From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Requested Comments Regarding Proposed Amendments to Indigent Defense Standards
Date: Tuesday, October 29, 2024 8:24:54 AM
Attachments: image002.png
image003.png
WSBA memo re Caseload Standards_030424.pdf

From: Michael Kawamura <michael.kawamura@piercecountywa.gov>
Sent: Tuesday, October 29, 2024 8:21 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Requested Comments Regarding Proposed Amendments to Indigent Defense Standards

Pierce County
Department of Assigned Counsel

MICHAEL R. KAWAMURA
Director

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October 23, 2024

The Honorable Chief Justice Steven Gonzalez
Washington State Supreme Court
PO Box 40929
Olympia WA 98504-0929

Dear Chief Justice Gonzalez and Members of the Court:

We appreciate the request and opportunity to provide comment regarding an issue vital to the ongoing provision of effective assistance of counsel in courtrooms throughout Washington State.

During discussions surrounding this issue, we submitted comment to the Washington State Bar Association Board of Governors in March 2024. We have attached those comments as our thoughts have not deviated significantly since then.

We fully endorse substantive review of current caseload standards and further believe existing maximum caseload standards require modification downward. However, the current proposed timelines and final caseload outcome is troubling when compared to existing logistical challenges. Indigent clients awaiting appointment of counsel and the need to curtail attorney experience qualifications as a precursor to appointment speak to ongoing realities.

Adoption and adherence to Phase I of the WSBA proposal before the Court related to staffing and available fiscal resources should be adopted. We also believe Phase II of the current proposal should be adopted. The expansion of necessary inquiry as well as corresponding time and expertise, from arraignment to sentencing, in order to provide effective assistance of counsel to clients cannot be seriously compared to what was envisioned when the current caseload maximums were adopted.

Some jurisdictions fully comply with existing standards, others do not. Given that reality, we respectfully ask the Court to consider an expanded timeline for adherence to lower caseload limits and required support services to attorneys. Current and proposed standards contemplate relevance based upon "fully supported" attorneys. This vital combination allows for meaningful workload evaluation. For this to become reality, we believe local and State participation is necessary.

As we have insufficient information as to each jurisdiction's situation, we cannot responsibly propose a one size fits all adoption phase-in period. We do believe, given the seriousness of this matter, meaningful progress and compliance with Phase I requirements should be attainable and made effective commencing January 1, 2026. Phase II should be made effective commencing January 1, 2027. Further, the Court can clearly articulate the requirements that Phase III will be adopted but defer setting a firm implementation date until meaningful data relevant to the decision of what is needed to provide effective representation is obtained and evaluated.

Securing staffing would need to commence immediately and would not fit neatly into 12-month boxes as the current proposal suggests. Further, fiscal impacts, given additional time to accommodate, would increase the likelihood of meaningful modifications.

We appreciate the opportunity to comment and the Court's attention to this most serious and complex issue. These comments come from our role as an indigent defense service provider. They are not intended to represent the views of Pierce County government.

Very truly yours,

Michael R. Kawamura
Director

MRK:aps

Pierce County
Department of Assigned Counsel

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March 4, 2024

Board of Governors
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle WA 98101-2539

Re: Proposed Caseload Standards

In anticipation of the March 7 and 8, 2024, Board of Governors (BOG) meeting at which the BOG will consider proposed revisions to the Standards for Indigent Defense, we are writing to express our appreciation for the work done by the Council on Public Defense and other knowledgeable individuals committed to public defense, and to express our support for meaningful revisions to existing workload standards. However, we cannot support proposed standard 3 as currently drafted, and particularly Standard 3.j which establishes maximum caseload numbers for felonies ranging from a low of 6 to a high of 47.

We fully support a substantive review of current caseload standards done in a reasonable timeline which allows actual reflection to determine jurisdictional needs for all in the State of Washington. While we are fully aligned with the overarching goal of supporting all lawyers engaged in the challenging work of indigent defense, tethering the entirety of Washington State, including vital independent practitioners who accept conflict case appointment, to a study that has not been vetted by any Washington State jurisdiction is troublesome.

We want to reiterate, while we are not in support of standard 3 as currently drafted, that does not mean we do not support a substantive review of existing caseload standards and a reduction in felony caseloads but rather that this must be based on data reflecting our individual jurisdictional conditions. Materials provided concerning the Rand study and proposed standards say individual jurisdictions should confirm the proposed model standards are appropriate for the jurisdiction. (Attached).

Raising legitimate concerns does not equate to anti-indigent defense. At a recent Council on Public Defense meeting there was criticism that those expressing concern with Standard 3 were anti-indigent defense and did not have an alternative. As an alternative, perhaps a phased

in implementation of a caseload reduction, followed by an assessment of the impact of the reduction which could result in an additional reduction and so on.

