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RESEARCH

# Indigent Defense Reforms in Brooklyn, New York

## An Analysis of Mandatory Case Caps and Attorney Workload

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Please note that the opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect the positions or policies of UCS, Brooklyn Defender Services, the Legal Aid Society, or other criminal justice stakeholders in New York City. For correspondence, please contact Michael Rempel, Center for Court Innovation, [rempelm@courtinnovation.org](mailto:rempelm@courtinnovation.org), or Valerie Raine, Unified Court System, [vraine@nycourts.gov](mailto:vraine@nycourts.gov).

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## Executive Summary

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In 2009, New York State's Chief Judge, Jonathan Lippman, spearheaded legislation requiring the establishment of case caps for indigent defense attorneys in New York City. Pursuant to this legislation, on March 9, 2010, the state's Chief Administrative Judge issued an administrative order setting case caps at 150 felony or 400 misdemeanor cases, or a proportionate combination, in each calendar year, while allowing these caps to represent an agency average for institutional indigent defense providers, rather than an exact cap for each individual attorney. The judicial branch then secured funding in its budget to support case caps for the Legal Aid Society, which represents indigent defendants across New York City, and for five other institutional providers that each represent defendants in one of the city's five boroughs.<sup>1</sup>

The state law allowed for phasing in case caps from April 2010 to April 2014, and state funding was phased in accordingly. By Fiscal Year 2015, the state funding for implementing case caps had increased to \$55.6 million for the city's institutional providers, supplementing their base New York City budget of 157.9 million.<sup>2</sup> In effect, in collaboration with state policymakers, Judge Lippman created a 35.2 percent funding increase for the institutional defense providers.

### Rationale for Mandatory Case Caps

By implementing case caps and new state funding, Judge Lippman sought to alleviate the burden on New York City to fund indigent defense; reduce the caseloads of indigent defense attorneys; and produce related improvements in the fairness, quality, and effectiveness of indigent defense representation. Case caps in New York City could also serve as a model for other counties.

Concerning the need for case caps, in a 2006 report, the Commission on the Future of Indigent Defense Representation concluded that the state does not adequately fund indigent defense representation in criminal matters and does not fulfill the state's constitutional and statutory obligations to protect the rights of the accused.<sup>3</sup> More recently, a legal settlement of a class-action lawsuit reached in October 2014 required the state Office of Indigent Legal Services to set case caps and take other steps to support improved indigent defense representation in five other counties, Onondaga, Ontario, Schuylar, Suffolk, and Washington.

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<sup>1</sup> The five alternative providers are Bronx Defenders, Brooklyn Defender Services, New York County Defender Services, Neighborhood Defender Service of Harlem, and Queens Law Associates. Whereas Manhattan (New York County) has two alternative providers, Staten Island does not have an alternative provider to the Legal Aid Society.

<sup>2</sup> Budget totals are rounded to the nearest hundred thousand. Fiscal Year 2015 ends on March 31, 2015 for New York State and June 30, 2015 for New York City. The reported totals include funding for the Legal Aid Society or the five alternative providers for trial level indigent defense services, excluding funding for representing indigent defendants in family court cases. For the New York City figures, see Ryan, R. P. and Wright, E. N. (2014). *Hearing on the Fiscal 2015 Preliminary Budget & the Fiscal 2014 Preliminary Mayor's Management Report: Legal Aid Society/Indigent Defense*. New York, NY: The Council of the City of New York (March 27, 2014).

<sup>3</sup> See Commission on the Future of Indigent Defense Services. (2006). *Final Report to the Chief Judge of the State of New York*. See, also, the accompanying research report that informed the Commission's findings and conclusions: The Spangenberg Group. (2006). *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services*. West Newtown, MA: The Spangenberg Group.

## About this Study

At the request of the state's Unified Court System (UCS), the Center for Court Innovation collaborated with the UCS Office of Policy and Planning to conduct an exploratory study of case caps. The study was conducted over a three-month period from November 2014 through January 2015 and took the form of a case study of Brooklyn, where the two institutional providers are the Legal Aid Society and Brooklyn Defender Services (BDS). The research included analysis of caseload data and provider staffing levels from 2009 through 2014; a series of interviews and structured group discussions with stakeholders; and an online survey administered to 246 attorneys in the two provider agencies (representing an 87% response rate).

## Major Findings

### *Criminal Caseload in Brooklyn, New York*

- Caseload Size: In 2013, Brooklyn's courts heard 85,666 newly filed criminal cases, of which 14,323 (16.7%) were arraigned on felonies and 71,343 (83.3%) on misdemeanors.
- Indigent Defense Representation: The two institutional providers represent more than 90 percent of the criminal caseload. Among criminal cases disposed in 2014, Legal Aid represented 63.7 percent, and Brooklyn Defender Services represented 26.5 percent. The remaining cases were represented by other court-appointed attorneys (known as the 18-B Panel) or private attorneys.
- Changes in the Caseload: Comparing 2009 and 2014, the number of felony or misdemeanor criminal cases represented by the two institutional providers barely changed (increasing by 0.3%).

### *Implementation of Case Caps*

- Attorney Staffing: Comparing 2009 and 2014, the two institutional providers increased their number of attorneys on staff from 196 to 282, representing a 43.5 percent increase.
- Average Attorney Caseload: By adding more attorneys, the institutional providers reduced average caseloads. In computing caseloads over time, felony arraignments were converted to misdemeanor equivalents, using the case caps assumption that 150 felonies represent a comparable caseload to 400 misdemeanors (hence every felony converts to 2.67 misdemeanor equivalents). Comparing 2009 and 2014, the average felony equivalent caseload per attorney decreased from 505 to 358, representing a 29.1 percent reduction.
- Compliance with Case Caps: The institutional providers reached compliance with case caps in 2013, after three years of implementation. By 2014, the average attorney caseload of 358 misdemeanor equivalent cases was 10.5 percent under the case caps requirement of 400 misdemeanors.

### ***Related Staffing Enhancements***

- **Specialized Immigration Attorneys:** In research interviews, stakeholders indicated that a sizable number of clients face potential immigration or deportation issues. Accordingly, BDS drew on case caps-related funding to increase its number of specialized immigration attorneys from one to eight. Legal Aid went from having one immigration attorney in its main Manhattan office consult in Brooklyn once every other week to having such consultation five days per week. As a result, the combined number of annual referrals to immigration attorneys across both agencies tripled from 417 in 2009 to 1,250 in 2013.
- **Investigators:** Stakeholders indicated that investigations increase the likelihood that important legal evidence will be discovered. Comparing 2009 and 2014, the institutional providers used state funding to almost double their combined number of investigators from 12 to 23. Stakeholders conveyed that prior to case caps, investigation requests were typically limited to felonies; but under case caps, sufficient resources have been acquired to consider all types of cases for investigation where the legal merits point to its utility.
- **Other Non-Attorney Staffing:** Prior to case caps, qualitative research findings pointed to significant concerns over the insufficiency of staffing in critical non-attorney support positions, including social workers, paralegals, and administrative staff. Comparing 2009 and 2014, the two institutional providers increased their combined number of social workers from 11 and 27; paralegals from 11 to 22; administrative support staff from 11 to 47; and non-attorney management staff from 8 to 20. All told, non-attorney staff in these positions as well as investigations (see above) increased by 91.7 percent.
- **Other Specialized Attorneys or Units:** Stakeholders at both agencies reported that state funding enabled increasing in-house specialization. At BDS, two attorneys now specialize in mental health cases, one attorney specializes in veteran cases, and one attorney specializes in human trafficking cases. At Legal Aid, the central office in Manhattan established a new DNA Unit as well as a Digital Forensic Unit staffed with four forensic information technology specialists to provide attorneys with greater access to digital forensics.

### ***Related Improvements in Indigent Defense Representation***

- **Supervision and Training:** From 2009 to 2014, the institutional providers increased their number of supervising attorneys by 30.8 percent and reduced supervisor caseloads by close to half, creating more time for actual supervision activities. Both agencies also provided new attorneys more time for training, supervision, and general acclimation. Brooklyn Legal Aid added weekly Friday trainings (involving three-hour sessions) for first and second year attorneys. BDS had attorneys build their caseloads more gradually, whereas before case caps they would jump to a caseload of 100 immediately after a six-week training period.

- Attorney-Client Relationship: Based on research interviews, lower caseloads afforded attorneys more time to meet with clients both in the courthouse and outside of court, for instance via conference calls or in-person visits to the Rikers Island city jail.
- Case and Trial Preparation: Based on research interviews, lower caseloads under case caps have reportedly created more time for attorneys to engage in important tasks that include: reviewing evidence thoroughly; conducting legal research; thinking and reflecting on each case; writing discovery letters where documents are missing; negotiating with prosecutors based on observed limitations in the legal case; submitting investigation requests; referring clients to immigration attorneys or social workers; and preparing for trial (both during trials and in general, through training activities like role playing and mock trials).
- Judicial Perceptions of Change since Case Cap Implementation: Based on focus group findings, most Supreme Court judges in Brooklyn (who preside over indicted felonies) observed an improvement in the quality of representation due in large measure to an increase in the use of social workers, specialized experts in immigration law, and more resources for challenging scientific evidence. Criminal Court judges also perceived enhanced representation, highlighting the increase in access to social workers, which judges believed had positively affected both arraignment practice and pre- and post-plea litigation.

### *Current Attorney Workload*

- Survey Findings: In the December 2014 survey, attorneys answered on a five-point Likert scale how frequently they have enough time to perform each of 53 job duties in a “typical work week” (not counting “extra” hours). For all 53 duties, more than 65 percent reported frequently, very frequently, or always/almost always having enough time. For 43 of the 53 duties, more than 80 percent chose one of those options. Duties for which attorneys were particularly likely to report at least “frequently” having enough time included: inform the client of his or her rights at the earliest opportunity (96 percent); interview the client to identify and develop mitigation information (95 percent); review all written/recorded discovery (94 percent); engage in meaningful plea discussions with opposing counsel and the court (92 percent); promptly explain to the client all significant plea proposals and engage the client in meaningful plea discussions (98 percent); collaborate with investigative staff (93 percent); and respond to client and/or family concerns (92 percent).
- Job Duties Sometimes Involving Insufficient Time: The survey findings indicated that for 10 of the 53 job duties, from 20 to 35 percent of responding attorneys reported seldom or never/almost never having enough time. These duties included: meet with clients in custody (32 percent answered seldom or never/almost never); examine all physical evidence (33 percent); visit and document the alleged crime scene (31 percent); research and prepare post-disposition motions (34 percent); identify and confer with appropriate independent experts (26 percent); and identify and confer with hired expert for dispositional evaluation (social worker, psychologist, psychiatrist, etc.) (28 percent).

- Attorneys' Descriptive Conclusions: An analysis of major themes in open-ended survey responses revealed the following three: (1) *Case caps have improved the quality of indigent defense representation* (e.g., through reduced caseloads and other measures noted above); (2) *Scarce resources result in prioritization* (i.e., workload remains high and attorneys must often triage work to address the most urgent matters); and (3) *Support staff is an essential element of the defense team but more are needed* (i.e., investments in hiring more social workers, investigators, and other non-attorney staff were needed but are still not sufficient).
- In-Court Wait Time: One systemic problem that was reported to dampen the impact of case caps was the consistently high waiting time that attorneys experience when they enter a courtroom to represent their cases. For example, in one of the group sessions held with attorneys, they generally agreed that half of the average 50 hours estimated for handling a Driving While Intoxicated case from beginning to end was attributed to waiting time in court, not to substantive activities related to quality representation. Attorneys attributed high waiting time in large part to inefficiencies in producing incarcerated defendants in the courtroom.
- Attorney Hours: Many of the 246 attorneys who responded to the online survey cited their ethical obligation to serve the interests of their clients and asserted, in response to open-ended questions, that they make time to do whatever is necessary to ensure justice for their clients. According to the attorneys, meeting these obligations requires long hours, but the hours they work have become more manageable under case caps.

### *Case Weights*

- Case Weights: A case weight represents the average amount of time an attorney spends to process a case of a particular type, from appointment through post-disposition activity. The use of separate weights for different case types accounts for the fact that cases of varying complexity require different amounts of time for quality representation. To establish case weights, two Delphi groups were held respectively with ten BDS and ten Brooklyn Legal Aid attorneys, and their results were averaged.<sup>4</sup> Weights were established for eight case types, including (weights per case in parentheses): youthful offender-eligible misdemeanors (12), other misdemeanors (5), youthful offender-eligible felonies (42), unindicted felonies (16), indicted nonviolent felonies (35), indicted violent felonies (67), DWI cases treated separately from all other categories (38), and probation violations

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<sup>4</sup> Delphi groups are a structured communication technique, which relies on a panel of experts who are repeatedly polled and asked to explain their answers to a set of highly focused questions. In the current study, participating attorneys were asked how much time they need for a case across each designated case type in a series of rounds, where each round involved a secret balloting process, followed by a brief discussion and consensus revision, followed by the next round. To establish starting weights prior to the initial round, weights were used from those developed in a recent study of case weights and attorney workload in Massachusetts: See Labriola, M. and Hopkins, Z. (2014). *Attorney Workload Assessment*. Boston, MA: Committee for Public Counsel Services. Although results were averaged between the Delphi groups held with BDS and Legal Aid attorneys, the differences were minimal.

(30). The reported weights represent estimated average hours per case according to participating attorneys. However, because Delphi groups are not an ideal method to estimate hours per case, the numbers are most usefully viewed in relation to each other, indicating the relative time and complexity that attorneys believed different types of cases involve. Thus, regular misdemeanors clearly require the least time (5) and violent felonies the most (67).

- Felony and Misdemeanor Weights: The administrative order establishing case caps assumed that, on average, representing felonies requires 2.67 times the amount of time to represent misdemeanors. However, the Delphi groups produced weights suggesting that according to participating attorneys, felonies should be weighted 4.80 times misdemeanors. (The average weight across all felony categories was 29, and the misdemeanor average was six.) Whereas the Delphi methodology is highly imprecise, these figures still suggest that for New York City, the case caps order may have underestimated the time differential.
- Importance of Local Context: Contributing to the wide gap between the felony and misdemeanor weights, more than half of all misdemeanors in New York City are disposed at arraignment, requiring relatively little time for legal representation. In other counties where a higher percentage of cases continue past arraignment, the time gap may be smaller.

