



Brian Schweitzer
Governor

OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Chief Public Defender
William Hooks

DRAFT

CASE WEIGHT SYSTEM - RULES

*Adopted at the November 16, 2012 Labor Management Committee Meeting
Effective December 1, 2012*

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 moves 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:

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 5 hours to the month when a jury trial occurs.

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

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 = 12 hours

(start with 3 hours since all are in the 3 hour category, then, because there are 5 or more charges add 7 hours + 5 hours because a jury trial occurred)

Felony:

- 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 10 hours to the month when a 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

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 = 100 hours
(even though its attempted homicide, look at underlying charge of homicide)

Civil / Juveniles:

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

10 hours

-DJ (Juveniles - Felony)

Add 10 hours to the month when a jury trial occurs

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

Add 10 hours if there are 5 or more charges in the 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.

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.