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## RESEARCH BRIEF

An Examination of Prosecutorial  
Staff, Budgets, Caseloads and  
the Need for Change

## OVERVIEW

The impact of large workloads and inadequate funding create an obvious problem for prosecutors. More importantly, research demonstrates that this challenge increases the likelihood of extended case processing time, error, plea bargains, stress-related burnout, and turnover. These situations diminish a prosecutor's ability to address disparities, adhere to Constitutional constraints and maintain public safety.

Due to increases in forensic evidence and body camera footage, district attorneys are now required to process more complex and time-consuming cases.

The recent focus on unconstitutional bail practices and the calls for reducing the incarcerated populations, while maintaining public safety, has put prosecutors in the middle of the justice-reform movement. Unfortunately, federal agencies and legislative bodies have yet to provide a framework from which prosecutors could determine the ideal caseload. Prosecutor workload management is a serious concern.

*Given the urgency and the need for policy-oriented solutions, it is pertinent that we understand prosecutor budgetary constraints and their impact on staff, case processing, and case outcomes.*

As such, this research brief will provide an overview of prosecutor offices in the largest U.S. counties along with their funding allocations and staff differentials. We will also examine any potential relationships. Recommendations that will improve the ability of prosecutors to reduce disparities, address mass incarceration and maintain public safety will conclude this research brief.



*“Case management is a significant component of prosecutorial decision-making; it affects multimillion-dollar budget decisions and represents one of the biggest decision points in the criminal justice system. More importantly, it impacts justice, retribution and freedom.”*





## INTRODUCTION

The 2,400 U.S. prosecutors arguably serve in the most powerful decision point of the American criminal justice system, wielding immense discretionary influence. Unfortunately, little attention has been given to prosecutorial workloads, budgets, staffing or the factors that influence their decision-making practices, such as politics. Recently, the focus has been turned to the overburdening of public defenders, most notably resulting from their representations of the indigent. In 1968, the Bureau of Justice Statistics (BJS) commissioned a committee to examine the nature of public defender caseloads and found indigent defense counsel to be underfunded and overburdened by an excess of cases. In response, the commission recommended a set of guidelines for public defender caseloads in which defense attorneys handle no more than 150 felony or 400 misdemeanor cases per year (National Advisory Commission on Criminal Justice Standards and Goals, 1973). Prosecutors face similar demands and time constraints, handling in excess of 1,000 felony cases per year (Gershowitz & Killinger, 2011). However, no similar effort has been made to establish guidelines for prosecutorial caseloads. In fact, when given the opportunity to do so, the American Bar Association deferred to the inevitable politicization of local nuances (i.e. policymakers and taxpayers).

Research has found that high judicial caseloads can negatively impact important sentencing related outcomes. For example, caseload size significantly influences the odds of departure status, trial penalties, sentence length and incarceration (Feldmeyer & Ulmer, 2011; Johnson, 2005, 2006; Ulmer, Eisenstein, & Johnson, 2010). Additionally, defense attorneys with high caseload pressures may contribute to the “meet and plead” system of justice, which calls into question the legitimacy of the plea-bargaining process (Carmichael, Clemens, Casper, Marchbanks, & Woods, 2015). Prosecutors who face similar caseload pressures are also subject to these realities, leaving the accused at a significant disadvantage, ultimately contributing to miscarriages of justice. Most of these issues express themselves through minority overrepresentation at each decision point.

By using data from prosecutor offices in the largest counties, a descriptive analysis is conducted. Additionally, suggestions for potential caseload standards are discussed. In conclusion, we provide a few recommendations that can lead us out of this prosecutor caseload cul-de-sac.

*Moreover, excessive prosecutor caseloads may result in a number of unintended consequences including further harm to victims, backlogs in case processing, and delays in trial, resulting in unwarranted guilty pleas.*

*(Gershowitz & Killinger, 2011).*

These consequences are notable for several reasons. First, overburdened prosecutors may be unable to efficiently communicate with the victims in cases, causing victims to become apathetic or unsatisfied with the judicial process. This may have significant implications for victim compliance during the trial process. Second, excessive caseloads disrupt the efficiency of the case processing system. Those who are unable to post bail may be jailed for extended periods of time prior to trial. As a result, these individuals may be more willing to accept a plea bargain, regardless of their innocence. The consequences of such circumstances may have disparate impacts on people of color, as evidence suggests that minority offenders are less likely to receive reduced charge offers, and more likely to receive custodial offers (Devers, 2011; Kutateladze, Andiloro, & Johnson, 2014). This is noteworthy given that race significantly influences the probability of entering a plea (Albonetti, 1990).

