

# **Tennessee Public Defender Case-Weighting Study**

**Final Draft Report**  
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# Chapter 1

## Introduction to the Report

### 1.1\_ Background

Indigent defense representation in Tennessee is provided primarily by public defenders<sup>1</sup> and is funded primarily by the state. The District Public Defenders Conference was created by Chapter 588 §11, Public Acts of 1989. The Conference is a statewide system of elected public defenders from the state's 31 judicial districts and a central administrative office of the Executive Director. District 20 (Davidson County) and District 30 (Shelby County) are served by local public defender offices which existed prior to creation of the Conference and which were added to the Conference by Chapter 751, §6, Public Acts of 1990.

District public defenders and their staffs fulfill the State's obligation under the United States Constitution to provide an attorney to a person charged with the commission of a crime who cannot afford a private attorney. District Public Defenders have the statutory duty to represent indigent persons for whom they have been appointed by the court (1) in any criminal prosecution or juvenile delinquency proceeding involving a possible deprivation of liberty, or (2) in any habeas corpus or other post-conviction proceeding.<sup>2</sup> T.C.A. §8-14-201. District public defenders also have the duty to handle all appeals filed by defendants whom they represented in trial court.

The Executive Director, who is elected every four years by the District Public Defenders at their annual June conference, develops policy, provides administrative services, coordinates training and coordinates multi-district cases on behalf of the District Defenders. The office of the Executive

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<sup>1</sup> Conflict-of-interest cases are handled by private attorneys who indicate to the court that they are willing to take appointments to indigent defendant cases. Tennessee Supreme Court Rule 13 sets out the requirements for appointment and compensation of counsel. Funding for court-appointed counsel work is a state responsibility.

<sup>2</sup> The Tennessee Post-Conviction Defender Office was created in 1996 to handle capital state post-conviction cases.

Director performs all Conference planning, budgeting, expenditure approval, accounting, purchasing, reporting, personnel and payroll functions, and maintains the management information system used by the majority of the districts. Further, the Executive Director serves as a liaison among the various branches and divisions of state government, such as the courts, the General Assembly, the Executive Department and the Office of the Attorney General and Reporter.

Although the public defender offices in Davidson and Shelby counties are members of the conference, the majority of funding for these two offices comes from the counties, not the state. As a consequence, the elected public defenders from these offices play roles similar to that of the Conference's Executive Director at the local level.

The Public Defender Conference is a relatively young organization. With the exception of Shelby and Davidson counties, indigent defense representation in Tennessee prior to 1989 was provided primarily by court-appointed counsel, with funds provided by the state. From 1986 to 1989, the legislature funded a pilot project, which placed public defender offices in seven districts. This led to the creation of the statewide conference, as mentioned, in 1989.

The Conference has had its share of ups and downs during its 10-year existence. In its first three years of operation, it faced a series of budget shortfalls which led to overburdened public defenders. The most dramatic point came in November 1991, when the Knox County Public Defender requested, by motion, that the four General Sessions court judges suspend further case appointments to it. Assignments to the Knox County Public Defender were temporarily suspended, but the court's solution to handling the overflow sparked outcry within the bar. The court issued notice to every bar member in the county that he or she, without exception, would be expected to take an appointment to a criminal case to help distribute the overflow of cases. Similar, but less dramatic, events have peppered the Conference's first decade.

Since its creation, the Conference has struggled with inadequate staffing. After years of disagreement between the General Assembly and the Conference over how to determine the number of attorneys needed to adequately handle the indigent defense caseload, in 1997 the General Assembly announced it would not provide any further attorney positions to the Conference until a case-weighting study was conducted. One year passed and the study was not conducted, therefore the Conference received no additional attorneys. Finally, in 1998, the General Assembly requested

that the Comptroller of the Treasury hire consultants to conduct case-weighting studies for the courts, public defenders and prosecutors. The National Center for State Courts (NCSC) was hired to manage the project, and it sub-contracted with The Spangenberg Group and the American Prosecutors Research Institute (APRI) to conduct the public defender and prosecutor portions of the study.

The Spangenberg Group (TSG) is a private consulting firm located in West Newton, Massachusetts which specializes in the study of indigent defense systems. TSG has conducted public defender case weighting studies in several other jurisdictions, including California, Colorado, Minnesota, Wisconsin and New York City. These past projects have equipped the public defender programs in those jurisdictions with highly effective tools which are used to prepare and justify budget requests and to respond to various reporting requirements.

## 1.2 National Standards

In response to the rising crime rate and changes in constitutional requirements throughout the criminal justice system in the last two decades, the American Bar Association (ABA) has taken a leadership role in developing a set of standards and goals for each component of the criminal justice system. These are found in the ABA's Standards Relating to the Administration of Criminal Justice. Two of its chapters address the subject of indigent defense. Chapter 4 is devoted to the prosecution and defense functions, and Chapter 5 concerns the provision of defense services.

Standard 4-1.3(e) of Chapter 4 deals with the ethical considerations of the defense lawyer.

It states:

Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations...<sup>3</sup>

Chapter 5 provides a blueprint and set of standards for delivering defense services. It spells

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<sup>3</sup> American Bar Association Standards for Criminal Justice Prosecution Function and Defense Function, Standard 4-1.3 Delays; Punctuality; Workload, p. 126 (1993) .

out in detail the requirements for both public defenders and privately appointed counsel in meeting their constitutional and ethical requirements. Standard 5-5.3 provides:

(a) Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Special consideration should be given to the workload created by representation in capital cases.

(b) Whenever defender organizations, individual defenders, assigned counsel or contractors for services determine, in the exercise of their best professional judgement, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.<sup>4</sup>

While these statements, guidelines, and standards are extremely important, they do not provide specific guidance as to what constitutes an excessive workload or what lawyers should do when they have reached the workload limit. More specific detail can be found by examining the work of two other national organizations which have attempted to deal with the problem: the National Study Commission on Defense Services and the National Advisory Commission on Criminal Justice Standards and Goals.

Under a grant from the U.S. Department of Justice, the National Legal Aid and Defender Association conducted a two-year study through the National Study Commission, which resulted in the 1976 publication, Guidelines for Legal Defense Systems in the United States. Chapter 5 of that report addresses the maximum criminal caseload for a defense attorney. Section 5.1 states:

- a. In order to achieve the prime objective of effective assistance of counsel to all defender clients, which cannot be accomplished by even the ablest, most industrious attorneys in the face of excessive workloads, every defender system should establish maximum caseloads for individual attorneys in the system.

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<sup>4</sup> American Bar Association Standards for Criminal Justice Providing Defense Services, Third Edition, Standard 5-5.3. Workload, p. 67 (1992).

- b. Caseloads should reflect national standards and guidelines. The determination by the defender office as to whether or not the workloads of defenders in the office are excessive should take into consideration the following factors:
  - 1. objective statistical data;
  - 2. factors related to local practice; and
  - 3. an evaluation and comparison of the workload of experienced, competent, private defense practitioners.<sup>5</sup>

Section 5.3, which deals with the elimination of excessive caseloads, states:

- a. Defender office caseloads and individual defender attorney workloads should be continuously monitored, assessed, and predicted so that, whenever possible, caseload problems can be anticipated in time for preventive action.
- b. Whenever the Defender Director, in light of the system's established workload standards, determines that the assumption of additional cases by the system might reasonably result in inadequate representation for some or all of the system's clients, the defender system should decline any additional cases until the situation is altered.
- c. When faced with an excessive caseload the defender system should diligently pursue all reasonable means of alleviating the problem including:
  - 1. declining additional cases and, as appropriate, seeking leave of court to withdraw from cases already assigned;
  - 2. actively seeking the support of the judiciary, the defender commission, the private bar, and the community in the resolution of the caseload problem;
  - 3. seeking evaluative measures from the appropriate national organization as a means of independent documentation of the problem;
  - 4. hiring assigned counsel to handle the additional cases; and
  - 5. initiating legal causes of action.
- d. An individual staff attorney has the duty not to accept more clients than he can effectively handle and should keep the Defender Director advised of his

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<sup>5</sup> National Legal Aid and Defender Association, Guidelines for Legal Defense Systems in the United States, Report of the National Study Commission on Defense Services (Washington, D.C.: NLADA, 1976), p. 411.

workload in order to prevent an excessive workload situation. If such a situation arises, the staff attorney should inform the court and his client of his resulting inability to render effective assistance of counsel.<sup>6</sup>

The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC), which published its standards in 1973. In that report, Standard 13.12 on Courts states:

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<sup>6</sup>Ibid., p. 413.

The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.<sup>7</sup>

Commentary to Standard 5-5.3 of the ABA Standards references the public defender caseload standards developed by NAC, noting they "have proven resilient over time, and provide a rough measure of caseloads."<sup>8</sup>

### 1.3 Tennessee's System for Allocating Attorneys to the District Public Defenders Conference

The Tennessee General Assembly has relied on several different mechanisms for determining the number of district public defenders that are needed, but staffing determinations have never been based on caseload or workload of public defenders. When the Conference was first created, a statutory provision required that public defender offices receive half the number of state-funded staff attorney positions that were allocated to the district attorney offices in their respective districts. This ratio was subsequently modified so that public defenders were to receive attorney positions equivalent to 75% of those provided to the district attorneys. The district attorneys successfully lobbied for yet another change to this staffing scheme, with the result that public defenders are now only entitled to 75% of any *locally* funded positions provided to district attorneys. Very few counties provide funds to district attorneys, so very few public defenders receive any local assistance, either.

In 1994, a second type of statutory provision was created to serve as a stop-gap measure until a comprehensive case-weighting study was completed for prosecutors and defenders. T.C.A. §16-2-519 states there should be one Assistant District Attorney for every 20,000 people in each judicial district. In the first year this provision was in effect, District Attorneys received half of the

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<sup>7</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts (Washington, D.C., 1973), p. 186.

<sup>8</sup> American Bar Association Standards for Criminal Justice Providing Defense Services, Third Edition, p. 72.

additional attorneys they required under this formula. A year later, T.C.A. §8-14-202 was created which calls for one district public defender for every 26,675 people in the district; roughly 75% of the district attorney formula. The General Assembly, however, has never funded any positions required by this provision. Under this formula, in May 1998, the District Public Defenders Conference would have been entitled to approximately 20 additional attorney positions.

In 1997, eight new judgeships were authorized with no corresponding district attorney or public defender positions. There were no additional judge, public defender or district attorney positions authorized in the 1998 legislative session on the reasoning that it made sense to wait until case-weighting studies for the three components were completed.

The purpose of this workload study is to produce an empirical method of measuring the amount of work required to be performed by public defenders on the various types of cases they handle. The method also accounts for the non-case related work which is essential to the functioning of any public defender program. This method of determining public defender staffing needs, because it considers the projected public defender caseload for the coming fiscal year, is more meaningful and accurate than relying simply on less relevant indicators, such as population or district attorney staffing.

## **Chapter 2**

### **Measures Employed by Public Defender Programs to Address Caseload Problems**

In a study developed for the United States Department of Justice, National Institute of Justice in 1983 entitled "Maximizing Public Defender Resources: A Management Report," conducted by Robert Spangenberg, an effort was made to report on a series of innovative methods developed by public defenders to maximize their resources with limited funding. Part of that report was devoted to public defender caseload problems; it described caseload/workload standards developed by public defenders in Portland, Oregon, West Palm Beach, Florida, Colorado, and Vermont.

As part of that research effort, a national survey was conducted among the largest public defender programs in the country seeking information on formal or informal methods used by these programs to control caseload. Results of that survey disclosed that, "Clearly, the state of the art is extremely low. Where standards do exist, many appear to be informal and based upon the guesswork of the chief public defender." In the period since 1982, progress has been made as state and county public defenders have found it difficult to justify increases in budget and staffing without reliable data and detailed caseload standards.

A second national survey of large trial and appellate public defender programs was conducted by Robert Spangenberg for the National Legal Aid and Defender Association in 1986 to examine the then-state-of-the-art of public defender caseload/workload standards. The results were more encouraging than in 1983. Over 80 programs responded to the survey, and more than 75% indicated that they had either formal or informal standards in effect. Fifty percent of the programs reported having formal written standards. Many of these programs had been successful in incorporating their standards into the regular budget process. Over half of the programs reporting formal, written standards indicated that attorneys in the program were required to keep time records, including hours spent on individual cases, on either a daily or weekly basis. The majority of these latter programs had developed a computerized management information system for statistical and docketing purposes. Several of the programs indicated that they had developed their caseload standards as a result of an internal time study.

The last question set out in the survey asked for a description of any problems that inhibit the program from developing specific caseload limitations. The most frequent response to this question was lack of credible data to support caseload numbers.

Programs that have successfully addressed the problem share a common set of characteristics. They include:

- a sound management information system based upon reliable and empirical data;
- a statistical reporting procedure which has been accepted by the funding sources;
- a sound managerial/administrative system;
- the ability to tie caseload standards to budget requests; and
- the ability to mobilize strong local support for their program.

The results of this survey showed that many statewide and local public defender agencies had in fact recognized the importance of developing accurate and reliable caseload standards, in large measure because the funding source, state or local, demanded that the program become more accountable as requests for increased funding were made from year to year. Many funding sources became frustrated by the fact that public defenders were unable to justify their funding requests through reliable, quantitative measures. Such measures are absolutely necessary not only to justify funding requests but to permit funders to plan for reasonable year to year appropriations. This was precisely the reasoning behind the Tennessee General Assembly's request for this weighted caseload study of the State Public Defender program.

## 2.1 Measurement Methods Employed by Public Defenders to Develop Caseload Standards

In a paper entitled "Public Defender Caseloads and Common Sense," Professor Richard J. Wilson (then of the City University of New York School of Law) described three basic methods used by public defender offices to develop caseload standards. This paper was based on a joint study that he and the Jefferson Institute<sup>9</sup> carried out for the National Institute of Justice entitled, "Case Weighting Systems: A Handbook for Budget Preparation." Professor Wilson identified the three

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<sup>9</sup> A consulting firm based in Washington, DC.

systems as unit-based, time-based and open file.

The unit-based system is an attempt to establish a maximum number of cases that one public defender attorney can reasonably be expected to handle in a given year. The best example is the standards developed by the National Advisory Commission on Criminal Justice Standards and Goals, discussed earlier in this report. Some 26 years later, the NAC standards are still the only nationally promulgated numeric standards governing defender office trial and appellate caseloads. It is significant to note that these standards were developed exclusively by attorney estimates.

The second system identified is the time-based system. Under this method, public defender attorneys report the amount of time that it takes them to perform specific tasks on various kinds of cases, from intake to disposition. Public defender offices have conducted studies to measure these activities both through attorney estimates alone and through a more extensive case-weighting process, which involves filling out contemporaneous time records.

The third method that public defenders have used to control caseload is to establish a total number of open cases to be handled by any public defender attorney at any one time.

Based upon more than a decade of work in the field of public defender caseload/workload measures, The Spangenberg Group feels that any reliable caseload study must be empirically-based in order to assure reliability both for public defender management and the funding source. There are two acceptable methods to achieve these results: the Delphi Method and the Time Record-Based Case-Weighting Method. The most reliable method, which is the one chosen for the Tennessee study, is the case-weighting method using contemporaneous time records.

## 2.2 The Time Record-Based Case-Weighting Method

The case-weighting method such as the one used in the Tennessee study is one in which detailed time records are kept by public defender attorneys, over a given period of time, typically ranging from seven to 13 weeks. The time records provide a means by which caseload (the number of cases a lawyer handles) can be translated to workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). In the broadest context, weights can be given to the total annual caseload of an office to compare to the next year's anticipated volume of cases.

Assuming that time records are kept of attorney time expended in each case, the translation of projected caseload into projected workload can be accomplished with some assurance of precision.

Under the Delphi Method, a sample of attorneys is given a series of scenarios designed to reflect typical cases and clients to be found in any public defender' workload. The attorneys are asked to estimate the amount of time involved handling the various scenarios. This results in case weights based on "strong educated guesses" about the relative time require to complete various tasks.

The Spangenberg Group has had extensive experience in conducting caseload/workload studies for public defenders around the country using both the Delphi and Time-Based Case-Weighting methods.<sup>10</sup> This experience has led us to the conclusion that the time-record case weighting method is the most thorough and complete method to determine valid, empirical workload measures that can be translated into caseload standards for public defender programs.

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<sup>10</sup>We used the Delphi method in conducting our case-weighting studies for the California Office of the State Defender and the State Public Defender of Wisconsin and we used the time-record-based method in studies for the Colorado State Public Defender, the Minnesota Board of Public Defense and the New York Legal Aid Society Criminal Defense Division.

## Chapter 3

### Site Work and the Tennessee District Public Defenders Conference

#### 3.1 Site Work

In June and October 1998, members of The Spangenberg Group visited several of the Tennessee District Public Defenders Conference district offices. This field work was conducted to familiarize the research team with the procedures and policies affecting criminal law practice for public defenders throughout Tennessee, and enabled us to learn about the variations in practice among judicial districts. The Spangenberg Group considers these site visits a critical part of the study, because they best inform us as to how defenders from various regions of the state spend their time on case specific and non-case specific tasks. In addition, our discussions with staff attorneys enabled us to begin designing the daily activity log to be used in the time study.

The site work team consisted of four members of The Spangenberg Group: attorney and President of the company, Mr. Robert L. Spangenberg, Vice President Marea L. Beeman, Research Associate David J. Carroll, and attorney and Research Associate Evelyn S. Pan.

In performing our site work, we met with a significant number of individuals, including supervisors, staff attorneys, investigators and support staff, who introduced us to their local public defender program. All of the site team participants were highly impressed with the competence, dedication and enthusiasm of the men and women working for the Tennessee Public Defender system.

#### 3.2 The Tennessee Court System

The criminal justice court system in Tennessee operates on three levels. The highest court is the Tennessee Supreme Court, which has five justices. The justices are nominated by the Judicial Selection Commission, appointed by the governor, and are retained on a “yes-no” ballot every eight years. By constitutional mandate, the court convenes in Knoxville, Nashville, and Jackson.

The intermediate appellate court is the Court of Criminal Appeals, whose twelve judges (also serving eight-year terms subject to a “yes-no” vote each term) hear capital, criminal and juvenile case

appeals. The Court of Criminal Appeals hears trial court felony and misdemeanor appeals in three-judge panels, meeting in Knoxville, Nashville and Jackson.

The trial courts in the Tennessee criminal justice system are the Circuit Courts, and, in some judicial districts, Criminal Courts, which were established by the General Assembly to relieve Circuit Courts in areas succumbing to heavy caseloads. General Sessions Courts (established county-by-county) also hear criminal cases, but jurisdiction is limited to preliminary hearings in felony cases, and misdemeanor trials in which the defendant has waived the right to a jury trial. General Sessions Court is not a court of record. General Sessions judges may also hear juvenile cases in counties where the General Assembly has not established a separate juvenile court. Juvenile courts, if they have been established, have exclusive jurisdiction over proceedings involving minors alleged to be delinquent, abuse and neglect cases, and Children in Need of Services (CHINS) cases.

### 3.3 The Public Defender System in Tennessee

#### 3.3.1 Indigency Determination

The Tennessee courts are responsible for determining a defendant's indigent status for the purpose of appointing public defender representation. The court considers the ability to make a bail bond, income, property, obligations, number and ages of dependents, and any other factors that may be relevant to the indigency determination. Upon a finding of indigency, the judge then appoints the district public defender or private counsel to represent the person.

We have been told by attorneys in sample districts we visited that the actual screening for indigency is cursory at best, and that judges rarely fail to find indigency if a defendant claims inability to afford counsel. There are no verification procedures, though in some districts the judge presumes ability to afford counsel if the client is able to post bond. Recoupment is a possibility, but rarely imposed. Many attorneys are not themselves aware of the eligibility standards.

