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## EXECUTIVE SUMMARY

Adequate attorney and support staff resources are essential for Virginia's public defenders to provide effective assistance of counsel to indigent clients. Consequently, the Virginia Indigent Defense Commission (VIDC) contracted with the National Center for State Courts (NCSC) to conduct a comprehensive and objective assessment of attorney and staff resources in Virginia public defender offices. The primary goals of the study were to:

1. Develop a clear measure of attorney and support staff workload in all public defender offices throughout Virginia.
2. Evaluate the current allocation of attorney and support staff resources.
3. Establish a transparent formula for the VIDC and the General Assembly to use in assessing the levels of attorney and support staff resources necessary to provide effective assistance of counsel to clients of all Virginia public defender offices.

To develop the workload model, NCSC used a multi-faceted, iterative, and highly participatory data collection strategy. The model is anchored in three components:

1. Guidance, oversight, and critical decision-making provided by a steering committee of justice system stakeholders, an advisory committee of chief Public Defenders and senior support staff, and a working group of seasoned attorneys and support staff.
2. A time study designed to assess the amount of time VIDC attorneys and staff currently spend on cases of various types—in other words, a measure of current practice.
3. A systematic qualitative review process used to elicit expert opinion on how current practice can be adjusted to better enable attorneys and staff to provide effective assistance of counsel to indigent clients across Virginia.

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### Recommendations

NCSC offers two recommendations to maintain the integrity and utility of the workload standards:

1. Attorney and support staff need should be updated on an annual basis using the most recent open case data available.
2. Over time, the integrity of workload standards is affected by multiple influences such as changes in legislation, legal practice, technology and administrative factors. Regular updates are necessary to ensure that the workload standards continue to accurately represent attorney and support staff workload. The VIDC should:
  - a. Establish a standing committee that meets on an annual basis to review the impact of new legislation or other contextual factors on the workload standards, and
  - b. Conduct a systematic update of the workload standards approximately every five years.

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A basic premise of this study is that all criminal cases are not equal—in other words, more complex case types require more time to defend. Workload assessment is a resource measurement methodology that weights case filings to capture the varying complexity and corresponding workload associated with various types of cases. The end result is a set of workload standards that provide a uniform and comparable measure of the attorney and support staff time required to handle cases effectively in each public defender office. Applying the workload standards to open case data results in a need for an additional **19.5** full-time equivalent attorneys and **32.5** additional FTE support staff statewide for Virginia's public defender offices to provide effective assistance of counsel to their indigent clients.

## Project Design

Throughout the life of the project, the Workload Assessment Advisory Committee (WAAC), comprising chief Public Defenders and senior support staff, approved the overall project design and reconvened at key points to review, modify, and ratify the findings and recommendations of the NCSC project team. Additional oversight was provided by a Steering Committee of stakeholders from all parts of Virginia's criminal justice system.

The workload assessment was structured around several complementary activities:

- NCSC worked closely with the VIDC to compile an accurate defendant-based count of open cases and an inventory of the number of attorneys and support staff in public defender offices throughout the state.
- To establish a baseline of current practice, NCSC staff utilized a Web-based time study to measure the amount of time attorneys and staff *currently* spend on various activities throughout the day, including case-related and non-case-related activities. Statewide, approximately 98 percent of VIDC attorneys and support staff participated in the time study.
- To gain perspective on the sufficiency of time available to perform key case-related and non-case-related activities, NCSC administered a Web-based survey to all VIDC attorneys and support staff. Attorneys and staff were asked to assess whether they have enough time to do a reasonable job in performing their essential duties.
- Seven groups of seasoned attorneys and support staff from across the state convened to consider whether current practice, as measured by the time study, allows adequate time for quality performance. Each group referenced the concerns identified by the sufficiency of time survey to make recommendations on a set of final workload standards. These recommendations were reviewed and ratified by WAAC and the Steering Committee.

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*In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.*

– *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)

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## I. INTRODUCTION

The United States Constitution guarantees the right to be represented by an attorney to every person accused of a crime whose life or liberty is at stake.<sup>1</sup> When a defendant cannot afford to hire his own attorney, the government is obligated to provide him not merely with token representation, but with effective assistance of counsel.<sup>2</sup> In Virginia, this constitutional obligation is fulfilled by the Virginia Indigent Defense Commission (VIDC) in conjunction with private court-appointed attorneys. In recent years, questions have arisen as to what caseload or workload levels are appropriate for attorneys employed in public defender offices. These questions have been framed in both ethical and economic terms. In an effort to respond to these questions, the VIDC determined that a Virginia-specific workload assessment would be the most valuable tool for determining the resources needed to meet its constitutional obligations within the existing ethical and economic parameters.

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This workload assessment answers the question of how many public defenders and support staff members are needed to provide effective assistance of counsel to indigent clients represented by Virginia public defenders.

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In response to the public perception that Virginia's indigent defense system was overworked and consequently fell short of providing effective assistance of counsel to all indigent criminal defendants,<sup>3</sup> the Virginia General Assembly established the Virginia Indigent Defense Commission (VIDC) in 2004 by renaming and expanding the duties of the former Public Defender Commission. The VIDC was charged with overseeing the operations of all public defender offices, certifying court-appointed counsel as qualified for appointment, and developing and enforcing standards of practice for all court-appointed criminal defense attorneys in Virginia. The VIDC was further mandated to report to the Virginia General Assembly annually on the "state of indigent criminal defense in the Commonwealth."<sup>4</sup> The VIDC determined that additional information was needed in order to fulfill

this mandate and consequently began its pursuit of a state-specific empirical assessment of the number of public defenders and support staff needed to provide a competent and effective defense in every case.<sup>5</sup> The VIDC subsequently contracted with the National Center for State Courts (NCSC) to conduct this assessment.

This report describes the methods and results of NCSC's comprehensive evaluation of VIDC attorney and support staff workloads, conducted between 2007 and 2010. The primary goals of the project were to:

- Develop a clear measure of attorney and support staff workload in all public defender offices throughout the Commonwealth of Virginia.
- Evaluate the current allocation of public defender and support staff resources.
- Establish a transparent formula for the VIDC and the General Assembly to use in assessing the appropriate levels of attorney and support staff resources necessary to provide effective representation for indigent defendants statewide.

This workload assessment employs a *weighted caseload* methodology that allows for variation in the amount of attorney and staff time required to defend different types of cases effectively. For example, a typical violent felony requires many hours of individual attention from the defense attorney and assigned staff, whereas the average misdemeanor takes considerably less time. Resource models that are based solely on the total number of open cases across all case types, or aggregate cases per attorney, are incapable of accommodating

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<sup>1</sup> The only existing national caseload standards for public defenders were established in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals Task Force on Courts (150 felonies, 400 misdemeanors, 200 juvenile cases, 200 Mental Health Act cases, or 25 appeals per attorney per year). TASK FORCE ON COURTS, NAT'L ADVISORY COMM'N ON CRIM. JUST. STANDARDS & GOALS, COURTS, Standard 13.12 (1973). These standards, however, are not founded on empirical research, do not allow for the varying complexity of felony case types (e.g., homicide, violent felonies, and non-violent felonies), and predate the introduction of information technology resources commonly used by today's attorneys and support staff.

differences in workload associated with the varying complexity of different types of cases. To provide a more accurate assessment of the resources necessary to defend each type of case, this study *weights* open cases to account for differences in public defender and support staff workload associated with each case type.

To develop the workload model, NCSC used a multi-faceted, iterative, and highly participatory data collection strategy. The model is anchored in three key components:

1. Guidance, oversight, and critical decision-making provided by an advisory committee of chief Public Defenders and senior support staff, a working group of seasoned attorneys and support staff, and a steering committee comprising stakeholders from throughout the criminal justice system;

2. A time study designed to assess the amount of time VIDC public defenders and support staff currently spend on cases of various types—in other words, a measure of current practice; and
3. A systematic qualitative review process used to elicit expert opinion on how current practice can be adjusted to better enable attorneys and support staff to provide effective assistance of counsel in criminal cases.

