

THE INDIANA PROJECT

AN ANALYSIS OF THE INDIANA PUBLIC DEFENSE SYSTEM AND ATTORNEY WORKLOAD STANDARDS

JULY 24, 2020

PREPARED BY



AMERICAN BAR ASSOCIATION

Standing Committee on
Legal Aid and Indigent
Defendants





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Lawyers' Professional
Liability

DATA COLLECTION AND ANALYSIS BY



Preface

The Indiana Public Defender Commission (“Commission”) separately engaged the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (“ABA SCLAIID”) and Crowe LLP (“Crowe”) to collaboratively conduct the Indiana Project, an analysis of public defense workloads, and produce a final report.

The Indiana public defense workload analysis was conducted under the leadership of Stephen Hanlon, Project Director for ABA SCLAIID, and Alicia Antonetti-Tricker, Principal at Crowe. On behalf of ABA SCLAIID, Mr. Hanlon was supported by Malia Brink, Deputy Project Director and Counsel for Indigent Defense to ABA SCLAIID as well as, the late Norman Lefstein, Dean Emeritus and Professor of Law at Indiana University Robert H. McKinney School of Law. Ms. Antonetti-Tricker was supported by Crowe colleagues Ann Solzak and Drew Sherman.

We would like to thank the Commission for its leadership during this project, which was critical to this undertaking. Specifically, Derrick Mason, Senior Staff Attorney, and Torrin Liddell, Research and Statistics Analyst, at the Commission each played a vital role in making this report possible.

Additionally, we would like to thank the members of the Selection Panel, Magistrate Kaarin Lueck, Justice Robert Rucker (Ret.), and Richard Kammen, for reviewing the participants in the field of Indiana defense representation to participate in the Delphi process. Finally, we would like to thank the survey participants comprised of private defense practitioners, public defenders and contract defenders for their significant contributions and service on the Delphi panels for The Indiana Project.



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I. Executive Summary

The American Bar Association Standing Committee on Legal Aid and Indigent Defendants (“ABA SCLAID”) and Crowe LLP (“Crowe”) worked collaboratively to conduct an analysis of public defense workload standards on behalf of the Indiana Public Defender Commission (the “Commission”). The analysis consisted of two main phases: (1) the application of the Delphi Method as a survey process to identify how much time an attorney should spend, on average, in providing representation in certain types of cases to provide reasonably effective assistance of counsel pursuant to prevailing professional norms; and (2) an analysis of the historical caseloads for public defense in Indiana.

The Delphi Process in Indiana

Four separate Delphi panels were conducted, each covering a specialized area of practice among public defenders in Indiana: (1) Adult Criminal, (2) Juvenile, (3) Children in Need of Services / Termination of Parental Rights (CHINS/TPR) and (4) Appeals. Each Delphi panel, consisting of Indiana private defense practitioners and public defenders, and guided by the applicable legal and ethical standards relating to the area of practice, provided professional consensus opinions regarding the appropriate amount of time an attorney should spend on certain case types to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in the State of Indiana. The results of these Delphi panels are presented in the tables below.

Table: Delphi Panel Results – Adult Criminal

Case Type	Delphi Case Length (Hours)	Delphi Annual Caseload
Misdemeanor	12.6	164.8
Low-Level Felony (Level 5-6)	22.0	94.5
Mid-Level Felony (Level 3-4)	42.6	48.9
High-Level Felony (Level 1-2)	68.2	30.5
Non-Capital Murder (Non-LWOP)	232.1	9.0
Non-Capital Murder (LWOP)	311.3	6.7
Probation/Community Corrections Revocations	8.5	243.7

Table: Delphi Panel Results – Juvenile

Case Type	Delphi Case Length (Hours)	Delphi Annual Caseload
Status	4.6	454.4
Misdemeanor/Juvenile Misc.	7.4	279.7
Low-Level Felony (Level 5-6)	9.6	215.9
High-Level Felony (Level 1-4)	23.3	89.1
Waiver Felony (Non-Murder)	43.4	47.9
Murder (With or Without Wavier)	178.5	11.7

Table: Delphi Panel Results – CHINS		
Case Type	Delphi Case Length (Hours)	Delphi Annual Caseload
CHINS (No Removal/In Home)	11.4	182.9
CHINS (With Removal)	32.3	64.5
Termination of Parental Rights	20.9	99.5

Table: Delphi Panel Results – Appeals		
Case Type	Delphi Case Length (Hours)	Delphi Annual Caseload
Criminal/Misc. Record Under 250 Pages	24.9	83.4
Criminal/Misc. Record 250-1,000 Pages	42.7	48.7
Criminal/Misc. Record Over 1,000 Pages	60.8	34.2
LWOP Appeals	143.3	14.5
CHINS Appeals	30.3	68.7
TPR Appeals	41.2	50.4
Interlocutory Appeals	30.2	68.8

In comparison to the Indiana Public Defender Commission’s current caseload standards, the Delphi annual caseload results were consistently lower for Adult Criminal and Juvenile cases. For CHINS/TPR and Appeals, the Delphi annual caseload results were sometimes higher and sometimes lower than the comparable Commission caseload standard. This comparison is not exact, however, because the Commission Caseload Standards (Standard J) do not use the same detail of Case Type as the Delphi analysis, among other reasons detailed more fully below. The Delphi Case Types and caseload standards provide substantial information for the Indiana Public Defender Commission to consider in future efforts to revise Indiana caseload standards.

Historical Caseloads and Staffing in Indiana

The historical caseload analysis calculates the annual public defender cases in Indiana by case type. Indiana has neither a unified court system nor a single case management system for all 92 counties. However, the courts and probation departments of all 92 counties report caseload information quarterly to the Indiana Supreme Court Office of Court Services (IOCS), which is made available to the public on their website. The IOCS reports were determined to be the most complete source of historical public defense caseloads in Indiana, though the case types reported to IOCS do not match the Delphi case types utilized and the Commission has, at times, found IOCS data to be flawed.

The historical caseloads for public defense in the 54 counties that opted-in to the Commission’s reimbursement program from 2015-2017 are presented below.

Table: Historical Caseloads – Adult Criminal			
Case Type	2015	2016	2017
Misdemeanor	37,779	36,944	37,323
Low-Level Felony (Level 5-6)	29,501	33,651	35,500
Mid-Level Felony (Level 3-4)	4,076	4,185	3,948
High-Level Felony (Level 1-2)	1,332	1,375	1,418
Non-Capital Murder (Non-LWOP)	158	157	144
Non-Capital Murder (LWOP)	311.3		6.7
Probation/Community Corrections Revocations	--	--	--

Table: Historical Caseloads – Juvenile			
Case Type	2015	2016	2017
Status	824	630	565
Misdemeanor/Juvenile Misc., Low-Level Felony (Level 5-6), High-Level Felony (Level 1-4), Waiver Felony (Non-Murder), and Murder (With or Without Wavier)	7,987	7,189	6,497

Table: Delphi Panel Results – CHINS			
Case Type	2015	2016	2017
CHINS (No Removal/In Home), CHINS (With Removal)	10,169	11,899	10,944
Termination of Parental Rights	1,211	1,845	1,255

Table: Delphi Panel Results – Appeals			
Case Type	2015	2016	2017
Criminal/Misc. Record Under 250 Pages, Criminal/Misc. Record 250-1,000 Pages, Criminal/Misc. Record Over 1,000 Pages, LWOP Appeals, and Interlocutory Appeals	513	577	597
CHINS Appeals	60	112	78
TPR Appeals	137	195	195

Due to the lack of complete and reliable data in the state, it is not possible to determine the number of full time equivalent (FTE) public defenders during the study period. As a result, it is not possible to complete an analysis to determine whether public defense staffing in Indiana is adequate or deficient and, if deficient, the extent of that deficiency.



II. Background

The Indiana Public Defender Commission separately engaged ABA SCLAID and Crowe to work collaboratively to analyze the public defender system and workloads in Indiana and produce a final report. ABA SCLAID was responsible for the law and standards applicable to the project, and Crowe was responsible for the data collection and analysis in Section IV of this Report. The Commission, in addition to contracting with ABA SCLAID and Crowe to complete this project, played a critical role in, among other things, helping to identify potential participants, assisting in gathering data and identifying additional data sources on current and historical public defense operations, answering questions regarding practice in the jurisdiction, and determining what assumptions were appropriate in data analysis.

To understand public defender workloads and our analysis of caseloads, it is important to understand the relevant legal rules and standards pertaining to effective assistance of counsel, as well as the structure for providing public defense in Indiana.

A. The Right to Counsel

The Sixth Amendment to the United States Constitution and Article I, Section 13 of the Indiana Constitution impose a duty upon the State of Indiana to provide defense counsel for those charged with crimes and who are unable to afford a lawyer. Although the Indiana Constitution merely provides that “in all criminal prosecutions” an individual has a right “to be heard by himself and counsel,”¹ Indiana was the first state to recognize a right to counsel at public expense. In 1854, in *Webb v. Baird*,² the Indiana Supreme Court recognized a right to appointed counsel if a defendant could not afford counsel for any case in which liberty was at stake:

It is not to be thought of, in a civilized community, for a moment, that any citizen put in jeopardy of life or liberty, should be debarred of counsel because he was too poor to employ such aid. No Court could be respected, or respect itself, to sit and hear such a trial. The defense of the poor, in such cases, is a duty resting somewhere, which will be at once conceded as essential to the accused, to the Court, and to the public.³

In *Webb*, Mr. Baird, an attorney, was ordered by the court to defend an individual “destitute of means to employ counsel” charged with burglary.⁴ The court ordered the county to pay the attorney. In upholding that order, the Indiana Supreme Court stated:

The poor of that county are not left to the generous charity of individual citizens. They are provided for by law. . . It seems eminently proper and just, that the treasury of the county, which bears the expense of his support, imprisonment and trial, should also be chargeable, with his defense.⁵

¹ Indiana Constitution, Article I, Section 13(a).

² 6 Ind. 13 (1854).

³ *Id.* at 18.

⁴ *Id.* at 14.

⁵ *Id.* at 19.

Over the next 100 years, Indiana would recognize a right to counsel at public expense as “indispensably necessary to the orderly administration of justice and a fair trial,”⁶ in all criminal cases,⁷ including direct appeals,⁸ at every stage of the proceedings beginning from the time of arrest.⁹

It was not until 1963 that the United States would begin to follow Indiana’s lead, when the United States Supreme Court held in the famous *Gideon* decision that persons charged with felonies in state criminal courts have a constitutional right to a lawyer at state expense.¹⁰ In 1972, the United States Supreme Court extended the right to counsel to misdemeanor and petty cases that resulted in a defendant’s loss of liberty.¹¹ A majority of states, however, reject this actual incarceration standard and recognize the right to a lawyer if the defendant is charged with a misdemeanor.¹²

In 2014, Indiana also recognized a statutory right to counsel at public expense for parents in a Children in Need of Services (CHINS) proceeding.¹³

B. The Right to Reasonably Effective Assistance of Counsel Under Prevailing Professional Norms

The right to counsel would mean nothing without some guarantee that counsel take steps to provide appropriate service to the individual he or she represents. In 1984, the United States Supreme Court held that the right to counsel in the Sixth Amendment means the right to “reasonably effective assistance of counsel pursuant to prevailing professional norms.”¹⁴ “Prevailing professional norms” include substantive professional standards as well as ethical rules.¹⁵ The ABA has developed substantive professional standards for virtually every practice area in which there is a right to counsel.

ABA Criminal Justice Standards

The ABA Standards for Criminal Justice are the pre-eminent substantive practice standards on all aspects of the criminal law and the operations of the criminal justice system. Covering topics from discovery and DNA evidence to sentencing and collateral sanction, these Standards are the result of a lengthy process that began in 1964, and they “are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the

⁶ *Hendryx v. State*, 29 N.E. 1131, 1132 (Ind. 1892).

⁷ *Bolkovac v. State*, 98 N.E.2d 250, 253 (Ind. 1951) (“Since § 13 of Article 1 makes no distinction between misdemeanors and felonies, the right to counsel must and does exist in misdemeanor cases to the same extent and under the same rules in felony cases.”).

⁸ *State ex. Rel. White v. Hilgeman*, 34 N.E.2d 129, 131 (Ind. 1940).

⁹ *Suter v. State*, 88 N.E.2d 386, 390 (Ind. 1949).

¹⁰ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

¹¹ *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (“We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.”).

¹² Nat’l Ass’n Crim. Def. Lawyers, *Gideon at 50 Part 3 – Representation in All Criminal Prosecutions: The Right to Counsel in State Courts*, 15-16 (Oct. 2016), available at <https://www.nacdl.org/getattachment/652ad777-4a20-4215-a545-f7a40d3ce338/gideon-at-50-representation-in-all-criminal-prosecutions-the-right-to-counsel-in-state-courts-part-3-.pdf>.