## Conclusion and Recommendations

This study found that the institutional indigent defense providers in Brooklyn became compliant with case caps within three years. After the fourth year of implementation, the institutional providers reached an average annual caseload of 358 misdemeanor equivalent cases per attorney, which is 10.5 percent under the case caps requirement of 400 misdemeanors (based on arraignment charge). This study also found that new state funding was used not only to reduce attorney caseloads but also to invest in specialized immigration attorneys, investigators, social workers, and other support staff and in-house expertise. According to stakeholders and attorneys, these investments led to critical enhancements in indigent defense representation. Moreover, this study identified numerous areas in which the implementation of case caps and related state funding spawned tangible improvements in the quality of indigent defense representation. Indigent defense attorneys in Brooklyn still reported that their workloads remain high, and many attorneys articulated a personal and ethical commitment to meet the needs of their clients regardless of that workload.

Study findings also pointed to a number of recommendations for future policy reform.

- Implement case caps and related state funding in other counties: This study found that case caps and related funding yielded highly positive results. The implementation experience in Brooklyn suggests that similar initiatives can improve indigent defense representation in other counties where there is a demonstrated need. Brooklyn required three of the four allotted phase-in years to become compliant with case caps, but other

counties may have varying starting points, necessitating phase-in periods of varying length.

- Invest in training and supervision: The leadership at both Brooklyn Defender Services and the Legal Aid Society in Brooklyn recognized that new hiring under case caps led to a significantly younger and less experienced pool of attorneys, necessitating more intensive and frequent training and supervision. Future policy reforms implemented elsewhere might explicitly incorporate funding and other provisions for enhanced training and supervision.
- Support non-attorney hiring: Although the state law and administrative order that gave rise to case caps explicitly sought only to reduce attorney caseloads, both of the institutional providers in Brooklyn also utilized state funding to make investments that, by all accounts, were critically needed in hiring investigators, social workers, paralegals, and other support staff. Future reforms might explicitly acknowledge and support needs in these areas.
- Study case caps through rigorous research: The current study was necessarily retrospective. Its methodology would have been improved if caseload analysis, survey research, and qualitative research had investigated attorney workload and perceptions both at baseline (prior to the implementation of case caps) and at one or two follow-up intervals, perhaps after the first two years of phase-in and then after full phase-in. Rigorous baseline research in other counties in the future could also produce needs assessments that might aid state and local policymakers concerning the best course for implementing case caps elsewhere.
- Use time studies to inform policy: The most reliable method for understanding the workload and future hiring needs of institutional indigent defense providers is to conduct a time study, in which attorneys track all of their working time over a short period of time (4-6 weeks) by case type and task type in five-minute increments. Although the data collection process is potentially onerous, the results indicate precisely how attorneys spend their time over a designated period; in turn, the results can be extrapolated to longer periods of time, enabling estimates to be computed for how much work attorneys perform on an annual basis across different types of cases and duties.<sup>5</sup> For both New York City and other counties, a time study methodology could yield precise estimates informing future funding and hiring needs as well as reliable case weights for different types of cases. The current study, which relied on survey of 246 attorneys and two Delphi groups, yielded suggestive findings, yet was necessarily imprecise as compared to a full time study.
- Consider revisions to the case caps formula: The administrative order establishing case caps assumed that one felony is comparable in workload to 2.67 misdemeanors. Evidence collected in this study suggests that in Brooklyn, the time differential between felonies

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<sup>5</sup> See, e.g., Kleiman, M., and Lee, C. G. (2010). *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment-Final Report*. Williamsburg, VA: National Center for State Courts.

and misdemeanors may be greater than a factor of 2.67. Future policy reforms targeting other counties might contemplate a multi-step process establishing reasonable case caps (e.g., the 2.67 formula) for a period of years but then allowing the caps to be altered in light of empirical findings. Moreover, policymakers may also consider drawing finer differences among different types of cases, such as indicted v. non-indicted felonies, nonviolent v. violent indicted felonies, and misdemeanors disposed v. not disposed at arraignment.

- Explore the feasibility of initiatives to reduce in-court waiting time: To the extent that indigent defense attorneys often have to wait for multiple cases to be called in a given courtroom, or have to shuttle between courtrooms to represent one or more cases in each one, the attorneys cited high in-court wait time as a significant obstacle. Future research and development work might explore ideas for limiting wait time in high volume counties.

# Chapter 1

## Introduction

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In 2009, New York State's Chief Judge, Jonathan Lippman, spearheaded a new law requiring case caps for all indigent defense attorneys handling criminal matters in New York City. The purpose of this law was to reduce the caseloads of indigent defense attorneys and thereby improve the fairness, quality, and effectiveness of indigent defense representation. The law ordered the Chief Administrative Judge of the state to set specific case caps; provided new funding for New York City's institutional indigent defense providers to increase their staffing levels in order to move under the caps; and allowed for a four-year phase-in period.

Pursuant to this law, on March 9, 2010, the Honorable Ann Pfau, then Chief Administrative Judge of the New York State Unified Court System (UCS), issued an administrative order requiring that indigent defense attorneys in New York City be assigned no more than 150 felony cases or 400 misdemeanor cases, or a proportionate combination, in each calendar year. Cases were defined as either a felony or misdemeanor based on the charge as of the initial arraignment court appearance. Where applied to institutional indigent defense providers, the order defined the case caps as an agency average, meaning that some individual attorneys could respectively exceed or fall under the caps, as deemed necessary to promote effective representation.

To implement case caps, Judge Lippman obtained new funding in the UCS budget for the Legal Aid Society, which represents indigent defendants across New York City, and five other institutional defense providers that each represent defendants in one county, of the Bronx, Brooklyn (Kings County), Manhattan (New York County), and Queens.<sup>6</sup> By Fiscal Year 2015, the UCS budgeted \$55.6 million for the city's institutional providers, supplementing their base New York City budget of 157.9 million.<sup>7</sup> In effect, the state created a 35.2 percent funding increase for the city's institutional indigent defense providers. The state funding stream was intended to alleviate the burden on New York City government to fund indigent defense; to make it possible to hire more attorneys and support staff at each provider agency; and to produce related improvements in the quality of indigent defense representation.

### About this Study

With the intended four-year phase-in period almost complete, UCS called for an exploratory study designed to assess the implementation of case caps and to illuminate the current capacity of indigent defense attorneys in New York City to provide quality representation. Implemented by the Center for Court Innovation in collaboration with the UCS Office of Policy and Planning,

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<sup>6</sup> The five alternative providers are Bronx Defenders, Brooklyn Defender Services, New York County Defender Services, Neighborhood Defender Service of Harlem, and Queens Law Associates. Whereas Manhattan (New York County) has two alternative providers, Staten Island does not have an alternative provider to the Legal Aid Society.

<sup>7</sup> Budget totals are rounded to the nearest hundred thousand. Fiscal Year 2015 ends on March 31, 2015 for New York State and June 30, 2015 for New York City. The reported totals include funding for the Legal Aid Society or the five alternative providers for trial level indigent defense services, excluding funding for representing indigent defendants in family court cases. For the New York City figures, see Ryan, R. P. and Wright, E. N. (2014). *Hearing on the Fiscal 2015 Preliminary Budget & the Fiscal 2014 Preliminary Mayor's Management Report: Legal Aid Society/Indigent Defense*. New York, NY: The Council of the City of New York (March 27, 2014).

the study focused on the experience of case caps in Brooklyn (Kings County). Conducted over a three-month period from November 2014 through January 2015, the study was designed to address the following four research questions:

1. Implementation of Case Caps: How have Brooklyn's institutional defense providers used the case caps order and related state funds to increase staffing, reduce caseloads, and enhance their legal and other services? To what extent have the providers reached compliance with case caps (allowing for a four-year phase-in period ending April 2014)?
2. Impact of Case Caps on Indigent Defense Representation: How have case caps influenced the nature and quality of indigent defense representation in criminal matters in Brooklyn?
3. Current Attorney Workloads: What is the current state of attorney workload and capacity to perform necessary indigent defense representation work? Specifically, as of the end of 2014, how do indigent defense attorneys in Brooklyn perceive the sufficiency of their time for performing key elements of effective representation?
4. Case Weighting Analysis: Based on assessments from a sample of indigent defense attorneys, how do different types of criminal cases vary in the time they require, on average, for quality representation? Case types include misdemeanors, unindicted felonies, indicted nonviolent felonies, indicted violent felonies, DWI cases, and probation violations?

## **Background on Indigent Defense Representation in New York State**

The 2009 state legislation and 2010 judicial order set in motion case caps for New York City, which encompasses five of the state's 62 counties. However, the state as a whole has long struggled to address perceived structural inadequacies in indigent defense representation for the entire state. Accordingly, close to a decade ago, then Chief Judge Judith S. Kaye appointed a Commission on the Future of Indigent Defense Representation, which in 2006 both issued its own report<sup>8</sup> and commissioned a companion research report from the Spangenberg Group.<sup>9</sup> Both reports concluded that New York State does not provide adequate funding to support indigent defense representation in criminal matters and, moreover, does not satisfy the state's constitutional and statutory obligations to protect the rights of the accused. Among other recommendations, the Commission proposed that the state assume full responsibility for funding indigent defense services. Such a change would replace a decentralized system established 50 years ago in 1965, whereby each of the state's 62 counties was made responsible for both funding and quality control. (In the case of New York City, city government assumed responsibility for funding indigent defense in all five city boroughs, or counties, through the city's annual budget.)

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<sup>8</sup> Commission on the Future of Indigent Defense Services. (2006). *Final Report to the Chief Judge of the State of New York*. Report issued June 18, 2006.

<sup>9</sup> The Spangenberg Group. (2006). *Status of Indigent Defense in New York: A study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services*. Prepared on behalf of Administrative Office of the Courts for Chief Judge Kaye's Commission on the Future of Indigent Defense Services. West Newtown, MA: The Spangenberg Group. Report issued June 16, 2006.

Subsequent to the Commission's work and overlapping with the implementation of case caps in New York City, the New York Civil Liberties Union and the law firm of Schulte, Roth, and Zabel filed and litigated a class-action lawsuit alleging inadequacies in indigent defense representation in five other counties of the state, Onondaga, Ontario, Schuyler, Suffolk, and Washington. A legal settlement reached in October 2014 required the New York State Office of Indigent Legal Services to set case caps and take other steps to set performance standards and establish a training and supervision plan for indigent defense attorneys in the five named counties.

The current study appears at a timely moment for indigent defense reform in New York. The methodology and findings produced may well be of some use not only for assessing progress to date in New York City but for guiding future research undertakings that might inform policy and practice in other parts of the state. Accordingly, the final chapter on conclusions and recommendations notes what steps might be taken to support evidence-based reforms in the five counties subject to the recent legal settlement and ultimately, throughout New York state.

## Chapter 2 Methodology

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This study relied upon Brooklyn, New York for a case study. Specifically, the study focused on indigent defense representation provided by two institutional defense providers, Brooklyn Defender Services and the Legal Aid Society, which together represented the defendants in 90% of Brooklyn's criminal cases resolved in 2014. The remaining defendants were represented by private attorneys or indigent defense attorneys from a designated panel established pursuant to Article 18-B of the County Law.

Research methods included data analyses of official caseload data and indigent defense agency staffing levels from 2009 through 2014; a series of interviews and structured focus groups with key stakeholders; and a survey administered to 225 indigent defense attorneys. Since the purpose of the research was to assess attorney workload at the institutional provider agencies in Brooklyn that received increased funding in conjunction with case caps, but not per se to assess or evaluate one as opposed to the other of the two institutional providers, BDS or Legal Aid, most of the data obtained separately for each provider agency was combined in the analysis.

### Official Records Data

Official caseload, staffing, and funding data were drawn from three sources, namely, the Unified Court System (UCS), Brooklyn Defender Services ("BDS), and the Legal Aid Society. The UCS Division of Technology provided case level data for cases either filed or disposed in 2004, 2009, and 2014; the data included attorney type (e.g., BDS, Legal Aid, or other type of provider) at both first and last court appearance. The data also distinguished the type and severity of the criminal charges, including whether they were felony, misdemeanor, or lesser violation or infraction charges. Although they are heard in criminal courts and receive indigent defense representation, violations and infractions are not technically crimes and were not referenced in the case caps order, which set case caps at 150 felonies, 400 misdemeanors, or a proportionate combination. Therefore, while this report includes total caseloads for violations and infractions, they are *not* counted in sections of the report that address compliance with case caps. As a practical matter, violations and infractions are nearly always disposed at the initial arraignment court appearance (more than 93% of violations were disposed at arraignment in both 2013 and 2014), leading these cases to require comparatively little time from the attorneys.

The UCS Division of Financial Management provided state budget information, reflecting state funding allocated (through UCS) to institutional defense providers throughout New York City in each state fiscal year from FY 2010-11 through FY 2014-15. (The FY 2014-15 state fiscal year runs from April 1, 2014 through March 31, 2015.) The Legal Aid Society and BDS provided information on caseload, staffing (attorney and non-attorney), and case process measures from 2009 to 2014. The process measures included investigation requests/referrals, social worker requests/referrals, and immigration requests/referrals on the premise that increased funding levels may have enabled the institutional defense providers to enhance their staffing, respectively, to conduct investigations, use in-house social workers, and address potential legal issues related to immigration status that some of their clients may face.

Due to variations in how different agencies collect and track their data, an attempt was made to use a calendar year where possible, but some annual figures in this report are provided for one of two fiscal years, for the state (April 1-March 31) or for the city (July 1-June 30). In addition, figures on provider staffing levels were as of a one-day snapshot in the middle (June 30) of each calendar year. (For example, 2014 staffing levels were reported as of June 30, 2014.)

## Qualitative Data on Stakeholder Perceptions

Separate interviews were conducted with the Executive Director of Brooklyn Defender Services and the Attorney-in-Charge of the Legal Aid Society's Brooklyn Criminal Defense Office.<sup>10</sup> A structured interview protocol sought to explore how case caps have affected agency caseload, staffing, quality of representation, office culture as well as implementation challenges. (See Appendix A for the interview protocol.) In addition, a focus group was held with 12 judges from the Brooklyn judiciary with a focus on any perceived changes in the quality of indigent representation. (See Appendix B for the focus group protocol.) Finally, two Delphi groups (discussed below) provided an additional opportunity to observe and document how attorneys perceived the impact of case caps and challenges and important case processing implications for different types of criminal cases.

## Workload Assessment

Besides examining the implementation and effects of case caps specifically, this study also sought, based on current staffing and workload as of the end of 2014, to conduct a workload assessment and to assess differences in the average time required by different types of criminal cases. The primary goals of the workload assessment were to:

1. Provide an empirical basis to understand the allocation of attorney resources; and
2. Establish a transparent formula to use in assessing the levels of attorney resources necessary to provide effective counsel to clients.

