

THE
SPANGENBERG
PROJECT



4400 University Drive
Fairfax, Virginia 22030
Tel: 703.993.8253
Fax: 703.993.8597
www.tsp.gmu.edu

King County, Washington Public Defender
Case-Weighting Study

April 30, 2010
Final Report

Prepared for:
King County Office of the Public Defender

Prepared by:
The Spangenberg Project
David J. Newhouse
Aimee N. Wickman
Jon B. Gould

Contents

Executive Summary	1
Chapter 1 - Project Overview	4
Introduction.....	4
The Spangenberg Project.....	6
What is a Case-Weighting Study?.....	7
Phases of the Report	8
Chapter 2- National Standards & Indigent Defense in King County	10
National standards- Indigent Defense & Public Defender Workload	10
<i>The American Bar Association</i>	10
<i>The National Advisory Commission on Criminal Justice Standards</i>	11
<i>National Legal Aid & Defender Association</i>	13
<i>The American Council of Chief Defenders</i>	14
Overview of King County, Washington	15
<i>Washington State Court System</i>	15
<i>Indigent Defense in Washington State</i>	15
<i>King County Court System</i>	16
<i>Indigent Defense in King County</i>	17
<i>King County Defender Agencies</i>	20
Chapter 3- Designing the Workload Assessment	22
Case-Weighting Methodology	22
Chapter 4 – Data Analysis	29
Participation.....	29
Available Attorney Work Hours	29
Workload Distribution by Activity Type	33
Attorney Hours per Disposition	37
<i>Superior Court Felony Cases</i>	39
<i>District Court Criminal Cases</i>	42
<i>Juvenile Offender Cases</i>	43
<i>Superior Court Dependency Cases</i>	43
<i>Adult Drug Court and Involuntary Treatment Proceedings</i>	44
<i>Case Type Categories with Insufficient Data</i>	45
<i>Supervisor Time</i>	47
<i>Murder Cases</i>	47
Chapter 5 – Proposed Workload Model & Discussion	49
Case Weighting Study Conclusions	49
<i>Workload Standards</i>	49
<i>Implementing a Case-Weighting Funding Methodology</i>	49
Issues Affecting Appropriate Workload Measurement	58
<i>Comparing Jurisdictions</i>	58

<i>Challenges to Indigent Defense in King County</i>	59
<i>Support Staff Ratios</i>	63
<i>Scheduling & Delays</i>	67
<i>Interactions with the Office of the Public Defender</i>	70
<i>Operations within the Public Defender Agencies</i>	75
<i>Conclusions from Qualitative Research</i>	77
Chapter 6 – Conclusions & Recommendations	78
Appendices	82
Appendix A - Case-Weighting Steering Committee Members.....	82
Appendix B – Case Type Codes	83
Appendix C - Enhancers and Disposition Codes	83
Appendix D - Attorney Activity Codes.....	84
Appendix E - Attorney Time-Keeping Training Manual.....	84
Appendix F- Interview Protocols.....	85
Appendix G - Previous King County Indigent Defense Reports	96
Appendix H - King County Office of the Public Defender reported improvements.....	98
Appendix I – Summary of King County PAO Filing & Disposition Standard Changes.....	99
Appendix J - Agency Support Staff.....	102
Appendix K - Case Credit Application Schedule.....	103
Appendix L - Hours by Case Type and Activity	107
Appendix M - Workload Standards from Other Jurisdictions	112

Tables & Figures

Figure 1.1 Report Phases	8
Figure 3.1 Case-Weighting Calculations	22
Figure 3.2 Workload Standard Calculation	27
Table 4.1 Available Attorney Work Hours.....	29
Table 4.2 Reported Hours by Case Type.....	31
Figure 4.1 Attorney Hours by Case Category	31
Table 4.3 Supervisor Reported Hours by Case Type.....	32
Figure 4.2 Supervisor Hours by Case Category	32
Table 4.4 Attorney Hours by Activity	33
Figure 4.3 Attorney Hours by Activity	33
Table 4.5 Activities by Practice Area.....	34
Table 4.6 Out of Court Time by Practice Area	35
Table 4.7 Supervisor Hours by Activity	36
Figure 4.4 Supervisor Hours by Activity	36
Table 4.8 Waiting Time in Court by Practice Area.....	37
Table 4.9 Superior Court Felonies	40
Table 4.10 District Court Misdemeanors	42
Table 4.11 Juvenile Offenders	43
Table 4.12 Dependencies	44
Table 4.13 ITA Court.....	45
Table 4.14 Case Types without Sufficient Data.....	46
Table 4.15 Supervisor Time by Case Type	47
Table 4.16 Capital and Other Murder Cases	48
Table 5.1 Proposed New Attorney Work Unit Formula	53
Figure 5.1 Example of Work Unit Distribution Using a Hypothetical Caseload.....	55
Table 5.2 CY 2009 Superior Court Dispositions	56
Table 5.3 CY 2009 Superior Court Total Work Units and Projected FTEs	56
Table 5.4 CY 2009 Dependency Petitions and Hearings	57
Table 5.5 CY 2009 Dependency Work Units and Projected FTEs	57
Figure 5.2 Crime Percentage Increases by Category.....	62
Table 5.6 Total Support Staff to Attorney Ratio	65
Table 5.7 Comparative Staff Support	66

Acknowledgments

The Spangenberg Project expresses its gratitude to the King County Office of the Public Defender and its staff for their patience and assistance throughout this case-weighting study. Specifically, we would like to acknowledge David Hocraffer, Mary Jane Ferguson, and Russ Goedde for their indispensable knowledge and support and Gretchen Bruce and Ericka Turley for logistics assistance. This report owes as well to the involvement of many others. We thank members of the Case-Weighting Steering Committee for devoting time and energy to provide us with valuable feedback; the four public defender agency directors and deputy directors for responding to our many requests for information; court personnel and public defender agency staff for providing verified data; all of the participants in the performance review for their openness, honesty, and willingness to offer their insights; and Jean Faria and Dennis Murphy for lending their time and expertise during our King County interviews. Most importantly, we wish to state our sincere gratitude to all the attorneys who participated in the study and their support staff who helped to make that possible. Without their diligent time-keeping, this study would not have been possible.

Executive Summary

The provision of indigent defense services in King County has historically been seen as among the finest in the nation. However, the County presently faces substantial challenges in continuing to provide and maintain the quality of representation it does. King County's Office of the Public Defender (OPD) developed a request for proposal to study the payment model in King County and the possibility of moving to a case-weighting payment structure. This was in response to a Proviso of the King County Council to address impacts of changes in the King County criminal filing standards, as adopted by the Prosecuting Attorney's Office (PAO), on the indigent defense contracts with independent, non-profit law firms. Per the Proviso, OPD also convened a Case-Weighting Steering Committee to assist, monitor, and provide transparency to the study. The Case Weighting Steering Committee ratified engagement of The Spangenberg Project (TSP) as the consultant for the study to perform a review of the current public defense caseload and, if advisable, propose a new case-weighting methodology taking account of key differences or similarities between the complexity of caseloads faced by attorneys in King County and other jurisdictions throughout the country.

TSP has been performing public defender case-weighting studies for over twenty years. The current King County study used a similar methodology as in each of these studies. Assuming that records are maintained for attorney time expended in each case type area, the translation of projected caseload into projected workload can be accomplished with some assurance of precision. In the broadest context, weights can be given to the total annual caseload of an office to compare to the following year's anticipated volume of cases. The unit of measurement used to determine the projected workload and resulting standard for each type of case is "attorney-time-per-disposition."

The King County case-weighting study was conducted in three phases. First, King County representatives and TSP outlined the goals and guidelines of the study. Second, TSP began collecting data, consulted with the Case-Weighting Steering Committee, and conducted an effectiveness review. Third, the data collection was completed, analyzed, and drafts of the case-weighting report were distributed to the Case-Weighting Steering Committee.

The fundamental purpose of this study for King County is to examine OPD's current payment model and decide if weighting cases is a more suitable method of paying public defender agencies. TSP's review of the current public defender caseload is based on twelve weeks of time-keeping from 144 attorneys and

supervisors with partial caseloads. An expected work week is 40 hours; however, a public defender's actual work week in King County, on average, is 48 hours. Therefore, attorneys are working 20 percent more than expected. Each attorney should be expected to work approximately 1792 hours per year.

Based on the results of this study, TSP recommends that the case credit system currently used by OPD as a funding model be discarded and replaced with a much simplified system. The present system of assigning credits is challenging to understand from outside of the system as well as from within it. From TSP's research, this seems to have caused a considerable amount of miscommunication and misperceptions within the system. For this reason, TSP concludes that a more simplified system that is accurately monitored and updated could alleviate many of the concerns that defense attorneys are not receiving accurate credits for their work. Problems with the current case credit system include perceived inaccuracies in the model between credit assignment and workload, inequitable distribution between defender agencies, and questions about the accuracy of defense attorneys' reporting of extraordinary credits. Improper reporting of credits by defense agencies may lead to OPD's rejection of credit requests, which is time-consuming and frustrating for both OPD and the defense agencies. A proper system of case-weighting, by contrast, should be perceived as fair in order for attorneys to feel they are being compensated for their work and not forced to overextend themselves. An appropriate case formula also will likely stabilize the relationship between OPD and the defender agencies and, in turn, allow for more efficient and effective representation for the clients.

In this new proposed formula, a work unit is defined by one hour and a workload standard is the number of cases an attorney should be able to handle in one year *when only representing cases of that type*. These workload standards are based on a FTE attorney receiving 1792 work units in one year. This formula is based on the case-weighting methodology, which measured the number of hours that each type of case took to handle on average. It is imperative to recognize that the workload standards and work units set out above reflect the *current* practice of King County public defenders, and are an empirical measure of the time attorneys are currently spending to resolve their cases in an effective way, *not* necessarily the amount of time they should ideally be spending on cases.

Although concluding that public defense attorneys in King County strive to provide the highest level of representation, TSP is concerned about threats to the County's system of public defense. That system still offers adequate representation, but changes are afoot that tax the efficiency and effectiveness of an

already over-extended public defense corps to provide acceptable representation under the workload standards TSP has produced. The challenges faced in King County include such factors as filing practices, case complexity, support staff ratios, relationships between the defense agencies and the County, and inefficiencies in local practices. Thus, while TSP proposes a new workload metric based on current practice, it notes that King County will need to take affirmative steps in the immediate future to address many of the pressures that currently challenge the system of indigent defense. TSP recognizes these decisions are the province of the County Council and Executive, acting in concert with OPD and the defender agencies, but it urges all to consider a reduction in the defenders' real, effective work week. Apart from this overarching issue – one that likely applies to others in the criminal justice system and County government, especially at a time of historic fiscal distress – TSP notes several other challenges to the defenders' workload, including staff shortages, a rise in the complexity of prosecutions, and a number of procedural impediments and inefficiencies.

Based on these conclusions, TSP makes the following recommendations:

1. King County should replace its case credit system with a new model based on this case-weighting study.
2. OPD should simplify the defender agency contracts.
3. The County Council and Executive, acting in cooperation with OPD and the public defender agencies, should address several challenges to the provision of services in the King County public defense system by:
 - Increasing the number of support staff within each agency and OPD.
 - Establishing greater transparency and communication between the four private defender agencies and OPD, the County Executive, and County Council.
 - Developing a centralized repository for case management system information from the agencies and OPD, while also taking advantage of information provided by the courts' systems.
 - Promoting collaboration between the public defense bar, the PAO, the courts, and the corrections facilities.
4. Any future changes in the law or further changes in prosecutorial policies may require a reevaluation of these workload standards.

Chapter 1 - Project Overview

Introduction

King County's Office of the Public Defender (OPD) developed a request for proposal to study the payment model in King County and the possibility of moving to a case-weighting payment structure.¹ This was in response to the King County Council Proviso² request to address impacts of changes in the King County criminal filing standards, by the Prosecuting Attorney's Office (PAO), on the indigent defense contracts with independent, non-profit law firms. Per the Proviso, OPD also convened a Case-Weighting Steering Committee to assist, monitor, and provide transparency to the study. The Case Weighting Steering Committee ratified engagement of The Spangenberg Project (TSP) as the consultant for the study to perform the following as required by the Proviso:

- A review of the current public defense caseload, including a review of hours spent broken down by types of services provided for different case types by primary charge³
- A review of caseloads at comparable jurisdictions throughout the country⁴
- A discussion of key differences or similarities between the complexity of caseloads faced by felony attorneys in King County and other jurisdictions throughout the country⁵
- A review of the advantages and disadvantages of a funding methodology change to a case-weighting methodology for how the county pays for public defense services⁶
- A recommendation as to whether the county would be well-advised to switch to a case-weighting methodology⁷
- If a case-weighting methodology is recommended, provide a recommended methodology⁸

The fundamental purpose of this study for King County is to examine OPD's current payment model and decide if weighting cases is a more suitable method of paying public defender agencies. TSP's review of

¹ King County Ordinance 16542 as an amendment to the 2009 Budget Ordinance 16312, Section 49.

² King County Ordinance 16312

³ Chapter 4, pages 29-47

⁴ Pages 40-42, 50, 58, 59, 61, 65, and Appendix M

⁵ Chapter 5, pages 58-77, also pages 34, 35, 40, 41, 42, 50, and Appendix M

⁶ Pages 6, 49, 57, 73, 75, and 78

⁷ Chapter 5, pages 49-57, and Chapter 6, Conclusions & Recommendations

⁸ Chapter 5, pages 49-57, and Chapter 6, Conclusions & Recommendations

the current public defender caseload is based on twelve weeks of time-keeping from 144 attorneys and supervisors with partial caseloads. An expected work week is 40 hours at work; however, a public defender's actual work week in King County, on average, is 48 hours. Therefore, attorneys are working 20 percent more than expected. Each attorney should be expected to work approximately 1792 hours per year after subtracting vacation, sick, holiday and other leave time. The details of these conclusions and a breakdown of how time was spent by type of service and type of case can be located in chapter 4 (pages 29-48).

TSP ultimately concludes that King County would be better served by changing from its present case credit system to a model based on attorney workload for the provision of public defense services. A new model based on this case-weighting study is recommended in chapter 5 (pages 49-57) and in Recommendation 1 of chapter 6 (along with the implementation of Recommendation 2-4). Based on 1792 hours of work per year for each attorney, each case type is allocated a number of "Work Units" (equivalent to one hour per unit) which constitute a "Workload Standard" (number of hours needed for that case type). It must be emphasized that this formula is based on how attorneys are currently performing, rather than an ideal workload.

Although TSP concludes that public defense attorneys in King County are presently providing an adequate level of defense to meet the standard of effective assistance of counsel, the system faces several unique challenges that may threaten the sustainability of those standards under current workloads. Several of these factors are felt by other jurisdictions across the country, but TSP cautions officials from seeking merely to match their caseload or workload standards against those in other areas, for the circumstances in King County are, in many ways, distinctive and local. For example, the changes in filing practices by the PAO have had a major impact on public defender caseloads. Because of budget cuts, the PAO was "compelled to focus its shrinking staff resources on serious violent crimes, sex offenses, domestic violence and the most serious property crime offenders by modifying its filing and disposition standards." According to the PAO, "these changes are not advanced as good policy" but instead to focus on issues of highest priorities.⁹ Chapter 5 of this report addresses those challenges, discussing such factors as filing practices, case complexity, support staff ratios, relationships between the defense agencies and the County, and inefficiencies in local practices.

⁹ Summary of PAO changes in filing standards can be found in Appendix I and at: www.seattletimes.nwsource.com/ABPub/2008/09/24/2008201397.pdf

Implementing a new work unit model based on this case-weighting study will require cooperation and proper planning across many branches of the criminal justice system and County government, but the likely advantages are several. A simplified credit system should provide a common ground for understanding and measuring public defense in King County, ensuring that the matrix for funding more accurately reflects actual time spent representing clients. King County has a commendable history in providing public defense. In modernizing its system of case weighting, the County will maintain that worthy tradition.

The Spangenberg Project

The Spangenberg Project is a nationally- and internationally-recognized criminal justice research and consulting group that specializes in independent, high-quality research on access to justice and indigent defense services. Operated as The Spangenberg Group (TSG) for over twenty years, TSP researchers have conducted work in all fifty states and have provided consultative services to jurisdictions seeking to reform and improve their indigent defense and legal aid delivery programs. TSP researchers have been under contract with the American Bar Association's (ABA) Bar Information Program, which provides support and technical assistance to individuals and organizations working to improve indigent defense systems. In 2009, TSG joined George Mason University's Center for Justice, Law, and Society to form The Spangenberg Project.

The Spangenberg Project has considerable knowledge of indigent defense systems across the country and extensive experience in case-weighting studies. Among its many recent case-weighting studies, TSP researchers completed one for King County in 2003. Other completed projects include those for jurisdictions in Colorado, New York, Tennessee, Minnesota, Wisconsin, and Pima and Maricopa Counties in Arizona.

In addition to case-weighting studies, TSP researchers are familiar with the history of public defense in King County, having conducted a number of research projects in the past. In 1989, 1994, and 2000, TSG conducted evaluations of public defense in King County and made recommendations for improving the quality of representation, resource allocation, and case processing (review of report recommendations

located in Appendix G). Given this experience, TSP researchers are uniquely qualified to conduct an updated case-weighting study in King County.

What is a Case-Weighting Study?

In private law practice, time-keeping is commonplace. The concept of billable time has only begun being incorporated in the public law field within the last two decades. In the public sphere, attorney time-keeping provides managers, as well as governmental and private corporations, a mechanism to translate caseload (the number of cases handled) to workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). The ability to *weight* cases allows consideration of not just the raw number of cases assigned to a criminal justice agency annually, but also the overall severity of cases handled by the program.

The case-weighting methodology determines this billable time through detailed time records kept by attorneys over a given period of time. Case-weighting studies determine the average amount of time the average attorney takes to complete an average case, within a case-type, from assignment through disposition and any post-disposition work. Because of this averages-based technique, case-weighting studies cannot be used to measure the qualitative performance of any single attorney or small group of attorneys. However, case-weighting can tell us how much time is required to perform necessary functions for processing a type of case within the larger system.

In addition to establishing case-weights for varying types of cases, case-weighting studies also provide a snapshot of time spent on various activities for agency managers and government officials to use when assessing how efficiently time is spent. For instance, a case-weighting study may demonstrate that public defenders spend an inordinate amount of time each day simply waiting (i.e., in court or at the county jail). Such a time analysis by activity could lead to recommended improvements at the court or at the jail that would decrease the amount of “down” time attorneys are expected to undergo. Similarly, a case-weighting study may show that public defenders are not afforded sufficient time to keep abreast of changes in the law due, perhaps, to the amount of time they are expected to be in court.

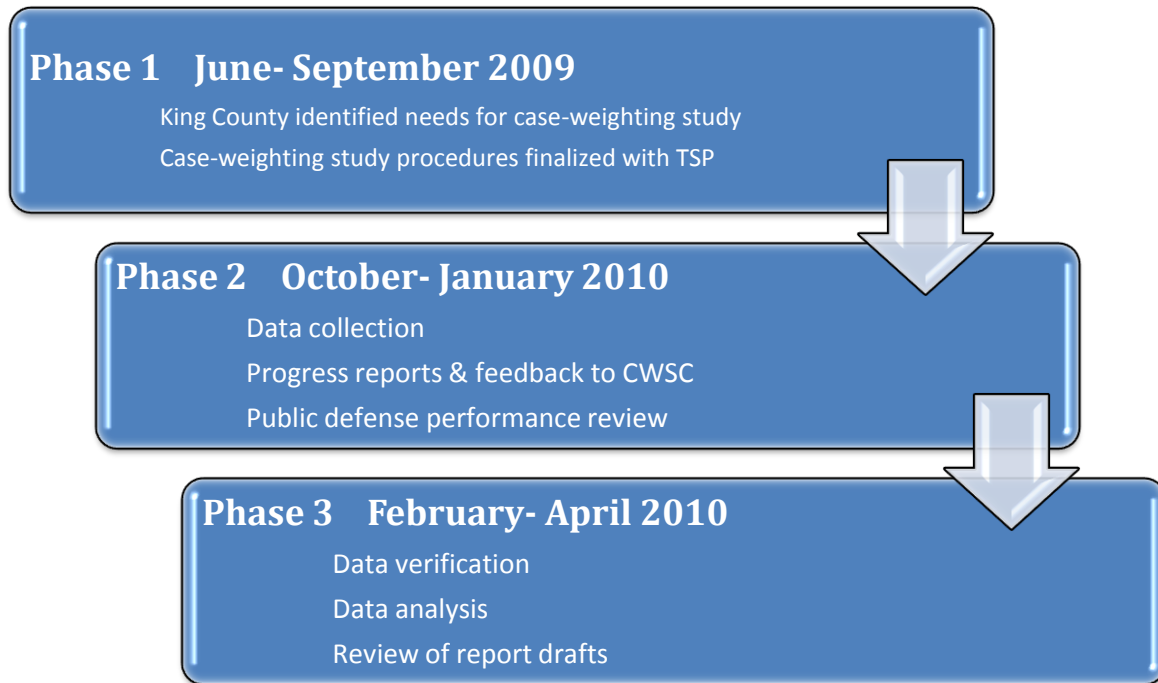
The time records provide a means by which caseload (the number of cases handled) can be translated to workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). The ability to weight cases allows thorough consideration of not just the raw number of cases

assigned to a criminal justice agency annually, but also the severity of cases handled by the program, the experience level of its attorneys, the ratio of support staff to attorneys, and the attorneys' other work requirements. In the broadest context, weights can be given to the total annual caseload of a defender organization to compare to the next year's anticipated volume of cases.¹⁰ This method solves those problems posed by relying on national numerical standards because they are current and jurisdiction-specific. Furthermore, the case-weighting method has become an accepted method among courts and prosecutors in determining staffing levels as well; but because their functions differ so greatly, they should never be used to draw comparisons between the different groups.

Phases of the Report

The King County case-weighting study was conducted in three phases. First, King County representatives and TSP outlined the goals and guidelines of the study. Second, TSP began collecting data, consulted with the Case-Weighting Steering Committee, and conducted an effectiveness review. Third, the data collection was completed, analyzed, and drafts of the case-weighting report were distributed to the Case-Weighting Steering Committee.

Figure 1.1 Report Phases



¹⁰ When estimating their annual caseload, public defender agencies should consider input from all components of a criminal justice system, including law enforcement, courts, prosecutors, and bar associations.

The following chapters more thoroughly explain the stages of the report and the importance of the study. Chapter 2 highlights national standards of indigent defense and public defender workload. The chapter then summarizes standards and the current system of indigent defense in King County. Chapter 3 provides a detailed discussion of the methodology used in this case-weighting study. In chapter 4, the data from the attorney time-keeping is provided and analyzed. From the data analysis, chapter 5 outlines TSP conclusions, a suggested new work unit formula, comparisons to other jurisdictions, and draws main conclusions TSP researchers found during the public defender effectiveness review. The report concludes with TSP's recommendations for King County based on analysis from this case-weighting study.

Chapter 2- National Standards & Indigent Defense in King County

National standards- Indigent Defense & Public Defender Workload

Beginning in the 1970's, various organizations gave voice to the constitutionally mandated need for effective indigent defense in the United States. The ABA, the Law Enforcement Assistance Association, and the National Legal Aid and Defender Association separately played an important role in developing standards of indigent defense and proposing caps on defender caseloads. Nevertheless, though national standards lend credence and support to the work of defenders, each jurisdiction is different from the next and must assess the needs of its own defenders and clients. These organizations have simply provided a base from which to start.

The American Bar Association

In response to a rising crime rate and changing constitutional requirements, the ABA has taken a leadership role in developing a set of standards and goals for each component of the criminal justice system. In its publication entitled *ABA Standards for Criminal Justice, Prosecution Function and Defense Function*, originally published in 1970, the ABA outlined standards for the provision of defense services.¹¹ Specifically, Standard 4-1.3 deals with the ethical considerations regarding a defense lawyer's workload. It states:

(e) Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations.¹²

In its set of standards dealing with the structure of a public defense programs, the ABA reasserts and builds on Standard 4-1.3. The *ABA Standards for Criminal Justice, Providing Defense Services*, Standard 5-5.3 states:

¹¹ American Bar Association, *Standards for Criminal Justice, Prosecution Function and Defense Function*, Third Edition (1993). In addition to its more lengthy standards, in February 2002 the American Bar Association published its *Ten Principles of a Public Defense Delivery System*, a series of black letter guidelines aimed specifically at policymakers. Principle 5 states, "Defense counsel's workload is controlled to permit the rendering of quality representation."

¹² *Ibid.* at 126.

(b) Whenever defender organizations, individual defenders, assigned counsel or contractors for services determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.¹³

While these standards are extremely important, they do not provide specific guidance in defining an excessive workload or what lawyers should do if they have reached the workload limit. In 2009, the ABA House of Delegates adopted the *Eight Guidelines of Public Defense Related to Excessive Workloads*.¹⁴ These guidelines stress the need to maintain a workload that allows for quality representation, a supervision program that monitors a defender's workload, training in professional and ethical responsibilities in representation, oversight of workload concerns by program management staff, and prompt action within the courts in the face of an excessive workload. More specifically, these guidelines discuss the duty of attorneys to notify supervisors when they feel overloaded and the proper instruction that this is, in fact, an obligation of the attorneys. In addition, it is the duty of the supervisors to monitor the workloads of their attorneys and take corrective measures when an attorney is overloaded.

The National Advisory Commission on Criminal Justice Standards

In 1971, the Law Enforcement Assistance Administration, a federal agency within the United States Department of Justice, commissioned the National Advisory Commission on Criminal Justice Standards and Goals (hereinafter "NAC"). One of six reports issued by the NAC, the *Report on Courts*, published in 1973, has had a substantial impact because it is the only national source that has attempted to quantify a maximum annual public defender caseload. During the preparation of the *Report on Courts*, the NAC relied mostly on qualitative and anecdotal information to formulate its standards.¹⁵ Although the NAC Standards have not been formally adopted by the ABA, the standards have been cited by the ABA and

¹³ American Bar Association, *Standards for Criminal Justice, Providing Defense Services*, Third Edition (1992), at 68.

¹⁴ American Bar Association, House of Delegates, Proceedings of Annual ABA Meeting, August 3, 2009, at 22.

¹⁵ *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Washington, D.C., 43, 265 (Jan. 1973).

implicitly relied on by practitioners and researchers in the criminal justice field because of the lack of other readily available numerical national standards.

Beginning in 1971 and concluding in 1973, the NAC found inherent dangers to the criminal justice system, including increased pressure on defendants by defense attorneys to accept a guilty plea to expedite the movement of cases.¹⁶ The *NAC Report on Courts* articulated express standards for indigent defense services with the goals of expanding resources for professional and support staff; increasing the amount of state versus county funding of indigent defense services; and representing all eligible defendants during all stages of criminal proceedings. The NAC standards also called for specific criteria for initial client contact, parity of pay with attorney associates at local law firms, and numerical caseload levels. With regard to the caseload levels of public defenders, the NAC established these numerical standards based on estimates by seasoned defense attorneys that public defenders should not handle more than 150 felonies per year, 400 misdemeanors per year, 200 juvenile court cases per year, 200 Mental Health Act cases per year, or 25 appeals per year when that attorney is only handling one type of case.¹⁷ These standards were adopted based entirely upon the work of the defender committee of the National Legal Aid and Defender Association. These NAC caseload standards composed in 1973 are still often cited but seldom, if ever, monitored or enforced in any public defender program in the country. Moreover, the NAC standards are now understood by most experts as permitting too high a defender caseload to ensure adequate and effective representation.¹⁸ King County and many other jurisdictions, however, use a modified version of these numbers in its current case credit system.

Although the NAC standards have historically served as a useful comparison tool for individuals and organizations advocating for attorney caseload reduction, they should not be used in projecting jurisdiction-specific staffing needs because they do not account for several key factors, including: 1) variations in local practice across the country; 2) increasingly complex cases; and 3) ever-evolving laws and policies. Additionally, the NAC Standards, when created, were not based on any statistically verifiable data.

¹⁶ *Ibid.*

¹⁷ *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Washington, D.C., Standard 13.12 (Jan. 1973). 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 post-judgment review is a separate case. *Ibid.* at 276.

