



# 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

FY 2015

JULY 2014 - JUNE 2015

Region	Attorney ID	Case Weight	Target	Over (Short) Target
1 - Kalispell	188649	904	250	654
1 - Kalispell	144032	2,994	1,125	1,869
1 - Kalispell	7238	1,499	1,500	(1)
1 - Kalispell	7747	1,522	1,500	22
1 - Kalispell	173865	260	250	10
1 - Kalispell	98467	1,741	1,500	241
1 - Kalispell	11746	1,678	1,500	178
1 - Kalispell	116504	1,698	1,500	198
1 - Kalispell	98497	1,265	750	515
1 - Kalispell	12345	1,199	1,125	74
1 - Kalispell	160139	2,969	1,500	1,469
1 - Kalispell	83447	1,598	875	723
1 - Kalispell	72035	493	375	118
1 - Kalispell	10530	475	500	(25)
1 - Kalispell	108480	2,365	1,375	990
1 - Kalispell	148299	2,110	1,500	610
1 - Kalispell	77344	1,485	1,500	(16)
1 - Kalispell	134006	2,406	1,500	906
1 - Kalispell	159102	1,525	1,500	25
1 - Kalispell	177931	1,607	1,000	607
1 - Kalispell	136579	2,459	1,500	959
2 - Missoula	176810	577	250	327
2 - Missoula	2376	2,028	1,500	528
2 - Missoula	10212	1,854	1,500	354
2 - Missoula	5006	1,866	1,500	366
2 - Missoula	115668	2,475	1,500	975
2 - Missoula	38907	670	625	45
2 - Missoula	122055	2,557	1,500	1,057
2 - Missoula	134390	2,547	1,500	1,047
2 - Missoula	9475	2,227	1,500	727
2 - Missoula	10795	514	375	139
2 - Missoula	98497	1,643	750	893
2 - Missoula	12123	2,273	1,500	773
2 - Missoula	133017	1,890	1,500	390
2 - Missoula	134642	2,214	1,500	714
2 - Missoula	13533	1,915	1,500	415
2 - Missoula	144636	938	625	313
2 - Missoula	16611	1,072	1,500	(429)
2 - Missoula	19035	1,810	1,500	310
2 - Missoula	150057	2,495	1,500	995
2 - Missoula	19639	2,072	1,500	572
2 - Missoula	20418	2,304	1,500	804
2 - Missoula	100217	374	250	124
2 - Missoula	125946	2,262	1,500	762
2 - Missoula	24001	2,102	1,500	602
2 - Missoula	147134	2,013	1,500	513
3 - Great Falls	85065	2,160	1,500	660
3 - Great Falls	168625	1,931	1,500	431
3 - Great Falls	6163	1,582	1,500	82
3 - Great Falls	93100	2,204	1,500	704
3 - Great Falls	155279	1,925	1,500	425
3 - Great Falls	12133	1,492	1,500	(8)
3 - Great Falls	145122	1,599	1,500	99
3 - Great Falls	169146	911	1,250	(339)
3 - Great Falls	19893	2,428	1,500	928



OFFICE OF THE STATE PUBLIC DEFENDER  
STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED

FY 2015

JULY 2014 - JUNE 2015

Region	Attorney ID	Case Weight	Target	Over (Short) Target
3 - Great Falls	151155	1,603	1,500	103
3 - Great Falls	28675	1,539	1,500	39
4 - Helena	101	1,900	1,500	400
4 - Helena	151759	943	1,500	(558)
4 - Helena	63245	1,101	1,500	(400)
4 - Helena	106250	1,886	1,500	386
4 - Helena	195114	15	125	(110)
4 - Helena	146393	534	375	159
4 - Helena	171248	2,411	1,500	911
4 - Helena	152741	1,766	1,500	266
4 - Helena	173014	2,051	1,500	551
4 - Helena	146630	1,130	875	255
4 - Helena	172123	2,786	1,500	1,286
4 - Helena	163957	1,774	750	1,024
4 - Helena	148633	965	1,000	(36)
4 - Helena	131270	1,855	1,500	355
5 - Butte	172378	1,140	875	265
5 - Butte	179576	1,101	750	351
5 - Butte	3651	2,396	1,500	896
5 - Butte	151121	2,055	1,125	930
5 - Butte	24135	2,505	1,500	1,005
5 - Butte	96968	319	375	(56)
5 - Butte	144636	609	625	(17)
5 - Butte	144797	183	250	(67)
5 - Butte	146630	808	750	58
5 - Butte	19633	1,665	1,125	540
5 - Butte	187927	939	625	314
5 - Butte	188008	973	625	348
5 - Butte	168635	388	375	13
5 - Butte	155467	1,003	875	128
6 - Havre	185134	1,206	875	331
6 - Havre	101111	1,950	1,375	575
6 - Havre	166769	1,626	1,500	126
7 - Lewistown	158201	1,594	1,500	94
8 - Bozeman	2566	442	500	(58)
8 - Bozeman	39619	1,434	1,500	(67)
8 - Bozeman	141464	1,524	1,500	24
8 - Bozeman	38962	1,101	1,500	(400)
8 - Bozeman	193704	123	125	(2)
8 - Bozeman	7922	1,445	1,500	(55)
8 - Bozeman	137596	1,685	1,500	185
8 - Bozeman	57485	1,659	1,500	159
8 - Bozeman	14857	1,375	1,500	(125)
8 - Bozeman	186767	739	750	(11)
8 - Bozeman	121707	1,165	1,125	40
9 - Billings	183514	1,504	875	629
9 - Billings	74687	1,510	1,250	260
9 - Billings	179576	776	500	276
9 - Billings	188061	692	500	192
9 - Billings	39077	1,829	1,500	329
9 - Billings	39078	1,433	1,500	(68)
9 - Billings	51592	1,583	1,500	83
9 - Billings	164949	2,189	1,500	689
9 - Billings	188060	901	625	276
9 - Billings	147133	435	375	60



OFFICE OF THE STATE PUBLIC DEFENDER  
 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED  
 FY 2015  
 JULY 2014 - JUNE 2015

Region	Attorney ID	Case Weight	Target	Over (Short) Target
9 - Billings	164073	2,309	1,500	809
9 - Billings	184663	1,171	750	421
9 - Billings	58167	451	500	(49)
9 - Billings	121706	937	750	187
9 - Billings	101111	458	250	208
9 - Billings	39087	1,685	1,500	185
9 - Billings	16445	1,218	625	593
9 - Billings	107913	1,961	1,500	461
9 - Billings	155309	2,245	1,500	745
9 - Billings	178365	2,161	1,375	786
9 - Billings	43104	1,846	1,500	346
9 - Billings	81272	1,416	875	541
9 - Billings	68482	2,100	1,500	600
9 - Billings	96880	1,750	1,500	250
9 - Billings	151966	2,014	1,500	514
10 - Glendive	172378	1,014	500	514
10 - Glendive	151967	2,692	1,500	1,192
10 - Glendive	12897	1,121	750	371
11 - Miles City	185703	499	750	(252)
11 - Miles City	165141	803	500	303

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.