¹³ *In re G.P.*, 4 N.E.3d 1158, 1163 (Ind. 2014) (“Section 31-34-4-6 is an explicit provision of just such a statutory right, though subject to its own internal qualifications, and is consistent with the operation of the rest of the statutory scheme. And it exists independently of — though informed and influenced heavily by — any constitutionally compelled right to counsel pursuant to the Due Process Clause of the Fourteenth Amendment.”).

¹⁴ *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

¹⁵ *Id.* at 688.

process.”¹⁶ The Standards have been cited by federal circuit courts in more than 700 opinions.¹⁷ In 2010, the United States Supreme Court noted that: “We long have recognized that ‘[p]revailing norms of practice as reflected in American Bar Association standards and the like ... are guides to determining what is reasonable.’ ... Although they are ‘only guides’ - and not ‘inexorable commands,’ - these standards may be valuable measures of the prevailing professional norms of effective representation.”¹⁸

ABA Criminal Justice Standards for the Defense Function

Within the ABA Standards for Criminal Justice, the Standards for the Defense Function¹⁹ address criminal defense practice:

Early Entry of Counsel

In 2008, the United States Supreme Court established that the Sixth Amendment right to counsel attaches at a criminal defendant’s initial appearance before a judicial officer, because that is when “the accused ‘finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law’.”²⁰ The ABA Defense Function Standards require defense counsel to “be made available in person to a criminally-accused person for consultation before any appearance before a judicial officer, including first appearance.”²¹ The ABA Defense Function Standards also require a public defender to act with “diligence and promptness,”²² act to establish a relationship of trust “[i]mmediately upon appointment,”²³ and, “as early as practicable in the representation ... discuss ... the likely length and course of the pending proceedings, ... potential sources of helpful information, evidence, and investigation, ... the client’s wishes ... [and] the range of potential outcomes and alternatives, and if convicted, possible punishments.”²⁴

Adequate Preparation

The standards guide defense counsel to investigate the facts;²⁵ research the law;²⁶ communicate with clients;²⁷ negotiate with prosecutors;²⁸ file appropriate motions;²⁹ and prepare for court.³⁰

Plea Bargains and Investigations before Entering a Plea of Guilty

In 2012, the United States Supreme Court in *Missouri v. Frye*, citing to the Department of Justice, Bureau of Justice Statistics, noted that “ninety four percent of state convictions are the result of

¹⁶ Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 CRIM. JUST. 10 (2009), available at https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/makingofstandards_marcus.pdf.

¹⁷ *Id.* at 2.

¹⁸ *Padilla v. Kentucky*, 559 U.S. 356, 366-67 (2010) (citing, *inter alia*, the American Bar Association Criminal Justice Standards related to the Defense Function)(citations omitted).

¹⁹ ABA Criminal Justice Standards for the Defense Function (4th Ed. 2017), available at https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/.

²⁰ *Rothgery v. Gillespie County, Tex.*, 554 U.S. 191, 198 (2008) (quoting *Kirby v. Ill.*, 406 U.S. 682, 689 (1972)(plurality opinion)).

²¹ ABA Criminal Justice Standards for the Defense Function at Standard 4-2.3.

²² *Id.* at Standard 4-1.9.

²³ *Id.* at Standard 4-3.1.

²⁴ *Id.* at Standard 4-3.3.

²⁵ *Id.* at Standard 4-4.1.

²⁶ *Id.* at Standard 4-4.6.

²⁷ *Id.* at Standards 4-3.1, 4-3.3, 4-3.9, 4-5.1, and 4-5.4.

²⁸ *Id.* at Standards 4-6.1, 4-6.2, and 4-6.3.

²⁹ *Id.* at Standards 4-3.2, 4-7.11, and 4-8.1.

³⁰ *Id.* at Standard 4-4.6.

guilty pleas.”³¹ In that case, the United States Supreme Court quoted with approval the following statement from a Yale Law Journal article: “[P]lea bargaining...is not some adjunct to the criminal justice system; it is the criminal justice system.”³²

The ABA Criminal Justice Standard related to the Defense Function, 4 6.1(b), Duty to Explore Disposition Without Trial (Plea), provides as follows:

In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer (plea) **unless and until appropriate investigation and study of the matter has been completed**. Such study should include discussion with the client and an analysis of relevant law, the prosecution’s evidence, and potential dispositions and relevant collateral consequences. Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client’s best interest.³³

IJA-ABA Juvenile Standards

In addition to the ABA Criminal Justice Standards for the Defense Function, the ABA, in coordination with the Institute of Judicial Administration (IJA), drafted comprehensive standards for all aspects of juvenile proceedings.³⁴ Though somewhat older than the Defense Function Standards and not exclusively applicable to defense attorneys, these standards contain certain core principles that influence the nature of considerations and arguments to be made by defense counsel. For example, the Standards provide before a juvenile may accept a plea, it must be determined that the respondent “has the mental capacity to understand his or her legal rights in the adjudication proceeding and the significance of such a plea.”³⁵ This Standard requires that before permitting a juvenile to plead, a defense attorney must have conducted a social history review, including understanding the juvenile’s school history, as well as any records pertaining to intellectual disability or mental illness.

ABA Criminal Justice Standards on Criminal Appeals

The Criminal Appeals standards include standards on transitioning a criminal case from trial counsel to appellate counsel, as well as the duties of counsel during the appellate phase. For example, Standard 21-1.2 of the ABA Criminal Justice Standards on Criminal Appeals³⁶ states:

The purposes of the first level of appeal in criminal cases are:

- (i) to protect defendants against prejudicial legal error in the proceedings leading to conviction and against verdicts unsupported by sufficient evidence;
- (ii) authoritatively to develop and refine the substantive and procedural doctrines of criminal law; and

³¹ *Missouri v. Frye*, 132 S.Ct.1399, 1407 (2012).

³² *Id.* (quoting R. E. Scott & W. J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L.J. 1909, 1912 (1992)).

³³ ABA Criminal Justice Standards for the Defense Function at Standard 4-6.1(b)(emphasis added).

³⁴ IJA-ABA Standards for Juvenile Justice (1996), available at https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/JJ/JJ_Standards_Adjudication.pdf.

³⁵ *Id.* at Adjudication, Standard 3.1(A).

³⁶ ABA Standards for Criminal Justice, Criminal Appeals (1978), available at https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_crimappeals_toc/.

(iii) to foster and maintain uniform, consistent standards and practices in criminal process.³⁷

Accordingly, undertaking a first level appeal in a criminal case requires not only familiarity with the record below, but also the substantive law and procedural rules at issue in the case.

ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

The ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases³⁸ cover the special nature of abuse and neglect proceedings, as well as the duties of parental counsel. These duties include:

- Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.³⁹
- Conduct a thorough and independent investigation at every stage of the proceeding.⁴⁰
- Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.⁴¹

Rules of Professional Conduct

All lawyers in Indiana, including public defenders, are required to abide by the Indiana Rules of Professional Conduct.⁴² The Rules not only address the responsibilities of lawyers in representing a particular client, but also concern when a lawyer is not permitted to represent a client or must withdraw. Pertinent and identical rules of the Indiana Rules of Professional Conduct and the ABA's Model Rules of Professional Conduct⁴³ applicable to this study include the following:

Rule 1.1 Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 Diligence: A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.7(a) Conflict of Interest: Current Clients: Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or

³⁷ *Id.* at Standard 21-1.2.

³⁸ ABA Standards of Practice of Attorneys Representing Parents in Abuse and Neglect Cases (2006), available at https://www.americanbar.org/content/dam/aba/administrative/child_law/aba-parent-rep-stds.pdf.

³⁹ *Id.* at Standard 11.

⁴⁰ *Id.* at Standard 19.

⁴¹ *Id.* at Standard 26.

⁴² ABA Model Rules of Professional Conduct, available at https://www.in.gov/judiciary/rules/prof_conduct/#_Toc461714653.

⁴³ Indiana first adopted the ABA Model Rules of Professional Conduct in 1986.

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Rule 1.16(a)(2) Declining or Terminating Representation: Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law;

Rule 6.2(a) Accepting Appointments: A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause such as when . . . representing the client is likely to result in violation of the Rules of Professional Conduct or other law.

An ABA Ethics Opinion interprets these ethical rules to require public defenders to limit workloads to ensure that they can represent each client with the competence and diligence required.⁴⁴

C. Public Defense in Indiana

In Indiana, public defense historically was organized and administered on the county level. When the Indiana Supreme Court recognized the right to counsel in 1854, it did so by upholding a judge's order that the county pay for the indigent individual's defense attorney. County-based structures permit for extraordinary differences in both funding and quality of public defense services within a state. For this reason, the ABA Ten Principles of a Public Defense Delivery System provide, "Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide."⁴⁵ In 1989, the Indiana General Assembly created the Indiana Public Defender Commission, primarily to address concerns regarding the quality of counsel appointed in death penalty cases.⁴⁶ In 1993, the legislature broadened the statutory scope of the Commission to include non-death penalty cases.⁴⁷ The Commission is directed to:

- Adopt guidelines and standards for indigent defense services, including on minimum and maximum caseloads of public defender offices and contract attorneys;
- Make recommendations concerning the delivery of indigent defense services in Indiana; and
- Make an annual report to the Governor, the General Assembly, and the Supreme Court.⁴⁸

⁴⁴ ABA Ethics Committee, Formal Ethics Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf.

⁴⁵ Commentary to Principle 2, ABA Ten Principles of a Public Defense Delivery System (2002). In *Gideon*, the Supreme Court laid the responsibility of providing the right to counsel on the states, noting that "a provision of the Bill of Rights which is fundamental and essential to a fair trial is made obligatory upon the States by the Fourteenth Amendment." *Gideon*, 372 U.S. at 342.

⁴⁶ Ind. P.L. 284-1989.

⁴⁷ Ind. P.L. 283-1993.

⁴⁸ Indiana Code §§ 33-40-5-4(2)-(4).

Caseload Standards

The Indiana Public Defender Commission’s maximum caseload standards for full-time public defenders are established in Standard J of the Commission’s Standards for Indigent Defense Services in Non-Capital Cases.⁴⁹ The Standard establishes the maximum number of cases that can be assigned to a full-time public defender with adequate support staff during a 12-month period, as well as the reduction in those maximum standards applicable when the public defender does not have adequate support staff. To have adequate support staff, the public defender must be supported by a secretary/paralegal (1 for every 4 full-time attorneys), paralegal/investigator (1 for every 4 full-time attorneys), and other litigation support (social worker, mitigation investigator, etc.) (1 for every 4 full-time attorneys). In other words, to have adequate support staff, Standard J requires 3 support staff for every 4 full-time time attorneys (or .75 support staff/trial attorney). For appellate defenders, there must be 1 support staff (paralegal, secretary or law clerk) for every 4 full-time attorneys.⁵⁰ The maximum allowable caseloads in Standard J are as follows.

Case Type	Full-time <i>with</i> Adequate Support Staff⁵¹	Full-time <i>without</i> Adequate Support Staff⁵²
(Adult) Misdemeanors	400	300
(Adult) Level 6 Felonies	200	150
(Adult) Murder; Felonies (Level 1-5)	120	100
Juvenile Status	500	400
Juvenile Misdemeanor	400	300
Juvenile Miscellaneous	400 ⁵³	400
Juvenile Felony (Level 6)	300	250
Juvenile Felony (Level 1-5)	250	200
Juvenile Probation Violation	500	400
CHINS	150	120
TPR	150	120
Appeal (Trial)	25	20
Appeal (Guilty Plea)	50	40

⁴⁹ Standard J, Indiana Public Defender Commission, Standards for Indigent Defense Services in Non-Capital Cases (2016), available at <https://www.in.gov/publicdefender/files/indigent-defense-non-cap.pdf>.

⁵⁰ *Id.* at Table 2. It should be noted that in the years since Standard J was updated, greater emphasis has been placed on the importance of investigators, social workers, and mitigation specialists in public defense, as opposed to secretary and paralegal support.

⁵¹ *Id.* at Table 3.

⁵² *Id.* at Table 1.

⁵³ The Juvenile Miscellaneous standard as printed here is what was published on the Indiana Public Defender Commission website at the time of this study. During the review of this study, it was discovered that the number published on the website did not correctly reflect the standard adopted by the Commission. The correct standard as adopted, and as used by the Commission, is identical for those of Juvenile Status cases - 500 for full-time with adequate support staff and 400 for full-time without adequate support staff. This error did not dramatically alter the findings because there are not many Juvenile Miscellaneous appointments.

