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*Caseload Standards Report: The committees are concerned about the high caseloads in the Office of the Public Defender (OPD), which exceed the current standards for cases per attorney. The committees request a report, to be submitted by November 1, 2023, detailing the average caseloads for attorneys in all of OPD's tracked case types between fiscal 2019 to 2023, using the caseload standards that OPD expects to adopt in calendar 2023. Additionally, the report should include average caseloads for core staff including paralegals and secretarial staff between fiscal 2019 to 2023.*

In September 2023, the leading experts on workload standards for public defense released the National Public Defense Workload Study ("National Standards") for adult criminal practice. The study accounts for the advancements in criminal litigation and defense practices over the past 17 years and provides a more accurate approach to determining appropriate workloads. The National Standards provide empirical evidence that public defender offices are overburdened and to ensure the constitutional right to counsel staffing numbers must be increased. In adult criminal trial practice alone, the National Standards reveal that OPD is operating at less than half of its full staffing need.

OPD assesses the workloads for attorneys, based on practice area, and for non-attorney staff, based on their position. Prior to FY2023, we relied on standards developed in 2005 ("2005 Maryland Standards"), which did not account for current trial practice or technological needs, nor followed the industry, standard methodology for determining appropriate workloads.

With the release of National Standards, we have transitioned from exclusive reliance on the outdated 2005 Maryland Standards to utilizing the best standards for each practice area and position where available. While the National Standards have a limited scope – focused solely on adult criminal district and circuit court practice – recent workload studies from Oregon and New Mexico use the same methodology as the National Standards to provide standards for juvenile, appellate, and parental defense practices.

The data tables provided below are separated by attorney practice area and non-attorney staff position. For each area, the graph details the best available standard for measuring workloads, OPD's current employees for the identified position, and the staffing needed to comply with the best available workload standard.

The more nuanced approach offered in the current standards distinguishes the time needed between different types of cases within an attorney's practice. As the time estimates per case vary by offense charged (and an individual attorney will often represent clients facing a variety of charges), these standards are not designed to measure workloads by an individual attorney. Rather, the workloads are aggregated by office to determine the overall staffing required to meet the aggregated need. As a result, the data below provides the discrepancies in overall staffing needed, rather than individual caseloads.

The below calculations focus exclusively on cases where the entire representation was provided solely by an OPD attorney. Cases that were paneled to a private attorney or where private counsel was retained at any point prior to disposition were excluded.

**I. Adult Criminal Practice (District and Circuit Court)**

OPD’s District and Circuit Court practice areas are addressed by the National Standards. The National Standards calculate the average amount of time per case needed based on the sentencing exposure for the most severe offense charged. This distinction recognizes that a homicide case with a potential life sentence will require substantially more time than a lower-level felony or misdemeanor. To apply the National Standards to Maryland’s practice, OPD classified Maryland charges in accordance with the National Standards’ categories based on the maximum sentence available by law.

The National Standards do not account for Maryland’s two-court structure, but instead factor in the time needed for both District and Circuit Court litigation together. The numbers below incorporate OPD’s adult criminal practice in both courts, with District Court proceedings that were subsequently litigated in Circuit Court excluded to avoid double counting. Consequently, this reflects a more accurate accounting of the Maryland criminal trial practice.

Area of practice	Applicable Standard (Basis of Conversion)	Number of new cases		Number of actual attorney positions		Number of attorneys needed for standards compliance	
		FY19	FY20	FY19	FY20	FY19	FY20
Adult criminal practice (district and circuit court)	National Standard	FY19	*See Note 1.	FY19	385	FY19	*See Note 1
		FY20	*See Note 1.	FY20	393	FY20	*See Note 1
		FY21	88,541	FY21	355	FY21	1,440
		FY22	86,829	FY22	353	FY22	1,307.9
		FY23	92,530	FY23	393.5	FY23	1,266.6
Notes:	<ol style="list-style-type: none"> <li>OPD converted to a new case management system (eDefender) in 2020, which can identify and aggregate top charge information. Data was provided for the three fiscal years in which eDefender was in place. The system is unable to differentiate charge data in cases that were converted from the prior case management system, and therefore we cannot apply the National Standards to OPD’s workload in FY2019 and FY2020.</li> <li>The calculation for ‘attorneys needed’ is dependent on the seriousness of the offenses charged in each case. Consequently, ‘attorney need’ does not directly correlate to the number of new cases. Although FY21 and FY22 had fewer cases overall, there were more cases with serious felony charges which require more time per case to prepare.</li> <li>The number of new cases does <b>not</b> include the number of District Court proceedings that were forwarded to Circuit Court for jury trial. This addition would reflect as 14,612 in FY2021; 14,605 in FY2022; and 15,053 in FY2023.</li> <li>New cases that lacked an offense defined in the ‘standards coding’ were included in the total number of matters but <b>not</b> in the calculation for the number of attorneys needed. This additional workload totaled 2,893 cases for FY2021; 2,928 cases in FY2022, and 2,769 cases in FY2023.</li> </ol>						

