

Public Defense Standards

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Deason Criminal Justice Reform Center

History of Public Defense Standards

- **ABA**
 - **Providing Defense Services (1967, latest edition 1992)**
 - **Guidelines for Negotiating and Awarding Contracts for Criminal Defense Attorneys (1985)**
 - **Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989)**
 - **Defense Function Standards (latest edition 2017)**
- **National Advisory Commission (NAC) on Criminal Justice Standards (1973)**
- **NLADA**
 - **National Study Commission on Defense Services Report (1974-76)**
 - **Standards for Negotiating Contracts for Criminal Defense (1984)**
 - **Model Contract for Public Defense (2000)**
 - **Standards for Administration of Assigned Counsel Programs (1989)**
 - **Defender Training Standards (1997)**

ABA 10 Principles – 2002 Version

- **Designed “to provide experts and non-experts alike with a quick and easy way to assess a public defense delivery system and communicate its needs to policymakers.”**
- **Simple way to assess the important components of public defense.**
- **Recognized by public defense agencies, courts, legislatures, and policymakers.**
- **Attorney General Eric Holder: The 10 Principles are “the building blocks of a well-functioning public defender system.”**
- **Preconditions for good public defense**

Revising the ABA 10 Principles

Why Revised?

- **Over 20 years**
- **Changes to public defense practice**
 - **Technology**
 - **Cultural competency**
 - **Support services**
- **Need for more clarity while maintaining core commitments of the original Principles**

Revision Process

- **Diverse group of public defenders, public defense experts, and academics**
- **Comments: NLADA, NAPD, NACDL, 6th Amendment Center**
- **ABA Entities:**
 - **Standing Committee on Legal Aid and Indigent Defense**
 - **Criminal Justice Section**
 - **Section on Civil Rights and Social Justice**

Adoption of the Revised Principles

- **Adopted as ABA policy by the House of Delegates at the August 2023 Annual Meeting.**
- **The full text of the Revised 10 Principles, including footnotes, has the force of ABA policy.**
- **While original commitments of 10 Principles have been preserved, some Principles have been consolidated or moved to make room for new language elsewhere.**

Principle 1: Independence

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Public Defense Providers and their lawyers should be **independent** of political influence and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting agency and its lawyers. To safeguard independence and promote effective and competent representation, a **nonpartisan board or commission** should oversee the Public Defense Provider.

Principle 1: Independence

The **selection** of the head of the Public Defense Provider, as well as lawyers and staff, should be based on relevant qualifications and should prioritize diversity and inclusion to ensure that public defense staff are as diverse as the communities they serve. Public Defender Providers should have **recruitment and retention plans** in place to ensure diverse staff at all levels of the organization. Neither the chief defender nor staff should be **removed** absent a showing of good cause.

Principle 2: Funding, Structure & Oversight

Principle 2: Funding, Structure, and Oversight

For state criminal charges, the responsibility to provide public defense representation rests with the state; accordingly, there should be **adequate state funding and oversight** of Public Defense Providers.

Where the caseloads allow, public defense should be a **mixed system**: primarily dedicated public defense offices, augmented by additional Public Defense Providers to handle overflow and conflict of interest cases.

Principle 2: Funding, Structure, and Oversight

The **compensation** for lawyers working for Public Defense Providers should be appropriate for and comparable to other publicly funded lawyers. Full-time public defender salaries and benefits should be no less than the salaries and benefits for full-time prosecutors. Other provider attorneys should be paid a reasonable fee that reflects the cost of overhead and other office expenses, as well as payment for work.

Principle 2: Funding, Structure, and Oversight

Investigators, social workers, experts, and other staff and service providers necessary to public defense should also be funded and compensated in a manner consistent with this Principle. There should be at least **parity of resources** between public defense counsel and prosecution.

Principle 3: Control of Workloads

Principle 3: Control of Workloads

The **workloads** of Public Defense Providers should be regularly **monitored and controlled** to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations.

Principle 3: Control of Workloads

Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology. Jurisdiction-specific workload standards may be employed when developed appropriately, but national workload standards should never be exceeded.

Principle 3: Control of Workloads

If workloads become excessive, Public Defense Providers are **obligated to take steps necessary to address excessive workload**, which can include notifying the court or other appointing authority that the Provider is unavailable to accept additional appointments, and if necessary, seeking to withdraw from current cases.

Principle 4: Data and Transparency

Principle 4: Data Collection & Transparency

To ensure proper funding and compliance with these Principles, states should, in a manner consistent with protecting client confidentiality, **collect reliable data** on public defense, regularly review such data, and implement necessary improvements.

Principle 4: Data Collection & Transparency

Public Defense Providers should collect reliable data on **caseloads** and workloads, as well as data on **major case events**, use of investigators, experts, social workers and other **support services**, **case outcomes**, and **all monetary expenditures**.

Principle 4: Data Collection & Transparency

Public Defense Providers should also collect **demographic data** on lawyers and other employees. Providers should also seek to collect demographic data from their clients to ensure they are meeting the needs of a diverse clientele.

Principle 4: Data Collection & Transparency

Aggregated data should be **shared** with other relevant entities and made **publicly available** in accordance with best practices.

Principle 5: Cost, Fees, and Eligibility

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Public defense should be provided at **no cost** to any person who is financially unable to obtain adequate representation without substantial burden or undue hardship... Jurisdictions should not charge an application fee for public defense services, nor should persons who qualify for public defense services be required to contribute to or reimburse defense services.

Principle 5: Eligibility & Fees for Public Defense

Persons should be screened for **eligibility** in a manner that ensures information provided remains confidential. The process of applying for public defense services should not be complicated or burdensome, and persons in custody or receiving public assistance should be deemed eligible for public defense services absent contrary evidence.

Principle 6: Early and Confidential Access

Principle 6: Early & Confidential Access to Counsel

Counsel should be **appointed** immediately after arrest, detention, or upon request. Prior to a client's first court appearance, counsel should confer with the client and prepare to address pretrial release and, if possible, probable cause. Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information.

Principle 6: Early & Confidential Access to Counsel

Waiver of the right to counsel and waiver of the person's right to court appearance should never be coerced or encouraged. Before a person may waive counsel, they must be provided a meaningful opportunity to confer with a defense lawyer who can explain the dangers and disadvantages of proceeding without counsel and, if relevant, the implications of pleading guilty, including the direct and collateral consequences of a conviction.