To develop the workload model, the Center for Court Innovation utilized a multi-faceted, iterative, and highly participatory data collection strategy, modeled after one recently implemented for the Committee for Public Counsel Services, the statewide public defender agency in Massachusetts.<sup>11</sup> The model is anchored in two components:

1. Sufficiency of Time Survey: A survey sent to indigent defense attorneys to elicit expert opinion on whether or not they have sufficient time and resources to provide effective assistance of counsel to indigent clients on a variety of tasks.
2. Delphi Groups: An assessment of the amount of time attorneys currently spend on cases of various types—in other words, a measure of current practice. This assessment entails a systematic qualitative review process to elicit expert opinion on how current practice can

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<sup>10</sup> Two senior attorneys also participated at BDS.

<sup>11</sup> The methodology and results of the study conducted for the Committee for Public Counsel Services in Massachusetts are available in Labriola, M. and Hopkins, Z. (2014). *Attorney Workload Assessment*. Boston, MA: Committee for Public Counsel Services. Available for download at: <http://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Attorney-Workload-Assessment.pdf>

be adjusted quantitatively to better enable attorneys to provide effective assistance of counsel. As explained below, the process depends on Delphi groups.

### *Sufficiency of Time Survey*

In November and December of 2014, researchers at the Center for Court Innovation developed and administered a survey to attorneys at BDS and Legal Aid inquiring whether or not they believed that they had sufficient time to complete a variety of tasks imperative to providing quality assistance to indigent clients. (The survey instrument is in Appendix C.) The time sufficiency survey was modeled on an analogous survey developed and administered as part of the Center for Court Innovation's recent study for the statewide public defender agency in Massachusetts (see footnote 6). The survey was also drafted in consultation with experts at the UCS Office of Policy and Planning and agency heads at BDS and Legal Aid in Brooklyn. The questions reflected best practices for the agency. For each of a series of essential duties, attorneys were asked to respond to the statement, "I generally have sufficient time to perform the duty effectively," using a five-point scale ranging from: Never/Almost Never, Seldom, Frequently, Very Frequently, and Almost Always/Always. A response of "Not My Job" was available for duties that the respondent did not regularly perform. We instructed the respondents to answer with the consideration that "generally sufficient time" implied a reasonable work-week (e.g., about forty hours) or actual hours worked. Therefore, if an attorney was able to perform a task but only as a result of working long overtime hours, the respondent, in effect, had insufficient time.

Job duties were organized around nine general case-related functions:

1. Nurture attorney-client relationship
2. Protect client during pendency of case
3. Evaluate the People's case
4. Seek evidence to support theory of the case
5. Challenge the People's case
6. Develop dispositional plans
7. Develop and plan theory of the case
8. Continuing duty of loyalty to client (post-disposition activity)
9. Office and practice area activities
10. Resources

Additional questions were asked regarding time spent waiting at court (for a case to be called) and traveling to visit clients. The survey also asked those attorneys that were public defender in 2010 to compare their work week and time spent on cases currently with their work week and time spent on cases in 2010. Survey results are presented in Chapter 4.

### *Case Weights*

Case weights seek to distinguish among major types of cases that each require a different average amount of time and effort from the attorneys involved. The development of case weights is anchored in two components. The first component is a time study to assess the amount of time attorneys currently spend on cases of different types, which establishes preliminary case weights. (For example, if attorneys average more time on felonies than misdemeanors, those case types

would receive different weights.) The second component is a series of methods to adjust the preliminary case weights gained from the time study so that the weights better reflect the amount of time that *should* be spent on cases. (For example, in an overworked indigent defense office, attorneys may spend less time on cases, as determined through the time study, than they should spend on cases were the time available.) The workload model is based on the assumption that more complex case types require more time to defend.

The first component, a time study, necessitates that staff attorneys track all of their working time over a short period of time (4-6 weeks) by case type and case-related event or by non-case-related event, in five-minute increments using a Web-based timesheet. Participants are instructed to track all work, including time spent on job, tasks outside of normal working hours, and time spent on non-case-related activities such as travel and administrative duties. Although the data collection process is intensive and can be quite onerous for participating attorneys, the resulting “time study” reveals precisely how attorneys spent their time over a designated period; and results can then be extrapolated to longer periods of time, enabling estimates to be computed for how much work attorneys perform on an annual basis across different case types and types of duties.<sup>12</sup>

A time study does not in itself reveal how much work attorneys *should* perform on an annual basis; instead, it reveals how much time attorneys are actually spending on cases. It is possible that attorneys simply lack sufficient time to provide the highest quality of representation possible, in which case estimates of how they currently allocate their time might fall short of the amount of time that is truly desired and necessary. Accordingly, a time study is typically coupled with a “sufficiency of time study” and an adjustment process, known as Delphi groups. Although we were able to conduct a rigorous sufficiency of time survey (see above), for the purposes of this project, due to time and funding constraints, a time study whereby attorneys tracked their time in five-minute increments over a 4-6 week period could not be conducted.

Instead, to establish a baseline of current practice, we utilized case weights developed for the statewide public defender agency in Massachusetts in a recent study conducted by the researchers at the Center for Court Innovation (see footnote 4). We simply needed beginning numbers of how much time is spent on various types of cases to allow the attorneys in Brooklyn to adjust the time to more accurately reflect the reality that they face in New York. Instead of starting at ground zero, we thought it would be helpful to have a number used by other indigent defense agencies so that the assembled attorneys in Brooklyn could have a starting point from which to adjust the case weights based on their knowledge and experience. After establishing proper case weights for each type of case, we utilized UCS caseload and staffing data to establish current attorney needs.

### Case Type Categories

The workload model is based on the assumption that more complex case types require more time to defend. Thus, case type categories had to be developed. The goal in developing the case type categories was to identify a manageable number of case types that are recognized as legally

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<sup>12</sup> See, for example, Kleiman, M., and Lee, C. G. (2010). *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment-Final Report*. Williamsburg, VA: National Center for State Courts; or National Center for State Courts and National District Attorneys Associate. (2007). *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorney's Offices, and the New Mexico Public Defender Department- Final Report* (2007).

and logically distinct, associated with different amounts of attorney work, and covering the full range of cases handled by each agency.

Table 2.1 shows the eight case type groupings. For the purpose of these groupings, charge severity (misdemeanor or felony) is based on the top charge at arraignment, which is the first court appearance. Data provided by UCS also indicated whether or not felonies met the state definition of a violent felony offense (VFO) and whether or not they were indicted. All cases arraigned on driving while intoxicated (DWI) charges, which includes all charges under the state Vehicle and Traffic Law, Section 1192, and encompass both misdemeanors and felonies, were separated out from other cases due to the inherent issues and time needed to represent these cases.

Regarding another important distinction, in New York State, youthful offender (YO) eligible cases involve defendants 16-18 years old. When YO eligible cases are in fact disposed with YO status, although essentially convicted, the conviction does not become part of any permanent criminal record. YO status can be granted either for misdemeanors or felonies and either for indicted or non-indicted felonies. An extremely small proportion of defendants ages 16-18 are ineligible for YO status, mainly due to either a prior felony conviction or prior felony YO designation.<sup>13</sup> However, for the purpose of this analysis, all 16-18-year-old defendants were treated as YO eligible, given the small proportion of 16-18-year-old defendants who are ineligible and the distinct time and attention that all cases involving defendants in this age group are likely to receive.

A final distinction of interest concerns non-criminal violation and infraction charges. Although cases arraigned on such charges are not technically charged with a crime, the defendants on such cases are exposed to fines or other penalties and receive legal representation in New York City. However, these cases are nearly always resolved at the initial arraignment court appearance, meaning that they involve relatively little time from the attorneys. Hence, these cases have relatively marginal workload implications and were not included in the case weighting analysis.

<b>Table 2.1. Case Types</b>
Probation
DWI
Misdemeanor
Unindicted Felonies
Indicted Non-Violent Felonies
Indicted Violent Felonies
Youthful Offender - Misdemeanor
Youthful Offender - Felony

Data for all cases was obtained from UCS. The one exception is the probation category, which refers to probation violation cases that are brought where a violation is alleged for a

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<sup>13</sup> See Reich, W., Farley, E. J., Rempel, M., and Lambson, S. H. (2014). *The Criminal Justice Response to 16- and 17-Year-Old Defendants in New York*. New York, NY: Center for Court Innovation.

defendant sentenced to probation on a case that was previously filed and disposed. Probation violation cases are not tracked in the UCS dataset received by the research team. However, the New York City Department of Probation informed the research team that in 2013, there were 508 adults on probation supervision in Brooklyn who had a disposition on an alleged probation violation. We applied this number to 2014, assumed that the 2014 figure would be unlikely to vary greatly, and then multiplied it by 0.91, given separate knowledge that almost 91% of disposed cases in Brooklyn in 2014 were represented by BDS or Legal Aid attorneys (thereby seeking to exclude cases represented by private counsel or the 18-B panel); this math yielded an estimate of 462 BDS or Legal Aid violation of probation (VOP) cases in 2014.

### ***Delphi Groups***

Informed by the survey results, the next step of this process was to convene Delphi groups of purposively selected seasoned attorneys to adjust the preliminary case weights to incorporate sufficient time for effective representation. This adjusted weight serves as a “perfect world” scenario.

In order to gain an in-depth understanding of the challenges attorneys face in providing effective counsel to indigent clients, research staff conducted two Delphi groups across two days on January 15 and 16, 2015. In general, Delphi groups are a structured communication technique, which relies on a panel of experts who are repeatedly polled and asked to explain their answers to a set of highly focused questions. In the current study, participating attorneys were asked how much time they need for a case across each designated case type in a series of rounds, where each round involved a secret balloting process, followed by a brief discussion and consensus revision, followed by the next round. To establish starting weights prior to the initial round, weights were used from those developed in a recent study of case weights and attorney workload in Massachusetts.<sup>14</sup> Thus, in the first round, the attorneys were then asked to adjust the preliminary case weights from Massachusetts by thinking about how much additional time they would need for a case (approximately) of each case type. After the first round and each subsequent round, the researcher moderating the Delphi groups provided an anonymous summary of the adjustment from the previous round and asked the attorneys to provide the reasons for their judgments. Thus, the attorneys were encouraged to revise their earlier answers in light of the replies of other members of their panel. The theory of Delphi groups is that during this process the range of the answers will decrease and the group will converge towards the “correct” answer. The process was stopped after consensus was achieved amongst all members in the group.

The research team that moderated the Delphi sessions included the principal investigator from the Center for Court Innovation and the assistant deputy counsel at the UCS Office of Policy and Planning, the latter of whom is also a former defense attorney at the Legal Aid Society in Brooklyn. She was therefore able to assess from experience the extent to which the Delphi group process was well understood among participants and yielded credible information. Following the Delphi groups, the research team reviewed the recommended adjustments and averaged those reached in the Delphi groups held with BDS and Legal Aid attorneys (between which the initial differences were minimal). In one instance, based on official caseload data or

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<sup>14</sup> Labriola, M. and Hopkins, Z. (2014). *Attorney Workload Assessment*. Boston, MA: Committee for Public Counsel Services.

follow-up discussions with BDS or Legal Aid staff, the research team engaged in an additional adjustment. This one instance stemmed from a concern of the research team that attorneys at the Delphi groups had failed to consider that just over half of all misdemeanors in Brooklyn (53% of misdemeanors disposed in 2013 and 51% of those disposed in 2014) reach a disposition at the initial arraignment court appearance, with such cases therefore requiring minimal attorney time. Therefore, a sizable downward adjustment was made following the Delphi groups under what the research team deemed to be a reasonable conclusion that the Delphi group estimate was valid only for cases *not* disposed at arraignment.

As discussed above, Delphi groups are considered a standard method for adjusting preliminary case weights that were obtained from a formal time study. In the aforementioned case weighting analysis in Massachusetts, although a formal time study was not conducted, the researchers had the benefit of analyzing precise quantitative data from a task-based billing system used by contracted attorneys across the state to produce a data-driven set of preliminary weights by case type. On the other hand, the analysis in the present study was significantly limited by lacking an independent quantitative data source that could yield plausible preliminary case weights to serve as the starting point for the Delphi group process. Lacking an alternative, the preliminary weights in the Massachusetts analysis were used as the starting point. However, differences in state and jurisdictional context, as well as customary case processing procedures and practices, mean that the preliminary weights in Massachusetts may have been a problematic model for launching the Delphi groups with indigent defense attorneys in Brooklyn, New York.

In general, after considering results from other components of the current study, including the sufficiency of time survey of 246 attorneys and the qualitative discussions and focus groups held regarding current attorney workload, researchers at the Center for Court Innovation and project staff at the UCS Office of Policy and Planning concluded that the Delphi groups were likely to have erred high in their estimations of how many hours are needed for each type of case (see Table 4.4 below). This conclusion stems from the fact that results from the online survey indicate that there are few tasks that attorneys indicated they currently do not have sufficient time to complete; yet, if the case weights were accurate, attorney need for still-additional staff would be much greater than the survey results indicated. Accordingly, unlike the previous report by the Center for Court Innovation for Massachusetts (see footnote 15), this report did not use the results of the case weighting study as a basis for determining whether or not indigent defense providers in Brooklyn currently have adequate staffing.

On the other hand, whereas the case weighting results should be viewed as imprecise in totaling average hours required per type of case, what is likely to have significantly greater merit is the relationship between the weights accorded to different types of cases. For instance, whereas the Delphi groups may not have yielded precise estimates of the exact average number of hours involved in representing a nonviolent indicted felony or a violent indicted felony, the fact that the attorneys in the Delphi groups—including both the group held with BDS and with Brooklyn Legal Aid attorneys—agreed that violent indicted felonies consume close to twice as much time strongly suggests that these two case types are distinct in their workload implications.

## Chapter 3

### The Implementation and Impact of Mandatory Case Caps

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This chapter examines how judicially ordered case caps and related funding increases for indigent defense agencies in Brooklyn changed staffing levels, caseloads, and case processing, as well as how indigent defense attorneys and judges perceived the effects of case caps. The first section provides contextual background, with data on caseload size, division of the caseload across indigent defense providers, and funding changes. The second section indicates the resulting trends in indigent defense staffing levels and attorney-to-caseload ratios. The third section presents largely qualitative findings based on interviews with agency executive directors and discussions with attorneys who participated in the Delphi groups. The fourth section presents findings from a focus group with judges who preside over criminal cases in Brooklyn.