This multi-method approach yielded a uniform set of empirically based workload standards that can be used in conjunction with caseload data to determine the number of attorneys and support staff required on a statewide basis, to evaluate the allocation of personnel among offices, and to gauge the impact of new legislation and court decisions affecting criminal defense in Virginia.

## II. INDIGENT DEFENSE SERVICES IN VIRGINIA

The Virginia Indigent Defense Commission oversees legal representation for indigent adults and juveniles accused of crimes punishable by incarceration or death. The VIDC provides representation directly through 25 field offices serving 26 cities and 27 counties, four regional capital defender offices, and an appellate office.<sup>4</sup> The VIDC also administers a certification program for court-appointed private attorneys who represent indigent defendants not served through the public defender system. This report focuses solely on caseloads in the public defender system and does not address the workload of court-appointed private attorneys.

VIDC attorneys are assisted by a variety of support staff, including investigators, sentencing advocates, mitigation specialists, secretaries, and office managers. Investigators perform fact investigation tasks such as interviewing witnesses and visiting crime scenes, review recordings of court hearings, and help attorneys prepare trial exhibits. Sentencing advocates and mitigation specialists develop mitigating information for sentencing, match defendants with appropriate treatment programs and jail alternatives, investigate the facts surrounding probation violations,

coordinate witness appearances, and assist defendants with matters such as jail issues and obtaining legal identification. Secretaries create and maintain case files, enter data into the computerized case management system, prepare letters and routine discovery motions, schedule appointments, answer telephones, and assist clients and members of the public at the reception desk. Office managers oversee the secretarial staff, perform administrative functions related to human resources and procurement, and assist the chief Public Defender in managing the office. In some offices, investigators or secretaries also pick up and drop off paperwork at the court.

As of 2009, the VIDC was authorized to employ 332.5 full-time equivalent (FTE) attorneys and 188 FTE support staff (see Appendix A). Each field office is headed by a chief Public Defender; some larger offices also employ a deputy Public Defender. Four regional capital defender offices represent defendants facing capital charges. A specialized appellate defender office handles some appeals; other appeals are handled by the field office where the case originated. In fiscal year 2008, the Virginia public defender system handled over 100,000 criminal cases.

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<sup>4</sup> This report refers to the capital defender and appellate offices as “division” offices.

### III. ADVISORY COMMITTEES

One of the initial steps in the workload assessment was to establish a Workload Assessment Advisory Committee (WAAC) to provide policy oversight and guidance throughout the life of the project. Comprising chief Public Defenders and senior support staff from a representative set of offices across the state, WAAC was charged with refining the approach and content of the workload assessment and resolving important issues affecting data collection, interpretation, and analysis. WAAC's responsibilities included:

- Advising the project team on the case type and event definitions for the time study.
- Making policy recommendations regarding the amount of time attorneys, support staff, and chief Public Defenders should devote to their case-related and non-case-related duties on both a daily and an annual basis.
- Reviewing the results of the time study and the quality adjustment process.

In addition to WAAC, all results of the evaluation were shared with a Steering Committee made up of chief Public Defenders, a designee of the Virginia Senate, an appointee of the Attorney General's office, a member of the private bar, and representatives from the Virginia State Bar, the Virginia Commonwealth's Attorneys' Services Council, and the Supreme Court of Virginia.

Following WAAC's first meeting, a Working Group of experienced attorneys and support staff from across Virginia was formed to assist project staff and WAAC in defining the parameters for data collection during the workload assessment. This included identifying the types of cases handled by public defenders and support staff, as well as the activities (case-related and non-case-related events) that attorneys and staff perform. The construction of the case type and event categories was also informed by the American Bar Association Criminal Justice Standards: Defense Function,<sup>5</sup> the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representation,<sup>6</sup> and on-site interviews with attorneys and staff from the Charlottesville and Alexandria public defender offices. Parts III.A and III.B provide an overview of the case type and event definitions for attorneys and support staff.

#### A. Case Type Categories

Because the workload model is based on the assumption that more complex case types require more time to defend, the case type categories represent a fundamental building block of the workload

assessment. The goal in developing the case type categories was to identify a manageable number of case types that WAAC and the VIDC recognized as legally and logically distinct, associated with different amounts of attorney or staff work, and covering the full range of cases handled by Virginia's public defender offices.

Due to differences in the nature of attorney and staff work, separate case type groupings were developed for attorneys and support staff. Exhibit 1 shows the eleven case type groupings for attorneys and the eight case type groupings for staff.<sup>7</sup> Variation between the attorney and staff case type groupings results from differences in the relative amount of time attorneys and staff require to handle certain types of cases. For example, the Working Group and WAAC identified two categories of felony offenses—Violent Felony and Non-Violent Felony—as requiring different amounts of attorney time to defend. For staff, however, the Working Group and WAAC concluded that both violent and non-violent felony cases are associated with similar amounts of work, and classified both types of offenses into a single category.

#### Exhibit 1: Case Types

Attorneys	Support Staff
Murder/Homicide	Murder/Homicide
Violent Felony	Felony (Violent and Non-Violent)
Non-Violent Felony	
Misdemeanor	Misdemeanor
Juvenile	Juvenile
DWI	DWI
Probation Violation—Felony	Probation Violation
Probation Violation—Misdemeanor	
Probation Violation—Juvenile	
Appellate	Appellate
Capital Defense	Capital Defense

<sup>7</sup> During the time study, attorneys were also permitted to associate their time with two additional case type categories—Drug Courts and Alternative Dockets, and Competency and Mental Health—as well as a Non-Case-Type-Specific category for case-related events that could not be attributed to a single case type (e.g., waiting at the jail to meet with several clients facing different types of charges). The small amounts of attorney time associated with these case type categories were distributed to the remaining case type categories for purposes of analysis; for details, see the footnote accompanying Part IV.B *infra*.

## B. Case-Related and Non-Case-Related Events

To cover the full range of attorney and support staff activities, the Working Group and WAAC developed separate definitions of both case-related and non-case-related events for attorneys and support staff. Case-related events include all activities directly associated with the handling of individual cases, from the time of

appointment through post-trial and appellate activity. Exhibits 2 (attorneys) and 3 (staff) list the case-related event categories for attorneys and support staff; Appendix B (attorneys) and Appendix C (staff) provide examples of specific activities that fall into each case-related event category.<sup>7</sup>

### Exhibit 2: Case-Related Events, Attorneys

#### **Pretrial Activities and Hearings**

Includes pretrial hearings and motions.

#### **Client Contact**

Includes all contact with client and client's family, such as jail visits, plea discussions, telephone calls, and trial preparation with client.

#### **Investigation and Discovery Activities**

Includes activities such as reviewing evidence, visiting the crime scene, and interviewing witnesses.

#### **Investigator Duties**

Duties that can be performed by non-attorney investigative staff, such as reviewing recordings of hearings and serving subpoenas.

#### **Legal Research**

Includes all case-related legal research.

#### **Negotiating Plea Alternatives**

Includes plea discussions with the Commonwealth's Attorney as well as non-trial dispositions such as diversion.

#### **Trial/Contested Adjudication**

In-court work and out-of-court preparation related to trial (e.g., jury selection, opening statement, examination of witnesses).

#### **Sentencing/Post-Trial Activities**

Includes all activities related to sentencing, post-trial motions, and appeals.

#### **Social Work/Sentencing Advocacy Functions**

Duties that can be performed by sentencing advocates, such as finding alternative sanction options and coordinating mental health evaluations.

#### **Staff Duties**

Duties that can be performed by non-attorney administrative staff, such as creating and updating case files.

#### **Waiting Time**

Time spent waiting in court or at the jail.

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<sup>7</sup> For support staff, some high-volume case-related activities (Court Runs, Docket Preparation, and Public Relations) were impossible to associate with a particular case type due to the large number of cases involved and the extremely short duration of the task for each individual case. For example, a single court run lasting 30 minutes might involve filing and copying documents in a number of individual cases of several different types. These three case-related activities were therefore defined as "non-case-specific" events, and staff were not asked to track the case type associated with these events during the time study.

