

Understanding The National Public Defense Workload Study

**A Practical Guide to Mapping
Common California Offenses**

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Note to the reader: This guide is not a part of the National Public Defense Workload Study and any errors in the interpretation of the study are solely attributable to the Office of the State Public Defender (OSPD).

Purpose of This Guide

The purpose of this guide is to summarize the National Public Defense Workload Study (NPDWS) and to provide statewide guidance on its application to California.¹ This guide includes a very brief summary of the NPDWS. Readers are strongly encouraged to read the full [report](#).

A workload study allows counties and defender offices to estimate how many defense attorneys are needed based on the number and type of cases filed annually in a jurisdiction. While a workload study can provide useful guidance as to individual caseloads, it works best on a more systemic level. OSPD recognizes that many defender offices may be understaffed and that counties across the State are impacted by a statewide public defender shortage.² However even where rapid staffing increases are not immediately feasible, using enhanced data collection practices and this tool, defense leaders and policymakers can better assess overall attorney caseloads in order to responsibly plan for their system's anticipated future needs.³

About the National Public Defense Workload Study

The goal of the NPDWS was to create new national workload standards based on extensive data and expertise.⁴ That process began with a comprehensive review of 17 prior state-level public defense workload studies conducted between 2005 and 2022.

Through this review, NPDWS researchers, working with practitioners across the country, identified and defined 11 case types and 8 activity types. Case types ranged from Felony-High-Life Without Parole cases to Misdemeanor-Low cases. The NPDWS used offense severity and sentencing exposure as proxies for the relative amount of

¹ The NPDWS was a collaboration between the RAND Corporation; the National Center for State Courts (NCSC); the American Bar Association (ABA); the Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID); and Stephen F. Hanlon, Principal, Law Office of Lawyer Hanlon. The NPDWS is widely available on the RAND Corporation and the ABA's websites..

² [California's Attorney Deserts: Access to Justice Implications of the Rural Lawyer Shortage](#), California Commission on Access to Justice (July 2019).

³ As defense leaders adopt workload standards, they should also consider whether non-attorney staff such as paralegals, investigators, social workers, and administrative staff can provide support to complement attorney staffing.

⁴ Previously some relied on caseload standards published in the 1973 National Advisory Commission (NAC) on Criminal Justice Standards and Goals. The NAC failed to account for changes in the practice of law such as case investigation, discovery, obligations to advise clients on collateral consequences of criminal convictions and sentencing practices. Moreover, the NAC report lacked any formally documented basis for its recommended caseload standard. See generally, NPDWS at pages 4-34.

attorney time required to defend the case, as does this California guide. The 8 activity types represented different types of attorney work, including such things as client communication, negotiations, research, and court preparation.

The NPDWS team then assembled a panel of expert criminal defense attorneys from around the country and employed the Delphi method, a quantitative research technique developed by the RAND Corporation in the 1950's through which the opinions of experts are aggregated and deliberated until they achieve consensus.⁵ The NPDWS Delphi panel was comprised of a diverse group of experienced criminal defense attorneys practicing in different types of offices.⁶ The panel undertook a rigorous and moderated effort to come to a consensus on the average amount of attorney time needed to provide reasonably effective assistance of counsel in an array of adult criminal cases.⁷

Considerations in the NPDWS

The scope of the NPDWS was limited to the 11 defined case types for adult criminal court. The NPDWS did not consider the amount of attorney hours required to defend capital cases, juvenile justice matters, conservatorships, immigration work, post-conviction matters or California-specific matters, such as litigation under the Racial Justice Act or Three Strikes law.⁸

Offices that represent people in matters not considered by the NPDWS must calculate the hours required to do that work in addition to the NPDWS calculations to have a true understanding of their office's needs. In essence, defender offices will need to account for the additional attorney hours required to defend these additional case types which were not included in the NPDWS.

Because this document is an application of the NPDWS it does not attempt to create case weights for additional case types or activities. This does not in any way indicate

⁵ [Generating Evidence Using the Delphi Method](#), RAND Corporation, 2023.

⁶ To assemble the expert panel, the authors of the NPDWS reached out to major national organizations with a focus on the provision of effective assistance of counsel in criminal cases: Gideon's Promise, the National Association for Public Defense, the National Association of Criminal Defense Lawyers, the National Criminal Defense College, and the National Legal Aid and Defender Association. Each organization was asked to nominate a diverse group of attorneys with a wide range of experience and a track record of good practice. Ultimately, 33 attorneys served on the expert panel, 5 were from California. See NPDWS at pp. 63-67.