### 3.3.2 Conflict of Interest Cases

Generally speaking, there are no formal procedures for screening cases for potential conflicts of interest. Once a conflict is detected, the public defender's office is responsible for seeking withdrawal. The readiness with which the courts permit withdrawal and appoint substitute counsel varies from district to district. In some regions, public defenders are automatically excused from representation of co-defendants or in cases where the victim is a former or current client, and withdrawal is generally granted in other situations as well. In other regions, however, particularly in areas with heavier dockets, it can be a struggle to withdraw even from cases in which the public defender represents co-defendants; and, in fact, many attorneys described having to represent co-defendants because of an inability to withdraw from the situation.

### 3.3.3 Public Defender Attorney Ranking

Attorneys in the public defender system are classified and paid according to years of experience.<sup>11</sup> Supervisors almost always carry caseloads; some are partial caseloads, but others are full felony caseloads. Generally, supervisors' caseloads are comprised of more serious offenses. In some of the smaller, rural offices, the supervisor takes responsibility for all capital or death-eligible cases. Senior attorneys who are not office heads typically handle felonies in criminal and circuit court. In many districts, more experienced attorneys are encouraged to become involved in community service activities as representatives of the public defender program. This includes serving on bar committees or boards reviewing criminal justice issues, participating in school programs (such as moot court), making presentations to bar association groups, etc. Newer attorneys usually begin in General Sessions court handling misdemeanors and probation violation cases. Eventually, as their experience grows, junior attorneys begin taking on responsibility for increasingly serious cases. Occasionally this responsibility is thrust upon a new attorney prematurely, as when

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<sup>11</sup> Salaries for assistant public defenders are increased in small increments every year up to a final 1.5% increase once the attorney has reached twenty years of experience. Beyond this level of experience, the assistant public defender salary is capped. The District Public Defenders earn a fixed salary, irrespective of experience.

a felony attorney leaves the office, forcing the district public defender to reassign the departing attorney's caseload before a replacement can be found.

#### 3.3.4 Training

In smaller districts, there is no formal in-house training program for attorneys. Nashville provides training sessions for its new attorneys through a series of six to eight seminars focusing on issues most relevant to those attorneys' practice areas. Generally speaking, however, most of the newer attorneys learn much of their work on-the-job. There is an annual Tennessee District Public Defenders Conference at which attorneys can fulfill their annual Continuing Legal Education ("CLE") requirements. While this has been helpful to attorneys in the public defender system because it eases the burden of obtaining CLE credit each year, many attorneys expressed the desire to participate in more training and coursework. We were informed that there are many CLE and other professional development opportunities offered externally which are available throughout the year. However, time constraints preclude most attorneys from taking advantage of these educational opportunities. Davidson County attempts to provide supplemental training in-house by offering occasional CLE presentations during monthly staff meetings.

#### 3.3.5 Investigators

Investigators are in short supply in virtually all of the Tennessee district public defender offices. Many attorneys report having to conduct the bulk of their cases' investigatory tasks without investigator assistance, either because the office's investigator(s) were overburdened and could not accept the request, or because of the realization that the investigator would never be able to fulfill the task on a timely or thorough basis. In most offices, there is either a stated or unstated policy of reserving the investigator's services for the most serious of felonies, e.g., murder, rape. The quality of what little investigative staff exists has been reported to be excellent.

The problem is compounded by the fact that some of the investigator slots available are classified as attorney-investigator positions. The attorneys who are hired into these positions work as attorneys and case handlers, but not as investigators. The people with whom we spoke regarding this practice told us that hiring attorneys under these circumstances is necessary to meet what they

consider to be the higher priority goal of acquiring more attorneys to handle growing caseloads. This results in districts *not* hiring investigators, and, therefore, compromising this very critical function of representation.

### 3.3.6 Case-Tracking

In 1993, the members of Tennessee District Public Defenders Conference created a six-person committee charged with investigating and making recommendations to the TDPDC on the purchase of case-tracking and case-management software. At that time, many indigent defense providers across the country were just beginning to automate these functions, so very few off-the-shelf case-tracking software programs were commercially available. Because public defender case-tracking software was in its infancy, and because the committee felt that none of the available programs satisfied the needs of TDPDC, the case-tracking committee recommended that the Conference issue a request-for-proposal to have a case-management software program made especially for the Tennessee public defenders.

In 1994, TDPDC contracted with Amicus Legal Staffing, a division of the Nashville-based Corrections Management Affiliates, to create a Tennessee public defender case-tracking program. The majority of the district public defenders (excluding Knox, Davidson and Shelby counties) currently use the Amicus-produced CaseMan case-tracking system. CaseMan is a Fox-Pro based data collection and statistical program that tracks cases as they move through the court system from assignment to disposition. Each district public defender office that uses CaseMan generally has one or two non-attorney staff charged with the daily updating of the system, including opening and closing cases, recording subsequent appearances, and electronically sending statistical caseload information to the TDPDC office in Nashville on a monthly basis. CaseMan is supported by a two-person management information specialist team located at the TDPDC headquarters.

Originally, the Metro Public Defender's Office in Davidson County also opted to use the CaseMan program. After approximately one year, Davidson County officials elected to electronically link the county's criminal justice agencies on a LAN-system to allow for the sharing of non-confidential court information. Unfortunately, the new criminal justice link would not support the CaseMan product. After unsuccessfully trying to resolve the problem, the Metro Public

Defender office opted to stay on the Davidson County criminal justice system link. The office currently tracks caseload information manually.

When TDPDC elected to contract with Amicus to design the CaseMan system, the Knox County Public Defender was already considering other case-tracking software. The decision was made that it would be more beneficial to Knox County to have a case-tracking system that was Windows-compatible. In 1994, the Knox County Public Defender entered into an agreement with CompuLegal, a company specializing in civil case-tracking software. CompuLegal agreed to make modifications to its civil case-tracking program to accommodate the criminal defense needs of the office. The resulting product, LegalPro, a Paradox-driven, Windows-compatible 32-bit application, is the current case-tracking program in the Knox County office. Three data-entry clerks open cases on LegalPro, while secretaries and attorneys make electronic updates to the files throughout the life of a case. The Knox County Public Defender has a management information specialist on staff to oversee the LegalPro case-tracking software and its supporting hardware.

Shelby County's public defender case-tracking system is currently in transition. When CaseMan was first brought on-line, the Shelby County Public Defender Office did not have the computer capacity to run the program and, unfortunately, the TDPDC did not have the financial resources to purchase personal computers for them. For more than a decade, the Shelby County Public Defender operated a Wang-based mainframe system to track billable in-court and out-of-court attorney hours for the county. The attorney-hour tracking program was specifically written for the public defender office by the county's data programmer. The system was not designed to track case counts. A program run by the local clerk of courts currently provides some public defender case-tracking information, though the system does not give complete and detailed information by offense classification. Much of the county's public defender case counts are done by hand.

Over the past two and a half years, the Shelby County Public Defender has received additional county funding to purchase personal computers for the office. With the updated hardware, the Shelby County Public Defender was able to recently reassess its case-tracking needs. Since 1993, there have been many improvements in commercially-available public defender case-tracking software. Having assessed a variety of programs, including CaseMan, the Shelby County Public Defender elected to purchase Case-in-Point, a Windows-based criminal case management system

designed for high volume defender offices. Case-in-Point was developed by Portland, Oregon-based Key-Point, which specializes in legal case-tracking software programs. Case-in-Point is scheduled to be installed and working by the summer of 1999. For the immediate future, Shelby County will continue to employ manual case-counting procedures.

### 3.4 Variations in Practice Across the State's Regions

Differences in public defender practice in Tennessee are attributable to many factors, such as prosecutor charging and negotiation practices, or the existence of specialty courts. However, the best way to characterize general variations in practice is to consider the offices as members of distinct regions. Population density and geography assert significant influences over the caseload and practice of public defenders throughout the state. For analysis purposes, members of the Judicial Weighted Caseload Study Steering Committee classified the participating districts according to three types of regions in Tennessee: Urban, Rural, and Transitional. (See Table 3-1)

<b>Table 3-1 Regional Categorization of Participating Districts</b>		
<b><u>Urban</u></b>	<b><u>Rural</u></b>	<b><u>Transitional</u></b>
District 6 – Knox	District 4 – Sevier, Jefferson, Grainger, Cocke	District 2 – Sullivan
District 20 – Davidson	District 13 – Clay, Pickett, Overton, Putnam, Dekalb, White, Cumberland	District 16 – Rutherford, Cannon
District 30 – Shelby	District 22 – Maury, Giles, Lawrence, Wayne	District 19 <sup>12</sup> – Montgomery, Robertson
	District 25 – McNairy, Hardeman, Fayette, Tipton, Lauderdale	District 26 – Madison, Henderson, Chester
	District 29 – Lake, Dyer	

Urban districts exhibit dense population centers and concentrated economic and industrial activity. Rural districts, on the other hand, are characterized by larger geographical territory, and

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<sup>12</sup>District 19 was originally in the study, but excluded because participation became unduly burdensome due to upheaval resulting from a tornado which struck the region early in the time study.

a more diffused population. Transitional districts can be identified by their traditionally rural environs, but growing population centers and accelerated economic and industrial activity have altered the nature of the criminal docket to more closely resemble their urban counterparts. These districts' dockets are growing in volume, and the communities within these regions are beginning to see a rise in drug and/or violence crime prosecutions. One common thread shared by all of these regions is a gravitation toward horizontal representation of felony clients, whereby one client may be represented by several different attorneys as he or she progresses from arraignment to trial, and perhaps to post-judgment activity. This is in large part due to the almost universal division of public defender assignments among courts (general sessions v. circuit courts), rather than among clients, given that virtually all felonies originate in general sessions court. Table 3-2 lists all judicial districts in Tennessee according to their regional categorization.

<b>Table 3-2 Regional Categorization of All Judicial Districts</b>		
<u><b>Urban</b></u>	<u><b>Rural</b></u>	<u><b>Transitional</b></u>
District 6 – Knox	District 3 – Greene, Hamblen, Hancock, Hawkins	District 1 – Carter, Johnson, Unicoi, Washington
District 11 – Hamilton	District 5 – Blount	District 2 – Sullivan
District 20 – Davidson	District 7 – Anderson	District 4 – Cocke, Grainger, Jefferson, Sevier
District 30 – Shelby	District 8 – Campbell, Claiborne, Fentress, Scott, Union	District 16 – Cannon, Rutherford
	District 9 – Loudon, Meigs, Morgan, Roane	District 18 – Sumner
	District 10 – Bradley, McMinn, Monroe, Polk	District 19 – Montgomery, Robertson
	District 12 – Bledsoe, Franklin, Grundy, Marion, Rhea, Sequatchie	District 21 – Hickman, Lewis, Perry, Williamson
	District 13 – Clay, Cumberland, DeKalb, Overton, Pickett, Putnam, White	District 26 – Madison, Henderson, Chester
	District 14 – Coffee	
	District 15 – Jackson, Macon, Smith, Trousdale, Wilson	
	District 17 – Bedford, Lincoln, Marshall, Moore	
	District 22 – Giles, Lawrence, Maury, Wayne	
	District 23 – Cheatham, Dickson, Houston, Humphreys, Stewart	

**Table 3-2 (Continued)**  
**Regional Categorization of All Judicial Districts**

<u>Urban</u>	<u>Rural</u>	<u>Transitional</u>
	District 24 – Benton, Carroll, Decatur, Hardin, Henry	
	District 25 – Fayette, Hardeman, Lauderdale, McNairy, Tipton	
	District 27 – Obion, Weakley	
	District 28 – Crockett, Gibson, Haywood	
	District 29 – Dyer, Lake	
	District 31 – Van Buren, Warren	

### 3.4.1 Urban District Public Defender Practice

Urban district public defenders practice in a single-county, centralized court system. Attorneys in the urban offices are assigned cases according to their experience level. Typically, newer attorneys start out with a misdemeanor caseload, then graduate to a juvenile caseload and eventually to a felony caseload. In Nashville (Davidson County), however, juvenile attorneys are often specialists and do not transfer back and forth between juvenile and felony work. The urban offices rely on specialists to handle capital and first degree murder cases. There are other types of specialists in the urban offices, such as a bilingual attorney in Nashville who handles the bulk of the office’s Spanish-speaking clients. The pace is hectic, and both misdemeanor and juvenile caseloads are high in urban public defender offices. In Memphis (Shelby County), the public defender’s offices are located in the same building as the court facilities, making quick trips to and from the courtroom relatively easy. In Nashville, the public defender’s office is located within a short walking distance of the courts. In Knoxville (Knox County), public defenders currently must travel about five miles to the courthouse. There is no dedicated work space for public defenders in the court building. In general, however, travel time and court calendar juggling is less of an issue in these areas; case volume is the primary concern.

Urban practice in Nashville and Memphis can be particularly straining due to special assignments, such as “jail docket” in Nashville and “report day” in Memphis. As an example, Jail Docket in Nashville is a day in which the reporting public defender (rotationally assigned to either misdemeanor or felony jail docket) represents all in-custody defendants on that day’s docket sheet. There are generally around 40 or 50 defendants on jail docket each day. The public defenders working jail docket do so out of a converted holding cell at the courthouse, where they handle questions from defendants, requests for information from the court, and pleas or other in-court proceedings. There is virtually no “down-time,” and the pace is feverish. One attorney described the atmosphere as similar to the triage process in hospital emergency rooms. Nashville attorneys participating in the workload study reported tremendous difficulty in breaking down their activities when working the jail docket.

Computers are available to all attorneys, though the technical capability among PC units varies widely, and, as described in Section 3.3.7, Shelby County is still in the process of computerizing all of its attorneys. In Nashville, all attorneys are linked by e-mail, which has improved inter-office communications. Voice mail, too, has also facilitated the flow of information in the urban offices.

### 3.4.2 Rural District Public Defender Practice

Rural offices generally service multiple counties and multiple courts spread over a larger geographical area. District 13, for example, must cover seven different counties among its five attorneys. Caseloads are somewhat lighter than in the urban offices, but the logistical obstacles of traveling and calendaring amongst various counties and courts are major concerns. Travel time alone consumes a large portion of the rural public defender's day. Because of the investigator shortage, much of this travel time includes the legwork involved in locating and interviewing witnesses, as well as searches for one’s own client.

Capital or first-degree murder cases are generally handled by the district public defender, or by a very senior staff attorney. Among other staff attorneys, case assignments vary from district to district. In some rural districts, there may be an attempt to ease junior attorneys into felony work through experience in General Sessions court. However, because of the small staff size of most rural

offices, it is generally not practicable to divide attorneys' workloads this way, and many districts consequently assign attorneys to cover the entire caseload in individual counties. These attorneys are responsible for all cases originating in those jurisdictions, whether misdemeanor or felony. There is little or no supervision of attorneys in rural districts.

Attorney-client contact is substantially affected by the nature of rural practice. Approximately half of the rural public defender's clients are out-of-custody, and it is initially the responsibility of the client to contact the public defender. Attorneys informed us that most of their clients are very diligent about contacting the office, but some are not. Moreover, many clients do not have ready access to a telephone or transportation. In these situations, rural attorneys often will travel to visit their clients. Clients who are able to call the public defender office are often frustrated when, due to a shortage of support staff and hectic court schedules, they reach an answering machine instead of a person in the rural branch offices.

There are very few support staff available in rural districts. For example, it is not unusual for one legal secretary to divide her time and travel among county offices throughout the week. As a result, many rural attorneys must handle nearly all of their own administrative tasks such as filing and typing, and tracking expenses. In rural offices, there is often no one but an attorney available to answer the phone, and, as mentioned above, most rural offices rely on an answering machine to accept calls. Computers equipped to handle legal research and other services are in short supply. Where computers are available, they generally are underutilized due to lack of training. In at least one district, the district public defender opted not to install various legal research software on the only computer which had an intermediate-speed processor, so that the one secretary in the office could use it to type motions for the attorneys.

Another factor in small towns is the impact that notorious cases, such as a sex assault, have on the community. A sexual assault case in a small town will likely take much longer than in Memphis. Publicity and notoriety result in lengthier proceedings. At the same time, however, members of The Spangenberg Group observed in their site visits that the intimate nature of small town court systems can also facilitate speedier resolution of cases. For example, judges, sheriffs, and the public defender often have continuing relationships and can avoid prolonged proceedings by making agreements and deals more quickly.

### 3.4.3 Transitional District Public Defender Practice

Transitional districts face challenges of both rural and urban practice. These are districts which in previous years were essentially rural, that is, situated across more than one county, and/or serving a dispersed population. Increased population density and economic activity, however, have produced greater case filings in the courts in these districts. Public defenders in these regions have experienced a corresponding increase in burdens associated with handling greater numbers of cases and more serious felonies. As a result, resource utilization is perhaps the greatest challenge facing public defender offices in transitional districts, because many offices still operate with staffing established under the assumption that caseloads would be lighter, both in volume and seriousness.

Attorneys in transitional district offices described their caseloads as having “exploded” in recent years. In some circumstances, the public defender office has been required to cover newly created courts with existing attorneys. Attorney assignments vary from district to district. In Sullivan County, for example, attorneys are assigned to specific courts, either alone or with another attorney, although attorneys frequently must stand in for each other due to court schedule juggling. In Montgomery County, attorneys rotate through General Sessions and Circuit courts. Most transitional offices function with little or no supervision. There is essentially no secretarial support, and most of the attorneys do all their own typing. Computer resources vary: Sullivan County attorneys each have computers equipped with CD-ROM legal research capabilities, but in other districts, computer access to CD-ROM research is very limited.

### 3.5 Factors Affecting Workload Nationally and in Tennessee

As the preceding discussion indicates, factors such as geography and population density can contribute to regional variations in public defender practice. Moreover, national and local trends in criminal justice jurisprudence and legislative and law enforcement policies necessarily influence the way the public defender must approach his or her work. The public defender’s duties are defined by not just the number of cases they must handle, but also their increasing complexity. This is the premise behind a case weighting study.

The ability to *weight* cases allows thorough consideration of not just the raw number of cases assigned to a public defender program annually, but also the overall severity of cases handled by the

program. This ability is particularly valuable in light of numerous factors affecting indigent defense caseloads nationally and locally. For instance, "tough on crime" legislation has been enormously popular around the country in recent years, resulting in new mandatory minimum sentences and habitual offender sentence enhancements. Each of these phenomena produces greater numbers of initial filings by prosecutors, as well as fewer cases which can be diverted out of the system at an earlier stage of litigation. While violence-related drug crimes have been a main target of prosecution for several years, we have begun to see a considerable increase in arrests of non-violent drug offenders as well. Other important factors nationwide include:

- Changes in statutes, case law, or court rules in individual states that increase the types of cases or proceedings for which counsel is required;
- Changes in the economy, resulting in increased claims of indigency;
- Increased levels of appropriation to public safety and prosecutorial functions, without a commensurate increase to public defenders, resulting in greater numbers of prosecutions and case filings;
- Increased levels of appropriation to corrections and prison facilities, enabling greater numbers of offenders to be incarcerated;
- Changes in public policy or office policy within public defender offices requiring the performance of additional tasks, e.g., preparation of sentencing reports and diversion recommendations, indigency screening, and appellate review;
- Changes in prosecutorial practices such as the institution of career criminal prosecution programs or policies limiting plea bargaining in certain types of cases;
- Changes in the method of case disposition or the stage at which cases are disposed, e.g., increase in trials, more frequent use of juries, fewer dismissals, less plea bargaining at early stages of the case;
- Changes in the nature of offenses for public defenders with an increased percentage of cases exposing clients to substantial, mandatory imprisonment;
- Reductions in court processing time through added judgeships or other increases in court efficiency; and

- Changes in procedural handling (e.g., speedier trials or preliminary hearings) for certain classes of offenses.

The Tennessee caseload, while affected by national trends in criminal justice, has manifested its own unique workload characteristics. The following is a non-exhaustive list of Tennessee-specific information concerning public defender caseload:

- In 1991, the average annual caseload for TDPDC attorneys was 545 cases. By the next year, caseloads had risen 20% to 653 cases per attorney;
- In 1996 there was a 12% increase in the average caseload per attorney, and in both 1997 and 1998 the annual caseload grew by 8%. The current average, annual caseload is 670 cases per attorney;
- Homicide filings from 1997-1998 were nearly 30% higher than those in 1996-1997, and are currently at about 1,321 statewide.