Principle 7: Experience, Training & Supervision

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A Public Defense Provider's plan for the assignment of lawyers should ensure that the **experience, training, and supervision** of the lawyer matches the complexity of the case. . . Lawyers and staff should be required to attend continuing education programs or other training to enhance their knowledge and skills. Public Defense Providers should provide training at no cost to attorneys, as well as to other staff.

Principle 7: Experience, Training & Supervision

Public Defense Providers should **regularly supervise** and systematically evaluate their lawyers to ensure the delivery of effective and competent representation free from discrimination or bias. In conducting evaluations, national, state, and local standards, including ethical obligations, should be considered.

Principle 7: Experience, Training & Supervision

Public Defense Providers should ensure that attorneys and other staff have the necessary training, skills, knowledge, and awareness to effectively represent clients affected by poverty, racism, and other forms of discrimination in a **culturally competent manner. Public defense counsel should be specifically trained in raising legal challenges based on racial and other forms of discrimination. Public defense counsel and other staff should also be trained to recognize biases within a diverse workplace.**

Principle 8: Vertical Representation

Principle 8: Vertical Representation

To develop and maintain a relationship of trust, the same defense lawyer should **continuously represent** the client from assignment through disposition and sentencing in the trial court, which is known as “vertical” representation. Representation by the defense lawyer may be supplemented by specialty counsel, such as counsel with special expertise in forensic evidence, immigration, or mental health issues, as appropriate to the case. The defense lawyer assigned to a direct appeal should represent the client throughout the direct appeal.

Principle 9: Essential Components of Effective Representation

Principle 9: Effective Representation

Public Defense Providers should adopt a **client-centered approach** to representation based around understanding a client's needs and working with them to achieve their goals.

Principle 9: Effective Representation

Public Defense Providers should have the assistance of investigators, social workers, mitigation specialists, experts, and other **specialized professionals necessary to meet public defense needs**. Such services should be provided and controlled by Public Defense Providers. Additional contingency funding should be made available to support access to these services as needed.

Principle 9: Effective Representation

Public Defense Providers should address **civil and non-legal issues** that are relevant to their clients' cases. Public Defense Providers can offer direct assistance with such issues or establish collaborations with, or provide referrals to civil legal services organizations, social services providers, and other lawyers and non-lawyer professionals.

Principle 10: Equal Partners in the Justice System

Principle 10: Public Defense as Legal System Partners

Public Defense Providers should be included as **equal participants** in the legal system. Public Defense Providers are in a unique position to identify and challenge unlawful or harmful conditions adversely impacting their clients.

Principle 10: Public Defense as Legal System Partners

Legislative or organizational changes or other legal system reforms should not be considered without **soliciting input** from representatives of the defense function and evaluating the impact of such changes on Public Defense Providers and their clients. To the extent any changes result in an increase in defender workload or responsibilities, **adequate funding** should be provided to Public Defense Providers to accommodate such changes.

Uses of the ABA 10 Principles

- **System Evaluation**
 - **6th Amendment Center Reports**
- **Jurisdiction-Specific Standards**
 - **Michigan Standards**
 - **Standard 1: Education and Training**
 - **Standard 2: Initial Interview**
 - **Standard 3: Investigation and Experts**



National Public Defense Workload Study

Topics to be Covered

Background and Methodology

Results of the National Public Defense Workload Study

Application to Assess Staffing Needs

- Caseload
- Staffing
- Needs Assessment

Jurisdictions Applying the Standards

Why set workload standards?

Model Rule of Professional Conduct

- **Rule 1.1 requires Competence**

Competence requires not only legal knowledge and skill, but the “thoroughness and preparation reasonably necessary for the representation.”

- **Rule 1.3 requires Diligence**

Comment 2 to Rule 1.3. notes that a “lawyer’s workload must be controlled so that each matter may be handled competently.”

ABA Ethics opinion- 06-441

The ethics rules “provide no exception for lawyers who represent indigent persons charged with crimes.”

“All lawyers, including public defenders, have an ethical obligation to control their workloads.”

ABA Ten Principles – Principle 3




“Defense counsel’s workload is controlled to permit the rendering of quality representation.”

Why set workload standards?

- **ABA Model Rule 1.7(a)(2) – Concurrent Conflict**
- **Lawyers cannot undertake the representation of more clients than they can competently represent.**
- **Excessive caseloads create a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client.**



