

Gideon's Promise Versus Gideon's Reality: Resource Shortfalls in Pennsylvania Public Defense

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Summary and Key Findings

In September 2023, the RAND Corporation, in collaboration with the National Center for State Courts (NCSC) and the American Bar Association (ABA), published the *National Public Defense Workload Study* (NPDWS). This landmark study estimates the minimum time inputs required for public defenders to provide adequate representation that satisfies prevailing constitutional and professional standards in criminal cases. To calculate the implied minimum workload of public defender organizations in each Pennsylvania county, we applied these estimates to a dataset covering over 1 million criminal cases in Pennsylvania filed between 2016 and 2022. Further, we compared this to actual staffing levels to identify areas with resource shortfalls. Our approach for estimating shortfalls was conservative, i.e. we analyzed the data and chose assumptions that will tend to minimize findings of inadequacy.

Key Findings

- Statewide, public defenders are experiencing a substantial personnel shortfall. In a typical year, public defenders are assigned cases that would require over 1,200 full-time equivalent (FTE) attorneys to provide adequate representation, but there are only about 850 criminal attorney FTEs currently employed by public defender organizations in the state.
- Shortfalls are pervasive but not universal--60 of the 66 counties with public defenders (91%) have criminal attorney staffing levels below current standards. However, there are counties that satisfy adequacy standards in varied regions of the state and within different county population categories.
- For 50 counties (76%), there is no combination of estimates provided by any of the dozens of experts involved in the NPDWS that would allow us to conclude that the county has adequate personnel to handle its public defender's criminal caseloads. Put differently, no matter which of the 33 different expert estimates from the NPDWS we choose to use, we would always conclude that there is a personnel shortfall in these counties.
- For the first time in the 2023-2024 fiscal year, Pennsylvania authorized state funding for indigent defense; prior to this year, Pennsylvania was one of only two states that provided no state funding for indigent defense. The shortfalls created by an overwhelmingly local funding model may violate state and federal constitutional guarantees of access to counsel in criminal cases.

Motivation

Although the U.S. and Pennsylvania Constitutions provide a right to counsel for all criminal defendants facing significant sanctions, numerous stakeholders, including the Pennsylvania Supreme Court, have raised concerns about the practical operation of the state's system for providing criminal defense for indigent people accused of crimes.[1] A key concern is that public defender budgets constrain these organizations to hire fewer personnel than necessary to handle the volume of cases assigned to their offices. Persistent personnel shortfalls create large caseloads for individual attorneys, forcing them to adopt shortcuts that compromise the quality of representation they offer clients. For example, high caseloads can prevent public defenders from regularly meeting with and building rapport with clients, thoroughly investigating evidence, and vigorously contesting cases, including going to trial when doing so would be in the client's best interests. Additionally, because the U.S. system follows an adversarial model, defense attorneys' failure to fully understand and represent their clients can also impair the work of prosecutors and judges seeking to tailor charges and sentences to the unique circumstances of each case.



“[Pennsylvania's public defender] offices are chronically underfunded and understaffed, and are hard-pressed to meet the baseline demands of the Sixth Amendment, raising the disconcerting question of whether counties are complying with *Gideon*.”

Unanimous opinion of the Pennsylvania Supreme Court
in *Kuren v. Luzerne County*, 146 A.3d 715 (Pa. 2016)

Many stakeholders agree Pennsylvania's public defenders are under-resourced, but one obstacle to improving policy in this area has been a lack of quantitative benchmarks that could be used to understand the extent of the problem. How many attorneys would be necessary to provide constitutionally sufficient representation? Are public defenders everywhere under-resourced, or are resource gaps larger in certain areas? We sought to address these questions by developing some of the first estimates of attorney shortfalls across jurisdictions in Pennsylvania.

Methodology

Estimating resource requirements and shortfalls for Pennsylvania's public defender offices requires several components, including:

- Data on the numbers and types of cases assigned to public defenders
- Estimates of the amount of time it would require to adequately represent a client in any given case
- Assumptions about the number of hours public defender staff have available for client work
- Information about the current number of staff members in each public defender office

For this analysis, we focus on criminal defense attorneys, although ABA guidelines[2] and existing research[3] demonstrate the value and importance of paraprofessionals such as investigators, social workers, and support staff in public defender offices. The basic methodology outlined in this report could also be used to better understand resource shortfalls for other categories of public defender staff.

Below we describe the data and analysis we used to address each of these components.

How Many and What Types of Cases Are Assigned to Public Defenders?

To measure public defender caseloads, we obtained case-level data from the Administrative Office of the Pennsylvania Courts (AOPC) covering all unsealed criminal cases that were filed between 2016 and 2022, a dataset of over 1 million cases. Our data enable us to observe the county of filing, charges (including charge grading), defendant demographics, attorney information, and case resolution, including sentences.

The attorney of record can vary over the course of a case. For example, a public defender may represent an individual at a preliminary arraignment, but afterwards, the person charged with a crime engages a private attorney who takes over the case. To determine which cases should be considered "public defender" cases, we first identified the point in time at which the lead charge was resolved for each case. If the attorney of record was a public defender at that same point in time, we counted the case as a public defender case. For cases still pending, we examined whether the most recent (as of the data pull in March 2023) attorney of record was a public defender, and, if so, counted the case as a public defender case. Of the 955,878 cases that remained after we excluded summary cases not eligible for jail time, 497,916 (52.1%) were assigned to public defenders.

How Much Attorney Time Is Required to Provide Adequate Representation in a Given Case?

With a list of public defender cases in hand, the next task becomes figuring out how much time would be required to provide appropriate representation in each case. For example, if a public defender is assigned a first-time DUI case, how much time would the attorney need to adequately represent the client?

To answer this question, we must first define what we mean by "adequate" representation. While one might consider any number of definitions--e.g., the best possible representation, a level of representation equivalent to that obtained by individuals who hire their own attorneys, or the presence of a lawyer--we focus here on a constitutional adequacy standard drawn from current case law.

