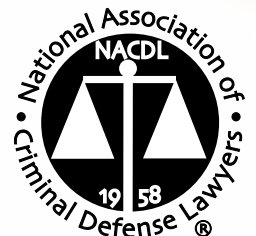


THE RHODE ISLAND PROJECT

A Study of the Rhode Island Public Defender System
and Attorney Workload Standards



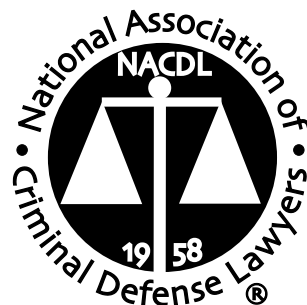
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THE RHODE ISLAND PROJECT

A Study of the Rhode Island Public Defender System
and Attorney Workload Standards

November 2017

Conducted by:

BlumShapiro

and

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

and

The National Association of Criminal Defense Lawyers



PREFACE

The Rhode Island Project is a workload study of the Rhode Island Public Defender (“RIPD”) system. The study is a collaborative research effort conducted by Blum, Shapiro & Company, P.C. (“BlumShapiro”),¹ the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (“ABA” or “ABA SCLAID”),² and the National Association of Criminal Defense Lawyers (“NACDL”).³

The research team would like to thank each member of the RIPD for their cooperation and input throughout the project. A special thanks goes to Mary McElroy, Rhode Island’s Public Defender, Daniel Bright, the RIPD’s IT Director, and Michael DiLauro, the Rhode Island Training Director for facilitating staff availability, training, and providing insight into the RIPD’s practices and technical systems. The researchers would also like to thank the group of private bar attorneys and public defender experts who participated in numerous surveys and meetings. The project would not have been possible without their input and efforts.

BlumShapiro was responsible for the econometric analysis and reporting. The effort was led by Andrew Bostian, who serves as Director in BlumShapiro’s Litigation Services and Business Valuation Group. Mr. Bostian was assisted by his colleagues Michael Pendergast and Kelly Burns.

The ABA and NACDL were responsible for the application of legal standards in this study. Stephen F. Hanlon, served as Project Director for the ABA and NACDL. Mr. Hanlon previously served as the Project Director for the ABA on The Missouri Project and The Louisiana Project. Mr. Hanlon has a long history of handling public interest and civil rights cases. In 1989, he founded the Community Services Team at Holland & Knight and for the next 23 years he served as the Partner in Charge of the CST, which during Mr. Hanlon’s tenure was the largest full-time private practice pro bono department in the nation. Since leaving Holland & Knight at the end of 2012, Mr. Hanlon has confined his practice to assisting and representing public defenders with excessive caseloads. He now serves as General Counsel to the National Association for Public Defense in Washington, D.C. and is a Professor of Practice at Saint Louis University School of Law. Mr. Hanlon was lead counsel for the Missouri Public Defender in State ex rel. Mo. Public Defender Commission, 370 S.W.3d 592 (Mo. 2012), which was the first state supreme court case to uphold the right of a public defender organization to refuse additional cases when confronted with excessive caseloads.

1. Formed in 1980, BlumShapiro is the largest regional business advisory firm based in New England providing accounting, tax and business consulting services. Headquartered in West Hartford, Connecticut, BlumShapiro serves clients from its offices in Connecticut, Rhode Island, and Massachusetts. Government clients include municipalities, quasi-government entities and state government departments, for which BlumShapiro provides audit as well as specialized consulting services.

2. With nearly 400,000 members and more than 3,500 entities, the American Bar Association is one of the largest voluntary professional membership organizations in the world. Founded in 1878, the ABA is committed to supporting the legal profession with practical resources while improving the administration of justice, accrediting law schools, establishing model ethical codes, and more. The ABA opens membership to lawyers, law students, and others interested in the law and the legal profession. The ABA’s national headquarters is in Chicago, with a significant office in Washington, DC.

3. The National Association of Criminal Defense Lawyers is the preeminent organization in the United States solely devoted to advancing the mission of the nation’s criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. A professional bar association founded in 1958, many thousands of direct members in 28 countries — and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America’s criminal justice system.



Support for this project was provided by Geoffrey Burkhart, who served as an attorney for the ABA Standing Committee on Legal Aid & Indigent Defendants, Colette Tvedt, who served as NACDL’s Director of Public Defense Training and Reform, and Diane Price, who served as NACDL’s Public Defense Training Manager. Additional support was provided by Peter Sterling, who served 38 years with the Missouri State Public Defender Commission (“MSPD”) and retired as General Counsel in 2014.

Norman Lefstein of the Indiana University McKinney School of Law served at the lead editor on this report. Professor Lefstein is a Special Advisor to ABA SCLAID and a former ABA SCLAID committee member, consultant, and chair of the committee’s Indigent Defense Advisory Group. His previous positions include serving as director of the D.C. Public Defender Service. He has been extensively involved for more than four decades in efforts to improve public defense services nationwide. Malia Brink, who serves as Assistant Counsel for Public Defense to ABA SCLAID, and Bonnie Hoffman, Director of Public Defense Reform and Training for NACDL, provided editorial assistance to this report.



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EXECUTIVE SUMMARY



The Rhode Island Project is a study conducted by BlumShapiro, the ABA, and NACDL of the Rhode Island Public Defender to establish public defender workload standards for the State of Rhode Island. This report outlines the methodology, analysis, and results of the joint efforts of BlumShapiro, the ABA, and NACDL to calculate data-driven workload standards that can assist the RIPD in assessing staffing requirements and provide empirical support to determine workloads. Funding for this project was provided by the Department of Justice, Bureau of Justice Assistance.

To calculate workload standards, the Rhode Island Project proceeded in three main phases: (1) an analysis of the RIPD's historic caseloads and staffing; (2) an analysis of the actual time spent by public defenders on recent caseloads; and (3) the application of the Delphi Method to identify how much time an attorney *should* spend, on average, in providing representation in certain types of criminal cases to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

To determine how much time is currently being spent by RIPD attorneys, this study relied on six months of RIPD time data gathered between October 2015 and April 2016. The timekeeper data allowed BlumShapiro to analyze time expended by various case types. For each case type, the amount of time spent on twelve case tasks was analyzed. However the timekeeping data represented only a snapshot of the public defenders' work (with many cases beginning and/or concluding outside the timekeeping window), with only 44% of the data able to be directly attributed to a specific case. As a result, an analysis of full-time equivalent public defenders was conducted to determine the current deficiencies in the RIPD.

The analysis of timekeeping data does not assume that the time that *is* being spent on defense representation necessarily reflects the time that *should* be spent to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. Rather, the analysis of average actual time spent, along with historic caseloads and staffing, establish a baseline of current practices.

