background

In 2019, the RAND Corporation was asked by the Utah Indigent Defense Commission (IDC) for assistance in developing a provisional set of maximum caseload standards for providers of indigent legal representation in the courts of the state of Utah (*indigent legal representation* refers to services provided by attorneys appointed to represent clients involved in criminal cases, juvenile delinquency proceedings, or other legal matters; the adjective *indigent* as used here simply refers to a person’s overall eligibility for appointed counsel, and not necessarily in regard to their financial status). 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”), are a useful tool that administrators of indigent defense programs, the courts that appoint indigent defense counsel, and policymakers who decide on funding allocations for such appointments can use in determining both when caseloads are in danger of being excessive and the number of attorneys that may be needed to handle expected demand.

An important distinction for understanding how such standards are derived is that between the terms *caseloads* and *workloads*. In the context of indigent legal representations, a caseload is simply a description of the number and types of cases in which an attorney provides legal services (for example, at the start of a month an attorney might have a caseload consisting of six third-degree felony cases, ten Class B misdemeanor cases, and six probation violation proceedings). Caseloads can be measured in different ways, such as by active representations at a specific point in time or by cases opened (i.e., new appointments accepted), closed, or active during a specific period (maximum caseload standards are typically couched in terms of the numbers and types of cases opened during a year). Workloads, on the other hand, represent the totality of effort necessary to complete whatever tasks or discharge whatever responsibilities are required by a particular caseload. Workloads are often expressed in terms of estimated total time expenditures. For example, if a Class C misdemeanor is assumed to require, on average, 10 hours of attorney time to complete in a satisfactory manner, then the workload associated with a caseload consisting of 25 Class C misdemeanors would be 250 hours. A maximum caseload standard that cautions against an attorney accepting, for example, more than 150 felony appointments in a year essentially indicates that the workload associated with 151 or more such felonies risks exceeding the amount of time realistically available to an attorney to devote to those cases over the course of a year.

Caseload 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; and whether additional effort should be made to address issues that, left unresolved, would increase the likelihood of recidivism. Without a reliable metric available to flag (and subsequently remedy) instances where workloads for an individual attorney, a law firm, or the indigent defense system for an entire county have risen to the point where additional resources are needed to deliver appropriately professional services, attorneys will have to make difficult decisions as to how to allocate their limited time. In such instances, a type of triage can take place in which all but the most mission-critical, time-sensitive tasks are ignored, and, in the extreme, attorneys can find themselves routinely delivering just the minimum effort necessary to avoid ethical sanctions while hoping for a quick plea deal.

Making sure Utahan counsel have enough time to adequately defend their clients is not a new concern. In 2011, the Utah Judicial Council (the policymaking body for the state's judiciary) commissioned the Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts (the Utah Study Committee) composed of judges, local government representatives, prosecutors, court administrators, indigent defenders, and others to "assess the provision of indigent criminal defense services at the trial level in Utah courts and to identify any concerns and make appropriate recommendations for improvement."⁸ As part of this work, the Utah Study Committee developed a set of principles in its 2015 final report that it felt "appropriately described the components of a constitutionally adequate indigent defense system."⁹ One such principle held that in order to be able to test the prosecution's evidence in a meaningful adversarial process, the defense counsel's workload must permit effective representation of each client. In addition, a report commissioned by the Utah Study Committee noted that the "very high caseloads" shouldered by some counsel in the state made it "unlikely" that such counsel would be "able to spend the necessary time on each case to adequately represent defendants."¹⁰

One specific recommendation of the Utah Study Committee was that the legislature "create an Indigent Defense Commission to provide statewide oversight of indigent defense services and to promulgate standards and to provide training, economic assistance, and other resources to

⁸ Utah Judicial Council, Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts, *Report*, Administrative Office of the Courts, October 26, 2015, p. 1.

⁹ Utah Judicial Council Study Committee, 2015, pp. 13–14.

¹⁰ Utah Judicial Council Study Committee, 2015, p. 15, summarizing the findings of Sixth Amendment Center, *The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services*, Boston, Mass., October 2015.

local jurisdictions to meet constitutional obligations for indigent defense.”¹¹ Seven months after that recommendation was published, the Utah Legislature established the IDC with the goal of ensuring that the state meet its “obligations for the provision of indigent criminal defense services, consistent with the United States Constitution, the Utah Constitution,” and Utah’s Indigent Defense Act.¹² The IDC is presently charged with developing and adopting “core principles” for the state’s indigent defense systems, including ones that ensure counsel have workloads which allow “for sufficient time to meet with clients, investigate cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client.”¹³

How can an indigent defense system determine when the effort required by an attorney’s caseload is not allowing “sufficient time” to serve their clients’ best interests? While it might be conceivably possible to perform a close inspection of an attorney’s cases and review each decision made to ensure that the choice was uninfluenced by any time constraints, conducting such an evaluation would be difficult or impossible when the inquiry is expanded to include all indigent defenders operating in an entire county or across the state. A more practical approach would simply involve an examination of the number and types of cases in an attorney’s caseload with the assumption that different types of cases are likely to require, on average, different time expenditures. Such assumptions can translate caseloads into workloads, which in turn can be compared to the time reasonably available to an attorney during the work day, week, month, or year.

An initial attempt to develop such a caseload-based metric 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.

¹¹ Utah Judicial Council Study Committee, 2015, p. 2.

¹² Utah Senate Bill 155, 2016, Section 6.

¹³ Utah Code § 78B-22-404.

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.¹⁴

These nearly five-decade-old NAC caseload standards have received considerable attention since their publication and were often adopted with little modification by various state and national organizations.¹⁵ Nevertheless, the 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 influenced by local legal cultures and rules, and for their apparent lack of any documented basis (empirical or otherwise) for the recommended caseload maximums. In an overview of the right to counsel in Utah produced as part of the Utah Study Commission's work, Utah District Court Judge Derek P. Pullan indicated that while national "caseload standards may be instructive," they would not be "outcome determinative for Utah."¹⁶ Instead, Judge Pullan cited an academic analysis arguing that in order to ensure that defenders have sufficient time to devote to each client, states must control workloads, with the most direct route being the establishment of state-specific caseload limits:

Although national caseload standards are available, states should consider their own circumstances in defining a reasonable defender workload. Factors such as availability of investigators, level of support staff, complexity of cases, and level of attorney experience all might affect a workable definition. Data collection and a consistent method of weighing cases are essential to determining current caseloads and setting reasonable workload standards.¹⁷

¹⁴ 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 & Defender Association, *National Advisory Commission on Criminal Justice Standards and Goals: The Defense*, Washington, D.C., 1973.

¹⁵ See, e.g., American Bar Association, *Ten Principles of a Public Defense Delivery System*, February 2002 ("National caseload standards should in no event be exceeded," citing the numbers in NAC Standard 13.12); Washington State Office of Public Defense, *Washington State Supreme Court Standards for Indigent Defense*, 2012, Standard 3.4; and American Council of Chief Defenders, *American Council of Chief Defenders Statement on Caseloads and Workloads*, August 27, 2007 ("The ACCD recommends that public defender and assigned counsel caseloads not exceed the NAC recommended levels . . .").

¹⁶ Derek P. Pullan, "The Constitutional Right to Counsel: Evaluating the Health of Utah's Indigent Defense System," in Utah Judicial Council Study Committee, 2015, Appendix A, p. 6.

¹⁷ Mary Sue Backus and Paul Marcus, "The Right to Counsel in Criminal Cases, a National Crisis," *Hastings Law Journal*, Vol. 57, 2006, p. 1125 (quoted in Pullan, 2015, p. 6).

Indeed, Colorado,¹⁸ Idaho,¹⁹ Indiana,²⁰ Louisiana,²¹ Maryland,²² Massachusetts,²³ Michigan,²⁴ Missouri,²⁵ New Mexico,²⁶ New York,²⁷ North Carolina,²⁸ Rhode Island,²⁹ Texas,³⁰ and Virginia³¹ have conducted studies similar to the one that is the subject of this report, with the goal of developing reasonable workload standards. Generally, these 14 studies use a combination of empirical data collections and the opinions of experts (in both local legal practice and the applicable legal and ethical requirements for delivering effective representation) to develop estimates of *average* attorney time expenditures in different types of cases to be used by indigent defense systems when planning for the number of attorneys required to handle expected numbers of annual appointments. The idea of any sort of average may seem out of place in the context of

¹⁸ 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.

¹⁹ Vanessa Crossgrove Fry, Sally Sargeant-Hu, Lantz McGinnis-Brown, and Greg Hill, *Idaho Public Defense Workload Study 2018*, Boise, Idaho: Idaho Policy Institute, Boise State University, 2018.

²⁰ American Bar Association, Standing Committee on Legal Aid and Indigent Defendants, and Crowe LLP, *The Indiana Project: An Analysis of the Indiana Public Defender System and Attorney Workload Standards*, July 2020.

²¹ 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.

²² Brian J. Ostrom, Matthew Kleiman, and Christopher Ryan, *Maryland Attorney and Staff Workload Assessment*, 2005, Williamsburg, Va.: National Center for State Courts, 2005.

²³ Melissa Labriola and Ziyad Hopkins, *Answering Gideon’s Call Project (2012-DB-BX-0010)—Attorney Workload Assessment*, Committee for Public Counsel Services and Center for Court Innovation, October 2014.

²⁴ Nicholas M. Pace, Dulani Woods, Shamena Anwar, Roberto Guevara, Chau Pham, and Karin Liu, *Caseload Standards for Indigent Defenders in Michigan: Final Project Report for the Michigan Indigent Defense Commission*, Santa Monica, Calif.: RAND Corporation, RR-2988-MIDC, 2019.

²⁵ RubinBrown and the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, June 2014.

²⁶ Daniel J. Hall, *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorneys’ Offices, and the New Mexico Public Defender Department: Final Report*, Denver, Colo.: National Center for State Courts, June 2007.

²⁷ Nicholas M. Pace, 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 (final standards adopted by the state of New York are described in 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).

²⁸ Cynthia G. Lee, Lydia E. Hamblin, and Brittney Via, *North Carolina Office of Indigent Defense Services Workload Assessment*, Williamsburg, Va.: National Center for State Courts, February 2019.

²⁹ 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.

³⁰ Public Policy Research Institute, Texas A&M University, *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission*, College Station, Tex., 2015.

³¹ Matthew Kleiman and Cynthia G. Lee, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment: Final Report*, Williamsburg, Va.: National Center for State Courts, March 2010.

indigent defense, as any individual case can differ markedly in its needs, complexities, and challenges; one case might require a lengthy trial and many weeks of work on the part of the defender, whereas another with essentially the same fact pattern and applicable law might be resolved the day after the arraignment when the prosecution drops the charges. Nevertheless, the total amount of time spent by attorneys for a particular type of case (such as a third-degree felony) over the course of a year divided by the total number of cases of that type yield a mean average across all such cases, even if none of the cases actually consumed exactly the average amount of time.

Where these studies depart from work that simply measures current mean time expenditures is in the use of expert opinion to develop *recommended* averages that account for all effort needed to deliver effective assistance of counsel conducted pursuant to prevailing professional norms. Choosing a recommended average is a normative decision, one that draws on authoritative guidance from sources such as the U.S. Supreme Court's decisions in *Strickland v. Washington*,³² *United States v. Cronin*,³³ and *Padilla v Kentucky*;³⁴ the American Bar Association's (ABA's) standards described in its *Ten Principles of a Public Defense Delivery System*,³⁵ *Eight Guidelines of Public Defense Related to Excessive Workloads*,³⁶ *Standards for Criminal Justice: Providing Defense Services*,³⁷ and *Criminal Justice Standards for the Defense Function*;³⁸ and the National Legal Aid & Defender Association's (NLADA's) *Performance Guidelines for Criminal Defense Representation*.³⁹ The decision also draws on the experts' personal knowledge of the challenges currently facing indigent defenders in the courts being studied; the experts' extensive experience in representing clients in local criminal, juvenile, appellate, and child welfare proceedings; and their familiarity with standards developed for counsel in their own state. In Utah, such standards might arise from case law, such as *State v. Hales*⁴⁰ and *State v. J.A.L.*;⁴¹ recently issued standards from the IDC, such as its *Core Principles*

³² 466 U.S. 668 (1984).

³³ 466 U.S. 648 (1984).

³⁴ 559 U.S. 356 (2010).

³⁵ American Bar Association, 2002.

³⁶ American Bar Association, *Eight Guidelines of Public Defense Related to Excessive Workloads*, August 2009.

³⁷ American Bar Association, *ABA Standards for Criminal Justice: Providing Defense Services*, 3rd ed., 1992.

³⁸ American Bar Association, *Criminal Justice Standards for the Defense Function*, 4th ed., 2017.

³⁹ National Legal Aid & Defender Association, *Performance Guidelines for Criminal Defense Representation*, Washington, D.C., 2006.

⁴⁰ 2007 UT 14 (2007).

⁴¹ 2011 UT 27 (2011).

for Appointed Attorneys Representing Youth in Delinquency Proceedings;⁴² and various mandates from the Utah Legislature, the Utah courts, and the Utah State Bar.⁴³

As a simplistic example of how the experts in these studies might reach a decision regarding a recommended average, assume that an effort measuring attorney time expenditures finds that an average of 10 hours was spent across all misdemeanor charges of driving under the influence (DUI). The experts would consider such findings in light of the guidance and their knowledge described previously, and might conclude that an additional 10 percent of time, on average, would yield a more comfortable cushion for defenders to provide services that were often being neglected or minimized in favor of more immediate needs and that, with such time available, counsel would be more likely to deliver effective assistance conducted pursuant to prevailing professional norms. The average increase of one hour might, for example, allow for increased time working with the client to review the prosecution's evidence, to appear with the defendant when the defendant was informed of the filed charges at the initial court appearance, or to address collateral consequences, such as suspension of driving privileges. The recommended average of 11 hours of attorney time across all misdemeanor DUI could be considered a "case weight," a relatively straightforward means for calculating total attorney demand. If in the indigent defense system in question a total of 500 misdemeanor DUI cases have counsel appointed to represent the defendants in such cases annually, then system administrators would need to have enough attorneys to devote 5,500 hours (11×500) over the course of a year for this particular type of case.

Such case weights are translated into maximum caseload standards by using assumptions about the annual amount of time attorneys have available to devote to case-related representations (in other words, annual work time not used for administrative purposes, professional development, vacations, client development, and the like). If the annual case-related available assumption is, for example, 1,870 hours, and if, for example, an average of 11 hours should be planned on for devoting to misdemeanor DUI cases to help ensure that effective representations are being delivered across the case type, then the maximum caseload standard for an individual attorney would be 170 misdemeanor DUI cases per year ($1,870 \div 11$). These standards assume full-time practices involved in the subject matter area. If, for example, an attorney spent 40 percent of each week practicing criminal defense and the remaining 60 percent of the week as an accountant, then the maximum caseload standard for misdemeanor DUI cases would be exceeded by this attorney should they accept more than 68 such cases in a year ($170 \times 40\%$).

It is important to keep in mind that such standards are simply a reflection of averages, recommended or otherwise. An attorney inexperienced in DUI defense might find even 100 such

⁴² Utah Indigent Defense Commission, *Core Principles for Appointed Attorneys Representing Youth in Delinquency Proceedings*, 2018.

⁴³ See, e.g., Utah Code § 77-32-804.

cases an unsupportable burden over the course of a year, while a seasoned veteran in full compliance with all ethical standards might find themselves appointed to 200 relatively straightforward cases, with a lot of unspent time at the end of that same year. Ultimately, it is up to the indigent defense system to utilize maximum caseload standards as canaries in the coal mine for warning of potential workload excesses and, when the signals are there, take a closer look at the impact of heavy caseloads on defenders and their clients and marshal resources appropriate for meeting the demand. That said, a maximum caseload standard should not be viewed as an inflexible target for defenders to strive for when accepting new clients. As always, attorneys have an ethical responsibility to decline appointments when their workload is in danger of becoming excessive and runs the risk of negatively affecting their ability to competently and diligently represent all their clients, even if the number and types of cases taken on do not exceed the maximum limits.

This report is intended to describe the results of maximum caseload standards-setting work conducted by RAND on behalf of the IDC in regard to adult criminal cases and juvenile delinquency proceedings, two of the four subject matter areas for which caseload standards will ultimately be developed for Utah defenders (work on standards for child welfare and termination representations and appellate appointments are addressed as part of a separate IDC effort).

Definitions

We use the term *indigent defendant* to describe an individual who has counsel appointed on their behalf regarding a criminal case or a juvenile delinquency proceeding in the courts of Utah as mandated by the U.S. Constitution, the Utah Constitution, the Utah Code, local statutes, state or local regulations, or court rules and policies. It should be noted that under the Utah Code, the proper term for one whose case is under the jurisdiction of the Utah Juvenile Court in a delinquency proceeding is *minor*, but for the purpose of this report we will be using *defendant* when referring to any person who has appointed counsel.⁴⁴ The terms *indigent defense attorney*, *indigent defender*, and *defender* interchangeably describe any attorney who provides such representation at any time or has indicated a willingness to do so, even if the bulk of their practice does not normally involve indigent defendants.

In Utah, primary responsibility for both financing and deciding on the manner in which appointed counsel is provided to indigent defendants has traditionally fallen on the state's counties, cities, and towns. Indigent defenders in the state can generally be differentiated by the arrangements under which they receive appointments and are compensated for their services. Those who participate in *assigned counsel programs* are listed on a roster of available defenders,

⁴⁴ Utah Code § 78A-6-105(36). Though the focus of this caseload standards development effort is on criminal and delinquency matters, the term *defendant* in this context would also cover represented parties in appointments involving appeals (technically a party would be considered an appellant or an appellee) and child welfare and termination proceedings (here the represented party would be a petitioner or respondent).

and, if appointed by the court to represent an indigent defendant, they might be paid by the hour, by the case, or by each event in a case (the manner of compensation depends on the program’s rules and the nature of the appointment). Assigned counsel can be solo practitioners or members of private law firms. Defenders who participate in *contract defender programs* are paid (or their law firm is paid) an agreed amount of money to handle up to a preset number or percentage of indigent defense representations of an agreed-to type over a period of time (e.g., “up to 200 misdemeanor cases per year”). Such contract counsel can also be solo practitioners or members of private law firms. Those who work in *public defender offices* (law firms that are part of governmental agencies or nonprofit nongovernmental organizations) are typically salaried employees, and the primary focus of these entities is on the delivery of indigent defense (in contrast, assigned counsel and contract counsel may also represent fee-paying clients and practice types of law other than criminal defense or delinquency representations in addition to representing indigent defendants).⁴⁵ In 2019, when the bulk of the research for this project was conducted, the only three entities in Utah meeting this definition of a public defender office were the Salt Lake Legal Defender Association (LDA) and Utah Juvenile Defender Attorneys (UJDA) based in Salt Lake City, and the Utah County Public Defender Association based in Provo. All three are nonprofit private law firms. It should be noted that the media in Utah and many members of the state’s legal community often use the term *public defender* to refer to *any* attorney appointed to represent an indigent defendant in the state, even if the attorney is not associated with one of the three offices listed above. In this report, we reserve the term exclusively for attorneys associated with the LDA, the UJDA, or the Utah County Public Defender Association.

Key Components of the Research

Primary Data Collection Activities

We conducted three data collection efforts to provide the empirical foundation for the provisional criminal and delinquency standards. The first effort involved an analysis of attorney time records maintained by the two large public defender offices in Salt Lake County (see

⁴⁵ The definitions offered here are quite broad and do not fully capture the range of approaches that local governments in Utah have utilized to provide counsel to qualified defendants. For example, a county might establish an Office of the Public Defender and appoint a single attorney to that post. This public defender would then be responsible both for entering into arrangements (including on an assigned or contract basis) with private counsel on behalf of the county to receive appointments under negotiated terms and for providing some level of oversight over the delivery of defense services by those attorneys. In addition, some indigent defenders operate in multiple counties and could, for example, function as assigned counsel in one location and as contract defenders in another. And there are indigent defenders who are not staff of a public defender office, are not on an assigned counsel roster, or have not entered into a contract for services; instead, they are simply appointed by the court on an ad hoc basis when the need arises. For the sake of simplicity in this report, our focus is on the three most common vehicles for the delivery of indigent defense in the state.

