

Assessment of the Washoe and Clark County, Nevada

Public Defender Offices

Final Report

Prepared By:

The Spangenberg Group

**and the Center for Justice, Law and Society at George Mason
University**

July 1, 2009

Contents

Section I. Introduction to the Report.....	4
1.1 Background.....	4
1.2 The Nevada Court System.....	6
1.3 Public Defense in Nevada.....	7
Section II: Site Visits in Clark County: Observations and Findings.....	9
Section III: Site Visits in Washoe County: Observations and Findings.....	15
Section IV: Methods of Calculating Weighted Caseload Standards.....	20
4.1 Measurement Methods Employed by Public Defenders to Develop Caseload Standards.....	20
4.2 Clark & Washoe Weighted Caseload Study Methods.....	21
Section V. Clark County Time Keeping Analysis.....	27
5.1 Attorneys.....	27
5.2 Support Staff.....	31
5.3 Workload Analysis.....	34
Section VI. Washoe County Time Keeping Analysis.....	38
6.1 Attorneys.....	38
6.2 Support Staff.....	42
6.3 Workload Analysis.....	44
Section VII: Discussion.....	49
Section VIII: Conclusions and Recommendations.....	57

Acknowledgements

The Spangenberg Group and the Spangenberg Project at George Mason University wish to express their sincere gratitude to the staffs of the Public Defender offices in Clark and Washoe counties for their patience, cooperation and assistance throughout the course of this study. The research team also thanks county and court personnel in both jurisdictions, who were cooperative and responsive to requests for information throughout the study.

Section I. Introduction to the Report

1.1 Background

The state of Nevada relies on a mixed system of representation, using county public defenders, state public defenders and contracted private counsel to provide representation to indigent defendants as required by the Nevada and U.S. Constitutions. NRS 260.010 requires counties with populations over 100,000 persons to provide public defenders to indigent defendants at the county's cost. Smaller counties with populations less than 100,000 persons have the option of providing county-based public defenders, contracting with private-bar attorneys, or using the state public defender system. Clark (Las Vegas) and Washoe (Reno) counties are the only counties in Nevada with populations over 100,000 and are, thus, responsible for providing indigent defense services at the county level without much state assistance.

Nationally, counties with lower sources of revenue may have to dedicate a far greater portion of their limited budget to defender services than counties with better funding. For instance, crime rates frequently tend to increase when there is a high level of unemployment. Thus, at a time when tax-revenues may be down due to depressed real estate prices and people's departure from the community, the criminal justice system is expected to increase its workload. A county's revenue base may also be strained during economic downturns because of the need for increased social services, such as indigent medical costs. In addition, counties must provide the citizenry with other important services, such as public education. With such competing services, a county may fail to provide competent and effective indigent defense services compared to other counties in the state. Thus, the economic disparity among counties in a state can threaten the notion that defendants are afforded equal justice before the courts of the state.

Given the various methods of providing indigent defense services within the state, the potential influence of economic conditions, and the lack of state support available to Clark and Washoe counties, there is a risk of inconsistent and inadequate representation. Beginning in the fall of 1999, The Spangenberg Group (TSG),¹ a nationally recognized criminal justice research

¹ In February 2009, The Spangenberg Group joined George Mason University to create The Spangenberg Project. Although George Mason researchers assisted in the completion of the present report, the content and conclusions are based on the research of TSG.

and consulting firm, conducted a study of indigent defense in Nevada on behalf of the Implementation Committee for the Elimination of Racial, Gender and Economic Bias in the Criminal Justice System. The study was sponsored by the ABA-BIP program and the U.S. Department of Justice, Bureau of Justice Assistance, State Commission Project, and included on-site visits to Clark and Washoe County, in addition to analyzing available secondary data pertaining to indigent defense throughout the state. The report was presented in December of 2000 and concluded that there were several problems with indigent defense services in Nevada, including: an absence of independence of the defense function throughout the state; the lack of state-wide standards and oversight regarding the provision of indigent defense services; the lack of comprehensive and reliable indigent defense data; a disparity in the provision of indigent defense between urban and rural counties; and high workloads of indigent defense providers, particularly in Clark and Washoe counties, which negatively affected the rights of indigent defendants throughout the state. The report recommended that the state of Nevada begin assisting counties in providing funds for defender services and establish an indigent defense commission to oversee services and promulgate minimum standards for indigent defense throughout the state.

In 2003, the National Legal Aid and Defender Association (NLADA) completed an evaluation of the Clark County Public Defender Office. The corresponding final report highlighted the severe case overload experienced within the county, concluding that the office has been “historically understaffed and there is a serious crisis in adult felony and misdemeanor representation” (NLADA, 2003, p.ii). Consistent with TSG’s findings in 2000, the NLADA was concerned with the structure and funding mechanisms within the state regarding indigent defense; although the lack of state support is a significant issue, NLADA concluded that it does not reach the level of a Sixth Amendment violation. In an effort to increase the standard and quality of representation, the NLADA recommended Clark County develop performance standards.

Acting on the recommendations of these and other reports, the Nevada Supreme Court convened the Indigent Defense Commission in April 2007. The Commission was tasked with examining and making recommendations regarding the delivery of indigent defense services in the state. The Commission’s first report was issued in 2007 and its first order, ADKT 411 was issued on January 4, 2008. Following a series of subsequent orders, ADKT 411 became final in

April 2009, making comprehensive changes to the state’s indigent defense delivery system. These included: (1) preparing a statewide standard for determining indigency; (2) instructing each judicial district to formulate and submit for approval a procedure for the appointment of counsel that is independent of the judiciary; (3) requiring performance standards for court-appointed counsel; (4) ordering several large jurisdictions to conduct weighted caseload studies; and (5) forming a permanent statewide oversight body. The performance standards for court-appointed counsel included detailed performance standards for felony, juvenile, appellate, and capital cases, which were to be imposed in the future. This order also called for a weighted caseload study in Clark and Washoe counties to determine the appropriate public defender caseloads once those standards had taken effect.²

In February 2008, Washoe and Clark counties issued a Request For Proposal (RFP) to assess each county’s workload and recommend a reliable and manageable caseload standard for each county. After a competitive bid process, TSG was awarded the contract to conduct a weighted caseload study. TSG proposed a methodology that included both onsite field work, a detailed time-keeping period, and informed analyses of the time data.

In the report that follows, TSG describes the methods and findings of the weighted caseload study. Sections Two and Three document the site work observations and findings in Clark and Washoe counties, respectively. Section Four describes the methods employed by TSG in the time keeping phase in detail. Sections Five and Six present the analyses of time data collected. Section Six discusses the findings in the context of national standards and other weighted caseload studies. Finally, a seventh section summarizes this study’s conclusions and makes recommendations for improving indigent defense services delivery in Clark and Washoe counties. The remainder of this introduction provides an overview of the court structure and system of public defense in the state of Nevada.

1.2 The Nevada Court System

The criminal justice system in Nevada operates on several different levels. Two types of courts operate and are funded at the local level: Municipal Courts and Justice Courts. The Municipal Courts address misdemeanors, small claims (under \$2,500) and ordinance violations

² As described later in this report, the standards have only recently been imposed. As a result, a caseload study cannot adjust directly to the new standards, as attorneys are only now learning what they entail. National standards and practice are instructive in understanding what will be necessary in Nevada to reach the new standards set by ADKT 411/

that occur within the city limits of incorporated municipalities.”³ There are 17 incorporated towns or cities in the state. Justice Courts handle misdemeanor cases, traffic violations, and various civil claims. Justices of the peace preside over felony and gross misdemeanor arraignments. The Justice Courts further conduct preliminary hearings to determine if sufficient evidence exists to hold criminals for trial at District Court. There are 48 Justice Courts throughout the state with eleven located in Clark County and four in Washoe County.

There are nine District Courts in Nevada which have jurisdiction over all legal disputes, including criminal, civil, family, and juvenile matters. The judges at the District Courts also hear de novo appeals from Justice Courts. Attorneys report and the results of this study confirm that cases in District Court require more time than those in Justice Courts, as the former entail motions and are generally more complex. Judges are chosen in nonpartisan elections.

The Nevada Supreme Court is the highest court in the Nevada judicial system and has mandatory appellate jurisdiction over decisions of the District Courts. There are seven justices who are elected to six-year terms, with mid-term vacancies filled by the Governor through appointment. Nevada is one of only a few states that do not have an intermediate appellate court. Instead, current appellate practice involves a fast track system for criminal appeals that was designed to address growing backlogs. There are two three-justice panels with rotating membership that hear a great number of the appeals filed in Nevada. In addition, the Nevada Supreme Court suffers from a demanding caseload and is one of the most overloaded courts in the country.⁴

1.3 Public Defense in Nevada

As mentioned previously, Nevada relies on a mixed delivery system. Based upon TSG’s most recent 50 state expenditure data for 2005, Nevada stands 25th in the nation regarding total per capita spending on indigent defense. More than 50 percent of the state’s indigent defense system is funded by counties. In Nevada, there is an ongoing effort by the National Association of Counties and the Indigent Defense Commission to establish a state-funded indigent defense system. A bill was introduced in the 2009 legislative session to extend the state public defender office to include Clark and Washoe counties and require the state to provide funding, but that bill died in committee. At this time, only smaller counties may use the state public defender office

³ About the Nevada Judiciary. Available online: <http://www.nevadajudiciary.us/index.php/about-the-nevada-judiciary.html>

⁴ National Center for State Courts. 2005. State Court Caseload Statistics: Annual Report 2005.

and they must pay 80% of the costs, otherwise they must fully fund their own county system.⁵
As of 2005, Nevada provided less than 3% of the total costs of indigent defense in the state.⁶

⁵ Justice Denied. <http://tcpjusticedenied.org/>

⁶ ABA/TSG. 50 State Expenditure Report.
http://www.abanet.org/legalservices/sclaid/defender/downloads/FINAL_REPORT_FY_2005_Expenditure_Report.pdf

Section II. Site Visits in Clark County: Observations and Findings

TSG researchers conducted site visits and interviews in Clark County, Nevada between July 28 and July 31, 2008. They spoke with members of the Clark County Public Defender Office, including the Chief Defender and the Training Director, various judges, police officers, and outside defense counsel as well. This field work was conducted to familiarize the research team with the procedures and policies affecting criminal law practice for public defenders. These visits are a critical component because they inform the researchers as to how public defenders spend their time on case specific and non-case specific tasks.

These interviews provided in-depth qualitative information regarding procedures in Clark County, from the determination of indigency and appointment of a public defender through the final disposition of a case. These descriptions served to inform the creation of the various time-keeping materials.

Indigency Determination

In the past, Clark County Pretrial Services conducted the determination of indigency. At the time of the site visit in 2008, the public defenders had the task of reviewing a defendant's information and deciding if the defendant qualified for a court appointed attorney. In cases where the attorney was unsure, he was able to confer with the judge. At that time, there were no written guidelines for indigency. The Justice Court has recently assumed the role of indigency determination. Following this, the Court appoints counsel and sets bail. In *Alabama v. Shelton*, the United States Supreme Court held that the Sixth Amendment right to appointed counsel applies in any case which may "end up in the actual deprivation of a person's liberty".⁷ In accordance with Shelton, the Justice Court does not generally appoint counsel if the prosecutor is not seeking jail time.

Public Defender Staffing

The Clark County Public Defender office handles felonies, gross misdemeanors, misdemeanors, juvenile delinquency, capital, and appeals cases. Those cases involving individuals with mental health needs are contracted out. The office does not represent defendants

⁷ *Alabama v. Shelton*, 535 U.S. 654 (2002).

in The City of Las Vegas Municipal Court, which hears cases involving offenses that occur within the city of Las Vegas.

The Clark County Public Defender Office has 180 full-time employees; a Public Defender, an Assistant Public Defender, 102 attorneys, and 76 support staff. The office has seen significant growth in the last decade. As of 2000, the office employed 70 attorneys; it has since become one of the largest law firms in the state. The office uses a relatively new system of attorney classification, with associate attorneys, attorneys, and senior attorneys. The attorneys at the Clark County PD are on the same pay scale as the county prosecutors, with starting salaries in the mid \$60,000s. It is estimated that over thirty percent of the attorneys make over \$100,000. While the county used to provide public defenders with a longevity package after serving for a certain period of time, this practice has ended which has led to greater turnover in the office and thus more work spread across fewer experienced attorneys.

Despite these new hires, the office has not kept pace with the overall growth in Clark County, which had an increase in population of over 65 percent between 1990 and 2000.⁸ This influx has led to an overall increase in the number of defendants and cases assigned to the PD in recent years.

Clark County PD attorneys are divided into “track teams,” with each team assigned to cases from a particular courtroom. Members of the track team are appointed to a case at the initial arraignment, and represent the client through conclusion at trial. The office has additional teams devoted to particular specialties, including those assigned to juvenile court, homicide cases, sexual assault cases, and appeals. Each team consists of one chief, between five and eight trial attorneys, an investigator, and a legal secretary. The Clark County Public Defender Office also employs sixteen in-house investigators, classified as level I, II, or special investigators. The sexual assault team, in particular, has had to turn away cases due to a lack of resources, and statistics from the office report that attorneys who are not on the team have had to work on these cases.

In addition to its qualified attorneys, the Clark County PD staffs a talented group of 76 support staff, including the investigators and office specialists. There are seven social workers, including one who serves as a mitigation specialist. The office does not currently employ any

⁸ (<http://quickfacts.census.gov/qfd/states/32000.html>).

paralegals, who could assist with the overwhelming workload. It does employ a small number of law clerks, some of whom are on track to be hired as attorneys as positions open up.

Training

In recent years, the Clark County PD has instituted an in-depth training program for new attorneys. The head of the program has a great deal of knowledge and organizational skills, with over ten years of experience in the office. The training program typically lasts five weeks and is conducted at least two times per year, coinciding with the bar results. In addition, the head of the program has access to the necessary technology and equipment to conduct different types of trainings.

The Clark County PD office is also a certified CLE provider, offering enough courses each year to meet each attorney's annual requirement. In addition, every two years, the office holds a retreat for its attorneys, which includes both team building exercises and CLE courses. In past years, some of the attorneys at the Clark County PD expressed concern over the quality of representation provided by their peers, noting that the problems ranged "from attorneys' complete abdication of responsibilities, to disrespectful treatment of clients, to benign neglect".⁹ Based on conversations with individuals at the office as well as outsiders in direct contact with the attorneys, the situation has improved substantially. There is still concern, however, that the attorneys at the PD do not have sufficient time to engage in the necessary steps and procedures involved in each case, though this no longer appears to result from a lack of concern or interest.

A local judge expressed concern over the inability for new attorneys to gain trial experience due to low trial rates in District Court and the absence of jury trials in Justice Court. In 2000, the Clark County Public Defender explained that he assigns some serious cases to less experienced attorneys as a way to train them and give them trial exposure. This was justified by the low trial rate, which he agreed does not offer young attorneys trial exposure for less serious felony and misdemeanor cases.

Conflict of Interest Cases

The Clark County PD does not have a written conflict policy; rather the office follows rules outlined by the Nevada Supreme Court. The Nevada Code regarding attorney conflict of interest, Rules 157 through 162, mirrors national standards established by the American Bar

⁹(NLADA, 2003, p.17)

Association, though TSG recommends that the office incorporate these standards into a written office policy.

The office conducts conflict checks, though the procedure is made more difficult by the means through which the office and the District Attorney count cases and file charges. The Nevada court system works with three different case management systems, as the District Courts, the Justice Court, and the Municipal Courts each uses its own system. Further, prosecutors do not always charge each co-defendant in a particular offense with sufficient identifying information to allow the PD to determine conflicts of interest in a timely manner.

For cases that are conflicted out, each track team in the office has three outside contract attorneys who accept the cases. The Alternate Public Defender also handles conflict cases from the PD, but focuses only on capital cases.

