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# Public Defender Commission



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## REQUEST FOR PUBLIC COMMENT: NEW CASELOAD STANDARDS & COMPENSATION PROPOSALS

On July 21, 2021, the Indiana Public Defender Commission authorized its staff to release the following proposed changes for public comment:

- 1) proposed changes to caseload standards; and
- 2) proposed changes to compensation for public defenders in counties that have no equivalent deputy prosecutor doing similar work and having similar experience to their public defender counterparts.

The proposed changes generally consist of:

- Removing the ability to assign higher maximum caseloads to attorneys who exclusively receive Level 6 felony assignments (which only impacts about four counties using this standard).
- Reduced caseload maximums for felonies above Level 5. Additionally, instead of having all major felony case types weighted the same, the proposed changes divide caseload weights into the following categories: Murder, Level 1 & 2 felonies, and Level 3 & 4 felonies.
- Perform similar adjustments to juvenile delinquency case types as described above regarding adult felony case types.
- Consolidating appeals into a single category with a caseload maximum equal to the previous standard for guilty plea/limited issue appeals, not including LWOP appeals which will have a new, separate standard based upon the existing trial appeal standard.
- In counties where it is not possible to establish pay parity between public defenders and deputy prosecutors who perform similar job duties and have similar experience, the guideline setting the salary or contract threshold at \$60,350/\$30,175 should be increased to \$80,000/\$40,000. *Please note: The county specific changes described below do not account for any compensation changes and only refer to the impact the proposed caseload changes may have.*
- All the changes have a proposed **effective date of January 1, 2023.**

## **BACKGROUND & DETAILS OF CASELOAD STANDARDS**

### **PROPOSAL:**

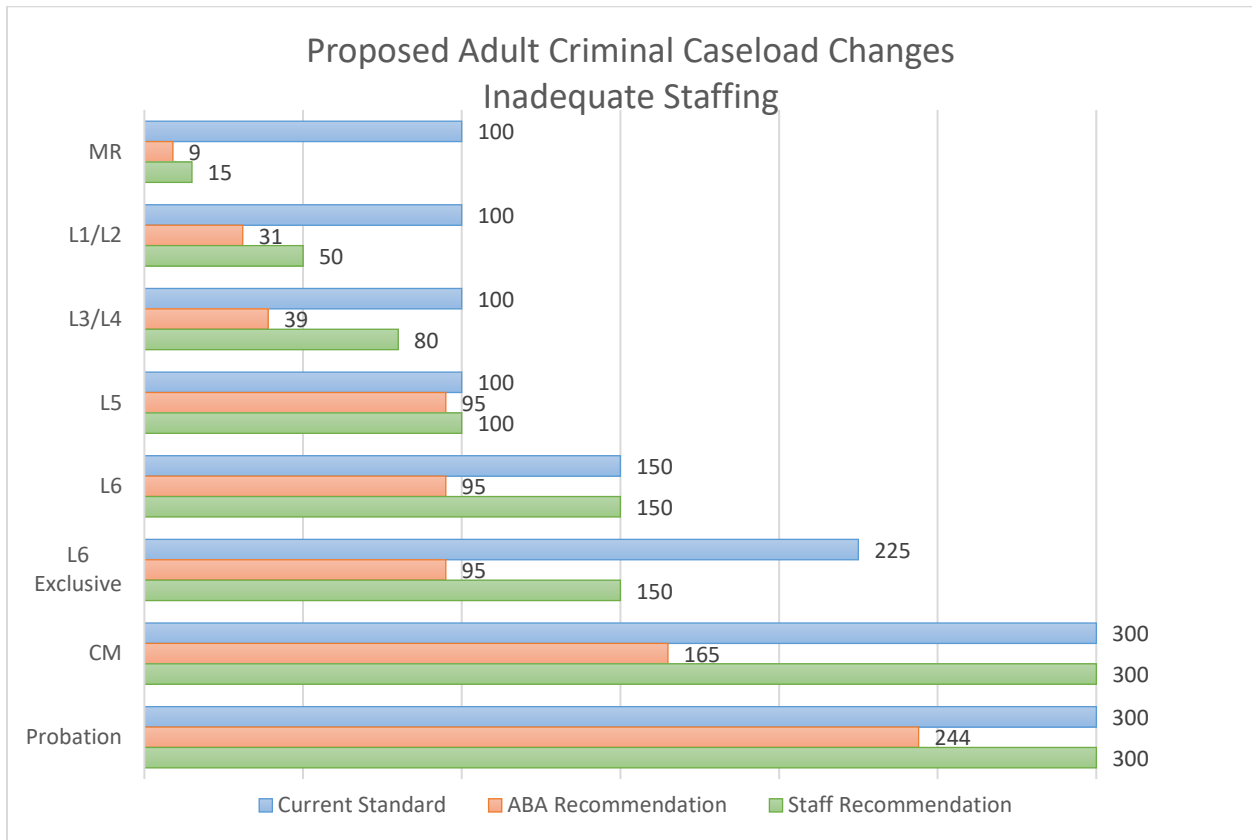
The Commission received the final American Bar Association (ABA)/Crowe Workload Study almost one year ago. [Click here to read the full study.](#)