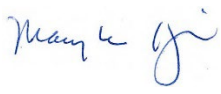
This incremental approach in caseload reduction could work in conjunction with our articulated support for modifying current language in numerous sections of the existing Indigent Defense Standards from "should" to "shall". This would provide resourced offices and supported attorneys to better evaluate appropriate caseloads for each jurisdiction. Perhaps, the Washington State Office of Public Defense (OPD) could be tasked with creating a panel of social workers, investigators, and paralegals to assist offices lacking the ability to hire fulltime employees as the current environment clearly suggests. An attorney's pending caseload should also be considered when assigning cases, and we suspect current assignment models across the State do take this into consideration. The representation that the entirety of Washington State Indigent Defense is similarly situated is not accurate.

During discussion at the February 23, 2024, Council on Public Defense Meeting, concern was voiced that more not less defendants will be harmed by reduced case limits and ongoing attorney shortage, which is a legitimate concern. We also have obligations to consider these impacts. Jurisdictions with defender shortages continue to file criminal cases.

Many of these challenges existed during discussion surrounding adoption of the WSBA Indigent Defense Standards in 2012. At that time, recognition was given that jurisdictions are different, and standards were drafted accordingly. State standards should not be drafted for particular jurisdictions.

We appreciate the time the CPD has given to reviewing current indigent defense standards and offer comments for consideration in acknowledgment of the work that has and will be done.

Sincerely,



Mary Kay High
Chief Deputy
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Counsel

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Pierce County Department of Assigned