In interviews with TSG staff, the Clark County Public Defender Training Director admitted that in the past, the Clark County PD was criticized by local criminal justice practitioners for presenting too many superficial conflicts, but the public defenders are working to change this practice. The office has a conflict rate ranging between 10 and 13 percent. This number is within the range of conflict rates typically seen at public defender offices, especially since the Clark County Public Defender handles a much higher ratio of felony to misdemeanor cases than is typical of most public defenders, as they do not appear in municipal courts. In turn, this conflict rate is not of concern to TSG researchers. Conflicts are more likely to arise in more serious cases. There are instances where conflicts are not immediately caught by the office. In these cases, an attorney is appointed and continues to work on a case until the conflict is noticed, thus consuming both time and monetary resources.

Case Processing

The public defenders at the Clark County PD regularly engage in video arraignments when their clients are in jail. While video arraignments are widely used throughout public defense practice due to cost savings and increased safety, the practice can be problematic as it limits the ability of the attorneys to engage in private and confidential discussions with their clients during the proceedings. It is essential that Clark County public defenders are provided an opportunity to meet with their clients in a confidential setting. It is more desirable that they be present with the clients at the jail, rather than in the courthouse, though this still places

confidentiality at risk as the conversations tend to take place within earshot of other individuals in the holding cell. This issue requires additional attention in Clark County.

The preliminary appearance must be within fifteen days of the arraignment or first appearance. If the prosecutor does not file a charge at the first appearance, the Justice Court will set the case for several days to allow for the charges to be filed. These practices can cause delays in the appointment of counsel, as the public defender office is only appointed after charges have been filed.¹⁰

Public defenders in Clark County report that prosecutors overcharge cases. In addition to plea bargains to lesser charges, public defenders say that many cases are dismissed outright before reaching the District Court. A typical situation involves a felony case of domestic violence in which the state is unable to produce the alleged victim. This situation is not unique to Clark County, although it appears from the results of this study that, especially for the lowest level felony cases, this practice may be in excess of the norm. Further investigation is necessary to establish its extent.

There are 24 full time judges in Clark County, and it is estimated that less than one percent of felony and gross misdemeanors go to trial. In their 2000 report, *Indigent Defense Services in the State of Nevada: Findings and Recommendations*, TSG researchers noted that a low trial rate can limit the professional growth of defenders, who lose the opportunity to develop the necessary skills and experience to argue a case in court. Over time, the quality of representation can suffer. Due to their high caseloads, attorneys at the Clark County Public Defender Office might be favoring a tendency to plea bargain as opposed to proceeding with cases in court, which consumes more time and resources. In fact, the 2008 interviews with judges throughout Clark County revealed their concerns that the public defenders are not aggressive enough in taking cases to trial, and instead tend to plead them out.

The low trial rate in Clark County, however, may also be attributed in part to the complex interactions between various criminal justice agencies involved in processing a case, and the District Attorney is attempting to increase the trial rate and expects his prosecutors to go to trial at least five times per year in the future. An increase in the trial rate would significantly impact the workload of the Clark County Public Defender Office.

¹⁰Of note, this practice may implicate *Rothgery v. Gillespie County*, 128 S.Ct. 2578 (2008), which holds that a criminal defendant's Sixth Amendment right to counsel is triggered by his initial appearance before a judge whether or not a prosecutor is aware of or involved in that appearance.

Despite their concerns over the low trial rate, the judges TSG researchers spoke with seem pleased with the performance of the public defender office and note dramatic improvements in the last several years. This has been attributed in part to increased and better quality training. Based on court observations, attorneys from the public defender office seem to be well prepared for their cases in court.

Summary

The above information gathered through interviews with individuals at the Clark County Public Defender Office and other criminal justice agents provides a detailed introduction to the office and its work. Both staff members and attorneys at the Clark County PD seem competent to complete their work, though details about case processing reveal they may not have adequate time to address their duties as charged. This information has served to inform the creation of the various time-keeping instruments used in this study, and provides context to the data that was gathered.

Section III. Site Visits in Washoe County: Observations and Findings

Site visits were conducted in Washoe County on July 31 and August 1, 2008, with additional phone interviews held around the same time. TSG researchers spoke with various court administrators and coordinators, judges, and clerks, as well as the Washoe County District Attorney and a County contract attorney.

Indigency Determination

Pretrial services, a function of the court, handles the screening of defendants for indigency and financial eligibility. Court Services reviews individuals for release, and judges have a great deal of discretion in the determination of release for those individuals held for misdemeanors.

Public Defender Staffing

The Washoe County Public Defender Office has nearly 60 full time employees, with 33 attorneys, 8 investigators, a mitigation specialist, and 17 support staff. The attorneys work in teams, with a Chief Deputy Public Defender mentoring and supervising each one. The Chief Defender benefits from an extensive history in defense work, and was appointed by county commissioners.

Although the Washoe County PD hired additional investigators in the past year, it seems communication between them and the public defenders can be lacking. Interviews with investigators reveal that they are often not notified and are thus unaware when cases have closed. Thus, they may continue working on a case after the final disposition, thus consuming extra time and monetary resources. In some instances, when an investigator is unavailable, the attorneys do not have enough time to conduct their own investigations, forcing them to rely on the police report and the word of the District Attorney. This is of concern, as the public defenders strive to provide the best advocacy possible and seek the time to do so.

The attorneys at the Washoe County PD represent not only indigent individuals involved in criminal cases, but also those in juvenile delinquency cases, involuntary commitments, parole violations, child support, termination of parental rights cases, temporary protection order violations, abuse and neglect cases, and other family court matters. They also handle their own direct appeals.

Training

Fairly recently, the Washoe County Public Defender Office hired a full-time trainer to present seminars to staff on current issues related to indigent defense. The Washoe County Public Defender Office also sponsors an in-house scholarship program for the National Criminal Defense College, which provides extensive training. The investigators at the Washoe County PD have a great deal of experience, and though they have not attended many training conferences, they are able to do so. It is important that the office continue to provide training to both the attorneys and the support staff.

Conflict of Interest Cases

The Alternate Public Defender Office, created in March of 2007, accepts conflict cases and staffs the Adult Drug and Mental Health Courts . There are nine attorneys in the office, who are available to serve individuals facing felony, misdemeanor, juvenile delinquency and termination of parental rights cases. Interviews reveal that several judges in Washoe County believe that the alternate defender is doing an excellent job handling its cases.

In other cases of conflict, a group of approximately twenty-five contract attorneys, led by the Appointed Counsel Administrator, represents defendants. These are attorneys working under contract to the county, which provides counsel both on a flat fee and on an hourly basis for Class A Felonies (those which carry the possibility of life sentences).

There is an additional contract system that allows private attorneys to be on a panel that receives other cases from the county. A selection committee for choosing the contract attorneys is made up of individuals at the Washoe County Public Defender Office as well as private attorneys. These attorneys handle only misdemeanor, gross misdemeanor, felony, juvenile and family court cases. They do not receive class A felonies or homicides, though the Lead Contract Counsel believes they are qualified to do so. The contract attorneys receive a flat fee for each case, which varies depending on the case type. The reliance on a flat fee can reduce incentive to spend sufficient time on a case. In recent years, the Lead Contract Counsel has noticed a decrease in the number of cases conflicted out by the public defender office, and believes the office has tightened its policy.

Case-Tracking

The Washoe County Public Defender Office and Alternate Public Defender Office use a case management system built by the county, with individuals at IT Services working to make

improvements to the in-house data system. Attorneys at the Washoe County Public Defender Office have access to the system to view case information, although they cannot make any changes as the secretaries have control over data entry. County IT staff were very responsive and cooperative with TSG's requests for reports from the system, and made prompt modifications to the system such that TSG could determine the case type of each disposition according to the categories selected for the time study.

Case Processing

Until recently, the public defenders were not present at arraignment, seemingly due to their high caseloads and thus limited time. As a result of the attorneys' busy schedules, one of the Justice Courts has instituted a non-event calendar for client meetings, which enables public defenders to meet with their clients without going to the jail.

Although Washoe public defenders have begun to appear at arraignment, the District Attorney's office has been vocal in protests against it, arguing that pretrial services has already conducted an investigation. The prosecutor is not usually present unless the office is seeking a continuance due to a delay in filing the charge. Throughout interviews with Washoe County judges, they noted their suspicions that the public defenders were not meeting with their clients prior to the court appearance. Because of this, they expressed some concern over the attorneys' ability to advocate for their client to achieve the best possible disposition.

Between ten and forty-five cases per day undergo video arraignment from the jail. Frequently, however, the complaint is not yet ready, and a continuance is ordered. Public defenders are often present at these arraignments. The public defender is appointed at arraignment, and the attorneys typically meet with their clients at the preliminary hearing. Some of the judges in Washoe County feel there are too many continuances, and that the public defenders should meet with their clients ahead of time.

Prior to the preliminary hearing, public defenders receive case files, including the indigency determination, the probable cause sheet, and a schedule of pending court dates. The attorneys have the option of rejecting a case within seventy-two hours of receipt. There is not open file discovery; the attorneys are required to request discovery, which includes police reports, a rap sheet, signed witness statements, and can include audio or video witness statements. Both the prosecutors and the attorneys at the public defender office are responsible for subpoenas for their witnesses. Defense attorneys often file pretrial motions, but there is not a

form program, and thus attorneys are responsible for the creation of motions from scratch. This can be time-consuming, and the office might want to consider developing a document bank for various motions or have County IT develop document generation as part of the case management system.

If there is a mental health concern, the public defender raises the issue at the preliminary hearing. If the defendant is found unlikely to be competent, defense counsel takes the issue to the Justice Court. Once a District Court judge orders a competency evaluation, the inmate is transported to the hospital for the evaluation. After an inmate is returned to the jail, there are delays in having the case reset to Justice Court for arraignment or a preliminary hearing. Seventy-five percent of preliminary hearings are continued for between thirty and sixty days. Many preliminary hearings end in counter pleas. This practice allows defendants to plead guilty to a misdemeanor without appearing before a judge. At the Reno Justice Court, however, counter pleas are not permitted for domestic violence cases, DUIs, possession of marijuana, and other violent offenses. Counter pleas are of some concern to TSG researchers as it is uncertain whether defendants always engage in a true colloquy with the judge and that they fully understand the consequences of the plea. If transferred to District Court, defendants face a second arraignment, which is handled by the Public Defender, the Alternate Public Defender, or private counsel who serve on conflict cases.

Specialty Courts

There are several specialty courts in Washoe County, including a drug court, a juvenile drug court, and a mental health court, each intended to reduce recidivism. Statistics show that individuals who pass through the various specialty courts do in fact have lower recidivism rates and other beneficial outcomes as a result of their participation. One county official expressed concern over the workload of the primary specialty court public defender, as she seems to be overwhelmed, covering 1,000 cases and regularly working ten to twenty hours of overtime per week. Washoe County lacks therapeutic programs and halfway houses that would enable defendants to avoid the criminal justice system, so these courts serve an important function in the county.

Washoe County's Early Case Resolution Program (ECR)

In the past, the prosecutor's office in Washoe County had an early resolution program, which enabled cases to be resolved without a preliminary hearing. There was concern, however,

within the Washoe County Public Defender Office as it was not clear whether the attorneys could work with the early resolution program without conducting a thorough investigation, receiving full discovery, and obtaining a complete criminal history. The attorneys noted that their clients frequently entered pleas before investigation and discovery, thus leading to quick outcomes at the expense of quality representation.

Approximately 35 percent of cases filed were resolved using the program. Although the program was intended to eliminate non-serious cases from the courts, several serious felonies went through. In part due to the ECR Program, only a small percentage of cases proceeded to trial each year in Washoe County. Although ECR programs can bring efficiencies to the criminal justice system, TSG has evaluated many similar systems throughout the country and is concerned that there is a substantial risk that quality representation may be compromised, especially when they are used simply as a relief valve for a criminal justice system that is experiencing high caseloads.

Summary

The Washoe County Public Defender Office and Alternate Public Defender Office benefit from strong relationships with other agencies in the criminal justice system. The above information on the Washoe County Public Defender Office provides an understanding of the office and its functioning in an attempt to address the results of the time-keeping study. It further helped in the creation of the study materials.

Section IV. Methods of Calculating Weighted Caseload Standards

It is now well documented that detailed caseload standards are an effective management tool for public defender offices. As data tracking methods have improved, an increasing number of public defender offices have consulted with research entities to develop caseload standards. As such, offices have found it difficult to justify increases in budget and staffing without reliable data and detailed caseload standards. In fact, as early as 1986, many statewide and local public defender agencies had recognized the importance of developing accurate and reliable caseload standards, in large measure because the funding sources, state or local, have demanded that the program become more accountable as requests for funding are made year to year.¹¹

4.1 Measurement Methods Employed by Public Defenders to Develop Caseload Standards

In a paper entitled "Public Defender Caseloads and Common Sense," Professor Richard J. Wilson (then of the City University of New York School of Law) described three basic methods used by public defender offices to develop caseload standards. This paper was based on a joint study that he and the Jefferson Institute¹² carried out for the National Institute of Justice entitled, "Case Weighting Systems: A Handbook for Budget Preparation." Professor Wilson identified the three systems as unit-based, time-based and open file.

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

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

¹¹ Spangenberg, R. for the National Legal Aid and Defender Association. National Survey of large trial and appellate public defender programs.

¹² A consulting firm based in Washington, DC.

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

Based upon more than a decade of work in the field of public defender caseload/workload measures, TSG feels that any reliable caseload study must be empirically-based in order to assure reliability both for public defender management and the funding source. There are two acceptable methods to achieve these results: the Delphi Method and the Time Record-Based Case-Weighting Method. The most reliable method, which is the one chosen for the Clark and Washoe study, is the case-weighting method using contemporaneous time records. This method, because it relies on quantitative data, is reproducible and statistically sound. Less reliable, but used in the past because of limited time and resources, or because quantitative data was not available, is the Delphi method. The Delphi method uses the opinions of a group of experts, after a series of structured surveys, to draw conclusions. This is loosely how the NAC public defender caseload standards were established.

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

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

4.2 Clark & Washoe Weighted Caseload Study Methods

TSG proposed a methodology that included both onsite field work, a detailed time-keeping period, and informed analyses of the time data. While this section describes the methods used to develop the weighted caseload standard for each county, the site work described in the previous chapters was fundamental in designing and implementing these methods. In addition, discussions with staff attorneys and support staff on site enabled the team to begin designing the daily activity log to be used in the time keeping portion of the study.

Collecting Time Data

To collect the data needed to measure workload, or the amount of work required per case, public defenders and support staff need to account for their daily work-related activities. As such, during the onsite interviews, attorneys and support staff were asked to identify specific case types and activities that are important in their everyday work. This information was used to create draft daily activity logs for both attorneys and support staff. The draft daily activity logs were converted into a web-based data entry application used to collect the time data. Each attorney and support staff member was assigned an

identification number used to log into the online timekeeping database. This identification number ensured anonymity; participants were instructed to use this number, and not their name, on their daily time sheets. Only one member of the TSG consulting team, David Newhouse, kept the list that cross-referenced participant names with identification numbers.

Participants were asked to log on each day and track their daily activities, from their first work-related activity of the day until their last work-related activity of the day over the 12-week time keeping period. Individuals tracked their times on weekdays, as well as on any weekend day or holiday that they worked. For each work related activity, the web-based application asked participants to capture: the start and end time for each activity, the Case Type Code and the Activity Code for the work they were performing, an Enhancer Code for any enhancer associated with the case, a Court Code for the court in which the case was currently pending, the Case Type Code for any associated probation violation that was associated with the primary case, and, if the activity resulted in the disposition of the case, the Court Case Number of the case as well as a Disposition Code corresponding to the type of disposition. Support staff time sheets were designed to capture only the start and end time, Case Type Code and Activity Code for each activity. Additional Case Type and Activity codes were developed for support staff to account for work performed on cases where the case type was unknown and for activities that were specific to their job function.

