



Washington State Office of Public Defense

Model Misdemeanor Case Weighting Policy

What is the Purpose of this Packet?

- To respond to requests for assistance in creating optional public defense misdemeanor case weighting policies consistent with the Supreme Court Standards for Indigent Defense.
- To establish a model misdemeanor case weighting policy as directed by Supreme Court Order 25700-A-1016.

What is Included in this Packet?

- Commentary on the Model Misdemeanor Case Weighting Policy
- Instructions for Creating a Local Case Weighting Policy
- Template for Adopting the Model Case Weighting Policy

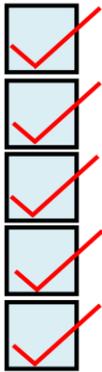
Commentary on the Model Misdemeanor Case Weighting Policy

In 2012 the Washington Supreme Court adopted the Standards for Indigent Defense (Standards). These are essential to providing quality representation for all public defense clients statewide. Caseload size and composition are critical because they ensure that attorneys have sufficient time to communicate with each client and carefully prepare every case. Along those lines, the Court set caseload limits so that attorneys have enough time to fulfill their legal and ethical obligations for each client. For misdemeanor cases, an attorney may accept appointment to a maximum of 400 new cases each year. Or, if the county/city adopts a case weighting system, an attorney's caseload may consist of a maximum of 300 weighted credits per year.



What is Case Weighting?

Attorney caseloads include a wide variety of clients, charges, and situations. While each case is unique, data show that attorneys tend to spend, on average, more time on cases with complex charges (e.g. DUI or domestic violence) and less time on cases with less complex charges (e.g. traffic). A case weighting system assigns higher and lower time values or weighted credits to charges based on the amount of time that is typically required to provide effective representation.



Even in cases with simple charges, however, public defense attorneys must meet the basic requirements for providing effective assistance of counsel. Attorneys must, for example:

- interview the client and communicate throughout the case,
- carefully review evidence,
- conduct necessary investigations,
- obtain records,
- prepare for court appearances, and
- assess consequences of conviction.

Client communication is one of the most important factors for effective assistance, and is required for all clients, including those who have language barriers, mental health issues, or cognitive or developmental disabilities. In appropriate circumstances, attorneys must also conduct legal research, draft and file motions, prepare other legal documents and undertake other tasks.

Advantages and Disadvantages of a Case Weighting System

Case weighting, which is done by assigning 'weighted credits' to specific case types based on a time study, may be employed at the option of a local government. Case weighting may be a helpful method to allocate attorney caseloads reflecting case types commonly charged in a court. Because a case weighting policy has already pre-identified the average amount of time required for representing various case types, attorney time keeping is expected to be minimal.

Since weighted credits are proportional to the amount of time spent on a case, less complex cases have fewer weighted credits.

Jurisdictions that will benefit most from misdemeanor case weighting are those with a higher concentration of simple offenses, probation violations, and cases that regularly resolve in early non-criminal dispositions.

Therefore, courts with a high volume of less complex charges may be able to assign a higher number of weighted credits to public defense attorneys under a case weighting system. On the other hand, complex cases tend to require more time to properly defend. Case weighting can ensure that an attorney with a highly complex caseload has a smaller number of weighted credits, and more time to dedicate to each one. Courts with many sentence violation hearings find that case weighting permits the assignment of fewer weighted credits to them, compared to counting them as a regular case under the 400-case caseload. In addition, fewer weighted credits can be assigned to case types that, as a matter of regular court practice, often result in non-criminal sanctions at an early stage of the proceedings. These include routine reductions to infractions or diversions.

Deciding Whether to Case Weight

Each local government has discretion to decide whether to measure public defense caseloads by 300 weighted credits per year, or 400 non-weighted cases. When a case weighting policy is used, it must meet certain requirements specified in the Standards. One requirement, for example, is assessing and documenting the time required for defending different case types.

Many cities and counties wish to explore whether case weighting would help manage public defense caseloads, but do not have the resources to conduct a data-driven assessment. For that reason, the Supreme Court ordered the Washington State Office of Public Defense (OPD) to perform a statewide attorney time study and create this model case weighting policy.