Chapter 2). The analysis was intended to identify the average amount of time such counsel currently spend on criminal and delinquency matters within various case type categories.

The second effort was a survey of attorneys who had previously been identified as indigent defenders practicing in Utah, in which the results of the first effort's time study were presented to participants as evidence of current time expenditures (see Chapter 3). Informed by those results, respondents provided their opinions as to the average amount of time that an attorney should plan on spending on a particular type of case to ensure sufficient time is available to deliver effective assistance of counsel across all cases of that type. 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 December 2019 (see Chapter 4). The purpose of the conference was to have experienced counsel review authoritative guidance related to the provision of indigent defense, examine available evidence regarding the state's indigent defense bar, and consider the results of the two earlier data collections. With such information supplementing what they already were aware of—both personally and professionally—in regard to the practice of criminal and juvenile defense in Utah, this panel of experts reached consensus on recommended average time expenditures for counsel representing indigent defendants in various categories of adult criminal and juvenile delinquency matters proceeding in the Utah courts. The decisions of the conference participants formed the basis for the provisional maximum caseload standards described in Chapter 5.

It should be emphasized that RAND's final task in this work was to describe how the participants' recommendations at the December 2019 conference to the IDC translate into provisional maximum caseload levels. RAND was not charged with issuing *final* caseload standards; that important responsibility remains in the hands of the IDC. Factors outside the scope of the RAND project are likely to be taken into account when the IDC decides upon such final standards. For example, the commission may perceive a need to adjust the maximums upward or downward for certain jurisdictions with specialized courts; unusual demands on counsel, such as extensive travel time; or issues with support staff availability. This statewide body regulating indigent defense in Utah might, for example, decide to phase in the implementation of the standards over time as a result of budgetary considerations, or modify them on the basis of assumptions related to anticipated changes in substantive or procedural rules or impending changes in state financial support for local defender resources, such as funding for investigators. Thus, we offer only *provisional* caseload standards for the commissioners' review.

Rationale for Our Approach

The methods employed here were similar to previous studies in other states that have also addressed the question of reasonable caseloads (see Table 1.1). These studies, conducted by the ABA's Standing Committee on Legal Aid and Indigent Defendants (ABA-SCLAID), the National Center for State Courts (NCSC), RAND, and others, built on decades of related research that had been previously conducted to assess the workloads of federal and state

judges.⁴⁶ Caseload studies for indigent defenders share a number of similarities, usually involving the measurement of the average amount of hours currently spent by attorneys on different types of indigent representations, a survey in which indigent defenders within the jurisdiction being examined review those averages and weigh in as to whether sufficient amounts of time were being spent on those cases, and finally an expert panel (sometimes characterized as an “advisory committee”) composed of experienced attorneys to consider the information collected during the earlier phases of the work and, after discussing the key issues in play, reach consensus on various measures that can be used to estimate attorney levels in an indigent defense system that would be needed to provide effective representations in accordance with prevailing professional and ethical norms.

Despite these common themes, the specific methods employed and the relevant scope of the efforts differed somewhat depending on the study. For example, some were conducted in states where essentially all trial-level indigent defense is handled by attorneys who are part of a statewide public defender agency, whereas others were conducted in locations where the bulk of defenders are drawn from the private criminal bar, often in the form of very small firms and solo practitioners (such distinctions are described in the “Subjects” column in Table 1.1). In all studies reported here, maximum caseload standards were developed for adult criminal case types, but in some the inquiry was expanded to include various categories of juvenile delinquency proceedings, appeals, or family law matters (“Case Types” in Table 1.1). Information about average attorney time expenditures was sometimes obtained by conducting special time studies in which defenders recorded the amount of time spent on each case they worked on during a specific period of time, whereas other studies were able to analyze existing timekeeping information already collected by defenders as a routine business practice (see “Time Analysis” in Table 1.1). When special time studies were employed, participation was never mandatory unless the sole subjects of the standards-setting process were the attorneys employed by a statewide public defender system.

The studies also differed by whether the focus of the inquiry would be on the average amount of time attorneys were spending on cases within different case type categories, or instead on the average amount of time spent on different *tasks* undertaken in such cases (see “Task-Based Approach” in Table 1.1). The latter approach assumes that by deconstructing an attorney’s day into various activity categories (trial time, investigation time, client communication time, research time, etc.) at the case level, a more accurate picture of overall expenditures can be obtained (total average time would then be the sum of the average time spent in trial plus the average time spent investigating the case plus the average time communicating with the client, and so on). In such task-based studies, surveys of the indigent defense bar that elicit opinions regarding whether current time expenditures are adequate would ask, for example, whether the

⁴⁶ For a detailed review of the history and application of indigent defender workload research, see Pace et al., 2019, pp. 5–18.

two hours reported as the average amount of time consumed for client communication in a Class C felony was believed to be a sufficient estimate for planning purposes (see “Time Sufficiency Survey Inquiry” in Table 1.1). In a non-task-based study, for example, the survey question would only inquire as to whether the 20 hours average reported for Class C felonies was believed to be sufficient.

One commonality across all of these studies involved the use of one or more collections of experienced criminal defense practitioners drawn from within the subject state to weigh in on what they believe to be reasonable average time allocations for different types of cases (see “Expert Panels” in Table 1.1). Typically, these panels were provided guidance as to the prevailing professional norms for defendant representations prior to their deliberations. Examples of such guidance would include the ABA’s *Criminal Justice Standards for the Defense Function* (2017) and its *Model Rules of Professional Conduct* (2008), and any similar state-specific authority. At this point, the experts would be encouraged to come to a consensus as to recommended average time expenditures for different types of cases, though in studies utilizing the task-based model, the recommendations would be for average time expenditures for various activity categories within each case type.

Where the studies in Table 1.1 differ in a significant way methodologically is in the nature of the information provided to the panel for its deliberations. One approach ensures that the panel is familiar with the results of the time analysis regarding current average time expenditures and with the findings of the attorney survey that identify case types where the indigent defense bar believes inadequate time is being spent. Some studies following this informational model have the experts make upward or downward “adjustments” to the values reported in the time analyses or surveys, while others encourage the experts to make independent decisions on recommended average time expenditures despite being informed by the prior data collections (see “Expert Decisions or Adjustments” in Table 1.1). A contrasting approach is employed by standards-development projects in which the experts are prevented (or at least discouraged) from considering any results of prior time studies or attorney surveys in the hopes of avoiding a situation where their deliberations would be improperly anchored to any existing institutional deficiencies. Regardless of the informational model employed, ultimately it will be the experience of the panel members in their practice of criminal defense, as informed by the legal and ethical guidelines provided for their deliberations, that produce the recommended average time expenditures needed for calculating maximum caseload limits.

Table 1.1. Recent Indigent Defender Caseload Standards-Setting Approaches

Jurisdiction and Primary Researchers or Sponsors (Citation)	Subjects	Case Types	Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Colorado ABA-SCLAID (RubinBrown and ABA-SCLAID, 2017)	Statewide public defender system	15 adult criminal, 3 juvenile	Mandatory time study over 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 where each task should take place
Idaho Idaho Policy Institute (Fry et al., 2018)	Mix of private bar and public defenders across state	5 adult criminal, 1 juvenile, 1 appeal, 1 family	Voluntary time study over 12 weeks	Yes, using 13 task types	(1) Average amount of time that should be spent on cases within each case type; (2) average time needed to complete each task within each case type	Between 12 and 16 attorneys depending on the round	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type where each task should take place
Indiana ABA-SCLAID (ABA-SCLAID, 2020)	Statewide public defender system	7 adult criminal, 6 juvenile, 7 appeals, 3 family	None	Yes, using 11–13 task types depending on case type grouping	None	“Approximately 10 experienced and knowledgeable defense attorneys, public defenders and private practitioners” in each of four case type groupings	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type where each task should take place
Louisiana ABA-SCLAID (Postlethwaite & Netterville and ABA-SCLAID, 2017)	Statewide public defender system	7 adult criminal, 1 juvenile, 2 family	Mandatory time study over 6 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 where each task should take place

Jurisdiction and Primary Researchers or Sponsors (Citation)	Subjects	Case Types	Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Maryland NCSC (Ostrom, Kleiman, and Ryan, 2005)	Statewide public defender system	District offices: 15 adult criminal, 2 juvenile Statewide divisions: 7 adult criminal, 3 appeals, 2 family	Voluntary time study over 4–6 weeks	Yes, using 15 task types at start, collapsed to 8 at end	Likert scale to indicate frequency in which attorney generally had enough time for each task across all cases	Three attorney focus groups, one each for urban, suburban, and rural cases Advisory Committee comprising 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 either accepted, rejected, or made further changes.
Massachusetts The Committee for Public Counsel Services (Labriola and Hopkins, 2014)	Mix of private bar and public defenders	10 adult criminal, 4 juvenile, 2 family	Used existing billing data from private bar for 1 year of closed cases as proxy	No, task data only informed focus group decisions	Likert scale to indicate frequency in which 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 in which this additional time was required.
Missouri ABA-SCLAID (RubinBrown and ABA-SCLAID, 2014)	Statewide public defender system	6 adult criminal, 1 juvenile, 1 appeal	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
Michigan RAND (Pace et al., 2019)	Mix of private bar and public defenders	9 adult criminal	Voluntary time study over 8 weeks	No	Average amount of time that should be spent on cases within each case type	29 panelists consisting of “16 private criminal practitioners, nine public defenders, two appellate attorneys, and two federal public defenders”	Average amount of time that should be spent on cases within each case type

Jurisdiction and Primary Researchers or Sponsors (Citation)	Subjects	Case Types	Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
New Mexico NCSC (Hall, 2007)	Statewide public defender system	District offices: 9 adult criminal, 1 juvenile, 1 appeal Statewide units: 2 adult criminal, 2 appeals	Voluntary time study over 6 weeks	Yes, using 51 task types	Likert scale to indicate frequency in which attorney generally had enough time for each task across all cases	Focus group: "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
New York RAND (Pace et al., 2016)	Mix of private bar and public defenders in five counties	6 adult criminal, 2 appeals	Voluntary time study over 8 weeks	No, task data only informed expert decisions	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 attorneys"	Average amount of time that should be spent on cases within each case type
North Carolina NCSC (Lee, Hamblin, and Via, 2019)	Statewide public defender system	12 adult criminal, 3 juvenile, 3 family	Mandatory time study over 7 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 where additional time was needed
Rhode Island ABA-SCLAID (BlumShapiro, ABA-SCLAID, and NACDL, 2017)	Statewide public defender system	6 adult criminal, 2 juvenile, 1 family	Used existing timekeeping data covering 6 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 where each task should take place

Jurisdiction and Primary Researchers or Sponsors (Citation)	Subjects	Case Types	Time Analysis	Task-Based Approach	Time Sufficiency Survey Inquiry	Expert Panels	Expert Decisions or Adjustments
Texas Public Policy Research Institute (Public Policy Research Institute, Texas A&M University 2015)	Mix of private bar and public defenders across state	6 adult criminal	Voluntary time study over 12 weeks	Yes, using nine task types	For each task within each of three collapsed case types: (1) percentage of cases where task should be performed; (2) average hours per case when task is performed	“18 highly experienced criminal defense practitioners”	(1) Time needed to complete each task in a case within each case type; (2) percentage of cases within each case type where each task should take place; (3) percentage of cases within each case type that should go to trial Note: Results later split into cases going to trial and those resolved by other means
Virginia NCSC (Kleiman and Lee, 2010)	Statewide public defender system	Local offices: 8 adult criminal, 2 juvenile, 1 appeal Division offices: 1 adult criminal, 1 appeal	Mandatory time study over 8 weeks	Yes, using 56 task types	Likert scale to indicate frequency in which 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 believed to be necessary, (1) revised time needed to complete task; (2) revised percentage of cases within case type where task should take place

NOTE: As defined in this table, “adult criminal” case types in the above referenced studies include all representations that do not clearly involve juvenile delinquency, appeals, or family law.

In designing our project approach, we selected the features of prior caseload standards-setting studies that we felt were most appropriate for a Utah-focused effort. Little detailed information about indigent defender activity across the state was available at the start of this project, due to the traditionally localized responsibility for funding and overseeing indigent appointments and to the relatively recent creation of the IDC at the time this project began. The IDC was established in 2016, in part, as a state-level entity for gathering and reporting information about local indigent defense services, though in May 2020 that task became the responsibility of the Utah Office of Indigent Defense Services (OIDS). As such, we anticipated that we would have to collect our own data on current attorney time expenditures with a special time study, presumably one in which participation would be voluntary (the voluntary nature of the data collection meant that the duration of the study would have to be limited, perhaps as short as eight weeks, to avoid participant fatigue and subsequent dropout). We would not utilize a task-based approach in which time data would be collected at the activity level and used as building blocks for estimating case-level expenditures, because our prior experience in managing justice system–related timekeeping had shown that it would be far easier for attorneys not used to routinely tracking their time to simply record how many hours they spent on each case they worked on during the day than it would be if they had to also break out those hours by perhaps ten different activity types. We also planned to field a survey to the Utah indigent defense bar, in part to get their input as to whether they felt there was a need to have additional time available for them to spend on various types of cases, and in part to gather information on the annual volume and nature of appointments they receive annually. And finally, a decision was made to provide our expert panel with as much information as possible about indigent defense in the state, including what we learned about actual and recommended time expenditures. Despite the concerns of some researchers in this field about the possibility that the experts’ recommendations might be anchored to current indigent defense practices (and perhaps inappropriately reflect their shortcomings), we believe that the findings of the time studies and attorney surveys play an important role in informing the provisional standards, one that outweighs the risks of anchoring (in Chapter 4, we describe the steps we took to minimize any anchoring influences).

Other Research Activities

We spent the initial days of this effort gathering general background information on the delivery of indigent defense services in Utah and organizing RAND resources for subsequent project activities. In April 2019, the RAND project leader met with the staff of the IDC to discuss the strategic partnership between the two organizations that would be needed to deliver appropriate caseload standards and case weights, review project requirements, reach a consensus on key features of a preliminary work plan for moving forward, and learn about sources of relevant information in the control of the IDC, the Utah courts, and the indigent defense community.

One important task during this phase of the work was to develop a database of contact information for all Utah attorneys believed to be currently accepting indigent appointments. We obtained files developed from the IDC's initial attempts at identifying various segments of the Utah indigent defense bar, combined them, eliminated duplicates, and corrected obvious errors in the physical and email addresses. Our final tally of the defender population was 355 attorneys, though we were well aware that some of the names on the list identified individuals who were no longer practicing law at all or only doing so in areas outside of interest to this study, were now deceased, or who had new (and unknown) contact information. Similarly, we also were aware that there were indigent defenders now practicing in the state who were not on our list, perhaps because of a recent bar admission or because of a recent decision to accept appointments (thus being missed by the IDC's earlier canvassing efforts). Our assumption was that the two sets essentially offset each other and, for the purposes of this study, we estimate that the Utah indigent defense bar currently consists of about 350 attorneys. It should be noted that most of these attorneys are unlikely to be full time-indigent defenders who represent only or mostly court-appointed clients. Indeed, some might only represent a handful of indigent defendants in any one year, and others might have simply indicated to the IDC that they were theoretically available to accept appointments if needed but have never actually received one. That said, we examined the postal and email addresses in the contact list to estimate that 34 percent of all indigent defenders in the state are associated with one of the three public defender offices operating during our study period (June 2019 through October 2019; we also estimate that about 27 percent of the indigent defense bar are associated with the two Salt Lake County public defender offices). Given that these public defenders are likely to have practices exclusively involving appointed clients, their aggregate contribution to the total indigent defense caseload statewide would be much larger than their numbers.

Much of the immediate activity following the kickoff meeting was spent modifying the originally proposed workplan to reflect a more informed understanding of the challenges that would be faced during the standards-development effort. One such adaptation involved moving away from our proposed approach of inviting indigent defenders from across the state to participate in a two-month time study of attorney time expenditures. Timekeeping has historically been an uncommon practice for indigent defenders in the United States, particularly for public defenders who do not have clients requiring detailed accountings of time expenditures for billing purposes. Attorneys receiving appointments through contract counsel or assigned counsel programs do have a "paying client" in the form of the indigent defense systems that compensate them for their services, but timekeeping is not required when such compensation is on a per-contract or a flat-fee-per-case basis. Because of this, a special time study would likely require most indigent defenders in Utah to make major changes in their ordinary routine, track information not usually maintained as part of their normal business practices, and spend a nontrivial amount of time at the end of each work day thinking about what they did for their clients and recording such activities in an organized manner. Such a task would be made much

easier with a modern computerized case management system (CMS) with an integrated timekeeping application that can display client and case information, thereby avoiding the need for the attorney to repeatedly enter such information when recording the time spent on a discrete activity. But early in the course of this research, it became clear that relatively few Utah law firms and solo practitioners involved in indigent defense were believed to utilize a CMS with features sufficient to support the daily recording of attorney time and the tracking of characteristics and outcomes for cases included in a time study. Some prior studies of indigent defense have provided attorneys participating in a special time study of limited duration with temporary, cost-free access to a CMS, but the effort required to learn how to use such a sophisticated application correctly and to build a database of currently active cases from scratch is substantial. Because such efforts fall primarily on the shoulders of those tracking their time in these one-off, temporary data collections, many attorneys aware of the substantial commitment needed to participate may be disinclined to volunteer or will withdraw from the study prematurely.

Given such challenges, it was welcome news to learn that the two public defender offices in Salt Lake County (the LDA and UJDA) had in fact been recording individual case data for more than a decade using a full-featured CMS. We also learned that the LDA had instituted a mandatory timekeeping policy for its staff in early 2019 and that the UJDA had such a policy in place for many years (the former hoped to utilize time expenditure information as an ongoing tool for case and practice management, while the latter required time records for recovering various costs associated with juvenile representations from certain government agencies). This situation offered the possibility that we could avoid the expense of conducting a time study simply by analyzing records already collected in the ordinary course of business. Though a large-scale time study of indigent defenders across the state with a participant distribution that reflected both geographic diversity and the variety of approaches that local governments in Utah utilize to provide defendants with appointed counsel would likely yield a more accurate picture of current time expenditures for the “average” defender in the state, the opportunity to analyze extremely detailed, multiyear information from an important segment of the Utah indigent defense bar was very attractive. In addition, the use of already existing data for our analyses of attorney activity would eliminate the not-inconsiderable timekeeping burden that would have been placed on the defenders who volunteered for the proposed time study. Factoring into the decision was our understanding that the IDC was in the process of launching an initiative to provide case management software to local indigent defense providers. Though such an effort would not be completed in the time frame available for our work, we believed that once defenders across the state were routinely employing some sort of CMS in their practices, future efforts to measure attorney time expenditures could roll out special time studies as needed with far less disruption to the practices of participants than would be possible at the present time.

Accordingly, a plan was developed to extract attorney time expenditure records from the LDA and UJDA CMS installations and to analyze such data as our sole source of information

about recent attorney time expenditures.⁴⁷ We also worked with the vendor of the CMS used in those two offices to become familiar with the structure and definitions of the databases utilized by the systems.

Another important early task was to choose the case type categories that would be used as a template for our data collections and for the development of the provisional caseload standards. After the decision was made to collect time expenditure information from only the two Salt Lake County public defender offices, we initially suggested that the case types in Table 1.2 for adult criminal and Table 1.3 for juvenile delinquency be used, as they captured the essence of the categories described in the IDC’s original request for proposals to conduct the caseload standards development.