In a series of cases, most notably *Strickland v. Washington* [4], the U.S. Supreme Court determined that the right to counsel guaranteed by the Sixth Amendment embodies a right to "effective" counsel. According to *Strickland*, a violation of federal constitutional rights occurs when the defense attorney's performance falls below an "objective standard of reasonableness" under "prevailing professional norms." As an example, the Pennsylvania Rules of Professional Conduct mandate adequate communication between an attorney and their client on the status of their case[5]. Taking this as a statement of prevailing professional norms, if a Pennsylvania defense attorney carried a caseload so large that they regularly failed to inform clients of important case developments, they would violate the Rules of Professional Conduct and presumably fall below the constitutional floor for effective representation set by *Strickland*.

Following *Strickland*, we utilize a constitutionally-based standard for adequacy, defining adequate representation as representation that satisfies the minimum federal constitutional guarantee of effective assistance of counsel because it is reasonably effective pursuant to prevailing professional norms. In places that lack sufficient resources to provide adequate representation according to this definition, we would expect some subset of clients to receive a level of representation that falls below what the Sixth Amendment requires.

In September 2023, the RAND Corporation, in collaboration with the National Center for State Courts and the American Bar Association, published the *National Public Defense Workload Study* (NPDWS) [6], a landmark study offering significant new data designed to inform public defender resourcing decisions across the nation. A key goal of the NPDWS was to estimate the attorney time inputs ("case weights") required to provide adequate representation as defined above (i.e. reasonably effective representation pursuant to prevailing professional norms) for different types of criminal cases. To accomplish this, the NPDWS employed an expert elicitation approach, a widely used methodology that has been employed for numerous previous state and local case weighting studies.

The NPDWS convened a panel of 33 highly experienced defense attorneys from across the country, selected from a set of 100 nominees. The experts were instructed to use their professional experience and judgment to estimate the amount of attorney time required to provide adequate representation in a typical case with a given top charge category. As an example, the experts were asked to estimate the number of hours an attorney would need to adequately handle an average serious DUI case--such as a case involving a repeat DUI or a DUI with nonfatal injuries--where the potential sentence was more than 2 years of incarceration (which the RAND study labeled a "DUI-High"). To assist them in developing their estimates, the experts were supplied with summaries of key ethics rules and professional guidance (e.g. the ABA Defense Function Standards), a tabulation of prior case weight estimates drawn from previous research, and an explanation for the types of activities that should (e.g. meeting with client, reading expert reports) and should not (e.g. general office meetings not tied to a particular case, work done by non-attorneys such as investigators) be incorporated into their estimate.

To arrive at a consensus expert estimate for each case type, after individually providing an initial estimate, the experts met in person and followed an iterative discussion and estimate refinement methodology called the Delphi method. The Delphi method is an expert elicitation method that has been widely studied and is commonly applied by businesses and social scientists to develop professional guidelines and formulate consensus expert opinions.

Table 1 reports the expert estimates for the attorney time required to adequately represent a defendant for each of the case types. Each individual expert likely had their own views about the time needed to adequately handle a case; the table reports the median estimate across all 33 experts. For instance, the table shows that the median expert believed that it would take 286 hours to adequately represent someone charged with a felony carrying a life without parole (LWOP) sentence.

Of course, there are myriad factors that affect how much time is required to provide adequate representation in any case, including local court procedures, specific charges filed, defendant characteristics (e.g. education, language, familiarity with the system), and the amount and quality of evidence. Because each case is unique, we would expect significant case-to-case variation in time requirements within the broad categories outlined above, with some cases requiring much less, and others much more time than the NPDWS experts indicated. While the estimates above may be far off the mark if applied to one particular case, once we aggregate across many cases, average numbers such as those given above become more useful, because over a large number of cases we expect the numbers of unusually simple and unusually complex cases to balance out.[7] Stated differently, the NPDWS time estimates are most informative when applied in aggregate to large numbers of cases, as we do below.

Table 1: Estimates of the Number of Hours Required to Provide Reasonably Adequate Representation by Case Type, 2023 National Public Defense Workload Study

Case Type	Description	Sentencing Range	Hours
01: Felony–High–LWOP	Felonies with possible sentences of life without the possibility of parole (LWOP)	LWOP	286.0
02: Felony–High–Murder	Non-LWOP felonies involving intentional killing of a person	Up to life with possibility of parole	248.0
03: Felony–High–Sex	Non-LWOP felonies involving serious sex offenses	More than 15 years (including life with possibility of parole)	167.0
04: Felony–High–Other	Non-LWOP felonies (including DUIs resulting in death) other than charges falling into the high felony categories for murder or serious sex offenses	More than 15 years (including life with possibility of parole)	99.0
05: Felony–Mid	Felonies (including DUIs resulting in death) including serious property crimes, serious drug distribution crimes, and less serious violent crimes	Possible sentences of 3 to 15 years	57.0
06: Felony–Low	Felonies (including DUIs resulting in death) including less serious property crimes, less serious drug felonies, and minor crimes of violence	Possible sentences of up to 2 years	35.0
07: DUI–High	Repeat DUIs, serious DUIs, and DUIs causing nonfatal injuries (can be a felony or misdemeanor)	Possible sentences of more than 2 years	33.0
08: DUI–Low	First or successive DUIs (typically misdemeanors)	Possible sentences of up to 2 years	19.0
09: Misdemeanor–High	Serious misdemeanors (other than DUIs) involving enhanceable misdemeanors (such as misdemeanors triggering repeat offender sentencing), sex misdemeanors, or violent misdemeanors	Any	22.3
10: Misdemeanor–Low	Less serious misdemeanors (other than DUIs or those falling into the high misdemeanor category)	Any	13.8

Source: National Public Defense Workload Study Table 3.3, 4.5

Mapping Between Pennsylvania Charges and the NPDWS Case Categories

To apply the NPDWS estimates to Pennsylvania data, we require a means of mapping Pennsylvania charges into the NPDWS case categories, a process called "crosswalking." For example, if a defendant is charged with violating 18 Pa. C.S.A. § 2705 (recklessly endangering another person), is this equivalent to a high misdemeanor, a low misdemeanor, or something else under the NPDWS definitions? While it may seem tempting to simply match misdemeanors to misdemeanors and felonies to felonies, such an approach would likely be inappropriate, as some categories of Pennsylvania misdemeanors, such as those of the first degree, carry longer potential sentences than those included in the NPDWS hypotheticals. Furthermore, felonies vary widely in potential sentences. Instead, we use a data-driven approach to build a charge crosswalk.