Reimbursement Program

The Commission is authorized to reimburse counties for 50% of their defense expenditures in capital (death penalty) cases and up to 40% of their expenditures in non-death penalty cases, excluding misdemeanors.⁵⁴ Reimbursement is authorized not only for adult criminal felony cases, but also for juvenile delinquency cases, Children in Need of Services (CHINS) cases, Termination of Parental Rights (TPR) cases, and the appeals of these cases.⁵⁵

To receive reimbursement in non-capital cases, counties must agree to abide by the Commission's standards for defense services. Of the 92 counties, 62 (67%) participated and received reimbursement in the 2018-2019 fiscal year.⁵⁶ The participating counties represent over two-thirds of Indiana's population. The Commission reimbursed these counties more than \$27.5 million in 2018-2019.⁵⁷

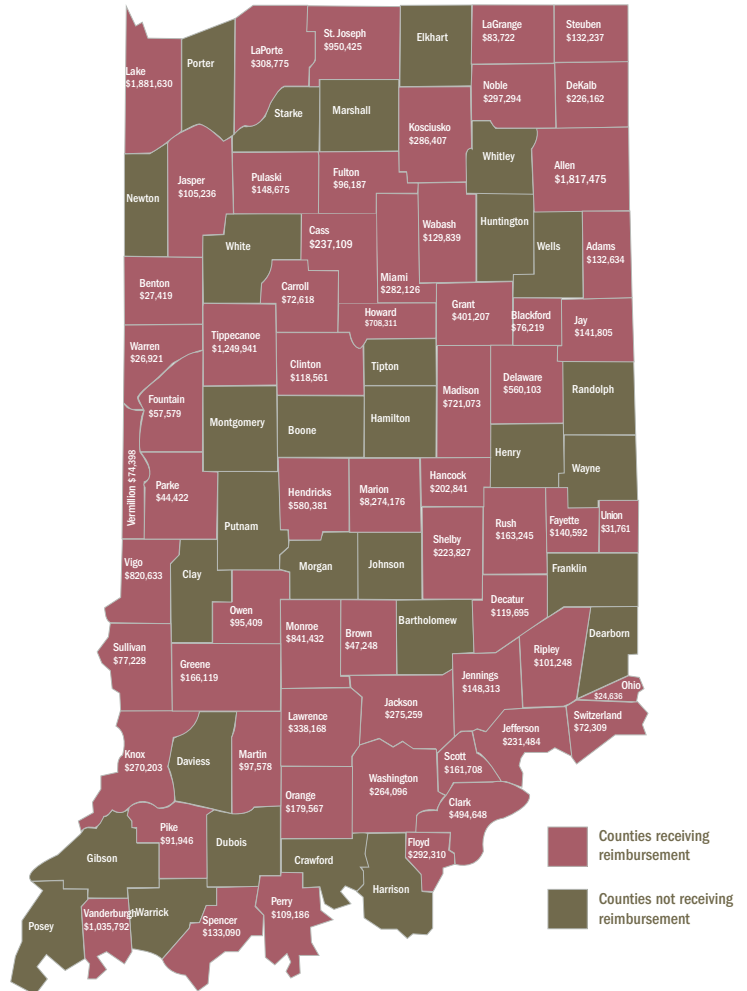
For various reasons, 30 counties did not opt-in to the Commission standards and seek reimbursement in 2018-2019. Counties are not required to give a reason for not participating in the Commission's reimbursement program, but historically such reasons have included a desire to retain local control over public defense or an inability to meet the attorney qualification standards of the Commission.

Counties that do not participate in the Commission reimbursement program are also not required to provide any information on public defense services to the Commission. As a result, there is no entity in the State of Indiana that has comprehensive information on public defense services – providers, caseloads, etc. – for the entire state.

III. Public Defense Workload Study Methodology

Chart: Participation in Commission's Reimbursement Program by County

2018-2019




⁵⁴ 2018-2019 Annual Report of the Indiana Public Defender Commission, available at <https://www.in.gov/publicdefender/files/2018-2019%20Annual%20and%20Letter.pdf>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*



Following the approach used in other ABA SCLAID studies, a public defense workload analysis is a two-step endeavor: (1) a Delphi study, which seeks to determine appropriate public defense caseload standards, based on factors particular to Indiana; and (2) a data analysis, which examines available historical caseloads and staffing data.

A. The Delphi Method⁵⁸

The Delphi method was introduced in 1962 by researchers at the Rand Corporation. The method was described as a “new” research technique utilized by the Air Force in the 1950s to gather expert opinion and generate a reliable consensus.⁵⁹ As a methodological strategy, the Delphi method proposed that a succession of surveys be given to a group of experts, with structured feedback presented to the experts at each interval stage. The surveying practices applied by the Delphi method could be interviews or questionnaires that focus on fundamental questions of significance to the expert group convened for the purpose of obtaining their views.

The features of this method include “anonymity, iteration, controlled feedback, and the statistical aggregation of group response.”⁶⁰ At the onset of the process, participants in a Delphi group are largely anonymous from one another. The purpose of anonymity is to ensure that solicited experts are not influenced by the responses of other participants and that the ideas presented are judged on their own merit. This technique is believed to be conducive to the exercise of independent thought on the part of participating experts (individuals who are experienced and knowledgeable in the topic being addressed and participate in the Delphi panel) and to aid experts in forming thoughtfully considered opinions.

The reliance on expert opinion as data is built on the premise that an expert is “able to select the needed items of background information, determine the character and extent of their relevance, and apply these insights to the formulation of the required personal probability judgments.”⁶¹ Experts typically complete a questionnaire over multiple iterations with the goal of allowing participants to change their opinions and judgments when presented with controlled feedback regarding the opinions and judgments of their fellow participants. This controlled feedback is normally presented as a statistical summation of the group’s responses, *e.g.*, a mean or median. The structured feedback at each successive iteration consists of “available data previously requested by ... the experts ... or of factors and considerations suggested as potentially relevant by one or another respondent.”⁶²

The goal of the feedback at each stage is to assist in limiting mistaken beliefs an expert may have

⁵⁸ This literature review on the Delphi Method is derived from *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, prepared by RubinBrown on behalf of the ABA’s Standing Committee on Legal Aid and Indigent Defendants. The Missouri Project provided a national blueprint for workload studies such as this one. Available at https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_5c_the_missouri_project_report.authcheckdam.pdf.

⁵⁹ Norman Dalkey & Olaf Helmer, RM-727, *An Experimental Use of the Delphi Method to the Use of Experts* 1 (1962), available at http://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf.

⁶⁰ Gene Rowe & George Wright, *The Delphi Technique as a Forecasting Tool: Issues and Analysis*, 15 INT’L J. FORECASTING 353, 354 (1999), available at <https://www.sciencedirect.com/science/article/abs/pii/S0169207099000187>.

⁶¹ Olaf Helmer & Nicholas Rescher, P-1513, *On the Epistemology of the Inexact Sciences* 42 (1958) available at <http://www.rand.org/content/dam/rand/pubs/papers/2005/P1513.pdf>.

⁶² Dalkey & Helmer, *supra* note 59, at 2.

on the question at hand or to increase their awareness of other information they may not previously have considered.⁶³

At the conclusion of the final iteration, the final iteration's mean or median response is used as the measure of the group's opinion.⁶⁴ In theory, the number of iterations required of the Delphi method can be unlimited until consensus among participants is achieved. However, it has been found that three to four iterations is usually all that is required to reach consensus.⁶⁵

B. Reliability of the Delphi Method

Rowe and Wright systematically reviewed studies that explored the effectiveness of the Delphi method. Their focus was on how well the Delphi method worked in producing a consensus of opinions and judgments and to assess how accurate those opinions and judgments were.

Overall, they found that the majority of these evaluative studies showed support for the Delphi method in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved. As for the concern over the accuracy of those opinions and judgments, Rowe and Wright again found that the majority of studies provide compelling evidence in support of the Delphi method. Compared to other methodological techniques used for similar purposes, the Delphi method was found to “lead to improved judgments over staticized groups and unstructured interacting groups.”⁶⁶

Since its introduction, the Delphi method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.⁶ The purpose of its use beyond forecasting has included “program planning, needs assessment, policy determination, and resource utilization.”⁶⁸ Examples of these attempts were sponsored by both the National Association of Court Management (“NACM”) and the National Center for State Courts (“NCSC”). These efforts were principally charged with assessing judicial and court support staff needs.⁶⁹

C. Use of Delphi Method to Determine Public Defender Caseload Standards

In the 2000's, the National Center for State Courts used Delphi techniques in addressing the caseload and workload crisis of public defense in their weighted caseload studies. In his book on public defender caseloads, Professor Norman Lefstein commented on this use of the Delphi method, noting:

The technique is recommended when a problem does not lend itself to precise measurement and can benefit from collective judgments. This would seem to be precisely the situation when a defense program seeks to determine how much additional time, on average, its lawyers need to spend on a whole range of activities involving different kinds of

⁶³ *Id.* at 2-3.

⁶⁴ Rowe & Wright, *supra* note 60, at 354.

⁶⁵ Chia-Chien Hsu & Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus*, 12 PRAC. ASSESSMENT, RES. & EVALUATION 1 (2007), available at <http://pareonline.net/pdf/v12n10.pdf>.

⁶⁶ Rowe & Wright, *supra* note 60, at 366.

⁶⁷ Harold A. Linstone & Murray Turoff, *The Delphi Method: Techniques and Applications* 10–11 (2002), available at <https://web.njit.edu/~turoff/pubs/delphibook/delphibook.pdf>; Rowe & Wright, *supra* note 60, at 355.

⁶⁸ Hsu & Sandford, *supra* note 65, at 1. For detailed examples of the application of the Delphi method, see LINSTONE & TUROFF, *supra* note 67.

⁶⁹ See, e.g., Victor E. Flango & Brian J. Ostrom, Nat'l Center For State Courts, *Assessing the Need for Judges and Court Support Staff* (1996).

cases.⁷⁰

In seeking to undertake a public defender caseload study in Missouri, ABA SCLAIID partnered with RubinBrown to both select a methodology and execute an analysis that would, using data and analytics, result in reliable caseload standards. After an exhaustive literature review, RubinBrown concluded that the Delphi method was a reliable research tool to determine the appropriate workload for a public defender office because it was capable of generating a reliable consensus of expert opinion. The experts in a public defender workload Delphi study are experienced defense attorneys, both private practitioners and public defenders, with in depth knowledge of practice in the jurisdiction. These individuals serve as panelists in the Delphi process.

RubinBrown and ABA SCLAIID utilized the Delphi method to complete The Missouri Project, a public defender workload study, which included a National Blueprint for conducting future workload studies.⁷¹ In these studies, the Delphi process is driven, not by actual time data provided to the Delphi panel participants, but by the Standards applicable to public defense practice discussed above – the ABA Criminal Justice Standards and the state Rules of Professional Responsibility.⁷²

In the years since The Missouri Project, ABA SCLAIID has conducted three additional public defender workload studies in collaboration with two additional accounting and consulting firms: Louisiana (Postlewaithe and Netterville, APAC),⁷³ Rhode Island (Blum Shapiro)⁷⁴ and Colorado (RubinBrown).⁷⁵ In each instance, the accounting and consulting firm reviewed and approved the use of the Delphi process, and conducted their services in accordance with the Standards for Consulting Services, as established by the American Institute of Certified Public Accountants.

Additionally, in 2018, the RAND Corporation was contracted to conduct a public defense workload analysis in Michigan. In undertaking the project, the RAND Corporation conducted a comprehensive review of all prior methodologies for workload studies and discussed, at length, the ABA SCLAIID public defense workload studies. The RAND analysis concludes that a number of recently-conducted public defense workload studies, including all those conducted in conjunction with ABA SCLAIID and using the Delphi Method, “provided well-tested models,” which were then used as a basis for designing RAND’s public defense workload project in Michigan.⁷⁶

D. The Historical Caseload Analysis

⁷⁰ Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, 146 (American Bar Association 2011), available at https://www.americanbar.org/groups/legal_aid_indigent_defendants/indigent_defense_systems_improvement/publications/case_guidebook/.

⁷¹ *The Missouri Project*, supra note 58.

⁷² These standards are included in the Delphi surveys and are also discussed at length prior to the start of the in-person meeting of the Delphi panel.

⁷³ *The Louisiana Project* is available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf.

⁷⁴ *The Rhode Island Project*, which was also conducted with the National Association of Criminal Defense Lawyers, is available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf.

⁷⁵ *The Colorado Project* is available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf.

⁷⁶ Nicholas M. Pace, et al., *Caseload Standards for Indigent Defenders in Michigan*, RAND (2019), available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR2900/RR2988/RAND_RR2988.pdf.

The historical caseload analysis is a comprehensive review of the available current and historical workload of the public defense system. It seeks to accurately describe the current state of public defense in the jurisdiction or what we call “the world of is.”⁷⁷

The historical caseload analysis includes, whenever possible, staffing numbers (FTE) and caseloads for public defense attorneys/providers going back, ideally, at least three years.⁷⁸ This data may be gathered directly from the public defense system but may also require data to be gathered from the courts or other relevant agencies. Additionally, when possible, the analysis should include timekeeping data showing how current public defense attorneys are expending their time.⁷⁹ Timekeeping data tracks time spent by particular attorneys on specific tasks and the particular type of case for which the task is being done.

