

The Louisiana Project

A Study of the Louisiana Public Defender System
and Attorney Workload Standards



Modeled on the *National Blueprint for Future Workload Studies*
from *The Missouri Project*
www.indigentdefense.org

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A Study of the Louisiana Defender System and Attorney Workload Standards

February 2017

Conducted by:



and

The American Bar Association
Standing Committee on Legal Aid and Indigent Defendants



This report has been produced by Postlethwaite & Netterville, APAC and the American Bar Association Standing Committee on Legal Aid and Indigent Defendants. The views expressed herein, unless otherwise noted, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association. Certain conclusions involve legal concepts and judgments, and no legal opinion from Postlethwaite and Netterville, APAC is intended or implied in this report. Funding for this study was provided by the Laura and John Arnold Foundation and the views expressed herein are not necessarily those of the Foundation.

February 15, 2017

Laura and John Arnold Foundation
c/o Denis Calabrese, President
3 Columbus Circle, Suite 1601
New York, NY 10019

Dear Mr. Calabrese:

The American Bar Association Standing Committee on Legal Aid and Indigent Defendants and Postlethwaite and Netterville, APAC have prepared and enclosed our analysis of attorney workload standards for the Louisiana public defense system. The report that follows this transmittal letter provides an overview and results of the study.

Postlethwaite and Netterville, APAC's services were conducted in accordance with the *Statements on Standards for Consulting Services*, as established by the American Institute of Certified Public Accountants.

In closing, we would like to thank you for this opportunity to be of service to you.

Sincerely,

POSTLETHWAITE & NETTERVILLE, APAC

A handwritten signature in blue ink that reads "Postlethwaite & Netterville".

AMERICAN BAR ASSOCIATION STANDING COMMITTEE
ON LEGAL AID AND INDIGENT DEFENDANTS

A handwritten signature in black ink that reads "Lora J. Livingston".

Lora J. Livingston, Chair

PREFACE

The Louisiana Project is a public defense workload study performed as a collaborative research effort conducted by the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (“ABA”) and Postlethwaite and Netterville, APAC (“P&N”). We would like to thank the Laura and John Arnold Foundation for funding this study, which was critical to this undertaking.

The Louisiana Project was conducted under the leadership of Mr. Daniel Gardiner, CPA (Director of Tax Services at P&N), Mr. Jason MacMorran, CPA/ABV/CFF, CVA, MS (Director of Consulting Services at P&N), and Mr. Stephen F. Hanlon, J.D. (Project Leader for the ABA).

On behalf of P&N, Mr. Gardiner and Mr. MacMorran were provided significant professional assistance from Mr. Madison Field, CFE, CVA, MBA (Consulting Manager at P&N) and Mr. Jeremy Sanders, CSM, CSPO (Consulting Manager at P&N).

On behalf of the ABA, Mr. Hanlon was supported by Mr. Geoffrey Burkhart, J.D. (former Special Project Coordinator for the ABA Standing Committee on Legal Aid and Indigent Defendants) and Mr. Norman Lefstein, LL.B., LL.M. (Professor of Law and Dean Emeritus, Indiana University Robert H. McKinney School of Law).¹

In addition, we would like to thank Mr. Peter Sterling, J.D. (former General Counsel for the Missouri State Public Defender), Mr. Michael Lewis (RubinBrown, LLP), and Mr. Josh Leesmann (RubinBrown, LLP) for their guidance and contributions to this study.

We also would like to thank the Louisiana Public Defender Board (“LPDB”) for their cooperation throughout this project, specifically, Mr. James Dixon, J.D. (State Public Defender), Ms. Jean Faria, J.D. (Capital Case Coordinator), Mr. Erik Stilling, Ph.D. (Program Development and Resource Management Officer), Ms. Carol Kolinchak, J.D. (Trial Level Compliance Officer), and Ms. Cristine Roussel (CMS Report Analyst). Additionally, we would like to thank the public defenders who voluntarily tracked their time on criminal cases in the 10th, 19th, 22nd, and 41st judicial districts.

We would like to thank the independent panel comprised of Mr. James Boren (Baton Rouge, Louisiana), Mr. Mark Cunningham (New Orleans, Louisiana), Mr. John DiGiulio (Baton Rouge,

¹ The work of the ABA on The Louisiana Project was performed under the auspices of the ABA Standing Committee on Legal Aid and Indigent Defendants (“SCLAID”). Mr. Hanlon is a former member of SCLAID and former chair of the committee’s Indigent Defense Advisory Group. Professor Lefstein is currently a Special Advisor to SCLAID and a former SCLAID consultant and committee member; and Mr. Burkhart served as a SCLAID staff member during the project.

Louisiana), and Mr. Daniel Martiny (Metairie, Louisiana) for selecting participants (“luminaries”) in the field of Louisiana criminal defense representation to participate in the workload study.

Finally, we would like to thank the survey participants comprised of private defense practitioners and public defenders for their significant contributions and service on the Delphi Panel for The Louisiana Project.

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EXECUTIVE SUMMARY

The ABA and P&N conducted a study on behalf of the Louisiana Public Defender Board to establish public defense workload standards for the State of Louisiana, called the Louisiana Project.

The Louisiana Project consisted of three main phases: (1) an analysis of the Louisiana public defense system's historic caseloads and staffing; (2) an analysis of actual time spent by public defenders on recent caseloads in pilot districts; and (3) the application of the Delphi Method as a survey process to identify how much time an attorney *should* spend, on average, in providing representation in certain types of criminal cases to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

The Delphi Method's structured and reliable technique integrates opinions of highly informed professionals to develop consensus opinions. The Delphi Panel, consisting of Louisiana private defense practitioners and public defenders, provided professional consensus opinions regarding the appropriate amount of time an attorney *should* spend on certain case types to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in the State of Louisiana. The results of the Delphi Panel survey are presented below.

Delphi Panel Survey Results	
Case Type	Hours Per Case
Misdemeanor or City Parish Ordinance	7.94
Enhanceable Misdemeanor	12.06
Low-level Felony	21.99
Mid-level Felony	41.11
High-level Felony	69.79
Felony-Life Without Parole	200.67
Juvenile Delinquency	19.78
Families in Need of Service (FINS)	9.66
Child in Need of Care (CINC)	25.08
Revocation	8.47

A Delphi workload analysis, consisting of an estimate of Louisiana's public defense annual workload² multiplied by the Delphi Panel's opinions listed above for each Delphi case type is presented in the table on the next page and Exhibit #3.

² See definition of "workload" presented in Appendix A and Annual Workload Analysis presented in Appendix H.

	Estimated Workload	Delphi Panel Results	Workload Analysis
Delphi Case Type	Annual Cases By Case Type	Hours Per Case	Total Hours Per Case Type
Misdemeanor or City Parish Ordinance	27,755	7.94	220,490
Enhanceable Misdemeanor	36,860	12.06	444,347
Low-level Felony	20,242	21.99	445,155
Mid-level Felony	21,029	41.11	864,397
High-level Felony	16,561	69.79	1,155,847
Felony - Life Without Parole	575	200.67	115,383
Juvenile Delinquency	9,025	19.78	178,545
Families in Need of Service (FINS)	1,736	9.66	16,770
Child in Need of Care (CINC)	7,528	25.08	188,827
Revocation	5,909	8.47	50,030
Estimated Annual Workload	147,220		3,679,792

At this workload, and to be in compliance with the Delphi Panel's consensus opinions, 3,679,792 hours (approximately 1,769 FTE public defenders³) are required to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in Louisiana to meet the annual public defense workloads for these Case Types.⁴ As of October 31, 2016, the Louisiana public defense system employed approximately 363 FTE public defenders. Therefore, the Delphi Method's process indicates the Louisiana public defense system is currently deficient 1,406 FTE attorneys. Alternatively, based on the Delphi Method's results and analysis presented herein, the Louisiana public defense system currently only has capacity to handle 21 percent of the workload in compliance with the Delphi Panel's consensus opinions.

³ FTE attorneys are based on 2,080 hours annually (52 weeks @ 40 hours per week). Therefore, this calculation conservatively assumes all hours are allocated to the legal representation of annual workload, without consideration for continuing legal education requirements, administrative tasks, vacation, etc.

⁴ The Delphi Panel's consensus opinions presume adequate investigative, secretarial and other support services.

INTRODUCTION

The relevant legal rules and standards pertaining to effective assistance of counsel are critical components for understanding both attorney workloads and our analysis thereof in this study. The duty of the State of Louisiana to provide defendants representation in criminal cases for those unable to afford counsel derives from the Sixth Amendment to the United States Constitution, as interpreted by the United States Supreme Court, and Article 1, Section 13 of the Constitution of the State of Louisiana.

In 1963, the United States Supreme Court held in the *Gideon* case that defendants charged with a felony in state criminal court were entitled to a lawyer at state expense if they were unable to afford counsel.⁵ In 1972, the United States Supreme Court extended the right to counsel to misdemeanor cases resulting in a defendant's loss of liberty.⁶ A majority of states, however, recognize the right to an attorney if a defendant is charged with a misdemeanor regardless of whether or not imprisonment results. In Louisiana, the right to counsel applies to defendants in misdemeanor cases if imprisonment is possible.⁷

In 1984, the United States Supreme Court held that the Sixth Amendment's requirement of counsel means the right to "reasonably effective assistance of counsel pursuant to prevailing professional norms of practice."⁸ In 2010, the Supreme Court noted in *Padilla v. Kentucky* that: "We have long recognized that 'prevailing norms' of practice as reflected in American Bar Association Standards...are guides to determining what is reasonable...although they are 'only guides'...and not 'inexorable commands'...these standards may be valuable measures of the prevailing professional norms of effective representation...."⁹

There also are ethical rules and standards expressly applicable to attorneys providing public defense representation in Louisiana. These include the Louisiana Rules of Professional Conduct and the Louisiana Public Defender Board Trial Court Performance Standards.

The ABA Standards for Criminal Justice are the result of a lengthy process that began in 1964, and most recently culminated with the fourth edition of these standards approved and published by

⁵ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁶ *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

⁷ *State v. Reeves*, 11 So.3d 1031, 1056 (La. 2009).

⁸ *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

⁹ *Padilla v. Kentucky*, 559 U.S. 356, 366-67 (2010), citing, *inter alia*, American Bar Association Standards for Criminal Justice related to the Defense Function.

the ABA in 2015. These ABA Standards “are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the process.”¹⁰

In 2012, the United States Supreme Court, in *Missouri v. Frye*, citing to the Department of Justice, Bureau of Justice Statistics, noted that “ninety-four percent of state convictions are the result of guilty pleas.”¹¹ In that case, the United States Supreme Court quoted with approval the following statement from a Yale Law Journal article: “[P]lea bargaining...is not some adjunct to the criminal justice system; it is the criminal justice system.”¹²

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

In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer (plea) **unless and until appropriate investigation and study of the matter has been completed**. Such study should include:

- discussion with the client,
- analysis of relevant law,
- analysis of the prosecution’s evidence,
- analysis of potential dispositions, and
- analysis of relevant potential consequences.

Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client’s best interest. (Emphasis added).

The Louisiana Rules of Professional Conduct applicable to this study include the following:

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

¹⁰ Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 CRIM. JUST. 10 (2009), available at www.americanbar.org/groups/criminal_justice/standards.html.

¹¹ *Missouri v. Frye*, 132 S.Ct.1399, 1407 (2012).

¹² *Id.* See also R. E. Scott & W. J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L. J. 1909, 1912 (1992).

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

Rule 1.7 (a)(2): Conflict of Interest: Current Clients: [A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if...there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client....

Rule 1.16 (a) Declining or Terminating Representation: [A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law....

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

The materials cited above were presented to and considered by the criminal defense professionals (both private defense practitioners and public defenders) from across Louisiana identified by a senior panel of professionals in the field of criminal defense and asked to participate in this study.

THE LOUISIANA PROJECT

To establish workload standards, the Louisiana Project workload study involved three phases of analyses to estimate the appropriate amount of time attorneys *should* spend on certain case tasks involving certain case types.