#### **Indigent Defense Representation in Brooklyn, New York**

In terms of population, Brooklyn is the largest of the five boroughs of New York City. According to the U.S. Census, Brooklyn was home to an estimated 2.6 million residents in 2013, constituting 31% of the city's population. Also in 2013, Brooklyn's courts heard 85,666 newly filed criminal cases. Of those, 14,323 (16.7%) were arraigned on felonies and 71,343 (83.3%) were arraigned on misdemeanors. That same year, Brooklyn's courts saw more than 25,000 other cases charged with violation or infraction level offenses, neither of which is technically a crime but both of which expose defendants to fines or other penalties and receive legal representation.

To represent Brooklyn's indigent defense caseload, New York City contracts with two institutional providers, the citywide Legal Aid Society and Brooklyn Defender Services, the latter of which represents defendants in Brooklyn only.<sup>15</sup> These agencies handle comparable cases, with each one acquiring new cases at arraignment during different times of the week.

Among criminal cases disposed in Brooklyn in 2014, the two institutional providers combined to represent 90.2%, including 63.7% by Legal Aid and 26.5% by Brooklyn Defender Services.<sup>16</sup> The remaining cases were represented by private attorneys (4.2%) or attorneys from the 18-B Panel (5.6%). The 18-B attorneys may be court-appointed to represent indigent defendants, generally on cases involving multiple defendants who may have conflicting interests.

The analyses in this chapter focus on the two institutional providers, which represent the preponderance of cases and received supplemental state funding to implement case caps. Specifically, in fiscal year 2015, the Legal Aid Society received base funding of \$103.9 million from New York City and \$45.8 million in supplemental state funding. These funds were for the Legal Aid Society to represent indigent defendants citywide. For Brooklyn only, Brooklyn Defender Services (BDS) received \$17.4 million from the city and \$2.9 million from the state.<sup>17</sup>

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<sup>15</sup> The Legal Aid Society represents defendants in all boroughs of New York City. In addition to Brooklyn, three of the other four boroughs (except Staten Island) also have alternative providers that share the caseload with the Legal Aid Society. Manhattan has two alternative providers (New York County Defender Services and Neighborhood Defender Service of Harlem), the Bronx has one (Bronx Defenders), and Queens has one (Queens Law Associates).

<sup>16</sup> Percentages reflect cases disposed from January 1, 2014 through November 2, 2014 (when data was received).

<sup>17</sup> Totals are rounded to the nearest hundred thousand. The BDS city funding total omits additional funding to represent indigent defendants in family court. State funding amounts were provided to the researchers by the

Based on data from the New York State Unified Court System, which administers the new state funding stream, state funds began in Fiscal Year 2010 at less than one-fifth of the level reached by Fiscal Year 2015. State funding then gradually increased in each subsequent year. This funding plan is consistent with the original state legislation, which assumed that there would be a phase-in period before full compliance with case caps. Accordingly, subsequent trend data in this chapter should be interpreted with an expectation of a gradual phase-in of other changes as well.

## **Agency Staffing, Caseload, and Referral Trends**

Table 3.1 displays the trend in caseload and staffing for both Legal Aid and BDS from 2009 through 2014. (Staffing figures are based on one-day snapshots on June 30 of each year.)

### ***Caseload Trend, 2009-2014***

Whereas small year-to-year fluctuations in the caseload are apparent, the total number of felony and misdemeanor criminal cases arraigned and represented by the two institutional providers remained virtually unchanged when comparing 2009 and 2014 filings (increasing by only 0.3%). On the other hand, the number of newly filed non-criminal offenses (violations and infractions) represented by the two providers nearly doubled between 2009 and 2014 (increasing 96.7%). Overall, these results point to a relatively marginal increase in workload attributable to new case filings, since the violation and infraction cases whose numbers increased are nearly always disposed at arraignment (more than 93% of the time). For cases disposed at arraignment, there is little added time expenditure by the attorneys, since they would be staffing the arraignment parts anyway, regardless of the number of cases on a given day; and resolving a case at arraignment typically involves a rapid on-the-spot plea negotiation in the courtroom.

The implication of the caseload data is that with only a small increase in caseloads over the past six years, case cap funding can be directly invested in staffing increases, which reduce attorney-to-caseload ratios, or in taking other steps to improve the quality of representation.

### ***Staffing Trend, 2009-2014***

As intended, the number of staff members across nearly all categories increased in each successive year from 2009 through 2014 (see Table 3.1). These staffing increases can be logically attributed to successive increases in state funding related to case caps.<sup>18</sup>

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Division of Financial Management of the New York State Unified Court System. City funding, also conveyed to the researchers with thanks to the same Division of Financial Management, are based on preliminary budget figures (the final figures may be slightly different) contained in Ryan, R. P. and Wright, E. N. (2014.) *Hearing on the Fiscal 2015 Preliminary Budget & the Fiscal 2014 Preliminary Mayor's Management Report: Legal Aid Society/Indigent Defense*. New York, NY: The Council of the City of New York (March 27, 2014). Technically, the city Fiscal Year 2015 runs from July 1, 2014 through June 30, 2015, whereas the overlapping state fiscal year runs from April 1, 2014 through March 31, 2015.

<sup>18</sup> Coinciding with the implementation of case caps, New York City modestly increased its funding for institutional defense providers in order to enable these providers to handle more cases involving a conflict of interest. For example, in the past, if a case involved multiple defendants, one of the providers would typically represent one defendant, and 18-B Panel attorneys would typically represent other defendants. However, the added city funding was intended to enable the institutional providers to represent each other's conflict cases, such that, in Brooklyn for

**Table 3.1. Annual Caseload and Staffing for Brooklyn Legal Aid Society and Brooklyn Defender Services from 2009 to 2014<sup>1</sup>**

	2009	2010	2011	2012	2013	2014
<b>CASES FILED</b>						
Felonies	11,246	11,019	11,107	11,265	11,432	12,263
Misdemeanors	69,083	66,632	68,257	69,391	66,872	68,323
<b>Felonies &amp; Misdemeanors</b>	<b>80,329</b>	<b>77,651</b>	<b>79,364</b>	<b>80,656</b>	<b>78,304</b>	<b>80,586</b>
Violations/Infractions	13,561	13,563	16,307	24,797	31,134	26,672
<b>Total</b>	<b>93,890</b>	<b>91,214</b>	<b>95,671</b>	<b>105,453</b>	<b>109,438</b>	<b>107,258</b>
<b>CASES DISPOSED</b>						
Felonies	12,628	11,727	10,009	11,542	11,532	11,643
Misdemeanors	65,995	68,040	72,184	68,884	66,217	68,349
<b>Felonies &amp; Misdemeanors</b>	<b>78,623</b>	<b>79,767</b>	<b>82,193</b>	<b>80,426</b>	<b>77,749</b>	<b>79,992</b>
Violations/Infractions	13,800	12,970	17,126	24,444	30,535	26,745
<b>Total</b>	<b>92,423</b>	<b>92,737</b>	<b>99,319</b>	<b>104,870</b>	<b>108,284</b>	<b>106,737</b>
<b>ATTORNEY STAFF</b>						
Supervisors	15.6	17.6	18.6	20.4	22.4	20.4
Staff	180.8	177.4	191.1	216.4	232.5	261.5
<b>Total</b>	<b>196.4</b>	<b>195</b>	<b>209.7</b>	<b>236.8</b>	<b>254.9</b>	<b>281.9</b>
<b>NON-ATTORNEY STAFF</b>						
Investigators	12	12	13	16	20	23
Social Workers	11	12	13	16	22	27
Paralegals	11	11	14	15	18	22
Administrative (Case-Related)	31	31	32	39	41	47
Management	8	8	11	15	18	20
<b>Total</b>	<b>73</b>	<b>74</b>	<b>83</b>	<b>101</b>	<b>119</b>	<b>139</b>

<sup>1</sup>Note: Staff numbers reflect actual staff working on June 30 of every year, for which there may be slight variations from actual staffing at any point in time due to ongoing hiring and staff turnover.

When comparing 2009 and 2014, the institutional providers increased their attorney staffing by 43.5%, including increases of 30.8% for supervisory staff and 44.6% for other attorneys.

In addition, the providers increased their non-attorney staffing by 90.4%, with all of the specific staffing categories shown in Table 3.1 experiencing an increase. The increases were 91.7% for investigators, 145.5% for social workers, 100% for paralegals, 51.6% for administrative staff, and 150% for non-attorney management staff. The particularly high increases for these non-attorney staff members are consistent with qualitative findings (discussed

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example, Legal Aid and BDS might each represent a defendant in a two-defendant conflict case in lieu of the second defendant receiving representation from the 18-B Panel. Whereas this development also increased funding resources for institutional providers, the net increase was only about 10 percent of the increase generated by the influx of state funds for the purpose of complying with case caps.

below) that evinced great concerns over the insufficiency of these critical support categories prior to the added state funding.

### *Attorney Caseloads*

In order to determine whether the institutional providers became compliant with case caps by the end of the phase-in period, we calculated the average number of cases per attorney. For this purpose, we included both supervisors and staff attorneys in the calculation. Although supervisors carry a lower caseload, the case caps judicial order defined case caps as an average for all attorneys at each institutional provider agency, indicating that it would be reasonable for some attorneys (e.g., supervisors) to represent fewer cases and other attorneys to represent more.<sup>19</sup>

Notably, both because nearly all violation and infraction cases are resolved at arraignment (meaning that they pose extremely marginal workload implications), and because these types of cases were not specifically referenced in the case caps administrative order, these non-criminal cases were excluded from the attorney caseload calculations.<sup>20</sup>

The first step in the analysis involved determining how many misdemeanors were equivalent to a felony, based on the case caps order (400 misdemeanors = 150 felonies). Based on this equivalence, we obtained a ratio of 2.67 misdemeanors for every one felony. Using this relationship, we multiplied the number of felony cases represented by the institutional providers in 2014 (12,263)<sup>21</sup> by 2.67 and then added the result (32,742) to the number of misdemeanor cases that year (68,323). We then divided the sum of 101,065 misdemeanor equivalent cases by the number of attorneys in 2014 (which rounds to 282). Finally, we divided the number of attorneys by itself ( $282/282 = 1$ ) and the number of misdemeanor equivalent cases by the number of attorneys ( $101,065/282 = 358.4$ ) to generate an average attorney-to-caseload ratio. We then performed the same calculations for all other years.

As shown in Table 3.2, the findings revealed that the average misdemeanor equivalent caseload per attorney in 2014 was 358, which translates into an average felony equivalent of 134. These results demonstrate that by 2014, the institutional providers in Brooklyn were compliant with case caps, which required 150 felony equivalent or 400 misdemeanor equivalent cases. In fact, the data in Table 3.2 indicates that compliance was achieved one year earlier in 2013, when the institutional providers reached an average misdemeanor equivalent caseload of 382 cases.

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<sup>19</sup> An alternative methodology might have been considered, where supervising attorneys could have been counted toward case caps compliance only for the proportion of their working time that is estimated to be dedicated to their own caseloads. However, such a proportion is difficult to calculate with precision, particularly as it can fluctuate from periods immediately following when a supervising attorney acquires new cases at arraignment to the period that follows the acquisition of new cases. Therefore, it was deemed methodologically prudent, as well as consistent with the administrative order establishing case caps, to count supervising attorneys as attorneys (similar to any other attorneys) for all of their working time, while acknowledging that such attorneys would inevitably constitute a subclass whose workload would average less than the overall average for their agencies.

<sup>20</sup> Had violations and infractions, alternatively, been counted in the calculations and grouped with misdemeanors for this purpose, the results would have shown an average misdemeanor equivalent caseload of 574 cases in 2009 and 453 cases in 2014. Since the formal case caps order does not include violations or infractions, and these cases are not truly comparable to misdemeanors, as they average far less attorney time given that they are nearly all disposed at arraignment, we ultimately considered this alternative methodology to be inappropriate.

<sup>21</sup> The number of felony cases includes indicted and un-indicted cases.

By comparison, prior to the implementation of case caps in 2009, the average misdemeanor equivalent caseload per attorney was 505, which translates into an average felony equivalent of 189. All told, from 2009 to 2014, the institutional providers reduced their average attorney-to-caseload ratio by 29.1% (1:505 to 1:359 misdemeanor equivalent cases). Put differently, the providers went from exceeding case cap levels by 26.3% to falling under those levels by 10.5%.

Besides displaying relevant data on case cap compliance, Table 3.2 also displays staff to total caseload ratios for each type of staff member, including supervising and line attorneys, as well as non-attorney staff. Whereas all five non-attorney staff types witnessed a decrease in staff to caseload ratios from 2009 to 2014, social workers and investigators were of particular interest as they respond to attorney referrals, which Table 3.3 and 3.4 show increased between 2009 and 2014. For social workers, the average misdemeanor equivalent caseload decreased by 58.4%, and investigators saw a 46.8% decrease in the caseload ratio from 2009 to 2014. In short, on a per case basis, the ability of critical support staff to step in and provide needed services vastly increased from 2009 to 2014.

**Table 3.2. Annual Staffing Numbers From 2009 to 2014 with Ratio to Caseload<sup>1</sup>**

	2009	2010	2011	2012	2013	2014
	Ratio to Caseload					
<b>ATTORNEY STAFF</b>						
Supervisors	1:6,353	1:5,458	1:5,264	1:4,876	1:4,348	1:4,954
Staff	1:548	1:541	1:512	1:460	1:419	1:386
<b>Total</b>	1:505	1:493	1:467	1:420	1:382	1:358
<b>NON-ATTORNEY STAFF</b>						
Investigators	1:8,259	1:8,004	1:7,532	1:6,217	1:4,870	1:4,394
Social Workers	1:9,010	1:8,004	1:7,532	1:6,217	1:4,427	1:3,743
Paralegals	1:9,010	1:8,732	1:6,994	1:6,631	1:5,411	1:4,594
Administrative	1:3,197	1:3,098	1:3,060	1:2,250	1:2,375	1:2,150
Management	1:12,389	1:12,007	1:8,901	1:6,631	1:5,411	1:5,053

<sup>1</sup>Note: Caseload is based on misdemeanor equivalent calculations.

### ***Referrals to Specialized Staff Members***

Coinciding with the aforementioned increase in staffing within all categories, the institutional providers also saw an increase in referrals of cases to investigators, social workers, and specialized immigration attorneys. For example, as shown in Table 3.3, immigration referrals tripled from 417 to 1,250 from 2009 to 2013. Enhanced access to immigration attorneys responds to a specific need created by changes in the enforcement of immigration laws as well as the Supreme Court decision in *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010).<sup>22</sup>

<sup>22</sup> In 2011, the Transactional Records Access Clearinghouse conducted a decade-by-decade comparison of all removal proceedings initiated in the Immigration Courts seeking to deport individuals from the United States. The study found substantial growth in removal proceedings in the 10 years post-9/11—from 1.6 million in the decade before 9/11 to 2.3 million in the ten years after. (Transactional Records Access Clearinghouse (TRAC))

As only one of the two institutional providers had reliable data dating back to 2009, Table 3.4 shows the equivalent numbers for this one provider from 2009 to 2013. Calculations of percentage change over the five year period reveal a 40.2% increase in investigator referrals, a 14.6% increase in social work referrals, and a 159.8% increase in immigration referrals over this period. This data demonstrates that attorneys actually made use of the additional specialized staff who could be hired due to the new state funding stream, significantly increasing their referrals to these staff.