In each of the previous ABA SCLAIID public defense workload studies detailed above, the consultants conducted a wide-ranging analysis of the data sources and data available and determine how to obtain the best possible data. Once obtained, they analyzed and summarized the data, particularly the staffing, as full-time equivalents (FTEs), and caseload data, and compared it to the standards generated through the Delphi study. Specifically, the annual caseloads by Case Type were multiplied by the Delphi panel results for each Case Type to produce an estimated annual workload. This was compared to the current FTE hours⁸⁰ to determine how many additional FTEs were required to provide reasonably effective assistance of counsel pursuant to professional norms in the jurisdiction.

IV. Methodology and Analysis in Indiana

⁷⁷ This stands in contrast to the Delphi study which describes “the world of should.”

⁷⁸ See The Louisiana Project, *supra* note 73 at 7-10.

⁷⁹ Timekeeping with sufficient accuracy and consistency to allow for reliable comparisons has proven difficult in several jurisdictions, including Louisiana. See *id.* If accurate and consistent timekeeping can be obtained, it is very useful for management purposes after the Delphi study is concluded. It is noteworthy, however, that timekeeping data, even if accurate and consistent, is never shown to a Delphi panel under the research methodology determined to be appropriate by all of the econometrics experts in these ABA SCLAIID studies. The applicable law and standards, not current practices evidenced by timekeeping, are the principal grounding or “anchor” for the consensus professional judgment of the Delphi panel. As a term of art in the science of research methodology, an anchor is used to constrain the consensus professional judgment of the Delphi panel. Prior experience with the use of timekeeping as the principal anchor for the consensus professional judgment of the Delphi panel demonstrates that timekeeping data has a strong tendency to institutionalize current bad practices. By contrast, the instructions to the Delphi panel regarding the law and standards as the principal anchor for their consensus of professional judgment serve much the same function as jury instructions, guiding the exercise of the professional judgement of each of the panel members.

⁸⁰ In Indiana, full time hours per employee (1 FTE) are assumed at 2,080 (40 hours/week for 52 weeks/year). The 2,080 annual hour number for annual work is undoubtedly conservative, as it does not permit any time for administrative or supervisory work, general meetings, training, travel time, wait time, or other time not devoted to case-specific legal work. It also is not discounted to allow for public holidays, sick leave or vacation.

A. The Delphi Process in Indiana

As was done in prior ABA SCLAID workload studies, the Delphi methodology was used to provide an estimate of what workload standards *should be* in order for a public defender in Indiana to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The Delphi process used in Indiana, as it has in other jurisdictions, relied upon the expertise of both private practice attorneys and public defense attorneys to supply a consensus estimate of the amount of time defense counsel *should* expect to spend on a particular case in order to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

1. Standards and Definitions

In consultation with the Indiana Public Defender Commission, ABA SCLAID determined that four separate Delphi panels were needed in Indiana to cover four major areas of practice in which public defense providers are utilized: (1) Adult Criminal; (2) Juvenile; (3) Appeals; and (4) Children in Need of Services (“CHINS”). The panel areas selected correspond to the areas of specialization most often practiced by defense attorneys in Indiana.⁸¹

The Indiana Public Defender Commission then worked to select approximately 10 experienced and knowledgeable defense attorneys, public defenders and private practitioners, in each of the Delphi practice areas to consult with the research team on survey design. These Consulting Panels (one for each Delphi area) met with research team personnel and selected the Case Types and Case Tasks for the Delphi process.

*Case Type*⁸² is a way to group offenses of roughly similar complexity. Examples of Case Types for adult criminal might include: homicide cases, high level felonies, sex felonies, misdemeanor cases, and probation violations. While it is understood that, within a Case Type, case complexity can vary greatly, these groupings help create overall categories of cases that share similar complexity and types of tasks that are performed during representation.

Case Task is a way to group common tasks performed by an attorney. Examples of Case Tasks include: client communication, discovery, attorney investigation, and motions/other writing.

⁸¹ Initial workload studies, such as the one completed in Missouri, utilized a single Delphi panel. However, use of a single Delphi panel for a broad range of Case Types often did not accurately reflect how most public defense attorneys practice. While the same attorney may represent clients in misdemeanor and felony cases, it is relatively rare that such an attorney also takes appeals. As a result, many appellate attorneys participating in the Delphi panel could only answer questions regarding one Case Type, *e.g.*, appeals. Additionally, having only one or two Case Types in specialist areas, such as appeals and juvenile cases, may not provide the adequate level of distinction necessary for these specialist practitioners to make accurate time estimates. For example, a juvenile defender has a difficult time thinking about a typical juvenile case when such cases range from status violations to serious assaults and even murder. Over the several ABA public defense workload studies, this resulted in the number of Case Types increasing. For example, in the Colorado workload study, there were 18 Case Types, including three juvenile Case Types. However, this number of Case Types is difficult to manage. To address this problem, the use of specialty Delphi panels, with separate surveys, was first utilized in Texas.

⁸² The Delphi Case Types are chosen by the Consulting Panels and do not necessarily mirror whatever statutory case types may exist in the study jurisdiction.

a) *Indiana Adult Criminal: Case Types/Case Tasks*

The Consulting Panel on adult criminal identified 8 Case Types and 12 Case Tasks.

Table: Consulting Panel Results – Adult Criminal	
Case Type	Case Tasks⁸³
Misdemeanor	Client Communication
Problem-Solving	Client Support Services
Low-Level Felony (Level 5-6)	Discovery/Case Preparation
Mid-Level Felony (Level 3-4)	Depositions/Taped Statements
High-Level Felony (Level 1-2)	Attorney Investigation/Attorney Interviews
Non-Capital Murder (Non-LWOP)	Experts
Non-Capital Murder (LWOP) ⁸⁴	Legal Research, Motions Practice, Other Writing
Probation/Community Corrections Revocations	Negotiations
	Court Preparation
	Court Time
	Sentencing/Mitigation
	Post-Judgment

b) *Indiana Juvenile: Case Types/Case Tasks*

The Juvenile Consulting Panel in Indiana chose 6 Case Types and 13 Case Tasks

Table: Consulting Panel Results – Juvenile	
Case Type	Case Tasks⁸⁵
Status Offenses	Client Communication
Misdemeanor/Juvenile Miscellaneous	Parent/Guardian/Custodian Communication
Low-Level Felony (Level 5-6)	Client Support Services
High-Level Felony (Level 1-4)	Discovery/Case Preparation
Waiver Felony (Non-Murder)	Depositions/Taped Statements
Murder (Waiver or Non-Waiver)	Attorney Investigation/Attorney Interviews
	Experts
	Legal Research, Motions Practice, Other Writing
	Negotiations
	Pre-Adjudication Court Preparation
	Disposition
	Court Time
	Post-Disposition

c) *Indiana CHINS: Case Types/Case Tasks*

⁸³ The Adult Criminal Consulting Panel agreed on comprehensive definitions for the Case Tasks. These definitions are included at Appendix A.

⁸⁴ LWOP stands for Life Without Possibility of Parole. Although LWOP/Non-LWOP is not a designation obtainable currently in murder case dockets, the Adult Criminal Consulting Panel determined that LWOP was a critical driver of time and that LWOP murder cases needed to be a separate case type of non-LWOP murder cases.

⁸⁵ The Juvenile Consulting Panel agreed on comprehensive definitions for the Case Tasks. These definitions are included at Appendix B.

The CHINS Consulting Panel in Indiana chose 3 Case Types and 11 Case Tasks.

Table: Consulting Panel Results – CHINS	
Case Type	Case Tasks ⁸⁶
CHINS – No Removal ⁸⁷	Client Communication Discovery/Case Preparation Depositions/Taped Statements Experts Legal Research, Motions Practice, Other Writing Court Preparation Court Time through Disposition ⁸⁸ Appeal Preparation Post-Disposition Client Services ⁸⁹ Post-Disposition Hearing Preparation Post-Disposition Court Time
CHINS – Removal	
Termination of Parental Rights	

d) *Indiana Appeals: Case Types/Case Tasks*

The Appeals Consulting Panel in Indiana chose 7 Case Types and 12 Case Tasks.

Table: Consulting Panel Results – Appeals	
Case Type	Case Tasks ⁹⁰
Criminal/Miscellaneous ⁹¹ – Record below 250 pages	Client Communication Pre-Notice Motions Practice Initiation of Appeal (Direct Review) Record Review (Direct Review) Initial Appellate Brief (Direct Review) Reply Brief (Direct Review) Appellate Motions Practice (Direct Review) Oral Argument (Direct Review) Discretionary Review Motions Practice Oral Argument (Discretionary Review) Post-Decision Practice Petition for Certiorari
Criminal/Miscellaneous – Record 250-1000 pages	
Criminal/Miscellaneous – Record over 1000 pages	
LWOP Cases	
CHINS	
TPR	
Interlocutory Appeals	

⁸⁶ The CHINS Consulting Panel agreed on comprehensive definitions for the Case Tasks. These definitions are included at Appendix C.

⁸⁷ Although removal is not an event currently documented or denoted in a case docket, the CHINS Consulting Panel determined that CHINS cases should be divided into cases in which a child was removed from the home and cases in which no child was removed from the home. The Consulting Panel viewed removal as a critical driver of time.

⁸⁸ For TPR cases, this Case Task was simply listed as Court Preparation.

⁸⁹ For TPR cases, all post-disposition Case Tasks were not shown as they are not applicable.

⁹⁰ The Appeals Consulting Panel agreed on comprehensive definitions for the Case Tasks. These definitions are included at Appendix D.

⁹¹ Please note that a Criminal/Miscellaneous case type does not include LWOP, CHINS, TPR or Interlocutory Appeals.

2. Participant Selection

The lawyers selected to participate in each of the Delphi Panels were initially identified by Commission staff, public defenders, private practitioners and judicial officers around the state. Each of these individuals was asked to identify practitioners with experience and expertise in each of the Delphi areas [Adult Criminal, Juvenile, Appeals, and CHINS] and whose work on behalf of clients was well-respected. When an individual practiced in two of the Delphi areas, e.g. Adult Criminal and Juvenile, they were permitted to serve on both Delphi panels.

In collecting names of potential panel participants, the Commission and ABA SCALID sought to ensure that the proposed Delphi panel participants reflected the diversity of the defense community in terms of geography within the state, gender and race. The Commission and ABA SCLAIID also sought to have each Delphi panel include a mix of public defense attorneys and private practitioners.

Panel participants were then reviewed by a Selection Panel of three highly-esteemed individuals in the Indiana legal community – including a former Supreme Court Justice, a current Magistrate and a nationally-renowned private practice defense attorney. Selection Panel members were asked to review the proposed Delphi participant lists and strike the names of any proposed participants they believed lacked the requisite expertise, experience and respect. Selection Panel members could also add names to any of the Delphi participant list. Following review by the Selection Panel, the list of participants on each Delphi panel was considered final.

Table: Delphi Process Panels and Roles

Panel Name	Role Details
Consulting Panel	The Consulting Panel for each Delphi area consults with the research team on survey design, selecting the Case Types and Case Tasks to be included. Each Consulting Panel was made up of approximately 10 experienced and knowledgeable defense attorneys in their Delphi area. In Indiana, there were four Delphi areas, each a specialized area of defense practice: (1) Adult Criminal Defense; (2) Juvenile Defense; (3) CHINS/TPR; and (4) Appeals.
Selection Panel	The Selection Panel was made up of three highly-esteemed individuals in the Indiana legal community. This Panel reviewed the lists of proposed participants in the Delphi Panels and were able to add or strike names from those lists.
Delphi Panels	The attorneys approved by the Selection Panel to participate in the Delphi process. Participants include both private practice defense attorneys and public defenders. Each participant must have experience and expertise in defense practice in Indiana in the practice area to be covered by their Delphi Panel: (1) Adult Criminal Defense; (2) Juvenile; (3) CHINS/TPR; and (4) Appeals.

3. Online Surveys

Round One – Online Survey

In Round One, the members of each Delphi panel were asked to complete an online survey. The substance of the survey was developed by ABA SCLAID, and the survey was produced and administered by Crowe using an online survey tool. The survey questions were designed to ascertain how much time a lawyer should devote to each Case Task in each of the different Case Types identified to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The panel was also asked in what percentage of that Type of case the Task would have to be performed. For Adult Criminal, Juvenile and CHINS, the questions were further divided into cases in which the ultimate outcome is decided by a Trial/Disposition and those that result in a Plea/Dismissal.