This study (“The Louisiana Project”) is a public defense workload study consisting of three main phases: (1) an analysis of Louisiana’s public defense system’s historic caseloads and staffing; (2) an analysis of actual time spent by public defenders on recent caseloads in pilot districts; and (3) the application of the Delphi survey process to identify how much time an attorney *should* spend, on average, in providing representation in certain types of criminal cases to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

The three phases of the Louisiana Project study are discussed in detail in the following sections.

Due to the LPDB’s current funding and Louisiana’s current economic condition, certain public defense districts throughout the state experienced a ‘restriction of services’ during the analysis period covered by the workload study. The impacts of restriction of services, and other significant events occurring during the analysis period, are discussed as appropriate in subsequent sections of this report.

For the purposes of this report, the terms attorney “caseload” and “workload” are defined in detail in Appendix A.

OVERVIEW OF HISTORICAL CASELOADS AND STAFFING

Overview of Louisiana Public Defender System

The Louisiana Public Defender Board's authority includes budgeting, personnel management, and compliance with professional standards for all 42 judicial districts of public defenders in the State of Louisiana. An understanding of the Louisiana public defender system's historic criminal caseloads and personnel is a critical component of the workload study.¹³

Historical case data was obtained from LPDB's case management system, Justice Works defenderData™, which is utilized for tracking criminal case information, such information includes case filings and tracking by district, charge type, assigned attorney, and client identification. This study analyzed all new public defense criminal cases represented from January 1, 2013 through October 31, 2016 (see Exhibit #1.1).

The LPDB provided staffing information from compensation reports for the period from January 1, 2014 through October 31, 2016. These reports provided personnel data, including, but not limited to, name, title, employment classification, assigned district, and hours worked (see Exhibit #1.2).

Public Defense Criminal Cases Analysis

Based on an analysis of the historical criminal caseload¹⁴ data, the LPDB represented, on average, 156,408 new criminal cases per year from 2013 through 2016. A summary of the LPDB's new criminal cases by Case Type is presented in the table on the next page.¹⁵

¹³ The data presented in this analysis is on a calendar year basis ending December 31st; however, certain source data provided by the LPDB was on a fiscal year basis for periods ending June 30.

¹⁴ See Appendix A for the definition of caseload.

¹⁵ New criminal cases are defined as cases originating during the calendar year, not total cases open during the year which includes cases originating in prior years.

Case Type ¹⁶	2013	2014	2015	Annualized 2016
Capital	107	88	97	108
Child in Need of Care (CINC)*	6,799	8,242	8,689	7,528
Enhanceable Misdemeanor*	33,785	34,768	36,507	36,860
Felony – Life Without Parole*	547	506	469	575
Fine Only	1,009	1,072	952	1,375
Families in Need of Service (FINS)*	1,765	1,591	1,853	1,736
High-level Felony*	17,692	17,014	16,021	16,561
Juvenile Delinquency*	10,259	9,224	9,336	9,025
Low-level Felony*	18,532	18,197	19,420	20,242
Mid-level Felony*	19,122	19,832	20,029	21,029
Misdemeanor or City Parish Ordinance*	44,887	37,852	34,549	27,755
Other	1,877	1,711	1,928	1,770
Revocation*	6,169	6,994	5,669	5,909
Total New Cases	162,550	157,091	155,519	150,473
Total New Delphi Cases*	159,557	154,220	152,542	147,220
Total Open Cases¹⁷	N/A	225,960	255,392	271,843

As illustrated in the table above, approximately 98 percent of new criminal cases annually are New Delphi Cases (*) included in this workload study.

Public Defense Staffing Analysis

Based on an analysis of the historical personnel employment data, total staff employed fluctuated annually. The Louisiana public defender offices employed several classifications of attorneys, ranging from full-time attorneys (40 hours a week) to intermittent attorneys (10 hours or less a week).¹⁸ In the analysis, total attorney compensation hours reported by all classifications of attorneys were converted to full-time equivalents (FTEs).¹⁹ As presented in Exhibit #1.2 and in the table on the next page, the public defense system, on average, employed approximately 386 FTE attorneys. As of October 31, 2016, employment was approximately 363 FTE attorneys. The

¹⁶ An asterisk (*) indicates the Case Type was included in the workload study. See Appendix F for detailed descriptions of each Case Type included in the weighted caseload study.

¹⁷ Total open cases represent the total cases originating in the current period and cases which remain open from prior years, based only on cases originating between January 1, 2013 and October 31, 2016.

¹⁸ The Louisiana public defender offices comprise several types of employment classifications (contract, full-time, part-time, etc.). For the purposes of this analysis, personnel are presented on a full-time equivalent basis.

¹⁹ FTE attorneys were determined by dividing the total hours worked by 2080 (52 weeks @ 40 hours per week). FTE attorneys for 2016 were pro-rated to account for a partial period of 10 months.

Louisiana public defender offices employ, on average, approximately 172 FTE support staff to assist attorneys (office managers to investigators).

Public Defense Staffing	2014	2015	2016
Total Full-time Equivalent Attorneys	403	391	363
Total Full-time Equivalent Support Staff	171	178	168

Restriction of Services and Other Events

In recent periods, the Louisiana public defender system experienced significant funding deficits due to the State's economic condition, among other factors. As a result, certain Louisiana public defense districts experienced a 'restriction of services' (see Appendix B for further details). In the event a public defender district's budget forecast indicates expenditures will exceed revenues, a district office may enter into a restriction of services pursuant to LPDB's protocol to alleviate and prevent excessive workloads. Based on a review of the Service Restriction Protocol²⁰, the protocol is invoked based on the circumstances and discretion of a Chief District Defender and the LPDB. In the event of a restriction of services, typically, districts may discharge support staff (*e.g.*, investigators), contract attorneys working part-time, or waitlist certain new cases. According to the protocol, "excessive caseloads impair the ability of public defense service providers to meet the ethical obligations imposed upon all attorneys, public and private, by the Rules of Professional Conduct."²¹

As a result of public defender districts entering into periods of restriction of services, certain new criminal cases were waitlisted over the period analyzed, as detailed in the table on the next page and Exhibit #1.3.

²⁰ LA. ADMIN. CODE 22:VX Ch. 17, in 38 La. Register, Vol. 38, No. 3, March 20, 2012.

²¹ *Id.* at 814.

Case Type Waitlisted ²²	2013	2014	2015	Annualized 2016
Child in Need of Care (CINC)*	0	0	1	2
Enhanceable Misdemeanor*	59	120	238	217
Felony – Life Without Parole*	2	4	8	6
Fine Only	0	0	0	1
High-level Felony*	46	116	251	215
Low-level Felony*	60	106	315	257
Mid- level Felony*	82	122	353	290
Misdemeanor or City Parish Ordinance*	37	51	53	50
Other	1	1	7	8
Revocation*	0	0	2	10
Total New Cases	287	520	1,228	1,057
Total New Delphi Cases*	286	519	1,221	1,048

²² An asterisk (*) indicates the Case Type was included in the workload study.

OVERVIEW OF THE LOUISIANA PUBLIC DEFENDER TIME STUDY

In support of the time study component of the workload study, the LPDB implemented a time keeping process for certain public defense districts. The time study was designed to identify approximately how much time public defenders are *currently* recording for the legal representation of criminal cases in Louisiana.

The time study was conducted by public defense attorneys in four of Louisiana's public defense districts, which volunteered to participate as 'pilot' programs ('pilot districts') to implement detailed time keeping. This study analyzed time spent by public defenders²³ on certain tasks for a six month period from May 1, 2016 through October 31, 2016. A general overview of each of the pilot districts listed below, including demographics, public defense personnel, and impacts of restriction of services are detailed in Appendix C.²⁴

- 10th Judicial District – Natchitoches Parish
- 19th Judicial District – East Baton Rouge Parish
- 22nd Judicial District – St. Tammany and Washington Parishes
- 41st Judicial District – Orleans Parish

The time keeping system was utilized for tracking the time that personnel in pilot districts spent on criminal cases, specifically, time spent on certain Delphi Case Tasks related to Case Tasks included in the workload study. In conjunction with an analysis of time keeping data from the pilot districts, P&N personnel interviewed experienced public defenders from the pilot districts to gain insight regarding the time keeping process.

Pilot District Comparison

The sampled pilot districts represented, on average, 36,593 new criminal cases per year from 2013 through 2016 (annualized year to date October 31, 2016), or approximately 23 percent of all new criminal cases statewide (*see* Exhibit #1.1). As illustrated in Exhibit #1.2, these pilot district offices employed approximately 117 FTE attorneys (30 percent of all attorneys statewide) and 73 FTE support staff (42 percent of all support staff statewide).

The 19th and 41st pilot districts were in a restriction of services state at the start of the study. In addition to restriction of services, the 19th district was impacted by extraordinary circumstances related to the protests during July 2016, and the floods in 2016, causing the court system to close

²³ This study only considers time entered by public defenders.

²⁴ The LPDB and ABA selected these districts as a representative sample of Louisiana public defenders across the state.

temporarily. A detailed comparison of the pilot districts and statewide cases waitlisted during the period analyzed is presented in Exhibit #1.3.

Time Study Analysis

Time keeping data from the public defenders and support personnel in the pilot districts is separated into three main classifications: General Work Related (“GWR”), Case Related (“CR”), and Case Specific (“CS”), as discussed below.

- **GWR** – this is productive time unrelated to case work (*e.g.*, performing administrative or organizational tasks).
- **CR** – time spent working on more than one case and not attributable to any individual case or cases by the time keeper (*e.g.*, a block of time in Misdemeanor Court or spent answering several client voicemails in quick succession).
- **CS** – this is time spent working on a single, specific case, and requires that the case be linked to the time entry by the time keeper (*e.g.*, Delphi case tasks²⁵).

Based on an analysis of the time keeping records for the combined pilot districts for the six month period, approximately 74 percent of the time was spent on Case Related and Case Specific functions, as presented below.

	GWR Hours	CR Hours	CS Hours	Total Hours
6 Month Total	23,502	35,577	32,656	91,736
Percentage	25.62%	38.78%	35.60%	100.00%

As previously discussed, the time study was designed to identify approximately how much time public defenders are *currently* recording on Delphi case types (Case Specific time), which would be compared to the Delphi Panel results of how much time attorneys *should* spend on Delphi cases. However, in an analysis of Case Related time recorded, 71 percent (25,159 total hours) of Case Related time was spent on Delphi case tasks. This time was recorded as Case Related time, but upon inquiry, it was determined that time spent on Delphi case tasks should have correctly been reported to a specific case and included in the Case Specific time records.²⁶ Consequently, the time keeping study understates the Case Specific time spent on legal representation of clients on specific cases by public defenders during the analysis period.

²⁵ See Appendix F for detailed descriptions of Delphi case tasks.

²⁶ Based on discussions with experienced public defenders in pilot districts, the ABA, and the LPDB staff, the Case Related time keeping records provided insufficient detail to allocate the time spent on Delphi case tasks to specific case types.

As a result of the analysis presented above and for the purposes of this report, all public defender time based on FTE attorney staffing levels (at 2,080 hours annually per attorney) was utilized in lieu of Case Specific time. Therefore, this FTE calculation conservatively assumes all hours are allocated to the legal representation of annual workload, without consideration for continuing legal education requirements, administrative tasks, vacation, etc.

OVERVIEW OF THE DELPHI METHOD

The workload study applied the Delphi Method, a multi-round survey process developed by the Rand Corporation and used in a range of industries and professions. In the context of applying the Delphi Method to estimate attorney workloads, RubinBrown, LLP and the ABA designed and conducted a workload study of the Missouri State Public Defender program, issued June 2014 (“Missouri Project”).²⁷ The Delphi Method, process, and analysis applied in the Missouri Project has been implemented in similar workload studies of public defender systems in other states, and the Missouri Project provided pertinent guidance for the Louisiana Project. An overview of the Delphi Method, including use of the method in determining appropriate caseloads for defense attorneys, is summarized below and described in Appendix D.