History of Public Defense Workload Standards

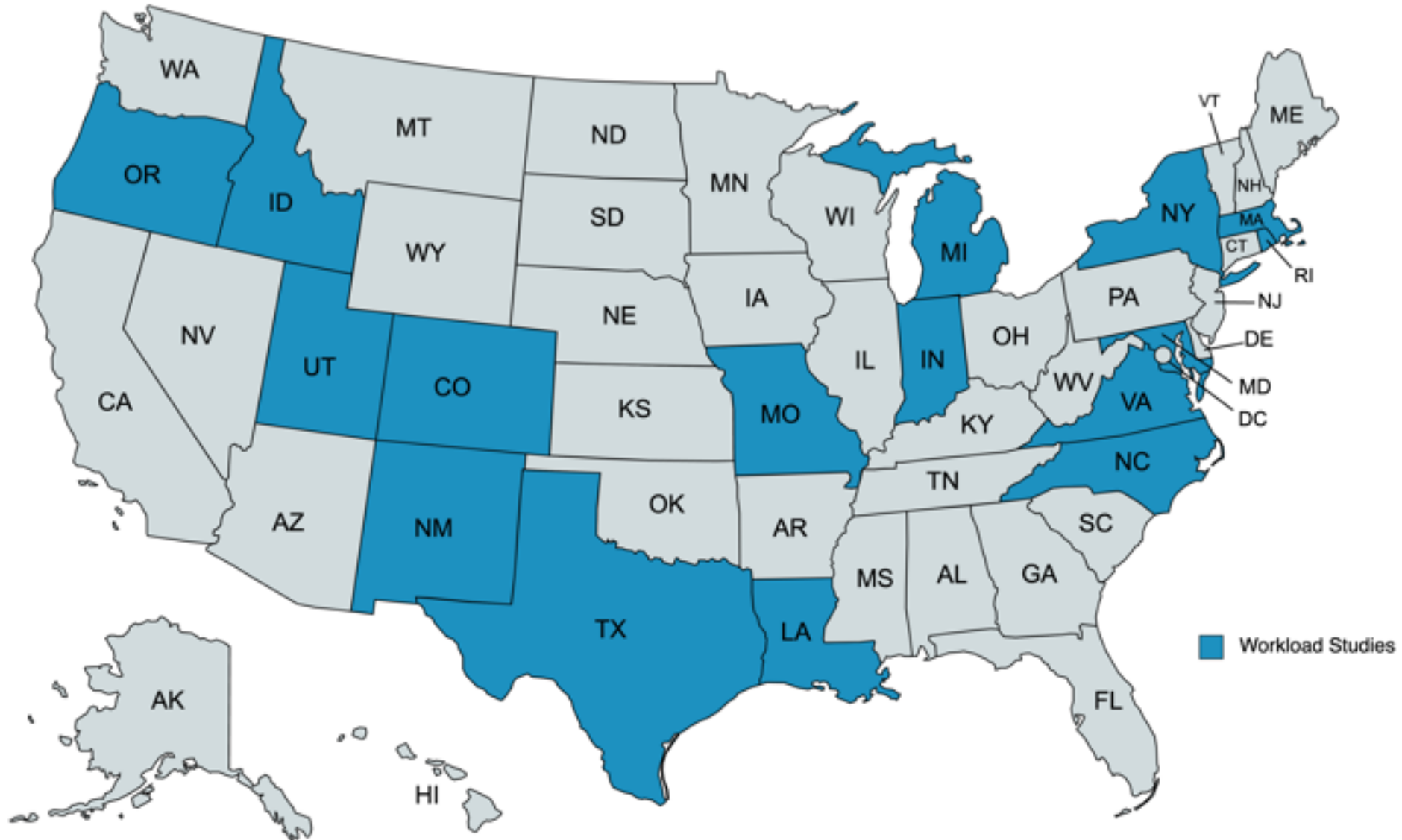
	<p>1973 NAC Standards 150 felonies/year 400 misdemeanors/year</p>
	<p>Deficiencies of NAC Standards Lack of defensible methodology Failure to distinguish case types</p>
	<p>Jurisdiction-specific efforts to set workload standards through empirical studies</p>

Overview of Project



- **Systematic Review of Workload Studies**
 - **Existing, Jurisdiction-Specific Public Defense Workload Studies**
- **Scope = Adult Criminal**
- **What is a Delphi Panel?**
- **Role of the Delphi Panel**
 - **Expertise**
 - **Consensus**

Jurisdictions with Workload Studies



Public Defense Workload Studies 2005 – April 2022



ABA SCLAID	RAND	NCSC	Other
CO (2017)	MI (2019)	MD (2005)	ID (Idaho Policy Institute, 2018)
IN (2020)	NY non-NYC (2016)	NC (2019)	TX (Public Policy Research Institute, 2015)
LA (2017)	UT (2021)	NM (2007)	
MO (2014)		VA (2010)	
NM (2022)			
OR (2022)			
RI (2017)			



Results of the National Public Defense Workload Study

Results of the National Workload Study

Case Type
Felony – High – LWOP
Felony – High – Murder
Felony – High – Sex
Felony – High – Other
Felony – Mid
Felony – Low

Case Type
DUI – High
DUI – Low
Misdemeanor – High
Misdemeanor – Low
Probation/Parole Violations

What is a Case Weight?

- **Case weight = average hours per case, by case type**
 - **Mid-Level Felony: 57 hours/case**
- **Why use a case weight?**
 - **Focused on time needed to do work**
 - **Constructed from time estimates on attorney tasks**
 - **Adjustable to circumstances**
 - **Mixed caseloads**
 - **Part-time attorneys**

Lawyer Activities/Tasks:

Client Communication and Care
Discovery and Investigation
Experts
Legal Research, Motions Practice,
Other Writing
Negotiations
Court Preparation
Court Time
Sentencing/Mitigation and Post-
Adjudication