Table 1.2. Original Recommended Adult Criminal Case Type Categories

Case Type	Explanation
Felony DUIs	Third-degree felonies involving driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration (§ 41-6a-503(2)).
First-Degree Felonies	Prison sentence of 5 years to life. Examples: Murder (§ 76-5-203); Aggravated robbery (§ 76-6-302); Aggravated assault targeting a law enforcement officer and resulted in serious bodily injury (§ 76-5-103(2)(b)).
Second-Degree Felonies	Prison sentence of 1 to 15 years. Examples: Intentional infliction of serious physical injury upon a child (§ 776-5-109 (2)(a)); Kidnapping (§ 76-5-301); Manslaughter (§ 76-5-205).
Third-Degree Felonies	Prison sentence of up to 5 years. Examples: Burglary of other than a dwelling (§ 76-6-202); Marijuana possession with intent to distribute (§ 58-37-8(1)(b)(ii)); Possession of forged writing or device for writing (§ 76-6-502).
Misdemeanor DUIs	Misdemeanor charges involving driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration (§ 41-6a-503(1)).
Class A Misdemeanors	Jail sentence of up to 1 year. Examples: Manufacturing or delivering drug paraphernalia (§ 58-37a-5(2)(b)); Assault or threat of violence against a peace officer (§ 76-5-102.4(2)(a)); Criminal trespass of a dwelling (§ 76-6-206(3)(a)).
Class B Misdemeanors	Jail sentence of up to 6 months. Examples: Arson of property less than \$500 (§ 76-6-102(6)); Issuing a bad check or draft (§ 76-6-505(3)(a)); Harassment with communication of threat to commit violent felony (§ 76-5-106).
Class C Misdemeanors	Jail sentence of up to 90 days. Examples: Leaving a child unattended in a motor vehicle (§ 76-10-2202); Failure to disperse after order by a peace officer (§ 76-9-104); Driving with a suspended license (§ 53-3-227).
Probation Revocation—Felonies	Proceedings to determine whether conditions of probation imposed following a conviction on one or more felony charges have been violated (§ 77-18-1(12)).
Probation Revocation—Misdemeanors	Proceedings to determine whether conditions of probation imposed following a conviction on misdemeanor charges only have been violated (§ 77-18-1(12)).
All Other Client Matters	All adult criminal appointments not covered by one of the above categories. Examples: Extraditions; Criminal contempt; Parole revocations.

⁴⁷ We also considered case information from the Utah County Public Defender Association for inclusion into the time analysis, but the final approach we adopted ultimately required a more extensive history of data collection than would be available from this office. We greatly appreciate the considerable effort that the office’s staff expended in efforts to adapt their existing CMS to the needs of this project.

Table 1.3. Original Recommended Juvenile Delinquency Case Type Categories

Case Type	Explanation
Serious Youth Offender Act or Certification Felonies	Any felony charge involving the initiation of Serious Youth Offender Act or certification proceedings intended to have the juvenile tried as an adult in District Court (regardless of whether successful).
Homicides	All homicide cases (i.e., manslaughter or murder) that do <i>not</i> involve transfer proceedings (Serious Youth Offender Act or certification).
Other Felonies	All other cases involving at least one felony charge.
All Other Client Matters	All other Juvenile Court appointments for juvenile delinquency matters, such as misdemeanor prosecutions, probation violations, contempts, infractions, status changes, or orders to show cause.

We developed these case type categories under the assumption that the information then available in the CMS applications in place at the two offices could be used to similarly classify the cases assigned to their attorneys during the past few years. Unfortunately, subsequent analysis of the extract of CMS data we received revealed that it was not possible to categorize the offices' cases in such a way. While a highly granulated breakout of the two offices' caseloads would certainly be useful for a research perspective when developing maximum caseload standards, recording the information necessary for such an analysis (typically a listing of the relevant Utah statutes for each charge plus detailed narrative information about surrounding circumstances alleged by the prosecution in order to interpret the application of those statutes) into an office's CMS and keeping it updated as the case evolves and charges are dropped or added is not a day-to-day business need for a public defender office. Attorneys need only refer to the documents in the case file if they wish to know what specific charges are currently pending against a client, removing any pressing need for the office's staff to devote their time to record case type information beyond, for example, the fact that the client was facing felony burglary charges at the time of the original appointment. Devoting organizational resources toward recording detailed information that may have no obvious benefit to that organization can be a burdensome exercise. Such an effort would clearly need to be undertaken once maximum caseload standards are in place, but during the time this research was conducted, that need did not exist.

For this reason, we needed to make significant changes to our proposed case type categories, at least for the purposes of the first two phases of our work involving the calculation of average attorney time expenditures in different categories of cases and the fielding of a survey to the indigent defense bar to obtain attorney input as to whether those averages were sufficient for the goal of consistently delivering effective assistance of counsel. For those two purposes only, we created what might be thought of as an interim set of study case types, one that could be successfully applied to the information already contained in the two offices' CMS applications (see Table 1.4). The results of the time analysis and the attorney survey would then inform the deliberations of the panel of experts, who would ultimately make the decisions that would lead to maximum caseload standards, but they would not be required to restrict those decisions to the

categories listed in the interim case type sets. It should also be noted that Table 1.4 excludes criminal cases in which charges of capital murder are alleged, as we learned that the IDC planned to develop maximum caseload standards for these relatively rare but resource-intensive representations through a process outside the RAND project.

Table 1.4. Interim Case Type Classifications Used Only for Initial Time Analysis and the Attorney Survey

Subject Area	Case Type Category
Adult Criminal	Non-Capital Murder
Adult Criminal	Felony DUIs
Adult Criminal	Other Felonies
Adult Criminal	Misdemeanor DUIs
Adult Criminal	Other Misdemeanors
Adult Criminal	Probation Violations—Felonies
Adult Criminal	Probation Violations—Misdemeanors
Juvenile Delinquency	Felonies
Juvenile Delinquency	Misdemeanors
Juvenile Delinquency	Status Offenses
Juvenile Delinquency	Orders to Show Cause
Juvenile Delinquency	Probation Violations and Contempts

Certain important changes were indeed made to the interim case type set at the expert session in December 2019. As described more fully in Chapter 4, a category for felonies potentially requiring a convicted defendant to register as a sex or kidnap offender was carved out of the adult criminal “Other Felonies” case type, and a category for Class A misdemeanors was carved out of the adult criminal “Other Misdemeanors” case type. These changes were made by the expert panel to better reflect their understanding of the differences in average attorney time requirements for the offenses in question. Similarly, the panel voted to drop juvenile delinquency “Status Offenses” case type as a stand-alone category, because of its decreased importance for Utahan practitioners, and to carve out a category for sex offense–related felonies from the juvenile delinquency “Felonies” case type (expected attorney time was in play here as well). The set of categories ultimately utilized by the expert panel, along with detailed descriptions of the relevant defining statutes, are set forth in Table 1.5.

Table 1.5. Final Case Type Classifications Used in the Provisional Standards

Subject Area	Case Type Category	Explanation
Adult Criminal	Non-Capital Murder	First-degree felony charges under Utah Code § 76-5-203, potentially resulting in imprisonment for an indeterminate term of not less than 15 years and up to life. Does not include charges of aggravated murder under Utah Code § 76-5-202, nor homicides not constituting murder under Utah Code § 76-5-203.
Adult Criminal	Mandatory Sex and Kidnap Registration Felonies	Felony charges alleging violations of crimes (including attempting, soliciting, or conspiring) listed in Utah Code §§ 77-41-102(9) and (17) that upon conviction require registration as either a kidnap offender or a sex offender. Examples include aggravated kidnapping (§ 76-5-302), rape of a child (§ 76-5-402.1), and sexual exploitation of a vulnerable adult (§ 76-5b-202).
Adult Criminal	Other Non-DUI Felonies	All first-, second-, and third-degree felony charges not described above, excluding DUI charges for violations of Utah Code § 41-6a-502. Examples include aggravated arson of a habitable structure or vehicle (§ 76-6-103(2)), burglary of a dwelling (§ 76-6-202(2)), and odometer violation with intent to defraud (§41-1a-1319).
Adult Criminal	Felony DUIs	Third-degree felony charges for violations of Utah Code § 41-6a-502 with circumstances described in § 41-6a-503(2): infliction of serious bodily injury; two or more prior convictions within 10 years for various crimes (such as DUI or driving with illegal controlled substance in body) defined in § 41-6a-501(2); or a prior conviction for felony DUI or automobile homicide.
Adult Criminal	Misdemeanor DUIs	All misdemeanor DUI charges for violations of Utah Code § 41-6a-502.
Adult Criminal	Class A Misdemeanors	Misdemeanor charges with potential incarceration of up to one year. Excludes DUI charges. Examples include threats to influence official or political action (§ 76-8-104(1)), theft of property valued at between \$500 and \$1,500 (§ 76-6-412(1)(c)(i)), and negligent homicide (§ 76-5-206(2)).
Adult Criminal	Class B and C Misdemeanors	Misdemeanor charges with potential incarceration of up to six months (Class B) or up to 90 days (Class C). Excludes DUI charges. Examples include making a false alarm (§ 76-9-105(2)(c)), criminal defamation (§ 76-9-404(2)), and providing tobacco to a minor (§ 76-10-104).
Adult Criminal	Probation Violations—Felonies	Proceedings in which a violation of the terms of probation is alleged and the conviction for which probation was originally ordered involved at least one felony charge.
Adult Criminal	Probation Violations—Misdemeanors	Proceedings in which a violation of the terms of probation is alleged and the conviction for which probation was originally ordered only involved misdemeanor charges.
Juvenile Delinquency	Sex Felonies	Felony charges found in Part 4 (Sexual Offenses), Chapter 5 (Offenses Against the Person) in Title 76 (Utah Criminal Code) of the Utah Code. Examples include forcible sexual abuse (§ 76-5-404), rape of a child (§ 76-5-402.1), and unlawful adolescent sexual activity by a 17-year-old with a victim of 12 or 13 years of age (§ 76-5-401.3(2)(a)).
Juvenile Delinquency	Other Felonies	All first-, second-, and third-degree felony charges other than sex felonies described above. Examples include aggravated kidnapping (§ 76-5-302), burglary of a dwelling (§ 76-6-202(2)), and odometer violation with intent to defraud (§41-1a-1319).
Juvenile Delinquency	Misdemeanors	All Class A, B, and C misdemeanor charges. Examples include assault on a school employee (§ 76-5-102.3(1)), making a false alarm (§ 76-9-105(2)(c)), and providing tobacco to a minor (§ 76-10-104).
Juvenile Delinquency	Probation Violations and Contempts	Proceedings involving allegations of violations of the terms of probation or of willful violation or refusal to obey any order of the court.
Juvenile Delinquency	Orders to Show Cause	Hearings to determine whether a juvenile has violated some condition or failed to meet some requirement previously imposed by the court.

Each case type category within a subject area (such as adult criminal or juvenile delinquency) in Table 1.5 is listed in priority order for the purpose of classifying indigent appointments. For example, an adult criminal case that involves both Class A and Class C misdemeanor charges would be assigned to the “Class A Misdemeanors” case type because that category precedes “Class B and C Misdemeanors” in the list. Indigent defense appointments that fall outside the categories described in the table (such as an appointment made solely for the purpose of providing representation to an accused facing extradition to another state or matters involving juvenile status offenses) are not included in this set of provisional maximum caseload standards.

Organization of This Report

Chapter 2 summarizes the design and results of the time analysis of records maintained by the two public defender offices in Salt Lake County. Chapter 3 summarizes the design and results of an attorney survey fielded in early December 2019. Chapter 4 describes the December 20, 2019, caseload standards conference and the decision made by the expert panel. Chapter 5 presents provisional caseload standards for the IDC’s consideration. Chapter 6 discusses various recommendations concerning how caseload standards should be utilized. And finally, the appendix presents the comments about aspects of Utah indigent defense that were submitted by participants in the attorney survey.

2. Attorney Time Expenditure Analysis

Approach Used for Adult Criminal Cases

To estimate average attorney time expenditures in adult criminal cases, we analyzed an extract of data taken from the transactional database utilized by the LDA for tracking indigent representations handled by that office. The LDA CMS application had been in place for many years, but office staff did not start routine timekeeping until the beginning of 2019. Given the ramp-up time needed to successfully implement time tracking in an office that had not previously done so, we limited our analysis to only those cases that were active (meaning the client matter had not yet been resolved and that at least some attorney time was recorded during the period in question) at some point during the five-month period from June 2019 through October 2019 (the “study period”). A total of 11,703 adult criminal cases active during the study period and involving one of the client matters listed in the categories contained in Table 1.4 were used.

A complicating issue was that not all of the active cases had complete time information. About 27 percent of the cases defined as active both began and ended within the study period (and we did have complete information for these cases), but the remainder either started before June 2019 but finished within the study period (22 percent), started during the study period but were still pending as of the end of October 2019 (30 percent), or both started before and were pending at the end of the study period (21 percent). Because we chose to base our analysis only on time recorded starting in June 2019, we needed a means for imputing attorney time not recorded before June 2019 for those cases with a start date prior to the beginning of the study period and for imputing attorney time for cases that were still pending at the time of the analysis.⁴⁸ To do so, we used a relatively simple imputation technique for estimating total time expenditures for all cases based upon the known or expected life of each individual case.

This technique was felt to be one that would provide reasonable estimates of time expenditures in the aggregate for LDA cases, even if its application in any specific case would be misleading. The underlying assumption employed here for the sole purpose of extrapolating time in a large and representative set of cases was that time expenditures we observed during the study period 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 prior to June 2019, and would continue at the same rate after the end in those cases that were pending after October 2019. Such an assumption would not be a realistic one when extrapolating time for any individual case, but the average

⁴⁸ Though we had some additional time information for many cases in the analysis that had opened before the start of the study period as a result of the office having started timekeeping procedures earlier in 2019, we chose to focus only on attorney hours recorded in June or later because we felt that time tracking before that point may not have always been consistently performed when office staff were in the process of adapting to the new policy.

across them all would provide a useful indication of the total.⁴⁹ To be able to extrapolate our observed hours in this manner, we needed to know how long an LDA case in our analysis was open during its entire life span. For those cases that terminated during the study period, this value is known because the LDA CMS contained fields reporting the day the case was opened by the office and the day the office closed the file. But for the 51 percent of cases that were pending at the end of the study period, a means for estimating total case duration would be required.

Though timekeeping was a relatively new practice for LDA staff when we conducted our research, the CMS application used to record and manage information for the office's caseload had been in place for many years, and thus could provide a rich source of data for an analysis of the length of time between the opening of new case files and when the office considered the matters concluded. To obtain such data, we examined all cases in the office's CMS application that (1) could be classified in one of the interim case type categories contained in Table 1.4 and (2) were closed by the office at some point from January 2017 to October 2019 (73,545 cases met these criteria). Half of the cases in this set were closed within 53 days of case opening, 75 percent within 161 days, and 95 percent within 637 days, and 1 percent were open longer than 1,147 days.

We used this special closed case dataset to calculate median days from opening to closure for those matters that remained open beyond different time thresholds. For each adult criminal case type, median days open were calculated for all such cases, for all cases that were open for at least 2 days, for all cases open at least 9 days, for all cases open for at least 16 days, and so on for additional 7-day cutoff points (at least 23 days, at least 30 days, at least 37 days, at least 44 days, etc.).

Using this information, we estimated the expected life of a time expenditure analysis set case that was pending at the time of the CMS extract using the median associated with case type-specific threshold category for the number of days the case was known to have been open. For example, a pending "Other Felony" case that was open for 40 days at the time of the extract was assigned an estimated life span of 114 days, which was the median value for records of this case type in the January 2017–October 2019 closed-case dataset that had remained open past the 37-day threshold cutoff.

We then calculated two values for each of the 11,703 adult criminal cases used in the attorney time analysis: (1) "recording days," or the number of days in which the case was active within the study period (i.e., the number of days for which time expenditure information could have been recorded), and (2) "total open days," which was either the actual number of days the case was reported to be open in our CMS data or the expected number of days open using the median duration estimates described previously. These values were calculated as follows:

⁴⁹ For an example of a similar approach for estimating average attorney time expenditures for cases starting or ending outside a time study, see Appendix C in Public Policy Research Institute, 2015.

1. For time analysis cases that both started and ended within the data collection period:
 - a. Recording days = file closure date – file opening date + 1
 - b. Total open days = file closure date – file opening date + 1
2. For time analysis cases that started before the data collection period but ended within the data collection period:
 - a. Recording days = file closure date – first day of data collection + 1
 - b. Total open days = file closure date – file opening date + 1
3. For time analysis cases that started within the data collection period but were pending at the end:
 - a. Recording days = last day of data collection – file opening date + 1
 - b. Total open days = expected total number of days open based on the number of known open days
4. For time analysis 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 = expected total number of days open based on the number of known open days.

For all of these scenarios, imputed total hours were calculated as follows:⁵⁰

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

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. The results of our time analysis should be viewed simply as approximations of average attorney time rather than precise reflections of reality, a shortcoming that will be repeated in future research efforts until regular timekeeping becomes widespread among indigent defense providers across the state.

The final step was to use aggregate attorney hours to calculate mean times for each of the interim case type categories. To address concerns over the inclusion of atypical outlier records in the data, we first applied a mild form of Winsorization by identifying the 99th percentile value for attorney hours within each case type and capping total hours for each individual case at the respective 99th percentile.⁵¹

⁵⁰ For scenario 1 cases, imputed hours and actual hours are the same because total open days and recording days are the same.

⁵¹ Winsorization is a strategy to reduce the influence of outlier values and increase the robustness of statistical inferences when calculating means. The method retains all members of the set while converting values of extreme data points so that they are no larger (or no smaller) than the highest (or smallest) data point not considered to be an outlier. Percentiles are often used as the indicator of unwanted outliers for this purpose. For example, Winsorization using the 20th percentile for the lowest values and the 80th percentile for the largest on a set containing the values 3,

Approach Used for Juvenile Delinquency Cases

We employed a different strategy to calculate average attorney time expenditures in juvenile delinquency cases. We analyzed an extract of data taken from the transactional database utilized by the UJDA for tracking indigent representations handled by that office, but in this instance both case and time information had been recorded in its CMS for many years. As a result, there was no need for any imputation of unrecorded attorney time expenditures, because, with few exceptions, cases that had recently been closed by the office would have complete information for all hours spent during the representation.

Before the analysis could begin, however, a decision had to be made regarding what would constitute a juvenile delinquency case for the purpose of this standards-setting effort. In the context of adult criminal prosecutions, the District and Justice Courts of Utah issue a unique court case number for each newly filed criminal complaint or information. For an indigent defender, the representation of a client as a result of an appointment is likely to begin about the same time as the court case, and it is likely to end about the same time as the court case is resolved through dismissal, judgment, or sentencing. The files kept in the attorney's office for the appointed representation will contain both the client's name and the relevant court case number. Should a former client be the subject of a subsequent criminal prosecution and the attorney again be appointed, the court will issue a different court case number, and the office's new file for the appointment will contain the new case number. In Juvenile Court, the first time a minor is subjected to the jurisdiction of the court (for example, as the result of an arrest for joyriding), a new and unique case number is also assigned. But unlike the situation with defendants in adult criminal matters, that same court case number will remain associated with that minor for all further proceedings in Juvenile Court. This is so even if the original reason for the court's jurisdiction (for example, adjudication of a joyriding charge) has essentially been disposed (for example, by commitment to a place of detention for fewer than 30 days). If the juvenile is again arrested on different charges after the disposition, even years later, the same court case number will apply.

