

PROSECUTOR WORKPLACE AND
COMPENSATION STUDY
Report of Findings



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ATTORNEYS

LAFAYETTE

Prosecutor Workplace and Compensation Study: Report of Findings

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Highlights

Attorney Staffing: In 2020, attorney staffing levels varied considerably among the largest prosecutors' offices in jurisdictions containing major US cities. Per capita attorney staffing varied significantly as well and was only weakly associated with jurisdiction size. In contrast, there was little variation in in-house investigator staffing per 100,000 residents, suggesting that larger offices are uniformly more likely to employ more investigators.

Sources of Funding: Offices receiving funding primarily from their counties had higher attorney salaries, while those offices drawing mostly upon state funding had lower attorney salaries.

Attorney Compensation: The average starting annual salary for a non-supervising attorney among large prosecutors' offices in 2020 was \$68,506. Compared with earlier studies of attorney salaries, we find that many offices' starting salaries have likely not kept pace with inflation.

Office Programming: Most offices reported operating some form of prosecutor-led diversion programming, dedicating an average of 8% of staff time to such efforts. A majority of offices reported operating a community prosecution effort. All offices reported offering either mental health, drug, and/or veterans' courts, while two-thirds of offices reported operating at least one other type of specialty court such as a traffic or DWI/DUI courts.

Impact of COVID-19: Most offices reported disruptions to normal court proceedings and added measures to protect staff as a result of COVID-19. Some offices indicated substantial increases in case backlogs, or the number of cases awaiting trial, due to these changes. While some offices indicated small reductions in overall attorney staffing just after the onset of the pandemic, staffing levels have remained very consistent going into 2020.

Introduction

Prosecutors' offices throughout the country are primarily comprised of individual prosecutors who collectively manage portfolios of cases from their inception to the conclusion of each case. The capacity of a single office to process cases is mainly determined by the individual productivity of each prosecutor, their time available to devote to cases given other duties, and the level of staffing (e.g., number of prosecutors). An office may become more productive by devoting additional resources to aid prosecutors in managing their cases, or by forming specialized teams or units.

Police departments are a similarly structured public entity, where a local department has a large workload dispersed across law enforcement officers and other staff. While there is no single model by which police departments determine staffing needs, many employ models based

directly on the population size of the jurisdiction served by the police department or some measure of anticipated workload.¹ Thus, larger jurisdictions will in general have larger police departments with greater staffing of law enforcement. Policies such as these can ensure that law enforcement officers are not overwhelmed with high workloads, which can lead to inefficient management, such as failure to complete casework in a timely manner, or increased burnout.

Unlike police departments, prosecutors' office staffing is not generally determined using jurisdiction population or other measures correlated with the overall inflow of casework. Additionally, the programmatic engagements of prosecutors' offices can vary considerably across offices, further infringing on the time prosecutors can

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¹McCabe, James. 2013. "An analysis of police department staffing: How many officers do you really need?" An ICMA Center for Public Safety Management White Paper

devote to managing their caseloads. Policy changes over the last two decades such as states' adoptions of Victims' Bill of Rights laws and discovery law reforms as well as the advent of body worn cameras have significantly increased the volume of contact time and evidence review and collection associated with any given case, while often not allowing for additional time or resources to complete these tasks. These factors can contribute not just to excessive caseloads, but also to poor job satisfaction, burnout, and attrition.

An office can better retain prosecutors with superior compensation. However, the availability of funding resources is often determined at higher levels of governance and may not be commensurate with the resource demands of the office or the level of funding needed to offer competitive salaries and compensation. Sources of funding can vary across states or even among individual offices, which may have implications for how offices determine their staffing and compensation levels. For example, budget constraints may prevent hiring or retention of staff needed to manage caseloads more efficiently. Although offices can seek funding through external sources, they typically cannot change their overall funding levels, which can lead to mismatch between available resources and the demands on those resources to process cases and offer other programs.

Existing nationally representative estimates or censuses regarding prosecutors' offices compensation and staffing have not been published within the last decade. Further, the COVID-19 pandemic has complicated the operations of prosecutors' offices because of office closures or the shuttering of courthouses. There is currently little systematic evidence of the effect of COVID-19 on prosecutor workload or how offices have responded to these challenges.

The Association of Prosecuting Attorneys (APA), in collaboration with Prof. Biener at Lafayette College, created a survey to determine staffing and compensation levels for prosecutors' offices and how these staff are allocated across different programmatic offerings. The goal of this survey was to resolve these knowledge gaps while also determining the effect of COVID-19 on staffing and workloads. The survey was fielded to a sample of prosecutors' offices whose jurisdictions include the 50 largest cities in the United States. The remainder of this report is organized as follows: Section 2: Literature Review, Section 3: Survey Data and Methods, Section 4: Findings, Section 5: Discussion.

