



# OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

## **CASE WEIGHT SYSTEM - RULES**

*Revised by the Labor Management Committee May 2, 2014*

*Effective June 1, 2014*

### **BEST PRACTICES: how to administer and use this system**

#### **Step 1- VALUE THE CASE**

Assign case hours to each case when assigned – this means DAILY, as the cases come in, then write the hours on the appointment sheet. Likewise, the hours assigned should be entered into JustWare.

#### **Step 2- DAILY TRACKING**

This system is designed to help evenly distribute cases among attorneys and to monitor how many cases each attorney receives each month. We are currently using JustWare to generate monthly reports.

#### **Step 3- GENERATE MONTHLY JUSTWARE REPORT**

Print a JustWare Report for each attorney at the end of each month.

#### **Step 4- ATTORNEY REVIEWS MONTHLY JUSTWARE REPORT**

At the close of the month distribute the reports to the attorneys. If there are questions, concerns, or changes, the attorney can write in the comment section on the form and talk to the manager about changes.

#### **Step 5- AFTER ADJUSTMENTS, ATTORNEY AND MANAGER SIGN AND DATE MONTHLY REPORT, REPORT IS SENT TO CENTRAL OFFICE**

### STEP 1 – VALUE THE CASE

1. The Regional Deputy Public Defender and/or Managing Attorney will assign and track cases by attorney for the office or region. If the Regional Deputy Public Defender or Managing Attorney is absent they will appoint a backup person who will be an attorney to assign and track cases. Every region will provide the Central Office with a list of those individuals that are approved to assign and track cases including all backup personnel. **(See pages 4-7 for specifics on values.)**

### STEP 2 – DAILY TRACKING

2. Cases will be assigned DAILY and entered into JustWare DAILY. This information will be reported to the Central Office within 10 calendar days after the end of each month.

3. There will be a separate JustWare Form for each attorney.

4. This case weighting system is designed to monitor case assignments rather than open cases. Therefore, there is no incentive for a staff attorney to keep cases open.

5. One case is any number of tickets or charges an individual received in a specific incident and assigned to one jurisdiction for adjudication (i.e. traffic stop results in a speeding ticket, criminal distribution of dangerous drugs and possession – if litigated in the same court – all one case).

6. **When an attorney's monthly hours reach 125, the Regional Manager or Managing Attorney must meet with the staff attorney to discuss the attorney's caseload.**

7. This tool is not a performance measure but is simply used to assess whether resources are being properly distributed and help assure that the agency is not exceeding ethical caseload limits.

### STEP 3 – STEP 5

#### GENERATE, ATTACH, REVIEW, SIGN AND DATE

8. At the close of each month, print off the JustWare Report and distribute to every attorney. The attorney then has a chance to review the JustWare Report for errors, questions, concerns, and can write their comments on the form. Once the review is completed and adjustments are made, if any, both the attorney and manager sign the JustWare Report.

9. The JustWare Report must be sent to the Central Office within 10 calendar days after the end of each month.

### **Summary Report (generated by Central Office)**

10. The JustWare Report will be used by Central Office to generate a summary form for each attorney. The summary form will have 12 months for each attorney and a sum of the activity for the 12 month period at the bottom of each column.

11. On the summary form for a new attorney, any month that does not have “actual information” for case assignments will have 125 hours in place of the non-existent actual information. Therefore each attorney will begin with 1500 hours (12 months times 125 hours = 1500).

12. Actual monthly hours will replace the 125 hour place holder and become part of the calculation of total annual hours.

13. This is a “rolling month” process so the most recent actual information replaces the old information and the total is recalculated.

14. New hires: Central Office will backfill the summary report with the total number of hours transferred to the attorney at 125 hours per month beginning with the current month until all cases that have been transferred are accounted for. Backfill to fill out the year with 125.

### **Special Circumstances**

15. Warrants: If a case goes to warrant status, make no adjustments.

16. Similarly, if a case comes back from warrant status to active, make no adjustments unless the case has been re-assigned to another attorney. (Generally, these cases will most likely return to the attorney’s caseload within the year.)

17. Conflicts: If a case is conflicted out of the office after it has been assigned, subtract the appropriate hours from the attorney to whom it was assigned. (Management retains discretion to leave the hours on the original attorney’s count if the case goes to conflict at a late stage after the attorney has worked the case for some time or if the attorney has expended significant hours.)

Adjustments should be made in the month in which the transfer takes place, regardless of when the appointment was made.