At the start of the process, the expert panel of participants was instructed to use the relevant Standards and Rules, discussed at length above, as well as their own expertise to complete the online survey. A link to the relevant Standards and Rules were provided in the survey. Additionally, the participants were instructed to assume (1) appropriate investigative resources; (2) only to record attorney time on tasks; and (3) provide the time estimate for a typical case of the particular Case Type, e.g. a typical high level felony or a typical misdemeanor.

For each Case Type, a preliminary question was asked to determine whether the participant represents individuals in that Case Type. Survey respondents were permitted to answer questions only for Case Types that they handle. If, for example, an attorney responded that they did *not* represent individuals in Misdemeanor cases, the survey would automatically redirect to the next Case Type.

For each Case Type, the survey asked one preliminary substantive question: What percentage of [Case Type] cases *should* go to trial (reach Disposition) vs. plead guilty (or other disposition). Thereafter, the survey presented as a chart asking the participant to answer the following two questions about the different Case Tasks, both for cases that Plead Guilty and cases that Go to Trial:

1. When this task is performed, how much time is sufficient to perform the task with reasonable effectiveness under prevailing professional norms?

and

2. In what percentage of cases should these tasks be performed?

On the form, each Case Task had a link to its definition.

Chart: Round One Survey

	- Cases that PLEAD GUILTY -				- Cases that GO TO TRIAL -			
	Minutes per case when task is performed *		% of cases in which task should be performed *		Minutes per case when task is performed *		% of cases in which task should be performed *	
Client Communication	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Client Support Services	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Discovery/ Case Preparation	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Depositions/ Taped Statements	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Attorney Investigations/ Attorney Interviews	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Experts	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Legal Research, Motions Practice, Other Writing	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Negotiations	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Court Preparation	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Court Time	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Sentencing/Mitigation	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	
Post Judgement	<input type="text"/>	min	<input type="text"/>	%	<input type="text"/>	min	<input type="text"/>	%
	*		*		*		*	

Round Two – Online Survey with Feedback

The panel of attorneys who participated in Round One in each Delphi area was sent the online survey for Round Two for that practice area. Round Two was identical to Round One, with one important difference: the survey participants were given summary statistics of the panel's responses to Round One.

Chart: Round Two Survey

	- Cases that PLEAD GUILTY -						- Cases that GO TO TRIAL -					
	Minutes per case when task is performed *	Peer Mean	Peer Range	% of cases in which task should be performed *	Peer Mean	Peer Range	Minutes per case when task is performed *	Peer Mean	Peer Range	% of cases in which task should be performed *	Peer Mean	Peer Range
<u>Client Communication</u>	<input type="text"/>	74 min	60 - 120 min	<input type="text"/>	100%	100-100%	<input type="text"/>	174 min	109 - 240 min	<input type="text"/>	100%	100-100%
Client Support Services	<input type="text"/>	35 min	15 - 60 min	<input type="text"/>	64%	35-100%	<input type="text"/>	45 min	26 - 60 min	<input type="text"/>	73%	43-100%
Discovery/ Case Preparation	<input type="text"/>	60 min	30 - 98 min	<input type="text"/>	100%	100-100%	<input type="text"/>	146 min	86 - 240 min	<input type="text"/>	100%	100-100%
Depositions/ Taped Statements	<input type="text"/>	48 min	30 - 60 min	<input type="text"/>	30%	18-53%	<input type="text"/>	108 min	60 - 120 min	<input type="text"/>	89%	48-100%
Attorney Investigations/ Attorney Interviews	<input type="text"/>	45 min	30 - 60 min	<input type="text"/>	79%	50-100%	<input type="text"/>	83 min	60 - 120 min	<input type="text"/>	99%	90-100%
Experts	<input type="text"/>	36 min	12 - 60 min	<input type="text"/>	15%	5 - 26%	<input type="text"/>	64 min	30 - 120 min	<input type="text"/>	34%	19 - 63%
Legal Research, Motions Practice, Other Writing	<input type="text"/>	51 min	30 - 60 min	<input type="text"/>	52%	36-75%	<input type="text"/>	100 min	58 - 120 min	<input type="text"/>	90%	68 - 100%
Negotiations	<input type="text"/>	37 min	20 - 60 min	<input type="text"/>	100%	100 - 100%	<input type="text"/>	59 min	30 - 98 min	<input type="text"/>	100%	100 - 100%
Court Preparation	<input type="text"/>	39 min	15 - 60 min	<input type="text"/>	100%	98 - 100%	<input type="text"/>	143 min	60 - 255 min	<input type="text"/>	100%	100 - 100%
<u>Court Time</u>	<input type="text"/>	48 min	28 - 70 min	<input type="text"/>	100%	100 - 100%	<input type="text"/>	288 min	120 - 510 min	<input type="text"/>	98%	80 - 100 %
Sentencing/Mitigation	<input type="text"/>	36 min	10 - 60 min	<input type="text"/>	95%	69 - 100 %	<input type="text"/>	58 min	19 - 120 min	<input type="text"/>	98%	79 - 100%
Post Judgement	<input type="text"/>	20 min	0 - 34 min	<input type="text"/>	35%	5 - 83 %	<input type="text"/>	40 min	5 - 60 min	<input type="text"/>	60%	18 - 100%

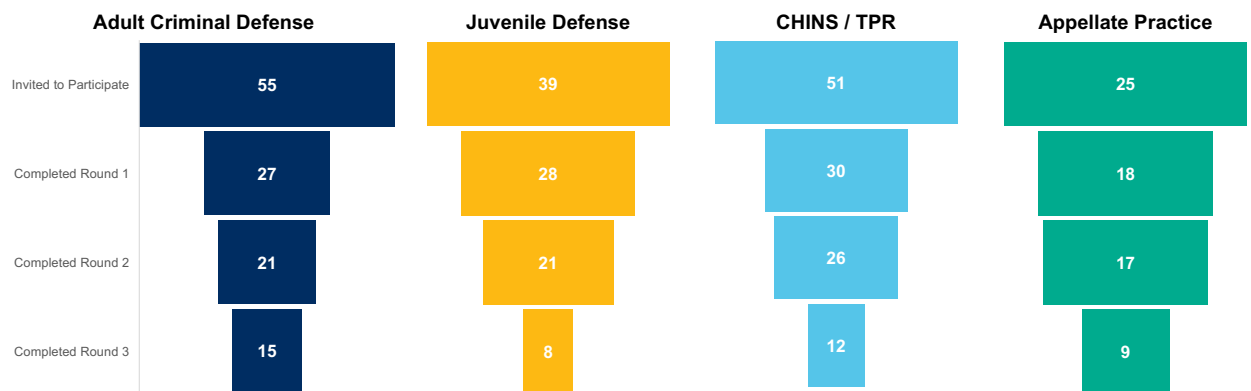
The summary statistics from Round One are intended to assist in informing the survey participants' responses for Round Two. Round Two participants were provided with a peer range and a peer mean of Round One responses for each question. The peer range that was presented was not the entire range of estimates received, but the middle 50% of responses from Round One were provided to Round Two panel participants. The peer mean is a single point estimate showing the average responses of the peer range of Round One participants.⁹² The peer mean and peer range responses were trimmed, prior to providing feedback, to eliminate outliers.

⁹² Average in this context is the mean of the estimates received by the survey respondents. It is meant to serve as a calculation of a central value of the set of estimates.

4. The In-Person Meeting

As a third and final iteration, the expert panelists for each Delphi area who had completed the Round Two survey were invited to participate in an in-person meeting. The purpose of this meeting was to discuss the Round Two survey results and to reach a group consensus for the time required for each Case and frequency estimate for each Case Type.

Because participation in each round requires participation in all previous rounds, attrition occurs throughout the Delphi process. The below charts show the attrition that occurred in each round of each of the Indiana Delphi panels:



Prior to beginning the round three in-person meeting, an ABA SCLAIID research team member provided an introduction, including an overview of relevant professional standards and ethical rules intended to guide participants' thinking in determining their recommendations. A Crowe team member then facilitated the discussion among the expert panel members for each Delphi area.

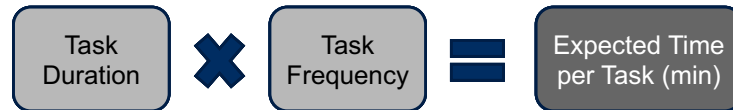
The summary statistics from Round Two showing the peer mean of all Round Two participants, as well as the peer range was projected on a large screen for the expert panel to see as a starting point for facilitated discussion. The Delphi panel participants⁹³ were then asked either to confirm the time and frequency estimates from the second survey round or provide a new estimate. As each of the task frequency or time frequency values was considered, participants were encouraged to publicly state a rationale and advocate for their views based on their best professional judgment. Following discussion, a vote was held with a two-thirds majority required to change the frequency or time estimate being considered. Further discussion ensued until at least two-thirds of participants indicated no further adjustments were needed. ABA SCLAIID members of the Research Team were present throughout the meeting and available to assist in the process, and to orient the expert panel to professional norms and standards of practice that should guide their thinking in determining their recommendations.

Votes were taken using a computer application available on mobile phones or tablets. The application allowed participants to respond and votes to be recorded anonymously. Frequency and time recommendations remaining after completing this process were aggregated to produce totals by offense level.

⁹³ Despite attrition, the Round Three Delphi participants included public defense attorneys and private practitioners of considerable experience from across Indiana. The Adult Criminal Delphi participants in Round Three, for example, had an average 27 years in practice and more than 400 years combined legal experience.

5. Delphi Process Conclusion

As a final step in the Delphi Process, the estimated Task Time and estimated Task Frequency reached by consensus of the expert panel were combined to arrive at an expected time that should be spent for each Case Task, on average. The formula below was used to make this calculation:



The expected time per task is interpreted as the amount of time that a public defender should expect to spend on any one Case Task and Case Type combination for the typical case. Where relevant, the Trial/Disposition and Plea/Other Disposition numbers were combined by multiplying the final time numbers in each category by the agreed upon consensus for what percentage of that Case Type should Go to Trial vs. Plead Guilty/Otherwise Resolve. The expected times for each Case Task were then summarized for each Case Type in arriving at the final Delphi Case Length (hours), which is a measure of the number of hours that a typical case of this Case Type should take while providing reasonably effective assistance of counsel pursuant to professional norms.

These numbers were then used to calculate Delphi Caseload Results, which are annualized caseloads or the number of cases of this type that can be handled by 1 attorney FTE in on year. This calculation assumes an attorney work year of 2,080 hours (40 hours/week; 52 weeks/year). In other words, this standard assumes all attorney time is devoted to case specific work and does not reduce time to account for administrative tasks, supervisory tasks, continuing education, group meetings, travel or wait time, holidays or vacation, among other things.

The tables below show the Delphi Case Length (hours) and Delphi Caseload Results for each of the four practice areas examined. The conclusions shown in these charts reflect a reliable consensus of expert opinion of the time an attorney should spend to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

Case Type	Delphi Case Length (Hours)	Delphi Annual Caseload
Misdemeanor	12.6	164.8
Low-Level Felony (Level 5-6)	22.0	94.5
Mid-Level Felony (Level 3-4)	42.6	48.9
High-Level Felony (Level 1-2)	68.2	30.5
Non-Capital Murder (Non-LWOP)	232.1	9.0
Non-Capital Murder (LWOP)	311.3	6.7
Probation/Community Corrections Revocations	8.5	243.7

⁹⁴ The Adult Criminal Delphi panel could not reach any conclusions regarding the Problem-Solving Case Type because it was determined, during the final in-person meeting, that there had been a misunderstanding about whether this case type concerned the handling of cases before they are transferred to a Problem-Solving Court or the handling of cases once in Problem-Solving Courts.

Table: Delphi Panel Results – Juvenile

Case Type	Delphi Case Length (Hours)	Delphi Annual Caseload
Status	4.6	454.4
Misdemeanor/Juvenile Misc.	7.4	279.7
Low-Level Felony (Level 5-6)	9.6	215.9
High-Level Felony (Level 1-4)	23.3	89.1
Waiver Felony (Non-Murder)	43.4	47.9
Murder (With or Without Wavier)	178.5	11.7

Table: Delphi Panel Results – CHINS

Case Type	Delphi Case Length (Hours)	Delphi Annual Caseload
CHINS (No Removal/In Home)	11.4	182.9
CHINS (With Removal)	32.3	64.5
Termination of Parental Rights	20.9	99.5

Table: Delphi Panel Results – Appeals

Case Type	Delphi Case Length (Hours)	Delphi Annual Caseload
Criminal/Misc. Record Under 250 Pages	24.9	83.4
Criminal/Misc. Record 250-1,000 Pages	42.7	48.7
Criminal/Misc. Record Over 1,000 Pages	60.8	34.2
LWOP Appeals	143.3	14.5
CHINS Appeals	30.3	68.7
TPR Appeals	41.2	50.4
Interlocutory Appeals	30.2	68.8

6. Comparing Delphi Panel Conclusions with Current Commission Caseload Standards

The Delphi Caseload results for each Case Type provide an initial basis of comparison, in that they can be compared to the current Indiana Public Defender Commission Caseload Standards. This comparison is not exact, however, because the Commission Caseload Standards (Standard J) do not use the same detail of Case Type as this analysis. For example, the Commission uses two caseload standards for adult criminal felonies – one for Level 6 felonies and one for all other felonies. By comparison, in the Delphi process, the Adult Criminal Consulting Panel determined that felonies should be broken down into three categories: Low-Level (Levels 5-6),⁹⁵ Mid-Level (Levels 3-4) and High-Level (Levels 1-2).