Literature Review

When it comes to assessing the operation of state prosecutors' offices in the United States, very few country-wide surveys have been attempted over the course of the

last several decades.² The Bureau of Justice Statistics (BJS), the primary statistical agency of the Department of Justice,³ has conducted two surveys of all state court prosecutors' offices in the U.S., the first taking place in 2001 and the second—and most recent—occurring in 2007.⁴ The 2007 report measured for each office their populations served, operating budgets and staffing levels, felony cases and dispositions, tenure and salary, threats against prosecutors' offices, use of DNA evidence in felony cases, and case disposition information reported to repositories.⁵ The report concluded that, of the offices included in the 2007 survey, the total estimated budget was \$5.8 billion dollars, 78,000 people, including attorneys, paralegals, investigators, and support staff, were employed full-time, and that 2.9 million felony cases, or 94 for each prosecuting attorney, were closed in state courts that year alone.⁶

Regarding the populations served by prosecutors' offices, the report found that offices across the U.S. served districts with populations with anywhere from 500 to nearly 10 million residents, 74% of which served district populations of fewer than 100,000 residents.⁷ In its assessment of budgetary composition, the report noted a 7% increase in the number of assistant prosecuting attorneys employed from 2001 to 2007. Notably, this increase in staffing was associated with a simultaneous 5% decrease in the total operating budget of state prosecutors' offices from 2001 to 2007. Overall, the average operating budget for prosecutors' offices ranged from \$526,000 for smaller jurisdictions to \$49 million in significantly larger ones.⁸ In 2007, the average entry-level salary for an assistant prosecutor in a jurisdiction of larger than 1 million was between \$51,354 and \$64,517.⁹

Existing literature suggests there is not a uniform method by which any given prosecutor's office in the U.S. chooses how many attorneys and support staff to employ. Staffing decisions can largely depend on how offices allocate workloads,¹⁰ with most offices organizing their work using one of three prosecution models.^{11,12} In a horizontal model of prosecution, assistant prosecuting attorneys are assigned to specific steps associated in the judicial process, such as preliminary hearings or arraignments. This horizontal model is most commonly implemented in larger offices.¹³ In a vertical model, each case is

²Olsen, Robin, Leigh Courtney, and Chloe Warnberg. "How Do Prosecutors Collect and Use Data in Decisionmaking?" Urban Institute.

³"About BJS." Bureau of Justice Statistics.

⁴Perry, Steven W., and Duren Banks. "Prosecutors in State Courts, 2007 - Statistical Tables." Bureau of Justice Statistics. Pg. 1.

⁵Ibid. Pgs. 2-3.

⁶Ibid. Pg. 1.

⁷Ibid. Pg. 2.

⁸Ibid.

⁹Ibid.

¹⁰Gramckow, Heike. "Estimating Staffing Needs in the Justice Sector." World Bank.

¹¹"Chapter 5: Prosecutors." SagePub. Pg. 135.

¹²Nugent, M. Elaine, and Mark L. Miller. "Basic Factors in Determining Prosecutor Workload." The Prosecutor.

¹³Ibid.

assigned to an individual prosecutor who is responsible for overseeing each step in the judicial process of that case from beginning to close. This particular model is most often employed in small offices.¹⁴ In a hybrid model of prosecution, the majority of cases handled by an office are administered under the horizontal style. However, for a select few types of crimes, such as homicide or sexual assault, specialized units of prosecuting attorneys within the office handle cases with a vertical approach.¹⁵

One study conducted by the American Prosecutors Research Institute (APRI) and the BJA aimed to develop a method to project resource needs by quantifying the level of effort associated with case processing.¹⁶ Distinguishing between prosecutor caseload and workload,¹⁷ the study conducted assessments in 56 prosecutors' offices throughout the country to determine whether it would be possible to develop national caseload and workload standards.¹⁸ The researchers concluded that, because it is difficult to control for certain local factors that create substantial variation across the country, developing national standards in this way was virtually impossible.¹⁹

In addition to the variety in how caseloads and staffing are determined across offices, there is broad evidence of rising prosecutor workloads and stagnating or shrinking budgets.²⁰ Staffing methods that primarily focus on aligning staffing to the number of cases filed or population size can result in offices having sub-optimal numbers of attorneys, resulting in significant individual caseloads.²¹ Excessive caseloads for individual attorneys can result in longer case processing time, a greater risk for decision-making errors, excessive plea bargains, career burnout, and turnover.²²

Holding caseloads constant, prosecutor workloads are likely also rising due to a number of policy changes that have increased the volume of evidence discovery and other responsibilities associated with certain case types. Many of these changes have occurred more recently and are likely not reflected in earlier studies of prosecutor staffing or workload, such as the 2007 BJS report. For example, in 2008, California passed Proposition 9, or the Victims' Bill of Rights Act, an amendment to its state constitution intended to provide additional rights to

victims.²³ Similar laws have been enacted in other states with others still considering their adoption. To meet the requirements set forth in these more recent laws to ensure victims' rights to justice and due process, prosecutors may need to allocate additional time and resources to increase time in contact with victims or to disseminate additional information to victims.