**Exhibit 3: Case-Related Events, Support Staff**

**Intake**

Includes activities such as scheduling initial appointments, conflict checks, and obtaining charging documents from court files.

**Records Management**

Includes activities such as entering case information into the case management system and archiving and retrieving files.

**Secretarial Services**

Includes secretarial tasks such as taking telephone messages, filing, typing, and preparing dockets.

**Investigative Services**

Includes investigative work such as visiting the crime scene, identifying and interviewing witnesses, serving subpoenas, and running background checks.

**Legal Research**

Legal research and preparing legal memoranda.

**Social Work/Sentencing Advocacy Functions**

Includes activities such as developing mitigation information, coordinating alternative placements, and gathering medical and family histories.

**Interpreter Services**

Interpreting for clients and their family members.

**Direct Attorney Support**

Locating clients, finding files for attorneys, and checking for client cases in other jurisdictions.

**In-Court Support**

Providing direct support to attorneys during all types of court proceedings.

**Waiting Time**

Time spent waiting in court or at the jail.

For both attorneys and support staff, some activities such as training and staff meetings are not directly related to a particular case. These activities were defined as “non-case-related” events. In order to ensure that the full range of attorney and staff activities were defined, lunch, breaks, sick leave, and vacation

time were also included as non-case-related events. Exhibit 4 shows the non-case-related event categories for attorneys and support staff; Appendices B and C provide specific examples of activities that fall into each category.

**Exhibit 4: Non-Case-Related Events**

<u>Attorneys</u>	<u>Support Staff</u>
Training Conferences/Continuing Legal Education	Training
Travel	Travel
Staff Meetings	Committee/Staff Meetings
Duty Work	
Community Outreach	
Administrative/Personnel Tasks	Administrative/Personnel Tasks
Attorney Supervision	Staff Supervision
General Public Relations/Interface	
Leave and Vacation	Leave and Vacation
Lunch and Breaks	Lunch and Breaks

## IV. TIME STUDY

To establish a baseline of current practice, NCSC staff measured the amount of time VIDC attorneys and staff *currently* devote to each case type as well as to non-case-related tasks. Separately, the VIDC provided defendant-based counts of open cases by case type and office. Following data collection, the project team used the time study results and caseload data to calculate the average number of attorney and staff minutes currently expended to defend cases within each case type category (preliminary case weights). Next, informed by the time study data, WAAC specified the number of minutes available for case-related work during a typical work year for attorneys and for staff (attorney and staff year values). The preliminary case weights were then used to translate caseload data into attorney and staff workloads. Finally, the year values were used to calculate attorney and staff need based on an empirical assessment of current practice.

### A. Data Collection

#### 1. Time Study

From October 15, 2007 through November 11, 2007, all VIDC attorneys and support staff were asked to track all of their working time by case type and case-related event (for case-related activities), or by non-case-related event (for non-case-related activities), in five-minute increments using a Web-based timesheet. Participants were 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.<sup>†</sup>

Approximately 98 percent of attorneys and support staff participated in the time study. These extremely high participation rates ensured sufficient data to develop an accurate and reliable picture of current practice and to ascertain whether there are meaningful differences in case processing time among the various public defender offices.

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<sup>†</sup> Before the time study began, attorney and support staff representatives from each office attended “train-the-trainer” sessions. Held in Hampton for attorneys and Richmond for staff, these sessions provided an in-depth overview of the data collection instruments and data collection protocols. Trainers then returned to their offices to instruct their colleagues on how to record their time during the time study.

#### 2. Caseload Data

To translate the time study data into the average amount of time expended on each type of case (the preliminary case weights), it was necessary to determine how many individual open cases in each category were handled statewide. An open case was defined as all charges being prosecuted together against a single defendant. Each case was classified according to the most serious charge. The VIDC provided caseload data for fiscal years (FY) 2006, 2007, and 2008, broken down by case type category and office. Separate sets of caseload statistics were provided for attorney and staff case types.<sup>‡</sup> For analysis of the time study data, the caseload data for FY 2006 and FY 2007 were averaged to provide an annual count of open cases within each case type.<sup>‡</sup> The use of an annual average rather than the caseload data for one particular year minimizes the potential for any temporary fluctuations in caseloads to influence the case weights. Exhibit 5 displays the FY 2006 – FY 2007 average annual VIDC caseloads by attorney and staff case type category.

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#### What is an open case?

An open case is defined as all charges against an individual defendant arising out of a single incident. Each case is classified according to the most serious charge. Defendant-based caseload statistics provide a uniform basis for comparing workload among offices.

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<sup>‡</sup> Because the VIDC’s case management system currently uses only four case type categories (Capital, Felony, Misdemeanor, and Appeal), Virginia Criminal Code charge numbers were used to reclassify each case into the appropriate attorney and support staff case type categories. Juvenile cases do not receive a separate designation in the case management system, so juvenile cases were identified by the occurrence of case events specific to juveniles (e.g., transfers, detention hearings) or the defendant’s juvenile status at the time of the offense.

<sup>‡</sup> Because FY 2008 caseload data were not yet available when the time study analysis was conducted, only FY 2006 – FY 2007 average caseloads were used to calculate and validate the preliminary case weights. To accommodate sustained trends in caseloads and provide the most accurate picture of current staffing needs, FY 2007 – FY 2008 average caseloads were used for the final calculations of attorney and support staff need shown in Part VI of this report.

**Exhibit 5: VIDC Average Annual Caseloads, Fiscal Years 2006 and 2007**

Attorneys		Staff	
Case Type	Annual Open Cases (FY06-FY07 average)	Case Type	Annual Open Cases (FY06-FY07 average)
Murder/Homicide	150	Murder/ Homicide	150
Violent Felony	6,780	Felony	29,032
Non-Violent Felony	22,252		
Misdemeanor	41,357	Misdemeanor	41,357
Juvenile	8,471	Juvenile	8,471
DWI	3,630	DWI	3,630
PV – Felony	8,745	Probation Violation	12,717
PV – Misdemeanor	2,401		
PV – Juvenile	1,571		
Appellate	1,424	Appellate	1,424
Capital Defense	1	Capital Defense	1
<i>Division Offices</i>		<i>Division Offices</i>	
Appellate	137	Appellate	137
Capital Defense	19	Capital Defense	19
<b>Total</b>	<b>96,938</b>	<b>Total</b>	<b>96,938</b>

**B. Preliminary Case Weights for Attorneys and Support Staff**

Following data collection, the time study and caseload data were used to calculate preliminary case weights for attorneys and support staff. A preliminary case weight represents the average amount of time a VIDC attorney or support staff member *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. For example, the case weight for homicide should be substantially larger than the case weight for misdemeanor offenses, in part because homicide cases typically involve evidence of much greater volume and complexity than the evidence in a misdemeanor case.

To ensure simplicity, ease of implementation, and resource equity throughout the state, WAAC determined that a uniform set of case weights should be used for all field offices. Due to the unique nature of the cases handled by the capital and appellate divisions, separate sets of case weights were calculated for these

divisions. Because the number of capital cases defended by field offices was not sufficient to calculate a valid case weight, no preliminary case weight was calculated for capital cases in field offices.

The preliminary attorney case weights for each case type were calculated by summing all attorney time recorded for the case type\* and dividing by the average

\* To correspond with the annual open case statistics, the time study data were weighted to represent one year's worth of working time for VIDC attorneys and staff throughout the state. During the time study, data were collected under two additional case type groupings for both attorneys and staff: Drug Courts and Alternative Dockets, and Competency and Mental Health. Because the VIDC case management system does not track these case types separately, these cases were counted in the caseload data for the standard case type categories. For instance, a felony drug case handled in drug court would be counted in the Non-Violent Felony category. As a result, all time recorded during the time study for the Drug Courts and Alternative Dockets and Competency and Mental Health was added to the time reported for the remaining case type categories. Time recorded for Drug Courts and Alternative Dockets was divided equally between the Non-Violent Felony and Juvenile case types (for staff, Felony and Juvenile). Time recorded for Competency and Mental Health was divided among the Murder/Homicide, Violent Felony, Non-Violent Felony, Misdemeanor, and Juvenile case types (for staff, Murder/Homicide, Felony, Misdemeanor, and Juvenile) in proportion to the number of cases in each category.

annual open cases for the case type. For example, the time study data reveal that VIDC attorneys devote a total of 3,868,528 minutes per year to violent felony cases. Dividing the total time by the annual average number of open violent felony cases (6,780) yields a preliminary case weight of 571 minutes. This indicates that, on average, a VIDC attorney currently spends approximately 9.5 hours on each violent felony case from the time of appointment through post-disposition activity. Exhibit 6 shows the calculation of the preliminary attorney case weights for all case types.