Time Study Findings

The OPD Model Misdemeanor Case Weighting Policy (Model Policy) was developed after tracking public defense attorney time over a period of twenty weeks in fifteen different courts of limited jurisdiction throughout the state. Also, pre-existing data collected from three different courts was included in the study. The existing data was conformed with the new time study data so that the two data sets could be merged. Specific charge types were analyzed and average attorney times for each specific charge type was determined. The results showed that

Case Weighting Requirements

- Create a case weighting system by **assessing and documenting** the time required for defending different types of cases
- Identify which case types require more or less time **compared to** other case types. **Ensure adequate attorney time** for quality representation.
- **Adopt a written policy that formally establishes** the case weighting system.
- **File** the case weighting policy with the Washington State Office of Public Defense.
- Because laws and practices change over time, periodically **review and update** the case weighting system.

attorneys consistently spent more/less time on certain charge types. This information forms the basis for the weighted credit values provided in the Model Policy.

Data reflecting attorney work in more than three thousand misdemeanor cases revealed that attorneys with a 400-case caseload spend, on average, 4.5 hours per case. The 4.5 hour finding validates the 1,800 hours spent annually on case representation for a full-time public defense attorney (400 cases time 4.5 hours per case equals 1,800 attorney hours spent on case representation).

Using 1,800 attorney hours spent on case representation per year, 6.0 attorney hours was calculated for a “weighted credit.” The 6.0 attorney hours “weighted credit” was calculated by dividing 1,800 attorney hours by 300 weighted credits per year.

The findings of the study are set forth in the Table below.

Attorney Time Spent by Criminal Charge Category

Criminal Charge Category	Attorney Hours Spent by Charge Category
Alcohol Related Offenses	3.0 hours
Assault (not Domestic Violence)	6.0 hours
Criminal Trespass 1 or 2	4.5 hours
Disorderly Conduct (Excluding Indecent Exposure)	3.0 hours
Domestic Violence –Assault and Reckless Endangerment	9.0 hours
DUI and Physical Control	9.0 hours
DWLS 1st and 2nd Degree	4.5 hours
DWLS 3rd Degree	3.0 hours
Harassment	9.0 hours
Hit and Run-Attended and Unattended	4.5 hours
Malicious Mischief	4.5 hours
Obstructing a Public Servant	4.5 hours
Racing	6.0 hours
Reckless Driving	6.0 hours
Simple Traffic Offenses	3.0 hours

Theft/Shoplifting	4.5 hours
Violation of a Protection Order/No Contact Order/Restraining Order	4.5 hours
Weapons Related Offenses	6.0 hours
Other Unlisted Misdemeanors	4.5 hours

Based on the equation that 6.0 attorney hours equals 1 weighted credit, a conversion table was developed to assist attorneys and public defense administrators in calculating a weighted caseload. An example of how the attorney hours were converted to weighted credits is shown in the Table below.

Hours / Weighted Credit Conversion Table

Attorney Hours Spent by Charge Category	Weighted Credits
9.0 hours	1.5 credits
6.0 hours	1.0 credits
4.5 hours	0.75 credits
3.0 hours	0.5 credits

Instructions for customizing the Model Case Weighting Policy appear on pages 6 – 8 of this document. A template for utilizing the Model Case Weighting Policy can be found on pages 9 – 18 of this document.

Instruction Guide for Customizing the OPD Misdemeanor Case Weighting Policy

The purpose of the OPD Model Case Weighting Policy (Model Policy) is to design a system for weighting public defense misdemeanor cases in accordance with the Supreme Court Standards for Indigent Defense (Standards). The Model Policy was drafted in template form, so it can easily be customized. Most of the language in the Model Policy can apply to any public defense misdemeanor caseload.

