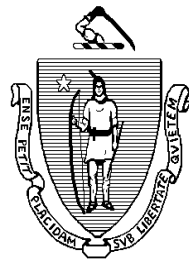


**The Committee for Public Counsel Services  
Answering Gideon's Call Project (2012-DB-BX-0010)**

**Final Report:  
National Recommendations**

**December 2014**



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# I. Introduction

In accordance with current trends promoting the greater use of evidence-based practice in the criminal justice system, the Bureau of Justice Assistance of the U.S. Department of Justice recently funded several public defender agencies to take concrete steps towards improving the quality of indigent defense services. Among those funded, the Committee for Public Counsel Services (CPCS), which serves as Massachusetts' statewide public defender agency, partnered with the Center for Court Innovation (CCI) to complete a statewide strategic planning and capacity building project. The project was designed to combine the interdisciplinary expertise of public defenders regarding known best practices in indigent defense representation; researchers regarding the translation of best practice knowledge into quantifiable performance indicators; and technology experts regarding the needs of public defender management information systems.

Specifically, the current project sought to build capacity within four distinct indigent defense practice areas: (1) adult criminal defense; (2) juvenile delinquency proceedings; (3) child care and protection; and (4) mental health. For each practice area, the project pursued six goals:

1. Identify and articulate best practices;
2. Identify key performance indicators that correspond to the best practices;
3. Assess the capacity of existing CPCS case tracking, case management, and other data collection systems to collect and report on the identified performance indicators;
4. Craft a proposal for improving or replacing existing case tracking, case management and other data collection systems, as needed;
5. Propose an evaluation plan for CPCS indigent defense delivery systems that takes into account the above findings, including both substantive need and practical feasibility; and
6. Develop a case weighting system for the purpose of more accurately evaluating the capacity of an attorney to provide high-quality representation in each practice area (and also to provide high-quality representation for different case types within each area).

The project includes six specific products reflecting these six goals: two final documents respectively presenting best practices and performance measures; and four reports respectively addressing CPCS' current data collection systems; recommendations for future systems; evaluation plans; and methods and findings from an original case weighting study.<sup>1</sup> The current report consolidates the major methods, lessons, and recommendations from the six more in-depth products. The goal is to aid other indigent defense agencies in implementing their own self-assessment process. Moreover, we do not assume that other agencies will reach identical conclusions as CPCS. Rather, we assume that the current undertaking might provide a valuable model for other agencies interested in similar self-reflection.

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<sup>1</sup> All products of this project, *Answering Gideon's Call Project*, are on file with the Committee for Public Counsel Services.

## **II. Project Setting: The Committee for Public Counsel Services**

In Massachusetts, the Committee for Public Counsel Services (CPCS) coordinates the delivery of both criminal and certain noncriminal legal representation to indigent persons throughout the state. Representation is provided by salaried public counsel (staff attorneys) and certified private attorney bar advocates (private counsel). In total, CPCS oversees approximately 450 staff attorneys and over three thousand private counsel, handling a total of approximately 250,000-300,000 cases per year in ten distinct areas of law: trial and appellate work for individuals facing criminal charges originating in district, superior and juvenile courts (including youthful offender cases and grant of conditional liberty proceedings); child welfare or termination of parental rights cases (care and protection); status offenses cases (CHiNS, now CRA); mental health civil commitments; mental health guardianship proceedings; sexually dangerous person commitments; sex offender registry proceedings; as well as an immigration impact unit, and a federally funded innocence program.

The focus of the current project was on four umbrella practice areas in which staff attorneys represent clients: (1) adult criminal, (2) juvenile delinquency (including youthful offender); (3) child care and protection (including status offenses); and (4) mental health (including both civil commitment and guardianship cases). Over the thirty year agency history, CPCS has well established best practice standards for each of these four practice areas. However, at the outset of the current project, the agency found that it had a compelling need to finalize best practice and performance indicator lists and associated documentation; as well to implement data collection systems to better inform and guide self-assessment efforts and statewide policy advocacy. Moreover, agency-wide data collection is currently limited, fragmented and not conducive to the meaningful evaluation and self-assessment necessary to ensure quality representation.

### III. Identifying Performance Indicators through Best Practices

Recommendation #1: The iterative process of identifying measurable and quantifiable performance indicators about quality indigent representation is an opportunity to reflect on, and coalesce around, values, ideals and standards that drive a practice. Using the methodology and framework in Massachusetts, more jurisdictions should engage in the process of selecting best practice indicators and share their work in this area to work towards national indicators to ensure quality representation.

Like many other indigent representation organizations, CPCS has developed and established best practice standards for conducting indigent defense representation. The challenge in identifying performance indicators that reflect these standards is to ensure that while there is a framework for structured decision-making, each individual attorney is empowered and entrusted to exercise professional judgment. Even within each legal discipline, the variation in clients, facts and circumstances impact the appropriate course of action. Nonetheless, our guiding premise was that individual variations in what a client needs should not preclude establishing general standards and performance indicators that, while not applicable in each and every case, provide an apt description in most cases of what public defenders are seeking to achieve in their work.

Accordingly, the team engaged in a multi-pronged approach to identify meaningful performance indicators in general as well as within each of the four practice areas of interest.