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**What is a preliminary case weight?**

The average amount of time an attorney or staff member currently spends to handle each case of a particular type, from appointment through post-disposition activity.

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**Exhibit 6: Preliminary Case Weights for VIDC Attorneys**

Case Type	Annual Case-Related Time (minutes)	÷	Annual Open Cases (FY06-FY07 average)	=	Preliminary Case Weight (minutes)
Murder/Homicide	375,819	÷	150	=	2,505
Violent Felony	3,868,528	÷	6,780	=	571
Non-Violent Felony	9,200,683	÷	22,252	=	413
Misdemeanor	6,223,016	÷	41,357	=	150
Juvenile	2,200,966	÷	8,471	=	260
DWI	686,755	÷	3,630	=	189
PV-Felony	1,405,444	÷	8,745	=	161
PV-Misdemeanor	132,127	÷	2,401	=	55
PV-Juvenile	64,576	÷	1,571	=	41
Appellate	1,254,450	÷	1,424	=	881
Capital Defense	*	÷	1	=	*
<i>Division Offices</i>					
Appellate	355,908	÷	137	=	2,598
Capital Defense	1,106,108	÷	19	=	58,216
Total	26,874,380		96,938		

\*Due to the limited number of capital cases handled in field offices, a separate preliminary case weight was not calculated for these cases.

The preliminary case weights for support staff were calculated in the same manner as the preliminary attorney case weights.\* Support staff case weights include the combined work of all types of support staff,

including investigators, sentencing advocates, mitigation specialists, secretaries, administrative assistants, and office managers. The preliminary case weights for support staff appear in Exhibit 7.

**Exhibit 7: Preliminary Case Weights for VIDC Support Staff**

Case Type	Annual Case-Related Time (minutes)	÷	Annual Open Cases (FY06-FY07 average)	=	Preliminary Case Weight (minutes)
Murder/Homicide	242,500	÷	150	=	1,617
Felony	7,902,811	÷	29,032	=	272
Misdemeanor	4,739,161	÷	41,357	=	115
Juvenile	1,346,855	÷	8,471	=	159
DWI	267,124	÷	3,630	=	74
Probation Violation	785,709	÷	12,717	=	62
Appellate	357,957	÷	1,424	=	251
Capital Defense	*	÷	1	=	*
<i>Division Offices</i>					
Appellate	97,036	÷	137	=	708
Capital Defense	1,171,469	÷	19	=	61,656
<b>Total</b>	<b>16,910,622</b>		<b>96,938</b>		

\*Due to the limited number of capital cases handled in field offices, a separate preliminary case weight was not calculated for these cases.

\* Time entered under the non-case-specific event categories of Court Runs, Docket Preparation, and Public Relations was distributed among all case type categories in proportion to the number of open cases in each case type category.

### C. Day and Year Values

In every workload study, three factors contribute to the calculation of resource need: case weights, caseload data (open cases), and the *year value*. The year value is defined as the amount of time an attorney or staff member has available for case-related work on an annual basis. The relationship among the case weights, open cases, and year value is expressed as follows:

$$\text{Workload (minutes)} = \text{Case Weights (minutes)} \times \text{Open Cases}$$

$$\text{Resource Need (FTE)} = \frac{\text{Workload (minutes)}}{\text{Year Value (minutes)}}$$

The attorney and staff year values were calculated using a two-stage process. First, WAAC determined the amount of time available for case-related work in a typical day (attorney and staff *day values*). Next, the day values were multiplied by the number of working days in one year to yield the attorney and staff year values.

The attorney and staff day values were calculated by subtracting time devoted to lunch, breaks, and non-case-related tasks from the total workday to determine the amount of time remaining for case-related work. The VIDC established a 9-hour workday as a starting point for both attorneys and support staff. Subtracting 1 hour for lunch and breaks yields 8 hours available for both case-related and non-case-related work. The time study data reveal that both attorneys and support staff spend approximately 1.5 hours per day on non-case-related tasks, leaving 6.5 hours, or 390 minutes, for case-related work.<sup>1</sup>

#### What is a year value?

The amount of time an attorney or staff member has available for case-related work on an annual basis, in minutes.

The attorney and staff year values were obtained by multiplying the day values by the number of days available for case-related work each year. Human resources data provided by the VIDC reveal that after subtracting non-working time (weekends and holidays), leave (vacation, sick leave, and personal days), and time allocated to continuing legal education (CLE) and training, both attorneys and support staff have an average of 225 days per year available for case-related work. As shown in Exhibit 8, multiplying 225 days per

<sup>1</sup> WAAC also explored the possibility that, due to variation in the amount of travel or administrative responsibilities, the day value might vary among offices according to size (as measured by the number of attorneys employed). Based upon the time study data, WAAC concluded that it was appropriate to use a single set of attorney and staff day values for all offices.

year by 390 minutes per day yields 87,750 minutes available for case-related work per attorney or support staff member per year.

### Exhibit 8: Attorney and Staff Year Value

Total Days per Year		365
<i>Subtract Non-Working and Training Days</i>		
Weekends	-	104
Holidays	-	12
Personal Days	-	5
Vacation	-	10
Sick	-	5
Training/Continuing Legal Education	-	4
Working Days per Year	=	225
Day Value (minutes)	x	390
Year Value (minutes)		87,750

### D. Validating the Preliminary Case Weights

To assess the validity of the preliminary case weights, the weights were applied to the annual average caseload for fiscal years 2006 and 2007 to determine whether the workload could reasonably have been accomplished with the staffing levels in place at the time of the time study—in other words, to determine whether the preliminary case weights paint an accurate picture of “what is.” To calculate the implied workload for attorneys and staff statewide, the preliminary case weight for each case type was multiplied by the number of cases of that type, then the time required for all case types was totaled.<sup>†</sup> Next, the workload figures were divided by the attorney and staff year values to calculate implied staffing needs, or the numbers of attorneys and staff needed to handle current caseloads under the existing practices reflected in the preliminary case weights. Finally, staffing levels in place during the time study were compared to implied staffing needs.<sup>‡</sup> As shown in Exhibits 9 (attorneys) and 10 (staff), implied staffing needs are close to actual staffing levels as of the time study for both attorneys and support staff, indicating that the preliminary case weights developed from the time study data accurately reflect current practice at a statewide level.

<sup>†</sup> For capital cases handled by field offices, the preliminary attorney and staff case weights for capital defender offices were used to calculate implied staffing need.

<sup>‡</sup> February 2008 staffing levels were used to approximate staffing levels as of the time study.

However, the fact that the implied staffing needs based upon the preliminary case weights are close to existing staffing levels does not indicate that staffing levels are currently appropriate—it merely validates the preliminary case weights as an accurate indicator of the

amount of time currently being spent on case-related work. Parts V – VI of this report address the question of whether current staffing levels allow public defenders and support staff sufficient time to provide effective assistance of counsel.