⁷ The expert panel engaged in an initial survey and then a real-time or roundless Delphi session. The session continued until the panel reached a predefined level of consensus on the total time required on all considered case types.

⁸ California Pen. Code § 745, also known as the California Racial Justice Act (AB 2542, 2020, expanded by AB 256, 2022), allows defenders to file motions to challenge proceedings that may have been affected by racial bias; *People v. Superior Court (Romero)* (1996) 14 Cal.4th 497 was a landmark case that gave California judges the ability to dismiss a "strike prior", pursuant to the California Three-strikes law.

that those types of cases or activities are less critical for defense systems, only that they are outside the scope of the NPDWS.

The NPDWS focused on the workloads of attorneys. It did not include workload recommendations for other defense team members, such as investigators, social workers, paralegals, or other support staff. Experts on the Delphi panel were told to assume their office’s current staffing level of support staff.

Workload Standards

The NPDWS resulted in a consensus “case weight” for each case type, i.e., the average amount of hours needed for an attorney to complete the case tasks for a particular case type. To convert those hours into annual caseload standards, a jurisdiction must understand the number of hours a full-time attorney has available to work on cases each year. Prior American Bar Association (ABA) workload studies assumed that each attorney had 2,080 hours per year available for case related work, and the NPDWS also used the assumption of 2,080 hours per year – for illustrative purposes. 2,080 hours is equivalent to an attorney working entirely on client casework 40 hours a week, 52 weeks a year without any days off for holidays, PTO or sick leave, fulfilling MCLE requirements, or administrative duties.

In applying workload standards, a local determination will need to be made regarding the number of hours per year realistically available for each attorney to conduct case work. This amount may differ based on variables such as: state and local holidays, sick and vacation leave allowances, training time, travel time, and any deductions for attorneys who handle reduced caseloads (including part-time attorneys and attorneys with administrative or supervisory responsibilities).

The chart below includes the case weight for each case type and an example of an annual attorney caseload according to the NPDWS standards if 2,080 hours is assumed. For example, if an attorney has 2,080 hours a year available for casework and has only Felony-High-LWOP cases (life without the possibility of parole), a caseload meeting the NPDWS standards would be approximately 7 cases annually.

Case Type	Hours Per Case (Case Weight)	Sample Annual Caseload Standard (for a non-mixed caseload)
Felony-High-LWOP	286	7
Felony-High-Murder	248	8
Felony-High-Sex	167	12
Felony-High-Other	99	21
Felony-Mid	57	36
Felony-Low	35	59
DUI-High	33	63
DUI-Low	19	109

Misdemeanor-High	22.3	93
Misdemeanor-Low	13.8	150
Probation/ Parole Violations	13.5	154

“Mixed caseloads,” where an attorney might have multiple case types, require a slightly more sophisticated calculation and OSPD has created a tracking tool using Excel software to assist counties and defender offices with calculating the number of attorney hours available and needed in their jurisdiction. Please contact IDIDtraining@ospd.ca.gov for more information or to request a copy of the tool.

Deciding the Case Type

In considering what case type a case falls under, the members of the NPDWS expert panel were asked to consider all charges filed against an individual that arose out of a single event or series of events that were being prosecuted together as a single case.⁹ Cases were then classified by considering only the highest charge in a case.¹⁰ For example, if an individual was charged with armed robbery and possession of a stolen car, the case was mapped as armed robbery. This guide uses the same process.

Mapping Common California Offenses

Many of the case types identified by the NPDWS do not track seamlessly to California’s unique criminal legal system.¹¹ However, to make the tool practicable for California systems, decisions need to be made about how to categorize California offenses to the case types in the NPDWS. OSPD consulted with experts from around the State and authors of the NPDWS to make recommendations about how to best categorize California specific offenses into NPDWS case type categories. The resulting recommendations about how to categorize many commonly charged California offenses are included in Tables 1-11. The charges included are not exhaustive.

OSPD endeavored to adhere as closely as possible to the NPDWS guidelines. In making categorization recommendations, our focus was on the amount of attorney hours required to defend certain types of cases. The following are the rules that guided OSPD’s mapping process for California offenses.¹²

⁹ See NPDWS at p. 60.

¹⁰ Id.

¹¹ Id. at pp. 58-59.

¹² Two primary authors of the NPDWS were consulted when considering these rules on how to map the national study onto California law.