In 2019, New York became the most recent of 47 states to adopt open discovery laws, which mandate automatic timely disclosure of case evidence.²⁴ In 2004, only one-third of U.S. states had implemented similar open discovery laws.²⁵ Following the implementation of these laws, prosecutors are required to provide discoverable materials in a shorter time, often 15 to 30 days following arraignment. Concurrent with changing discovery laws that limit the time frame during which discovery needs to be completed by are increased volumes of discovery evidence requiring review by prosecutors. Digital evidence and video footage from body-worn cameras have become increasingly more common and can require significantly more time to review.²⁶

Starting in the mid-2000's, large prosecutors' offices began establishing conviction integrity units.²⁷ Following wider adoption in the last decade, currently over 70 offices nationwide have established conviction integrity units.²⁸ These units (sometimes called conviction review units) conduct "extrajudicial, fact-based review of secured convictions to investigate plausible allegations of actual innocence."²⁹ These units often require dedicated staff, sometimes with specialized legal knowledge. In other cases, review work may be more dispersed across staff. Conviction review work has increased in scope and intensity in recent years.³⁰ Unlike other casework however, conviction review work does not constitute a new case, and in many offices will not be separately counted in case management systems. Instead, this work can remain attached to the original cases regardless of the time between when a case was initially closed and the review began.

Survey Data and Methods

Survey Design

APA and Dr. Biener collaborated in designing a survey instrument to ascertain prosecutor office staffing, com-

¹⁴Ibid.

¹⁵Ibid. Pg. 136.

¹⁶"How Many Cases Should A Prosecutor Handle?: Results of the National Workload Assessment." Executive Summary.

¹⁷In this particular study, caseload is defined as the amount of time spent by prosecuting attorneys on handling cases while workload encompasses all non-case such as administrative tasks, travel, and meetings as well.

¹⁸"How Many Cases Should A Prosecutor Handle?: Results of the National Workload Assessment." Executive Summary.

¹⁹Ibid. Pg. 29.

²⁰Bourgeois, J., Henry, T., Kwende, M., Henderson, H. (2018). "An Examination of Prosecutorial Staff, Budgets, Caseloads, and the Need for Change." Center for Justice Research at Texas Southern University.

²¹Gramckow, Heike. "Estimating Staffing Needs in the Justice Sector." World Bank.

²²Bourgeois, J., Henry, T., Kwende, M., Henderson, H. (2018). "An Examination of Prosecutorial Staff, Budgets, Caseloads, and the Need for Change." Center for Justice Research at Texas Southern University.

²³<https://www.cdcr.ca.gov/victim-services/marsys-law/>

²⁴<https://www.cityandstateny.com/policy/2020/02/what-to-know-about-new-yorks-new-discovery-laws/176409/>

²⁵The Justice Project. Expanded Discovery in Criminal Cases: A Policy Review. 1025 Vermont Avenue, NW, Third Floor. Washington, DC 20005

²⁶<https://www.govtech.com/data/just-how-common-are-body-cameras-in-police-departments.html>

²⁷<https://www.law.umich.edu/special/exoneration/Pages/Conviction-Integrity-Units.aspx>

²⁸Ibid.

²⁹Hollway, John, "Conviction Review Units: A National Perspective" (2016). Faculty Scholarship at Penn Law. 1614

³⁰Ibid. Pg. 10.

pensation and programmatic needs.³¹ Offices were asked to report the number of attorneys, levels and sources of funding for attorneys and salary information. Sources of funding were asked as the share of total funding from each of the following sources: City, County, State, Federal, Private or Foundation, Other Source. Similar questions were asked for in-house investigators and offices were asked to report the number of support staff as well.

Offices were asked two open-ended questions regarding attorney staffing and evaluation, “How does your office typically determine attorney staffing needs?” and “How does your office measure and evaluate individual prosecutor performance?” Other open-ended questions regarding office activities included “Who serves subpoenas and related processes for your office?” and “How many law enforcement agencies submit cases to your office for review?” Offices were asked to enumerate the three largest law enforcement agencies that submit cases for review.

Offices were asked whether they participate in the operation of any problem-solving courts (e.g., drug court, mental health court, impaired driving court, etc.) Offices were also asked to list these problem-solving courts and to identify the share of staff time allocated to them. Two similar sets of questions were asked about pre-trial diversion and community prosecution, including the number of cases diverted from each program as well as the share of staff time allocated.

In order to measure the full distribution of work demands on attorneys, offices were asked the share of staff time allocated to each of the following case types (if they reported handling them at all), felonies, misdemeanors, traffic crimes, infractions/violations, juvenile delinquency, juvenile dependency, civil matters, appellate work, “defense of conviction” work, other caseloads (which offices could specify) and public outreach, community engagement or other activities outside of caseloads.

During development, it became clear that lockdowns and closures due to COVID-19 would impact survey response rates and could complicate interpretation of individual responses. Prior to fielding, the survey was refined to distinguish between staffing and time allocations prior to COVID-19 induced lockdowns as well as afterwards. To capture other effects of the pandemic, offices were asked if trials were being conducted in their county and, if not, when they anticipated trials would resume as well as what measures offices were taking to continue working through the pandemic and associated closures. Additionally, offices were asked the number of cases that are typically awaiting trial both at the start of 2020 (pre-COVID-19) as well as currently awaiting trial due to court disruptions from COVID-19. The survey instrument consisted of 34 questions. Questions regarding staffing levels and time allocation were divided to allow offices to give responses for both the start of 2020 (to indicate

pre-COVID-19 levels) as well as for the time at which the survey was completed (to represent post-pandemic levels).

