

# Rural Nevada Indigent Defense Services Weighted Caseload Study

## Final Report October 2023

(Revised 11.2.23)

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The authors extend their sincere appreciation to the indigent defense service providers, including attorneys, investigators, and administrative staff of rural Nevada, all of whom contributed their valuable time and insights during the time study, focus group, and quality adjustment panels. We also thank the members of the Study's Advisory Committee for their thoughtful guidance throughout the course of the project. Marcie Ryba, Tom Qualls, Peter Handy, and Stanley Morrice from the Department of Indigent Defense Services (DIDS) were invaluable for providing leadership and data support. Thank you all for the serious attention you provided to this important project.

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## EXECUTIVE SUMMARY

### Project Design

To provide oversight and guidance on matters of policy throughout the project, DIDS established the Indigent Defense Workload Standards Advisory Committee (the Advisory Committee) comprising public defenders, contract indigent defense providers, administrative staff members, an investigator, a Board of Indigent Defense Services member, a County Manager, and an Assistant County Manager. The workload assessment was conducted through a multi-phased approach, including:

1. A time study in which all rural public defender/contract attorneys, investigators and administrative staff were asked to record all case-related and non-case-related work, including evenings and weekends, over a six-week period. The time study provides an empirical description of the amount of time currently devoted to handling cases of each type, as well as the division of the workday between case-related and non-case-related activities. One hundred percent of all expected participants entered data during the time study.
2. An analysis of current practice, based on time spent working on cases, as entered into the new time tracking system, called *LegalServer*.
3. A review of case weights in other jurisdictions, including the new RAND Corporation's workload standards published in August 2023, and
4. A quality adjustment process to ensure that the final weighted caseload model incorporates sufficient time for effective representation. Grounded in applicable

professional standards, the quality adjustment process included:

- Focus groups conducted by NCSC staff with attorneys to develop an in-depth understanding of indigent defense work across the rural counties and to identify challenges attorneys face in handling their workload.
- Delphi panels, consisting of a structured review of the case weights by a set of experienced attorneys, investigators, and administrative staff members.
- Census survey of rural indigent defense attorneys, and
- A review of past indigent defense provider weighted caseload studies to compare case weights for similar case types, which also accounted for adherence to ABA standards.

This multi-staged quantitative/qualitative approach takes advantage of empirical data from the time study ("what is") and relies upon expert opinion and data from other states, as well as a nationally focused assessment of public defender case weights to formulate the quality adjustments ("what should be"), resulting in reasonable case weights and workload standards for rural indigent defense providers in Nevada.

### Results

Applying the final weighted caseload model to current new cases shows a need for a total of 90 full-time equivalent (FTE) attorneys to effectively handle current indigent defense provider caseloads. The model also shows a need for approximately 46 administrative support staff members, and 22 investigators, both of which are based on recommended ratios. The weighted caseload model therefore suggests

that indigent defense providers' need either more resources or smaller caseloads to enable attorneys to provide every client with effective assistance of counsel.

## **Recommendations**

This workload assessment provides evidence of a need for more attorney and staff resources to effectively handle the current workload of Nevada's rural indigent defense provider system. The following recommendations are intended to promote the effective implementation of the weighted caseload model, preserve the model's integrity and utility over time and ensure effective representation of Nevada's rural indigent defendants.

### **Recommendation 1**

Indigent defense provider offices should be provided with enough attorneys, administrative staff, and investigator support to represent clients effectively and consistently across rural Nevada. The focus groups, Delphi Panels, census survey, and state comparison quality adjustment processes clearly demonstrate that attorneys and staff face serious resource constraints at current caseloads and staffing levels. Appropriate resource levels can be achieved either by adding attorneys and staff to indigent defense provider offices or by reducing first-tier public defender office caseloads. Options used to reduce first-tier defender caseloads could include transferring a portion of the workload to the NSPD under NRS 180.450, contracting with private counsel, or reducing or eliminating the civil workload.

### **Recommendation 2**

Social workers serve a critical function where they exist in indigent defense provider offices.

Where social workers are not employed, attorneys, investigators or administrative staff provide this function in addition to their traditional duties. Social workers' specialized professional knowledge enables them to investigate clients' social histories, obtain educational and health records, place clients in treatment and other programs, prepare mitigation information, and assist in developing alternative sentencing plans—often more efficiently and effectively than an attorney, investigator or administrative staffer can. Nevada's rural indigent defender offices currently employ just one social worker, in Elko (who is sometimes assisted by interns), although there are 51 indigent defense attorneys in fifteen rural counties. To improve both the effectiveness and efficiency of client representation, social workers should be made available in all rural Nevada counties.

### **Recommendation 3**

DIDS should consider hiring a small group of mitigation specialists available to work with rural indigent defense attorneys in the rural counties. Mitigation specialists are members of the criminal defense team that provide significant documented history of the defendant for use by defense counsel. The information provided is used to identify potential mitigating factors that should be presented to the court. Mitigation specialists are especially important for use in capital murder cases and high-level felony cases. In Nevada, Clark County employs 2 mitigation specialists for 20 attorneys and Washoe County employs 1 mitigation specialist for 37 attorneys, for a combined total of three mitigation specialists for 57 attorneys, or ratio of 1 mitigation specialists for every 19 attorneys. Applying this ratio to the 80.8 rural indigent defense attorneys needed, that implies a need

for 4.3 mitigation specialists across all of the rural counties.

**Recommendation 4**

Administrative staff, investigators, and social workers are essential components of the defense team. These staff members complement the work of the attorney, increasing the attorney's effectiveness and efficiency in representing clients, but cannot fulfill the attorney's unique professional functions. Therefore, staff and attorney positions should not be treated as fungible.

**Recommendation 5**

Many of the rural indigent defense attorneys have civil cases assigned to them, which increases their workload beyond what is presented in this report. Developing case weights for civil cases was outside of the scope of this project, and the recommendations are for the number of attorneys needed that are practicing only indigent defense as defined by NRS 180.004

**Recommendation 6**

DIDS should create a complex litigation unit that would be housed in the State Public Defender's Office. The complex unit should include attorneys, administrative staff, investigators, and mitigation specialists. Death penalty case attorneys have to be specially trained and have a certain level of experience to represent indigent defendants (Nevada Supreme Court Rule 250). If a rural attorney does not have the requisite qualifications and skills another will be appointed. Given that the NCSC are relatively rare, but they do occur, we are unable to recommend the staffing needs for this unit.

**Recommendation 7**

DIDS should monitor the new case count and hours expenditure database located on *LegalServer* to ensure its accuracy. Once the accuracy has been ensured and ample, accurate data have been entered, DIDS should use this information to update the needs model on an annual basis.

**Recommendation 8**

DIDS and indigent defense providers should actively use the weighted caseload model to monitor and manage workloads. Annual calculations of workload based on caseload numbers can aid DIDS in determining the appropriate allocation of attorneys, investigators, and staff to offices. Calculating incoming workload on the basis of appointments can also assist indigent providers in monitoring capacity and assigning cases to individual attorneys.

**Recommendation 9**

Over time, the integrity of any weighted caseload model may be affected by external factors such as changes in legislation, case law, legal practice, court technology, and administrative policies. NCSC recommends that Department of Indigent Defense Services conduct a comprehensive update of the public defender office weighted caseload model every five to seven years. This update could either entail an analysis of the *LegalServer* data or it could include both a time study and a comprehensive quality adjustment process.

**Recommendation 10**

It is recommended that all rural counties in Nevada heed the recommended case

weights/caseload standards and provide staffing resources, including attorneys, investigators, and administrative staff equally across all rural counties.

## I. INTRODUCTION

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.”<sup>1</sup> In 1963, the United States Supreme Court held that the Sixth Amendment requires states to provide counsel for criminal defendants who cannot afford to hire counsel for themselves.<sup>2</sup> Twenty-one years later, the Court held that the right to counsel is a right not merely to token representation, but to the effective assistance of counsel.<sup>3</sup>

For any criminal defense attorney, maintaining a manageable caseload is essential to providing effective assistance of counsel. According to the American Bar Association’s *Model Rules of Professional Conduct*, the requirement of diligence in representation includes the responsibility to control the lawyer’s workload “so that each matter can be handled competently.”<sup>4</sup> Similarly, the American Bar Association Standards for Criminal Justice: Defense Function assert that “[d]efense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client’s interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations.”<sup>5</sup> Faced with an excessive workload,

an attorney may not have sufficient time to investigate the facts of a case, visit a crime scene, identify or interview witnesses, prepare mitigation information, address potential collateral consequences, explore the possibility of diversion or alternative sentencing, or maintain regular communication with a client.

Since the beginning of the twenty-first century, concern over excessive workloads among attorneys who represent indigent clients has grown. Forty years after *Gideon v. Wainwright* established the right to state-provided defense counsel, the American Bar Association’s Standing Committee on Legal Aid, and Indigent Defendants (SCLAID) held a series of hearings to determine whether that promise was being kept. SCLAID concluded that the defense function was systematically underfunded and that indigent defense providers in many states were chronically overworked and could not devote sufficient time to their cases.<sup>6</sup> Similarly, in 2009 the Constitution Project’s National Right to Counsel Committee found that inadequate funding and excessive workloads were “a problem virtually everywhere in public defense throughout the United States.”<sup>7</sup> In 2011, the Justice Policy Institute concluded that inadequate representation resulting from excessive indigent defense workloads leads to increased incarceration costs, reduces public trust and confidence in the judicial system, and has a disproportionate impact on people of color and low-income communities.<sup>8</sup>

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<sup>1</sup> U.S. Constitution amend. VI.