Because a relatively small set of charges map into NPDWS offense categories 1-3 and 7-8, we directly coded the corresponding Pennsylvania statutes for these categories.[8] For NPDWS categories 4-6, we matched Pennsylvania charges that carry the same maximum sentences into each category. However, rather than using statutory maximum sentences, which may not reflect real-world practice, we used actual sentences for these calculations. Specifically, for a given lead charge as defined by the criminal code title, section/subsection, and offense grade, we computed the actual empirical distribution of maximum sentences received by those with this charge who were sentenced to confinement, across all years and all counties in the commonwealth. We then used the 95th percentile of this distribution as a maximum sentence for that charge for the purpose of mapping into categories 4-6.

As an illustration, in our dataset we observe 6,848 sentences for first-degree misdemeanor violations of 18 Pa.C.S.A. §907 (possessing instruments of a crime); the median maximum sentence imposed for this offense is 2 years and the 95th percentile maximum sentence is 5 years. In contrast, for 18 Pa.C.S.A. §5902 (prostitution) violations also graded as first-degree misdemeanors, the median maximum imposed sentence is 1 year, and the 95th percentile sentence is 1.92 years. Although these offenses are ostensibly misdemeanors of the same grade, because the sentencing exposure for the 18 Pa.C.S.A. §907 is actually 5 years, this charge is best understood as belonging to NPDWS category 5 (Felony-Mid), while the 18 Pa.C.S.A. §5902 offense is NPDWS category 4 (Felony-Low). As another example, despite carrying the highest felony grade in Pennsylvania with a statutory maximum of 20 years, more than 95% of the 995 actual sentences for first-degree felony violations of 18 Pa.C.S.A. §5111 (dealing in proceeds of unlawful activities) observed in our data were for 10 years or less, meaning that this charge is best understood as belonging to NPDWS category 5 (Felony-Mid) rather than NPDWS category 6 (Felony-High).

For the remaining misdemeanor charges not mapped into one of the higher categories, we classified second-degree misdemeanors (which have a statutory maximum sentence of 2 years) as NPDWS category 9, and all other grades of misdemeanors as NPDWS category 10. We also included summary offenses as NPDWS category 10 if we observed custodial

sentences of any length in at least 1,000 cases involving a given charge, as we viewed those charges as carrying at least some risk of confinement. For example, there were 2,214 people sentenced to confinement following a conviction for violating 18 Pa.C.S.A. §5503 (disorderly conduct) graded as a summary offense, so we classified this charge as equivalent to a NPDWS category 10 (Misdemeanor-Low) case. Appendix Table A1 summarizes the mapping process.

Once we have a crosswalk that maps lead charges into NPDWS case categories, calculating resource needs is straightforward. For each case, we simply impute the time requirement based on the expert consensus in Table 1, and then add up hours across all cases assigned to a given public defender office in a given time period. This sum is the measure of total attorney time required to provide constitutionally adequate representation that meets prevailing professional norms for all the cases assigned to the public defender in that time frame.

Translating Hours into Full-Time Equivalent (FTEs)

The NPDWS measures time inputs in terms of hours, but for understanding resource shortfalls, we need to translate hours into staffing levels, so we can compare required versus available numbers of staff. If we knew that an average attorney in a particular office had X (e.g., 1,900) hours available per year for client work, we could translate the hours to numbers of attorneys required by simply dividing the total hours required by the hours available per attorney. Of course, individual attorneys may spend more or less time with clients; for example, supervisors would presumably have fewer hours available for clients given their administrative responsibilities, and some attorneys would likely work fewer hours in particular years due to illness, family leave, etc. By focusing on average available hours, we seek to abstract from these attorney-to-attorney differences and consider the overall time resources available to the office as a whole.

There is no consensus value for the number of hours of client time available for an attorney in a year, so in the analysis below, we provide estimates based on a range of plausible values for this parameter. For example, if we assume that an average public defender works 40 hours a week, has 3½ weeks a year of vacation, and needs 15% of their work time for training, administrative work, or other non-client matters, then an average public defender would have 1,650 client hours in a year.[9] In a recent case weighting study for Utah, experts calculated that an average attorney should have 1785.2 hours to devote to client matters across a year.[10] On the higher end, we might assume 40 hours of client work per week across 52 weeks per year, yielding 2,080 hours per year of client time. This value would be consistent with billable hours requirements for associates at the most demanding large law firms.[11]

All of these assumptions are defensible, so rather than select among these, in the analysis below we provide estimates of shortfalls based on different assumptions regarding available attorney time. In particular, we report results under the assumption that attorneys have 1650, 1785.2, 1900, or 2080 hours available for client work.