The sample frame was the 50 county prosecutors’ offices whose jurisdictions contained the 50 most populous U.S. cities.³² Collectively, these offices prosecute the majority of state-level crimes. APA determined the list of offices and contacted offices, asking that a person knowledgeable about office staffing and compensation complete the survey. Surveys were fielded during the time beginning September 1, 2020 and fielding concluded January 15, 2021. Approval for this data collection was granted by the Lafayette College Institutional Review Board (Project number AY2021-01.)

Survey Response

Of the 50 offices contacted by APA, 31 offices responded (62%). When contacted by APA, the primary reason for non-response was insufficient staff time to dedicate to completing the survey. That offices under the greatest strain during the pandemic may be most likely to not have completed the survey suggests that response may not be random and possibly correlated with some study outcomes. We discuss this and other limitations in the discussion section.

To alleviate burden and encourage accurate partial response, respondents were informed that they could leave these responses blank if there were no changes in these levels before and after the onset of the pandemic. Thus, the response rate varies considerably across fields. Further, there are high rates of missingness for fields regarding post-pandemic staffing levels and time allocations.

Analysis

Missing responses for post-pandemic staffing level and time allocation questions are interpreted as not missing, but instead unchanged from the start of 2020, only if there is a non-missing response for the start of 2020 within the same question. One record with missing jurisdiction population had this information imputed using population estimates from the Census Bureau as of July 1, 2019. All other fields with no response were treated as missing.

Numerical survey responses are described using un-weighted means such that each office contributes the same weight regardless of jurisdiction population. Reported jurisdictional population is used to construct per capita staffing measures. The range of numerical responses are presented using standard deviations and interquartile ranges. To protect the confidentiality of participating offices, minimum or maximum values discussed are bottom- and top-coded respectively. Population quartiles are rounded to the nearest 100,000 population and staff

³¹Full text of the survey instrument is available upon request.

³²Population estimates are as of July, 2019. <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html>

Table 1. Prosecutor Office Staffing Characteristics at the Start of 2020 (Pre COVID-19)

	Observations	Mean	S.D.	IQR
Jurisdiction Population	31	1,610,849	1,235,890	[800,000, 1,800,000]
Num. Attorneys	28	200	164	[100, 290]
Attorneys per 100,000 Residents	28	12.5	6.7	[8.7, 13.7]
Num. Attorneys Involved in Criminal Cases	25	162	134	[70, 200]
Attorneys Involved in Criminal Cases per 100,000 Residents	25	10.4	5.2	[7.1, 11.9]
Num. In-house Investigators	29	37	35	[10, 50]
In-house Investigators per 100,000 Residents	29	2.3	1.6	[1.0, 3.1]
Num. Support Staff	27	198	184	[90, 250]
Support Staff per 100,000 Residents	27	12.9	8.2	[6.9, 16.1]

Notes: Population quartiles are rounded to the nearest 100,000. Raw staffing levels are rounded to the nearest 10. Staff per capita are rounded to the nearest tenth. S.D. = standard deviation. IQR = interquartile range.

counts are rounded to the nearest 10 staff. Constructed per capita measures are not rounded.

Open-ended responses are described qualitatively. Where applicable, responses are categorized to allow for comparison across offices. Categories of problem-solving courts are abstracted from open-ended responses to the question, “Does your office currently participate in the operation of any problem-solving courts? (e.g., drug court, mental health court, impaired driving court, etc.)?” Individual responses quoted in this report have all directly identifying information censored.

Given the small sample size, statistics presented in this report are intended to be primarily descriptive. As such, all averages are presented with their standard deviations and interquartile ranges are used to further describe the distributions of numerical data. Where applicable, we use Pearson’s Correlation Coefficient to inform assessment of how strongly numerical data are associated with each other. All results presented below are the author’s calculations from offices’ survey responses.

Results

Staffing and Compensation

Table 1 contains descriptive statistics for prosecutors’ office staffing characteristics as of the start of 2020. The mean jurisdiction population was 1,610,849 residents. The minimum jurisdiction size was below 500,000 residents and the maximum had above 5 million residents. Offices employed 200 attorneys on average, twice the 25th percentile office and two-thirds the 75th percentile office. On average, there were 12.5 attorneys per 100,000 jurisdiction residents. The interquartile range was 5 attorneys per 100,000 (8.7 to 13.7 per 100,000), with a minimum below 5 attorneys per 100,000 and a maximum above 35.

In general, the level of attorney staffing is highly correlated with jurisdiction size (correlation coefficient = 0.80). However, there is considerable variation in how per capita staffing relates to jurisdiction size. For example, the office in the largest jurisdiction employed the largest number of attorneys, translating to a slightly above average 14.8 attorneys per 100,000 jurisdiction residents. Yet, of the next 6 largest offices in jurisdictions with over 2 million residents, all employed fewer attorneys per capita than the sample average. Interestingly, the office with the maximum per capita number of attorneys (35), a value over 3 standard deviations above the mean, was an office in a jurisdiction with just below average jurisdiction size.