Some of the key takeaways from the study were that the weighting of major felony cases (Murder through Level 5) as all equal is wholly inappropriate; the Commission's similar approach to juvenile delinquency caseloads is also inaccurate; the Commission's higher Level 6 caseloads for an attorney operating in a Level 6 court and exclusively practicing on Level 6 cases is not justifiable; and the appellate standards developed in the 1990's are more stringent than what could be allowed with the prevalence of online research, word processing technology, and e-filing.

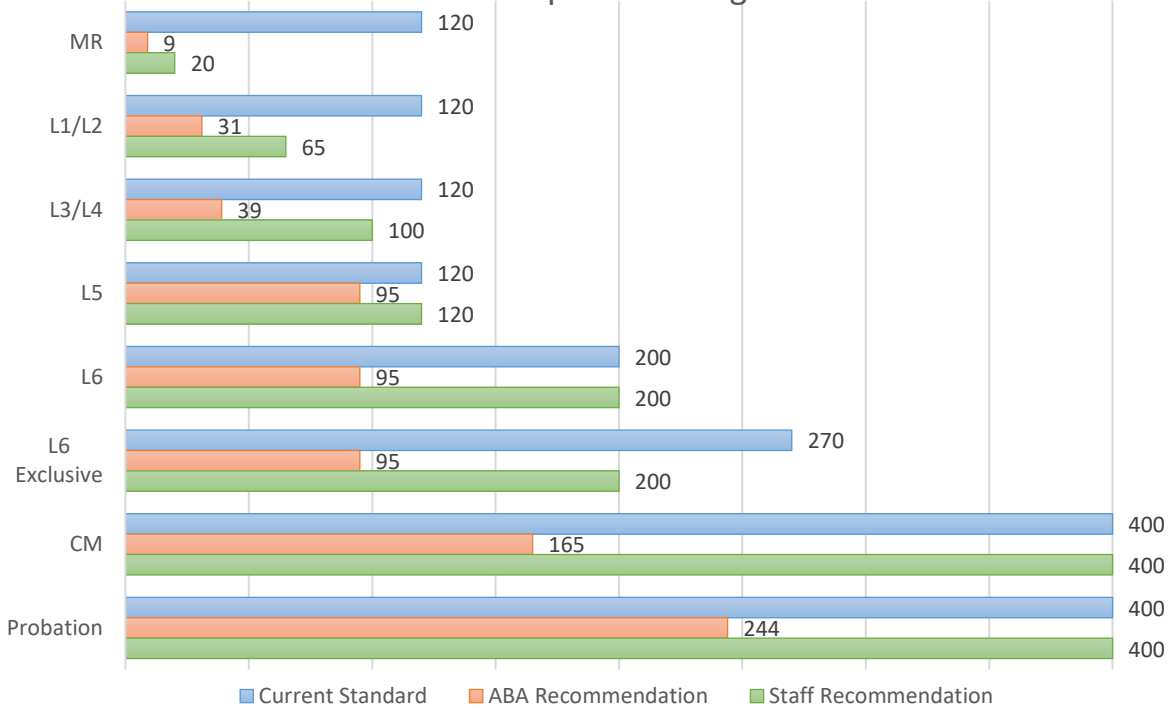
To address some of these issues, Commission staff has proposed the following changes:

	CURRENT		PROPOSED	
	Inadequate	Adequate	Inadequate	Adequate
MR	100	120	15	20
L1/L2	100	120	50	65
L3/L4	100	120	80	100
L5	100	120	100	120
L6	150	200	150	200
L6 Exclusive Atty	225	270	150	200
CM	300	400	300	400
JD MR	200	250	15	20
JD Waiver	200	250	50	65
JD L1-4	200	250	100	120
JD L5*	200	250	220	275
JD L6*	250	300	220	275
JD CM**	300	400	300	375
JM**	400	500	300	375
JD Prob	400	500	400	500
JS	400	500	400	500
JC	120	150	120	150
JT	120	150	120	150
Adult. Prob. Viol.	300	400	300	400
Non-Reimb. Other	300	400	300	400
*JD L5/L6 were grouped together, but currently have different standards				
**JD CM/JM were grouped together, but currently have different standards				