MKH:aps

Attachments as indicated

Research Report

NICHOLAS M. PACE, MALIA N. BRINK, CYNTHIA G. LEE, STEPHEN F. HANLON

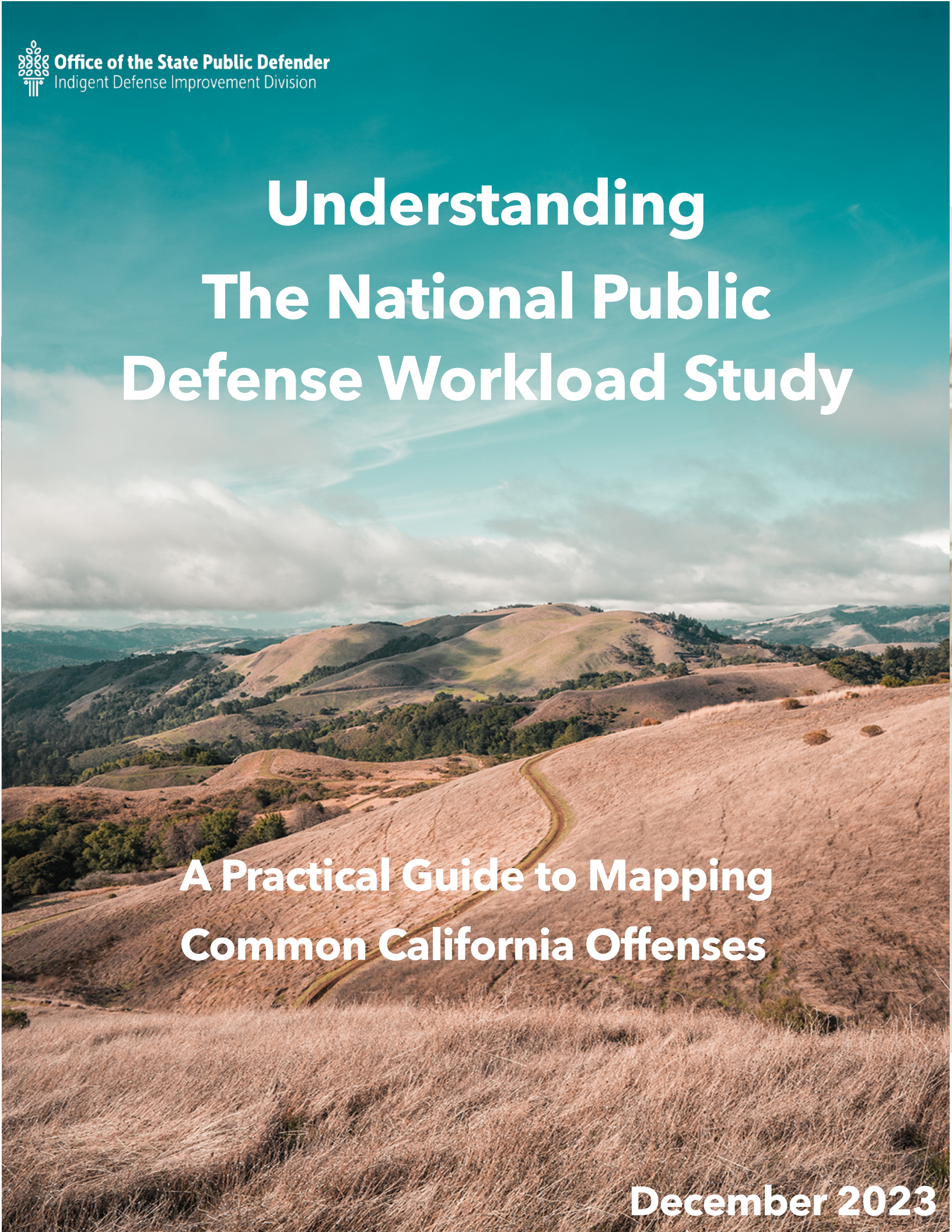
National Public Defense Workload Study

updated workload guidance could also provide useful benchmarks for federal funding decisions regarding the delivery of public defense at the state and local levels. Some limited assistance in this area already exists (e.g., the Edward Byrne Memorial Justice Assistance Grant Program), but a significant expansion of federal assistance to state and local public defense systems to reduce defender workloads will inevitably require some common metric, first for identifying the level of assistance needed, and later for measuring the degree to which resource enhancements have improved the public defense system.

Given the foregoing, we believed that an effort to develop a set of nationally applicable workload standards was necessary. Such standards should not necessarily replace those already developed in jurisdictions that have conducted their own studies to establish limits on the numbers and types of adult criminal case appointments or to perform needs assessments. When based on empirical evidence and grounded in the *Strickland* performance standard of reasonably effective assistance of counsel pursuant to prevailing professional norms, state or local workload standards can provide more-tailored benchmarks for identifying excessive workloads or for estimating future attorney needs than could any national measures. But for those jurisdictions where a state or locally focused study is not feasible at this time or an existing study is flawed or outdated, the case weights yielded from this study can serve as a major upgrade from continued use of the NAC caseload standards.

Office of the State Public Defender
Indigent Defense Improvement Division

Understanding The National Public Defense Workload Study



A Practical Guide to Mapping Common California Offenses

December 2023

because it acknowledges and captures the attorney work required to defend the case.

- If charges decrease substantially during the pendency of litigation, the case should continue to be mapped to the higher case type category. This acknowledges and captures that amount of attorney work required to defend the case, including the successful reduction in case exposure.
- When examples or descriptions of offenses listed in the NPDWS were inconsistent with suggested case type sentencing ranges, offenses were typically categorized using the NPDWS sentencing ranges.[16]

Local Adjustments to Case Weights

The NPDWS is a national study utilizing experts from various systems and is intended to represent the *average* amount of time spent on a type of case. This guide attempts to clarify which California offenses carry which case weight pursuant to the NPDWS.

However, where a local jurisdiction has practices related to certain charges that require an attorney, on average, to spend a higher or lower number of hours on that case, a local adjustment of case weight for those charges may be warranted. For example, some jurisdictions may litigate Three Strikes *Romero* motions or Racial Justice Act motions in a large percentage of certain case types, which may increase the "case weight" (number of attorney hours needed) for those case types in that jurisdiction. In addition, where offices have high functioning specialized support units or robust non-attorney paralegal teams, a local adjustment to case weights downward may be warranted for certain case types to reflect more accurately the time an attorney[17] must spend on case specific tasks.

Any adjustment to the recommended NPDWS case weight should be based on data and structured information from attorneys and staff.

Calculating Future Attorney Needs

An effective way to utilize the NPDWS and this guide is for a public defender system to perform a historical review of caseload data or a "look-back." To do so, counties and defender offices would look at their cases from prior years and categorize each case according to the defined case types. Unless there have been significant changes

[16] The NPDWS used multiple descriptors to define each case type. For example, in defining Felony-Mid case types, the NPDWS included an offense description (i.e., felonies and serious property crimes), sentencing ranges (i.e., 3-15 years) and examples (i.e., arson, robbery, drug distribution) to define the case type. These descriptors do not map seamlessly onto California Penal Code sections. When there was a conflict, OSPD chose to use the NPDWS numerical sentencing range for consistency, clarity, and ease of use. OSPD acknowledges that for some types of cases (i.e., burglary), utilizing only the sentencing range rather than the examples places those cases in a higher case type category.

[17] The NPDWS only accounts for attorney time on case activities, not all staff time.

to local practice or law, this historical review would serve as a reasonable estimate for the future number of each case type. Counties and offices could then calculate how many attorney hours are needed to meet the estimated work. Attorney hours are an essential component to calculating the number of attorneys needed. When historical data is lacking, counties can begin tracking caseload data by case type and perform a "look-back" after sufficient data is collected. Although it is more complicated, the NPDWS case types could also be used to sort and classify open caseloads.

OSPD has created an Excel tool for tracking attorney hours, numbers of each case type, and calculating annualized caseloads, which is available upon request at IDIDtraining@ospd.ca.gov.