## Chapter 4

### The Daily Activity Log and the Collection of Data

#### 4.1 Introduction

This chapter describes the technical aspects of developing the Daily Activity Log and its accompanying Instructions, as well as the actual coding methodology. It also discusses the sample of participating attorneys and the data collection process.

The primary purpose of developing case weights is to provide the Tennessee District Public Defenders Conference with a reliable and credible basis for developing staffing need estimates for its annual funding requests. The goal was to design a workload measurement approach that would be tailored to the nature of criminal practice in Tennessee. To accomplish this, we needed to satisfy three requirements:

- The daily activity log needed to account for all of the hours that public defenders worked during the seven-week period of the study;<sup>13</sup>
- The methodology developed needed to be minimally intrusive to the sample of attorneys as they recorded their activities each day; and
- The methodology must assure that the time recorded reflected the totality of the actual environment in which public defenders work, including travel and waiting time.

To collect data for the case-weighting study we used a self-recording measurement tool for the selected sample of attorneys throughout the state. The participating attorneys would complete daily time sheets for seven consecutive weeks, a period we felt was long enough to establish the empirical basis to support the workload standards, and yet short enough to limit the intrusion on the attorney's work environment.

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<sup>13</sup> This included time spent directly providing representation in individual cases; activities that were not directly related to an individual case, but are nonetheless part of the work of a public defender; and time away from work, e.g., holidays, vacation or sick time.

#### 4.2 Designing and Testing the Daily Activity Log

Following our site work in the fall of 1998, Vice President Marea Beeman and members of The Spangenberg Group developed a draft Daily Activity Log, the instrument on which sample attorneys were to record their time over a seven-week period, and an accompanying manual containing instructions on how to complete the Daily Activity Log. The Daily Activity Log was similar to those we developed for use in public defender time studies conducted in New York City, Minnesota, and Colorado, but tailored, naturally, to public defender practice in Tennessee. Input from the numerous individuals we met during our site work allowed us to ensure that the Log accurately captured the various types of situations faced each day by Tennessee public defenders – whether practicing in urban, rural, or transitional districts in the state.

In November 1998, Robert Spangenberg, David Carroll, and Evelyn Pan met with twenty-four public defenders from around the state in Nashville and in Memphis. The purpose of these meetings was to introduce the group to our draft Daily Activity Log and the accompanying Instructions, to get their input and suggestions for improvement on their design, and to train the attorneys to use the draft version of the Log in a week-long pre-test. The pre-test, using the new versions of the Log and Instructions, was conducted one week later, from November 23 - December 4, 1998. Following the pre-test we consulted with the participating public defenders to determine if they had any further suggestions for modifying the final version of the Daily Activity Log. Once the necessary changes were made and final versions of the Daily Activity Log and Instructions were produced, the next step was to select the full sample of attorneys to participate in the time-tracking phase of the study.

#### 4.3 The Sample

The study covered the seven-week period from January 11 to February 26, 1999. This period was considered sufficiently long to capture the variety of activities performed by staff attorneys in various regions of the state. The Steering Committee selected Districts 2, 4, 6, 13, 16, 19, 20, 22, 25, 26, 29, and 30 as the sample districts which would participate in the study. The National Center for State Courts, The Spangenberg Group, and the American Prosecutors Research Institute all

agreed that these districts would best represent the diversity in geography, population, prosecutory customs, and public defender practices in Tennessee.

Every full-time attorney from the selected districts participated in the study, with the exception of attorneys who had joined the public defender’s office only within the three months prior to the start of the time study. At the onset of the time study, the districts produced a total of 133 attorney-participants:

<b>Table 4-1</b>	
<b>Attorney-Participants by District</b>	
<u>District</u>	<u>Number of Attorneys</u>
2 – Sullivan County	6
4 – Cocke, Grainger, Jefferson, Sevier Counties	7
6 – Knox County	18
13 – Clay, Cumberland, Dekalb, Overton, Pickett, Putnam, White Counties	5
16 – Cannon, Rutherford Counties	5
19 – Montgomery, Robertson Counties	6
20 – Davidson County	29
22 – Giles, Lawrence, Maury, Wayne Counties	5
25 – Fayette, Hardeman, Lauderdale, McNairy, Tipton Counties	5
26 – Chester, Henderson, Madison Counties	5
29 – Dyer, Lake Counties	3
30 – Shelby County	<u>39</u>
<b><u>Total</u></b>	<b>133</b>

As the study progressed, various external circumstances changed the total count of attorney-participants in the study. First, District 19 (6 attorneys) was excluded from the study due to a tornado which caused significant damage and disruption to the community, including the public defender's office and the courts.<sup>14</sup> Second, it has been our experience that within any group of attorneys asked to keep their time on a daily activity log, some will not be able to track their activities consistently or accurately within the parameters set by our study. Because we feel that the data in the time sheets completed by these individuals lacked the degree of reliability we require, we excluded a total of five attorneys from the study whose time sheets were not sufficiently complete: three from Nashville, and two from Memphis. As a result, there was a final count of 122 attorney-participants in the study whose data were used in the calculation of the workload standards.

Before the seven-week time tracking period began, The Spangenberg Group held group training sessions in three locations (Memphis, Nashville, and Knoxville). Each participating attorney was required to attend the training. At the sessions, attorneys were introduced to the mechanics of the Daily Activity Log, and then provided with a number of hypothetical exercises for which to code time. The time sheets did not require identification of individual attorneys or clients. Each participant was assigned an identification number or "attorney number" and instructed to include this number, and not their name, on their time sheets each day. The attorney numbers enabled researchers to track completed time sheets as they were submitted, while assuring attorneys anonymity.

#### 4.4 Structure of the Daily Activity Log

The Daily Activity Log, or "time sheet," was designed to capture the activity of public defenders from the time they entered the office to the end of their work day. Attorneys were

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<sup>14</sup> This District was also excluded from the APRI study. Because the time study for judges was conducted in the fall of 1998, NCSC report includes District 19.

instructed to record all time spent in-court, as well as all out-of-court activities which lasted ten minutes or longer.<sup>15</sup> Attorneys were required to provide start and stop times for all activities according to the specific type of activity performed (e.g., preparing a motion, participating in training, or waiting in court). In addition, they were required to specify for what type of case the activity was performed (e.g., Misdemeanor or Class B Felony). If the activity performed was non-case related (e.g., lunch break or administration), the attorneys were instructed to use a special “non-case related” case type code.

The time sheet contained nine specific case type codes representing felony, misdemeanor, juvenile, probation violation, post-judgment and appellate cases handled by trial attorneys with the public defender conference. An “Other” case type code was also provided to reflect any unusual type of case the attorney was involved in which could not be accurately captured by the other nine case type codes. A “Multiple Case Types” code was also provided; attorneys were instructed to use this code only in the situation where activities involving different types of cases occurred in such rapid succession that separate recording would be impracticable. Finally, the “Non-Case Related” case type code was included for the attorneys’ use to describe activities which did not pertain in any way to an existing case.

There were twenty case-related activities that lawyers could use to record the actual work that they performed on the cases that they were handling, such as case preparation, a conference with a prosecutor, or a sentencing hearing. There were four “General Activities” codes which might either be performed in relation to a specific case or which were non-case related (e.g., waiting time or supervision). Finally, there were six other activity codes that were not case-related, but were nonetheless integral parts of performing their jobs (e.g., professional development, lunch or community service), as well as an “Other” category for miscellaneous activities not covered by the first thirty codes.

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<sup>15</sup> In order to minimize the burden on attorneys during particularly hectic periods of their days, we allowed the attorneys the opportunity to either combine short (lasting less than ten minutes), out-of-court activities into longer ones without recording separately the short activity, or to record several short out-of-court activities together under a “multiple activities” coding option. To ensure quality data concerning attorneys’ time in-court, however, we instructed the attorneys to record all activities performed before a judge, even if very short in duration.

#### 4.4.1 The Case Type Codes

To ensure that the complete picture of public defender representation in the state during the time-recording phase would be recorded, numerous case types were provided for on the daily log. It was not sufficient to break out the case types into the broad categories of juvenile, misdemeanor, felony and appeals. The amount of time required to provide representation in some categories of cases varies greatly, and to account for these variations, it was necessary to create sub-classifications within the broad categories. After consulting with many public defenders from various regions and with various experience levels, and in conjunction with the Conference's Executive Director, we agreed that the felony category required more sub-classifications. Narrowly classifying felony work would enable us to better account for the substantial variation in time required to provide representation in the wide spectrum of felony case types and severity levels.

The Steering Committee and the Public Defender sub-committee decided to break the felony classifications into four levels: Capital/First Degree Murder, Felony A, Felony B, and Felony C, D, and E. The workload factors considered when identifying the four felony case type codes were as follows:

- Seriousness of Charge: The case types identified follow the existing severity level classifications as set forth in the Tennessee Code Annotated with some modifications. Felony C, D, and E cases were collapsed together based on the consensus that the amount of effort put into these cases is about equal.
- Capital/First Degree Murder: The unique nature of capital cases and cases involving a charge of first degree murder was perceived to increase the work required in handling them.

Misdemeanor and juvenile cases were separated in order to study the amount of time necessary to handle each of these types of cases.<sup>16</sup> Probation violations and post-judgment actions,

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<sup>16</sup> Although offenses charged in juvenile cases generally fall under adult felony and misdemeanor classifications, it was agreed that juvenile representation should be studied separately in order to properly credit the amount of social services and other agency-related work involved in representing minors.

which typically stem from existing files or recent adjudications, were also studied independently in order to account for the variations in procedural handling of these types of cases.<sup>17</sup>

Although the offices varied in whether and the degree to which the attorneys handled appeals for their own clients, most offices did handle some appeals. We therefore also included a case type code for appeals.

Attorneys were instructed that if they were representing a client facing multiple charges, they should record all work for that case on the Daily Activity Log using the case type code corresponding to the most serious charge.

#### 4.4.2 The Activity Codes

Along with each case type code entered on the Daily Log, attorneys were required to record an activity code corresponding to all work performed, whether it was case-related work or non-case-related work. Activity codes developed for the Log were broken into five categories:

- Out-of-Court Case Related Activities;
- In-Court Case Related Activities;
- General Activities (Case or Non-Case Related);
- Non-Case Related Activities; and
- Other Activities.

“Out-of-Court” case related activities were defined as work performed by a trial attorney in connection with representing a specific defendant outside of court in a misdemeanor, felony, or juvenile case, or a case on appeal. These activities are defined as case-related, but not performed in front of a judge. The seven “out-of-court” case related activity codes on the time sheet were:

- Investigation;
- Client Related Contact;
- Social Services Activity;

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<sup>17</sup>We learned in our on-site interviews with public defenders that each of these types of representation generally involve less investigation and move more quickly through the system than charges which originate independently.

- Legal Research;
- Conference with Supervisor/Colleague;
- Conference with DA or Court Personnel; and
- Case Preparation.

Information dispensed in the training sessions and in the Instructions Manual accompanying the Daily Activity Log detailed specific definitions and distinctions among these activities.<sup>18</sup>

Thirteen “in-court” case related activity codes were used to describe various proceedings, hearings, conferences which might take place before a judge in each of the various courts of practice (general sessions, circuit or criminal, and juvenile):

- Arraignment;
- Initial Hearing/First Appearance;
- Preliminary Hearing;
- Bond Hearing;
- Pre-Trial Conference/Status Hearing;
- Motions;
- Disposition/Plea/Settlement Day;
- Trial;
- Sentencing;
- Post-Trial/Post-Plea;
- Detention Hearing;
- Diversion; and
- Waiver Hearing.

#### 4.4.3 General Activities

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<sup>18</sup>For instance, client related contact was defined as "...any telephone, in-person or written discussions with the defendant, defendant's friends or the defendant's family. Includes contact in office, jail, detention center, court holding pen or correctional facility. Includes all conferences with the client prior to the beginning of hearings or trial."

“General Activities” activity codes were used to describe types of work which might or might not pertain to a specific case, but were nonetheless basic functions required of public defenders in Tennessee:

- Waiting Time;
- Travel Time;
- Multiple Activities; and
- Supervision.

The “Multiple Activities” code was used in the situation where several different types of work were performed in rapid succession such that the attorney is unable to track each activity individually. These short activities might involve case-related work, e.g., quick conferences with the prosecutor intermingled with client conversations; or, there might be several different non-case related tasks involved, e.g., supervision or administration.

Attorneys were instructed to record waiting and travel time with the appropriate case type code if they were associated with a specific case. Waiting time can compromise a significant portion of a public defender’s day, especially in jurisdictions where private counsel are almost always allowed to proceed before public defender cases, in urban courts, or where jail visits are particularly burdensome.

Travel, particularly in rural regions, can also consume a large amount of time. Travel time was intended to cover all travel incidental to working, with the exception of normal commuting time, and might involve a specific case or not. For example, case related travel time included travel to and from jail visits, court appearances, investigations, etc. Non-case related travel may include travel to and from training sessions in another district, or to and from a doctor’s appointment in the middle of the work day.

#### 4.4.4 Non-Case Related Activity Codes

The “Non-Case Related Activities” category refers to activities which are all related to necessary work of public defenders in Tennessee; however, they are not performed in the course of client representation. Non-case related activities include:

- Administrative Activity;

- Professional Development;
- Lunch & Other Breaks;
- Vacation & Time Away from Work;
- Training; and
- Community Service & Public Education.

With the exception of the non-case related activity codes for waiting and travel Time,<sup>19</sup> all of the activities under non-case related activities category were to be coded, naturally, in conjunction with the non-case related case type code.

The “Time Away From Work” code was established to ensure that there were no gaps in the Daily Activity Logs and so that time sheets were submitted for every day of the time study. Time away from work includes leave time, compensatory time, vacation time, sick time, holidays, etc.

The remaining activities in the non-case related activities section of the time log – administration, professional development, training, and community service and public education – are all essential for the effective public defender, as they would be for any attorney, whether in private practice or other government positions. The Spangenberg Group has included time to perform these activities within the new case-weighting standards.

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<sup>19</sup> See Section 4.4.3, above.

#### 4.4.5 Other Activities

The final activity code on the time log is “Other Activities,” which is essentially a residual code for work that does not fit into any of the previous definitions, whether case or non-case related. For example, during the course of the study we learned that on occasion, the elected district public defenders in Tennessee are called upon to engage in political activities which are vital to their positions, but which were not otherwise contained within the existing activity codes. In these situations, the attorneys used the “Other” activity code with the non-case related case type code. Another district used the “Other” activity code in conjunction with a specific felony case type when the client’s conduct toward his attorney required discussions with the police, which, given the circumstances, could not appropriately be included in the “conference with court personnel” activity code. Overall, the “Other” activity code option was used very sparingly.

#### 4.4.6 Disposition Codes

In addition to providing the start and stop times, activity codes, and case type codes for all work performed during the day, public defenders in the time study were required to record codes for all dispositions produced during the seven week period. As discussed in detail in Chapter 5, we required the disposition codes not to evaluate what types of outcomes were achieved in the sample attorneys’ cases, but rather as a measure of the cases closed. The disposition codes on the Daily Activity Log were:

- Withdrawal;
- Diversion;
- Bound Over to Circuit/Criminal Court;
- Dismissed;
- Plea/Deferred Sentence;
- Plea/Sentence;
- Trial-Acquitted;
- Trial-Convicted; and
- Committed to State Hospital/Incompetency.

In situations involving many of the same type of disposition at one time (for example, when a general sessions arraignment produces three misdemeanor pleas/sentences), we instructed attorneys to record the disposition code with the quantity of cases disposed in parentheses. Similarly, if one in-court event produced several dispositions for the same case type, the attorney would record the appropriate code for each disposition on the same line.<sup>20</sup>

#### 4.5 Attorney Support

Attorneys were instructed to call The Spangenberg Group for assistance if a situation arose which was not explained in the Daily Activity Log Instructions Manual, or if they were uncertain how to code a specific activity. This helped ensure that recording of time would be done in a uniform fashion.

#### 4.6 Data Collection

The time study ran from Monday, January 11 to Friday, February 26, 1999. One hundred and twenty-three attorneys completed time sheets over the seven-week period. We expected that each attorney would submit five time sheets for each of the seven work weeks of the study, or thirty-five time sheets per attorney for a total of 4,305 time sheets. The total number of time sheets received from the 122 sample attorneys during the seven-week period was 4,483.

Gauging participation levels, we found that despite our expectation of some attrition throughout the study, very little occurred. As explained above, five attorneys had to be excluded from the study because it was felt that the quality of their data was uncertain due to time-keeping errors and omissions, and the District 19 attorneys were relieved from participation due to the tornado's effect on their community. For the remaining 122 attorneys, we collected data from an average number of 36.75 days per attorney, or 640 time sheets per week for the entire sample. Many

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<sup>20</sup> Multiple dispositions were allowed to be recorded in this manner provided that the dispositions occurred for the same case type. If several different types of cases were disposed during one in-court proceeding, attorneys were asked to record separately each disposition according to case type. We instructed attorneys never to use the multiple case type code when entering a disposition to avoid ambiguous data concerning time per case type per disposition; however, this was extremely difficult at times, particularly during heavy docket days, e.g., jail docket in Nashville.

attorneys submitted time sheets for work they had performed on weekend days, and a significant number of attorneys' time sheets turned in for state holidays revealed that they had worked on those days as well.

The rate of cooperation among the sample attorneys was outstanding, and the attorneys who participated in the time sheet phase of the study should be commended for the high level of diligence and professionalism they exhibited throughout.

## Chapter 5

### Processing and Analysis of the Data

#### 5.1 Processing the Data

During the training sessions, a representative from each participating district was chosen to collect the completed time sheets and forward them to The Spangenberg Group on a weekly basis. As the time sheets were received, staff members reviewed each line for thoroughness and accuracy. The time sheets were then entered into an Excel-based spreadsheet data-collection program created expressly for the Tennessee study. The program was designed with internal verification features that prevented the user from entering incompatible case type and activity codes, and/or gaps in time.

The data entry task was quite daunting. With 122 attorneys participating in the study, 4,483 time sheets had to be checked and entered. On average, each attorney turned in 36.75 time sheets with slightly over nine hours worth of time entered per day. Each time sheet averaged approximately 16 entries per sheet. In total, The Spangenberg Group verified and entered 70,619 separate entries. As is often the case in these types of studies, problems with incomplete time sheets, incompatible activity and case-type codes, and missing time were more frequent during the initial weeks of the time-keeping. When these problems occurred, The Spangenberg Group contacted the individual attorneys directly to resolve the issues.

During the first two weeks of the study, The Spangenberg Group staff members scanned each individual time sheet for errors,<sup>21</sup> recorded the errors separately, matched the problematic time sheets to attorney-participants by their attorney numbers, and then individually contacted each attorney to resolve the problem. We attempted to contact the attorneys as soon as possible following the submission of the time sheets to ensure maximum recall of the activities in question; indeed, we found that many attorneys were able to isolate and correct the problematic entries.

The Spangenberg Group anticipated that prompt communication with attorneys to clarify time sheet errors would become more and more difficult as the study progressed given the large

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<sup>21</sup> These included time-keeping errors (gaps in time, overlapping time entries, etc.); incompatible case type and activity codes (e.g., case-related case type code entered with non-case related activity code); and illegible entries.

volume of time sheets expected and attorneys' often hectic court schedules. We therefore issued a memorandum requesting that all attorneys begin keeping copies of their time sheets prior to submitting them to our staff so that clarifications would be more easily determined. The Spangenberg Group also began issuing weekly memoranda to the contact person in each participating district, which set forth all time sheet errors by attorney number and date. The attorneys were then responsible for contacting The Spangenberg Group to clarify the error(s). This procedure was extremely successful, and the vast majority of attorneys were diligent and responsive to our requests for clarification.