<sup>2</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

<sup>4</sup> American Bar Association Model Rules of Professional Conduct Rule 1.3 comment. 4 (2007).

<sup>5</sup> ABA Standards for Criminal Justice: Defense Function, Standard 4-1.8(a) (4<sup>th</sup> ed. 2015).

<sup>6</sup> Standing Committee on Legal Aid and Indigent Defendants, American Bar Association, *Gideon’s Broken*

*Promise: America’s Continuing Quest for Equal Justice* (2004).

<sup>7</sup> National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel* 65 (2009).

<sup>8</sup> Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense* (2011).



In response to these concerns, the American Bar Association promulgated a series of guidelines related to indigent defense workloads. These guidelines direct providers to “avoid excessive workloads and the adverse impact that such workloads have on providing quality legal representation to all clients.” The guidelines also advise that public defense providers establish “a supervision program that continuously monitors the workloads of its lawyers to assure that all essential tasks on behalf of clients ... are performed.”<sup>9</sup>

In 2017, the Nevada State Legislature created the Nevada Right to Counsel Commission (NRTCC), which contracted with the Sixth Amendment Center to evaluate the state of rural indigent defense in Nevada. This report identified a number of problems associated with indigent defense in the state’s rural counties. Of direct relevance to the project reported on here, the NRTCC found that, while the state has a Fourteenth Amendment obligation to ensure Sixth Amendment services, at that time there was no “entity authorized to promulgate and enforce systemic standards...Moreover, the State of Nevada does not require uniform indigent defense data collection and reporting. Without objective and reliable data, right to counsel funding and policy decisions are subject to speculation, anecdotes and potentially even bias.”<sup>10</sup>

In 2018, indigent defendants in Nevada’s rural counties filed an action against the governor challenging the constitutionality of the policies and practices of the state’s indigent defense system (*Davis v. State*). In June, the general

assembly passed Assembly Bill 81 (AB 81), creating the Department of Indigent Defense Services (DIDS) and its oversight body, the Board of Indigent Defense Services (BIDS) to promulgate policies and practices for rural indigent legal service providers. One of the first requests from BIDS was funding to conduct a rural-focused weighted caseload study to determine staffing levels necessary to provide effective representation to rural indigent defendants in Nevada.

In July of 2020, DIDS contracted with the NCSC to conduct a weighted caseload study with indigent defense providers in Nevada.

To measure and monitor indigent defenders’ workloads effectively in Nevada, the state must first establish workload standards. The current workload assessment study is the beginning step that DIDS is taking in this effort. Until very recently, when the RAND Corporation published new recommended national workload standards (August 2023 study referenced below), the only existing national public defender workload standards were established in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals and later adopted by the National Legal Aid and Defender Association (NLADA). These standards have frequently been criticized on the grounds that they were not based upon empirical research, do not allow for the varying complexity of different types of cases within each of the broad categories (e.g., homicide, violent felonies, and nonviolent felonies), ignore variation among the states in criminal justice policies and procedures, and

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<sup>9</sup> American Bar Association, *Eight Guidelines of Public Defense Related to Excessive Workloads*, guidelines 1 – 2 (2009).

<sup>10</sup> Sixth Amendment Center Newsletter, *Report released evaluating the right to counsel in rural Nevada*, September 18, 2018, p. 7.

predate the widespread usage of information technology in courts and law offices.<sup>11</sup>

Over the past decade and a half, statewide public defender systems have increasingly begun to adopt state-specific weighted caseload systems for monitoring workload assessment. Some of the earliest empirically based studies of public defender workload were conducted by National Center for State Courts (NCSC) in Maryland (2005), New Mexico (2007), and Virginia (2010).<sup>12</sup> More recently, the ABA has partnered with accounting firms to establish weighted caseload formulas in Missouri (2014), Louisiana (2017), Colorado (2017), and Rhode Island (2017).<sup>13</sup> Other organizations have conducted weighted caseload studies in Missouri (2014), Massachusetts (2014) Texas (2015), New York (2016), Maryland (2017) and Idaho (2017).<sup>14</sup> These studies uniformly find that public defender agencies do not have enough attorneys to effectively handle their workloads.

Most recently, in August 2023, the RAND Corporation published the *National Public Defense Workload Study* in which they developed defense workload standards based

on average case processing times reported in 17 separate studies published between 2005 and 2022. This comprehensive review and expert analysis included a panel of 33 criminal defense attorneys from across the country. RAND’s new standards incorporate “attorneys’ experience with modern criminal defense practice, including the tremendous expansion of digital discovery from body-worn cameras, cell phone data, and social media data; the increasing use of forensic evidence; and the expanding scope of a criminal defense lawyer’s obligations, such as advising clients on the collateral consequences that attend criminal convictions.”<sup>15</sup> This most recent nationally focused study on defense attorney standards recommends that indigent defense attorneys maintain significantly lower caseloads than previous guidelines have indicated, especially considering the modern-era defense realities noted above. See Figure 1, below, for a comparison of the case weights developed by the NLADA, RAND, and the NCSC for rural Nevada indigent providers.

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<sup>11</sup> Matthew Kleiman & Cynthia G. Lee, *Public Defenders*, in *Encyclopedia of Criminology and Criminal Justice* 4134, 4139 (Gerben Bruinsma & David Weisburg eds., 2013).

<sup>12</sup> Matthew Kleiman & Cynthia G. Lee, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment* (2010); National Center for State Courts & American Prosecutors Research Institute, *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorneys’ Offices and New Mexico Public Defender Department* (2007); Brian J. Ostrom, Matthew Kleiman & Christopher Ryan, *Maryland Attorney and Staff Workload Assessment* (2005).

<sup>13</sup> Blum Shapiro & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards* (Nov. 2017); Rubin Brown & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Colorado Project: A Study of the Colorado Public Defender System*

and *Attorney Workload Standards* (Aug. 2017); Postlethwaite & Netterville & Standing Committee on Legal Aid & Indigent Defendants, American Bar Association, *The Louisiana Project: A Study of the Louisiana Public Defender System and Attorney Workload Standards* (Feb. 2017); Rubin Brown, *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards* (June 2014).

<sup>14</sup> Idaho Policy Institute, Boise State University, *Idaho Public Defense Workload Study* (2018); N.Y. State Office of Indigent Legal Services, *A Determination of Caseload Standards Pursuant to § IV of the Hurrell-Harrington v. The State of New York Settlement* (Dec. 2016); Dottie Carmichael et al., *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission* (Jan. 2015).

<sup>15</sup> Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study*, RAND Corporation, 2023, Santa Monica, CA.

**Figure 1: Case Weights Comparisons – NLADA and RAND**

Organization	NLADA	RAND
	1973	2023
	Hours per Case	Hours per Case
Case Types		
Felonies - All	12	
Felony - High Life without Parole		286
Felony - High - Murder		248
Felony - High - Sex		167
Felony - High - Other		99
Felony - Mid		57
Felony - Low		35
DUI - High		33
DUI - Low		19
Misdemeanor - All	4	
Misdemeanor - High		22.3
Misdemeanor - Low		13.8
Juvenile Delinquency	9	
Probation/Parole Violations		13.5
Mental Health Cases	9	
Appeals	70	

The RAND workload standards study clearly delineated between different types of felonies and misdemeanors, whereas the 1973 NLADA standards had a single case weight/standard for all felonies of 12 hours and 4 hours for all misdemeanors. The NLADA study also included juvenile delinquency and mental health cases as well, which RAND did not, but RAND did include probation and parole appeals. Obviously, the case weights, or average case processing times are extremely dissimilar.

When the case weights are translated into caseload standards, the difference between the NLADA and RAND recommendations is even more stark. The caseload standard represents the maximum number of cases of that type that should be assigned to an attorney in a year, if that were the only type of case that attorney handled. The caseload standards presented in Figure 2 assume that each attorney has 1,760 hours available per year for all casework, which

is the annual working year that was agreed to for the current study in rural Nevada (discussed later in this report).

**Figure 2: Workload Standard Comparisons – NLADA and RAND**

Organization	NLADA	RAND
	1973	2023
	Annual Cases	Annual Cases
Case Types		
Felonies - All	150	
Felony - High Life without Parole		6
Felony - High - Murder		7
Felony - High - Sex		11
Felony - High - Other		18
Felony - Mid		31
Felony - Low		50
DUI - High		53
DUI - Low		93
Misdemeanor - All	400	
Misdemeanor - High		79
Misdemeanor - Low		128
Juvenile Delinquency	200	
Probation/Parole Violations		130
Mental Health Cases	200	
Appeals	25	

The new RAND workload standards recommend that a single defense attorney only handling low level felony cases could adequately represent 50 clients (cases) in a year, whereas the previous standards suggested that a single defense attorney could handle three times as many felony cases of all types in a single year.