## METHODOLOGICAL OVERVIEW

The prosecutor staff and budget data for the current study was derived from county level websites containing information on county demographics and prosecutor offices. Specifically, information from county websites provided data on the total number of prosecutors, staff, investigators, and operating budgets for the 7 largest counties in the United States. The Uniform Crime Report was used to determine a better understanding of crime patterns that may impact caseload differentials.

The prosecutor caseload data used for this study was gleaned from the 2017-2018 databases provided by the Harris County prosecutor's office, the 2017 Annual Report of the Illinois Courts Statistical Summary and the Maricopa County 2017 Case Activity Report. The data from these reports

were confirmed with the respective research analysts of these departments. Misdemeanor and felony cases filed and disposed of were used to determine a baseline from which to identify workload parameters. Similar to other studies on this topic, we had to count cases and not individuals. Future research should examine individual prosecutor caseloads. In the discussion we explore this issue further.

Due to the exploratory nature of this brief, correlational analysis was used to determine the association between the number of prosecutors, staff, investigators, and funding allocations. The following results provide a comparative analysis of caseload and budgetary characteristics. We are also able to determine aggregate caseload differences between selected counties.

This report used data from the Limited Jurisdiction and Superior Courts of Arizona's legal system in Maricopa County. The Limited Jurisdiction Court handles misdemeanor cases, and the Superior Court processes felonies. Information pertaining to case filings and dispositions in annual reports are disaggregated by charges, which results in a higher number of cases in comparison to the results found in the Maricopa County Case Activity Reports. For example, one case may have multiple charges.

So that we are able to remain consistent across all counties and respective of the uniqueness of DWI/DUI filings, we chose to exclude them. Therefore, for all three counties, the number of cases filed and disposed of does not contain DWI/DUI cases. Excluded for Harris County were 10,984 misdemeanor DWI cases filed, 8,788 misdemeanor DWI cases disposed of, 1,345 felony DWI cases filed, and 1,337 felony DWI cases disposed of. For Maricopa County, 34,452 misdemeanor DWI cases filed and 39,646 misdemeanor DWI cases disposed of were excluded. Felony DWI cases were not indicated in Maricopa County's Superior Court Case Activity data. Cook County did not distinguish between misdemeanor and felony DWIs; however, 8,753 filed DWI cases and 9,450 disposed of DWI cases were excluded from our analysis. Though we recognize the significance of these DWI/DUI numbers, we reserve an analysis of this issue for future research.



## RESULTS

Prosecutor offices of the seven largest counties were examined to assess the characteristics of these organizations and to determine the extent of their caseloads respective of funding and staffing constraints. While the number of prosecutors, across the seven largest counties ranges from 282 (Orange County, CA) to 987 (Los Angeles County, CA), the average office employs approximately 482 prosecutors, serving a community population average of 4,649,546.29 (See Table 1). On average, prosecutors employ 1,166 full time employees, including prosecutors, investigators, and other staff. Harris County, TX was the smallest office in the largest seven counties with only 703 full time employees, despite being the third largest county in the United States. In contrast, the Los Angeles County office employs 2,143 personnel. In addition to prosecutors, agencies are comprised of a

number of investigators who aid in the processing of cases. The average number of investigators per office in the current sample is 110, however, there is considerable variation in this measurement, with some offices operating with as few as 18 investigators (Miami-Dade County, FL) when compared to the 287 in the largest prosecutor office (Los Angeles). Similarly, the number of staff assisting also varies, with Harris County, TX employing 280 staff members and Miami-Dade County, FL operating with 920. Notably, of the 7 counties, Harris County, TX has the smallest support staff (including investigators and other staff) across district attorney offices. It must be noted that prosecutor personnel and budgets are function of agency composition. For example, Florida child support prosecutors are housed in the the prosecutors office.

**Table 1. District Attorney Office Personnel and Operating Budget**

County	State	Population	Prosecutor	Investigator	Staff	Total FTE	Operating Budget
Los Angeles	California	10,017,068	987	287	869	2,143	\$416,159,000.00
Cook County	Illinois	5,240,700	737	80	309	1,126	\$122,229,716.00
Harris County	Texas	4,336,853	329	94	280	703	\$82,903,000.00
Maricopa County	Arizona	4,009,412	370	54	582	1,006	\$100,714,000.00
San Diego County	California	3,211,252	318	118	616	1,052	\$186,496,000.00
Orange County	California	3,114,363	282	122	443	847	\$140,000,000.00
Miami-Dade County	Florida	2,617,176	350	18	920	1,288	\$87,160,160.00

Source: County level websites containing information on county demographics and prosecutor offices.

