

## Report: Indigent Defense Lawyers Should Reduce Caseloads

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Lawyers who represent indigent criminal defendants should drastically reduce their number of appointments annually to ensure that indigent clients get effective representation, according to a recent report, which recommended caseload limits that could hit lawyers in the pocketbook.

The Texas Indigent Defense Commission on Jan. 15 released [research findings](#) that showed that indigent defense lawyers currently take 340 misdemeanor cases or 152 felonies each year.

"Excessive caseloads erode the right to competent and effective counsel by inhibiting attorneys' ability to devote the time and attention required for 'meaningful adversarial testing' of the charges," said the report, which recommended caseload guidelines that are nonbinding at this time.

The report recommended an overall limit of 226 misdemeanors or 128 felonies per year. In reality, those totals might be broken down by an "annual full-time equivalent caseload" of: 236 Class B misdemeanors; 216 Class A misdemeanors; 175 state jail felonies; 144 third-degree felonies; 105 second-degree felonies; or 77 first-degree felonies.

An attorney would have to calculate the full-time equivalent of her own caseload. For example, if the lawyer handled 177 Class B misdemeanors, she would divide 177 by the 236-case limit. That caseload would be 75 percent of the limit; she could fill the remaining amount with other cases. For example, 19 first-degree felonies divided by the 77-case limit would be 24.7 percent of the limit.

The report said that lawyer compensation also must be addressed to provide meaningful indigent defense.

"At current average compensation rates of \$608 per noncapital felony and \$198 per misdemeanor, court-appointed private attorneys spending the time recommended by this report would earn between \$37 and \$20 per hour, respectively. Justice is put at risk not only when caseloads are excessive, but when lawyers are not paid fairly for their

work," said the report.

If an attorney handled the current average 340 misdemeanors per year and received \$198 per case, he would earn \$67,320 annually. Facing the 226-misdemeanor caseload limit, his income would drop to \$44,748.

If a lawyer handled the current average of 152 felonies and received \$608 per case, she would earn \$92,416 annually. Facing the 128-limit, her income would drop to \$77,824.

## Study Findings

The National Advisory Commission on Criminal Justice Standards and Goals in 1973 recommended annual maximum caseloads of 150 felony cases and 400 misdemeanor cases, noted the report.

House Bill 1318, passed in the 2013 legislative session, called on the Texas Indigent Defense Commission to study caseloads and recommend Texas limits.

H.B. 1318 also required indigent defense lawyers to report their work time, which revealed that some were paid for 500-1,000 indigent defense cases in 2014, said the report.

"It is not difficult to find examples of defense lawyers who are overwhelmed by too many cases," noted the report.

As part of the study, 196 indigent defense attorneys tracked their time for 12 weeks. Results showed the average time that lawyers spend on various case types.

Among other things, the researchers organized a panel of 18 highly experienced criminal defense attorneys who recommended that lawyers should spend much more time on each case. The time-per-case recommendations varied depending upon whether a lawyer disposed of a case prior to trial, or whether the case went through trial—which takes more time.

The panel recommended that the trial rate for criminal cases in Texas should increase dramatically. In that case, a lawyer would have to handle even fewer cases per year, since trial cases would take more lawyer time than the nontrial cases.

Austin criminal defense solo Rachel Rogers said that the caseload guidelines would still be "an extremely high number of clients."

"It would be very hard to try the cases the way that I would like to try them, with that many cases," said Rogers, who takes court appointments in four counties.

Houston criminal defense solo Robert Fickman said that imposing caseload limits would be a step in the right direction. Still, an attorney might continue to provide ineffective

representation if he disposed of cases through "light speed" guilty pleas, he said.

Caseload limits "would hopefully afford lawyers at least ostensibly the opportunity to provide more effective assistance because they would have more hours per case. But if the lawyers who are appointed are predisposed to doing a lousy job anyway, is it really going to make them better lawyers or make for better representation? I don't think so," Fickman said. "There needs to be a change where court appointments are spread out more evenly among the defense bar."