## II. Juvenile Practice

While the National Standards did not include juvenile representation, a 2022 workload study in Oregon conducted by co-authors of the National Standards included delinquency (i.e. juvenile) representation relying on similar charge classifications as in the National Standards. In this analysis, OPD relied on the same charge classifications used for adult matters, and applied the hours provided in the Oregon Standards for juvenile practice.

Area of practice	Applicable Standard (Basis of Conversion)	Number of new cases		Number of actual attorney positions		Number of attorneys needed for standards compliance	
		FY	Value	FY	Value	FY	Value
Juvenile practice	Oregon Standard	FY19	See Note 1	FY19	51.5	FY19	See Note 1
		FY20	See Note 1	FY20	45	FY20	See Note 1
		FY21	2,769	FY21	41	FY21	63
		FY22	2,304	FY22	41	FY22	53
		FY23	4,077	FY23	41	FY23	105.37
Notes:	<ol style="list-style-type: none"> <li>1. The Oregon Juvenile Standards rely on an hourly calculation per case based on top charge similar to the National Standards. As noted above, OPD converted to a new case management system (eDefender) in 2020. We identified and aggregated top charge information for FY2021- FY2023, but the system was unable to do so for FY2019 and FY2020.</li> <li>2. New cases that lacked an offense defined in the 'standards coding' were included in the total number of matters but <b>not</b> in the hourly calculation for the number of attorneys needed. This additional workload totaled 30 cases in FY2021, 57 cases in FY2022, and 103 in FY2023.</li> <li>3. The additional case preparation required for transfer and waiver hearings are <b>not</b> included in any of the workload calculations.</li> </ol>						

**III. Appellate Practice**

New Mexico's 2022 standards included appellate practice and, consistent with the nuances of the National Standards, distinguish the different workload needs for different cases. To determine the amount of time needed per case, the New Mexico standards rely on the number of transcript pages in the appellate record.

Area of practice	Applicable Standard (Basis of Conversion)	Number of new cases		Number of actual attorney positions		Number of attorneys needed for standards compliance	
		Fiscal Year	Number of cases	Fiscal Year	Hours per case	Fiscal Year	Number of attorneys
Appellate practice	New Mexico Standard	FY19	743	FY19	27.5	FY19	44
		FY20	461	FY20	27.5	FY20	26
		FY21	435	FY21	27.5	FY21	26
		FY22	405	FY22	28	FY22	24.8
		FY23	581	FY23	28	FY23	35.5
Notes:	<ol style="list-style-type: none"> <li>1. The New Mexico Standards for appellate practice rely on the number of transcript pages in the appellate record to determine the number of hours needed per case. As a result, the number of attorneys needed does not directly correlate to the number of appellate matters.</li> <li>2. For some appeals, available data does not reveal the number of transcript pages. In those instances, a low middle range of 250-750 transcript pages were used.</li> <li>3. The conversion of our case management system did not allow for distinction between Supreme Court and Appellate Court cases. Consequently, FY2019 and FY2020 cases are all reflected as heard before the Maryland Appellate Court.</li> </ol>						

**IV. Parental Defense Practice**

The Oregon Standards, developed in 2022, include parental representation in their juvenile court standards. Like the National Standards, the Oregon Standards rely on the average number of hours needed for different types of cases, distinguishing between dependency (CINA) cases and termination of parental rights (TPR) proceedings.