## CASELOAD COMPARISONS

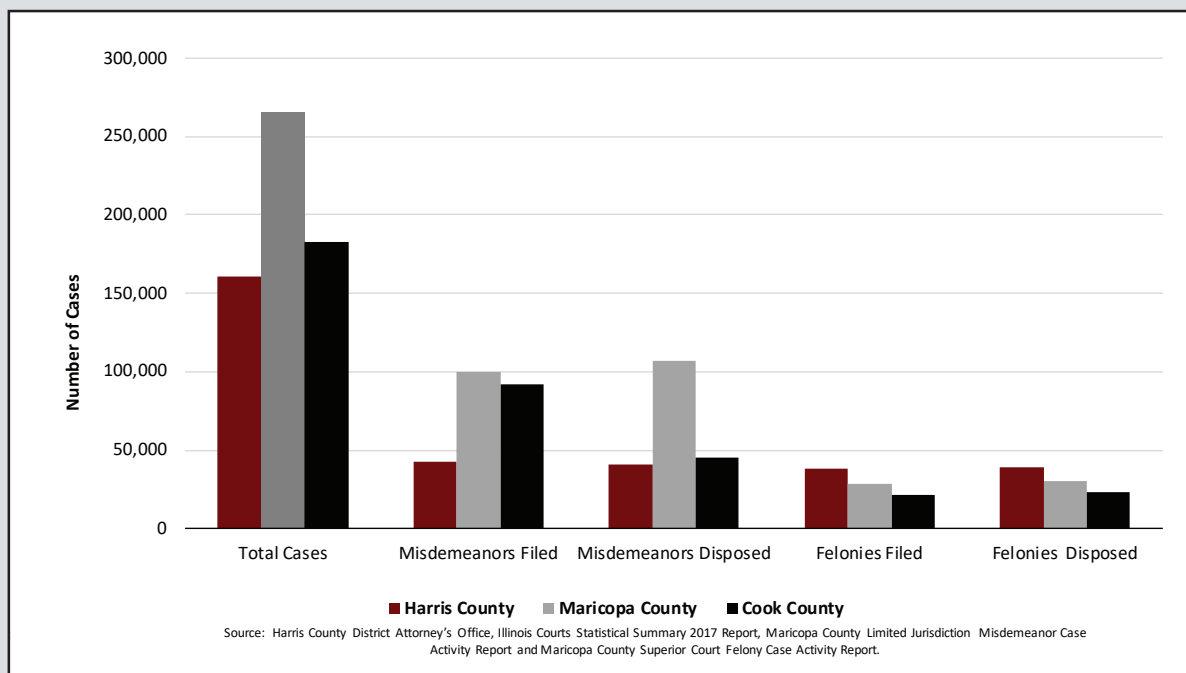
After recent debate about the Harris County District Attorney's need for more funding and their similarly situated populations, we sought to compare their caseloads to that of Cook County, Illinois and Maricopa County, Arizona (See Figure 1). The figure below shows the frequency, offense type, and case processing status by county. Maricopa County prosecutor's office had the highest number of total cases at 265,711 and more misdemeanors disposed of than Harris and Cook Counties.

Interestingly, the population difference does not explain the degree to which these three counties differ in misdemeanor filings. It could also be

argued that the recent county approach to misdemeanor diversions served to reduce Harris County's misdemeanor filings. The number of felonies Harris County processed is still higher than that of Maricopa and Cook counties. In 2017, Harris County processed 77,493 felony cases, while Maricopa county processed 58,921 and Cook County processed 44,666 felony cases.

*Further inquiry should determine the degree to which caseload equates to time allocation (workload).*

Figure 1. County Caseloads



Note: Total Cases = The sum of misdemeanors and felonies filed and disposed per county