The new RAND workload standards were designed to provide states with guidance on reasonable caseload sizes in the absence of a state-focused workload assessment study. However, the RAND report does note that “While having a specific state or local workload study remains the ideal approach for public defense resource planning, in the absence of a jurisdiction-specific study, nationally applicable workload standards are needed to provide

benchmarks and assist administrators in assessing system needs.”<sup>16</sup>

In 2019, the Board of Indigent Defense Services (BIDS) and the Department of Indigent Defense Services (DIDS) were established to oversee and improve criminal defense services provided to indigent persons in Nevada by providing state funding and guidance to local indigent defense providers. Specifically, BIDS and DIDS have been tasked with developing minimum standards and regulations for the delivery of indigent services, develop guidelines for maximum caseload sizes and, once these are established, to oversee the rural indigent defense attorneys to ensure that the minimum standards and regulations are being followed.

The Department of Indigent Defense Services is currently working on developing practice standards and they contracted with the National Center for State Courts to conduct a workload assessment study for indigent defense providers in the 15 rural counties of the state. The results of the workload assessment study, described in this report, will be used to create reasonable and sustainable preliminary caseload standards for indigent defense attorneys in Nevada. At the foundation of the workload assessment study is a time study, which, under normal working conditions, will provide an empirical profile of the amount of time indigent defense providers currently spend working on the various types of cases to which they are assigned. As will be discussed later, for the current study, the empirical data obtained through the time study was supplemented with additional consensus-based and qualitative data to develop the current preliminary standards.

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<sup>16</sup> Please see Appendix C for the final Rand case weights.

<sup>17</sup> Clark and Washoe Counties are considered urban counties, so they were not included in this study.

## A. Indigent Defense Services in Rural Nevada

Nevada is composed of 17 counties, 15 of which are considered to be rural.<sup>17</sup> Nevada law stipulates that counties with populations of 100,000 or more must provide a county-funded public defender office; counties with populations of less than 100,000 can either opt into representation by the Nevada State Public Defender, open a county public defender office, or contract with private attorneys to provide public defender representation.

Of the 15 rural counties in Nevada, only one rural public defender office (Carson City) employs full-time or contract investigators to support the work of county-based indigent defense attorneys. Storey County contracts with Carson City Public Defender’s Office or may enter into individual contracts with attorneys. Five rural counties, including Carson City, Elko, Churchill, Humboldt, and Pershing have established public defender offices. These offices are funded by the county, including furnishings, equipment, and salaries. The remaining eight counties contract with private attorneys to provide indigent defense services. In locations in which investigators are not permanently employed, attorneys request additional fees for investigation or expert consultation from DIDS when needed<sup>18</sup>. Administrative staffing support also varies across the counties. Finally, all of the rural counties either have contracts with private attorneys, or rely on DIDS’s list of approved counsel, to provide indigent defense services in cases in which the public defender or contract attorney has a conflict of interest. In cases

<sup>18</sup> AB 480, passed in 2021 provided the funds to DIDS to review requests and, if approved, provide investigative service fees.

involving the death penalty, attorneys must meet specific training and experiential criteria, so most of these attorneys are appointed from a specific pool of qualified attorneys.

The remaining counties, including Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, and Nye, and contract with private attorneys.

Understanding that rural counties face different challenges than urban areas do, the current workload analysis is specific to Nevada's rural counties. The study's findings are intended to assist counties in understanding the size of their workload and caseload, the number of attorneys that are needed to provide effective representation, and how defense-related support resources should be planned and allocated.

## B. About Weighted Caseload

The weighted caseload method of workload analysis is grounded in the understanding that different types of cases vary in complexity, and consequently in the amount of work they generate for attorneys and staff. For example, a typical felony creates a greater need for attorney and staff resources than the average misdemeanor case. The weighted caseload method calculates resource need based on the total workload of each county, while accounting for the variations in workload associated with different types of cases. The weighted caseload formula consists of three critical elements:

1. *New open case counts*, or the number of cases of each type assigned indigent defense providers each year;<sup>19</sup>
2. *Case weights*, which represent the average amount of time required to handle cases of each type over the life of the case; and
3. The *year value*, or the amount of time each attorney or staff member has available for case-related work in one year.

Total annual workload is calculated by multiplying the annual new cases for each case type by the corresponding case weight, then summing the workload across all case types. Each office's workload is then divided by the year value to determine the total number of full-time equivalent attorneys, needed to handle the workload.

## C. Introduction to Workload Assessment Methodology

A weighted caseload model is established through a study called a *workload assessment*. There are two primary methods of workload assessment: the Delphi method and the time study method. Originally developed for the United States Department of Defense by the RAND Corporation in the 1950s as a tool for forecasting the influence of technology on warfare, the *Delphi method* is a structured, iterative, consensus-based process for gathering and distilling expert opinion about a particular

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<sup>19</sup> For purposes of this study, a case is defined as 1. A single adult defendant on a single charging document, regardless of the number of counts alleged, in a felony, gross misdemeanor, or misdemeanor matter; or 2. A single juvenile defendant on a single petition, regardless of the

number of counts alleged, in a matter concerning a child who is alleged to be delinquent or in need of supervision pursuant to title 5 of NRS. For a case in which multiple charges are involved, the case is classified by the highest offense charged at the time counsel is appointed.

topic.<sup>20</sup> The Delphi method is best suited for situations in which “[t]he problem does not lend itself to precise analytical techniques but can benefit from subjective judgments on a collective basis,” such as when empirical data are nonexistent, inaccurate, or unavailable.<sup>21</sup> Under the classical Delphi approach, experts interact through questionnaires and remain anonymous throughout the entire process. In the context of workload assessment, the traditional Delphi approach has evolved into a structured in-person group discussion, which may or may not be preceded by one or more rounds of questionnaires.

Unlike the Delphi method, which is grounded entirely in expert opinion, the *time study* method of workload assessment is based on empirical data describing how attorneys and staff spend their time. During the time study, participants track their working time by case type and/or event, allowing researchers to construct an empirical profile of their activity. Depending on the project design, the time study may record only certain case-related activities, or all work performed by attorneys and staff, including case-related and non-case-related work. A time study typically runs for several weeks and may involve a sample of attorneys and staff members, or all attorneys and staff throughout the state.

A well-executed time study will produce a more accurate calculation of the time currently spent handling cases than a typical Delphi study; however, unlike a Delphi study, a time study can quantify only the time that attorneys and staff *currently* spend on their cases and does not

examine whether this is the amount of time that they *should* be spending to handle their cases efficiently and effectively. For this reason, NCSC has long employed a two-phase approach to workload assessment that is frequently referred to as the “what is”/“what should be” approach. Other organizations that conduct weighted caseload studies have since adopted the “what is”/“what should be” terminology, but typically do not incorporate the empirical data from the time study into the final workload model.

Under the NCSC framework, a time study forms the empirical foundation of the workload model. The time study results in a set of *initial case weights* that describe the amount of time attorneys and staff currently spend handling cases of each type, or “what is.” Given the unusual circumstances in which the current time study was conducted (during a global pandemic), the NCSC based the current case weights on the time study, but also used additional data to inform the case weights. To do this, NCSC staff used qualitative data from focus groups and a variant on the Delphi method in which panels of experienced indigent and private defense attorneys, investigators, and administrative staff members provided *qualitative* information to assist NCSC consultants in developing adjustments to the initial case weights; NCSC consultants used data for the census survey to determine if additional issues needed to be considered. Finally, since this time study was conducted during the COVID-19 pandemic, in which courts and other justice-related agencies were not conducting business as usual, the Nevada data was supplemented with both *LegalServer* data reporting the number of hours

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<sup>20</sup> Harold A. Linstone & Murray Turoff, *Introduction to The Delphi Method: Techniques and Applications* 3, 10 (Harold A. Linstone & Murray Turoff eds., 2002).

<sup>21</sup> *Id.* at 4.

worked on various cases, and case weights derived from indigent defense provider studies in other states.

The NCSC's two-phase workload assessment methodology provides the basis for judicial and/or court staff weighted caseload models currently in use in the majority of states. Two counties in Nevada (Clark and Washoe) have previously relied on the same two-phase "what-is"/"what should be" methodology to create weighted caseload models for district court judges.<sup>22</sup>

#### D. Study Methodology

Using the NCSC "what is"/"what should be" framework, the current workload assessment was conducted in several phases:

1. At the onset of this study, an Indigent Defense Workload Standards Advisory Committee (the Advisory Committee) comprising chief public defenders, senior public defenders, office investigators and administrative staff, DIDS staff, and an Indigent Defense Commission member was convened to determine the parameters of the study, including the case types and activities on which to collect data, the attorney year value and the timeframe and dates during which the time study would occur. Given the unusual circumstances under which the time study was conducted and the fact that business was not being conducted as usual, the NCSC worked with DIDS leadership to discuss alternative methods by which to develop final case

weights for use in the development of an attorney needs model.