A pilot test was conducted from September 10th through the 12th, in which 25 attorneys and 18 support staff participated. The pilot test asked the participants to consider the ease of using the application, the instruction manual, and the website, generally. Pilot participants provided comments on the application and modifications were made to capture all daily activities and to ensure ease of use. The website was designed to ensure participants could not leave any gaps in time entered, enter overlapping time, or enter case type or activity codes that were invalid. The web-based application also contained links to a variety of materials, including a help link, updates and notices, frequently asked questions, and individual summary data that provided participants with a review of the time entered each day.

Training sessions were conducted for attorneys and support staff in each county.¹³ Two attorney sessions and two support staff training sessions were held in each county. Training sessions introduced instruction manuals on time keeping, previewed the web-based time keeping application, and provided detailed guidelines on how to enter time. Hard copy daily activity logs were provided to staff for recording throughout the day and later entry to the web-based time keeping application. TSG also reviewed the mechanisms employed to ensure anonymity. TSG researchers feel strongly that this is a very important feature of time keeping, as accurate reporting is essential to the validity and applicability

¹³ Clark County training was on September 22nd and 23rd. Washoe County training was provided on September 24th and 25th.

of a weighted caseload study. The training sessions were very well attended, and the sessions in Clark County were recorded for those who were unable to attend. TSG provided participants with several methods for contacting TSG staff if they needed further assistance during the time keeping period. The contact information included a toll-free office phone number, a mobile phone number, an email address, and a help web-link.

The Time-Keeping Phase

The time keeping phase began on September 29th and concluded on December 19th. Time-keeping entries were monitored by TSG researchers on a daily basis. Any irregularities or missing data were noted and participants were contacted via email and telephone to resolve the issue. Early on in the time keeping process, TSG was informed that attorneys were unable to keep track of each disposition as it occurred, especially in Justice Court where numerous dispositions were likely to occur in quick succession. Attorneys were instructed to continue capturing Court Case numbers to the best of their ability, and indicate the number of justice court dispositions during each session, and that TSG would retrieve the actual disposition count from the case management systems maintained by the Public Defender in Clark County and by the County IT department in Washoe County.

Analysis of Time Data

All attorneys and support staff were asked to participate in the study. TSG researchers excluded only those attorneys who did not carry a caseload, law clerks and runners. Additionally, a number of individuals were excluded due to extended leaves of absence or failure to keep adequate time records. Since appellate, capital and murder cases are distinctly more complex and less common than other criminal cases, and take significantly longer from appointment to final disposition, the timekeeping period was insufficient to draw any conclusions about workload for those case types. Therefore, the analysis reflects only the time spent on activities in these cases, and does not discuss the current attorney workload.

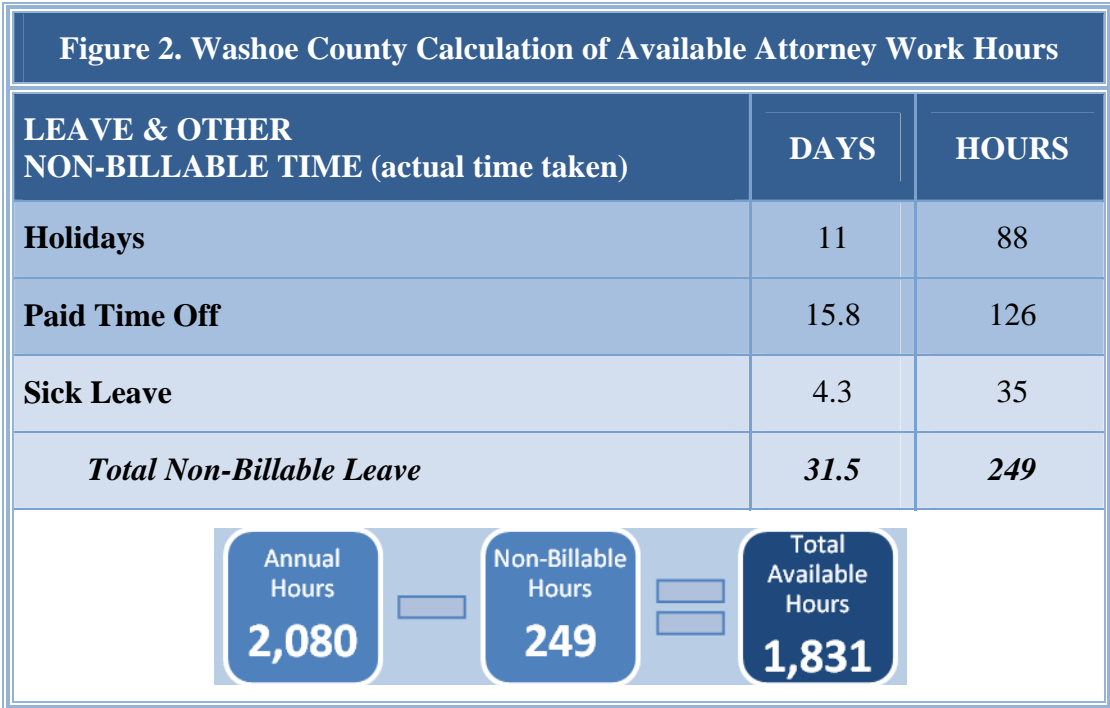
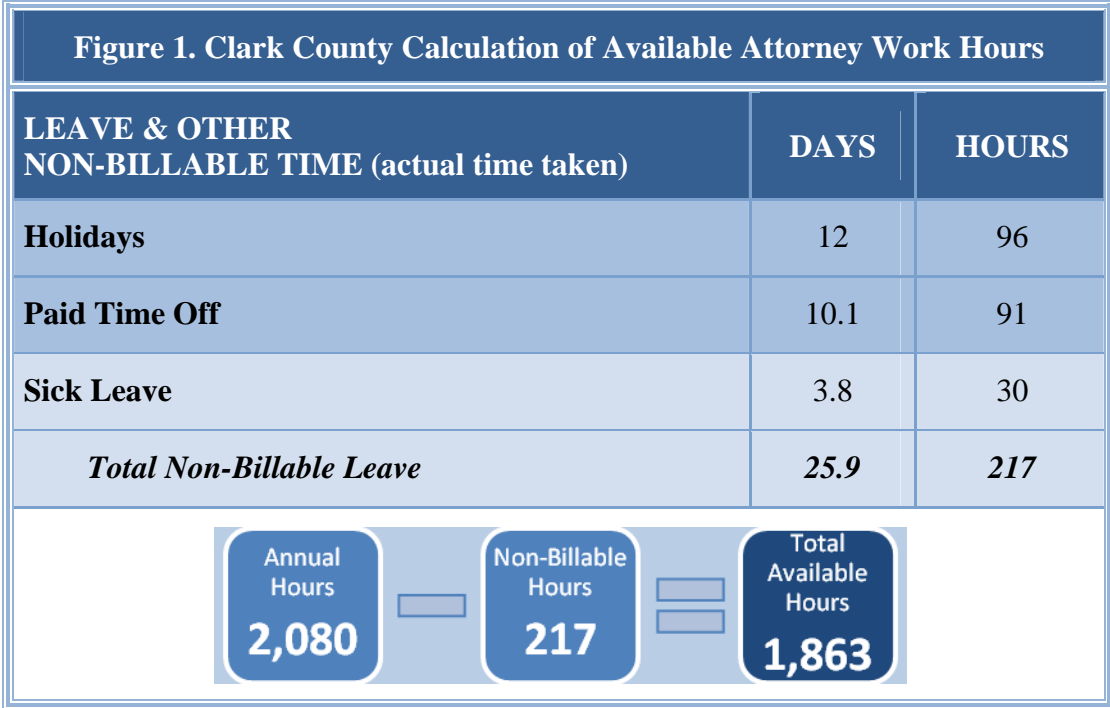
Workload is the numerical value describing how many cases of a particular case type (e.g., Class 1 felony, felony sex assault, misdemeanor DUI, etc.) an attorney disposes of within a year. This is calculated using the total number of available work hours in one year and dividing that by the average number of hours it takes for a disposition of a particular case type, as illustrated below.



To derive the current attorney workload, one must first determine: a) the number of available work hours in one year, and b) the number of hours per disposition for each case type. Dispositions rather than appointments are used to calculate the workload, since there is far more known about complicating factors and other essential elements of the caseload being measured. Workloads are then determined by dividing the number of work hours available each year by attorney-time-per-disposition. Excluded from the number of dispositions used to calculate workload are conflict cases, cases where the defendant retained private counsel, and cases which may be considered closed but the defendant is out on a bench warrant. Substantial work may have been performed on many of those cases, but this has been a consistent practice in all of the case weighting studies performed by TSG to date.

The concept of “billable time” is one that is well understood in the private practice of law. The concept has only been accepted in the public law field since the early 1990s. The types of time expenditures, outside a public defender’s direct client work, vary from organization to organization, and must be calculated in every case-weighting study to arrive at the annual average “billable time” for each staff attorney. The starting point for developing this figure is the fact that public defender attorneys work 40 hours per week, which when multiplied by 52 weeks equals 2,080 hours per year. Holidays, vacation, sick time, bereavement leave, military leave, maternity, paternity, or child care leave, and any other allowable leaves of absence must be subtracted from this number to arrive at the number of available work hours per year. Participants were instructed to record any time that fell into these categories under the activity code for Time Away From Work on the Daily Activity Log. Case-weighting studies, which are increasingly common among the judiciary, prosecutors and public defenders, build into the work week appropriate time for training, administration, professional development, supervision and community service as well as vacation time, sick time and other leave requirements. All of these functions are a necessary part of the job of public defenders.

All employees receive eleven paid holidays each year. Clark County employees are also allowed to take their birthday off. In addition, employees are entitled to a number of days of vacation time and accrue a number of days of paid sick time each year. Figure 1 sets out the total number of available hours for public defenders to work after accounting for all non-billable time, including holiday, non-billable leave and sick time actually taken. Figures 1 and 2 calculate the available attorney work hours for each County. There were four holidays during the time study period: Nevada Day, Veteran’s Day, and two days for Thanksgiving.



Additional activities performed by public defenders that are essential to providing quality representation are training, professional development, community service, supervision and administration. In order to maintain a staff of attorneys who are current on the law and aware of recent developments in criminal practice and procedure they need to have time in their work week set aside for these activities.

Time recorded in these areas is added to the number of hours spent working directly on cases by attributing a portion of this time to each case type according to the percentage of time spent on each specific case type as a percent of total time.

Finally, the number of hours attributed to a particular case type is divided by the total number of dispositions for that same case type occurring during the study period and attributable to the participating attorneys. To arrive at the current attorney workload for each case type, TSG divided the total number of available attorney hours by the average number of hours per case type disposition.

Section V. Clark County Time Keeping Analysis

5.1 Attorneys

In Clark County, 96 of the 102 attorneys who work directly on cases, or 94% of attorneys, comprise the final sample and are included in the following analysis. Administrative attorneys who did not carry a caseload were excluded from this analysis. Team chiefs, all of whom carry a caseload, were included in the time study. In sum, the 96 attorneys included in the sample entered 40,113 hours of work related time during the 12-week period.

Table 1 displays, in hours and minutes, the total amount of time logged by attorneys by each case type category, and the percentage of all time entered by attorneys. The only time excluded was Time Away from Work, which was a category used to ensure that participants were not leaving gaps in time and were submitting a timesheet for every work day.

TABLE 1: Clark County Attorney Hours by Case Type		
Case Type	Hours	Percent of Total
Capital	924:52	2.31%
Felony		
Felony A Murder	2193:08	5.47%
Felony A Sex	3870:00	9.65%
Felony A Other	927:57	2.31%
Complex Economic Crime (B)	51:44	0.13%
Felony B >10 max	2757:30	6.87%
Felony B <=10 max	4597:32	11.46%
Felony C & D	2624:59	6.54%
Felony E	267:51	0.67%
Felony Total	17290:41	43.10%
Misdemeanor		
Gross Misdemeanor	427:17	1.07%
Misdemeanor	248:06	0.62%
Misdemeanor DUI	254:51	0.64%
Misdemeanor DV/DB	365:53	0.91%
Misdemeanor Appeal	13:49	0.03%
Misdemeanor Total	1309:56	3.27%
Probation/Parole Violation		
Parole Violation	6:45	0.02%
Probation Violation	173:41	0.43%
Probation/Parole Violation Total	180:26	0.45%
Multiple Case Types: Adult	11042:46	27.53%
Juvenile		
Juvenile Felony or Misdemeanor	2211:03	5.51%
Juvenile Sex Offender	669:21	1.67%
Violent Juvenile Offender	382:04	0.95%

Certification	407:21	1.02%
Juvenile SC Appeal	187:37	0.47%
CHINS (truancies)	10:33	0.03%
Juvenile Probation Violation	48:46	0.12%
Multiple Case Types: Juvenile	943:30	2.35%
Juvenile Total	4860:15	12.12%
Appeals		
Fast Track Guilty Plea/Other	23:28	0.06%
Fast Track Trial	322:34	0.80%
Non-Fast Track Guilty Plea/Other	0:15	0.00%
Non-Fast Track Trial	1171:25	2.92%
Extraordinary Writs	0:40	0.00%
Discretionary Appeal	81:54	0.20%
Multiple Case Types: Appeals	59:56	0.15%
Appeals Total	1660:12	4.14%
Specialty Court		
Specialty Court Misdemeanor	35:11	0.09%
Specialty Court Felony	13:37	0.03%
Specialty Court Juvenile	44:29	0.11%
Multiple Case Types: Specialty Court	15:11	0.04%
Specialty Court Total	108:28	0.27%
Non-Case Related	2736:08	6.82%
Grand Total	40113:43	100.00%

TABLE 2: Clark County Attorney Hours by Activity

Activity Group	Hours	Percent of Total
In Court	4337:32	10.81%
Out Of Court	29613:21	73.82%
Multiple Activities	3698:20	9.22%
Non Case Related	2464:31	6.14%
Grand Total	40113:43	100.00%

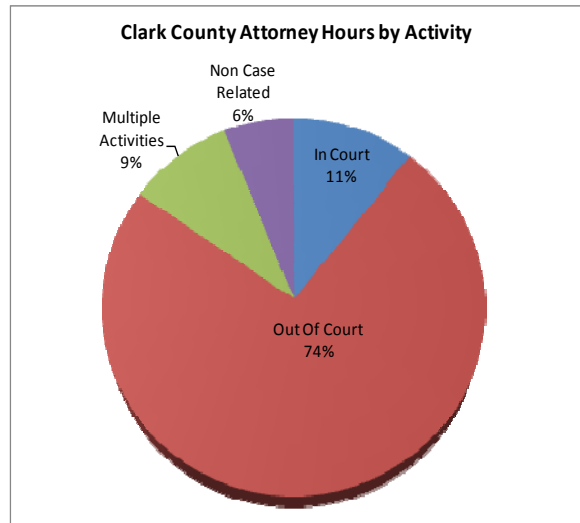


Table 3 displays the number of hours spent on each activity, broken out by general case type category.

Only the time where a specific case type category was

entered is included in this table. A higher percentage of in court time is spent on Misdemeanor cases than on Felony or Juvenile cases. This is consistent with the fact that more serious cases involve more research, client contact and investigation than those that carry less serious penalties.