On average, 162 attorneys per office were involved in processing criminal cases, translating to 10.4 attorneys per 100,000 jurisdiction residents. 10 of the 25 offices that responded to this question reported that all their attorneys were involved in processing criminal cases, with an overall average of 88% of attorneys involved in the processing of criminal cases and a minimum of 36% in one office.

There was similar variation in the number of attorneys involved in criminal cases compared to total attorneys employed, with an interquartile range of 4.8 attorneys per 100,000, a minimum below 4 attorneys per 100,000 and a maximum of nearly 30 per 100,000. The number of attorneys involved in processing criminal cases is highly correlated with jurisdiction size (correlation coefficient = 0.82). However, there were similar patterns in how per capita staffing compared with population size, with most of the offices in larger jurisdictions having below average per capita numbers of attorneys, and a number of offices in smaller jurisdictions with above average per capita staffing.

Out of 29 responding offices, 28 reported employing in-house investigators. The number of in-house investigators per 100,000 jurisdiction residents is not very varied, with only two offices employing more than 5 investigators per 100,000 jurisdiction residents. The number of in-house

Table 2. Prosecutor Office Sources of Funding at the Start of 2020 (Pre COVID-19)

Funding Source	Contributes any Funding for Attorneys (S.D.)	Share of Attorney Funding Conditional on Any Funding (S.D.)	Contributes any Funding for In-House Investigators (S.D.)	Share of In-House Investigator Funding Conditional on Any Funding (S.D.)
City	23% (43%)	35% (48%)	21% (41%)	72% (32%)
County	77% (43%)	63% (35%)	58% (50%)	75% (27%)
State	92% (27%)	38% (38%)	68% (48%)	39% (41%)
Federal	62% (50%)	8% (11%)	5% (3%)	32% (48%)
Private or Foundation	8% (27%)	1% (0%)	0% (0%)	n/a
Other Source	15% (37%)	5% (5%)	29% (46%)	45% (44%)

Notes: Observations = 26. Standard deviations in parentheses.

investigators employed by an office is moderately positively correlated with the number of attorneys employed (correlation coefficient = 0.60). As there is little variation in per capita staffing of investigators, this suggests that in general, larger offices employ more in-house investigators.

Out of 27 responding offices, all reported employing support staff. The average number of support staff employed was 198, with a minimum level of under 30 staff in one office and a maximum of over 900 support staff in another office (over 2 standard deviations above the next highest value). The number of support staff is somewhat positively correlated with the number of attorneys employed (correlation coefficient = 0.64), although there is considerable variation in the number of support staff offices employ in general, offices with more attorneys employ more support staff.

In general, descriptive statistics regarding staffing levels following the start of the COVID-19 pandemic are unchanged from those presented in Table 1. Of 28 responding offices, half reported no change in the total number of attorneys employed at the time of survey response (during the COVID-19 pandemic). 11 offices (39%) reported decreases in the number of attorneys employed, with an average reduction of 11 attorneys, or a roughly 5% reduction in total attorney staff.

Table 2 contains descriptive statistics regarding sources of funding for office staff. The most common source of funding for attorneys was the offices' state, which contributed some portion of funding for 92% of offices. Among offices that received funding from their state, the state contributed an average of 38% of the funding for attorneys. Among the 77% of offices that received funding from their county, the county was in general the largest source of funding for attorneys, contributing 63% of attorney funding on average. Although more than half of offices received funding from federal sources, these only comprised 8% of those offices' funding on average, with only two of those offices receiving more than 5% of attorney funding from federal sources. No office reported

a single source of funding, though 13 (50%) of offices reported that at least 90% of attorney funding came from a single source.

Compared with funding for attorneys, funding for in-house investigators was much less likely to come from federal sources and much more likely to come from another source, which two offices reported fully funded their in-house investigators. In general, if an office received funding for in-house investigators from either their city or county, this was likely to be the majority source of their funding. Overall, 7 offices reported a single source of funding for in-house investigators.

Table 3 contains summaries of open-ended responses regarding how prosecutors' offices determine staffing levels. Using caseloads to determine staffing was the most common method, reported by 14 of the 30 offices that responded to this question. 6 offices (20%) reported that they determined staffing primarily by programmatic needs, which were overseen by a board of supervisors or other supervisory authority. Table 4 contains summaries of open-ended responses regarding the methods used to evaluate prosecutor performance. Annual performance review by a supervisory body was the most common form of evaluation, reported by 14 out of 29 responding offices (48%).

Table 5 contains descriptive statistics on prosecutor office compensation as of the start of 2020. The average starting annual salary for a non-supervising attorney was \$68,056. The bottom quartile of starting salaries was below \$54,000 with two offices having starting salaries below \$50,000. The top quartile of starting salaries was above \$71,500 with three offices having starting salaries above \$100,000. The mean average salary for non-supervising attorneys across offices was \$91,474. The bottom quartile of average salaries was below \$67,500 with one office having an average salary below \$60,000. The top quartile of starting salaries was above \$99,000 with three offices having average salaries above \$150,000.