To determine the amount of time that *should* be spent on average by RIPD attorneys to provide reasonably effective assistance of counsel, this study utilized a Delphi method. The Delphi method's structured reliable technique integrates opinions of highly informed professionals to develop consensus opinions. The Delphi panel, consisting of Rhode Island private defense practitioners and public defenders, provided professional opinions regarding the appropriate time an attorney should spend on certain case tasks in a number of case types to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in the State of Rhode Island. Through a three round iterative process, the Delphi panel comes to a consensus on the frequency with which certain case tasks should be performed for a specific case type and how much time should be spent on that specific case task.



The results of the Delphi panel survey are presented below.

DELPHI PANEL RESULTS

Case Type	Case Task Hours per Case Type
Murder	181.6
Non-Murder -Max Life	108.1
Felony Class I	51.9
Felony Class II	28.3
Probation Violation	16.9
Misdemeanors	12.7
Juvenile Wayward	29.5
Juvenile Delinquent	46.1
Dependency and Neglect	27.2

A Delphi workload analysis, consisting of an estimate of Rhode Island's public defense annual caseload multiplied by the Delphi panel's opinions listed above for each Delphi case type, reflects the total number of hours needed annually to meet that caseload.

DELPHI WORKLOAD ANALYSIS OF 2015 RHODE ISLAND PUBLIC DEFENDER OFFICE CASELOAD

(Number of new cases x Workload standard for case types=Total hours per year)

Case Type	Number of New Cases	Workload Standards for Case Types	Total Hours per Year
Murder	15	181.6	2,724.0
Non-Murder -Max Life	174	108.1	18,809.4
Felony Class I	825	51.9	42,817.5
Felony Class II	2,805	28.3	79,381.5
Probation Violation	1,488	16.9	25,147.2
Misdemeanors	8,507	12.7	108,038.9
Juvenile Wayward	150	29.5	4,425.0
Juvenile Delinquent	42	46.1	1,936.2
Dependency and Neglect	36	27.2	979.2
TOTALS	14,042		284,259

**DELPHI WORKLOAD ANALYSIS AVERAGE RHODE ISLAND
PUBLIC DEFENDER CASELOAD (2011-2015)**

(Number of new cases x Workload standard for case types=Total hours per year)



Case Type	Average Number of New Cases per Year	Workload Standards for Case Types	Total Hours per Year
Murder	10	181.6	1,816.0
Non-Murder -Max Life	171	108.1	18,485.1
Felony Class I	914	51.9	47,436.6
Felony Class II	2,983	28.3	84,418.9
Probation Violation	1,775	16.9	29,997.5
Misdemeanors	8,982	12.7	114,071.4
Juvenile Wayward	159	29.5	4,690.5
Juvenile Delinquent	30	46.1	1,383.0
Dependency and Neglect	31	27.2	843.2
TOTALS	15,055		303,142

At this workload, to be in compliance with the Delphi panel’s consensus opinions, a minimum of 284,259 hours per year (approximately 136 Full Time Equivalent (“FTE”) public defenders) are required for the Office of the RIPD to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in Rhode Island. As of July 2017, there are 49 public defenders in the Office of the RIPD. Based on the Delphi data, the RIPD is currently deficient at least 87 FTE attorneys.

Notably, the 49 current public defenders in Rhode Island, include attorneys who, in addition to direct representation, also perform supervisory and/or administrative duties. This means the actual shortage of attorneys is even greater, as the data does not account for these additional responsibilities and their impact on the total caseload such attorneys should carry. Viewed another way, based on the Delphi Method’s results and analysis presented herein the RIPD currently has capacity to handle, at most, 36.0% of the workload in compliance with the Delphi Panel’s consensus opinions.



INTRODUCTION

To understand both public defender workloads and our analysis of workloads in this study, it is critical to understand the relevant legal rules and standards pertaining to effective assistance of counsel. The duty of Rhode Island to provide defense counsel for those charged with crimes unable to afford a lawyer derives from the Sixth Amendment to the United States Constitution and Article 1, Section 10, of the Rhode Island Constitution, which has guaranteed the right to counsel in state criminal prosecutions in Rhode Island since 1842.

In 1963, the Supreme Court held in the famous *Gideon* decision that persons charged with felonies in state criminal courts have a constitutional right to a lawyer at state expense.¹ In 1972, the Supreme Court extended the right to counsel to misdemeanor cases that resulted in a defendant's loss of liberty.² A majority of states, however, reject this actual incarceration standard and recognize the right to a lawyer if the defendant is charged with a misdemeanor.³ In *State v. Holliday*, the Rhode Island Supreme Court held that the right to counsel was extended to defendants in all misdemeanor cases.⁴

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

In 1984, the Supreme Court held that the right to counsel in the Sixth Amendment means the right to “reasonably effective assistance of counsel pursuant to prevailing professional norms.”⁵ In 2010, the Supreme Court noted that: “We long have recognized that ‘[p]revailing norms of practice as reflected in American Bar Association Standards ... are guides to determining what is reasonable.’ ... although they are ‘only guides’ ... and not ‘inexorable commands’ ... these standards may be valuable measures of the prevailing professional norms of effective representation.”⁶

1. ABA Criminal Justice Standards

The ABA Standards for Criminal Justice are the result of a lengthy process that began in 1964, and most recently culminated with the fourth edition of these standards approved and published by the ABA in 2015. These ABA Standards “are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the process.”⁷ Within the ABA Standards for Criminal Justice, the Defense Function Standards address every aspect of criminal defense practice.

a. Early Entry of Counsel

The ABA Defense Function Standards require a public defender to act with “diligence and promptness” (Standard 4-1.3) and “as soon as practicable” interview the client (Standard 4-3.2). In 2008, the Supreme Court further established that the Sixth Amendment right to counsel attaches at a criminal defendant's initial appearance before a judicial officer, because that is when “the accused ‘finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law.’”⁸

b. Adequate Preparation

The ABA Defense Function standards instruct defense counsel to investigate the facts (Standard 4-4.1); research the law (Standard 4-4.6); communicate with clients (Standards 4-3.1, 4-3.3, 4-3.9, 4-5.1, 4-5.4); negotiate with prosecutors (Standards 4-6.1, 4-6.2, 4-6.3); file appropriate motions (Standards 4-3.2, 4-7.11, 4-8.1); and prepare for court (4-4.6).



c. Plea Bargains and Investigations before Entering a Plea of Guilty

In 2012, the United States Supreme Court in *Missouri v. Frye*, citing to the Department of Justice, Bureau of Justice Statistics, noted that “ninety-four percent of state convictions are the result of guilty pleas.”⁹ In that case, the United States Supreme Court quoted with approval the following statement from a Yale Law Journal article: “[P]lea bargaining...is not some adjunct to the criminal justice system; it is the criminal justice system.”¹⁰

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

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

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

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

The criminal defense professionals (both private defense practitioners and public defenders) on the Delphi Panel were asked to consider the standards cited above in completing this study.

2. Rules of Professional Conduct

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

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

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

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



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

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

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

The ABA Model Rules of Professional Conduct have been interpreted to require public defenders to limit workloads to ensure that they can represent each client with the competence and diligence required.¹¹

The materials cited above were presented to and considered by the criminal defense professionals (both private defense practitioners and public defenders) from across Rhode Island asked to participate in this Delphi study.