2. A *time study* in which all rural public defender/contract attorneys, investigators and staff were asked to record all case-related and non-case-related work, including evenings and weekends, over a six-week period (January 25 through March 5, 2021). The time study provided an empirical description of the amount of time participants devoted to handling cases of each type, as well as the division of the workday between case-related and non-case-related activities. However, as noted above, since the time study was conducted during the COVID-19 pandemic, the case weights did not provide an accurate portrayal of indigent defense work under "normal" working conditions and had to be further supplemented with additional data sources.
3. A *quality adjustment* process to ensure that the case weights incorporated sufficient time for effective representation. The quality adjustment process included:
  - *Focus groups* with attorneys in rural counties, including public defenders, contract attorneys and conflict attorneys. Focus groups provided lived experience of stresses and frustrations associated with the work and provided useful feedback regarding the provision of indigent defense services in rural Nevada. This feedback was useful in providing constructive insight into the detail behind the time study data collected. The focus group questions

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<sup>22</sup> Christopher Ryan, Marilyn Wellington, Anne Jones, Mary-Beth Kirven, John Douglas, Judicial Workload Assessment. Eighth District, Clark County, Nevada (2005); Suzanne

Tallarico, John Douglas, Anne Jones, Judicial Workload Assessment, Washoe County Nevada (2007).

focused primarily on the variations on workload demands based on the type of attorney (public defender, contract, conflict) and location in which the attorneys work and whether and how the COVID-19 pandemic impacted attorneys' ability to provide adequate representation to their clients.

- A structured review of the case weights by a set of *Delphi panels* comprising experienced attorneys, investigators, and administrative staff volunteers.
- Census survey data, especially regarding travel times by attorneys to meet client and travel to and from court.
- A comparison of case weights for similar case types from workload assessment studies conducted in other states under more normal working conditions.
- *LegalServer* data. NRS 180 requires the uniform collection of the amount of time indigent defense attorneys spend on their casework. DIDS began requiring all rural defense attorneys who provide indigent services to report all time associated with case work in the case management system called *LegalServer* on October 1, 2021. The NCSC analyzed data from the first nine months (October 1, 2021, through June 30, 2022) of data to obtain average case processing times, or case weights. This data available at that time was not sufficiently robust to generate statistically significant case processing information, because not all attorneys were entering data consistently or correctly in the early

months of implementation of that case management system. As the use of *LegalServer* becomes more consistent over time, the data should be able to be used to determine average case processing times.

The quality adjustment process, including focus groups, Delphi quality adjustment sessions, census survey data, and the comparison to other states' indigent defense provider case weights, was grounded in applicable professional standards and guidelines, including the ABA Standards for Criminal Justice: Defense Function and the temporary regulations for attorneys as promulgated by the Board of Indigent Defense Services in Nevada.<sup>23</sup>

## II. Case Types and Activities

On October 23, 2020, the Advisory Committee met to review and discuss the study design and establish the case type and activity categories upon which the time study would be based. Together, the case types, case-specific activities, and non-case-related activities describe all the work performed by rural Nevada indigent defense attorneys, investigators, and support staff.

### A. Case Type Categories

The Advisory Committee was charged with determining the case type categories into which all indigent defense provider time would be divided for purposes of the weighted caseload model. The case type categories were designed to satisfy the following requirements:

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<sup>23</sup> These standards were built into case weights to provide adequate time to provide effective representation in the various case types.



- The case type categories are both mutually exclusive and collectively exhaustive, meaning that any given case falls into one, and only one, case type category.
- Categories are legally and logically distinct.
- There are meaningful differences among categories in the amount of attorney, investigator and support staff work required to represent clients in cases of different types.
- There are a sufficient number of new case filings within the category to develop a valid case weight.
- New case filings for the case type category or its component case types are, or will be, tracked consistently and reliably.<sup>24</sup>
- Case types are aligned with the reporting regulations being developed by DIDS (NAC 180), so in the future, case counts for these categories should be easily determined.

Figure 3 lists the case type categories identified for rural indigent defense providers.

## B. Activity Categories

In addition to the case type categories, the Advisory Committee identified a set of activity categories to describe all case-related and non-case-related work performed by attorneys, investigators, and administrative staff. Because variations in local needs and staff availability result in some overlap between the roles of attorneys, administrative staff and investigators, all study participants used the same activity categories.

*Case-related work* includes all work directly linked to a represented individual in which the

<sup>24</sup> At the point at which the time study was conducted, there was no system in place to consistently count new cases filed and assigned to rural indigent defense attorneys. The NCSC asked attorneys to track these cases during the time study,

attorney, investigator or administrative staffer engaged.

*Non-case-related activities* include all work that is not related to any case, such as office administration and preparing for and attending meetings. To simplify the task of completing the time study forms and to aid in validation of the time study data, vacation and other leave, and time spent completing time study forms were included as non-case-related activities.

**Figure 3: Case Type Categories**

Case Type
Death Penalty Cases
Category A Felonies
Category B Felonies
Misdemeanor DUI/Domestic Violence
Appeals (Felony and Gross Misdemeanors)
Misdemeanors & Appeals
Probation & Parole Violations
Juvenile Delinquency, Supervision, Appeals
Juvenile Probation/Parole Violations
Specialty Court Cases

Figure 4 lists the case-specific activities, and Figure 5 lists the non-case-related activity categories for public defender office attorneys and staff. Appendices A and B provide detailed definitions of each activity.

but this was not consistently done in the same manner by all attorneys. By the time the report was finalized, the *LegalServer* data entry system was in full use by indigent providers, so accurate case counts can now be obtained.

**Figure 4: Case-Related Activity Categories**

Case-Specific Activities	
In-Court Activities	Bail and other general hearings
	Suppression hearings
	Bench trials
	Jury trials
	Waiting in court
Out-of-Court Activities	Client contact
	Consulting experts
	Consulting investigators/engaging in investigation
	Legal research
	Social work/sentencing advocacy
	Motions to suppress
	Other court actions
	Review police camera feeds
	Jury trial preparation
	Bench trial preparation
In-court attorney support	

**Figure 5. Non-Case-Specific Activity Categories**

Non-Case-Specific Activities
General non-case-related/administrative tasks
Attending and preparing for meetings
Training, conferences, continuing legal education
Work-related travel (not normal commute)
Providing supervision
Vacation/illness/other leave/furlough
Other
Time study tracking

### III. Time Study

To provide an empirical portrait of current practice, NCSC conducted a comprehensive time study. For a period of six weeks, all attorneys, investigators, and support staff were asked to track all their working time by case type and activity. Part-time contract and conflict attorneys and staff were identified as “ancillary” staff, since they do not work exclusively on indigent cases; all others, were considered to be

“primary” staff, meaning that their work time is exclusively dedicated to indigent defense work.

Separately, each county provided annual counts of cases by case type category and office directly to the NCSC on a weekly basis. NCSC used the time study and caseload data to calculate the average number of minutes currently spent resolving cases within each case type category (initial case weights).

### Data Collection

#### 1. Time Study

During the six-week period from January 25 through March 5, 2021, all rural indigent defense service providers, including attorneys, investigators, and administrative staff were asked to track all working time by case type category and activity (for case-specific work), or by activity (for non-case-related work). Participants were instructed to record all working time, including any after-hours and weekend work. All participants recorded their time to the nearest five minutes using a web-based form.

To maximize data quality, all time study participants were asked to attend a webinar training session explaining how to categorize and record their time. In addition to the training sessions, participants were provided with web-based reference materials, and NCSC staff were available to answer questions by telephone and e-mail.

The web-based method of data collection allowed time study participants to verify that their own data were accurately entered and permitted real-time monitoring of participation

rates, helping to maximize the quality and completeness of the time study data. To ensure sustained participation throughout the course of the time study, NCSC provided weekly reports to DIDS regarding the participation rates of expected participants. If participation was low for a particular location, DIDS employees reached out to those individuals to ensure participation. This personal encouragement ensured sustained participation throughout the course of the study. At the conclusion of the time study, the data were weighted to account for the small amounts of missing data associated with sick leave, vacation time, vacancies, and temporary failures to report data.

In total, 100% percent of all primary participants (attorneys, investigators, and administrative staff) participated in the time study. This extremely high level of participation, if collected during “normal times” would ensure sufficient data to develop an accurate and reliable profile of the amount of time attorneys, investigators and administrative staff currently spend representing clients in each type of case, as well as on non-case-specific and non-case-related work. However, as will be discussed later, this did not hold true during the COVID-19 era, so the empirical data were supplemented with qualitative data derived from focus groups, Delphi Panels, census survey data as well as with case weights derived from weighted caseload studies for indigent defense providers in other states (during normal times).

## 2. Caseload Data

To translate the time study data into the average amount of time expended on each type of case (initial case weights), it was first necessary to determine how many individual cases of each type were assigned to each location on an annual basis. When the time study data were analyzed, obtaining accurate new case counts for rural indigent defense providers did not exist, so NCSC staff had to triangulate multiple sources of data for this information.

Prior to the creation of DIDS, state law did require that counties report caseload information; however, there was no guidance regarding the content of that information, so reporting detail was left largely to the counties. With the passage of AB 81 in 2018 (now codified in NRS 180), the enacting language that created DIDS, there is now a requirement to report “the total number of cases pending, closed, hours spent, and the number of expenditures in each participating county.”<sup>25</sup> DIDS has been collecting uniform data through *LegalServer* since October 2021.