TABLE3: Clark County Detail of Attorney Activities by Case Type Group

Activity	Felony		Misdemeanor		Juvenile		Appellate		All Case Types	
	Hours	% of Total	Hours	% of Total	Hours	% of Total	Hours	% of Total	Hours	% of Total
In Court										
Arrestment/Bond Hearing	178:38	1.05%	38:51	2.98%	22:19	0.48%	0:00	0.00%	239:48	0.98%
Preliminary Hearing	428:00	2.52%	27:04	2.07%	0:00	0.00%	0:00	0.00%	455:04	1.85%
Status Check/Court Ordered Reviews	97:57	0.58%	34:03	2.61%	88:00	1.88%	0:10	0.01%	220:10	0.90%
Motions/Writs Hearing	186:08	1.10%	10:50	0.83%	9:34	0.20%	0:55	0.06%	207:27	0.84%
Trial	600:37	3.54%	46:59	3.60%	45:27	0.97%	0:00	0.00%	693:03	2.82%
Sentencing	297:12	1.75%	26:20	2.02%	51:36	1.10%	0:00	0.00%	375:08	1.53%
Post Trial/Post-Plea Matters	83:27	0.49%	6:40	0.51%	10:37	0.23%	0:10	0.01%	100:54	0.41%
Dispo/Plea Hearing/Case Setting/Cal. Call	250:34	1.48%	58:23	4.48%	128:59	2.76%	0:00	0.00%	437:56	1.78%
Anaya hearing (Probation)	51:38	0.30%	5:26	0.42%	0:00	0.00%	0:10	0.01%	57:14	0.23%
Competency Proceeding	9:01	0.05%	2:32	0.19%	1:39	0.04%	0:00	0.00%	13:12	0.05%
Involuntary Medication (Sell)	0:07	0.00%	0:00	0.00%	0:00	0.00%	0:00	0.00%	0:07	0.00%
Contempt	2:40	0.02%	1:15	0.10%	0:00	0.00%	0:00	0.00%	3:55	0.02%
Detention Hearing	7:30	0.04%	1:05	0.08%	85:26	1.83%	0:00	0.00%	94:01	0.38%
Diversion/Deferred Pros./Early Offer	3:58	0.02%	4:55	0.38%	1:19	0.03%	0:00	0.00%	10:12	0.04%
Evidentiary Hearing	35:37	0.21%	1:15	0.10%	2:05	0.04%	0:00	0.00%	38:57	0.16%
Extraditions	1:00	0.01%	0:10	0.01%	0:30	0.01%	0:00	0.00%	1:40	0.01%
Transfer Hearing (Certification)	0:35	0.00%	0:00	0.00%	14:59	0.32%	0:00	0.00%	15:34	0.06%
Oral Argument (Appeals)	4:10	0.02%	1:35	0.12%	0:00	0.00%	8:00	0.50%	13:45	0.06%
In Court Total	2238:49	13.19%	267:23	20.50%	462:30	9.90%	9:25	0.59%	2978:07	12.13%
Out Of Court										
Case Preparation	3175:26	18.71%	169:28	12.99%	950:37	20.34%	75:39	4.71%	4371:10	17.80%
Document Review	1673:34	9.86%	63:10	4.84%	342:09	7.32%	432:47	26.96%	2511:40	10.23%
Legal Research	873:37	5.15%	36:33	2.80%	149:12	3.19%	312:28	19.47%	1371:50	5.59%
Pleadings/Brief Writing	1065:02	6.28%	46:35	3.57%	326:31	6.99%	638:27	39.77%	2076:35	8.46%
Case Admin., Follow-Up, Report Writing	385:49	2.27%	28:06	2.15%	174:38	3.74%	2:45	0.17%	591:18	2.41%
Direct Client Contact	2841:44	16.75%	389:04	29.82%	647:00	13.84%	19:50	1.24%	3897:38	15.87%
Client Related Contact	860:07	5.07%	75:34	5.79%	345:23	7.39%	7:46	0.48%	1288:50	5.25%
Communication w/ Investigator	179:49	1.06%	11:07	0.85%	72:21	1.55%	0:30	0.03%	263:47	1.07%
Communication w/ Social Worker	60:06	0.35%	7:03	0.54%	74:18	1.59%	0:00	0.00%	141:27	0.58%
Conf. w/ DA, Ct. Personnel/ Dep. Tm. Mtg.	403:42	2.38%	30:36	2.35%	167:40	3.59%	6:50	0.43%	608:48	2.48%
Conference with Supervisor/Colleague	1182:12	6.97%	49:42	3.81%	297:22	6.36%	44:46	2.79%	1574:02	6.41%
Justification for Costs	16:56	0.10%	0:20	0.03%	0:46	0.02%	0:30	0.03%	18:32	0.08%
Appellate Document Collection	4:34	0.03%	0:00	0.00%	13:29	0.29%	11:25	0.71%	29:28	0.12%
Appellate Filing/E-filing	3:00	0.02%	0:00	0.00%	0:25	0.01%	24:29	1.53%	27:54	0.11%
Social Services by Attorney	33:28	0.20%	0:10	0.01%	4:35	0.10%	0:00	0.00%	38:13	0.16%
Investigation by Attorney	145:45	0.86%	10:08	0.78%	21:06	0.45%	0:00	0.00%	176:59	0.72%
Clerical	155:26	0.92%	8:57	0.69%	82:26	1.76%	2:30	0.16%	249:19	1.02%
Supervision	262:00	1.54%	9:55	0.76%	48:32	1.04%	0:00	0.00%	320:27	1.31%
Travel	449:20	2.65%	29:41	2.28%	48:37	1.04%	12:00	0.75%	539:38	2.20%
Waiting	959:37	5.65%	70:59	5.44%	444:06	9.50%	3:05	0.19%	1477:47	6.02%
Out Of Court Total	14731:14	86.81%	1037:08	79.50%	4211:13	90.10%	1595:47	99.41%	21575:22	87.87%
Grand Total	16970:03	100.00%	1304:31	100.00%	4673:43	100.00%	1605:12	100.00%	24553:29	100.00%

* This only includes hours recorded in the major case type categories indicated.

Attorneys were instructed to indicate the court in which the case was pending for each activity entered. Table 4 depicts the total number of hours entered where a court was indicated.

TABLE 4: Clark County: Where the Case was Pending		
Court	Hours	Percent of Total
Supreme Court	2235:09	6.43%
District Court	15775:19	45.41%
Justice Court	11530:54	33.19%
Juvenile Court	5129:33	14.76%
Specialty Courts	71:29	0.21%
Grand Total	34742:24	100.00%

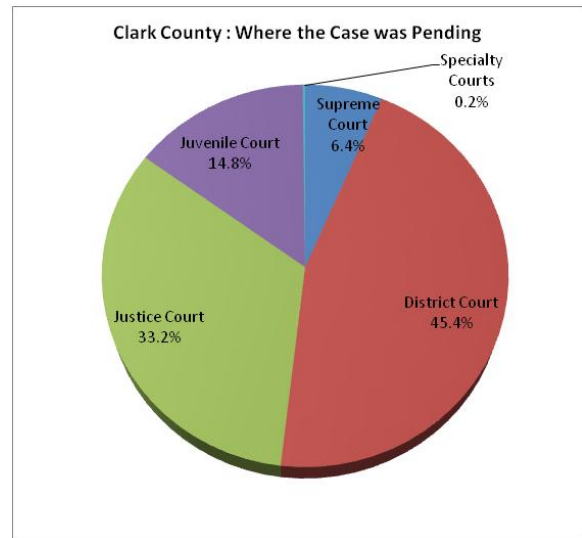
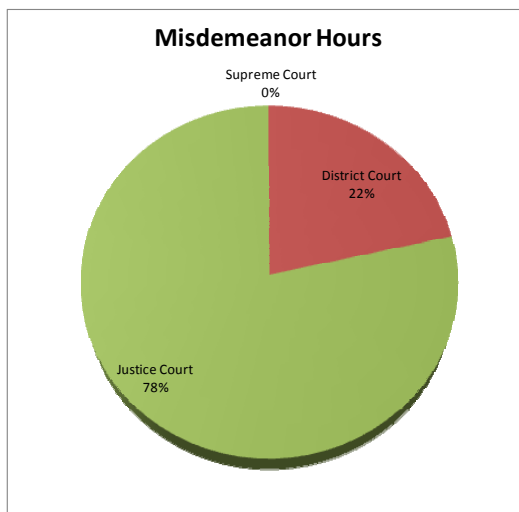
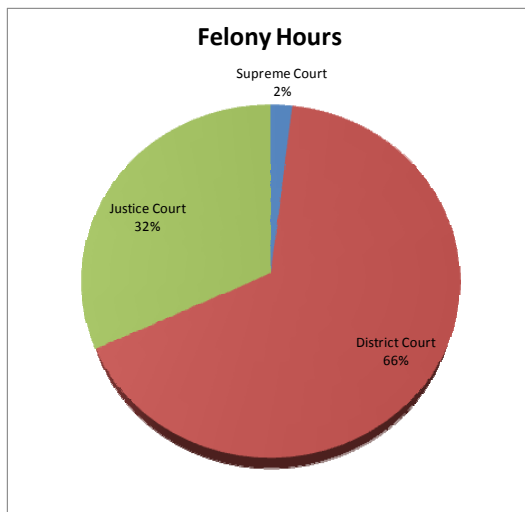


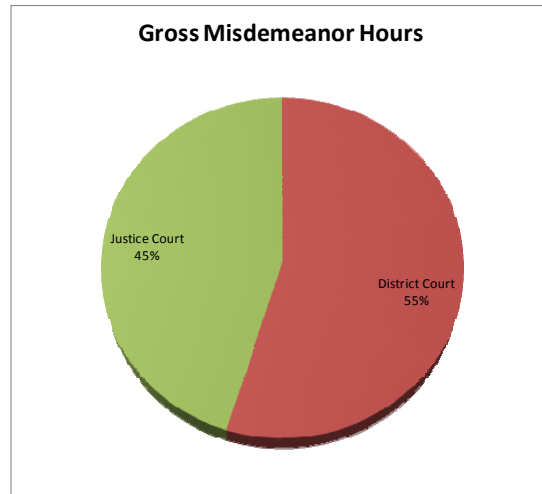
Table 5 presents the same analysis for Adult Felony and Misdemeanor cases.

TABLE 5: Clark County Felony and Misdemeanor: Where the Case was Pending						
Court	Felony		Misdemeanor*		Combined	
	Hours	Percent of Total	Hours	Percent of Total	Hours	Percent of Total
Supreme Court	333:31	1.9%	0:00	0.0%	333:31	1.8%
District Court	11385:19	66.2%	278:52	21.5%	11664:11	63.0%
Justice Court	5492:24	31.9%	1016:08	78.5%	6508:32	35.2%
Grand Total	17211:14	100.0%	1295:00	100.0%	18506:14	100.0%

*Includes Gross Misdemeanors



Since Gross Misdemeanors, like Felonies, can only be disposed of in District Court (other than by dismissal), the numbers of hours spent in each court are indicated separately in the chart below.



While many of the lower level Felonies and Gross Misdemeanors may plea out or be dismissed in Justice Court, the majority of time spent on these case types was at the District Court level.

5.2 Support Staff

Of 81 potential staff participants (five staff left shortly before or during the study period), excluding law clerk positions, time sheets completed by 74 staff members, or 91%, are included in these results. Seven of the positions are part time employees. Assuming that part time employees work twenty hours per week, this is 70.5 FTE positions.

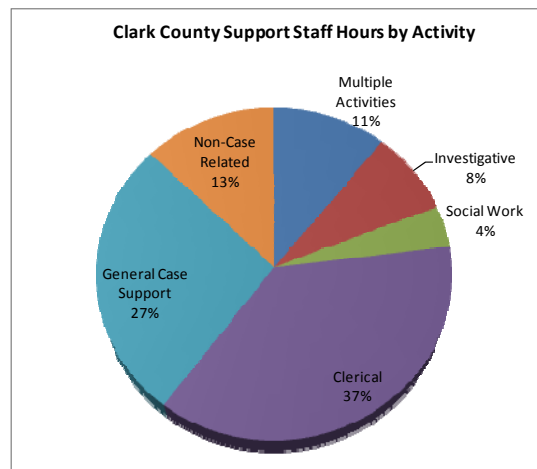
Case Type	Hours	Percent of Total
Capital	395:15	1.42%
Felony		
Felony A Murder	1219:02	4.39%
Felony A Sex	1541:06	5.55%
Felony A Other	310:16	1.12%
Complex Economic Crime (B)	41:20	0.15%
Felony B >10 max	726:04	2.62%
Felony B <=10 max	922:39	3.32%
Felony C & D	1104:48	3.98%
Felony E	30:01	0.11%
Felony Total	5895:16	21.25%
Misdemeanor		
Gross Misdemeanor	94:09	0.34%
Misdemeanor	89:02	0.32%
Misdemeanor DUI	13:26	0.05%
Misdemeanor DV/DB	60:43	0.22%
Misdemeanor Total	257:20	0.93%
Probation/Parole Violation		
Parole Violation	9:25	0.03%
Probation Violation	85:25	0.31%
Probation/Parole Violation Total	94:50	0.34%
Multiple Case Types: Adult	9438:37	34.01%
Juvenile		
Juvenile Felony or Misdemeanor	1235:55	4.45%

Juvenile Sex Offender	137:58	0.50%
Violent Juvenile Offender	140:40	0.51%
Certification	273:04	0.98%
Juvenile Appeal (rehearing)	0:20	0.00%
Juvenile SC Appeal	59:32	0.21%
CHINS (truancies)	1:00	0.00%
Juvenile Probation Violation	13:50	0.05%
Multiple Case Types: Juvenile	1740:54	6.27%
Juvenile Total	3603:13	12.99%
Appeals		
Discretionary Appeal	0:53	0.00%
Extraordinary Writs	21:30	0.08%
Fast Track Guilty Plea/Other	17:56	0.06%
Fast Track Trial	104:00	0.37%
Non-Fast Track Guilty Plea/Other	0:45	0.00%
Non-Fast Track Trial	87:24	0.31%
Multiple Case Types: Appeals	172:22	0.62%
Appeals Total	404:50	1.46%
Specialty Court		
Specialty Court Misdemeanor	63:38	0.23%
Specialty Court Felony	940:03	3.39%
Specialty Court Juvenile	35:39	0.13%
Multiple Case Types: Specialty Court	8:25	0.03%
Specialty Court Total	1047:45	3.78%
Non-Case Related	6611:50	23.83%
Grand Total	27748:56	100.00%

The total number of hours entered by support staff, 27,749, as a percentage of hours entered by attorneys, 40,114, is 69%. The total number of FTE support staff, 70.5, as a percentage of the total number of attorney participants, 96, is 73.4%. This means that for every FTE attorney position, there are approximately .7 FTE staff positions, measured both in hours and FTE positions. TSG has found a support staff to attorney ratio between .8-to-1 and 1-to-1 in other jurisdictions it has studied, which supports the assertion that the Clark County Public Defender needs additional staff to provide sufficient support to attorneys.

There are a total of 16 investigator positions, or one investigator for every 6 attorneys. Many public defender offices provide one investigator to every three or four attorneys. Felony cases typically demand more attention from investigators and other support staff than do misdemeanor cases. In the Clark County Public Defender office, where the ratio of felony to misdemeanor cases is much higher than in most jurisdictions, investigator and other support is even more important.