B. The Rhode Island Public Defender

Rhode Island has chosen to fulfill its responsibility to provide counsel to the indigent primarily through lawyers employed by a single agency, the Rhode Island Public Defender. The RIPD was created in 1941 and is believed to be the first statewide full-service public defender office established in the United States. All RIPD attorneys are admitted to practice in the Rhode Island Bar. They work full time for the RIPD, have no private practices, and do not charge fees to clients for their services.

The Rhode Island Public Defender employs a staff of more than 90 full-time professionals devoted to providing high-quality defense for those guaranteed the right to counsel, including attorneys, investigators, social workers and interpreters.¹² At the time of this project, RIPD had 49 FTE public defenders. RIPD attorneys specialize in different areas of defense: criminal cases, juvenile cases, parental rights cases, and appeals. A specialized staff of arraignment attorneys provides representation at the earliest stages of criminal prosecutions in order to minimize time spent in jail awaiting trial.



The RIPD budget is approved by the General Assembly of Rhode Island every year. For the fiscal year ending June 30, 2016, the total approved budget of the RIPD was \$11,616,528.¹³ About 99% of the appropriation (\$11,503,708) came from the state's general revenue, with the remainder (\$112,820) from federal funds. The budget breakdown is as follows:

Expenditure by Object	Budget
Personnel	\$10,530,038
Operating Supplies and Expenses	\$978,990
Assistance and Grants	\$60,000
Subtotal: Operating Expenditures	\$11,569,028
Capital Purchases and Equipment	\$47,500
TOTAL EXPENDITURES	\$11,616,528

The recommended budget for the fiscal year ending June 30, 2017, is \$11,897,202, with the following breakdown:

Expenditure by Object	Budget
Personnel	\$10,771,263
Operating Supplies and Expenses	\$1,018,439
Assistance and Grants	\$60,000
Subtotal: Operating Expenditures	\$11,849,702
Capital Purchases and Equipment	\$47,500
TOTAL EXPENDITURES	\$11,897,202



THE DELPHI METHOD¹⁴

The Delphi method was introduced in 1962 by researchers at the Rand Corporation. The method was described as a “new” research technique utilized by the Air Force in the 1950s to gather expert opinion and generate a reliable consensus.¹⁵ As a methodological strategy, the Delphi method proposed that a succession of surveys be given to a group of experts, with structured feedback presented to the experts at each interval stage. The surveying practices applied by the Delphi method could be interviews or questionnaires that focus on fundamental questions of significance to the expert group convened for the purpose of obtaining their views.

The features of this method include “anonymity, iteration, controlled feedback, and the statistical aggregation of group response.”¹⁶ At the onset of the process, participants in a Delphi group are largely anonymous from one another. The purpose of anonymity is to ensure that solicited experts are not influenced by the responses of other participants and that the ideas presented are judged on their own merit. This technique is believed to be conducive to the exercise of independent thought on the part of participating experts and to aid experts in forming thoughtfully considered opinions.

The reliance on expert opinion as data is built on the premise that an expert is “able to select the needed items of background information, determine the character and extent of their relevance, and apply these insights to the formulation of the required personal probability judgments.”¹⁷ Experts typically complete a questionnaire over multiple iterations with the goal of allowing participants to change their opinions and judgments when presented with controlled feedback regarding the opinions and judgments of their fellow participants. This controlled feedback is normally presented as a statistical summation of the group’s responses, e.g., a mean or median. The structured feedback at each successive iteration consists of “available data previously requested by ... the experts ... or of factors and considerations suggested as potentially relevant by one or another respondent.”¹⁸

The goal of the feedback at each stage is to assist in limiting mistaken beliefs an expert may have on the question at hand or to increase their awareness of other information they may not previously have considered.¹⁹

At the conclusion of the final iteration, the final iteration’s mean or median response is used as the measure of the group’s opinion.²⁰ In theory, the number of iterations required of the Delphi method can be unlimited until consensus among participants is achieved. However, it has been found that three to four iterations is usually all that is required to reach consensus.²¹ Researchers Gene Rowe and George Wright systematically reviewed studies that explored the effectiveness of the Delphi method. Their focus was on how well the Delphi method worked in producing a consensus of opinions and judgments and to assess how accurate those opinions and judgments were.

Overall, they found that the majority of these evaluative studies showed support for the Delphi method in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved. As for the concern over the accuracy of those opinions and judgments, Rowe and Wright again found that the majority of studies provide compelling evidence in support of the Delphi method. Compared to other methodological techniques used for similar purposes, the Delphi method was found to “lead to improved judgments over staticized groups and unstructured interacting groups.”²²

Since its introduction, the Delphi method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.²³ The purpose of its use beyond forecasting has included “program planning, needs assessment, policy determination,

and resource utilization.”²⁴ Examples of these attempts were sponsored by both the National Association of Court Management (“NACM”) and the National Center for State Courts (“NCSC”). These efforts were principally charged with assessing judicial and court support staff needs.²⁵



In the 2000’s, the NCSC used Delphi techniques in addressing the caseload and workload crisis of public defense in the United States. In a recent book, Professor Norman Lefstein comments on the use of the Delphi method, noting:

The technique is recommended when a problem does not lend itself to precise measurement and can benefit from collective judgments. This would seem to be precisely the situation when a defense program seeks to determine how much additional time, on average, its lawyers need to spend on a whole range of activities involving different kinds of cases.²⁶

The Delphi method has been recommended as an essential complement to time-based studies that seek to determine appropriate caseloads for defense lawyers.²⁷ The Delphi method provides a way to adjust preliminary case weights based solely on time studies and thus avoids institutionalizing potentially sub-standard current practices.

METHODOLOGY AND ANALYSIS

BlumShapiro reviewed prior workload studies conducted for state public defenders in advance of this study.²⁸ In this study, Delphi methodology was used to provide an estimate of what workload standards *should be* in order for a public defender to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. This study, moreover, focuses on both the amount of time that should be spent on a task, as well as how frequently the task should be completed. This study relies upon the expert judgments of Rhode Island private practice defense counsel and public defenders.

A. Standards and Definitions

To determine workload standards, a multi-step process was used that analyzed the *actual* time spent by Rhode Island Public Defenders on certain case types and case tasks and the amount of time that *should be* spent on the same case types and case tasks. Throughout the project, the research team referred to the two data sets as “The World of Is” (data derived from case data and timesheets of Rhode Island Public Defenders) and “The World of Should” (data derived from survey responses and in-person panel discussion of Rhode Island private practice defense counsel and public defenders). Case types and case tasks were defined for Delphi panel members, as shown below.