**Table 3.3. Referrals to Specialized Staff<sup>1</sup>**

	2009	2010	2011	2012	2013
<b>Number of Investigation Referrals</b>	-	-	-	6,283	7,447
<b>Number of Social Work Referrals</b>	-	-	-	1,112	1,201
<b>Number of Immigration Referrals</b>	417	575	744	1,152	1,250

<sup>1</sup>Note: Missing numbers/ratios represents unavailable data for at least one of the agencies.

**Table 3.4. Referrals to Specialized Staff at One Institutional Provider**

	2009	2010	2011	2012	2013
<b>Number of Investigations Referrals</b>	2,458	2,244	2,814	2,483	3,447
<b>Number of Social Work Referrals</b>	589	558	499	592	675
<b>Number of Immigration Referrals</b>	413	551	691	971	1,073

### *Expansion and Creation of New Agency Units*

The increase in state funding also allowed both agencies to free up resources to support specialized units. For example, BDS focused their effort and resources on expanding their Immigration Unit and providing additional training for their immigration attorneys.

Legal Aid opted to create two new units. The first, a DNA Unit, was established to handle all Frye litigation. The second, a Digital Forensic Unit was established and staffed with four forensic IT specialists to provide attorneys with greater access to digital forensics. Resources for the Digital Forensic Unit not only entailed hiring and training new staff but required locating a secure office, providing computers, and implementing a secure network independent of the agency's primary network. Legal Aid also increased attorney hours dedicated to Brooklyn from its preexisting Immigration Unit from once every other week (pre-2009), to once a week (2010) and finally, five days a week in 2014.

Two other changes in the organizational structure at Brooklyn Legal Aid involved the Misdemeanor Arraignment Project and the permanent assignment of attorneys at arraignment. The Misdemeanor Arraignment Project involves assigning social workers to be present at arraignment in order to expeditiously identify and assess potential participants who may require

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<http://trac.syr.edu/immigration/reports/260/>). In 2010, the United States Supreme Court created an explicit and compelling need for lawyers specializing in immigration law. In *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010), the Court held that criminal defense attorneys must advise non-citizens of the deportation risks of a guilty plea, even in cases where the law is unclear or uncertain about the consequences. Failure to do so is grounds for ineffective assistance of counsel claims.

social work services once Legal Aid is assigned the case. Defendants' access to the Misdemeanor Arraignment Project is based on how many social workers are available to work in arraignments. As a result of the increase in state funding, Legal Aid was able to hire more social workers for Brooklyn, thereby allowing this project to expand.

In addition, Legal Aid restructured attorney staffing at arraignment. First, new funding enabled increasing the total number of attorneys at arraignment from three or four to now five. In the new set-up, Brooklyn Legal Aid typically assigns two felony certified attorneys and three other attorneys to arraignment. Legal Aid has also always stationed an arraignment supervisor who is an attorney manager responsible for routing cases to attorneys and checking for conflicts. Second, Legal Aid phased out what had been the permanent assignment of some attorneys to staff arraignments. Attorneys who were permanently assigned to arraignments had to pass the cases they picked up to other attorneys if those cases were not disposed of at arraignment.

## **Attorney Perceptions of Change since Case Cap Implementation**

In order to gain a deeper understanding of how reduced caseloads and increased funding levels influenced the nature and quality of indigent defense representation, we interviewed the Executive Director of BDS (along with two other senior BDS staff) and separately interviewed the Attorney-in-Charge of the Brooklyn Criminal Office of the Legal Aid Society. We also noted relevant comments and sentiments of the 20 attorneys who participated in the Delphi groups. The following discussion cites perceptions and concrete changes conveyed during these sessions.

### ***Staffing Changes and their Impact on Quality of Representation***

The data presented above makes clear that the two institutional defense providers utilized their additional resources to add investigators, social workers, and other non-attorney staff. This section adds relevant supplemental information concerning these changes.

#### **Specialized Immigration Attorneys**

Senior BDS staff estimated that one-quarter of all defendants in Brooklyn are foreign born; in turn, a meaningful proportion of those clients may face potential immigration or deportation issues (see footnote 23). For this reason, specialized immigration attorneys can reportedly play an essential role, for instance, in removal proceedings as a result of a criminal conviction or in representing clients who require legal representation after a transfer to federal immigration detention.

Accordingly both institutional providers added dedicated immigration attorneys (see Table 3.1 above). In 2009, BDS had only one immigration attorney who was funded by an outside law firm. By 2014, BDS employed eight immigration attorneys, two of whom were funded through an outside source but six of whom were supported by new state funds.

The Legal Aid Society has a specialized unit in the main Manhattan-based office, which is staffed with five criminal/immigration specialists and one supervising attorney. This unit includes one specialized immigration attorney assigned specifically to Brooklyn five days per week. Prior to case caps funding, an immigration attorney was only available on-site in Brooklyn approximately one day every other week.

### Investigators

With the aid of additional state funding, both institutional providers diverted more funds to the staffing and resource needs of their investigative units. With attorneys submitting more investigation requests over the last six years (see Tables 3.3 and 3.4 above), and with more investigators employed to handle these requests (see Table 3.1), attorneys reportedly became better able to gain critical evidence that could aid the quality of their representation.

Specifically, as learned in research interviews, investigation requests prior to case caps were primarily submitted for felony cases. However, now that the agencies have more manageable caseloads, attorneys reportedly gained more time to make investigation requests on misdemeanor cases—and added investigators meant that the increase in investigation referrals could be handled. Greater use of investigations reportedly increased the likelihood that all potentially relevant information would be discovered for all cases, whether they are felonies or misdemeanors. Regarding felonies, BDS staff also emphasized a perception that increased resources enabled the office to conduct more investigations prior to grand jury deliberations and possible indictment. In addition, under case caps, attorneys reportedly gained more time to schedule in-person meetings with investigators in order to follow-up and discuss any findings.

Finally, prior to the implementation of case caps, all investigators at Brooklyn Legal Aid in particular had to serve subpoenas as a part of their job responsibilities. Serving subpoenas is, in effect, an additional task that takes time away from investigations. The subpoena process has also reportedly become more time consuming with the implementation approximately two and a half years ago of strict electronic documentation requirements that take up to three or four hours to complete. With new hiring under case caps, Brooklyn Legal Aid took two investigators and divided them between 50% investigative responsibilities and 50% subpoena responsibilities; the remaining investigators were then able to devote 100% of their attention to investigations, making the system more specialized and efficient.

### Social Workers

In 2009, BDS had just one social worker. By 2014, the organization was able to support ten social workers. Although not as dramatically, Brooklyn Legal Aid also significantly increased its social work staff since 2009. With the greater time afforded attorneys under case caps, the attorneys in turn reportedly gained more time both to make social work referrals and to follow-up with in-person meetings in order to better understand the special needs of their clients.

### ***Training and Supervision***

As the number of new hires at both agencies increased since 2010, so did the need for enhanced training and supervision. To illustrate, at BDS, it was estimated that the average number of years of experience for line attorneys in 2010 was 15 years, whereas immediately after one of the new rounds of hiring, an estimated half of the staff averaged only three months of experience.

In conjunction with the rapid increase in new staff attorneys, both agencies took steps to increase their training and supervision activities. For example, Brooklyn Legal Aid expanded its training schedule to include weekly Friday trainings (involving approximately three-hour sessions) for all first and second year attorneys.

Brooklyn Legal Aid also organized more trainings at the individual cluster level, thereby allowing some trainings to be tailored to the specific needs of attorneys in a given cluster. In this

regard, Brooklyn Legal Aid has long divided its attorneys into five clusters. Prior to case caps, each cluster had approximately 25 attorneys and two supervisors assigned. Currently, each cluster has approximately 30 attorneys and two or three supervisors. Eventually, the reported goal is to increase supervisory staff sufficiently to a ratio of 10 attorneys per supervisor within each cluster.

Reportedly, case caps-related funding further aided the acclimation process for new attorneys by enabling them to build their caseload at a slower pace, providing more time to reflect, review, ask questions, and generally familiarize themselves with how to become an effective attorney. For example, prior to 2009, during the first six weeks of training at BDS, new hires would carry a caseload of 50, but once the training was complete their caseload would rapidly jump to 100. Under case caps, it became possible to increase new attorney caseloads much more gradually.

### ***Supervisor Caseload and Workload***

Further increasing time for supervision, both agencies took steps to reduce the average caseloads that supervising attorneys had to maintain. As learned in research interviews, at BDS in 2009, supervisors carried approximately 70 cases each, whereas this number was approximately halved following the implementation of case caps. At Legal Aid in 2009, supervisors carried about 15 cases, whereas now supervisors carry no more than eight to 10 cases.

At BDS, case caps funding also impacted the hiring recruitment process, in which supervisors play a central role. Once case caps went into effect, supervisors reportedly had more time to:

- Travel out of town for recruitment purposes;
- Attend job fairs;
- Interview candidates (allowing them to interview more candidates in total); and
- Hold multiple rounds of interviews.

The enhanced recruitment and hiring process at BDS reportedly resulted in a better qualified pool of new attorneys.

### ***Use of Felony Certified Attorneys***

With additional staff available to handle misdemeanor cases, Brooklyn Legal Aid's felony-certified attorneys could direct more attention to complex felony cases that they were trained to represent, rather than having to maintain a sizable misdemeanor caseload. In the years prior to 2010, felony certified attorneys at Brooklyn Legal Aid often had to maintain a caseload involving about 70% misdemeanors, a percentage that has recently been reduced.

### ***Attorney-Client Relationship***

Based on interviews, in both agencies, lower caseloads have created a ripple effect through many aspects of the attorney-client relationship. For example, with lower caseloads, attorneys are reportedly able to work more closely with their clients by having additional time to meet and speak with them on the day they appear in court. Attorneys also reportedly have more time to

arrange conference calls or in-person visits with those incarcerated at the Rikers Island city jail.<sup>23</sup> These additional meetings allow the attorneys to review the case with their clients and to keep them apprised of any legal issues or decisions related to the case.

Attorneys also reportedly have more time to assist their clients after their case is closed. Such assistance may include making sure a client's rap sheet is "cleaned," meaning their charge or disposition is removed or sealed where legally required; helping clients to secure a job; or following up with clients to make sure they pay their fine or arrange a payment plan.

Another enhancement reported by Legal Aid involves the representation of clients in Brooklyn's specialized problem-solving courts. Brooklyn is home to numerous specialized courts, including three drug courts, a mental health court, and a human trafficking intervention court. In the past, attorneys transferred these cases to the dedicated defense attorney assigned to the specialized court. Now, with the added time afforded attorneys under case caps, at Brooklyn Legal Aid, the original attorney who picked up a specialized court case at arraignment can remain involved with the case, often consulting with the dedicated specialized court attorney. Reportedly, since the original attorney formed the initial relationship with the client and may have become aware of important legal issues, this ongoing involvement of the original attorney may be helpful to the client's case.

### ***Case and Trial Preparation***

Prior to case caps, attorneys were typically forced to prioritize, pick, and choose which tasks to complete. As a result of lower caseloads, attorneys reportedly have more time to:

- Follow up on leads (e.g., making a second or third call to potential witnesses);
- Review potential evidence thoroughly (e.g., take a second or third look at a video);
- Conduct legal research;
- Consider a wider range of legal issues and potential challenges to the state's case;
- Write discovery letters (although Brooklyn has open file discovery, upon reviewing released documents, a defense attorney may be more likely to notice that documents are missing, leading them to write discovery letters requesting further information);
- Conduct thorough negotiations with prosecutors (e.g., often facilitated when an attorney has time to review evidence and detect limitations in the state's case, in turn enabling the defense attorney to contact the prosecutor and negotiate a more favorable disposition);
- Submit investigation requests;
- Attend Continuing Legal Education (CLE) trainings;
- Specialize in particular areas (e.g., at BDS, two attorneys now specialize in mental health cases, another attorney specialized in veterans cases, and another attorney specializes in human trafficking cases; such specialization reportedly increases both the efficiency and quality of representation of clients with relevant special needs but was not possible prior to case caps);
- Refer more clients to specialized attorneys or staff (i.e., immigration attorneys or social work staff); and
- Participate in special meetings or forums organized by bar associations.

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<sup>23</sup> The Brooklyn Legal Aid Society provides a shuttle once a week to and from Rikers Island.

Additionally, whereas relatively few cases go to trial, those that do demand a great deal of time and energy. In the post-case cap years, attorneys have reportedly been able to dedicate more time to prepare for trials (e.g., by observing other trials, role playing with colleagues, or organizing a mock trial). Fulfilling these tasks reportedly allows attorneys to work through legal arguments, prepare presentations, and fine-tune questions for testifying witnesses. In addition, because supervisors have lower caseloads and therefore increased time for supervision (see above), they have reportedly gained more time to support less experienced attorneys by taking a “second seat,” enabling the supervisor to take notes and provide feedback and advice on legal strategy as a trial unfolds.

Prior to case caps, the stakeholders we interviewed emphasized that attorneys often performed many of the tasks noted above, but this was accomplished by working afterhours or over the weekend. Under case caps, the workload reportedly became more manageable, not only increasing the quality of the work but allowing attorneys to complete vital tasks during regular working hours.

### ***Structural Limitation on Workload Reduction: The Problem of Case Calendaring***

One systemic problem that was reported to dampen the impact of case caps was the consistently high waiting time that attorneys experience when they enter a courtroom to represent their cases. An attorney could reportedly lose many working hours on each court appearance waiting in the courtroom for their case(s) to be called. For example, in one of the Delphi groups, attorneys generally agreed that half of the average 50 hours it takes to handle a Driving While Intoxicated case from beginning to end was attributed to waiting time in court, not to substantive activities related to quality representation. Overall, based on the time sufficiency survey of 246 attorneys at both institutional provider agencies, they estimated a per case average of 179 minutes per case (one minute less than three hours) waiting in court for a case to be called.

Attorneys reported that waiting time in court for all cases could be attributed to two factors. The first involves delay in the production of incarcerated clients, which in turn results in lawyers waiting idly in the courtroom. The second factor relates to case calendaring practices of some judges.