Though there are no requirements that Utah attorneys practicing juvenile delinquency law must conform their recordkeeping procedures to the approach employed by the local courts, one presumably common way to organize an office's CMS used to track juvenile representations involves opening a single case file for the client in a manner that parallels Juvenile Court's "one juvenile, one case number" model. For private indigent defense firms and public defender offices that are likely to be appointed to represent the same juvenile whenever the minor is arrested, even if the previous representation occurred years earlier, this sort of client-oriented case file makes sense. This is indeed the approach utilized by the UJDA, which handles most indigent juvenile appointments in Salt Lake County and so repeat representations for the same client are

27, 34, 37, and 96 (mean = 39.4) would result in a set with values of **27**, **27**, 34, **37**, and **37** (mean = 32.4). We modified only extreme values at the tail of the distribution and then only reset them to the 99th percentile.

common. As a result, the total of all hours expended by UJDA attorneys for an individual “case” as the UJDA defines one would include all activities performed for all of the office’s representations for the same client, even if those representations took place over a number of years and involved unrelated events and allegations. But in a jurisdiction where the indigent juvenile defense bar is made up of multiple private law firms or solo practitioners, it is possible that Juvenile Court will appoint one attorney to handle a juvenile’s first representation and appoint a different one for a subsequent involvement with the criminal justice system. From the perspective of those two attorneys, their cases only involved the juvenile’s dealings with Juvenile Court for the specific matter they were appointed.

To deal with this issue, we reviewed the UJDA data to identify individual “incidents” that approximate the manner in which cases are defined in adult criminal courts. Adjudications in Juvenile Court and their subsequent dispositional hearings can be thought of as the functional equivalent of trials and subsequent sentencing in District and Justice Courts. Such adjudications result in a finding by the court as to whether a petition’s allegations that a juvenile committed acts constituting a crime if committed by an adult have been proved true or not true. Thus, the efforts of an indigent defender to represent a juvenile in legal proceedings during the period between the alleged acts and the adjudication are essentially similar to what a defender would do for a client in an adult criminal prosecution from arrest through trial or plea.

A somewhat similar approach that also moves from Juvenile Court’s expansive definition of a case (one that includes all of a juvenile’s legal proceedings) to one more focused on individual events is utilized by the Utah Sentencing Commission in its Juvenile Disposition Guidelines: “All offenses used in the Juvenile Disposition Guidelines are offenses grouped into episodes. A criminal episode is considered to include all offenses occurring on the same calendar day.”⁵² Here we define an incident as a concept that includes both an episode and its ultimate adjudication. Some adjudications involve more than one episode for the same juvenile, and as a result the adjudication will decide on all charges that arise from alleged offenses that occurred on multiple days. When that happens, the commission’s guidelines designate the episode with the greatest severity at the adjudication to be the “presenting,” or lead, episode for all episodes being adjudicated that day (an episode involving a firearm felony, for example, would be considered more severe than an episode involving only a misdemeanor charge, and therefore be designated as the lead). Our analysis of UJDA CMS data suggested that multiple-episode adjudications constitute about 15 percent of all adjudications for the case types of interest, but they typically involve offenses alleged to have taken place within a relatively short time span of each other (most intervals were within two months). Our assumption is that in most Utah courts, the same attorney or firm would typically be appointed to represent the interests of a juvenile who was facing charges arising from all events allegedly occurring within a span of a few weeks or

⁵² Utah Sentencing Commission, *2015 Juvenile Disposition Guidelines*, January 2015, p. 9.

months of each other. As such, all of the offenses that are addressed in a single adjudication handled by the same attorney can be thought of as forming a single discrete incident.

To define a juvenile delinquency incident in the UJDA data, we first identified all the UJDA's client's adjudications and the episodes associated with each. For adjudications in which only a single episode was at issue (85 percent of all adjudications), we defined the incident period to be the time span between the date of the alleged offense and the date of the adjudication, and the incident case type would be the charge within the episode that had the highest priority listed on our table of interim case type categories (e.g., any felony charge would classify the incident as a juvenile felony, even if most other charges involved misdemeanor allegations). For multiple-episode adjudications, we defined the incident period to be the time span between the earliest date of all offenses alleged and the date of the adjudication; the incident case type would be the highest-priority charge across all episodes subject to the adjudication, no matter when they were alleged to have been committed. We then calculated total attorney hours for each of the 3,332 single-episode and multiple-episode incidents that were adjudicated at any point from 2017 through mid-November 2019 by using just the attorney time expenditure information recorded for each incident period. For expositional purposes, juvenile delinquency *incidents* as we have defined them will be referred to as juvenile delinquency *cases* for the remainder of this document.

As was true for the adult criminal analysis, we calculated mean times for each of the interim case type categories relevant to juvenile delinquency matter after applying a mild form of Winsorization by capping total hours for each case at the respective 99th percentile for its case type.

It should be noted that our approach for conceptualizing juvenile representations for the purpose of developing maximum caseload standards is likely to undercount the total amount of time defenders spend on behalf of each of their juvenile clients. Post-disposition activity (which can range from occasionally checking in on a client, to appearing at certain types of hearings, and to consulting on appeals) would not be included to the extent that it takes place after an adjudication but before the date of any alleged subsequent offense for which the same office was appointed. Thus, our calculated mean times for juvenile delinquency matters should be viewed as minimum values capturing only expenditures directly related to resolving allegations in a delinquency petition.

Estimated Attorney Hours by Case Type

Mean hours for attorney time expenditures in the cases included in the time analysis are set forth in Table 2.1. As would be true with any mathematical analysis, as the size of a sample grows, its mean gets closer to the average of the whole population. Thus, we have the most confidence in the mean hour estimates for the case types with the largest count of records in the analysis (such as adult criminal "Other Felonies" and juvenile delinquency "Misdemeanors") and

the least confidence for the case types with relatively smaller counts (such as adult criminal “Misdemeanor DUIs”).

Table 2.1. Results of Analysis of Case-Level Attorney Hours

Study Area	Interim Case Type	Cases in Analysis	Estimated Mean Attorney Hours
Adult Criminal	Non-Capital Murder	74	206.0
Adult Criminal	Felony DUIs	102	8.5
Adult Criminal	Other Felonies	4,351	8.4
Adult Criminal	Misdemeanor DUIs	36	12.4
Adult Criminal	Other Misdemeanors	4,352	5.5
Adult Criminal	Probation Violations—Felonies	1,568	1.9
Adult Criminal	Probation Violations—Misdemeanors	1,220	1.9
Juvenile Delinquency	Felonies	1,252	8.4
Juvenile Delinquency	Misdemeanors	1,636	4.9
Juvenile Delinquency	Status Offenses	17	3.4
Juvenile Delinquency	Orders to Show Cause	397	2.7
Juvenile Delinquency	Probation Violations and Contempts	30	2.8

Caveats

The averages described in Table 2.1 reflect the experiences of a specific segment of the Utah indigent defense bar: attorneys working for the two public defender offices in the state’s most populous and densely populated county. As such, the nature of their practices, the size of their caseloads, and the level and breadth of in-house resources available to these attorneys may well result in average time expenditures that differ in some unknown degree from the experiences of counsel in private law firms operating within contract counsel and assigned counsel programs or in regions outside the more urbanized areas of the Wasatch Front. But though we estimate that attorneys in these two offices constitute just 27 percent of all identified indigent defenders in the state, they are likely to be involved in much more than 27 percent of all indigent cases, because essentially all cases they represent are the result of appointments (in contrast, most other attorneys identified as accepting appointments in Utah are likely have paying clients as a substantial part of their practices). And as far as we are aware, the type of information found in Table 2.1 is not currently available from any other source in terms of the number of cases included and the span of time that detailed recordkeeping was practiced. Because the Utah indigent defense bar is likely to utilize more sophisticated CMSs in the future as a result of IDC initiatives, and because timekeeping is also likely to become a more routine part of everyday practice for indigent defenders as a management tool, better opportunities will exist in

subsequent years for assessing the changing nature of defender time expenditures, particularly in regard to private attorneys, to attorneys outside Salt Lake County, and to attorneys in small and medium-sized offices. Until that point is reached, however, we must rely on Table 2.1 for providing some sense of how much time appointed counsel in Utah are currently able to devote to their clients.

3. The Attorney Survey

Overview

Though the time analysis was intended to report on current time expenditures for indigent criminal and juvenile defense, its findings describe only what *is*, not what *ought to be*. To obtain insight into what practitioners across the state feel are the amounts of time necessary, on average, that should be planned on to deliver competent legal representation on matters within each of the study case types, we reached out to indigent defenders in Utah to seek their participation in an online, confidential survey. The questionnaire presented the results of the time analysis described previously, and, with that information as background, respondents entered their recommendations. They also provided detailed information about their practices, available support staff, and annual caseloads.

Participation

Email invitations to take the confidential online survey were sent to all 355 attorneys who had been identified by the IDC as accepting indigent defense appointments. We selected 100 of these attorneys to also receive a hardcopy letter invitation via an overnight delivery service. The hardcopy letter group consisted of all indigent defenders residing outside the Salt Lake City–Provo-Orem Combined Statistical Area (CSA), as well as a random sampling of the remaining attorneys on our list (we included the supplemental letter invitation for the purpose of boosting response rates outside major metropolitan areas of the state).⁵³

A total of 183 respondents began the survey and 141 completed the questionnaire to the end, yielding a response and completion rate of about 40 percent. To be precise, more than 183 invitees began the survey, but those who indicated they had no experience in adult criminal cases, juvenile delinquency proceedings, or related appeals were exited from the online application. Thus a “respondent” as defined in this chapter would be an attorney who began the survey and who has at least some direct professional knowledge of the practice areas that are the subject of this report. The distribution of the reported county locations of the survey respondents roughly matched that of the full list of invitees in terms of the U.S. Office of Management and Budget’s designations for Utah metropolitan and micropolitan statistical areas (Table 3.1).

⁵³ The definition we used for the Salt Lake City–Provo-Orem CSA included the counties of Box Elder, Davis, Juab, Morgan, Salt Lake, Summit, Tooele, Utah, Wasatch, and Weber. Office of Management and Budget, *Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas*, OMB Bulletin No. 13-01, February 28, 2013.

Table 3.1. Distribution of Identified Indigent Defenders and Survey Respondents, by County Type

Statistical Region	All Identified Indigent Defenders	Respondents
Salt Lake County	48.8%	55.7%
Other Salt Lake City--Provo-Orem CSA	36.9%	31.2%
Other metro/micropolitan county in Utah	12.4%	7.1%
Non-urban county in Utah	4.8%	4.9%
Other location	1.1%	1.1%

NOTE: N for identified defenders was 355; N for respondents was 183.

Appointment Mechanisms

Table 3.2 describes the means by which respondents are currently receiving indigent defense appointments, if at all.⁵⁴ Excluding the 7 percent of the responding attorneys who reported that they had never represented an indigent defendant or are not accepting them now, about 58 percent indicated that they are public defenders, a significantly higher percentage than the one-third of all indigent defenders in the state who we believe are associated with the three public defender offices in Salt Lake and Utah counties. While this indicates that our survey results skew toward the experiences of attorneys in these three offices, it should be understood that some Utah attorneys who are solo practitioners or members of private firms and who are the only attorneys in a county with a contract or other arrangement for the purpose of receiving appointments may well consider themselves to be a public defender for that county. Thus, it is possible that if the more commonly employed definition of a public defender (i.e., a salaried attorney working for a government office or a nonprofit firm on contract to the government and whose practice is limited to indigent defense) had been utilized by all of the respondents to the survey, the percentages in Table 3.2 for contract counsel, attorneys in assigned counsel programs, and attorneys who are appointed by other means would increase.

Table 3.2. Types of Appointment Mechanisms

How Appointed	Respondents
Never received an indigent appointment	1.1%
Not currently accepting indigent appointments (but did previously)	6.0%
Contract counsel	34.4%
Public defender	53.6%
Assigned counsel program	2.7%
Other means of appointment	2.2%

NOTE: N = 183.

⁵⁴ Though the sampling frame for the survey consisted of all names identified by the IDC as indigent defenders, we did not restrict participation to only those attorneys who were actively accepting appointments.

Practice Characteristics and Resources

Overall, our respondents reported that they worked an average of 46.4 hours a week in the practice of law. The median (the value in which half the respondents were below and half were above) was 45 hours, and the 90th percentile (the value in which 90 percent of the respondents were below and 10 percent were above) was 60 hours. Public defenders reported slightly greater weekly hours than attorneys in other types of practices (Table 3.3).

Table 3.3. Average Hours Each Week

Purpose	Mean	Median	90th Percentile
Public defenders	47.2	50	60
Other appointment models	45.5	45	60
All respondents	46.4	45	60

NOTE: N = 182.

We also asked the respondents to estimate how their typical workweek breaks out by the type of matters they usually work on (Table 3.4). On average, just over 70 percent of such time was devoted to adult criminal or juvenile delinquency cases or to appeals that arise from such matters (caseload standards related to appeals will be addressed in a separate IDC effort). As will become apparent later in this report, a particularly important finding is that respondents reported that an average of 11.8 percent of their time is spent on matters that are not directly related to any specific case. Such activities might consist, for example, of reading advance sheets, advancing one's professional development, taking care of administrative tasks, supervising the non-case-related work of others, developing clients, timekeeping, or even attending the office holiday party.

Table 3.4. Time Expenditures During Typical Workweek

Purpose	Percentage of Workweek
Case-related adult criminal	56.3
Case-related juvenile delinquency	7.0
Case-related appeals of adult criminal or juvenile delinquency	8.2
Case-related matters other than related to adult criminal or juvenile delinquency	16.7
Non-case-related activities	11.8

NOTE: N = 172.

The values in Table 3.4 reflect the experiences of all of our respondents, but attorneys accepting indigent defense appointments are likely to have what might be thought of as a primary focus for their practices. Using the information they provided regarding their average weekly time expenditures, we categorized each respondent by the specific case-related subject matter area consuming the greatest percentage of their week. As Table 3.5 indicates, attorneys

focused on juvenile delinquency proceedings made up a relatively small proportion of all respondents, suggesting that we might have less-than-optimal information from this segment of the indigent defense bar. The attorney lists we obtained from the IDC did not indicate practice focus, so we do not have a means for confirming the degree to which juvenile delinquency practitioners are underrepresented in the pool of respondents. We do know that 23 percent of the respondents reported that they spent at least some time each week representing juveniles.

Table 3.5. Primary Practice Focus

Purpose	Percentage of Workweek
Adult criminal	67.8
Juvenile delinquency	7.1
Appeals of adult criminal or juvenile delinquency	8.7
None of the above	16.4

NOTE: N = 183.

We also asked about office size and support. Single-person offices were common (44 percent) among attorneys who received appointments through contracts, assigned counsel programs, or other means (Table 3.6). About 18 percent of non-public defenders reported that they essentially worked by themselves, without any other attorneys in the office or any support staff (including administrative staff, such as clerks, secretaries, or receptionists; investigators; paralegals or legal assistants; interns and externs; research attorneys; interpreters; social workers; mitigation specialists; or any other nonattorney staff member). Nearly 70 percent of the public defenders had at least part-time investigators as colleagues in their offices, more than five times the rate for other types of attorneys. We suspect that the unexpected non-zero percentage of those self-reporting as a public defender without support staff or operating as a solo practitioner is the result of a few respondents considering themselves as public defenders despite not being associated with any of the three offices in the state.

Table 3.6. Office Resources

Practice Characteristics	Public Defenders	Other Appointment Models	All Respondents
Solo practitioner (N = 150)	5.0	44.3	23.3
Office has three or more attorneys (N = 150)	93.8	47.1	72.0
No support staff of any type (N = 147)	1.3	17.7	8.8
“Solo-solo” (solo practitioner without any support staff) (N = 146)	1.3	17.9	8.9
Has any investigators (N = 147)	69.6	13.2	43.5
Has any legal support (paralegals, legal assistants, interns, externs, research attorneys) (N = 147)	93.7	76.5	85.7

NOTE: Values shown are the percentage of respondents reporting that their practices had the listed characteristic.

Caseloads

We also asked the respondents to estimate the size of their adult criminal and juvenile delinquency caseloads for a recent 12-month period (Table 3.7). It is important to keep in mind that the mean values in the table include responses from attorneys whose primary activities during a workweek may be related to matters other than adult criminal or juvenile delinquency in nature. This might include attorneys who have substantial civil or family practices, attorneys whose primary role is to supervise or manage law firms rather than directly participate in case-related work, or attorneys who practice law only part-time. In addition, the practice of a responding attorney might have an exclusive concentration in specific subject matter areas (such as adult criminal) but nevertheless be counted in the calculation of the means for other areas (such as juvenile delinquency). Because of this, the relatively modest case counts for each case type as reported by the means in the table do not provide a useful picture of the caseloads of attorneys who primarily represent indigent defendants. Subsequent tables in this section attempt to address this shortcoming. We can, however, use the 90th and 95th percentiles in Table 3.7 to identify instances where active attorneys are shouldering a particularly large caseload in one of our interim study types. For example, 10 percent of all respondents reported that they represented at least 150 adult criminal “Other Felonies” annually, and 5 percent reported at least 200. These counts do not reflect the experiences of most indigent defenders, but they do show that at least some defenders have heavy caseloads for some case types.

Table 3.7. Reported Annual Adult Criminal and Juvenile Delinquency Caseloads

Study Area	Interim Case Type	Mean	90th Percentile	95th Percentile
Adult Criminal	Non-Capital Murder	2	3	4
Adult Criminal	Felony DUIs	4	10	16
Adult Criminal	Other Felonies	64	150	200
Adult Criminal	Misdemeanor DUIs	15	64	64
Adult Criminal	Other Misdemeanors	78	210	300
Adult Criminal	Probation Violations—Felonies	38	120	155
Adult Criminal	Probation Violations—Misdemeanors	36	100	150
Adult Criminal	All Other Adult Criminal Matters	7	20	50
Juvenile Delinquency	Felonies	11	25	60
Juvenile Delinquency	Misdemeanors	10	30	65
Juvenile Delinquency	Status Offenses	1	1	5
Juvenile Delinquency	Orders to Show Cause	6	2	15
Juvenile Delinquency	Probation Violations and Contempts	1	1	5
Juvenile Delinquency	All Other Juvenile Delinquency Matters	4	2	20
All Adult Criminal and Juvenile Delinquency		308	567	702

NOTE: N = 145 for individual case types, 130 for total adult criminal and juvenile delinquency.

To provide a more helpful picture of the caseload of individual defenders that avoids the problem of mixing trial court–level criminal defense and juvenile delinquency practitioners with attorneys with other interests, Table 3.8 and Table 3.9 describe caseloads with a major change from what was presented in Table 3.7. Both tables examine the caseloads of only those attorneys who reported that they spent at least 50 percent of their time each week in the practice of either criminal defense or juvenile delinquency, or some combination of the two. In addition, Table 3.8 reports on the caseloads of just those attorneys who are primarily adult criminal defense counsel, which we define as a respondent who reported that they spent more time on adult criminal defense than on juvenile defense, related appeals, or all other areas of the law. Similarly, Table 3.9 describes the caseload of just respondents who are primarily juvenile delinquency counsel, here defined as someone spending more time on juvenile delinquency cases than any other.

In simplistic terms, Table 3.8 represents respondents who might hold themselves out as specializing in criminal defense, even if some part of their workweek involves dealing with other practice areas. The “average” such defender had 364 adult criminal cases in a year. Ten percent of the respondents in this table are handling 193 or more “Other Felonies” each year, and 10 percent (likely a different 10 percent) had more than 600 adult criminal cases.

Table 3.8. Reported Annual Caseloads for Attorneys with Adult Criminal Focus and Half or More of Workweek Devoted to Criminal or Juvenile Work

Interim Case Type	Mean	Median	90th Percentile
Non-Capital Murder	4	1	4
Felony DUIs	5	3	14
Other Felonies	98	83	193
Misdemeanor DUIs	21	10	64
Other Misdemeanors	114	55	300
Probation Violations—Felonies	59	43	150
Probation Violations—Misdemeanors	55	31	148
All Other Adult Criminal Matters	8	0	25
All Adult Criminal	364	352	601

NOTE: N = 92.

Table 3.9 requires some caution when interpreting the results. Just ten respondents qualified for this table, another indication that Utah attorneys who primarily focus on juvenile delinquency matters are either a relatively rare segment of the indigent defense bar or underrepresented in our respondent pool. The average juvenile delinquency caseload for these respondents was 305 cases per year, and it appears that one respondent was dealing with an annual juvenile felony caseload of 350 cases.