	CURRENT		PROPOSED	
	Inadequate	Adequate	Inadequate	Adequate
Trial Appeal	20	25		
Plea Appeal	40	50		
LWOP Appeal			20	25
Appeal			40	50



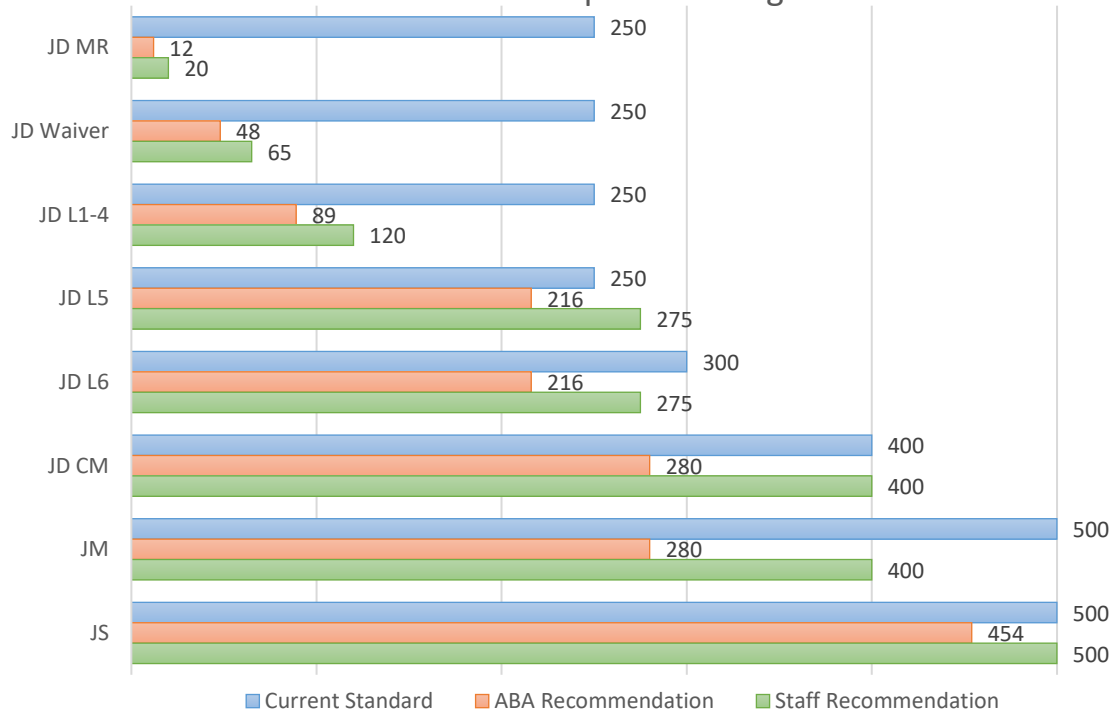
### Proposed Adult Criminal Caseload Changes Adequate Staffing



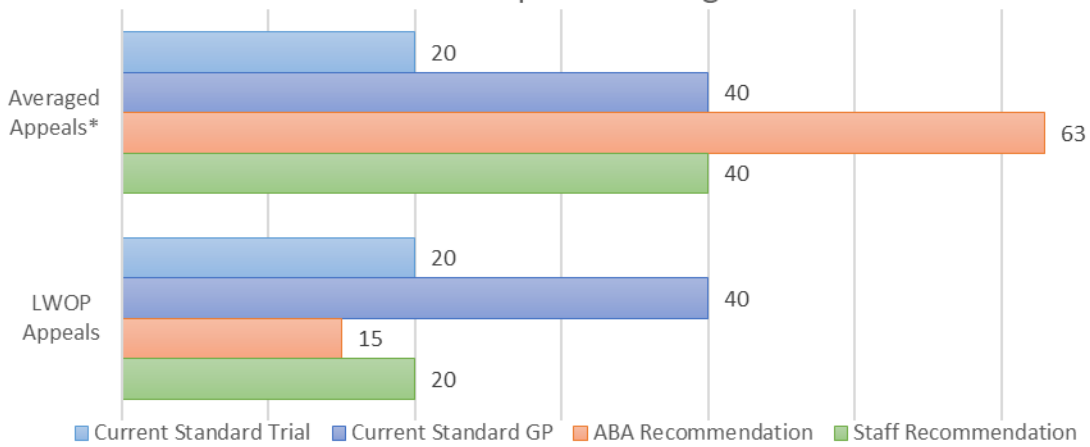
### Proposed Juvenile Caseload Changes Inadequate Staffing