To generate a reasonable set of open cases, the NCSC team had to estimate the number of cases being held in each county. To do this, the team relied on three data sources:

- **The Annual Report of the Nevada Judiciary and Data Appendix (fiscal year 2019).** This report, produced by the Nevada Administrative Office of the Courts (AOC), summarizes all cases filed in Nevada state courts by case type and county.
- **The Annual Report of the Nevada Department of Indigent Defense Services**

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<sup>25</sup> Nevada Department of Indigent Defense Services Annual Report, Fiscal Year 2020, p. 15.

(fiscal year 2020 containing data from fiscal year 2019). The Board and Department of Indigent Defense Services was created in 2019. This report is the inaugural annual report produced by DIDS.

- **Case counts provided by attorneys during the 6-week time study.** In addition to recording time, attorneys were asked to track the number of new cases opened during the time study period using the case type categories displayed in Figure 4.
- **LegalServer new case counts.** In October 2021, rural indigent defense providers were required to report all new cases assigned, as well as the time they expended on each case. While the initial months of this data proved unreliable. By 2023, the indigent defense providers were using the *LegalServer* database to track new cases, so the final case counts used in the final resource needs model represents the most accurate method of counting new cases in rural Nevada.

## IV. Case Weight Development

The initial case weights generated from the time study were expected to provide the amount of time rural Nevada indigent defense service providers spent handling various types of cases during that six-week period. As indicated previously, the time study was conducted under the unusual circumstance of a global pandemic that lasted for over a year. The pandemic disrupted court schedules because many courts were instituted social distancing protocols, which lengthened court hearings. Unlike the urban counties in Nevada courts in the rural counties remained open during the pandemic, but working under social distancing conditions became more time-consuming. Similarly, jail visits became more onerous, with jails either limiting attorney visits to allow for social distancing or are conducted via telephone or

Zoom calls, both of which are less than satisfactory to attorneys who seek to build a trust relationship with clients.

Given this significant change in practices, the NCSC team relied on other sources from which to generate interim case weights, including focus groups conducted with rural indigent defense providers, Delphi Panels conducted with attorneys, a census survey conducted with rural indigent defense attorneys, and past weighted caseload studies conducted for indigent defense providers, which incorporated ABA standards.

### A. Focus Groups

As a precursor to the time study, the National Center for State Courts conducted focus groups with three attorney groups, including rural public defenders, contract attorneys, and conflict attorneys. A total of twenty-one attorneys participated in the focus groups, which were conducted via Zoom in December 2020.

The purpose of the focus groups was to inform the NCSC about the variations in their workload demands, time constraints and whether and how responses to the COVID-19 pandemic impacted their ability to adequately represent their clients. The information obtained from the focus groups was used to inform the final case weights presented below.

### Focus Group Themes

Three primary questions were posed to the focus group participants. First, we asked whether they feel they have sufficient time, without working overtime, to attend to all aspects of their job. Second, we asked what the greatest constraints on their time are; and third, we asked whether and how the COVID-19 pandemic has changed

the way their work is conducted. The results are presented below.

***Is their sufficient time to engage in all aspects of your work without having to work overtime on a regular basis?***

All of the focus group participants indicated that the work ebbs and flows, so there is never a “typical week or month;” however, there were variations in perceptions of workload across the three groups. Public defender participants were more likely to indicate feeling as though they are “never caught up.” These sentiments did not come from a defeatist attitude, but rather a realistic attitude. They all agreed that they do not have enough time in a day to get their work done, and they all described working long days and most weekends just to stay on top of the work. One participant summed up what all of the participants were saying this way: “When I first started, I worked all the time; now I work less; you just learn to be more efficient.” As a group, the public defenders noted that the high workload levels lead to frustration at not being able to do more for their clients. One participant noted that “Early on, I was stressed that I could not keep up with everything. You just need to learn to live with not getting everything done.”

Contract attorneys were more likely to indicate that their workloads are generally manageable, but that they can sometimes get out of hand. Depending on where they are located, these attorneys have contracts that amount to an approximate half-time job or a full-time job, which might account for their sentiment regarding their workload levels. To a person, contract attorneys all agreed that it is hard to predict when cases will be assigned, and they may come one at a time, or in groups. Given this, a contract attorney may find him/herself

working seven days each week for ten to twelve hours per day; but when caseloads drop, they could be working much less. Overall, contract attorneys agreed their workloads generally are manageable.

Conflict attorneys saw their workloads more similarly to contract attorneys. Many of the conflict attorneys work in multiple jurisdictions, so their work may be impacted by virtue of the location of the case to which they have been assigned, often requiring more travel time to meet with a client and/or attend court hearings. One attorney summed up the work in this way “As far as general workload is concerned, I feel that we are very busy and occasionally it can be overwhelming, but not to the extent of many other offices across the country that you hear horror stories about. We are fortunate to have the resources that we do, so I can understand why it has been and likely will continue to be difficult to find attorneys in the rural counties that are willing to take on indigent defense given the amount of work, lack of resources, and high expectations.”

***When you think about your work, what are the greatest constraints on your time?***

Four major categories arose from the discussion of the greatest time constraints associated with representing indigent clients in the rural counties of Nevada, including: client services, jail visits and associated travel, court visits and associated travel, and reviewing electronic discovery data. Each issue will be discussed in order.

*Client Services.* Several the attorneys indicated that they spend more time on “social work” activities than they do on legal work. Contract attorneys and public defenders were the most

likely to report spending a lot of their time tracking down and enrolling clients in services, such as mental health or substance abuse treatment programs. Similarly, attorneys work with clients ensuring they appear in court, helping to reinstate driver's licenses, having interlock systems installed in cars, connecting them with computers to attend virtual court hearings, obtaining transportation to work, meetings and other services and in simply helping their clients navigate the criminal justice system.

Focus group participants said they feel this aspect of the job is as important as the legal services they provide, because following terms and conditions of placement. Working to obtain services for clients is also extremely challenging for rural indigent attorneys, because services are limited, mass transportation is non-existent and many clients do not have adequate means of communication, including phone service or computer access. Some attorneys enlist the assistance of office workers, such as paralegals or secretarial support, but in the end, most of this work is done by the attorney.

*Jail Visits and Associated Travel.* All attorney groups listed jail visits and travel associated with them is an extremely time-consuming, but critical component of their job. Finding time to travel to the jail, locating clients, finding private places to meet, and completing the necessary paperwork to meet with a client combine to make meeting with detained clients a time-consuming task.

Due to the COVID-19 restrictions, some jails are allowing detainees to meet with attorneys over Zoom or by telephone, but several of the participating attorneys expressed conflicting feelings about these options. As one attorney

stated "Video visitation in rural jails would be really great and could increase the number of attorneys who could take a case. On balance though, I prefer to look people in the eyes when I talk to them, and this is a big limitation of video interactions." Another participant made a strong case for meeting with clients in person at the jail, noting that the clients don't know the attorneys and have no reason to trust them, so meeting with them in person provides the ability to begin establishing that trust relationship.

*Court Hearings and Associated Travel.* Similar to the discussion relating to jail visits and travel, rural indigent defense service providers spend a lot of time traveling to and from court and attending court hearings. At a minimum, all attorneys have to juggle hearing dates and times in district and justice courts; and in some cases, they cover more than two court locations. Most indigent defense service providers attend arraignments, initial appearances, and bail/detention hearings, as these are the most likely places from which to obtain newly assigned cases. While this practice has significant benefits, including quickly connecting an attorney and client, it is also a time-consuming process. In one rural court location, each of the three attorneys spends a full week of their time in court, just to ensure that individuals to whom they might be assigned have their rights protected. And once a court session has ended, attorneys reported that they typically have a lot of phone calls to make and new cases for which to prepare, making court days very long days.

Attorneys indicated that it is difficult to get other work done while waiting in court, so much of the waiting time is lost. Courts also have different practices regarding the order in which they call cases. In one location, public defender cases are

prioritized by the court, so attorneys in that court can get in and out of court in a reasonable amount of time; other attorneys indicated that courts in which they work are just the opposite and prioritize paid attorneys' cases over the indigent cases.

Another factor exacerbating the court schedule is that some jurisdictions have multiple justice and district courts. For example, in Douglas County there are two district courts and two justice courts, so juggling court schedules can be very difficult. Several attorneys also noted that having clients in specialty courts can be difficult on both the attorney and the client. For clients, transportation is always an issue for indigent defendants as there is no public transportation available. Some attorneys indicated they provide rides to clients to attend drug court and other treatment services, but this is not sustainable. It is not unusual for rural indigent clients to give up on drug court because of these transportation limitations.

Three public defender participants indicated that they regularly spend time in specialty court meetings and hearings. These participants noted that they really don't do anything for their clients during these sessions and wondered aloud why non-lawyers could not participate instead.