## **Judicial Perceptions of Change since Case Cap Implementation**

In addition to engaging with attorneys about their experience with case caps, the research team sought to determine whether judges in Brooklyn had perceived any changes in the quality of representation since the implementation of case caps. On January 23, 2015, a member of the research team conducted a 90-minute focus group with 12 Brooklyn (Kings County) judges, including six from Criminal Court and six from Supreme Court.

Participation in the focus group was completely voluntary as was responding to any questions posed by the facilitator. Participants were directed to avoid specific reference to individual attorneys or cases. They were advised that no comments would be attributed to a particular judge, either orally or in any written communication or product.

The facilitator began the focus group by asking each of the judges to identify themselves, indicate in what court they presided and for how they had sat on the bench in Brooklyn. The participating judges represented a wide range of tenure on the bench, with some appointed in the

1980s to one judge appointed as recently as 2013. Moreover, their exposure to indigent defense attorneys spanned several different practice areas. Half of the judges preside over misdemeanors; the other half hear only felonies. Two of the judges spend nearly all of their time presiding over trials. Some work Arraignment shifts while others rarely sit in an Arraignment part. Given the diversity of judicial assignments, this section will offer an overview of the comments expressed during the focus group.

The group was asked to identify significant changes, if any, in the overall quality of representation by attorneys from the Legal Aid Society and the Brooklyn Defender Services. The facilitator asked them to consider the following areas of practice when offering their remarks:

- Arraignments (for those who work that Part): quality of bail applications, knowledge of the law
- Attorneys appearing on their own cases in a timely manner
- Availability for case conferencing
- Preparation for:
  - calendar calls
  - case conferencing/plea negotiations
  - pre-trial hearings
  - trial
  - post-conviction proceedings
- Motion practice
- Investigation of cases
- Use of specialized units for:
  - Immigration
  - Social services
  - DNA examination

### ***Criminal Court***

Criminal Court judges cited a significant increase in the use of social workers which they observe both in general practice and in Arraignments where Legal Aid has a social worker assigned to every day shift. One judge, who sits in an All Purpose part, believed that attorneys still do not devote sufficient resources to Criminal Court cases, which is consistent with the comments of some attorneys who feel that case caps have had the greatest impact on their felony practice. This judge also commented that attorneys frequently do not cover their own cases in Criminal Court, which could be a function of case assignment in Supreme Court. In Kings County, cases are assigned to court parts based on geographical zones established by the District Attorney's office which in turn requires defense attorneys to cover multiple parts. Another judge observed that case caps have allowed attorneys to spend more time addressing the potential collateral consequences of a plea, most particularly in the area of immigration law. One judge, who sits in a Criminal Court trial part, believes that attorneys are very well prepared for trial, especially those from Legal Aid and BDS.

One judge opined that the lawyers from the two agencies need training on how to maximize the use of the additional time afforded by case caps. He suggested that without training, attorneys will continue to practice under the "old culture" where misdemeanor practice was considered less of a priority and therefore did not receive sufficient attention.

One judge in Criminal Court perceived that case caps may have had an overall positive impact on case processing. In fact, data from 2011 to 2014 indicate that average case processing time from

arraignment to disposition was unchanged for misdemeanors but declined each year for felonies (from an average of 178 days in 2011 to 157 days in 2014). The average number of court appearances to disposition similarly remained unchanged for misdemeanors while declining for felonies (from 6.91 appearances in 2011 to 6.59 in 2014).<sup>24</sup>

### ***Supreme Court***

As noted in the aforementioned data, average case processing time and numbers of court appearances declined for felony cases. Moreover, four of the Supreme Court judges noted improved quality of representation due to 1) increased use of social workers in both the pre- and post-conviction stage of cases, 2) increased availability of lawyers specializing in Immigration law, and 3) Legal Aid's recently created DNA Unit (see above), which has successfully challenged the prosecutors' use of certain types of DNA evidence. One Supreme Court judge presides almost exclusively over trials where almost all of the defense attorneys are from the 18-B Assigned Counsel Plan. The remaining judge said that he had not observed a dramatic change in quality of indigent representation since implementation of case caps.

The judges who had observed a change cited much more comprehensive sentencing reports, which are used to inform a judge of issues in an offender's background that could affect the sentence. The defense attorneys have also expanded the use of social workers in the pre-conviction stage of a case to advocate for more favorable plea offers by the prosecutor. All judges agreed that collateral consequences "are very much on the minds of the defense attorneys." (See previous section, which found that referrals to Immigration units at both Legal Aid and BDS tripled from 2009 to 2013) Finally, the attorneys appear more sophisticated about scientific evidence in general and specifically, about prosecutorial use of DNA evidence. In a recent challenge by Legal Aid, a Brooklyn judge ruled inadmissible two types of DNA evidence regularly used in criminal cases throughout the city.

## **Summary**

Based on data collected for this study, the two institutional defense providers in Brooklyn received significantly increased funding from 2009 to 2014 and, in turn, effectively used that funding to hire more attorneys and reduce average caseloads. Indeed, by 2013 (and continuing in 2014), Brooklyn's providers were fully in compliance with case caps. The institutional providers also utilized case cap-related funding to reorganize their attorney staff (e.g., reducing the caseloads of supervisory staff, adding immigration attorneys, and increasing attorney specialization in other ways) and to add critical non-attorney staff, including investigators, social workers, and other support staff. Data indicates that referrals to specialized immigration attorneys, investigators, and social workers all significantly increased as a result. In turn, observations and sentiments expressed by attorneys regarding the impact of the case caps were overwhelmingly positive and included numerous examples where case caps fostered improvements in the quality of staff training, supervision, interaction with clients, social work or other services for the client, representation in immigration matters, evidence collection and review, and other aspects of indigent defense.

Furthermore, focus group findings indicate that Supreme Court judges have observed an improvement in the quality of representation due in large measure to an increase in the use of social workers, specialized experts in Immigration law, and more resources for challenging

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<sup>24</sup> The analysis compared cases disposed in each year from 2011 through 2014.

scientific evidence. Although the Criminal Court judges experienced less of an improvement, they agreed that the increase in access to social workers and immigration lawyers had positively affected both Arraignment practice and pre- and post-plea litigation.

## **Chapter 4**

### **Current Attorney Workload and Recommended Case Weights**

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The attorney workload and recommended case weighting analysis were based on research conducted in December 2014—after completion of the four-year phase-in period for case caps and related funding increases. The analysis unfolded in two parts. First, to assess whether current practice allows adequate time for quality performance and to assess the attorneys’ feelings toward whether or not they currently have sufficient time to provide quality counsel, a web-based time sufficiency survey was administered to all Brooklyn Legal Aid and BDS attorneys. Informed by the survey results, the next step of this process was to convene Delphi Groups of purposively selected seasoned attorneys to develop proposed case weights.

#### **Sufficiency of Time Survey**

The sufficiency of time survey instrument (see Appendix C) was drafted in consultation with project partners at the New York State Unified Court System and was reviewed by agency directors at BDS and Legal Aid’s Brooklyn office. The questions reflected the best practices for quality representation in each agency. For each of a series of 53 essential duties, attorneys were asked to respond to the statement, “I generally have sufficient time to perform the duty effectively,” using the following five-point scale: (1) almost never, (2) seldom, (3) frequently, (4) very frequently, or (5) almost always. A response of “not my job” was available for duties that the respondent did not regularly perform. Respondents were instructed to answer according to a reasonable work week (e.g., about forty hours) or actual hours worked, not including working longer hours and on weekends. In other words, we sought the attorneys’ perceptions not of what they had time to accomplish given the hours they actually worked but what the attorneys believed they would have had time to accomplish if they worked a “typical work week.”

Job duties were organized around ten general case-related functions:

1. Nurture attorney-client relationship
2. Protect client during pendency of case (detention proceedings, legal and life issues)
3. Evaluate the people’s case (discovery practice)
4. Seek evidence to support theory of the case (independent investigation)
5. Challenge the government’s case (evidentiary motion practice)
6. Develop dispositional plans
7. Develop and plan theory of the case (contested disposition at trial)
8. Continuing duty of loyalty to client (post-disposition activity)
9. Office and practice area activities
10. Resources

Across the agencies, 246 attorneys completed the survey for a response rate of 87%. Table 4.1 provides information on the employment and experience of the respondents.

**Table 4.1. Respondent Information**

	<b>Legal Aid/BDS</b>
	246
Employed Full-Time	97%
Years of Experience	
0-2	23%
3-5	23%
6-10	23%
11-20	18%
20+	13%
Supervisory Duties	16%

For every one of the 53 job duties listed in the survey, more than 65 percent of respondents reported frequently, very frequently, or almost always (or always) having enough time. For 43 of the 53 duties, more than 80 percent chose one of those options.

Table 4.2 provides an illustrative range of duties where a vast majority of attorneys reported that they had ample time after full implementation of case caps—i.e., as of survey implementation in December 2014. Specifically, the table lists the 13 highest-scoring duties, for which 48% or more of the responding attorneys indicated that they “almost always” (or always) felt they had sufficient time. When combining answers of almost always/always with frequently and very frequently, the results in Table 4.3 indicate that for all 13 duties presented in the table, at least 87% of attorneys reported that they at least “frequently” had enough time to perform the given duty. The duties with the highest percentages of attorneys giving at least a “frequently” response included: inform the client of his or her rights at the earliest opportunity (96%); interview the client to identify and develop mitigation information (95%); review all written/recorded discovery (94%); engage in meaningful plea discussions with opposing counsel and the court (92%); promptly explain to the client all significant plea proposals and engage the client in meaningful plea discussions (98%); collaborate with investigative staff (93%); and respond to client and/or family concerns (92%).

On the other hand, as shown in Table 4.3, for ten job duties from 20% to 35% of responding attorneys answered that they either seldom or almost never/never had enough time. These duties included: meet with clients in custody (32% answered seldom or never/almost never); examine all physical evidence (33%); visit and document the alleged crime scene (31%); research and prepare post-disposition motions (34%); identify and confer with appropriate independent experts (26%); and identify and confer with hired expert for dispositional evaluation (social worker, psychologist, psychiatrist, etc.) (28%).

**Table 4.2. Percentage of Attorneys who Responded that they Almost Always or Always Have Enough Time To Complete the Following Tasks**

Tasks	Percent Answering Frequently, Very Frequently, or Almost Always/Always		
	Frequently or Very Frequently	Almost Always (or Always)	Combined Total
<b>Nurture Attorney-Client Relationship</b>			
Interview the client early (within three business days) in the case to determine all relevant facts known with regard to the allegation	47%	48%	95%
Interview the client in order to identify and develop mitigation information	47%	48%	95%
Inform the client of his or her rights at the earliest opportunity	38%	58%	96%
Promptly explain to the client all significant plea proposals and engage the client in meaningful plea discussions	42%	57%	98%
Review the collateral consequences of conviction entailed by any plea offer	44%	51%	95%
Explain to the client the meaning and consequences of the court's judgment(s) and advise the client of appellate options	45%	48%	93%
<b>Evaluate the People's Case</b>			
Review all written/recorded discovery	42%	52%	94%
Review and appropriately respond to prosecutor's pretrial motions, including reciprocal discovery motions, demands for non-testimonial evidence; severance & joinder issues; probable cause hearings	43%	48%	91%
<b>Develop Dispositional Plans</b>			
Engage in meaningful plea discussions with opposing counsel and the court, including mitigation, arguing disposition to the court and participating in change of plea proceedings	41%	51%	92%
<b>Develop and Plan Theory of the Case</b>			
Prepare an opening statement	42%	50%	92%

Prepare for direct and cross-examination of witnesses, including arranging for appearance of witnesses	42%	49%	91%
Prepare closing argument	39%	51%	90%
Prepare sentencing argument (review file, determining potential sentence, prepare arguments)	39%	48%	87%

**Table 4.3. Percentage of Attorneys who Responded that they Seldom, Almost Never or Never Have Enough Time To Complete the Following Tasks**

<b>Nurture Attorney-Client Relationship</b>	
Meet with clients who are in custody	32%
<b>Protect Client During Pendency of Case</b>	
Prepare and zealously advocate at ancillary courtroom legal proceedings (such as restraining order applications, forfeiture of bail money, etc.)	30%
<b>Evaluate the People's Case</b>	
Examine all physical evidence	33%
<b>Seek Evidence to Support Theory of the Case</b>	
Visit & document the alleged crime scene	31%
Identify and confer with appropriate independent experts, if necessary	26%
<b>Develop Dispositional Plans</b>	
Identify and confer with hired expert for dispositional evaluation (e.g., social workers, psychologists, psychiatrists, etc.)	28%
<b>Continue Duty of Loyalty to Client</b>	
Research and prepare post-disposition motions (e.g., motion for new trial, motion for reconsideration, motion for bail pending appeal, etc.)	34%
Participate in hearing on a motion for new trial, modification of sentence, or correction of an illegal sentence	32%
Adequately assist and cooperate with appellate counsel	32%
<b>Office and Practice Area Activities</b>	
Participate in the administration of the office (including the development of agency policies and priorities and meaningful committee work)	32%

In open-ended questions, the attorneys also responded to the resource constraints they face, as well as the impact of these constraints on the quality of their representation for indigent defendants. As discussed below, attorneys also commented on the impact of case caps on their work. Three major themes emerged from the open-ended responses.

- 1. Case caps have improved the quality of indigent defense representation.** Case caps have dramatically reduced the caseloads of indigent defense attorneys in New York City and thereby improved the fairness, quality, and effectiveness of representation for indigent defendants.

*“Case caps have certainly improved my ability to perform vital client-related work. However, there are still things that get left undone because of my caseload - i.e. it could be better.”*

*“Since the case cap legislation, I feel that I have enough time to do all I need to do on my felony cases (which wasn't always the case before, if a sudden crisis arose or my case*

load got particularly high). However, I still feel that I have to prioritize my felony cases, and don't always communicate sufficiently with my misdemeanor clients."

"Prior to the case cap, due to appearing on several cases on any given day, it was more difficult to return phone calls, have face-to-face meetings to discuss client concerns or participate in case investigations. There are still several court appearances and various parts but time management has improved for attorney-client communication and case review."

"Case cap legislation has clearly "freed up" the time necessary to review discovery and prepare motions or response to motions during regular business hours."

- 2. Scarce resources result in prioritization.** The most common comment and problem faced by attorneys was the lack of time available to get all job duties completed. During their few hours in the office, attorneys are forced to triage their work and often have time to address only the most urgent matters. For attorneys, long hours and weekend work are typical strategies to stay on top of their cases.