Delphi Method

The Delphi Method offers a reliable and structured means to integrate opinions of highly informed professionals to develop a consensus opinion. As a methodological strategy, the Delphi Method is an iterative process of surveys given to a group of professionals, with structured feedback presented to the experts at each interval stage. The surveying practices applied by the Delphi Method can be either interviews or questionnaires that focus on fundamental questions of significance to the group of experts convened.

In general, a group of experts first provide individual, anonymous responses on a given topic based on the background information provided and their expertise. Next, professionals are provided the same survey with the inclusion of the aggregated results of the initial survey, including peer response means and ranges. At this time, the participants may then choose to adjust their initial responses based on the feedback provided by the aggregated results and their expertise. This iterative process of alternating participant’s independent assessments with other anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion.

Since its introduction, the Delphi Method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.²⁸ The purpose of its use beyond forecasting has ranged from “program planning, needs assessment,

²⁷RubinBrown on behalf of ABA’s Standing Committee on Legal Aid and Indigent Defendants, *The Missouri Project, A Study of the Missouri Public Defender System and Attorney Workload Standards* (2014), available at http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_5c_the_missouri_project_report.authcheckdam.pdf

²⁸ HAROLD LINSTONE AND MURRAY TUROFF, *THE DELPHI METHOD: TECHNIQUES AND APPLICATIONS* (2002); Gene Rowe & George Wright, *The Delphi Technique as a Forecasting Tool: Issues and Analysis*, 15 INT’L J. FORECASTING 353-54 (1999).

policy determination, and resource utilization.”²⁹ Within the legal system, early examples of use of the Delphi Method can be traced back a couple of decades and are considered an appropriate methodology for a weighted caseload study.³⁰ Examples of these attempts were sponsored by both the National Association of Court Management and the National Center for State Courts.³¹ These efforts were principally charged with assessing judicial and court support staff needs.³²

²⁹ Chia-Chien Hsu and Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus*, (2007), available at <http://pareonline.net/pdf/v12n10.pdf>.

³⁰ NORMAN LEFSTEIN, SECURING REASONABLE CASELOADS: ETHICS AND LAW OF PUBLIC DEFENSE 140-51 (Am. Bar Assoc. 2011), available at http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/indigent_defense_systems_improvement/publications/case_guidebook.html.

³¹ National Center for State Courts’ reports, available at <http://www.ncsc.org/Topics/Court-Management/Workload-and-Resource-Assessment/Resource-Guide.aspx>.

³² Matthew Kleiman, Cythia Lee and Brian Ostrom, *Workload Assessment: A Data-driven Management Tool for the Judicial Branch* (National Center for State Courts 2013).

OVERVIEW OF DELPHI PROCESS

The Louisiana Project's workload study relied upon the Delphi survey process to identify how much time, on average, an attorney *should* spend on different types of criminal cases to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. An overview and summary of the Delphi process as applied in the workload study is described below.

Delphi Methodology Framework

The Delphi Method was designed as a series of surveys, consisting of three rounds. The first and second rounds were conducted as anonymous online surveys, and the third round was conducted as an in-person discussion. In responding to the surveys, participants were requested to consider the ABA and LPBD standards and rules³³ applicable to defense representation, as well as their own expertise in providing Louisiana criminal defense representation. The survey participants, surveys, and results are discussed below.

Delphi Survey Luminaries

An independent panel of individuals³⁴ in the field of criminal defense consisting of Mr. James Boren (Baton Rouge, Louisiana), Mr. Mark Cunningham (New Orleans, Louisiana), Mr. John DiGiulio (Baton Rouge, Louisiana), and Mr. Daniel Martiny (Metairie, Louisiana) selected approximately 125 participants ("luminaries") in the field of Louisiana criminal defense representation to participate in the workload study. The selected luminaries consisted of approximately 65 private defense practitioners and 60 public defenders. As previously discussed, the Delphi Method is designed as an iterative survey process; therefore only the luminaries completing each survey round were permitted to advance to the next round of surveys.

Delphi Round One Survey

In the Round One survey, luminaries were requested to use the ABA and LPBD standards for defense representation, as well as their own expertise in criminal defense representation to complete an online survey. The survey was designed to identify how much time an attorney *should* spend on different types of criminal cases to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.³⁵ For each of the eleven Case Types considered in the study (*e.g.*, High-Level Felony, etc.), the luminaries were requested to answer the following two questions about eleven different Case Tasks (*e.g.*, Client Communication, etc.):

³³ The standards and rules referenced in the study include the ABA Criminal Justice Standards related to the Defense Function, the Louisiana Public Defender Board Standards, and the Louisiana Rules of Professional Conduct.

³⁴ The independent panel of individuals was selected by the ABA, LPBD, and highly-regarded Louisiana criminal defense practitioners.

³⁵ See Appendix E.

- A. For (this Case Type), when the following Case Tasks are performed, how much time (*in minutes*) is required on average to perform each Case Task with reasonably effective assistance of counsel pursuant to prevailing professional norms?
- B. In what percentage of (this Case Type) on average should each of the following Case Tasks be performed?³⁶

In the context of answering the questions outlined above, luminaries were instructed to consider the following in constructing their responses:

- account for the cumulative time required to complete a Case Task over the life of a case,
- presume adequate investigative, secretarial and other support services, and
- in the context of the average case of its type, not the exceptional case.

Case Types

The luminaries in the Delphi surveys considered the following eleven Case Types³⁷ (*see* Appendix F for detailed descriptions):

Case (Offense) Type
• Misdemeanor or City Parish Ordinance
• Enhanceable Misdemeanor
• Low-level Felony
• Mid-level Felony
• High-level Felony
• Felony - Life Without Parole
• Juvenile Delinquency
• Families in Need of Service (FINS)
• Child in Need of Care (CINC)
• Revocation
• Appeals / Post-Conviction Review (PCR) ³⁸

³⁶ In making these judgments, the expert luminary panelists were also asked to take into account that a relatively small percentage of cases would proceed to a jury or bench trial and that a relatively small percentage of cases would be dismissed while representation was being provided.

³⁷ Appeals / Post-Conviction Review Case Types were initially part of the workload study but later excluded.

³⁸ During the Delphi panel's collaboration and discussion in the final round, participants decided to exclude from the case types Appeals / Post-Conviction Review ("PCR"). In the Delphi panel's judgment, due to the varying complexities of the Case Type as presented, it was inappropriate to render an opinion for the Appeals and PCR cases because they are not sufficiently similar to one another. Consequently, our analysis excludes a consensus opinion of time a lawyer should expect to spend on this Case Type.

Case Tasks

The luminaries in the Delphi surveys considered the following eleven Case Tasks performed in each of the eleven Case Types (*see* Appendix F for detailed descriptions):

Case Task Area	Case Tasks
Client Communication	<ul style="list-style-type: none"> • Client Communication
Discovery / Investigative	<ul style="list-style-type: none"> • Collecting Records • Interviews / Field Investigation • Experts
Case Preparation	<ul style="list-style-type: none"> • Legal Research and Writing • Negotiations • Court Preparation • Case Preparation • Sentencing
Court Time	<ul style="list-style-type: none"> • Court Time
Client Care	<ul style="list-style-type: none"> • Client Care

Summary Analysis of the Round One Survey

P&N issued the Round One survey to approximately 125 luminaries on December 15, 2015. Upon the conclusion, 62 luminaries completed the survey with 36 identifying themselves as private defense practitioners and 26 identifying themselves as public defenders; participants had an average of 27 years of experience.

P&N collected all the survey responses and analyzed the results for meaningful trends. For each Case Type, a trimmed mean³⁹ and peer range⁴⁰ were calculated for the number of minutes required to perform each Case Task, and the percentage of cases in which each Case Task should be performed.

Round Two Survey

The Round Two survey was similar in nature to the Round One survey, except the summary statistics from peer responses from the Round One survey were provided for the luminaries' reference (*see* Appendix E).

³⁹ Trimmed mean is the average of the responses between the 25th and 75th percentile of all responses.

⁴⁰ Peer range is based on the 25th percentile (low) and 75th percentile (high) of all responses.

Summary Analysis of the Round Two Survey

P&N issued the Round Two survey to the 62 eligible luminaries on February 2, 2016. Upon the conclusion, 48 luminaries completed the survey with 28 identifying themselves as private defense practitioners and 20 identifying themselves as public defenders; participants had an average of 29 years of experience.

P&N collected all the survey responses and analyzed the results for meaningful trends. For each Case Type, a trimmed mean and peer range were calculated for the number of minutes required to perform each Case Task, and the percentage of cases in which each Case Task should be performed.

Delphi Panel

A meeting of the Delphi Panel was the final iteration of the Delphi surveys. In the Delphi Panel survey,⁴¹ luminaries were requested to use the following information for guidance in completing an in-person survey:

- ABA and LPBD standards for defense representation,
- Louisiana Rules of Professional Conduct,
- their expertise from experience in the Louisiana criminal defense field,
- the summary statistics from peer responses from the Round Two survey, and
- collaboration and discussion with their Delphi Panel peer luminaries.

For each Case Type, the Delphi Panel was asked to determine a consensus opinion of the number of minutes required to perform each Case Task and the percentage of cases in which each Case Task should be performed.

Summary Analysis of the Delphi Panel Survey

The ABA and P&N completed the final Delphi Panel survey in-person on April 26, 2016, attended by 23 luminaries. The participants averaged 29 years of law practice with 12 identifying themselves as private defense practitioners and 11 identifying themselves as public defenders.

The Delphi Panel results yielded the consensus opinions for the number of minutes required on average to perform and the percentage of cases in which each Case Task should be performed for each of the eleven Case Types. These results are presented in detail in Exhibits #2.1-2.3 and summarized in the following section.

⁴¹ See Appendix G for a list of the Delphi Panel members and the Delphi Panel's survey instructions.

THE DELPHI METHOD RESULTS

P&N collected the Delphi Panel consensus opinions for the number of minutes required, on average, to perform each Case Task and the percentage of cases in which each Case Task should be performed for each of the eleven Case Types. In order to determine the amount of time that *should* be spent on each Case Type, the Case Task time was multiplied by the corresponding Case Task frequency (percentage performed) to arrive at an expected time for each Case Task. The expected time for each Case Task was totaled by Case Type to estimate the total amount of expected time for each Case Type.

The Delphi Method's structured and reliable technique integrates opinions of highly informed professionals to develop consensus opinions. The Delphi Panel, consisting of Louisiana private defense practitioners and public defenders, provided professional consensus opinions regarding the appropriate amount of time an attorney *should* spend on certain case types to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in the State of Louisiana. The results of the Delphi Panel survey are presented below.

Delphi Panel Survey Results	
Case Type	Hours Per Case
Misdemeanor or City Parish Ordinance	7.94
Enhanceable Misdemeanor	12.06
Low-level Felony	21.99
Mid-level Felony	41.11
High-level Felony	69.79
Felony-Life Without Parole	200.67
Juvenile Delinquency	19.78
Families in Need of Service (FINS)	9.66
Child in Need of Care (CINC)	25.08
Revocation	8.47

A Delphi workload analysis, consisting of an estimate of Louisiana's public defense annual workload⁴² multiplied by the Delphi Panel's opinions listed above for each Case Type is presented in the table on the next page and Exhibit #3.

⁴² See definition of Workload presented in Appendix A and Annual Workload Analysis in Appendix H.