Area of practice	Applicable Standard (Basis of Conversion)	Number of new cases		Number of actual attorney positions		Number of attorneys needed for standards compliance	
Parental Defense Division	Oregon Standard	FY19	4,099	FY19	31	FY19	227.8
		FY20	1,051	FY20	31	FY20	58.4
		FY21	1,123	FY21	31	FY21	62.4
		FY22	1,004	FY22	31	FY22	55.5
		FY23	901	FY23	32	FY23	49.7
Notes:	1. FY2019 has a higher calculation of new cases than subsequent years due to differences in data entry in the prior case management system. In our new case management system, the methodology for measuring cases is more standardized across practice areas.						

**V. Mental Health Practice**

There are no recently developed workload standards for representation of people committed to psychiatric facilities. Consequently, OPD must continue to rely upon the 2005 Maryland Standards, which propose 883 cases per attorney. This averages a shocking 2.4 hours per client, affording virtually no time for preparation and the most minimal client contact beyond appearing at the hearing. Beyond not providing time for the necessary review of extensive medical records, consultations with hospital staff and other experts, and communications with clients and family members required, the standard ignores the multiple hearings that clients are entitled to receive, the time needed to advise clients for whom a hearing is not in their best interest at that time, and the delays in release due to lack of outpatient resources that result in additional proceedings.

Area of practice	Applicable Standard	Number of new cases		Number of actual attorney positions		Number of attorneys needed for standards compliance	
		FY19	FY20	FY19	FY20	FY19	FY20
Mental Health Division	2005 Maryland Standard	FY19	8,126	FY19	11	FY19	9.2
		FY20	7,494	FY20	11	FY20	8.5
		FY21	10,012	FY21	11	FY21	11.3
		FY22	10,590	FY22	11	FY22	12
		FY23	9,561	FY23	11	FY23	10.8
Notes:	1. The new cases includes all types of proceedings covered by our Mental Health Division: involuntary commitment; incompetent to stand trial; not criminally responsible; commitment reviews.						

## VI. *Post-Conviction Practice*

There are no recently developed workload standards for post-conviction work. As a result, we continue to rely upon the 2005 Standards. These standards, proposing 78 cases per attorney, provide for only 26.6 hours per case. Each post-conviction matter requires review of records that often span hundreds or thousands of pages; visiting clients who are often incarcerated hours away; investigating issues relevant to post-conviction claims; interviewing trial counsel, family members, and other relevant individuals; developing a legal strategy and, where appropriate, a release plan; drafting petitions and motions; preparing for and participating in court proceedings; and maintaining ongoing communications with each client.

Area of practice	Applicable Standard (Basis of Conversion)	Number of new cases		Number of actual attorney positions		Number of attorneys needed for standards compliance	
		FY19	FY20	FY19	FY20	FY19	FY20
Post-Conviction Division	2005 Maryland Standard	FY19	2,200	FY19	24	FY19	28.2
		FY20	1,888	FY20	24	FY20	24.2
		FY21	1,754	FY21	24	FY21	22.5
		FY22	1,336	FY22	24	FY22	17
		FY23	2,072	FY23	24	FY23	26
Notes:	<p>1. This data is from OPD's FY2019-FY2023 annual reports and MFR, which relied on the 2005 Maryland Standards.</p> <p>2. The new cases included all the proceeding types covered by our Post-Conviction Division: post-conviction petitions, parole revocations proceedings, sentencing modifications, applications for leave to appeal illegal sentence motions, writs of actual innocence, other post-sentencing hearings, and petitions for DNA testing.</p>						

**VII. Social Workers**

There are no recently developed workload standards for any non-attorney positions. As a result, we continue to rely upon the 2005 Maryland Standards' attorney to non-attorney staff ratios. For social workers, this standard is 8 attorneys to 1 social worker.

Area of practice	Applicable Standard (Basis of Conversion)	Number of actual Social Worker positions		Number of social workers needed for current attorney staffing		Number of social workers needed for standards' attorney staffing	
		FY19	FY20	FY19	FY20	FY19	FY20
Social Workers	Maryland 2005 Standard	FY19	27	FY19	66.3	FY19	See notes
		FY20	27	FY20	66.4	FY20	See notes
		FY21	27	FY21	61.2	FY21	203.4
		FY22	27	FY22	61.0	FY22	184.5
		FY23	27	FY23	66.2	FY23	185.6
Notes:	<ol style="list-style-type: none"> <li>1. This data is from OPD's FY2019-FY2023 annual reports, which relied on the 2005 Maryland Standards.</li> <li>2. OPD converted to a new case management system (eDefender) in 2020. The system is unable to calculate the number of adult criminal and juvenile attorneys needed for FY2019 and FY2020. Consequently, we were unable to determine the social worker ratio under the Standards for FY2019 and FY2020.</li> </ol>						

**VIII. Paralegals**

There are no recently developed workload standards for any non-attorney positions. As a result, we continue to rely upon the 2005 Maryland Standards' attorney to non-attorney staff ratios. For paralegals, this standard is 11 attorneys to 1 paralegal.