Activity	Hours	Percent of Total
Multiple Activities	3022:55	10.9%
Investigative	2228:03	8.0%
Social Work	1119:37	4.0%
Clerical	10307:27	37.1%
General Case Support	7547:25	27.2%
Non-Case Related	3523:29	12.7%
Grand Total	27748:55	100.0%



Activity	Hours	% of Total
Investigative		
In-Court Testimony	7:40	0.03%
Information Verification	53:09	0.19%
Investigation	1232:49	4.44%
Review File Investigation Memo from Atty.	383:40	1.38%
Security	1:20	0.00%
Service of Subpoenas	257:02	0.93%
Trial Prep (maps, trial materials, etc.)	261:00	0.94%
Witness Transport	31:23	0.11%
Investigative Total	2228:03	8.03%
Social Work		
Agency Contact	129:55	0.47%
Alternative Sentencing	188:22	0.68%
Client Screening/Assessment	125:25	0.45%
Client Support	55:58	0.20%
Detention Hearing Interviews	79:50	0.29%
Home Visits	32:10	0.12%
Order/Review Records	401:39	1.45%
Post Conviction Support of Clients	16:15	0.06%
Team Meetings	90:03	0.32%
Social Work Total	1119:37	4.03%
Clerical		
Accounting	109:15	0.39%
Conflict Checking	512:34	1.85%
Covering Phones/Front Desk	1050:34	3.79%
Data Entry/Document Management	3165:56	11.41%
Document Delivery/Filing w/Court	378:52	1.37%
Document Preparation	1827:52	6.59%
Facilities Management	20:14	0.07%
File Assembly/SCOPE review	284:09	1.02%
File Location, Retrieval & Distribution	1265:11	4.56%
File Opening/Closing	1103:26	3.98%
Human Resources, Other	283:03	1.02%
Human Resources, Payroll	136:07	0.49%
Mail/Fax Distribution	166:22	0.60%
Notary Service	3:52	0.01%
Clerical Total	10307:27	37.15%
General Case Support		
Client Contact	713:24	2.57%
Conference/Case Consultation	673:24	2.43%
Discovery, Record Retrieval	254:26	0.92%
Locating Clients, Other Persons	199:15	0.72%

Office Filing	546:03	1.97%
Other Clerical	890:29	3.21%
Report Writing	796:19	2.87%
Research	600:59	2.17%
Scheduling/Calendaring	510:14	1.84%
Supervision	230:53	0.83%
Translation/Interpretation	307:48	1.11%
Travel	863:15	3.11%
Trial Attendance, Other In-Court Time	322:42	1.16%
Waiting	166:27	0.60%
Witness Contact	471:47	1.70%
General Case Support Total	7547:25	27.20%
Multiple Activities	3022:55	10.89%
Non-Case Related		
Administrative Activities	1649:22	5.94%
Community Service	99:41	0.36%
IT Support	1213:11	4.37%
Maintenance: Building, Vehicle	252:46	0.91%
Professional Development	75:36	0.27%
Training	232:53	0.84%
Non-Case Related Total	3523:29	12.70%
Grand Total	27748:55	100.00%

5.3 Workload Analysis

As noted above, in order to establish the current workload of attorneys in the Clark County Public Defender’s office, the total number of work hours are used to establish the number of hours spent on each particular case type. Multiple Case Related hours are distributed among the case types according to the percentage of time spent in each specific case type category. Non- Case Related hours are distributed according to the percentage of time spent on each specific case type as a percent of total time. As noted previously, this accounts for all of an attorney’s work-related time in order to establish the total number of hours required to dispose of each case, including the time that is not directly attributable to a particular case. This is done in Table 9.

Table 9: Distribution of Multiple and Non Case Related Time						
	Original Hours	Percent of Category	Multiple Case Related Time added	Percent of Total	Non Case Related Time added	TOTAL COMBINED HOURS
ADULT						
Capital	924:52	5%	518:16	4%	99:57	1543:05
Felony A Murder	2193:08	11%	1228:59	9%	237:01	3659:00
Felony A Sex	3870:00	20%	2168:39	15%	418:15	6456:55
Felony A Other	927:57	5%	520:00	4%	100:17	1548:14
Felony B >10 max	2757:30	14%	1545:14	11%	298:01	4600:46
Felony B <=10 max	4597:32	23%	2576:21	18%	496:53	7670:47
Complex Economic Crime (B)	51:44	0%	28:59	0%	5:35	86:18
Felony C & D	2624:59	13%	1470:59	10%	283:42	4379:30
Felony E	267:51	1%	150:05	1%	28:56	446:52
Felony Total	18215:33	92%	10207:35	72%	1968:42	30391:51
Gross Misdemeanor	427:17	2%	239:26	2%	46:10	712:54
Misdemeanor	248:06	1%	139:01	1%	26:48	413:56
Misdemeanor DUI	254:51	1%	142:48	1%	27:32	425:12
Misdemeanor DV/DB	365:53	2%	205:01	1%	39:32	610:27
Misdemeanor Appeal	13:49	0%	7:44	0%	1:29	23:03
Misdemeanor Total	1296:07	7%	726:18	5%	141:34	2185:34

Parole Violation	6:45	0%	3:46	0%	0:43	11:15
Probation Violation	173:41	1%	97:19	1%	18:46	289:46
All Adult Trial	19705:55	100%	11042:46	78%	2129:46	32878:27
Multiple Case Types: Adult	11042:46					
JUVENILE						
Certification	407:21	10%	98:07	2%	44:01	549:30
Juvenile Sex Offender	669:21	17%	161:14	3%	72:20	902:55
Violent Juvenile Offender	382:04	10%	92:02	2%	41:17	515:23
Juvenile Fel. or Misd.	2211:03	56%	532:36	9%	238:57	2982:37
CHINS (truancies)	10:33	0%	2:32	0%	1:08	14:13
Juvenile SC Appeal	187:37	5%	45:11	1%	20:16	253:05
All Juvenile	3916:45	100%	943:30	15%	423:18	5283:33
Juvenile Probation Violation	48:46	1%	11:44	0%	5:16	65:47
Multiple Case Types: Juv	943:30	19%				
APPELLATE						
Discretionary Appeal	81:54	5%	3:04	0%	8:51	93:49
Extraordinary Writs	0:40	0%	0:01	0%	0:04	0:45
Fast Track Guilty Plea/Other	23:28	1%	0:52	0%	2:32	26:52
Fast Track Trial	322:34	20%	12:04	1%	34:51	369:30
Non-Fast Track Guilty Plea/Other	0:15	0%	0:00	0%	0:01	0:17
Non-Fast Track Trial	1171:25	73%	43:52	5%	126:36	1341:53
All Appellate	1600:16	100%	59:56	6%	172:57	1833:09
Multiple Case Types: Appeals	59:56					
SPECIALTY COURT						
Specialty Court Misdemeanor	35:11	38%	5:43	0.1%	3:48	44:42
Specialty Court Felony	13:37	15%	2:12	0.1%	1:28	17:18
Specialty Court Juvenile	44:29	48%	7:14	0.2%	4:48	56:31
All Specialty	93:17	100%	15:11	0.4%	10:04	118:32
Multiple Case Types: Spec. Court	15:11					

Table 10 establishes the number of hours per disposition for each case type for which TSG was able to collect sufficient data and for which there was a sufficient number of dispositions to accurately reflect the workload of the public defender attorneys. Note that Felony A Sex cases include cases that were worked on by attorneys other than those that are part of the Sex Assault Team.

Note that the disposition rate for Felony E cases is greater than that of any of the misdemeanor case types. This may be due to these cases consisting largely of minor drug offenses, which are often pled out if the defendant agrees to participate in drug court programs. The drug court cases are then handled by contract attorneys who did not participate in the time study.

TABLE 10: Clark County Public Defender Attorney Workloads (based on 1863 available work hours per year)				
Case Type	A. Total Hours (TABLE 1)	B. Dispositions	C. Hours per Disposition+ (A/B)	D. Annual Dispositions per FTE Attorney (1863 /C)
ADULT FELONY				
Felony A Sex	6456:55	51	126:36	14.7
Felony A Other	1548:14	83	18:39	99.9
Felony B >10 max*	4600:46	329	13:59	133.1
Felony B <=10 max*	7757:05	1359	5:42	326.4
<i>All Felony B*</i>	<i>12357:52</i>	<i>1688</i>	<i>7:19</i>	<i>254.5</i>
Felony C & D	4379:40	745	5:52	316.9
Felony E	446:53	346	1:17	1442.4
Non Murder Felony Total	25189:36	2913	8:38	215.4
ADULT MISDEMEANOR				
Gross Misdemeanor & Unclassified Felony**	712:54	285	2:30	744.8
Misdemeanor	436:59	304	1:21	1368.2
Misdemeanor DUI	425:12	193	2:12	845.6
Misdemeanor DV/DB	610:27	351	1:44	1071.2
Misdemeanor Total	2185:34	1133	1:55	965.8
Parole Violation				
Probation Violation	173:41	300	0:34	3217.9
JUVENILE***				
Certification	549:30			
Juvenile Sex Offender	902:55			
Violent Juvenile Offender	515:23			
Juvenile Fel or Misd	2982:37			
CHINS (truancies)	14:13			
Juvenile SC Appeal	253:05			
All Juvenile	5283:33	951	5:33	335.3
Juvenile Probation Violation	65:47	144	0:27	4078.0

+Dispositions were derived from data provided by the Clark County Public Defender case management system.

* The Public Defender Case Management system did not record case types with sufficient specificity to identify sentence lengths of the B Felonies. This analysis apportions B felonies in the same proportions as those reported during the study. The aggregated amount of time is also reported here.

** A number of cases (75) that did not specify the class of Felony are counted here as Gross Misdemeanors, as many of the charges are indeterminate and may be prosecuted as either felonies or misdemeanors.

*** The Public Defender's Case Management System does not classify offenses in the same categories as were tracked by the attorneys, therefore an aggregate number is used.

Validation

In order to assess the accuracy of the time study results, actual assignments for Calendar Year 2008, excluding cases which conflicted out of the office and cases which are still out on bench warrant, were used to determine the number of attorneys needed. Dividing the number of assignments by case type by the annual dispositions by case type calculated in Table 10 results in the number of FTE attorneys needed to process those cases to disposition, shown in Table 11. In Murder and Appellate cases, since

disposition rates were not established in this study, FTE requirements were established by annualizing the number of hours spent on that case type, and dividing the result by 1863 available work hours per attorney. To annualize the number of hours, divide by .23 (12 weeks of recorded time divided by 52 weeks in a year).

Table 11: Projected Number of FTE Attorneys using CY 2008 Actual Assignments				
	A. CY 2008 Assignments	B. Annual Dispositions per Attorney (TABLE 10)	C. FTEs Required at Current Disposition Rate (A/B)	D. Actual FTE Attorney Positions
Felony A Sex	273	14.7	18.6	8
Felony A Other	267	99.9	2.7	62
Felony B >10 max	1194	133.1		
Felony B <=10 max	4938	326.4		
<i>All Felony B</i>	<i>6132</i>	<i>254.5</i>	<i>24.1</i>	
Felony C	2071	316.9	6.5	
Felony D	1250	316.9	3.9	
Felony E	1764	1442.4	1.2	
Gross Misdemeanor	1168	744.8	1.6	
Misdemeanor DUI	978	1368.2	1.2	
Misdemeanor DV	1780	845.6	1.7	
Other Misdemeanor	1421	1071.2	1.0	
Adult PV	1304	3217.9	.4	
Murder (Attorneys recorded 22,543 hours during the study under the Capital and Murder Case Types. Annualized, and divided by 1863 available work hours, results in 12.1 FTE)			12.1	
TOTAL ADULT ATTORNEYS			74.8	80
All Juvenile Delinquency	4651	335.3	13.9	
Juvenile PV	655	4078.0	0.2	
TOTAL JUVENILE ATTORNEYS			14.1	13
Appellate (Attorneys recorded 1,833 hours of Appeals case types during the study. Annualized, and divided by 1863 available work hours, results in 4.3 FTE)		(Appellate attorneys were instructed to record the non-appellate case type when giving advice)	4.3	5
GRAND TOTAL			93.3	98
Difference			4.7 FTE, or 4.8%	

Section VI. Washoe County Time Keeping Analysis

The Washoe County Public Defender and Alternate Public Defender time is combined for this analysis. The Alternate Public Defender typically handles Adult and Juvenile conflicts from the Public Defender Office, and also staffs the Adult Drug Court, DUI Court and Mental Health Court, Dependency cases and Terminations of Parental Rights. The Public Defender Office handles Adult and Juvenile cases, Civil Commitments, Dependency cases and Terminations of Parental Rights. The Public Defender also staffs the Family Specialty Courts.

6.1 Attorneys

In Washoe County, 40 of the 41 attorneys who work directly on cases, or 98% of attorneys, comprise the final sample and are included in the following analysis. Administrative attorneys who did not carry a caseload were excluded from this analysis. Team chiefs, all of whom carry a caseload, were included in the time study, including the head of the Alternate Public Defender office. In sum, the 40 attorneys entered 17,032 hours of work related time during the 12-week period.

TABLE 12: Washoe County Attorney Hours by Case Type		
Case Type	Hours	Percent of Total
Capital	309:24	1.8%
Felony		
Felony A Murder	862:12	5.1%
Felony A Sex	709:02	4.16%
Felony A Other	233:28	1.37%
Complex Economic Crime (B)	48:14	0.3%
Felony B >10 max	784:30	4.6%
Felony B <=10 max	1002:04	5.9%
Felony C & D	1086:58	6.4%
Felony E	217:56	1.3%
Felony Total	4944:24	29.0%
Misdemeanor		
Gross Misdemeanor	335:57	2.0%
Misdemeanor	677:26	4.0%
Misdemeanor DUI	759:06	4.5%
Misdemeanor DV/DB	193:16	1.1%
Misdemeanor Appeal	9:27	0.1%
Misdemeanor Total	1975:12	11.6%
Probation/Parole Violation		
Parole Violation	29:48	0.2%
Probation Violation	20:35	0.1%
Probation/Parole Violation Total	50:23	0.3%
Multiple Case Types: Adult	2751:44	16.2%
Juvenile		
Juvenile Felony or Misdemeanor	1291:46	7.6%
Juvenile Sex Offender	31:03	0.2%

Violent Juvenile Offender	2:15	0.0%
Certification	58:06	0.3%
Juvenile Appeal (rehearing)	1:15	0.0%
CHINS (truancies)	5:00	0.0%
Juvenile Probation Violation	10:15	0.1%
Multiple Case Types: Juvenile	131:27	0.8%
Juvenile Total	1531:07	9.0%
Family/Civil		
Civil Commitment	209:47	1.2%
Dependency	1564:07	9.2%
Termination of Parental Rights	349:46	2.1%
Multiple Case Types: Family/Civil	187:30	1.1%
Specialty Court Family/Civil	136:15	0.8%
Family/Civil Total	2447:25	14.4%
Appeals		
Discretionary Appeal	1:10	0.0%
Extraordinary Writs	39:43	0.2%
Fast Track Guilty Plea/Other	52:52	0.3%
Fast Track Trial	84:46	0.5%
Non-Fast Track Guilty Plea/Other	36:23	0.2%
Non-Fast Track Trial	135:35	0.8%
Multiple Case Types: Appeals	31:30	0.2%
Appeals Total	381:59	2.2%
Specialty Court		
Specialty Court Misdemeanor	30:32	0.2%
Specialty Court Felony	165:00	1.0%
Multiple Case Types: Specialty Court	472:53	2.8%
Specialty Court Total	668:25	3.9%
Non-Case Related	1972:05	11.6%
Grand Total	17032:07	100.0%

TABLE 13: Washoe County Attorney Hours by Activity

Activity	Hours	Percent of Total
In Court	2026:42	11.9%
Out Of Court	11928:19	70.0%
Multiple Activities	1225:51	7.2%
Non Case Related	1851:36	10.9%
Grand Total	17032:28	100.0%