	Estimated Workload	Delphi Panel Results	Workload Analysis
Delphi Case Type	Annual Cases By Case Type	Hours Per Case	Total Hours Per Case Type
Misdemeanor or City Parish Ordinance	27,755	7.94	220,490
Enhanceable Misdemeanor	36,860	12.06	444,347
Low-level Felony	20,242	21.99	445,155
Mid-level Felony	21,029	41.11	864,397
High-level Felony	16,561	69.79	1,155,847
Felony - Life Without Parole	575	200.67	115,383
Juvenile Delinquency	9,025	19.78	178,545
Families in Need of Service (FINS)	1,736	9.66	16,770
Child in Need of Care (CINC)	7,528	25.08	188,827
Revocation	5,909	8.47	50,030
Estimated Annual Workload	147,220		3,679,792

At this workload, and to be in compliance with the Delphi Panel’s consensus opinions, 3,679,792 hours (approximately 1,769 FTE public defenders⁴³) are required to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in Louisiana to meet the annual public defense workloads for these Case Types.⁴⁴ As of October 31, 2016, the Louisiana public defense system employed 363 FTE public defenders. Therefore, the Delphi Method’s process indicates the Louisiana public defense system is currently deficient 1,406 FTE attorneys. Alternatively, based on Delphi Method’s results and analysis presented herein, the Louisiana public defense system currently only has capacity to handle 21 percent of the workload in compliance with the Delphi Panel’s consensus opinions.

⁴³ FTE attorneys are based on 2,080 hours annually (52 weeks @ 40 hours per week). Therefore, this calculation conservatively assumes all hours are allocated to the legal representation of annual workload, without consideration for continuing legal education requirements, administrative tasks, vacation, etc.

⁴⁴ The Delphi Panel’s consensus opinions presume adequate investigative, secretarial and other support services.

Appendices

DEFINITION OF CASELOAD AND WORKLOAD

For the purposes of the Louisiana Project, this report defines the terms attorney “caseload” and “workload.”

As referenced in this report, “caseload” refers to the total number and different kinds of cases assigned to either a jurisdictional district of the LPDB or to the entire LPDB during a certain period of time, which can be less than a year, a year, or for multiple years. “Caseload” can also refer to the cases on which an attorney or group of attorneys are working at any given time.

As referenced in this report, “workload” refers to an attorney’s responsibilities for all cases on which an attorney works during the course of a year, as well as the attorney’s many other responsibilities not pertaining specifically to the cases for which the attorney is responsible. The Delphi survey process used in this research study addressed only the time requirements of attorneys for legal representation tasks performed on their various types of cases under study. However, the Delphi survey process did not address the time required of attorneys for their non-case related activities, such as staff meetings, mentoring or supervision of other attorneys, attendance at continuing legal education programs, and bar activities.

RESTRICTION OF SERVICES

NOTICE OF INTENT

Office of the Governor Louisiana Public Defender Board

Service Restriction Protocol (LAC 22:XV.Chapter 17)

The Public Defender Board, a state agency within the Office of the Governor, proposes to adopt LAC 22:XV.Chapter 17, as authorized by R.S. 15:148. These proposed Rules are promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq. The purpose of these Rules is to establish policies and procedures to ensure that district public defenders' expenditures do not exceed their revenues and that public defense service providers meet the ethical obligations imposed upon them by the Rules of Professional Conduct.

Title 22 CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT Part XV. Public Defender Board

Chapter 17. Service Restriction Protocol

§1701. Purpose, Findings and Intentions

A. On May 25, 2011, the Legislative Auditor issued a report entitled, "Louisiana District Public Defenders Compliance with Report Requirements." The report, prepared in accordance with R.S. 24:515.1.F, focused largely upon the fact that twenty-eight of Louisiana's forty-two district public defenders had expenditures that exceeded revenues during the 18-month period beginning January 1, 2009 and ending June 30, 2010.

The report explains, at p. 6, that:

[D]uring 2008 and 2009, the Louisiana Public Defender Board ("Board") received less money than it had requested during the budgeting/appropriations process. To preserve the state's public defender system, the Board reduced, and in some cases, eliminated state funding to local public defender districts that had positive fund balances. This allowed state funding to be directed to those districts with the greatest financial need. Twelve districts were required to use their fund balances to finance operations in 2008 and 28 districts were required to do so in 2009. It was a limited solution that allowed the continuation of the public defense system during lean economic times. At the same time, this seriously depleted most of the local districts' fund balances.

As a result of this spending pattern, the Legislative Auditor recommended that the Board monitor the fiscal operations and financial position of all District Defenders and, further, provide guidance to District Defenders to ensure that Districts do not spend more money than they collect. In order to comply with the Legislative Auditor's recommendation to provide guidance to public

defenders to ensure that Districts do not spend more funds than they receive, the Board adopts this Service Restriction Protocol.

B. The Board recognizes that excessive caseloads affect the quality of representation being rendered by public defense service providers and thereby compromise the reliability of verdicts and threaten the conviction of innocent persons.

C. The Board further recognizes that excessive caseloads impair the ability of public defense service providers to meet the ethical obligations imposed upon all attorneys, public and private, by the Rules of Professional Conduct. The Board finds that by breaching the ethical obligations imposed by the Rules of Professional Conduct, a public defense service provider fails to satisfy the State's obligation to provide effective assistance of counsel to indigent defendants at each critical stage of the proceeding. The relevant ethical obligations imposed by the Rules of Professional Conduct include, but are not limited to, Rules 1.1 (requiring competent representation), 1.3 (requiring "reasonable diligence and promptness" in representation), 1.4 (requiring prompt and reasonable communications with the client), 1.7(a)(2) (a "lawyer shall not represent a client if ... there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person..."), 1.16(a)(1) (requiring a lawyer to "withdraw from the representation of a client if...the representation will result in violation of the Rules of Professional Conduct or law."), 5.1(a) and (b) (imposing on a "firm" the obligation to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct" and that a "lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct"), and 6.2(a) (a "lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as ... representing the client is likely to result in violation of the Rules of Professional Conduct or other law."). The Board further recognizes that a District or a District Defender's office may be a "firm" for the purposes of Rule of Professional Conduct 5.1(a).

D. When this Protocol uses "shall" or "shall not," it is intended to impose binding obligations. When "should" or "should not" is used, the text is intended as a statement of what is or is not appropriate conduct, but not as a binding rule. When "may" is used, it denotes permissible discretion or, depending on the context, refers to action that is not prohibited specifically.

E. This Protocol is intended to be read consistently with constitutional requirements, statutes, the Rules of Professional Conduct, other court rules and decisional law and in the context of all relevant circumstances.

F. This Protocol is neither designed nor intended as a basis for civil liability, criminal prosecution or the judicial evaluation of any public defense service provider's alleged misconduct.

G. If any phrase, clause, sentence or provision of this Protocol is declared invalid for any reason, such invalidity does not affect the other provisions of this Protocol that can be given effect without the invalid provision, and to this end, the provisions of this Protocol are severable. The provisions of this Protocol shall be liberally construed to effectuate the Protocol's purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1703. Definitions

A. As used in this Protocol, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1. Board. The Board means the Louisiana Public Defender Board.
2. Board staff. Board staff means one or more members of the executive staff of the Board as set forth in R.S. 15:150 assigned by the Board or the State Public Defender to perform the duties set forth herein.
3. Case. Case means case as defined in R.S. 15:174.C.
4. Caseload. Caseload means the number of cases handled by a public defender service provider. The caseload of a District is the sum of all public defender service providers' caseloads in that District.
5. District. District means the judicial district in which a District Defender supervises service providers and enforces standards and guidelines.
6. District Defender. District Defender means an attorney under contract with the Board to supervise public defense service providers and enforce standards and guidelines within a judicial district or multiple judicial districts. Also known as a district public defender or chief indigent defender.
7. District indigent defender fund. District indigent defender fund means the fund provided for in R.S. 15:168.
8. Fiscal crisis. A fiscal crisis means that a district indigent defender fund is unable to support its expenditures with revenues received from all sources and any accrued fund balance. Because a district indigent defender fund may not expend amounts in excess of revenues and accrued fund balance, a District facing a fiscal crisis must restrict public defense services to cut back on or slow the growth of expenditures. Services should be restricted in the manner that the Board and the affected District Defender determine to be the least harmful to the continuation of public defense services within the District.
9. Notice. Notice means written notice given as provided for herein.
 - a. Between the District Defender and the Board or Board staff. Notice between a District Defender and the Board or Board staff, as required in this Protocol, may be given by mail, facsimile transmission or electronic mail. If notice is given by certified or registered mail, notice shall be effective upon receipt by the addressee. If notice is given by mail that is not sent certified or registered, by facsimile transmission, or by electronic mail, notice shall be effective only after the sending party confirms telephonically with the receiving party that all pages, including attachments, were received by the receiving party.
 - b. From the District Defender to the Court. Notice from a District Defender to the Court, as required in this Protocol, shall be given by filing notice with the affected District's clerks(s) of court and hand-delivering copies to the offices of the Chief Judge and the District Attorney of the affected District.
 - c. From the District Defender to Others. Notice from a District Defender to persons not otherwise specified may be given by hand-delivery or by certified or registered mail; notice of

shall be effective upon hand-delivery or deposit into the U.S. mail.

10. Public defender service provider. Public defender service provider means an attorney who provides legal services to indigent persons in criminal proceedings in which the right to counsel attaches under the United States and Louisiana constitutions as a District employee or as an independent contractor. Unless the context or surrounding circumstances clearly indicate otherwise, a public defender service provider includes a District Defender.

11. Rules of Professional Conduct. Rules of Professional Conduct mean the Louisiana Rules of Professional Conduct.

12. State Public Defender. State Public Defender means the person employed by the Board pursuant to R.S. 15:152.

13. Workload. Workload means a public defender service provider's caseload, including appointed and other work, adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties. Non-caseload factors also include the experience level of the public defense service provider, waits in courtrooms for judicial priority afforded private-lawyer cases, training functions required of senior lawyers to junior lawyers, travel time to and from jails and prisons where clients are incarcerated, timeliness and ease of access to incarcerated clients, and the number of non-English speaking clients. A workload is excessive when it impairs the ability of a public defense service provider to meet the ethical obligations imposed by the Rules of Professional Conduct. The workload of a District is the sum of all public defender service providers' workloads in that District. The workload of a District is excessive when all non-supervisory public defense service providers within that District have excessive workloads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1705. Applicability of Sections

A. Sections 1707 through 1717 shall apply when a District is facing a fiscal crisis or excessive workload, or both. Section 1719 applies when one or more individual public defender service providers are facing excessive workloads, but the District itself is not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1707. Notice of Impending Fiscal Crisis, Excessive Caseload, or Both

A. When a District Defender or Board staff projects that a District will experience a fiscal crisis or an excessive workload, or both, during the next twelve months, the District Defender or Board staff, as the case may be, shall give notice to the other within seven days of making such projection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR

38:813 (March 2012).

§1709. Discussion of Alternatives; Proposed Service Restriction Plan

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from giving or receiving of the notice specified in §1707, the following steps shall be taken:

1. Within forty-five days after giving or receiving the notice, the District Defender shall discuss with Board staff any viable alternatives to restricting public defense services within the District.

2. If the District Defender and Board staff are unable to agree upon any viable alternatives to restricting public defense services with the District, the District Defender shall, within sixty days after either giving or receiving the notice, develop a proposed written plan for restricting services in the District, including staff and overhead reductions where necessary, and submit the proposed plan to Board staff.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from giving or receiving of the notice specified in §1707, the following steps shall be taken:

1. Within fifteen days after giving or receiving the notice, the District Defender shall discuss with Board staff any viable alternatives to restricting public defense services within the District.