1. The team reviewed existing standards and best practices with in-house experts at CPCS who work within the four major practice areas: (1) adult criminal, (2) juvenile delinquency, (3) child care and protection, and (4) mental health. See, Committee for Public Counsel Services, Assigned Counsel Manual ([www.publiccounsel.net](http://www.publiccounsel.net)).
2. The project team met with leading trial attorneys from each of the practice areas to discuss their work, identifying their approach to their clients and cases, including the motivations and reasons behind their activities, as well as the logistical factors that present challenges to meeting best practices.
3. The team compared best practice standards from other jurisdictions and national organizations to CPCS standards to ensure that the CPCS standards were comprehensive and reflected the insight—and indeed even wording—of other jurisdictions, including the National Legal Aid and Defender Association’s Compendium of Standards for Indigent Defense Systems.
4. The team incorporated insight from the vast array of training materials (including checklists to identify and address certain issues, client and case intake interview forms, sample motions, mock examinations, and other practice aides) for each of the practice areas.
5. The team looked to the various internal protocols used by supervisors for staff and private attorney qualitative evaluations.

The main challenge that emerged from the discussions in all practice areas was the difficulty in quantifying work that is both qualitative in nature and inherently contextual. Many of the markers of quality representation cannot be quantified—the non-judgmental client interview; the precise cross-examination; the development of positive relationships with court personnel. The complex social and legal circumstances of CPCS clients, including different court practices from county to county, coupled with a client-centered and directed approach to case strategy impact staff activity and case results. For example, in the care and protection context, a parent client may choose not to argue for reunification—often assumed to be the desired legal outcome-- if the client believes the children should actually be raised by a member of the extended family. Similarly, a criminal defendant may choose a trial leading to a sentence much longer than was offered in an attractive plea offer or accept a plea offer in a strong defense case. In a civil commitment case, the effects of a long past verdict of “not guilty by reason of insanity” linger in a court’s fact finding.

### ***Performance Indicators***

When turning to articulate a final list of best practices of indigent representation, the project team identified eight common principles that cross each practice area, establishing a common foundation to link all of the case types, both within and across the practice areas. The team used this rubric to draft, in consultation with each practice area, performance indicators. It also identified a number of data points about caseload, staff activity and outcomes to provide insight into the extent to which CPCS can understand and provide quality representation. In anticipation of assessment and evaluation needs, the final version of the performance indicators included two additional categories of data elements about clients and their cases at *intake* and *post-representation* for a total of ten categories of data to assess and evaluate quality indigent representation.

The principles of best practice were created to encompass a wide variety of case types. Some—perhaps many—of the individual indicators may be relevant outside of Massachusetts. However, what is thoroughly generalizable beyond Massachusetts is the process undertaken: a systemic process of reflection to develop indicators helps to coalesce a community of indigent defense practice. The tables below summarize the eight best practices and some of the suggested data points and indicators agencies could use to measure those practices.

<b>Nurture the attorney client relationship</b>	
<b>Explanation</b>	Each attorney must strive to establish and maintain a collaborative and trusting relationship with the client so that s/he can meaningfully participate in developing, and continually re-assessing, the most persuasive case strategy, including a theory of the case and a theory of disposition and/or post-case plan.

<b>Suggested Data and Indicators</b>	<ul style="list-style-type: none"> <li>• Time from court appointment of counsel<sup>2</sup> to first (face to face) private client contact</li> <li>• Ratio of out of court, private in person client contact to in court dates for client</li> <li>• Ratio of any client contact to in court dates for client</li> <li>• Time between out of court, private in person client contacts</li> <li>• Time between date of disposition in court to most recent in person private client contact before disposition</li> </ul>
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<b>Protect and promote the client(s) during the pendency of the case</b>	
<b>Explanation</b>	Each attorney, in consultation with the client, must minimize the harm of a pending case to the client by protecting the client's immediate liberty interests as well as promoting the client's interests in collateral matters that impact the course or outcome of the case strategy.
<b>Suggested Data and Indicators</b>	<ul style="list-style-type: none"> <li>• Results from initial decisions that impact client's liberty<sup>3</sup> position</li> <li>• Time (and ratio to length of case) in altered liberty status during pendency of case</li> <li>• Clients with defense team that includes social service advocate<sup>4</sup></li> <li>• Number of collateral contacts (made on behalf of client)</li> </ul>

<b>Evaluate the government's case</b>	
<b>Explanation</b>	Each attorney must understand and analyze the government's case to develop the most persuasive theory of the case, ensuring that any affirmative requests for additional information, formal or informal, align with the case strategy.
<b>Suggested Data and Indicators</b>	<ul style="list-style-type: none"> <li>• Time to receipt of discovery items and/or to completion of government discovery obligations<sup>5</sup></li> <li>• Number of court events involving discovery issues</li> </ul>

<sup>2</sup> In Massachusetts, counsel is appointed and present at the client's first appearance in court, either as a result of a summons, filing of petition or arrest. This measure assumes that the appointment of specific attorney (or office) is made at least by the commencement of legal proceedings in the court of jurisdiction. Physical presence of counsel at, and participation in, the first appearance is a best practice for indigent representation.

<sup>3</sup> The immediate liberty interest at stake for cases involving criminal charges is pre-trial detention while for cases involving allegations of child abuse or neglect, it is the child placement decision. In civil commitment cases, the right to choose one's own medical treatment is at stake.