18. Co-counsel: If an attorney is full co-counsel, give that attorney full hours. If the attorney is a trial-only co-counsel, give the attorney one-half of the allotted hours.

19. When a case is transferred from one attorney to another the case hours move with the case (subtract from the original attorney, add to the new attorney). Adjustments should be made in the month in which the transfer takes place.

# CASE WEIGHT HOURS

## Misdemeanor (Including Juvenile Cases):

### 2.5 hours

-Fugitive / Out of County warrants

### 3 hours

-ALL Traffic Offenses (Title 61) (chapters 3, 5, 6, 7, 8, 9, 11, 13)  
**Except (DUI / Per Se – 61-8-401 and 61-8-406)**

-Crimes (ONLY these three): Disorderly Conduct 45-8-101  
Obstructing 45-7-302  
Minor in Possession 45-5-624

-All City Ordinance Violations

### 7 hours

-DUI / Per Se (Title 61) (DUI 61-8-401 and Per Se 61-8-406)

-Crimes (ALL Title 45) (chapters 2, 5, 6, 7, 8, 9, 10)  
**Except Disorderly Conduct 45-8-101**  
**Obstructing 45-7-302**  
**Minor in Possession 45-5-624**

### 10 hours

-misdemeanor sex crime

**Add hours spent in a BENCH TRIAL (round down)** to the month the bench trial occurs  
(if it's less than one hour, add nothing, Example: 30 minutes = add no hours,  
2.75 hours, add 2 hours, 8.1 hours, add 8 hours)

**Add 5 hours** to the total for appeals from Justice/Municipal/City court upon appeal

**Add 5 hours** to the hours assigned if the case is outside of the assigned region.

(Example: DUI (misdemeanor) charged in Kalispell, but the attorney comes from  
Missoula = DUI (7) + 5 for travel, assign 12 hours)

**Add 7 hours** if there are **5 or more charges in one case.**

**Add 8 hours a day - per day(s) spent in trial** to the month when a **JURY TRIAL** occurs.

**Add 20 hours** to the **month for those who practice in courts located outside**  
**of the city where their office is located.**

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Assign the hours based on the highest crime charged, then no hours for the other charges

### EXAMPLES

1- Disorderly, DUI, and open container = 7 hours

(because DUI is worth the most, don't count the others)

2- No insurance, obstructing, and driving while suspended = 3 hours

(that's the highest unit for any one of them)

3- No insurance, obstructing, no DL, speeding, minor in possession,  
which goes to jury trial for two days= 26 hours

(start with 3 hours since all are in the 3 hour category, then add 7 hours for five or  
more charges, then add 16 hours for two days jury trial)

## **Felony (Including Juvenile Cases):**

- 2.5 hours** -Fugitive / Out of County warrants
- 7 hours** -Petition To Revoke
- 10 hours** -Property Crimes (45-6-101 – 45-6-341)  
-Offenses Against Public Administration (45-7-101 – 45-7-501)  
-Offenses Against Public Order (45-8-103 – 45-8-408)
- 15 hours** -Dangerous Drugs (45-9-101 – 45-9-132)  
-Felony DUI (61-8-401, 61-8-406)
- 20 hours** -Felony theft  
-Offenses Against the Person (45-5-201 – 45-5-401 and 45-5-601 - 637)  
**Except Felony Sex and Homicide charges**
- 50 hours** -Felony Sex Offense (45-5-501 – 45-5-512)
- 100 hours** -Homicide (45-5-101 – 45-5-106)

**Add 5 hours** to the hours assigned if there are 3 or 4 charges in the case

**Add 5 hours** to the hours assigned if the case is outside of the assigned region.

(Example: Kidnapping charged in Kalispell, but the attorney comes from Missoula – person crime + 5 hours for travel, assign 25 hours.)

**Add 8 hours a day - per day(s) spent in trial to the month when a TRIAL (bench OR jury trial) occurs.**

**Add 10 hours** to the hours assigned if there are 5 or more charges in the case

**Add 20 hours** to the **month** for those who practice in courts located outside of the city where their office is located.

Inchoate Offenses (**Solicitation, Conspiracy, and Attempt**), assign hours according to the underlying crime.