2. If the District Defender and Board staff are unable to agree upon any viable alternatives to restricting public defense services with the District, the District Defender shall, within thirty days after either giving or receiving the notice, develop a proposed written plan for restricting services in the District, including staff and overhead reductions where necessary, and submit the proposed plan to Board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1711. Comprehensive and Expedited Site Visits

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from the giving or receiving of the notice specified in §1707 and the District Defender and Board staff are unable to agree upon any viable alternatives to restricting public defense services with the District, the following steps shall be taken:

1. Within ninety days of receiving the District Defender's proposed service restriction plan, Board staff shall conduct a comprehensive site visit. The purpose of the comprehensive site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting comprehensive site visits, Board staff should perform any and all such actions that Board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing District employees and independent contractors, and

contacting other stakeholders in the local criminal justice system. If the Board staff determines that services should be restricted in the District following completion of the comprehensive site visit, the District Defender and Board staff should consult with the Chief Judge and District Attorney before finalizing the service restriction plan.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from the giving or receiving of the notice specified in §1707 and the District Defender and Board staff are unable to agree upon any viable alternatives to restricting public defense services with the District, the following steps should be taken:

1. Within forty-five days of receipt of the District Defender's proposed service restriction plan, Board staff should conduct an expedited site visit. The purpose of the expedited site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting expedited site visits, Board staff may perform any and all such actions the Board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing District employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the Board staff determines that services should be restricted in the District following completion of the expedited site visit, the District Defender and Board staff should consult with the Chief Judge and District Attorney prior to finalizing the service restriction plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1713. Factors to be Considered in Development of a Service Restriction Plan

A. Recognition of Diversity of Districts

1. Individual Districts have different public defender service delivery methods, funding levels, caseloads, workloads and staff. As a result, service restriction plans should be tailored to each District. In some Districts, restricting misdemeanor representation may be the appropriate step, while in others, Districts may no longer be able to handle capital cases. However, to the extent possible, all service restriction plans should reflect that the District will continue representation of existing clients.

B. Non-Attorney Support Staff

1. In preparing the final service restriction plan for a District, the District Defender and Board staff should attempt to preserve the District's support staff to the extent possible.

C. Public Defender Service Provider Considerations

1. Public defender service providers' workloads must be controlled so that all matters can be handled competently. If workloads prevent public defender service providers' from providing

competent representation to existing clients, public defender service providers must neither be allowed nor required to accept new clients.

2. Reasonable communications between public defender service providers and their clients are necessary for clients to participate effectively in their representation.

3. Loyalty and independent judgment are essential elements in public defender service providers' client relationships. Conflicts of interest can arise from the public defender service providers' responsibilities to other clients, former clients, third persons or from the public defender service providers' own interest. Loyalty to clients is impaired when a public defender service provider cannot consider, recommend, or carry out appropriate courses of action for clients because of the public defender service providers' other responsibilities or interests.

§1715. Declination of New Appointments; Other Relief

A. If the District Defender and Board staff agree that the fiscal crisis or excessive workload, or both, is imminent, the District Defender and public defense service providers shall begin declining new appointments at an agreed upon time prior to breaching the Rules of Professional Conduct.

B. If the court appoints the District Defender or one of the District's public defense service providers following declination of appointments as set forth in §1715.A., the District Defender and the District's public defense service providers shall seek continuances in those cases where the defendant is not incarcerated. The District Defender and the District's public defense service providers shall continue to provide legal services for incarcerated clients provided they may do so without breaching the Rules of Professional Conduct and after considering the severity of the offense and the length of time the defendant has been in custody. If the District Defender determines that litigation pursuant to *State v. Peart*, 621 So.2d 780 (La. 1993); *State v. Citizen*, 04-KA-1841 (La. 4/1/05), 898 So.2d 325 or other related litigation is necessary at this time, the District Defender is authorized to take such action after giving notice to the Board and Board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1717. Finalization of Plan; Dissemination

A. If the fiscal crisis or excessive workload, or both, remains imminent at conclusion of the Board staff's site visit, the District Defender shall, within thirty days of conclusion of the site visit, submit his or her proposed written final service restriction plan to Board staff.

B. Board staff shall have seven days after receipt of the proposed final service restriction plan to review and approve the plan as submitted or approve the plan as modified by Board staff. The plan becomes final upon the District Defender's receipt of the Board staff's approval. If Board staff takes no action on the proposed final services restriction plan, the plan is deemed to be approved as submitted on the first business day following the expiration of the seventh day.

C. After the plan has been approved by Board staff, the District Defender shall give notice of the plan, together with a copy of the plan, to the Court in accordance with §1703.A.9.b. and to the

State Public Defender in accordance with §1703.A.9.a.

D. Copies of the notice and the final service restriction plan also shall be sent by the District Defender to the Chief Justice of the Louisiana Supreme Court, the President of the Louisiana State Bar Association, the Chief and/or Administrative Judge of each court in the District in which public defender service providers deliver legal services to indigent persons in criminal proceedings, and the Sheriff and Parish President or equivalent head of parish government for each parish in the District in accordance with §1703.A.9.c.

E. The District Defender may seek assistance from the court, where appropriate, in recruiting members of the local private bar to assist in the provision of indigent representation.

F. Notices under this Section 1717 shall include the effective date of the service restriction and should be provided as soon as practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1719. Excessive Workloads of Individual Public Defender Service Providers

A. A public defender service provider's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or result in the breach of ethical obligations, and public defense service providers are obligated to decline appointments above such levels.

B. If the District Defender becomes aware that one or more of the District's public defender service providers' workloads are, or will become, excessive, the District Defender shall take appropriate action. Appropriate action includes, but is not limited to, transferring non-representational responsibilities within the District, including managerial or supervisory responsibilities to others; transferring cases from one public defender service providers to another; or authorizing the public defender service providers to refuse new cases.

C. If a public defense service provider believes that he or she has an excessive workload, the public defense service provider shall consult with his or her supervisor and seek a solution by transferring cases to a public defense service provider whose workload is not excessive or by transferring non-representational responsibilities. Should the supervisor disagree with the public defense service provider's position or refuse to acknowledge the problem, the public defense service provider should continue to advance up the chain of command within the District until either relief is obtained or the public defense service provider has reached and requested assistance or relief from the District Defender. If after appealing to his or her supervisor and District Defender without relief, the public defense service provider should appeal to the State Public Defender for assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

PILOT DISTRICTS⁴⁵

A general overview of each of the pilot districts, including demographics, public defense staffing, and impacts of restriction of services is summarized below.

Natchitoches Parish, the 10th Judicial District, had an estimated population of 39,179 on July 1, 2015⁴⁶ and is located in the northwest portion of the state (rural area).

East Baton Rouge Parish, the 19th Judicial District, had an estimated population of 446,753 as of July 1, 2015.⁴⁷ The East Baton Rouge Parish District Defender entered Restriction of Services (“ROS”) on March 1, 2015 and remains in ROS; as such it was already freezing positions, cutting/suspending contracts and moving some counsel to part time contracts. In January 2016, the office employed approximately 38 FTE attorneys, which was reduced to approximately 25 FTE attorneys by September 30, 2016. The office no longer handles capital cases or conflict cases, and instituted a waitlist.

The 22nd Judicial District Defender Office covers the Parishes of **St. Tammany and Washington Parishes**, with estimated populations of 250,088 and 46,371 as of July 1, 2015, respectively.⁴⁸ These Parishes consist of two differing demographics, one of which is populous and affluent, the other which is rural and poor. In January of 2016 the office employed approximately 14 FTE attorneys, which was reduced to approximately 10 FTE attorneys by September 30, 2016.

Orleans Parish, the 41st Judicial District, had an estimated population of 389,617 as of July 1, 2015.⁴⁹ The Orleans Public Defender Office entered a restriction of services for the second time on December 1, 2015 and remains in ROS. The office no longer handles capital cases or conflict cases, and instituted a waitlist.

⁴⁵ Per the Louisiana Public Defender Board staff.

⁴⁶ https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

IMPACTS OF RESTRICTION OF SERVICES⁵⁰

As a result of being in a period of restriction of services during the workload study, the East Baton Rouge and Orleans programs discharged certain attorneys and support staff which were not replaced, as presented in the *Public Defense Staffing Analysis* section of this report. According to the LPDB, the reduction in attorneys and support staff resulted in attorneys performing an increased volume of administrative tasks and higher caseloads. As a result, the LPDB stated the higher case and workloads have created concurrent conflicts of interest for the attorneys accepting new cases in that they are choosing which clients, existing or new, will receive the attorneys' limited amount of time.

According to the LPDB, these circumstances force attorneys to accept new clients when they have preexisting time constraints to adequately represent existing clients. As a result, attorneys are forced to improperly allocate their time between clients, in violation of Rule 1.7 of the Louisiana Rules of Professional Conduct. Rule 1.7 (Conflict of Interest: Current Clients) states in pertinent part:

[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

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

...

⁵⁰ Per the Louisiana Public Defender Board staff.

DELPHI METHODOLOGY

The Delphi method was introduced in 1962 by researchers at the Rand Corporation. The method was described as a “new” research technique utilized by the Air Force in the 1950s to gather expert opinion and generate a reliable consensus.⁵¹ As a methodological strategy, the Delphi method proposed that a succession of surveys be given to a group of experts, with structured feedback presented to the experts at each interval stage. The surveying practices applied by the Delphi method could be interviews or questionnaires that focus on some fundamental question of significance to the group of experts convened for feedback.

The features of this method include “anonymity, iteration, controlled feedback, and the statistical aggregation of group response.”⁵² At the onset of the process, participants in a Delphi group are largely anonymous from one another. The purpose of anonymity is to ensure that solicited experts are not influenced by the responses of other participants and that the ideas presented are judged on their own merit. This technique is believed to be conducive to the exercise of independent thought on the part of participating experts and to aid experts in forming well-thought-out opinions.

The reliance on expert opinion as data is built on the premise that an expert is “able to select the needed items of background information, determine the character and extent of their relevance, and apply these insights to the formulation of the required personal probability judgments.”⁵³ Experts typically complete a questionnaire over multiple iterations with the goal of allowing participants to change their opinions and judgments when presented with controlled feedback regarding the opinions and judgments of their fellow participants. This controlled feedback is normally presented as a statistical summation of the group’s responses, e.g., a mean or median. The structured feedback at each successive iteration consists of “available data previously requested by...the experts..., or of factors and considerations suggested as potentially relevant by one or another respondent.”⁵⁴

⁵¹ Norman Dalkey and Olaf Helmer, *An Experimental Application of the Delphi Method to the Use of Experts*, 1962, available at http://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf.

⁵² Gene Rowe and George Wright, *The Delphi Technique as a Forecasting Tool: Issues and Analysis*, 15 INT’L J. FORECASTING 35354 (1999)(hereafter Rowe and Wright, *The Delphi Technique*).

⁵³ Olaf Helmer and Nicholas Rescer, *On the Epistemology of the Inexact Sciences* P-1513 42 (The Rand Corporation 1958), available at <http://www.rand.org/content/dam/rand/pubs/papers/2005/P1513.pdf>.

⁵⁴ Norman Dalkey and Olaf Helmer, *An Experimental Application of the Delphi Method to the Use of Experts* (1962), available at http://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf.

The goal of the feedback at each stage is to assist in limiting mistaken beliefs an expert may have on the question at hand or to increase their awareness of other information they may not have previously considered.⁵⁵

At the conclusion of the final iteration, the final iteration's mean or median response is used as the measure of the group's opinion.⁵⁶ In theory, the number of iterations required of the Delphi method can be unlimited until consensus among participants is achieved, however it has been found that three to four iterations is usually all that is required to reach consensus.⁵⁷ Rowe and Wright systematically reviewed studies that explored the effectiveness of the Delphi method. Their focus was on how well the Delphi method worked in producing a consensus of opinions and judgments and to assess how accurate those opinions and judgments were.

Overall, they found that the majority of these evaluative studies showed support for the Delphi method in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved. As for the concern over the accuracy of those opinions and judgments, Rowe and Wright again found that the majority of studies provide compelling evidence in support of the Delphi method. Compared to other methodological techniques utilized for similar purposes, the Delphi method was found to "lead to improved judgments over staticized groups and unstructured interacting groups."⁵⁸

Since its introduction, the Delphi method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.⁵⁹ The purpose of its use beyond forecasting has ranged from "program planning, needs assessment, policy determination, and resource utilization."⁶⁰ Within the legal system, early examples of use of the Delphi method can be traced back a couple of decades. Examples of these attempts were sponsored by both the National Association of Court Management ("NACM") and the National Center for State Courts ("NCSC"). These efforts were principally charged with assessing judicial and court support staff needs.⁶¹

⁵⁵ *Id.*

⁵⁶ Rowe and Wright, *The Delphi Technique*, *supra* note 52.