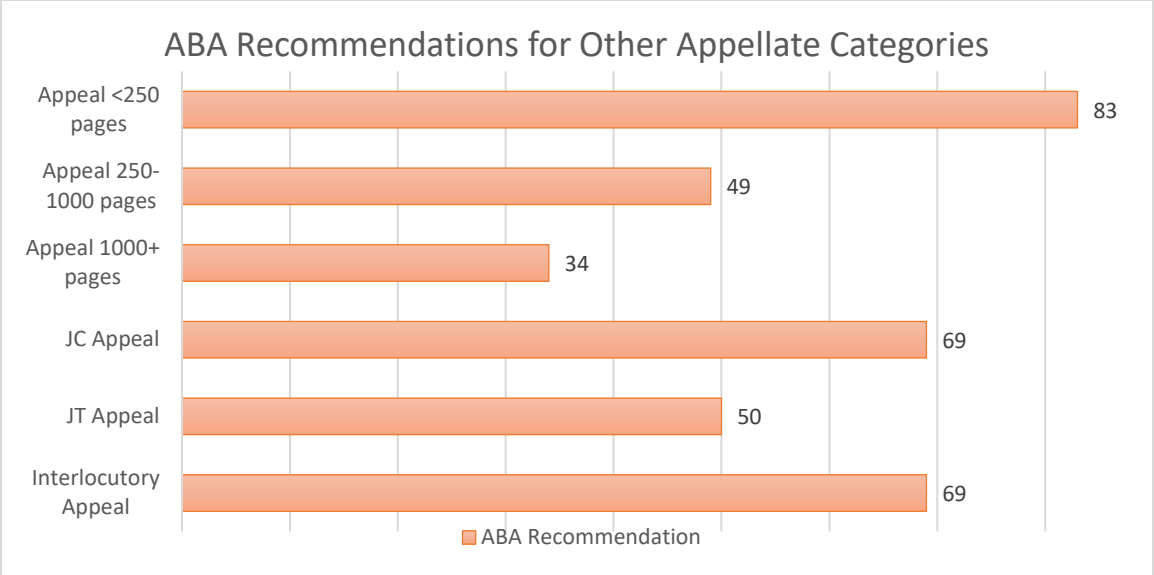
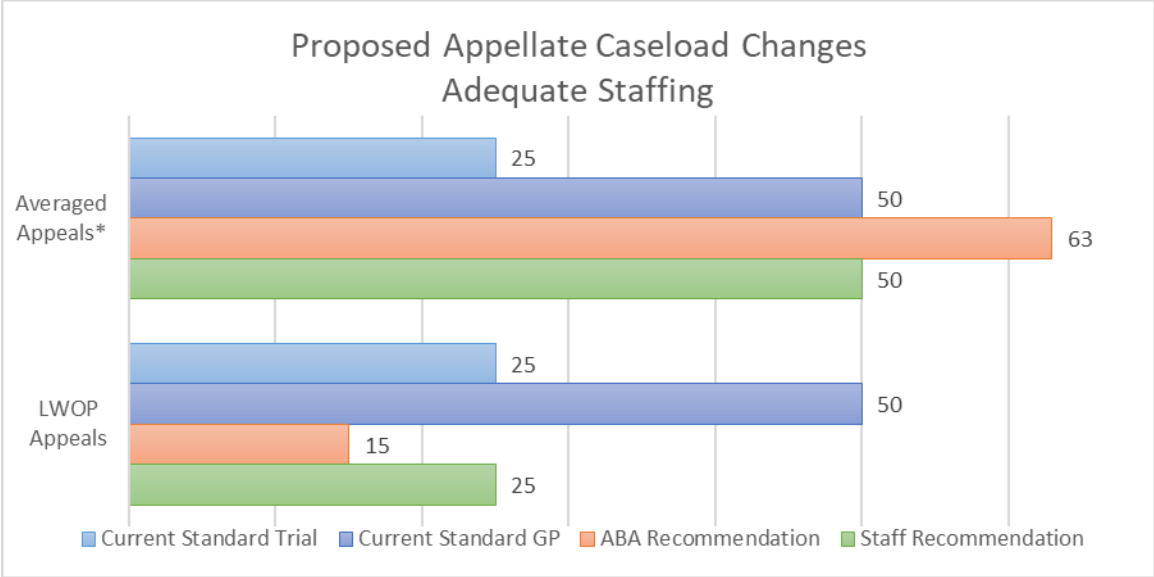