To customize the Model Policy, review the items listed below, and edit the template accordingly:

Section in Model Policy	Description of Customization
Title	Insert court name.
2.A.	Insert reference to local ordinance, court rule, and/or any other local regulatory documents that are relevant to this policy.
3.A.	Insert name, title, office, and/or whatever information is appropriate for identifying the local government administrator with authority over public defense services.
6.D.	<p>Routine Early Non-Criminal Resolutions: Some courts have pre-selected categories of charges which, when a case meets a set of requirements, are regularly reduced to infractions, diverted, or are resolved in some other non-criminal manner. For example, many courts automatically reduce DWLS-3 charges to infractions when the defendant has a limited number of prior offenses. When the court has a regular practice of such early, non-criminal resolution of criminal charges (as opposed to making such an offer on the morning of trial or some other late stage in the case), the practice can be described in section 6.C. as taking no fewer than one-third of a case.¹</p> <p>If certain case categories are regularly resolved in this manner, identify them and describe the conditions that regularly result in early non-criminal resolution. Those charges may then be added to the Routine Early Non-Criminal Resolutions chart.</p> <p>If the court does not engage in such practices, delete all language in section 6.D.</p>
6.F.	<p>Sentence Violations and Other Non-Charge Representations: Standard 3.6(B)(ii) states that sentence violations and other non-charge representations must be weighted at a minimum of one-third of a case. Because the time required to represent clients on probation violations greatly varies from court to court, a higher value may be appropriate.</p>

¹ Standard 3.6(B)(v) states that representation on charges which, as a matter of regular practice, are resolved at an early stage of the proceeding by a non criminal resolution should be weighted at least one-third of a case.

<p>7.B.</p>	<p>Adjustments for Local Factors: Public defense attorneys in all jurisdictions work with the same statutes and state court rules. They also are required to spend sufficient time on client communication, case preparation, and court appearances. Therefore, there is a significant degree of similarity in the work done by public defenders from court to court. However, each court experiences some local factors that uniquely impact the time spent on public defense. Local factors may be charge specific, such as aggressive prosecution of certain offenses. Local factors may also be general, such as requiring public defense attorneys to wait for long periods of time to appear at regular court calendars.</p> <p>Local factors and practices should be examined to determine whether they, overall, substantially increase or reduce attorney time spent on public defense cases.</p> <p>Where local factors substantially increase the time required for delivery of quality public defense services, the weighted credits provided in this model policy can be increased. There is no limit to upward adjustment to weighted credits.</p> <p>Where local factors substantially decrease the time required for delivery of quality public defense services, the weighted credits of section 6.A. can be decreased by no more than 0.05 credits.</p> <p>Downward adjustments may not be made to other categories of Section 6.</p> <p>In consultation with OPD, public defense attorneys, judicial officers, and local government administrators have identified the following as potential local factors that <i>increase</i> the amount of time required for public defense representation:</p> <ul style="list-style-type: none"> ▪ Long periods of time waiting for cases to be called in court; ▪ Long periods of time waiting for access to clients at jail; ▪ Long travel time to court, jail, crime scenes, or other meetings associated with representation; ▪ The scheduling of court appearances; ▪ Absence of access to technology; ▪ Therapeutic court cases, which tend to require a significantly higher number of court appearances; ▪ Disproportionately high number of limited English proficient clients; and ▪ Disproportionately high number of clients with mental illness. <p>Examples of local factors that have been identified as <i>reducing</i> attorney time include:</p> <ul style="list-style-type: none"> ▪ Court calendars or dockets dedicated to public defense cases; and ▪ Effective use of technology that demonstrably saves public defense attorney time. <p>If a case weighting policy increases weighted credits due to local factors in section 7.B, provide a concise description in this section identifying the relevant local factors and the specific reasons justifying the deviation.</p>
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	<p>If a case weighting policy decreases weighted credits due to local factors in section 7.B, provide a concise description in this section identifying the relevant local factors and the specific reasons justifying the decrease. In addition, identify the amount of deviation in the weighted credit values (a maximum of 0.05 fewer credits) that has been made.</p>
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Draft for Comment

TEMPLATE

OPD Model Case Weighting Policy - Misdemeanors

[*insert city/county*] Public Defense Case Weighting Policy – Misdemeanors

1. Purpose

The purpose of this policy is to implement a system for weighting public defense cases in accordance with the Washington Supreme Court’s misdemeanor caseload standards. This policy recognizes that appropriate case weighting allows reasonable workloads for public defense attorneys consistent with applicable rules and standards.