## 5.2 Analysis of the Attorney Case-Related Time

Once all of the data were collected and entered, we began our analysis by tallying the aggregate time recorded by case type codes. Overall, the attorneys' reported time during the study was 40,427 hours and 13 minutes, including holidays, vacation time, lunch, breaks, non-case related travel and waiting time, and other time away from work. Collectively, the public defenders worked a total of 32,911 hours and 16 minutes during the seven-week time study. Of the total hours public defenders worked during the time study, 91.52% (or 30,119 hours and 50 minutes) was spent on case-related activities. Excluding time away from work, the attorneys participating in the survey worked, on average, seven hours and 52 minutes per day. Approximately seven hours and 19 minutes, or 93% of the average day worked, was spent on case-related activities. Tennessee public defenders are paid to work a 7.5 hour day. Based on this figure, approximately 97.55% of a public defender's paid work day is dedicated to case-related work. Table 5-1 shows the total case-related time recorded during the study broken down by each of the ten specific case-type codes and the multiple case type (case-related) code for each district classification (urban, rural and transitional).

**Table 5-1**  
**Total Case-Related Attorney Time Per Case Type Code**  
 (Hours: Minutes)

<u>Case Type Code</u>	<u>Total Hours</u>				<u>Percentage of Total Time</u>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
Capital/1st Degree Murder	1,426:20	434:19	218:04	2,078:43	7.06%	7.09%	5.75%	6.90%
Felony A	1,137:42	391:45	323:20	1,852:47	5.63%	6.39%	8.53%	6.15%
Felony B	1,451:25	467:45	455:14	2,374:24	7.19%	7.63%	12.00%	7.88%
Felony C, D, E	5,129:26	1,652:01	993:23	7,774:50	25.39%	26.96%	26.19%	25.81%
Misdemeanor	4,604:38	1,146:22	548:48	6,299:48	22.80%	18.71%	14.47%	20.92%
Juvenile	1,469:50	200:01	97:46	1,767:37	7.28%	3.26%	2.58%	5.87%
Probation Violation	476:21	139:33	129:49	745:43	2.36%	2.28%	3.42%	2.48%
Post-Judgement Action	179:05	100:52	92:12	372:09	0.89%	1.65%	2.43%	1.24%
Appeal	108:03	142:44	97:43	349:00	0.54%	2.33%	2.58%	1.16%
Other	33:08	9:15	8:42	51:05	0.16%	0.15%	0.23%	0.17%
Multiple Case Type, Case Related	4,183:26	1,442:54	827:24	6,453:44	20.71%	23.55%	21.82%	21.43%
<b>Grand Total</b>	<b>20,199:54</b>	<b>6,127:31</b>	<b>3,792:25</b>	<b>30,119:50</b>				

As stated earlier, the “Multiple Case Type, Case Related” code was created to allow attorneys to account for time spent doing multiple activities of very short duration (under ten minutes) and related to more than one type of case. For example, an attorney may have made several phone calls at the end of the day to different clients involved in different types of cases. This attorney may have been on the phone for a total of twenty minutes with no single call lasting longer than three minutes. Instead of asking the attorney to record each three minute interval, we allowed the attorneys to record the whole twenty minute block of time under the generic “Multiple Case

Type, Case Related” code. In total, the attorneys reported that 6,453 hours and 44 minutes, or 21.43%<sup>22</sup> of the total case-related time, was spent during the time study on such short-duration, multiple case-type activities.

For purposes of analysis, we allocated those 6,453 hours and 44 minutes across the ten specific case types proportionately based upon the percentage of time recorded for each type of case in the study. Table 5-2 reflects the adjusted time spent on case-related activities.

<b>Table 5-2</b>								
<b>Adjusted Case-Related Attorney Time Per Case Type Code<sup>23</sup></b>								
<b>(Hours: Minutes)</b>								
<b><u>Case Type Code</u></b>	<b><u>Total Hours</u></b>				<b><u>Percentage of Total Time</u></b>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
Capital/1st Degree Murder	1,798:53	568:05	278:55	2,645:34	8.91%	9.27%	7.35%	8.78%
Felony A	1,434:51	512:24	413:33	2,358:02	7.10%	8.36%	10.90%	7.83%
Felony B	1,830:31	611:49	582:16	3,021:53	9.06%	9.98%	15.35%	10.03%
Felony C, D, E	6,469:13	2,160:51	1,270:35	9,895:01	32.03%	35.26%	33.50%	32.85%
Misdemeanor	5,807:20	1,499:27	701:56	8,017:45	28.75%	24.47%	18.51%	26.62%
Juvenile	1,853:44	261:37	125:02	2,249:38	9.18%	4.27%	3.30%	7.47%
Probation Violation	600:46	182:31	166:02	949:04	2.97%	2.98%	4.38%	3.15%
Post-Judgement Action	225:51	131:56	117:55	473:38	1.12%	2.15%	3.11%	1.57%
Appeal	136:54	186:41	124:59	441:10	0.68%	3.05%	3.30%	1.47%
Other	41:47	12:05	11:07	65:00	0.21%	0.20%	0.29%	0.22%
<b>Grand Total</b>	<b>20,199:54</b>	<b>6,127:31</b>	<b>3,792:25</b>	<b>30,119:50</b>				

<sup>22</sup> In the case-weighting study The Spangenberg Group completed in Colorado, a similar “general case-related” code was used to record activities of short duration. In that study, 32.1% of the attorneys’ case-related time was recorded under this generic case-type.

<sup>23</sup> Multiple case-type, case-related time spread proportionally across the ten case-types.

### 5.3 Analysis of Attorney Time by Activity

To help understand the differences in practice between urban, rural and transitional districts, further analysis was completed detailing how the attorneys allocated their time toward the many various activities required of them, both case-related and non-case related. For purposes of this analysis, we have defined those daily activities that are necessary to the effective and efficient running of a public defender office as “productive” time. Productive time includes all case-related activities, plus the following non-case related work: supervision, administration, professional development, training, community service, and public education.<sup>24</sup> “Unproductive” time includes: holidays, vacation time, lunch, breaks, non-case related travel and waiting time, and other time away from work. Table 5-3 shows a breakdown of the total productive attorney hours devoted to each of the 29 different activities defined in the study.

	<u>Total Hours</u>				<u>Percentage of Total Time</u>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
<b>Case Related Activities<sup>26</sup></b>								
<i>A. Out-Of-Court Case-Related Activities</i>	14,043:41	4,149:22	2,706:25	20,899:28	64.06%	61.29%	64.16%	63.50%
Investigation	469:28	258:02	144:20	871:50	2.14%	3.81%	3.42%	2.65%
Client Related Contact	4,298:06	1,225:08	688:44	6,211:58	19.16%	18.10%	16.33%	18.87%
Social Services Activity	130:08	50:50	11:05	192:03	0.59%	0.75%	0.26%	0.58%
Legal Research	626:02	272:31	232:16	1,130:49	2.86%	4.03%	5.51%	3.44%
Conference with Supervisor or Colleague	1,037:52	269:09	165:12	1,472:13	4.73%	3.98%	3.92%	4.47%

<sup>24</sup> For purposes of this study, time was also recorded under a “Multiple Activity” non-case related code. Multiple activities, which in this instance includes a series of short (under ten minutes), non-case related productive time activities, recorded in succession. Only 61 hours and 24 minutes (less than 1% of all recorded productive time) were recorded under this activity code.

<sup>25</sup> During the time study, attorneys recorded 3,331 hours and 40 minutes were recorded under the “Vacation & Time Away from Work” activity code. This time included the two holidays during the time study. Another 53 hours and 59 minutes were logged under “Non-Case Related Waiting Time.” Additionally, attorneys recorded 412 hours and 39 minutes as “Non-Case Related Travel Time,” and 3,717 hours and 29 minutes as time dedicated to “Lunch & Other Breaks.” All of these hours are excluded from Table 5-4.

<sup>26</sup> Two hours and 55 minutes of non-case related time was incorrectly recorded under case-type codes. This time is included in the case-related time.

**Table 5-3 (Continued)**  
**Total Attorney Time Per Activity Code**

<u>Case Related Activities</u>	<u>Total Hours</u>				<u>Percentage of Total Time</u>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
<i>A. Out-of-Court Case-Related Activities (Continued)</i>								
Conference with D.A. or Court Personnel	1,368:56	510:28	300:34	2,179:58	6.24%	7.54%	7.13%	6.62%
Case Preparation	6,113:09	1,563:14	1,164:14	8,840:37	27.88%	23.09%	27.60%	26.86%
<i>B. In-Court Related Activities</i>	<i>2,268:44</i>	<i>872:03</i>	<i>526:50</i>	<i>3,667:37</i>	<i>10.35%</i>	<i>12.88%</i>	<i>12.49%</i>	<i>11.14%</i>
Arraignment	292:55	62:32	34:02	389:29	1.34%	0.92%	0.81%	1.18%
Initial Hearing/First Appearance	168:18	38:46	21:52	228:56	0.77%	0.57%	0.52%	0.70%
Preliminary Hearing	177:26	73:46	29:02	280:14	0.81%	1.09%	0.69%	0.85%
Bond Hearing	26:10	15:02	4:55	46:07	0.12%	0.22%	0.12%	0.14%
Pre-Trial Conf./Status Hearing	297:39	86:13	51:07	434:59	1.36%	1.27%	1.21%	1.32%
Motions	229:39	59:09	39:52	328:40	1.05%	0.87%	0.95%	1.00%
Disposition/Settlement Day	650:03	334:34	168:32	1,153:09	2.97%	4.94%	4.00%	3.50%
Trial	260:31	133:07	125:47	519:25	1.19%	1.97%	2.98%	1.58%
Sentencing	40:41	23:23	23:50	87:54	0.19%	0.35%	0.57%	0.27%
Post-Trial/Post-Plea	55:47	33:02	20:40	109:29	0.25%	0.49%	0.49%	0.33%
Detention Hearing	50:11	4:14	0:53	55:18	0.23%	0.06%	0.02%	0.17%
Diversion	8:33	1:25	3:57	13:55	0.04%	0.02%	0.09%	0.04%
Waiver Hearing	10:51	6:50	2:21	20:02	0.05%	0.10%	0.06%	0.06%
<i>C. General Activities</i>	<i>3888:19</i>	<i>1,106:21</i>	<i>561:00</i>	<i>5555:40</i>	<i>17.74%</i>	<i>16.34%</i>	<i>13.30%</i>	<i>16.88%</i>
Waiting Time	1062:45	319:33	225:51	1,608:09	4.85%	4.72%	5.35%	4.89%
Travel Time	570:58	450:35	143:21	1,164:54	2.60%	6.66%	3.40%	3.54%
Multiple Activities	1,864:08	281:17	147:20	2,292:45	8.50%	4.15%	3.49%	6.97%
Supervision	273:21	25:35	24:17	323:13	1.25%	0.38%	0.58%	0.98%
Other Activities	117:07	29:21	20:11	166:39	0.53%	0.43%	0.48%	0.51%

**Table 5-3 (Continued)**  
**Total Attorney Time Per Activity Code**

	<u>Total Hours</u>				<u>Percentage of Total Time</u>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
<b><u>Non-Case Related Activities</u></b>	1,722:42	642:00	423:29	2,788:31	7.86%	9.48%	10.05%	8.47%
Multiple Activities	39:49	19:15	2:20	61:24	0.18%	0.28%	0.06%	0.19%
Supervision	63:21	20:17	25:21	108:59	0.29%	0.30%	0.60%	0.33%
Administrative Activity	787:48	332:14	237:49	1,357:51	3.59%	4.91%	5.64%	4.13%
Professional Development	544:45	139:07	78:49	762:41	2.48%	2.05%	1.87%	2.32%
Training	64:30	37:35	43:40	145:45	0.29%	0.56%	1.04%	0.44%
Community Service & Public Education	213:20	81:47	35:44	330:51	0.97%	1.21%	0.85%	1.01%
Other	9:09	11:45	0:06	21:00	0.04%	0.17%	0.00%	0.06%
<b>Grand Total</b>	<b>20,289:43</b>	<b>6,769:46</b>	<b>4,218:04</b>	<b>32,911:16</b>				

Overall, many of the differences in practice between urban, rural and transitional districts we observed during our site visits were confirmed by the time study. For instance, attorneys in rural districts spend 6.7% of their productive time on case-related travel, as compared to the attorneys in transitional districts and urban districts who spend only 3.4% and 2.6% of their time, respectively, on such travel. This case-related travel time in rural districts most noticeably affects the attorneys' case preparation time. In urban districts, 27.9% of attorneys' productive time is spent on case preparation, and 27.6% of transitional district public defenders' productive time is spent on the same. Comparatively, rural attorneys spend approximately 23% of their time on case preparation.

Similarly, among the three groups, attorneys in transitional districts spend the greatest portion of their productive time on case-related waiting time. Such time may include waiting for an in-custody defendant to be brought up to an interview room or time spent waiting for a client's case to be called. In the transitional districts surveyed, 5.35% of attorneys' productive time was spent on case-related waiting.

As stated earlier, attorneys on average reported seven hours and 52 minutes per day were spent on productive time activities, of which 93%, or seven hours and 19 minutes, were spent on

case-related activities. Because public defenders are paid to work a 7.5 hour day in Tennessee, only 11 minutes a day, on average, remain for public defenders to perform traditional public defender non-case related activities, including: supervision, administration, professional development, community service and in-house training. For public defenders to be effective, it is necessary that they be provided adequate time for professional development, supervision and training. It is our opinion that much of the traditional non-case related public defender work is not performed, especially in the rural and transitional districts, where the chief public defenders must, at times, carry caseloads as large as the assistant public defenders.

#### 5.4 Analysis of Attorney Non-Case Related Time

Because activities such as administrative activity, professional development, training, and/or community services and public education are necessary and vital to the overall efficiency and effectiveness of the public defender office, it is necessary to account for this time before case-weights are determined. In total, the attorneys recorded 2,788 hours and 31 minutes worth of productive non-case related time, or approximately 8.40% of the total productive hours recorded. We have allocated this time proportionately across the ten case-type codes based upon the total time recorded for each. Table 5-4 shows the final productive attorney time per class type.

Table 5-4 <b>Final Productive Attorney Time Per Case Type Code<sup>27</sup></b> (Hours: Minutes)								
<u>Case Type Code</u>	<u>Total Hours</u>				<u>Percentage of Total Time</u>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
Capital/1st Degree Murder	1,952:22	627:38	310:13	2,890:46	8.91%	9.27%	7.35%	8.78%
Felony A	1,557:17	566:07	459:58	2,576:34	7.10%	8.36%	10.90%	7.83%
Felony B	1,986:42	675:56	647:37	3,301:57	9.06%	9.98%	15.35%	10.03%
Felony C, D, E	7,021:11	2,387:20	1,413:11	10,812:04	32.03%	35.26%	33.50%	32.85%

<sup>27</sup> Multiple case-type, case-related time and productive non-case related time spread proportionally across the ten case-types.

<b>Case Type Code</b>	<b>Total Hours</b>				<b>Percentage of Total Time</b>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
Misdemeanor	6,302:50	1,656:37	780:43	8,760:49	28.75%	24.47%	18.51%	26.62%
Juvenile	2,011:54	289:02	139:05	2,458:08	9.18%	4.27%	3.30%	7.47%
Probation Violation	652:01	201:39	184:40	1,037:01	2.97%	2.98%	4.38%	3.15%
Post-Judgement Action	245:07	145:45	131:09	517:31	1.12%	2.15%	3.11%	1.57%
Appeal	148:35	206:15	139:00	485:20	0.68%	3.05%	3.30%	1.47%
Other	45:21	13:22	12:22	71:02	0.21%	0.20%	0.29%	0.22%
<b>Grand Total</b>	<b>21,923:26</b>	<b>6,769:46</b>	<b>4,218:04</b>	<b>32,911:16</b>				

### 5.5 Analysis of Disposition Data

Besides tracking their time and activities by case-type, attorneys were also asked to record all of the dispositions of cases occurring during the seven week time study. Attorneys were not allowed to record a disposition under the “Multiple Case Type” generic code. Instead, attorneys were instructed to record the actual case type code for all disposition regardless of the time duration to dispose of the case. During the time study, public defenders recorded 7,916 dispositions. Table 5-5 shows the total dispositions by case type, and Table 5-6 shows total dispositions by disposition type.

<b>Case Type Code</b>	<b>Total Dispositions</b>				<b>Percentage of Total Dispositions</b>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
Capital/1st Degree Murder	11	8	3	22	0.22%	0.43%	0.31%	0.28%
Felony A	40	24	22	86	0.79%	1.29%	2.25%	1.09%
Felony B	173	49	76	298	3.41%	2.63%	7.79%	3.76%
Felony C, D, E	1,194	535	269	1,999	23.52%	28.73%	27.56%	25.24%

Table 5-5 (Continued)

**Total Dispositions Per Case Type Code**

<u>Case Type Code</u>	<u>Total Dispositions</u>				<u>Percentage of Total Dispositions</u>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
Misdemeanor	3,133	1,012	409	4,555	61.71%	54.35%	41.91%	57.53%
Juvenile	271	73	67	411	5.34%	3.92%	6.86%	5.19%
Probation Violation	233	154	117	504	4.59%	8.27%	11.99%	6.37%
Post-Judgement Action	16	3	12	31	0.32%	0.16%	1.23%	0.39%
Appeal <sup>28</sup>	0	1	1	2	0.00%	0.05%	0.10%	0.03%
Other	5	3	0	8	0.10%	0.16%	0.00%	0.10%
<b>Grand Total<sup>29</sup></b>	<b>5,077</b>	<b>1,862</b>	<b>977</b>	<b>7,916</b>				

Table 5-6

**Total Dispositions Per Disposition Code**

<u>Disposition Type Code</u>	<u>Total Dispositions</u>				<u>Percentage of Total Dispositions</u>			
	Urban	Rural	Transitional	Total	Urban	Rural	Transitional	Total
Withdrawal	136	30	32	198	2.68%	1.61%	3.28%	2.50%
Diversion	111	16	19	146	2.19%	0.86%	1.94%	1.84%
Bound Over to Circuit/Criminal	445	227	94	766	8.77%	12.19%	9.62%	9.68%
Dismissed	558	333	81	972	10.99%	17.88%	8.29%	12.28%
Plea/Deferred Sentence	418	115	42	575	8.23%	6.18%	4.30%	7.26%
Plea/Sentence	3,257	1,006	625	4,888	64.15%	54.03%	63.97%	61.75%
Trial - Acquitted	6	40	7	53	0.12%	2.15%	0.72%	0.67%
Trial - Convicted	92	78	55	225	1.81%	4.19%	5.63%	2.84%
Committed to State Hospital/Incompetency	54	17	22	93	1.06%	0.91%	2.25%	1.17%
<b>Grand Total</b>	<b>5,077</b>	<b>1,862</b>	<b>977</b>	<b>7,916</b>				

<sup>28</sup> The time study did not accurately record appeals data. The attorneys-of-record generally were performing other duties when the formal disposition of the case was handed down. As such, the appellate dispositions were undercounted in the time study.

<sup>29</sup> Attorneys were instructed not to use the “Multi-Case Type” code when recording dispositions. Still, there were 72 instances in which dispositions were recorded under this incorrect code (55 urban, 2 rural, and 15 transitional). Since the correct case type code could not be properly identified, and because these 72 dispositions represented less than 1% of the total dispositions, The Spangenberg Group spread these disposition counts amongst the three most common case-types code: Felony C, D & E; Misdemeanor; and, Juvenile. Grand total figure is slightly higher than the sum of the ten categories due to rounding.

## 5.6 Verification of Disposition Data

Because workload standards are determined by “attorney-time-per-disposition,” it is very important that the accuracy of the disposition counts be verified. In other studies we have conducted, The Spangenberg Group has generally been able to confirm the disposition data against court caseload statistics. Tennessee has no statewide case-tracking system that can serve this purpose. The Administrative Office of Courts (AOC) does not keep statistics on criminal cases which distinguish whether the defense was provided by a public defender, assigned counsel, private attorney, or whether the indigent defendant represented himself pro se. It is our understanding that the AOC keeps no statistical counts of any General Sessions cases, and that only certain Criminal Courts record data on type of defense counsel. Therefore, the *only* validation method available to us was the four case-tracking systems utilized by Tennessee District Public Defenders Conference, the Knox County Public Defender, the Metro Public Defender (Davidson County), and the Shelby County Public Defender.