"While we meet our clients at arraignment and have an opportunity to interview them at that time, the conditions of their confinement as well as the large number of cases each attorney must frequently arraign during a given shift frequently prevent a comprehensive interview that gleans "all relevant facts." It is difficult to bring clients to the office within three days (or plan a trip to Rikers or video-conference) for a follow-up because of our obligations to our existing clients."

"Most of this work entails staying late/coming in weekends, it is difficult to say which would be accomplished if I had to limit myself to 40 hours."

- 3. Support staff is an essential element of the defense team but more are needed.** Without adequate support staff resources, attorneys' ability to provide effective representation is compromised.

"Our social workers are still very overwhelmed. Our clients have such great needs and while our social workers do excellent work, we need more of them to be sure their services are available to all who need them."

"As a result of more investigators, we are able to get prompt investigations which are time sensitive that were not able to get in the past."

"I rely heavily on the social workers in these areas. They prepare most of these reports, and I review and edit."

"Our social workers are a big help in convincing prosecutors to offer alternatives to incarceration. We don't have enough of them, so I often find myself doing their jobs in addition to my own."

*“We need more investigators and actual forensic mitigation specialists. Our DNA unit and immigration specialists have been a huge benefit.”*

In spite of the resource constraints they face, attorneys are highly committed to providing quality representation to indigent defendants. Citing their ethical obligation to serve the interests of their clients, a large number of attorneys asserted in their open-ended responses that no matter how busy they are, they will always make time to do whatever is necessary to ensure justice for their clients. Nevertheless, many feel that they are stretched to the limit.

## **Delphi Groups**

To build upon the information gained from the surveys and in order to gain an in-depth understanding of the challenges attorneys face in providing effective assistance of counsel to indigent clients, research staff conducted two Delphi groups, one with Brooklyn Legal Aid attorneys and one with BDS attorneys.

Delphi groups are a structured communication technique, which relies on a panel of experts. In this case, the attorneys were asked to develop a case weight by thinking about how much time they would need for a case (approximately) in each case type (see case types in Table 4.4 below). A case weight represents the average amount of time (i.e., hours) an attorney currently spends to process each case of a particular type, from the time of appointment through post-disposition activity. The use of separate case weights for different case types accounts for the fact that cases of varying levels of complexity require different amounts of time to handle effectively.

As discussed in Chapter 2, case weights were finalized through an iterative process. After each round of case weight adjustments, the researcher provided an anonymous summary of the adjustment from the previous round and asked the attorneys to provide the reasons for their judgments. Thus, the attorneys were encouraged to revise their earlier answers in light of the replies of other members of their panel. The theory of Delphi groups is that during this process the range of the answers will decrease and the group will converge towards the "correct" answer. The process was stopped after consensus was achieved amongst all members in the group.

The panels were made up of attorneys from across the agency. During each session, Center for Court Innovation research staff described that they were going to begin with a preliminary case weight based on other jurisdictions just to have a starting point. In fact, as discussed in Chapter 2, in the absence of an independent quantitative data source as is typically present in previous research of this nature, the research team utilized the preliminary case weights determined in a recent research project regarding indigent defense attorney workload in Massachusetts.<sup>25</sup> Each Delphi group then reviewed the results of the sufficiency of time survey and the implications regarding the adequacy of time currently available for various case-related functions—revising the preliminary case weights through the standard Delphi process described above and in Chapter 2.

Following the Delphi sessions, as further noted in Chapter 2, the research team implemented a further downward adjustment in the misdemeanor case weight, based on concluding that the

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<sup>25</sup> See Labriola, M. and Hopkins, Z. (2014). *Attorney Workload Assessment*. Boston, MA: Committee for Public Counsel Services. Available for download at: <http://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Attorney-Workload-Assessment.pdf>

attorneys had been able to account for the more than 50% of misdemeanor cases in Brooklyn (including 53% in 2013 and 51% in 2014) that are expeditiously resolved at arraignment.

Table 4.4 details the attorney case weights for each of the case types. As discussed in Chapter 2, the average hourly estimates that constitute the weights should be interpreted as imprecise, since the preliminary weights that formed the starting point for the Delphi group discussions were neither based on a rigorous time study, nor (as in the previous Massachusetts study) on independent quantitative data from a reliable data source, as adjusted case weights typically are.

The project team therefore urges extreme caution before interpreting the weights in Table 4.4 as precise and reliable renditions of average hours per case type. However, the weights *are* illuminating in pointing to significant *relative time differentials between the various case types*. Specifically, the results indicate that misdemeanors require the least time, which largely reflects the aforementioned finding that more than 50% of misdemeanors in Brooklyn are disposed at arraignment, involving minimal time from the defense attorney (i.e., certainly no more than 30 minutes on average, if that much). The results further indicate that the estimated weight for unindicted felonies (i.e., cases dismissed, reduced, and/or expeditiously resolved prior to the grand jury process) is less than half that for indicted nonviolent felonies. In turn, the estimated weight for indicted nonviolent felonies is just slightly more than half that for indicted violent felonies.

The findings shown in Table 4.4 underline that whereas the overarching distinction between cases arraigned on a misdemeanor or felony is important, finer distinctions among different types of cases can quite substantially influence the average time and effort required from to provide quality indigent defense representation. Indeed, even among misdemeanors, those misdemeanors involving defendants from ages 16 to 18 years old who are eligible for youthful offender status (meaning that, if such status is granted, the case outcome will not become part of their public criminal record) were accorded a weight that was more than twice as high as other misdemeanors.

**Table 4.4. Calculation of Case Weights**

<b>Case Type</b>	<b>Case Weight (hours)</b>
Probation	8
DWI	38
Misdemeanor	5
Unindicted Felonies	16
Indicted Non-Violent Felonies	35
Indicted Violent Felonies	67
Youthful Offender - Misdemeanor	12
Youthful Offender - Felony	42

*Note:* Weights were rounded to the nearest whole number.

## Appendix A. Interview Protocol

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Center research staff are interested in speaking with directors from both agencies as well as a couple of individuals, possibly supervisors, who practiced during the pre-2009 and post-2009 phases. These would ideally be experienced individuals who, while primarily speaking for themselves, could also provide some insight into the larger office-wide impact of the 2009 case caps. Below is a small list including possible topics or questions that may arise during the interview/discussion.

1. How has increased funding impacted the agency/attorney caseload (In terms of time, quality, and services)?
  - Any notable improvements/changes in regards to:
    - Contact with clients
    - Level of preparation
    - Quality of courtroom advocacy
    - Availability of attorneys for case conferencing/negotiation with prosecutors and judges
    - Provision of expert and investigative services
    - Other resources
2. Do you have a sense of any changes in the office culture? For example, do you think that attorneys are using the new found “extra time” to devote more attention to cases that may have received less attention in the past?
3. What, if any, have been some of the challenges in implementing the case caps since 2009?
4. Part of this project involves conducting an analysis of case processing measures; what measures other than those already provided, do you feel would be useful in determining the impact of the cap case? (and would the site be willing to provide their data for analysis, 2009-present)

## Appendix B. Kings County Focus Group Protocols

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On March 9, 2009, the Honorable Ann Pfau, then Chief Administrative Judge of the New York State Unified Court System, signed an administrative order requiring that indigent defense attorneys in New York City be assigned no more than 150 felony or 400 misdemeanor cases (or a proportionate combination) in each calendar year. This order applied both to individual attorneys and to indigent defense organizations, where in the latter instance, the caseload limits represented a per attorney average for each organization. The order dovetailed with New York State legislation passed in 2009 to increase state funding for indigent defense services. In his 2014 State of the Judiciary Address, Chief Judge Jonathan Lippman expressed support for extending similar reforms to upstate attorneys and their clients in order to ensure high quality, consistent, and equitable indigent defense representation in all parts of the state.

To gain information regarding the progress of indigent defense reforms in New York City, the Center for Court Innovation engaged in an assessment which featured collection and analysis of data, a time sufficiency survey, two Delphi groups, and a facilitated focus group with Kings County judges from Criminal Court and Supreme Court. The focus group is designed to explore any perceived changes by the judges in the quality of legal representation by indigent defender agencies in Kings County, namely, the Kings County Criminal Defense Office for the Legal Aid Society and the Brooklyn Defender Services Office. Participation in the focus group is completely voluntary as is responding to any questions posed by the facilitator. The group will be asked to identify significant changes, if any, in the overall quality of representation by attorneys from the two indigent defender agencies. They will be directed to avoid specific reference to individual attorneys or cases. They will be advised that no comments will be attributed to a particular judge, either orally or in any written communication or product.

The facilitator will guide the discussion to include perceptions about the following areas of practice:

- Arraignments (for those who work that Part): quality of bail applications, knowledge of the law
- Attorneys appearing on their own cases in a timely manner
- Availability for case conferencing
- Preparation for:
  - calendar calls
  - case conferencing/plea negotiations
  - pre-trial hearings
  - trial
  - post-conviction proceedings
- Motion practice
- Investigation of cases
- Use of specialized units for:
  - Immigration
  - Social services
  - DNA examination

## Appendix C. Time Sufficiency Survey Instrument

The purpose of this survey is to get a better understanding of the time and resources you have to spend on various types of cases. Your participation in the attached survey is essential in maintaining high quality standards. We want to ensure that each attorney has the resources and time to provide quality representation. Some questions ask you to think about various tasks that you perform as part of each case and whether during a 40 hour work week (e.g. not when you are on trial) you generally feel that you have “enough time” to complete all tasks associated with your case work, NOT if you put in extra hours at night or the weekend. When you think about whether you have enough time to complete a task, you should consider whether you have sufficient time to be reflective and thorough. Also, while you are completing the survey, please consider whether you currently have time to perform tasks that you were unable to perform in the past. Some questions ask you to consider whether you generally feel that you have “enough resources” to accomplish particular goals with respect to client representation. As with the questions that ask about time, please consider whether you have sufficient resources to be effective. Also, please consider whether you currently have the resources to perform tasks that you were unable to perform in the past. It would be particularly helpful for you to compare your ability to perform tasks before case cap implementation to your ability to perform them now. There is space set aside for this purpose in the ‘Comments’ sections of the survey. Please take the time to fill the survey out. **All information is anonymous.** Responses will be collected, tabulated and analyzed by the Center for Court Innovation. In order to more fully understand the workload of trial attorneys across practice areas, it is very important we have maximum participation rate. If you have any questions about this survey, please contact Melissa Labriola, Associate Director of Research at the Center for Court Innovation, at (301) 879-1781 or labriolam@courtinnovation.org

Please provide the following information							
Are you a fulltime employee	Yes	No					
Years of experience at agency	Less than 2	2 to 5	5 to 10	10 to 20	more than 20		
Do you have supervisory duties over other attorneys	Yes	No					
Nurture attorney-client relationship							
I generally have enough time to.....	Never or Almost Never	Very Seldom	Seldom	Frequently	Very Frequently	Always or Almost Always	Not My Job
Interview the client early (within three business days) in the case to determine all relevant facts known with regard to the allegation							
Interview the client in order to identify and develop mitigation information							
Meet with clients who are in custody							
Meet with clients who are not in custody							
Inform the client of his or her rights at the earliest opportunity							
Build a rapport with the client that instills trust and confidence							
Keep the client regularly informed of the developments in the case, including discovery and investigation updates, and respond to all client correspondence/communication requests							
Promptly explain to the client all significant plea proposals and engage the client in meaningful plea discussions							
Review the collateral consequences of conviction entailed by any plea offer							
Explain to the client the meaning and consequences of the court’s judgment(s) and advise the client of appellate options							
Comments (e.g. compare your ability to perform individual tasks on your cases before the implementation of case caps to your ability to perform tasks now)							
Protect client during pendency of case (detention proceedings, concurrent legal and life issues)							
I generally have enough time to.....	Never or Almost Never	Very Seldom	Seldom	Frequently	Very Frequently	Always or Almost Always	Not My Job
Prepare for and zealously advocate at arraignment (or notice of violation of probation in probation cases), including gathering necessary discovery and information from client for bail arguments							
Prepare for and zealously advocate at bail review hearings							
Prepare and zealously advocate at ancillary courtroom legal proceedings (such as restraining order applications, forfeiture of bail money, etc.)							
Collaborate with social service advocate in identifying client needs to limit impact of pending case (e.g. detention, conditions of release, health conditions, mental health issues, substance abuse concerns, employment/education issues, collateral consequences, etc.)							
Respond to (directly and through social service advocate) client and/or family concerns regarding the impact of the pending case and advocating for client (to extent permissible)							
(Comments)							

<b>Evaluate the people's case (discovery practice)</b>							
I generally have enough time to.....	Never or Almost Never	Very Sekdom	Sekdom	Frequently	Very Frequently	Always or Almost Always	Not My Job
Review all written/recorded discovery							
Examine all physical evidence							
Prepare, submit and argue discovery motions including conferencing with prosecutor							
Prepare, submit and argue motions to comply with discovery order/sanctions for non-compliance							
Review and appropriately respond to prosecutor's pretrial motions, including reciprocal discovery motions, demands for non-testimonial evidence; severance & joinder issues; probable cause hearings							
Comments (e.g. compare your ability to perform individual tasks on your cases before the implementation of case caps to your ability to perform tasks now)							
<b>Seek evidence to support theory of the case (independent investigation )</b>							
I generally have enough time to.....	Never or Almost Never	Very Sekdom	Sekdom	Frequently	Very Frequently	Always or Almost Always	Not My Job
Visit & document the alleged crime scene							
Identify and obtain third party records (court records, FOIA requests, business records, health records, etc. )							
Identify and confer with appropriate independent experts, if necessary							
Identify, interview and investigate background of witnesses (prosecution and defense)							
Collaborate with investigative staff (or hired investigators), including preparing discovery packets and investigative memorandum as necessary							
Conduct a prompt and on-going investigation of the circumstances of the case							
Comments (e.g. compare your ability to perform individual tasks on your cases before the implementation of case caps to your ability to perform tasks now)							
<b>Challenge the government's case (evidentiary motion practice)</b>							
I generally have enough time to.....	Never or Almost Never	Very Sekdom	Sekdom	Frequently	Very Frequently	Always or Almost Always	Not My Job
Investigation for evidentiary/suppression motions							
Research and prepare evidentiary/suppression motions							
Litigate and argue evidentiary/suppression motions							
Prepare and participate in other substantive motions challenging evidence (motions to dismiss, Daubert hearings, etc. )							
Comments (e.g. compare your ability to perform individual tasks on your cases before the implementation of case caps to your ability to perform tasks now)							
<b>Develop dispositional plans</b>							
I generally have enough time to.....	Never or Almost Never	Very Sekdom	Sekdom	Frequently	Very Frequently	Always or Almost Always	Not My Job
Investigate client's background and circumstances, and developing specific aspects for the plea negotiation (e.g., alternatives to incarceration, program placements, connection to community resources, resolution of additional charges, education/employment intervention, limiting collateral consequences, etc.), including identifying and obtaining supporting documentation and individuals for sentencing/dispositional argument,							