2. Applicable Court Rules, Regulations, and Standards

- A. Washington State Rules of Professional Conduct
- B. Criminal Rules for Courts of Limited Jurisdiction
- C. Washington Supreme Court Standards for Indigent Defense (Standards)
- D. [*insert reference to local ordinance, court rule, and/or other local applicable authority.*]

3. Definitions

- A. **Administrator:** the designated supervisor of public defense services for [*insert identification information*].
- B. **Case:** the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation.
 - i. In courts of limited jurisdiction multiple citations from the same incident can be counted as one “case.”
 - ii. The number of counts in a single cause number does not affect the definition of a “case.”

- iii. When there are multiple charges or counts arising from the same set of facts, the weighted credit will be assigned based on the most serious charge.
- C. **Case Weighting:** the process of assigning a numerical value, or “weighted credit,” to specific types of cases that recognizes the greater or lesser attorney workload required for those cases compared to an average case.
- D. **Caseload:** the complete array of cases in which an attorney represents or provides service to clients.
- E. **Docket /Calendar:** a grouping of filings where a public defense attorney is designated to represent indigent defendants without an expectation of further or continuing representation. Examples include, but are not limited to, first appearance calendars and arraignment calendars.
- F. **Full Time:** working approximately forty hours per week. It is presumed that a “full-time” public defense attorney spends approximately 1,800 hours annually on case representation. It is expected that other work time is spent on administrative activities, attending CLEs, participating in professional associations or committees, and spending time on vacation, holiday, or sick leave.
- G. **Local Factors:** practices, characteristics, advancements, or challenges that are unique to the delivery of public defense in a given jurisdiction, and that substantially impact the time required for effective delivery of public defense services.
- H. **Non-Charge Representations:** matters where public defense attorneys represent clients who are eligible for public defense representation for matters that do not involve the filing of new criminal charges. Examples include, but are not limited to, sentence violations, extraditions, and representations of material witnesses.
- I. **Partial Representation:** situations where clients are charged with crimes, but representation is either cut short at early stages of the case, or begins significantly later in a case. Such situations include, but are not limited to, client failures to appear, preliminary appointments in cases in which no charges are filed, withdrawals or transfers for any reason, or limited appearances for a specific purpose.
- J. **Public Defense Attorney:** a licensed attorney who is employed or contracted to represent indigent defendants. “Public Defense Attorney” also refers to a licensed attorney who is list-appointed to represent indigent defendants on a case-by-case basis.
- K. **Weighted Credit:** one weighted credit represents a type of case which, on average, requires six hours of attorney time.

4. Misdemeanor Caseload Limits

As provided in the Washington Supreme Court Standards for Indigent Defense, the caseload of a full-time public defense attorney should not exceed 300 misdemeanor weighted credits per year, which is equivalent to the time spent on 400 average misdemeanor cases per year. The caseload of a full-time Rule 9 intern who has not graduated from law school may not exceed 75 misdemeanor weighted credits per year.

5. General Considerations

- A. Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort.
- B. Caseload limits are set to ensure that all public defense attorneys have adequate time to provide quality representation.
- C. Caseload limits assume a reasonably even distribution of cases throughout the year.
- D. If the public defense attorney is carrying a mixed caseload with non-misdemeanor cases, the attorney's caseload should be calculated proportionately by case type, as provided in the Standards.
- E. If the public defense attorney also maintains a private law practice, the public defense caseload should be proportionate to the percentage of work time the attorney devotes to public defense.
- F. If the attorney provides public defense services in multiple courts, cases from all courts are used for caseload calculations.

6. Weighted Credits

A. **Weighted Credits by Criminal Charge Category.**

The weighted credits to be assigned by criminal charge category are in the Table of Weighted Credits by Charge Category found on the following page.

Table of Weighted Credits by Charge Category

Criminal Charge Category²	Attorney Hours	Hours Converted to Weighted Credits
Alcohol Related Offenses	3.0 hours	0.50 credits
Assault (not Domestic Violence)	6.0 hours	1.0 credit
Criminal Trespass 1 or 2	4.5 hours	0.75 credits
Disorderly Conduct - Excluding Indecent Exposure	3.0 hours	0.50 credits
Domestic Violence -Assault, Reckless Endangerment	9.0 hours	1.5 credits
DUI and Physical Control	9.0 hours	1.5 credits
DWLS 1st and 2nd Degree	4.5 hours	0.75 credits
DWLS 3rd Degree	3.0 hours	0.50 credits
Harassment	9.0 hours	1.5 credits
Hit and Run-Attended and Unattended	4.5 hours	0.75 credits
Malicious Mischief	4.5 hours	0.75 credits
Obstructing a Public Servant	4.5 hours	0.75 credits
Racing	6.0 hours	1.0 credit
Reckless Driving	6.0 hours	1.0 credit
Simple Traffic Offenses	3.0 hours	0.50 credits
Theft/Shoplifting	4.5 hours	0.75 credits
Violation of a Protection Order/No Contact Order/Restraining Order	4.5 hours	0.75 hours
Weapons Related Offenses	6.0 hours	1.0 credit
Other Unlisted Misdemeanors	4.5 hours	0.75 credits