Our Estimates Are Conservative

As with any empirical research study, our analysis is not without limitations. Nearly all of these limitations would tend to render our estimates more conservative; in other words, we would underestimate the resources needed by each public defender relative to a situation with perfect data. Key limitations include the following:

- Many public defender offices in Pennsylvania also represent clients in civil matters or other types of cases not reflected in the estimates below. We excluded such cases not because they are unimportant but rather because either 1) they are not represented in the NPDWS, making it uncertain how the time inputs for these cases should be calculated here or 2) they are not well-captured in our AOPC criminal case dataset (e.g. civil cases) or are captured inconsistently from jurisdiction to jurisdiction. Key categories of cases excluded from our analysis include:
 - Cases that have been sealed or expunged
 - Juvenile cases
 - Dependency hearings and other family law cases
 - Immigration matters
 - Probation violation hearings
 - Appeals
 - Cases where attorney information may be missing or incomplete
- We assumed that all attorneys employed by the office were available to handle adult criminal matters. In actuality, some public defenders hold supervisory positions or specialize in juvenile or other types of cases.
- Some clients who were represented by appointed counsel or retained counsel at the time of initial case resolution--who are therefore excluded from the analysis--were in fact represented by a public defender at some point during the adjudication process, which would have taken public defender time.
- To maintain comparability with the instructions given to the NPDWS experts, who were told to focus on the lead charge, we measured sentencing exposure based on the lead charge only. In cases carrying multiple charges, defendants may face greater exposure than what would be indicated by focusing solely on the lead charge.
- This analysis focuses only on attorney time inputs, but [applicable standards](#) also call for sufficient paraprofessional support staff such as investigators, social workers, and mitigation specialists to enhance the work of the attorneys.

- The NPDWS does not provide separate estimates of time inputs for death penalty cases, which are considerably more complex and time consuming than non-capital cases. By applying the "Felony-High-LWOP" estimates to first- and second-degree murder cases, we likely understate time inputs in capital cases.
- If public defense is widely under-resourced, as many have argued is the case, then expert views regarding the appropriate amount of time needed for a case may themselves be skewed by that under-resourcing, as a lack of resources becomes incorporated into prevailing norms.

Results

Attorney Time

Figure 1 [[available online](#)] reports county by year estimates of the total number of attorney hours necessary to provide adequate representation that meets prevailing standards. We obtained the values in the figure by combining the AOPC data with the NPDWS hours estimates as described above. The figure also disaggregates the total hours across different categories of cases.

Several patterns are apparent from the figure. First, the total number of required hours varies considerably from county to county, with a high of over 830,000 hours in Philadelphia in 2022 and lows of fewer than 1000 hours in some counties like Sullivan. These differences are unsurprising given the considerable variation in population and crime rates across the commonwealth.

The figure also demonstrates that both misdemeanors and felonies are drivers of resource needs in most counties. In many counties misdemeanors represent around half of the total caseload, at least in terms of required time inputs. Although requiring the most time on a per case basis, homicides and serious (first-degree) felonies constitute a relatively small share of the overall workload in most jurisdictions due to the infrequency of these charges.

The data also reveal important temporal variation in caseloads for many counties. Many, but not all, counties experienced declines in case volumes in 2020 with the onset of the pandemic, and some jurisdictions have seen an increase in more recent years as cases deferred during the pandemic were finally resolved.

For the analysis that follows, we measure resource needs using average annual caseloads across the entire period from 2016 to 2022, which abstracts from this year-to-year variation and focuses instead on how current resource levels compare to "typical" needs. Of course, fluctuations in case volumes also create separate resourcing challenges (that are not a focus of this paper) for public defenders, as hiring and training new attorneys often takes months or years but case volumes can vary significantly across shorter time spans and can be difficult to forecast.

One way to understand the implications of these caseload numbers is to consider what they tell us about workloads for a typical attorney. To address this question, we obtained information about current staffing levels that was furnished by 66 public defender offices in September 2023 in response to public records requests. We then calculated the annual number of hours of client work per attorney by dividing the average annual case hours calculated above by the total number of attorneys in the office. Once again, these are conservative numbers because we are in essence assuming that the only matters attorneys handle in each office are adult criminal cases; in actuality, of course, there are other types of cases handled by most public defender offices in the state.