Example: attempted robbery, assign hours for robbery, 45-5-401 = 20 hours

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Assign the hours based on the highest crime charged, then look at the number of charges for extra points:

### **EXAMPLES**

- 1- Possession of Dangerous Drugs, Stalking = 20 hours  
(since stalking is worth the most, don't assign hours for PODD)
- 2- Criminal Mischief, Arson, Burglary = 15 hours  
(even though all are in the 10 hour category, add 5 hours since there are THREE charges)
- 3- Attempted negligent homicide that goes to bench trial for four days= 132 hours  
(even though its attempted homicide, look at underlying charge of homicide so 100 hours, then add 8 hours a day for four days, or 32 hours)

## **Civil:**

### **2.5 hours**

-DI (Involuntary Commitment)

**Add 5 hours** if goes to contested judge hearing (total possible 7.5 hours)

**Add 10 hours** if goes to contested jury trial (total possible 12.5 hours)

### **4 hours**

-DD (Developmentally Disabled)

### **5 hours**

-DG (Guardianship)

**Add 5 hours** if the case goes to final contested hearing  
(total possible 10 hours)

-DJ (Juveniles - misdemeanor / status offense)

**Add 5 hours** to the month when a jury trial occurs

**Add 7 hours** -If there are 5 or more charges in one case

### **20 hours**

-DN (Dependent Neglect)

**Add 10 hours** if goes to contested termination (total possible 30 hours)

*Note: DN case weighting is based upon the cause number of the parent(s), not the number of children, and includes termination proceedings, so trial level preparation is necessary. The value for a DN case is only placed in one of the DN cases that are all related to the same filings against the one client. The value should be placed in the first case the office receives or in the lowest cause number associated with the one client. The case weight value should only be counted once regardless of the number of children.*

**Add 5 hours** to the hours assigned if the case is outside of the assigned region.

**Add 20 hours** to the **month** for those who practice in courts located outside  
of the city where their office is located.

## **DUI / Treatment Court:**

**Add 20 hours** every month for each treatment court the attorney is assigned to.

Each treatment court is separate and distinct, unless they are consolidated for the purpose of staffing, hearing and case work. For example, some courts have separate official names, but don't require separate attorney time because all court and case work is done at the same time.

## **Jail Run / Initial Appearances:**

**Add 70 hours** every month for the attorney who is the "designated daily jail attorney" for their office (applies to Regions 1, 2, 3, 4, 5, 8 and 9) This value applies when there is only ONE person doing the jail run and initial appearances for the entire office. This does not apply in offices that use a rotation to cover the jail run and initial appearances.



OFFICE OF THE STATE PUBLIC DEFENDER  
 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED  
 FY2017  
 July 2016 - June 2017

<b>Region</b>	<b>Attorney ID</b>	<b>Case Weight</b>	<b>Target</b>	<b>Over (Short)</b>
1 - Kalispell	211195	2,419	1,500	919
1 - Kalispell	188649	2,417	1,500	917
1 - Kalispell	204633	2,561	1,500	1,061
1 - Kalispell	201259	2,360	1,500	860
1 - Kalispell	198797	1,910	1,500	410
1 - Kalispell	100990	1,124	1,000	124
1 - Kalispell	186221	2,563	1,500	1,063
1 - Kalispell	227155	131	125	6
1 - Kalispell	148299	1,243	1,500	(257)
1 - Kalispell	98467	1,877	1,500	377
1 - Kalispell	11746	2,124	1,500	624
1 - Kalispell	116504	2,031	1,500	531
1 - Kalispell	98497	1,276	750	901
1 - Kalispell	197145	339	250	89
1 - Kalispell	160139	1,554	1,500	54
1 - Kalispell	72035	1,396	1,000	396
1 - Kalispell	199839	2,443	1,500	943
1 - Kalispell	77344	2,291	1,500	791
1 - Kalispell	134006	1,729	1,500	229
1 - Kalispell	177931	2,348	1,500	848
1 - Kalispell	199606	3,045	1,250	1,795
1 - Kalispell	170996	347	438	128
2 - Missoula	176810	2,251	1,500	751
2 - Missoula	2376	1,782	1,500	282
2 - Missoula	11291	1,622	1,500	122
2 - Missoula	67203	492	750	(259)
2 - Missoula	57620	511	625	(114)
2 - Missoula	82681	379	313	223
2 - Missoula	136579	1,695	1,500	195
2 - Missoula	10212	1,744	1,500	244
2 - Missoula	5006	1,306	1,250	56
2 - Missoula	211634	2,341	1,500	841
2 - Missoula	115668	2,153	1,500	653
2 - Missoula	199607	2,445	1,375	1,070
2 - Missoula	122055	2,199	1,500	699
2 - Missoula	9475	3,009	1,500	1,509
2 - Missoula	210861	2,477	1,500	977
2 - Missoula	98497	1,376	750	1,001
2 - Missoula	12123	2,107	1,500	607
2 - Missoula	133017	1,052	1,500	(448)
2 - Missoula	197145	1,772	1,250	522
2 - Missoula	12686	150	313	(6)