Additionally, the comparisons provided are to the Commission’s current caseload maximum under Standard J, which assumes attorneys have adequate support staff.⁹⁶ Under Standard J, if the

⁹⁵ Under the Commission’s Standard J, Level 6 Felonies are separated from Level 1-5 Felonies, The Level 6 Felonies standard is 200 a year, whereas the standard for Level 1-5 Felonies is 120 a year, see Table: Current Caseload Limits – Standard J, *supra*. However, for the Delphi process, the Adult Criminal Consulting Panel decided to group Level 5 and Level 6 felonies together in a single Case Type. When making the comparison between the current Commission standards and the Delphi process standards, we compared the Level 5-6 Felony Case Type to the standard for Level 1—5 felonies of 120 per year under Standard J.

attorneys do not have adequate support staff, the standards typically are reduced by 20-25%.⁹⁷ In each of these charts, the left side of the charge shows the Commission’s current caseload maximum under Standard J is in grey and the Delphi results for the same case type is in blue. The right side of the chart shows the percentage change reflected when comparing the current Indiana caseload maximum to the Delphi results for the same case type. A negative change shows that the Indiana caseload maximum would have to be reduced to meet the Delphi results for the case type, whereas a positive percentage change shows that the Indiana caseload maximum would be increased to meet the Delphi results for the case type.

Chart: Adult Criminal – Delphi Panel Caseload Results vs. Current Caseload Maximum per Standard J

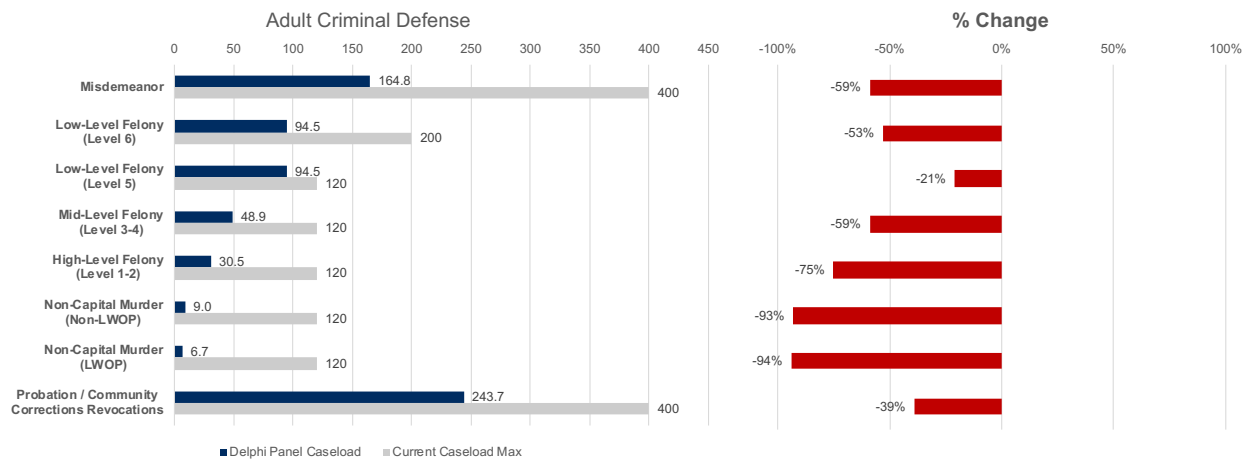
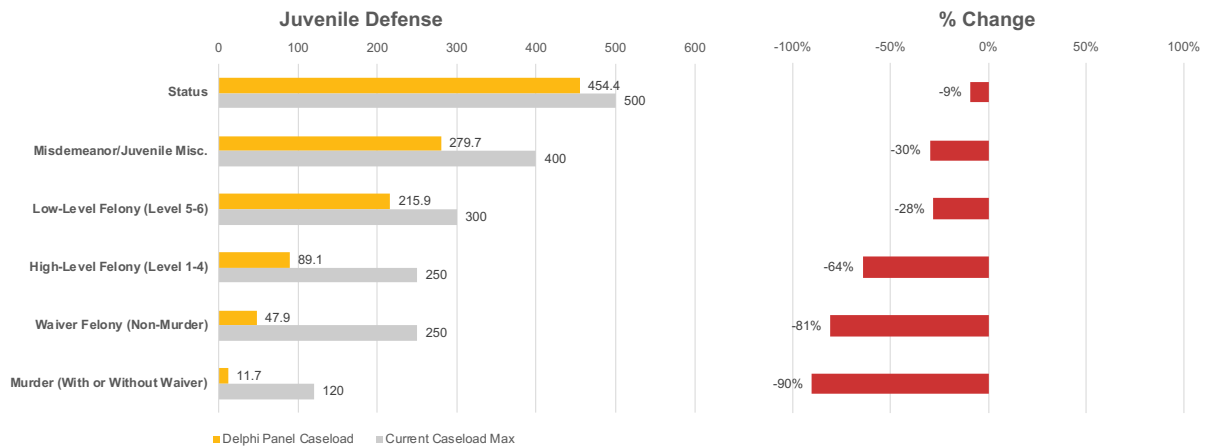


Chart: Juvenile – Delphi Panel Caseload Results vs. Current Caseload Maximum per Standard J



⁹⁶ This is the most appropriate comparison because throughout the Delphi process, participants were asked to allot time only for work appropriate for attorneys and to assume appropriate levels of support staff.

⁹⁷ There are a few cases in which Standard J reflects a smaller reduction of roughly 17%: (1) Non-Capital Murder; Level 1, 2, 3, 4, 5 Felonies and (2) JD-Level 6 Felony. For JM – Juvenile Miscellaneous cases the standard does not change at all.

Chart: CHINS / TPR – Delphi Panel Caseload Results vs. Current Caseload Maximum per Standard J

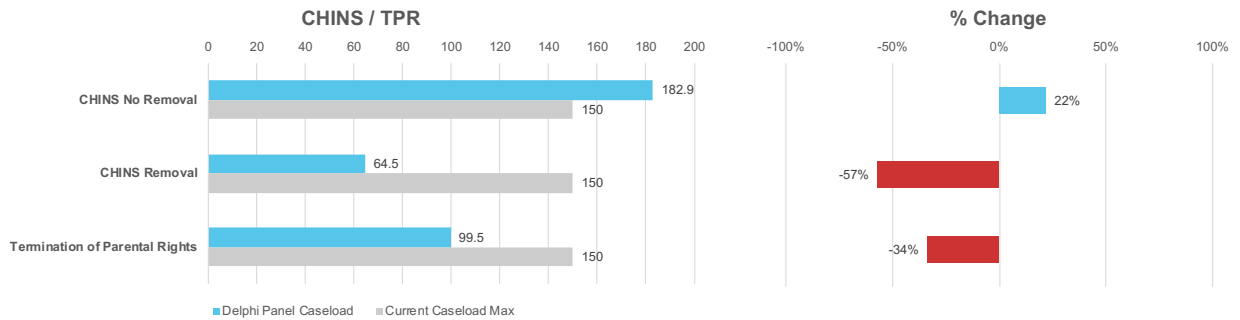
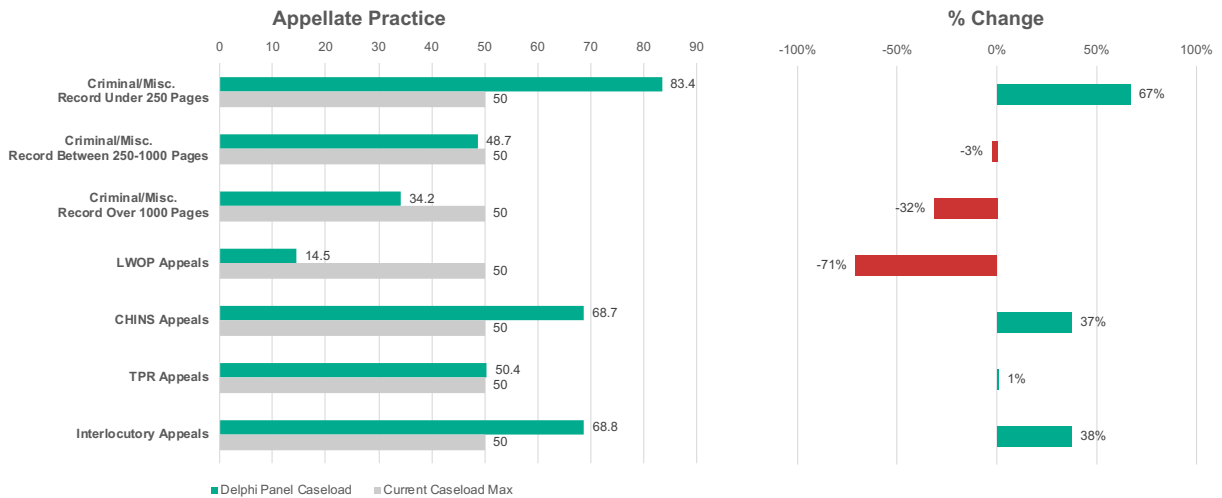


Chart: Appellate – Delphi Panel Caseload Results vs. Current Caseload Maximum per Standard J



B. Indiana Caseload and Staffing Analyses

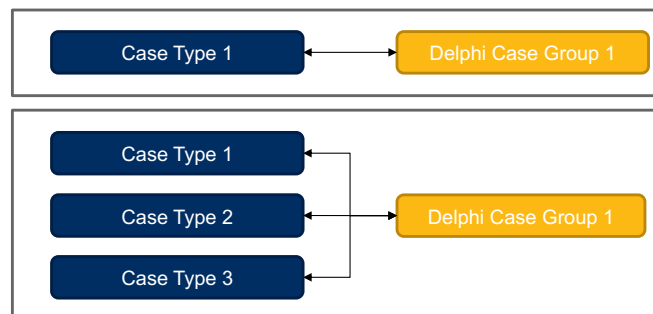
The historical analysis of the public defense system is intended to provide an overview of public defense as it exists in present conditions in the jurisdiction. When measured against the results of the Delphi process, historical analysis generally allows for a determination of whether deficiencies exist and the extent of those deficiencies. Crowe conducted two types of historical analyses in Indiana: (1) a historical caseload analysis, and (2) a historical staffing analysis.

1. Historical Caseload

The historical caseload analysis assesses the annual public defender cases in Indiana by case type. As noted above, Indiana has neither a unified court system, nor a single case management system for all 92 counties. However, the courts and probation departments of all 92 counties report caseload information quarterly to the Indiana Supreme Court Office of Court Services (IOCS).⁹⁸ This data is self-reported.⁹⁹ The reporting requirements and directions are uniform, as is the reporting platform. These reports served as the primary data source for Crowe’s historical caseload analysis.



Crowe compiled relevant annual historical caseloads using the Pending, Incoming, Disposed and Miscellaneous Case Statistics chart from IOCS, looking specifically at the Pauper Appointment data sheet for 2015, 2016 and 2017.¹⁰⁰ The relevant historical caseloads are the 54 (of 92) counties that were part of the Commission system and reported caseload and staffing data for the period 2015, 2016 and 2017. Accordingly, Crowe initially filtered the court statistics within the scope of this analysis, and then totaled the caseloads of the relevant 54 counties by the case types reported to IOCS. Commission staff then matched the types of cases reported in IOCS reports to the Delphi Case Types, as follows:



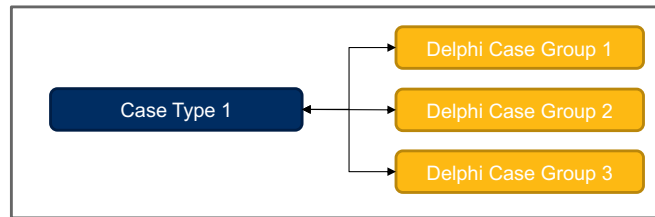
⁹⁸ Indiana Judicial Service Reports, by year, available at <https://www.in.gov/judiciary/iocs/3298.htm>. The Commission, in consultation with Crowe, also submitted a data request to the Indiana Office of Court Services for information from counties using the Odyssey case management system on all cases in which a pauper appointment was made. After receiving this data, however, Commission staff and Crowe determined that the information received was not sufficient to determine historical caseloads. However, as discussed later in this report, this data was used as a sample to allow for the estimation of Case Type distinctions where such estimations were not feasible from the IOCS data.