Figure 2: Average Annual Adult Criminal Case Hours Per Attorney by County

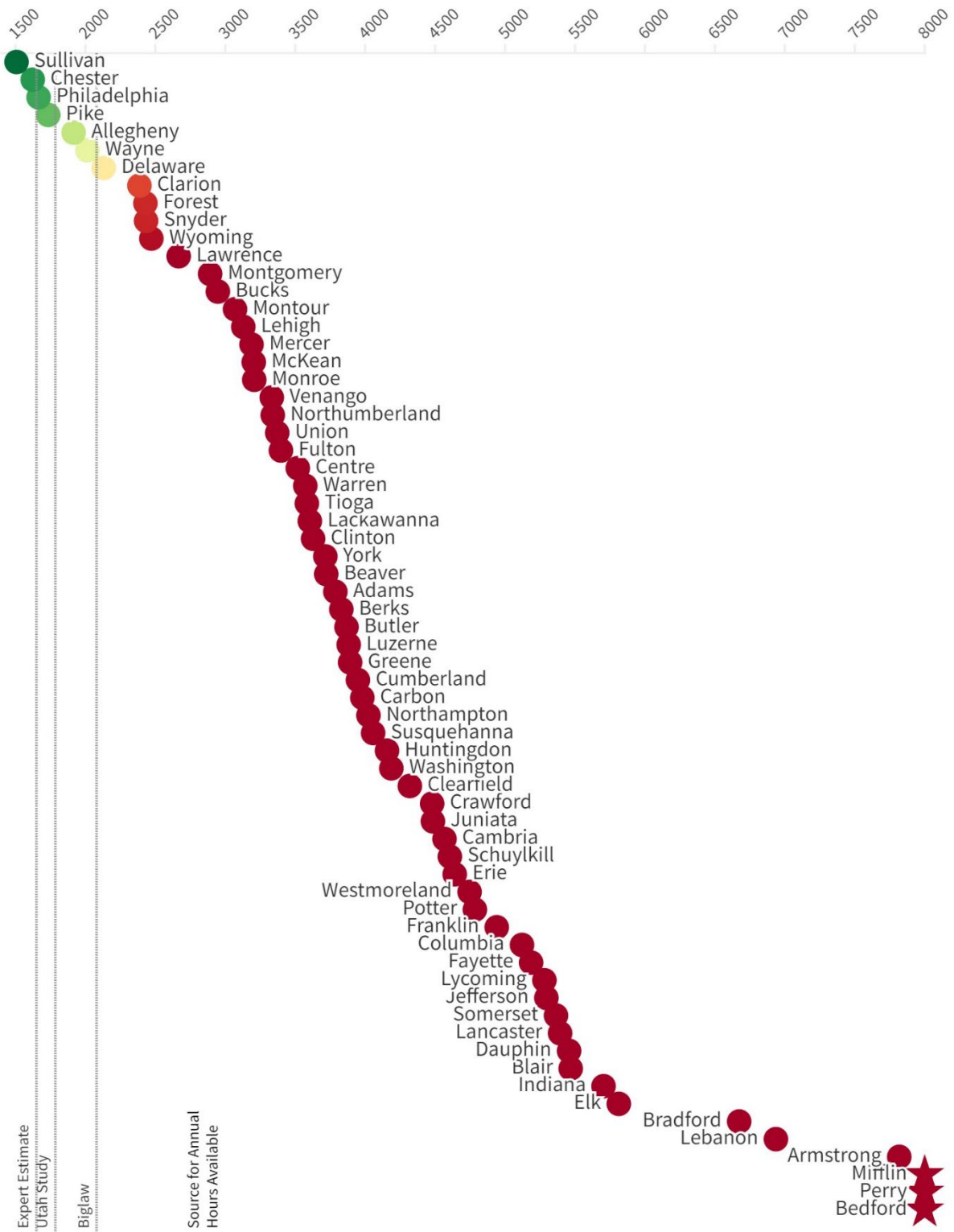


Figure 2 shows the results of these calculations. Only two counties appear clearly within acceptable workload levels, and a further cluster of five counties appear within the range of normal workloads. What is perhaps most noticeable about Figure 2 is the large number of counties with more than 3,000 hours of needed client time per attorney, a level far beyond the billable hours expected at even the most demanding law firms. As a point of comparison, a recent study indicates that the single lawyer with the most billable hours in any of the 100 largest law firms in the United States billed 3,737 hours in 2023[12]. For 36 counties in the commonwealth, caseloads are so high that the entire office would have to average above the level of this top biller in order for them to provide constitutionally adequate counsel.

Which Counties Have Shortfalls and How Large Are These?

Figure 3 reports, for each county in the commonwealth, the required number of attorneys needed to meet constitutional standards of adequacy against the current number of criminal attorneys in the office (first numeric column). While it's important to note that the actual number of attorneys in each office may fluctuate over time, these comparisons offer at least a qualitative indication of where the largest shortfalls might be. The Figure reports results under varying assumptions regarding the number of available hours per attorney per year.

Figure 3: Comparison Between Currently Available and Constitutionally Adequate Staffing Levels by County

County	Attorneys Available	Attorneys Needed Based Upon Hours Per Year:			
		1650	1785.2	1900	2080
Adams	5	11.5	10.6	10.0	9.1
Allegheny	93	108	99.8	93.8	85.7
Armstrong	1.5	7.1	6.6	6.2	5.6
Beaver	9.5	21.4	19.8	18.6	17
Bedford	1	8.5	7.8	7.4	6.7
Berks	21	48.7	45	42.3	38.7
Blair	8.5	28.2	26	24.5	22.3
Bradford	2	8.1	7.5	7.0	6.4
Bucks	25	44.7	41.3	38.8	35.4
Butler	7	16.4	15.2	14.2	13
Cambria	7.5	20.8	19.2	18.0	16.5
Cameron	N/A	4.9	4.5	4.2	3.9
Carbon	4.5	10.9	10	9.4	8.6
Centre	5	10.7	9.9	9.3	8.5
Chester	35	34.4	31.8	29.9	27.3
Clarion	3.4	4.8	4.5	4.2	3.8

Clearfield	4.3	11.1	10.3	9.7	8.8
Clinton	3	6.6	6.1	5.7	5.2
Columbia	3	9.3	8.6	8.1	7.4
Crawford	4.3	11.7	10.8	10.1	9.3
Cumberland	11	26.3	24.3	22.9	20.9
Dauphin	20.5	67.8	62.7	58.9	53.8
Delaware	45	58.1	53.7	50.5	46.1
Elk	1.5	5.3	4.9	4.6	4.2
Erie	12.5	35.2	32.5	30.5	27.9
Fayette	8	25.1	23.2	21.8	19.9
Forest	0.5	0.7	0.7	0.6	0.6
Franklin	7	21	19.4	18.2	16.6
Fulton	1	2.1	1.9	1.8	1.6
Greene	2	4.7	4.4	4.1	3.7
Huntingdon	2	5	4.7	4.4	4
Indiana	3.5	12.1	11.2	10.5	9.6
Jefferson	2	6.4	5.9	5.6	5.1
Juniata	1	2.7	2.5	2.4	2.2
Lackawanna	9	19.7	18.2	17.1	15.6
Lancaster	18	58.8	54.4	51.1	46.7
Lawrence	5.5	8.9	8.2	7.7	7.1
Lebanon	4.5	18.9	17.5	16.4	15
Lehigh	17	32.2	29.8	28.0	25.6
Luzerne	17	40	37	34.7	31.7
Lycoming	6.4	20.4	18.9	17.7	16.2
McKean	3	5.8	5.4	5.1	4.6
Mercer	8.5	16.4	15.2	14.3	13
Mifflin	1.5	8.6	7.9	7.4	6.8
Monroe	11	21.4	19.8	18.6	17
Montgomery	41.5	72.7	67.2	63.2	57.7
Montour	1	1.9	1.7	1.6	1.5
Northampton	10.5	25.6	23.7	22.2	20.3
Northumberland	6	12.1	11.2	10.5	9.6
Perry	1	5.9	5.4	5.1	4.7
Philadelphia	228	230.1	212.7	199.9	182.6
Pike	4.3	4.5	4.1	3.9	3.5
Potter	1	2.9	2.7	2.5	2.3
Schuylkill	8.5	23.7	21.9	20.6	18.8
Snyder	2	3	2.7	2.6	2.3
Somerset	2	6.5	6	5.6	5.2
Sullivan	0.5	0.5	0.4	0.4	0.4
Susquehanna	1.5	3.7	3.4	3.2	2.9
Tioga	1.6	3.5	3.2	3.0	2.8
Union	1.5	3.1	2.8	2.7	2.4