¹⁸ See, e.g., *Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel* p. 65-77 and *ABA 8 Guidelines of Public Defense Related To Excessive Workloads*, p. 11-12

The NAC standards group all case type subcategories under an overarching category (e.g., felony, misdemeanor, juvenile, etc.). By contrast, TSP’s findings and data analyses from each of our case-weighting studies demonstrate that attorney workload ranges greatly from one sub-category to the next. For example, defending a felony involving a rape or murder is much more time-consuming and complex than defending a minor drug felony.

When the NAC standards were promulgated in 1973, the national landscape was much different than it is today or even a decade ago. First, when the standards were published, capital punishment was not a sentencing possibility in any state. Behaviors and crimes that did not exist in 1973, such as Internet-based crimes, have since become more prevalent. Since then, most jurisdictions around the country have instituted “tough on crime” policies, such as habitual offender statutes and mandatory minimum sentencing requirements. Mental health institutions have been de-funded and closed, and many people with mental health disorders find themselves facing criminal charges and jail time in lieu of treatment. In addition to traditional penalties, many convictions now carry collateral consequences, such as the loss of government benefits, fewer employment opportunities, and deportation. Recently, the United States Supreme Court held that providing inaccurate advice on immigration consequences rose to the level of ineffective assistance of counsel.¹⁹

The changes listed above, among several others, illustrate the increased complexity of providing adequate representation. Although TSP recognizes the inherent appeal of national caseload “standards,” it urges King County (and others) not to extrapolate from the NAC suppositions or any other supposed national standards to draw prescriptive conclusions about the needs of specific jurisdictions. Instead, jurisdictions should develop individualized assessments of caseload standards for their own justice systems through the use of case-weighting studies.

National Legal Aid & Defender Association

Under a grant from the U.S. Department of Justice, the National Legal Aid and Defender Association (NLADA) conducted a two-year study through the National Study Commission, which resulted in the 1976 publication of the *Guidelines for Legal Defense Systems in the United States*. Chapter 5 of that report addressed the maximum criminal caseload for a defense attorney and stated that “every defender system should establish maximum caseloads for individual attorneys in the system ... Caseloads should

¹⁹ *Padilla v. Kentucky*. 08-651 (03/31/2010)

reflect national standards and guidelines ... [and be based on] objective statistical data, factors related to local practice, and an evaluation and comparison of the workload of experienced, competent, private defense practitioners.”²⁰ The Commission further asserted in Section 5.3 that when caseloads become too high and there is a danger of inadequate representation to clients, the Chief Defender should pursue one or more of the following options:²¹

- decline additional cases and, as appropriate, seeking leave of court to withdraw from cases already assigned;
- actively seek the support of the judiciary, the defender commission, the private bar, and the community in the resolution of the caseload problem;
- seek evaluative measures from the appropriate national organization as a means of independent documentation of the problem;
- hire assigned counsel to handle the additional cases; and
- initiate legal causes of action.

In keeping with these standards, the Commission also directed individual staff attorneys to monitor their caseload and inform the Chief Defender, the court, and their clients if his/her caseload is unreasonable.²² King County’s initiative to review its caseload by way of this project is one way of satisfying the recommendations of NLADA’s Commission.

The American Council of Chief Defenders

In August of 2007, the American Council of Chief Defenders (ACCD) issued a Statement on Caseloads and Workloads, in which it recommends that caseloads not exceed the NAC recommendations.²³ The resolution goes on to state that, in many jurisdictions, maximum caseloads should be lower than those recommended by the NAC.

²⁰ National Legal Aid and Defender Association, *Guidelines for Legal Defense Systems in the United States*, Report of the National Study Commission on Defense Services (Washington, D.C.: NLADA, 1976), at 411.

²¹ The current study and the County Council action was brought about at the initiative of the defender agencies, who asserted that the changing felony caseload, in particular, had increased workloads above what could be handled even by experienced, skilled attorneys.

²² *Supra* note 20 at 413.

²³ American Council of Chief Defenders *Statement on Caseloads and Workloads*, August 24, 2007. ACCD is a unit of the National Legal Aid and Defender Association.

The statement also discusses many of the reasons that representation of indigent defendants has become even more complicated since the NAC standards were developed, including, among other factors, increases in collateral consequences of convictions, an increase in the number of jurisdictions enacting persistent offender statutes and an increase in the severity of those penalties, a dramatic increase in penalties for people charged with sex offenses, and an increase in the number of juveniles charged as adults.

TSP applauds the work of the ACCD and agrees that a public defender caseload that exceeds the NAC numbers would be presumptively unreasonable. However, meeting the NAC “standards” does not, and should not, be seen as assuring constitutionally adequate representation. Instead, as TSP has repeatedly urged, jurisdictions must develop individualized assessments of caseload standards for their own courts and public defense practices. Circumstances vary so greatly from jurisdiction to jurisdiction that a caseload standard in one locale may well be inappropriate elsewhere. Indeed, as we explain in the remainder of this report, King County’s public defense practice is so unique – with new and novel challenges – that the appropriate workload metric must be constructed specifically for its circumstances.

Overview of King County, Washington

Washington State Court System. The state's court of last resort is the Washington Supreme Court located in Olympia and consists of nine justices elected to six year terms. The State has one Court of Appeals with three geographical divisions located in Seattle, Tacoma, and Spokane. Judges are elected to six year terms. The Superior Courts of Washington consist of thirty-nine trial courts – one in every county -- that handle criminal and civil cases, Unified Family Court, as well as initial appeals from civil matters and criminal misdemeanors. Judges presiding over these courts are elected to four-year terms. The thirty-nine counties within the state have District and Municipal Courts consisting of judges both elected to four-year terms and also appointed.

Indigent Defense in Washington State. Indigent defense services in the State of Washington are primarily a county responsibility. At the trial level, each county is responsible for funding indigent defense services and may choose among public defender, contract defender, or assigned counsel systems. Many Washington counties have opted for a hybrid system in which a public defender provides primary representation with a contract defender or assigned counsel system in place to handle conflict of interest

cases. At the appellate level, the State of Washington is responsible for funding the State Office of Public Defense, which contracts with private firms and attorneys in each of the state's three appellate divisions to provide representation in non-capital appeals, and provides some funding for certain types of non-appellate cases. For capital appeals, a private attorney is appointed by the Supreme Court and compensated by the State Office of Public Defense. Misdemeanor appeals are the responsibility of the counties, but become a state responsibility if they are appealed to the Court of Appeals or Supreme Court.

Caseload standards are a product of state law, which requires each county or city providing indigent defense services to adopt standards, including caseload limits.²⁴ In October, 1989, the Washington Defender Association published "Standards for Public Defense Services." "Standard Three: Caseload Limits and Types of Cases" sets a limit on the annual caseload of a full-time public defender. Currently, according to the Washington State Bar Association's standards, adopted in 2007, the number of cases per attorney in a given year is not to exceed the following: 150 felony cases, 300 misdemeanor cases (or 400 depending on circumstances), 250 juvenile offender cases, 80 open juvenile dependency cases, 250 civil commitment cases, or 36 appeals. The standards also allow only one active death penalty case at a time per attorney. (King County requires two attorneys to be assigned to a death penalty case). The commentary to the caseload limit explains: "Caseload levels are the single biggest predictor of the quality of representation. Not even the most able and industrious lawyer can provide effective representation when their workloads are unmanageable."²⁵

King County Court System. King County's court system is two-tiered, with a District Court of limited jurisdiction and a Superior Court of general jurisdiction. District Court has eight separate locations within the county, providing localized criminal and civil justice services. The state cases assigned to public defenders have been consolidated into three of these locations. Along with their civil caseloads, the district courts hear criminal misdemeanor and gross misdemeanor cases. In addition, the district courts provide municipal court services to seventeen cities. None of those cities contracts with King County for public defense services; however, several contract with the Office of the Public Defender (OPD) for

²⁴ RCW 10.101.030.

²⁵ Commentary to Standard 3 of the WDA Standards for Public Defense Services: <http://dev21.npowerseattle.org/wda/resources/standards/wda-standards-for-public-defense-services/standard-three-caseload-limits-and-types-of-cases>

indigency screening services. The Superior Court is separated into three departments: civil, criminal and juvenile, each of which is administered by a presiding judge. The criminal department is divided between the King County Courthouse (the “KCCH”) in downtown Seattle and the Maleng Regional Justice Center (MRJC) in the city of Kent, some twenty miles to the south. The Superior Court’s Juvenile Department is located in a stand-alone facility in Seattle and is also where dependency cases are heard. Dependency cases are heard at the MRJC as well. Civil cases prosecuted under the Involuntary Treatment Act (ITA) take place in the court located at the Harborview Hospital in Seattle. The ITA unit handles persons with mental illness who are a risk to themselves or others and are detained involuntarily in one of the local in-patient mental health treatment facilities.

Indigent Defense in King County. The King County Public Defense system is unique among all major urban counties in the United States because of its system of contracting with four non-profit law firms to provide public defense. King County provides funds for indigent defense through its own Office of the Public Defender (OPD), which is a division within the Department of Community and Human Services. OPD, in turn, assigns cases to four private, non-profit contract agencies (each with its own board of directors), or an assigned counsel panel. Funding for public defense is determined according to formulas first enacted by the County as a Public Defense Model in 2005. The Model contains caseload limits and allocations for attorneys at salary parity with the county prosecutor’s office. The Model also includes a staff allocation per attorney, administrative costs, rent and other overhead.²⁶ King County code designates the Office of the Public Defender as responsible for screening persons to determine whether they are financially eligible for public defense services and obtaining promissory notes from those able to contribute to the cost of their defense.²⁷

The Office of the Public Defender is responsible for assigning cases (assigned over 25,000 cases in 2009) either to contract public defense agencies or to private counsel, negotiating and administering contracts (which establish case credit workload standards) with four private, non-profit public defender agencies that provide direct representation to indigent defendants (described below), and maintaining standards of competence and credentialing qualifications of its 100 member Assigned Counsel Panel of conflict attorneys (approximately ten percent of cases assigned). OPD also is designated by local court rule to review requests for authorization of expert services funding for District and Superior Court. OPD does not

²⁶King County Motion 12160 July 18, 2005 “The Public Defense Model”

²⁷ King County Code 2.60.040

directly represent persons charged with criminal offenses but is responsible for managing the contracts and funds for indigent defense provided by King County. King County is led by an Executive and County Council. The current Metropolitan King County Council has nine members, each elected by geographic district to a four-year term.

Financial screeners at OPD have the responsibility of determining indigency. Screeners use a computerized, rotational system to assign cases to the four public defender agencies after determining the financial eligibility of defendants and checking for conflicts within OPD's database. Screeners have access to data that shows information on case assignment for each agency, relative to their contract shares of the caseload. Screeners use OPD computers to see if an applicant has been assigned to one of the defender agencies before. If so, the person is assigned to that agency again. Screeners then search OPD's database for named co-defendants, victims and witnesses to detect potential conflicts with the four defender agencies. OPD case coordinators assign conflict cases to assigned counsel. The agencies are responsible for assigning cases to individual attorneys within their organization. OPD also administers some small grant funds for public defense services. As required by County code, OPD assesses and collects a processing fee from indigent clients and issues and prepares promissory notes for defendants who can pay some part of their legal defense. OPD also administers the assigned counsel panel and provides noon-time and day-long trainings for assigned counsel and agency attorneys, including a three-day trial advocacy training with national trainers. Finally, complaints by clients are received by OPD, communicated to the appropriate agency, and follow-up measures are communicated back to OPD by the agency.

Each of the agency contracts with OPD contains a schedule that sets out the total number of case credits that OPD expects to assign to the particular agency in the coming year, broken down by case type and by location. OPD uses projections for annual case credit totals to budget sufficient funding to compensate the agencies for the attorneys, administration, support staff and overhead necessary to handle the assigned caseloads. The credit system is defined by the Public Defense Model enacted by the county council. The Model calculates the price per credit based on attorney salary (at parity with prosecutors) and includes funding for 0.2 clerical staff, 0.5 paraprofessional staff (e.g. investigators, paralegals and social workers) and 0.1 supervisory staff for each attorney. Not all contractors choose to take all case types in all court locations. Various types of cases are assigned a particular "case credit value." The use of this credit system is a long-standing practice in King County, in which each case receives one credit, and probation

review hearings or other hearings in all case types may receive a partial or full credit depending on the type of hearing. Agencies may apply for extra credits for extraordinary cases. However, assigning credits is a complicated matter that few people outside of management grasp easily. Adding to this complexity, models of the credit system have varied over the years. Each type of case or proceeding receives a prescribed number of credits, and additional credits for extraordinary cases can be requested by the agencies.

The credit formula is based on case credit workload standards designed to ensure that attorneys carry a full caseload, without overloading an individual attorney (Appendix K). For example, the case credit workload standard for felony cases is 150 case credits per attorney per year (or 12.5 case credits per month). Credits are received for each case, and credits or partial credits are also received for probation violation hearings and other hearings. For example, a felony probation violation receives one-third of a felony credit; a misdemeanor probation violation receives one misdemeanor credit. Thus, a felony credit caseload of 150 case credits may include credits for probation violations and other hearings as well as credits for original felony cases.

That is, if a group of attorneys within an agency handled only felony cases, that group, on average, should handle no more than 150 felony case credits per year. Thus, if a defender agency were projected to dispose of 1500 felony case credits in one year, the agency would be funded for ten attorneys (1500 credits divided by 150 credits-per-attorney would equal ten attorneys). Under this formula, the basic unit, one credit, is assigned to a “typical” felony case. Contracts allow for additional felony credits under various circumstances (e.g. extraordinary cases, multiple incidences, etc). Other proceedings are valued at multiples or fractions of this unit. For instance, a non-capital homicide case is initially worth two credits, while a probation review hearing carries one-third of a credit. Misdemeanor, juvenile offender, and dependency cases also merit one credit each. Their contracts permit defender agencies to receive extra credits for complex assignments, such as capital cases, aggravated homicides, “two and three strike” cases, or multi-count fraud cases. For example, an agency receives 12.5 credits per month if one of its attorneys is handling an aggravated homicide not eligible for the death penalty; if the agency is handling aggravated homicide cases eligible for or pending determination of eligibility for the death penalty, it receives two full time attorneys’ credits – 25 credits per month. Persistent Offender cases currently are awarded one credit every 12.1 hours attorney time. Additional credits are also awarded for extraordinary

cases in practice areas other than felonies. The credits awarded for certain case types have changed over time, including a reduction in the number of credits awarded in dependency cases.

Since July 1, 2009, a modified felony case-weighting system has been in place. Under this methodology, most homicide cases receive ten credits on assignment; specified sex offenses with potential indeterminate life sentences receive five credits. Both types of cases also receive “hourly rate” compensation of 3 credits for every block of 50 hours attorney time over 200 hours. All other felonies receive “hourly rate” compensation of three credits for every block of 50 hours attorney time over 12.1 hours. Although few such “hourly rate” requests were submitted to OPD prior to or during the study, TSP understands that several such requests have since been sent to OPD.

Other case areas have various credit formulas, such as dependency credits, which are structured based on stages of the case, from initial petition to adjudication. Contracts also provide for calendar attorneys for various types of proceedings such as preliminary hearings, 72 hour shelter hearings, and arraignments. These calendar attorneys are funded on a full time equivalent (FTE) basis, not a credit basis. Specialty courts also are funded on a calendar basis.

King County Defender Agencies. The operations of all four defense agencies have broadened over time into nearly every area of representation (e.g., felony, misdemeanor, Superior, District, juvenile offender and dependency matters), so that each is considered a “full-scope defender,” but some specialization among the agencies remains. For example, The Defender Association (TDA) is the only agency that represents clients in the Involuntary Treatment Court of King County, the Society of Counsel Representing Accused Persons (SCRAP) handles Juvenile Drug Diversion Court, and Associated Counsel for the Accused (ACA) contracts for representing clients in Adult Drug Diversion Court and Mental Health Court. The Northwest Defenders Association (NDA) does not handle cases in Kent at the MRJC, other than dependency cases. Each of the District Court locations has some, but not all, contractors taking cases in those courts.

TDA is the oldest and largest of the four defense agencies. Its history can be traced back to 1969, when it was founded as an office of five attorneys working only in Seattle Municipal Court. TDA currently has

around 80 defense attorneys, not including the director and her deputy, as well as approximately 56 support staff.

ACA is made up of 76 attorneys and approximately 37 support staff. ACA is the second oldest and second largest of the four agencies. Founded in 1973, ACA grew substantially after another agency dissolved and ACA absorbed many of its attorneys.

SCRAP was created in 1976, initially to represent indigent minors. Today, SCRAP has about 60 attorneys and roughly 30 support staff.

NDA is the newest and smallest of the four agencies. NDA began operation in 1988. NDA consists of 32 attorneys and roughly 19 support staff.

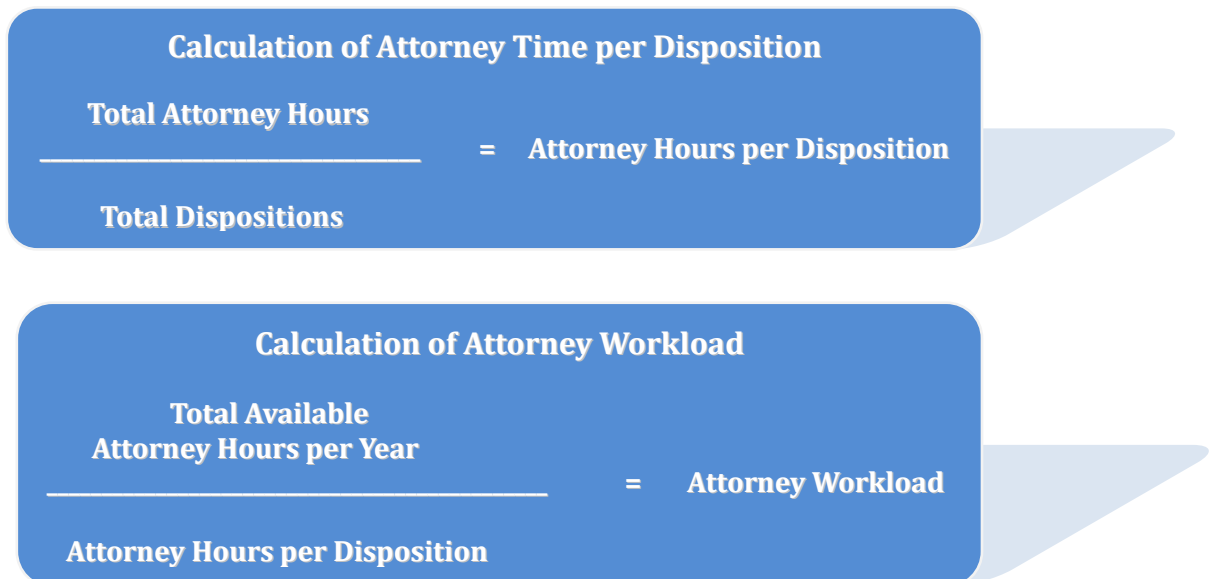
The 100 member assigned counsel panel is given cases when there is a legal conflict of interest with the four agencies. Each member of the panel is a licensed attorney within the State of Washington; they are not state or county employees; and they are paid hourly depending on the type of case they are assigned. The assigned counsel panel covers approximately ten percent of the indigent cases in King County.

Chapter 3- Designing the Workload Assessment

Case-Weighting Methodology

The Spangenberg Project has been performing public defender case-weighting studies for over twenty years. The current King County study used a similar methodology to those used in each of these studies. Assuming that records are maintained for attorney time expended in each case type area, the translation of projected caseload into projected workload can be accomplished with some assurance of precision. In the broadest context, weights can be given to the total annual caseload of an office to compare to the following year's anticipated volume of cases. The unit of measurement used to determine the projected workload and resulting standard for each type of case is "attorney-time-per-disposition." This figure is determined by dividing the total number of hours attributed to a case-type during the study by the total number of dispositions for that same case-type during the same period:

Figure 3.1 Case-Weighting Calculations



Once the workload standard has been determined, projecting resources for ensuing years operates in much the same way as the current King County public defender budget process. By projecting the number of cases of a particular case-type to be disposed of by an organization in the upcoming year, accurate projections of attorney needs can be made by dividing the workload standard into the projected caseload.

The stages laid out in this chapter explain the steps TSP researchers took to execute the study and reach the conclusions, standards, and recommendations provided in this report.

Stage 1: Initial Assessment

Upon an initial request from OPD, TSP representatives traveled to King County to meet with representatives from OPD, key criminal justice representatives, and appropriate state officials in order to familiarize themselves with the procedures and policies affecting criminal law practice for public defenders throughout King County. The Case-Weighting Steering Committee, composed of key King County criminal and juvenile justice practitioners, ~~and~~ stakeholders, and others with public defense experience, helped to ensure transparency, contributed necessary input and perspectives, and assisted TSP with various steps in monitoring the progress of the study (Appendix A).

The first site visit allowed TSP the opportunity to discuss the case-weighting study with public defender personnel and address questions they had about the process. TSP researchers consider these site visits a critical part of the study, as the information gathered provides an understanding of how defenders spend their time. The first site visit also allowed TSP researchers to familiarize themselves with the current case-tracking and disposition recording systems of each agency. Because workload standards are determined by “time-per-disposition,” it is very important that the accuracy of disposition counts be verified. In addition, discussions with public defender staff enabled TSP to begin designing the daily activity log for use in the time study. As in other studies, TSP emphasized the anonymity of the time-keepers and the fact that individual time sheets only would be seen by members of TSP’s research team. Further, it was reinforced that this study is not and cannot be viewed as a valid measure to evaluate the performance of individual public defenders involved in the time-keeping.

Stage 2: Develop Criteria

Case Classification Categories. A case-type subcommittee of the Case-weighting Steering Committee consisting of a select group of administrators, experienced defense attorneys and other participants was formed in order to recommend which case classifications should be used in developing caseload standards (Appendix B). This listing was then accepted by the Case-Weighting steering committee.

Case Enhancers. TSP, in consultation with the subcommittee, identified factors that consistently add to case complexity of certain cases and the resulting amount of time that needs to be spent on those cases. Examples of these factors include: Is the case a sex crime? Is an interpreter needed? Are there predicate offenses that will add to the potential penalty? Is there a child victim? Although many of these potential factors were included in the time keeping instruments, the case management systems of the various offices and the courts precluded a detailed analysis of hours per disposition for all of these categories. For example, although attorneys recorded whether an interpreter was required for the case on which they were recording time, the case management systems of the agencies do not keep track of this detail (Appendix C). The additional time required for these more time-consuming cases was recorded during the study period, and is reflected in the total time captured for all case types.

Case Activities. TSP determined which case activities should be tracked. These activities are grouped into several categories: in-court time may include arraignments, preliminary hearings, status conferences, and trial and sentencing hearings; out-of-court time may include legal research, client contact, investigation, waiting and travel time, etc.; and non-case-related time may include office meetings, continuing legal education (CLE), community service, etc. In the final analysis, non-case-related time is distributed proportionally among the case types, as these hours are part of an attorney’s work and should be considered in calculating the time necessary to dispose of cases (Appendix D).

Attorney Work Hours. Researchers collected information on attorney work hours and determined the hours available for King County’s public defenders to conduct their work. Taking the total number of hours for which attorneys are paid, researchers subtracted the average vacation time, sick leave, and any other time that lawyers spend away from work. The resulting net “available work hours” is used in the final case-weighting analysis.

Stage 3: Develop Time-keeping Materials and Instruction Manual

Daily Activity Log. The time sheet was designed to capture the activity of personnel from the beginning to the end of each work day. Attorneys were instructed to record all time spent in-court, as well as all out-of-court activities which last ten minutes or more. Activities that lasted less than ten minutes were included within another activity or grouped into an activity code for multiple activities. Participants were required to provide start and stop times for all activities according to the specific type of activity performed. In addition, they were required to specify the type of case for which the activity was

performed. If the activity performed was non-case related, the participants were instructed to use special “non-case related” case type codes.

Training Materials. The training materials gave indigent defense providers step-by-step instructions on how to record case types, activities, enhancers and dispositions, how to fill out the daily activity log, and detailed instructions on how to enter data in the Web-based timekeeping system. Training materials had an easy reference code to assist the participants in deciding how to code the work they performed. Prior to the start of the time-keeping process, nine training sessions were held over a three day period to familiarize attorneys with the materials and procedures. If an attorney was unable to attend any of these sessions, a Web-based training was offered (Appendix E).

Web-based Time-Keeping Interface. Based upon the King County-specific daily activity log, TSP created a database for all time entries. This Web-based interface allowed attorneys to enter their daily activity into a database.²⁸ The program was designed with internal verification features that prevented attorneys from entering incompatible case type and activity codes and/or gaps in time. Attorneys had access to the instruction manual, activity sheets and logs, and video training through this site. If the attorneys had any problems using the site, they were able to turn to a frequently asked questions section or communicate with a TSP researcher using the help link.

Stage 4: Pilot Test

It was necessary to test the reliability, relevance, and completeness of the daily activity logs, and therefore TSP conducted a pilot project in which personnel tracked their time over three days. TSP carefully analyzed the results of the pilot test to ensure that there were no recording or entry problems that compromised the integrity of the main study. After consulting with the steering committee, TSP printed instructions for time-keeping so that each participant in the study had his or her own copy.

Stage 5: Attorney Selection

OPD requested the participation of all four defense agencies in this study. With a voice in the steering committee, the agency directors asked all of their attorneys to track their time. Several of the agencies asked their support staff or hired temporary staff to help attorneys record their time in order to improve

²⁸ <http://www.kcpdtime.com>

participation. It was reported that support staff were compensated directly by the agency for this additional work. TSP recommended attorneys keep their time electronically, using the Web-based application and undergo appropriate time-keeping training either in person or online.

Stage 6: Time Keeping Period / Data Collection

The attorneys tracked their time in two six-week periods, for a total of twelve weeks, to ensure that the time keeping period encompassed a significant length of time and number of case dispositions. The length of this study period is adequate to capture information about most of the various case types, and provides a sufficient number of dispositions of the more serious case types to provide reliable results. However, some of the most serious case types, such as death penalty and other murder cases, do not provide a sufficient number of dispositions to provide reliable results.

During this period, the attorneys not only recorded the number of hours they spent on a particular case type, but they also recorded each case disposition and disposition type (e.g., dismissal, plea, trial, etc.). TSP continuously monitored the time entries to ensure that time was accurately tracked. Attorneys were contacted and instructed on any errors found with their entries. Despite these efforts, there are, in every study conducted, always a small percentage of time entries that must be discarded due to error. TSP worked to ensure that such errors were caught early in the study and minimized.

Stage 7: Performance Analysis

If effective representation is not being provided, there is a risk that workload standards based on a case-weighting study may institutionalize substandard performance. Because of this, TSP researchers, including consultants from other regions of the country,²⁹ conducted a qualitative analysis of public defense in King County. Researchers collected data from a large sample of practitioners within the criminal justice system through interviews and group discussions based on protocols (see sample protocols in Appendix F). TSP researchers interviewed more than one-hundred criminal justice practitioners and community members to better understand how the public defense system functions in King County to assess whether effective representation was being delivered by public defenders in King

²⁹ Jean Faria, Louisiana State Public Defender. Dennis Murphy, Director of Training for the Criminal Practice, National Legal Aid and Defender Association.

County. A case-weighting study cannot be used accurately to measure how much time is needed for a case if the level of representation being delivered during the study is not effective.

TSP used a wide sample of King County practitioners as suggested by the Case-Weighting Steering Committee members. Those interviewed consisted of judges from various courts, court personnel, public defenders from all four agencies practicing within assorted courthouses, prosecutors practicing in various units, attorneys general, agency directors and deputy directors, OPD staff, appellate public defenders, private appointed counsel, County Council members, and members of community-based organizations.

Stage 8: Data Analysis

Overview. Following the time-keeping and site visit, TSP analyzed the results to determine the number of hours recorded by the participating attorneys by case type. Dispositions recorded by the attorneys during the study were compared to data provided by the agencies and the courts in which they practiced to validate and supplement the data provided by the attorneys. This analysis will be explained in the following sections of the report.