⁵⁷ Chia-Chien Hsu and Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus* (2007)(hereafter Hsu and Sandford, *The Delphi Technique*), available at <http://pareonline.net/pdf/v12n10.pdf>.

⁵⁸ Rowe and Wright, *The Delphi Technique*, *supra* note 52, at 353-54.

⁵⁹ Harold Linstone and Murray Turoff, *The Delphi Method: Techniques and Applications* (2002); Rowe and Wright, *The Delphi Technique*, *supra* note 52, at 353-54.

⁶⁰ Hsu and Sandford, *The Delphi Technique*, *supra* note 57.

⁶¹ See, e.g., Victor Flango and Brian Ostrom, *Assessing the Need for Judges and Court Support Staff* (National Center for State Courts 1996).

In the 2000's, the NCSC started using Delphi techniques in addressing the caseload and workload crisis of indigent defense in the United States. In a recent book, Lefstein comments on the use of the Delphi method, noting:

“The technique is recommended when a problem does not lend itself to precise measurement and can benefit from collective judgments. This would seem to be precisely the situation when a defense program seeks to determine how much additional time, on average, its lawyers need to spend on a whole range of activities involving different kinds of cases.”⁶²

The Delphi method has been recommended as a necessary complement to time-based studies that seek to determine appropriate caseloads for defense lawyers.⁶³ What the Delphi method is believed to offer is a method to adjust preliminary case weights based on time studies while avoiding the institutionalization of potentially sub-standard current practices.

Past workload studies⁶⁴ were reviewed and assessed in developing the methodology advanced in this study, which sought to quantify the amount of time a public defender should expect to spend on a particular task in a particular case type through the application of the Delphi Method. As in prior studies, the Delphi methodology was used to provide an estimate of what workload standards *should be* in order for a public defender to provide reasonable effective assistance of counsel. However, among other things, this study expands upon prior work in this field that it focuses on both the amount of time that should be spent on a task, as well as how often a task should be completed. Further the study expands on prior work in that it utilized the input of private practice defense counsel.

⁶² NORMAN LEFSTEIN, SECURING REASONABLE CASELOADS: ETHICS AND LAW OF PUBLIC DEFENSE 146 (Am. Bar Assoc. 2011).

⁶³ *Id.* at 149.

⁶⁴ See National Center for State Courts' reports, available at <http://www.ncsc.org/Topics/Court-Management/Workload-and-Resource-Assessment/Resource-Guide.aspx>.

ROUND ONE SAMPLE

Misdemeanor or City Parish Ordinance

Save & Return

Save your progress and complete this form later. (optional)

[Create an account or login](#)

For descriptions of the Case Types, Case Tasks, and the ABA/P&N Louisiana Public Defender Workload Study, please reference the links below:

[Case Types Information](#) [Case Task Information](#) [Overview of the ABA/P&N Louisiana Public Defender Workload Study](#)

INSTRUCTIONS: Please provide an answer to the following questions for each Case Task listed below.

For the purpose of this study, Misdemeanor or City Parish Ordinance cases are defined as misdemeanor offenses.

In Column A, please answer the following question: In Misdemeanor or City Parish Ordinance cases where the lawyer performs (the Case Task), how much time (in minutes) should a lawyer typically spend performing the task in order to provide reasonably effective assistance of counsel pursuant to prevailing professional norms?

In Column B, please answer the following question: In what percentage of Misdemeanor or City Parish Ordinance cases should a lawyer perform (the Case Task) in order to provide reasonably effective assistance of counsel pursuant to prevailing professional norms?

Your answers to the question in Column A should reflect the *cumulative time* required to complete the Case Task over the life of a case; should presume you have the adequate investigative and secretarial support; and should be based upon the average case of its type (not the exceptional case).

The optional explanation field below the listed Case Tasks is for clarification required on any answers provided.

	Minutes Per Case	Percentage Performed	
Client Communication	<input type="text"/>	<input type="text"/>	%
Collecting Records	<input type="text"/>	<input type="text"/>	%
Interviews / Field Investigation	<input type="text"/>	<input type="text"/>	%
Experts	<input type="text"/>	<input type="text"/>	%
Legal Research and Writing	<input type="text"/>	<input type="text"/>	%
Negotiations	<input type="text"/>	<input type="text"/>	%
Court Preparation	<input type="text"/>	<input type="text"/>	%
Case Preparation	<input type="text"/>	<input type="text"/>	%
Sentencing	<input type="text"/>	<input type="text"/>	%
Court Time	<input type="text"/>	<input type="text"/>	%
Client Care	<input type="text"/>	<input type="text"/>	%
<div style="display: flex; justify-content: space-between; align-items: center;"> Total Case Time 0.00 <input type="button" value="Calculate"/> </div>			

ROUND TWO SAMPLE

Misdemeanor or City Parish Ordinance

Save & Return

Save your progress and complete this form later. (optional)

Create an account or login

For descriptions of the Case Types, Case Tasks, and the ABA/P&N Louisiana Public Defender Workload Study, please reference the links below:

[Case Types Information](#)

[Case Task Information](#)

[Overview of the ABA/P&N Louisiana Public Defender Workload Study](#)

INSTRUCTIONS: Please provide an answer to the following questions for each Case Tasks listed below. Please consider your expertise, your review of the applicable standards, and the peer responses from the Round One survey.

For the purpose of this study, *Misdemeanor or City Parish Ordinance* cases are defined as misdemeanor offenses.

In Column A, please answer the following question: In *Misdemeanor or City Parish Ordinance* cases where the lawyer performs (the Case Task), how much time (in minutes) should a lawyer typically spend performing the task in order to provide reasonably effective assistance of counsel pursuant to prevailing professional norms?

In Column B, please answer the following question: In what percentage of *Misdemeanor or City Parish Ordinance* cases should a lawyer perform (the Case Task) in order to provide reasonably effective assistance of counsel pursuant to prevailing professional norms?

Your answers to the question in Column A should reflect the *cumulative time* required to complete the Case Task over the life of a case; should presume you have the adequate investigative and secretarial support; and should be based upon the average case of its type (*not the exceptional case*).

The optional explanation field below the listed Case Tasks is for clarification required on any answers provided.

	Minutes Per Case	Peer Trimmed Mean	Peer Low*	Peer High*	Percentage Performed	Peer Trimmed Mean	Peer Low*	Peer High*
Client Communication	<input type="text"/>	90	45	120	<input type="text"/> %	95%	94%	100%
Collecting Records	<input type="text"/>	45	30	60	<input type="text"/> %	72%	43%	100%
Interviews / Field Investigation	<input type="text"/>	73	30	120	<input type="text"/> %	58%	20%	100%
Experts	<input type="text"/>	70	9	120	<input type="text"/> %	13%	2%	25%
Legal Research and Writing	<input type="text"/>	65	30	120	<input type="text"/> %	45%	11%	75%
Negotiations	<input type="text"/>	38	20	60	<input type="text"/> %	97%	90%	100%
Court Preparation	<input type="text"/>	72	30	120	<input type="text"/> %	80%	50%	100%
Case Preparation	<input type="text"/>	66	30	120	<input type="text"/> %	81%	50%	100%
Sentencing	<input type="text"/>	37	15	60	<input type="text"/> %	71%	32%	100%
Court Time	<input type="text"/>	104	45	180	<input type="text"/> %	76%	50%	100%
Client Care	<input type="text"/>	45	16	60	<input type="text"/> %	56%	25%	100%

Total Case Time 0.00

LOUISIANA PUBLIC DEFENDER WORKLOAD STUDY CASE TYPES

Case (Offense) Type	Description
Misdemeanor or City Parish Ordinance	<ul style="list-style-type: none"> Misdemeanor offenses
Enhanceable Misdemeanor	<ul style="list-style-type: none"> Misdemeanor offense, which may be increased to a felony with additional offenses
Low-level Felony	<ul style="list-style-type: none"> Low complexity offenses with a sentence less than 4.99 years
Mid-level Felony	<ul style="list-style-type: none"> Low to medium complexity offenses with a sentence between 5 years and 9.99 years or high complexity offenses with a sentence of less than 5 years
High-level Felony	<ul style="list-style-type: none"> Offenses with a sentence greater than 10 years or high complexity offenses with a sentence between 5 years and 9.99 years
Felony - Life Without Parole	<ul style="list-style-type: none"> High complexity offenses with a life sentence without parole
Juvenile Delinquency	<ul style="list-style-type: none"> All offense types levied against a defendant under the age of 17, except high-level felonies which are transferred to or otherwise conducted in the criminal court system despite the juvenile age-status of the defendant
Families in Need of Service (FINS)	<ul style="list-style-type: none"> Status offenses (actions that constitute an offense only because of the age of the defendant, such as truancy, ungovernable, and runaway) charged against a defendant under the age of 18
Child in Need of Care (CINC)	<ul style="list-style-type: none"> Civil cases in which the state accuses parents of abuse or neglect of children, possibly resulting in removal of children into foster care or termination of parental rights
Revocation	<ul style="list-style-type: none"> Offenses founded in the technical or constructive violation of the conditions of probation
Appeals / Post-Conviction Review (PCR)	<ul style="list-style-type: none"> Right of review from judgment or ruling by the proper appellate court/ PCR- petitions filed by-persons in custody after sentence, seeking to have their convictions and sentences set aside

LOUISIANA PUBLIC DEFENDER WORKLOAD STUDY CASE TASKS

Case Task Area	Case Tasks (<i>In Bold</i>) and Descriptions
Client Communication	<ul style="list-style-type: none"> • Client Communication: All client communication (not otherwise included in performing the tasks below)
Discovery / Investigative	<ul style="list-style-type: none"> • Collecting Records: Ordering and obtaining records, transcripts, discovery materials, and other case related documents • Interviews / Field Investigation: Case related investigation activities, including viewing the scene and physical evidence; interviewing and canvassing for witnesses; serving subpoenas; taking photos/videos; etc. • Experts: Locating, retaining, corresponding, consulting with, and reviewing reports of experts for the defense
Case Preparation	<ul style="list-style-type: none"> • Legal Research and Writing: Researching and drafting of pleadings, briefs, etc. • Negotiations: Discussions with a prosecutor in an effort to resolve a case • Court Preparation: Preparing for trial or a hearing (includes defense team meetings, as well as time spent prepping for direct exams, cross exams, and other elements of trials and court hearings) • Case Preparation: Reviewing, analyzing and organizing case-related materials/evidence; dictating and editing case-related memos; defense team meetings (unless related to a court appearance, which falls under Court Preparation); documenting case file • Sentencing: Developing or collecting evidence to be used at sentencing
Court Time	<ul style="list-style-type: none"> • Court Time: In court at a trial (bench or jury) or a hearing of any kind
Client Care	<ul style="list-style-type: none"> • Client Care: Working with public safety, social services departments, or outside agencies on behalf of the client; handling medical/family/other issues affecting client during case

DELPHI PANEL MEMBERS

The Delphi Panel in-person survey was conducted on April 26, 2016. The Delphi Panel survey was attended by the 23 luminaries listed below, comprised of participants averaging 29 years of law practice with 12 identifying themselves as private practitioners and 11 identifying themselves as public defenders. As previously discussed, the Delphi Methodology is designed as an iterative survey process, therefore only the luminaries who completed each survey round were permitted to advance to the next round of surveys.

First Name	Last Name	Law Practice Classification
Kyla	Blanchard-Romanach	Public Defender
Fred	Crifasi	Private Practitioner
Thomas	Damico	Private Practitioner
C. Jerome	D'Aquila	Public Defender
Dwight	Doskey	Public Defender
Carrie	Ellis	Public Defender
Paul	Fleming	Public Defender
Lester	Gauthier	Private Practitioner
Kendall	Green	Public Defender
Stephen	Haedicke	Private Practitioner
Arthur	Lemann	Private Practitioner
John	Lindner	Private Practitioner
Thomas	Lorenzi	Private Practitioner
John	McLindon	Private Practitioner
Chris	Murell	Public Defender
Alan	Robert	Public Defender
Christie	Smith	Private Practitioner
William	Sothern	Private Practitioner
Richard	Stricks	Public Defender
Tony	Tillman	Public Defender
Caroline	Tillman	Private Practitioner
Robert	Toale	Private Practitioner
Richie	Tompson	Public Defender

DELPHI PANEL SURVEY

Presented below is an excerpt from the instructions provided to the Delphi Panel participants.