<sup>4</sup> CPCS attorneys work with staff social service advocates and/or social workers. They are considered part of the defense team. Other jurisdictions may use different job titles for a person whose function is to identify and facilitate access to services designed to address a client's need and/or capitalize on the client's strength with the intent to impact the legal outcome of the client's case(s).

<sup>5</sup> In Massachusetts, for care and protection cases, discovery is ongoing, although there are certain items and regular reports which should be provided to counsel in a timely fashion. Counsel in these cases may have to advocate for disclosure.

	<ul style="list-style-type: none"> <li>• Types of discovery [categories of witnesses (police, civilian); forensics; seized evidence; statements; identification procedures; records]</li> </ul>
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<b>Independently investigate the government's case</b>	
<b>Explanation</b>	Each attorney must independently seek evidence that challenges the government's case to develop the most persuasive theory of the case.
<b>Suggested Data and Indicators</b>	<ul style="list-style-type: none"> <li>• Number cases with investigator and days to engagement of investigator (for criminal cases)</li> <li>• Number of witnesses interviewed by defense team</li> <li>• Number of records collected (third party, relating to allegations)</li> <li>• Number of cases with discovery providing to government/opposing party</li> </ul>

<b>Initiate challenges to the government's case</b>	
<b>Explanation</b>	Each attorney must identify procedural, jurisdictional, statutory, common law and constitutional challenges to limit the strength of the government's case and pursue them to the extent that they align with the most persuasive case strategy.
<b>Suggested Data and Indicators</b>	<ul style="list-style-type: none"> <li>• Number of Motions to Dismiss with court ruling</li> <li>• Number of Motions to Suppress with court ruling (for criminal cases)</li> </ul>

<b>Develop a theory of disposition</b>	
<b>Explanation</b>	Each attorney must develop the most persuasive dispositional, or post-case, plan by investigating the client's background and by counseling and assisting the client to work towards reasonable dispositional, and/or post-case, goals.
<b>Suggested Data and Indicators</b>	<ul style="list-style-type: none"> <li>• Number of clients with defense team social service advocate</li> <li>• Number of records collected (belonging to client, relating to dispositional theory)</li> <li>• Number of dispositional reports/sentencing memorandum provided to court</li> <li>• Number of cases disposed by plea before first trial date</li> </ul>

<b>Fully prepare to persuade the finders of fact/law to adopt the theory of the case</b>	
<b>Explanation</b>	Each attorney must strive to persuade the finder of fact/law to accept the theory of the case, and, if applicable, a theory of disposition.

<b>Suggested Data and Indicators</b>	<ul style="list-style-type: none"> <li>• Number of cases dismissed without trial/admission on trial date</li> <li>• Number of cases disposed by plea/stipulation on trial date</li> <li>• Number of trials/hearing on the merits</li> <li>• After trial/hearing on the merits, number of acquittals (by charge and case for criminal cases); no violation (for probation cases); dismissals (for care and protection cases); denials (for civil commitment cases)</li> <li>• Sentence lengths (in absolute terms and as proportion of maximum sentence); Child custody orders (for care and protection cases)</li> </ul>
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<b>Affirm the continuing duty of loyalty</b>	
<b>Explanation</b>	Each attorney must ensure that the client understands the ramifications of the legal outcome of the case and offer guidance, support and assistance for the client's post-case goals.
<b>Suggested Data and Indicators</b>	<ul style="list-style-type: none"> <li>• Number of cases with post-disposition client contact</li> <li>• Number of clients with post-dispositional court filings</li> </ul>

## IV. Data Collection Systems

Recommendation #2: A better supported defense-oriented data collection system, with access to data held by other stakeholders in the justice system, will enhance the ability to collect and analyze more relevant data efficiently.

Recommendation #3: Increase funding to develop and implement affordable and sustainable web-based case management systems to improve and maintain data quality about indigent representation.

The ability to collect and analyze data efficiently for self-assessment and evaluation will improve with a unified case management system that contains a user-friendly interface for data entry and that can also automatically import data held by other stakeholders in the justice system. CPCS, like many large and fast growing organizations, uses a variety of data collections systems, including various software applications and practices resulting in a patchwork of procedures and tools. Data is collected and managed on a purpose-specific basis. Even within CPCS, the same data is often collected for different purposes and kept in redundant locations. The data sprawl is compounded, additionally, by the fact that unlike some jurisdictions, CPCS has limited direct access to data from other stakeholders in the justice system (trial courts, jails, prisons, police departments, and prosecutors), resulting in additional duplicate data entry if CPCS wishes to track case processing basics like charges, dispositions, sentences, release status, and key dates throughout the processing of each case. The *Gideon* Project technology team determined that the ideal case management system, applicable to other indigent defense organizations, should be based on the following ten principles listed in the table below.

Principle	Explanation
Interoperability	Open data standards provide consistent meaning to data shared among different information systems, programs, and agencies throughout the court system. The data in a system must be structured and defined to ensure the capacity to exchange information with databases outside CPCS in a secure and reliable manner (e.g., courts, prisons, jails, prosecutors' offices), as well with CPCS private counsel billing system.
Modularity	The system should be built using three modular components: the database; a user interface; and a clear set of technical rules (or "APIs") to exchange data between the database and the user interface (as well as any relevant external systems). The technology choice(s) for the components can then be made independently, providing flexibility in the continued maintenance and development of the system.