Results of the National Workload Study

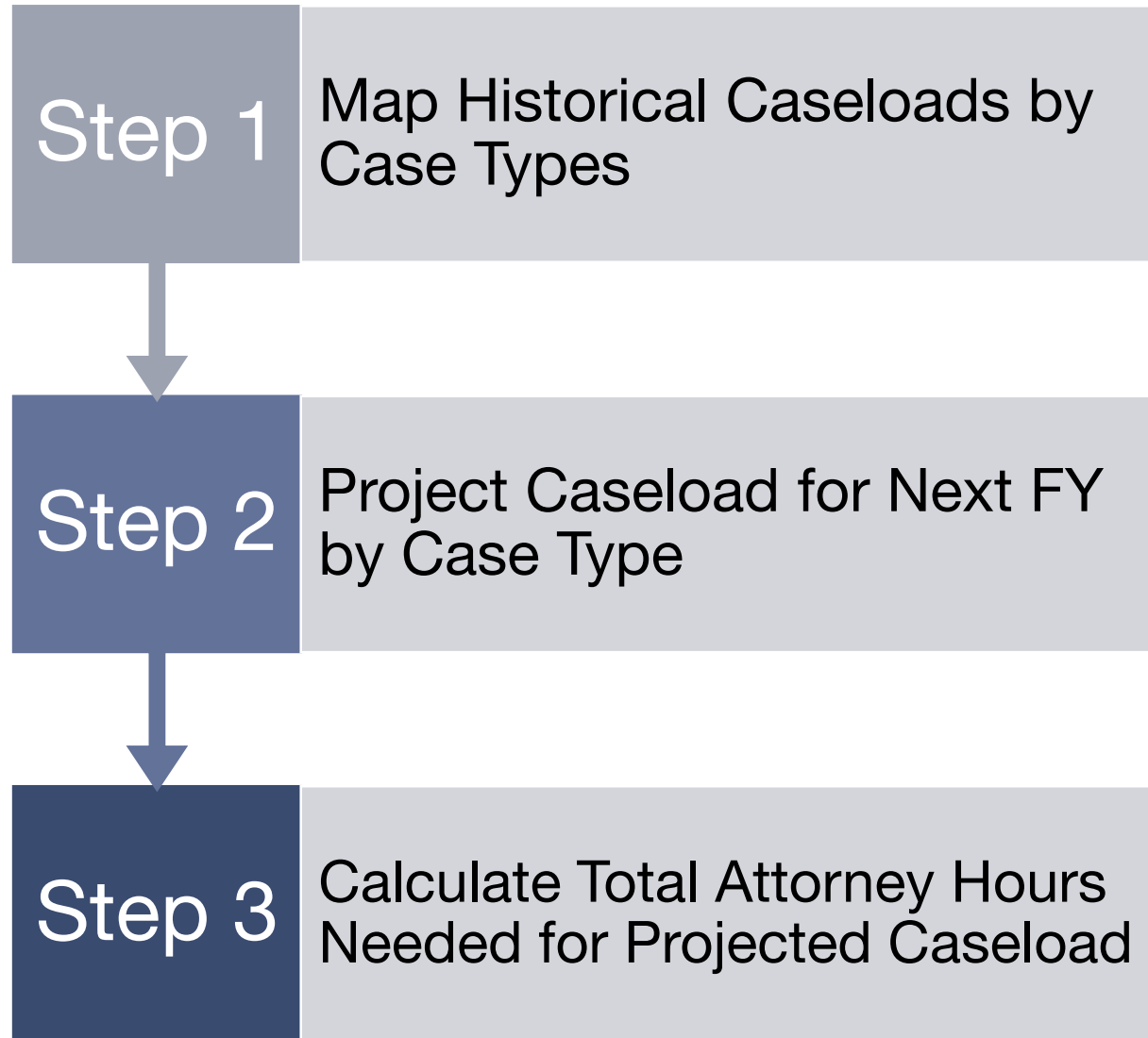
Case Type	Case Weight
Felony – High – LWOP	286.0
Felony – High – Murder	248.0
Felony – High – Sex	167.0
Felony – High – Other	99.0
Felony – Mid	57.0
Felony – Low	35.0

Case Type	Case Weight
DUI – High	33.0
DUI – Low	19.0
Misdemeanor – High	22.3
Misdemeanor – Low	13.8
Probation/Parole Violations	13.5



Applying the National Public Defense Workload Study

Application of the NPDWS - Caseload



Results of the National Workload Study

Case Type
Felony – High – LWOP
Felony – High – Murder
Felony – High – Sex
Felony – High – Other
Felony – Mid
Felony – Low

Case Type
DUI – High
DUI – Low
Misdemeanor – High
Misdemeanor – Low
Probation/Parole Violations

NPDWS Felony Case Types

Case Type	Description	Sentencing Range	Examples	Case Weight
01: FELONY – HIGH – LWOP	Felonies with possible sentences of life without parole (LWOP)	Life without parole		286.0
02: FELONY – HIGH – MURDER	Non-LWOP felonies involving intentional killing of a person	Up to life with possibility of parole	First degree murder; malice murder; second degree murder; felony murder	248.0
03: FELONY – HIGH – SEX	Non-LWOP felonies involving serious sex offenses	More than 15 years (including life with possibility of parole)	Rape; aggravated sexual assault; child sex abuse; child pornography with victim	167.0
04: FELONY – HIGH – OTHER	Non-LWOP felonies (including DUIs resulting in death), other than charges falling into the high felony categories for murder or serious sex offenses	More than 15 years (including life with possibility of parole)	Negligent homicide; manslaughter; aggravated assault; assault with a deadly weapon; kidnapping	99.0
05: FELONY – MID	Felonies (including DUIs resulting in death), including serious property crimes, serious drug distribution crimes, and less serious violent crimes	Possible sentences of 3 to 15 years	Arson; armed robbery; grand theft; breaking and entering; drug distribution or manufacturing; battery	57.0
06: FELONY – LOW	Felonies (including DUIs resulting in death), including less serious property crimes, less serious drug felonies, and minor crimes of violence	Possible sentences of up to 2 years	Theft; larceny; burglary; simple assault	35.0

NPDWS DUI, Misdemeanor Case Types

Case Type	Description	Sentencing Range	Examples	Case Weight
07: DUI – HIGH	Repeat DUIs, serious DUIs, and DUIs causing non-fatal injuries (can be a felony or misdemeanor)	Possible sentences of more than 2 years		33.0
08: DUI – LOW	First or successive DUIs (typically misdemeanors)	Possible sentences of up to 2 years		19.0
09: MISDEMEANOR – HIGH	Serious misdemeanors (other than DUIs) involving enhanceable misdemeanors (such as misdemeanors triggering repeat offender sentencing), sex misdemeanors, or violent misdemeanors	Any	Domestic violence; misdemeanor assault; misdemeanor animal cruelty; exposure	22.3
10: MISDEMEANOR – LOW	Less serious misdemeanors (other than DUIs or those falling into the high misdemeanor category)	Any	Petty theft; drug possession; drug paraphernalia; trespass; status offenses; criminal traffic offenses	13.8
11: PROBATION/PAROLE VIOLATIONS	Probation or parole violations derived from either felony or misdemeanor offenses	Any		13.5

Mapping Cases To Case Types

- **Definition of a Case**

- **Person-based definition (not charge-based)**
- **One defendant, single event or closely related series of events**
 - **Note: May differ from how your prosecutor and court(s) count cases**

- **Map by highest charge**

- **E.g., Individual 1 is charged with armed robbery and firearm violation**
- **Case is mapped as armed robbery**

Fictional Jurisdiction – Historical Caseload Data



Case Types	2019	2020	2021	2022	2023
Felony – High - LWOP	18	10	15	19	18
Felony – High - Murder	9	5	9	11	12
Felony - High - Sex	12	8	12	15	14
Felony – High - Other	825	816	862	811	831
Felony – Mid	1,021	877	824	1,011	987
Felony - Low	11,914	8,821	6,237	9,178	9,254
DUI High	813	718	542	701	692
DUI Low	1,211	971	864	1,387	1,376
Misdemeanor – High	4,805	4,293	3,373	4,541	4,272
Misdemeanor – Low	15,302	12,471	8,439	12,703	11,983
Probation/Parole Violations	12,614	7,546	3,786	9,404	9,751
Total Caseload	48,544	36,536	24,963	39,781	39,190