1. Case Types

Murder — Includes murders of all degrees

Non-Murder — Where the maximum penalty is life

Felony Class I — Carries penalty of more than 10 years

Felony Class II — Carries penalty of up to and including 10 years

Probation Violations — Both misdemeanor and felony



Appeals — Full

Appeals — Pre-brief only and PCR cases²⁹

Misdemeanors

Juvenile — Wayward³⁰

Juvenile — Delinquent³¹

Dependency and Neglect

2. Case Tasks

Case Preparation — Reviewing, analyzing and organizing case-related materials/evidence; dictating and editing case-related memos; defense team meetings (unless related to a court appearance, which falls under Court Preparation); and documenting case files.

Client Care — Working with social services department or outside agencies on behalf of the client and handling medical/family/other issues affecting client during case.

Client Communication — All client communication (mail, phone, in-person, etc.), as well as communication with client family members (except communication of an investigative nature, which falls under Interviews/Field Investigation).

Records Collection — Ordering and obtaining records, transcripts, discovery materials, and other case-related documents.

Court Preparation — Preparing for trial or a hearing, including defense team meetings, as well as time spent prepping for direct exams, cross exams, etc.

Court Time — In court at a trial (bench or jury) or a hearing of any kind.

Experts — Locating, retaining, corresponding, consulting with, and reviewing reports of experts for the defense.

Interviews/Field Investigations — Case-related investigation activities, including viewing the scene and physical evidence, interviewing and canvassing for witnesses, serving subpoenas, taking photos/videos, etc.

Legal Research/Writing — Researching and drafting of pleadings, briefs, etc.

Negotiations — Discussions with a prosecutor in an effort to resolve a case.

Post Judgment — Work performed post-disposition, including status court dates; correcting judgments/jail credit/expungements; property returns, troubleshooting lingering case-related matters, etc.

Sentencing — Developing or collecting evidence to be used in sentencing.



B. Time Study — The World of Is

This phase of the research study involved measurement of current Rhode Island Public Defender practice by analyzing actual amount of time lawyers spend on their cases. This data represents the “World of Is”, a real-world view of defense-related services provided in the case types and case tasks analyzed. The actual time spent and the number of new cases taken on offers the means to compare the amount of additional time or staff, if any, which may be required to deliver reasonably effective representation.

The RIPD maintains a case management system that tracks basic case information such as case open, case closed, assigned attorney, case type, and whether or not it is a life sentence charge. This study began with the January 2011 through September 2016 extract of the case management database consisting of over 86,000 cases. In September 2014, public defenders began entering their time in a time log system.

Based on an analysis of historical criminal caseload data, the RIPD provided representation in, on average, 15,055 new cases per year from 2011 through 2015.³² In 2015, the most recent full year with caseload data available, RIPD took on 14,042 new cases. A summary of the RIPD’s new cases by Case Type is presented in the tables below:

RHODE ISLAND PUBLIC DEFENDER NEW CASES BY TYPE (2015)

Case Type	Number of New Cases
Murder	15
Non-Murder -Max Life	174
Felony Class I	825
Felony Class II	2,805
Probation Violation	1,488
Misdemeanors	8,507
Juvenile Wayward	150
Juvenile Delinquent	42
Dependency and Neglect	36
TOTAL	14,042



AVERAGE RHODE ISLAND PUBLIC DEFENDER NEW CASES BY TYPE (2011-2015)

Case Type	Average Number of New Cases Per Year
Murder	10
Non-Murder -Max Life	171
Felony Class I	914
Felony Class II	2,983
Probation Violation	1,775
Misdemeanors	8,982
Juvenile Wayward	159
Juvenile Delinquent	30
Dependency and Neglect	31
TOTAL	15,055

The above statistics only represent new cases taken on by the RIPD. Some cases remain open for more than one year. It is not uncommon for a RIPD attorney to take on new cases, while simultaneously working on open cases. The average number of cases that remained open from prior years during the 2012 through 2015 period was 4,432. In 2015, 4,557 cases remained open from prior years.

The study of actual time spent links RIPD's time entry database with its case management database to provide a representation of how much time RIPD attorneys are spending on case-related work. Time data was extracted from the time entry database for a six-month period beginning October 2015 and ending March 2016.³³ This data showed how much time RIPD lawyers spent on case-related tasks as defined in Section IV (A)(2) above.

On the surface, the task of measuring actual public defender practice time may seem clear-cut, but not all cases were started and closed during the review period (October 2015 through March 2016). Many cases either began or ended outside of the time collection window. However, conclusions based only on cases completed within the time collection period would inaccurately represent time estimates for more complex, longer-duration cases, such as murder cases. To adjust for this challenge, BlumShapiro assigned each case a group identifier.

- ❖ **Group 1** —
Case opened and disposed of during the period of review.
- ❖ **Group 2** —
 - a. Case opened before period of review and disposed of during period of review.
 - b. Case opened during the period of review and disposed of after the period of review.
- ❖ **Group 3** —
Case opened either before or during the period of review and the date of disposition is not known (i.e., the case is ongoing).



For cases that fell in Group 1, full information about the time spent on defense representation was available. As a result, case time was directly calculable and no estimation was required.

For cases in Group 2 and Group 3, an estimation of time was required. The steps below describe the process of estimating the time spent on each case.

1. Calculate the Case Life:

- ❖ For Group 2, the Case Life is determined by calculating the total number of days between when a case was opened and when a case was concluded.
- ❖ For Group 3, since the case closed date is unknown, an estimation of the number of days to disposition is required. The median observed number of days to completion for disposed cases of the same type was therefore assigned to all cases in Group 3.

2. Calculate a Time Multiplier

- ❖ Calculate what portion of the Case Life was captured in the period of review for each case, and then invert that figure to derive a Time Multiplier for that case. Assume, for example, a misdemeanor case was opened 10 days before the period of review, and was closed within the first 10 days. The Case Life would therefore be 20 days, and 50% of this case was captured in the time study window. Inverting that figure results in a Time Multiplier of 2.00.

3. Apply Multiplier to the Total Time Tracked for Each Case

4. Calculate Average Time Spent for All Cases for Each Case Type.

The table below shows the average amount of estimated time, in hours, spent for each Case Type by the Rhode Island Public Defender Office.