Centralization	The system must have a well-documented, with on-going training and improvement, workflow for all of the roles and responsibilities of the various staff members so that it can be used organization-wide and across all practice areas, limiting ‘double entry’/duplication of data, both for user ease and data quality.
Security	Access to the system must be tightly controlled and restricted to authenticated users, which will require a system administration component to create, edit, and manage account IDs and passwords using industry standard protocol. Security should also include an ability to limit and audit user access to various parts of the system.
User permissions	The system should allow for different levels of direct data access based on user role and permissions. Given the complexity of CPCS’ internal structure and conflict/ethical concerns, designated, non-technical staff should be able to manage user settings and permissions to allow for rule-based and <i>ad hoc</i> partitioning and sharing of data.
Remote Access	The interface must allow for effective remote access for field staff (managers, attorneys, investigators, social service advocates/social workers), including specific design for mobile interface on smartphones and tablets.
Document Management	It should contain full document storage, search, and production capacity for multiple file types (including audio and video); template management; document creation; workflow processes (including e-filing and capacity to securely share documents with users and non-users); and metadata about each document to search for documents within the system, as well as to report on certain indicators.
Practice aids	The system should include built in, or links to, practice area and litigation resources (e.g., training, case law, statutes, maps, vouchers, word processing, email, calendar, etc.).
Reports	Staff will be encouraged to use the system if it can display robust, dashboard-driven analysis and reports on performance indicators and workload (including case weighting).
Sustainability	The particular platforms and technology choices for the new system must be made with the assumption that the system will need to be maintained and developed by a revolving staff with a varied skill set. Any system must contain clear documentation for incoming IT staff. Technology choices should include consideration of future

	workforce availability as well. On-going training and documentation for users is essential to ensure data quality.
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There are two essential avenues for improving public defender information systems, each with important advantages and shortcomings: (1) adapting an existing off-the-shelf system (which typically involves purchasing it from a private, often for profit, consulting agency); or (2) creating an entirely new system either in-house or through the use of consultants (which can increase customization but may take far more time and labor costs to produce).

### ***Prospects for Adapting Off-the-Shelf Database Solutions***

While there are private vendors who offer solutions to case management it is difficult for many organizations to receive committed funding to purchase these products, which include a necessary investment, also, of time and staff resources to customize the software. Local staff must be recruited to identify and describe the most efficient workflow practices in the constraints of each jurisdiction. In addition, each jurisdiction's leadership must work with other local justice partners for inter-agency planning and project management around data sharing agreements and protocols. While these systems can be cost-prohibitive, they are generally relatively quick to implementation assuming the capacity of indigent organizations to meaningfully participate in the implementation process.

### ***Prospects for Developing an Entirely New Database Solution***

While taking more time, the alternative to a customizable off the shelf system is to develop internal applications for data collection. In the course of the team's assessment of CPCS' data collection systems, other similar organizations shared their experiences in developing or adopting effective case management systems. For those with internally developed systems, various public defender organizations have offered to share their own systems, but often they are built, or integrate, proprietary software. As an alternative to a customized system that includes proprietary components, a true open source indigent defense case management community could work towards offering low cost solutions to organizations across the country, including the standardization of data across jurisdictions. Open source programming offers a number of advantages, including tapping otherwise unavailable resources. The code of open source software is made publicly available for any indigent defense organization to use.

An advantage of developing a data management system on the open source model (i.e., through a new system that does *not* depend on or integrate any proprietary or for-profit components) is that, in the long run, it is likely to be the most economical. With a commitment to open source programming, the "tech community" can be engaged—namely, the open source community and civic programmers in particular. There already exists a vibrant community of individuals lobbying to open up the government in the sense of open standards and open source. To date this has been embraced most vigorously by the executive branch of the federal government. *See, e.g.,* <http://www.whitehouse.gov/open/about>. Municipalities have followed motion on the federal level, and partnerships have been forged between government and civic-minded programmers. *See, e.g.,* <http://codeforamerica.org/about/>. The justice system, however, has lagged behind. However, open law movements like "Law.Gov" are working to bring about better access to legal materials and the

justice system through the use of technology. See, e.g., <https://law.resource.org/index.law.gov.html>. The *Gideon* Project has found that, students and faculty from CPCS area universities—Northeastern University School of Law’s [NuLawLab](#), Suffolk University Law School’s [Institute on Law Practice Technology & Innovation](#), and Harvard University’s [Berkman Center for Internet & Society](#), Wentworth Institute of Technology, Massachusetts Institute of Technology—are more apt to join an open source based approach to improving an essential government service. An open source approach structurally and philosophically maximizes resources by appealing not only to the limited mission of the indigent representation, but also to those motivated by open source ideals. An open source case management system based on open standards can serve multiple missions, however its success depends upon making these clear and leveraging them to recruit and grow a community of developers (technology specialists and attorneys) committed to its realization.

As this discussion makes clear, an original customized database solution that is expressly designed to meet the needs of CPCS specifically or of comparable public defender organizations generally has great long-term advantages. Nonetheless, production of such a solution is a potentially long-term undertaking. In short, there remain real trade-offs between developing a new open source solution and adapting an extant off-the-shelf product.

## V. Evaluation Recommendations

Recommendation #5: A small group of performance monitoring measures will focus data collection efforts, allow for meaningful self-assessment and prepare for future impact evaluation of indigent representation.

Recommendation #6: Each indigent representation organization should articulate a select group of action and outcome measures that can be internally reviewed and analyzed with the goal of improving the quality of indigent representation.