**Exhibit 9: Implied Attorney Need, Preliminary Case Weights**

Case Type	Annual Open Cases (avg FY2006-2007)	x	Preliminary Case Weight (minutes)	=	Workload (minutes)
Murder/Homicide	150	x	2,505	=	375,750
Violent Felony	6,780	x	571	=	3,871,380
Non-Violent Felony	22,252	x	413	=	9,190,076
Misdemeanor	41,357	x	150	=	6,203,550
Juvenile	8,471	x	260	=	2,202,460
DWI	3,630	x	189	=	686,070
PV–Felony	8,745	x	161	=	1,407,945
PV–Misdemeanor	2,401	x	55	=	132,055
PV–Juvenile	1,571	x	41	=	64,411
Appellate	1,424	x	881	=	1,254,544
Capital Defense*	1	x	58,216	=	58,216
<i>Division Offices</i>					
Appellate	137	x	2,598	=	355,926
Capital Defense	19	x	58,216	=	1,106,104
Total Workload (minutes)					26,908,487
Attorney Year Value (minutes)					÷ 87,750
Total Implied Attorney Need (FTE)					306.6
Total Attorneys as of February 2008 (FTE)					- 305.8
Difference (FTE)					.9

\*For capital cases handled by field offices, the case weight from capital offices was used.

**Exhibit 10: Implied Support Staff Need, Preliminary Case Weights**

Case Type	Annual Open Cases (avg FY2006-2007)	x	Preliminary Case Weight (minutes)	=	Workload (minutes)
Murder/Homicide	150	x	1,617	=	242,550
Felony	29,032	x	272	=	7,896,704
Misdemeanor	41,357	x	115	=	4,756,055
Juvenile	8,471	x	159	=	1,346,889
DWI	3,630	x	74	=	268,620
Probation Violation	12,717	x	62	=	788,454
Appellate	1,424	x	251	=	357,424
Capital Defense*	1	x	61,656	=	61,656
<i>Division Offices</i>					
Appellate	137	x	708	=	96,996
Capital Defense	19	x	61,656	=	1,171,464
Total Workload (minutes)					16,986,812
Support Staff Year Value (minutes)					87,750
Total Implied Support Staff Need (FTE)					193.6
Total Support Staff as of February 2008 (FTE)					192.9
Difference (FTE)					.7

\*For capital cases handled by field offices, the case weight from capital offices was used.

## V. QUALITY ADJUSTMENTS: MOVING FROM “WHAT IS” TO “WHAT SHOULD BE”

The preliminary case weights generated during the time study measure the amount of time VIDC attorneys and staff *currently* spend defending various types of cases, but do not necessarily indicate how much time attorneys and staff *should* spend. To assess whether current practice allows adequate time for quality performance, project staff conducted on-site focus group interviews with attorneys and staff from four public defender offices and administered a Web-based survey to all VIDC attorneys and staff members statewide. Informed by the survey and interview results as well as their own experience, Delphi Groups of seasoned attorneys and support staff adjusted the preliminary case weights to incorporate sufficient time for effective representation. Finally, WAAC made adjustments to reduce the amount of attorney time devoted to support staff duties and to accommodate the unique administrative responsibilities of chief Public Defenders.

### A. Site Visits and Sufficiency of Time Survey

In order to gain an in-depth understanding of the challenges attorneys and staff face in providing effective assistance of counsel to indigent clients, NCSC staff visited four field offices representing a variety of rural, suburban, and urban jurisdictions: Richmond, Virginia Beach, Winchester, and Danville. In each office, NCSC staff conducted focus group interviews with panels of attorneys and staff members.

The interviews allowed project staff to document work procedures and practices thought to be exemplary, as well as areas where attorneys and staff perceived that

resource limitations inhibit their ability to perform their duties effectively.

To provide a statewide perspective on areas of concern with relation to current practice, all VIDC attorneys and staff throughout the state were asked to complete a Web-based sufficiency of time survey. For each of 56 (attorneys) or 43 (staff) essential duties, attorneys and staff were asked to respond to the statement “I generally have sufficient time” to perform the duty effectively, using a five-point scale ranging from “Almost Never” to “Almost Always.” For attorneys, job duties were organized around five general case-related functions: Pretrial Activities and Preparation, Client Contact, Legal Research, Trial/Contested Adjudication, and Sentencing/Post-Trial. For staff, job duties were organized around six general case-related functions: Records Management, Secretarial Services, Investigative Services, Sentencing Advocacy Functions, Direct Attorney Support, and Other (including Non-English-Speaking Clients, Court Run/Mail Run, Docket Preparation and Management, and General Public Relations/Interface). A response of “Does Not Apply” was available for duties that the respondent did not regularly perform. Exhibit 11 shows a sample question from the attorney survey.

Across the state, 94 percent of attorneys and 82 percent of support staff completed the survey. Exhibits 12 (attorneys) and 13 (support staff) list the lowest-scoring job duties, or those for which respondents reported that they least often had sufficient time. Detailed survey results are available in Appendix D (field office attorneys) and Appendix E (field office staff).

### Exhibit 11: Sufficiency of Time Survey Question, Attorneys

*I generally have sufficient time to . . .*

. . . Inform the client of his or her rights at the earliest opportunity and build a rapport with the client that instills trust and confidence.

1	2	3	4	5	N/A
Almost Never	Seldom	Occasionally	Frequently	Almost Always	Does Not Apply

<sup>4</sup> The lists of job duties were based on the case-related event categories developed by the Working Group, and were informed by formal standards for criminal defense as well as site visits to VIDC offices. *See supra* Part III.

## Exhibit 12: Job Duties for Which Attorneys Least Often Have Sufficient Time

### Pretrial Activities and Preparation

- Direct activities of investigative staff
- Review recordings or transcripts of prior hearings
- Identify and interview potential witnesses
- Consult with staff of alternative sanction programs
- Identify, locate, and confer with independent experts
- Visit the crime scene, if necessary

### Client Contact

- Respond to all client correspondence, as appropriate
- Meet with client within 48 hours of appointment
- Speak with client or family to gather information and answer questions

### Legal Research

- Prepare for and participate in bond revocation hearings

### Trial/Contested Adjudication

- Prepare motions during trial

### Sentencing/Post-Trial

- Prepare for and participate in drug court/juvenile review hearings
- Write appellate briefs, including replies
- Research and prepare post-trial motions
- Review and correct sentencing orders

## Exhibit 13: Job Duties for Which Support Staff Least Often Have Sufficient Time

### Records Management

- Archive files

### Secretarial Services

- File documents

### Investigative Services

- Visit the crime scene; take measurements and photographs
- Review discovery materials
- Serve witness subpoenas

### Sentencing Advocacy Functions

- Gather medical, psychiatric, and family histories
- Evaluate clients for programs
- Assist with probation revocation hearings
- Evaluate programs
- Arrange for client placement in programs
- Maintain a list of available programs

### Direct Attorney Support

- [None]

### Other

- Assist non-English-speaking clients with basic communication
- Take documents to the court for filing
- Perform receptionist duties

The sufficiency of time survey also invited respondents to comment freely on their workload. When combined with the results of the on-site focus group interviews, these comments reveal several key insights about how VIDC attorneys and staff respond to the resource constraints they face, as well as the impact of these constraints on the quality of representation for the Commonwealth's indigent defendants:

- **Scarce resources result in prioritization.** Many attorneys reported that they spend the majority of their time either in court or making jail visits. 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. This leaves little time for work such as writing motions, trial preparation, correspondence, and client contact. For attorneys, long hours and weekend work are typical strategies to stay on top of their cases.

*“I make time for the things I need to do, but I would like more time to do legal research, fact-checking, investigation, and discovery, and to talk with my clients.” – VIDC Attorney*

*“Being a good public defender is akin to being a good emergency room physician. In order to do what we do, the lawyer must know her stuff and be able to do it at high volume.” – VIDC Attorney*

Collateral matters such as post-trial support are often left to be handled by sentencing advocates; where sentencing advocates are not available, these matters may not be addressed at all. Administrative staff reported that during their own busy periods, tasks such as closing and archiving files must be relegated to the lowest priority, even when these tasks are essential to maintaining an effectively functioning office. Support staff also noted that they have little time to participate in training.