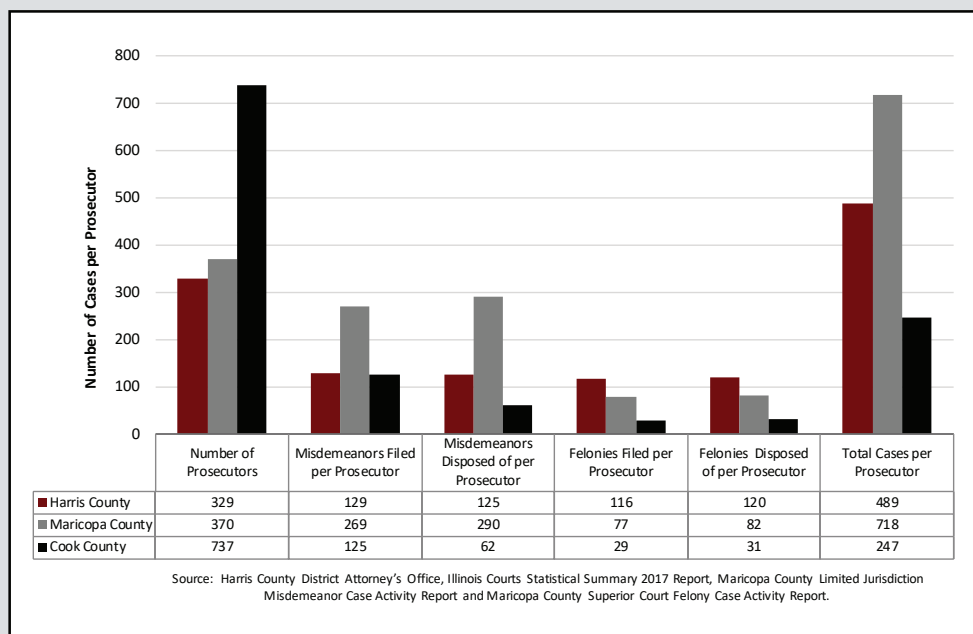
Despite Cook County having a larger population and more prosecutors than Harris County (See Table 1), the Harris County District Attorney's office has more cases per prosecutor than Cook County. Simply stated, Harris County has 408 fewer prosecutors than Cook County but handles twice as many cases per prosecutor. *Figure 2* highlights the number of cases each prosecutor handled in Harris County, Maricopa County and Cook County. The number of misdemeanors filed per prosecutor in Harris County and Cook County in 2017 were almost similar, but there is a significant gap between both counties in the number of misdemeanors disposed of and the number of felonies filed and disposed, per prosecutor.

Maricopa County is close in population size to Harris County but has an operating budget that is \$17 million dollars higher. Maricopa County's operating budget may account for its ability to hire more prosecutors than Harris County, despite the latter having a slightly higher population than Maricopa County. While Harris County is the third largest county in the nation, with a significant number of misdemeanor and felony cases, its prosecutor office is seriously understaffed and overburdened.

Another measure used to examine the pretrial caseload of the prosecutor's office is to determine the number of officers per prosecutor by adding the city and county departments. Though this is a conservative estimate, it provides an idea of the workload feeders to the prosecutor's office.

For a criminal justice system to function adequately, there needs to be a sufficient officer to prosecutor ratio. Using the data gathered on the seven largest counties in the United States, we determined that Harris County has the highest number of police officers per prosecutor, while Maricopa County, which is close in size to Harris County, had the lowest number of police officers per prosecutor (See Figure 3). Rounded to the nearest wholenumber. Harris County has 15 police officers per prosecutor, while Maricopa County has 2 police officers per prosecutor. Prosecutors have cases as a result of police activity. The number of police officers in Harris County may be an indicator of why the prosecutors in this county have a higher caseload than most of the other large counties. Therefore, future research would do well to examine the relationship between police representation and prosecutor caseloads.

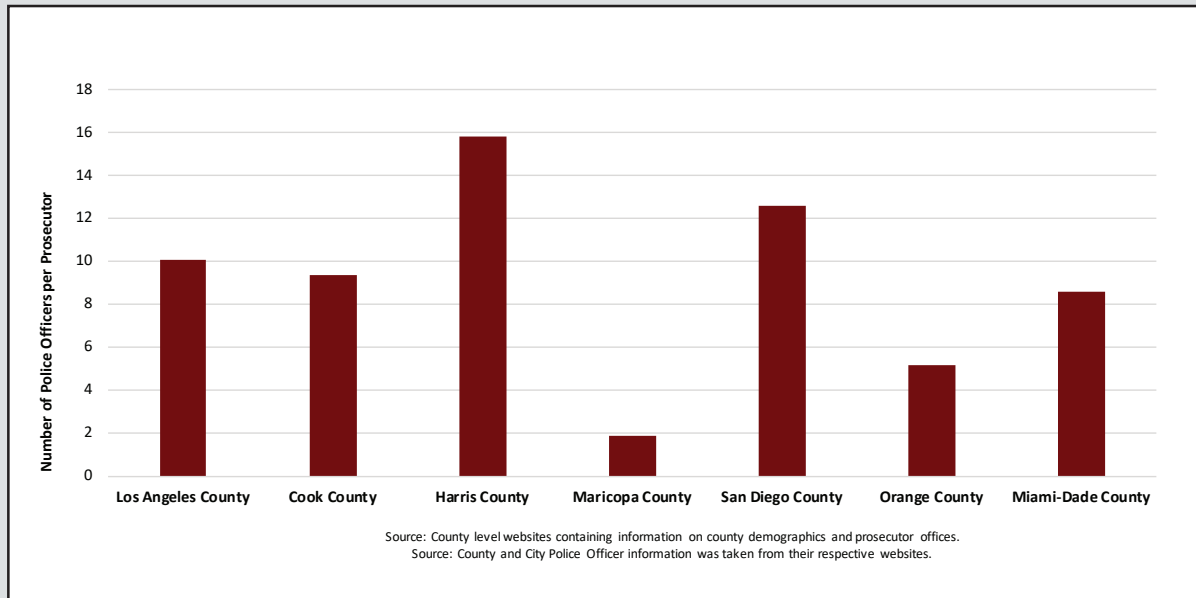
**Figure 2. Cases per Prosecutor\***



\* Type of Case per Prosecutor = Number of Cases by Type/Number of Prosecutors



**Figure 3. Police Officers per Prosecutor**



Numbers rounded to the nearest whole number and include only City and County Police Departments