The ability to perform program evaluation has been lacking in the operation of indigent defense systems across the country. In the past, indigent defense has focused on measuring the resources available to attorneys to perform their work, such as access to investigators or attorney workloads. While these efforts have been valuable, they have fallen short, because they do not measure indigent defense processes and outcomes. Moreover, it is difficult, if not impossible, to identify best practices or quantify the benefits of indigent defense to the court system or the community without identifying and quantifying system outcomes. We may find out how many investigators indigent defense attorneys use, how often these attorneys make various types of motions or applications, and how often attorneys meet with clients at various stages of the process, but we also want to test how these processes relate to positive legal case outcomes and/or positive personal outcomes for the clients. In short, *we want both to identify the indigent defense practices that we think are important, based on prior knowledge about what makes for high quality representation—and then we want to test to what degree different practices truly prove to be important empirically.*

### ***Action Research***

Performance monitoring includes “*action research*,” the routine tracking of the most essential performance indicators for a program or agency. Such monitoring is designed to provide immediate and useful feedback about everyday program operations and performance. Even with limited resources, agencies can use data productively to monitor their everyday operations, identify areas of success, and bring to light problem areas or ways to improve. A recommended format for presenting information is a regular statistical report that simply includes core quantitative data on performance measures of interest (i.e., it is not necessary for any staff member to write an accompanying narrative). Through regular reporting, trends over time can also be identified. Management staff can then discuss the implications of the data through in-person management/performance review meetings or other forms of consultation and deliberation.

Researchers from CCI worked closely with CPCS attorneys in identifying the key indicators (based on best practices) that they would like to prioritize for data collection and evaluation purposes. While the full best practices and associated performance indicators document is extensive and inclusive, the task for the performance monitoring component was to narrow down that larger list

of indicators to only indicators with the greatest priority. Each practice area extracted key indicators in the areas of caseload, client profile, case processing, in-court action, and out-of-court action.

<b>Action Research</b>	
Intake Data	<ul style="list-style-type: none"> <li>• Volume by type of case (#)</li> <li>• Disposed at arraignment/initial hearing (%)</li> <li>• Client demographics (% by race/ethnicity, age, sex)</li> <li>• Interpreter needed (%)</li> </ul>
Staff Activity (court and case specific related best practices)	<ul style="list-style-type: none"> <li>• Distribution of number of days from first appearance to assignment of attorney (#)</li> <li>• Average days from assignment to first (private, in person) contact (#)</li> <li>• Same attorney from first <u>assignment</u> by CPCS through disposition (%)</li> <li>• Result of first appearance, (detained/placed outside home)(%)</li> <li>• Average days of pretrial detention/out of home placement (#)</li> <li>• Average age (in days) of pending cases (#)</li> <li>• Motions (including responses/oppositions) (# and % of cases)</li> <li>• Trials <ul style="list-style-type: none"> <li>○ Bench (# and % of cases)</li> <li>○ Jury (for criminal/juvenile cases) (# and % of cases)</li> </ul> </li> <li>• Open cases with investigator involved (staff or hired) <ul style="list-style-type: none"> <li>○ Witness(es) interviewed (%)</li> <li>○ Visit crime scene (%)</li> <li>○ Testifies in court (%)</li> </ul> </li> </ul>
Staff Activity (client related best practices)	<ul style="list-style-type: none"> <li>• Client Contacts <ul style="list-style-type: none"> <li>○ Out of court, in-person client contacts by any CPCS staff member <ul style="list-style-type: none"> <li>▪ Office (#/%)</li> <li>▪ Detention/placement location (#/%)</li> <li>▪ Home (of client) (#/%)</li> <li>▪ Other Face to face (#/%)</li> </ul> </li> <li>○ Out of court, NOT in-person contacts (email, phone, text, etc.) (#/%)</li> </ul> </li> <li>• Clients for whom Social Service Advocate (SSA) engaged <ul style="list-style-type: none"> <li>○ Client contacts from SSA (#/%)</li> <li>○ External to CPCS collateral contact from SSA (e.g., school, work, health care, family, etc.) (% of cases)</li> <li>○ Client contacts from SSA (#/%) and collateral contacts by attorney</li> </ul> </li> </ul>

With proper data collection tools, analyses can be done in-house and most frequently would use

purely descriptive methods—i.e., reporting the numbers or percentages of cases where the various events took place that are indicated in the performance measures sampled above or listed in the appendices. Choosing objectives and performance indicators that are easy to collect and important for the agency can provide immediate and useful feedback about everyday program operations and performance. Analyzing this data over a period of time can provide a snapshot of how and where practices might be changing. The analysis would reveal the current state of CPCS—or any indigent representation practice, including variation in best practices. We recommend a quarterly or bi-annual report for each practice area that presents this information that can be easily disseminated to attorneys in the agency for review, as well as for use to inform other justice stakeholders about the needs and opportunities for quality indigent representation.

### ***Case Outcome Research***

Case outcome research works in parallel to, and is another component of performance monitoring—except that it focuses solely on case outcomes—i.e., the desired results that flow from the work performed by the defense team. It should be emphasized that, if there are occurrences of system performance failure, it does not mean that the failure is the fault of the individual attorney. Individuals work within a system, and there are many factors that influence system outcomes that are beyond the control of the individual. Even more pertinent, system problems often require system-level solutions. The identification of these system problems, however, is a necessary first step. These can be both short- and long-term outcomes. In basic outcome monitoring, it can be useful to look at trends over time. We recommend that this type of data collection and evaluation be done jointly with the collection of action indicators to provide a full picture of best practices. Senior staff at CPCS narrowed down key case outcomes of interest.