*Reviewing Electronic Data.* Obtaining, storing, and reviewing electronic data has become one of the most onerous tasks in which indigent defense attorneys engage. Not only does the review of electronic data take hours, but depending on the court, the information may be delivered to the attorney at the last minute, with little or no time to effectively review it. For example, watching police body camera or dashboard camera footage is a necessary, but

time-consuming task. The entire footage has to be reviewed at least once to determine what information is available, and then it has to be reviewed again, often several times, to clearly understand what evidence exists. In a single case, it is not unusual to have ten hours of body camera footage to review. Other types of digital data can also be time consuming to review, such as social media data and digital information such as text messages. As one attorney stated: "All pieces of data must be read or listened to and much of which will, in the end, not be useful but you don't know until you've reviewed the information." Another attorney agreed with the degree of scrutiny needed to review electronic data: "Watching relevant footage is hard. First, you have to locate the relevant footage (for example, on CD-ROM), then watch everything that may be relevant. I may get questions if something occurs at arraignment; if the judge asks if I've reviewed the camera footage, I don't want to say 'no.' This takes a lot of time. This is true of body or police dashboard cameras, surveillance camera footage and cell phone data review (social media, text messages), especially used in probation violations."

### Focus Group Summary

The attorneys participating in the focus groups indicated that there are four areas of work that take up most of their time: finding and coordinating client services, such as mental health or substance abuse treatment; conducting jail visits; time in court hearings and trials (including waiting in court); and reviewing electronic data, such as police body camera footage and social media output. While they agree this is all part of their jobs, the amount of time some of these activities require is exacerbated by the fact that they practice in rural jurisdictions with limited services, far

distances between court and jails and the explosion of forensic use of electronic data. It is also important to note that most of the time-consuming factors identified were not present when the initial defender standards were developed in 1973.

## B. Delphi Panels and Case Weights for Indigent Providers in Other States

To ensure that the final workload model incorporated sufficient time for effective representation, project staff facilitated a series of Delphi sessions with five panels of attorneys, investigators, and administrative staff in April 2021. Separate panels were held for public defenders, private attorneys, contract indigent defense attorneys, death penalty attorneys, investigators, and administrative support staff; each panel consisted of volunteers. The attorney panels focused on a subset of case types, including death penalty, felony cases, adult misdemeanors (including DUI and domestic violence cases), juvenile delinquency, appeals, and probation/parole violations. The investigator and administrative staff panels addressed all case types.

The Delphi panels provided opportunities for the NCSC staff to hear from participants how much time it currently takes – and should take -- to handle different types of cases from each of their perspectives.

## C. Rural Indigent Defense Attorney Census Survey

As part of the Nevada Indigent Defense Services Weighted Caseload Study, the Department of Indigent Defense Services (DIDS) and the

National Center for State Courts (NCSC) asked all attorneys to complete a census survey to provide important background information to assist with the data analysis and development of standards. Since there are differences among defender systems across rural Nevada, it was important to understand the variations between counties and how these variations affect representation of indigent defendants. The survey was sent to public defenders, contract attorneys, and conflict attorneys. Out of 73 attorneys, 45 completed the survey.

To get a better understanding of the variations between practices, the attorneys were asked to provide some basic background information. Respondents were asked how long they have been practicing law and specifically how long they have been practicing criminal law. The responses ranged for both questions, with the minimum number of years being 1 and the maximum being 43 years, suggesting that there is a vast range of experience among those who completed the survey.

The majority of attorneys indicated they either meet with their clients in their offices (83%), at the courthouse (8%), or at another location (10%). This suggests that the need to build in additional travel time for this purpose was not necessary. Survey respondents were also asked to provide the average amount of time they spend traveling for court, to meet with clients, or for other purposes related to their jobs. When averaged, it was found that attorneys spend approximately 12.33 hours per month traveling.



#### D. Case Weights from Previous Indigent Defense Provider Workload Assessment Studies in Other Jurisdictions

To generate the final case weights, the case weights from public defender workload assessment studies conducted in Maryland, Massachusetts, Michigan, Missouri, New Mexico, North Carolina, Texas, and Virginia compared across comparable categories for capital murder, non-capital murder, B felonies, misdemeanor DUIs and DV, misdemeanors, adult probation and parole violations, specialty court cases and juvenile delinquency. The case weights from these states were compared with input derived from the Nevada time study, focus groups and Delphi Panels and recommended case weights were generated. There were no case weights for appeals cases, so the focus group and Delphi input were heavily relied upon to generate that case weight. The capital case weights were derived solely from the Delphi Panels.

While the RAND Corporation's recommended case weights and standards have recently been published, there was not sufficient time to incorporate this information into the current recommended case weights. RAND's recommended standards for indigent representation are suggested for use in the absence of a local workload assessment. RAND states that having a specific state or local workload study is the ideal approach for public defense resource planning. The current case weights and caseload standards are based on Nevada-specific data and input.

#### E. Final Case Weight Methodology

As discussed previously, the time study did not provide adequate information from which to

determine representative case weights. Largely due to the pandemic, fewer cases were filed, because fewer arrests were made; few, if any jury trials occurred, since many courts were either closed or were limiting trials due to the need to socially distance and ensure health safety. Additionally, there was limited travel to courts and jails during this time, again, to ensure health safety. All of this combined to provide a less-than-accurate picture of the work conducted by indigent defense providers, investigators, and staff.

Given this unusual set of circumstances, the NCSC relied heavily on past weighted caseload studies conducted with indigent defense providers, ABA standards, as well as feedback from the Delphi panels. Additionally, time study data from investigators (there were only two employed full-time) and administrative staff was truncated for the same reasons described above for attorneys, so NCSC consultants again looked to past studies as well as Delphi panel information and staffing patterns in the larger public defender offices in Nevada to determine appropriate staffing levels and ratios of investigators and support staff to attorneys. The recommendations for staffing for investigators and support staff are based on ratios of staff to attorneys, rather than on case weights.

#### ***Final Case Weights and Staffing Ratios for Investigators and Administrative Staff***

Provided below are the final case weights computed from a combination of the sources identified above. All case weights represent the average number of hours that should be expended on each identified case type by one attorney. The death penalty case weight is an exception, in that it includes the total number of hours that are expected to be associated with a

death penalty case for two attorneys over a period of several years. Attorneys defending death penalty cases must meet specific experiential criteria laid out in Nevada Supreme Court Rule 250, which many indigent providers do not currently meet.

**Figure 6: Final Attorney Case Weights in Hours**

Case Type <sup>26</sup>	Case Weight (hours)
Death penalty cases	3,647.6
Category A Felonies	50
Category B Felonies	20
Misdemeanor DUI/DV	10
Appeals (Felony and Gross Misdemeanors)	50
Misdemeanor and Appeals	6
Probation and Parole Violations	4
Juvenile Delinquency, Supervision and Appeals	7.1
Juvenile Probation and Parole Violations	26
Specialty court cases**	90
Annual time for 48-hour hearings***	3

\*Death penalty cases require two attorneys with specific qualifications.

\*\*Specialty court cases require attorneys to be present at weekly or monthly meetings, as well as to participate in staffing sessions, for an average of 7.5 hours per month.

\*\*\*The annual time for 48-hour hearings is weekend and holiday in-custody bail review hearings.

Another metric that can be computed based on case weights is the caseload standard. Once case weights have been computed, caseload standards are then generated for each case type by dividing the number of attorney case-related hours available per year (shown in Figure 10) by

the case weight to determine the number of cases a single attorney could be expected to handle in one year if he or she was only handling that particular case type.

For example, the number of hours required to process the average felony case in is 50 hours. The number of hours available per year rural indigent defense attorney to process cases is 1,392.6 hours (220 days x 6.33 hours per day)<sup>27</sup>. Dividing the number of hours available per year for each attorney by the number of hours required, on average, to handle each case filed results in the number of cases of a particular type a single attorney could handle in one year (i.e., 1,540 / 50 = 30.8 felony cases annually). The case weights and workload standards per attorney/per year for each case type are presented in Figure 7.

<sup>26</sup> While civil cases were originally a part of this project, we opted to not include this case type in this project because DIDS was only tasked with developing standards for criminal/delinquent case types. Also, there are a range of civil case types that are sometimes assigned to these

attorneys, that it was nearly impossible to determine a case weight.

<sup>27</sup> The 6.33 hours per day includes an 8-hour working day minus 1 hour for non-case-related work and 40 minutes (.67 hour) of travel time per day.

**Figure 7: Attorney Annual Caseload Standards**

Case Type <sup>28</sup>	Case-Specific Hours per Year	Case Weight (hours)	Caseload Standard
Death penalty cases	1,392.6 ÷	3,647.6	= .38
Category A Felonies	1,392.6 ÷	50	= 27.8
Category B Felonies	1,392.6 ÷	20	= 69.6
Misdemeanor DUI/DV	1,392.6 ÷	10	= 139.3
Appeals (Felony and Gross Misdemeanors)	1,392.6 ÷	50	= 27.8
Misdemeanor and Appeals	1,392.6 ÷	6	= 223.1
Probation and Parole Violations	1,392.6 ÷	4	= 348.2
Juvenile Delinquency, Supervision and Appeals	1,392.6 ÷	7.5	= 53.6
Juvenile Probation and Parole Violations	1,392.6 ÷	26	= 185.7
Specialty court cases	1,392.6 ÷	90	= 15.5
Annual 48-hour hearings	NA	3	NA

Looking at caseload standards can provide an easy metric from which to determine when a defender’s caseload has reached levels of full capacity. Of course, no attorney is handling a single case type, so the standards would need to be combined for each attorney to determine when each attorney has reached their viable caseload capacity. The attorney caseload standards, based on the case weights are shown in Figure 7.