To control for population differentials, we created ratios. This allows us to compare counties without undue influence of population size. There are notable differences in per capita spending rates (See Table 2). Harris County, the third largest county in the country, receives \$19.12 per capita spending. This rate is significantly lower than other comparable counties. For example, Maricopa County, AZ, which is similar in population size and the number of prosecutors per 10,000 citizens, receives \$25.12 in per capita funding. This disparity is even more pronounced in comparison to San Diego County, CA, which receives \$58.08 per capita spending. At \$41.54, the Los Angeles County, CA office is funded at nearly 2 times that of Cook County, IL (\$23.32), Harris County, TX (\$19.12), and Maricopa County, AZ. Numbers rounded to the nearest whole number and include only City and County Police Departments. Other counties with funding over \$30 per capita include San Diego County, CA (\$58.08), Orange County, CA (\$44.95). Note that a consensus has been that there should be 1 prosecutor for every 10,000 residents (Litke, 2016).

Operating budgets for these offices vary considerably (Table 2). On average, prosecutor offices receive \$162,237,410.90 in funding. Funding

per office ranges from \$82,903,000.00 (Harris County, TX) to \$416,159,000.00 (Los Angeles County, CA). However, it is not apparent whether operating budget is a function of population size. For example, Los Angeles, San Diego, and Orange counties have the highest operating budgets among the counties examined. While Los Angeles County has the greatest population, San Diego and Orange counties are the 5th and 6th largest counties, respectively. This may be a function of the cost of living differentials. A concern that will need to be examined in future research. Similarly, Los Angeles (n = 987), Cook (n = 737), Maricopa (n = 370), and Miami-Dade (n = 350) counties have the greatest number of prosecutors on staff. However, the operating budgets do not necessarily reflect this pattern. Cook County has the 4th highest operating budget at \$122,229,716.00, followed by Maricopa county ranked 5th with \$100,714,000.00 and Miami-Dade County with the 6th highest budget at \$87,160,160.00. Notably, while Miami-Dade County has the 6th highest operating budget, it has the 2nd highest number of full-time employees. Differences in funding and personnel may negatively impact victims, defendants and the general public.



**Table 2. District Attorney Personnel and Operating Budget Ratios (per 10,000 residents)**

County	State	Prosecutors	Investigators	Staff	FTE	Total Operating Budget	Per Capita
Los Angeles County	California	0.99	0.29	0.87	2.14	\$415,449.91	\$41.54
Cook County	Illinois	1.41	0.15	0.59	2.15	\$233,231.66	\$23.32
Harris County	Texas	0.76	0.22	0.65	1.62	\$191,159.35	\$19.12
Maricopa County	Arizona	0.92	0.13	1.45	2.51	\$251,193.94	\$25.12
San Diego County	California	0.99	0.37	1.92	3.28	\$580,757.91	\$58.08
Orange County	California	0.91	0.39	1.42	2.72	\$449,530.13	\$44.95
Miami-Dade County	Florida	1.34	0.07	3.52	4.92	\$333,031.33	\$33.30

Source: County level websites containing information on county demographics and prosecutor offices.

In addition to the descriptive patterns previously noted, a series of bivariate correlations were analyzed to examine the extent of these relationships (See Table 3). County population is positively associated with the number of prosecutors in each office ( $r = .924, p < .01$ ). As such, the population of citizens in a county is related to the number of prosecutors serving each county. Population is also significantly correlated with other employee related measures. Specifically, the number of investigators in an office ( $r = .869, p < .05$ ), as well as, the number of full-time employees are both positively related with county population size ( $r = .825, p < .05$ ).

More populated counties may have a greater number of investigators and full-time staff, while the opposite may be true for smaller counties. Population is also significantly correlated with an office's operating budget ( $r = .874, p < .05$ ). In this instance, county size dictates the amount of funding allocated to an office. Notably, Harris and Maricopa counties do not follow this pattern. Unlike the operating budget, the number of staff in an office and per capita spending are not significantly related to the population size. For example, Harris county staffs 280 employees, while Miami-Dade county employs 920, primarily due to Florida's housing of child support personnel



within the prosecutors office. Research suggests that improper staffing has significant implications for the daily functions and support offered to prosecutorial teams including case processing, case outcomes, stress, and prosecutor burnout.