The case outcome indicators are quantitative in nature. Similar to the process indicators, the first step is to ensure that proper data collection and tools are determined and finalized so that each practice and each attorney can easily and consistently input this information. Again, similar to performance measures, with proper data collection tools, data analysis can be done in-house and would be purely descriptive methods. We recommend these indicators be included in any quarterly or bi-annual report. It would be possible to also present this information by case type to see if different types of cases are receiving different outcomes based on various variables, such as court of origin, office, or executive branch agency. As procedures for data collection, analyses and dissemination are finalized; exact methods for how the data will be displayed and analyzed will be determined. These indicators can provide immediate and useful feedback about everyday program operations and performance, including the variation in best practices.

<b>Outcome Research</b>	
<b>Case Specific</b>	<ul style="list-style-type: none"> <li>• Client not detained pre-trial/Placement decisions about children (%)</li> <li>• Charge(s)/petitions dismissed prior to trial(#/%)</li> <li>• Charges acquitted/dismissals/denials after trial (#/%)</li> <li>• Pleas/admissions to reduced charge(s)/stipulations/uncontested hearings (#/%)</li> <li>• Sentences (% each of custody, probation(community based supervision)/Child custody orders</li> </ul>

### ***Impact Research***

Impact research measures the difference between what happened with the program or its activities and what would have happened without it. It answers the question, “How much (if any) of the change or positive outcomes observed in the target population occurred because of the program or particular (e.g., indigent defense representation) activities of interest?” Rigorous research designs and research expertise are needed for this level of evaluation. It is the most complex and intensive type of evaluation, incorporating methods such as random selection, control and comparison groups. Impact evaluation efforts follow from consistent and sustained data collection for the purposes of action and outcome research.

Although most of the impact items on this list are quantitative in nature, in Massachusetts, there was widespread agreement that a key goal of quality indigent representation is to provide a client with a voice. This idea encapsulates the theory of procedural justice. Procedural justice suggests that how litigants regard the justice system is tied more to the perceived fairness of the *process* than to the perceived fairness of the *outcome*. In other words, even litigants who “lose” their cases rate the system favorably if they feel that the outcome is arrived at fairly. The influence of procedural justice on litigant perceptions and future behavior has been analyzed in a variety of court contexts—drug courts, community courts, family courts, and small claims courts<sup>6</sup>. The findings from these studies have been consistent: Courts that exhibit procedural justice elements produce more satisfied and compliant litigants. This research raises several important questions: What is the role of defense attorneys in procedural justice? How can attorneys enhance procedural justice? Are there specific practices that attorneys can implement in order to improve perceptions of fairness?

<b>Impact Research</b>	
Public Defender Division and Youth Advocacy Division	<ul style="list-style-type: none"> <li>• Client satisfaction with representation</li> <li>• Clients not under any criminal justice/juvenile supervision</li> <li>• Clients not incarcerated past minimum sentence/projected GCL date (suggests successful parole)</li> <li>• Clients without new arrests</li> <li>• Clients without new admissions/convictions</li> <li>• Clients engaged in pro-social activities post disposition/incarceration</li> <li>• Reduce erroneous legal outcomes</li> <li>• Reduce collateral costs</li> <li>• Safer communities</li> </ul>
Children and Family Law Division	<ul style="list-style-type: none"> <li>• Client satisfaction with representation</li> <li>• Clients not under juvenile/criminal justice supervision</li> <li>• Clients without subsequent care and protection petitions</li> <li>• Clients not involved in child welfare system (beyond expressed wishes)</li> <li>• Reduce erroneous legal outcomes</li> </ul>

<sup>6</sup> See: Thibault, J.W. and L. Walker. 1975. *Procedural Justice: A Psychological Perspective* Hillsdale, NJ: Lawrence Erlbaum; Tyler, T.R. 1990 *Why People Obey the Law*. Yale University Press New Haven: London; Tyler, T. R. 1997. “Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform”. *American Journal of Comparative Law*, 45: 871-904; Tyler, T.R. and Y.J. Huo. 2002. *Trust in the Law*. New York, NY: Russell Sage Foundation.

	<ul style="list-style-type: none"> <li>• Reduce collateral costs</li> <li>• Safer communities</li> </ul>
Mental Health Litigation Division	<ul style="list-style-type: none"> <li>• Client satisfaction with representation</li> <li>• Clients without subsequent petitions (re-commit or new)</li> <li>• Clients not supervised by criminal justice system</li> <li>• Re-commitment petitions filed upon expiration of commitment order</li> <li>• New commitment petition (e.g., new petition after discharge)</li> <li>• Re-hospitalized (voluntary) after discharge</li> <li>• Reduce erroneous legal outcomes</li> <li>• Reduce collateral costs</li> <li>• Safer communities</li> </ul>

For the most part, the quantitative dependent and independent variables needed for an evaluation of this kind will be collected as part of the action and case outcome reporting. With consistent and accurate data collection, experience reviewing and analyzing regular reports, indigent defense organizations will be able to work with researchers to develop additional research questions of interest and identify key variables and methodologies for analyses.