Workload Standards. After determining the number of hours spent on each case type, that number was divided by the number of dispositions during the study to determine the average number of hours per disposition. Then, the number of available work hours per attorney was divided by the number of hours per disposition to determine the workload standard, or the number of cases an attorney should be capable of disposing of in one year.

Figure 3.2 Workload Standard Calculation



Adjustment. As noted in the effectiveness review section below, TSP determined that attorneys were generally providing effective representation during the period of the study. However, King County faces

a number of challenges that threatens the sustainability of quality public defense in the immediate future. These forces and their effects on the workload proposed by TSP are discussed in chapter 5.

Application of Standards. Once workload standards were developed, staffing needs could be established. If the number of cases appointed to an office multiplied by the workload standard for those case types exceeds the staffing in the office, this could be an indication that the office is exceeding the number of cases that allow for adequate representation. The ABA Ethics Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, states, in part, “if workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients.” The workload standards developed by a case-weighting study can help an office anticipate a potentially excessive workload and take steps to remedy the situation or defend a refusal to accept new cases. In King County, workload standards provide OPD and the County Executive with a means to budget appropriately. The application of workload standards for this study will be addressed in the final chapters of the report.

Stage 9: Report Drafting

Drafts of this report were given to the King County Office of the Public Defender, King County Executive Office, and the Case-Weighting Steering Committee for review and recommendations for revision. Thereafter, TSP issued this final draft of the report.

Chapter 4 – Data Analysis

Participation

All attorneys who worked on King County funded cases were expected to participate in the time study, including supervisors who carried a caseload. After excluding attorneys who resigned or went on extended leave for the majority of the study period, 181 attorneys would have been expected to track their time. After careful review of the timekeeping records, records from 37 attorneys were excluded from the results, either because they failed to keep track of their hours for the majority of the study period or it was apparent from their entries that they were not entering their time properly. Although felony attorneys participated at a higher rate than misdemeanor attorneys, the overall effective participation rate was 80 percent, an incredibly high and statistically valid rate for this type of study. Of the useable responses, ninety percent were from non-supervisory attorneys; the other ten percent came from supervisory attorneys who handled a partial caseload during the study period reported time.

Available Attorney Work Hours

TSP gathered information from each of the four defender agencies regarding the amount of time taken for vacation, sick and other leave time to calculate the total hours available for attorneys to devote to their cases.

Table 4.1 Available Attorney Work Hours

<u>Agency</u>	<u>SCRAP</u>	<u>ACA</u>	<u>TDA</u>	<u>NDA</u>	<u>Weighted Average</u>
Total Annual Hours	2080	2080	2080	2080	2080
Vacation	175	140	113	154	141.1
Sick	38.72	70	50	15.22	49.6
FMLA	22.87	28	8	5.54	17.6
Holiday	80	80	80	80	80
Available Attorney Work Hours	1763	1762	1829	1825	1792

Table 4.1 reflects the actual amount of leave taken by attorneys in each of the categories in 2009. 2080 Total Annual Hours reflects a 40 hour week over 52 weeks. The resulting 1,792 Available Attorney Work Hours is what remains after deducting the various categories of leave time, and is used later to calculate workload standards for each of the case types.

A standard work year contains 250 non-holiday work days. The study period contained 56 work days, or 22.4 percent of a standard work year. The 125.13 FTE attorneys (not including supervisors) who participated in the study would have been expected to devote 50,228 hours to work-related activities during the study period. They, in fact, reported a total of 60,360 hours worked, or just over 20 percent more time than expected, an average of 8 hours more per week for the participating attorneys. This supports the conclusion that King County public defenders put in long hours to continue to provide the quality of representation their jobs demand.³⁰

Note that all attorney time is used in the following analyses, including time spent by calendar attorneys. The study makes no distinction between dispositions that occurred during calendar calls and those that occurred thereafter. Whether or not cases are disposed at a calendar appearance, the time spent on those dispositions is used in the final analysis.

Workload Distribution by Case Type

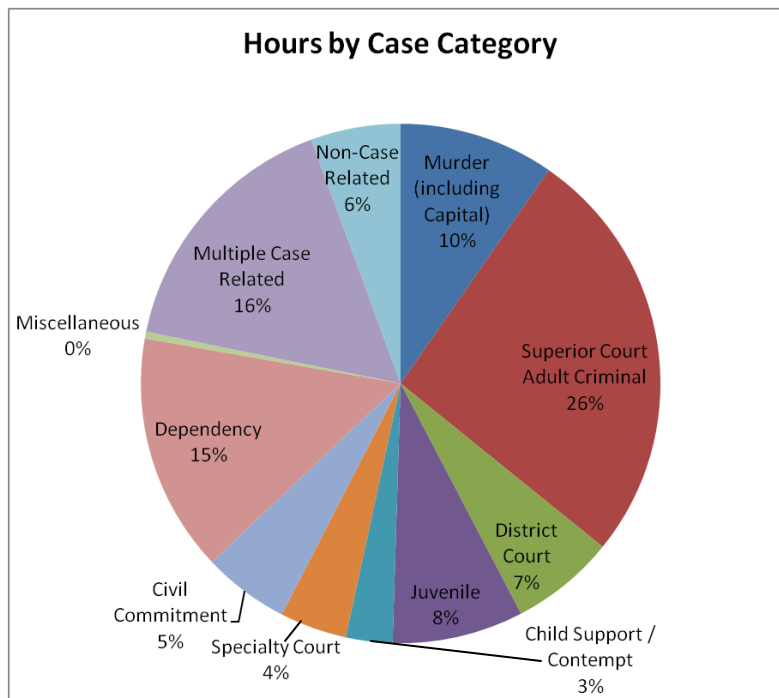
During the 12-week time-keeping period, TSP captured over 60,000 hours of staff attorney work time from non-supervisory attorneys working on county-funded cases. Table 4.2 presents the total productive time spent on case-related activities and its distribution among the different case type categories. For all of the productive time recorded, six percent was spent on non-case-related activities such as professional development and general office-related administrative activities. Overall, approximately 26 percent of all case-related attorney time during the time-keeping period was devoted to non-murder felony cases.

³⁰ Qualitative research was conducted as part of this project, which is discussed in the next chapter.

Table 4.2 Reported Hours by Case Type

Case Type Category	Case-related Time	Percent of Total
Murder (including Capital)	5835:54	10%
Superior Court Adult Criminal	15784:05	26%
District Court	3932:44	7%
Juvenile	4924:41	8%
Child Support / Contempt	1750:36	3%
Specialty Court	2515:57	4%
Civil Commitment	3246:34	5%
Dependency	8955:48	15%
Miscellaneous	255:33	0.4%
Multiple Case Related	9783:28	16%
Non-Case Related	3374:33	6%
Grand Total	60359:53	100%

Figure 4.1 Attorney Hours by Case Category

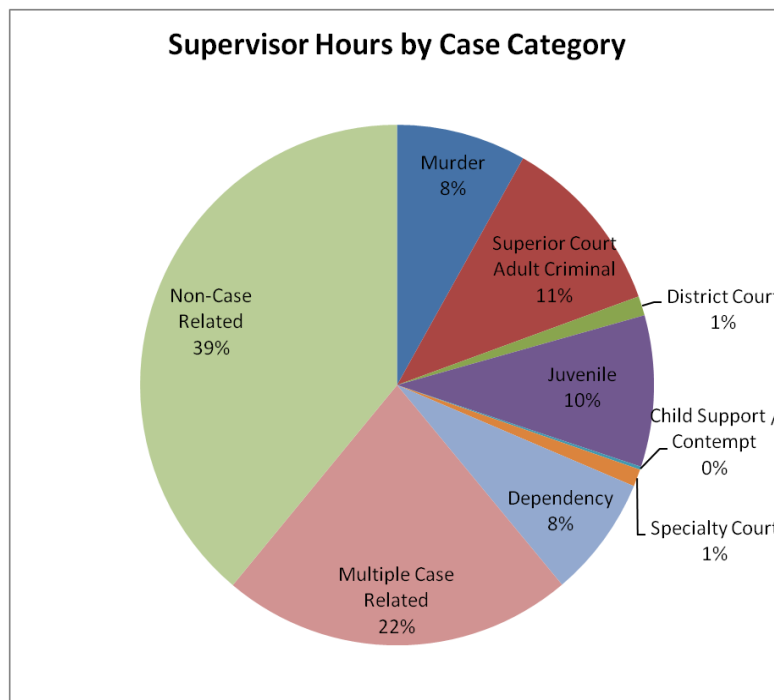


Supervising attorneys who carried any caseload were asked to participate in the study as well. Fourteen supervisors tracked their time during the study.

Table 4.3 Supervisor Reported Hours by Case Type

Case Type Category	Case-related Time	Percent of Total
Murder	520:22	8%
Superior Court Adult Criminal	720:50	11%
District Court	76:37	1.2%
Juvenile	599:37	9%
Child Support / Contempt	12:07	0.2%
Specialty Court	68:30	1%
Dependency	481:54	7.6%
Multiple Case Related	1411:14	22.1%
Non-Case Related	2483:12	38.9%
Grand Total	6374:23	100.0%

Figure 4.2 Supervisor Hours by Case Category



Supervisors with a caseload devoted most of their time to non-case related administrative and multiple case-related activities such as training and other support activities, an indication that they are not handling more cases than they should in order to provide necessary support and supervision for their attorneys. Non-Case Related activities include Administrative Activities, Community Service, Professional Development and Training. The study did not distinguish between time spent on a supervising attorney’s active caseload and time spent assisting a supervisee on that particular case type.

The current agency contracts provide funding for one supervisory attorney for every ten staff attorneys, and allow supervisors to provide minimal representation to clients “solely for the purpose of addressing management issues, emergencies or caseload overflow beyond the projections,”³¹ such that the remaining time available for supervision does not result in less than one supervisor to every ten attorneys. The funding model includes funding only for attorney supervisors and does not provide funding for staff supervisors. See Appendix L for further detail.

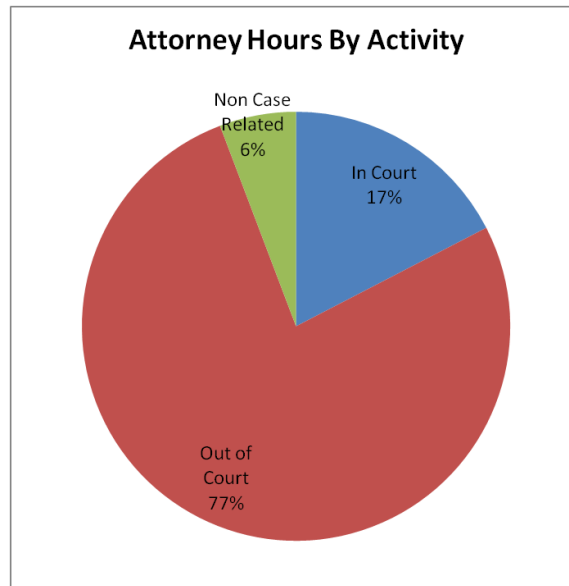
Workload Distribution by Activity Type

Table 4.4 presents the staff attorney time distribution as a percentage of all work-related activities performed and as a percentage within each activity category – in court, out of court, and non-case related – over the 12-week time-keeping period. Figure 4.3 presents this information in a more visual depiction.

Table 4.4 Attorney Hours by Activity

Activity	Hours	Percent of Total
In Court	9312:40	17.4%
Out of Court	41091:21	76.8%
Non Case Related	3093:21	5.8%
Grand Total	60359:53	100%

Figure 4.3 Attorney Hours by Activity



³¹ King County Agency Services Contract – 2009-2010, Exhibit V

The amount of time attorneys spend in court in King County is slightly higher than our experience in most other jurisdictions where TSP has performed similar studies but very similar to the percentage of time spent in court by attorneys in Colorado. King County public defenders spent 17.4 percent of their time in court, where Colorado public defenders spent 17.3 percent of their time in court. In Maricopa and Pima counties in Arizona, attorneys spent 11.5 percent, and in Clark and Washoe counties in Nevada, between 11 and 12 percent. Not surprisingly, King County and Colorado public defenders each maintain a trial rate of over five percent³², whereas trial rates in the other jurisdictions mentioned above are far lower. The average trial rates in large urban counties nationally have declined steadily over the past several years, and were at about three percent in 2004³³.

Table 4.5 Activities by Practice Area

Attorney Type	Percent of Attorneys Participating	In Court	Out of Court	Non Case Related	Total
Capital	2%	13.7%	82.9%	3.4%	100.0%
Felony	41%	15.8%	77.6%	6.6%	100.0%
Misdemeanor	12%	18.1%	73.5%	8.4%	100.0%
Juvenile	14%	17.8%	76.5%	5.6%	100.0%
Dependency	15%	15.7%	81.5%	2.8%	100.0%
COC	4%	27.5%	67.1%	5.4%	100.0%
MHC	2%	33.9%	58.7%	7.4%	100.0%
Drug Court	3%	38.9%	53.7%	7.4%	100.0%
ITA	6%	12.8%	84.0%	3.1%	100.0%
BECCA	1%	13.6%	84.1%	2.3%	100.0%
Grand Total*	100%	17.4%	76.8%	5.8%	100.0%

*Weighted Average: All attorney hours in each category divided by all hours reported.

In-court time, which includes trial and all other hearings, is substantially higher for Mental Health Court and Drug Diversion Court attorneys, which helps to explain the higher average in-court time experienced in King County compared to TSP's experience in other jurisdictions. In 2007, the Metropolitan King County Council voted to enact a one-tenth of one cent sales tax to fund the strategies and programs outlined in King County's Mental Illness and Drug Dependency Action Plan, including diversion of mentally ill and chemically dependent youth and adults from initial or further involvement in the traditional criminal justice system. Having separate mental health and drug courts -- seen as a model

³² King County Felony Case Processing Summary Report Based on Resolutions Through 2009 (AJOMP Report)

³³ Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties*, 2004
<http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc04.pdf>

system nationally – can reduce recidivism while also allowing for specially-trained practitioners to address the specific needs of defendants within these courts and handle cases more efficiently.

Out of Court Activities

Public Defenders spent the majority of their out-of court time on case preparation and client-related contact, slightly more so in those categories in Juvenile and Dependency representation. Client-related contact, at just fewer than 14 percent, is consistent with but on the lower end of the range of TSP’s experience in other jurisdictions, which ranges from 14 to 17 percent for that category.

Table 4.6 Out of Court Time by Practice Area

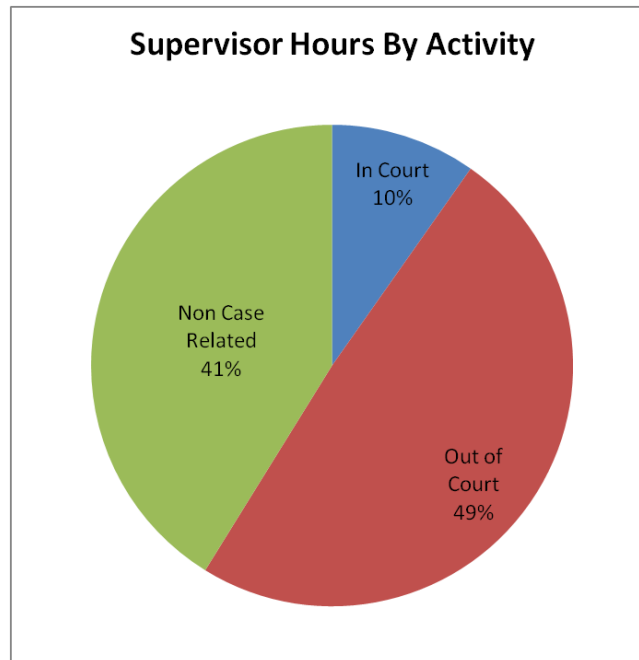
Activity	Felony	Misdemeanor	Juvenile	Dependency	Total
AOD/General Calls/Substantial Advice	0.89%	0.33%	1.61%	0.81%	0.92%
Case Preparation	24.93%	28.41%	17.94%	27.41%	24.67%
Case-Related Clerical Time	3.63%	5.95%	4.63%	5.88%	4.55%
Client-Related Contact	12.61%	11.85%	14.49%	17.85%	13.76%
Conference: Colleague	3.75%	2.61%	2.98%	2.53%	3.23%
Conference: Judge	0.07%	0.03%	0.08%	0.11%	0.07%
Conference: Other	0.92%	0.50%	1.21%	3.01%	1.28%
Conference: Prosecutor	2.39%	0.78%	1.67%	1.13%	1.80%
Investigation	2.09%	0.60%	1.93%	0.36%	1.54%
Jail Release Issues	0.02%	0.01%	0.11%	0.00%	0.03%
Legal Research	4.40%	2.96%	5.25%	2.39%	3.98%
Mitigation-Related	1.42%	0.00%	0.48%	0.04%	0.80%
Social Services-Related	0.23%	0.15%	0.52%	0.85%	0.38%
Supervision: Case-Related	0.13%	0.80%	1.20%	0.15%	0.42%
Travel Time: Case-Related	6.03%	7.30%	4.26%	6.58%	6.01%
Waiting Time: In Court	3.91%	4.42%	3.34%	4.94%	4.07%
Waiting Time: Jail	0.66%	0.22%	0.31%	0.06%	0.43%
Waiting Time: Prosecutors	0.56%	0.08%	0.87%	0.04%	0.45%
Percent of All Reported Time	68.64%	67.01%	62.88%	74.14%	68.38%

Case-related clerical time comprises almost five percent of all attorney time, and investigative activities consume approximately two percent of all time for Felony and Juvenile attorneys. Although attorneys were not specifically instructed to use these categories to record activities that investigators or support staff could do if there was sufficient availability, these numbers support TSG’s conclusion in chapters 5 and 6 that at least some of the time spent by the attorneys on these activities could be freed up if there were additional professional and clerical support staff to provide these functions.

Table 4.7 Supervisor Hours by Activity

Activity	Hours	Percent of Total
In Court	545:32	9.8%
Out of Court	2744:44	49.1%
Non Case Related	2303:10	41.2%
Grand Total	5593:26	100.0%

Figure 4.4 Supervisor Hours by Activity



The activities reported by participating supervisory attorneys indicate that most of their time is appropriately spent on non-case related and other administrative activities, and that they spend only a small percentage of their time in court.

Waiting Time

Attorneys were instructed to record time spent waiting in court as a specific activity. If the attorneys were performing other work-related activities while waiting, they were instructed to record the activity they were performing and note in a separate field that the activity was performed while waiting. TSP denoted such activities as “productive waiting time,” which is distinguished from waiting time during which attorneys could not conduct other business. Waiting time in correctional facilities and at the prosecutor’s office, as reported by the attorneys, was recorded at less than one-half percent of total time each.

Combined waiting time in court, however, ranged from 5.8 percent for Juvenile attorneys to 12.8 percent for Dependency attorneys. This compares to waiting time from other TSP studies of three to six percent, and supports the assertions made by many of the attorneys that the courts’ scheduling decisions often neglect the needs of defense attorneys. Although there will always be some amount of waiting time required, scheduling changes should include input from defender agencies.

Table 4.8 Waiting Time in Court by Practice Area

	Felony	Misdemeanor	Juvenile	Dependency
Non-Productive	3.9%	4.4%	3.3%	4.9%
Productive	2.2%	3.7%	2.5%	7.8%
Total	6.1%	8.1%	5.8%	12.8%

Mental Health Court attorneys reported just 1.1 percent non-productive waiting time and did not indicate any waiting time where productive activities were performed.

Attorney Hours per Disposition

As noted previously, the unit of measurement used to calculate the workload of public defenders is the overall time per disposition for each case type. For this reason, attorneys were asked to note when a disposition occurred and the type of disposition that occurred. TSP also received information from each of the defender agencies and from the Superior and District Court case management systems. Because of the varying degrees of accuracy of the data reported by each of these sources, TSP used the most reliable disposition data available from each of those sources. Superior Court disposition data provided the most reliable and comprehensive source of information, and was used wherever possible. Inconsistencies and limited reporting capabilities of the defender agency case management systems limited the use of agency data to the reporting of District Court dispositions. Data from the District Courts, while potentially useful for analyzing total agency disposition information, did not consistently record the attorney of record at disposition, often using a generic code for the agency rather than the attorney appointed to the case. For this reason, TSP relied on agency reported dispositions for District Court cases.

In reviewing the disposition data, it is important to note that some case type categories yielded a very low number of dispositions during the study. In some instances, the low number of disposition occurrences was related to the serious and complex nature of the case type, such as with murder cases and complex economic crimes, which were not resolved as often during the twelve-week study period. For other case types, the number of hours devoted to that case type was relatively low, or an insufficient number of

attorneys reported their time for that particular case type category; in other circumstances, a reliable source of disposition information could not be identified, such that the results would not provide a reliable workload measure.

Note that for dispositions attributed to the agencies' case management systems, the agencies only keep track of case closings, rather than case dispositions, and sometimes do not close the case until sometime after the disposition occurs. Some agencies were unable to provide the case classification of an offense, and we established the case classification by referring to the Washington Revised Code for each of the listed offenses. Also, some agencies were unable to provide specific disposition information for each case, and often marked the cases as "closed," rather than dismissed, acquitted, etc. Comparisons between the various sources indicate that when agency case closures are used, the number of dispositions provides a close approximation to those provided by the other sources.

All reported dispositions are non-conflict cases, where the attorney of record at the time of disposition or case closure corresponds to the attorney reporting hours for that case type. When an attorney withdrew from a case prior to disposition, the time spent on that case is reported in the total hours for that case type, so the resulting hours per disposition include the time required to work cases prior to the identification of conflicts. The total time reported in each of the following tables includes multiple case-related time and non case-related time attributed in proportion to the amount of time that each attorney spent on each specific case type, such that all work-related hours are ultimately accounted for in the total hours per disposition. See Appendix L for more detail.

Although attorneys were asked to report specific enhancers for the type of case on which they were working (Persistent Offender, Mandatory Minimum Sentence, Interpreter Required, etc.) there were an insufficient number of dispositions in some of these areas and no reliable means to validate the existence of these enhancers for the cases disposed. For example, there were only five persistent offender cases disposed of during the study period, which we ended up including in their more general case category. So long as the proportion of cases assigned to each agency involving these enhancers remains consistent in the future, a new workload system should prove easier to administer and reduce the need for requesting extraordinary case credits. These cases, while they do demand an additional effort to represent, are included in the hours spent on the remaining case types. If the proportion of these cases changes in the future, the workload standards can be recalculated based on those changes.

Similarly, for capital offenses and other murder cases, the paucity of prosecutions, the inconsistent occurrence of these offenses, and the wide variety of hours required to dispose of each case precludes the establishment of a caseload standard in a time study of this duration. In capital cases, sufficient funding is allocated to provide two full time attorneys to each case for its duration, which is in line with generally accepted national standards.³⁴ This practice should continue for capital cases. Until there is sufficient data to recommend a case weight for other homicides, they should continue to be assumed to require 120 hours of work at minimum. Homicide cases that substantially exceed that time additional weight should be recognized consistent with the interim case weighting now in place

Based on the attorneys' record keeping, Tables 4.9 and 4.10 present data on the amount of time that attorneys currently spend on case types and the hours it presently takes them per disposition. The "Workload Standard" reported in the last column of each of these tables represents the number of cases an attorney should be able to handle if that attorney represented that case type *exclusively*. The term workload standard is used in place of caseload standard, as it better describes the measurement being performed. These tables constitute TSP's recommended case-weighting methodology for King County, the advantages and implementation of which are discussed further in this chapter and chapter 5.

Superior Court Felony Cases

Table 4.9 shows the hours per disposition reported during the study period for the non-capital criminal case types handled in Superior Court. Felony C cases included certain cases reported by the Superior Court as Gross Misdemeanors that were filed in that court.

³⁴ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (February, 2003).

Table 4.9 Superior Court Felonies

Case Type	A Total Time (Hours)	B Dispositions (Superior Court)	C=A/B Hours per Disposition	1792³⁵/C Workload Standard
Murder*	3243:34	6	--	--
Felony A Sex**	2545:17	20	127:15	14
Felony A Other	2591:28	43	60:16	30
<i>Felony B Sex***</i>	<i>458:07</i>	<i>5</i>	<i>91:37</i>	<i>20</i>
Felony B Other	8068:34	320	25:12	71
Felony C and Felony C Sex****	4262:48	204	20:53	86
Felony Drug	1494:03	168	8:53	202
Total*****	19420:20	760	25:33	70
Expedited Cases in District Court (from table 4.10 below)*****	967:46	247	3:55	457
Total w/Expedited*****	20338:06	1007	20:14	89

*Information on Non-Capital Murder cases is included here for informational purposes only, and cannot be used to establish reliable workload standards.
**Felony A Sex Offenses include RCW 9A.44.040-Rin the First Degree; 9A.44.050-Rape in the Second Degree; 9A.44.073-Rape of a Child in the First Degree;9A.44.076-Rape of a Child in the Second Degree;9A.44.083-Child Molestation in the First Degree; and 9A.44.100(1)(A)-Indecent Liberties by Forcible Compulsion.
***Felony B Sex Offenses include RCW 9.68A.040-Sexual Exploitation of a Minor; 9.68a.101-Promoting the Commercial Sexual Abuse of a Minor; 9A.44.086- Child Molestation in the Second Degree; 9A.44.100 (b-f) Indecent Liberties and 9A.64.020(1)-Incest in the First Degree.
****Felony C Sex Offenses include RCW 9A.44.160: Custodial sexual misconduct in the first degree. RCW 9.68A.050: Dealing in depictions of minor engaged in sexually explicit conduct. RCW 9A.64.020: Incest. RCW 9A.44.115: Voyeurism. RCW 9.68A.100: Commercial sexual abuse of a minor. RCW 9A.44.089: Child molestation in the third degree. RCW 9A.44.093: Sexual misconduct with a minor in the first degree. RCW 9.68A.090: Communication with minor for immoral purposes. RCW 9A.44.060 and RCW 9A.44.060 (1) (A): Rape in the third degree. RCW 9A.44.079: Rape of a child in the third degree. RCW 9A.88.010: Indecent exposure (if previously convicted). Felony C Sex cases comprised only 416 reported hours and 12 dispositions, and did not present as substantially more time consuming than other Felony C cases, and are therefore combined.
*****Aggregated Totals and Expedited cases are included here only to provide context to workload standards in other jurisdictions and to King County workloads prior to implementation of the expedited process. The aggregated totals do not represent a workload standard alone, and will change as the ratio of case types change.

As expected, the hours per disposition for sex cases are far higher than for other types of felonies. Although the Felony B Sex cases are reported here for informational purposes, to underscore the substantial complexity and time-consuming nature of those offenses, there are too few dispositions reported to use these results as a basis for a reliable workload standard standing alone, and would require a substantially longer study period to provide a reliable result. Later, the felony sex cases are combined to provide a more reliable workload standard. Expedited cases in District Court are included here to provide a comparison point to workload standards in other jurisdictions. The workload standard for combined felonies is also lower than that reported in many other jurisdictions. Much of this is due to the change in

³⁵ 1792 represents the total available work hours for a public defender, as determined in Table 4.1.

PAO filing practices, but even when those expedited cases are accounted for, the workload standards may still appear relatively modest.

This departure is not unexpected, as experts around the country have been concerned that the standards in use by many jurisdictions are far too high to ensure quality representation.³⁶ Further, the increasing complexity of criminal cases, the substantial increase in the seriousness and number of collateral consequences attendant to convictions, and the increasing complexity of forensic evidence and investigations lead us to conclude that the resulting workload standard is not unreasonably low, and is actually an accurate reflection of the amount of work it takes to provide quality representation. If anything, King County faces a number of novel challenges to the practice of public defense that suggest its workload standard is unsustainable over the long term without careful attention by the County. These factors are discussed in the next chapter.

OPD reports that the current credit system, which provides a standard of 150 felony case credits, is equivalent to 113 felony cases³⁷ plus additional credits for time-intensive cases, persistent offender cases, sex cases, probation review, extradition and work on conflict cases that required substantial work before identification of the conflict.