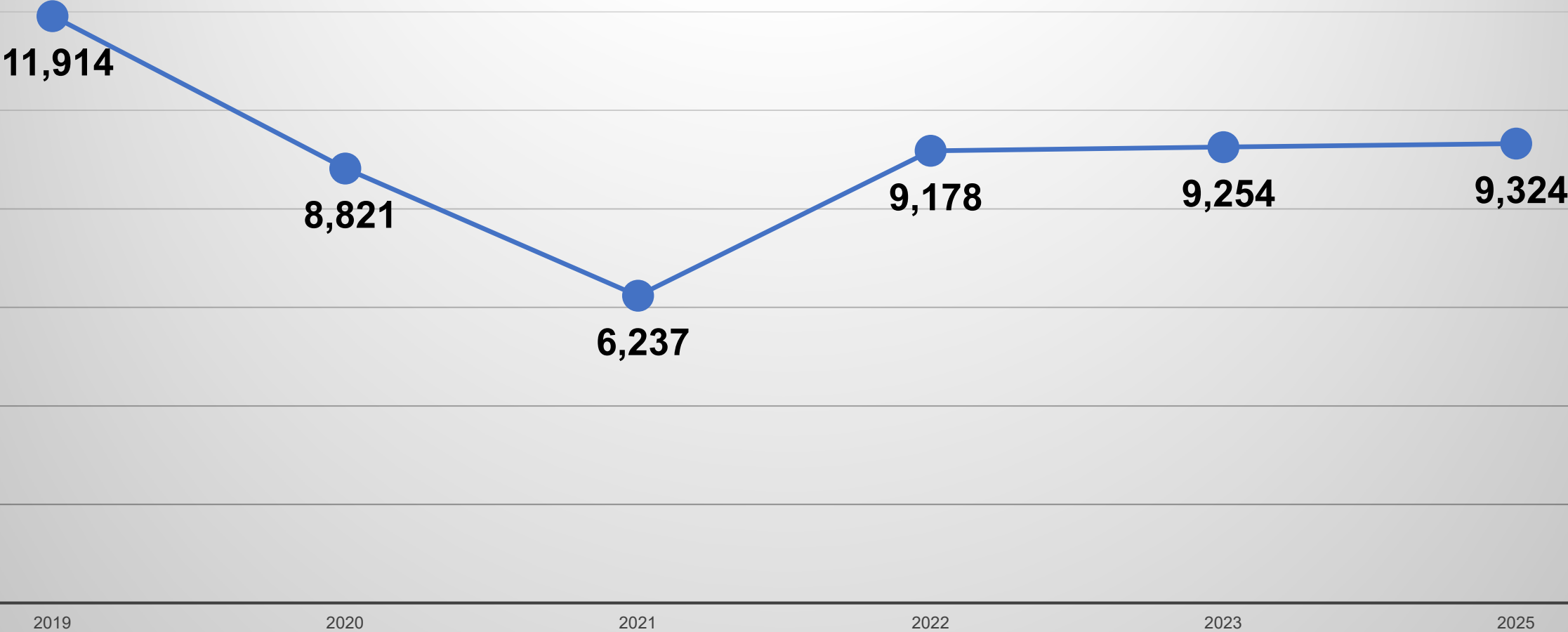
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Felony – Low Caseload Projection for 2025

Felony - Low



Total hours of attorney time needed

EXAMPLE: Case Type: Low-Level Felony



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Case Types	2019	2020	2021	2022	2023	2025 (Projected)
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Felony - High - Sex	12	8	12	15	14	15
Felony – High - Other	825	816	862	811	831	817
Felony – Mid	1,021	877	824	1,011	987	954
Felony - Low	11,914	8,821	6,237	9,178	9,254	9,324
DUI High	813	718	542	701	692	712
DUI Low	1,211	971	864	1,387	1,376	1,292
Misdemeanor – High	4,805	4,293	3,373	4,541	4,272	4,427
Misdemeanor – Low	15,302	12,471	8,439	12,703	11,983	12,743
Probation/Parole Violations	12,614	7,546	3,786	9,404	9,751	9,469
Total Caseload	48,544	36,536	24,963	39,781	39,190	39,782