Venango	4	8.1	7.5	7.0	6.4
Warren	2	4.3	4	3.8	3.4
Washington	7.8	19.7	18.2	17.1	15.6
Wayne	3.3	4	3.7	3.4	3.1
Westmoreland	13	37.4	34.6	32.5	29.7
Wyoming	2	3	2.8	2.6	2.4
York	25.5	57.4	53.1	49.9	45.6

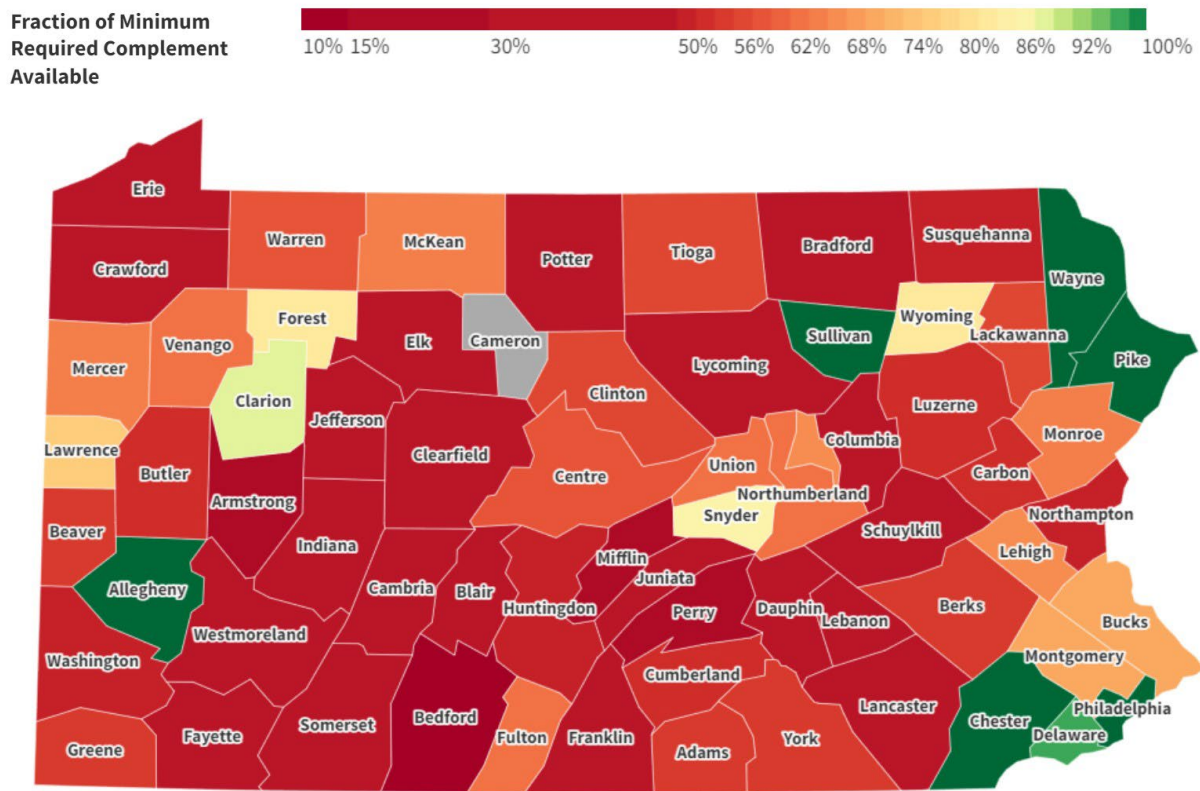
Several patterns are notable from Figure 3. First, the most counties appear inadequately resourced regardless of the assumptions one uses regarding available hours per year. Under-resourcing also appears to be the dominant pattern within each different county population class grouping. Using the most generous assumption of 2,080 hours available per year, we find that only 6 of 66 counties (9%) have enough attorneys to provide adequate representation given their case assignments. However, the figure also provides examples of counties that appear adequately resourced or close to adequately resourced within most county classes. In other words, insufficient funding isn't a foregone conclusion-- some jurisdictions have managed to provide enough attorneys to adequately staff their cases, and this is true of both smaller and larger counties.

The figure also shows that the degree of under-resourcing varies substantially from county to county. As one illustration, consider Clarion and Jefferson counties, two counties near to one another with roughly comparable population. Depending on our assumption regarding available hours per attorney, Cambria has anywhere from 71-89% of the necessary complement to meet its usual caseloads. Jefferson, in contrast, has only 31-39% of its needed complement, a much larger resource gap. As another example, Dauphin and Berks, two counties near to one another in southern Pennsylvania, have roughly similarly sized public defender offices in terms of FTEs. However, the Dauphin County Public Defender has much larger caseloads (despite the smaller population of this county), leading to a resource shortage that is about 1.5 times that of its neighbor (68% vs. 46%, assuming 2,080 hours per year).

How do resource shortfalls vary across Pennsylvania regions? Figure 4 provides a visual representation, showing county-by-county shortfall estimates under the assumption of 2,080 attorney hours for client work per year. It is important to note that the absolute degree of resourcing partially depends on our modeling assumptions. Therefore, the fact that a particular county is shaded red or green does not conclusively indicate that it is adequately or under-resourced, respectively. However, this map enables an examination of how resource gaps vary across different locations. We observe that both well-resourced and poorly resourced counties are present in varied regions of the state, without an obvious geographic pattern to under-resourcing. Notably, the northeastern corner of the state has a cluster of comparatively well-resourced counties. In contrast, none of the counties in the south-central portion of the state has more than 65% of the lawyers

necessary to handle their caseloads in a constitutionally adequate manner, based on these assumptions.

Figure 4: Geographic Distribution of Personnel Resourcing Levels



How Sensitive Are These Conclusions to Workload Assumptions?