There are very few jurisdictions where a direct comparison can be made to King County, where felony attorneys are responsible only for the more serious cases that are less likely to be resolved quickly. Maricopa County, Arizona, where the county utilized an Early Disposition Court process during a case-weighting study performed by TSG in 2002, reported a combined felony caseload per attorney of 96.3 in non-EDC cases. In Massachusetts, institutional public defenders who provide representation in Superior Court report just over 90 cases per attorney per year. Neither of these reported workloads is formally institutionalized as caseload standards but, instead, represents the average number of appointments or dispositions per attorney per year. When compared to these jurisdictions –seen as national leaders on indigent defense – King County’s numbers are far from exceptional. But, even more, the County faces a number of unique challenges that may threaten the sustainability of the current workload.

³⁶ *Supra* note 18.

³⁷ This number is based on calculations made based on 2008 data.

District Court Criminal Cases

Similar to the situation in Superior Court, attorneys are faced with a more serious set of cases than in the past. PAO charging practices and the growing number and seriousness of collateral consequences result in a much lower caseload standard than contemplated by the current credit system and lower than those used in many other jurisdictions as well. Where minor misdemeanors once comprised a larger percentage of District Court cases handled by public defenders, they now make up less than 25 percent of the overall District Court caseload. This is similar to the percentage of misdemeanors appointed to public and private defenders in the first two months of 2010, according to information provided by OPD, and is a substantial decrease from the percentage of misdemeanors appointed in 2009, which was 37 percent (Case Assignments by Court and Agency, OPD). Thus, as is the case in Superior Court, the cases that remain are substantially more complex than in the past, which means that the workload standards must be substantially lower than the current credit system contemplates. These ratios may fluctuate over time, and the aggregate workload for all misdemeanors will change as a result.

Table 4.10 District Court Misdemeanors

Case Type	A Total Time (Hours)	B Dispositions (Agency Reports)	C: A/B Hours per Disposition	1792/C Workload Standard
Gross Misdemeanor	1272:49	113	11:15	159
Misdemeanor DUI	2747:47	191	14:23	125
Misdemeanor DV	495:55	37	13:24	134
Misdemeanor	543:41	110	4:56	363
Total*	5060:13	451	11:13	160
Expedited Cases**	967:46	247	3:55	457

*Aggregated Totals are included here only to provide context to workload standards in other jurisdictions and to past King County workloads. The aggregated totals do not represent a workload standard alone, and will change as the ratio of case types change.

**Cases which the PAO has filed as misdemeanors in District Court. If the defendant does not accept a plea agreement, the PAO may re-file the case in Superior Court as a felony. Table 4.10 does not include time specifically identified as time spent on probation reviews, nor does it include probation review dispositions.

It should be noted that during the study period, King County District Courts have been suppressing blood alcohol content evidence in DUI cases. This policy is expected to be reviewed, and if there is a change in the policy, the amount of time devoted to those cases may increase as a result.

Juvenile Offender Cases

While the Juvenile Felony Sex cases are reported here for informational purposes, to underscore the substantial complexity and time-consuming nature of those offenses, there are too few dispositions reported to use these results as a basis for a reliable workload standard. Instead, it would require a substantially longer study period to provide a reliable result. Attorneys reported five dispositions of these cases during the study period, and the agencies closed just eight during the same period. These figures would translate to a range of 104-65 hours per disposition.

Table 4.11 Juvenile Offenders

Case Type	A Total Time	B Dispositions (Superior Court)	C: A/B Hours per Disposition	1792/C Workload Standard
<i>Juv. Felony Sex</i>	521:47	5	104:21:33	17
Juv. Felony	4758:42	249	19:06:41	94
Juv. Misdemeanor	2020:02	372	5:25:49	330
Total	7300:33	625	11:40	153

Superior Court Dependency Cases

Dependency cases are particularly complicated and present a special challenge when establishing workload standards. An attorney may represent a parent, one child, or many children at once. Additional petitions regarding additional children may be filed at different times in the life of a case. These cases may continue for years without a final resolution, and the special nature of dependency representation may require many skills from an attorney quite different than those of a criminal defense attorney. Part social worker, part investigator, these attorneys may spend many hours providing services, attending meetings and being at once an advocate for and counselor to their clients.

Current law requires that once dependency is established, either by stipulation or court order after a hearing, reviews must be held at least once every six months, and additional permanency planning hearings or hearings for additional children or to dismiss the dependency are regularly held. The time study results indicate that approximately 5 hearings per year are held for each initial petition filed. A motion to terminate parental rights can be filed at any time during the life of a case, and once filed, there may continue to be review hearings and other matters that require the attorney's attention during the pendency of that action.

Table 4.12 Dependencies

Case Type	A Total Time	B Dispositions * (Superior Court)	C: A/B Hours per Disposition	1792/C Workload Standard
New Petition Through Adjudication/Disposition	2414:56	96	25:09	71
Review / Permanency Planning Hearings	5241:16	481**	10:53	165
Termination of Parental Rights Petitions	1258:02	19	66:12	27
Family Treatment Court	345:02	8***	43:08	42

* Dispositions were grouped when an attorney represented more than one child in a proceeding and the petition or review hearing was held on the same date. Petitions are based on the date of the initial petition, rather than the conclusion of the hearing.

** This is the number of Dependency Review Hearings Orders and Permanency Planning Hearing Orders in which participating attorneys were involved. This is not the same disposition count that the current case credit system uses. These dispositions represent the significant review proceedings in a dependency case, and are intended to capture the additional time required to provide assistance of counsel in the additional motion hearings and other reviews that might take place. The number of creditable events recorded here is substantially lower than the creditable events currently reported to OPD, and is intended to account for the same amount of work with more simplified reported requirements,

***Orders to Participate in Family Treatment Court. The Hours per Disposition figure considers the considerable time needed to prepare for and attend the many court appearances required for these cases.

Currently, the formula used in King County by contract sets a case credit workload for each attorney of 180 credits per year. A credit is awarded at the initiation of a dependency case, and partial credits are awarded for hearings held after a disposition order is entered in the case and for contested adjudications or disposition hearings relating to the initial petition. One credit is allotted for each termination petition filed, and another credit for each petition that requires a trial. The Washington State Bar Association and the Washington Defender Association standards are 80 open dependency cases per attorney. Again, time spent by calendar attorneys appearing at the initial 72 hour hearing is included in this analysis.

Adult Drug Court and Involuntary Treatment Proceedings

Adult Drug Court, Juvenile Drug Court and District Court Mental Health Court are currently funded by providing calendar attorneys to staff those proceedings, and agencies do not otherwise receive separate credits for those case types. Attorneys were asked to record a disposition at the time of successful completion or failure to complete the program. Adult Drug Court and Mental Health Court dispositions could not be determined from the Court or Agency provided data, and Juvenile Drug Court reported hours and dispositions were too few to provide reliable results. As a result, workload standards for those case types are not provided in this report.

Table 4.13 ITA Court

Case Type	A Total Time	B Dispositions (Superior Court)	C: A/B Hours per Disposition	1792/C Workload Standard
Civil Commitment/ITA	3358:27	579	5:48	309

Civil Commitment proceedings, for which agencies receive one case credit, each include: initial petitions for commitment, 180-day hearings for which a new docket number is assigned, involuntary medication hearings, alcohol involuntary commitment proceedings, and drug-related commitment proceedings, and all subsequent proceedings under the same cause number (see Appendix K). Attorneys were asked to report a disposition at the conclusion of each significant stage of each proceeding. The analysis in table 4.13 reflects each significant stage of each proceeding, including the initial petition, 14-day hearing, 90 day hearing, 180 day hearing and petitions for revocation. While attorneys were asked to record time spent in court for each proceeding type, most hours were recorded under the Other In-Court time category, so the amount of time spent on each proceeding type could not be determined. The resulting workload standard is therefore the average number of significant stage proceedings an average attorney would be able to handle in one year.

Case Type Categories with Insufficient Data

We were unable to accurately determine the number of hours spent on the following case types as well, either because there were few too hours or too few dispositions to provide reliable results, or because a reliable source of information to determine the number of dispositions could not be found. OPD and the agencies will need to determine alternative methods for establishing reliable workload measures, either by further studying the time spent on these cases, or by developing a reliable method of capturing the number of dispositions, appointments or other significant events to calculate the work required for each of these case types.

For probation violation and review hearings, other post-dispositional proceedings such as SSOSA and DOSA reviews, and extradition proceedings, attorneys were instructed to record time spent on probations violations and reviews when they were not associated with another case on which they were currently working. In Juvenile Court, very few hours were recorded for these proceedings, and in Superior and District Courts, we were unable to distinguish whether review hearings were associated with an existing

case or not. In Superior Court, this time accounted for just over one percent of the total time spent on Superior Court cases, and just under 11 percent in District Court.

Table 4.14 Case Types without Sufficient Data

Although the Superior Court was able to provide data on RALJ dispositions, the number of dispositions during the study period for those attorneys participating was inconsistent with the number of dispositions in a year for those same attorneys, and inconsistent with the number of case closings reported by the agencies. It appears that an inordinate number of dispositions occurred during the study period when compared to the annual number of dispositions, based on the Superior Court data. As a result, we felt it inadvisable to use these likely anomalous data in proposing a workload standard. Further study by OPD and the agencies to determine a reliable assignment or disposition count for this case type should result in a reliable workload standard.

Case Type	Total Time
Complex Economic Crime	725:08
Superior Court Probation Violation/Extradition	247:01
District Court Probation Violation/Extradition	619:53
RALJ	640:21
Juvenile Probation Reviews	31:07
Juvenile Decline Hearings	50:25
Adult Drug Court	1517:33
Mental Health Court	737:20
Juvenile Drug Court	320:15
Child Support/Contempt	2009:11
CHINS/ARY	718:32
Truancy	45:52
Contested private adoption	3:19
Guardianship	140:40
SSOSA/DOSA Reviews	173:49
Post Conviction Review	92:55
NGI Review	15:55
Material Witness	53:52
Representation of Guardian	0:53

Regional Mental Health Court, Adult Drug Court and Juvenile Drug Court are staffed by calendar attorneys and the agencies fund commensurately. Absent this study's ability to develop a workload standard for these case types, this practice should continue, and adjusted for changes in caseload. Child Support/Contempt cases currently receive one credit and include two review hearings. One-third credit is awarded for every review after the first two. CHINS/ARY cases receive one credit for each completed case and include the first two review hearings thereafter, and also are credited one-third credit for each review hearing. Truancy cases receive one credit for each initial petition and one credit for each contempt filing. ARY/CHINS have a credit load limit of 250 credits per year; Truancy cases have a limit of 375 credits per year. Although there were a substantial number of hours recorded for these case types, OPD and agencies should determine a reliable appointment or disposition count in order to provide a workload standard for use in the future. Until then, the cases should be credited according to the system currently in place.

Supervisor Time

As discussed above, time was recorded by supervisors who carried any case during the study, although that time is not included in the hours per disposition or workload standard calculations, as those positions are funded separately by OPD. Dispositions attributable to those supervisors were not included in the calculations and thus should not affect the workload calculation for non-supervisory attorneys. Supervisor time is devoted primarily to multiple case-related and non-case-related functions.

Table 4.15 Supervisor Time by Case Type

Hours	Case-Related Time
Murder	520:22
Superior Court Adult Criminal	720:50
District Court	76:37
Juvenile	599:37
Child Support / Contempt	12:07
Specialty Court	68:30
Civil Commitment	0:10
Dependency	481:54
Miscellaneous	3:05
Multiple Case-Related	1411:14
Non-Case Related	2483:12
Total	6377:38

Murder Cases

Although the time spent on Capital and other murder cases is not included in any of the calculations for hours per disposition or workload standards (because there were insufficient records), it is reported here for informational purposes. These cases consumed approximately ten percent of the total time recorded by non-supervisory attorneys participating in the study. The varying complexity and irregular occurrence of murder cases makes it impossible to develop a reliable workload standard for these cases using a 12 week study period. OPD and the agencies should continue to use and refine the procedures already in place.

Table 4.16 Capital and Other Murder Cases

Case Type	Hours
Capital Murder	3167:07
Aggravated Murder: non-capital	73:18
Murder I	2003:54
Murder II	354:41
Other Homicide	236:54
Juv. Homicide	42:28
Murder Total	5835:54

Chapter 5 – Proposed Workload Model & Discussion

Case Weighting Study Conclusions

Workload Standards

Having performed numerous case-weighting studies throughout the country, TSP cannot overstate the role that workload standards should play and the concomitant limitation of their use. Most importantly, the numerical standards presented in this study represent average time requirements and should not be used to evaluate individual attorneys or to redistribute cases among attorneys within an agency. Individual cases vary widely with respect to the amount of work they entail including such factors as: the complexity of the case, the number of witnesses, the number of charges, the background of the defendant, the defendant's criminal history, the seriousness of the crime, the complexity of the law, and the willingness of the client to accept a plea offer. Thus, it needs to be emphasized that the workload standards are *not* appropriate for measuring the quality of representation provided to individual clients. The primary purpose of the workload standards developed by TSP is to provide a tool to project staffing requirements based on a projected annual caseload, such that caseloads do not become so high as to threaten the ability of attorneys to provide effective representation.

Implementing a Case-Weighting Funding Methodology

Based on the results of this study, TSP recommends that the case credit system currently used by OPD as a funding model be discarded and replaced with a much simplified system. The present system of assigning credits is challenging to understand from outside of the system as well as from within it. From TSP's research, this seems to have caused a considerable amount of miscommunication and misperceptions within the system. For this reason, TSP concludes that a more simplified system that is accurately monitored and updated could alleviate many of the concerns that defense attorneys are not receiving accurate credits for their work. Problems with the current case credit system include perceived inaccuracies in the model between credit assignment and workload, inequitable distribution between defender agencies, and questions about the accuracy of defense attorney reporting of extraordinary credits. Improper reporting of credits by defense agencies may lead to OPD's rejection of credit requests, which is time-consuming and frustrating for both OPD and the defense agencies. A proper system of

case-weighting, by contrast, should be perceived as fair in order for attorneys to feel they are being compensated for their work and not forced to overextend themselves. An appropriate case formula also will likely stabilize the relationship between OPD and the defender agencies and, in turn, allow for more efficient and effective representation for the clients.

Undoubtedly, adjusting to a new system will require some planning and cooperation. However, switching to a new workload system based on this case-weighting methodology will allow for an uncomplicated, straightforward structure, a common ground of understanding, easier implementation, and a more accurate reflection of the time needed to handle a case.

Other jurisdictions throughout the country have developed workload standards using this approach, either by developing a funding formula that provides sufficient attorney resources to handle the anticipated workload, or by limiting the number of appointments to an agency as described by the workload standards. These systems apply the same workload standard to each case of a particular case type, regardless of the amount of time it takes to resolve each specific case. King County's current system is complicated, consumes a substantial amount of administrative time to manage, requires agencies to disclose information they consider proprietary, and generates a good deal of friction between the agencies and OPD.

Instead, TSP recommends that King County move to a new Work Unit system, which is depicted in Table 5.1. This new approach relies on the concept of averages; when dealing with large numbers of cases, such an approach results in the fair and equitable distribution of cases. The amount of time required to defend the average case includes activities such as staffing for calendar parts, post-disposition proceedings such as probation reviews, and other activities that consume an attorney's time such as professional development and administrative activities. The courts rely upon the agencies to be available to staff many calendars to help the calendars run efficiently. The time required to staff these calendars, as well as the dispositions that occur there, are included in these workload calculations. If, however, one agency staffs these calendars disproportionate to the percentage of cases to which it is appointed, funding reconciliation may be necessary to account for the difference. For example, if each agency receives 25 percent of the Superior Court felony cases, and only two agencies staff the calendar parts, those two agencies should

receive additional funding to account for the greater attorney and staff time necessary to provide that coverage.

This proposed methodology, in which review hearings and other events that are currently receiving extra credits are consolidated in the average time required for disposition, encourages continuity of representation, early determination of conflicts, and improves the efficiency of the courts and their ability to accommodate the needs of four separate defender agencies.

In crafting this system, TSP combined time for certain case types. For Superior, District and Juvenile Court case types, probation review and other post-dispositional hours were added to the hours previously calculated for each case type in direct proportion to the percentage of hours recorded in each category. In Juvenile Court, hours recorded for Decline proceedings were also added.

For purposes of this system, a case is defined pursuant to the current definitions set forth in the current agency contracts: “A case is any one charge or series of related charges filed against one defendant/respondent in a single charging document, or in the case of misdemeanors, a series of charges under several charging documents, set for one court hearing that will ultimately lead to one disposition.”

This system allows OPD to allocate initial Work Units at case assignment, and such units can be debited or credited back to OPD in situations where a case is assigned in error or where the agency identifies a conflict of interest prior to disposition. While this approach to conflicts may appear to unfairly penalize an agency when a conflict is identified, so long as the conflict rate among the agencies is similar, the agencies will continue to receive an equitable apportionment of workload. The time required to work on cases that ultimately conflict out is included in the time required to dispose of the non-conflict cases, and therefore compensates the agencies for the additional efforts these cases require. OPD should monitor the number of conflicts that each agency reports in each case type category to ensure that the use of these averages results in an equitable distribution of actual workload.

For dependency cases, a case is defined as appointment of an initial petition regarding one parent, one child, or several children if the agency chooses to represent multiple children in a proceeding. This includes the time required to staff the 72-hour hearing calendars, and all work required through the initial adjudication of the matter, regardless of whether the case requires appearance at a contested hearing on

the merits. If the agencies staff the 72-hour hearings disproportionate to the number of cases to which they are appointed, funding reconciliation can be made to account for that coverage. For terminations of parental rights, the same definition of a case applies, whether the petition is resolved prior to a trial or not. OPD should monitor the percentage of dependency and termination proceedings that require a trial between the agencies to ascertain whether workload distribution remains equitable.

There are numerous formulas that could be developed based on the results of the study, and some case types have been combined for simplicity and uniform distribution of workload among the agencies. The following table is TSP's proposed workload allocation system.

Table 5.1 Proposed New Attorney Work Unit Formula

Case Type	Hours	Dispositions ³⁸	Hours per Disposition	Workload Standard (based on 1792 hours)	Work Units (1 hour per Unit)
Superior Court Adult Criminal					
Felony A or B Sex	3085	25	123:24	14.5	123
Felony A Other	2662	43	61:54	28.9	62
Felony B Other	8289	320	25:54	69.2	26
Felony C	4379	204	21:27	83.5	21
Felony Drug	1535	168	9:08	196.2	9
District Court					
Gross Misdemeanor	1385	113	12:15	146.2	12
Misdemeanor DUI	3030	191	15:51	112.9	16
Misdemeanor DV	547	37	14:46	121.2	15
Misdemeanor	600	110	5:27	328.8	5
Expedited Cases	1067	247	4:19	414.7	4
Juvenile Offender					
<i>Juv. Felony Sex</i>	528	5	105:31	17.0	106*
Juv. Felony	4812	249	19:19	92.7	19
Juv. Misdemeanor	2043	372	5:29	326.4	5
Dependency					
Dependency (each initial petition)	2415	96	25:09	71	25
Dependency Reviews/Modification Hearings* *	5241	481	10:53	164.5	11
Termination of Parental Rights (each petition)	1258	19	66:12	27.1	66
Family Treatment Court	345	8	43:07	41.5	43
Other					
Civil Commitment/ITA (each significant stage)	3358	579	5:48	308.9	6

*While there were insufficient dispositions in the Juvenile Sex Crime category to provide a reliable workload standard, we propose that the 106 Work Unit number be used until OPD can perform further analysis of the time required for this case type.

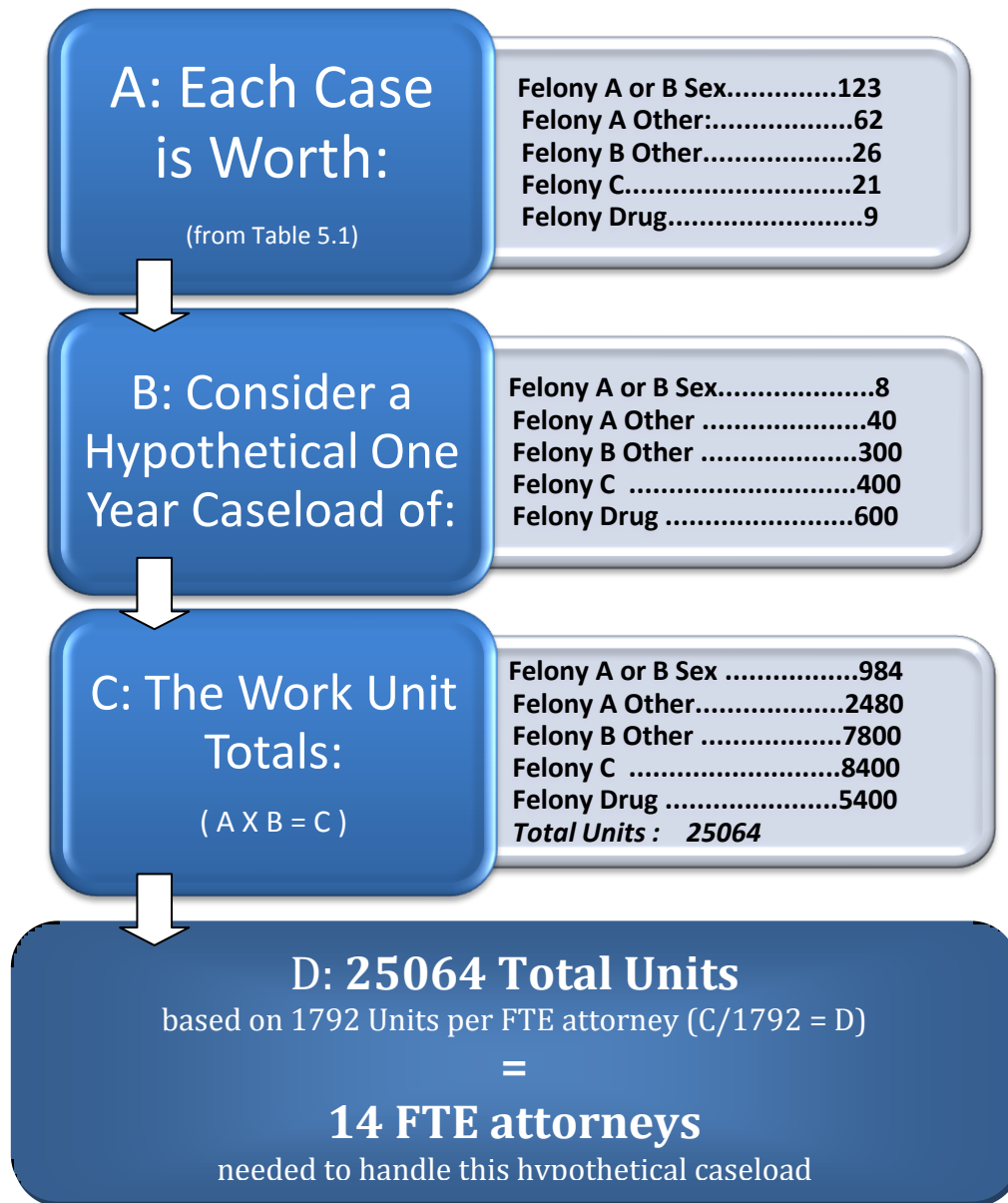
**For each year that the proceeding continues, starting on the date that dependency is established, or .9 Work Units for each additional month. Dependency Reviews and Modification Hearings are the number of Dependency Review Hearing Orders and Permanency Planning Orders reported by the Superior Court during the study period, and do not reflect as many hearings and motions reported by the agencies under the current case credit system

³⁸ In a separate submission, TSP will provide OPD the specific data sources and queries used to arrive at these numbers.

In this new proposed formula, a **work unit** is defined by one hour and a **workload standard** is the number of cases an attorney should be able to handle in one year *when only representing cases of that type*. These workload standards are based on a FTE attorney receiving **1792 work units** in one year, as previously presented in Table 4.1. This formula is based on the case-weighting methodology, which measured the number of hours that each type of case took to handle on average. It is imperative to recognize that the workload standards and work units set out above reflect the *current* practice of King County public defenders, and are an empirical measure of the time attorneys are currently spending to resolve their cases in an effective way, *not* necessarily the amount of time they should ideally be spending on cases.

To better understand this new workload distribution system, Figure 5.1 provides an example. In this example, the first level displays the work unit distribution measured in this case-weighting study, the second level offers a series of caseload numbers simply as an example, and the third level shows how those caseloads would be expressed as work units. The final level of Figure 5.1 allows us to see how many attorneys an agency would need to handle the number of cases in this example. For instance, as Table 5.1 demonstrates, a single felony drug case consumes nine work units. If an agency handles 600 drug cases within the year (as shown in Figure 5.1), the agency would receive 5400 units. Based on this case-weighting study, one FTE attorney can handle 1792 work units within a year. Therefore, an agency would require approximately three FTE attorneys ($5400/1792$) to cover these felony drug cases. Figure 5.1 expands these calculations to a broader mix of cases that an agency might handle.

Figure 5.1 Example of Work Unit Distribution Using a Hypothetical Caseload



It bears repeating that this system, or any system of case credit, requires that it only be applied when dealing with large numbers, and it is not an appropriate means to distribute cases among a small number of attorneys. Because the complexity of cases varies substantially, it is incumbent upon supervisory personnel within each agency to continuously monitor the workload of their attorneys to be sure that the burdens of complex cases are not unfairly apportioned by relying primarily on any formula.

As an example of how this would apply to projecting annual FTE requirements for each agency, the following tables use actual Superior Court dispositions from Calendar Year 2009 and applies the proposed workload formula.

Table 5.2 CY 2009 Superior Court Dispositions

Case Type	ACA	NDA	SCRAP	TDA
Felony A or B Sex	29	19	33	38
Felony A Other	71	61	67	74
Felony B Other	427	354	477	603
Felony C*	399	233	386	437
Felony Drug	303	238	232	315

*Includes a few Gross Misdemeanor and case types identified as 'Other' in data provided by the Superior Court

Multiplying the number of dispositions recorded by the Work Units for each case type results in the total number of work units required for each case type. Dividing the result by 1792, the number of available attorney work hours per FTE, provides the projected number of FTE attorneys required to provide representation in those cases. This projection does not include FTE attorneys required to handle Capital and other Murder cases.

Table 5.3 CY 2009 Superior Court Total Work Units and Projected FTEs

Case Type	Work Units Per Case	ACA	NDA	SCRAP	TDA
Felony A or B Sex	123	3567	2337	4059	4674
Felony A Other	62	4402	3782	4154	4588
Felony B Other	26	11102	9204	12402	15678
Felony C	21	8379	4893	8106	9177
Felony Drug	9	2727	2142	2088	2835
Total Units		30177	22358	30809	36952
Projected FTE Attorneys (Total Units / 1792)		16.8	12.5	17.2	20.6

For Dependency Cases, the number of initial petitions filed in Dependency and Termination proceedings, the number of Dependency Review and Permanency Planning Hearings resolved and the number of Orders to Participate in Family Treatment Court during Calendar Year 2009 appear in Table 5.4.

Table 5.4 CY 2009 Dependency Petitions and Hearings

Case Type	ACA	NDA	SCRAP	TDA
Initial Petitions	37	99	108	117
Reviews/Permanency Planning Hearings	92	477	1072	605
Termination of Parental Rights Petitions	6	22	53	29
Family Treatment Court	1	3	13	3

Multiplying the appropriate work units for each proceeding type provides the total number of units required. Dividing the total Work Units required by 1792 available work hours per FTE results in the total number of attorneys required to provide representation in Dependency cases.

Table 5.5 CY 2009 Dependency Work Units and Projected FTEs

Case Type	Work Units Per Case	ACA	NDA	SCRAP	TDA
Initial Petitions	25	925	2475	2700	2925
Reviews	11	1012	5247	11792	6655
Termination of Parental Rights	66	396	1452	3498	1914
Family Treatment Court	43	43	129	559	129
Total Units		2376	9303	18549	11623
Projected FTE Attorneys (Total Units / 1792)		1.3	5.2	10.4	6.5

As described repeatedly in this report, the workload standards and the examples are taken from current data of attorney effort in which King County's Public Defenders are already working 20 percent more hours per week than required. Thus, in moving from a case credit system to the attorney work unit formula described in Table 5.1, TSP urges King County to ensure that sufficient attorney positions are created so that the considerable time pressures on public defenders can be alleviated.