Table 3.9. Reported Annual Caseloads for Attorneys with Juvenile Delinquency Focus and Half or More of Workweek Devoted to Criminal or Juvenile Work

Interim Case Type	Mean	Median	90th Percentile
Felonies	122	94	350
Misdemeanors	82	75	163
Status Offenses	10	5	35
Orders to Show Cause	42	27	110
Probation Violations and Contempts	13	0	60
All Other Juvenile Delinquency Matters	36	20	92
All Juvenile Delinquency	305	294	592

NOTE: N = 10.

While helpful, Table 3.8 and Table 3.9 do not account for the fact that even an attorney who considers themselves primarily an adult criminal or juvenile delinquency defender may have other practice areas of interest, spend time working in fields not involving the practice of law, or simply decide to cut back professionally and work only part-time. Such decisions have consequences for estimating how caseload numbers and types affect individual attorney workloads. As suggested previously, maximum caseload standards assume that an attorney subject to such standards has full-time availability for, and only for, the case types encompassed by the standards. To the extent that there is any reduced availability, regardless of the reason, the maximum must be reduced proportionally. For example, a general standard of no more than 120 Type X cases would need to be modified to an individual standard of just 48 such cases if the attorney to whom the standard is being applied only works 40 percent of a full-time schedule ($120 \times 40\%$). The corollary of this rule is that when comparing attorneys using raw caseload numbers, it can be useful to normalize the results so that all comparisons are based on full-time equivalents (FTEs).

Accordingly, Table 3.10 and Table 3.11 build on the results for the specialist respondents in Table 3.8 and Table 3.9 by adjusting their caseloads by both the number of average weekly work hours they reported and the percentage of weekly work hours devoted to their primary practice areas. Using 40 hours as our proxy for a full-time practice, an attorney who reported that they spent an average of just 32 hours each week practicing law would have their reported caseload numbers adjusted upward by a factor of 1.25 ($40 \div 32$), on the assumption that should typical weekly hours worked increase to 40, 25 percent more time would theoretically be available to devote to the practice.⁵⁵ The adjustment facilitates comparison between respondents because the average amount of time that can be devoted to each case during the week for an attorney with a 32-hour workweek and a caseload of 100 cases of a specific type would be the same as the average hours per case available to an attorney with a 40-hour workweek and 125 cases of that same type. Similarly, we made upward adjustments of the reported caseloads for the degree to

⁵⁵ No downward adjustments were made for those respondents reporting more than 40 hours each week.

which reported weekly worktime spent on case-related adult criminal or juvenile defense work made up a fraction of all case-related work. If, for example, a respondent reported that 60 percent of the time practicing law in a week was spent on case-related adult criminal or juvenile delinquency work, 30 percent was spent on other case-related work (e.g., family law, personal injury, appeals), and 10 percent was spent on non-case-related legal work, caseload counts for adult criminal or juvenile delinquency would be adjusted upward by a factor of 1.5 $([60 \text{ percent} + 30 \text{ percent}] \div 60 \text{ percent})$.⁵⁶ Some respondents represented in the two tables had both FTE adjustments and the subject matter adjustments, and the extent to which respondents had any adjustments are reported in the table notes.

Interestingly, these changes did not have a dramatic impact on the means, medians, or 90th percentiles for the adult criminal specialists (Table 3.10). This suggests that most such specialists, at least the ones reporting in our survey as we have defined them, are full-time attorneys (or close to it) who do little else other than adult criminal defense. The modest changes in Table 3.11 compared with Table 3.9 imply a similar conclusion for juvenile defense specialists, though with such a low number of respondents that caution is advised against relying too heavily on the results.

The average adult criminal specialist reported an adjusted count of 407 such cases in a year (Table 3.10), but there are some indigent defenders in Utah who receive the equivalent of at least 193 felony appointments when the amount of time available for those cases is taken into account. The nearly half-century NAC standards, which have been repeatedly criticized as allowing far too many cases annually given the current professional and ethical demands on indigent defense attorneys today, limited felonies to just 150 per year. It should be kept in mind that those respondents reporting the equivalent of 193 felonies or more may well have represented clients in misdemeanor cases and probation violations at the same time. The number of respondents who we identified as juvenile delinquency specialists was quite small, but they reported an average of 375 cases a year (Table 3.11). Notably, at least one of them reported that they represented clients in the equivalent of at least 360 juvenile felonies in a 12-month period, a sizable jump from the NAC recommendation of no more than 200 juvenile cases annually, a figure that presumably would include proceedings involving matters less serious than a felony, such as probation violations, misdemeanors, status offenses, and orders to show cause.

⁵⁶ No adjustments were made for those respondents reporting that 100 percent of all case-related time was spent on adult criminal or juvenile delinquency cases.

Table 3.10. Adjusted Annual Caseloads for Attorneys with Adult Criminal Focus and Half or More of Workweek Devoted to Criminal or Juvenile Work

Interim Case Type	Mean	Median	90th Percentile
Non-Capital Murder	4	1	4
Felony DUIs	5	5	14
Other Felonies	103	87	193
Misdemeanor DUIs	27	10	98
Other Misdemeanors	134	61	310
Probation Violations—Felonies	61	45	150
Probation Violations—Misdemeanors	63	32	150
All Other Adult Criminal Matters	9	0	25
All Adult Criminal	407	363	671

NOTE: N = 92. Of the 110 respondents eligible for this table, 67 had no combined FTE and subject matter adjustments, 13 had upward adjustments of less than 10 percent, 9 had upward adjustments of between 10 and 25 percent, 5 had upward adjustments of between 26 and 50 percent, 14 had upward adjustments of between 51 and 67 percent, and 2 had an upward adjustment of 100 percent.

Table 3.11. Adjusted Annual Caseloads for Attorneys with Juvenile Delinquency Focus and Half or More of Workweek Devoted to Criminal or Juvenile Work

Interim Case Type	Mean	Median	90th Percentile
Felonies	145	104	360
Misdemeanors	103	90	206
Status Offenses	13	5	46
Orders to Show Cause	48	32	135
Probation Violations and Contempts	18	0	87
All Other Juvenile Delinquency Matters	48	26	121
All Juvenile Delinquency	375	351	732

NOTE: N = 10. Of the 12 respondents eligible for this table, 4 had no combined FTE and subject matter adjustments, 4 had upward adjustments of less than 15 percent, 2 had upward adjustments of between 40 and 80 percent, and 2 had an upward adjustment of 100 percent.

Recommended Average Hours

The questionnaire asked the respondents to provide their recommendations for average hours to be used for planning purposes. Specifically, we requested that the attorneys consider

the amount of time, on average, 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, and accordingly each individual case will likely differ from the estimated average for its case type in the attorney time actually expended.

This can be a difficult concept for someone to grasp in a brief survey, so in addition we provided a different way of looking at the question:

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 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, even though you might actually spend more or less time on each by the time the representations are concluded.

The results of the time analysis were presented for their consideration, and the respondents could simply accept those results as their recommendation for a specific case type, enter a different amount of time, or skip the case type altogether. We encouraged the respondents to use the analysis results only as a guide rather than an anchor for their recommendations, but the nature of the inquiry meant that some anchoring would undoubtedly result:

The table below presents the results of a recently concluded time analysis of indigent defense counsel in which participating attorneys tracked and reported the hours they spent on appointed cases in Utah courts. 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 analysis would be insufficient to allow an attorney to provide effective assistance of counsel in most cases 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 average amount of lawyer time that would be required to afford a client adequate and effective aid in the defense of a case of that type.

Table 3.12 presents the recommendations of the respondents, by practice type and for all attorneys taken together. The percentages of respondents agreeing with the time analysis results, recommending an average hour estimate that was less than the analysis results, and recommending an average hour estimate that was greater are shown in the parentheses following the case type description. With a few exceptions (misdemeanor DUIs, status offenses, orders to show cause, and probation violations and contempts), the participating attorneys as a group felt that the time analysis results understated the amount of time needed, on average, for providing an adequate and effective defense. That said, between one-half and three-quarters of the respondents for each case type indicated that the average times reported in the analysis results were already sufficient.

For the adult criminal case types, public defenders recommended more hours than their contract and assigned counsel counterparts. That pattern was reversed somewhat for juvenile delinquency, in that public defenders' responses generally matched the time analysis results, whereas attorneys in other types of practices felt that additional time was needed for felony and misdemeanor representations in delinquency matters.

Table 3.12. Recommended Average Hours from the Attorney Survey

Study Area	Interim Case Type (N; % Agreed/Less/More)	Time Analysis Results	Public Defenders	Other Appointment Models	All Attorneys
Adult Criminal	Non-Capital Murder (N = 53; 62%/4%/34%)	206.0	288.7	259.9	278.9
Adult Criminal	Felony DUIs (N = 88; 67%/3%/30%)	8.5	12.0	10.4	11.2
Adult Criminal	Other Felonies (N = 95; 52%/8%/40%)	8.4	12.7	12.1	12.4
Adult Criminal	Misdemeanor DUIs (N = 90; 50%/34%/16%)	12.4	13.1	10.3	11.6
Adult Criminal	Other Misdemeanors (N = 97; 60%/22%/19%)	5.5	7.3	5.3	6.3
Adult Criminal	Probation Violations—Felonies (N = 93; 61%/16%/23%)	1.9	2.3	2.1	2.2
Adult Criminal	Probation Violations—Misdemeanors (N = 92; 64%/21%/15%)	1.9	2.0	1.8	1.9
Juvenile Delinquency	Felonies (N = 52; 48%/8%/44%)	8.4	8.7	12.3	11.5
Juvenile Delinquency	Misdemeanors (N = 50; 72%/10%/18%)	4.9	4.9	5.6	5.5
Juvenile Delinquency	Status Offenses (N = 35; 77%/17%/6%)	3.4	3.2	3.3	3.2
Juvenile Delinquency	Orders to Show Cause (N = 36; 69%/19%/11%)	2.7	2.5	2.6	2.6
Juvenile Delinquency	Probation Violations and Contempts (N = 34; 71%/21%/9%)	2.8	2.6	2.6	2.6

4. The Caseload Standards-Setting Conference

Overview

The IDC recruited a panel of experienced adult criminal and juvenile delinquency attorneys who agreed to participate in an effort to reach consensus on the average hours necessary to deliver effective representation. Their deliberations were informed by the results of the earlier data collections, as well as by current guidance on the ethical and professional standards for criminal and juvenile defense. The assembled panel represented a diverse mix of Utah contract counsel, assigned counsel, and public defenders (see Table 4.1). A one-day, in-person group session with the 38 panelists was held in Provo on December 20, 2019.

Table 4.1. Caseload Standards Session Panelists

Name	Affiliation
Ben Aldana	Utah County Public Defender Association, Provo
Ashley Anderson	Utah County Public Defender Association, Provo
David Angerhofer	Contract defender, San Pete & Sevier, Mt. Pleasant
Michael Bouwhuis	Defense Coordinator, Weber County; contract defender, Ogden
Michael Brown	Utah County Public Defender Association, Provo
Wally Bugden	Private defense attorney & IDC commissioner, Salt Lake City
Steven Burton	Private defense attorney, Salt Lake City
Mary Corporon	Private attorney & IDC commissioner, Salt Lake City
Lance Dean	8th District Managing Public Defender, Vernal
Shannon Demler	Private defense attorney, Logan
Monica Diaz	Utah Juvenile Defender Attorneys, Salt Lake City
Joshua Esplin	Utah County Public Defender Association, Provo
Lisa Estrada	Utah County Public Defender Association, Provo
Jennifer Foresta	Utah County Public Defender Association, Provo
Stephen Frazier	Contract defender, Utah County & Juab County, Provo
Debbie Hill	Utah County Public Defender Association, Provo
Bryson King	Utah County Public Defender Association, Provo
John Kwarm	Utah County Public Defender Association, Provo
Robert Latham	Contract defender, Washington Co., St. George
Skye Lazaro	Private defense attorney, Salt Lake City
Shain Manuele	Iron County managing defense attorney, Parowan
Richard Mauro	Executive director, Salt Lake Legal Defenders, Salt Lake City
Michael McGinnis	Contract defender, Cache County, Logan
Mark Moffat	Private defense attorney, Salt Lake City
Matthew Morrise	Utah County Public Defender Association, Provo
Sam Pappas	Utah Juvenile Defender Attorneys, Salt Lake City
Dustin Parmley	Utah County Public Defender Association, Provo
Marina Pena	Utah Juvenile Defender Attorneys, Salt Lake City

Name	Affiliation
Jessica Peterson	Contract defense attorney, Summit County; private defense attorney, Park City
Daniel Shen	Utah County Public Defender Association, Provo
Neil Skousen	Private defense attorney, Provo
Ann Marie Taliaferro	Private defense attorney, Salt Lake City
Todd Utzinger	Davis County defender coordinator, Farmington
Pam Vickrey	Executive director, Utah Juvenile Defender Attorneys & IDC commissioner, Salt Lake City
Brian Voeks	Attorney, Utah County Commission Office, Provo
Joshua Wilkinson	Utah County Public Defender Association, Provo
Tasha Williams	Utah Juvenile Defender Attorneys, Salt Lake City
Dallas Young	Utah County Public Defender Association, Provo

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 adequately and effectively 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 at the session, as well as links to suggested guidance for defining the provision of reasonably effective assistance under prevailing professional norms.⁵⁷ At the beginning of the session, some of those legal and ethical foundations for the panel were described by two senior panel members, with a special focus on 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. As was done for the respondents in the attorney survey,

⁵⁷ The recommended guidance included the ABA's *Criminal Justice Standards for the Defense Function*, 4th ed., 2017; NLADA's *Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems*, 2nd ed., 2008; the ABA's *Eight Guidelines of Public Defense Related to Excessive Workloads*, August 2009; the ABA's *Standards for Criminal Justice: Providing Defense Services*, 3rd ed., 1992; the ABA's *Ten Principles of a Public Defense Delivery System*, February 2002; and appellate opinions in *United States v. Cronin* (466 U.S. 648 (1984)), *Strickland v. Washington* (466 U.S. 668 (1984)), *State v. Hales* (2007 UT 14 (2007)), and *State v. J.A.L.* (2011 UT 27 (2011)).

guidance was provided to help the panelists think about the question of the amount of time is needed, on average, to represent clients in different types of cases in Utah and render, as described in *Strickland v. Washington*, “reasonably effective assistance” to their client as defined under “prevailing professional norms.” An important need was to move the panel away from the notion that because each individual case is unique (because different facts; judges; prosecutors; client background, attitude, mental capacity, and history; travel requirements; strength of the government’s case; consequences for the client; resources available to the defender; witness availability; presence of co-defendants; pre-trial detention facility access; etc.), it would be impossible to think about *average* time demands for any individual case within a case type category. We suggested that the sort of analysis we would be asking the panel to perform would not be dissimilar to the mental calculations that a law office supervisor must make in order to balance the incoming caseload among staff attorneys. In such situations, felonies are thought of as requiring, on average, more time than misdemeanors, Class A misdemeanors are thought of as requiring, on average, more time than Class B cases, etc. Moreover, we asked the panel to think about hundreds or even thousands of cases of a specific case type when developing their recommendations rather than just a handful of recent or memorable defenses. Despite the fact that trials may consume the majority of a defender’s time, we suggested that the panelists keep in mind that trials are relatively infrequent, and the averages should include trial time only to the extent that such time is weighted by the likelihood that a case would be resolved in such a manner.

We also noted that our inquiry only addressed the issue of attorney time. While support staff resources ultimately play a major role in delivering an adequate defense, our interest for the instant work would be solely focused on attorney time expenditures. Panel members were told that they could assume that any hypothetical attorney in this exercise would have support staff resources similar to the levels in their own practice (or former practice if no longer active).

In addition, we attempted to make clear that the panel recommendations should pertain to any trial-level criminal or juvenile representation, and not just those involving indigent defendants. We argued that it should make no difference to a client’s rights whether counsel was appointed by the court as a result of the financial eligibility of the client or whether the representation was the outgrowth of a fee agreement. 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 conflict counsel panel. Put another way, any recommended average time expenditure should be the same for all attorneys representing clients in the case type categories of interest.

Detailed information about the two data collection efforts was also provided, covering such topics as project approach and assumptions, participation rates, and the characteristics of the attorneys who took the survey. It is important to note that before discussing the *results* of the data collection that related to attorney time expenditures (both actual and the survey participants recommendations), the speaker asked the panelists to write down their assumptions about the

average amount of time now spent for different case types, as well as 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 analysis and attorney survey in detail before proceeding with other aspects of the expert panel 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 entered into their laptops or mobile computing devices (loaner iPads were provided for those who needed one) and display the results. The panelists then made their entries anonymously, and, if they chose to do so, they could add explanatory comments to their submission. Importantly, options were provided for the attorneys to skip over a case type if they were uncomfortable with making a recommendation for that category.

After the panelists had entered their first sets of recommendations, we then projected a graphical and statistical summary of their responses onto a screen in the meeting room. The application on the computing devices also provided similar information in the form of a "dashboard" display. These summaries were updated periodically as new responses were submitted. Direct discussions among the panelists about each of the case types were initiated by the facilitator. Each panelist was free to change their answers at any time until the conference ended, including while discussions were taking place, when results were being displayed, and 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 the stability statistic. We adopted a rule common in many Delphi sessions in which a CoV of less than or equal to 0.5 indicated a good degree of consensus, making further discussion about the case type in question unnecessary. CoVs exceeding 0.5 but less than or equal to 0.8 would be considered less satisfactory, and additional discussion would be recommended for the purpose of enhancing consensus as much as possible. CoVs at the lower part of this range could be considered acceptable if it was clear that no further discussion would be useful. CoVs exceeding 0.8 would indicate a poor degree of consensus, and, unless the range of results could be tightened, the case type would need to be dropped from the standards-setting process. The RAND facilitator focused the group discussion on those case types with CoVs greater than 0.5, in part by seeking panelists to voice arguments for the low end of the range for each case type, as well as the high end.

When CoVs for nearly all of the case types had dropped below 0.5, a discussion ensued among the panel as to whether more granulated categories could be utilized for certain offense categories in both the adult criminal and juvenile delinquency practice groupings. One proposed change for adult criminal involved splitting the "Other Felonies" case type (essentially all

felonies other than those involving murder and DUIs) into two: (1) a category of particularly serious felonies defined by the potential imposition of registration requirements as a sex or kidnap offender and (2) a residual category that constituted all felonies other than murder, DUI, or those requiring registration. Another proposed change would split the adult criminal misdemeanor group into one category for Class A misdemeanors and another for Classes B and C. On the juvenile delinquency side, the first proposal was to drop status offenses as a caseload standards category because such matters (which involve allegations that the juvenile is ungovernable, a runaway, or is committing violations that would not be a violation but for the age of the offender) are becoming less important in the practice of indigent defense. The second juvenile delinquency proposal was to split the felony category into two: (1) a category of felony charges constituting sex offenses and (2) a category consisting of all nonsex felonies. All of these proposals were discussed at length and voted on by the group, and by general assent it was agreed to make the recommended changes in the caseload standards case type list.

These modifications to the interim case type list were clearly necessary. Some survey respondents who submitted comments about their practices, the state of indigent defense in Utah, and the survey itself noted that it was extremely difficult to estimate the average hours needed for reasonably effective representations when the categories for doing so included so many different types of client matters (see the appendix). Common among these complaints was concern over a lack of separate categories for sex-related crimes due to the complexities of the defense and the potential for an outcome in the case that would trigger offender registration and associated consequences. The changes instituted by the expert panel will address some of those concerns.