As the discussion above indicates, the degree of funding shortfall measured depends on both 1) the specific case weights used and 2) the assumptions about the amount of client hours available to attorneys per year. This raises a question about the robustness of our conclusions when alternative, reasonable methods are used to compute the shortfall.

To explore this question, we calculated upper and lower bounds for the shortfall in each county. This approach helps identify a range of plausible values given different modeling assumptions. For the lower bound--the most generous interpretation of the work that could be accomplished with current resources--we chose the lowest case weight estimate from the 33 expert estimates for each case type. We also assumed that each attorney would have 2,080 hours of client time per year, representing the most conservative estimate for case work and the most generous assumption for attorney hours. In contrast, to calculate the upper bound, we used the highest number of hours from the expert

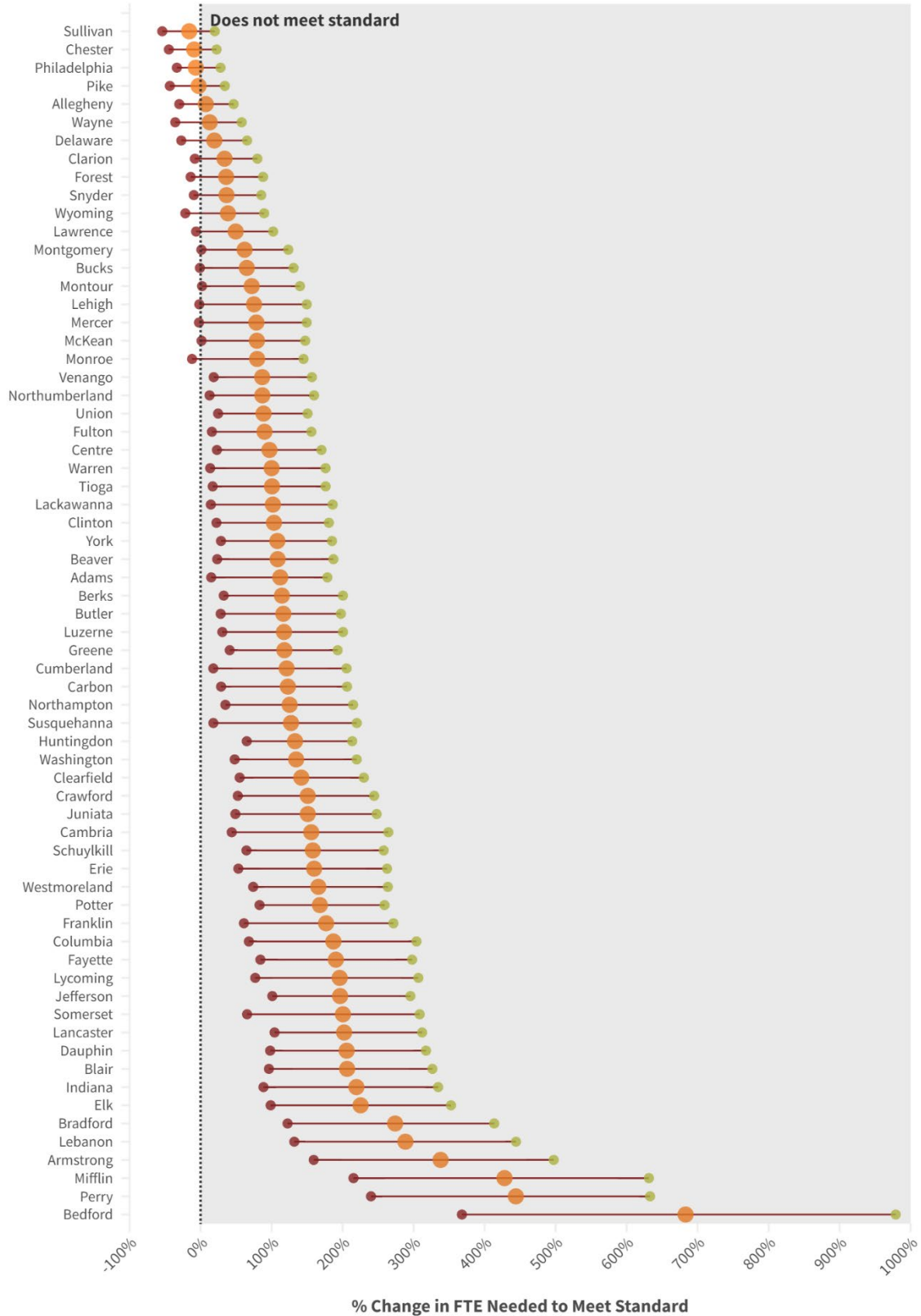
estimates for each case and the lowest credible amount of annual attorney time (1,650 hours). Additionally, we present a preferred middle ground estimate, applying the case weights from Table 1 and assuming 1,785.2 attorney hours per year. Any shortfall amount falling outside these bounds would be inconsistent with the data, requiring time inputs per case that no expert endorsed or unrealistically large or small amounts of client time per lawyer.

The results of these calculations are shown in Figure 5. In the figure, values less than zero denote results where a county has more personnel than needed to provide constitutionally adequate representation, and positive values denote situations where there is a resource shortfall. For some counties, the conclusion regarding effectiveness depends in part on the modeling assumptions. For instance, in Pike County, adopting our preferred estimate of average time inputs and availability leads to the conclusion of adequate resources. However, if we consider more pessimistic expert views on the work required for adequate case preparation, we find a shortfall.

A key takeaway from Figure 5 is that in 76% (50 of 66) of the counties in the commonwealth, we can have a high degree of confidence that current public defender staffing levels are constitutionally inadequate. For these counties, where the estimates lie completely within the grey region of the figure, there is no plausible set of assumptions consistent with the data that would allow us to conclude that there are enough attorneys to meet current caseloads. In simpler terms, for these counties, all 33 experts consulted for the NPDWS furnished numbers that would lead us to conclude that staffing is inadequate.