Issues Affecting Appropriate Workload Measurement

The phenomenon of “doing more with less” is hardly unique to King County. Governments and public defense systems across the country are currently strapped in seeking to provide a constitutionally acceptable level of indigent defense. In King County, though, the stakes are higher, for the jurisdiction rightly takes pride in its historical commitment to public defense. If King County wavers in that commitment, what hope is there for others?

Comparing Jurisdictions

Understandably, King County officials seek a detailed accounting of how their public defense system “stacks up” against other jurisdictions across the country. As much as TSP appreciates the reasoning for this request, it strongly discourages King County – or other jurisdictions – from seeking to simply match their caseload data against those of others. Although such data are provided in Appendix M, detailing other jurisdictions in which TSP has previously conducted case-weighting projects, it would be a real mistake for King County to rely on those comparisons in setting its own caseload standards. This is a classic example in which the failure to appreciate different circumstances on the ground can lead to incorrect assumptions and conclusions.

Each jurisdiction across the country has different criminal laws and practices. A behavior that may be considered criminal in one jurisdiction incurs a civil penalty in another; what is statutorily defined a misdemeanor in one jurisdiction may be a felony in another. Prosecutorial practices also vary from jurisdiction to jurisdiction. Jurisdictions across the country employ different systems for providing indigent defense representation. In some jurisdictions, for example, a court appoints panel attorneys from a list. Others have public defender systems with staff secretaries and investigators, and some jurisdictions contract with individual attorneys or law firms to represent a fixed number or all non-conflict cases appointed by the court. Only three of the 20 largest counties in the nation make substantial use of assigned counsel, and only one makes substantial use of contract attorneys. In addition, the expansion of the right to counsel varies from jurisdiction to jurisdiction; for instance, some jurisdictions limit the right to counsel to indigent criminal defendants facing incarceration while other jurisdictions have expanded

the right to counsel to include dependency and other civil cases. For all of these reasons and many more, one could then expect that attorney workload varies from jurisdiction to jurisdiction, and it should.

Indeed, there are several unique characteristics of King County's public defense system that make it inaccurate and inappropriate to compare the County's workload standard to those in other jurisdictions. These include such differences as 1) case complexity, 2) the unique system of private, nonprofit defender agencies and the related credit system, 3) prosecutorial charging patterns, 4) staffing shortfalls, 5) challenges in practice and training, and 6) varying offending patterns and inflation rates. Each of these differences plays a role in attorneys' efficiency and their ability to use work hours for essential case work. Currently, King County defense attorneys are working an average of 48 hours a week, twenty percent more than for which they are paid. Although this feature may not be unique to King County, experts increasingly recognize that caseloads are too high nationwide. Therefore, it is difficult to say that King County should be compared to another jurisdiction that also may be suffering.

Challenges to Indigent Defense in King County

Apart from the issues of measurement, the practice of public defense in King County is subject to several new and unique challenges that affect the level and quality of indigent defense, such as the complexity of cases and the level of support staff. Not only do these factors make it inappropriate to compare King County to other jurisdictions, but officials also must be aware of the challenges in preserving the County's public defense system. As in any case-weighting study, TSP conducted a series of wide-ranging and in-depth interviews with a variety of criminal justice practitioners in King County to assess the effectiveness of counsel and determine whether the study would institutionalize inadequate hours per disposition. Rather than representing a separate study, this work was addressed to the appropriateness of workload standards in King County given current practices. If these factors are not taken into account, there is a risk that workload measurements based on a case-weighting study may institutionalize imperfect or even substandard representation.

This section of the report is based on interviews TSP researchers conducted with over one-hundred practitioners in King County, including representatives of OPD, county council members, judges, court personnel, prosecutors, members of community organizations, private assigned counsel attorneys, appellate public defenders, and public defense agency attorneys, support staff, directors and deputy

directors, to discuss the provision of indigent defense in the County.³⁹ Interviewees were informed that their names would not be used in the report to encourage them to speak candidly.

Although concluding that public defense attorneys in King County strive to provide the highest level of representation, TSP is concerned about threats to the County's system of public defense. That system still offers adequate representation, but changes are afoot that tax the efficiency and effectiveness of an already over-extended public defense corps to provide acceptable representation under the workload standards TSP has produced. In the sections that follow, TSP describes those challenges and urges County officials both to recognize and, where possible, address these factors. If any of these should worsen, the workload standards provided in this report would be unsustainable. As it is, public defenders and their partners in the criminal justice process are already operating at their margins.

Case Complexity. As workloads become more demanding and cases become more complex, defenders are forced to devote more time and resources to their cases. Over time, in this situation, attorneys are then forced to cut corners by forgoing investigations, doing less research, and spending less time with their clients. Currently, attorneys are working over 40 hours a week. In order to ensure efficiency and their ability to use work hours most productively when implementing a new system based on this case-weighting methodology, workload challenges need to be considered. In addition to the obvious solution of providing more funding, addressing the challenges identified in this section would contribute to the efficiency and productivity of public defenders in King County.

It is important to point out that in King County the prosecutor has been, since October of 2008, engaged in a program to expedite certain felonies by filing them as misdemeanors.⁴⁰ The prosecutor has also chosen not to file certain low level misdemeanors at all. While King County or the state of Washington

³⁹ TSP utilized distinct interview protocols for each category of participant. Sample protocols can be found in Appendix F.

⁴⁰ Due to an 11.4 percent budget cut for all King County criminal justice agencies in 2009, and the expectation of further budget cuts in the future, the PAO decided a realistic, though not ideal, approach would be to focus dwindling resources on the most serious cases. The PAO modified the filing and disposition standards in October of 2008. Property crimes valued between \$1,001 and \$5,000 and drug crimes of personal use amounts were filed as gross misdemeanors in District Court. The change in filing practice of expedited cases resulted in the removal of easily resolved cases from the felony caseload. The District Court concluded that they would hear these expedited cases on a calendar basis. Although expedited felony cases had been used on a more limited basis by the PAO in the past, the consolidation of the cases into one court calendar was a change that permitted a more focused use of resources. The County Council adopted funding for each agency for one FTE attorney, 0.50 professional support staff, and 0.10 supervisory staff, if the District Court is scheduling at least eight or nine weekly expedited case calendars consistently. An assignment limit of 450 expedited felony assignments per FTE attorney was maintained, even though credits were not used. The Council adopted an interim case weighting methodology for more serious felony cases. This change went into effect on July 1, 2009, and was included in the defender agency contracts at that time.

has not formally declassified minor misdemeanors, this practice is one of the factors that make it challenging to compare the complexity of cases across jurisdictions. King County’s prosecutor is not currently filing minor felonies in Superior Court while also not filing certain minor misdemeanors at all. This is certainly unusual on a national level. Within the County, the result is a remaining set of cases that are disproportionately more complex to defend than at an earlier time.

Based on previous research that TSP has performed in other jurisdictions, there are certain conditions that contribute to case complexity.⁴¹ The major impediments that are evident in King County include: the addition of aggravated homicide cases, habitual offender prosecutions, mandatory minimums, two- and three-strikes cases, sex offenses, juveniles charged as adults, and multi-count fraud cases; the increased need for interpreters; cases with increased collateral consequences applicable upon conviction; and the expansion of specialty courts. In addition, a Washington Supreme Court’s recent decision suggests that investigation is called for in a higher percentage of cases than the King County agencies are staffed to investigate.⁴² Setting a mandatory standard for defense in the area of client communications and investigation likely will increase defender workload and the need for support staff.

TSP researchers found that most attorneys, from both the defender and prosecutor offices, feel they have a heavier caseload than in years earlier. Nearly every respondent reported that most of the “easy” cases are no longer heard in Superior Court due to the changes in filing standards; the cases that do not require extra attorney attention and often end in plea agreements are no longer included in most felony attorney caseloads. This means that Superior Court attorneys are left with more difficult, time-consuming cases, which are more likely to go to trial. Currently, cases handled in Superior Court are more likely to go to trial than in other jurisdictions studied by TSP,⁴³ thus bringing a heightened workload. Another implication of the change in filing standards is the severity of sentencing. The sentences for the non-expedited cases are more severe than those prosecutions now deferred. For example, even a minor sex-related case such as indecent exposure can result in six months of jail, three to four years of treatment, and mandatory registration for life as a sexual offender. Therefore, attorneys are likely to take a higher percentage of their cases to trial. At the same time, since the cases are more serious, prosecutors are less likely to make plea offers.

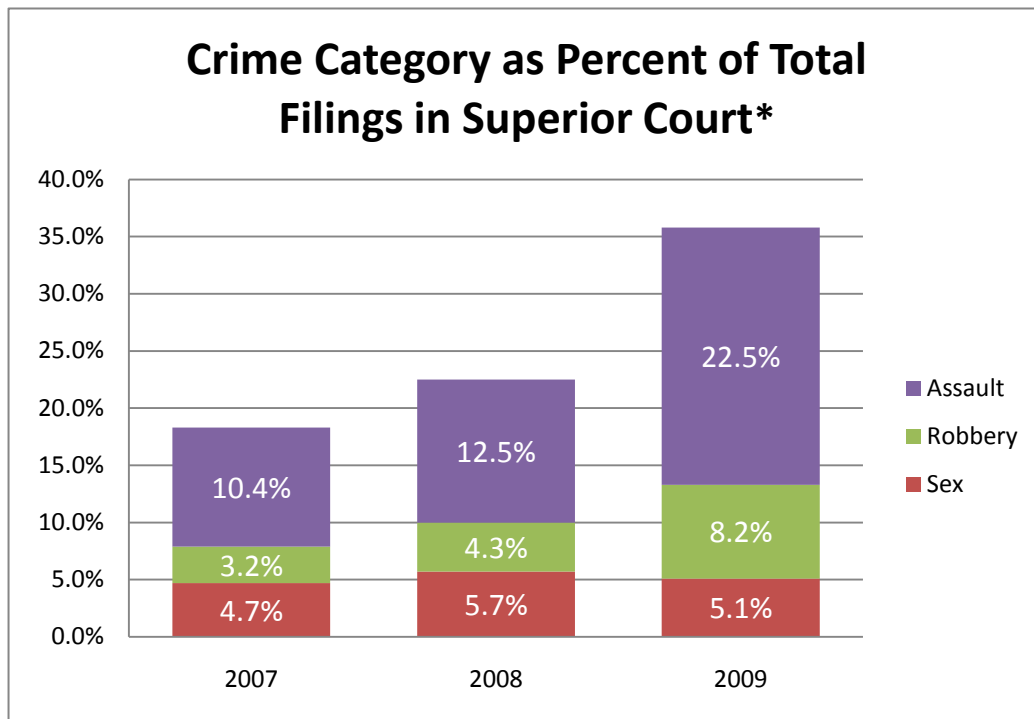
⁴¹ See Chapter 2, “Tough on Crime Policies”, p. 70, Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel.

⁴² *State v. A.N.J.* 81236-5 (2010).

⁴³ AJOMP, *Supra* footnote 32

Assault, robbery and sex crime cases are among the most complex cases handled in Superior Court. Figure 5.2 shows how these cases have encompassed a larger percentage of a felony attorney’s caseload since 2007. In 2007, these cases made up 18 percent of the total Superior Court filings. In 2008, those cases increased to account for 23 percent of the filings. By 2009, the percentage increased even more to 36 percent.

Figure 5.2 Crime Percentage Increases by Category



* King County Superior Court Criminal Department Statistical Report, December 2009

District Court cases also are not as mixed as they once were, as prosecutors are no longer filing as many of the lesser-degree misdemeanors. Instead, DUIs, domestic violence, and gross misdemeanor cases make up more of a defense attorney’s caseload and with it a heightened degree of effort. As noted in chapter 4, public defenders in District Court are receiving a smaller amount of minor misdemeanor cases than in the recent past. These minor misdemeanors now make up less than 25 percent of a District Court defender’s caseload. In addition, there have been enhanced penalties and increases in the number and severity of collateral consequences throughout the system. In juvenile court, defense attorneys explained the increasing complexity of representing their clients. As sentencing becomes more severe, especially in sex-related cases that can affect the child for the rest of his/her life, attorneys have to be more aggressive in the fight for proper representation of the child.

Defense attorneys, prosecutors, judges, court personnel, and community members told TSP researchers that cases are becoming more complex for reasons other than the filing standards, creating a perfect storm resulting in attorney burnout. These changes in case complexity help explain the difficulty of maintaining effective representation and the need to recalculate the length of time needed to represent a case.

Attorneys reported that the criminal justice system is dealing with a growing clientele of individuals with mental health issues, drug dependency, illiteracy, and decreasing English proficiency. TSP researchers were also told that when defense attorneys represent these clients, it generally takes longer for lawyers to retrieve information and earn their clients' trust, resulting in time-intensive meetings. Dependency caseloads are of particular concern. The caseloads were reported by interviewees to be heavy and further complicated by court scheduling in Seattle and a lack of sufficient support staff resources, both discussed below.⁴⁴

Technological and scientific advancements also increase the complexity of criminal cases, and both prosecutors and defense attorneys must rely upon a greater number of witnesses and advanced experts to help explain these issues to judges and juries. Lawyers also must invest additional time to understand these issues themselves and work with the experts in preparing for court.

With all of the growing complications discussed above, attorneys reported being confronted with less time for preparation, more paperwork, little to no office time, the need to request more continuances, lengthier trials, and a need to rotate in and out of units more frequently due to burnout. Needless to say, the fallout from all of these developments is a system of public defense in which the efficiency and effectiveness of those involved is at risk.

Support Staff Ratios

In addition to the issues noted above, TSP's final analysis and recommendations take account of insufficient levels of administrative support that affect the ability of public defense attorneys to practice most efficiently and as effectively.

A vital component of the defense function is an office's support staff. Only by relying on their support staff are attorneys allowed the time to spend with their clients, research the case, and prepare for trial. As

⁴⁴ TSP researchers would like to note that public defenders have been benefitting, and should continue to utilize, the admirable efforts of King County organizations such as Team Child and the Washington Defender Association's Immigration Project.

noted in chapter 4, defense attorneys in King County already spend a smaller percentage of their time with clients when compared to other jurisdictions. Defense agencies use a mixture of legal assistants or clerical staff, paralegals, social workers, investigators, and technical support. In King County, interpreters are funded by the County and provided for all indigent clients. This is not an in-house service, but relies on a bank of over three hundred interpreters that cover 128 languages. The organization that runs these services in King County gained recent national recognition for its superior service.

King County public defenders are operating at a disadvantage because of inadequate levels of support staff. As cases increase in complexity and greater numbers go to trial, support staff is needed more than ever. In addition, technological advances are now pushing agencies to scan documents, respond to email communication, perform more transcribing responsibilities, and investigate more frequently in a growing field of forensic evidence, all tasks that could be done by staff. Yet, many attorneys reported doing clerical and investigative duties that should be the responsibility of support staff. As attorneys take on these administrative tasks that could be handled by support staff, they necessarily have less time to spend on client matters. At the same time, clerical support staff is often overwhelmed with tasks related to their agencies' contracts with OPD.

Many respondents cited deficient funding for the lack of support staff and support staff supervisors within the agencies. This proved to be a point of contention. While OPD funds support staff according to Council-directed formulas within the agency contracts, the number of hired staff is not always in line with OPD formulas. The funded ratio of support staff to attorneys according to the funding model can be found in Table 5.6 (detail in Appendix J). However, the cause of this disparity was reported to be partly due to a lack of a distinction in the funding. Agencies reported that the salaries used in the computation for support staff funding lags the actual average compensation rate for those positions within the county. OPD responds that the rates that they use are averages used in public sector, not private sector jobs, and that the lag that the agencies report only exists when compared to the private sector. In addition, the agencies say that support staff raises have been limited to cost of living, which limits their ability to hire and retain the most experienced and talented employees.

Table 5.6 Total Support Staff to Attorney Ratio

<u>Agency</u>	<u>Total FTE Attorneys</u>	<u>Total Professional Staff</u>	<u>Professional: Attorney Ratio</u>	<u>Clerical & Other Staff</u>	<u>Clerical & Other: Attorney Ratio</u>	<u>Total Support Staff</u>	<u>Total Staff: Attorney Ratio</u>
OPD Funding Model	--	--	0.50	--	0.20	--	0.70
ACA	69.25	22	0.32	13.60	0.20	35.60	0.51
NDA	29	9	0.31	9.60	0.33	18.60	0.64
SCRAP	52.2	18	0.34	12.00	0.23	30.00	0.58
TDA	75.8	35	0.46	20.32	0.27	55.37	0.73

It is evident that the support staff ratios, as laid out by the funding model, are not fully being implemented by all of the agencies. The number of attorneys and support staff employed by the agencies is provided in Table 5.6 (more detailed tables in Appendix J). The table reveals that three of the agencies clearly fall below the OPD support staff funding model for investigators, social workers, and paralegals. TDA is the only agency to provide nearly the number required by the funding model. However, it is reported that by doing so, they had to sacrifice considerably in other areas. This suggests that suggested ratios are difficult to achieve based on the provided funding.

It is important to note that even the funding model is on the low end of support staff allocations provided in other jurisdictions around the country. Table 5.7 shows the ratios of support staff to attorneys in selected jurisdictions for which these data are available. This average staff ratio is about half that found in Maricopa County (Phoenix), Arizona. It is just 79 percent of the ratios used in the 100 largest counties in the US, according to a national study conducted by the federal Bureau of Justice Statistics, and as TSP concludes, it rests at a level that is insufficient to support effective and adequate representation to King County’s clients. King County’s caseload may be lower than most of these jurisdictions, but because of the filing changes and increased case complexity in King County support staff is perhaps even more crucial.⁴⁵ Lastly, improving the number of support staff in the defender agencies would not only allow attorneys to spend more time on case work, it also would be considerably less expensive than increasing the number of attorneys. Indeed, if public defense attorneys are to meet the workload standards

⁴⁵ Again, it is important not to rely too heavily on comparisons between dissimilar jurisdictions. Some of these figures are more than ten years old. Table 5.3 is presented not to argue for a specific staffing standard (which is beyond the scope of this study), but to underscore the seriousness of the situation in King County, where the ratio is already low and pressures are only increasing.

envisioned in this report, they will need sufficient staffing to concentrate their efforts on client representation and not clerical tasks.

Table 5.7 Comparative Staff Support

Jurisdiction	All Support per Attorney	Year
Maricopa County, Arizona (one of three agencies) ⁴⁶	1.05	2008
Delaware ⁴⁷	0.96	2005
Connecticut ⁴⁸	0.92	2008
Pima County, Arizona ⁴⁹	0.90	2002
Rhode Island ⁵⁰	0.80	2008
Montana ⁵¹	0.79	2008
Wyoming ⁵²	0.70	2008
Kentucky ⁵³	0.68	2010
Colorado ⁵⁴	0.61	2008
Missouri ⁵⁵	0.59	2008
King County, WA Average:	0.62	2010
TDA:	0.73	
NDA:	0.64	
SCRAP:	0.58	
ACA:	0.51	
Bureau of Justice Statistics ⁵⁶ (100 largest counties in US)	0.73	1999

⁴⁶ <http://www.pubdef.maricopa.gov/index.html>

⁴⁷ <http://publicdefender.delaware.gov/Docs/Spangenberg.pdf>

⁴⁸ <http://www.ocpd.state.ct.us/Content/Annual2008/2008Table.htm>

⁴⁹ Pima County Case Weighting Study - TSG -2002

⁵⁰ New England Public Defenders Conference - 2008

⁵¹ <http://www.publicdefender.mt.gov/forms/pdf/FY08Staffing-Report.pdf>

⁵² <http://wyodefender.state.wy.us/files/2008Annual.pdf>

⁵³ Kentucky Dept. of Public Advocacy

⁵⁴ Colorado Public Defender

⁵⁵ "Assessment of the Missouri State Public Defender System" TSG 2009

⁵⁶ <http://www.ojp.usdoj.gov/bjs/id.htm>

Scheduling & Delays

King County public defenders, like most professionals in the criminal justice system, aim to provide efficient and effective representation. Nevertheless, there are several structural barriers and delays that hinder the provision of public defense services. In order to ensure the efficiency and productivity of public defenders under TSP's proposed work unit formula, the County must address procedural challenges within the system. Careful attention to these frailties will help to reduce costs, encourage better relationships within the system, and avoid the institutionalization of unacceptable levels of representation.

Court Scheduling and Waiting Time. Based on its research, TSP noted several areas of concern regarding court procedures. Advocacy for bail, according to some, occurs too late in the process in King County. In Superior Court, many expressed concern with back-to-back hearings and trials. It was reported that suppression hearings do not occur until trial, which may unnecessarily require attorneys to prepare issues for trial that could have been resolved early in the life of a case. In both Superior and District court, most respondents reported the problem of cases trailing on the calendar for days or even weeks. As noted in chapter 4, defense attorneys spend more time in court than other jurisdictions where TSP has performed studies. Although this is likely attributable to a higher trial rate in King County, it is also affected by longer wait times. It was reported that a working group of judges and other practitioners within the criminal justice system in King County have attempted to change this procedural problem and implement "meaningful case-setting" procedures.

While many public defenders reported problems with being on-call, standing by in court, and waiting for case-settings, there were also complaints about the punctuality of the public defenders at court proceedings. Indeed, there was general agreement that attorneys from both the defense and prosecution are frequently late. Based on conversations with judges, tardiness is often due to competing demands on the attorneys, although some may not manage their time effectively. This lack of timeliness is wasteful for the court and also may disparage the defenders' reputation in the system and among their clients.

Defenders explained the frustration and inefficiency of having to conform to a new schedule or procedural policy within the courts that does not take their practice needs into consideration. Judges were often viewed as not able to see beyond their courtroom doors when implementing schedules, rules, and policy changes. On the other hand, court personnel aired their frustration with attorneys' resistance to

change. For example, two areas where there was concern over policies adopted by the court included the controversy over video hearings in the ITA court⁵⁷ and the case-setting calendar changes in the Juvenile Court. The latter is a highly divisive matter that defense attorneys reported would likely affect their ability to effectively represent their clients in the future.⁵⁸

Delays in Jail Operations. Public defenders report that they “waste” time at the corrections facility in Seattle waiting to meet with their clients. Delays appear to be lessening; however, several issues remain that may impede the work of public defenders. Lawyers, investigators, and interpreters reported a lack of privacy and appropriate client meeting facilities, and believe that corrections personnel are not responsive in Seattle. Further, attorneys, paralegals, and investigators are not expedited through the three levels of security at the jail. This means that it can take in excess of thirty minutes just to get in and out of the facility, not including the time necessary to meet with the client. Consequently, it is often easier for lawyers to request that the clients meet with them in the courthouse, which limits their time for preparation. As noted in chapter 4, public defense attorneys in King County spend a proportionately lower amount of time with clients when compared with other jurisdictions TSP has studied. Difficulties encountered at the jail may contribute to this low number.

Prosecutorial Negotiations and Communication. While King County public defenders and prosecutors may be more collegial than those in some other criminal justice systems, TSP found tensions to be evident in certain courts. From the interviews as well as a recent Justice Management Institute (JMI) report (see Appendix G),⁵⁹ TSP researchers gathered that the dockets of most courts in the county

⁵⁷ According to the court, the purpose of video hearings is to prevent mentally ill clients from being strapped into gurneys for up to eight hours while awaiting their hearing. Notwithstanding the purported benefits, public defenders are hesitant to embrace video hearings because the procedures deny their clients their right to due process by appearing in the courthouse as well as increased cost and time-constraint for the defenders.

⁵⁸ At the suggestion of a group of court practitioners and staff (excluding OPD and public defenders) following recent violence at the juvenile courthouse, the juvenile offender case-setting calendar was moved from 8:30am to 1pm to alleviate overcrowding in the courthouse. Public defenders anticipated a serious, adverse effect on their schedules, but suggestions and a proposed schedule made by a work group of defenders were reportedly disregarded. As they expected, defense attorneys subsequently said that the changes to the juvenile calendar placed additional pressure on their time management. Case-setting competes with paperwork and negotiation processes with prosecutors, who are not reliably available at other times for these activities, according to defenders. Also, meetings with clients, families, preparation time in their offices, and other hearings must be juggled during the brief block of afternoon hours now reserved for case-setting. Defenders maintain that because more of their time is spent waiting at case-setting hearings, cases are held over and families must make more visits to the courthouse, which crowd court calendars and lobbies. The overall effect, they argue, is detrimental to their ability to represent clients. This change has coincided with an unusual drop in juvenile offender caseload since early January. Its impact will likely be magnified should cases increase to more typical numbers.

⁵⁹ The Justice Management Institute, *King County Criminal Caseflow Management Project: Key Findings and Recommendations for Improving Felony Caseflow Management*. November 2008.

are set by the prosecuting attorney. For the most part, prosecuting attorneys call the case, ask the defense attorneys to bring their files to them, and dictate meeting times. Interviews reported delays in the meetings and plea negotiations, but it is unclear whose responsibility this is. The PAO has posted negotiation hours in Superior and District Court units and offers also to provide appointment times for defense attorneys who cannot meet at those times. Public defenders explained that they often have to wait in line to meet with the prosecutor during these posted hours. In response, several prosecutors mentioned that defense attorneys arrive only in the last half-hour of a prosecutor's multiple-hour window set aside for meetings. In addition, it was reported that many public defenders do not take advantage of the PAO's willingness to grant appointments.

In Juvenile Court, on the other hand, negotiations were often handled during case-settings, but because of calendar changes, negotiations are now to be handled in the prosecutor's office. However, while juvenile offender prosecutors have posted negotiation times, defenders reported that their counterparts are often unavailable and do not provide timely responses to requests for appointments.⁶⁰ Clearly, to effectively process a high volume of cases, defense lawyers and prosecutors must find time to meet and negotiate.

Apart from communications, the work of public defenders is subject to the charging practices of prosecutors. Reports suggest that prosecutors in King County have been filing "low." These conservative charging practices may seem helpful to the defense, but public defenders, with confirmation by some of the judges interviewed, claim that prosecutors then expect a plea and will often threaten to file higher or take the plea away if agreements are not reached quickly. This process affects how the client views the defender's ability to represent effectively, as defenders are perceived to be able to do little else than prevent things from getting worse. In jurisdictions where prosecutors file high and are then willing to reduce the charges in exchange for a plea agreement, defenders are perceived to be improving the client's situation. It may seem axiomatic, but public defenders are only as effective as their clients see them to be.

⁶⁰ Recent changes made to the case-setting calendar in Juvenile Court, as well as efforts by prosecutors to prevent negotiation at case-settings, have, ironically, limited the time that defense lawyers have available for case work. When the case-setting calendar changes were at the proposal stage, prosecutors offered to commit to negotiation hours, but they are often out of the office or busy during the prescribed hours (9am to noon). Public and private defenders report with frustration that they must wait in line for prosecutors when they are available to negotiate and process paperwork and continuances that fall well within agreed-upon parameters. Defense counsel often receive delayed or no responses to requests for appointments, and, at times, appointments are scheduled shortly before case-setting, which is said to result in greater need for continuances. Deputy prosecutors generally request several follow-up appointments after the first case-setting, however, while public defenders, and their clients, are being asked to respond to plea agreements much more quickly and pressured not to use continuances.

Interactions with the Office of the Public Defender

Under the umbrella of the King County Department of Community and Human Services, OPD is in charge of providing legal help to the accused who are unable to afford an attorney. Pursuant to King County Code, OPD contracts with four non-profit law firms “formed for the specific purpose of rendering legal services in behalf of indigents.” In addition, OPD has established an assigned counsel panel for conflict cases.⁶¹ During TSP’s research, many respondents noted the role of OPD in setting expectations for, and facilitating the provision of, indigent defense in King County. Indeed, any inefficiencies in OPD practices can have a magnified effect on the ability of public defenders to effectively represent their clients and maintain a reasonable workload. To maximize attorney productivity under the proposed workload standards, OPD should consider concerns raised during TSP’s research about expert witness approval, morale, and information management, and, of course, OPD should be adequately funded to implement any necessary improvements. Each of these issues is addressed in turn.