FICTIONAL JURISDICTION CASELOAD: Hours Needed for 2024

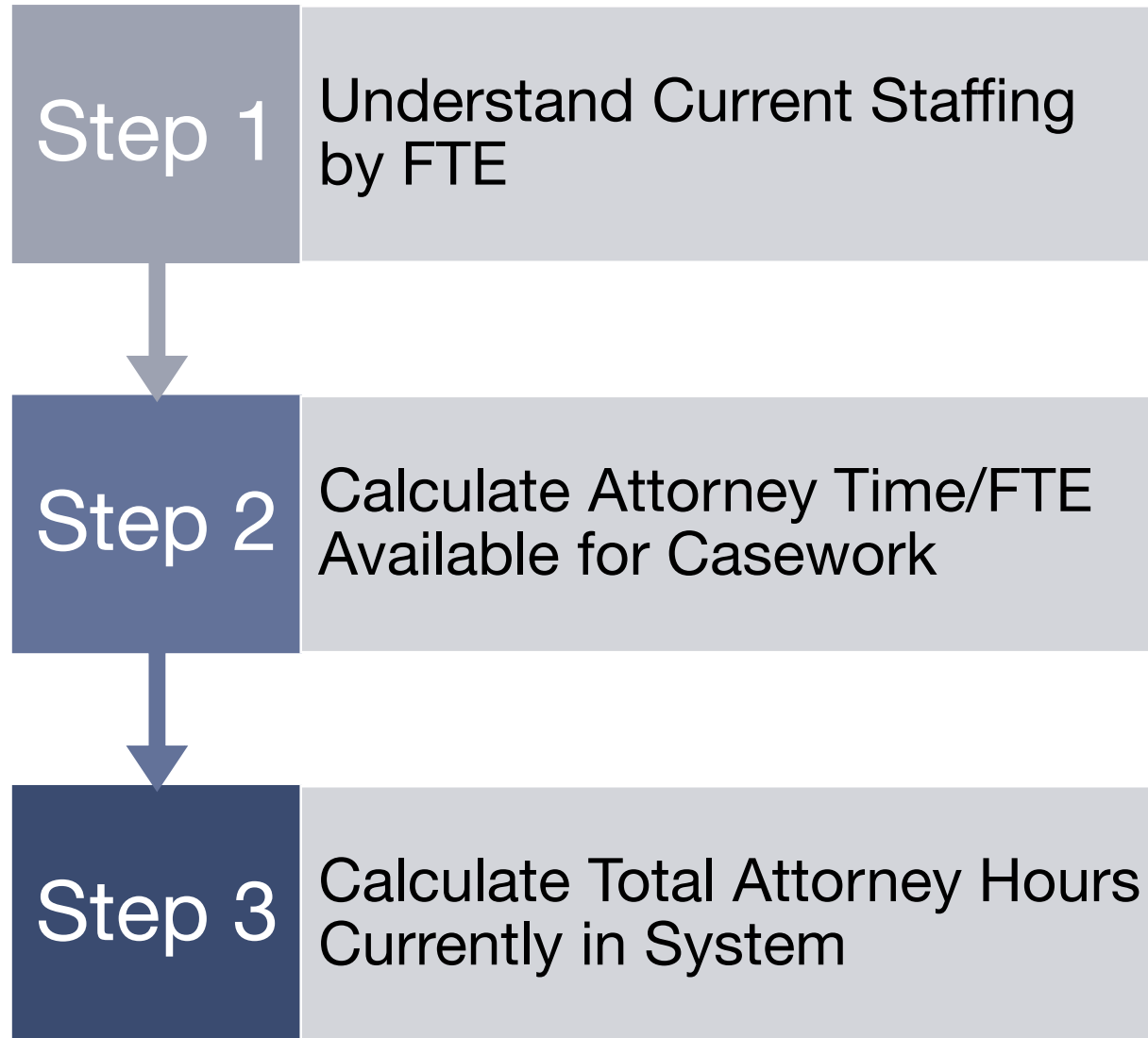
Case Type	2025 Projected	Case Weight	Total Hours Needed
Felony – High - LWOP	18	286	5,148
Felony – High - Murder	11	248	2,728
Felony - High - Sex	15	167	2,505
Felony – High - Other	817	99	80,883
Felony – Mid	954	57	54,378
Felony - Low	9,324	35	326,340
DUI High	712	33	23,496
DUI Low	1,292	19	24,548
Misdemeanor – High	4,427	22.3	98,722
Misdemeanor – Low	12,743	13.8	175,853
Probation/Parole Violations	9,469	13.5	127,832
Adult Criminal Total Cases	39,782		922,433 Hours

Total Attorney Hours Needed

Adult Criminal Caseload – 2024 Projection

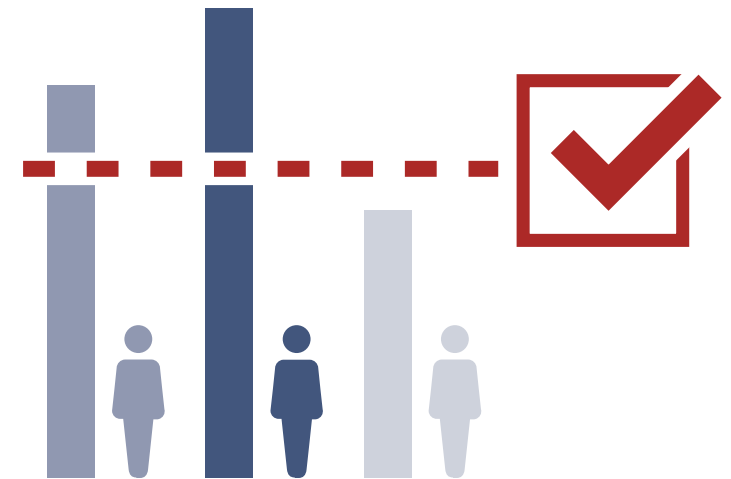
922,433
Hours

Application of the NPDWS - Staffing



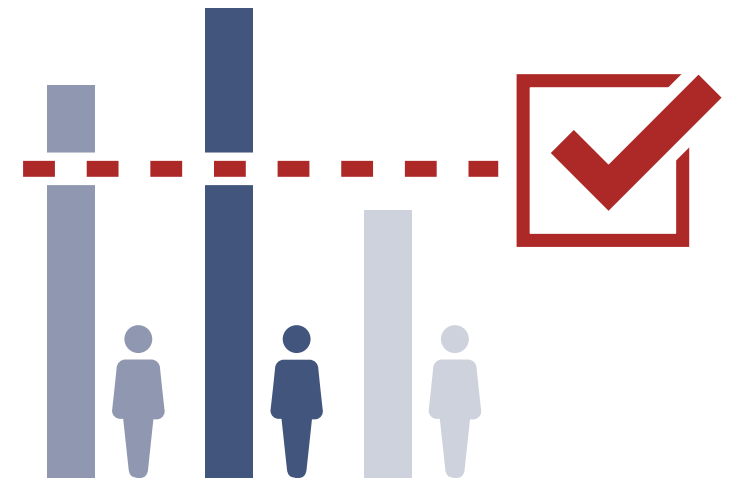
Staffing Analysis

- **Most Recent Data – 326 Attorneys FTE**
 - **1 Chief PD – No Caseload**
 - **2 Assistant Chief PD – No Caseload**
 - **1 Training Director – No Caseload**
 - **6 Division Heads – Minimal Caseload**
 - **30 Attorneys – Juvenile/Other**
- **286 Adult Criminal FTE (Non-Leadership)**