⁹⁹ In counties using Odyssey, the data can be imported from the case management system into the IOCS reporting platform.

¹⁰⁰ Indiana Judicial Service Reports, by year, *supra* note 98. Because this report seeks to look only at cases in which public defense services are utilized, the report uses data from the IOCS reports on Pauper Appointments. Each county is directed to report “the number of cases in which counsel was provided in each case type where the county incurred expense.” Quarterly Case Status Report Instructions, at 43 – Question 3 (May 2020), available at <https://www.in.gov/judiciary/iocs/files/icor-qcsr-application-guide.pdf>.

The Commission has found the reliability of this data set to be lacking in some instances. *See, e.g.*, Discussion of Appellate Caseload Statistics, *infra* text accompanying n. 102. The Commission is pursuing ways to improve data collection for cases utilizing public defense services in Indiana

Most case types in IOCS reports fit easily into a Delphi case type. However, in some instances, a case type in IOCS would have to be divided between two or more Delphi Case Types.



For example, in IOCS, there is a single case type for CHINS. The CHINS Consulting Panel, as noted above, divided CHINS cases into two Case Types: (1) CHINS No-Removal and (2) CHINS Removal. Because none of the data reported through IOCS allowed us to distinguish what percentage of the reported case type (e.g. CHINS) belonged in each of the Delphi Case Types (CHINS No-Removal and CHINS Removal), we do not have reliable historic caseload data for those case types. In these instances, Crowe and the Commission utilized data from another available source to allow an estimate of which portion of the caseload belongs in which Delphi Case Type. Where this occurred, the estimated caseloads are shown separately and the data used to calculate the estimate is explained.

Below are tables showing the available data on historical public defense caseloads for the 54 Commission counties for 2015, 2016, and 2017 for each of the four practice areas: Adult Criminal, Juvenile, CHINS/TPR and Appeals. For each practice area, the first chart shows the information as it is available from the IOCS reports. Following this chart is an explanation of how more detailed estimates were made to provide estimated historical caseloads for each of the Delphi case types, if estimates were derived working with the Commission staff. The second chart for the practice area shows those estimates, as needed.

Chart: Historical Caseload – Adult Criminal			
Case Type	2015	2016	2017
Misdemeanor	37,779	36,944	37,323
Low-Level Felony (Level 5-6)	29,501	33,651	35,500
Mid-Level Felony (Level 3-4)	4,076	4,185	3,948
High-Level Felony (Level 1-2)	1,332	1,375	1,418
Non-Capital Murder (Non-LWOP) & Non-Capital Murder (LWOP)	158	157	144
Probation/Community Corrections Revocations	--	--	--

The Commission utilized data from IOCS on LWOP cases¹⁰¹ in the in-scope counties to estimate the number of Non-Capital Murder LWOP cases. Subtracting those cases from the IOCS reported Murder cases with pauper appointments provided the estimate for Non-Capital Murder (Non-LWOP) cases.

¹⁰¹ This data was derived from the Indiana Judicial Service Reports, by year, *supra* note 98. Specifically, the data on LWOP cases was pulled from the data tab labelled Add'l Case Information General. Only the data from in-scope counties was included.

Chart: Historical Caseload – Murder Non-LWOP / LWOP Estimate			
Case Type	2015	2016	2017
Non-Capital Murder (Non-LWOP)	151	155	137
Non-Capital Murder (LWOP)	7	2	7

Chart: Historical Caseload – Juvenile			
Case Type	2015	2016	2017
Status	824	630	565
Misdemeanor/Juvenile Misc., Low-Level Felony (Level 5-6), High-Level Felony (Level 1-4), Waiver Felony (Non-Murder) and Murder (With or Without Wavier)	7,987	7,189	6,497

For juvenile delinquency cases, the IOCS reports only distinguish between status offenses and other offenses. To estimate the percentage of the other offenses attributable to the corresponding five Delphi case types, the Commission staff collated charging data for all juvenile delinquency cases included in the data from the Odyssey case management system requested from the courts.¹⁰² Because the data source was the Odyssey case management system, this breakdown does not include data from counties that use Quest for their juvenile dockets, which include several of the larger urban counties such as Marion County and Allen County. For this reason, the more severe case types, including Waiver and Murder, are likely under-represented.

Chart: Historical Caseload – CHINS			
Case Type	2015	2016	2017
CHINS (No Removal/In Home)	10,169	11,899	10,944
Termination of Parental Rights	1,211	1,845	1,255

As noted previously, the IOCS reports do not provide any means of distinguishing between CHINS cases in which a child is removed from the home and a case in which the child is never removed from the home. To estimate the percentages applicable to this distinction, Commission staff used the Indiana Department of Child Services practice indicator reports, which provide the statewide proportion of CHINS cases *currently* in-home. This proportion is not identical to the proportion of cases in which a child is ever removed, but it is related. The true proportion could be larger, as some currently in-home cases may have a removal in the future or a removal in the past. There is also a possibility that the percentage of no removal cases could also be smaller, as in-home CHINS cases are likely to be resolved faster and thus underrepresented in the population of current open cases when compared with annualized case percentages.

Chart: Historical Caseload – CHINS Removal / No Removal Estimates			
Case Type	2015	2016	2017
CHINS (No Removal/In Home)	2,542	2,975	2,736
CHINS (With Removal)	7,627	8,924	8,208

¹⁰² For greater detail on this data request, see description, *supra* note 98.

Appeals is the one practice area where the Commission staff believes that the IOCS reports are systematically inaccurate. The IOCS report data is generated by trial courts, not appellate courts, and an appeal begins after the trial court case has concluded. As a result, the Commission believes it possible that trial courts significantly underreport appeals in IOCS reports.¹⁰³ Nonetheless, the IOCS report is the most reliable available data on the number of appeals brought by a public defender annually by county in Indiana.

Chart: Historical Caseload – Appeals			
Case Type	2015	2016	2017
Criminal/Misc. Record Under 250 Pages, Criminal/Misc. Record 250-1,000 Pages, Criminal/Misc. Record Over 1,000 Pages, LWOP Appeals and Interlocutory Appeals	513	577	597
CHINS Appeals	60	112	78
TPR Appeals	137	195	195

The IOCS reports do not break criminal appeals into more detailed case types. The Commission allocated cases or percentages of cases to these case types using the following rationale:

- Interlocutory appeals numbers were estimated using the Odyssey data provided by IOCS and counting the total number of appeals in the time period that had an “Order Granting Motion for Interlocutory Appeal” or an “Order Granting Motion to Certify Interlocutory Order for Appeal” event code. However, this number is very low, and the Commission staff suspects that it underestimates the true number of interlocutory appeals.
- The case types based on record length were allocated by percentage based on a recent sample of appellate transcript length from Marion and Lake Counties.
- The LWOP appeals case counts were estimated using the Odyssey data pulled from the court. LWOP appeals were identified using event codes in MR – Murder cases.

Chart: Historical Caseload – Appeals Estimates			
Case Type	2015	2016	2017
Criminal/Misc. Record Under 250 Pages	413	416	443
Criminal/Misc. Record 250-1,000 Pages	88	88	94
Criminal/Misc. Record Over 1,000 Pages	16	16	17
LWOP Appeals	3	4	1
Interlocutory Appeals	3	3	3

¹⁰³ The numbers themselves suggest that this is likely. The IOCS reports show a total of 93,037 cases across all Adult Criminal, Juvenile, and CHINS/TPR case types for 2015 for the study counties. During the same period, the IOCS data shows only 710 appeals for these case types. If accurate, less than 1% (0.76%) of all cases represented by a public defender are being appealed in Indiana. By comparison, The Missouri Project suggests that approximately 3% of all criminal trial cases represented by a public defender are appealed in that state. See *The Missouri Project*, *supra* note 58 at 16 (using Annual Case Counts for trial level cases versus appellate cases).

2. Historical Staffing

The historical staffing analysis was challenging because all of Indiana's 92 counties retain local control over public defense. The Indiana Public Defender Commission, as noted above, only collects data from those counties that have opted-in to receive reimbursement and follow its Standards. Staffing data is not collected statewide and is therefore not readily available from counties that have not opted-in to the Commission program. Moreover, because counties can opt-in and opt-out of participation at any time, the counties on which the Commission has caseload and other data change from year to year. Because of this fluidity, the analysis conducted by Crowe in Indiana assesses the 54 (of 92) Indiana counties that reported caseload and staffing data for the periods of 2015, 2016 and 2017.¹⁰⁴

Even within the 54 counties for which the Commission has historical data, significant data limitations and factors create difficulties in ascertaining accurate staffing data:

- Attorneys work across counties and court systems – and many accept cases as a public defender while also maintaining a private caseload. The Commission receives no data concerning those private caseloads. As a result, no accurate count of cases by attorney exists.
- While the Commission collects data quarterly from the counties that seek reimbursement, only 58.7% of Indiana counties reported data in all three years. According to IOCS data, those 54 counties account for 71.76% of the overall cases statewide.
- Standard J distinguishes between attorneys with adequate and inadequate support staff; however, this analysis assumes all attorneys are adequately supported. Based on the data collected by the Commission, more than three-quarters of Indiana attorneys do not have adequate support staff as defined by current standards.

Given these data constraints, the Commission is unable to determine how many FTEs were providing public defense services in Indiana.

3. Data Collection Needed to Provide Accurate Caseload and Staffing Analysis

As noted above, data limitations prevented Crowe and the Commission staff from ascertaining complete historical caseload or staffing data, preventing a complete analysis on public defense in Indiana. Even for counties that opt-in to the oversight and standards of the Indiana Public Defender Commission, the data is insufficient to allow for an accurate caseload analysis or staffing analysis. Right now, it is impossible to determine with accuracy:

1. Number of public defenders,
2. Public defender FTEs,
3. Cases per public defender,
4. Cases per public defender FTE, and
5. Many other measures of interest.

¹⁰⁴ A list of the 54 counties in this analysis is included at Appendix E.

To accurately understand the application of the Delphi results in Indiana and to compare those results to current conditions to determine future staffing needs, the Indiana Public Defender Commission would need to be able to collect or obtain accurate data on public defense caseloads and staffing across all 92 counties.

Necessary caseload data would include, at a minimum:

- Cases¹⁰⁵ opened by Case Type
- Cases closed by Case Type
- Who handled each Case (Assignments by Attorney)
- Case disposition

Additionally, for each county, the Commission would need to collect staffing data:

- Number of attorneys
- Years of experience of attorneys
- Support staff numbers and type
- For part-time attorneys:
 - o Percentage of time spent on public defense cases in each county
 - o Percentage of time spent on public defense cases in other counties
 - o Percentage of time spent on private cases or non-public defense cases

The above suggested data collection program is the minimum required to conduct a basic caseload and staffing analysis. Following best practices in public defense would require a far more detailed data collection program. In 2014, the National Legal Aid and Defender Association recommended that all public defense programs track not only basic caseload information, but defendant characteristics (e.g., sex, race, age), case events (e.g. bail determinations, motions filed, client contacts), and case management events (e.g. use of investigators, use of social workers, use of experts).¹⁰⁶

¹⁰⁵ A standardized definition of a case is critical to accurate data collection. The IOCS Quarterly Case Status Report instructions provide a definition that could be adopted for this purpose:

Each defendant is reflected as a single case [Admin. Rule 1(B)(4)]. When a person is charged contemporaneously with multiple criminal offenses or infractions arising out the same incident, or multiple incidents occurring on the same date, only one new filing will be reported in the category of the most serious charge against the defendant. The case will remain in that category even if charges are later amended or if the defendant is convicted of a lesser offense. If a previously filed case is amended to include a charge of murder, the court or clerk may open a new MR case. This exception is explained under the description of the MR – Murder case type.

If multiple individuals are jointly charged with one or more offenses, the report should reflect the number of cases filed as equal to the number of individuals charged. A separate case number is assigned to each defendant even if both defendants are charged in the same charging Information or indictment. Case disposition may vary as to each defendant.

Quarterly Case Status Report Instructions, at 6 (May 2020), available at <https://www.in.gov/judiciary/iocs/files/icor-qcsr-application-guide.pdf>.

¹⁰⁶ National Legal Aid and Defender Association, *Basic Data Every Defender Program Needs to Track: A Toolkit for Defender* (2014), available at <http://www.nlada.org/sites/default/files/pictures/BASIC%20DATA%20TOOLKIT%2010-27-14%20Web.pdf>.