Expert Witnesses. One of OPD’s responsibilities is to review public defenders’ motions for expert witnesses. Trial courts can grant expert services to indigent defendants if the expert will be a significant factor at trial.⁶² In King County, the Superior and District Courts have delegated decisions on motions for expert services to OPD; the format and procedure for these requests are set by court rule and OPD applies the case law standards to the requests it receives. OPD reported receiving over 2,000 requests in 2009 and approving just short of 90 percent. The office has a specific policy posted on its website that outlines parameters and processes for submitting these motions, in accordance with Superior Court rules.⁶³ OPD can ask for further documentation from an attorney if it is not able to approve the expert based on the information submitted in the attorney’s motion. Denials of expert services by OPD can be appealed to the chief criminal judge for each court. Despite OPD’s statistics showing its high rate of approval, several judges and even prosecutors reported that defenders often petition the court to obtain an expert.⁶⁴ This process, in turn, causes delays in the system.

⁶¹ King County Code Section 2.60.

⁶² *Ake v. Oklahoma*. 470 U.S. 68 (1985). This requires a particularized, factual showing. *Mount Vernon v. Cochran*. 70 Wn.App. 517(1993).

⁶³ <http://www.kingcounty.gov/court/OPD/Partners/Policies.aspx>

⁶⁴ To be sure, the process is *ex parte*, arguably making the prosecutors’ reports inferential. But both they and the judges who hear these petitions reported that defenders appeal to the court if denied by OPD.

During the interviews, many people from all quarters expressed frustration with the system of expert requests. OPD reported that the numbers of expert motions are time-consuming for its staff members. Although they have decreased turn-around time for these requests within their office, they often receive last-minute requests from defenders that further impede the process.

Current data from OPD show that it is currently taking an average of 3.65 business days between receipt and decision of an expert request. Ten percent of requests take longer than ten days. Although several defenders agreed that the decision time for expert requests is speedier than in the past, the majority of defenders (from the agencies and the private assigned counsel panel) and support staff found the acquisition of experts time-consuming and often a major struggle. They describe a lengthy back-and-forth process with OPD to justify their request, which adds time and stress, affects case strategy, and can reduce clients' trust in their ability to provide effective representation.

Concerns also were raised about the breadth of experts OPD approves. Defenders, prosecutors, and judges expressed some doubts about under-qualified and over-used experts. However, OPD has the responsibility of only approving experts that fall within the parameters of case law, policy and budget constraints and manage a designated budget that considers the reasonableness of requests.⁶⁵ OPD policy states that if out-of-state experts are requested, attorneys must demonstrate that they have contacted experts in Washington State and neighboring states and provinces. Still, the defense bar believes these problems affect their ability to use experts strategically in the defense of their clients.

In 2009, OPD spent from 5-7 percent of total indigent defense expenditures on experts for public defenders, appointed counsel, and in some cases on experts for defendants with privately retained counsel. The percentage is higher when compared to the expenditures for criminal representation alone as opposed to the total expenditures for public defense services. Although some jurisdictions provide funding for experts as part of an organization's budget, others do not.⁶⁶ In those jurisdictions that do not, few have delegated the responsibility for expert witness approval to a non-judicial entity as in King County, which is likely a more efficient process than submitting requests to a judge in each instance. TSP's experience is that in many other jurisdictions, where requests are made from numerous different

⁶⁵ Community and Human Services/Office of the Public Defender, "Expert Services" (October 13, 2008).

⁶⁶ CrR 3.1(f)

judges, the decisions and the amount of funding approved for them are applied inconsistently, and requests for reimbursement of those expenses often take far longer than is the case in King County. Frequently, some experts refuse to provide expert testimony in other jurisdictions because of delays in payment or the insufficient reimbursement amounts approved for their services.

TSP concluded that that some agencies seem better able to deal with expert requests. Researchers noticed, for example, that agencies that dedicate support staff for expert requests seemed to have fewer reported issues with expert requests overall. Thus, this is an issue that could be addressed in part by improving the availability of support staff, as discussed previously.

Morale & Advocacy. One of the most obvious challenges that TSP detected during the interviews was a communication gap between OPD, the four agencies, and the public defenders that affects the morale, and in turn the efficiency, of public defenders. Undoubtedly, this is exacerbated by the ongoing lawsuit (since 2005) between the defender agencies and the County that causes OPD to maintain more of an arm's length relationship with the agencies.⁶⁷ Due to this, and other issues mentioned within this section, numerous defenders felt a lack of support within the criminal justice system. Interviews with various judges, prosecutors, court personnel, and members of community organizations indicated that these impressions have spread beyond the defense bar. TSP considers the lack of public defenders' confidence in workload recognition one of the challenges that needs to be considered when implementing a new system based on this case-weighting methodology.

TSP researchers observed that there is an indistinct institutional voice in the County to advocate for the improvement of indigent defense. Advocacy is vital to public defenders, and discussion of advocacy within this review is necessary to explain how impediments to a public defender's workload are not properly addressed within the system. In most jurisdictions, this advocacy role is fulfilled by the county, state, or local agency that provides indigent defense. Although OPD assumes a role for public defender advocacy, the unique nature of the private non-profit agencies in King County, means that they also

⁶⁷ *Dolan v King County*. Washington Supreme Court 82842-3

advocate on their own behalf.⁶⁸ It is apparent to TSP that part of the problem is that the structure of the system does not promote the role of OPD as an independent advocate for indigent defense.⁶⁹

Additionally, it can be difficult for agency directors to play this role since they are not allowed to attend all of the same meetings as county-level employees (e.g. the Criminal Justice Coordinating Council).⁷⁰

OPD reports that much of the advocacy for the public defenders is handled behind the scenes, and pertains to budgetary matters and other policy discussions that may affect public defense. An example of this, as provided by OPD, includes advocating for additional funding for senior attorneys.⁷¹ OPD successfully went before the Washington State Legislature to maintain state public defense improvement funding to the counties, including King, when proposals were pending to shift the funds to municipalities.

It is clear that there is a strained relationship between OPD and the defender agencies. Not only did TSP researchers notice this, but others within the system observed this relationship as well. For the purpose of maintaining workload standards and addressing the concerns of the public defenders, it is important that

⁶⁸ The contract cycle essentially requires attention every six months in order to give the county the ability to deal with the special issues of the agency contracts. As of last year, the contract cycle was moved from the calendar year, similar to the rest of the budget decisions, to a cycle beginning in July and ending in June. This was implemented partly because the agencies were addressing their needs with the County Council every November, and this change provided them with a separate time to discuss budgetary issues. The decision was also partially based on the County Council requiring a report from OPD last year. However, because of the budget demands for the rest of the County that occur in November, there are constant contract changes throughout the year. This results in frequent negotiations between the agencies, OPD, the Department of Community and Human Services, the County Executive, and the County Council.

⁶⁹ Respondents from various courts and areas of expertise agreed that the position of OPD within the criminal justice system is structurally difficult. OPD is not managed by a separately elected official and answers to the Department of Community and Human Services rather than directly to the County Executive, as does the PAO. This puts OPD at a disadvantage relative to the PAO. Because it is not separately elected, the role of OPD within the system in terms of budget and political persuasion, as well as a forceful advocate for defense concerns is more limited. In addition, it is difficult for the public defender agencies to hold OPD accountable for the advocacy it provides to them. Finally, because of the historically close relationship that the non-profit law firms have with the County Council, they regularly argue their needs directly to Council Members, which reportedly affects the ability of OPD and the Executive to negotiate with the firms. Agencies contend their work with the County Council over the last few years has preserved public defense funding at near adequate levels.

⁷⁰ Another area of concern was OPD's role in budget requests to the County Executive. Originally, the non-profit firms led the budgeting process by presenting their budget information to the County. After the County adopted the Public Defense Model in 2005 in order to avoid inequities in paying some firms differently for the same work, the County used the Model to calculate the budget to pay each agency similarly (King County Council Motion 12160, 2005). This represented a major change in roles and may account for some of the tension between the firms and OPD to this day. OPD undeniably has a difficult position as an agent of the county and as the representative of the defense function. It was visible to TSP researchers that OPD endures pressure from both sides. However, many public defenders believe that OPD does not advocate strongly for funding, resources, or reasonable contracts for the defense agencies. Although OPD reports on the needs of the defenders to the County Council, Council members explained that frequently, defender agency directors will go directly to them to present opinions that are considerably different from those OPD had communicated previously. The Council Members complained that this is a time-consuming process for them, but they understand the need of the agency directors to do so.

⁷¹ Additional examples as provided by OPD can be found in Appendix H.

morale is strong among defenders and that indigent defense has a strong and unified voice within the criminal justice system. Concerns over public defender advocacy are considered in recommendations.

Communication & Information Management. TSP researchers found that OPD has improved the process of assignments, voucher payments, funding requests, and paper processing over the past several years. It was noted that OPD seems to be performing their functions with minimal staff and, for the sake of public defender agencies and themselves, could benefit from having more administrative personnel. Still, TSP concludes that there are flaws in OPD's transfer of data and sharing of information that impedes the efficiency of public defenders.⁷² Although it is difficult to deduce the precise source of the problem, it is clear that OPD's relationship with the defender agencies requires attention. TSP researchers were given the impression from public defenders, appointed counsel, and interviewees from within the courts, community organizations, and County Council that there is an overall lack of communication and transparency.

The transfer of information between OPD and the agencies is a source of frustration, as agency support staff report a large number of errors in client records. Interviewees frequently remarked that it would be ideal to merge databases, possibly similar to the database that was designed for the Seattle jail. Currently, each agency uses its own case management system, with different table structures, codes, and reporting features. OPD has its own case management system for indigency screening and case assignment. These contrasting systems seem to TSP researchers to be causing delays in information distribution and accuracy. However, confidentiality concerns also may be a major barrier to a merged system.

In addition, agencies complained that OPD too often fails to discover conflicts prior to appointment. These errors cause both delays and frustration for defenders and clients alike. OPD explained that the challenges surrounding conflict assignments are mostly unavoidable. Due in part to the nature of the status of the defender agencies as non-profit entities and non-governmental employees, the agencies are hesitant to share certain information with OPD that could improve the process of identifying conflicts prior to case assignment. Agency staff countered that they fail to share this information because they do not trust the accuracy of OPD's information management. OPD's records indicate that there has been a

⁷² Some agency attorneys and administrative staff informed TSP that email and phone calls to OPD were often not returned. The relationship appears to be "hostile," with agencies concerned about a lack of professional courtesy on such items as contract discussions, the scheduling of meetings, and day-to-day communication.

twenty-six percent reduction in the number of conflicts that arise that are within the control of OPD or the agencies over the last three years. Nonetheless, issues surrounding conflict assignments, information management, and misconceptions of case credit allocation are affecting the public defender agencies and their relationship with OPD. These communication and information challenges directly impact the efficiency and morale of defenders within the system. If the quality of indigent defense is to be maximized in King County under a new workload standard, the challenges must be addressed.

Operations within the Public Defender Agencies

The adequacy of public defense in King County is affected by many forces, including by the practices of the agencies themselves. This section discusses the barriers to effective representation and stress on workload from within the agencies, as well as the defender procedures that other stakeholders see as being a hindrance to the quality of representation. Currently, attorneys, on average, are working beyond the paid work week. In order to ensure efficiency and their ability to use work hours most productively when implementing a new case-weighting system, training, support staff, and workload challenges need to be addressed.

Training. TSP researchers found little consensus on whether the agencies provide and fund appropriate training for their attorneys. Not only do the public defense attorneys offer differing opinions, but there are also disparities in training abilities among the agencies.⁷³ Across agencies, some public defenders stated that they have access to a sufficient amount of training while others stated the opposite. OPD representatives explained to TSP researchers that they provide various trainings through their office. Many of the interviewees outside of the agencies reported that attorneys generally seem well-trained. However, some reported that there is often a lack of experience when rotating to a new unit that ultimately affects client representation. Newcomers were said to be unprepared and sometimes lack sensitivity (especially within certain units). Where additional training was said to be needed, the subjects

⁷³ Various people claimed that there is a strong set of supervisors within TDA, and that this type of training is not necessarily inferior, but there is not a formalized training program. TSP researchers were informed that there used to be a full time training coordinator, but that person is no longer there. NDA was noted to have improved access to training considerably and that access to orientation when joining a unit depends entirely on that unit. ACA has a full time attorney in Kent that, without additional compensation, runs internal training sessions for both offices. Though not always able, this training coordinator runs a weekly training entitled “Totally Tuesdays.” Other defenders within the agency expressed great appreciation for these trainings. However, there were reports that ACA does not provide appropriate orientation when attorneys transfer between units. The reason for this was said to be because of caseload and time constraints. SCRAP attorneys had varying opinions on the availability of trainings. However, TSP researchers learned that there is an annual retreat, monthly in-house CLE, a training stipend, specific specialty trainings, and an orientation process.

include trial advocacy, discovery, negotiation, and time management skills. However, given the caseloads, defenders wondered if they had sufficient time to spend on additional training sessions.

Frequency of Rotation & Use of Co-Counsel. A common complaint heard from judges, prosecutors, and even participating community organizations was the frequency of attorney unit rotations. This is the process through which attorneys switch between areas of legal practice, such as from dependencies to misdemeanors, often in an attempt to alleviate a heavy workload or to relieve another attorney. Some defenders and support staff agreed that rotations can be a significant problem. Rotating between units frequently can make for a disjointed practice in which attorneys take on cases already in progress and for which they do not yet have experience. Rotations were cited to increase the number of continuances, be disruptive, frustrating, hard on the client, and damaging to the attorneys' reputations.

On the other hand, these rotations are used to enhance the attorney experience and avoid burnout. With a heavy workload, attorneys within certain units look for relief by transferring to another unit for a period of time. From TSP's interviews, it seems that the attorneys often return to the original unit. If they had a lighter caseload they might prefer to remain within the unit. As many respondents both within and outside of the defense bar reported, rotation would be less frequent if there were a reduction in the workload requirements.

Another issue discussed in various interviews was the public defenders' use of co-counsel. The agencies have their own policies regarding the use of co-counsel, but the main purpose is to ease excessive workload and provide experience for new or rotating attorneys. Generally, co-counsel are used on more serious cases such as murder, sex crimes, and three-strike cases, as well as within demanding units like the dependency unit. The defenders seem to appreciate the opportunity to have co-counsel, but the rest of the practitioners varied on whether they believed it helped or hurt representation or court procedure. Some outside of the defense bar assume that the use of co-counsel means the defenders have excess resources and are looking to bolster their caseload and gain more credits, even if defenders claim otherwise. It is possible that this misunderstanding between the two groups is becoming a political problem. The need for co-counsel may be minimized by implementation of the recommendations found in chapter 6.

Conclusions from Qualitative Research

TSP's research team concludes that King County public defenders are, in most circumstances, currently providing effective representation, and they continue to strive for excellence in the provision of those services. However, their effectiveness is being undermined by severe caseload pressures and a lack of adequate support. Attorneys are providing this level of service with insufficient support staff and investigative resources, are putting in far more hours than a 40 hour work week, and are experiencing the stress of excessive workloads. The current level of effectiveness appears unsustainable without implementation of case weighting recommendations and other recommended improvements to address significant system challenges.

Thus, while TSP proposes a new workload metric based on current practice, it notes that King County will need to take affirmative steps in the immediate future to address many of the pressures that currently challenge the system of indigent defense. TSP recognizes these decisions are the province of the County Council and Executive, acting in concert with OPD and the defender agencies, but it urges all to consider a reduction in the defenders' real, effective work week. Apart from this overarching issue – one that likely applies to others in the criminal justice system and County government, especially at a time of historic fiscal distress – TSP notes several other challenges to the defenders' workload, including staff shortages, a rise in the complexity of prosecutions, and a number of procedural impediments and inefficiencies. For example, it should be noted that during TSP's visit, it was reported that at least two agencies were providing higher attorney staffing levels than that for which they were funded. If King County seeks to effectively implement the workload metric proposed by TSP and continue its present level of public defense practice, other reforms will be necessary – and soon.

Chapter 6 – Conclusions & Recommendations

Final Conclusions:

- King County’s case credit system for public defense is a complicated, confusing, and in many ways antiquated approach to establishing attorney workload and compensating public defenders. A simpler model, based on work units, would address many of the weaknesses of the current system.
- A simpler system would be based on attorney effort. To estimate those figures, TSP has reviewed the current public defender workload through a 12-week time-keeping study of King County public defense attorneys.
- That research shows public defenders are working an average of 20 percent beyond a typical 40 hour work week. Among other things, a workload distribution system based on attorney work units would help to ensure that expectations for attorneys match their available hours.
- Notwithstanding the pressures of long hours, TSP concludes that King County public defenders continue to provide effective representation even in the face of several factors that challenge the provision of indigent defense.
- Those challenges, including prosecutors’ filing practices, increasing case complexity, inadequate staff support, inefficiencies in local practices, and communication problems (among others) will require attention from the County Council and Executive, working in concert with OPD and the public defender agencies, to ensure that the quality of public defense in King County is maintained.
- These challenges also underscore the uniqueness of King County’s public defense system and caution against blind comparisons of attorney workloads with those from other jurisdictions in which the nature of practice is different. Although King County has rightfully earned a fine reputation for the quality of public defense, the challenges identified in this report raise questions about the sustainability of those standards given present workloads.
- Implementing a new funding model will require cooperation and proper planning across all spheres of the criminal justice system and County government. But the advantages are many, including a more simplified system, a common ground for understanding attorney

effort and compensation, and a more accurate approximation of the time required to provide representation in each of the case types.

Recommendations:

- 1. A new model based on this case-weighting study is recommended.** Based on the results of this study, each case type is allocated a number of “Work Units” (number of hours needed for that case type). It must be emphasized that this formula is based on how attorneys are currently performing, rather than an ideal workload. TSP recommends that the workload standards presented in this report be used as the basis for establishing and funding attorney positions⁷⁴ and that it replace the complicated case credit system currently in place. The study results provide a “Workload Standard”, which, based on 1792 available attorney work hours per year, represents the number of cases that an attorney, on average, should be able to represent to completion in a given year, if he or she is handling only that type of case. Effective implementation of such a standard also may help to alleviate the present problem in which public defense attorneys are working 20 percent beyond a typical work week in order to provide the current level of representation. Of course, a new standard will only be effective if it is fully funded and has the support of both OPD and the agencies.
- 2. Simplify the defender agency contracts.** Agency contracts are cumbersome, confusing, and frequently elicit misconceptions. In addition, simplified contracts would also help alleviate the strained relationship between the four private defender agencies and OPD. By implementing Recommendation 1, agency contracts should naturally become more simplified. However, it is important that the contracts are clearly understood by agency management, staff, and attorneys. The contracts should also consider the need for sufficient trainings and adequate numbers of support staff.

⁷⁴ The exact number of attorney (and by extension staff) positions depend, of course, on the number of indigent cases that King County sees in a year. The workload standard explains how many attorneys are needed to effectively cover these cases given current levels of practice.

3. In order to properly implement recommendations 1 and 2, and ensure efficient and effective representation, **TSP recommends that the challenges to the provision of services in the King County public defense system be addressed.** Based on TSP conclusions detailed in chapter 5, the following efforts should be made:

- **Increase the number of support staff within each agency and OPD.**

Adequate support staff (investigators, social workers, paralegals, clerical staff, etc.) helps ease the burden on public defenders and improves the overall quality of representation. The number of support staff necessary to run each office should be reassessed. Support staff assistance on tasks that could alleviate the workload of attorneys should be realized (i.e. monitoring the new work unit system, handling increased scanning needs, expert requests, etc.). OPD should also be funded to allow for any necessary IT development and monitoring of the new work unit formula based on this case-weighting study. The County Council and Executive and should revisit the support staff funding formula currently in place to provide greater levels of support – including funding for support staff supervisors – and the agencies should make use of that funding to provide support staff levels more in line with the OPD funding levels as well as national norms.

- **Establish greater transparency and communication between the four private defender agencies and OPD, the County Executive, and County Council.** Recurring meetings and scheduled communication between OPD and management within the agencies would be beneficial. Frequent updates and communications regarding intentions of advocacy from OPD and the four agencies (including staff attorneys) should be conveyed between one another more frequently. In addition, a specific representative from OPD should be added and funded to handle day-to-day communication and informational requests made by agency management and support staff. Given the number of interactions between OPD and the agencies and the importance of maintaining proper communication and transparency, this responsibility needs to be addressed.

- **Develop a centralized repository for case management system information from the agencies and OPD, while also taking advantage of information provided by the courts' systems.** This would reduce the need for repetitive data entry at each of the defender agencies, ensure consistency, and reduce costs throughout the agencies and OPD. A centralized repository, with most of the information provided by the courts, and only minimal information required by the agencies, would ensure a verifiable and reliable source of information with which OPD can make informed decisions, and would provide the agencies with tools to monitor workload allocation. As such, reduced input from the agencies would alleviate much of the concern the agencies have with disclosing potential identifying information regarding their cases pursuant to the ABA Model Rules of Professional Conduct 1.6. OPD would require access to or the transmittal of information from the Superior Court and District Court case management systems on a regular basis to implement such a system. This repository could also be expanded to further automate the process of case assignment and conflict identification by OPD.

- **Promote collaboration between the public defense bar, the PAO, the courts, and the corrections facilities.** By creating a better understanding of the workload and needs of each of these groups, issues surrounding scheduling, case processing, and methods of practice could potentially be alleviated. Although the level of collegiality in King County is better than in many other jurisdictions, communication and collaboration could improve the relationships between the parties and contribute to the quality of the criminal justice system. .

4. **Any future changes in the law or further changes in prosecutorial policies may require a reevaluation of these workload standards.** As changes occur in the criminal justice system over time, the amount of time required to provide public defense services may also change. If and when these changes occur, workload measures and allocation of resources should be reevaluated in light of those changes.

Appendices

Appendix A - Case-Weighting Steering Committee Members

Entity	Member	Designee (as needed)
King County Superior Court	Sharon Armstrong	
King County District Court	Barbara Linde	Anne Harper
King County Prosecuting Attorney's Office	Dan Satterberg	Leesa Manion or Ian Goodhew
Office of the Public Defender	V. David Hocraffer	Russ Goedde
King County Office of Management and Budget	Toni Rezab	Krista Camenzind
Associated Counsel for the Accused	Don Madsen	Jim Robinson
Northwest Defenders Association	Eileen Farley	Dave Roberson
Society of Counsel Representing Accused Persons	Anne Daly	Kim Exe
The Defender Association	Floris Mikkelsen	Lisa Daugaard
King County Bar Association	Andrew Prazuch	
OPD Assigned Counsel Panel Attorneys	Dennis McGuire	
OPD Assigned Counsel Panel Attorneys	Robert McKay	
Washington Defender Association	John Rodgers	
King County Council	Bob Ferguson	Pat Hamacher
King County Executive	Dow Constantine	Gail Stone
King County Department of Community and Human Services	Jackie MacLean	Terry Mark
Washington State Office of Public Defense	Joanne Moore	
Washington Court of Appeals, Division I	H. Joseph Coleman (ret.)	
Washington State Bar Association - Council on Public Defense	Marc Boman	
Washington Association of Criminal Defense Lawyers	Todd Maybrow	
Director of a Public Defense Program of WA Urban County	Ann Christian	
City of Seattle Office of Policy and Management (OPM)	Catherine Cornwall	

Appendix B – Case Type Codes

CASE TYPE CODES	
Adult	Juvenile
1. Capital Murder	27. Homicide
2. Aggravated Murder – non-capital	28. Felony Sex
3. Murder I	29. Felony
4. Murder II	30. Misdemeanor
5. Other Homicide	31. SSODA Review
6. Felony A Sex	32. Probation Review
7. Felony B Sex	33. Decline Hearing
8. Felony C Sex	BECCA
9. Felony A Other	34. CHINS/ARY
10. Felony B Other	35. Truancy
11. Felony C Other	Dependency
12. Felony Drug	36. New petition through adjudication/initial disposition
13. Complex Economic Crime	37. Review / Permanency Planning
14. Felony Prob. Review/Revocation/ Extradition	38. Termination of parental rights
15. SSOSA/DOSA Review/Revocation	39. Reinstatement of parental rights
16. NGI Review	40. Guardianship
17. Gross Misdemeanor	41. Contested private adoption
18. Misdemeanor	42. Representation of Guardian
19. Misdemeanor DV	Civil
20. Misdemeanor DUI	43. Child Support / Contempt
21. Misd. Prob. Review/Revocation/Extradition	44. Civil Commitment
22. RALJ	Other
Specialty Court	45. Material Witness
23. Drug Diversion Court	46. Post Conviction Review
24. Juvenile Drug Court	47. Multiple Case Types: Adult
25. Mental Health Court	48. Multiple Case Types: Juvenile
26. Family Treatment Court	49. Non-Case Related

Appendix C - Enhancers and Disposition Codes

Enhancers (use the most serious)	Dispositions
A. Persistent offender (2 strikes, 3 strikes)	M. Withdrawal
B. Deadly Weapon/Firearm enhancement	N. Deferred Pros./ Submittal on the record/Transfer to Spec. Court
C. Mandatory Minimum Sentence	O. Dismissed
D. Sexual motivation (applies only to non-sex cases)	P. Plea (includes deferred sentence)
E. Domestic Violence (if Felony)	Q. Trial: Acquitted/Convicted/Hung
F. Declined (Juvenile in Adult Court)	R. Committed to State Hospital/Incompetency/Released
G. Intention to Seek a Manifest Injustice (Juvenile) Exceptional Sentence (Adult)	S. Conclusion of Significant Stage (Dependency/TPR/Adoption/ Decline/BECCA/Specialty Court Conclusion)
H. Interpreter	T. Probation/SSOS(D)A/DOSA Review or Revocation/ NGI Review Disposition
J. Subject to Commitment at Juvenile Rehab. Admin.	
K. Expedited Felony	
X. None	

Appendix D - Attorney Activity Codes

ACTIVITY CODES			
A. In-Court: Adult Criminal	B. In-Court: Juvenile	D. In-Court: Dependency	F. Out-of-Court
50. Arraignment/1st Appearance	70. Detention Hearing	100. Shelter Care Hearing	150. Client Related Contact
51. Bond Hearing	71. Arraignment	101. Pre-Trial Hearing	151. Investigation
52. Omnibus Hearing	72. Decline Hearing	102. Dependency Fact Finding	152. Legal Research
53. Case Scheduling Hearing	73. Diversion Hearing	103. Dependency Review Hearing	153. Social Services Related
54. Motions	74. Capacity Hearing	104. Detention Review Hearing	154. Conference: Judge
55. Plea Hearing	75. Competency Hearing	105. Permanency Planning Hearing	155. Conference: Prosecutor
56. Pretrial Hearing	76. Case Setting Hearing	106. Motions	156. Conference: Colleague
57. Bench Trial	77. Omnibus Hearing	107. Preliminary Hearing	157. Conference: Other
58. Jury Trial	78. Motions	108. Termination/Reinstatement Fact Finding	158. Supervision: Case-Related
59. Sentencing Hearing	79. Disposition Hearing	109. Progress Review	159. Case Preparation
60. Post-Trial/Post-Plea Hearing	80. Review Hearing	110. Guardianship Trial	160. Case-Related Clerical Time
61. Restitution Hearing	81. Bench Trial	111. Termination/Reinstatement Trial	161. Mitigation Related
62. SSOSA/DOSA Hearing	82. Post-Trial/Post-Plea Hearing	112. Dependency Trial	162. Jail Release Issues
63. SRA Calendar	83. SSODA Hearing	113. Unified Family Court Hearing	163. Waiting Time: Jail
64. Probation Hearing	84. Modification Hearing		164. Waiting Time: In Court
65. Hearings: Other	85. Restitution Hearing		165. Waiting Time: Prosecutors
66. Competency Hearing			166. Travel Time: Case-Related
67. Specialty Court		<u>E. In-Court: Other Civil</u>	167. AOD/General Calls/Substantial Advice
	<u>C. In-Court: BECCA</u>	114. ITA -Probable Cause/72 Hr	168. Multiple, Short Activities
	86. ARY/CHINS Fact Finding	115. ITA-Revocation	
	87. ARY/CHINS Review	116. ITA-90 Day Hearing	<u>G. Non-Case Related</u>
	88. Return on Warrants	117. ITA-180 Day Hearing	175. Professional Development
	89. Contempt of Court	118. CC- Show Cause/Contempt	176. Administrative Activities
	90. Detention Review Hearing	119. CC-Return on Warrant	177. Training
	91. Truancy Contempt	120. ITA- Other In Court	178. Community Service
	92. Review Hearing		179. Time Away from Work
			168. Multiple, Short Activities

Appendix E - Attorney Time-Keeping Training Manual

<http://www.kcpdtime.com/ATTORNEY%20MANUAL.pdf>

Appendix F- Interview Protocols

King County Judge Protocol

Thank You/s & Promise of Anonymity

- Remind interviewees: no one will be identified in the report or in discussions with others

Practice of Interviewee/s:

- Position/Court
- Types of Cases S/he Hears
- Years on the Bench
- Other Courts S/he Has Worked In
- Prior Legal Experience

Public Defenders:

Office of the Public Defender Questions-

- In What Way Do You Work with the Office of the Public Defender (OPD)?
- Performance of OPD?
- Adequate Determination of Indigency by OPD?
- Appropriate Distribution of Cases Among Agencies by OPD?
- Sufficient Advocacy for Defense by OPD?