Given the limitations of the time study data, along with significant variations in staffing levels across the rural counties, the NCSC recommends using staffing ratios to determine the number of support staff and investigators needed in each county, based on the number of full-time

<sup>28</sup> While civil cases were originally a part of this project, we opted to not include this case type in this project because DIDS was only tasked with developing standards for criminal/delinquent case types. Also, there are a range of civil case types that are sometimes assigned to these

equivalent (FTE) attorneys required. These ratios are based on past studies reviewed where staffing needs for investigators and administrative staff were assessed.

Since all of the investigators utilized by rural indigent defense providers are privately employed, the ratio for investigators should begin with the development of a fund that is consistent with the comparable level of an FTE position (e.g., 25% of one FTE investigator’s salary) if there is only one attorney in a particular county. For administrative staff, there appear to be economies of scale when multiple attorneys exist in a particular office. For this reason, we recommend one administrative staff person for a single attorney and one administrative staff person for every two attorneys in offices in which there are multiple attorneys. Figure 8 provides these recommended ratios.

**Figure 8: Staffing Ratio Recommendation for Investigators and Administrative Staff**

Positions	Ratios (Attorneys: Staff)
Investigators: Attorney(s)	4:1
Administrative Staff: Attorney (single attorney offices)	1:1
Administrative Staff: Attorney (multiple attorney offices)	2:1

## V. Resource Need

In the weighted caseload model, three factors contribute to the calculation of attorney<sup>29</sup> need:

attorneys, that it was nearly impossible to determine a case weight.

<sup>29</sup> Since the need for investigators and administrative staff are determined based by a ratio of attorneys to staff, the weighted caseload model has been developed for attorneys

caseload data, case weights, and the year value. The year value is equal to the amount of time each full-time attorney or staff member has available for case-specific work on an annual basis. The relationship among caseload data, case weights, and year value is expressed as follows:

$$\frac{\text{Caseload Data}}{\text{Year Value}} \times \text{Case Weights} = \text{Resource Need (FTE)}$$

Multiplying the caseload data (new cases assigned in a single year) by the corresponding case weights calculates the total annual case-specific workload in minutes. Dividing the workload by the year value yields the total number of FTE attorneys needed to handle the workload, and application of the ratios to the attorney need indicates the need for investigators and support staff. Death penalty cases were not included in the development of the attorney needs model, since they are relatively rare and can take many years to reach resolution. Given that the model estimates the number of attorneys needed to provide representation for all cases assigned in a given year, death penalty cases do not fit this model.

All workload studies are based on the development of a standard year in which workers are expected to work. Typically, year values exclude weekends, holidays, and a reasonable amount of time for employees to have time off for vacation, illness, or personal time, and a reasonable amount of time devoted to professional training. While the standard year value does not preclude employees from working additional hours at any time, the

and the ratios for investigators and administrative staff are derived by applying the ratios at the bottom.

*expectation* that employees would work overtime is not reasonable. In Nevada, for example, the judicial workload studies conducted in Clark County (2005) and in Washoe County (2007), included year values of 219 days at 7.5 hours per day and 210 days at 7.5 hours per day, respectively.

## A. Year Value

To develop the year values for attorneys<sup>30</sup>, it was necessary to determine the number of days available for case-related work in each year (work year), and to divide the workday between case-specific and non-case-specific work (day value).

### 1. Work Year

The *work year* represents the number of days per year during which a full-time attorney works on case-specific matters. As shown in Figure 9, the Advisory Committee constructed the work years for attorneys and staff by beginning with 365 days per year, then subtracting weekends, holidays, annual leave and sick leave, and conferences and training. The work year is 220 days, at 8 hours per day, for attorneys, staff, and investigators.

**Figure 9. Attorney Work Year Value**

Work Year Breakdown	Attorneys, Staff & Investigators Days
Total days per year:	365
-Weekends	104
-Holidays	11
-Personal leave	25
-Training & staff education	5
Total working days available	220

<sup>30</sup> Though not used to develop the need model for investigators and administrative staff, the year value for both positions is consistent with the attorney year value.

## 2. Day Value

The day value represents the amount of time each attorney has available for case-specific work each day. This value is calculated by subtracting time for lunch/breaks, and non-case-related work from the total working day. The time study indicated that attorneys spend approximately one hour each day on non-case-related work. Data from the attorney census survey indicated that attorneys travel, on average 12.33 hours per month, which averages out to 40 minutes per day. Given this, in a normal 8-hour workday, attorneys spend 6 hours on case-related work, not including travel.<sup>31</sup>

**Figure 10: Attorney Day Value**

Time per Day	Hours per Day	Minutes per Day
Workday	8	480
Non-case-related work	1	60
Travel	.67	40
Case-related workday	6.33	379.8

To calculate the final year value for case-specific work, the number of days in the working year was multiplied by the day value for case-specific work. This figure was then expressed in terms of hours per year. Figure 11 shows the calculation of the case-related year value for attorneys.

**Figure 11: Case-Related Annual Attorney Year Value**

Work Year (days)		Case-Specific Hours per Day	=	Year Value (hours)
220	x	6.33	=	1,392.6

<sup>31</sup> Based on information obtained through both focus groups and Delphi Panels, travel is likely underestimated in this non-case-related time estimate. Time study data is the only empirical data available for this estimate, and that data indicated that both non-case-related work and travel combined to equal 43 minutes per day, which we rounded up to 60 minutes to account for travel.

## B. Resource Need

To calculate the number of attorneys needed in each county, the annual new case count for each case type was multiplied by the corresponding case weight to compute the annual workload in minutes associated with that case type. Workload was summed across all case types, then divided by the year value, or the amount of time each full-time attorney has available for case-specific work in one year. This yielded the total number of attorneys required to handle each location's case-related workload and non-case-related responsibilities, in full-time equivalent terms.<sup>32</sup>

Figure 12 shows that, across the 15 rural counties in Nevada, a total of 89.2 attorneys are needed to manage the number of new cases assigned in Fiscal Year 2022-23.

**Figure 12: Rural Indigent Defense Attorney Resource Need by County**

Location	Attorneys Needed (FTE)
Carson City	16.3
Churchill	7.4
Douglas	8.8
Elko	16.4
Esmerelda	.3
Eureka	.3
Humboldt	4.9
Lander	1.3
Lincoln	1.1
Lyon	12.0
Mineral	2.1
Nye	12.0
Pershing	2.3
Storey	1.3
White Pine	3.3
<b>TOTAL</b>	<b>89.9</b>

<sup>32</sup> Basing staffing needs on case weights is not a new concept in Nevada. Indeed, in 2005 Clark County employed the NCSC to develop a judicial needs model based on case weights in 2005, and Washoe County engaged the NCSC to conduct a similar study in 2007. In August of 2023, NCSC received an inquiry from the Washoe County Family Court to conduct another study of this nature.

Figure 13 shows the need for investigators and administrative staff (based on the recommended ratios shown in Figure 8) in each rural indigent defense provider county. In the aggregate, the model demonstrates a need for 89.9 attorneys to effectively handle current rural indigent defender caseloads. The model also shows a need for 46.4 administrative support staff members, and a need for 22.5 investigators.

Social workers in public defense systems play a critical role in ensuring clients are assessed for, and receive, critical services prior to and after case resolution. Social workers also frequently testify in court, providing judges with information and insights into extenuating circumstances surrounding the client’s actions, as well as recommended services to address those circumstances.<sup>33</sup> As discussed in the focus group section of this report several attorneys reported spending more time on social work activities, such as obtaining treatment services, obtaining transportation, reinstating driver’s licenses, and similar assistance that help ensure that they can meet the obligations of pre-trial release.

One study did find that public defender clients who received social worker services were less likely to incur additional misdemeanors or felonies within a two-year period than those who did not receive such services.<sup>34</sup> While no reports exist on recommended staffing levels for social workers, these critical positions, if included as part of all public defense teams in rural Nevada, are likely to result in better overall representation of clients, and could alleviate

some of the work currently conducted by attorneys, so they can focus on lawyering, rather than the provision of social services.

**Figure 13: Rural Indigent Investigators and Support Staff Resource Need by County**

Location	ATTORNEYS		
	Attorneys Needed (FTE)	Number of Investigators Needed (FTE)	Number of Support Staff Needed <sup>35</sup> (FTE)
Carson City	16.3	4.1	8.1
Churchill	7.4	1.9	3.7
Douglas	8.8	2.2	4.4
Elko	16.4	4.1	8.2
Esmerelda	0.3	0.1	0.3
Eureka	0.3	0.1	0.3
Humboldt	4.9	1.2	2.5
Lander	1.3	0.3	1.0
Lincoln	1.1	0.3	1.0
Lyon	12.0	3.0	6.0
Mineral	2.1	0.5	1.1
Nye	12.0	3.0	6.0
Pershing	2.3	0.6	1.1
Storey	1.3	0.3	1.0
White Pine	3.3	0.8	1.6
<b>TOTAL</b>	<b>89.9</b>	<b>22.5</b>	<b>46.4</b>

## VI. Recommendations

This workload assessment provides strong evidence of a need for more attorney and staff resources to effectively handle the current workload of Nevada’s rural indigent defense providers. The following recommendations are intended to promote the effective implementation of the weighted caseload model, preserve the model’s integrity and utility

<sup>33</sup> Assessing a Social Worker Model of Public Defense, Urban Institute, Andrea Matei, Jeanette Hussemann, and Jonah Siegel, March 2021.