Introduction

Thank you for participating in the Louisiana Public Defender Workload Survey. Your participation in this survey process will directly affect the quality of representation to thousands of indigent criminal defendants in Louisiana.

The American Bar Association (ABA) and Postlethwaite and Netterville, APAC (P&N) are conducting a survey of Louisiana criminal defense experts, on behalf of the Louisiana Public Defender Board (LPBD), to establish public defender workload standards. This study is being funded by the Laura and John Arnold Foundation.

A panel of experts consisting of Mr. James Boren (Baton Rouge, Louisiana), Mr. Mark Cunningham (New Orleans, Louisiana), Mr. John DiGiulio (Baton Rouge, Louisiana), and Mr. Daniel Martiny (Metairie, Louisiana) has selected you to participate in this study as a luminary in the field of Louisiana criminal defense.

The study uses the Delphi Method, a multi-round survey developed by the Rand Corporation and used in a range of industries and professions. The in-person Delphi Panel Survey is the last of three rounds of surveys conducted by ABA and P&N research team.

A brief overview and instructions for the Delphi Panel Survey are presented in the sections below.

Delphi Panel Survey Overview

As one of the Delphi Panel Survey participants, you and your peers will complete an in-person survey designed to identify a consensus conclusion of approximately how much time a lawyer should spend in different types of criminal cases to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. We ask that Delphi Panel participants maintain confidentiality of the Delphi Panel conclusions.

Similar to the Round Two Survey, participants will be asked to rely on guidance from the ABA/LPBD Standards, the summary results of the Round Two Survey including the trimmed mean and peer ranges of survey responses, the Delphi Panel's collective expertise to determine a consensus conclusion for each survey question.

Standards

For your reference during the survey, information on the applicable standards and rules are discussed below. If you have any questions or concerns regarding the standards referenced below, please do not hesitate to discuss with your Delphi Panel peers and the research team.

In answering the survey responses, you should rely on the ABA Criminal Standards related to Defense Function, the Louisiana Public Defender Board Standards, and Louisiana Rules of Professional Conduct, as well as your own knowledge and experience.

Today, most state-level criminal cases are resolved without a trial. For instance, while 94 percent of state-level convictions are the result of a guilty plea (*see Missouri v. Frye*, 132 S. Ct. 1399, 1407 (2012)), experts answering this survey should recall ABA Criminal Justice Standards related to Defense Function 4-6.1(b):

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

In reviewing the Louisiana Public Defender Standards, you should pay particular attention to LPDB Trial Court Performance Standards, LPDB Trial Court Performance Standards for CINC Representation, and LPDB Trial Court Performance Standards for Delinquency Representation. For example, as stated in an excerpt from Section 707 - General Duties of Defense Counsel of the LPDB Trial Court Performance Standards:

“Counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a defendant in a particular matter.”

In reviewing the Louisiana Rules of Professional Conduct, you should pay particular attention to Rules 1.1 (Competence) and 1.3 (Diligence), including the Comments to those Rules. For example, Rule 1.3 - Comment 2:

“A lawyer’s work load must be controlled so that each matter can be handled competently”.

Delphi Panel Survey Instructions

Facilitated by the research team, Delphi Panel participants are asked to determine a consensus conclusion for each survey question using guidance from the ABA and LPBD standards, the summary results of the Round Two Survey, and the Delphi Panel's collective expertise. For the purposes of the Delphi Panel Survey, the research team has selected a collective vote of 67 percent to represent the consensus conclusion for each question.

Similar to previous surveys, for each of the eleven Case Tasks (*e.g.*, Client Communication, etc.) considered in the study, the luminaries are requested to answer the following two questions about eleven different Case Types (*e.g.*, high-level felony, etc.):

- A. In what percentage of (this Case Type) should each Case Task be performed?
- B. For (this Case Type), when the Case Tasks are performed, how much time (in minutes) is required to perform each Case Task with reasonably effective assistance of counsel pursuant to prevailing professional norms?

Anonymous Voting

To facilitate the Delphi Panel Survey, the participants will anonymously vote on each of the survey questions via the Poll Everywhere application. For your convenience, P&N has supplied and setup laptop computers to access the survey voting application. If you experience any technical difficulties, please do not hesitate to ask a research team member for assistance.

Using the guidance referenced above and the Delphi Panel's collective expertise, the survey participants will be asked to vote anonymously on each question. In general, each question will have the following standard voting options:

- C. Yes, I agree with the peer mean.
- D. No, the number or percentage should be lower.
- E. No, the number or percentage should be higher.

If a consensus (67% agreement) is not reached on the first voting attempt, the percentage performed or minutes required to perform the Case Task will be adjusted according to the polling results and general consensus of the Delphi Panel's discussion, then voted on again until a consensus can be reached.

ANNUAL WORKLOAD ANALYSIS

An annual estimate of Louisiana's public defense workload is a critical component of the Louisiana Project. As previously discussed, this study analyzed all new public defense cases filed from January 1, 2013 through October 31, 2016.

Based on our analysis of the criminal case data, the LPDB represented an average of 156,408 new criminal cases per year from 2013 through 2016. As presented in Exhibit #1.1, case volume by Case Type is stable over the period, albeit slightly decreasing. This decrease in total cases is primarily attributable to a decline in new Misdemeanors or City Parish Ordinance cases per year. As of 2016, the LPDB represented an estimated caseload of 150,473 new criminal cases, but also, represented an additional 121,370 open cases from prior years, totaling 271,843 open cases during the period.⁶⁵

An analysis of historic case duration for all new cases filed during the analysis period, revealed approximately 55 percent of new cases are completed within the same calendar year in which they are filed. During the second calendar year, another 25 percent of the 'carry over' cases filed in the prior year are completed, resulting in the completion of a total of 80 percent of the cases within the first or second calendar years. During the third calendar year, another 5 percent of the 'carry over' cases filed in the prior year are completed, resulting in the completion of a total of 85 percent of the cases within the first, second, or third calendar years. Due to data limitations, the duration of the remaining 15 percent of cases is unknown. Based on the case data provided, the annual case completion trends were consistent for each period. Based on the analysis herein, Louisiana public defender workloads on open cases include new cases from the current year, in addition to 'carry over' cases from prior years. This analysis layered estimated cases completed annually, which includes 'carry over' cases from prior years completed, as an estimate annual public defense workload.⁶⁶ In applying this methodology, the following key assumptions were necessary to estimate annual public defense workload:

- consistent annual new case volume and composition,
- consistent annual case completion rates, and
- all 'carry over' cases are completed no later than the fourth calendar year.

⁶⁵ Case management data available to be analyzed in this study was limited to cases filed and closed between January 1, 2013 and October 31, 2016, therefore cases that were opened from the period prior to January 1, 2013 are not included in this study.

⁶⁶ Case management data available to be analyzed in this study was limited to cases filed and closed between January 1, 2013 and October 31, 2016. Therefore, the sample size period was insufficient to determine case duration of new cases by Case Type. For the purposes of this analysis, certain assumptions were necessary to estimate annual public defender workloads within reasonable certainty.

Applying the assumptions and analysis above, the estimated volume of cases completed annually is equal to the total annual new cases filed. For the purposes of this report, Louisiana's annual public defense workload is estimated to be 150,473 cases per year (based on annualized 2016 new cases filed).

Exhibits

Louisiana Public Defense Cases per Year [1]

Statewide New Cases Per Year by Case Type					
Case Type [2]	2013	2014	2015	YTD October 2016	Annualized 2016
Capital	107	88	97	90	108
Child in Need of Care (CINC)*	6,799	8,242	8,689	6,273	7,528
Enhanceable Misdemeanor*	33,785	34,768	36,507	30,717	36,860
Felony - Life Without Parole*	547	506	469	479	575
Fine Only	1,009	1,072	952	1,146	1,375
Families in Need of Service (FINS)*	1,765	1,591	1,853	1,447	1,736
High-level Felony*	17,692	17,014	16,021	13,801	16,561
Juvenile Delinquency*	10,259	9,224	9,336	7,521	9,025
Low-level Felony*	18,532	18,197	19,420	16,868	20,242
Mid-level Felony*	19,122	19,832	20,029	17,524	21,029
Misdemeanor*	44,887	37,852	34,549	23,129	27,755
Other	1,877	1,711	1,928	1,475	1,770
Revocation*	6,169	6,994	5,669	4,924	5,909
Total New Cases Per Year	162,550	157,091	155,519	125,394	150,473
Total New Delphi Cases Per Year (*)	159,557	154,220	152,542	122,683	147,220

Pilot Districts New Cases Per Year by Case Type					
Case Type [2]	2013	2014	2015	YTD October 2016	Annualized 2016
Capital	25	23	16	9	11
Child in Need of Care (CINC)*	630	2,448	2,801	1,909	2,291
Enhanceable Misdemeanor*	7,781	8,948	8,975	6,479	7,775
Felony - Life Without Parole*	162	143	144	140	168
Fine Only	87	184	110	54	65
Families in Need of Service (FINS)*	111	152	95	136	163
High-level Felony*	3,833	3,730	3,273	2,796	3,355
Juvenile Delinquency*	1,645	1,331	1,636	1,280	1,536
Low-level Felony*	3,659	3,518	3,472	2,859	3,431
Mid-level Felony*	3,165	3,516	3,270	2,829	3,395
Misdemeanor*	13,562	9,698	7,970	5,910	7,092
Other	948	952	660	470	564
Revocation*	3,363	3,941	3,119	2,858	3,430
Total New Cases Per Year	38,971	38,584	35,541	27,729	33,275
Total New Delphi Cases Per Year (*)	37,911	37,425	34,755	27,196	32,636

[1] Per the Louisiana Public Defender Board's case management system.

[2] An asterisk (*) indicates Case Types included in the Delphi workload study.

Summary of Attorney and Support Staff by Year [1]

Staffing Type	2014	2015	2016	Average
Attorneys				
Full-time Equivalent Attorneys (All Districts)	403	391	363	386
Full-time Equivalent Attorneys (Pilot Districts)	127	121	104	117
Support Staff				
Full-time Equivalent Support Staff (All Districts)	171	178	168	172
Full-time Equivalent Support Staff (Pilot Districts)	68	81	70	73
Pilot District Staff as Percentage of All Districts				
Full-time Equivalent Attorneys (Pilot Districts)	32%	31%	29%	30%
Full-time Equivalent Support Staff (Pilot Districts)	40%	46%	42%	42%

[1] Per the Louisiana Public Defender Board's compensation reports.

Cases in Restriction of Services by Year [1]

Statewide Cases in Restriction of Services					
Case Type [2]	2013	2014	2015	YTD October 2016	Annualized 2016
Child in Need of Care (CINC)*	-	-	1	2	2
Enhanceable Misdemeanor*	59	120	238	181	217
Felony - Life Without Parole*	2	4	8	5	6
Fine Only	-	-	-	1	1
High-level Felony*	46	116	251	179	215
Low-level Felony*	60	106	315	214	257
Mid-level Felony*	82	122	353	242	290
Misdemeanor*	37	51	53	42	50
Other	1	1	7	7	8
Revocation*	-	-	2	8	10
Total New Cases Per Year	287	520	1,228	881	1,057
Total New Delphi Cases Per Year (*)	286	519	1,221	873	1,048

Pilot Districts Cases in Restriction of Services					
Case Type [2]	2013	2014	2015	YTD October 2016	Annualized 2016
Child in Need of Care (CINC)*	-	-	-	-	-
Enhanceable Misdemeanor*	1	1	6	10	12
Felony - Life Without Parole*	2	2	4	5	6
Fine Only	-	-	-	-	-
High-level Felony*	9	13	39	58	70
Low-level Felony*	4	10	14	19	23
Mid-level Felony*	7	12	14	17	20
Misdemeanor*	-	-	1	8	10
Other	-	-	-	4	5
Revocation*	-	-	-	1	1
Total New Cases Per Year	23	38	78	122	146
Total New Delphi Cases Per Year (*)	23	38	78	118	142

[1] Per the Louisiana Public Defender Board's case management system. New Cases are tracked by date open (not date placed in restriction of services).