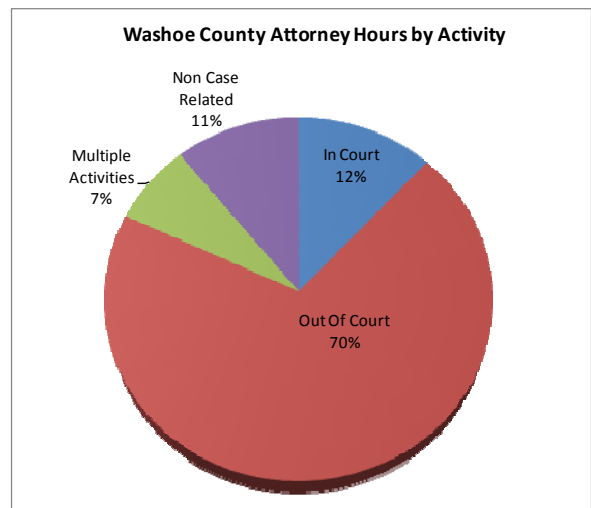
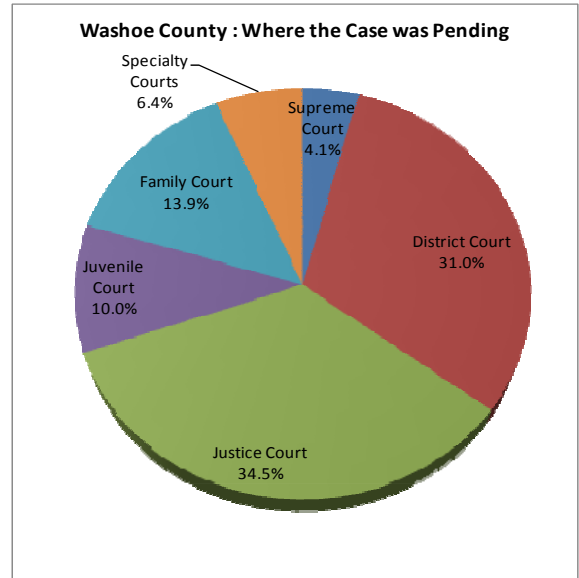


TABLE 14: Washoe County Attorney Hours by Activity Detail								
Activity	Felony		Misdemeanor		Juvenile		Family/Civil	
	Hours	% of Total	Hours	% of Total	Hours	% of Total	Hours	% of Total
In Court								
Arraignment/Bond Hearing	104:00	2.1%	15:09	0.8%	0:51	0.1%	0:30	0.0%
Preliminary Hearing	266:08	5.4%	26:00	1.3%	0:00	0.0%	0:00	0.0%
Status Check/Court Ordered Reviews	15:57	0.3%	6:38	0.3%	35:44	2.3%	193:21	7.9%
Motions/Writs Hearing	34:07	0.7%	8:20	0.4%	2:34	0.2%	3:03	0.1%
Trial	316:55	6.4%	46:55	2.4%	14:39	1.0%	10:32	0.4%
Sentencing	96:44	2.0%	50:13	2.5%	2:05	0.1%	0:00	0.0%
Post Trial/Post-Plea Matters	27:38	0.6%	19:13	1.0%	0:20	0.0%	12:35	0.5%
Disposition/Plea Hrg/Case Setting/Cal. Call	46:33	0.9%	103:01	5.2%	73:56	4.8%	16:13	0.7%
Anaya hearing (Probation)	9:12	0.2%	0:37	0.0%	0:00	0.0%	0:00	0.0%
Civil Commitment Hearing	0:00	0.0%	0:00	0.0%	0:00	0.0%	22:26	0.9%
Competency Proceeding	7:12	0.1%	2:43	0.1%	0:10	0.0%	0:00	0.0%
Contempt	1:04	0.0%	8:03	0.4%	0:00	0.0%	0:00	0.0%
Detention Hearing	3:26	0.1%	2:45	0.1%	44:06	2.9%	0:00	0.0%
Diversion/Deferred Pros./Early Offer	0:45	0.0%	1:18	0.1%	0:35	0.0%	6:00	0.2%
Evidentiary Hearing	18:45	0.4%	7:15	0.4%	0:57	0.1%	4:52	0.2%
Extraditions	0:10	0.0%	0:00	0.0%	0:50	0.1%	0:00	0.0%
Transfer Hearing (Certification)	0:00	0.0%	0:00	0.0%	1:15	0.1%	0:00	0.0%
Oral Argument (Appeals)	0:00	0.0%	0:00	0.0%	2:20	0.2%	2:30	0.1%
In Court Total	948:36	19.2%	298:10	15.1%	180:22	11.8%	272:02	11.1%
Out Of Court								
Case Preparation	1023:39	20.7%	225:08	11.4%	354:48	23.2%	322:51	13.2%
Document Review	376:21	7.6%	48:57	2.5%	38:01	2.5%	204:48	8.4%
Legal Research	180:42	3.7%	114:07	5.8%	40:09	2.6%	55:09	2.3%
Pleadings/Brief Writing	159:03	3.2%	105:38	5.3%	47:49	3.1%	124:55	5.1%
Case Admin., Follow-Up, Report Writing	226:48	4.6%	140:53	7.1%	185:54	12.1%	280:05	11.4%
Direct Client Contact	697:10	14.1%	296:34	15.0%	229:19	15.0%	344:16	14.1%
Client Related Contact	145:07	2.9%	67:53	3.4%	44:10	2.9%	98:11	4.0%
Communication w/ Investigator	65:11	1.3%	9:04	0.5%	12:20	0.8%	32:33	1.3%
Communication w/ Social Worker	4:49	0.1%	1:20	0.1%	1:45	0.1%	74:16	3.0%
Conf. w/ DA, Ct. Personnel/ Dep. Tm. Mtg.	257:16	5.2%	94:41	4.8%	113:22	7.4%	278:23	11.4%
Conference with Supervisor/Colleague	248:01	5.0%	49:34	2.5%	60:17	3.9%	97:08	4.0%
Justification for Costs	0:35	0.0%	0:30	0.0%	0:05	0.0%	0:00	0.0%
Appellate Document Collection	4:40	0.1%	4:15	0.2%	0:00	0.0%	0:00	0.0%
Appellate Filing/E-filing	0:00	0.0%	11:35	0.6%	0:10	0.0%	0:25	0.0%
Social Services by Attorney	0:20	0.0%	0:20	0.0%	1:40	0.1%	4:55	0.2%
Investigation by Attorney	22:14	0.4%	0:55	0.0%	1:55	0.1%	7:10	0.3%
Clerical	21:41	0.4%	11:33	0.6%	2:15	0.1%	5:28	0.2%
Supervision	40:29	0.8%	7:56	0.4%	15:05	1.0%	52:34	2.1%
Travel	283:34	5.7%	175:08	8.9%	113:28	7.4%	76:20	3.1%
Waiting	169:23	3.4%	104:45	5.3%	18:40	1.2%	6:31	0.3%
Out Of Court Total	3927:03	79.4%	1470:46	74.5%	1281:12	83.7%	2065:58	84.4%
Non Case Related								
Administrative Activities	0:15	0.0%	0:10	0.0%	0:00	0.0%	0:00	0.0%
Professional Development	0:00	0.0%	0:00	0.0%	0:00	0.0%	1:35	0.1%
Non Case Related Total	0:15	0.0%	0:10	0.0%	0:00	0.0%	1:35	0.1%
Multiple Activities	68:30	1.4%	206:06	10.4%	69:33	4.5%	107:50	4.4%
Grand Total	4944:24	100.0%	1975:12	100.0%	1531:07	100.0%	2447:25	100.0%

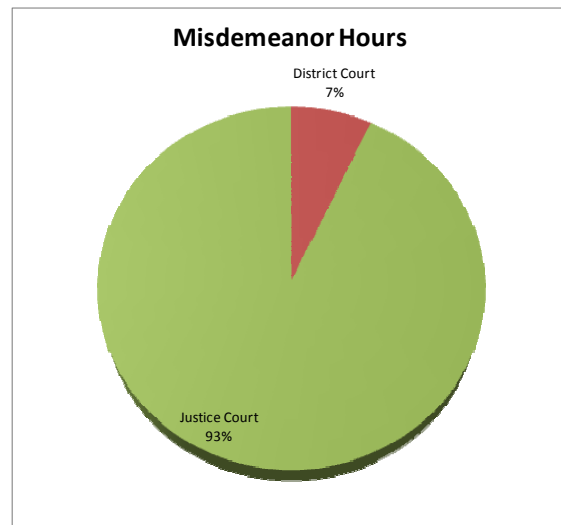
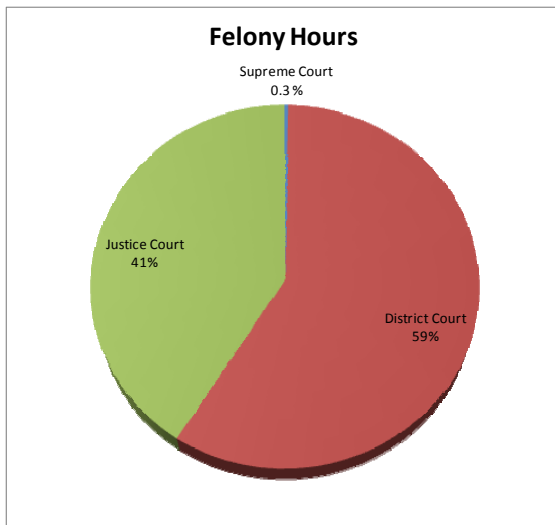
Pending Cases

Attorneys were instructed to indicate the court in which the case was pending for each activity entered. Table 15 presents the total number of hours entered by court type.

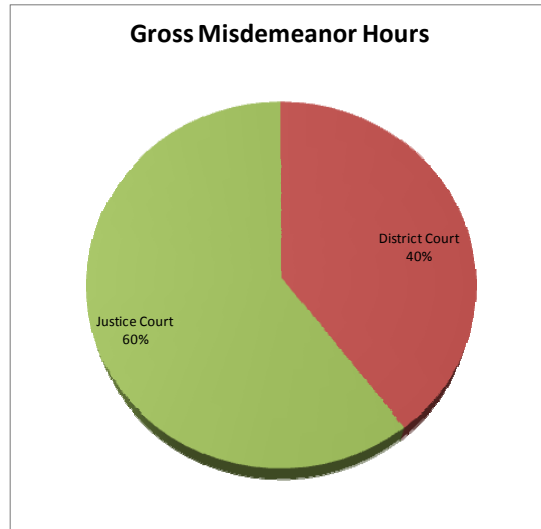
Row Labels	Hours	Percent of Total
Supreme Court	607:31	4.1%
District Court	4587:36	31.0%
Justice Court	5102:56	34.5%
Juvenile Court	1482:12	10.0%
Family Court	2047:10	13.9%
Specialty Courts	952:16	6.4%
Grand Total	14779:41	100.0%



Court	Felony		Misdemeanor		Combined	
	Hours	Percent of Total	Hours	Percent of Total	Hours	Percent of Total
Supreme Court	15:45	0.3%	0:00	0.0%	15:45	0.2%
District Court	2828:23	58.6%	138:57	7.1%	2967:20	43.7%
Justice Court	1981:45	41.1%	1826:12	92.9%	3807:57	56.1%
Grand Total	4825:53	100.0%	1965:09	100.0%	6791:02	100.0%



Since Gross Misdemeanors, like Felonies, can only be disposed of in District Court (other than by dismissal), the numbers of hours spent in each court are indicated separately in the chart below.



6.2 Support Staff

As shown in Table 17, the total number of hours entered by support staff, 12,257, as a percentage of hours entered by attorneys, 17,032, is 72%. The total number of FTE support staff, 30, as a percentage of the total number of attorney participants, 40, is 75%. This means that for every FTE attorney position, there are approximately .75 FTE staff positions, measured both in hours and FTE positions. TSG has found a ratio between .8-to-1 and 1-to-1 in other jurisdictions it has studied, which supports the assertion that the Washoe County Public Defender needs additional staff to provide sufficient support to attorneys.

TABLE 17: Washoe County Support Staff Hours by Case Type		
Case Type	Hours	Percent of Total
Capital	156:25	1.28%
Felony		
Felony A Murder	387:06	3.16%
Felony A Sex	604:26	4.93%
Felony A Other	126:36	1.03%
Complex Economic Crime (B)	41:44	0.34%
Felony B >10 max	514:56	4.20%
Felony B <=10 max	379:30	3.10%
Felony C & D	387:31	3.16%
Felony E	38:14	0.31%
Felony Total	2480:03	20.23%
Misdemeanor		
Gross Misdemeanor	97:49	0.80%
Misdemeanor	264:30	2.16%
Misdemeanor DUI	47:27	0.39%
Misdemeanor DV/DB	58:44	0.48%
Misdemeanor Appeal	1:45	0.01%
Misdemeanor Total	470:15	3.84%
Probation/Parole Violation		

Parole Violation	14:53	0.12%
Probation Violation	36:51	0.30%
Probation/Parole Violation Total	51:44	0.42%
Multiple Case Types: Adult	3766:55	30.73%
Juvenile		
Juvenile Felony or Misdemeanor	433:44	3.54%
Juvenile Sex Offender	6:53	0.06%
Violent Juvenile Offender	6:11	0.05%
Certification	106:51	0.87%
Juvenile Probation Violation	6:15	0.05%
Multiple Case Types: Juvenile	381:16	3.11%
Juvenile Total	941:10	7.68%
Family/Civil		
Civil Commitment	80:00	0.65%
Dependency	579:54	4.73%
Specialty Court Family/Civil	24:11	0.20%
Termination of Parental Rights	92:23	0.75%
Family Ct Appeal	17:04	0.14%
Multiple Case Types: Family/Civil	285:29	2.33%
Family/Civil Total	1079:01	8.80%
Appeals		
Non-Fast Track Guilty Plea/Other	2:56	0.02%
Multiple Case Types: Appeals	12:08	0.10%
Appeals Total	15:04	0.12%
Specialty Court		
Specialty Court Misdemeanor	4:35	0.04%
Specialty Court Felony	333:48	2.72%
Specialty Court Juvenile	3:45	0.03%
Multiple Case Types: Specialty Court	6:30	0.05%
Specialty Court Total	348:38	2.84%
Non-Case Related	2947:45	24.05%
Grand Total	12257:00	100.00%

Activity	Hours	Percent of Total
Investigative		
In-Court Testimony	2:01	0.0%
Information Verification	79:13	0.6%
Investigation	1009:08	8.2%
Review File Investigation Memo from Atty.	164:55	1.3%
Service of Subpoenas	80:52	0.7%
Trial Prep (maps, trial materials, etc.)	199:40	1.6%
Witness Transport	4:00	0.0%
Investigative Total	1539:49	12.6%
Social Work		
Agency Contact	60:25	0.5%
Alternative Sentencing	10:48	0.1%
Client Support	91:57	0.8%
Home Visits	6:48	0.1%
Order/Review Records	124:16	1.0%
Post Conviction Support of Clients	4:10	0.0%
Team Meetings	69:01	0.6%
Social Work Total	367:25	3.0%
Clerical		
Accounting	8:35	0.1%

Conflict Checking	143:05	1.2%
Covering Phones/Front Desk	527:19	4.3%
Data Entry/Document Management	1675:31	13.7%
Document Delivery/Filing w/Court	164:16	1.3%
Document Preparation	585:20	4.8%
Facilities Management	69:28	0.6%
File Assembly/SCOPE review	5:31	0.0%
File Location, Retrieval & Distribution	160:32	1.3%
File Opening/Closing	1615:18	13.2%
Human Resources, Other	37:51	0.3%
Human Resources, Payroll	38:49	0.3%
Mail/Fax Distribution	15:51	0.1%
Notary Service	0:29	0.0%
Clerical Total	5047:55	41.2%
General Case Support		
Client Contact	357:53	2.9%
Conference/Case Consultation	326:24	2.7%
Discovery, Record Retrieval	160:46	1.3%
Locating Clients, Other Persons	127:47	1.0%
Office Filing	275:29	2.2%
Other Clerical	121:37	1.0%
Report Writing	222:55	1.8%
Research	95:57	0.8%
Scheduling/Calendaring	442:25	3.6%
Supervision	207:27	1.7%
Translation/Interpretation	25:53	0.2%
Travel	93:26	0.8%
Trial Attendance, Other In-Court Time	122:10	1.0%
Waiting	9:21	0.1%
Witness Contact	140:50	1.1%
General Case Support Total	2730:20	22.3%
Multiple Activities	594:40	4.9%
Non-Case Related		
Administrative Activities	1685:18	13.7%
Community Service	36:22	0.3%
IT Support	73:35	0.6%
Maintenance: Building, Vehicle	11:56	0.1%
Professional Development	110:31	0.9%
Training	59:09	0.5%
Non-Case Related Total	1976:51	16.1%
Grand Total	12257:00	100.0%

6.3 Workload Analysis

As noted above, in order to establish the current workload of attorneys in Washoe County, the total number of work hours are used to establish the number of hours spent on each particular case type. Multiple Case Related hours are distributed among the case types according to the percentage of time spent in each specific case type category. Non-Case Related hours are distributed according to the percentage of time spent on each specific case type as a percent of total time (see Table 19).