### 5.6.1 TDPDC

We have taken several steps to ensure the accuracy of the TDPDC’s case counts in the eight non-urban district that use the TDPDC’s CaseMan case-tracking system. As part of any workload study, The Spangenberg Group conducts site visits to familiarize ourselves with the procedures and policies affecting criminal law practice throughout the state and to learn about the variations in practice from judicial district to judicial district. During our site visits to Tennessee, we made it a point to interview support staff and attorneys about case counting practices specifically because we had some reservations about the validity of the disposition counts collected through the time study.

It was our suspicion that some minor variations existed in counting methods in certain districts. We subsequently devised a data audit survey which we asked the Public Defender and Office Manager in each of the eight survey districts to complete. The audit consisted of seventeen questions aimed at understanding case counting procedures and practices in each of the survey districts.<sup>30</sup>

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<sup>30</sup> The questions included, among others:  
How do you define a “case” in General Sessions court and Circuit/Criminal Court?

As we suspected, there were differences in case-management practices in some of the districts, most notably in the definition of a “case.” We reported our findings to TDPDC and the conference formally adopted its state-wide uniform definition of a “case.” That definition is: a single charge, or set of charges, arising out of a single incident and concerning one defendant in one court proceeding.<sup>31</sup>

Once we were satisfied that the attorneys and data-entry personnel in each district agreed upon a common definition of a “case,” we asked the management information specialist team at TDPDC to run disposition counts for the seven-week time study for each of the eight districts that use the CaseMan case-tracking system. Because the CaseMan system has some disposition codes that do not correspond to the disposition codes employed in the study, a member of The Spangenberg Group had to manually eliminate certain codes from the counts. For instance, if a defendant fails to appear at court, the case disposition code “Case Open,” or “No Disposition,” is entered into CaseMan. This code indicates that the case is still open, but inactive.

The Spangenberg Group discovered that public defender personnel in each district may create disposition codes in the CaseMan system. Because of this, disposition codes are not maintained uniformly from district to district. In some districts, data entry personnel can enter a “Bench Trial” disposition code without indicating whether the outcome was favorable or unfavorable to the defendant. Because of such non-uniform practices, it was difficult to verify these district’s disposition totals in more detail beyond mere aggregate totals. Still, the verification totals from these

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- How many people in your office are responsible for the data-entry functions? What happens in the case of absences and/or vacations? What duties besides data entry do these people perform?
  - How do time constraints affect your case management practices? Do you have institutionalized “short-cuts” that are practiced on a regular basis? Do you have institutionalized “short-cuts” that are practiced during crunch times only?
  - Overall, do you think the caseload numbers on your case-tracking system accurately reflect the work you office performs?

<sup>31</sup> This is the “case” definition recommended by The National Center for State Courts and the Conference of State Court Administrators. The Conference of State Court Administrators and the National Center for State Courts’ publication, *State Court Model Statistical Dictionary, 1989*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case (page 19).”

eight districts were within an acceptable margin of error. During the time study, attorneys from the eight non-urban districts recorded 2,839 dispositions. The disposition count recorded on the CaseMan system was 2,814 (25 fewer dispositions than were recorded during the time study.)

### 5.6.2 Knox County

Because of its custom-made case-tracking system, The Knox County Public Defender Office was able to run a disposition report as requested. As in CaseMan districts, the Knox County Public Defender Office has a disposition code that did not correlate with the disposition codes established for the case-weighting study. The counts recorded under this disposition code had to be eliminated from the count manually.<sup>32</sup>

Attorneys in Knox County recorded 638 dispositions during the time study; the LegalPro case-tracking system recorded 718 (a difference of 94 fewer dispositions recorded during the time study.)

### 5.6.3 Davidson County

The Metro Public Defender currently has a manual case-tracking system. Regular reports are generated by hand that record the number of open and closed public defender cases for each of the courts. The Metro Public Defender does not track cases by charge-type. We asked the Metro Public Defender's Office to produce a similar report to cover the seven-week time study. Originally, they reported that 2,732 dispositions were recorded.

As stated earlier, part-time attorneys and attorneys who had been employed less than three months were not included in the study. As such, the Metro Public Defender was asked to manually tally the disposition totals for each of these attorneys. During the seven weeks, these non-participating attorneys recorded 847 dispositions.

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<sup>32</sup> In Knox County, if a defendant assigned to the public defender's office does not show up in court, the public defender's office records such cases as "Conditional Forfeiture." As is the case in most jurisdictions, it is generally difficult to determine when defendants who fail-to-appear in court will be brought back into the criminal justice system. As such, public defenders generally want to close these cases in their case-tracking systems, since little, if any, work will be done on these cases until the defendant is returned. Such cases were not to be recorded as disposed for the purposes of the time study because little public defender in-court time is required for such dispositions.

Additionally, whenever The Spangenberg Group conducts a case-weighting time study, some attorneys inevitably have to be removed from the study because of incomplete time records, and/or excessive errors in recording their time. Three such attorneys from the Metro Public Defender Office were removed from the time study. Collectively, these three attorneys recorded 229 dispositions.

When the new attorneys, part-time attorneys and excluded attorneys' dispositions were subtracted from the Metro Public Defender tallies, the office reported a total of 1,656 dispositions for the seven-week time period. Comparatively, the District 20 attorneys recorded 1,635 dispositions during the time study (a difference of 21 fewer dispositions recorded in the time study.)

#### 5.6.4 Shelby County

As stated earlier, the Shelby County Public Defender case-tracking capabilities are currently in transition. It was therefore necessary for representatives from the public defender office to manually tally the case disposition for the seven-week time study. The verification process recorded 3,515 for all attorneys in the Memphis office. As was the case in Davidson County, the Shelby County Public Defender Office had several attorneys who did not participate in the study due to recent hirings, part-time status, personal reasons and/or excessive errors in time-recording. Combined, these attorneys accounted for 662 dispositions during the seven-week period, decreasing the verification total to 2,853 dispositions. During the time study, Memphis public defenders recorded 2,804 dispositions (a difference of 49 dispositions).

<b>Table 5-7</b>			
<b>Dispositions Verification Analysis</b>			
	<b>Time Study</b>	<b>Case-Tracking</b>	<b>Difference</b>
TDPDC <sup>33</sup>	2,839	2,814	25
Knox County	638	718	-80
Davidson County	1,635	1,656	-21
Shelby County	2,804	2,853	-49
<b>Total</b>	<b>7,916</b>	<b>8,041</b>	<b>-125</b>

<sup>33</sup> Includes districts 2, 4, 13, 16, 22, 25, 26, and 29.

## Chapter 6

### Projected Caseload Standards for Tennessee Public Defenders

#### 6.1 Workload Standards: Overview

In the past ten years, the adoption of standards and guidelines has been one of the most notable developments in the delivery of indigent defense services. Several national organizations, states, and local jurisdictions have adopted standards pertaining to indigent defense in a number of different areas, including workload standards.<sup>34</sup> Workload standards establish specific guidelines to gauge when caseloads may be considered excessive and therefore threaten the constitutionally guaranteed right to effective assistance of counsel. Workload standards represent the average number of cases that a single attorney can be expected to handle during the course of one year.

This chapter presents the methodology for determining, and an analysis of, the current Tennessee public defender workload. This is followed by a discussion of how the current Tennessee public defender workload compares with other states. Finally, we make our recommendations for establishing public defender workload standards in the state, and discuss certain limitations of the workload standards when they are used to estimate staffing needs.

#### 6.2 Workload Formula

The unit of measurement used to determine the projected workload and resulting standard for each type of case is “attorney-time-per-disposition.” The attorney-time-per-disposition figure is determined by calculating the total number of hours attributed to a case-type during the study divided by the total number of dispositions for that same case-type during the study period:

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<sup>34</sup> Standards and guidelines pertaining to attorney eligibility, caseloads, conflict of interest, indigency screening, attorney performance and administration of indigent defense systems have been adopted by: state and local legislation; state supreme court rule; national, state and local public defender organizations; indigent defense commissions; and other entities. At the national level, the clear leader in this effort has been the American Bar Association (ABA). In 1993 the ABA published the third edition of its criminal justice standards relating to the provision of indigent defense services which for the first time addresses issues unique to the contract model of providing indigent defense services. The ABA has also taken the lead in promulgating standards which address the processing of death penalty, juvenile delinquency and juvenile abuse and neglect cases. Another national leader in promulgating well thought-out, thorough standards is the National Legal Aid and Defender Association (NLADA), which has published guidelines for awarding contracts to contract defenders, standards for the administration of assigned counsel systems and, most recently, a comprehensive set of performance standards that set out minimum requirements of practice for lawyers representing indigent defendants.

<u>Total Attorney Hours</u> <u>Total Dispositions</u>	= Attorney Hours Per Disposition
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As is often the case in these types of studies, too few dispositions were recorded during the seven-week period to develop a statistically significant hours-per-disposition figure for each district classification (urban, rural and transitional). In these instance, we collapsed the data to form a single, state-wide hours-per-disposition figure for the following case-types: Capital/1st Degree Murder; Felony A; Felony B; Juvenile; Probation Violation; Post-Judgement Action; Appeal; and, Other. Because of the time study did not produce enough dispositions for Capital/1st Degree Murder cases and appeals, the data below should be viewed as informational only. Based on the analysis in Chapter 5, Table 6-1 calculates attorney hours per disposition for each classification of case type:

**Table 6-1**  
**Attorney Hours Per Disposition Per Case Type Code**

<u>Case Type Code</u>	<u>Total Hours</u>	<u>Total Dispositions</u>	<u>Hours/Disposition</u>
Capital/1st Degree Murder <sup>35</sup>	2,890:46	22	131:23
Felony A	2,576:34	86	29:57
Felony B	3,301:57	298	11:04
Felony C, D, E:			
Urban	7,021:11	1,194	5:52
Rural	2,387:20	535	4:27
Transitional	1,413:11	269	5:14
Statewide	10,812:04	1,999	5:24
Misdemeanor:			
Urban	6,302:50	3,133	2:00
Rural	1,656:37	1,012	1:38
Transitional	780:43	409	1:54
Statewide	8,760:49	4,555	1:55

<sup>35</sup> Capital/1st Degree Murder should be viewed as informational only. The seven week time study did not provide enough data to form accurate hours per disposition figures. Our experience in other states indicate that Capital/1st Degree Murder cases require significantly more hours per case.

Table 6-1 (Continued)  
**Attorney Hours Per Disposition Per Case Type Code**

<u>Case Type Code</u>	<u>Total Hours</u>	<u>Total Dispositions</u>	<u>Hours/Disposition</u>
	2,458:08	411	5:58
Probation Violation	1,037:01	504	2:03
Post-Judgement Action	517:31	31	16:41
Appeal <sup>36</sup>	485:20	2	242:40
Other	71:02	8	8:52

Once attorney-hours-per-disposition have been calculated, the equation to determine workload is fairly simple. First, determine the available hours the average attorney can work per year. Next, divide the total available attorney hours by the attorney-hours-per-disposition figure:

$$\frac{\text{Total Available Attorney Hours Per Year}}{\text{Attorney Hours Per Dispositions}} = \text{Workload}$$

### 6.3 Determination of Total Available Attorney Hours Per Year

The concept of “billable time” is one that is well understood in private law practices. However, the concept has only been widely accepted in the public law field in the last decade. “Billable time” is determined by dividing an total number of hours an attorney spent on case-related work, both in-court and out-of-court, by the total number of hours available in a work year. A “work year” is defined as the annual number of hours attorneys are paid to work. Case-weighting studies build into the work year appropriate time for vacation time, sick time and other leave requirements.

Tennessee public defenders are paid for working a 7.5 hour workday, and receive ten annual leave days and five annual sick days. In addition, Tennessee observes 12 state holidays. Public Defenders also are paid for five days of official conferences and for ten days for continuing legal

<sup>36</sup> Appellate data should be viewed as informational only. The seven week time study did not provide enough data to form accurate hours per disposition figures. Our experience in other states indicate that appellate cases require significantly fewer hours per case.

education training each year. Based on these figures, the Public Defender Weighted Caseload Steering Sub-Committee determined that the average Tennessee public defender is paid to work 1,635 hours per year. A similar figure was derived at for district attorneys by the District Attorney Weighted Caseload Steering Sub-Committee (1,650 hours per year.)

Table 6-2 displays the formula and calculations used to determined the total attorney hours per year:

<b>Table 6-2</b>			
<b>Total Available Attorney Hours Per Year</b>			
		<u>Calculation</u>	<u>Hours</u>
A.	Work Day		7.5
B.	Work Week	(Row A x 5)	37.5
C.	Work Year (Prior to Leave Time Allowance)	(Row B x 52)	1,950
<hr/>			
	<u>Leave Time</u>	<u>Days Per Year</u>	<u>Hours</u>
D.	State Holidays	12	90
E.	Annual Leave	10	75
F.	Sick Leave	5	37.5
G.	Official Conferences	5	37.5
H.	Continuing Legal Education Training	10	75
I.	Annual Leave Sub-Total	42	315
<hr/>			
		<u>Calculation</u>	<u>Hours</u>
<b>Total Available Attorney Hours Per Year</b>		(Row C - Row I)	<b>1,635</b>

#### 6.4 Calculation of the Workload

After the average available attorney hours per year have been calculated, determining the current public defender workload is simply a matter of dividing the available attorney hours (1,635) by the attorney-hours-per-disposition figures determined in Table 6-1 (above). Table 6-3 shows the

projected workload standards for each case type. Once again, workload standards for each type of case represent the average number of cases that a single attorney can be expected to handle during the course of one year if that attorney handles only that particular type of case.

After careful analysis, The Spangenberg Group determined that there was not enough time and/or dispositions to draw workload conclusions for “Capital/1st Degree Murder,” “Appeals” and “Other” case-types. Table 6-3 shows the current Tennessee public defender workload for the other case-types:

<u>Case Type Code</u>	<u>Available Hours</u>	<u>Hours/Disposition</u>	<u>Workload</u>
Felony A	1,635	29:57	55
Felony B	1,635	11:04	148
Felony C, D & E	1,635	5:24	302
Misdemeanor:			
Urban	1,635	2:00	813
Rural	1,635	1:38	999
Transitional	1,635	1:54	857
Statewide	1,635	1:55	850
Juvenile	1,635	5:58	273
Probation Violation	1,635	2:03	795
Post-Judgement Action	1,635	16:41	98

#### 6.5 A Comparison of Tennessee Public Defenders’ Current Workload with Other States’ Public Defender Workload Standards

As stated in Chapter 1, the only national workload standards currently in existence were established by the National Advisory Commission on Criminal Justice Standards and Goals in 1973. Based on estimates by professionals working in the field, these standards suggest that the caseloads

of public defenders should not exceed 150 felony cases, or 400 misdemeanors, or 200 juvenile delinquency cases or 25 appeals in any one year. Since that time, a number of states have adopted similar caseload standards.

Making comparisons between various indigent defense systems is an imperfect science, due to the wide number of variables affecting indigent defense services in each state.<sup>37</sup> Naturally, criminal practices and procedures vary from state to state, and often between jurisdictions within a single state. Still, with these caveats in mind, it is important to place the current Tennessee public defender workload in the context of workload standards under which other indigent defense systems across the country operate.

The Spangenberg Group's familiarity with indigent defense workload standards is quite extensive. As stated earlier, The Spangenberg Group has completed workload studies in several jurisdictions. Additionally, The Spangenberg Group, under the auspices of the American Bar Association, Bar Information Program, in 1996 undertook the project of collecting and categorizing national, state and local standards and guidelines relating to the administration of indigent defense services. Though many state workload standards are aspirational rather than binding, we found that 15 states have implemented some kind of workload guidelines.

Table 6-4 shows a state-by-state comparison of the various workload standards. These workload standards represent the *maximum* annual number of cases a single attorney should carry if that attorney handled only that type of case. We have included Tennessee public defenders' current workload as derived from this study. It is our opinion that the workload standards from these other jurisdictions validate our observations that Tennessee public defenders handle caseloads in excess of recognized national standards. The excessive workload problems are especially acute in regard to misdemeanor cases. Most states that have misdemeanor caseload standards suggest that public defenders should handle no more than 400 misdemeanor cases in a single year, if misdemeanors were the only type of case the attorney handled. Tennessee public defenders are

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<sup>37</sup> Among the most important variables to consider in state-by-state indigent defense comparisons are the following: whether the system is funded entirely with state funds, entirely with county funds, or a mixture of both; whether the system is organized at the county, regional, or state level; whether or not the state has the death penalty; whether the system has a centralized organization responsible for statewide data collection, oversight, and/or policy making; the types and percentages of cases handled by various providers in the state; the rate of pay for court-appointed counsel in the state; the population of the state; and, the way in which programs define, and therefore count, cases (different programs define cases by charge, by indictment, by defendant, by assignment and by disposition.)

currently handling more than twice the nationally recognized number of misdemeanor cases per year.

**Table 6-4**  
**State-by-State Comparison of Maximum Workload Standards**

State	Felony	Misdemeanor	Juvenile	Appeals	Authority
Arizona	150	300	200	25	<u>State of Arizona v. Joe U. Smith</u> , 681 P. 2 <sup>nd</sup> 1374 (1984)
Colorado*	241	598	310	--	The Spangenberg Group. "Weighted Caseload Study for the Colorado State Public Defender." November 1996.
Florida*	200	400	250	50	Florida Public Defender Association. "Comparison of Caseload Standards." July 1986
Georgia	150	400	200	25	Georgia Indigent Defense Council. "Guidelines of the Georgia Indigent Defense Council for the Operation of Local Indigent Defense Programs." October 1989.
Indiana	200	400	250	25	Indiana Public Defender Commission. "Standards for Indigent Defense Services in Non-Capital Cases: With Commentary." January 1995.
Louisiana	200	450	250	50	Louisiana Indigent Defense Board. "Louisiana Standards on Indigent Defense." 1995.
Massachusetts	200	400	300	--	Committee for Public Counsel Services. "Manual for Counsel Assigned through the Committee for Public Counsel Services: Policies and Procedures." June 1995.
Minnesota*	120	400	175	--	Minnesota State Public Defender. "Caseload Standards for District Public Defenders in Minnesota." October 1991
Missouri	40-180 <sup>38</sup>	450	280	28	Missouri State Public Defender System. "Caseload Committee Report." September 1992.
Nebraska	50 <sup>39</sup>	--	--	40	Nebraska Commission on Public Advocacy. "Standards for Indigent Defense Services in Capital and Non-Capital Cases." May 1996.
New York* (City)	150	400	--	25	Indigent Defense Organization Oversight Committee. "General Requirements for All Organized Providers of Defense Services to Indigent Defendants." July 1996.
Oregon	240	400	480	--	Oregon State Bar. "Indigent Defense Task Force Report: Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases." September 1996.
<b>Tennessee</b>	<b>233<sup>40</sup></b>	<b>850</b>	<b>273</b>	<b>--</b>	<b>Derived from Case-Weighting Study.</b>

\* = Jurisdictions where caseload standards were developed through case-weighting studies.

<sup>38</sup> Missouri's caseload standards establishes thresholds based on the severity of the felony charge. For Felony A and B cases, the public defender caseload standard is 40 case per year. For Felony C and D cases, the public defender caseload standard is 180.

<sup>39</sup> The Nebraska Commission on Public Advocacy has established a felony caseload standard for only the most serious category of felonies. The standard represents the number of violent crime cases (rape, manslaughter, 2<sup>nd</sup> degree murder, sexual assault) that a single attorney could handle during a year if those cases were the only case she handled during the year.