Moreover, Figure 5 highlights that the resource shortfalls are significant in many counties, even under the most optimistic assumptions about resources. For instance, Lancaster, Fayette, and Dauphin Counties would need to nearly double their attorney headcount to meet constitutional standards in the best-case scenario. Our preferred estimates indicate that each of these counties has only about a third of the required number of attorneys to meet constitutional standards.

Figure 5: Plausible Ranges for County-Level Resource Shortfalls Under Varying Assumptions



Conclusions

Pennsylvania's public defense system is facing significant challenges in fulfilling the constitutional mandate of providing adequate legal representation to indigent defendants. Drawing on new, innovative research that measures the time inputs required to achieve constitutionally adequate representation in addition to a rich dataset covering over a million criminal cases in the commonwealth, we demonstrate a substantial shortfall in personnel within the public defense system statewide. In most counties, public defenders are assigned caseloads that far exceed their capacity and current staffing levels are insufficient to meet constitutional and professional standards of adequate representation. These conclusions are robust to different workload assumptions and, if anything, likely understate the extent of the problem because we have incorporated conservative sampling and modeling assumptions that err towards finding adequate funding.

This shortfall not only undermines the constitutional right to counsel but also impacts the broader criminal justice system by affecting the work of prosecutors and judges and potentially compromising the quality of justice delivered. Although beyond the scope of the present study, these shortfalls also likely have significant fiscal implications for the state and local governments, since they bear the costs of incarcerating individuals who are convicted due to poor representation[13]. The introduction of state funding for indigent defense, a first for Pennsylvania, is a step forward but does not fully address the systemic under-resourcing identified here.

The best available data provide compelling evidence of the urgent need for systemic reform in Pennsylvania's public defense system. The disparity between Gideon's promise of adequate legal representation for all and the reality of resource shortfalls among Pennsylvania's public defenders underscores a critical gap in the justice system. Addressing these shortfalls is not just a matter of fulfilling a constitutional obligation--it is crucial for the integrity and effectiveness of the criminal system as a whole. Future policy decisions should focus on increasing resources, improving public defender staffing levels, and ensuring that all defendants receive the quality of representation mandated by the Constitution.

Endnotes

Acknowledgements

I express thanks to Haley Sturges, the Quattrone Center Data Analyst, for contributing to the data analysis. I also acknowledge and appreciate the outstanding efforts of the Administrative Office of the Pennsylvania Courts (AOPC) to make our commonwealth's court records accessible to the public.

[1] Chief defenders (e.g. [here](#) or [here](#)), public interest groups (e.g. [here](#) or [here](#)) and bar groups (e.g. [here](#)) have all identified funding as a major challenge to the provision of indigent defense in the Commonwealth. Other significant recent treatments of this issue include the 2020 [memorandum](#) by the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness and the 2021 [report](#) on indigent defense funding and caseloads produced by the Legislative Budget and Finance Committee of the Pennsylvania General Assembly.

[2] [Principle #9](#), ABA Ten Principles of a Public Defense Delivery System (2023)

[3] See, e.g. [Anderson, Buenaventura, and Heaton \(2019\)](#) or [Ostrom and Bowman \(2020\)](#).

[4] [466 U.S. 668 \(1984\)](#)

[5] [Rule 1.4](#)

[6] Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee & Stephen F. Hanlon. [National Public Defense Workload Study](#). RAND RR-A2559-1 , 2023.

[7] This tendency has actually been formally described through a statistical principle called the [Law of Large Numbers](#).

[8] In particular, any charge graded first-grade homicide (H1) was coded as NPDWS case type #1, and any charge graded as second-grade homicide (H2) was NPDWS case type #2. NPDWS case type #3 was defined as any charge from Title 18, Sections 3121-3125 or any charge from Title 18, sections 3126-3133 that was also graded as a felony. NPDWS case type #7 was any charge from Title 75 Section 3802 that was graded as a felony or first-degree misdemeanor (M1) while NPDWS case type 8 was any charge from Title 75 Section 3802 that carried a lesser grading.

[9] Experts have opined that 1,650 is an appropriate number of hours in litigation challenging the adequacy of public defense resources in other jurisdictions. See, e.g. the Affidavit of Robert C. Boruchowitz in Allen v. Edwards; Docket No. 655079, 19th Judicial District Court, East Baton Rouge Parish, LA.

[10] See Table 5.1 of [Pace et al. \(2021\)](#).

[11] See [Update on Associate Hours Worked](#), NALP Bulletin, 2016.

[12] See Hyeon Jin Kim, [The 2023 Am Law 100: By the Numbers](#) (April 18, 2023).

[13] See, for example, [Anderson and Heaton \(2012\)](#), which finds that, estimated conservatively, the state of Pennsylvania incurred over \$200 million in additional incarceration costs due to the use of less effective counsel in Philadelphia murder cases involving indigent defendants.

Appendix

Table A1: Tabular Summary of Mapping Process

NPDWS Case Type	Corresponding PA Offenses
01: Felony–High–LWOP	Any first-grade homicide (H1)
02: Felony–High–Murder	Any second-grade homicide (H2)
03: Felony–High–Sex	18 § 3121-3125 18 § 3126-3133 when graded as a felony
04: Felony–High–Other	Any charge not already mapped above where the 95th percentile of observed maximum sentences is 15 years or greater plus first-degree felonies (F1) with missing sentencing information
05: Felony–Mid	Any charge not already mapped above where the 95th percentile of observed maximum sentences is 3 years or greater and below 15 years plus second-degree felonies (F2) with missing sentencing information
06: Felony–Low	Any charge not already mapped above where the 95th percentile of observed maximum sentences is 1 year or greater and below 3 years plus third-degree felonies (F3) and first-degree misdemeanors (M1) with missing sentencing information
07: DUI–High	75 § 3802 when graded as a felony or first-degree misdemeanor (M1)
08: DUI–Low	75 § 3802 when graded as a second or third-degree misdemeanor (M2, M3)
09: Misdemeanor–High	All remaining second-degree misdemeanors (M2)
10: Misdemeanor–Low	All remaining misdemeanors and summary offenses with more than 1,000 recorded jail sentences