Table 3. Distribution of Methods Used to Determine Attorney Staffing Needs

Caseload	46.67%
Programmatic Needs with Authorization from Board of Supervisors or Other Supervisory Authority	20.00%
Periodic Review of Case Counts, Types and Complexity by Staff	10.00%
Prosecution Priorities	6.67%
Based on Vacancies	6.67%
Attorney Court Assignments (num. of attorneys assigned to each court)	3.33%
Policy Priorities, Available State and Federal Funds, Needs in the Community, and State Formula	3.33%
Other/No Clearly Defined Method	6.67%

Notes: Observations = 30. Categories abstracted from open-ended responses to the question, “How does your office typically determine attorney staffing needs?”

Table 4. Distribution of Methods Used to Evaluate Prosecutor Performance

Annual Performance Review by Supervisory Body	48.28%
Varying Levels of Supervision and Types of Review	13.79%
Annual Evaluation Using Workload Data Combined with Review	10.43%
Annual Performance Reviews with More Frequent Reviews For Probationary Attorneys and New Hires	6.90%
Evaluation of Workload Data and Performance of Essential Skills and Tasks and Feedback from Other Criminal Justice Stakeholders	6.90%
Biannual Performance Review	3.45%
Other/No Clearly Defined Method	6.90%

Notes: Observations = 29. Categories abstracted from open-ended responses to the question, “How does your office measure and evaluate individual prosecutor performance?”

In general, starting or average salary for non-supervising attorneys is uncorrelated with the number of attorneys employed in an office or the number of attorneys per capita (for which there is a weak positive correlation with correlation coefficients = 0.20.) Notably, starting salaries for non-supervising attorneys are somewhat positively associated with the share of funding from the county among offices that receive county funding and somewhat negatively associated with the share of funding from the state among offices that receive state funding. Among 7 offices that reported both their starting salaries and that at least 90% of their funding came from the county, the average starting salary for non-supervising attorneys was \$77,827. Of the 8 offices with the lowest starting salaries (the bottom quartile plus one office with a starting salary below \$55,000) all but one received more than 70% of their funding from the state.

Staff Time Allocations

Of 26 responding offices, all reported having at least two specialty courts. On average, each office reported having just over four specialty courts with the most common number being three specialty courts (42%). Only four offices reported having more than 5 specialty courts, with a maximum of 10 in just one office. The number of specialty courts is uncorrelated with the number of attorneys employed by each office at the start of 2020 (Correlation coefficient = -0.17). For example, the office with the most specialty courts employed fewer than 100

attorneys, in a jurisdiction with under 700,000 residents.

Table 6 contains the share of offices that offer different specialty courts. Most offices reported having a mental health court, drug court and veterans court and every responding office reported having at least one of these three treatment courts. No other type of specialty court was offered by more than a quarter of offices, with no association between which court is offered any jurisdiction size or staffing levels. Two-thirds of reporting offices had at least one of the other types of specialty courts.

15 offices reported the share of staff time devoted to cases in specialty courts at the start of 2020. This subset of offices had a similar average number of attorneys employed and numbers of problem-solving courts to the larger sample. On average, 8% of staff time is allocated to cases in problem-solving courts, with all offices reporting a lower than average share except one office, which reported allocating 20% of staff time to these cases.³³ There is little association between the share of staff time devoted to these cases and the number of problem-solving courts offered. Following the pandemic, only one office reported a moderate increase in the share of staff time allocated to cases in problem-solving courts. Two offices reported decreases, one of which reported a movement

³³One responding office indicated that 100% of staff time was allocated to these cases and was omitted from these calculations (resulting in n=14). This office was omitted based on responses to subsequent staff time allocation questions in which all responses were either 0 or 100% of staff time per type of case.

Table 5. Prosecutor Annual Salary for Non-Supervising and Supervising Attorneys at the Start of 2020 (Pre COVID-19)

	Observations	Average (S.D.)	IQR
Non-Supervising Attorney			
Starting Salary	27	68,056 (20,880)	[54,000, 71,500]
Average Salary	24	91,474 (40,368)	[67,500, 99,000]
Maximum Salary	25	146,574 (46,511)	[112,000, 171,000]
Supervising Attorney			
Starting Salary	24	109,250 (52,628)	[74,500, 132,000]
Average Salary	24	132,641 (51,000)	[97,000, 147,000]
Maximum Salary	24	178,033 (48,425)	[138,000, 208,000]

Notes: Annual salaries do not reflect the value of other benefits. Individual salaries reported in the IQR are rounded to the nearest \$500. S.D. = standard deviation. IQR = interquartile range.

Table 6. Share of Offices with Specialty Courts

Court Type	Average (S.D.)
Mental Health Court	92% (27%)
Drug/Recovery Court	92% (27%)
Veterans Court	81% (40%)
Diversion Court	23% (43%)
DUI/DWI Court	15% (37%)
Low-Level Felony Drug Offenders	15% (37%)
Community Court	15% (37%)
Initial Appearance/Consolidated	12% (37%)
Misdemeanor Court	12% (37%)
Domestic Violence Court	12% (37%)
Traffic Court	8% (27%)
Youth Court	8% (27%)
Homelessness Court	8% (27%)

Notes: Observations = 26. Categories are abstracted from open-ended responses. S.D. = standard deviation.

from 5% of staff time to 0% of staff time (this was the office with the second largest number of attorneys in the third highest population jurisdiction in the sample).