- Felonies that have a sentencing triad of 16/2/3 were mapped to the Felony-Low category.¹³
- Felonies that have a sentencing triad of 2/3/4 to a maximum possible sentence of 15 years were mapped to the Felony-Mid category. This is consistent with the NPDWS categorization.
- Sentencing enhancements connected to the *offense*, such as gun enhancements and great bodily injury enhancements, were considered when deciding the severity of the case type because those enhancements meaningfully impact the time and effort involved in defending those cases.¹⁴
- Sentencing enhancements which attach to the *offender*, such as Three Strikes enhancements and prior conviction sentencing enhancements were not included when deciding case type severity.¹⁵
- Rape and all felony sex offenses involving minors were mapped to the Felony-Sex-High case type due to:
 - The amount of attorney work involved in defending sex offense cases;
 - Mandatory consecutive stacking laws in California for sex offenses are tantamount to an offense-based enhancement.
- Misdemeanor-High case types were classified based on descriptions and examples in the workload study, including domestic violence, assault, battery, animal cruelty, and misdemeanor cases that require sex offender registration under Penal Code § 290.
- Misdemeanor-Low case types were classified based on examples in the NPDWS, including petty theft, simple drug possession, trespass, and traffic offenses.
- DUI-High case types are felony DUIs.
- DUI-Low case types are all other DUIs, including misdemeanor DUIs regardless of whether they are successive.
- If charges increase substantially during the case so that the case type is changed, the case should be mapped to the higher case type category

¹³ This report does not distinguish between felonies eligible for local sentencing versus state prison under Penal Code § 1170(h). In jurisdictions where this makes a significant difference in the number of hours attorneys must spend on a case, a modification to case weights based on the data may be made.

¹⁴ See NPDWS at pp. 58-59. This comports with the examples set forth in the NPDWS, because California, unlike other states, separates gun and violence enhancements from the offense rather than having "armed robbery" or "aggravated assault" as standalone charges.

¹⁵ *Id.* at p. 60. We recognize that the various sentencing enhancements do create a significant workload for defenders. For example, in a Three-strikes case, the amount of attorney time required to defend the case includes the amount of time needed to litigate the charged offense and the time needed to research, prepare, and present a *Romero* motion. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497). Because the NPDWS did not establish how many hours are needed to effectively undertake a *Romero* motion, OSPD is not prepared to make assumptions about the amount of attorney time needed. However, a county or defender office may have the data to make that determination and could make a case weight adjustment to a case type with a higher severity with that information.

because it acknowledges and captures the attorney work required to defend the case.

- If charges decrease substantially during the pendency of litigation, the case should continue to be mapped to the higher case type category. This acknowledges and captures that amount of attorney work required to defend the case, including the successful reduction in case exposure.
- When examples or descriptions of offenses listed in the NPDWS were inconsistent with suggested case type sentencing ranges, offenses were typically categorized using the NPDWS sentencing ranges.¹⁶

Local Adjustments to Case Weights

The NPDWS is a national study utilizing experts from various systems and is intended to represent the *average* amount of time spent on a type of case. This guide attempts to clarify which California offenses carry which case weight pursuant to the NPDWS.

However, where a local jurisdiction has practices related to certain charges that require an attorney, on average, to spend a higher or lower number of hours on that case, a local adjustment of case weight for those charges may be warranted. For example, some jurisdictions may litigate Three Strikes *Romero* motions or Racial Justice Act motions in a large percentage of certain case types, which may increase the “case weight” (number of attorney hours needed) for those case types in that jurisdiction. In addition, where offices have high functioning specialized support units or robust non-attorney paralegal teams, a local adjustment to case weights downward may be warranted for certain case types to reflect more accurately the time an attorney¹⁷ must spend on case specific tasks.

Any adjustment to the recommended NPDWS case weight should be based on data and structured information from attorneys and staff.

Calculating Future Attorney Needs

An effective way to utilize the NPDWS and this guide is for a public defender system to perform a historical review of caseload data or a “look-back.” To do so, counties and defender offices would look at their cases from prior years and categorize each case according to the defined case types. Unless there have been significant changes

¹⁶ The NPDWS used multiple descriptors to define each case type. For example, in defining Felony-Mid case types, the NPDWS included an offense description (i.e., felonies and serious property crimes), sentencing ranges (i.e., 3-15 years) and examples (i.e., arson, robbery, drug distribution) to define the case type. These descriptors do not map seamlessly onto California Penal Code sections. When there was a conflict, OSPD chose to use the NPDWS numerical sentencing range for consistency, clarity, and ease of use. OSPD acknowledges that for some types of cases (i.e., burglary), utilizing only the sentencing range rather than the examples places those cases in a higher case type category.