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

- *Sentencing advocates* received universal praise from attorneys for their knowledge of sentencing alternatives and expertise in working with defendants with mental health issues. Sentencing advocates work to coordinate smooth transitions between defendant placements, investigate mitigating factors and alternative sentencing options, address defendant needs such as food and clothing, bill payment, and obtaining legal identification, and assist defendants in understanding the probation system. Attorneys in offices without sentencing advocates asserted that they rarely have time to perform these tasks themselves.
- *Investigators* can conduct in-depth factual investigations which are difficult for attorneys to fit into their busy court schedules. One attorney also pointed out that it is useful to have investigators conduct initial witness interviews, visit crime scenes, and handle other aspects of factual investigation because investigators, unlike the client’s attorney, are permitted to testify in court about the circumstances in which evidence was found.<sup>7</sup> In some offices, however, attorneys ration their own use of investigators, reserving this scarce resource for their most serious cases.
- *Administrative staff* are another key component of the defense team. The time attorneys spend performing administrative duties such as photocopying and answering telephones is time unavailable for activities directly related to client representation. For their part, a number of administrative staff members commented that the frequent interruptions associated with telephone and reception desk duty make it difficult to complete other tasks such as paperwork and filing.

*“Do not underestimate the impact of overworked support staff when assessing the caseload impact on attorneys. Attorney time committed to essential paperwork and filing duties is time taken from thoughtful reflection and tactical thinking.” – VIDC Attorney*

- **Offices with limited resources have difficulty compensating for illnesses and other absences.** Both attorneys and support staff commented that high caseloads and low staffing levels often mean that it is challenging to cover the duties and responsibilities of colleagues who are out sick or on vacation.
- **Institutional inefficiencies take time away from client representation.** A number of attorneys highlighted the large amount of time they spend waiting in court and at the jail, as well as the limited amount of time they often have to react to prosecutors' discovery disclosures and plea offers. Continuances resulting from inadequate preparation on either side place a strain on the entire criminal justice system, including courts and prosecutors as well as public defenders.
- **High turnover rates and a lack of time for mentoring reduce efficiency.** Some attorneys observed that heavy workloads contribute to burnout and rapid turnover in public defender offices. Seasoned attorneys also reported having little time to devote to mentoring less experienced colleagues. Reduced turnover and increased mentoring would raise the average level of expertise, potentially improving efficiency along with effectiveness. For instance, experienced attorneys are able to more accurately evaluate plea offers based upon the severity of the crime and the available evidence, which may lead to more appropriate plea bargains and more timely dispositions.
- **In spite of the resource constraints they face, VIDC 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 and staff asserted 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.

## B. Delphi Groups

Following the sufficiency of time survey and site visits, seven Delphi Groups of seasoned attorneys and staff from across the state met to adjust the preliminary (time study) case weights. The groups consisted of attorneys from field offices, attorneys from capital defender offices, an attorney from the appellate defender office, sentencing advocates from field offices, investigators from field offices, field office secretaries and office managers, and support staff from capital defender offices. During each session, NCSC staff described how the preliminary case weights were calculated. Each 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.<sup>7</sup>

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*“It is only because of a strong work ethic, a strong support staff, strong attorneys in the office and a strong desire to provide excellent representation for the indigent community that the cases are handled in a manner in which they are not compromised. It would be in the clients' best interest for me to have a reduced caseload, so that I would have the opportunity to spend more time and resources preparing these cases and representing my clients.”*

– VIDC Attorney

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<sup>7</sup> For simplicity, the attorney events of Pretrial Activities and Hearings, Investigation and Discovery Activities, and Negotiating Plea Alternatives were adjusted together. The Delphi Groups did not make adjustments to the attorney events of Investigator Duties, Social Work/Sentencing Advocacy Functions, Staff Duties, or Waiting Time. For support staff, the Intake and Records Management events were adjusted together, and the Legal Research, Interpreter Services, and Waiting Time events were not adjusted.

Using a variant of the Delphi protocol for group decision-making, each group was asked to:

1. Review each preliminary case weight by case type and event, along with the results of the site visits and sufficiency of time survey, and identify case types and functions where current practice allows insufficient time for effective representation.
2. Within particular case types, recommend adjustments to the time allotted to specific case-related functions.
3. Provide an explicit rationale to support any proposed increase or decrease in attorney or staff time.
4. Review and revise the recommended adjustments until a consensus was reached that all necessary adjustments had been made and all recommendations were reasonable.

Following the Delphi sessions, the recommended adjustments were reviewed and approved by WAAC. This structured, iterative process ensured that the statewide perspective gained from the site visits and sufficiency of time survey, along with the input of all Delphi Group members, was incorporated into the final workload model. Appendix F summarizes the Delphi adjustments, along with the rationale for each adjustment.

### ***1. Incorporating Quality Adjustments Into the Case Weights***

The Delphi Groups employed a structured process for identifying areas of resource need and adjusting the case weights to meet these needs. For each adjustment, Delphi participants were asked to specify both the amount of additional time needed and the percentage of cases in which this additional time was required (frequency of adjustment). For example, the Delphi Group of attorneys from field offices came to a consensus that in 100 percent of juvenile cases involving client contact, 60 additional minutes are required to adequately prepare the client and the client's family for court. Each adjustment was then multiplied by the corresponding frequency before being incorporated into the final case weights.<sup>7</sup> Exhibits 14 and 15 details the calculation of the adjusted attorney and support staff case weights for juvenile cases; Exhibit 15 shows the calculation of the adjusted support staff case weight for Juvenile cases.

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<sup>7</sup> When making an adjustment to a case-related event for a particular case type, each Delphi Group was asked to state the frequency of adjustment as a percentage of cases of that case type *in which the specified event took place*. For instance, an adjustment to the Sentencing/Post-Trial Activities event with a frequency of 10 percent was defined as applying to 10 percent of cases involving sentencing or post-trial activity. Each frequency of adjustment provided by the Delphi Groups was then multiplied by the percentage of cases of that type in which the relevant event took place (frequency of event), as provided by VIIC. For the Sentencing/Post-Trial Activities adjustment shown in Exhibit 14, the frequency of adjustment is 10 percent and the statewide frequency for the Sentencing/Post-Trial Activities event is 90 percent, so the final frequency is 9 percent (10 percent times 90 percent).

**Exhibit 14: Quality Adjustments to Attorney Case Weight for Juvenile Cases**

Event/Rationale	Quality Adjustment (minutes)		Frequency (% of cases)		Net Adjustment* (minutes)	
<i>Pretrial Activities/Preparation</i>						
No change	--		--		--	
<i>Client Contact</i>						
Additional contact with client's family to prepare client and family for court	60	x	100%	=	60	
<i>Legal Research</i>						
Additional research into complexities of juvenile code	30	x	3%	=	1	
<i>Trial/Contested Adjudication</i>						
No change	--		--		--	
<i>Sentencing/Post-Trial Activities</i>						
Explain sentence and ramifications of probation violations	60	x	9%	=	5	
Total Adjustment (minutes)					66	
Preliminary Case Weight (minutes)					+	260
Quality-Adjusted Case Weight (minutes)**						326

\*Each net adjustment is rounded to the nearest whole minute.

\*\*The quality-adjusted case weight does not reflect the attorney staff duty adjustment.

**Exhibit 15: Quality Adjustments to Support Staff Case Weight for Juvenile Cases**

Event/Rationale	Quality Adjustment (minutes)		Frequency (% of cases)		Net Adjustment* (minutes)	
<i>Records Management</i>						
File closed cases immediately so they can be located when needed	1	x	100%	=	1	
<i>Secretarial Services</i>						
Keep files up to date; place documents in case files in a timely manner	1	x	100%	=	1	
<i>Investigative Services</i>						
Additional time to coordinate interviews with juvenile and family	7	x	40%	=	3	
<i>Sentencing Advocacy Functions</i>						
Find appropriate placement; obtain client histories from multiple sources (e.g., schools, DSS)	30	x	30%	=	9	
Evaluate available programs and maintain program lists	9	x	100%	=	9	
<i>Direct Attorney Support</i>						
No change	--		--		--	
<i>In-Court Support</i>						
No change	--		--		--	
Total Adjustment (minutes)					23	
Preliminary Case Weight (minutes)					+	159
Quality-Adjusted Case Weight (minutes)						182

\*Each net adjustment is rounded to the nearest whole minute.