Offices were asked separately whether they operated a prosecutor-led diversion effort as well as a community prosecution effort. Most offices reported operating a prosecutor-led diversion effort (24 of 26 responding offices), whereas 64% (16 of 25 responding offices) reported operating a community prosecution effort. One of the two offices reporting no prosecutor-led diversion effort did report operating a community prosecution effort, with only one office reporting that they did not operate either type of program.

Table 7 shows the share of staff time allocated to prosecutor-led diversion programs. On average, offices that operate prosecutor-led diversion programs allocated 8% of staff time to these efforts. Of those that reported the number of diversions, the average number of diversions was 4,831. This translates to 444 diversions per attorney based on the share of total attorney time allocated to prosecutor-led diversion.

Table 8 contains descriptive statistics for the share of staff time allocated to different prosecutor activities at the start of 2020. All offices reported allocating staff time to felony cases, which comprises an average of 69% of staff time.

Following the COVID-19 pandemic, no office reported a reduction in staff time allocated to felonies, civil matters, appellate work, conviction integrity, or juvenile dependency. In general, most offices maintained the same distribution of staff time, with decreases or increases that were no more than 5% of overall staff time. Notable exceptions include one office that began in 2020 allocating 10% of staff time to traffic crimes that reduced this share to 0% and shifted this time into felony cases. Another office shifted 5% of total staff time out of handling infractions/violations (bringing this share to 0%) and shifted this time into handling misdemeanors.

At the time of response following the COVID-19 pandemic (between Sept. 2020 and Jan. 2021), 13 out of 25 offices reported that all or some trials were no longer being conducted in their county. Some offices that responded anticipated that trials would resume as early as October/November 2020, others expressed that trials would not resume until early 2021 with two offices reporting they did not anticipate trials resuming until Summer or Spring of 2021.

All 23 offices with responses indicated that at least some measures were taken to protect staff from COVID-19. Most offices indicated a combination of remote work and flexible in-person work. All offices with in-person work indicated use of hand sanitizer, personal protective equipment such as masks or plexiglass barriers, as well as adherence to social distancing guidelines.

Among 14 responding offices, there were just under 9,000 cases typically awaiting trial at the start of 2020 on average. Just under half of these offices reported fewer than 1,000 cases awaiting trial and two reported in excess of 30,000 cases awaiting trial. Following court disruptions due to COVID-19, the average number of cases awaiting trial was 14,056. There were 6 out of 15 responding offices (40%) reporting fewer than 1,000 cases

Table 7. Reported Operation of Prosecutor-Led Diversion Programs at the Start of 2020

	Observations	Average (S.D.)	IQR
Operates Diversion Program	26	92% (27%)	n/a
Share of Staff Time	13	8% (6%)	[5%, 10%]
Number of Diversions	10	4,831 (5,962)	[865, 7,700]
Number of Diversions Per Attorney Allocated	8	444.0 (948.2)	[97.2, 137.8]

Notes: Individual numbers of diversions are not rounded. One office reporting staff-time allocated to prosecutor-led diversion that reported 0 diversions was omitted when calculating the average number of diversions as well as number of diversions. Number of diversions per attorney allocated is calculated as the number of diversions divided by the product of total attorneys employed at the start of 2020 and the share of staff time allocated. S.D. = standard deviation. IQR = interquartile range.

awaiting trial during the pandemic and four offices (27%) reporting more than 20,000 cases awaiting trial during the pandemic. 11 of 13 responding offices indicated an increase in the number of cases awaiting trial. The average change in the number of cases awaiting trial was 5,565 cases, or roughly a 62% increase in the number of cases awaiting trial.

Discussion

The APA Prosecutor Workload and Compensation Survey sought to update knowledge about prosecutor staffing and compensation and understand the relationship between staffing and compensation and the activities and programs conducted by each office. The survey findings demonstrate that, even among the largest prosecutors' offices in jurisdictions containing major US cities, there is a wide variety in staffing levels, compensation, and office activities in programs. Further, there are varied measures for determining staffing needs across offices and weak associations between staffing levels and jurisdiction size or other amounts of programmatic needs.

Among prosecutors' offices whose jurisdictions include the most populous cities in the US, offices employed 200 attorneys on average, with the bottom quartile of offices employing fewer than 100 attorneys and the top quartile employing over 300 attorneys. After adjusting for jurisdiction size, there was still considerable variation in the levels of staffing with an interquartile range of 5 attorneys per 100,000 jurisdiction residents (8.7 to 13.7 per 100,000), with a minimum below 5 attorneys per 100,000 and a maximum above 35.