Area of practice	Applicable Standard (Basis of Conversion)	Number of actual Paralegal positions		Number of paralegals needed for current attorney staffing		Number of paralegals needed for standards' attorney staffing	
		FY19	FY20	FY19	FY20	FY19	FY20
Paralegal	Maryland 2005 Standard	FY19	21.5	FY19	48.2	FY19	See notes
		FY20	21.5	FY20	48.3	FY20	See notes
		FY21	21.5	FY21	44.5	FY21	147.9
		FY22	29.5	FY22	44.4	FY22	134.2
		FY23	29.5	FY23	48.1	FY23	135.0
Notes:	<ol style="list-style-type: none"> <li>1. There are no standards available for paralegal staffing other than the Maryland 2005 standards. As a result, the data originates from our annual reports for FY2019-FY2023, which relied on the Maryland 2005 Standards.</li> </ol>						

	<p>2. OPD converted to a new case management system (eDefender) in 2020. The system is unable to calculate the number of adult criminal and juvenile attorneys needed for FY2019 and FY2020. Consequently, we were unable to determine the paralegal ratio under the Standards for FY2019 and FY2020.</p>
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**IX. Administrative Aides and Secretaries**

There are no recently developed workload standards for any non-attorney positions. As a result, we continue to rely upon the 2005 Maryland Standards' attorney to non-attorney staff ratios. For administrative aides and secretaries, this ratio is 3 attorneys to 1 admin/secretary.

Area of practice	Applicable Standard (Basis of Conversion)	Number of actual Admin/Sec'y positions		Number of Admin/Sec'y needed for current attorney staffing		Number of Admin/Sec'y needed for standards' attorney staffing	
		FY19	FY20	FY19	FY20	FY19	FY20
Administrative and Secretarial	Maryland 2005 Standard	FY19	88	FY19	176.7	FY19	See notes
		FY20	88	FY20	177.2	FY20	See notes
		FY21	86	FY21	163.2	FY21	542.3
		FY22	99	FY22	162.7	FY22	491.9
		FY23	102	FY23	176.5	FY23	495.0
Notes:	<p>1. There are no standards available for administrative and secretarial staffing other than the Maryland 2005 standards. As a result, the data originates from our annual reports for FY2019-FY2023, which relied on the Maryland 2005 Standards.</p> <p>2. OPD converted to a new case management system (eDefender) in 2020. The system is unable to calculate the number of adult criminal and juvenile attorneys needed for FY2019 and FY2020. Consequently, we were unable to determine the administrative and secretarial staff ratio under the Standards for FY2019 and FY2020.</p>						

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While the National Standards were a significant development in determining public defender workloads and staffing needs, they do not sufficiently address the uniqueness of Maryland's legal system or the diversity of practice at OPD. We have prioritized conducting a Maryland OPD workload study so that updated standards account for Maryland's two court trial system, all of OPD's practice areas, and the vital role of non-attorney staff positions in the quality and efficiency of quality criminal defense representation.

The industry, standard methodology for determining appropriate workloads highlights the fact that OPD is woefully understaffed at all levels. Based on the data provided above for FY2021-2023, the number of **additional** attorney and non-attorney staff positions needed to adhere to best practices and OPD's constitutional mandated duty to provide effective representation is as follows:

- FY2021: 1,138.4 attorneys; 176.4 social workers (34.2 under current staffing); 126.4 paralegals (23 under current staffing); 456.3 administrative aides/secretaries (77.2 under current staffing).
- FY2022: 992 attorneys; 154.4 social workers (34 under current staffing); 104.7 paralegals (14.9 under current staffing); 392.9 administrative aides/secretaries (63.7 under current staffing).
- FY2023: 947 attorneys; 155.6 social workers (39.2 under current staffing); 105.5 paralegals (18.6 under current staffing); 393 administrative aides/secretaries (74.5 under current staffing).