It is important to remember that in all cases, even those with fewer weighted credits and those that may be resolved by routine non-criminal resolutions such as diversion or reduction to an infraction, an appointed public defense attorney must first meet the basic requirements for providing effective assistance of counsel, such as interviewing

² Hundreds of misdemeanor charges arise in courts of limited jurisdiction based on statutes and municipal codes. In creating this policy, similar charges requiring approximately the same amount of work time have been grouped into the categories in this table. Examples of charges under each category can be found in Appendix A.

and fully communicating with the client, carefully reviewing the evidence, obtaining records, investigating as appropriate, and preparing for court.

C. Guilty Pleas at First Appearance or Arraignment

As required by Standard 3.4, resolution of cases by **pleas of guilty to criminal charges at a first appearance or arraignment hearing** are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients. Therefore, these cases must be valued as one case.

D. Routine Early Non-Criminal Resolutions

*[The following paragraph only applies to jurisdictions that use the practice described in section 6.C. of the **Instruction Guide**. If applicable, see the **Instruction Guide** for details on completing this section. If not applicable, remove this portion.]* Standard 3.5(B)(v) allows the assignment of **no fewer credits than one-third of a case to charges that are regularly resolved at an early stage** by diversion, reduction to an infraction, stipulated order of continuance, or other alternative **non-criminal disposition** that does not involve a finding of guilt.

Routine Early Non-Criminal Resolutions	
<i>This only applies to public defense attorneys in courts that regularly resolve cases at an early stage by non-criminal disposition. If applicable, see the Instruction Guide for details on completing this section. If not applicable, remove this portion.</i>	
<i>Charge #1</i>	No less than 1/3 of a case
<i>Charge #2</i>	No less than 1/3 of a case
<i>Charge #3 (insert additional lines if necessary)</i>	No less than 1/3 of a case

E. Partial Representation:

A partial representation is counted based on the amount of time that an attorney has spent on the case under case-weighting. **Each hour** of work is assigned **0.17** weighted **credits**, up to the maximum weighted credits normally assigned for the case type.

F. **Sentence Violations and Other Non-Charge Representation:**

As required by Standard 3.6(b)(ii) sentence violations and other non-charge representations may be counted as **no fewer credits than one-third of a case**. [See *Instruction Guide*]

G. **Dockets / Calendars:** Cases on a criminal first appearance or arraignment docket where the attorney is designated, appointed, or contracted to represent groups of clients without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal or amendment to an infraction) are not counted individually. Instead, the attorney's hours needed for appropriate client contact, preparation, and court time are calculated as a percentage of the net annual hours of work time, and then applied to reduce the attorney's caseload. **Each hour of such docket time is assigned 0.17 weighted credits.**

7. Adjustments

A. **Case-Specific Adjustments:** Because credits are assigned to cases based on an average amount of time needed for each charge type, ordinary deviations in how complex a case is or how long it takes do not justify an adjustment to a case's credit value. It is assumed that attorneys will receive a mix of cases of varying complexity and effort, ending with a caseload that closely approximates a full-time caseload. However, an attorney may request that the Administrator adjust the weighted credit for any particular case upwards for substantial work on extraordinary cases in which the credit assigned does not adequately reflect the complexity or time and effort involved in the representation. Weighted credits may not be adjusted downward unless pursuant to the process identified in 7.B.