The number of prosecutors in an office is also significantly related to their operating budget ( $r = .772, p < .05$ ). Additionally, while the number of full-time employees is also associated with the number of prosecutors in an office ( $r = .835, p < .05$ ), there is no significant relationship between the number of investigators ( $r = .708, p = .075$ ) or staff ( $r = .242, p = .602$ ), per office. These results suggest that the support staff needed to assist prosecutors in their daily activities are not hired based on the number of district attorneys in the county. As with the population, per capita spending is also unrelated to the number of prosecutors in the county. These results are notable as they suggest that the financial resources allotted per citizen are not influenced by the number of prosecutors who work in the county.

It is also notable that the number of investigators and staff in a county is also unrelated to the number of full-time staff in employees per office. Similarly, while the number of investigators is related to an office's operating budget ( $r = .952, p < .01$ ), the number of staff is not ( $r = .485, p = .270$ ). Specifically, the financial resources of an organization are positively associated with the number of investigators in an office. This finding may imply that county offices devote more funding to investigative personnel than general staff.

Again, per capita spending is also unrelated to the number of investigators, staff, or operating budget. Funding per citizen is unrelated to the number of employees in an office, as well, as the overall budget. This suggests that the size of the organization may not be related to the costs associated with the case processing.

**Table 3. Summary of Correlations, Means, and Standard Deviations for Study Variables**

Variables	1	2	3	4	5	6	7
1. Population	---						
2. Number of Prosecutors	.924**	---					
3. Number of Investigators	.869*	.708	---				
4. Number of Staff	.249	.242	.241	---			
5. Total Full-Time Employees	.825*	.835*	.720	.720	---		
6. Operating Budget	.874*	.772*	.952**	.485	.879**	---	
7. Per Capita Spending	-.026	-.075	.378	.412	.249	.454	---
<i>M</i>	4649546.29	481.86	110.43	574.14	1166.43	162237410.90	35.06
<i>SD</i>	2523995.12	270.90	85.92	252.45	470.06	117526906.90	13.93

\*Correlation is significant at the  $p < .05$ ; \*\* $p < .01$  level 2-tailed



## ■ DISCUSSION AND RECOMMENDATIONS

Although there is no prosecutor caseloads standard, most follow recommendations of the National Advisory Commission on Criminal Justice Standards and Goals (NACCJSG) in 1973. Since this time, our population has increased by 53%. Though the NACCJSG caseload recommendation is 150 felony cases or 400 misdemeanor cases per defense attorney, this standard has been widely used by prosecutors. Gershowitz and Killinger (2011) argue that prosecutors should not use the 150 : 400 public defender standard because prosecutor caseloads are fundamentally different from that of public defenders, in that prosecutors do not have to identify leads or manage arraignments. The American Prosecutors Research Institute (2002) and the American Bar Association (2014) have held that there is no way to determine a national prosecutor caseload standard due to the difficulty in calculating a caseload that is realistic and respective of local nuances. Without an accepted standard, prosecutors have been left to determine their own metrics. Despite the missed opportunities to establish a standard, the responsibility lies in the hands of an already overburdened district attorney. High caseloads without agreed benchmarks and metrics of success are yet more examples of a dysfunctional criminal justice system. Justice reform requires an understanding of the state of prosecutorial caseloads. In the following section, we put forth suggestions for improvement and proven examples of successful approaches.



## RECOMMENDATION 1

### Determine Caseload/Workload Standard

The back and forth about prosecutor and public defender caseloads have garnered much debate; however, a standard has yet to be determined. Regardless of the challenges to the creation of a national prosecutorial caseload standard, there remains no empirically supported position on this issue. In fact, the American Bar Association and the American Prosecutors Research Institute are both of the opinion that there are too many local nuances to establish a prosecutorial caseload standard (APRI, 2002). We, for the sake of public safety and procedural justice, disagree with their position on the matter. Therefore, our first recommendation is to move beyond the conversation about the challenges to establishing a national standard, and instead focus on the creation and implementation of guidelines or a matrix by which prosecutors can determine an empirically supported caseload standard. This baseline must ensure all of the constitutional protections afforded to the accused, respective of victim rights and public safety.

### Calculating Prosecutorial Caseload Size

Although a national standard is difficult to create, the APRI 2002 report proposes that individual prosecutor offices evaluate their own caseloads and workloads in order to create their own standard. In order to determine the amount of time spent processing a case, APRI recommends the need to define and differentiate between caseload and workload. Caseload is the average amount of time it takes to process a case. Workload is the combination of caseload amount of time and non-case

related activities. Based on a review of prior research, APRI determined that there are two ways to calculate a prosecutor's caseload. One method fails to take into consideration the complexity of cases. The second method uses a formula that calculates a case's weight in order to account for the different amount of time spent processing a case during each disposition stage (APRI, 2002), both of which have been adapted below.