Collaborate with in-house subject area specialists or social workers (immigration, alternative to incarceration, housing, education, mental health services, etc.) to develop dispositional plan								
Identify and confer with hired expert for dispositional evaluation (e.g., social workers, psychologists, psychiatrists, etc.)								
Engage in meaningful plea discussions with opposing counsel and the court, including mitigation, arguing disposition to the court and participating in change of plea proceedings								
Review pre-sentence report, participate in any pre-sentencing investigation, and/or prepare sentencing memorandum								
Investigate and prepare (including litigation) for Competency to Stand Trial issues								
Comments (e.g. compare your ability to perform individual tasks on your cases before the implementation of case caps to your ability to perform tasks now)								
<b>Develop and plan theory of the case (contested disposition at trial)</b>								
I generally have enough time to.....	Never or Almost Never	Very Seldom	Seldom	Frequently	Very Frequently	Always or Almost Always	Not My Job	
Research legal and factual issues and document for trial notebook								
Prepare and argue trial/hearing motions, including in limine								
Prepare exhibits and other presentation materials for use during trial/hearing								
Prepare an opening statement								
Prepare for direct and cross-examination of witnesses, including arranging for appearance of witnesses								
Adequately prepare client to testify, if necessary								
Prepare closing argument								
Prepare proposed jury instructions								
Prepare sentencing argument (review file, determining potential sentence, prepare arguments)								
Trial/hearing, including preserving and protecting client's post-trial appellate rights and remedies								
Comments (e.g. compare your ability to perform individual tasks on your cases before the implementation of case caps to your ability to perform tasks now)								
<b>Continue duty of loyalty to client (post-disposition activity)</b>								
I generally have enough time to.....	Never or Almost Never	Very Seldom	Seldom	Frequently	Very Frequently	Always or Almost Always	Not My Job	
Research and prepare post-disposition motions (e.g., motion for new trial, motion for reconsideration, motion for bail pending appeal, etc.)								
Participate in hearing on a motion for new trial, modification of sentence, or correction of an illegal sentence								
Adequately assist and cooperate with appellate counsel								
Comments (e.g. compare your ability to perform individual tasks on your cases before the implementation of case caps to your ability to perform tasks now)								
<b>Office and practice area activities</b>								
I generally have enough time to.....	Never or Almost Never	Very Seldom	Seldom	Frequently	Very Frequently	Always or Almost Always	Not My Job	
Maintain records, including opening and closing all files promptly and maintaining contemporaneous electronic caseload reports								
Participate in the administration of the office (including the development of agency policies and priorities and meaningful committee work)								
Confer with supervisors								
Supervision and evaluation (of and/or by others)								
Comments (e.g. compare your ability to perform individual tasks on your cases before the implementation of case caps to your ability to perform tasks now)								

Resources							
I generally have enough resources to.....	Almost Never	Very Sekdom	Sekdom	Frequently	Very Frequently	Almost Always	Not My Job
Build a rapport with the client that instills trust and confidence							
Prepare and zealously advocate at ancillary courtroom legal proceedings (such as restraining order applications, forfeiture of bail money, etc.)							
Collaborate with social service advocate in identifying client needs to limit impact of pending case (e.g. detention, conditions of release, health conditions, mental health issues, substance abuse concerns, employment/education issues, collateral consequences, etc.)							
Respond to (directly and through social service advocate) client and/or family concerns regarding the impact of the pending case and advocating for client (to extent permissible)							
Visit & document the alleged crime scene							
Identify, interview and investigate background of witnesses (prosecution and defense)							
Conduct a prompt and on-going investigation of the circumstances of the case							
Investigation for evidentiary/suppression motions							
Prepare and participate in other substantive motions challenging evidence (motions to dismiss, Daubert hearings, etc.) through the use of experts							
Investigate client's background and circumstances, and developing specific aspects for the plea negotiation (e.g., mitigation, alternatives to incarceration, program placements, connection to community resources, resolution of additional charges, education/employment intervention, limiting collateral consequences, etc.), including identifying and obtaining supporting documentation and individuals for sentencing/dispositional argument.							
Collaborate with in-house subject area specialists or social workers (immigration, alternative to incarceration, housing, education, mental health services, etc.) to develop dispositional plan							
Identify and confer with hired expert for dispositional evaluation (e.g., social workers, psychologists, psychiatrists, etc.)							
Review and correct pre-sentence report, participate in any pre-sentencing investigation, and/or prepare sentencing memorandum							
Investgate and prepare (including litigation) for Competency to Stand Trial issues							
Prepare exhibits and other presentation materials for use during trial/hearing							
Participate in the administration of the office (including the development of agency policies and priorities, meaningful committee work, brain storming/collaboration/case crunching with colleagues, and program ideas)							

<b>Please provide the best estimate of the amount of time you spend per case (counting all hearings and visits in the average case).....</b>	<b>Minutes</b>
Waiting at court for arraignment session	
Waiting at court (not including arraignment session)	
Travelling to and from client visits (jail, home, or anyplace other than office)	

<b>Trainings</b>
Do you have an opportunity to attend trainings that would support or enhance the quality of your work?
Yes
No
Why not?

<b>2010 Comparison</b>		
Were you a public defender at your current agency in 2010?	Yes	No
If yes:		
In a typical week, as compared to 2010:		
My current workload requires me to work about the same number of hours per week		
My current workload requires me to work more hours per week		
My current workload requires me to work less hours per week		
I do not recall well enough to approximate an answer		
Concerning the time I spend representing each individual case, as compared to similar cases in 2010:		
I generally spend about the same amount of time representing each case		
I generally spend more time representing each case		
I generally spend less time representing each case		
I do not recall well enough to approximate an answer		
Additional Comments		

## Appendix D. Time Sufficiency Survey Results

Task	Seldom or Almost Never (or Never)	Frequently, Very Frequently, or Almost Always/Always		
		Frequently or Very Frequently	Almost Always (or Always)	Combined Total
<b>Nurture Attorney-Client Relationship</b>				
Interview the client early (within three business days) in the case to determine all relevant facts known with regard to the allegation	15%	36%	48%	85%
Interview the client in order to identify and develop mitigation information	5%	47%	48%	95%
Meet with clients who are in custody	32%	40%	28%	68%
Meet with clients who are NOT in custody	9%	61%	30%	91%
Inform the client of his or her rights at the earliest opportunity	4%	38%	58%	96%
Build a rapport with the client that instills trust and confidence	6%	57%	37%	94%
Keep the client regularly informed of the developments in the case, including discovery and investigation updates, and respond to all client correspondence/communication requests	10%	54%	35%	89%
Promptly explain to the client all significant plea proposals and engage the client in meaningful plea discussions	2%	42%	57%	98%
Review the collateral consequences of conviction entailed by any plea offer	5%	44%	51%	95%
Explain to the client the meaning and consequences of the court's judgment(s) and advise the client of appellate options	8%	45%	47%	92%
<b>Protect Client During Pendency of Case</b>				
Prepare for and zealously advocate at arraignment (or notice of violation of probation in probation cases), including gathering necessary discovery and information from client for bail arguments	18%	45%	36%	82%
Prepare for and zealously advocate at bail review hearings	16%	49%	35%	83%

Prepare and zealously advocate at ancillary courtroom legal proceedings (such as restraining order applications, forfeiture of bail money, etc.)	30%	39%	27%	66%
Collaborate with social service advocate in identifying client needs to limit impact of pending case (e.g. detention, conditions of release, health conditions, mental health issues, substance abuse concerns, employment/education issues, collateral consequences, etc.)	11%	61%	28%	89%
Respond to (directly and through social service advocate) client and/or family concerns regarding the impact of the pending case and advocating for client (to extent permissible)	8%	58%	34%	92%
<b>Evaluate the People's Case</b>				
Review all written/recorded discovery	6%	42%	52%	94%
Examine all physical evidence	33%	39%	27%	66%
Prepare, submit and argue discovery motions including conferencing with prosecutor	19%	40%	40%	80%
Prepare, submit and argue motions to comply with discovery order/sanctions for non-compliance	21%	43%	35%	78%
Review and appropriately respond to prosecutor's pretrial motions, including reciprocal discovery motions, demands for non-testimonial evidence; severance & joinder issues; probable cause hearings	10%	43%	47%	90%
<b>Seek Evidence to Support Theory of the Case</b>				
Visit & document the alleged crime scene	31%	52%	16%	68%
Identify and obtain third party records (court records, FOIA requests, business records, health records, etc.)	20%	61%	18%	79%
Identify and confer with appropriate independent experts, if necessary	26%	50%	24%	73%
Identify, interview and investigate background of witnesses (prosecution and defense)	15%	58%	27%	84%
Collaborate with investigative staff (or hired investigators), including preparing discovery packets and investigative memorandum as necessary	6%	55%	39%	93%
Conduct a prompt and on-going investigation of the circumstances of the case	9%	56%	35%	91%
<b>Challenge the Government's Case</b>				
Investigation for evidentiary/suppression motions	14%	49%	37%	86%
Research and prepare evidentiary/suppression motions	15%	46%	38%	84%
Litigate and argue evidentiary/suppression motions	14%	47%	38%	85%

Prepare and participate in other substantive motions challenging evidence (motions to dismiss, Daubert hearings, etc.)

### **Develop Dispositional Plans**

Investigate client's background and circumstances, and developing specific aspects for the plea negotiation (e.g., alternatives to incarceration, program placements, connection to community resources, resolution of additional charges, education/employment intervention, limiting collateral consequences, etc.), including identifying and obtaining supporting documentation and individuals for sentencing/dispositional argument

Collaborate with in-house subject area specialists or social workers (immigration, alternative to incarceration, housing, education, mental health services, etc.) to develop dispositional plan

Identify and confer with hired expert for dispositional evaluation (e.g., social workers, psychologists, psychiatrists, etc.)

Engage in meaningful plea discussions with opposing counsel and the court, including mitigation, arguing disposition to the court and participating in change of plea proceedings

Review pre-sentence report, participate in any pre-sentencing investigation, and/or prepare sentencing memorandum

Investigate and prepare (including litigation) for Competency to Stand Trial issues

### **Develop and Plan Theory of the Case**

Research legal and factual issues and document for trial notebook

Prepare and argue trial/hearing motions, including in limine

Prepare exhibits and other presentation materials for use during trial/hearing

Prepare an opening statement

Prepare for direct and cross-examination of witnesses, including arranging for appearance of witnesses

Adequately prepare client to testify, if necessary

Prepare closing argument

Prepare proposed jury instructions

Prepare sentencing argument (review file, determining potential sentence, prepare arguments)

16%	49%	34%	83%
10%	54%	36%	89%
5%	52%	43%	95%
28%	44%	27%	71%
8%	41%	51%	92%
17%	42%	41%	83%
23%	38%	38%	76%
14%	46%	40%	86%
11%	45%	43%	89%
17%	43%	39%	82%
8%	42%	50%	92%
9%	42%	49%	91%
11%	44%	45%	89%
10%	39%	51%	90%
15%	39%	46%	85%
13%	39%	48%	87%

Trial/hearing, including preserving and protecting client's post-trial appellate rights and remedies	12%	42%	46%	88%
<b>Continue Duty of Loyalty to Client</b>				
Research and prepare post-disposition motions (e.g., motion for new trial, motion for reconsideration, motion for bail pending appeal, etc.)	34%	33%	29%	62%
Participate in hearing on a motion for new trial, modification of sentence, or correction of an illegal sentence	32%	33%	30%	62%
Adequately assist and cooperate with appellate counsel	32%	31%	31%	62%
<b>Office and Practice Area Activities</b>				
Maintain records, including opening and closing all files promptly and maintaining contemporaneous electronic caseload reports	11%	50%	38%	88%
Participate in the administration of the office (including the development of agency policies and priorities and meaningful committee work)	32%	34%	25%	59%
Confer with supervisors	7%	51%	42%	93%
Supervision and evaluation (of and/or by others)	10%	55%	33%	88%
<b>Resources</b>				
Build a rapport with the client that instills trust and confidence	6%	54%	40%	94%
Prepare and zealously advocate at ancillary courtroom legal proceedings (such as restraining order applications, forfeiture of bail money, etc.)	15%	50%	34%	84%
Collaborate with social service advocate in identifying client needs to limit impact of pending case (e.g. detention, conditions of release, health conditions, mental health issues, substance abuse concerns, employment/education issues, collateral consequences, etc.)	10%	49%	41%	90%
Respond to (directly and through social service advocate) client and/or family concerns regarding the impact of the pending case and advocating for client (to extent permissible)	7%	52%	41%	93%
Visit & document the alleged crime scene	16%	50%	33%	83%
Identify, interview and investigate background of witnesses (prosecution and defense)	16%	49%	34%	83%
Conduct a prompt and on-going investigation of the circumstances of the case	11%	52%	37%	89%
Investigation for evidentiary/suppression motions	10%	50%	40%	90%

Prepare and participate in other substantive motions challenging evidence (motions to dismiss, Daubert hearings, etc.) through the use of experts

Investigate client's background and circumstances, and developing specific aspects for the plea negotiation (e.g., mitigation, alternatives to incarceration, program placements, connection to community resources, resolution of additional charges, education/employment intervention, limiting collateral consequences, etc.), including identifying and obtaining supporting documentation and individuals for sentencing/dispositional argument,

Collaborate with in-house subject area specialists or social workers (immigration, alternative to incarceration, housing, education, mental health services, etc.) to develop dispositional plan

Identify and confer with hired expert for dispositional evaluation (e.g., social workers, psychologists, psychiatrists, etc.)

Review and correct pre-sentence report, participate in any pre-sentencing investigation, and/or prepare sentencing memorandum

Investigate and prepare (including litigation) for Competency to Stand Trial issues

Prepare exhibits and other presentation materials for use during trial/hearing

Participate in the administration of the office (including the development of agency policies and priorities, meaningful committee work, brainstorming/collaboration/case crunching with colleagues, and program ideas)

10%	51%	38%	89%
9%	52%	39%	90%
5%	51%	44%	95%
22%	45%	32%	77%
13%	50%	37%	87%
14%	49%	36%	85%
17%	47%	36%	82%
20%	42%	36%	77%