B. **Local Factors:** *[The following paragraph only applies to public defense attorneys in courts that have local factors impacting the time required for public defense as described in section 7.B of the **Instruction Guide**. If applicable, see the **Instruction Guide** for details on completing this section. If not applicable, remove this portion.]* Due to the following circumstances, this policy deviates from the Model Case Weighting Policy by making adjustments to weighted credits as follows:

[Insert text here _]

Case Weighting Summary Chart

Criminal Charge Category	Attorney Hours	Hours Converted to Weighted Credits
Alcohol Related Offenses	3.0 hours	0.50 credits
Assault (not Domestic Violence)	6.0 hours	1.0 credit
Criminal Trespass 1 or 2	4.5 hours	0.75 credits
Disorderly Conduct - Excluding Indecent Exposure	3.0 hours	0.50 credits
Domestic Violence -Assault, Reckless Endangerment	9.0 hours	1.5 credits
DUI and Physical Control	9.0 hours	1.5 credits
DWLS 1st and 2nd Degree	4.5 hours	0.75 credits
DWLS 3rd Degree	3.0 hours	0.50 credits
Harassment	9.0 hours	1.5 credits
Hit and Run-Attended and Unattended	4.5 hours	0.75 credits
Malicious Mischief	4.5 hours	0.75 credits
Obstructing a Public Servant	4.5 hours	0.75 credits
Racing	6.0 hours	1.0 credit
Reckless Driving	6.0 hours	1.0 credit
Simple Traffic Offenses	3.0 hours	0.50 credits
Theft/Shoplifting	4.5 hours	0.75 credits
Violation of a Protection Order/No Contact Order/Restraining Order	4.5 hours	0.75 hours
Weapons Related Offenses	6.0 hours	1.0 credit
All Other Unlisted Misdemeanors	4.5 hours	0.75 credits

Case Weighting Summary Chart - continued

Non-Criminal Charge Categories	
Sentence Violations and Other Non Charge Representations	No less than 1/3 of a case
Early Non-Criminal Resolution per Regular Practice: <i>This only applies to jurisdictions that use this practice.</i>	No less than 1/3 of a case
<i>Charge #1</i>	*
<i>Charge #2</i>	*
<i>Charge #3 (insert additional lines if necessary)</i>	*

Guilty Plea to Criminal Charge at Arraignment or First Appearance Hearing
Equals 1 case pursuant to Standard 3.5

Partial Representations, and Dockets/Calendars	Credits for Case Weighting
One hour of attorney case work	0.17 credits

Appendix A
Charge Category Examples

Charge Category	Examples of Charges Included
Alcohol Related Offenses	Drinking in Public, Park Violation/Alcohol, Minor in Possession of Alcohol, Serving Minor
Assault/Simple Assault (not domestic violence)	Assault in the 4 th Degree, Strangulation
Criminal Trespass 1 or 2	Trespass 1 st Degree, Trespass Building, Trespass on Posted Public Property
Disorderly Conduct (Excluding Indecent Exposure)	Public Nuisance, Excessive Noise, Breach of Peace, Urinating in Public, Fighting, Pedestrian Interference
Domestic Violence Related Offenses	DV Assault, DV Reckless Endangerment
DUI or Physical Control	Operating Vessel While Intoxicated, Minor Operate Vehicle After Consuming Alcohol
DWLS 1st and 2nd Degree	Driving with a Suspended License First and Second Degree
DWLS 3rd Degree	Driving with a Suspended License Third Degree
Harassment	Stalking, Cyberspace Stalking, Telephone Harassment, Harassment Threaten Property, DV Harassment
Hit and Run-Attended and Unattended	Hit and Run Unattended Vehicle/Property, Hit and Run Accident/Injury, Hit and Run Bike/Pedestrian
Malicious Mischief	Graffiti, Property Destruction
Obstructing a Public Servant	Hindering Police, Obstructing Liquor Officer
Racing	Racing Vehicles
Reckless Driving	Reckless Driving
Simple Traffic Offenses	No Valid Driver License, Fail to Transfer Title Within 45 days, Trip Permit Violation
Theft/Shoplifting	Identity Theft, Theft of Rental/Lease Property
Violation of a Protection Order / No Contact Order / Restraining Order	Protection Order Violation, Restraining Order Violation,

	No Contact Order Violation
Weapons Related Offenses	Possession of a Dangerous Weapon, Aiming or Discharging Firearm, Carrying Concealed Pistol Without Permit

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