### Option 1 Basic Caseload Calculation

There are various ways to calculate a prosecutor's caseload. The approach below is considered the basic calculation for determining a prosecutor's caseload, which simply takes the number of cases and divides it by the number of attorneys or number of work hours available. The Basic Caseload Calculation approach assumes that all cases are equally taxing on appeal, and lies in the ease of determining the results.

$$\text{Caseload} = \frac{\text{\# of Cases Processed}}{\text{\# of Prosecutors or Amount of Available Prosecutor Hours}}$$

### Option 2 Caseload Calculation Using Case Weight Determination

Another option for calculating a prosecutor's caseload takes into consideration the weight of the case, and is considered a more accurate measurement for assessing the amount of time spent on cases because it takes into account non-case related responsibilities, such as administrative duties (APRI, 2002). A case's weight is the amount of time spent on each type of case (e.g. misdemeanor versus felony) divided by the number of dispositions for that respective attorney. There are

two ways of determining the number of dispositions: 1) the average number of hours it takes for a case to matriculate through each of the different stages of disposition (pre-charge, pre-trial, trial, etc.) or, 2) the average amount of time it takes to complete all of the various stages of dispositions combined. We recommend option one because it provides a more accurate determination. Below is the formula for determining case weight, which can be applied using either of the two methods explained above.

$$\text{Caseload} = \frac{\text{Amount of Time (in hours)}}{\text{Number of Dispositions}}$$

### Calculating a Prosecutorial Workload Measurement

This approach allows for a workload determination calculation that includes all actions culminating with the successful closing of a case. The factors used to calculate caseload sizes can be used to determine an optimal number of cases a prosecutor can annually maintain. Consistent with APRI's suggestions, the workload measure should originate from the average case processing time and the number of hours annually available to process cases. The number of annual caseload hours should be determined by computing the total hours in a work day, and subtracting from it the number of sick, vacation, holiday, and continuing education hours. This metric is referred to as the annual year value (in hours) and can be used to determine the workload measure. In the formula below, "x" is the case type (misdemeanor or felony).

$$\text{Workload Measure} = \frac{\text{Year Value}}{\text{Caseweight}_x}$$

### EXAMPLE

#### Wisconsin

Although there is not a national, nor local, standard for prosecutor caseloads, the state of Wisconsin conducted an in depth analysis of prosecutor caseloads using a workload analysis in 2016. Based on the 1 to every 10,000 residents model they used, several District Attorneys in Wisconsin recognized that their prosecutor offices were overworked and understaffed. The analysis allowed for District Attorneys within Wisconsin to identify solutions towards decreasing high caseloads such as focusing on pre-trial diversion programs and increasing the number of full time employee positions.

### RECOMMENDATION 2

#### Understand the Relationship Between Prosecutors and Public Defenders

Funding and resource allocation between prosecutors and public defenders continuously serves as a point of contention. Our recommendation here is to identify how prosecutorial caseloads can be determined in tandem with public defender caseloads. Prosecutor and public defender offices plead for additional resources annually. In the context of this report, our determination of resources situates itself around the number of full-time staff assigned to each case. Using APRI's suggested calculation matrix, the number of full-time staff positions is contingent upon workloads (see formula in Recommendation #1).

## EXAMPLE

### Ramsey County, Minnesota

The District Attorney and Public Defender's offices use an approach in Ramsey County, Minnesota in which they work together as a team while fighting for sentencing reform across the state. Usually in opposition of one another, a compromise was made in which unlikely individuals (prosecutors, officers, and defense attorneys) work together towards a more equitable justice system. Ultimately by working together resulted in the passing of the 2016 Minnesota Drug Reform Act.

on already strapped resources, positively impacting recidivism and further reducing the collateral consequences of the remaining criminal justice processing and incarceration. It is these types of programs that allow for connection to the community without the blemish of a criminal record (Pager, 2003).

$$\text{Full Time Staff} = \frac{\text{Annual Case Dispositions}}{\text{Workload Calculation}}$$

## RECOMMENDATION 3

### Implement Pre-Charge Diversion Programs

Prosecutors do not have control over the amount of new cases they are presented. Determining whether or not to accept these cases is a matter of statutory requirement or prosecutorial discretion. Therefore, prosecutors who serve as ministers of justice, are in a position to autocorrect for systematic errors. As such, we recommend prosecutors identify those cases most appropriate for immediate deferral.