<sup>40</sup> As indicated in Table 6-3, the Tennessee public defender current workload for Felony A cases is 55, Felony B is 148, and Felony C,D & E is 302. Table 6-4 shows a single "Felony" workload figure (233). This combined felony workload is weighted to account for the large number of less serious felony cases represented by public defenders.

State	Felony	Misdemeanor	Juvenile	Appeals	Authority
Vermont	150	400	200	25	Office of the Defender General. "Policy of the Defender General Concerning Excessive Workloads for Public Defenders." October 1987.
Washington	150	300	250	25	Washington Defender Association. "Standards for Public Defender Services: Objectives and minimum Requirements for Providing Legal Representation to Poor Persons Accused of Crime in Washington State." October 1989.
Wisconsin*	145	323	207	--	The Spangenberg Group. "Caseload/Workload Study for the State Public Defender of Wisconsin." September 1990.

\* = Jurisdictions where caseload standards were developed through case-weighting studies.

It should be noted that many of the other states have further restrictions on caseload standards. We highlight one example that we feel deserves further consideration. The Indiana Public Defender Commission's<sup>41</sup> workload standards were designed for use by indigent defense practitioners who have access to adequate support staff, in recognition of the important role support staff play in providing quality indigent defense. The Indiana workload standards in Table 6-4 represent the caseload standards for offices that maintain an adequate level of support staff consistent with the guidelines set-out in Table 6-5. County public defender offices that do not maintain the required support staff to attorney ratios are held to more stringent annual caseload standards (100-150 felonies; 300 msdemeanors; 200 juvenile cases; and, 20 appeals). We strongly urge that such support staff guidelines be adopted in Tennessee in conjunction with the caseload standards.

<u>Support Staff Position</u>	<u>Ratio of Support Staff to Attorneys</u>
Paralegal – Felony	1:4
Paralegal – Misdemeanor	1:5
Paralegal – Juvenile	1:4

<sup>41</sup> Indiana's 92 counties have the primary responsibility for funding the indigent defense programs within their jurisdictions. Each county may choose between a county public defender, contract defender program or an assigned counsel system. The Indiana Public Defender Commission (IPDC) allocates state funds to offset county indigent defense expenditures in those counties that comply with the commission's standards for indigent defense services in capital and non-capital cases. Counties that enforce these standards are reimbursed by the IPDC for 40% of the cost of representing indigent defendants in non-capital felony cases and 50% of the cost of attorneys' fees, as well as expert, investigative and support services, in capital cases. Currently, twelve of Indiana's 92 counties, including Marion County (Indianapolis), the state's largest county, are in compliance with IPDC standards and receive funds from the Commission.

**Table 6-5 (Continued)**  
**Indiana Public Defender Commission's**  
**Adequate Support Staff Guidelines**

<u>Support Staff Position</u>	<u>Ratio of Support Staff to Attorneys</u>
Paralegal - Mental Health	1:2
Investigator - Felony	1:4
Investigator - Misdemeanor	1:6
Investigator - Juvenile	1:6
Law Clerk - Appeal	1:2
Secretary - Felony	1:4
Secretary - Misdemeanor	1:6
Secretary - Juvenile	1:5

During our site visits, it was apparent that many Tennessee public defenders are in need of more investigative help, especially in the rural and transitional districts. The lack of support staff in most Tennessee public defender offices serves to further highlight the excessive levels that Tennessee public defender's currently work.

#### 6.6 Capital/1st Degree Murder and Appellate Caseload Standards

It is difficult to conduct a time-record-based appellate case-weighting study where the period of time-keeping is as short as seven weeks. The nature of appellate practice is such that attorneys may be working on one or more of the same appellate briefs in the seven week period, and thus record no dispositions, while the court may issue opinions in one or more other cases where briefs have already been filed and the attorney is no longer working on them. Since appellate practice is not conducive to a study with this methodology, we can, for now, simply refer to the other standards being used around the country and suggest that the Conference adapt one appropriate to Tennessee practice.

As Table 6-4 shows, among those public defender programs that utilize caseload standards, the target number of appeals to be handled each year per attorney ranges from 25 to 50. The most common figure, and the standard used by NAC, is 25 appellate cases per year. In Tennessee, we

did not encounter any attorneys who work solely on appeals, so these figures must be modified if they are to be adapted to Tennessee practice.

Similarly with capital and 1<sup>st</sup> degree murder cases, we did not have a sufficiently long enough time-keeping period to reflect the average amount of time put into these cases. And, as with appeals, we had an insufficient number of dispositions to provide quantitative standards for estimating staffing needs.

We have confronted this issue with previous case-weighting studies. In those studies, as now, we can refer the Conference to standards developed in other jurisdictions. In our Colorado study, based on our experience working in other jurisdictions and after working closely in Colorado, we recommended that staff attorneys handle not more than six to eight non-death penalty homicides per year. (We did not establish a capital case standard, as that was outside the scope of the study.)

Data collected from other state public defender systems with a substantial number of capital/first degree murder cases suggest that if full-time attorneys work exclusively on these cases, they should be responsible for no more than three to four cases during the course of the year. In most programs two attorneys are assigned to death penalty cases at trial, and the best practices further require a severe reduction in overall caseload two to three months before trial of the death penalty case. In Indiana, Supreme Court Rule 24 establishes the workload of a public defender who is carrying other cases in addition to a capital case assignment and that standard is listed in Chapter 7, Recommendation 6.

## 6.7 Determining Annual Caseload Figures

One of the primary purposes of developing the caseload/workload standards is to provide a reliable estimate of the attorney staffing requirements for the Tennessee District Public Defenders Conference. Given the current workload, one simply needs to divide the total statewide annual caseload figure for the TDPDC for each case type by the workload standard for that same case type.

Once again, the existence of four different case-tracking systems and the lack of uniform case-tracking practices and procedures throughout the state made the task of compiling annual caseload statistics difficult. In its 1998 Annual Report, TDPDC reported that the public defender

offices in the 31 districts opened 159,825 cases statewide last year (230,926 charges.)<sup>42</sup> TDPDC also reported 217,180 closed charges. Before this study, TDPDC did not track closed cases.

Our first attempt to determine the statewide public defender caseload simply took the ratio of closed charges to open charges (94%) and applied it to the total number of reported open cases (159,825). The result was an estimated annual closed caseload of 150,311. Unfortunately, this estimated annual disposed case count is inclusive of all of the disposition codes that were discovered during the time study disposition verification. The workload figures derived from the time study established specific parameters for the definition of a “case” and a “disposition.” Past caseload reporting practices of the Tennessee Public Defenders Conference did not follow these same definitions. Thus, the 150,311 estimated annual caseload figure is inflated in comparison to how the time study workload figures were derived.

Subsequently, we requested the management information specialist team at TDPDC to run disposition counts for all of 1998 for all districts that use the CaseMan case-tracking system. Because the CaseMan system has some disposition codes that do not correspond to the disposition codes employed in the study, a member of The Spangenberg Group had to develop a software filter to eliminate such disposition codes from the counts. Unfortunately, it was impossible to get 1998 annual caseload data for every district in the state and filter it appropriately in the time required for this study. Additionally, The Spangenberg Group did not conduct the data audit survey for those districts not included in the time study. As such, we believe that some of these other districts’ case counting procedures did not conform to the uniform definition of a case.

To overcome this difficulty, The Spangenberg Group decided to use the reported fiscal year 1998 charge counts as our basis for determining annual caseload figures. This decision was made because a simple recording of charges provided the most assurance of uniform data reporting practices. Using the data from the districts in which we were able to filter their caseload data (16 of 28 districts), The Spangenberg Group then determined a ratio of reported closed charges to filtered closed cases.

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<sup>42</sup> Tennessee District Public Defenders Conference “1998 Annual Report.” pp. v-vi.

Next, we also asked the management information specialist for the Knox County Public Defender Office to run a report of closed cases for 1998. Again, a software filter was created to eliminate those disposition codes that did not correspond to those employed during the time study. Again, a ratio of reported closed charges to filtered closed cases was determined.

Third, personnel at the Shelby County Pubic Defender Office conducted an exhaustive, manual tally of 1998 closed cases as defined by time study. This entailed an extraordinary amount of effort on their part to assure the accuracy of their data reporting. Again, a similar ratio was determined.

Finally, based on all of the filtered information from the CaseMan case-tracking system and the Knox County LegalPro system, and based on the Shelby County manual 1998 tallies, a single reported closed charges to closed cases percentage was determined. The Spangenberg Group then applied this percentage to all of the districts' fiscal year 1998 closed charges as reported in the Tennessee District Public Defender Conference's "1998 Annual Report." On average, closed cases are 52% of the reported closed charges.<sup>43</sup> The TDPDC's annual report only reports Capital/1st Degree, Felony, Misdemeanor, Juvenile and Other cases. The Spangenberg Group pulled out appellate cases from the "Other" category.<sup>44</sup> No further breakdown of the "Other" case-type was attempted.

Capital/1st Degree Murder	6
Felony	29,971
Misdemeanor:	70,225
Juvenile	4,469
Appeals	222

<sup>43</sup> The 52% figure was used to account for the relation of charges to cases. Additionally, this percentage accounts for the large number of cases that were administratively closed because the defendant failed to appear in court and the necessary filtering of other disposition codes that do not directly correlate with those designed for this report.

<sup>44</sup> The TDPDC's "1998 Annual Report" contains a "Open Case Summary" by court (page v). The Spangenberg Group tallied the numbers in the "Criminal Appeals" and "Supreme" categories to determine each districts' appellate caseload.

<b>Table 6-6 (Continued)</b>	
<b>1998 Statewide Annual Public Defender Caseload By Case Type</b>	
Other	8,038
<b>Total</b>	<b>112,930</b>

### 6.8 Estimating Staffing Needs

In 1998, the entire Tennessee District Public Defenders Conference and the Shelby and Davidson County Public Defenders had a caseload of approximately 112,930. To estimate staffing needs, one need simply divide the workload figure into the annual caseload by case-type. Once again, not enough data were recorded to form workload standards in “Capital/1st Degree Murder” and appellate cases. As such, The Spangenberg Group has used national caseload standards for these two categories (Capital/1st Degree Murder: 5; Appeals: 25).

The time study revealed that Tennessee public defenders are currently carrying a misdemeanor caseload almost twice as large as the recommended national standards. Once again, most states that have misdemeanor caseload standards suggest that public defenders should handle no more than 400 misdemeanor cases in a single year, if misdemeanors were the only type of case the attorney handled. The Spangenberg Group does not believe that the excessive misdemeanor caseload that the Tennessee public defenders currently handle should become the institutionalized norm as a result of this time study. Because of this, The Spangenberg Group based staffing estimates on a caseload standard of 500 misdemeanor cases.<sup>45</sup>

Since it was not possible to accurately determined the annual public defender felony caseload for each classification of felonies, we have used the combined felony standard of 233. Additionally, because it was not possible to breakout the percentage of “Probation Violations” and “Post-Judgement Actions” from the annual “Other” caseload, The Spangenberg Group has used the “Probation Violation” workload standard of 795. This reflects are belief the that vast majority of “Other” cases reported in the TDPDC’s “1998 Annual Report” are probation violation cases.

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<sup>45</sup> This figure is still above the national standard of 400 misdemeanor cases per year.

Currently, there are 250 full-time equivalent public defenders in the state including the elected public defenders and attorneys in investigator positions. Based on the workload calculations in Table 6-7, we recommend that the state expenditure for indigent defense services be increased to accommodate the hiring of 56 additional attorneys.

<b>Table 6-7 Public Defender Staffing Needs</b>			
<u>Case Type Code</u>	<u>1998 Totals</u>	<u>Workload Standard</u>	<u>Attorney Staffing</u>
Capital/1st Degree Murder <sup>46</sup>	6	5	1.20
Felony	29,971	233	128.63
Misdemeanor:	70,225	500	140.45
Juvenile	4,469	273	16.37
Appeals	222	25	8.88
Other	8,038	795	10.11
<b>Total</b>	<b>112,930</b>	<b>--</b>	<b>305.64</b>
<b>Current Attorney Staffing:</b>			<b>250</b>
<b>Additional Attorneys Needed:</b>			<b>56</b>

<sup>46</sup> The estimated Capital/1st Degree Murder caseload was determined using the uniformed methodology described in section 6.7. The Spangenberg Group believes that the methodology used to determine annual caseload figures does not accurately account for Capital/1st Degree Murder Cases in Tennessee. It is not our intent to infer that a single attorney could handle all of the Capital/1st Degree Murder cases in the state. Indeed, it is our belief that Capital/1st Degree Murder cases are of such an individual nature that they should be treated apart from other kinds of cases when estimating public defender staffing needs.

## 6.9 Limitations of Using Workload Standards for Staffing Estimates

After having performed several case-weighting studies for public defender organizations around the country, it is important to emphasize the role that workload standards can play and the concomitant limitation of their use. For a number of reasons, The Spangenberg Group strongly cautions against using the workload standards to estimate staffing needs on a district-by-district basis. First and foremost, this report is a time study of attorney hours only, and it does not take into account support staff hours. Each district is unique and each has differences in practice, work environment, travel requirements, number of investigators, and secretarial support. We have not visited each of the districts in Tennessee and therefore we find it presumptuous to assume that we can determine how each new attorney position authorized must be allocated throughout the state. This report shows how many public defenders are needed overall to handle the caseload throughout the state, but the decision on how to allocate those numbers among the districts is best left to the policy-makers in conjunction with representatives from TDPDC and the Weighted Caseload Study Steering Committee.

Second, we caution that the districts that operate on both state and county funding may be unfairly penalized if a district-by-district allotment of attorneys is undertaken without taking into consideration the unique differences between the districts. For instance, the workload standards might be used to conclude that a large urban district requires 50 public defenders to handle the caseload. If that organization received funding from the state for 40 defenders and funding from the county for 10 defenders, a simple calculation based solely on the workload standards would show that the district did not need any more public defenders. The funding some districts receive from counties is meant to augment, and should never supplant, the funding the state provides.

Third, there is a qualitative piece of this report that could never accurately be displayed by simple quantitative means. For instance, some public defenders hire attorneys for investigator slots, but use them as attorneys rather than as investigators. This study is not designed to measure the impact of this practice, but it is fair to assume that the practice reduces the amount of investigative work that could be done on cases. We believe that any funding increases should take into account whether or not attorney productivity would be increased by an increase in support staff as well.

Finally, we note that workload standards are not a tool that can be used to measure individual attorney performance. The workload standards that we have recommended represent average time requirements. Even within the case type codes that were used in the study, individual cases vary widely with respect to the amount of work that they entail. Among the variables that need to be considered in an individual case are the complexity of the case, the number of witnesses, the number of charges, the background of the defendant, the defendant's prior criminal history, the seriousness of the crime, the complexity of the law, etc. Individual caseloads vary substantially from one attorney to another in terms of workload and any assignment decisions or productivity measurement must continue to be based on a detailed knowledge of the relationship between a public defender and her client on a case-by-case basis and not on the broader caseload standards.

Another reason why the workload standards proposed in this report should not be used for case assignment and performance measurement purposes is that the caseload standards are set forth in terms of an average annual caseload based upon a particular type of case, and not a mix of cases. The vast majority of public defenders in Tennessee are responsible for mixed caseloads. In the event that an attorney is assigned to a capital case, that attorney should not be expected to adhere to these caseload standards while work continues on the capital case. Such an attorney's caseload should be restricted, as much as possible, to that capital case.

## Chapter 7

### Recommendations for Implementing Caseload Standards

#### 7.1 Recommendations

In order to receive the full benefit of the recommended caseload standards, we believe that it is necessary for the state and the Tennessee District Public Defenders Conference to make some changes in the current approach to the delivery of indigent defense services. Without implementation of these recommendations, it may not be possible to achieve maximum benefit of these standards.

1. Tennessee Public Defender Data Should Be Integrated Into the Administrative Office of the Court's Case-Tracking System.

It is our understanding that the state is currently in the process of improving the Administrative Office of Court's case-tracking system. We cannot stress enough how important it is that any improvement should aim to unify the case-tracking system for the courts, prosecutors and public defenders. One of our greatest frustrations during the study was that we had to deal with several different and incompatible databases to garner the most basic types of data. Collaborative approaches to management information services can produce substantial cost savings to jurisdictions through reducing man-hours dedicated to duplicate data-entry functions among court, prosecutor and public defender staff and can increase the reliability of the data by reducing the potential for human error.

United States Attorney General Janet Reno has recently begun to promote collaborative efforts among all the components of the criminal justice system that rely upon interagency planning and cooperation. Toward that end, new federal programs have been started to help jurisdictions succeed in their attempts to make sound criminal justice policy decisions, and some of those federal programs are geared specifically toward management information services.<sup>47</sup> Tennessee officials

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<sup>47</sup> The state of Rhode Island is currently creating a comprehensive, statewide computer system linking all components of the criminal justice system in one network through a U.S. Department of Justice Edward Byrne Memorial grant. The new system will allow criminal justice

need to look to the larger community of criminal justice agencies to cope with information problems before allocating money for any further computer services.

## 2. Uniform Case Closing Definitions and Procedures Must Be Developed and Maintained on the Various Public Defender Case-Tracking Systems Throughout Tennessee.

As indicated earlier in this report, one of the results of the Tennessee Case-Weighting Study was our discovery that there was no uniform set of disposition codes between the CaseMan system and the three separate case management systems in Knox, Davidson, and Shelby counties. Furthermore, we learned that some of the 28 district offices on the CaseMan system had the ability

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agencies (police, courts, prosecution, defense, corrections, and probation) to share non-confidential information on a PC-based network, eliminating the state's current reliance on a centralized hub mainframe. The goals of the "Justice Link Public Safety Network (J-Link)" include: the elimination of duplicative data entry function efforts system-wide; the implementation of the highest degree of data sharing capabilities; the automation of criminal court calendars; and the provision of better statistical summaries and reports throughout the criminal justice system.

Additionally, a program funded by the United States Department of Justice, Bureau of Justice Assistance (BJA) is already providing technical assistance in the specific area of court systems automation to criminal justice agencies under the Court Information Systems Technical Assistance Project (CISTAP). The goal of CISTAP is to provide State and local justice programs with assistance in "planning for, acquiring, developing, upgrading or integrating automated information systems" both within courts and between courts and other justice system organizations. The project is sponsored by a consortium of national justice organizations, including: BJA, National Center for State Courts, National Association for Court Management, and Conference of State Court Administrators. Technical assistance for the project is being provided by SEARCH, a non-profit organization dedicated to improving the criminal justice system through better information management, and is overseen by a national task force consisting of judges, court administrators, prosecutors, and public defenders.

A separate BJA-funded program administered by the Justice Programs Office at American University began providing technical assistance on January 1, 1999 to criminal justice agencies working to promote the coordinated and efficient administration of justice in their respective jurisdictions. The stated goal of the Criminal Court Technical Assistance Project (CCTAP) is to "facilitate the development and conduct of accessible, fair, prompt, modern, efficient, and accountable criminal adjudication system processes in the jurisdictions served." CCTAP offers on-site consultations in relevant subjects by experts from national adjudication system organizations to judicial system agencies, and will offer multi-jurisdiction workshops for representatives of all system components on topics of common need and/or emerging national interest. The project is being sponsored by a national consortium of justice organizations, including the National Legal Aid & Defender Association, the Justice Management Institute, and the Pretrial Services Resource Center.

to create unique disposition codes, further complicating our ability to determine accurate annual caseload figures. It is clear that in the future the Conference must create a common set of disposition codes that apply uniformly to all districts or the case-weights developed through this study will not assist the Conference in projecting future staffing needs.

3. The Tennessee District Public Defenders Conference Needs Investigators.

In order to ease the crush of the caseload, a number of district public defender offices have resorted to hiring attorneys to fill investigator slots, thus frequently leaving to the attorney the responsibility of conducting investigation. Once the Tennessee District Public Defenders Conference is provided with an adequate number of attorneys to effectively handle the caseload, this process should be discontinued, and qualified, trained investigators should be hired to fulfill the investigation function.