In the future, a data collection program likely will be required for a public defense program to access grants, particularly on the federal level. For example, earlier this Congressional session, Senator Kamala Harris and Representative Ted Deutch introduced the Ensuring Quality Access to Legal Defense (EQUAL Defense) Act of 2019.¹⁰⁷ The bill would establish a \$250 million/year grant program for five years (\$1.25 billion total) to “provide financial support for public defense systems and training programs that aim to improve the delivery of legal services to indigent criminal defendants.”¹⁰⁸ To access the funds, the public defense system would have to establish a detailed data collection program that could track not only cases opened and closed by case type, but also critical case events, including client interaction and court time, as well as time spent on investigation, legal research, writing and preparation.¹⁰⁹

¹⁰⁷ Press Release, *Harris Introduces the EQUAL Defense Act to Boost Pay and Resources, Limit Workloads of Public Defenders* (May 8, 2019), available at <https://www.harris.senate.gov/news/press-releases/harris-introduces-equal-defense-act-to-boost-pay-and-resources-limit-workload-of-public-defenders>.

¹⁰⁸ *Id.*

¹⁰⁹ Section 5, The EQUAL Defense Act, available at <https://www.harris.senate.gov/imo/media/doc/EQUAL%20Defense%20Act.pdf>.



V. Conclusion

The Delphi analysis provides the Indiana Public Defender Commission with important information about those aspects of cases that drive the need for additional public defense services in Indiana, not only from the conclusions of the Delphi panels regarding annual caseload standards, but also in the Case Types selected by experienced Indiana private practitioners and public defenders for inclusion in the Delphi process. The Case Types selected in Indiana suggest the Commission should consider greater striation in caseload standards going forward, as well as improved data collection on key events that impact necessary public defense time. For example, the Case Type selection and resulting difference in Delphi caseload standards between CHINS (No Removal) [11.4 hours/case] and CHINS (Removal) [32.3 hours/case] suggest that whether a child is removed from a home in a CHINS case is a critical data point that should be documented.

In terms on consideration of the current Commission caseload standards, in comparison to the Commission caseload standards, the Delphi annual caseload standards were consistently lower for Adult Criminal and Juvenile Cases. For CHINS/TPR and Appeals, the Delphi annual caseload standards were sometimes higher and sometimes lower than the comparable Commission caseload standard.

Unfortunately, a full analysis of the implications for public defense staffing in Indiana, should the caseloads in this report be implemented, proved unfeasible because of the lack of comprehensive statewide data. The Commission has been working to improve data collection statewide for some time, and this report elucidates not only the gaps that exist and require remedy, but also the uses of such data should collection processes improve.



Appendix A - Indiana Adult Criminal Case Task Definitions

1. Client Communication – All client communication (mail, phone, in-person, etc.) as well as communication with client family members related to the criminal case (except communication of an investigatory nature, which falls under Interviews/Field Investigation) including communications regarding plea and sentencing.
2. Client Support Services – Working with social services, treatment providers or outside agencies on behalf of clients; referrals for legal aid or other services; handling medical/family/other issues affecting client during criminal case; attending other proceedings related to or potentially impacting criminal charges.
3. Discovery/Case Preparation – Ordering and obtaining discovery materials and other case-related documents, including public records requests and nonparty record production. Reviewing, analyzing or organizing case-related materials/evidence including any video evidence, social media evidence, jail communications, etc.; working with investigators; writing/editing case related-memos; defense team meetings (except in preparation for Court, which falls under Court Preparation); documenting case file.
4. Depositions/Taped Statements – Preparation and taking depositions and taped statements.
5. Attorney Investigation/Attorney Interviews – Case-related investigation activities, including viewing the scene and physical evidence, canvassing for and interviewing witnesses, serving subpoenas; taking photos/videos, etc. (Note: this is all work conducted by the attorney. Communications with investigators or others related to their interviews/investigations fall under Discovery/Case Preparation).
6. Experts – Locating, retaining, corresponding, consulting with and reviewing reports of experts for the defense (except Experts exclusively related to Sentencing/Mitigation, which should be recorded under Sentencing/Mitigation).
7. Legal Research, Motions Practice, Other Writing – Research; Drafting of motions, pleadings, briefs, etc. related to pretrial, motions, or trial, including any written submission to the prosecutor related to negotiations (except research or writing exclusively related to Sentencing/Mitigation which falls under Sentencing/Mitigation).
8. Negotiations – Discussions with a prosecutor in an effort to resolve a case.
9. Court Preparation – Preparing for any and all hearings or a trial including defense team meetings in preparation for court, time spent prepping for direct exams, cross-exams, voir dire etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of trials and court hearings (except preparation for hearings exclusively related to Sentencing/Mitigation which falls under Sentencing/Mitigation)
10. Court Time – In court at hearings or trial (bench or jury) (except hearings related to Sentencing/Mitigation which falls under Sentencing/Mitigation)

11. Sentencing/Mitigation – Developing or collecting evidence to be used in sentencing, consulting with sentencing/mitigation experts, preparing for sentencing including review and rebuttal of prosecutorial sentencing materials, preparing for and attending sentencing hearings and addressing restitution.
12. Post Judgment – Work performed post-disposition including compliance hearings, AMS petitions, preparing file for appeal/transition to appellate attorney, ensuring appropriate release, correcting judgments/jail credit, property returns, expungements, sentencing modifications, and troubleshooting lingering case-related matters.



Appendix B - Indiana Juvenile Case Task Definitions

1. Client Communication – All client communication (mail, email, phone, in-person, etc.)
2. Parent/Guardian/Custodian Communication – All communications with the client’s parent(s)/guardian(s)/custodian(s) (except communication of an investigatory nature, which falls under Interviews/Field Investigation).
3. Client Support Services – Working with social services, treatment providers or outside agencies on behalf of clients; dual status work; handling medical/family/educational/other issues affecting client during juvenile delinquency case; attending other proceedings related to or potentially impacting juvenile charges (excluding preparation for Disposition, which falls under Disposition).
4. Discovery/Case Preparation – Ordering and obtaining discovery materials and other case-related documents, including medical records, educational records, treatment records, public records requests and nonparty record production (excluding preparation for Disposition, which falls under Disposition). Reviewing, analyzing or organizing case-related materials/evidence including any court-ordered evaluations, video evidence, social media evidence, etc.; working with investigators; writing/editing case related-memos; defense team meetings (except in preparation for Court, which falls under Court Preparation); documenting case file.
5. Depositions/Taped Statements – Preparation and taking depositions and taped statements.
6. Attorney Investigation/Attorney Interviews – Case-related investigation activities, including social history investigations, viewing the scene and physical evidence, canvassing for and interviewing witnesses, serving subpoenas; taking photos/videos, etc. (Note: this is all work conducted by the attorney. Communications with investigators or others related to their interviews/investigations fall under Discovery/Case Preparation).
7. Experts – Locating, retaining, corresponding, consulting with and reviewing reports of experts for the defense (except Experts exclusively related to Disposition which falls under Disposition).
8. Legal Research, Motions Practice, Other Writing – Research; Drafting of motions, pleadings, briefs, etc. related to pretrial, motions, or trial (except research and writing exclusively related to Disposition which falls under Disposition).
9. Negotiations – Communications and discussions with prosecutor and/or probation in an effort to resolve a case.
10. Pre-Adjudication Court Preparation – Preparing for any and all pre-adjudication hearings or trial including defense team meetings in preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of trials and pre-adjudication hearings. (excluding preparation for Disposition Hearing, which falls under Disposition)

11. Disposition – Developing or collecting evidence to be used in disposition, consulting with experts for disposition, preparing for disposition hearing including review and rebuttal of prosecutorial materials, and addressing restitution.
12. Court Time – In court at hearings, trial and/or disposition
13. Post-Disposition – Work performed post-disposition including post-disposition hearings, probation violations, preparing file for appeal/transition to appellate attorney, assisting with compliance with conditions, working with providers, ensuring appropriate release, property returns, expungements, petitions for modification, and troubleshooting lingering case-related matters.



Appendix C - Indiana CHINS Case Task Definitions

1. Client Communication – All client communication through trial and disposition (mail, email, phone, in-person, etc.) (does not include Post-Disposition communication, which falls under Post-Disposition)
2. Discovery/Case Preparation – All pre-adjudication case preparation except for court prep, including, but not limited to:
 - a. Ordering and obtaining discovery materials and other case-related documents, such as medical records, mental health records, criminal records, educational records, treatment records, etc.;
 - b. Talking to service providers;
 - c. Reviewing, analyzing or organizing case-related materials/evidence including DCS materials;
 - d. Working with investigators and social workers;
 - e. Writing/editing case related-memos;
 - f. Negotiating with DCS;
 - g. Attending mediation or other meetings;
 - h. Attorney conducted investigation, including reviewing photos, videos, physical evidence, and social media;
 - i. Attorney conducted interviews of witnesses
 - j. Documenting case file.
3. Depositions/Taped Statements – Preparation and taking depositions and taped statements.
4. Experts – Locating, retaining, corresponding, consulting with and reviewing reports of experts for the defense (except Experts exclusively related to Post-Disposition which fall under Post-Disposition).
5. Legal Research, Motions Practice, Other Writing – Research; Drafting of motions, pleadings, briefs, and pre-disposition report (except research and writing exclusively related to Post-Disposition which fall under Post-Disposition).
6. Court Preparation – Preparing for pre-disposition hearings and trial including meetings preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of trials and pre-disposition hearings. (excluding preparation for Post-Disposition Hearing, which falls under Post-Disposition)

7. Court Time through Disposition – In court time for pre-disposition hearings and disposition.

NOTE: FOR TPR, the Case Task is simply Court Time and it includes all time in court during the case.

8. Appeal Preparation – Preparing the case file for appeal; meeting with appellate attorney; drafting transition memo

NOTE: FOR TPR cases, the below Post-Disposition Case Tasks have been eliminated because they do not occur.

9. Post-Disposition Client Services – Communication with client post-disposition; Working with DCS service providers, social services, treatment providers or outside agencies on behalf of clients; dual status work; handling medical/family/educational/other issues affecting client; attending other related proceedings.
10. Post-Disposition Hearing Preparation – Obtaining and reviewing provider reports; conducting post-disposition discovery; preparation of post-disposition motions; hiring and consulting with post-disposition experts; preparing for post-disposition hearings;
11. Post-Disposition Court Time – Attending post-disposition hearings



Appendix D - Indiana Appellate Case Task Definitions

1. Client Communication – All client communication related to all appeals (mail, email, phone, in-person, etc.) including explanation of appellate process, discretionary review and post-appeal options
2. Pre-Notice Motions Practice – Preparation of Motions to Correct Errors or other post-trial motions
3. Initiation of Appeal (Direct Review) – Request and review attorney file; Consultation with trial attorney; Preparation for Notice of Appeal and attachments; Filing of Notice of Appeal; Requesting copy of court record and transcript; Preparation of Appendix
4. Record Review (Direct Review) – Review of the all documents;
5. Initial Appellate Brief (Direct Review) – Research to determine appellate strategy including legal research, brainstorming/consultation; Writing and editing initial brief
6. Reply Brief (Direct Review) – Research; Writing and editing reply brief
7. Appellate Motions Practice (Direct Review) – Preparation of any motions in direct review including, but not limited to, Motions to Compel and Motion for Oral Argument
8. Oral Argument (Direct Review) – Preparation for oral argument; moot court, brainstorming and consultation; attending/presenting oral argument in court
9. Discretionary Review Motions Practice – Preparing Petition for Rehearing; Preparing or responding to Petition to Transfer; Drafting Reply Brief
10. Oral Argument (Discretionary Review) – Preparation for oral argument; moot court, brainstorming and consultation; attending/presenting oral argument in court
11. Post-Decision Practice – Any and all work following decision at either direct or discretionary review including, but not limited to, preparing for file post-conviction; ensuring trial court compliance, attending any remand hearing(s), etc. (not including Petition for Certiorari, which falls under Petition for Certiorari)
12. Petition for Certiorari – Preparing and filing a Petition for Certiorari to the United States Supreme Court

Appendix E – Scope of Study by County

The following counties were included in this study. These counties participated in the Commission’s reimbursement program in all three years of the study(2015, 2016 and 2017).

Table: Counties Included in the Study Based on Participation in the Commission’s Reimbursement Program (2015 – 2017)			
Adams	Allen	Benton	Blackford
Carroll	Cass	Clark	Decatur
Delaware	Fayette	Floyd	Fountain
Fulton	Grant	Greene	Hancock
Howard	Jasper	Jay	Jennings
Knox	Kosciusko	LaGrange	Lake
LaPorte	Lawrence	Madison	Marion
Martin	Monroe	Noble	Ohio
Orange	Owen	Parke	Perry
Pike	Pulaski	Ripley	Rush
St. Joseph	Shelby	Spencer	Steuben
Sullivan	Switzerland	Tippecanoe	Union
Vanderburgh	Vermillion	Vigo	Wabash
Warren	Washington		