Public Defense Agency Questions-

- Which Agency/ies Represent/s Defendants in Your Court: TDA, ACA, NDA, SCRAP?
- Familiarity with Other Agencies (if not all appear in his/her court)
 - If yes, how?
- Of the Agencies You Are Familiar With...
 - Assessment of PD Agencies Mentioned Above
 - Office/s
 - Individuals
 - In Courtroom
 - Training
 - Supervision
 - Promptness
 - Work Well w/ Client
 - Professionalism
 - Over/Under Aggressiveness?
 - Quality of PD Representation by Each Agency
 - Attorneys
 - Experts
 - Investigators
 - Etc?
 - Preparedness of Each Agency for...
 - Pretrial
 - Trial
 - Sentencing
 - Etc?
 - Frequency with which Each PD Agency Files Continuances
 - When
 - For How Long
 - % of Cases
 - Excessive Caseloads?
 - If so, What Steps Do They Take to Alter/Manage

*Public Defense Specialty Areas **ONLY** -Juvenile, Dependency, ITA, & Specialty Courts*

- PD Sufficient Training & Experience for Specialty Area?
- PD Sufficient Familiarity with Detention & Treatment Facilities?
- PD Adequate Communication with Clients (appropriate to age, education, or special needs)?
- PD Appropriate Recommendations for Sentencing Alternatives?

King County Public Defense Questions-

- % of Cases Assigned to PD? In Custody Pre-Trial?
 - Any Change in Recent Years?
- Strong Points of Criminal Defense in King County
- Areas of Concern for Criminal Defense Practice in King County
- Quality of Representation Retained v. Court Appointed Counsel

- Quality of Representation Misdemeanor v. Felony Cases
- Expedited felonies:
 - Is Process Working?
 - Sufficiently Experienced Defense Attorneys?
 - Potential Problems with Expedited Felony System?
- Recommendations For Improvement of PD Agencies Mentioned Already, If Any

Closing:

- Rating of Quality of Criminal Representation in King Co.
- Rating of Indigent Defense in King Co.
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
Defense Attorney Staff Protocol

Thank You/s & Promise of Anonymity

- No names will be identified in the report or in discussions with others

Practice of Interviewee/s:

- What Does a Typical Day Look Like
- His/Her Position
- Agency
- Years in Current Position
- Experience Prior to Current Position

Office:

- How Many Attorneys Does S/he Support?
- Types of Cases the Attorney/s Handle/s
 - Felony/Misdemeanor
 - Juvenile, Dependency, Involuntary Treatment, Specified crimes
- Enough Office Staff to Support Attorneys?
 - Ratio prosecutors/staff
 - Ideal ratio
 - Anything you are doing now that could be done by someone else?
- Sufficient Training for the Clients the Attorney/s Represent?
- Sufficient Technical Support? If not, why?
- Sufficient Office Resources and Physical Office Space (i.e. facilities, technology, legal research, library materials)? If not, why?

Closing:

- Strong Points of Criminal Defense in King County
- Areas of Concern for Criminal Defense Practice in King County
- Public Defense as a Career? Why?
- Rating of Quality of Criminal Representation in King Co.
- Rating of Indigent Defense in King Co.
- Quality of Representation Retained v. Court Appointed Counsel
- Quality of Representation Misdemeanor v. Felony Cases
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
Defense Attorney Protocol

Thank You/s & Promise of Anonymity

- No names will be identified in the report or in discussions with others

Practice of Interviewee/s:

- What Does a Typical Day Look Like
- His/Her Position
- Agency
- Types of Cases He/She Handles
 - Felony/Misdemeanor
 - Juvenile, Dependency, Involuntary Treatment, Specified crimes
- In Which Courts/Courtrooms Do They Appear
- Years in Practice
- Experience Prior to Current Position

Office:

- Adequacy of Office Staff
 - Ratio prosecutors/staff
 - Ideal ratio
 - Paralegals (Per Atty?)
 - Legal Assistants (Per Atty?)
 - Anything you are doing now that could be done by someone else?
- Access to...(If inadequate, what prevents?)

- Expert Witnesses
- Investigators
- Interpreters
- Mental Health Experts
- Social Workers
- Adequacy and Training of Experts Mentioned Above
- Sufficient Technical Support? If not, why?
- Sufficient Office Resources and Physical Office Space (i.e. facilities, technology, legal research, library materials)? If not, why?

Training:

- Sufficient Training for the Clients You Represent?
- Amount of Annual Training
- Hours of Training Last year
- Quality & Cost of Training
- In-House Training Attorney?
 - If no, would it benefit office?
- Participation in Non-Required Training
 - Access to Non-Mandatory Training?
 - Do You Have Time?
 - Encouragement?

Caseload:

- Accessibility to Clients
 - Office Hours
 - Phone, Fax, Voicemail, Email
 - Home/Office/School Visits
- Annual Caseload Estimate w/n Office
- Current, Open Caseload
 - Compared to a Year Ago?
- Breakdown of Types of Cases by Percentage
- Approximate Length of Each Case
- Stay With a Case From Start to Finish
- Is There Sufficient time for... (If not, why?)
 - Interviews
 - Counseling Clients
 - Research
 - Preparation
 - Investigations
 - Pursuing Formal & Informal Discovery
 - Etc.?
- Do You Generally Feel Prepared For...(If not, why?)
 - Pretrial
 - Trial
 - Sentencing
 - Etc?
- Caseload Interference w/ Quality of Representation
- % of Cases Continued
 - For What Reasons?
- Unreasonable Caseload? Ideal Caseload?
- Any Additional Resources Offered with Excessive Caseloads?
- Any Reassignment of Cases Because of Excessive Caseloads?
- Any Motions to Withdraw From Current or Cease New Assignments?

Supervision:

- Who Supervises Staff Attorneys at Your Agency?
- Staff/Supervisor Ratio
- Rotating Supervisors?
- Do they carry Caseloads?
- Frequency of Evaluations

Office of Public Defense:

- In What Way Do You Work with OPD?
- Relationship with OPD...
 - Personal
 - Your Agency
- Efficiency of OPD
- Assessment of OPD
- Opinion of Level of Compensation by OPD
- Any Instances Where Hindered By Lack Of Compensation
- Recommendations for Improvement of OPD, if any

Closing:

- Strong Points of Criminal Defense in King County
- Areas of Concern for Criminal Defense Practice in King County
- Public Defense as a Career? Why?
- Rating of Quality of Criminal Representation in King Co.
- Rating of Indigent Defense in King Co.
- Quality of Representation Retained v. Court Appointed Counsel
- Quality of Representation Misdemeanor v. Felony Cases
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
Court Personnel Protocol

Thank You/s & Promise of Anonymity

- Remind interviewees: no one will be identified in the report or in discussions with others

Practice of Interviewee/s:

- Position/Court
- Years in Position
- Types of Cases S/he Encounters
- Previous Legal Experience

Public Defenders:

If Familiar, Office of the Public Defender Questions-

- What Interaction Do You Have with the Office of the Public Defender (OPD)?
- Performance of OPD?
- Sufficient Advocacy for Defense by OPD?

Public Defense Agency Questions-

- Which Agency/ies are you Familiar With: TDA, ACA, NDA, SCRAP?
- Of the Agencies You Are Familiar With...
 - Assessment of PD Agencies Mentioned Above
 - Individuals
 - In Courtroom
 - Etc?
 - Promptness
 - Work Well w/ Client
 - Professionalism
 - Over/Under Aggressive Representation?
 - Quality of PD Representation by Each Agency
 - Preparedness of each Agency for...
 - Pretrial
 - Trial
 - Sentencing
 - Etc?
 - Excessive Caseloads

*Public Defense Specialty Areas **ONLY** -Juvenile, Dependency, ITA, & Specialty Courts*

- PD Sufficient Training & Experience for Specialty Area?
- PD Sufficient Familiarity with Detention & Treatment Facilities?
- PD Adequate Communication with Clients (appropriate to age, education, or special needs)?
- PD Appropriate Recommendations for Sentencing Alternatives?

King County Public Defense Questions-

- Strong Points of Criminal Defense in King County
- Areas of Concern for Criminal Defense Practice in King County
- Quality of Representation Retained v. Court Appointed Counsel
- Quality of Representation Misdemeanor v. Felony Cases
- Expedited felonies:
 - Is Process Working?
 - Sufficiently Experienced Defense Attorneys?
 - Potential Problems with Expedited Felony System?
- Recommendations For Improvement of PD Agencies Mentioned Already, If Any

Closing:

- Rating of Quality of Criminal Representation in King Co.
- Rating of Indigent Defense in King Co.
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
County Council Protocol

Thank You/s & Promise of Anonymity

- Remind interviewees: no one will be identified in the report or in discussions with others

Practice of Interviewee/s:

- Current Position
- Years in Current Position
- Prior Experience
- How Does S/he Work with OPD and/or PD Contract Agencies?
(TDA, ACA, NDA, SCRAP)

King County Public Defense:

- Strong Points of Criminal Defense in King County
- Areas of Concern for Criminal Defense Practice in King County
- Over/Under Funded System? (*if not already mentioned*)
- Recommendations For Improvement, if any

Office of the Public Defender, *If Familiar:*

- What Interaction Do You Have with the Office of the Public Defender (OPD)?
- Performance of OPD?
- Sufficient Advocacy for Defense by OPD?

Public Defense Agency Questions, *If Familiar:*

- Which Agency/ies Do You Have Contact With: TDA, ACA, NDA, SCRAP?
- Of the Agencies You Are Familiar With...
 - Explain Relationship
 - Where Possible, Describe...
 - Quality of Representation
 - Preparedness for Proceedings
 - Level of Professionalism
 - Evidence of Excessive Caseloads?
 - Recommendations for Improvement of Agencies, if any

Closing:

- Rating of Quality of Criminal Representation in King Co.
- Rating of Indigent Defense in King Co.
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
Corrections Protocol

Thank You/s & Promise of Anonymity

- Remind interviewees: no one will be identified in the report or in discussions with others

Practice of Interviewee/s:

- Position
- Years in Position
- Types of Charges & Defendants S/he Works With
 - Felony/Misdemeanor
 - Juvenile, Dependency, Involuntary Treatment, Specified Crimes

Public Defenders:

Office of the Public Defender Questions-

- What Way Do You Interact with the Office of the Public Defender (OPD)?
- Performance of OPD?
- Sufficient Advocacy for Defense by OPD?

Public Defense Agency Questions-

- Which Agency/ies are You Familiar With: TDA, ACA, NDA, SCRAP?
- Of the Agencies You Are Familiar With...
 - Assessment of Performance of PD Agencies Mentioned Above
 - Promptness
 - Work Well w/ Client
 - Professionalism
 - Courteous
 - Ethical
 - Over/Under Aggressive Representation?
 - Quality of PD Representation
 - PD Access to Private Room/Area to Speak to Client
 - Scheduling?
 - Utilized as Necessary?

*Public Defense Specialty Areas **ONLY** -Juvenile, Dependency, ITA, & Specialty Courts*

- PD Sufficient Training & Experience for Specialty Area?
 - PD Sufficient Familiarity with Detention & Treatment Facilities?
 - PD Adequate Communication with Clients (appropriate to age, education, or special needs)?
-

King County Public Defense Questions-

- Strong Points of Criminal Defense in King County

- Areas of Concern for Criminal Defense Practice in King County
- Quality of Representation Retained v. Court Appointed Counsel
- Recommendations For Improvement of PD Agencies Mentioned Already, If Any

Closing:

- Rating of Quality of Criminal Representation in King Co.
- Rating of Indigent Defense in King Co.
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
Community Organization Protocol

Thank You/s & Promise of Anonymity

- Remind interviewees: no one will be identified in the report or in discussions with others

Practice of Interviewee/s:

- Explain Work/Goals of His/her Organization
- Position within Organization
- Years in Position
- Types of Cases S/he Encounters
- How Does S/he Work with OPD and/or PD Contract Agencies?
(TDA, ACA, NDA, SCRAP)

Public Defenders:

If Familiar, Office of the Public Defender Questions-

- What Interaction Do You Have with the Office of the Public Defender (OPD)?
- Performance of OPD?
- Sufficient Advocacy for Defense by OPD?

If Familiar, Public Defense Agency Questions-

- Which Agency/ies are you Familiar With: TDA, ACA, NDA, SCRAP?
- Of the Agencies You Are Familiar With...
 - Assessment of PD Agencies Mentioned Above
 - Office/s
 - Individuals
 - In Courtroom
 - With Client
 - Promptness
 - Professionalism
 - Courteous
 - Ethical
 - Over/Under Aggressive Representation?
 - Quality of PD Representation
 - Where Familiar, Preparedness for...
 - Pretrial
 - Trial
 - Sentencing
 - Etc?
 - Excessive Caseloads?

*Public Defense Specialty Areas **ONLY** -Juvenile, Dependency, ITA, & Specialty Courts*

- PD Sufficient Training & Experience for Specialty Area?
 - PD Sufficient Familiarity with Detention & Treatment Facilities?
 - PD Adequate Communication with Clients (appropriate to age, education, or special needs)?
 - PD Appropriate Recommendations for Sentencing Alternatives?
-

King County Public Defense Questions-

- Strong Points of Criminal Defense in King County
- Areas of Concern for Criminal Defense Practice in King County
- Quality of Representation Retained v. Court Appointed Counsel
- Quality of Representation Misdemeanor v. Felony Cases
- Recommendations For Improvement of PD Agencies Mentioned Already, If Any

Closing:

- Rating of Quality of Criminal Representation in King Co.
- Rating of Indigent Defense in King Co.
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
AG/AAG Dependency Protocol

Thank You/s & Promise of Anonymity

- Remind interviewees: no one will be identified in the report or in discussions with others

Practice of Interviewee/s:

- What Does a Typical Day Look Like

- Types of Cases S/he Handles
 - Felony/Misdemeanor
 - Dependency Only?
- Which Courts/Courtrooms Does S/he Appear
- Years in Practice
- Experience Prior to Current Position

Public Defenders:

- In What Way Do You Work with Public Defenders?
 - Directly with OPD?
 - Which Agencies: TDA, ACA, NDA, SCRAP?
- Familiarity with Other Agencies
 - If yes, how?
- Of the Agencies You Are Familiar With...
 - Assessment of PD Agencies Mentioned Above in Dependency Cases
 - Office/s
 - Individuals
 - In Courtroom
 - Promptness
 - Work Well w/ Client
 - Professionalism
 - Over/Under Aggressive Representation?
 - Quality of PD Representation by Each Agency in Dependency Cases
 - Attorneys
 - Experts
 - Investigators
 - Etc?
 - Preparedness of Each Agency for...
 - Pretrial
 - Trial
 - Sentencing
 - Etc?
 - Frequency with which each PD Agency Files Continuances
 - When
 - For How Long
 - % of Cases
- Sufficient Training & Experience for Dependency?
- Sufficient Familiarity with Detention & Treatment Facilities?
- Adequate Communication with Clients (appropriate to age, education, or special needs)?
- Appropriate Recommendations for Sentencing Alternatives
- Recommendations For Improvement of PD Mentioned Already, If Any

Closing:

- Rating of Quality of Criminal Defense Representation in King Co.
- Rating of Indigent Defense in King Co.
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
Prosecutor Protocol

Thank You/s & Promise of Anonymity

- Remind interviewees: no one will be identified in the report or in discussions with others

Practice of Interviewee/s:

- What Does a Typical Day Look Like
- Title of His/Her Position
- Types of Cases S/he Handles
 - Felony/Misdemeanor
 - Juvenile, Dependency, Involuntary Treatment, Particular Kinds of Crimes
- In Which Courts/Courtrooms Does S/he Appear
- Years in Practice
- Experience Prior to Current Position
- Culture of the Prosecutor's Office
 - Formal/Informal
 - Level of Professionalism
 - Adequate Staff, Resources, Etc?
 - Relationship with Police Department
 - Expectations of:
 - # of Hours
 - # of Cases
 - How To Deal with Opposing Counsel
 - Whether and/or When To Plead

- # or % of Convictions

Public Defenders:

- In What Way Do You Work with Public Defenders?
 - Directly with OPD?
 - Which Agencies: TDA, ACA, NDA, SCRAP?
- How Familiar are Prosecutors with the Agencies Mentioned & From What Sources?
- Familiarity with Other Agencies
 - If yes, how?
- Of the Agencies You Are Familiar With...
 - Culture of The PD Agency(ies)
 - Promptness
 - Work Well w/ Client
 - Professionalism
 - Over/under aggressiveness?
 - Quality of PD Representation by each agency mentioned above
 - Attorneys
 - Experts
 - Investigators
 - Etc?
 - Preparedness of each PD agency mentioned above for...
 - Pretrial
 - Trial
 - Sentencing
 - Etc?
 - Frequency with which each PD Agency Files Continuances
 - When
 - For How Long
 - % of Cases
- Recommendations For Improvement of PD Mentioned Already, If Any

*Public Defense Specialty Areas **ONLY**-Juvenile, Dependency, ITA, & Specialty Courts*

- PD Sufficient Training & Experience for Specialty Area?
 - PD Sufficient Familiarity with Detention & Treatment Facilities?
 - PD Adequate Communication with Clients (appropriate to age, education, or special needs)?
 - PD Appropriate Recommendations for Sentencing Alternatives?
-

Closing:

- Rating of Quality of Criminal Defense Representation in King Co.
- Rating of Indigent Defense in King Co.
- Is there Anything Else We Should Know about Indigent Defense in King County?

King County
Private Defense Attorney Protocol

Thank You/s & Promise of Anonymity

- No names will be identified in the report or in discussions with others

Practice of Interviewee/s:

- What Does a Typical Day Look Like
- His/her Position
- Types of Cases S/he Handles
 - Felony/Misdemeanor
 - Juvenile, Dependency, Involuntary Treatment, Specified crimes
- In Which Courts/Courtrooms Do They Appear
- Years in Practice
- Experience Prior to Current Position

Office:

- Adequacy of Office Staff
 - Ratio prosecutors/staff
 - Ideal ratio
 - Paralegals (Per Atty?)
 - Legal Assistants (Per Atty?)
 - Anything you are doing now that could be done by someone else?
- Access to... (If inadequate, what prevents?)
 - Expert Witnesses
 - Investigators
 - Interpreters
 - Mental Health Experts
 - Social Workers
- Adequacy and Training of Experts Mentioned Above
- Sufficient Technical Support? If not, why?

- Sufficient Office Resources and Physical Office Space (i.e. facilities, technology, legal research, library materials)? If not, why?
- Training:**
- Sufficient Training for the Clients You Represent?
 - Amount of Annual Training
 - Quality & Cost of Training
 - Participation in Non-Required Training
 - Access to Non-Mandatory Training?
 - Do You Have Time?
 - Encouragement?
- Caseload:**
- Accessibility to Clients
 - Office Hours
 - Phone, Fax, Voicemail, Email
 - Home/Office/School Visits
 - Annual Caseload Estimate w/n Office
 - Current, Open Caseload
 - Compared to a Year Ago?
 - Breakdown of Types of Cases by Percentage
 - Approximate Length of Each Case
 - Stay With a Case From Start to Finish
 - Caseload Interference w/ Quality of Representation
 - % of Cases Continued
 - For What Reasons?
 - Unreasonable Caseload? Ideal Caseload?
 - Any Additional Resources Offered with Excessive Caseloads?
 - Any Reassignment of Cases Because of Excessive Caseloads?
 - Any Motions to Withdraw From Current or Cease New Assignments?
- Office of Public Defense:**
- In What Way Do You Work with OPD?
 - How Are Cases Assigned to You?
 - How Frequently?
 - Efficiency of OPD
 - Assessment of OPD
 - Opinion of Level of Compensation by OPD
 - Any Instances Where Hindered By Lack Of Compensation
 - Sufficient Advocacy for Defense by OPD?
 - Recommendations for Improvement of OPD, if any
 - Communication with PD Agencies?
 - If Yes, Which: TDA, ACA, NDA, SCRAP
 - If Familiar...
 - Explain Relationship
 - Describe...
 - Quality of Representation
 - Preparedness for Proceedings
 - Level of Professionalism
 - Recommendations for Improvement of Agencies, if any
- Closing:**
- Strong Points of Criminal Defense in King County
 - Areas of Concern for Criminal Defense Practice in King County
 - Public Defense as a Career? Why?
 - Rating of Quality of Criminal Representation in King Co.
 - Rating of Indigent Defense in King Co.
 - Quality of Representation Retained v. Court Appointed Counsel
 - Quality of Representation Misdemeanor v. Felony Cases
 - Is there Anything Else We Should Know about Indigent Defense in King County?

King County
Defense Attorney Supervisor Protocol

Thank You/s & Promise of Anonymity

- Remind interviewees: no one will be identified in the report or in discussions with others

Practice of Interviewee/s:

- What Does a Typical Day Look Like
- Title of His/Her Position
- Agency (OPD, Immigration, Appeals, TDA, ACA, NDA, SCRAP)

- Types of Cases Agency Handles
 - Felony/Misdemeanor
 - Juvenile, Dependency, Involuntary Treatment, Particular Types of Crimes
- In Which Courts/Courtrooms Do Attorneys From Their Agency Appear
- Years in Practice
- Experience Prior to Current Position

Office:

- Adequacy of Office Staff for His/Her Attorneys
 - Ratio prosecutors/staff
 - Ideal ratio
 - Paralegals (Per Atty?)
 - Legal Assistants (Per Atty?)
 - Anything you are doing now that could be done by someone else?
- How Much Access Do His/Her Attorneys Have to... (If insufficient, why?)
 - Expert Witnesses
 - Investigators
 - Interpreters
 - Mental Health Experts
 - Social Workers
- Adequacy and Training of Experts Mentioned Above
- Sufficient Technical Support for His/Her Attorneys? If not, why?
- Sufficient Office Resources and Physical Office Space for His/Her Attorneys (i.e. facilities, technology, legal research, library materials)? If not, why?

Training:

- Sufficient Training for the Clients His/Her Agency Represents?
- Amount of Annual Training
 - Separate Training for Supervisors?
- Hours of Training Last year
- Quality & Cost of Training
 - For Him/Her?
 - For His/Her Attorneys?
- In-House Training Attorney?
 - If no, would it benefit office?
- Participation in Non-Required Training
 - Access to Non-Mandatory Training?
 - Do You Have Time?
 - Encouragement?

Caseload:

- Does He/She Carry a Caseload?
 - If So, Current & Yearly Caseload?
- Annual Caseload Estimate w/n Office
 - Compared to a Year Ago?
- Breakdown of Types of Cases by Percentage
- Approximate Length of Each Case
- Do Attorneys Stay With a Case From Start to Finish?
- Do the Attorneys Have Sufficient time for...(If not, why?)
 - Interviews
 - Counseling Clients
 - Research
 - Preparation
 - Investigations
 - Pursuing Formal & Informal Discovery
 - Etc.?
- Are the Attorneys Generally Prepared For...(If not, why?)
 - Pretrial
 - Trial
 - Sentencing
 - Etc?
- Caseload Interference w/ Quality of Representation?
- % of Cases Continued
 - For What Reasons?
- Do the Attorneys Ever Have an Unreasonable Caseload?
 - What causes?
 - What is an Ideal Caseload?
- Any Additional Resources Offered with Excessive Caseloads?
- Any Reassignment of Cases Because of Excessive Caseloads?
- Any Motions to Withdraw From Current or Cease New Assignments?

Supervision:

- How Many Attorneys Does He/She Supervise?
 - If more than ten, why?
- Frequency of Evaluations?
- Written Protocol for Evaluations?
- How Well Do Attorneys Manage Time?
- Staff/Supervisor Ratio
- Rotating Supervisors?
- Is His/Her Performance Evaluated?
 - How?
 - How Often?
- Do Other Supervisors Carry Caseloads?
- Is S/he In Charge of Hiring/Firing?
 - If So, Qualifications for Each
- Any Problems Filling Vacancies?
- Path of Advancement for New Public Defender?
- Process for Determination of Promotions and/or Salary Increases
- Any Room to Improve Attorney Management?
 - If So, How?

Office of Public Defense:

- In What Way Do You Work with OPD?
- Relationship with OPD...
 - Personal
 - Your Agency
- Efficiency of OPD
- Assessment of OPD
- Opinion of Level of Compensation by OPD
- Any Instances Where Staff Attorneys are Hindered By Lack Of Compensation
- Recommendations for Improvement of OPD, if any

Closing:

- Strong Points of Criminal Defense in King County
- Areas of Concern for Criminal Defense Practice in King County
- Public Defense as a Career? Why?
- Rating of Quality of Criminal Representation in King Co.
- Rating of Indigent Defense in King Co.
- Quality of Representation Retained v. Court Appointed Counsel
- Quality of Representation Misdemeanor v. Felony Cases
- Is there Anything Else We Should Know about Indigent Defense in King County?

Appendix G - Previous King County Indigent Defense Reports

In the last twenty years, King County has conducted a number of studies of various elements of its criminal justice system. TSG previously led four studies of the King County indigent defense system. In October 1989, TSG published a *Study of Proposed King County Operated and Managed Public Defense Program Final Report*, which was prepared at the request of the King County Public Defense program.⁷⁵ TSG prepared an Analytical Review of “Public Defense and Prosecution Funding in King County: A System out of Balance” on behalf of the Office of the Public Defender in November 1994.⁷⁶

TSG issued a comprehensive analysis of the public defender system in King County in 2000.⁷⁷ The proposal called for TSG to analyze the quality and efficiency of the public defense system and propose alternative models used across the country. The report made a number of recommendations to improve the efficiency and quality of the system. At the end of the report, TSG set out a series of short-term tasks for the Oversight Committee’s consideration, one of which was to conduct a case-weighting study. The report also issued several recommendations, including the following:⁷⁸

- Elevate the Office of the Public Defender to a county department level within the Executive Branch of county government due to the need for a stronger policy voice on behalf of public defense and greater oversight of the entire program.
- Appoint an attorney with prior experience in the criminal justice system to administer OPD.
- Develop a comprehensive case-weighting system that supports innovation and improvement in the public defender system by accurately reflecting the average time needed to perform necessary functions in various types of cases.
- Develop procedures that give attorneys and the court sufficient time and resources to ensure more meaningful early hearings.
- Develop a centralized case management system (CMS), accessible by each of the agencies to reduce the need for repetitive data entry at each of the defender agencies, ensure consistency, and reduce costs.
- Improve communication, coordination and contact among the public defense agencies in King County.

In 2002-2003, TSG conducted a case-weighting study in King County as recommended in the previous study.⁷⁹ That report concluded that the “average public defender in King County is working above capacity to achieve the goal of adequate representation. Over time, this commitment to extra work can become overly strained if caseloads continue to rise without additional staff.”⁸⁰

The Case-Weighting Study performed in 2002-2003 addressed the major problem of determining the appropriate workload for the then-existing operation. The results of the time study estimated that approximately 20 additional lawyers were needed to assure quality representation based upon the total case credits assigned in 2001. As with the 2000 report, TSG did not believe that the case and credit projections developed by OPD were reliable. Several potentially cost-saving reforms were offered at the time, including the following recommendations:

- OPD and the defender agencies would benefit from increased implementation of the existing Case Management System.

⁷⁵ The Spangenberg Group, *Study of Proposed King County Operated and Managed Public Defense Program Final Report*, (October, 1989).

⁷⁶ The Spangenberg Group, “Public Defense and Prosecution Funding in King County: A System out of Balance” (November 1994).