RHODE ISLAND PUBLIC DEFENDER OFFICE HOURS PER CASE TYPE

Case Type	Average Reported Hours
Murder	219.2
Non-Murder -Max Life	52.0
Felony Class I	17.9
Felony Class II	7.6
Probation Violation	2.9
Misdemeanors	2.8
Juvenile Wayward	3.1
Juvenile Delinquent	6.1
Dependency and Neglect	6.4



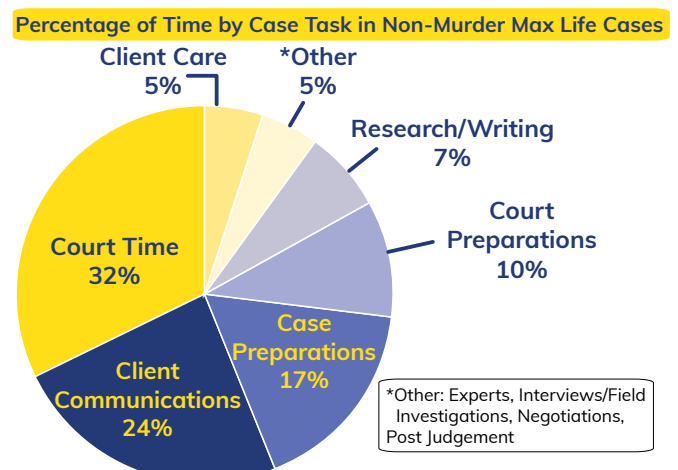
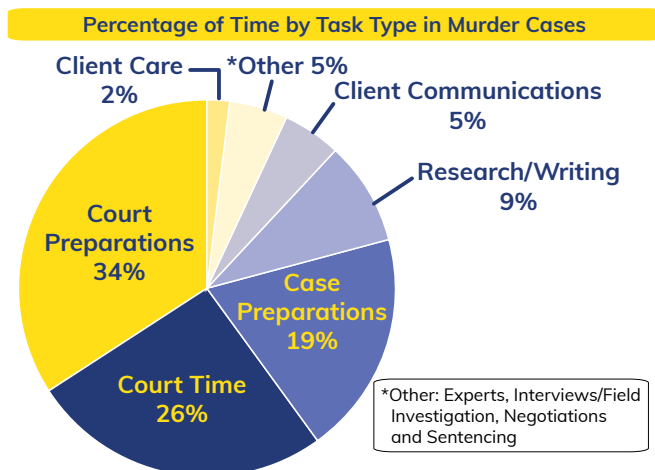
When examined by Case Task for each Case Type, the estimated actual time is expended as follows:

RHODE ISLAND PUBLIC DEFENDER AVERAGE HOURS PER CASE TASK FOR EACH CASE TYPE

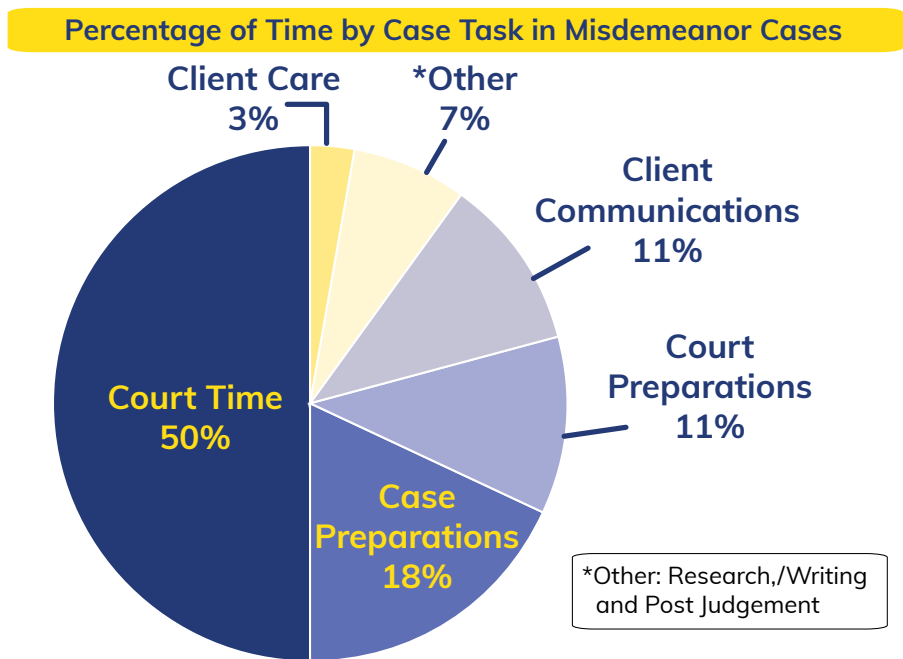
CASE TASK	MURDER	NON-MURDER MAX LIFE	FELONY CLASS I	FELONY CLASS II	PROB. VIOLATION	MISD.	JUVENILE WAYWARD	JUVENILE DELINQ.	DEP. & NEGLECT
Case Preparation	40.4 hrs	8.9 hrs	3.3 hrs	1.4 hrs	0.9 hrs	0.5 hrs	0.4 hrs	1.2 hrs	2.2 hrs
Client Care	5.3	2.6	0.5	0.2	0.1	0.1	0.2	0.3	0.0
Client Communication	11.4	12.3	2.0	1.1	0.5	0.3	0.4	0.7	3.5
Records Collection	--	--	--	--	--	--	--	--	--
Court Preparation	75.3	5.0	2.9	0.4	0.1	0.3	0.1	0.7	--
Court Time	57.3	16.8	8.0	3.9	1.2	1.4	1.06	2.0	0.6
Experts	2.6	0.1	0.0	0.0	--	0.0	--	0.0	--
Interviews/Field Investigations	3.2	0.2	0.1	0.0	0.0	0.0	0.0	0.0	--
Legal Research and Writing	19.4	3.6	0.8	0.2	0.0	0.1	0.0	0.4	--
Negotiations	4.1	1.9	0.3	0.1	0.1	0.0	0.0	0.1	--
Post Judgement	0.0	0.1	0.1	0.3	0.0	0.1	0.4	0.6	
Sentencing	0.1	0.5	0.0	0.0	0.0	0.0	0.0	0.1	--
TOTALS	219.2	52.0	17.9	7.6	2.9	2.8	3.1	6.1	6.4

Overall, the collected data demonstrates public defenders are spending the most amount of time on Court Time (29%). The next most time-intensive task categories are Court Preparation (27%), Case Preparation (19%), and Legal Research/Writing (8%). The remaining case tasks ranged between 1% and 3% of time expended.³⁴

Utilizing the data gathered, below are examples of the percentage of time expended by Case Task for specific Case Types.



Not surprisingly, less time is devoted to Misdemeanors, Probation Violations, and Juvenile Wayward cases than felony offenses. However, it is striking that on average, persons charged with Misdemeanors, Probation Violation, and in Juvenile Wayward cases received no more than an hour of attorney time in every time category except Court Time. Similarly, the only Case Tasks for which Juvenile Delinquent defendants received more than an hour of attorney time is Case Preparation and Court Time.



Many of the RIPD attorneys handle more than one case at a time, and also have supervisory and other administrative duties. BlumShapiro separated the time keeping data from the public defenders into three main categories: General Work Related, Case Related, and Case Specific, as discussed below.

- ❖ **General Work Related** — Time unrelated to case work (i.e., performing administrative, supervisory, or organizational tasks).
- ❖ **Case Related** — Time spent working on more than one case and not attributable to any individual case or cases by the time keeper (i.e., time in court on various cases or following up with various clients in a short period of time).
- ❖ **Case Specific** — Time spent clearly working on a single, specific case.

Based on an analysis of the time keeping records for the period reviewed, approximately 44 percent of the time was Case Specific, 39 percent of the time was Case Related, and 17 percent was General Work Related.