4. The Extent to Which Juveniles Charged in Delinquency Proceedings Go Unrepresented Should be Further Studied.

Interviews with attorneys on our site visits indicated that a number of juveniles charged with delinquency go without counsel. While we do not have enough information to determine the extent of this, it is an issue that should be investigated. Under U.S. case law<sup>48</sup> and Tennessee statute<sup>49</sup>, counsel is to be appointed to represent indigent juveniles appearing before the court in a juvenile delinquency proceeding where there is a possible deprivation of liberty. Unless the case creates a conflict of interest, the district defender should be handling such a case.

5. District Public Defenders Must Have Reduced Caseloads.

The elected district public defender in rural and transitional offices often carries a substantial caseload; in some instances as heavy or heavier than that of the deputy defenders. This does not

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<sup>48</sup>In *In re Gault* 387 U.S. 1 (1967) the Supreme Court extended the right to counsel to all juveniles involved in delinquency proceedings and facing possible incarceration.

<sup>49</sup>T.C.A. §8-14-205.

leave adequate time for supervision or administrative duties. (Only 1.33% of all productive time recorded in the time study was devoted to supervision, both case-related and non-case related). We recommend a clear policy be introduced which limits the district public defender (and, in the larger offices, supervisors), to no more than a one-quarter caseload in urban districts and a half caseload in rural and transitional districts.

## 6. Capital/First Degree Murder Cases

The time study did not yield a sufficient number of dispositions for capital/first degree murder cases, thus, we are unable to develop a case weight standard for these cases. However, it is clear that these are the most complex and time consuming cases that the public defenders work on in Tennessee. Data collected from other state public defender systems with a substantial number of capital/first degree murder cases suggest that if full-time attorneys work exclusively on these cases, they should be responsible for no more than three to four cases during the course of the year. In most programs two attorneys are assigned to death penalty cases at trial, and the best practices further require a severe reduction in overall caseload two to three months before trial of the death penalty case. Indiana Supreme Court Rule 24 is an excellent model for establishing workload limitations of public defenders assigned to a capital case.<sup>50</sup>

## 7. Lengthy Trials

Special consideration should be given to all trials that last beyond three days. The actual trial time beyond these three days should be reported and the individual's workload adjusted following the completion of the trial.

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<sup>50</sup> In Indiana, Supreme Court Rule 24 permits appointment of counsel in a capital case if:  
(i) the public defender's caseload will not exceed twenty (20) open felony cases while the capital case is pending in the trial court;  
(ii) no new cases will be assigned to the public defender within thirty (30) days of the trial setting in the capital case; and  
(iii) none of the public defender's cases will be set for trial within fifteen (15) days of the trial setting in the capital case.

## 8. Treatment of Vacant Assistant Public Defender Positions

Overall caseload requirements for full-time public defenders in Tennessee should be based upon the actual number of public defender trial attorneys engaged at any given period of time and not the annual number of authorized positions. When vacancies occur, full-time public defenders should not be required to absorb all of the remaining cases left behind as well as their own full caseload.

# **Appendix A**

TENNESSEE PUBLIC DEFENDER CASE-WEIGHTING STUDY  
DAILY ACTIVITY LOG INSTRUCTIONS MANUAL

January 1999

Prepared by  
Marea L. Beeman

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## I. INTRODUCTION

The Daily Activity Log, along with this instruction document, form the core of the workload time study for the Tennessee public defender system. This instruction book will serve as the primary reference source for every public defender participating in the seven-week time study. It contains detailed explanations on how to accurately complete the Daily Activity Log and should help participating attorneys resolve any questions that arise during the study period.

The purpose of the study is to collect data necessary for developing a case-weighting system for all public defenders practicing in Tennessee; those working both in and out of the District Public Defenders Conference. While statistics are kept on the total number of cases handled by public defenders each year, there is currently no ability to differentiate the amount of work required to complete cases of varying severity. The method currently used counts all cases -- whether, appeal, felony, misdemeanor, juvenile case, or post-judgment action -- the same way, despite their level of severity or complexity.

This counting system fails to accurately reflect the amount of time required to adequately represent clients in different types of cases. This system also fails to account for the time attorneys spend on activities that are essential to a public defender's role, such as traveling, waiting in court, or participating in training. Without an accurate method for measuring the time required to adequately handle caseload, it is difficult to project staffing needs and justify budget requests. The results of this study will make this much easier.

The methodology for this time study has been used successfully by both courts and public defenders in many areas of the country. In recent years, The Spangenberg Group has conducted similar time studies for public defenders in California, Colorado, New York City, Minnesota and Wisconsin.

During October 1998, Spangenberg Group staff visited several public defender offices in Tennessee to gain a thorough understanding of public defender practice. Thus, while we have conducted case-weighting studies in other jurisdictions, we have spent substantial time tailoring the Daily Activity Log to reflect public defender practice in Tennessee.

At first glance, the process of coding and tracking your activities may appear to be confusing and, frankly, annoying. However, experience by participating public defenders elsewhere has shown that after a few days the Daily Log is no longer imposing and should take no more than five-to-ten minutes to fill out each day.

The time study will begin Monday, January 11 and conclude Friday, February 26, 1999. A final report with analysis of the data and a set of case weights will be completed in mid-April, 1999.



## II. THE DAILY ACTIVITY LOG INSTRUCTIONS

This section contains general instructions for completing the Daily Activity Log, the instrument used by participating attorneys to record their work activities each day. Detailed definitions of individual codes, and guidelines on how to use them appropriately, appear in subsequent chapters.

### 1. The Daily Activity Log

The Daily Activity Log is designed to enable attorneys participating in the study to record all of the work they perform each day during the study period. The Log is organized to collect several key pieces of information. It is crucial that each of these elements is recorded on the Log accurately throughout the time study.

- **Date:** This is the date that the attorney is actually performing the work.
- **Attorney Identification Number:** The Log calls for the entry of an attorney identification number which will be assigned to you at the beginning of the study. While assuring your anonymity, this will assist us in assuring that all required logs for the attorneys participating in the sample are complete.
- **District Number:** This identifies your judicial district.
- **Case Type and Activity Codes:** These codes combine to identify exactly the type of work being performed by the attorney and the type of case on which he or she is working.
- **Disposition Code:** The Log is designed to collect information regarding any final case dispositions obtained by the recording attorney.
- **Start Time and Stop Time:** The attorney will record the clock times that he or she started and ended each activity.

## 2. Instructions For Completing the Daily Activity Log

This section contains the detailed recording instructions for filling out the log.

### 2.1 Introduction to the Daily Activity Log

The Daily Activity Log is to be completed for each work day during the study period. It is designed to record all work activities that you perform during a single day or date. **In recording your time, there should be no “gap” in time on any line of the daily activity log.** These instructions provide a code for every activity you perform including breaks and other time away from work.

In addition to recording all work activities performed during each work day, you should record work performed during other hours of the day, including any overtime you work, whether in the office, at home, or at some other location.

In no event, however, should one Daily Activity Log ever be used to record activities performed on more than one date. Should you need additional space to record your activities for a single day, please use a second Daily Activity Log, record the date on both, and staple the pages together before submitting them. (The day is defined as ending at 12:00 midnight. Therefore, work that runs, for example, from 5:00 p.m. to 1:00 a.m. the next day should be recorded on two Daily Activity Logs.)

Because the Daily Activity Log is designed to capture very detailed information about the work you perform, you should record your activities as you complete them, not at the end of the day. Once you are familiar with the Daily Activity Log and the various codes that you need to use, you will find that it takes very little time to complete.

The following pages contain specific instructions on how to complete the Daily Activity Log. Together with the case type and activity definitions and codes that have been provided to you, these instructions will enable you to record your work accurately.

## 2.2 Recording Identifying Information

The Daily Activity Log calls for certain identifying information that will enable the consultant team both to track study progress and to analyze the study results.

### Box 1: Date

On each Daily Activity Log used, please enter the date that the work was performed.

### Box 2: Attorney Number

It is critical that you also enter, on each Daily Activity Log used, the attorney number assigned to you at the beginning of the study. This number will enable the consultant team to ensure that all Logs are being submitted each day and is necessary for proper entry of the data.

### Box 3: Judicial District Number

Please enter the number of your Judicial District on each Daily Activity Log.

## 2.3 Recording Your Activities

Each row on the Log is designed to record a single activity. For each activity performed, you should make an entry in the columns labeled "Case Type Code," "Activity Code," "Start" and "Stop." The "Disposition Code" column will be completed only when the activity which you are recording resulted in a final disposition in your case.

### Column 1: Case Type Code

Enter the code for the case type on which you are working in this space. These codes are listed on the back of the Daily Activity Log. There are specific codes for juvenile delinquency cases, misdemeanors, felonies and other types of cases handled by attorneys (40-70).

Note the inclusion of a code for Multiple Case Types (Code 60). The use of this code should be reserved for those situations where you are working on multiple types of cases in a given period of time for which it would be unrealistic for you to identify individually which types of cases you worked on. Typically, this is in a situation where you are handling a large volume of

cases in a short period of time, such as jail docket or a busy arraignment shift. For both of these examples you would use Case Type Code 60 and the coinciding activity codes would be Activity Code 12, Pre-Trial Conference/Status Hearing and Activity Code 8, Arraignment, respectively.

Finally, there is a code for use with Non-Case-Related Activities (Code 70). This case type code is to be used for all activities performed that are not related to a case.

**Column 2: Activity Code**

Enter the code for the activity that you are performing. These codes (1-31) are listed on the back of the Daily Activity Log. If you are unsure of which code to use, consult the list of Activity Codes and Definitions provided in this manual.

You should record each individual activity occurrence on a separate row. Please remember: record only one activity code for each entry.

**CORRECT:**

Case Type Code	Activity Code	Disposition Code	Start Time (Hours: Minutes)	Stop Time (Hours: Minutes)
42	3		10:15	10:25
42	7		10:25	10:40

**WRONG:**

Case Type Code	Activity Code	Disposition Code	Start Time (Hours: Minutes)	Stop Time (Hours: Minutes)
42	3,7		10:15	10:40

It is recognized that different activities (or the same activity performed for different cases) may be of such short duration and be performed in such rapid succession that individual recording becomes impossible. Instructions for coding these situations follow.

- Out-Of-Court, Case-Related Activities

All out-of-court activities of a duration of **10 minutes or longer** should be recorded individually in one row.

For activities that are shorter than 10 minutes, the following guidelines apply:

- If a brief activity (less than 10 minutes in duration) interrupts a longer one, it need not be recorded separately. Rather, its time may be incorporated into the time recorded for the more time-consuming activity. For example, if you are preparing a motion and you receive a telephone call that lasts only 8 minutes, that time does not have to be recorded separately from the time for the motion.
- If a number of short activities are completed in succession (for example, a series of telephone calls), they may all be recorded in one row, with a combined start and stop time. If all of the activities being recorded correspond to a specific activity code, then that activity code should be entered. However, if there are different activities involved, enter Activity Code 23, Multiple Activities.

- In-Court, Case-Related Activities

We are particularly interested in how you spent your time in court. For this reason, we ask that you record each activity performed in court individually, regardless of its duration. (If several in-court activities are performed in succession, and it is impossible to record each as it occurs, you should record them retrospectively -- estimating their individual times as well as you can -- as soon as they have been completed.)

The only activity coded as “in-court activity,” should be that which occurs between the time when the case is called into the record and when that matter is completed. (In other words, in-court activity occurs within the so-called “gavel to gavel” period).

If you spend time with your client in the court lock-up, converse with family members or the assistant district attorney in the corridor, talk to witnesses on the courthouse steps, etc., these activities should be recorded with Out-of-Court Case Related Activities Codes (codes 1-7).

Column 3: Disposition Code

If the activity you have recorded ended in a final disposition, indicate this fact by entering the appropriate disposition code from the choices listed on the back of the Daily Activity Log. No more than one disposition may be recorded on a single row of the Daily Activity Log, unless dispositions occur at Arraignment or other such times when numerous dispositions may occur in rapid succession. If this occurs, note the types of dispositions that took place during the Arraignment proceeding, with the appropriate number of occurrences in parentheses.

For example, if during Arraignment, the charges against three Felony B clients were dismissed, and two Felony C clients entered guilty pleas and were sentenced, you would record two entries:

Case Type Code	Activity Code	Disposition Code	Start Time (Hours: Minutes)	Stop Time (Hours: Minutes)
42	8	D (3)	(Enter appropriate	time)
42	8	E (2)	(Enter appropriate	time)

Only in an Arraignment-like situation, where multiple dispositions occur in rapid succession, should multiple dispositions appear on one line.

The disposition code column should be used only for final case dispositions. Do not record a disposition at plea or conviction if the sentencing occurs on a subsequent date. Note, however, if you are handling a case in General Sessions which is bound over to circuit or criminal court, you should enter Disposition Code C: Bound Over to Circuit/Criminal Court.

#### Column 4: Start Time (Hrs:Min)

Enter the clock time that you started the activity. This time should be recorded to the nearest minute.

#### Column 5: Stop Time (Hrs:Min)

Enter the clock time that you stopped working on the activity, whether or not you actually completed the activity in question. As with the start time, you should record this time to the nearest minute.

Please do not leave gaps in time. For example, if you enter time for an activity occurring between 9:00 a.m. and 9:17 a.m., please begin your next entry with 9:17 (not 9:18).

#### 2.4 Practice Example

To see how these guidelines are put into practice in filling out the Daily Activity Log, consider the following example of a Circuit Court attorney. The attorney's first task upon arriving in the office is to hold a thirty-minute phone conference with a client who is charged with a felony.

To record this on the Daily Activity Log, the attorney will first determine the severity level of the felony (A, B, C, D or E). Then, the attorney will choose the appropriate Case Type Code in accordance with that level of severity. For example, assume that the attorney is representing the client on a child molestation charge, where the victim is over the age of 6, which is scheduled for a bond hearing. Because this is a B Felony, the Case Type Code written in the first column would be Code 42. For the thirty minute phone call beginning at 8 a.m., the Activity Code written in the second column of the Daily Activity Log will be Code 2, Client Related Contact. The Start time will be recorded as 8:00 a.m. and the Stop time will be recorded as 8:30 a.m. There has been no disposition of this case, so the Disposition Code column would remain blank.

This process will then continue for each activity throughout the attorney's day. It is essential that time be recorded throughout the day, because, due to the various duties required of the public defenders, the attorney may not be able to accurately "reconstruct" his or her time at the end of each day. It is also critical that the attorney record the date and his or her number on the Daily Activity Log.

### III. ACTIVITY CODES AND DEFINITIONS

This section describes the activity codes and definitions that have been developed for the study. These codes and definitions are intended to be comprehensive, encompassing all work performed by Tennessee public defenders.

The activity codes are organized into the following sub-groupings:

- Out-of-Court Case Related Activities,
- In-Court Case Related Activities,
- General Activities, and
- Non-Case Related Activities.

#### 1. **Out-of-Court, Case-Related Activities**

The following activities are typically performed in connection with representing a defendant outside of court in felony, misdemeanor, juvenile and other proceedings. They are defined as out-of-court activities because they are not performed before a judge in court.

##### Code 1: Investigation

Includes all attorney activities relating to conducting an investigation or making a request for investigation prior to a court hearing or trial. Includes interviewing witnesses, viewing the scene and evidence, checking criminal histories, and fact verification. Includes time spent preparing an investigation request and any accompanying materials (for example, making copies of case file contents) and time spent working with investigator staff.

##### Code 2: Client Related Contact

Includes any in-person, telephone or written discussions with the defendant, defendant's friends or the defendant's family. Includes contact in office, jail, detention center, court holding pen or correctional facility. Includes all conferences with the client prior to the beginning of hearings or trial.

### Code 3: Social Services Activity

Includes all attorney activity involving social services relating to disposition of a client's case, such as identifying alternatives to incarceration or arranging for preparation of pre-sentence or pre-plea reports. Includes time spent working with staff social workers.

### Code 4: Legal Research

Includes time spent conducting legal research for a specific client's case. Includes time spent in the office library and in outside law libraries. Does not include general legal research, reading advance sheets, etc., which should be recorded as Code 26, Professional Development Activities.

### Code 5: Conference With Supervisor or Colleague

Includes any in-person, telephone, or written discussion with a supervisor or colleague *regarding a specific client's case*. This includes conversations that take place when an attorney is arranging to have a colleague cover his or her cases in court. However, this code is not for use by persons providing supervision or who are observing a case being pre-tried. Supervision would be coded with the appropriate case type under Activity Code 24, Supervision. This code also does not include general, non-case specific discussions with supervisors or colleagues on legal matters or strategies, which are recorded as Code 26, Professional Development Activities.

### Code 6: Conference with District Attorney or Court Personnel

Includes time spent in person, on the telephone, or in written communications out of court with a representative of the District Attorney's Office. Also includes time spent in conference with a member of the District Attorney's Office inside a courtroom, providing that the conference does not take place after the case has been called into the record. This is the appropriate code for the Review Docket in Davidson County.

This activity also includes conferences with a judge, clerk of courts, or other court personnel so long as the case has not been called into the record.

### Code 7: Case Preparation

Includes all time spent out of court on case preparation activities that do not relate directly to Out-of-Court codes 1 through 6. This activity encompasses

a wide variety of case preparation tasks, including, but not limited to, the following:

- o motions,
- o subpoenas,
- o discovery,
- o witness preparation, including discussions with expert witnesses,
- o work with interns or legal assistants,
- o work with interpreters,
- o telephone calls,
- o correspondence,
- o contact with probation and/or law enforcement officers,
- o working on case strategy (for example, considering alternative strategies, taking notes),
- o reviewing the case file, and
- o associated clerical tasks, such as copying, typing, etc.

Be sure to only record your own activities on each line of the log and not that of anyone else working with you or for you.

## **2. In-Court, Case Related Activities**

The activities described below are also case-related, having to do with representing a client *in court*. These activities are only performed after the case has been called into the court record, during so-called “gavel to gavel” time. Discussions before the case is called into the record in the corridors, outside the courthouse or in the court lockup would all be recorded as out-of-court case related activities (Codes 1-7).

### Code 8: Arraignment

Includes all time spent on the arraignment of an individual defendant that you represent.

### Code 9: Initial Hearing/First Appearance

Includes all time for in-court activities that take place during the initial hearing or first appearance.

### Code 10: Preliminary Hearing

This includes all time spent in court at preliminary hearing after the case has been called into the record either to waive the preliminary hearing, proceed with preliminary hearing or to set a subsequent court date.

Code 11: Bond Hearing

Includes all time spent in court arguing bond, discussing bond with the prosecutor, or consulting with client and family members present.

Code 12: Pre-Trial Conference/Status Hearing

Time should be recorded here for all in-court activities that take place during the pre-trial conference, which may include status hearings or mandatory disposition dates.

This is also the appropriate code for Jail Docket duty in Davidson County and Report Day duty in Shelby County.

Code 13: Motions

Record all time spent in court prior to trial litigating pre-trial motions. However, if a plea is accepted at the motions hearing, record time under Activity Code 8.

Code 14: Disposition/Plea/Settlement Day

Record all time spent in court related to plea and setting of further proceedings.

Code 15: Trial

Time should be recorded here for all in-court activities that take place during the period of trial. Trial is defined as that period of time starting with any discussion of preliminary matters, or the beginning of jury selection, or the announcement by the court that a bench trial is commencing, and ends at the time that a verdict is announced, a mistrial is declared, a plea is entered during trial, or a trial order of dismissal is granted. This code should also be used for sentencing, if it occurs immediately after a verdict is announced or a plea is entered. If the court takes a recess of more than 10 minutes, you should record the time as waiting time, lunch and other breaks unless you use the time to work on another specific case you are handling, in which case you should record the appropriate case type and activity.

#### Code 16: Sentencing

This category should be used if sentencing occurs at a different time from when a verdict is announced or a plea is entered.

#### Code 17: Post-Trial/Post-Plea

Time should be recorded here for all in-court activities starting at the point in time at which trial and sentencing are completed, and ending at the point in time that the entry of a notice of appeal is made. Time should also be recorded here for any in-court activity that occurs after a plea is entered.