For example, in researching the role of defense counsel in promoting procedural justice, the indicators that are qualitative in nature, such as client satisfaction, will in turn lead to a different collection method. Collection methods may include one-on-one interviews with management and/or on the ground attorneys, investigation management and staff, legal support staff, operations personnel, and clients. We also recommend focus groups or roundtable discussions with various groups of interest. Qualitative methods are commonly used in evaluations in order to explore specific facets of programs and to give voice to participants' experiences. These methods provide in-depth information that can enhance the quality of programs or services.

## VI. Workload Assessment

**Recommendation #4:** With the growing body of workload studies from around the country, technical and financial assistance should be provided to indigent defense representation organizations to engage in workload assessments relevant to local conditions.

The *Gideon* Project team conducted a workload assessment to develop a case weighting model for the purpose of more accurately evaluating the capacity of an attorney to provide high-quality representation. CPCS needed a foundation to understand the reasonable work capacity of its staff.<sup>7</sup> The primary goals of the workload assessment were to:

- Develop a clear measure of attorney workload in all public defender offices throughout the four key practice areas (over five different office types);
- Provide a basis to understand the allocation of attorney resources; and
- Establish a transparent model to use in assessing the levels of attorney resources necessary to provide effective assistance of counsel to clients of all Massachusetts public defender offices and appointed private counsel.

Based on previous work done by the National Center for State Courts, the team used a multi-faceted, iterative, and highly participatory data collection strategy. The model was anchored in two components:

1. A time study based on private counsel billing data designed to assess the amount of time attorneys currently spend on cases of various types and on key tasks that apply to each type of case—in other words, a measure of current practice.
2. A systematic qualitative review process used to elicit expert opinion on how current practice can be adjusted to better enable attorneys to provide effective assistance of counsel to indigent clients across Massachusetts. This review process included a time sufficiency survey administered to staff attorneys and Delphi groups made up of current staff attorneys, including some who had practiced as private bar advocates.

The first project component (the time study) utilized hard empirical data to determine, empirically, the quantity of time public defenders are spending right now to represent each of 16 distinct types of cases on a per case basis. (The 16 case types are indicated in the table below.) However, public defenders at CPCS made clear to the research team that, in general, they believe that they at times are unable to afford cases the quantity of time that might truly merit in an ideal world, due to staffing and resources shortages. Therefore, in order to determine how much time attorneys *should* spend on each of the same 16 case types, the estimates obtained from empirical data were used as a starting point—but modified based on the results of a representative survey of CPCS attorneys and, ultimately, based on Delphi groups that brought together select attorneys for a highly focused

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<sup>7</sup> The full report, *Answering Gideon's Call Project: Attorney Workload Assessment* (October 2014), is on file with the Committee for Public Counsel Services.

in-person discussion designed to yield consensus on revised time estimates. (Delphi groups are not the same as focus groups in that Delphi groups do not allow for an open-ended discussion; instead, they involve a highly focused and heavily moderated discussion, coupled with multiple rounds of secret ballot voting, designed to zero in on and yield concrete consensus conclusions by the assembled experts—in this case, CPCS public defenders.)

Importantly, in a traditional “time study,” attorneys would be asked to document their time in five-minute intervals over a period of time. Instead of this method, which proved practically unfeasible, we produced the preliminary case weights based purely on quantitative billing data from the private counsel with whom CPCS contracts to represent a large number of indigent defendants within each practice area. We essentially summed all annual case-related time entered by private attorneys and divided that by the number of annual closed cases.

The preliminary case weights generated during the modified time study provide a baseline time that CPCS private attorneys currently spend defending various types of cases. As noted above, researchers wanted to take this one step further and provide CPCS a range of case weight time to incorporate how much time attorneys *should* allocate for each case type. To assess whether current practice allows adequate time for quality performance, Delphi Groups were convened. The purpose of Delphi groups is to reach a consensus about case weights from an experienced team of attorneys during a structured discussion that included a review of the data from the preliminary case weight analysis. The case weights are expressed in terms of the average amount of time an attorney needs to complete representation for each of the case types. The following table illustrates the preliminary and quality adjusted case weights. (Quality adjusted case weights are, essentially, adjusted based on consensus decisions reached in the Delphi groups.)

Case Type	Preliminary Case Weight (hours)	Quality Adjusted Case Weight (hours)
<b>PDD-District</b>		
Bail Only	1.39	2.19
Probation- District	6.12	8.26
Misdemeanor	11.98	16.78
OUI	15.96	19.69
Concurrent Felonies 265	16.24	24.13
Concurrent Felonies not 265	12.81	19.12
<b>PDD-Superior</b>		
Probation - Superior	8.98	9.17
Nonconcurrent Felonies 265	54.57	76.36
Nonconcurrent Felonies not 265	29.69	42.25
<b>Youth Advocacy Division</b>		
Bail Only	1.39	2.3
Probation - Juvenile	8.24	16.25
Non-Presumptive YO	13.98	34.77
Presumptive YO	57.36	112.4
<b>Child and Family Law Division</b>		
Status Offenses	19.88	22.51
Care & Protection	59.64	84.45
<b>Mental Health Litigation Division</b>		
Civil Commitments	10.16	16.97
Murder was included in Superior Court felony and not adjusted separately.		

Next, the total annual case time available to attorneys was calculated. FTE attorney year value was calculated to yield the number of full caseload attorneys (FCA) required to handle the practice area's caseload.<sup>8</sup> FTE of 1,662 hours was determined by summing the number of work hours available in each year for direct case related work.