One question that arises regarding the case type list changes is whether the lack of any information about current time expenditures or average time recommendations from the indigent defense bar for the “new” case type categories would have negative consequences for the deliberations of the expert panel. We do not believe this to be an issue. A number of well-regarded caseload studies employ a process in which the expert panelists are specifically shielded from learning of the results of any prior time analysis or attorney survey in order to avoid tainting the panel’s deliberations as a result of an unconscious anchoring of their submissions to the results of the earlier data collections. While we respectfully disagree with the authors of such studies over the need to embargo the results until after the expert panel session has completed, their approach does suggest that the panelists need not be locked into whatever case type categories might have been adopted at the beginning of the study. In our session, the panel had already reached consensus on various adult criminal felony, adult criminal misdemeanor, and juvenile felony categories prior to splitting, and they would have had the finalized results of those deliberations to use as benchmarks for deciding on recommended averages for the new categories.

Final Results

Table 4.2 presents the expert panels' median and mean hours recommendations and the CoV values for each of the final case types, comparing the results with those of the time analysis and the attorney survey for the interim case types (Table 1.5 presents the full definitions for each of the final case type categories). The median of the expert panel's responses, rather than the mean, was chosen as the statistic to report the group's consensus 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.⁵⁸

All of the expert panel's consensus decisions resulted in recommended average hours that were significantly greater than the results of the time analysis or attorney survey. Final CoV values for the adult criminal misdemeanor DUIs, Class A misdemeanors, and Classes B and C misdemeanors categories were slightly above the 0.5 threshold, but the session facilitator judged that additional discussion and voting for these categories was unlikely to result in any meaningful movement on the median score.

⁵⁸ 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.

Table 4.2. Expert Panel Session Recommended Hours Compared with Time Analysis and Survey

Subject Area	Interim Case Type	Time Analysis Result (hours)	Attorney Survey Results (hours)	Final Case Type	Expert Panel Hours (mean)	Expert Panel Hours (median)	Expert Panel CoV
Adult Criminal	Non-Capital Murder	206.0	278.9	Non-Capital Murder	333.4	300	0.49
Adult Criminal	Other Felonies	8.4	12.4	Mandatory Sex and Kidnap Registration Felonies	171.9	150	0.35
				Other Non-DUI Felonies	37.6	37	0.49
Adult Criminal	Felony DUIs	8.5	11.2	Felony DUIs	29.0	25	0.45
Adult Criminal	Misdemeanor DUIs	12.4	11.6	Misdemeanor DUIs	23.5	20	0.52
Adult Criminal	Other Misdemeanors	5.5	6.3	Class A Misdemeanors	24.6	25	0.55
				Class B and C Misdemeanors	15.7	12	0.60
Adult Criminal	Probation Violations—Felonies	1.9	2.2	Probation Violations—Felonies	6.0	6	0.43
Adult Criminal	Probation Violations—Misdemeanors	1.9	1.9	Probation Violations—Misdemeanors	5.1	5	0.44
Juvenile Delinquency	Felonies	8.4	11.5	Sex Felonies	72.8	72.5	0.40
				Other Felonies	23.9	25	0.38
Juvenile Delinquency	Misdemeanors	4.9	5.5	Misdemeanors	16.4	20	0.42
Juvenile Delinquency	Probation Violations and Contempts	2.8	2.6	Probation Violations and Contempts	5.4	6	0.42
Juvenile Delinquency	Orders to Show Cause	2.7	2.6	Orders to Show Cause	5.5	5	0.36

5. Provisional 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. That value can vary from year to year, attorney to attorney, law firm to law firm, and location to location, but for the purpose of calculating provisional caseload maximums, we needed to make a number of general assumptions, as described below.

First would be the expected hours worked each week on average. Drawing on consultation with IDC staff, we used an assumption of 45 hours per week, assuming five workdays at nine hours per day. This value mirrors what survey respondents reported as the median workweek (Table 3.3). A second assumption involves what might be characterized as absence days, which we base on benefits roughly equivalent to those available to Utah state employees. This includes 12 days of vacation (four vacation hours accrual for each 80 work hours per period and 26 pay periods per year, less two weeks not worked), 13 business days of sick leave or other personal leave (four sick leave hours accrual for each pay period and 26 pay periods per year), and an 11-day annual holiday schedule. A final assumption 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 11.8 percent of their workweek in the practice of law but not working on specific cases (Table 3.4). When these assumptions are plugged into the formula represented in Table 5.1, a total of 1,785.2 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 IDC to decide whether the assumptions set forth above make sense for Utah attorneys accepting adult criminal and juvenile delinquency appointments.

Table 5.1. Case-Related Duty Hours Calculations

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

Calculating the Provisional Standards

Our provisional standards, listed in Table 5.2, are simply the result of dividing the results of the expert panel’s deliberations into the annual case-related duty hours value for each case type. For cases in the “Felony DUI” category, 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 71 such cases to any single attorney in a single year (1,785.2 annual case-related duty hours ÷ 25 recommended average attorney hours = 71 cases maximum when rounded to the nearest whole number). Could any individual attorney adequately and effectively represent more than 71 defendants charged with DUI felonies over the course of a year? Absolutely. It is certainly possible, under the right circumstances, for an attorney to be assigned 71 other DUI 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 40 particularly difficult cases of this type might consume most of an attorney’s working hours over the course of 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 5.2. Provisional Caseload Standards

Subject Area	Final Case Type Category	Expert Panel Recommended Average Hours	Maximum Annual Caseload Standards
Adult Criminal	Non-Capital Murder	300	6
Adult Criminal	Mandatory Sex and Kidnap Registration Felonies	150	12
Adult Criminal	Other Non-DUI Felonies	37	48
Adult Criminal	Felony DUIs	25	71
Adult Criminal	Misdemeanor DUIs	20	89
Adult Criminal	Class A Misdemeanors	25	71
Adult Criminal	Class B and C Misdemeanors	12	149
Adult Criminal	Probation Violations—Felonies	6	298
Adult Criminal	Probation Violations—Misdemeanors	5	357
Juvenile Delinquency	Sex Felonies	72.5	25
Juvenile Delinquency	Other Felonies	25	71
Juvenile Delinquency	Misdemeanors	20	89
Juvenile Delinquency	Probation Violations and Contempts	6	298
Juvenile Delinquency	Orders to Show Cause	5	357

It is important to note that these provisional caseload standards make no distinction between indigent defense appointments and private representations. Many of the panelists at the December 2019 session have adult criminal and juvenile delinquency practices that included both appointments and paying clients at the time, and the same was true for many of the participants in 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 Utah criminal and juvenile defense in general. For example, those answering the attorney survey’s questions regarding recommended average times were informed that their responses should apply to any case involving the study case types and not just those that involved indigent appointments. Moreover, as the attorney survey instructed respondents, when

it comes to delivering an adequate and effective defense, it should 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 expert panel participants were given similar guidance.

That said, the standards were not developed as limitations on Utah practitioners generally. They reflect only specific needs of the IDC in executing its legislatively mandated

responsibilities and consequently apply only to attorneys serving indigent defendants. But with regard to how caseloads of indigent defenders are assessed when applying the standards, an attorney with 150 Class B and Class C misdemeanor felony representations annually could be considered to have exceeded the threshold, regardless of the extent to which those cases involve paying clients or court appointments.

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), and 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 work we did in processing the time records maintained by the two Salt Lake County public defender offices. 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 type of qualitative data collection that RAND and the IDC performed in holding the December 20, 2019, meeting in Provo. An assessment of current conditions is first conducted (such as by an analysis of time records), 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 in a manner compliant with prevailing professional norms. Accordingly, Utah already has the absolute case weights it needs, because these are exactly the same as the expert panelists’ recommendations for average attorney time allocations described in Table 4.2. As such, the absolute case weight for adult criminal Class A misdemeanors is 25, the absolute case weight for juvenile delinquency misdemeanors is 20, 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 adult criminal indigent appointments receives a contract to take on 60 Class A misdemeanors over the course of a year. For planning purposes, it might be expected that the attorney will wind up spending 1,500 hours handling these cases ($60 \text{ cases} \times \text{an absolute weight of } 25 \text{ hours}$). Using our working estimate of 1,785.2 annual case-related duty hours, this leaves the attorney 285.2 hours theoretically available that year for all other client-related matters. That residual could consist of, for example, 23 Class B or C misdemeanors ($285.2 \div 12\text{-hour case weight}$), or seven “other” felonies ($285.2 \div 37\text{-hour case weight}$), or six felony DUI cases and 20 felony probation violation cases ($[6 \times 25\text{-hour case weight}] + [20 \times 6\text{-hour case weight}] = 270 \text{ expected hours}$).

What about a situation where an attorney devotes less than full time to handling, for example, adult criminal matters? As the attorney survey suggested, attorneys 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 60 Class A misdemeanor contract described above had certified to the local indigent defense system that they would devote 90 percent of their time to adult criminal matters (it does not matter whether these are appointments or retained clients, nor does it matter what the attorney is doing during the other 10 percent of the workweek). That means only 90 percent of the 1,785.2 annual case-related duty hours in our assumptions would be available for clients and their legal needs. So, rather than 285.2 hours remaining for additional cases beyond the Class A misdemeanors, only 178.5 hours would be available ($[1,785.2 \text{ annual case-related duty hours} \times 0.90 \text{ FTE}] - [60 \text{ cases} \times \text{an absolute weight of } 25 \text{ hours}]$), and instead of as many as 23 Class B or C misdemeanors potentially added to the solo practitioner’s caseload, just 14 of such cases could be represented ($178.5 \div 12\text{-hour case weight}$).

Absolute case weights can also be used for estimating required staff levels. Assume that it is projected that, over the next year, an office with attorneys working full-time on juvenile delinquency cases will be called on to handle 20 sex felonies, 400 other felonies, 600 misdemeanors, 900 probation violations or contempts, and 1,000 orders to show cause. The estimated number of total hours necessary for this work would be 33,850 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 (1,785.2) suggests that about 19 attorney FTEs will be needed by this office.

It should be noted that the use of absolute case weights for calculating attorney need only provides estimates for the case types contemplated by those weights. As indicated previously, the case types chosen for this work represent adult criminal and juvenile delinquency client matters that are believed to consume most of a defender’s workday, but there were some exceptions. For example, extraditions, juvenile status offenses, matters that involve the provision of advice unrelated to a prosecution, certain mental health proceedings, and expungements would not have informed the caseload standards and, as such, any related absolute weights. Therefore, case-weight-based estimates for attorney need should be viewed as minimum requirements.

Comparing the Provisional Standards to Other Jurisdictions

As indicated in Chapter 1, 14 other states have also undertaken research studies similar to the RAND-IDC effort to develop case type–specific recommendations for either the average amount of attorney time policymakers should use in their planning or a numerical limit on the number of cases an attorney should handle in a year. As suggested by the calculations above, the two values—average time needed (often referred to as a *case weight*, which is discussed more fully later in this chapter) and a maximum annual caseload—are related to each other mathematically by whatever estimate is used for annual case-related duty hours.

It is helpful to place the provisional Utah caseload standards into perspective by comparing those values with what other jurisdictions have developed. 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, juvenile delinquency proceedings, 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 (prosecutorial policies regarding discovery, travel times to courthouses and jails, support staff levels, etc.) can arguably move such a comparison uncomfortably into the world of apples and oranges.

Tables 5.3–5.6 list the case types that have been examined in the 14 states mentioned earlier, grouped by adult criminal felony-level offenses (Table 5.3), adult criminal misdemeanor-level offenses (Table 5.4), other adult criminal client matters (Table 5.5), and juvenile delinquency proceedings (Table 5.6). The provisional standards for Utah are also presented and are shaded gray for ease of reference. We have also included the caseload maximums adopted by the Washington State Supreme Court because they closely adhere to the NAC caseload standards that have essentially functioned as the default guidance for indigent defender workload limits throughout the nearly five decades since their publication.⁵⁹

For the sake of comparability, we made several decisions. With the Washington exception, the values shown in the tables arose from attorney workload studies within the past 15 years that are similar to the effort described in this report. We included standards regardless of whether they had been officially adopted by an authoritative body with the power to enforce the caseload maximums. We excluded case types that involve child welfare, termination of parental rights, appeals, civil commitments or other mental health issues, and other matters that do not appear to include adult criminal or juvenile delinquency proceedings, given the focus of our effort. Case

⁵⁹ *Washington State 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.

types that were described only as a DUI offense or a similar charge were classified as misdemeanors. Some states did not issue standards per se but instead only calculated absolute case weights that reflect average time expenditures (i.e., case weights). To calculate the equivalent of an annual maximum caseload in such instances, we divided those absolute case weights into 1,785.2 hours (107,112 minutes) to mirror the annual case-related duty hours assumption used for this effort. In instances where two or more absolute case weights were reported for a single case type (such as when the study distinguished its results by whether the representations took place in rural, suburban, or urban jurisdictions), we used the mean of those values (the “Case Type” column in the four tables indicates when this took place with the designation “[average]”). Because we occasionally needed to make judgment calls on how to interpret the findings of the studies that led to the case weights or annual standards for many of the states listed 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 Adult Criminal Felonies

Jurisdiction	Case Type	Measure	Effective Annual Maximum Cases
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
Colorado	Class 1 felony (life or death penalty)	Standard	3
Maryland	Capital (death notice not filed)	Case weight (25,740 min.)	4
New Mexico	Capital offense	Case weight (29,544 min.)	4
Indiana	Non-capital murder (life without parole)	Case weight (311.3 hrs.)	6
Utah	Non-capital murder	Standard	6
Indiana	Non-capital murder (non-life without parole)	Case weight (232.1 hrs.)	8
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
Utah	Mandatory sex and kidnap registration felonies	Standard	12
North Carolina	First-degree murder (includes capital)	Case weight (8,189 min.)	13
Colorado	Class 2 felony	Standard	15
Michigan	Murder/manslaughter	Standard	15
Maryland	Homicide (average)	Case weight (6,420 min.)	17
Missouri	Murder/homicide	Case weight (106.6 hrs.)	17
Rhode Island	Nonmurder with possible life sentence	Case weight (108.1 hrs.)	17
Massachusetts	Superior nonconcurrent felony—265	Case weight (76.36 hrs.)	23
Michigan	Criminal sexual conduct (1, 2, or 3)	Standard	23
North Carolina	Felony A, B1, and B2	Case weight (4,519 min.)	24
Indiana	High-level felony (levels 1–2)	Case weight (68.2 hrs.)	26
Louisiana	High-level felony	Case weight (69.79 hrs.)	26
Idaho	Felony	Case weight (67.19 hrs.)	27
Missouri	Sex felony	Case weight (63.8 hrs.)	28

Jurisdiction	Case Type	Measure	Effective Annual Maximum Cases
Colorado	Sexual assault—Class 2, 3, 4, 5, or 6 felonies	Standard	30
Rhode Island	Felonies, more than 10 years imprisonment	Case weight (51.9 hrs.)	34
Michigan	Other Class A felony	Standard	37
Missouri	A/B felony	Case weight (47.6 hrs.)	38
Indiana	Midlevel felony (levels 3–4)	Case weight (42.6 hrs.)	42
Massachusetts	Superior nonconcurrent felony—not 265	Case weight (42.25 hrs.)	42
Louisiana	Midlevel felony	Case weight (41.11 hrs.)	43
Virginia	Murder/homicide (noncapital)	Case weight (2,471 min.)	43
Michigan	Class B, C, D felony	Standard	46
Utah	Other non-DUI felonies	Standard	48
New York	Violent felony	Standard	50
New Mexico	Violent felony	Case weight (1,774 min.)	60
Rhode Island	Felonies, up to 10 years imprisonment	Case weight (28.3 hrs.)	63
Colorado	Violent felony—Class 3 or 4 felonies	Standard	64
North Carolina	Felony C, D, E, and F	Case weight (1,560 min.)	69
Maryland	Violent felony (average)	Case weight (1,515 min.)	71
Missouri	C/D felony	Case weight (25 hrs.)	71
Utah	Felony DUIs	Standard	71
Massachusetts	District concurrent felony—265	Case weight (24.13 hrs.)	74
Michigan	Class E, F, G, or H felonies or two-year misdemeanors	Standard	74
Texas	Felony, first degree	Standard	77
Indiana	Low-level felony (levels 5–6)	Case weight (22 hrs.)	81
Louisiana	Low-level felony	Case weight (21.99 hrs.)	81
Massachusetts	District concurrent felony—not 265	Case weight (19.12 hrs.)	93
New York	Nonviolent felony	Standard	100
Texas	Felony, second degree	Standard	105
Colorado	Driving under the influence—Class 4 felony	Standard	115
Maryland	Nonviolent felony (average)	Case weight (838 min.)	128
Virginia	Violent felony	Case weight (766 min.)	140
Colorado	Nonviolent felony—Class 3 or 4 felonies	Standard	142
Texas	Felony, third degree	Standard	144
Washington	Felony	Standard	150
Texas	State jail felony	Standard	174
Colorado	Class 5 or 6 felonies	Standard	199
North Carolina	Felony G, H, and I	Case weight (524 min.)	204
New Mexico	Nonviolent felony	Case weight (509 min.)	210
Colorado	Schedule 1, 2, 3, or 4 drug-related felonies	Standard	241
Virginia	Nonviolent felony	Case weight (433 min.)	247

SOURCES: Colorado: RubinBrown and ABA-SCLAID, 2017; Idaho: Fry et al., 2018; Indiana: ABA-SCLAID, 2020; Louisiana: Postlethwaite & Netterville and ABA-SCLAID, 2017; Maryland: Ostrom, Kleiman, and Ryan, 2005; Massachusetts: Labriola and Hopkins, 2014; Missouri: RubinBrown and ABA-SCLAID, 2014; Michigan: Pace et al., 2019; New Mexico: Hall, 2007; New York: New York State Office of Indigent Legal Services, 2016; North Carolina: Lee, Hamblin, and Via, 2019; Rhode Island: BlumShapiro, ABA-SCLAID, and NACDL, 2017; Texas: Public Policy Research Institute, 2015; Virginia: Kleiman and Lee, 2010.

NOTE: Uses 1,785.2 annual case-related duty hours assumption for converting case weights into effective annual maximums; no adjustment was made to results of studies that originally reported recommendations as standards.

Table 5.4. Statewide Maximum Caseload Standards for Adult Criminal Misdemeanors

Jurisdiction	Case Type	Measure	Effective Annual Maximum Cases
Utah	Class A misdemeanor	Standard	71
Idaho	Misdemeanor	Case weight (21.95 hrs.)	81
Utah	Misdemeanor DUI	Standard	89
Massachusetts	Operating under the influence	Case weight (19.69 hrs.)	91
Massachusetts	Misdemeanor	Case weight (16.78 hrs.)	106
Colorado	Misdemeanor sex offense	Standard	125
Rhode Island	Misdemeanor	Case weight (12.7 hrs.)	141
Indiana	Misdemeanor	Case weight (12.6 hrs.)	142
Louisiana	Enhanceable misdemeanor	Case weight (12.06 hrs.)	148
Utah	Class B and C misdemeanor	Standard	149
Missouri	Misdemeanor	Case weight (11.7 hrs.)	153
North Carolina	Driving while impaired	Case weight (527 min.)	203
Texas	Class A misdemeanor	Standard	216
Louisiana	Misdemeanor or city parish ordinance	Case weight (7.94 hrs.)	225
Michigan	One-year misdemeanor	Standard	232
Colorado	Misdemeanor DUI	Standard	234
Texas	Class B misdemeanor	Standard	236
New Mexico	Driving while intoxicated	Case weight (439 min.)	244
Michigan	93-day misdemeanor	Standard	265
New York	Misdemeanors and violations	Standard	300
Washington	Misdemeanor (with case weighting)	Standard	300
Colorado	Misdemeanor 1	Standard	310
Washington	Misdemeanor (without case weighting)	Standard	400
Colorado	Misdemeanor 2 or 3	Standard	411
North Carolina	Misdemeanor (includes traffic)	Case weight (246 min.)	435
New Mexico	Misdemeanor	Case weight (225 min.)	476
Maryland	Misdemeanor jury trial demands/appeals (average)	Case weight (217 min.)	494
Virginia	Driving while intoxicated	Case weight (191 min.)	561
Colorado	Misdemeanor traffic/other	Standard	672
Virginia	Misdemeanor	Case weight (147 min.)	729
Maryland	District court criminal (average)	Case weight (137 min.)	782
Maryland	District court traffic (average)	Case weight (93 min.)	1,152

SOURCES: Colorado: RubinBrown and ABA-SCLAID, 2017; Idaho: Fry et al., 2018; Indiana: ABA-SCLAID, 2020; Louisiana: Postlethwaite & Netteville and ABA-SCLAID, 2017; Maryland: Ostrom, Kleiman, and Ryan, 2005; Massachusetts: Labriola and Hopkins, 2014; Missouri: RubinBrown and ABA-SCLAID, 2014; Michigan: Pace et al., 2019; New Mexico: Hall, 2007; New York: New York State Office of Indigent Legal Services, 2016; North Carolina: Lee, Hamblin, and Via, 2019; Rhode Island: BlumShapiro, ABA-SCLAID, and NACDL, 2017; Texas: Public Policy Research Institute, 2015; Virginia: Kleiman and Lee, 2010.