Table 19: Distribution of Multiple and Non Case Related Time						
	Original Hours	Percent of Category	Multiple Case Related Time added	Percent of Total	Non Case Related Time added	TOTAL COMBINED HOURS
ADULT						
Capital	309:24	4%	116:57	3%	53:07	479:29
Felony A Murder	862:12	12%	325:55	8%	148:02	1336:10
Felony A Sex	709:02	10%	268:01	6%	121:44	1098:48
Felony A Other	233:28	3%	88:15	2%	40:05	361:48
Felony B >10 max	784:30	11%	296:33	7%	134:42	1215:45
Felony B <=10 max	1002:04	14%	378:47	9%	172:03	1552:55
Complex Economic Crime (B)	48:14	1%	18:13	0%	8:16	74:44
Felony C & D	1086:58	15%	410:53	9%	186:38	1684:29
Felony E	217:56	3%	82:22	2%	37:25	337:44
Felony Total	4082:12	56%	1543:08	36%	700:55	6326:16
Gross Misdemeanor	335:57	5%	126:59	3%	57:41	520:37
Misdemeanor	677:26	9%	256:04	6%	116:19	1049:50
Misdemeanor Appeal	9:27	0%	3:34	0%	1:37	14:38
Misdemeanor DUI	759:06	10%	286:57	7%	130:20	1176:23
Misdemeanor DV/DB	193:16	3%	73:03	2%	33:11	299:30
Misdemeanor Total	1975:12	27%	746:39	17%	339:09	3061:00
Parole Violation	29:48	0%	11:15	0%	5:07	46:10
Probation Violation	20:35	0%	7:46	0%	3:32	31:53
All Adult Trial	7279:23	100%	2751:44	63%	1249:54	11281:01
Multiple Case Types: Adult	2751:44					
JUVENILE						
Certification	58:06	4%	5:27	1%	9:58	73:31
Juvenile Felony or Misdemeanor	1291:46	92%	121:19	11%	221:48	1634:53
Juvenile Sex Offender	31:03	2%	2:54	0%	5:19	39:17
Violent Juvenile Offender	2:15	0%	0:12	0%	0:23	2:50
CHINS (truancies)	5:00	0%	0:28	0%	0:51	6:19
Juvenile Appeal (rehearing)	1:15	0%	0:07	0%	0:12	1:34
All Juvenile	1399:40	100%	131:27	12%	240:19	1771:26
Juvenile Probation Violation	10:15	1%	0:57	0%	1:45	12:58
Multiple Case Types: Juvenile	131:27					
Family/Civil						
Civil Commitment	209:47	10%	18:31	2%	36:01	264:19
Dependency	1564:07	74%	138:04	14%	268:33	1970:45
Termination of Parental Rights	349:46	16%	30:52	3%	60:03	440:41
Family Ct Appeal	0:20	0%	0:01	0%	0:03	0:25
All Family/Civil	2124:00	100%	187:28	18%	364:42	2676:10
Multiple Case Types: Family/Civil	187:30					
APPELLATE						
Discretionary Appeal	1:10	0%	0:06	0%	0:12	1:28
Extraordinary Writs	39:43	11%	3:34	0%	6:49	50:06
Fast Track Guilty Plea/Other	52:52	15%	4:45	0%	9:04	66:41

Fast Track Trial	84:46	24%	7:37	1%	14:33	106:56
Non-Fast Track Guilty Plea/Other	36:23	10%	3:16	0%	6:14	45:54
Non-Fast Track Trial	135:35	39%	12:11	1%	23:16	171:02
All Appellate	350:29	100%	31:30	3%	60:10	442:09
Multiple Case Types: Appeals	31:30					
SPECIALTY COURT						
Specialty Court Misdemeanor	30:32	9%	43:31	0.3%	5:14	79:17
Specialty Court Felony	165:00	50%	235:10	1.4%	28:19	428:30
Specialty Court Family/Civil	136:15	41%	194:11	1%	23:23	353:50
All Specialty	331:47	100%	472:53	2.9%	56:58	861:38
Multiple Case Types: Specialty Court	472:53					

Table 20 establishes the number of hours per disposition for each case type for which TSG was able to collect sufficient data and for which there was a sufficient number of dispositions to accurately reflect the workload of the public defender attorneys.

TABLE 20: Washoe County Public Defender Attorney Workloads (based on 1831 available work hours per year)				
Case Type	A. Total Hours (Table 11)	B. Dispositions	C. Hours per Disposition+ (A/B)	D. Annual Dispositions per FTE Attorney (1831/C)
ADULT FELONY				
Felony A Sex	1098:55	9	122:06	15.0
Felony A Other	361:50	19	19:02	96.1
Felony B >10 max	1215:53	81	15:00	122.0
Felony B <=10 max	1627:51	234	6:38	275.9
<i>All B</i>	<i>2843:45</i>	<i>315</i>	<i>9:01</i>	<i>202.8</i>
Felony C & D	1684:41	215	7:50	233.7
Felony E	337:46	97	3:28	525.8
Non Murder Felony Total	6326:59	655	9:39	189.6
ADULT MISDEMEANOR				
Gross Misdemeanor	520:41	147	3:32	516.9
Misdemeanor	1049:57	184	5:42	320.9
Misdemeanor DUI	1176:31	263	4:28	409.3
Misdemeanor DV/DB	299:32	104	2:52	635.7
Misdemeanor Total	3046:42	698	4:23	417.5
Parole Violation	46:10	17	2:43	673.9
Probation Violation	31:53	84	0:22	4,821.1
JUVENILE*				
Certification	73:31			

Juvenile Fel. or Misd.	1634:53			
Juvenile Sex Offender	39:17			
Violent Juvenile Offender	2:50			
CHINS (truancies)	6:19			
All Juvenile	1756:53	228	7:42	237.4
Juvenile Probation Violation	12:58	19	0:40	2,679.7
Family/Civil				
Civil Commitment	263:14	217	1:12	1,509.3
Dependency (significant stages)**	1962:43	255	7:41	237.9
<i>Dependency (new & reopens)**</i>	<i>1962:43</i>	<i>78</i>	<i>25:09</i>	<i>72.6</i>
Specialty Court Family/Civil	170:58	-		
Termination of Parental Rights	438:54	20	21:56	83.4
All Family/Civil	2676:10			
SPECIALTY COURTS				
Specialty Courts	702:01	97***	7:14	253.0

+Dispositions derived from Washoe County Public Defender and Alternate Public Defender Case Management system.

* The County Case Management System does not classify offenses in the same categories as were tracked by the attorneys, therefore an aggregate number is used.

** Dependency cases are analyzed here using two different measures. Because dependency cases may take many years before they are finally resolved, significant stages of the proceedings, usually review and placement hearings, are used in the first instance. New and reopens are used in the second instance as a measure of the number of new petitions being filed per attorney per year.

***This is the number of graduations or failures reported by the attorneys during the study period.

Validation

In order to assess the accuracy of the time study results, actual assignments for Calendar Year 2008, excluding cases which conflicted out of the office and cases which are still out on bench warrant, were used to determine the number of attorneys needed. Dividing the number of assignments by case type by the annual dispositions by case type calculated in Table 10 results in the number of FTE attorneys needed to process those cases to disposition. In Murder and Appellate cases, since disposition rates were not established in this study, FTE requirements were established by annualizing the number of hours spent on that case type, and dividing the result by 1831 available work hours per attorney. To annualize the number of hours, divide by .23 (12 weeks of recorded time divided by 52 weeks in a year).

Table 21: Projected Number of FTE Attorneys using CY 2008 Actual Assignments					
	A. CY 2008 Assignments	B. Annual Dispositions per Attorney (TABLE 20)	C. FTEs Required at Current Disposition Rate (A/B)	D. Actual FTE Attorney Positions	
Felony A Sex	58	15.0	3.9	33	
Felony A Other	112	96.1	1.2		
Felony B >10 max	471	122.0	3.9		
Felony B <=10 max	1491	275.9	5.4		
<i>All Felony B</i>	1962	202.8			
Felony C	670	233.7	2.9		
Felony D	450	233.7	1.9		
Felony E	517	525.8	1.0		
Gross Misdemeanor	751	516.9	1.5		
Misd DUI	1229	320.9	3.0		
Misd DV	459	409.3	0.7		
Other Misd	874	635.7	2.7		
Adult PV	364	4,821.1	0.1		
Murder * (Attorneys recorded 1816 hours during the study under the Murder Case Type. Annualized, and divided by 1863 available work hours, results in 4.3 FTE)			4.3		
TOTAL ADULT ATTORNEYS			32.4		33
All Juvenile Delinquency	1917	237.4	6.8		5
Juvenile PV	82	2,679.7	0.02		
TOTAL JUVENILE ATTORNEYS			6.8	5	
Appellate * (Attorneys recorded 442 hours of Appeals case types during the study. Annualized, and divided by 1831 available work hours, results in 1.0 FTE)		(Appellate attorneys were instructed to record the non-appellate case type when giving advice)	1.0	1	
GRAND TOTAL			40.2	39	
Difference				-1, or 3%	

Workload validation for Family, Civil and Specialty Court attorneys is not performed here.

Section VII. Discussion

The case-weighting model employed by TSG is one in which detailed time records are kept by public defenders over a given period of time, typically ranging from ten to fifteen weeks. The time records provide a means by which caseload (the number of cases handled) can be translated to workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). The ability to weight cases allows thorough consideration of not just the raw number of cases assigned to a criminal justice agency annually, but also the severity of cases handled by the program, the experience level of its attorneys, the ratio of support staff to attorneys, and the attorneys' other work requirements. In the broadest context, weights can be given to the total annual caseload of a defender organization to compare to the next year's anticipated volume of cases.¹⁴ This method solves those problems posed by relying on national numerical standards because it is current and jurisdiction-specific. Furthermore, the case-weighting method has become an accepted method among courts and prosecutors in determining staffing levels as well, but because their functions differ so greatly, they should never be used to draw comparisons between the different agencies. Caseload standards adopted by any jurisdiction are not appropriate for measuring the *quality* of representation provided to clients in any individual case. Nor, without additional data, is it appropriate to apply these standards to any individual attorney or small group of attorneys. Individual attorney workload must always take into consideration the experience of the attorney, the difficulty of their current cases and the amount of support available to the attorney in terms of clerical, investigative and administrative resources. It is important for a supervisor to closely monitor each attorney's workload to ensure that the individual attorney does not become overloaded.

TSG's case-weighting model shows that, in felony cases, public defenders in Clark and Washoe Counties average nearly 200 dispositions per year. Although these numbers evidence progress from prior studies of Nevada,¹⁵ they are still significantly higher than caseload standards found in other comparable jurisdictions in which TSG has conducted studies. The caseload standards in those jurisdictions reflect justice systems in which attorneys were not overloaded with cases to the extent present in Clark and Washoe counties.

The original intent of this report was to develop recommended caseload standards that would allow attorneys enough time to represent their clients while meeting the performance standards set forth

¹⁴ When estimating their annual caseload, public defender agencies should consider input from all components of a criminal justice system, including law enforcement, courts, prosecutors, and bar associations.

¹⁵ Reports from NLADA and the Indigent Defense Commission previously have recounted higher caseloads in Nevada. However, as those studies have employed different methodologies from the present study, it is difficult to compare the numbers exactly.

in ADKT-411. TSG had intended to field a secondary survey of attorneys to determine the additional time necessary to comply with the performance standards set forth in ADKT-411. However, County administrators, in consultation with TSG and the Nevada Supreme Court, determined that it was premature to ask attorneys to determine this measure before they had an opportunity to practice under the new guidelines. Instead, TSG must analyze the current workload established by this study in the context of caseload standards developed in other jurisdictions designed to allow attorneys to continue to provide effective representation.

In 1971, the Law Enforcement Assistance Administration, a federal agency within the United States Department of Justice, commissioned the National Advisory Commission on Criminal Justice Standards and Goals (hereinafter “NAC”). One of six reports issued by the NAC, the *Report on Courts*, published in 1973, has had substantial impact because it is the only national source that has attempted to quantify a maximum annual public defender caseload. During the preparation of the *Report on Courts*, the NAC relied mostly on qualitative and anecdotal information to formulate its standards.¹⁶ Although the NAC Standards have not been formally adopted by the American Bar Association, the standards have been cited by the ABA and referred to by some practitioners and researchers in the criminal justice field, if only for the lack of other readily available numerical national standards.

The NAC *Report on Courts* articulated express standards for indigent defense services with the goals of expanding resources for professional and support staff; increasing the amount of state versus county funding of indigent defense services; and representing all eligible defendants during all stages of criminal proceedings. The NAC standards also called for specific criteria for initial client contact, parity of pay with attorney associates at local law firms, and numerical caseload levels.

With regard to the caseload levels of public defenders, the NAC established these numerical standards based on estimates by seasoned defense attorneys that public defenders should not handle more than 150 felonies per year, 400 misdemeanors per year, 200 juvenile court cases per year, 200 Mental Health Act cases per year, or 25 appeals per year *when that attorney is handling only one type of case*.¹⁷ These standards were adopted based entirely upon estimates obtained from a number of advisory committee members. These NAC caseload standards composed in 1973 are still often cited but never, in TSG’s experience, monitored or enforced in any public defender program in the country.

Although the NAC standards have historically served as a useful comparison tool for individuals and organizations advocating for attorney caseload reduction, they should not be used in projecting

¹⁶ *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Washington, D.C., 43, 265 (Jan. 1973).

¹⁷ *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Washington, D.C., Standard 13.12 (Jan. 1973). For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for post-judgment review is a separate case. *Id.* at 276.

jurisdiction-specific staffing needs because they do not account for: 1) local practice variations across the country; 2) case complexity; and 3) ever-evolving laws and policies. Additionally, the NAC Standards, when created, were not based on any statistical data. Each jurisdiction across the country has different criminal laws and practices. Expanded to the national level, variations become more prevalent. A behavior that may be considered criminal in one jurisdiction incurs a civil penalty in another; what is statutorily defined a misdemeanor in one jurisdiction may be a felony in another. In thirty-six states, a person can be executed for certain crimes, and execution practices vary among those states as well. Prosecutorial practices vary from jurisdiction to jurisdiction. Jurisdictions across the country employ different systems for providing indigent defense representation. In some jurisdictions, for example, a court appoints panel attorneys from a list while others have public defender systems with staff secretaries and investigators. In addition, the expansion of the right to counsel varies from jurisdiction to jurisdiction; for instance, while the federal right to counsel extends to indigent criminal and juvenile defendants facing incarceration, other jurisdictions have expanded the right to counsel to include dependency and other civil cases. All states have expanded the federal right to counsel to some extent. For all of these reasons and many more, one could then expect that attorney workload varies from jurisdiction to jurisdiction.