[2] An asterisk (*) indicates Case Types included in the Delphi workload study.

Analysis of the Delphi Survey Summary of Results

Delphi Panel Results		
Case Type	Minutes Per Case	Totals
		Hours Per Case
Misdemeanor or City Parish Ordinance	476.65	7.94
Enhanceable Misdemeanor	723.30	12.06
Low-level Felony	1319.50	21.99
Mid-level Felony	2466.30	41.11
High-level Felony	4187.60	69.79
Felony- Life Without Parole	12040.00	200.67
Juvenile Delinquency	1187.00	19.78
Families in Need of Service (FINS)	579.60	9.66
Child in Need of Care (CINC)	1505.00	25.08
Revocation	508.00	8.47

	Misdemeanor or City Parish Ordinance		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	75	100%	75.00
Collecting Records	30	100%	30.00
Interviews / Field Investigation	62	35%	21.70
Experts	60	5%	3.00
Legal Research and Writing	90	40%	36.00
Negotiations	20	100%	20.00
Court Preparation	70	100%	70.00
Case Preparation	60	100%	60.00
Sentencing	30	70%	21.00
Court Time	105	99%	103.95
Client Care	40	90%	36.00
Total Minutes per Case			<u>476.65</u>
Total Hours per Case			<u>7.94</u>

	Enhanceable Misdemeanor		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	120	100%	120.00
Collecting Records	45	100%	45.00
Interviews / Field Investigation	75	40%	30.00
Experts	90	25%	22.50
Legal Research and Writing	90	70%	63.00
Negotiations	30	100%	30.00
Court Preparation	100	100%	100.00
Case Preparation	100	100%	100.00
Sentencing	50	80%	40.00
Court Time	120	99%	118.80
Client Care	60	90%	54.00
Total Minutes per Case			<u>723.30</u>
Total Hours per Case			<u>12.06</u>

	Low-level Felony		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	180	100%	180.00
Collecting Records	60	100%	60.00
Interviews / Field Investigation	120	70%	84.00
Experts	120	25%	30.00
Legal Research and Writing	150	100%	150.00
Negotiations	90	100%	90.00
Court Preparation	240	100%	240.00
Case Preparation	180	100%	180.00
Sentencing	80	95%	76.00
Court Time	150	99%	148.50
Client Care	90	90%	81.00
Total Minutes per Case			<u>1,319.50</u>
Total Hours per Case			<u>21.99</u>

	Mid-level Felony		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	290	100%	290.00
Collecting Records	150	100%	150.00
Interviews / Field Investigation	180	90%	162.00
Experts	140	35%	49.00
Legal Research and Writing	240	100%	240.00
Negotiations	120	100%	120.00
Court Preparation	600	100%	600.00
Case Preparation	300	100%	300.00
Sentencing	120	99%	118.80
Court Time	350	99%	346.50
Client Care	100	90%	90.00
Total Minutes per Case			<u>2,466.30</u>
Total Hours per Case			<u>41.11</u>

	High-level Felony		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	480	100%	480.00
Collecting Records	210	100%	210.00
Interviews / Field Investigation	360	100%	360.00
Experts	300	50%	150.00
Legal Research and Writing	480	100%	480.00
Negotiations	240	100%	240.00
Court Preparation	800	100%	800.00
Case Preparation	600	100%	600.00
Sentencing	240	99%	237.60
Court Time	450	100%	450.00
Client Care	180	100%	180.00
Total Minutes per Case			<u>4,187.60</u>
Total Hours per Case			<u>69.79</u>

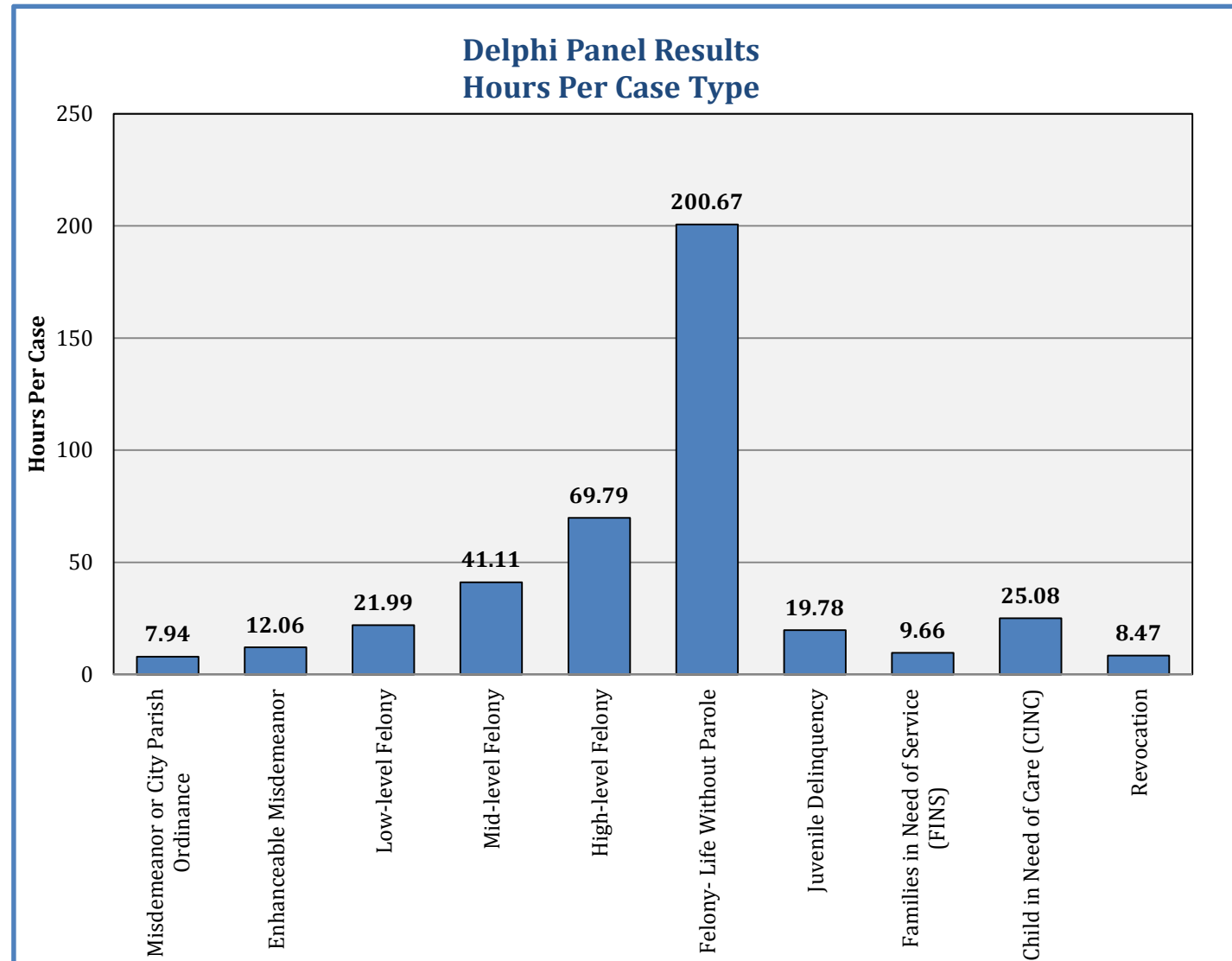
	Felony- Life Without Parole		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	2,500	100%	2,500.00
Collecting Records	600	100%	600.00
Interviews / Field Investigation	900	100%	900.00
Experts	600	95%	570.00
Legal Research and Writing	1,200	100%	1,200.00
Negotiations	300	100%	300.00
Court Preparation	1,600	100%	1,600.00
Case Preparation	1,800	100%	1,800.00
Sentencing	240	100%	240.00
Court Time	2,000	100%	2,000.00
Client Care	330	100%	330.00
Total Minutes per Case			<u>12,040.00</u>
Total Hours per Case			<u>200.67</u>

	Juvenile Delinquency		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	170	100%	170.00
Collecting Records	120	100%	120.00
Interviews / Field Investigation	90	50%	45.00
Experts	90	15%	13.50
Legal Research and Writing	110	35%	38.50
Negotiations	60	100%	60.00
Court Preparation	150	100%	150.00
Case Preparation	150	100%	150.00
Sentencing	100	90%	90.00
Court Time	230	100%	230.00
Client Care	120	100%	120.00
Total Minutes per Case			<u>1,187.00</u>
Total Hours per Case			<u>19.78</u>

	Families in Need of Service (FINS)		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	90	100%	90.00
Collecting Records	60	100%	60.00
Interviews / Field Investigation	60	40%	24.00
Experts	60	1%	0.60
Legal Research and Writing	60	5%	3.00
Negotiations	45	100%	45.00
Court Preparation	100	100%	100.00
Case Preparation	90	100%	90.00
Sentencing	45	30%	13.50
Court Time	60	100%	60.00
Client Care	110	85%	93.50
Total Minutes per Case			<u>579.60</u>
Total Hours per Case			<u>9.66</u>

Child in Need of Care (CINC)			
	Minutes Per Case	Percentage Performed	Total
Delphi Panel Results			
Client Communication	240	100%	240.00
Collecting Records	119	100%	119.00
Interviews / Field Investigation	240	100%	240.00
Experts	120	40%	48.00
Legal Research and Writing	60	30%	18.00
Negotiations	70	100%	70.00
Court Preparation	150	100%	150.00
Case Preparation	150	100%	150.00
Sentencing	120	100%	120.00
Court Time	220	100%	220.00
Client Care	130	100%	130.00
Total Minutes per Case			<u>1,505.00</u>
Total Hours per Case			<u>25.08</u>

Revocation			
	Minutes Per Case	Percentage Performed	Total
Delphi Panel Results			
Client Communication	81	100%	81.00
Collecting Records	60	100%	60.00
Interviews / Field Investigation	60	55%	33.00
Experts	60	10%	6.00
Legal Research and Writing	60	30%	18.00
Negotiations	55	100%	55.00
Court Preparation	60	100%	60.00
Case Preparation	60	100%	60.00
Sentencing	60	90%	54.00
Court Time	60	100%	60.00
Client Care	30	70%	21.00
Total Minutes per Case			<u>508.00</u>
Total Hours per Case			<u>8.47</u>



Statewide New Cases Per Year by Case Type		Delphi Panel Results	Workload Analysis
Case Type	Estimated Cases [1]	Hours Per Case [2]	Hours Per Case Type
Misdemeanor or City Parish Ordinance	27,755	7.94	220,490
Enhanceable Misdemeanor	36,860	12.06	444,347
Low-level Felony	20,242	21.99	445,155
Mid-level Felony	21,029	41.11	864,397
High-level Felony	16,561	69.79	1,155,847
Felony - Life Without Parole	575	200.67	115,383
Juvenile Delinquency	9,025	19.78	178,545
Families in Need of Service (FINS)	1,736	9.66	16,770
Child in Need of Care (CINC)	7,528	25.08	188,827
Revocation	5,909	8.47	50,030
Total New Delphi Cases Per Year	147,220		3,679,792
Estimated FTE Attorneys [3]			1,769

[1] Based on annualized 2016 new cases per year (see Exhibit #1.1).

[2] Per the Delphi survey summary results (see Exhibit #2.1).

[3] FTE attorneys were determined by dividing the total hours worked by 2080 (52 weeks @ 40 hours per week). Therefore, this calculation assumes all hours are allocated to the representation of annual workload, without consideration for continuing legal education requirements, administrative tasks, vacation, etc.