<sup>34</sup> Sara Beck Buchanan, Social Work Practice in Public Defense, Phd diss., University of Tennessee, 2017.

<sup>35</sup> In locations where less than one FTE attorney is needed, support staff need equals that of the attorney need.

over time and ensure effective representation of Nevada's rural indigent defendants.

### ***Recommendation 1***

Indigent defense provider offices should be provided with enough attorneys, administrative staff, and investigator support to represent clients effectively and consistently across rural Nevada. The focus groups, Delphi Panels, census survey, and state comparison quality adjustment processes clearly demonstrate that attorneys and staff face serious resource constraints at current caseloads and staffing levels. Appropriate resource levels can be achieved either by adding attorneys and staff to indigent defense provider offices or by reducing first-tier public defender office caseloads. Options used to reduce first-tier defender caseloads could include transferring a portion of the workload to the NSPD under NRS 180.450, contracting with private counsel, or reducing or eliminating the civil workload.

### ***Recommendation 2***

Social workers serve a critical function where they exist in indigent defense provider offices. Where social workers are not employed, attorneys, investigators or administrative staff provide this function in addition to their traditional duties. Social workers' specialized professional knowledge enables them to investigate clients' social histories, obtain educational and health records, place clients in treatment and other programs, prepare mitigation information, and assist in developing alternative sentencing plans—often more efficiently and effectively than an attorney, investigator or administrative staffer can. Nevada's rural indigent defender offices currently employ just one social worker in Elko

(who is sometimes assisted by interns), although there are 51 indigent defense attorneys in fifteen rural counties. To improve both the effectiveness and efficiency of client representation, social workers should be made available in all rural Nevada counties.

### ***Recommendation 3***

DIDS should consider hiring a small group of mitigation specialists available to work with rural indigent defense attorneys in the rural counties. Mitigation specialists are members of the criminal defense team that provide significant documented history of the defendant for use by defense counsel. The information provided is used to identify potential mitigating factors that should be presented to the court. Mitigation specialists are especially important for use in capital murder cases and high-level felony cases. In Nevada, Clark County employs 2 mitigation specialists for 20 attorneys and Washoe County employs 1 mitigation specialist for 37 attorneys, for a combined total of three mitigation specialists for 57 attorneys, or ratio of 1 mitigation specialists for every 19 attorneys. Applying this ratio to the 80.8 rural indigent defense attorneys needed, that implies a need for 4.3 mitigation specialists across all of the rural counties.

### ***Recommendation 4***

Administrative staff, investigators, and social workers are essential components of the defense team. These staff members complement the work of the attorney, increasing the attorney's effectiveness and efficiency in representing clients, but cannot fulfill the attorney's unique professional functions. Therefore, staff and attorney positions should not be treated as fungible.

**Recommendation 5**

Many of the rural indigent defense attorneys have civil cases assigned to them, which increases their workload beyond what is presented in this report. Developing case weights for civil cases was outside of the scope of this project, and the recommendations are for the number of attorneys needed that are practicing only indigent defense as defined by NRS 180.004.

**Recommendation 6**

DIDS should create a complex litigation unit that would be housed in the State Public Defender's Office. The complex unit should include attorneys, administrative staff, investigators, and mitigation specialists. Death penalty case attorneys have to be specially trained and have a certain level of experience to represent indigent defendants (Nevada Supreme Court Rule 250). If a rural attorney does not have the requisite qualifications and skills another will be appointed. Given that the NCSC are relatively rare, but they do occur, we are unable to recommend the staffing needs for this unit.

**Recommendation 7**

DIDS should monitor the new case count and hours expenditure database located on *LegalServer* to ensure its accuracy. Once the accuracy has been ensured and ample, accurate data have been entered, DIDS should use this information to update the needs model on an annual basis.

**Recommendation 8**

DIDS and indigent defense providers should actively use the weighted caseload model to monitor and manage workloads. Annual calculations of workload based on caseload numbers can aid DIDS in determining the appropriate allocation of attorneys, investigators, and staff to offices. Calculating incoming workload on the basis of appointments can also assist indigent providers in monitoring capacity and assigning cases to individual attorneys.

**Recommendation 9**

Over time, the integrity of any weighted caseload model may be affected by external factors such as changes in legislation, case law, legal practice, court technology, and administrative policies. NCSC recommends that Department of Indigent Defense Services conduct a comprehensive update of the public defender office weighted caseload model every five to seven years. This update could either entail an analysis of the *LegalServer* data or it could include both a time study and a comprehensive quality adjustment process.

**Recommendation 10**

It is recommended that all rural counties in Nevada heed the recommended case weights/caseload standards and provide staffing resources, including attorneys, investigators, and administrative staff equally across all rural counties.



## Appendix A. Case-Specific Functions

Activities that pertain to a specific case in which you have been appointed to represent the client.

### IN-COURT ACTIVITIES

#### **01. Bail and other general hearings**

Includes initial appearances, pretrial conferences, status conferences arraignments, specialty court hearings and sentencings.

#### **02. Suppression hearings**

Appearing for suppression and other evidentiary hearings.

#### **03. Bench trials**

All in-court work associated with bench trials.

#### **04. Jury trials**

All in-court work associated with jury trials.

#### **05. Waiting in court**

All time spent waiting in court while not actually engaged in a hearing or trial.

### OUT-OF-COURT ACTIVITIES

#### **06. Client contact**

Includes all client contact, including interviews, case-related discussions, institutional visits (jail, hospital), phone calls, office visits, correspondence.

#### **07. Consult experts**

Includes all work related to experts, including identifying and conferring with, preparing for expert testimony.

#### **08. Consult investigators/engage in investigation**

Includes all work related to investigations, including preparing and submitting discover requests, interviewing law enforcement, witnesses, and others, conducting crime scene visits, requesting documents.

#### **09. Legal research**

All legal research conducted to inform or support work on an indigent client's case, including the preparation of legal memoranda or other written documents.

#### **10. Social work/sentencing advocacy functions**

Includes developing mitigation information, working with probation on pre-sentence investigation and identifying sentencing and placement alternatives for clients, arranging for client placement in appropriate programs, gathering medical, psychiatric educational and family histories, evaluating clients, performing home visits, staffing cases, coordinating emergency responses.

#### **11. Motions to suppress**

Preparing motions to suppress, including legal research, and writing of motions.

#### **12. Other court actions**

Other out-of-court actions not defined above, including reviewing discovery and preparing for pleadings and negotiations that are not related to a trial, and post-conviction writs and appeals of post-conviction writs.

**13. Review police camera feeds**

Time spent reviewing body camera footage and time spent reviewing the dash camera footage.

**14. Jury trial preparation**

All time associated with preparation for a jury trial.

**15. Bench trial preparation**

All time associated with preparation for a bench trial.

**16. In-court attorney support**

Includes activities that support the attorney's in-court work on indigent cases, such as providing information at arraignments, providing support and information at other hearings/reviews.

## Appendix B: Non-Case-Specific Functions

Activities that *do not pertain to an individual case in which you or your office has been appointed to provide representation*. Includes activities that are not related to client representation, are related to a case in which you or your office has not been appointed to represent the client or may be related to multiple cases in which you are providing representation.

**a. General non-case-related/administrative tasks**

Includes activities related to general office work, such as non-case-specific paperwork, preparing and reviewing bills, authorizing leave requests of subordinates, responding to general email, phone calls and other correspondence, addressing technical and technological issues.

**b. Attending and preparing for meetings**

Includes time spent in meetings, preparing for meetings, such as staff meetings, state-or county-level meetings; include all meetings whether internal or external.

**c. Training, conferences, continuing legal education**

Participating in. any training or other educational opportunities related to your work, whether required or optional.

**d. Work-related travel (NOT normal commute from home to office)**

All reimbursable travel time not including your regular commute time.

**e. Providing supervision**

Direct supervision of subordinates (attorneys, investigators, administrative staff, others).

**f. Vacation/Illness/Other leave/Furlough**

All time off taken for vacation, illness or other purposes, including Furlough days. Assume each day off is equivalent to 8 hours; short period off for doctor or other appointments can be reported as the amount of time away for that appointment (e.g., 1 or 2 hours).

**g. Other**

All other non-case-related work that does not have a distinct reporting category.

**h. Time study data tracking and reporting**

Record all time associated with tracking and entering time for the weighted caseload study.

## Appendix C: RAND Corporation's Recommended Case Weights<sup>36</sup>

Case Type	Case Weights (hours)
Felony – High (Life without Parole)	266
Felony – High – Murder	248
Felony – High – Sex	167
Felony – High – Other	99
Felony – Mid	57
Felony – Low	35
DUI – High	33
DUI – Low	19
Misdemeanor – High	22.3
Misdemeanor – Low	13.8
Probation and Parole Violations	13.5

<sup>36</sup> Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study*, Rand Corporation, Santa Monica, CA, 2023, p 113.