The Delphi groups then reviewed and edited each proposed adjustment until a consensus was reached. Following the Delphi sessions, WAAC met to review and approve the Delphi Groups' recommendations. Rationales for all attorney and support staff Delphi adjustments are summarized in Appendix F. For attorneys, significant changes were made to the Violent Felony, Non-Violent Felony, Juvenile, DWI, and Probation Violation–Felony case weights. Because attorneys currently prioritize homicide cases above all other case types, the Homicide case weight was not adjusted. Across all case types, the quality adjustments to the attorney case weights related to activities such as visiting the crime scene, interviewing witnesses, reviewing mental health records, keeping the client up to date on the progress of the case, and researching motions.

For support staff, the largest changes were made to the Felony, Juvenile, and Probation Violation case weights. Like attorneys, staff indicated that homicide cases currently receive an appropriate amount of attention; consequently, only minor adjustments were made to the Homicide case weight for support staff. Across all case types, secretaries and office managers were allotted additional time to update, close, and archive case files in a timely manner. Additional investigator time was allocated for locating witnesses, conducting follow-up witness interviews, consulting with attorneys, visiting the crime scene, and preparing exhibits. Adjustments for sentencing advocates focused on developing additional mitigation information, writing sentencing memoranda, matching clients with alternative treatment programs, keeping up to date on available programs, and educating judges and attorneys about alternative sanction options available in the community.

## ***2. Attorney Staff Duty Adjustment***

After approving the Delphi Groups' recommended case weight adjustments for attorneys and support staff, WAAC made an additional adjustment to all attorney case weights that reduced the amount of attorney time allocated to duties that could otherwise be performed by support staff. During the time study, attorneys reported spending a total of 760,920 minutes per year, or the equivalent of 8.7 FTE attorneys statewide, on support staff duties such as secretarial work and filing. Because support staff can complete most of these tasks more efficiently and cost-effectively than attorneys, and because the Delphi Groups had already adjusted the staff case weights to allow support staff adequate time to perform these duties, the Advisory Committee recommended that the portion of each attorney case weight currently allocated to staff duties be reduced by 75%, reducing statewide attorney need by 6.8 FTE attorneys.<sup>†</sup> Exhibit 16 displays the preliminary and quality-adjusted case weights for attorneys and support staff, incorporating both the Delphi adjustments and the reductions in attorney time devoted to staff duties.<sup>‡</sup>

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<sup>†</sup> The reduction in attorney need associated with the attorney staff duty adjustment was calculated using FY 2007 – FY 2008 annual average caseloads.

<sup>‡</sup> Appendix G breaks down the quality-adjusted support staff case weights for field offices by position. Appendix H explores the variation in the relative amount of time devoted to case-related events by case type.

**Exhibit 16: Preliminary and Quality-Adjusted Case Weights, Attorneys and Support Staff**

Attorneys	Case Weight (minutes)		Staff	Case Weight (minutes)	
	Preliminary (Time Study)	Quality- Adjusted		Preliminary (Time Study)	Quality- Adjusted
Murder/Homicide	2,505	2,471	Murder/ Homicide	1,617	1,743
Violent Felony	571	766	Felony	272	305
Non-Violent Felony	413	433			
Misdemeanor	150	147	Misdemeanor	115	119
Juvenile	260	317	Juvenile	159	182
DWI	189	191	DWI	71	79
PV–Felony	161	165	Probation Violation	62	72
PV–Misdemeanor	55	54			
PV–Juvenile	41	41			
Appellate	881	861	Appellate	251	258
Capital	*	68,113	Capital	*	80,206
<i>Division Offices</i>			<i>Division Offices</i>		
Appellate	2,598	3,053	Appellate	708	708
Capital	58,216	68,113	Capital	61,656	80,206

\*For capital cases defended by field offices, no preliminary case weight was calculated. The adjusted capital case weights from capital division offices were used for capital cases in field offices.

**C. Public Defender Adjustment**

In addition to carrying an active caseload, each office’s chief Public Defender possesses administrative and managerial responsibilities beyond those built into the standard attorney day value established in Part IV.C. During the time study, the amount of time Public Defenders devoted to these administrative responsibilities varied according to office size. In order

to accommodate the unique duties of the Public Defender, WAAC determined that an administrative adjustment of .25 FTE should be added to the total attorney need for each office with fewer than 20 attorneys, and an administrative adjustment of .50 FTE should be added to the total attorney need for each office with 20 or more attorneys.

## VI. ATTORNEY AND STAFF NEED

At the conclusion of the quality adjustment process, the number of attorneys and support staff members currently needed in each office was calculated using the quality-adjusted case weights and the one-year average of FY 2007 and FY 2008 open cases. First, each office's total workload in minutes was calculated by multiplying the number of open cases for each case

type by the corresponding case weight, then summing the result for all case types. The office's total workload was then divided by the attorney or staff year value to yield the number of attorneys or staff members required to handle the office's caseload. Exhibit 17 provides an example of the calculation of total attorney need for the Fredericksburg Public Defender Office.

**Exhibit 17: Calculation of Implied Attorney Need, Fredericksburg Public Defender Office**

Case Type	Annual Open Cases (FY07-FY08 average)	x	Quality-Adjusted Case Weight (minutes)	=	Workload (minutes)
Murder/Homicide	7	x	2,471	=	17,297
Violent Felony	420	x	766	=	321,720
Non-Violent Felony	2,081	x	433	=	901,073
Misdemeanor	3,393	x	147	=	498,771
Juvenile	495	x	317	=	156,915
DWI	453	x	191	=	86,523
PV-Felony	613	x	165	=	101,145
PV-Misdemeanor	53	x	54	=	2,862
PV-Juvenile	147	x	41	=	6,027
Appellate	57	x	861	=	49,077
Capital	0	x	68,113	=	0
Total Workload (minutes)					2,141,410
Attorney Year Value (minutes)					÷ 87,750
Implied Attorney Need (FTE)					24.4
Public Defender Administrative Adjustment (FTE)					+ .5
Total Implied Attorney Need (FTE)					24.9

Exhibit 18 compares attorney need with the current number of authorized attorney positions for each office. In the aggregate, **19.5** additional FTE attorneys are needed to handle the VIDC's current workload. Although some field offices, such as Virginia Beach and Fredericksburg, need several additional attorneys, a few offices currently have resource levels that exceed the imputed number of attorneys needed to provide effective representation. For each office, the two right-hand columns in Exhibit 18 compare the number of cases per attorney at current (2009 allocated) staffing levels with the number of cases per attorney that would result if each office were staffed according to the workload model. Whereas current per-attorney caseloads range from a low of 120 in Arlington to a

high of 454 in Fredericksburg, full implementation of the workload model would result in per-attorney caseloads between 255 and 355. The residual differences in per-attorney caseloads among offices would reflect variations in caseload composition—for example, offices with a higher proportion of complex cases such as homicide and violent felonies would have lower per-attorney caseloads, whereas those with a larger share of less time-consuming cases would have larger per-attorney caseloads. By allowing the VIDC to direct new resources to the offices with the highest need, the weighted caseload model can serve as a powerful tool for ensuring resource equity among field offices.