The time study was designed to identify approximately how much time public defenders are currently recording on Delphi case types which would be compared to the Delphi Panel results of how much time attorneys should spend on Delphi cases. However, in the analysis of the time keeping data, only 44 percent could be directly attributed to a specific case. The time keeping data understates the Case Specific time spent on legal representation of clients on specific cases by public defenders because the Case Related work was not attributed to specific cases. Since the RIPD is taking on an average of 15,000 new cases per year, it is not feasible for the public defenders to keep track of their time on a Case Specific basis at the RIPD's current staffing level. As a result, our analysis of all public defender time is based on FTE attorney staffing levels (at 2,087 hours annually per attorney³⁵) in lieu of estimated Case Specific time.



C. Delphi Process — The World of Should

The Delphi process used in this study relied upon the expertise of both private practice attorneys and public defender attorneys to supply a consensus estimate of the amount of time defense counsel should expect to spend on a particular case in order to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

A panel of experts, including Judge Netti Vogel (ret.), Judge Judy Savage, and Peter DiBiasi, Esq. chose luminaries in the field of Rhode Island criminal defense. BlumShapiro sent online invitations to a total of 91 criminal defense attorneys (the “Delphi Panel”). Potential survey respondents were notified that the Delphi process would be conducted in three rounds, with two online survey rounds, and a third and final in-person meeting.

1. Online Surveys

In Round One, survey participants completed the survey questions designed to identify approximately how much time a lawyer should devote to different types of criminal cases to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The expert panel was instructed to use the ABA Standards for Criminal Justice related to the Defense Function, Rules of Professional Conduct contained in Article V of the Rhode Island Court Rules, and their own expertise to complete the online survey. A link to the ABA Defense Function Standards was provided in the survey. Each survey respondent also was provided with each case task definition as provided in Section IV(A)(2) above.

A total of 43 criminal defense attorneys participated in the first online survey round, of which 22 were private practice attorneys and 21 were public defenders. Of the private practice attorneys, eight of them are practicing in a law practice with two or more attorneys. The remaining 14 private practice attorneys are solo practitioners.

The private practice attorneys have on average 1 support staff per attorney, including 0.48 secretaries per attorney, 0.17 paralegals per attorney, and 0.40 investigators per attorney. In contrast, the Rhode Island Public Defenders have on average 0.21 support staff per attorney, including 0.08 secretaries per attorney and 0.13 investigators per attorney. As a result, RIPD attorneys are not able to devote full time to their cases as they are expected to perform other duties as well.

Survey respondents were instructed only to answer questions for case types that they handle. For example, if an attorney does not handle Murder cases, the attorney was instructed to answer “No” and would automatically be directed to the next Case Type.

Each Case Type section asked the following two questions about the different Case Tasks:

1. In what percentage of [Case Type] should a lawyer perform the [Case Task] to provide reasonably effective assistance of counsel pursuant to prevailing professional norms?

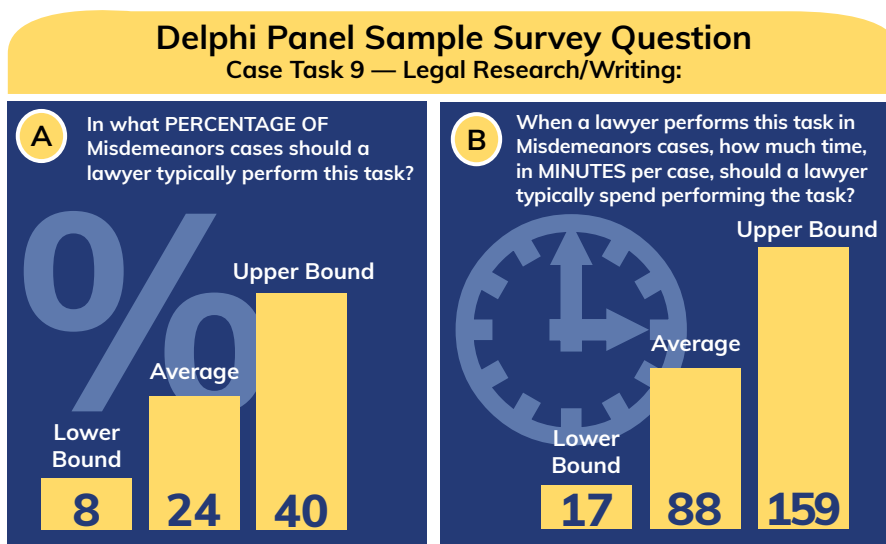
Example: In what percentage of Murder cases should a lawyer consult with one or more experts to provide reasonably effective assistance of counsel pursuant to prevailing professional norms?

2. In [Case Type], when a lawyer performs the [Case Task], how much time in minutes should a lawyer typically spend performing the [Case Task] to provide reasonably effective assistance of counsel pursuant to prevailing professional norms?

Example: In Murder cases, when a lawyer consults with one or more Experts, how much time in minutes should a lawyer spend on that task to provide reasonably effective assistance of counsel pursuant to prevailing professional norms?

The expert panel that participated in Round One was sent the online survey for Round Two. The response estimates of Task Frequency and Task Time from Round One were summarized across the entire group of experts. Round Two was identical to Round One, with one important difference: the survey participants were given summary statistics on the range of time from Round One, an example of which is below:

The summary statistics from Round One are intended to assist in informing the survey participants' responses for Round Two. The average estimate is a single point estimate showing the average responses of *all* Round One participants.³⁶ The range that was presented is not the entire range of estimates received, but rather is typically one standard deviation from the average.³⁷



The Survey Participants were asked to use the ABA Standards for Criminal Justice related to the Defense Function, Rules of Professional Conduct contained in Article V of the Rhode Island Court Rules, their own expertise, and Round One results to complete the Round Two survey. A link to the ABA Standards was provided to the expert panel.

A total of 31 criminal defense attorneys participated in the second online survey round, of which 10 were private practice attorneys and 21 were public defenders.

2. The In-Person Meeting

As a third and final iteration, the expert panel was invited to participate in an in-person meeting to discuss the Round Two survey results and to reach a group consensus for the time required for each Case and frequency estimate for each Case Type. Twenty-three attorneys participated in the in-person meeting, of which 15 were public defenders and 8 were private attorneys.³⁸

The expert panel was reminded that the frequency of task and time estimates should (i) assume adequate support staff (and that attorneys would only perform tasks not appropriate for support staff), (ii) apply prevailing professional norms, and (iii) provide an estimate of the amount of time defense attorneys should expect to spend on each Case Task.