Activities in this category include motions for a new trial or to set aside the verdict, motions for bail pending appeal, motions for stay of sentencing, and motions for entry of appeal. Time spent preparing these motions should be recorded using Activity Codes 1-7.

#### Code 18: Detention Hearing

Includes hearings in which the public defender appears either in court or at the detention facility. Also includes appearances regarding bond reduction, placement reviews and probable cause review.

#### Code 19: Diversion

Time should be recorded here only for in-court discussion with the judge on diversion possibilities.

#### Code 20: Waiver Hearing

Time should be recorded here only for in-court formal hearings on motions to waive juvenile jurisdiction to Superior Court.

### 3. General Activities

The activities listed in this section may be either case related or non-case related.

#### Code 21: Waiting Time

The recording of waiting time will be handled differently, depending on whether one or more cases or activities were involved.

- All waiting time in court or at a correctional facility is to be recorded as Code 21, Waiting Time. Each block of waiting time should be a separate line item on the Daily Activity Log, with its start and stop times recorded. This method of recording is used for court and correctional facility waiting regardless of whether only one case or activity, or more than one case or activity, is involved.
- If the waiting corresponds to one particular case, then record the appropriate Case Type Code with the Waiting Time Activity Code 21.
- If the waiting is related to multiple cases, use the Multiple Case-Type, Case Related Code (60).

#### Code 22: Travel Time

The following guidelines for recording travel time parallel those described above for waiting time.

- Travel to and from court (including travel between different courts) and travel to and from correctional facilities is always recorded as Code 22, Travel Time, with start and stop times noted. As with waiting time, this method of recording is used for instances where just one case or activity is involved as well as for instances involving multiple cases or activities.
- If the travel corresponds to one particular case, then record the appropriate Case Type Code with the Travel Time Activity Code.
- If the travel time relates to multiple cases, use the Multiple Case Type, Case-Related Code (60).

Time spent traveling at the beginning or end of the work day is to be recorded according to the following guidelines.

- Commuting

Time spent commuting between one's home and office is not considered to be part of the work day, and is not recorded. Similarly, time spent commuting from the office to home is also not recorded.

- Case-Related Travel

If an attorney travels from home to a site other than the office as part of his or her Public Defender duties (to a correctional facility, or to the District Attorney's office, for example) that time should be recorded as travel time.

### Code 23: Multiple Activities

This category is used to record time spent on multiple activities that cannot be individually recorded on the Daily Activity Log due to their short duration and quick succession. Such activities should be recorded on a single line of the Daily Activity Log, as explained in the Instructions for Completing the Daily Activity Log.

Use of Code 23 for multiple activity recording should be limited to instances where the following circumstances apply:

- The multiple activities occur in succession, and each of them is less than 10 minutes in length;
- All of the activities take place out of court (in-court activities have to be recorded individually regardless of their duration); and
- The individual activities involved are different from each other (that is, they could not be recorded collectively using any of the other activity codes).

For example, an attorney might spend a half-hour in the morning performing 15 different activities, none requiring more than three minutes. If those activities corresponded to different activity codes (for example, if they included preparing subpoenas, calling clients, conferring with a supervisor, and completing an investigation request), no single one of those activity codes could be used to record all of the activities performed. Therefore, it would be appropriate for the attorney to use Code 23 to record the entire block of time.

On the other hand, if all of the activities corresponded to a single activity code, that code would be used. For example, if the attorney spent the entire half-hour calling clients, Code 2 would be the correct choice.

When Code 23 is employed, any one of the case type codes might be appropriate.

- If all of the activities are related to the same case type (for example, Class C Felonies), then that case type code (Code 43) should be used.
- If all of the activities are case-related, but different case types are involved, then they should be coded as Multiple Case Type Case-Related (Code 60).
- Finally, if the activities are non-case-related, then Code 70 should be used.

#### Code 24: Supervision

This code encompasses all time devoted to supervision provided to staff that is both case-specific and non-case-specific. The code should be used by the person providing supervision, whether or not he or she is designated by title as a supervisor. For instance, this code would be used by an attorney critiquing another colleague who is practicing or pre-trying a case. It could also be used by an attorney whose responsibilities include direct supervision of line public defenders.

#### **4. Non-Case Related Activities**

The activities listed in this section are defined as always non-case-related. They are all related to activities that public defenders are now or should be doing. An objective of the study is to grant public defenders "credit" for performing activities beyond their extensive case work. In coding these activities, always use Case Type Code 70.

#### Code 25: Administrative Activity

This code includes all time spent on *non-case-related* activities that are primarily administrative in nature. Specific activities include the following:

- Completing the Daily Activity Log,
- Attending office or other meetings, and

- Administrative duties of Office Heads, Division Leads, or other supervisors.

Note that if you spend time, for example, typing a letter or filing case files, although the nature of this work is administrative or clerical, if it is related to a case or cases, it should be coded with the appropriate case type code, not Code 70.

#### Code 26: Professional Development

This code includes a variety of activities that relate to the professional development of public defenders. Examples include the following:

- Observation of a trial or other court proceeding;
- Supervision of a law intern;
- Conferring with supervisors or colleagues regarding cases *generally* or regarding the policies of the courts or District Attorney's Office; and
- Reading advance sheets or other legal publications. (Such reading does not include researching a specific case, which is recorded under Activity Code 4).

#### Code 27: Lunch and Other Breaks

This code includes any time during the course of the work day that the attorney is not working while at lunch or on a break.

#### Code 28: Vacation and Other Time Away From Work

This code is used to record all time during the day that is spent away from work, other than the time for lunch or breaks using Code 27. Specifically, the following kinds of time are included:

- All leave time, whether taken for a whole day or for part of a day, including holidays, vacation, sick time, bereavement leave, military leave, maternity, paternity, or child care leave, and any other leaves of absence.
- All compensatory time whether taken for a whole day or for part of a day.
- All other periods of time during the recorded day that were spent away from work. This refers to time periods that occur between the

initial Start Time on a Log and the last Stop Time on the same Log.  
The following are the most frequent instances of such time:

- A single Activity Log should only be used to record activities performed on a single date. As a result, if an attorney worked in court or in the office or at home later than 12 a.m., those hours after 12 a.m. would be recorded on a new Activity Log. When the attorney starts work the next morning, the same Log will be used, recording the gap of time with Activity Code 28 and Case Type Code 70.
- An attorney might work after normal hours. If he or she continued to work past 5:00 p.m., there would be no gap. However, if the attorney took work home at 5:00 p.m. and did not work on it until 8:00 p.m., the three hours from 5:00 to 8:00 should be recorded using Activity Code 28 and Case Type Code 70.

#### Code 29: Training

This code is to be used both by those individuals attending training sessions and those presenting training.

#### Code 30: Community Service/Public Education

This code should be used when, as a representative of the public defender office, an attorney participates in a community service or public education activity, such as meeting with school children or speaking at social clubs.

#### Code 31: Other Activities

This code is to be used sparingly, only in the rare situation when your activity simply does not fit into the definitions for activity codes 1-30.

#### IV. CASE TYPE CODES AND GUIDELINES

Each entry on the Daily Activity Log, whether it describes case-related or non-case-related activity, must include one of the following case type codes.

- Code 40: Capital/1st Degree Murder - includes capital murder and 1<sup>st</sup> degree murder but not other homicides. Use this code when a case is death eligible but the DA has not yet announced whether death will be sought. When and if a lesser charge is sought, begin coding the case accordingly to the lower charge (see Guidelines for Coding Charge Reductions).
- Code 41: Felony A - includes all Felony A crimes.
- Code 42: Felony B - includes all Felony B crimes.
- Code 43: Felonies C, D and E - includes all Felony C, D, and E crimes
- Code 44: Misdemeanors - includes all Misdemeanors.
- Code 45: Juvenile - includes juvenile delinquency only; no status offenses or dependency cases.
- Code 46: Probation Violation - include all cases in which a hearing has been scheduled.
- Code 47: Post-Judgment Actions - includes all post-judgment actions EXCEPT Probation Violation.
- Code 48: Appeal - includes all criminal Appeals.
- Code 49: Other - includes any case that does not fit into the above categories, such as post-conviction relief or extradition.
- Code 60: Multiple Case Types, Case-Related - This code is to be used for recording multiple activity occurrences (same or different activities) which are related to more than one of the above case types, and which cannot be recorded individually due to their short duration (for example, a series of brief telephone calls to clients with various types of felony cases).

Code 70: Non-Case Related - This case type code is to be used for all activities that are not related to a juvenile, misdemeanor, felony, appeal, probation violation, post-judgment action, or “Other” case.

#### 4. Guidelines for Using the Case Type Codes

There are a number of situations where there will be questions concerning which case type code is the appropriate one to use. The following guidelines are provided to assist participating attorneys in determining the appropriate case type code.

##### 4.1 Guidelines for Determining Whether an Activity is Case-Related or Non-Case-Related

In determining which case type code to enter when recording an activity on the Daily Activity Log, an attorney first must decide whether the activity is case-related or not. "Case-related" and "Non-case-related" carry very specific meanings in the workload measurement study, and they are critical to the outcome of the study.

The following guidelines are to be used in determining whether an activity calls for a case-related case type code (Codes 40-60) or the non-case-related code (Code 70).

- A "case" is defined as a juvenile, misdemeanor, felony, appeal, probation violation, post-judgment action or “other” case for which an appointment has been made to a public defender or a public defender office.
- If a public defender performs an activity on his or her own case, the activity is always case-related. This holds even if the attorney performs the activity during the course of an institutional assignment. For example, an attorney on an institutional assignment day may take 10 applications for appointment, interrupted at some point by preparing a motion on one of his or her felony cases. The work on the motion should be recorded according to the appropriate case type and activity code if it lasts 10 minutes or longer.
- If an attorney performs a case-related activity for a colleague (for example, appearing at an arraignment), and he or she does not do this as part of an institutional assignment, the activity is recorded as case-related, using the appropriate case type code.
- If an attorney performs an activity that is not related to a case, the activity is always coded as non-case-related, Code 70.

- If an attorney answers a colleague's question, or provides advice regarding a specific case, that activity is considered to be supervision, even if the responding attorney is not by title a supervisor. The attorney answering the question should record the time as case related under the type of case discussed. The Activity Code used should be 24, Supervision.

The attorney asking the question records the activity as case-related, using Activity Code 5, Conference with Supervisor/Colleague.

#### 4.2 Guidelines for Coding Multiple-Charge Cases

**For all cases involving more than one charge in a single complaint, record the case type code that corresponds to the highest charge.**

#### 4.3 Guidelines for Using Case Type Code 60: Multiple Case Types, Case Related

Case Type Code 60 is to be used for coding multiple activity occurrences, whether they are the same or different activities, when 1) the individual activities involved are related to more than one of the specific case types and 2) those activities have to be recorded on a single line of the Daily Activity Log, due to their short duration.

The use of Code 60 is to be limited because the use of the multiple case types code does not allow us to measure the amount of time spent on various types of cases. So, when time for multiple activities is recorded, if those activities are all related to the same case type, the specific case type code involved is to be used rather than Code 60.

For example, if a public defender spends 15 minutes making telephone calls, all of which are related to various misdemeanor cases, then Code 44, Misdemeanor, is the appropriate case type code. If the phone calls relate to different types of cases and cover different activities, such as social services activity and a conference with the DA, then Case Type Code 60, Multiple Case Types, is used, and should be paired with Activity Code 23, Multiple Activities.

Code 60 is to be used when the following circumstances apply:

- Multiple short activity occurrences (under 10 minutes) are being recorded on one line of the Daily Activity Log; or
- All of the activities involved are case-related, but the individual activities are related to different case types.

In terms of activity code/case type code pairings, Case Type Code 60 can only be used with the following activity codes:

- Out-of-Court Case-Related Activities (Codes 1-7);
- General Activities (Codes 21-24) when the particular activities involved are case-related.

#### 4.4 Guidelines For Coding Charge Reductions

When a charge is reduced, it is very possible that the case type will change. This possibility raises the question of how to code that case on the Daily Activity Log, since it may begin the day as one case type and end the day as another. In order to code such occurrences consistently, the following guidelines are to be applied.

- When, in the course of one court appearance, a charge reduction involves a plea to a lower charge, and as a result the case is disposed, record the case type code which corresponds with the lower charge, not the code corresponding with the original (higher) charge.
- If a charge reduction does not involve a disposition, but rather the case continues before the court on the lower charge, the initial case type code is applied to all activities up to and including the court appearance where the charge reduction takes place. However, any subsequent activities involved in working on that case are coded according to the lower charge.

## V. DISPOSITION CODES

Finally, we cannot overstate the importance of recording all case dispositions that occur during the study period. The Disposition Codes (A-I) should be written in the Disposition Code Column when the client's case is finalized. **In a case where a sentence will be imposed, the disposition should be recorded when the sentencing takes place, not at the plea or conviction stage.** If a client is facing multiple charges, the corresponding case type used with the disposition code should reflect disposition of the most serious charge.

The disposition codes are as follows:

- A: Withdrawal
- B: Diversion
- C: Bound Over to Circuit/Criminal Court
- D: Dismissed
- E: Plea/Deferred Sentence
- F: Plea/Sentence
- G: Trial - Acquitted: This disposition code is to be used in any case where the court or jury acquits the defendant of all charges.
- H: Trial - Convicted/Sentenced
- I: Committed to State Hospital/Incompetency.

Code C is to be used by those attorneys working in General Sessions Court when a case is bound over to Circuit or Criminal Court.

## **Appendix B**



## I. CASE TYPE CODES

(Most Serious Charge)

- |                               |                                       |
|-------------------------------|---------------------------------------|
| 40. Capital/1st Degree Murder | 46. Probation Violation               |
| 41. Felony A                  | 47. Post-Judgement Action             |
| 42. Felony B                  | 48. Appeal                            |
| 43. Felony C, D, E            | 49. Other                             |
| 44. Misdemeanor               | 60. Multiple Case Types, Case-Related |
| 45. Juvenile                  | 70. Non-Case Related                  |

## II. ACTIVITY CODES

### A. Out-of-Court Case Related Activities

1. Investigation
2. Client Related Contact
3. Social Services Activity
4. Legal Research
5. Conference with Supervisor or Colleague
6. Conference with D.A. or Court Personnel
7. Case Preparation

### B. In-Court Case Related Activities

8. Arraignment
9. Initial Hearing/First Appearance
10. Preliminary Hearing
11. Bond Hearing
12. Pre-Trial Conference/Status Hearing
13. Motions
14. Disposition/Plea/Settlement Day
15. Trial
16. Sentencing
17. Post-Trial/Post-Plea
18. Detention Hearing
19. Diversion
20. Waiver Hearing

### C. General Activities (Case or Non-Case Related)

21. Waiting Time
22. Travel Time
23. Multiple Activities
24. Supervision

### D. Non-Case Related Activities

25. Administrative Activity
26. Professional Development
27. Lunch & Other Breaks
28. Vacation & Time Away from Work
29. Training
30. Community Service & Public Education

## III. OTHER ACTIVITY CODES

31. Other Activities

## IV. DISPOSITION CODES

- |   |   |
|---|---|
| A. Withdrawal                           | F. Plea/Sentence                            |
| B. Diversion                            | G. Trial - Acquitted                        |
| C. Bound Over to Circuit/Criminal Court | H. Trial-Convicted                          |
| D. Dismissed                            | I. Committed to State Hospital/Incompetency |
| E. Plea/Deferred Sentence               |   |

## Appendix C



## **Appendix D**

## Appendix D

### District-by-District Public Defender Staffing Estimates

Below is an estimated, district-by-district staffing chart. The Spangenberg Group has several reservations regarding this chart and strongly emphasizes that this estimate should not be used as the final determination of public defender staffing. We say this for the following reasons:

- 1.2\_ The Spangenberg Group only conducted site visits at public defender offices in six of the judicial districts. We did not visit each district in the study, let alone every district in the state. Little, if any, information was provided to us about the nature of these other districts' practices. Final staffing determinations must take into consideration:
  - The working environment in each district, particularly the ratio of support staff (legal secretaries, investigators, etc.) to attorneys. Districts that have more support staff may require less attorneys than a similar sized district with less support staff;
  - The number of counties in a judicial district. Some districts encompass several counties which require staff to cover different courtrooms at the same time. Simple staffing assessments based solely on disposition counts do not account for this situation.
  - The number of courtrooms that must be staffed in a district. Some districts have received additional judges in recent years which leads to additional courtrooms that must be staffed by the public defenders. Districts that have similar caseloads may need different attorney staffing levels due to the additional work created by the new judgeships.
  - The caseload carried by the elected public defender. It was our observation that many elected public defenders carry the same caseload as their assistant public defenders. District Public Defenders must be allowed time to manage the office and to oversee the practice of his or her assistants. The extent to which some Public Defenders carry a higher caseload than others must be a factor in determining additional staffing.
  - The experience level of the attorneys presently working in each districts. A district that has a heavier serious felony caseload would need more experienced attorneys than a district that has a heavier misdemeanor caseload.
9. Due to the individual nature of Capital/1st Degree Murder cases, it is impossible to project when or where such cases will occur. It is quite possible that a district that has not had to defend a Capital/1st Degree Murder Case in several years will have such a case in the future. As such, staffing estimates will need to be altered to accommodate these circumstances. Additionally, the methodology used to determine the annual caseload greatly underestimates the number of Capital/1st Degree Murder cases that can be expected to occur. The report is not meant to imply that only one attorney is needed to handle all of the capital cases in the state.

10. It is our belief that a large percentage of juvenile defendants in the state go to court without counsel. Attorney staffing estimates will change if juvenile cases are handled by all of the districts.
11. The staffing estimates are based on charge information as reported by each district from FY1998. As we found out, case counting procedures and disposition coding was not uniform throughout the state during this time period. Though we are confident about the aggregate case counts statewide, we are less sure of the district-by-district counts. Districts should not be rewarded with additional staff nor penalized with losing staff due to improper case counts and coding practices. A comprehensive, district-by-district analysis of case counting and disposition coding practices is required to guarantee the validity of individual districts' staffing projections.
12. At this time, we do not have good data on the breakdown of Felony A, Felony B and Felony C, D & E cases within each district. Districts that have more serious felony cases will require more attorneys than a district with the same aggregate felony caseload, but with fewer serious cases.
13. At present, the estimated staffing chart does not take into account the differences in practices between urban, rural and transitional districts. The extra travel and waiting time experienced in rural and transitional districts must be taken into account.
14. The estimated staffing chart does not consider the projected increases or decreases in judge and prosecutor positions resulting from the other two studies conducted by APRI and NCSC. Increases in either prosecutor positions or judgeships in a district will significantly alter the public defender needs in each district.

<b>Appendix D</b>				
<b>Public Defender Estimated Staffing</b>				
<b>District</b>	<b>Annual Caseload</b>	<b>Required Staff</b>	<b>Current Staff</b>	<b>New Staff</b>
1	2,543	8	6	2
2	2,716	10	8	2
3	4,769	8	6	2
4	2,119	7	5	2
5	1,473	4	3	1
6	8,810	24	21	3
7	1,125	4	4	0
8	1,943	6	5	1
9	1,463	5	4	1
10	1,806	6	6	0
11	4,824	13	11	2
12	2,232	6	5	1

**Appendix D**  
**Public Defender Estimated Staffing**

13	1,985	6	5	1
14	1,512	4	4	0
15	2,398	6	4	2
16	2,044	6	5	1
17	2,385	6	4	2
18	1,879	6	4	2
19	5,039	9	5	4
20	20,465	47	38	9
21	2,020	6	4	2
22	2,475	7	5	2
23	1,692	5	4	1
24	1,286	5	5	0
25	2,559	8	5	3
26	2,895	9	7	2
27	1,242	4	4	0
28	1,404	4	3	1
29	916	4	3	1
30	22,461	61	55	6
31	448	2	2	0
<b>Total</b>	<b>112,930</b>	<b>306</b>	<b>250</b>	<b>56</b>