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 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED  
 FY2017  
 July 2016 - June 2017

<b>Region</b>	<b>Attorney ID</b>	<b>Case Weight</b>	<b>Target</b>	<b>Over (Short)</b>
2 - Missoula	134642	835	1,000	(166)
2 - Missoula	208273	1,513	375	1,325
2 - Missoula	13533	2,048	1,500	548
2 - Missoula	16611	948	1,500	(553)
2 - Missoula	82591	644	500	144
2 - Missoula	19035	1,416	1,500	(85)
2 - Missoula	19639	2,585	1,500	1,085
2 - Missoula	20418	322	375	(54)
2 - Missoula	100217	1,227	1,000	227
2 - Missoula	125946	2,675	1,500	1,175
2 - Missoula	24001	2,152	1,500	652
3 - Great Falls	3460	1,390	1,375	15
3 - Great Falls	65157	1,452	750	1,077
3 - Great Falls	85065	1,520	1,000	520
3 - Great Falls	60544	879	313	723
3 - Great Falls	5562	1,726	1,500	226
3 - Great Falls	168625	2,260	1,500	760
3 - Great Falls	93100	2,388	1,500	888
3 - Great Falls	155279	2,777	1,500	1,277
3 - Great Falls	200299	3,556	1,500	2,056
3 - Great Falls	200200	3,136	1,500	1,636
3 - Great Falls	12133	1,992	1,500	492
3 - Great Falls	217332	189	188	95
3 - Great Falls	145122	2,176	1,500	676
3 - Great Falls	220663	220	125	95
3 - Great Falls	19893	834	500	334
3 - Great Falls	202623	3,980	500	3,480
3 - Great Falls	28675	2,214	1,500	714
4 - Helena	4466	915	750	540
4 - Helena	6163	430	375	149
4 - Helena	101	1,963	1,500	463
4 - Helena	220000	1,313	875	438
4 - Helena	63245	1,981	1,125	856
4 - Helena	151121	2,903	1,500	1,403
4 - Helena	195569	550	250	300
4 - Helena	6163	997	750	247
4 - Helena	195114	2,873	1,500	1,373
4 - Helena	221167	1,182	750	432
4 - Helena	215470	2,313	1,250	1,063
4 - Helena	152741	1,444	938	740
4 - Helena	137867	1,519	750	769
4 - Helena	220663	477	500	(24)
4 - Helena	173014	2,347	1,500	847



OFFICE OF THE STATE PUBLIC DEFENDER  
 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED  
 FY2017  
 July 2016 - June 2017

<b>Region</b>	<b>Attorney ID</b>	<b>Case Weight</b>	<b>Target</b>	<b>Over (Short)</b>
4 - Helena	187672	343	375	(32)
4 - Helena	146630	160	250	(90)
4 - Helena	172123	921	500	421
4 - Helena	163957	2,698	1,500	1,198
4 - Helena	152162	2,060	750	1,310
4 - Helena	219041	1,547	1,000	547
5 - Butte	3651	2,185	1,500	685
5 - Butte	212094	2,047	1,500	547
5 - Butte	24135	2,704	1,500	1,204
5 - Butte	201527	1,812	1,375	437
5 - Butte	63316	1,735	750	985
5 - Butte	199827	1,759	1,500	259
5 - Butte	19633	2,209	1,500	709
5 - Butte	217161	1,940	1,125	815
5 - Butte	188008	426	375	51
5 - Butte	194869	1,793	1,250	543
6 - Havre	133840	1,333	1,375	(43)
6 - Havre	215866	1,837	1,250	587
6 - Havre	210853	140	125	15
6 - Havre	214047	2,044	1,375	669
6 - Havre	101111	2,302	1,500	802
7 - Lewistown	158201	1,628	1,000	628
7 - Lewistown	214648	1,296	1,375	(79)
8 - Bozeman	39619	1,759	1,500	259
8 - Bozeman	141464	2,187	1,500	687
8 - Bozeman	38962	1,812	1,500	312
8 - Bozeman	193704	1,870	1,500	370
8 - Bozeman	7922	1,389	1,000	389
8 - Bozeman	137596	2,030	1,500	530
8 - Bozeman	217281	322	250	72
8 - Bozeman	57485	2,198	1,500	698
8 - Bozeman	14857	1,913	1,500	413
8 - Bozeman	220670	860	750	110
8 - Bozeman	172123	1,168	875	293
8 - Bozeman	186767	2,037	1,500	537
9 - Billings	209168	1,717	1,375	342
9 - Billings	39077	1,710	1,500	210
9 - Billings	51592	1,840	1,500	340
9 - Billings	51608	1,840	500	1,590
9 - Billings	164073	720	438	501
9 - Billings	14024	1,100	469	748
9 - Billings	100099	1,320	1,500	(180)