BlumShapiro facilitated the discussion among the expert panel members. The summary statistics from Round Two showing the average responses of *all* Round Two participants, as well as a lower and upper bound was projected on a large screen for the expert panel to see as a starting point for facilitated discussion.³⁹



Given the summary statistics, the expert panel was asked either to confirm the time and frequency estimates from the second survey round or provide a new estimate. As each of the 240 task frequency or time frequency values was considered, participants were encouraged to publicly state a rationale and advocate for their views based on their best professional judgment. Following discussion, a vote was held with a two-thirds majority required to change the frequency or time estimate being considered. Further discussion ensued until at least two-thirds of participants indicated no further adjustments were needed. When asked to vote on an estimate, the expert panel voted on “i-clicker” remotes, which is an audience response system that records votes anonymously.⁴⁰ The project director, Stephen Hanlon, and Peter Sterling were also available to assist in the process, and to orient the expert panel to professional norms and standards of practice that should guide their thinking in determining their recommendations. Frequency and time recommendations remaining after completing this process were aggregated to produce totals by offense level.

3. Delphi Process Conclusion

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

$$\text{Expected Time Per Task} = \text{Task Time} \times \text{Task Frequency}$$

The expected time per task is interpreted as the amount of time that a public defender should expect to spend on any one Case Task and Case Type combination for the typical case. The expected time was then summarized for each Case Type in arriving at the final workload standards.

The table below shows the time recommended by the Delphi Panel by both Case Type and Case Task group. The conclusions shown in the chart reflect a reliable consensus of expert opinion of the time required to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

**DELPHI PANEL RECOMMENDED HOURS PER CASE TASK
FOR EACH CASE TYPE**



Case Task	Murder	Non-Murder Max Life	Felony Class I	Felony Class II	Prob. Violation	Misd.	Juvenile Wayward	Juvenile Delinq.	Dep. & Neglect
Case Preparation	33.7	19.4	8.1	5.0	1.5	1.9	2.5	4.0	2.7
Client Care	10.8	11.9	2.3	0.9	1.8	1.4	1.9	3.0	2.5
Client Communication	19.4	10.0	3.6	1.5	2.8	1.6	1.9	3.2	4.0
Records Collection	8.2	3.9	1.4	1.7	0.9	0.6	2.4	2.2	1.9
Court Preparation	40.0	18.1	9.5	8.2	4.1	2.2	4.2	9.0	5.0
Court Time	31.8	27.8	12.4	4.5	1.9	2.5	5.5	9.3	5.0
Experts	6.5	2.6	1.0	0.4	0.0	0.0	0.3	0.7	1.4
Interviews/Field Investigations	6.8	2.5	2.8	1.4	1.2	0.9	0.9	1.8	1.1
Legal Research and Writing	12.2	3.3	2.2	0.6	0.2	0.4	1.0	2.0	1.1
Negotiations	2.9	1.5	3.5	2.8	0.7	0.4	1.6	2.2	2.0
Post Judgement	1.1	1.0	1.0	0.2	0.1	0.1	3.5	4.6	0.6
Sentencing	8.3	6.2	4.1	1.1	1.8	0.7	4.1	4.0	-
TOTALS	181.6	108.1	51.9	28.3	16.9	12.7	29.5	46.1	27.2



Using the number of new cases in 2015 as a baseline, and the workload standards set by the Delphi Panel, we can estimate the total hours per year that should be spent to ensure effective representation of indigent criminal defendants, as shown below:

**TOTAL NUMBER OF HOURS NEEDED TO PROVIDE EFFECTIVE REPRESENTATION
BASED ON NUMBER OF NEW CASES IN 2015**

(Number of new cases by Case Type x Workload standard
for Case Type = Total hours per year)

Case Type	Number of New Cases in 2015	Workload Standards for Case Types	Total Hours Per Year
Murder	15	181.6	2,724.0
Non-Murder -Max Life	174	108.1	18,809.4
Felony Class I	825	51.9	42,817.5
Felony Class II	2,805	28.3	79,381.5
Probation Violation	1,488	16.9	25,147.2
Misdemeanor	8,507	12.7	108,038.9
Juvenile Wayward	150	29.5	4,425.0
Juvenile Delinquent	42	46.1	1,936.2
Dependency & Neglect	36	27.2	979.2
TOTALS	14,042		284,259

Applying this same data to the five year average of new cases for the period 2011 — 2015 as a baseline provides the following:



**TOTAL NUMBER OF HOURS NEEDED TO PROVIDE EFFECTIVE REPRESENTATION
BASED ON AVERAGE NUMBER OF NEW CASES PER YEAR**

(Number of new cases by Case Type x Workload standard
for Case Type = Total hours per year)

Case Type	Average Number of New Cases 2011-2015	Workload Standards for Case Types	Total Hours Per Year
Murder	10	181.6	1,816.0
Non-Murder -Max Life	171	108.1	18,485.1
Felony Class I	914	51.9	47,5436.6
Felony Class II	2,983	28.3	84,418.9
Probation Violation	1,775	16.9	29,997.5
Misdemeanor	8,982	12.7	114,071.4
Juvenile Wayward	159	29.5	4,690.5
Juvenile Delinquent	30	46.1	1,383.0
Dependency & Neglect	31	27.2	843.2
TOTALS	15,055		303,142

Assuming attorneys work 2,087 hours per year and all of this time is spent defending clients, the number of full-time equivalent attorneys required to ensure effective representation of indigent criminal defendants ranges from 136 to 145 attorneys, as calculated below:

Baseline	Total Hours Per Year w/Workload Standards	Full Time Equivalent Hours Per Year	Full Time Equivalent Employees
2015 New Cases	284,259	2,087	136
2011-2015 Ave. New Cases	303,142	2,087	145

(Total hours per year ÷ Full time equivalent hours per year = full time equivalent employees)

The above computations only factor in new cases, and do not factor in existing cases that have not been disposed. For instance, in 2015, there were 4,557 cases still open from prior years. Since the existing cases are not factored in, the number of full-time equivalent attorneys recommended in the above analysis is conservative and the actual number needed is likely to be higher.



ATTORNEY WORKLOAD STANDARD CONCLUSION

The aim of this workload study was to measure what workload standards *should be* in order for a defender to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. Rigorous research methods were employed, including an assessment of the current time being spent on different cases and the development of consensus around the time needed to provide reasonably effective assistance of counsel pursuant to prevailing professional norms by a group of private practice and public defender experts employing the Delphi method. A literature review on the Delphi method has demonstrated that a majority of studies provide compelling evidence in support of this method.

The table below provides the Delphi Panel's expert consensus on the time required for an attorney to provide reasonably effective defense by Case Type.

DELPHI PANEL RESULTS

Case Type	Case Task Hours per Case Type
Murder	181.6
Non-Murder -Max Life	108.1
Felony Class I	51.9
Felony Class II	28.3
Probation Violation	16.9
Misdemeanors	12.7
Juvenile Wayward	29.5
Juvenile Delinquent	46.1
Dependency and Neglect	27.2

Using the above workload standards for average amount of time that should be spent per Case Type, it is estimated that there should be 136 to 145 full-time public defenders at the Office of the RIPD to provide reasonably effective defense. As of this report, there are 49 full-time RIPD attorneys. However, not all of these attorneys handle a full caseload due to supervisory and other administrative duties. Therefore, the Delphi Method's process indicates that the Rhode Island public defense system is currently deficient at least 87 FTE attorneys. Alternatively, based on the Delphi Method's results and analysis presented herein the RIPD currently only has capacity to handle, at most, 36.0% of the workload in compliance with the Delphi Panel's consensus opinions.



1. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
2. *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (“We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.”).
3. NAT’L ASS’N CRIM. DEF. LAWYERS, *GIDEON AT 50 PART 3 — REPRESENTATION IN ALL CRIMINAL PROSECUTIONS: THE RIGHT TO COUNSEL IN STATE COURTS*, 15-16 (Oct. 2016), available at www.nacdl.org/gideonat50.
4. *State v. Holliday*, 109 R.I. 93, 280 A.2d 333 (R.I. 1971).
5. *Strickland v. Washington*, 466 U.S. 668 (1984).
6. *Padilla v. Kentucky*, 559 U.S. 356 (2010) (citing, *inter alia*, the AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE STANDARDS RELATED TO THE DEFENSE FUNCTION).
7. Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 CRIM. JUST. 10 (2009), available at http://www.americanbar.org/groups/criminal_justice/standards.html.
8. *Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 213 (2008).
9. *Missouri v. Frye*, 132 S.Ct.1399, 1407 (2012).
10. *Id.* See also R. E. Scott & W. J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L.J. 1909, 1912 (1992).
11. ABA Ethics Committee, *Formal Ethics Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation*, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441_authcheckdam.pdf (last visited June 1, 2017).
12. This report does not offer an assessment of whether or not the RIPD has sufficient auxiliary staff, including investigators, social workers, paralegals, secretaries, and other support personnel. The Delphi Panel’s determinations respecting workloads assume that adequate support personnel are available and Delphi Panel members were instructed to that effect when making their judgments respecting the time required to perform necessary case tasks.
13. State of Rhode Island and Providence Plantations, *Budget Fiscal 2017, Volume IV — Public Safety, Natural Resources and Transportation*, Governor Gina M. Raimondo, available at http://www.omb.ri.gov/documents/Prior%20Year%20Budgets/Operating%20Budget%202017/BudgetVolumeIV/39_Office%20of%20Public%20Defender.pdf.
14. This literature review on the Delphi Method is derived from “The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards,” prepared by RubinBrown on behalf of the ABA’s Standing Committee on Legal Aid and Indigent Defendants. The Missouri Project provided a national blueprint for workload studies such as this one.
15. Norman Dalkey & Olaf Helmer, RM-727, *An Experimental Use of the Delphi Method to the Use of Experts 1* (1962), available at https://www.rand.org/pubs/research_memoranda/RM727z1.html.
16. Gene Rowe & George Wright, *The Delphi Technique as a Forecasting Tool: Issues and Analysis*, 15 INT’L J. FORECASTING 353, 354 (1999).
17. Olaf Helmer & Nicholas Rescher, *On the Epistemology of the Inexact Sciences P-1513 42* (1958) available at <https://www.rand.org/pubs/reports/R353.html>.
18. Dalkey & Helmer, *supra* note 27, at 2.
19. *Id.* at 2-3.
20. Rowe & Wright, *supra* note 26, at 354.
21. Chia-Chien Hsu & Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus*, 12 PRAC. ASSESSMENT, RES. & EVALUATION 1 (2007), available at <http://pareonline.net/pdf/v12n10.pdf>.
22. Rowe & Wright, *supra* note 26, at 366.
23. HAROLD A. LINSTONE & MURRAY TUROFF, *THE DELPHI METHOD: TECHNIQUES AND APPLICATIONS* 10–11 (2002); Rowe & Wright, *supra* note 26, at 355.
24. Hsu & Sandford, *supra* note 31, at 1. For detailed examples of the application of the Delphi method, see LINSTONE & TUROFF, *supra* note 33.



25. See, e.g., VICTOR E. FLANGO & BRIAN J. OSTROM, NAT'L CENTER FOR STATE COURTS, *ASSESSING THE NEED FOR JUDGES AND COURT SUPPORT STAFF* (1996).

26. Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, 146 (American Bar Association 2011).

27. *Id.* at 149.

28. These included methodologies from workload studies conducted in Missouri, Texas, Tennessee and Louisiana. See *The Missouri Project*.

29. This category of appeals covers post-conviction relief (PCR) cases, as well as those determined after the filing of preliminary statements. See RI Sup Ct, Art. I, Rule 12A.

30. In Rhode Island, when a juvenile is charged with an offense which would be a misdemeanor if committed by an adult, the juvenile is charged with being wayward.

31. In Rhode Island, when a juvenile is charged with an offense which would be a felony if committed by an adult, the juvenile is charged with being delinquent.

32. BlumShapiro only had partial year data for 2016. There were 3,479 new cases opened in the first three months of 2016.

33. Though the RIPD attorneys began keeping time in September 2014, the researchers elected a six-month window from October 2015 through March 2016. Since timekeeping was a new undertaking for the attorneys, a period of adjustment to tracking time was necessary. By October 2015, the attorneys had adapted well to the system, giving the research team a higher level of confidence in the timekeeping entries. In addition, the RIPD has thousands of cases in its timekeeper system. However, the RIPD has its own task names that are different than those analyzed in this study. In order to link the two tasks, a six-month time period was selected as a manageable period of review. The six-month period of review had over 10,000 unique cases.

34. The Case Task "Records Collection" did not appear in the timekeeping records reviewed by BlumShapiro. This case task is defined as "ordering and obtaining records, transcripts, discovery materials, and other case-related documents." BlumShapiro assumes that this case task is in fact being performed by the RIPD, and that the time is included throughout the time expended in the other Case Tasks. As demonstrated later in the report, the Case Task of Records Collection should represent on average 4% of total time expended on all cases according to the Delphi Process.

35. The 2,087-hour work year is taken from the U.S. Government's Federal civilian employee full-time pay computation, available online at: <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/>.

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

37. In statistics, the standard deviation is a measure that is used to quantify the amount of variation or dispersion of a set of data values. Presenting a range that is one standard deviation from the average (mean) is meant to exclude outlier responses. The range we present contains approximately 2/3 of all Round One participant estimates. In other words, the range we present is not the entire range of estimates received, but is approximately limited to the central 2/3 of responses. See, e.g., *The 68-95-99.7 Rule for Normal Distributions*, available at <https://www.oswego.edu/~srp/stats/6895997.htm>.

38. There were not a sufficient number of attorneys present that handled Appeals — Pre-Brief Only and PCR cases; therefore, following discussion with the Delphi Panel, this case task was dropped from the study.

39. As was done in Round Two, in order to exclude outlier responses, the lower and upper bound range that was presented is not the entire range of estimates received in Round Two, but rather one standard deviation from the average.

40. For further information about "i-clickers," see the applicable website, available at <https://www.iclicker.com>. ♦



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