¹⁷ The NPDWS only accounts for attorney time on case activities, not all staff time.

to local practice or law, this historical review would serve as a reasonable estimate for the future number of each case type. Counties and offices could then calculate how many attorney hours are needed to meet the estimated work. Attorney hours are an essential component to calculating the number of attorneys needed. When historical data is lacking, counties can begin tracking caseload data by case type and perform a “look-back” after sufficient data is collected. Although it is more complicated, the NPDWS case types could also be used to sort and classify open caseloads.

OSPD has created an Excel tool for tracking attorney hours, numbers of each case type, and calculating annualized caseloads, which is available upon request at IDIDtraining@ospd.ca.gov.

Common California Charges Mapped to NPDWS Case Types

Table 1: Felony-High-LWOP

NPDWS description:¹⁸ Felonies with a possible sentence of life without parole.

Sentencing Range: Up to life without parole.

Case weight: 286 hours per case.

CA Code	Charge	Sentencing Range
Penal Code §190.2	Special circumstances murder	Up to LWOP
Penal Code §667.61(j)(1)	One strike sex law	Up to LWOP
Penal Code §667(l)	One strike sex law	Up to LWOP

Table 2: Felony-High-Murder

NPDWS description: Non-LWOP felonies involving the intentional killing of a person.

Sentencing Range: Up to life with possibility of parole

Case weight: 248 hours per case.

CA Code	Charge	Sentencing Range
Penal Code §187	First degree murder	25 to Life
Penal Code §187	Second degree murder	15 to Life

Table 3: Felony-High-Sex

NPDWS description: Non-LWOP felonies involving serious sex offenses.

Sentencing Range: More than 15 years, including life with the possibility of parole.

OSPD recommendation: Rape and all sex offenses involving minors are recommended to be mapped to the Felony-High-Sex category.¹⁹

Case weight: 167 hours per case.

CA Code	Charge	Sentencing Range
Penal Code §261(a)(2)	Rape by force, violence, duress	3/6/8
Penal Code §261(a)(2)	Rape of child under 14	9/11/13
Penal Code §261(a)(2)	Rape of child over 14	7/9/11
Penal Code § 287(b)(1)	Oral copulation with person under 18	16/2/3
Penal Code §288(a)	Lewd and lascivious act with child under 14	3/6/8
Penal Code §288(b)(1)	Lewd and lascivious act with child under 14 committed by force or violence	5/8/10
Penal Code §288.5	Continuous sexual abuse of a minor	6/12/16
Penal Code §289(a)(1)(A)	Sexual penetration w/foreign object by force, duress, menace	3/6/8
Penal Code §289(a)(1)(B)	Sexual penetration w/foreign object victim under 14 by force, duress, menace	8/10/12

¹⁸ See NPDWS at pp. 58-59.

¹⁹ See discussion regarding rape and sex offenses involving minors in the "Mapping Common California Offenses" section above.

Table 4: Felony-High-Other

NPDWS description: Non-LWOP felonies (including DUIs resulting in death) other than charges falling into the high felony categories for murder or serious sex offenses.

Sentencing Range: More than 15 years, including life with the possibility of parole.

Case weight: 99 hours per case.

CA Code	Charge	Sentencing range
Penal Code §664/187	Attempted first degree murder	Life
Felony w/ §12022.5(a) enhancement	Personal use of a firearm during the commission of a felony	Offense + 3/4/10
Felony w/ §12022.5(b) enhancement	Personal use of an assault weapon during the commission of a felony	Offense + 5/6/10
Felony w/ §12022.53(b) enhancement	Personal use of a firearm during the commission of a felony	Offense + 10
Felony w/ § 12022.53(d) enhancement	Personal and intentional discharge of a firearm resulting in great bodily injury	Offense + 25 to life

Table 5: Felony-Mid

NPDWS description: Felonies (including DUIs resulting in death) including serious property crimes, drug distribution crimes, and less serious violent crimes.

Sentencing Range: 3 to 15 years.

Case weight: 57 hours per case.

CA Code	Charge	Sentencing Range
Penal Code § 664/190	Attempted 2 nd degree murder	5/7/9
Penal Code § 191.5(a)	Vehicular manslaughter w/drugs or alcohol and gross negligence	4/6/10
Penal Code § 191.5(b)	Vehicular manslaughter with drugs or alcohol but without gross negligence	16/2/4
Penal Code § 192(b)	Involuntary manslaughter	2/3/4
Penal Code § 203	Mayhem	2/4/8
Penal Code § 207	Kidnapping	3/5/8
Penal Code § 212.5(a)	Robbery - first degree	3/4/6
Penal Code § 212.5(c)	Robbery - second degree	2/3/5
Penal Code § 215	Carjacking	3/5/9
Penal Code § 243(d)	Battery w/ serious bodily injury	2/3/4
Penal Code § 245(a)(1)	Assault w/ a deadly weapon	2/3/4
Penal Code § 245(a)(4)	Assault by means likely to produce GBI	2/3/4
Penal Code § 246	Discharge at inhabited dwelling or vehicle	3/5/7
Penal Code § 273a(a)	Willful cruelty to child	2/4/6