OFFICE OF THE STATE PUBLIC DEFENDER  
STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED  
FY2017  
July 2016 - June 2017

<b>Region</b>	<b>Attorney ID</b>	<b>Case Weight</b>	<b>Target</b>	<b>Over (Short)</b>
9 - Billings	3022	1,499	750	749
9 - Billings	170282	929	375	554
9 - Billings	81231	1,016	750	266
9 - Billings	39078	391	375	16
9 - Billings	212426	3,734	1,500	2,234
9 - Billings	224466	1,471	500	971
9 - Billings	164949	1,887	1,500	387
9 - Billings	188060	2,292	1,500	792
9 - Billings	224464	1,413	500	913
9 - Billings	39086	906	250	656
9 - Billings	212529	5,581	1,375	4,206
9 - Billings	107913	2,824	1,500	1,324
9 - Billings	210764	3,367	1,500	1,867
9 - Billings	204555	833	375	458
9 - Billings	155309	4,568	1,500	3,068
9 - Billings	204399	418	375	231
9 - Billings	178365	2,418	1,500	918
9 - Billings	49551	2,630	1,500	1,130
9 - Billings	43104	2,373	1,500	873
9 - Billings	202623	2,009	875	1,134
9 - Billings	130917	1,027	375	840
9 - Billings	81272	2,571	1,500	1,071
9 - Billings	152162	823	625	198
9 - Billings	202916	816	656	324
9 - Billings	50288	2,469	656	1,977
9 - Billings	68482	1,926	875	1,051
9 - Billings	96880	2,435	1,500	935
9 - Billings	151966	1,645	1,125	520
9 - Billings	227584	679	250	429
10 - Glendive	222101	545	313	389
10 - Glendive	12897	1,569	1,500	69



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 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED  
 FY2017  
 July 2016 - June 2017

<b>Region</b>	<b>Attorney ID</b>	<b>Case Weight</b>	<b>Target</b>	<b>Over (Short)</b>
10 - Glendive	204555	1,053	1,000	53
11 - Miles City	137867	1,144	625	519
11 - Miles City	177409	996	750	246
11 - Miles City	58167	1,933	1,125	808

Column 1 is the Region number.

Column 2 is the attorney ID number from the Agency's case management system.

Column 3 is the sum of the actual case weightings.

Column 4 is the target of 125 hours/month x the number of months worked.

Column 5 is the amount over or under the target.

The target of 1500 hours was determined by Chairman Gillespie in his 2012 Response to the ACLU and American University evaluations of the public defender system.

(see page 11, <http://publicdefender.mt.gov/ChairDocs/AU-ACLUResponse/PF-Response.pdf>).

¶22 221 FTE Staff Lawyer Workdays per Year. A 2080 work-hour year comes from 260 work days, *i.e.*, 52 weeks times 5 eight hour days. Although paid on the basis of 2,080 hours, expecting that many productive-hours per year from the most efficient lawyer is not realistic when at least 10 holidays, not less than 15 but not more than 24 vacation days, up to 12 sick leave days, and 15 hours of continuing education reduce the work year. Thus, 260 work days shrink to not more than 221 FTE staff lawyer workdays per year.

¶23 147,750 FTE Staff Lawyer-hours. 8.0 productive-hours per day, *i.e.*, representing clients or managing, over 221 days provides 1,768 hours. **1,547 hours comes out of 7.0 productive-hours per day.** Seven productive-hours over 221 work days is more realistic, although probably optimistic after OPD training, office meetings, breaks, and other requirements are taken into consideration. Thus, the productive-hours per annum is rounded down to 1,500 to account for lawyers entitled entitled to more than 15 vacation days and the meetings and other requirements. 1500 hours equates to 6.79 productive-hours on each of the 221 working days. Even that may be hopeful when travel time and waiting in court are considered. 98.5 FTE lawyers producing 1,500 hours of production gives OPD management 147,750 FTE staff lawyer-hours annually.