### Proposed Juvenile Caseload Changes Adequate Staffing



### Proposed Appellate Caseload Changes Inadequate Staffing



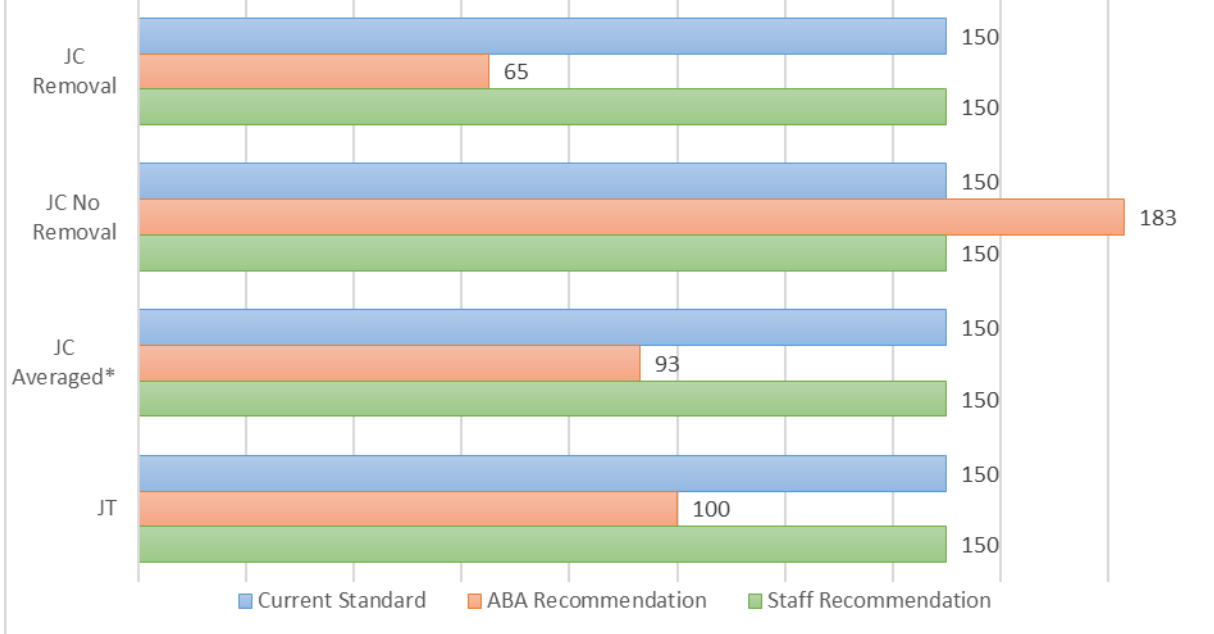


\*The averaged appeals caseload recommendation is a weighted average of the three appellate record length recommendations according to a survey of record length for all appellate cases decided in the first quarter of 2021.

### Proposed CHINS and Termination Caseload Changes Inadequate Staffing



### Proposed CHINS and Termination Caseload Changes Adequate Staffing



## **BACKGROUND & DETAILS OF COMPENSATION STANDARD PROPOSAL:**

In 2013 (effective 1/1/14), the Commission increased the amount counties were to pay public defenders by 50% when there is no corresponding position in the prosecutor's office to \$60,350 for 1.0 FTE and \$30,175 for 0.5 FTE (or equivalent FTE based upon the % of \$60,350). In 2016, the Commission increased the hourly rate for public defenders to \$90/hour from \$70/hour (in 2012 the amount was raised from \$60 to \$70). No similar compensation increases have occurred since 2016.

For some reason, Commission data shows that the typical pay for a 1.0 FTE public defender in Indiana is almost identical to our guideline of \$60,350. Recently the Commission has been informed of multiple public defenders leaving to work in other positions, including the Department of Child Services. DCS has recruited experienced attorneys and compensated them at over \$80,000. Other state entities also appear to be compensating attorneys at higher rates for both hiring and retention. The Commission has previously been informed of staff research that there is a shortage of attorneys in Indiana compared to other states. Judges have also complained about finding able-bodied lawyers willing to take public defense contracts.

**PROPOSAL:** Effective 1/1/23, raise contractor compensation when there is no comparable prosecutorial position to \$80,000 for 1.0 FTE and \$40,000 for 0.5 FTE (or equivalent FTE based upon the % of \$80,000 the attorney is paid).

## **HOW TO COMMENT:**

**The Commission asks you to submit your comments concerning the proposed changes, in writing, no later than September 8, 2021, to:**

**[information@pdcom.in.gov](mailto:information@pdcom.in.gov)**

Please also feel free to reach out to Derrick Mason at [derrick.mason@pdcom.in.gov](mailto:derrick.mason@pdcom.in.gov) with any questions about the changes.