**Exhibit 18: VIDC Attorney Need By Office**

Field Office	Annual Filings (FY07-FY08 average)	2009 Allocated Positions (FTE)	Attorney Need (FTE)	+	Public Defender Adjustment (FTE)	=	Total Attorney Need (FTE)	Total Need - Allocated (FTE)	Cases per Attorney	
									Current	Adjusted
Alexandria	3,286	11.0	9.0		0.25		9.3	-1.7	299	355
Arlington	1,681	14.0	4.8		0.25		5.0	-9.0	120	336
Bedford	977	4.0	2.9		0.25		3.1	-0.9	244	313
Charlottesville	2,348	7.5	7.4		0.25		7.6	0.1	313	308
Chesapeake	4,072	13.0	14.7		0.25		15.0	2.0	313	272
Danville	1,852	5.0	5.8		0.25		6.0	1.0	370	306
Fairfax	5,016	22.0	16.9		0.25		17.2	-4.8	228	292
Franklin	1,676	6.0	5.7		0.25		6.0	0.0	279	282
Fredericksburg	7,719	17.0	24.4		0.50		24.9	7.9	454	310
Halifax	2,215	7.0	6.8		0.25		7.1	0.1	316	314
Hampton	3,949	14.0	13.4		0.25		13.6	-0.4	282	290
Leesburg	5,132	15.0	16.0		0.25		16.2	1.2	342	316
Lynchburg	3,332	9.0	10.4		0.25		10.7	1.7	370	312
Martinsville	1,853	7.0	5.6		0.25		5.9	-1.1	265	316
Newport News	5,658	17.0	17.3		0.25		17.6	0.6	333	321
Norfolk	6,973	23.0	22.8		0.50		23.3	0.3	303	299
Petersburg	2,296	8.0	8.7		0.25		9.0	1.0	287	257
Portsmouth	4,863	16.0	15.5		0.25		15.8	-0.2	304	308
Pulaski	1,801	7.0	5.6		0.25		5.8	-1.2	257	308
Richmond	10,725	27.0	35.3		0.50		35.8	8.8	397	299
Roanoke	4,498	12.0	16.9		0.25		17.2	5.2	375	262
Staunton	3,917	9.0	12.0		0.25		12.2	3.2	435	320
Suffolk	1,535	7.0	5.8		0.25		6.0	-1.0	219	255
Virginia Beach	10,790	24.0	33.1		0.50		33.6	9.6	450	321
Winchester	3,332	10.0	10.2		0.25		10.4	0.4	333	319
<b>Total Field Offices</b>	<b>101,496</b>	<b>311.5</b>	<b>326.9</b>		<b>7.25</b>		<b>334.2</b>	<b>22.7</b>	<b>326</b>	<b>304</b>
Division Office	Annual Filings (FY07-FY08 average)	2009 Allocated Positions (FTE)	Attorney Need (FTE)	+	Public Defender Adjustment (FTE)	=	Total Attorney Need (FTE)	Total Need - Allocated (FTE)	Cases per Attorney	
									Current	Adjusted
Capital: Central	4	4.0	3.1		0.25		3.4	-0.6	1.0	1.2
Capital: Northern	4	4.0	3.1		0.25		3.4	-0.6	1.0	1.2
Fredericksburg	4	4.0	3.1		0.25		3.4	-0.6	1.0	1.2
Capital: Western	4	4.0	3.1		0.25		3.4	-0.6	1.0	1.2
Appellate	120	5.0	4.2		0.25		4.4	-0.6	24.0	27.1
<b>All Offices</b>	<b>101,632</b>	<b>332.5</b>	<b>343.5</b>		<b>8.50</b>		<b>352.0</b>	<b>19.5</b>		

Notes: Attorney need calculated based upon quality-adjusted case weights and FY07-FY08 one-year average filings. 2009 allocated positions include vacancies.

Exhibit 19 compares current authorized support staff positions to implied support staff need calculated using the weighted caseload model. Throughout the state, the model shows a need for 32.5 additional FTE support staff members. The fact that the model shows a greater need for additional support staff than for attorneys reflects the vital role of support staff on the

defense team. Support staff efficiently and cost effectively perform many functions integral to effective assistance of counsel, from investigating the facts of the case to locating alternative placement options to maintaining complete and accurate case files. Without sufficient support staff resources, public defenders' ability to provide competent and diligent representation to indigent clients may be seriously compromised.

**Exhibit 19: VIDC Support Staff Need by Office**

Field Office	Annual Filings (FY07-FY08 average)	2009 Allocated Positions (FTE)	Staff Need (FTE)	Need – Allocated (FTE)
Alexandria	3,286	8.0	5.8	-2.2
Arlington	1,681	8.0	3.1	-4.9
Bedford	977	1.6	1.8	0.2
Charlottesville	2,348	4.0	4.6	0.6
Chesapeake	4,072	8.0	9.0	1.0
Danville	1,852	4.0	3.7	-0.3
Fairfax	5,016	13.0	10.3	-2.7
Franklin	1,676	4.5	3.5	-1.0
Fredericksburg	7,719	8.5	15.7	7.2
Halifax	2,215	4.0	4.3	0.3
Hampton	3,949	8.0	8.3	0.3
Leesburg	5,132	7.5	10.6	3.1
Lynchburg	3,332	4.5	7.3	2.8
Martinsville	1,853	3.0	3.6	0.6
Newport News	5,658	9.5	11.0	1.5
Norfolk	6,973	13.0	14.1	1.1
Petersburg	2,296	4.0	5.2	1.2
Portsmouth	4,863	8.0	9.2	1.2
Pulaski	1,801	3.0	3.6	0.6
Richmond	10,725	14.0	22.5	8.5
Roanoke	4,498	6.4	10.3	3.9
Staunton	3,917	5.0	7.5	2.5
Suffolk	1,535	5.0	3.5	-1.5
Virginia Beach	10,790	10.0	20.0	10.0
Winchester	3,332	5.5	6.4	0.9
<b>Total Field Offices</b>	<b>101,496</b>	<b>170.0</b>	<b>204.7</b>	<b>34.7</b>

  

Division Office	Annual Filings (FY07-FY08 average)	2009 Allocated Positions (FTE)	Staff Need (FTE)	Need – Allocated (FTE)
Capital: Central	4	4.0	3.7	-0.3
Capital: Northern	4	4.0	3.7	-0.3
Capital: Southeastern	4	4.0	3.7	-0.3
Capital: Western	4	4.0	3.7	-0.3
Appellate	120	2.0	1.0	-1.0
<b>All Offices</b>	<b>101,632</b>	<b>188.0</b>	<b>220.5</b>	<b>32.5</b>

Notes: Staff need calculated based upon quality-adjusted case weights and FY07-FY08 one-year average filings. 2009 allocated positions include vacancies.

\* Appendix G breaks down support staff need by position for all field offices.

## VII. CONCLUSION AND RECOMMENDATIONS

The quality-adjusted case weights adopted by the Virginia Indigent Defense Commission Workload Assessment Advisory Committee indicate the need for an additional **19.5** FTE attorneys and **32.5** additional FTE support staff statewide to effectively represent indigent defendants in Virginia. These workload standards are grounded in current practice as measured by a statewide time study, and were reviewed for quality by seasoned attorneys and support staff members from across the state. The workload assessment provides the VIDC with an empirically based, state-specific model of attorney and support staff resource need that can be used to estimate staffing needs on a statewide basis. The model will also assist the VIDC in achieving resource equity among individual public defender offices, as well as in predicting the impact of proposed legislation on Virginia's public defender system. The following recommendations will aid the VIDC in maintaining the integrity of the workload standards into the future.

### *Recommendation 1*

NCSC recommends updating the calculations of attorney and support staff need on an annual basis using the most recent open case counts available. Recalculating attorney and support staff need each year necessitates that cases be counted consistently and accurately across the state for all case type categories defined in this report. Towards this end, the VIDC should continue to work with public defender offices to ensure the accurate and reliable reporting of comparable open case data across all jurisdictions. This includes refining the manner in which juvenile, probation violation, mental health/competency, and drug court and alternative docket cases are counted.

### *Recommendation 2*

Over time, the integrity of workload standards is affected by multiple influences, such as changes in legislation, legal practice, technology, and administrative factors. Regular updates are necessary to ensure the workload standards continue to accurately represent attorney and support staff workload. NCSC recommends that the VIDC implement procedures that allow both for interim adjustments and for periodic systematic review of the workload standards. For this reason:

- a. The VIDC should establish a standing committee that meets on an annual basis to review the impact of new legislation and other contextual factors on the attorney and support staff workload standards. The workload standards are designed to facilitate such adjustments. Each case weight has been structured around distinct case-related events (e.g., client contact, investigation and discovery, trial/contested adjudication, sentencing/post-trial activities). Through an annual review process, targeted adjustments can be made to the workload standards at the event level to respond to new court rules, legislative mandates, changes in case law, and improved case processing strategies.
- b. The VIDC should conduct a systematic update of the workload standards approximately every five years. This process should be grounded in a new time study and undertaken under the auspices of an advisory board similar to the Workload Assessment Advisory Committee.