Penal Code § 273.5(a)	Inflict traumatic injury on spouse or cohabitant	2/3/4
Penal Code § 368(b)(1)	Willful causing of pain on elder	2/3/4
Penal Code § 451(b)	Arson of inhabited dwelling house	3/5/8
Penal Code § 459/461(a)	Burglary - first degree	2/4/6
Penal Code § 4501.5	Battery on non-prisoner	2/3/4
Penal Code § 4502(a)	Prisoner possessing deadly weapon	2/3/4
Health & Safety Code § 11351	Possession of controlled substance for sale	2/3/4
Health & Safety Code § 11352(a)	Sale & transportation of controlled substance	3/4/5
Health & Safety Code § 11379.6(a)	Manufacturing controlled substance	3/5/7

Table 6: Felony-Low

NPDWS description: Felonies (including DUIs resulting in death,) including less serious property crimes, less serious drug felonies, and minor crimes of violence.

Sentencing Range: Possible sentences of up to 2 years.

OSPD recommendation: All felony offenses with a 16/2/3 sentencing triad are recommended to be mapped to the Felony-Low category.

Case weight: 35 hours per case.

CA Code	Charge	Sentencing Range
Penal Code § 69	Resisting an officer	16/2/3
Penal Code § 236	False imprisonment	16/2/3
Penal Code § 451(d)	Arson of property	16/2/3
Penal Code § 459/461(b)	Burglary - second degree	16/2/3
Penal Code § 487(a)	Grand theft over \$950	16/2/3
Penal Code § 496(a)	Receiving stolen property	16/2/3
Penal Code § 594(b)(1)	Vandalism	16/2/3
Penal Code § 597	Killing, maiming, or abusing animals	16/2/3
Penal Code § 646.9(a)	Stalking	16/2/3
Vehicle Code § 10851(a)	Vehicle theft	16/2/3
Vehicle Code § 2800.2	Evading the police	16/2/3

Table 7: DUI-High

NPDWS description: Repeat DUIs, serious DUIs, and DUIs causing nonfatal injuries.

Sentencing Range: Possible sentences of more than 2 years.

Case weight: 33 hours per case

CA Code	Charge	Sentencing Range
Vehicle Code § 23152	Felony DUI (including DUIs with multiple priors)	16/2/3

Table 8: DUI-Low

NPDWS description: First or successive DUIs (typically misdemeanors).

Sentencing Range: Possible sentences of up to 2 years.

Case weight: 19 hours per case

CA Code	Charge	Sentencing Range
Vehicle Code § 23152	Misdemeanor DUI	Any
Vehicle Code § 23103.5	"Wet reckless"	Any

Table 9: Misdemeanor-High

NPDWS description: Serious misdemeanors (other than DUIs) involving enhanceable misdemeanors (such as misdemeanors triggering repeat offender sentencing), sex misdemeanors or violent misdemeanors.

Sentencing Range: Any.

Case weight: 22.3 hours per case.

CA Code	Charge	Sentencing Range
Penal Code § 240	Assault	Any
Penal Code § 242	Battery	Any
Penal Code § 273.5	Inflict trauma on spouse or cohabitant	Any
Penal Code § 314	Indecent exposure	Any
Penal Code § 597(a)	Animal cruelty	Any
Penal Code § 243.4 or any offense requiring sex registration pursuant to Penal Code § 290.	Sexual battery or other registerable sex offense	Any

Table 10: Misdemeanor-Low

NPDWS description: Less serious misdemeanors (other than DUIs or those falling into the high misdemeanor category).

Sentencing range: Any.

Case weight: 13.8 hours per case.

CA Code	Charge	Sentencing range
Penal Code § 484	Petty theft	Any
Penal Code § 602	Trespass	Any
Health and Safety Code § 11364	Possession of drug paraphernalia	Any
Health and Safety Code § 11350	Possession of a controlled substance	Any
Health and Safety Code § 11377	Possession of methamphetamine	Any

Table 11: Probation or Parole Violations

NPDWS description: Probation or parole violations derived from either felony or misdemeanor offenses.

Sentencing range: Any.

Case weight: 13.5 hours per case.

CA Code	Charge	Sentencing range
Penal Code § 1203.2	Probation violation	Any
Penal Code § 3056	Parole violation	Any