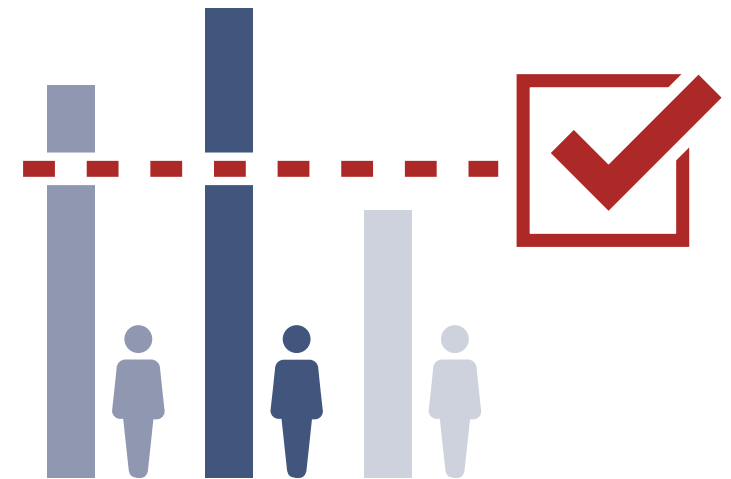
Staffing Analysis

- **286 Adult Criminal FTE (Non-Leadership)**
 - **10 Felony Unit Supervisor – 50% caseload**
 - **6 Misdemeanor Supervisors – 50% caseload**
 - **20 First Year Attorneys – 80% Caseload**
- **274 Adult Criminal FTE Attorneys**



Staffing Analysis: Case Work Hours/FTE

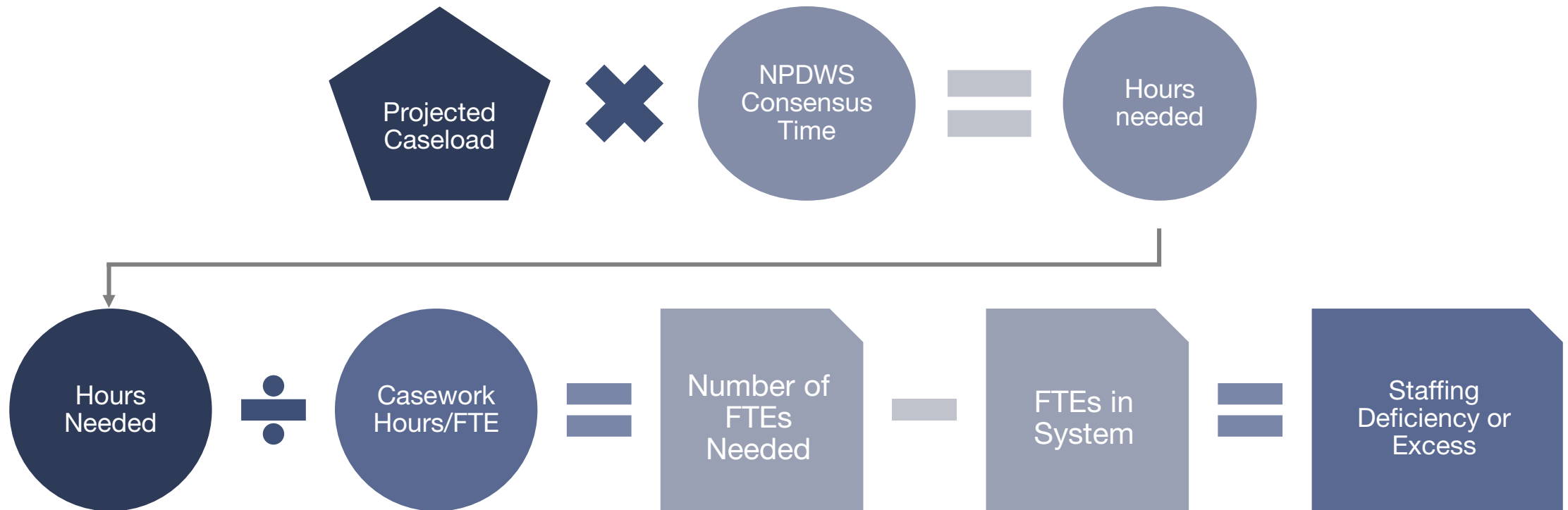
- **ABA Studies Use 2080 Hours/FTE**
 - **Conservative**
 - **40 Hours per Week/52 Weeks per Year**
- **Could Consider Deducting**
 - **Vacation/Sick Time**
 - **Training Time**
 - **Regular meetings**
 - **Outreach work**
 - **Travel time (particularly rural jurisdictions)**



In our fictional jurisdiction we will assume:

2080 Casework Hours/FTE

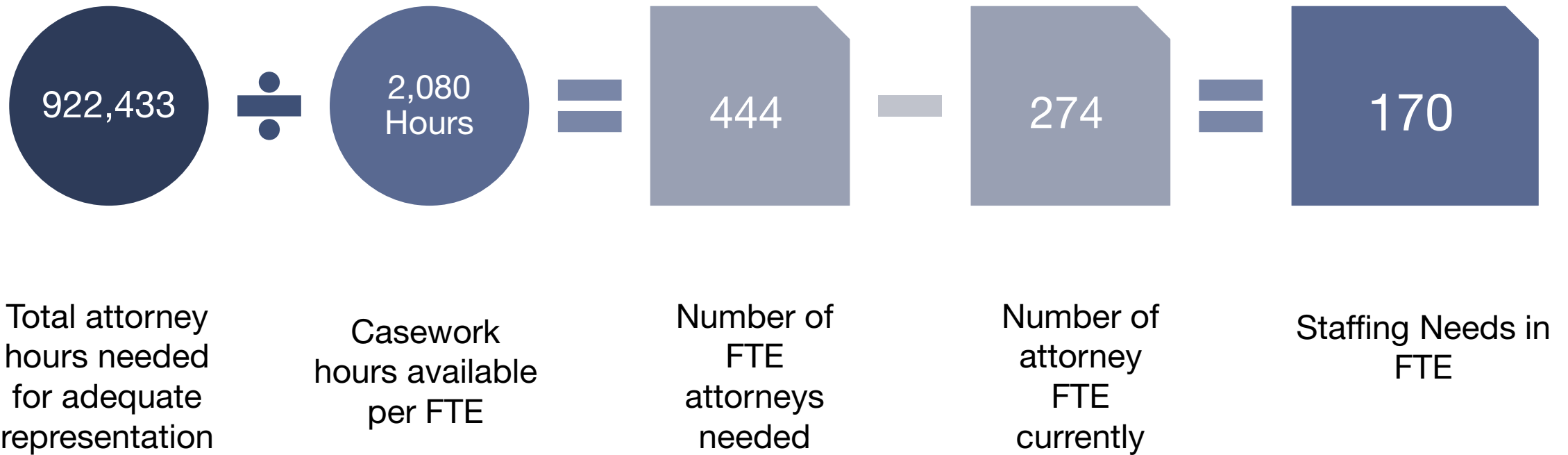
Staffing Needs Analysis



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Staffing Needs Analysis



Data Needs



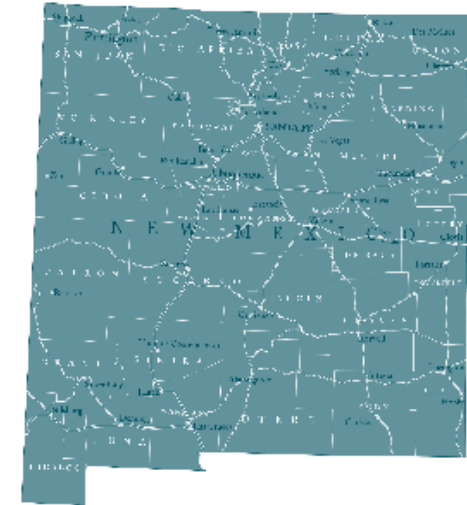
- **Identifying data needs**
 - **Historical caseloads**
 - **Time data (if available)**
 - **Staffing data**
- **Common definitions**
 - **Case (person-based counting)**
 - **Case types**
 - **Highest charge**
- **Potential results**
 - **Data inventory**
 - **Data systems upgrade**

How Jurisdictions are Applying the NPDWS

New Mexico

The New Mexico Public Defense System 5-Year Plan to Reduce Representation Deficiency

- Uses the NM Workload Study
- 5-Year Plan – Jan 2022
- Additional Resources
- Decriminalization



PREPARED BY:



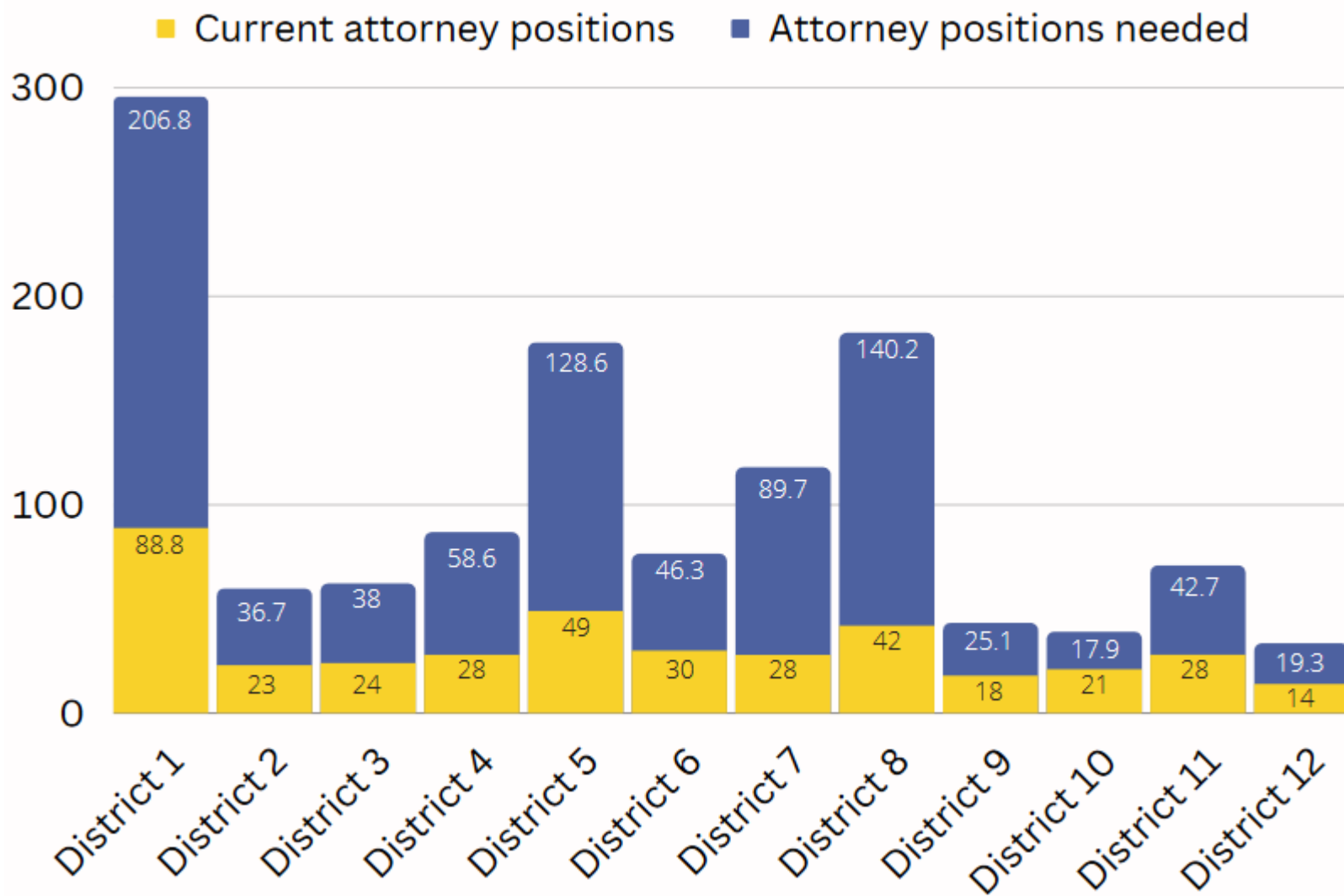
MOSSADAMS



Washington State

- **Had standards based on NAC**
 - **300-400 Misdemeanors**
 - **150 Felonies**
- **Washington Bar Association adopted NPDWS Standards by 2027**
 - **Argument focused on recruitment/retention**
 - **Board of Governors voted 12-1**
- **State Supreme Court**

Maryland



California

- **County-by-county system**
- **Guidance on how NPDWS applies in California**
- **Focused on case mapping**
- **Allows counties to apply easily and consistently**

Understanding The National Public Defense Workload Study

A Practical Guide to Mapping
Common California Offenses

December 2023

Questions?