The NAC standards group all case type subcategories under an overarching category, for example subsuming murder and fraud cases all under one broad category of felonies. TSG's findings and data analyses from each of our case-weighting studies indicate that the workload involved in each category ranges greatly from one sub-category to the next. For example, defending a felony involving a rape is much more time-consuming and complex than defending a minor drug felony. Nevertheless, by clustering all case types into overarching categories, the national numerical standards do not account for workload differentials.

When the NAC standards were promulgated in 1973, the national landscape was much different than it is today or even a decade ago. First, when the standards were published, capital punishment was not a sentencing possibility in any state. Behaviors and crimes that did not exist in 1973, such as Internet-based crimes, have since become more prevalent. Most jurisdictions around the country have instituted "tough on crime" policies, such as habitual offender statutes and "mandatory-minimum" sentencing requirements. Mental health institutions have been de-institutionalized and closed, and many people with mental health disorders find themselves facing criminal charges and jail time in lieu of treatment. In addition to traditional penalties, many convictions now carry collateral consequences, such as the loss of government benefits, fewer employment opportunities, and deportation. The changes listed above, among several others, illustrate the increased complexity of providing adequate representation.

Although national caseload standards are useful in certain contexts, TSG recommends that they not be used to draw conclusions about specific jurisdictions. Instead, jurisdictions should develop individualized assessments of caseload standards.

In August of 2007, the American Council of Chief Defenders (ACCD),¹⁸ issued a Statement on Caseloads and Workloads,¹⁹ in which it recommends “that public defender and assigned counsel caseloads not exceed the NAC recommended levels...” The resolution goes on to state that, in many jurisdictions, maximum caseloads should be lower than those recommended by the NAC. The statement also discusses many of the reasons that representation of indigent defendants has become even more complicated since the NAC standards were developed, including, among other factors, increases in collateral consequences of convictions, an increase in the number of jurisdictions enacting persistent offender statutes and an increase in the severity of those penalties, a dramatic increase in penalties for people charged with sex offenses, and an increase in the number of juveniles charged as adults.

The Washington (State) Defender Association has adopted caseload standards limiting the caseload of a full-time public defense attorney per year to 150 felonies; 300 misdemeanors; 250 juvenile offender cases; 60 juvenile dependency cases; 250 civil commitment cases; or 25 appeals cases with the case heard on the record. Those standards are careful to point out that additional consideration should be given to particularly complex cases, and set forth a case credit system for those more complicated case types.²⁰

Previous case weighting studies performed by TSG have yielded the caseload standards appearing in the following table. Since the case type categories studied were developed independently in each jurisdiction, the specific categories differ somewhat from those in Clark and Washoe counties. King County, Washington; Maricopa County and Pima County, Arizona; and the State of Colorado are presented here. All four are in or include major metropolitan areas, are Western states, have similar repeat offender statutes, and are jurisdictions where TSG has performed case weighting studies within the past decade.

Table 22 provides a summary of the caseload standards from those jurisdictions by equivalent case type, where possible. Please note that, as discussed throughout, direct comparisons between

¹⁸ The ACCD is a Section of the National Legal Aid and Defender Association.

http://www.nlada.org/Defender/Defender_ACCD/Defender_ACCD_Home

¹⁹

http://www.nlada.org/DMS/Documents/1189179200.71/EDITEDFINALVERSIONACCD_CASELOAD_STATEMENTsept6.pdf

²⁰ Washington Defender Association Standards for Public Defense Services,

<http://www.defensenet.org/resources/publications-1/wda-standards-for-indigent-defense>

jurisdictions cannot take into account all of the different factors that influence the complexity of any particular case type. In some cases, the case type equivalents between jurisdictions are not exact. The existence of diversion and drug treatment courts, early disposition courts, and the severity of potential sentences and charging practices are unique to each jurisdiction and can substantially contribute to the differences between jurisdictions.

The caseload standards established in these other studies were conducted at a time when the public defender was thought to be operating satisfactorily. Colorado, for example, is a state that has been operating relatively well with these standards. In one jurisdiction, Pima County, the table presents standards that have been adjusted upward to ensure that the public defender is being utilized to their full potential.

TABLE 22.						
Caseload Standard Comparison						
Case Type	King County (2001)	Colorado (2002)	Maricopa County (2002)	Pima County (2002)	Clark County	Washoe County
Available Attorney Work Hours	1806	1808	1853	1845	1863	1831
Felony Sex	A: 33.7 B: 61.2	32.6	31.9		14.7	15.0
Felony A (Class 2)	Repeat Offender: 8.5 Other: 24.5	32.6	76.5	Mandatory sentence: 41.9 Other: 135	99.9	96.0
Felony B (Class 3)	Repeat Offender: 16.5 Other: 65-96	105.5			254.5	202.5
Felony C & D (Class 4-5)	Class C* Person: 74.2	200.2	313.6	Mandatory & Fel. DUI: 103.1	316.9	233.3
Felony E (Class 6)	Property: 88.4 Drug: 727.1**	386.2		Non- Mandatory & Simple Possession: 204.9	1442.4	525.0
All Felony****	99.0	135.9	177.5	106.5	215.4	189.2
Gross Misdemeanor	235.8	196.4			744.8	516.1
Other Misdemeanor	371.4	429.8***			1368.2	398.7
All Misdemeanor****	249.4	291.8			201.9	965.8

All Juvenile	203.5	248.7	Fel: 149.5 Mis: 275.9	203.2 204.6	335.3	239.1
---------------------	--------------	--------------	--	------------------------------	--------------	--------------

* the lowest level Felony in Washington State is a Class C Felony, and consists of Personal, Property and Drug Offenses.

** Felony C Drug Court. This is not a diversion court, but a court that handles only drug-related offenses.

*** Includes non-jailable misdemeanor traffic offenses

****The aggregate numbers in these categories are not caseload standards and should not be used in place of standards developed for the more specific case types for determining staffing needs. They are only presented to provide a rough comparison between jurisdictions, and will change as the ratio between more serious and less serious case types fluctuate.

In Felony B cases, the category that consumes the most time of any category in either Clark or Washoe County, the workload is more than twice that of the standards established in any of the other jurisdictions. For combined Misdemeanors, attorneys in the other studies spent between 6 and 8.5 hours per disposition. In Clark County, the time spent on Misdemeanors is just under two hours, and just over four hours in Washoe County.

For sex offenses, the most serious offense specifically measured by the current report, the caseload standard in King County for Felony A Sex offenses is 33.7 cases per FTE attorney per year and 61.2 for felony B sex offenses. In Colorado, the standard is 32.6 for all Felony Sex offenses. In Clark and Washoe Counties, the current workload is 14.4 and 15.0 cases, respectively, being disposed of annually per FTE attorney. This comports with what was reported to TSG by the defenders: that sex offenses are treated very seriously in Nevada, and consume an enormous amount of time to defend. This is the only category for which either Clark or Washoe County's current workloads fall below any of the other jurisdiction's caseload standards, except as seen in Washoe County's representation in Juvenile Delinquencies, which is still on the high side of those established elsewhere, and twenty percent higher than the NAC standards established 36 years ago.

What is clear from the caseload standards and the case weighting study results referenced above is that Clark and Washoe County public defenders are processing far more cases per attorney than is recommended by or reflected in any of these standards. Evaluations of the Clark and Washoe County Public Defenders by TSG and others have stressed concerns about the impact on effectiveness of representation that caseload burdens such as these can cause, but this has been the first attempt at quantifying the caseloads by specific case type categories.

It is essential to note that the workloads established by this report reflect the practice of public defense in Clark and Washoe counties *before* the Supreme Court promulgated the performance standards in ADKT-411. What the caseload standards *should* be so that attorneys have sufficient time to represent their clients while meeting ADKT-411 are still to be seen and likely require the additional study that TSG had urged to the counties and the Court. However, it is inconceivable that ADKT-411 would countenance

caseload standards that exceed the range found in jurisdictions comparable to Nevada, especially when the problem is only exacerbated by the lack of essential support staff provided to attorneys.

Assuredly, both Clark and Washoe counties require additional FTE attorney positions to reach the caseload standards established by comparable jurisdictions and the new performance standards promulgated under ADKT-411. Without additional study, TSG cannot provide a definitive figure, but the following tables provide an illustration of the depth of the problem in Nevada. Tables 23 and 24 calculate the additional FTE attorney positions needed to staff each office to achieve a workload that falls within the range of standards established in other jurisdictions. This analysis only uses the other standards to calculate the number of attorneys required to provide representation in non-murder Felony, Misdemeanor and Juvenile Delinquency cases. Appellate and Murder attorneys required are calculated separately based on the percentage increase required for the other case types. Further, this is only a rough estimate of the increase in staffing required.

Table 23: Clark County Projected Number of FTE Attorneys using CY 2008 Actual Assignments and Caseload Standards in Other Jurisdictions					
	A. CY 2008 Assignments	B. High Estimate		C. Low Estimate	
		Workload	FTEs	Workload	FTEs
Felony A Sex	273	15	18.2	25	10.9
Felony A Other	267	30	8.9	40	6.7
Felony B >10 max	1194				
Felony B <=10 max	4938				
<i>All Felony B</i>	<i>6132</i>	100	61.3	135	45.4
Felony C	2071	125	16.6	200	10.4
Felony D	1250	150	8.3	350	3.6
Felony E	1764	350	5.0	700	2.5
Gross Misdemeanor	1168	200	5.8	235	5.0
All Other Misdemeanor	4179	325	12.9	500	8.4
Adult PV	1304	1500	0.9	3700	0.4
Murder *			18.0		12
TOTAL ADULT ATTORNEYS			156		105
All Juvenile Delinquency	4651	200	23.3	250	18.6
Juvenile PV	655	1500	0.4	3700	.2
TOTAL JUVENILE ATTORNEYS			23.7		18.8
Appellate *			9		5
GRAND TOTAL		Current FTE Attorneys: 98	188		129
Difference			82%		32%

Table 24: Washoe County Projected Number of FTE Attorneys using CY 2008 Actual Assignments					
	A. CY 2008 Assignments	B. High Estimate		C. Low Estimate	
		Workload	FTEs	Workload	FTEs
Felony A Sex	273	15	3.9	25	2.3
Felony A Other	267	30	3.7	40	2.8
Felony B >10 max	1194				
Felony B <=10 max	4938				
<i>All Felony B</i>	<i>6132</i>	100	19.6	135	14.5
Felony C	2071	125	5.4	200	3.4
Felony D	1250	150	3.0	350	1.3
Felony E	1764	350	1.5	700	0.7
Gross Misdemeanor	1168	200	3.8	235	3.2
All Other Misdemeanor	4179	325	7.9	500	5.1
Adult PV	1304	1500	0.2	3700	0.1
Murder *			18.0		12
TOTAL ADULT ATTORNEYS			54		37
All Juvenile Delinquency	4651	200	11.4	250	9.1
Juvenile PV	655	1500	0.1	3700	0.02
TOTAL JUVENILE ATTORNEYS			23.7		18.8
Appellate *			2		1
GRAND TOTAL			67		48
Difference			73%		22%

Section VIII. Conclusions and Recommendations

Recently, The Constitution Project published a three-year study titled “Justice Denied, America’s Continuing Neglect of Our Constitutional Right to Counsel – Report of the National Right to Counsel Committee.” The report chronicles primarily the past ten years of states seeking reform in their indigent defense systems. Among these efforts, the report speaks of recent efforts in Nevada, noting that: “In recognition of the need to improve indigent defense representation in Nevada, in 2008, the Nevada Supreme Court did what few other state supreme courts have done – approved new indigent defense performance standards. However, Nevada counties are responsible for 95% of the burden of funding indigent defense, and many of the counties have declared that they cannot afford to ensure compliance with the standards.”

The Nevada Supreme Court has promulgated the most extensive and comprehensive set of performance standards that TSG is aware of throughout the 50 states. Indeed, the Court’s performance standards apply not only to requirements under the U.S. and Nevada constitutions, but also to every other right to counsel required under Nevada law. They are designed to meet the requirements of the code of professional responsibility governing the lawyer’s duty to provide competent and diligent representation to each client, which are in accordance with the ABA Model Rules of Professional Conduct requiring “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

In further examining the professional duty of lawyers representing the indigent, the report “Justice Denied” states, “While almost all of the standards discussed in the preceding section are voluntary, an indigent defense program could choose to require its attorneys to adhere to them.” The authors of this recent and extensive report state, “We are aware of no defense program that has actually developed a vigorous process to monitor and strictly enforce compliance with professional standards.” But in a footnote to this statement, the authors have cited the recent opinion of the Nevada Supreme Court regarding the performance standards it promulgated in April, 2009 (ADKT-411). Put plainly, against the wide variety of standards dealing with the performance of defense counsel, the authors of “Justice Denied” were unable to reference another state in the country in which the State Supreme Court has mandated a comprehensive set of performance standards similar to Nevada.

After completing the 2008 case weighting study in Clark and Washoe Counties, after reviewing previous studies conducted in Nevada, and after performing extensive site visits in Clark and Washoe counties, it is clear to TSG that public defenders in Clark and Washoe counties will be unable to comply with the requirements of ADKT-411. TSG makes this statement for all of the reasons set forth below:

- There is not sufficient funding in either of the two counties to assure that all public defense attorneys can measure up to the performance standards recently adopted by the Nevada Supreme Court. The most recent 50-state expenditure data provided by the American Bar Association through its Bar Information Program for FY2005 notes that the State of Nevada covered just three percent of the cost for indigent defense.. This means that the counties in Nevada provided 97% of the total cost of indigent defense in Nevada in 2005.

The information set forth in this report also indicated that there were 28 states that provided 100% of indigent funding solely through state funds. There were only three other states that compare with the small amount of state funding as Nevada. This same study discloses that on a per capita basis total indigent defense funding in Nevada was 25th among the states.

- Based upon all the information available to TSG from Nevada, none of the public defender agencies in these jurisdictions is able to provide competent and diligent legal services to all of its clients due to a substantial excess number of cases and an insufficient number of staff. This was repeatedly told to TSG researchers by public defenders, judges, and other key members of the criminal justice system.
- Furthermore, the results of the case-weighting study echo these remarks. It is important to emphasize that TSG initially was to undertake a study of public defender offices in both counties to determine caseload standards that would ensure compliance with the new performance standards promulgated by the Nevada Supreme Court. However, this was not possible because ADKT-411 did not become effective until April 1, 2009, and the case-weighting study was conducted in late 2008 when there were no formal performance standards in effect in Nevada. The original intent of this report was to field a secondary survey of attorneys to determine the additional time necessary to comply with the performance set forth in ADKT-411. However, county administrators, in consultation with TSG and the Nevada Supreme Court, felt that it was premature to ask attorneys to determine this measure before they had an opportunity to practice under the new guidelines. As such, TSG has found it to be virtually impossible to establish a protocol for making the necessary adjustments under the 2008 workload.

The Spangenberg Group recommends that the current workloads be re-evaluated and re-adjusted within the next two years in order to establish staffing levels to allow the offices to comply with the new performance standards.

- TSG has arrived at a clear conclusion that until sufficient resources are dedicated to the public defender offices in Clark and Washoe counties, including sufficient support staff and investigative resources to support the attorneys, it will be impossible to measure the additional amount of time necessary to comply with the new performance standards. However, in an effort

to begin this lengthy and time-consuming process, TSG has compared from a qualitative standpoint results from other case-weighting studies it has conducted. This is not intended as a substitute for the recommended quantitative study to be conducted within two years, but rather to provide some other information that may prove useful in this ongoing effort. The performance standards may well provide a new opportunity for public defenders to begin controlling their caseloads to ensure that they can provide effective representation to their clients.