NOTE: Uses 1,785.2 annual case-related duty hours assumption for converting case weights into effective annual maximums; no adjustment was made to results of studies that originally reported recommendations as standards.

Table 5.5. Statewide Maximum Caseload Standards for Other Adult Criminal Client Matters

Jurisdiction	Case Type	Measure	Effective Annual Maximum
Rhode Island	Probation violation	Case weight (16.9 hrs.)	106
Idaho	Contempt	Case weight (15.53 hrs.)	115
Maryland	Drug treatment court (urban)	Case weight (912 min.)	117
New Mexico	Drug court	Case weight (861 min.)	124
Idaho	Probation violation	Case weight (10.37 hrs.)	172
North Carolina	Specialized court (any)	Case weight (620 min.)	173
Missouri	Probation violation	Case weight (9.8 hrs.)	182
Idaho	Other matter	Case weight (9.67 hrs.)	185
Massachusetts	Superior court probation	Case weight (9.17 hrs.)	195
New York	Probation revocation or other postdisposition matter	Standard	200
Indiana	Probation/community corrections revocation	Case weight (8.5 hrs.)	210
Louisiana	Revocation	Case weight (8.47 hrs.)	211
Massachusetts	District court probation	Case weight (8.26 hrs.)	216
Utah	Probation violation—felonies	Standard	298
Utah	Probation violation—misdemeanors	Standard	357
Michigan	Probation violation	Standard	530
North Carolina	Probation violation	Case weight (189 min.)	567
Colorado	Felony probation revocation	Standard	617
Michigan	Other matter	Standard	619
North Carolina	Other criminal	Case weight (151 min.)	709
Virginia	Probation violation, felony	Case weight (151 min.)	709
Massachusetts	District court bail only	Case weight (2.19 hrs.)	815
New Mexico	Probation violation	Case weight (129 min.)	830
Colorado	Misdemeanor probation revocation	Standard	1,014
Maryland	Modifications/sentence reviews, circuit (average)	Case weight (98 min.)	1,093
Maryland	Violations of probation, circuit	Case weight (90 min.)	1,190
Maryland	Modifications/sentence reviews, district (average)	Case weight (68 min.)	1,575
New Mexico	Extradition	Case weight (58 min.)	1,847
Virginia	Probation violation, misdemeanor	Case weight (54 min.)	1,984
Maryland	Violations of probation, district	Case weight (45 min.)	2,380
Maryland	Preliminary hearings, district (average)	Case weight (10 min.)	10,711

SOURCES: Colorado: RubinBrown and ABA-SCLAID, 2017; Idaho: Fry et al., 2018; Indiana: ABA-SCLAID, 2020; Louisiana: Postlethwaite & Netterville and ABA-SCLAID, 2017; Maryland: Ostrom, Kleiman, and Ryan, 2005; Massachusetts: Labriola and Hopkins, 2014; Missouri: RubinBrown and ABA-SCLAID, 2014; Michigan: Pace et al., 2019; New Mexico: Hall, 2007; New York: New York State Office of Indigent Legal Services, 2016; North Carolina: Lee, Hamblin, and Via, 2019; Rhode Island: BlumShapiro, ABA-SCLAID, and NACDL, 2017; Texas: Public Policy Research Institute, 2015; Virginia: Kleiman and Lee, 2010.

NOTE: Uses 1,785.2 annual case-related duty hours assumption for converting case weights into effective annual maximums; no adjustment was made to results of studies that originally reported recommendations as standards.

Table 5.6. Statewide Maximum Caseload Standards for Juvenile Delinquency

Jurisdiction	Case Type	Measure	Effective Annual Maximum
Indiana	Murder (with or without waiver)	Case weight (178.5 hrs.)	10
Massachusetts	Presumptive youth offender	Case weight (112.4 hrs.)	16
Utah	Juvenile sex felony	Standard	25
Rhode Island	Juvenile delinquent	Case weight (46.1 hrs.)	39
Indiana	Non-murder waiver felony	Case weight (43.4 hrs.)	41
Massachusetts	Non-presumptive youth offender	Case weight (34.77 hrs.)	51
Colorado	Juvenile sex offense	Standard	53
Rhode Island	Juvenile wayward	Case weight (29.5 hrs.)	63
Utah	Juvenile other felony	Standard	71
Indiana	High- and mid-level felony (levels 1–4)	Case weight (23.3 hrs.)	77
Utah	Juvenile misdemeanor	Standard	89
Louisiana	Juvenile delinquency	Case weight (19.78 hrs.)	90
Missouri	Juvenile	Case weight (19.5 hrs.)	92
Idaho	Juvenile	Case weight (17.47 hrs.)	102
Massachusetts	Juvenile probation	Case weight (16.25 hrs.)	110
Indiana	Low-level felony (levels 5–6)	Case weight (9.6 hrs.)	186
Colorado	Juvenile felony	Standard	200
Indiana	Misdemeanor/juvenile miscellaneous	Case weight (7.4 hrs.)	241
Washington	Juvenile offender	Standard	250
Maryland	Juvenile (average)	Case weight (397 min.)	270
Utah	Juvenile probation violation or contempt	Standard	298
New Mexico	Juvenile	Case weight (348 min.)	308
Virginia	Juvenile	Case weight (317 min.)	338
Colorado	Juvenile misdemeanor	Standard	351
Utah	Order to show cause	Standard	357
Indiana	Status	Case weight (4.6 hrs.)	388
Massachusetts	Juvenile bail	Case weight (2.3 hrs.)	776
Virginia	Probation violation—juvenile	Case weight (41 min.)	2,612
Maryland	Juvenile violation of probation (average)	Case weight (32 min.)	3,347

SOURCES: Colorado: RubinBrown and ABA-SCLAID, 2017; Idaho: Fry et al., 2018; Indiana: ABA-SCLAID, 2020; Louisiana: Postlethwaite & Netteville and ABA-SCLAID, 2017; Maryland: Ostrom, Kleiman, and Ryan, 2005; Massachusetts: Labriola and Hopkins, 2014; Missouri: RubinBrown and ABA-SCLAID, 2014; Michigan: Pace et al., 2019; New Mexico: Hall, 2007; North Carolina: Lee, Hamblin, and Via, 2019; Rhode Island: BlumShapiro, ABA-SCLAID, and NACDL, 2017; Texas: Public Policy Research Institute, 2015; Virginia: Kleiman and Lee, 2010. NOTE: Uses 1,785.2 annual case-related duty hours assumption for converting case weights into effective annual maximums; no adjustment was made to results of studies that originally reported recommendations as standards.

6. Going Forward

Potential Impact of Provisional Standards on Defender Need

Given the relative absence of detailed information about current defender caseloads and the numbers and types of Utah court cases that involve appointed counsel annually, it is difficult to accurately predict how unmodified adoption of the provisional standards would affect the statewide demand for defender services. That said, we are confident that, absent any future changes in substantive or procedural law in the state, adoption would clearly require a sharp increase in the supply of annual attorney hours available for indigent defense. In every adult criminal and juvenile delinquency case type category listed in Table 4.2, the recommended average hours issued by the expert panel exceeded the results of the analysis of average time expenditures in the two Salt Lake County public defender offices. Though a direct case-type-by-case-type comparison is hampered by the fact that the categories used by the expert panel differed somewhat from those used in the time analysis, the minimum increase beyond reported average attorney hours was 46 percent, and, depending on the category, the expert recommendations actually doubled, tripled, and even quadrupled what were reported as average time expenditures. Even employing the questionable assumption that the attorneys represented in the time analysis were somehow able to fully discharge their professional responsibilities in a manner that saved an extraordinary amount of their time compared with the activities of attorneys in other offices and law firms across the state (and thus the dramatic increases over time expenditures arising from the expert’s recommendations would be greatly reduced if we had better time information from the vast majority of indigent defenders in Utah), adoption of the provisional standards, if accompanied by a surge in attorney availability, will certainly cause a major sea change in the delivery of services to indigent defendants.

We do have some evidence that can help provide a clue as to the magnitude of the potential demand that would be triggered by the provisional standards, though interpreting such evidence is problematic. Table 6.1 presents the expert panel recommendations for the average hours that should be used for planning purposes to help ensure the delivery of effective representations. The second column from the right (“Utah AOC Case Counts”) represents information provided to the IDC by the Utah Administrative Office of the Courts (AOC) for counts of all cases filed in District, Justice, and Juvenile courts during the period of July 2018 through June 2019 that appear to match the final case type definitions adopted by our panel at the December 2019 conference.⁶⁰ Such matching would present difficulties for the AOC’s analysts, because it

⁶⁰ Case counts for juvenile delinquency only include petitioned episodes. Data from the AOC were provided to the authors via email by Leslie Howitt, IDC, May 21, 2020.

involves a backward look at data not originally designed to categorize court cases in this exact manner. Nevertheless, the numbers present the best available view of the potential total annual adult criminal and juvenile delinquency court caseload involving indigent defenders. The key word here is *potential*, because at the time our caseload standard development was taking place, there were known problems in the way Utah court records flag whether counsel was appointed to represent one or more parties before the court. From our review of IDC and AOC statistics, it appears that the number of cases identified by the courts as involving appointed counsel represent significant undercounts. Without a reliable indicator of appointment, the case counts in Table 6.1 simply represent an upward bound for the number of instances that counsel could have been appointed had the parties satisfied financial and other requirements for the provision of counsel.

Table 6.1. Expert Panel Recommended Average Hours and Annual Utah Caseload

Subject Area	Final Case Type Category	Expert Panel Recommended Average Hours	Utah AOC Case Counts	Attorney Hours Required
Adult Criminal	Non-Capital Murder	300	50	15,000
Adult Criminal	Mandatory Sex and Kidnap Registration Felonies	150	947	142,050
Adult Criminal	Other Non-DUI Felonies	37	17,387	643,319
Adult Criminal	Felony DUIs	25	575	14,375
Adult Criminal	Misdemeanor DUIs	20	5,818	116,360
Adult Criminal	Class A Misdemeanors	25	18,645	466,125
Adult Criminal	Class B and C Misdemeanors	12	110,416	1,324,992
Adult Criminal	Probation Violations—Felonies	6	15,034	90,204
Adult Criminal	Probation Violations—Misdemeanors	5	36,807	184,035
Juvenile Delinquency	Sex Felonies	72.5	540	39,150
Juvenile Delinquency	Other Felonies	25	1,323	33,075
Juvenile Delinquency	Misdemeanors	20	3,721	74,420
Juvenile Delinquency	Probation Violations and Contempts	6	341	2,046
Juvenile Delinquency	Orders to Show Cause	5	1,040	5,200
Total			212,644	3,150,351

Using the AOC case counts with the knowledge that not every adult criminal or juvenile delinquency case in a Utah courtroom involves the provision of appointed counsel, and using the expert panel’s recommendations, we estimate that policymakers would need to plan for a total of 3,150,351 hours of indigent defender time to handle the 212,644 court cases filed during fiscal year 2019 that involved each of the case types in Table 6.1. Employing our assumption for annual available case-related duty hours (1,785.2 hours), an estimated 1,765 full-time attorneys

would be needed to address this need. This estimate represents five times as many attorneys (350) who we believe are currently accepting appointments in Utah, despite our assumption that, for many in this group, the practice of indigent defense is only a part-time activity.

This estimate of 1,765 full-time attorneys would be reduced if we had better information about the percentage of all adult criminal and juvenile delinquency court cases in Utah that actually involve appointed counsel. A source we examined suggested that in one major urban county in the state, a *minimum* of 63 percent of adult criminal defendants might have appointed counsel. Using this value simply for the sake of a “back of the envelope” calculation, estimated total FTE attorney need would be reduced to 1,112 attorneys, which would still amount to slightly more than three times the estimated Utah indigent defender universe.

We take no position as to whether a rapid doubling or tripling of the indigent defender pool would be a disruptive and costly event for the Utah criminal justice system or a welcome lifeline thrown out to defenders who have been laboring under unconstitutionally dire conditions that undoubtably have had a negative effect on the quality of their representations. That is an important assessment best left to the IDC. But we do believe that the expert panel fully considered the evidence they were provided in light of prevailing professional norms and reached a satisfactory level of consensus, as was intended, about average-hour recommendations. As such, some substantial increase in statewide indigent defender resources is needed at this time if the aims of the panel are to be realized.

Next Steps

The comments submitted by many of the attorneys who participated in the survey evidence deep frustration over a lack of resources and inadequate time to do the job that they believe is necessary for effectively fulfilling their professional responsibilities to their clients (the comments are reproduced in the appendix). But to the extent that indigent defender caseloads in Utah are indeed excessive, regardless of whether the problem is widespread or just limited to a handful of defenders, workload issues cannot be made to disappear simply through the adoption of maximum caseload standards. Without the tools in place for routinely monitoring caseloads and for enforcing compliance, such standards can be easily ignored. To avoid that outcome, far better information about indigent defender caseloads, both at the local system level and the individual attorney level, will be needed by the IDC and the OIDS on a routine basis. The most obvious way to obtain the data necessary for planning purposes and for monitoring workloads would be the imposition of mandatory reporting requirements on attorneys who wish to be considered for appointments, with perhaps monthly submissions regarding current caseloads, pending matters, support staff assistance, and conflicting demands on each attorney’s

availability.⁶¹ Instances where caseloads are approaching the maximum thresholds would result in throttling back the rate of new appointments for those defenders at risk of excessive levels, and instances where a defender failed to submit reports as required would result in a suspension of future appointments until the shortcomings are remedied. For such a system to be truly effective, OIDS and the Utah judiciary will need to establish new lines of communication, so that near-real-time information about the status of cases with appointed counsel is available to OIDS staff, and so that information about the identities of attorneys whose appointment eligibility is at risk of exceeding caseload maximums is at the fingertips of judges and court personnel.

Most important of all, 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 possibly receiving fewer appointments over the course of a year. Even in the smallest or least populated jurisdictions in the state, plans must be in place for alternative counsel to quickly and seamlessly absorb the flow of new appointments when indigent defenders are approaching maximum limits, much like when conflict counsel steps in as a substitute when the initially appointed attorney has potential conflicts of interest. Without such backups in place and ready to take over on a moment's notice, courts will have little choice but to continue to appoint those who are at risk of excessive workloads.

IDC must also regularly revisit the issue of caseload standards in the future, in part to make sure that caseload maximums continue to accurately reflect the evolving challenges and the unique local legal cultures facing defenders in every jurisdiction in the state. It may turn out, for example, that the provisional standards are too restrictive when applied to attorneys in some locations, and too generous in others. Taking steps to regularly assess where the utility of the standards appears to be less than optimal will help determine whether customization is needed and, hopefully, reduce the likelihood of negative blowback from disgruntled indigent defenders and local indigent defense systems. Thankfully, standards-development efforts going forward will be far less daunting and, frankly, far less expensive. Once attorney levels and availability in local indigent defense systems are appropriately adjusted for the purpose of compliance with any new standards, and once CMSs are more widely utilized by the indigent defense bar so that more reliable and more easily accessed data on caseloads and attorney time expenditures are made

⁶¹ Understanding the availability of support staff, such as investigators, paralegals, and administrators, to members of the indigent defender community is a particularly important need for the IDC and OIDS going forward. When developing their recommendations for average attorney hours, the expert panelists were asked to assume that support staff resources similar to the levels in their own practices would be available to the typical indigent defender. To the extent that the panel represented a cross-section of all Utah attorneys accepting appointments for adult criminal and juvenile delinquency cases, the standards themselves reflect those current staff assumptions. If general support staff availability increases over time, then the standards may become too stringent. If staff availability decreases and attorneys must now do tasks that are currently handled by others, the maximum caseload limits might need to be lowered.

available for planners, there will be better information available for future expert panel sessions than could be utilized for the one RAND and the IDC conducted in December 2019. Ultimately, the provisional standards presented in this report are simply a starting point in a continuing, long-term process, one that has critically important consequences for Utah's criminal justice system and the state's citizens.

Appendix. Comments Submitted with the Attorney Survey

The comments in this appendix were submitted by defenders responding to the attorney survey in December 2019. The submissions, in alphabetical order, have been lightly edited for clarity and to avoid providing individually identifiable information.

1. A metric worth exploring may not be time on task, but a time frame in which to complete the task. For example, counsel may have a “eureka” moment for a case after having sat with it for several weeks; but measured purely by time-on-task, perhaps counsel spent only two hours on the case. Some indigent defense providers in rural counties also handle child welfare and private petitions to terminate parental rights, as well as appeals for both. These are time-intensive matters that require at least double the amount of time and resources of delinquency matters. As appointed counsel, there is a unique dynamic as a “repeat player” before a particular judge or court that is not present when appearing as retained counsel (a “one-shotter”). That dynamic or effect can impact the lawyer’s approach to resolving the case, because its precedential value will likely be more significant for the repeat-player than the one-shotter. The repeat-player trying to curry favor may invest less time asserting defenses on behalf of a client. The repeat-player trying to maintain systemic procedural protections may invest more time asserting defenses on behalf of a client. . . . It has been acknowledged in the instructions for this survey, but it is worth repeating that different lawyers have divergent case management styles. Acknowledging that a client’s interest is paramount, sometimes a more aggressive style results in an outcome that benefits taxpayers; sometimes a less aggressive style results in an outcome that benefits taxpayers—each client and case is different.
2. Appeals vary widely, anywhere from 10 hours for simple sentencing appeals where the court issues a *sua sponte* motion to affirm, to 40 to 90 hours for substantive appeals.
3. As a full-time public defender, it would be good if we could be paid enough so that we can focus solely on indigent defense and not have to take cases on the side to supplement our incomes.
4. Capital cases, murder cases, and sex cases require enormous amounts of time. I did not even notice a column for sex cases. Even then, I never have enough time for these types of cases. The time requirements are compounded when the Defendant does not speak English. I think your survey fails to take into account all the extra time (and money) that is needed when a Defendant does not speak English. Regarding capital cases only, an enormous amount of resources are spent, and constitutionally required to be spent, on these cases. Public defender budgets are drained when the State wants to put someone to death, *even* if the State doesn’t actually elect to pursue the death penalty. Filing the case as an “aggravated murder” implicates an insane amount of resources. All other clients are disadvantaged when an attorney is assigned a capital case, or even just assigned to help on a capital case.
5. Caseloads are large. Most clients are in need of treatment. Support staff and additional attorneys are essential.

6. Having the assistance of investigators that can work with IDC funds would be helpful in all cases. I would love to be able to get an investigator to ask certain witnesses. I think that would be a valuable in criminal cases.

7. I believe that caseloads are hard for indigent defense attorneys in Utah. Currently we are overworked and don't have the time dedicated to help our clients the best that we can. While the average case may not take as much time, we are often times getting appointed on cases such as rape, murder, sexual assault, kidnapping, etc. These first-degree felony cases take so much of our time and that time is split with our other clients. Sometimes it is hard to give the adequate representation to our clients with third degree felony or misdemeanor cases because our focus is on these harder cases. If our caseloads went down we would have more time to work on those lesser charged cases.