The team analyzed the ratio of case types in the staff attorney caseload for Fiscal Year 2013 (July 1, 2012 through June 30, 2013), the same period from which the time study data was analyzed, in order to arrive at a weighted average case weight for each practice area. In order to arrive at a weighted average for a practice area caseload, the total hours needed for each case type opened in the fiscal year was summed and then divided by the total number of cases. By understanding the ratio of case types within each division, it is possible to project the number of cases that can be handled by CPCS staff attorneys. Based on this weighted average derived from the Fiscal Year 2013 caseload, CPCS can monitor caseloads to ensure that assignments do not exceed levels which ensure quality representation. The actual number of cases any individual attorney handles, however, may differ based on the particular mix of case types in an individual caseload. Given that CPCS oversees an effective and experienced panel of private attorneys, the agency has the capacity to spread cases over a cadre of attorneys, public and private to ensure that attorneys have sufficient time to provide quality representation. The following table, based on 1,662 case available hours over the course of a year, shows the number of new cases an attorney could be assigned based both on the preliminary and quality adjusted case weights:

<b>Case Available Hours for a Full Caseload Attorney (FCA): 1662</b>		
<b>Practice Area</b>	<b>Prelim. Case Weight (based on FY13 case ratios)</b>	<b>Annual New Cases/FCA</b>
CAFL	43.26	38
Mental Health	10.16	164
PDD District	11.61	143
PDD Superior	31.54	53
YAD	14.98	111
<b>Practice Area</b>	<b>Quality Adjusted Case Weight (based on FY13 case ratios)</b>	<b>Annual New Cases/FCA</b>
CAFL	58.95	28
Mental Health	16.97	98
PDD District	18.03	92
PDD Superior	53.57	31
YAD	33.35	50

The workload assessment provides CPCS with an empirically based, state specific documented model that can be used to estimate staffing needs and caseload ranges from which departures can be understood. Based on qualitative assessments of individual caseloads, supervisors can adjust

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<sup>8</sup> A full time attorney may not be assigned a full caseload based on other job responsibilities, such as training or supervision, so the number of attorneys will be greater than full caseload attorneys.

caseloads to reflect best practices. Caseload targets based on the range of each case type weight can be used to ensure resource equity between offices and practice areas. Additional data collection could also provide more insight into the factors that impact quality representation, including case types, client characteristics and staff workflow that might suggest a reduction or increase of case assignments.

The process of case weighting allowed CPCS and its practice areas to reflect on best practices as well as workplace satisfaction as it seeks to ensure quality representation within its budgetary constraints. A manageable caseload for each attorney encourages talent retention, helping to bring down the costs of training as well as case processing. Nevertheless, any caseload protocol should be used as a guide, not a rule. During the course of this process, it has become clear that there can be multiple individual factors which impact the workload.

Different jurisdictions have engaged in a similar case weighting exercise and workload analysis.<sup>9</sup> Each jurisdiction offers varied case weights, reflective of local practice and circumstances. The growing body of time-based case weight studies from around the country provides a frame of reference to plan for quality representation by controlling caseloads. Based on the premise that a healthy and vibrant indigent defense bar is civic value, the workload of attorneys is an important measure of quality representation. The *Gideon* Project team's national recommendation is that technical and financial assistance should be provided to indigent defense representation organizations to engage in workload assessments.<sup>10</sup>

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<sup>9</sup> American Bar Association, *The Missouri Project: A Study of the Missouri Defender System and Attorney Workload Standards* (2014); Rand Corporation, *Case Weights for Federal Defender Organizations* (2011); National Center for State Courts, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment-Final Report* (2010); Neely, Elizabeth, *Lancaster County Public Defender Workload Assessment*, University of Nebraska Public Policy Center (2008); National Center for State Courts, *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorney's Offices, and the New Mexico Public Defender Department- Final Report* (2007); and National Center for State Courts, *Maryland Attorney and Staff Workload Assessment* (2005).

<sup>10</sup> Trial courts throughout the United States, and indeed even different courts within a single jurisdiction, benefit from workload assessments. See, e.g., <http://www.ncsc.org/Topics/Court-Management/Workload-and-Resource-Assessment/Resource-Guide.aspx> (a resource compiling over one hundred workload assessments conducted for trial courts in the United States by the National Center for State Courts).

## **VII. Conclusion**

The goal of the larger project that the Center for Court Innovation and Committee for Public Counsel Services embarked upon was to review and improve data collection, performance monitoring, and evaluation capacity at the CPCS. Multiple deliverables have been created, including performance indicators, data reports, workload analysis report and an evaluation proposal. Finalizing performance indicators was a necessary first step in achieving both a realistic assessment of data capacity as well as evaluation capacity. We believe that the first step is for CPCS, and other similarly situated indigent representation organizations, to develop a quarterly or annual statistical report that lists out the very most critical performance measures and outcome indicators of the data that can most readily be collected, tracked and analyzed for the purposes of self-assessment. The next step is then to enhance data collection capacity to collect more indicators that are critical to a fuller understanding of the practice, and to advance plans to evaluate which indicators—or which concrete indigent defense representation activities—truly comprise evidence-based practices. We believe the lessons learned during this intensive self-reflective process provides invaluable recommendations to the field as a whole as indigent defense services embark on similar journeys.