Such programming removes unnecessary arrest and criminal justice processing, while simultaneously reducing the strain

## EXAMPLE

### Houston, Texas

In an effort to reduce unnecessary arrest, convictions and permanent criminal records for misdemeanor marijuana possession, Harris County District Attorney Kim Ogg implemented a pre-charge diversion program. Before this program there were 10,000 yearly arrest for marijuana possession of less than four ounces. In each year since the diversion program began, there have only been 3,000 arrest per year, 9,000 Houstonians have been diverted, 14,000 fewer have been arrested and the county has saved \$35 million. This unprecedented pre-charge diversion program is a critical component of smart justice reform where almost 13 million Americans receive misdemeanor charges each year, comprising 80% of all criminal justice cases processed within this time.

“**Determining** the appropriate **workloads** will ensure that we **convict the necessary, divert the most warranted, protect the innocent, and respect the need for public safety.**”



## ■ CONCLUSION

Prosecutors, in this era of mass de-incarceration, must ensure that they exercise their unbridled discretion in an unbiased manner. At the same time, society cannot afford for them to be understaffed, overworked, underfunded or misaligned with the least prohibitive, most effective approaches. Almost every expert has supported the need for prosecutorial caseload standards, and we can no longer allow the nuances of local jurisdictions to impede the establishment of acceptable district attorney workloads. At the very least, guidelines for maximizing prosecutor efficiency are necessary in diverting the most warranted without the mark of a criminal record. In order to get a true measure of prosecutor workload, we must understand their relationship with criminal activity, resource allocation and downstream justice system outcomes.

Mass incarceration has taken its toll on the prosecutorial system, to the point that 94% to 97% of state and federal convictions now result from plea bargains. Many of these pleas would have been found not guilty or with evidence insufficient enough to warrant conviction from a jury or bench trial. Large prosecutor caseloads have been found to negatively impact the likelihood of departure status, trial outcomes, sentence length, and incarceration.

Prosecutor caseloads are about more than arriving at an optimal workload, they are more so about ensuring that the system operates without undue pressure on any one individual or decision point. Public discussion and increased transparency combined with evidence-based inquiry are steps in the right direction. We have too few district attorneys who support the need for alternatives to incarceration and for reducing the number of low-level nonviolent offenders in our system. Fortunately, public opinion polls reflect a change-oriented sentiment and a growing number of prosecutors who have listened to the public and their expectation for change.

The current debate centers around the need to hire more prosecutors without unnecessarily reversing the justice reform movement and furthering racial, ethnic, and class disparities. Within these concerns is a conversation of equity and public safety. Aligning prosecutorial workloads with this reality is a natural response.

In the end, there is no standard for prosecutorial caseloads. However, the 2,400 prosecutor offices have been forced to determine the best approach to case management, the outcomes of which negatively impact the community, the criminal justice system and the individual. A caseload determination matrix would serve the need for swift, sure, and proportionate justice for the most necessary.

Unfortunately, most prosecutors do not have the expertise or funding to conduct workload studies. Therefore, we sought to engage in a local issue with significant national implications. We examined the largest prosecutor offices in the country, in the hopes of identifying the threats to equitable prosecutorial effectiveness during this phase of accountability. Determining the appropriate workloads will ensure that we convict the necessary, divert the most warranted, protect the innocent, and respect the need for public safety.

## AUTHOR BIOS



### JENNIFER WYATT BOURGEOIS

Graduate Research Fellow

Jennifer Wyatt Bourgeois is a doctoral student in the Department of the Administration of Justice in the Barbara Jordan – Mickey Leland School of Public Affairs and graduate research fellow in the Center for Justice Research at Texas Southern University. Her research interests include risk and resilient factors associated with children and youth impacted by familial and/or parental incarceration, the intersection of race, class, and gender within fragile families impacted by collateral consequences of incarceration, criminal justice program evaluation, and the intersection of criminal justice and forensic science. Jennifer holds a BS in Forensic Science from Baylor University, and a MS in Criminal Justice from Sam Houston State University.



### TRIKEAH HENRY

Doctoral Candidate

TriKeah Henry is a doctoral candidate in the Department of Criminal Justice and Criminology at Sam Houston State University. In 2013, she graduated from Baylor University with a Bachelor of Arts degree in Psychology, and minors in English and Criminal Justice. She began the Ph.D. program in the Fall of 2015, after receiving a Master of Arts degree in Criminal Justice from Sam Houston. TriKeah's current research interests include racial disparities in sentencing outcomes, discretionary decision-making by key criminal justice actors, and procedural justice in policing.



### MELISSA KWENDE

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The Center for Justice Research is devoted to data-driven solutions for an equitable criminal justice system. The primary focus is to produce innovative solutions to criminal justice reform efforts by utilizing an experienced group of researchers working to understand and address the current challenges of the criminal justice system.

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