8. I do spend 200 hours on murder and other First Degree Felony cases that go to jury trial. I spend far less than the recommended time on all other public defender cases. I spend approximately the recommended time on private cases in the categories listed. Without my private cases, I would not have enough income to pay my family's cost of medical, which is about \$25,999 per year out of pocket because the contract has zero benefits.

9. I don't know how many staff members are in our office however I do know that the Juvenile Attorneys (of which I am one) have very little staff support. Most of our clerical work is done by the attorney's themselves as well as most investigation, communications etc., Our caseloads are too high given the fact that the Juvenile Attorneys also do all the Child Welfare Cases here in Utah County which takes the bulk of our time and resources.

10. I feel like district court gets the bulk of the grant funding because they have high caseloads with more serious charges, but, I feel like justice court is the forgotten court. The caseloads in justice court are high and time consuming just like district court. The amount of time in effort put into defending justice court cases is probably equal to justice court cases. In some instances they may take longer because individuals facing misdemeanor charges need more individualized education on how the justice system works.

11. I feel that it is very difficult to establish a standard amount of time for any case because of all the variables in play. For example, typically a violation of a protective order case, class A misdemeanor and occasionally a third-degree felony, has a client that is much more time demanding and difficult to deal with and therefore, takes up much more time. This applies to any case in which client personality comes into play. Further, to me the question for public defense is that if you are choosing which cases to give more of your time, it undoubtedly comes at the expense of another (perhaps less serious) case. That practice seems to undercut the quality of representation. More qualified bodies to handle cases is the only true way to assure that proper time is devoted to each client.

12. I have just enough time to address cases that are not going to trial. I don't have adequate time to devote to my trial bound cases and address the rest of my case load. There are weeks that I cannot afford the gas to drive to visit with clients at the jail. I prefer in-person visits because both sides of the conversation are confidential. I find that if other inmates can hear my client's attorney-client phone conversations, they start insert themselves into my client's case by offering bad advice. The bad advice complicates the process and make a clean and timely resolution less likely. I work the typical 8-5 (really 7AM-6PM), but I do regularly have to make evening (7PM-9PM) visits to the jail to speak with clients. Plus reading over

documents at night. I spend quite a bit of time addressing bail modifications and warrants for clients who do not show up to court. This delays resolving the case because the focus tends to be “getting out of jail,” instead of the merits of the case.

13. I never feel like I have enough time on my cases. I just work as hard as I can.

14. I suggest incorporating the time tracking data that currently exists in PD [public defender] offices to calculate the time that public defenders are currently taking on cases, and then ask the public defenders the follow-up question: Do you need more time than you are currently taking in order to effectively do your job (and if so, how much more time?). Also, the hours that are needed per case really differ depending on what type of case it is, the issues involved, etc. (e.g., Misdemeanor cases can sometimes take more time than felony cases because there are more complex issues involved). Overall, public defenders in Utah need more resources in order to do the important work required of them.

15. I think the question about average time spent on misdemeanor appeals is poorly presented because there are two distinct types of misdemeanor appeals which are significantly different in procedure and time needed: Appeals of class A misdemeanors are to the Court of Appeals, and go through the same procedure as felony appeals. Appeals of class B and C misdemeanors are to the District Court as a trial de novo, and typically take significantly less time. My answer was based on averaging the two but it is very low for a class A and very high for a class B or C.

16. I used to have the conflict contract for a public defender office. As a private practitioner, I approached my job in the same manner. I found it very difficult to be competent at the private practice standard given the caseload. Right now, it is an inconvenient truth that indigent defenders do not have sufficient time to provide an adequate defense to indigent clients. Everyone knows this. Hopefully, this will change but I am skeptical.

17. If the data reflects the ground truth of indigent defense, it will clearly reflect a bimodal distribution of results. Hopefully this will clearly illustrate the fact that there are 20% of appointed counsel who actually represent a client zealously and to the extent of the law, and 80% who have capitulated to the economic realities that the market for indigent representation does not meet the need for zealous representation, and therefore, engage in a race to the bottom to see who can do the least work for the tawdry wages offered by the patchwork “system.”

18. I’m not sure why the breakdown was largely murder vs DUI vs Order to Show Cause vs everything else. The everything else category encompasses anything from theft to drugs to assault, etc. I don’t feel those are similar enough in time and preparation to be lumped together. Furthermore, some of the most complex and time-consuming cases are those we get from the Attorney General involving public assistance fraud, unemployment, etc. Those are extremely time-consuming and include HUGE amounts of discovery and quite frankly, research time to get caught up to speed. My point is, my “average” time for a basic drug possession is much less time than a public assistance fraud case, so I’m not sure that my average answer of “30 hours” actually tells you anything at all. It is also my understanding that we receive no funding from the state of Utah, so essentially we are doing these complex state benefit cases for “free” Related to resources and compensation structure—we are in the position where half our office has lots of experience and the other half is brand new. This disproportionately affects the number of capital cases, other homicides, and misc. first-degree

felony cases that our experienced lawyers are handling. While our caseloads may be the same average numbers across the board, these types of cases take more time than your average low level felony case, which will translate to higher time-averages coming from these lawyers because there was no further breakdown in the survey. I often say in jest that my 10 most serious cases take 80% of my time. I am still relatively new so I am lucky that I only have 10 of these cases, whereas my more experienced colleagues have more like 30–50.

19. In comparison to prosecutors, adult public defense attorneys and other government employees, juvenile defense attorneys are grossly underpaid. This has led to a number of attorneys leaving juvenile defense work and candidates declining employment offers. The pay is preventing specialized and passionate attorneys from entering the field and/or staying in it. Understanding that indigent defense is funded by each county, something needs to be done in order to offer juvenile defenders, especially those who solely do juvenile defense, a livable salary.

20. In the State of Utah, the public defenders are compensated by counties instead of by the State. It is a deeply flawed system. In my county, there are approximately three County Attorneys who work in the criminal division per every one public defender. In the less populated counties, the discrepancy is even more prevalent. Very discouraging.

21. Indigent defense attorneys could use more support staff, such as, social workers, and paralegals. Our office has paralegals for adult criminal defense cases, but we do not have paralegals for juvenile defense or child welfare parental defense. We do not have staff investigators either. Staff investigators would be very helpful. We have some private investigators, but they are private and take cases on an hourly rate.

22. Indigent defense in Utah is way underfunded . . . even now in 2019 with the IDC system in place. Private attorneys, who have conflict contracts with the counties, are NOT paid anything extra to go to trial or do appeals. There is an UNETHICAL incentive to not go to trial or do an appeal if you're not going to get paid outside of your flat fee contract. County contracts do not offer realistic, honest, ethical compensation to go to trial or do appeals in Utah. Will this IDC survey make any difference? I doubt it—more of the same—all talk and no realistic money for the conflict attorneys.

23. It is hard answering the time questions based upon “felonies.” Sex offenses and other cases that need investigation obviously require much more time. Same for question regarding appeals. The amount of time depends on if an ineffective assistance of counsel claim is being raised and investigation needs to be conducted for a petition for a Rule 23B hearing, and then if it gets remanded, to do that, and then re-briefing, etc.

24. It is highly likely that ineffective assistance of counsel will result if indigent defense attorneys are not adequately compensated. Inadequate compensation leads to stress that leads to lack of focus needed for proper representation.

25. The Salt Lake Legal Defender Association just doesn't have enough attorneys to spread the caseload around—I cannot even count the number of justice court cases I have. It's probably upwards of 300. I'm in court literally every single day, sometimes all day, and I basically never have enough time to prep my cases. I prep for trials on the weekends, call clients back a week or two later because I literally am rarely in my office or have time. The caseload is too high for each client's case to get the attention it needs. There's not enough time in a week, especially if one is attempting to take care of their mental health. It feels like

things are ALWAYS falling through the cracks because there's too many clients and too little time.

26. More resources need to be spent on treatment, housing and early intervention to avoid the cycle of clients.

27. Most counties pay the lowest bidder. Further, all counties don't pay based on experience and success. Success rates should be taken into account. Finally, jury trials are disfavored by most counties and public defenders, yet they are a true measure of a client's representation. Too many clients are pushed into pleas because attorneys don't want to try the matter, whether it's because of a lack of compensation, fear, or laziness.

28. Murder cases take less time after you have taken a number of them to trial and you have gained substantial experience. New attorneys need to take more time that more experienced attorneys do not need. Trivial motion and research work is farmed out to less experienced attorneys.

29. My average hours spent on any one case are crazy. I have a huge caseload and not enough time to dedicate to each client in court. My office needs more attorneys so that we are not overburdened and ineffective.

30. My contract rates are sufficient for cases that are resolved or that don't require more than two days of trial. However, I don't feel like the contract rates are sufficient when I'm appointed to SERIOUS cases, especially if they end in trial—things like minimum-mandatory sex offenses, violent first-degree felonies, first-degree felony distribution charges with task force involvement, etc. Hourly rates after preliminary hearings or additional contract payments for multiple-day jury trials would alleviate some of this concern.

31. My major frustration is the lack of parity in the resources and compensation of public defenders versus the district attorneys. They have more attorneys and state resources in police officers, investigators, state crime lab, etc. and yet they are trying hard to minimize what information is provided to defense counsel. See "reliable hearsay" evidence submitted in lieu of testimony at preliminary hearings, or lack of follow through in police investigation. For investigation, I find myself doing my own investigation, for matters that may provide a basis for the defense of my client, find my own witnesses what were not interviewed, checking into background of state witnesses for bias or fabrication. this is basic investigation that should have been done by the police initially or by the district attorney in preparing the case, but they don't do it because it will weaken their case. for compensation, even past the lack of pay parity, they have an inhouse daycare, gym membership, etc. all subsidized by the state. I am paying for these services on my own.

32. Not all felonies are created equal. A simple felony drug possession offense takes very little time, compared to a felony child sex offense, which may take hundreds of hours to adequately investigate and pursue defenses, even if it doesn't go to trial. DUIs are not that much different from run of the mill felonies, but they are the only special category separated out in this survey. The study should also look at types of cases by content of the charge (theft, drugs, sex, assault, etc.), not just level of offense. I currently have 62 open and active cases, including a capital murder case. We don't have the resources to pull me and the other attorneys assigned to the capital case off of our other cases. Consequently, although there is a mountain of work to be done on the capital case, all the other cases keep popping up with more time-sensitive matters, and we do not have the time necessary to focus on the most

important case in our office. We also do not have funding for in-house investigators or social workers. We have to hire out investigative work, which means we have to pick and choose which cases will be adequately investigated. Our clients are also left to their own devices to try to get into drug and mental health treatment, housing, Supplemental Security Income disability, etc.

33. Nothing in these caseload questions or time questions reflect transfer cases which take a considerable amount of time. On average, a transfer case taken through all hearings, takes on average 200 plus hours per case.

34. Our office seems to have quite an onerous caseload right now, and many of the cases take a great deal of work. Also, the existence of body cam videos has greatly increased the amount of time that is needed to fully prepare cases as it takes a lot of time to review these videos.

35. Public defenders are paid too little, in general, but the discrepancy between the pay for juvenile and adult public defenders is appalling. There is no reason that we should not be compensated the same and with the same incentive package. Our rate of pay and other benefits should have parity with each other and with the district attorneys. Providing quality juvenile defense shouldn't be worth less than adult defense. Public defenders need access to ample investigators and social workers that are in-house. We shouldn't have to contract with outside investigators. This limits the clients' ability to access new facts and follow-up information. To have offices without investigators and social workers is not fulfilling our promise to our clients. Plus, it provides an unfair advantage that the District Attorney's Office has investigators on its payroll. Also, our caseloads are too high. This questionnaire did not ask about the numbers of juvenile transfer cases on our caseloads. I believe the National Juvenile Defender Center suggests limiting the caseload of those attorneys who have transfer cases because of the extreme number of hours required to adequately represent those youth. Given the number of transfer cases filed lately (at least in Salt Lake County) it is not appropriate for attorneys balancing those caseloads to continue to balance the rest of their full caseload, which is probably too big to start with.

36. Re: misdemeanor appeals. I wasn't clear if this contemplated an appeal de novo from justice court to district court, or if it contemplated an appeal to an appellate court. If it contemplated de novo appeal, please disregard my response as nonresponsive. I answered assuming the question contemplated an appeal to an appellate court, which is very different than a de novo appeal. The disparity in allocation of resources between the prosecution and public defenders is appalling. The two brightest examples in my neck of the woods that jump to mind are (1) Hiring 15 new prosecuting attorneys to handle the workload. Given that the public defenders handle approximately 80–85% of the cases the state prosecutes, it stands to reason that the public defenders should be funded to hire 11–12 new attorneys to handle that same caseload. At least one county commissioner has gone on record expressing skepticism of whether we really need that many new attorneys. (2) Giving the public defender office a 60-day eviction notice. One of the completely foreseeable consequence of increasing the County Attorney's attorneys by over 50% is that they would need office space. The County's solution: give a 60-day eviction notice to the public defenders to create space for their new hires. There was no prior notice. The first anyone in our office heard about this was when we were blind-sided with the eviction notice. For a county populated by people who predominantly profess to believe in limited government, the way we spend our money is

curious. One would think that there would be more emphasis on funding the entity that provides the most significant check on the exercise of the State's police power. And even more ironic is that the disparity in spending works to the detriment of the poorest among us.

37. The "default" times provided for felony DUIs and misdemeanor DUIs makes no sense to me. Why would a felony take less time, when so much more is at stake and when an additional hearing (preliminary hearing) is a likelihood?

38. The amount of time it takes to complete an appeal varies enormously based on the case. Based on my own data, I have had cases consuming anywhere from 4 hours of attorney time (sentencing case disposed of without briefing) to well over 300 hours of attorney time (supreme court case with multiple state constitutional issues of first impression). On average, a sentencing case might take 40 hours. An average felony appeal following a jury trial (no supreme court briefing, no petition for certiorari, and no motion for 23B remand) might take about 200 hours. However, if a motion for Rule 23B remand is necessary and granted, or if a petition for certiorari is necessary and granted, either one of those events will add an average of at least 100 hours to the time the appeal would take from beginning to end.

39. The current going rate for indigent appeals is shockingly low. Rough math suggests that, for example, Salt Lake County Legal Defenders Association *saves money* by conflicting a case. To wit: Assume that a single attorney could handle 2 merits appeals a month, on average, over the year. (In reality, I don't think that's possible.) At \$7,000 per, that's \$168,000 of gross income/year. Sounds okay at first glance. But one needs to account for costs. Take out taxes (let's be generous and say about 30%): \$118k No benefits included, so take out health insurance (national average for single male is ~ 5300/year—let's round down—and keep in mind that this is not family coverage, doesn't include dental coverage, etc.): \$113k And of course the Bar wants a lot of money for the privilege, including continuing legal education (CLE) sessions which for rostered attorneys have different CLE requirements that are somewhat more challenging to meet, plus you need to carry malpractice insurance which isn't cheap either (let's estimate \$2k): \$111k We also haven't considered that there's no retirement in that gross compensation number, so that needs to come out. Financial planners suggest saving 15%: \$95k So now we're not even in six-figure territory and we haven't even considered the overhead of an office, equipment, internet and phone, research tools, or support staff who are absolutely necessary if we keep the fiction that 24 cases/year is even theoretically possible. Not to mention the cost of servicing the debt that most attorneys incur to get the Juris Doctorate degree in the first place (there's no public service loan forgiveness for private practice). Basically, a private indigent defender would need to support herself and a small office on less than \$100k, and even that number is very generous given the assumptions above.

40. The murder estimate needs to be divided in 2. I put the most hours it would let me put. For simple murder it could be 200–500 hours. If it is an aggravated murder case it would be more like 2000 and if they certify death it would be more like 10000 hours, but those cases last several years.

41. The only way to keep caseloads manageable and the ability to give each client an adequate defense, I believe the following should be done: First, create a statewide Public Defender Office. That way each district would have the necessary support staff to render an adequate defense to our clients. We need to be on a level playing field with the state. At least as much as possible. Second, obtain a group of qualified investigators that meet a certain level

of experience and quality. There are too many Private Investigators that have no real experience. I searched a very long time to find a pair of investigators that can do the job required to adequately represent my clients. Third, establish a group of expert witnesses that we can go to in order to obtain assistance to adequately represent our clients. A group of experts in all the typical fields involved in the criminal justice system. Finally, establish some certified Labs we can obtain testing of evidence in our cases. If we had a Statewide Public Defenders Office with support staff along with a group of investigators, experts, and labs to choose from would definitely help us be more efficient with caseloads management and lowering the use of our time in locating and researching investigators, experts, and labs on their credibility and prior court experience. Plus we would have the confidence that these groups would have experience in what is needed and how to deliver their services to our clients. Just like the state crime lab is for the prosecutors and like the prosecutors own “in-house” investigators. I hope that makes sense.

42. The time needed for a felony appeal, from beginning to end, varies dramatically from case to case. A sentencing appeal, which does not go to full briefing and instead gets resolved on a sua sponte motion for summary disposition, probably takes an average of 40 hours. An average felony appeal in the court of appeals, with no petition for certiorari and no motion for remand under rule 23B, probably averages around 200 hours. But often cases exceed the average when a 23B remand is necessary or if a petition for certiorari is filed. On top of this, if cert is granted, briefing and oral argument to the supreme court can add well over 100 hours to the time it takes to complete an appeal. Furthermore, we only have time tracking information available beginning from January of this year, and appeals regularly take longer than a year to complete.

43. The time spent on an appeal from beginning to end varies enormously. For example, a sentencing appeal, resolved on a sua sponte motion for summary disposition, takes an average of 40 hours. An average felony appeal, with no petition for certiorari and no motion for remand under Rule 23B, takes an average of 200 hours. However, if it is necessary to conduct a Rule 23B investigation, or if a petition for certiorari is necessary and granted, either one of those events will add an average of at least 100 hours to the time the appeal would take from beginning to end.

44. This is a good start.

45. Time spent on any given appeal may vary according to whether the case also requires a Rule 23B motion or petition for certiorari. A Rule 23B motion will add, on average 100 hours to each appeal. An unsuccessful cert. petition will probably add about 20–50 hours to a case while a successful cert. petition will add about 100 hours.

46. Too burdensome acting as a social worker/therapist as opposed to lawyer. Not enough specialized support to fulfill these needs for substance abuse and mental health clients. And with the indigent population, that’s about 90% of the clients.

47. Utah’s indigent defense funding is 49th in the US. Washington County is the least funded county in Utah. Enough said.

48. We have been tracking our time for the last year, and appeals generally take longer than a year. We should have better data next year. A sentencing appeal can take about 40 hours. An average appeal will take about 200. However, if that appeal goes up on cert or if it

goes down on a 23B remand, that will add hours. A 23B remand procedure can take 100 hours.

49. We hire investigators as needed, but always with an eye to costs, and not always based on need, or improved representation.

50. When the County Attorney's Office gets 15 additional attorneys and we get ZERO that says a lot about how this county values indigent defense, add to that being evicted from our offices because we are not "core county personnel" pretty much finishes it.

51. Why is Utah's indigent defense commission actively fighting to undermine Utah's largest public defender office? Years have been spent building a bureaucracy instead of supporting and expanding what works. Now we have different organizations competing for the precious few dollars allotted by the government for indigent defense, and we are seeing power grabs by a commission that was created to provide GUIDELINES for the improvement of indigent defense statewide. WE NEED GUIDELINES so that the counties can comply with them. We do not need another agency to administer these cases. We already have several. IDC needs to scale back and DO THEIR JOB BEFORE EXPANDING TO TAKE OVER STATEWIDE INDIGENT DEFENSE. What good is a statewide office if we don't have accurate and reasonable standards? Who will listen to a statewide office if it creates its own standards? An independent agency needs to determine standards, including caseloads, funding etc. . . . that is the ONLY way the legislators will listen. So, dear IDC members: STOP THE TAKEOVER. Step back and do the most important job in indigent defense: provide accurate standards and guidelines that the rest of us can use to provide effective representation to our clients.

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