⁷⁷ The Spangenberg Group, *King County Public Defense Study Final Report* (June, 2000).

⁷⁸ *Ibid.* at 4-7

⁷⁹ The Spangenberg Group, *King County Public Defender Case-Weighting Study* (February 2003).

⁸⁰ *Ibid.* at 39.

- OPD, with the cooperation of the public defenders and the Oversight Committee, should consider adopting detailed, specific and uniform written policy on conflict cases. Furthermore, a form should be prepared to indicate the specific nature of the conflict and be forwarded to OPD.
- With a lower percentage of ineligible defendants screened than any other large metropolitan city in the country that TSP has studied, the question was raised of whether a new system of screening should be undertaken or to simply end screening of all felony defendants held in custody who have been unable to post bond.
- Agency contracts were cumbersome, numbering over 50 pages of text. Simpler contracts were advised.
- Reduce waiting and travel time for attorneys.

The Justice Management Institute (JMI) completed a study of the King County Court System in 2008.⁸¹ The report stated that there has been an increase in the number of pending cases, felony processing times have become lengthier, King County courts have a growing backlog problem, and that changes in case flow processes are necessary to reduce the inventory. The JMI report went on to commend King County for having speedier resolution times than the rest of the state, a relatively low jail population, sound core institutions, and collaborative, committed, and receptive criminal justice practitioners. Recommendations from the study included the following: 1) adopt felony case-processing standards and goals; 2) establish policy in order for Superior Court responsibility over effective management of Court's felony caseload; 3) use differentiated case management techniques to revise the felony case processing system; 4) organize and allocate Prosecuting Attorney's Office's (PAO) resources in order to implement recommendation #3; 5) organize and allocate OPD's resources to effectively implement recommendation #3; 6) organize and allocate the Superior Court's criminal division resources in order to implement recommendation #3; 7) continue developing an integrated criminal justice information system; 8) provide for active monitoring of caseload in the criminal division of the courts; 9) develop and implement case management procedures and calendaring that takes into the account the need for case preparation and effective representation; 10) revise structure and processes to enable better supervision of released defendants.

⁸¹ JMI, *supra* footnote 59.

Appendix H - King County Office of the Public Defender reported improvements

- Required the public defender agencies to establish performance standards for their attorneys.
- Reduced public defense contractor juvenile court attorney caseloads from the county caseload standard to the WSBA caseload standard.
- Increased the rate of hourly rate pay for Assigned Counsel panel members, helping to retain more experienced attorneys on more serious cases.
- Hired an experienced attorney to serve as an attorney trainer / quality control specialist for OPD.
- Instituted ongoing Continuing Legal Education trainings, ranging from “brown bag” lunch time trainings, full day programs with national speakers, and an annual three day Trial Advocacy Training program with national trainers.
- Required, by contract terms, public defender agencies to meet with their in custody clients within 24 hours of receiving a case assignment, and having contact with their out of custody clients within 5 business days of receipt of case assignment.
- Substantial revision to the Experts Services review process and procedure, resulting in much shorter turnaround times on notification of results.
- Substantial revision to the Assigned Counsel and Experts / vendor payment process, resulting in much shorter time from billing by a vendor until payment.
- Pushed the process in King County for applying to the State of Washington for funding through the Extraordinary Criminal Justice Act, for assistance in defraying county costs of Aggravated Murder cases.
- Established county caseload standards for Becca cases (for which the WSBA had none), and advocated successfully for use of county general fund resources to help defray the increased costs of this caseload.
- Revised the process for processing and investigating client complaints against their attorneys.
- Brought online a new database management system for indigency screening and case assignments, which also improved the ability of OPD staff to run initial conflicts checks at the time of assignment.
- Revised the felony case intake process to accommodate the new county electronic filing, with a goal of having clients assigned to attorneys as soon in the process after case filing possible.
- Revised the dependency case assignment process for 72 hour shelter care hearings, with an eye to improve the services to the client, and better utilize the resources of both the contract public defender agencies and the assigned counsel panel members.
- Improved the intake qualification process, supervision and monitoring of the assigned counsel panel.
- Revised the closed case data reporting to an electronic format with a uniform set of disposition codes.

Appendix I – Summary of King County PAO Filing & Disposition Standard Changes

SUMMARY OF BUDGET- INDUCED KCPAO FILING & DISPOSITION STANDARD CHANGES

I. Introduction

In 2009 King County government faces an \$85 million budget shortfall. Based on that shortfall, the King County Executive has ordered all criminal justice agencies, including the King County Prosecuting Attorney's Office, to take an 11.4% budget cut. A budget cut of this magnitude is simply unprecedented. The cut is the equivalent of 41 deputy prosecutors out of 190 funded by the current expense fund. More cuts are on the way for 2010 and beyond, absent significant changes to county revenues.

As a result, the PAO is compelled to focus its shrinking staff resources on serious violent crimes, sex offenses, domestic violence and the most serious property crime offenders by modifying its filing and disposition standards. These changes are not advanced as good policy, rather they represent a realistic approach to focus our remaining personnel on the cases that are our highest priorities.

Below is a list of policy changes that have been adopted as measures to adapt to the 2009 budget reduction. These changes will take effect for all cases brought to our office after October 6, 2008. Domestic violence property crimes are exempt from these changes and we will continue to file them as felonies.

II. Property Crimes to be referred Directly to Municipal/District Court for Misdemeanor Prosecution

A. Property Crime Values \$1,000 and under

Property crime cases where the value of the property is \$1,000 and under shall now be referred by law enforcement to municipal/district court prosecutors as misdemeanor offenses. Property crimes subject to this new filing standard include:

- Theft (excluding theft from a person and see below for theft of access devices)
- Theft of or Failure to Return Leased Property
- Organized Retail Theft
- Forgery
- Possession of Stolen Property (see below for possession of access devices)
- Unlawful Issuance of Bank Checks
- Malicious Mischief
- Trafficking in Stolen Property
- Insurance, Welfare and Housing Fraud
- Money Laundering
- Burglary in the Second Degree when based on a previously trespassed shoplifter
- Burglary when from a fenced area, carport, detached garage or structure

B. Identity Theft and Related Crimes

Identity theft where the loss is \$1000 or less and the absence of other aggravating factors shall now be referred by law enforcement to municipal/district court prosecutors as misdemeanor offenses. Property crimes subject to this new filing standard include:

- Possession of a Stolen Access Device with fewer than three victims.
- Theft of an Access Device with fewer than three victims.
- Identity theft with fewer than three victims unless there is evidence of manufacturing, a vulnerable victim, or the information was taken in a residential burglary, robbery or theft from a person.

III. Property Crimes to be filed as Expedited Felonies

A. Property Crimes Valued between \$1,001 to \$5,000

Property crime cases where value of property falls between \$1,001 and \$5,000 should be referred by law enforcement to the KCPAO but will be filed as expedited felonies into King County District Court. If defendants reject the reduced charge, the case will be re-filed as a felony in Superior Court.

- Theft (excluding theft from a person or theft of access devices)
- Theft of or Failure to Return Leased Property
- Organized Retail Theft
- Forgery
- Possession of Stolen Property (not including possession of access devices)
- Unlawful Issuance of Bank Checks
- Malicious Mischief
- Trafficking in Stolen Property
- Insurance, Welfare and Housing Fraud
- Money Laundering
- Burglary in the Second Degree when based on a previously trespassed shoplifter

B. Identity Theft Crimes with a Loss of \$1001 to \$5000

Identity theft cases where the loss falls between \$1001 and \$5000 should be referred by law enforcement to the KCPAO but will be filed as expedited felonies into King County District Court. If defendants reject the reduced charge, the case will be re-filed as a felony in Superior Court.

- Identity theft with fewer than three victims unless there is evidence of manufacturing, a vulnerable victim, or the information was taken in a residential burglary, robbery or theft from a person.

C. Special Considerations

In the appropriate case, the State may exercise its discretion to file a case listed above as a felony in Superior Court rather than as an expedited. In making such a decision, the State may consider factors including but not limited to a defendant's criminal history, high impact offenders, other pending criminal cases or the nature of the current offense.

IV. Drug Crimes to be Filed as Expedited Felonies

A. Forged Prescription

B. VUCSA Possession

- (i) For cocaine, heroin, methamphetamine, the amount possessed is less than 3 grams
- (ii) For marijuana, the amount possessed is less than 100 grams or fewer than 12 plants
- (iii) For MDMA (ecstasy), the amount possessed is fewer than 20 pills
- (iv) For prescription medication or any other type of pills, the amount possessed is fewer than 50 pills
- (v) Possession of any other substance not listed above will be reviewed on a case by case basis

C. Packaging

The drugs must be weighed without any kind of packaging. Any referral submitted for review or filing where the drugs were weighed with packaging, or where the Certification for Determination of Probable Cause does not specify, shall be returned to the referring police agency.

D. Exceptions for Drug Offenses

- (i) A defendant with 9 or more adult felony convictions AND whose criminal history includes adult convictions for any Class A felony or sex offense is not eligible for expedited filing. The case should be filed into Superior Court as a felony.
- (ii) A defendant who has received 3 or more expedited felonies in a 18 month period is not eligible for expedited filing. The case should be filed into Drug Court.

E. Special Considerations

As with property crimes, in the appropriate case, the State may exercise its discretion to file a case listed above as a felony in Superior Court rather than as an expedited. In making such a decision, the State may consider factors including but not limited to a defendant's criminal history, high impact offenders, other pending criminal cases or the nature of the current offense.

Appendix J - Agency Support Staff

Investigators to Attorney Ratio

<u>Agency</u>	<u>Investigators</u>	<u>Investigator/Attorney Ratio</u>
ACA	12.0	0.17
NDA	3.0	0.103
SCRAP	10.0	0.192
TDA	18.5	0.244

Social Workers to Attorney Ratio

<u>Agency</u>	<u>Social Workers</u>	<u>Social Worker/Attorney Ratio</u>
ACA	6.0	0.087
NDA	1.0	0.034
SCRAP	3.0	0.057
TDA	6.0	0.079

Paralegals to Attorney Ratio

<u>Agency</u>	<u>Paralegals</u>	<u>Paralegal/Attorney Ratio</u>
ACA	4.00	0.058
NDA	5.00	0.172
SCRAP	5.00	0.096
TDA	10.55	0.139

Clerical/Other Staff to Attorney Ratio

<u>Agency</u>	<u>Clerical/Other</u>	<u>Staff/Attorney Ratio</u>
ACA	13.60	0.196
NDA	9.60	0.331
SCRAP	12.00	0.230
TDA	20.32	0.268

Appendix K - Case Credit Application Schedule

Type of Case	
Felony	
One completed case	One case credit
Substantial advice	0.10 case credit
Substantial advice in the King County Detention Facility	0.20 case credit
Probation, other reviews, or sentencing only	0.33 case credit
Assignment for Motion to Withdraw Guilty Plea or a Motion for New Trial based on a claim of ineffective assistance of counsel	One case credit
Homicide cases assigned on and after July 1, 2009	Ten case credits upon assignment for the following case types: <ol style="list-style-type: none"> 1. Murder 1 – RCW 9A.32.040 2. Murder 2 – RCW 9A.32.050 3. Homicide by Abuse – RCW 9A.32.055 4. Manslaughter 1 – RCW 9A.32.060 5. Vehicular Homicide
Adult Sex Offenses subject to Indeterminate Life Sentences on cases assigned on and after July 1, 2009	Five case credits upon assignment for the following case types: <u>Indeterminate Sex Cases – Life Sentence</u> <ol style="list-style-type: none"> 1. Rape 1 – RCW 9A.44.040 2. Rape 2 – RCW 9A.44.050 3. Rape Child 1 – RCW 9A.44.073 4. Rape Child 2 – RCW 9A.44.076 5. Indecent Liberties with Forcible Compulsion – RCW 9A.44.100(2)(b) 6. Child Molestation 1 – RCW 9A.44.083 7. Kidnapping 1 with Sexual Motivation – RCW 9A.40.020 8. Kidnapping 2 with Sexual Motivation – RCW 9A.40.030 9. Assault 1 with Sexual Motivation – RCW 9A.36.011 and RCW 9A.36.030(43) 10. Assault 2 with Sexual Motivation – RCW 9A.36.021(2)(b) 11. Assault of a Child 1 with Sexual Motivation – RCW 9A.36.120 12. Burglary 1 with Sexual Motivation – RCW 9A.52.020
Additional Credits for Felony cases assigned on and after July 1, 2009	If Homicide cases or Sex Offenses subject to Indeterminate Life Sentences cases exceed 220 hours of attorney time, three additional credits for every 50 attorney hours over 200 attorney hours. Any other felony case: three credits for every 50 hours over the initial presumed 12.1
Case from Court Order for Public Health Isolation or Quarantine of Individuals, WAC 246-100-04D and WAC 246-100-060.	One felony case credit
Persistent Offender (593)	For cases assigned prior to July 1, 2009, one case credit upon assignment, less previously assigned felony credit. The Agency is eligible for additional case credit for each additional 12.1 hours or portion thereof of attorney time on the case according to the Extraordinary Cases section of this Attachment A. For 593 cases assigned on or after July 1, 2009, this reimbursement method shall be in place until such time as the King County Council approves, by motion, a change in reimbursement methodology, and such time when the Council approved change is amended to this Contract. The Agency shall report monthly to OPD the total attorney time in each persistent offender case in a format consistent with Attachment F categorizing attorney hours. It is understood that the Agency director or the director's designee will review the status of all pending persistent offender cases in the Agency at least monthly and will discuss the cases with the attorneys representing the clients. Such review will include the status of investigation, preparation and presentation of mitigation packages, legal and factual issues in the case, the client's physical and mental status, and any plea bargaining offers. Case credits upon assignment or upon documentation of persistent offender status and additional credits for cases assigned prior to July 1, 2009 shall be as per Extraordinary Cases application and submission of Persistent Offender Monthly Case Report. Cases

Type of Case	
	assigned on and after July 1, 2009 shall be tracked by the Persistent Offender Monthly Case Report until such time as the Attorney Monthly Billing Report is activated.
Felony Bench Warrant during case	One case credit if more than 180 days has passed since the date of the bench warrant and if the bench warrant was on a new case assignment; or 0.33 case credit if warrant was a probation review or other hearing valued at 0.33 credit.
Case transferred to another agency, assigned counsel, or retained counsel	Substantial advice credit if case is not completed prior to transfer and if Agency provides to OPD satisfactory justification for credit. This does not include withdrawals based on discovery of conflict upon initial conflict check by Agency, generally completed within 14 days of receipt of OPD assignment, including upon initial receipt of pretrial discovery. In the event that award of substantial advice credit alone results in a substantial financial hardship to the Agency, the Agency may request additional credit. Factors to be considered for additional credit include stage of proceedings (e.g. set for plea, set for or approaching trial date, amount and nature of work expended) and explanation made by the Agency to resolve any breakdown in communication between the defendant and the assigned attorney.
Case transferred to drug court	One case credit
Complex Litigation	
Capital cases	Two attorneys; up to 25 complex litigation case credits per month as reported by the Agency and consistent with SPRC 2; support staff and supervision to be assigned consistent with the King County Public Defender Payment Model.
Aggravated Homicide (non-death penalty)	One attorney; up to 12.5 complex litigation case credits per month maximum.
King County Misdemeanor	
One completed case, King County District Court	One case credit
District Court review, revocation, re-sentencing or other hearing	One case credit
Expedited Felony	Calendar funding
Misdemeanor Appeal	Four case credits
Misdemeanor Writ	Three case credits
Substantial advice; excludes misdemeanor beeper calendar matters listed in Attachment B and other calendar representation	0.10 case credit
Substantial advice for In-custody clients; excludes misdemeanor beeper calendar matters listed in Attachment B and other calendar representation	0.20 case credit
Juvenile Offender	
One completed case	One case credit
Decline hearing or Out of County Mods	One case credit
Reviews	0.33 case credit
Substantial advice	0.10 case credit
Juvenile Drug Court	Calendar Funding
Juvenile Dependency	
A dependency case	One case credit
Post Disposition Review Hearing	0.40 case credit
Dependency trial or contested disposition	0.50 case credit

Type of Case	
Termination Petition	One case credit
Termination trial	One case credit
Atty/Day for substantial advice	0.10 case credit
Reinstatement of Parental Rights	One case credit for child representation. One case credit for parent representation only if the court ordered appointment on the matter for the parent.
Post-Hearing on the Merits review hearing (Reinstatement of Parental Rights)	0.40 case credit
Contested Private Adoption	One case credit
Civil Contempt	
From show cause initial assignment hearing up to and including two contempt reviews	One case credit
Subsequent reviews	0.33 case credit
Becca: Child in Need of Services, At-Risk Youth, Truancy	
ARY/CHINS case	One case credit for one completed case – petition through disposition; includes first two review hearings.
ARY/CHINS Reviews	0.33 case credits for the third and successive review hearings, including any new contempts on the same petition.
Truancy	One case credit for initial petition filing One case credit for contempt filing
ITA	One case credit
Drug Diversion Court	Calendar funding
District Mental Health Court	Calendar funding
Other Circumstances	
New statutory mandates	Case types not contemplated by this Contract arising from legislation with effective dates after January 1, 2007 shall be assigned by OPD and accepted by the Agency subject to agreement on the credit to be given.
Extraordinary Cases	Extraordinary Juvenile Felony Offender, Dependency, Termination of Parental Rights, RCW 26.33.110 contested adoption termination, Reinstatement of Parental Rights, Contempt of Court, Murder, Persistent Offender, all Adult Felony cases, and in other case categories shall be given extra credits if the nature of the case requires such extra credits, based upon a written application from the Agency for additional credits and negotiation between OPD and the Agency. Factors entering into the awarding of extra credits include, but are not limited to: seriousness of the charges; amount and complexity of evidence; number of witnesses; unusual legal issues; number of defendants; whether there is a plea, bench trial or jury trial; number of pre-trial motions or hearings needed; severity of the consequences; actual length of trial, and the extent to which workload is accounted for by existing case weighting methodologies. The Agency application must be specific about the work to be done or completed to

Type of Case	
	date, the estimated length of time to perform the work, and the personnel that will be assigned to perform the work. Initial OPD response to the Agency, including requests for additional information, shall be made within five business days from OPD receipt of Agency application.
Credit for cases where the Agency withdraws due to a conflict of interest	When the Agency has reviewed discovery and reported to OPD its withdrawal for reason of conflict and requested credit for time expended, OPD shall review the Agency's request for credit, including the reason given for withdrawal, and may grant appropriate credit. Should such credit be denied, OPD shall inform the Agency of the basis for denial. Credit shall be determined as per rule involving case transferred to another Agency, Attachment A above.
Pro Se/Standby Counsel	Case credited in same manner as other felony credits in this Attachment A; if professional support staff work is performed by the Agency and requests for appointment of professional support staff at public expense outside of the Agency are not submitted to OPD. If professional support staff work is requested by the pro se defendant, the Agency must inform OPD if it is opting to reduce its credit allocation by 0.1 per each attorney credit assigned in the case by not utilizing its professional support staff.

Appendix L - Hours by Case Type and Activity

Hours by Case Type

Case Type	Case Related Time	Multiple Case Related	Non Case Related	Total Time
Murder				
Capital Murder	3167:07	161:23	195:28	3523:59
Aggravated Murder: non-capital	73:18	8:59	5:01	87:18
Murder I	2003:54	206:35	127:52	2338:21
Murder II	354:41	108:58	57:56	521:35
Other Homicide	236:54	42:15	11:32	290:42
Murder Total	5835:54	528:12	397:51	6761:57
Superior Court Adult Criminal				
Felony A Sex	1971:36	481:47	91:54	2545:17
Felony B Sex	335:06	96:32	26:29	458:07
Felony C Sex	293:20	107:55	15:07	416:23
Felony A Other	1854:44	605:55	130:31	2591:11
Felony B Other	5732:02	1834:04	532:52	8098:59
Felony C Other	3301:50	1089:58	270:31	4662:20
Felony Drug	1058:27	428:54	98:05	1585:26
Felony Prob Rev. - Extradition	161:44	61:59	23:17	247:01
Complex Economic Crime	541:26	146:38	37:04	725:08
RALJ	533:50	64:01	42:29	640:21
Superior Court Adult Criminal Total	15784:05	4917:49	1268:24	21970:18
District Court				
Gross Misdemeanor	853:29	273:43	145:37	1272:49
Misdemeanor DUI	2026:05	578:17	143:24	2747:47
Misdemeanor DV	271:17	188:12	36:25	495:55
Misdemeanor	354:35	145:30	43:36	543:41
Misd. Prob. Rev. - Extradition	427:18	125:24	67:11	619:53
District Court Total	3932:44	1311:08	436:14	5680:07
Juvenile				
Decline Hearing	31:13	18:52	0:20	50:25
Juv. Homicide	28:45	9:06	4:36	42:28
Juv. Felony Sex	351:51	144:45	24:47	521:24
Juv. Felony	3266:25	1336:03	153:23	4755:51
Juv. Misdemeanor	1227:39	703:31	86:53	2018:03
Juv. Probation Review	18:48	5:13	7:05	31:07
Juvenile Total	4924:41	2217:33	277:06	7419:20
Child Support / Contempt				
Child Support / Contempt	1750:36	67:49	190:46	2009:11
Child Support / Contempt Total	1750:36	67:49	190:46	2009:11
Specialty Court				

Drug Diversion Court	1257:56	146:16	113:20	1517:33
Juvenile Drug Court	290:44	12:00	17:30	320:15
Family Treatment Court	298:40	11:39	34:43	345:02
Mental Health Court	668:37	13:59	54:44	737:20
Specialty Court Total	2515:57	183:55	220:19	2920:11
Civil Commitment				
Civil Commitment	3246:34	11:25	96:50	3354:49
Civil Commitment Total	3246:34	11:25	96:50	3354:49
Dependency				
New petition - adjudication/disposition	2122:12	130:50	161:53	2414:56
Review / Permanency Planning	4900:38	160:58	179:39	5241:16
Termination of parental rights	1040:29	122:37	93:54	1257:01
Reinstatement of parental rights	19:36	0:42	1:43	22:01
CHINS/ARY	694:07	1:27	22:57	718:32
Truancy	44:48		1:04	45:52
Contested private adoption	2:45	0:23	0:11	3:19
Guardianship	131:13	6:11	3:15	140:40
Dependency Total	8955:48	423:12	464:39	9843:40
Miscellaneous				
SSOSA/DOSA Rev.	149:21	7:50	16:37	173:49
Post Conviction Review	50:15	35:57	6:43	92:55
NGI Review	13:57	1:37	0:21	15:55
Material Witness	41:10	10:42	2:00	53:52
Representation of Guardian	0:50		0:03	0:53
Miscellaneous Total	255:33	56:07	25:45	337:26
Multiple Case Related				
Multiple Case Types: Adult	7054:35			7054:35
Multiple Case Types: Juvenile	2728:53			2728:53
Multiple Case Related Total	9783:28			9783:28
Non-Case Related				
Non-Case Related	3374:33			3374:33
Non-Case Related Total	3374:33			3374:33
Grand Total	60359:53	9717:12	3377:57	73455:03

Hours by Activity

Note that some activity type may appear to be duplicative. This table is a list of activities established by the Case Type subcommittee for all case types. For example, Arraignment/1st Appearance was an activity used in Adult Criminal Cases, and Arraignment was used for Juvenile Offenses.

Case Related Time	
In Court	
Arraignment	63:45
Arraignment/1st Appearance	564:19
ARY/CHINS Fact Finding	63:55
ARY/CHINS Review	45:06
Bench Trial	219:51
Bond Hearing	88:00
Capacity Hearing	1:30
Case Scheduling Hearing	615:48
Case Setting Hearing	241:45
CC- Show Cause/Contempt	411:25
CC-Return on Warrant	22:10
Competency Hearing	90:17
Contempt of Court	13:57
Decline Hearing	6:57
Dependency Fact Finding	42:00
Dependency Review Hearing	205:58
Dependency Trial	15:57
Detention Hearing	54:50
Detention Review Hearing	16:22
Disposition Hearing	186:09
Diversion Hearing	21:07
Guardianship Trial	31:00
Hearings: Other	85:52
ITA - 180 Day Hearing	3:32
ITA - 90 Day Hearing	11:18
ITA – Revocation	14:40
ITA Other In Court Time	257:50
ITA Probable Cause/72 Hr	130:51
Jury Trial	1653:17
Modification Hearing	38:51
Motions	427:21
Omnibus Hearing	363:11
Permanency Planning Hearing	142:52
Plea Hearing	288:53
Post-Trial/Post-Plea Hearing	88:02

Preliminary Hearing	15:18
Pretrial Hearing	566:51
Pre-Trial Hearing	111:30
Probation Hearing	181:09
Progress Review	31:07
Restitution Hearing	33:17
Return on Warrants	7:50
Review Hearing	51:10
Sentencing Hearing	403:40
Shelter Care Hearing	272:12
Specialty Court	852:30
SRA Calendar	41:55
SSODA Hearing	1:50
SSOSA Hearing	33:31
Termination Fact Finding	120:49
Termination Trial	57:18
Truancy Contempt	0:50
Unified Family Court Hearing	1:15
In Court Total	9312:40
Out of Court	
AOD/General Calls/Substantial Advice	515:53
Case Preparation	14965:44
Case-Related Clerical Time	2801:30
Client Related Contact	8568:36
Conference: Colleague	1958:19
Conference: Judge	66:57
Conference: Other	836:23
Conference: Prosecutor	1063:39
Investigation	832:27
Jail Release Issues	30:05
Legal Research	2388:25
Mitigation Related	436:49
Social Services Related	221:02
Supervision: Case-Related	303:19
Travel Time: Case-Related	3531:20
Waiting Time: In Court	2116:46
Waiting Time: Jail	222:23
Waiting Time: Prosecutors	231:44
Out of Court Total	41091:21
Multiple Short Activities Total	6862:31
Non Case Related	
Administrative Activities	1523:11

Community Service	67:35
Professional Development	1155:46
Training	346:49
Non Case Related Total	3093:21
Grand Total	60359:53

Appendix M - Workload Standards from Other Jurisdictions

Case Type	King County (2010)	Colorado (2008)	Colorado (2002)	Maricopa County (2002)	Pima County (2002)
Available Attorney Work Hours	1792	1808	1808	1853	1845
Felony Sex	14.5	32	32.6	31.9	
Felony A	28.9	33 (Class 2)	32.6 (Class 2)	76.5 (Non- EDC: 70.7) (Class 2-3)	Mandatory sentence: 41.9 Other: 135
Felony B	69.2	97 (Class 3)	105.5 (Class 3)		
Felony C	83.5	150 (Class 4-5)	200.2 (Class 4-5)	313.6 (Non – EDC: 152.6) (Class 4-6)	Mandatory & Fel. DUI: 103.1
Felony Drug	196.2	235 (Class 6)	386.2 (Class 6)		Non-Mandatory & Simple Possession: 204.9
All Felony*	85.9	93	135.9	177.5 (Non-EDC: 96.2)	106.5
Gross Misdemeanor	122.1	187	196.4	N/A	
Other Misdemeanor	328.8	295	429.8**		
All Misd.*	145.3	244	291.8		201.9
Juvenile Felony	85.2	-	-	149.5	203.2
Juvenile Misd.	326.4	-	-	275.9	204.6
All Juvenile*	152.0	193	248.7	196.1	225.5
<p>*The aggregate numbers in these categories are not caseload standards and should not be used in place of standards developed for the more specific case types for determining staffing needs. They are only presented to provide a rough comparison between jurisdictions, and will change as the ratio between more serious and less serious case types fluctuate.</p> <p>**Includes non-jailable misdemeanor traffic offenses</p>					
<p>As noted throughout this report, <u>case complexity and the categories into which offenses fall differ substantially between jurisdictions.</u> Where possible, the table sets out the approximate equivalent case types to those used in King County. Maricopa County used an early disposition court (EDC) during the study period, therefore the non-EDC dispositions reported below is a better comparison point for the current situation in King County, where the dispositions reported here do not include expedited cases filed in District Court. In all of these jurisdictions, capital and all other murder cases were excluded from the workload standard calculations, and excluded conflict cases from the number of dispositions used.</p>					