The composition of staff, which includes both in-house investigators and administrative staff, also varied considerably across offices. We found little evidence of substitution across these types of employees, with larger offices (those with more attorneys) also more likely to employ more investigators and support staff. There were important differences in how these employee types are funded, however. Primarily, attorneys were funded by counties and states, with the largest share of attorney funding typically coming from counties. In-house investigators were more likely to be funded by cities and

counties, with a significantly larger funding share from cities.

There is similarly wide variation in the initial and average salaries for non-supervisory as well as for supervising attorneys. The average starting annual salary for a non-supervising attorney was \$68,056. Starting salaries ranged from below \$50,000 to above \$100,000. These distributions of entry-level attorney starting salaries are only somewhat larger than those described in the 2007 BJS report, where the average entry level salary for an assistant prosecutor in a jurisdiction of larger than 1 million was between \$51,354 and \$64,517. Adjusting for inflation, 2007 mean entry-level salaries observed in the BJS report were between \$65,404 and \$82,168 in 2020 dollars.³⁴ Although we do not observe salaries for responding offices in earlier years, it is unlikely that all offices' starting salaries have kept pace with inflation when compared with the distribution of salaries observed in the 2007 BJS report. Entry level salaries serve an important role in attracting and retaining attorneys, for whom private employment or other careers might offer more competitive salaries. Prosecutors' offices unable to offer competitive salaries may be unable to attract new attorneys or retain more experienced attorneys, leading to increased attrition requiring yet more resources being devoted to hiring and training.

We observed no meaningful associations between salaries and the levels of staffing, jurisdiction size or the types of programmatic offerings. Interestingly, there was some evidence to suggest that offices that were primarily funded by their counties had higher attorney salaries while those receiving mostly state funding had lower attorney salaries. These funding commitments may have important implications for offices' ability to attract and retain attorneys. We observed a small but significant trend toward reductions in overall attorney staff levels following the onset of the pandemic. Slow staffing responses tied to longer budgetary or decision-making cycles may lead us to understate the level of staff reductions in the following years. Low or non-competitive salaries combined with increased workloads due to the pandemic may prevent some offices from returning to pre-pandemic staffing

³⁴"CPI Inflation Calculator." U.S. Bureau of Labor Statistics. https://www.bls.gov/data/inflation_calculator.htm

Table 8. Reported Staff Time Allocated to Different Prosecutor Activities at the Start of 2020

	Office Handles Cases		Share of Staff Time Allocated (If Yes)		
	Obs.	Average (S.D.)	Obs.	Average (S.D.)	IQR
Felony	26	100%	17	69% (22%)	[59%, 83%]
Civil Matters	27	93% (27%)	13	9% (5%)	[4%, 13%]
Juvenile Delinquency	27	93% (27%)	13	9% (5%)	[4%, 13%]
Misdemeanor	25	92% (28%)	14	19% (13%)	[10%, 28%]
Conviction Integrity / Review	26	88% (33%)	13	3% (2%)	[2%, 5%]
Appellate Work	25	72% (46%)	11	3% (2%)	[3%, 5%]
Traffic Crimes	23	61% (50%)	8	6% (4%)	[4%, 10%]
Infractions / Violations	24	42% (50%)	7	3% (2%)	[1%, 5%]
Juvenile Dependency	23	22% (42%)	4	5% (4%)	[4%, 6%]
Other Caseloads	24	46% (51%)	5	9% (4%)	[5%, 10%]
Public Outreach, Community Engagement or Other Activities Outside of Caseloads	26	100%	16	5% (5%)	[2%, 5%]

Notes: Standard deviations in parentheses. Share of staff time allocated is only asked if the respondent indicated that their office handles the particular case type. Obs. = Observations. S.D. = standard deviation.

levels or reducing substantial case backlogs even after the full resumption of trials.

Each office that responded to questions about specialty courts reported operating at either a mental health, drug or veteran’s specialty court. These, as well as behavioral health or homeless courts, are generally considered to be treatment courts. Other specialty courts, including traffic, DUI/DWI or domestic violence specialty courts were not as widely adopted across offices. At least one of these accountability courts overall was offered in two-thirds of responding offices, with most offices offering one to two of these types of specialty courts. Unlike treatment courts however, there was little overlap in the type of accountability court offered, with a wider variety reported by offices.

Offices reported that the handling of felony cases required the most staff time, an average of just under 70% of staff time. Other types of prosecutor activities were very common across offices, though the reported share of staff time dedicated to these activities were considerably lower, with most offices allocating fewer than 5% of staff time on average to most activities outside of felony and misdemeanor cases. Some of these staff allocation levels, particularly for appellate work and defense of conviction work, are lower than one might expect for prosecutors’ offices of this size. Given the low numbers of individual responses, it is possible that only offices in the left-tail of the distribution of staff allocation towards appellate work responded to this field. However, there are a number of offices for which this type of work comprises only a small share of their staff resources.

The onset of the COVID-19 pandemic demanded adjustments from every office, particularly to comply with federal and state mandates for in-person operations, some

of which required the cessation of all in-person operations. All offices expressed some significant response to these mandates as well as efforts to protect the health of staff and community members. At the time of fielding, which was between September 2020 and January 2021, some offices were still largely remote and had either ceased some trials or had transitioned to some form of remote trial. Other offices had resumed some portion of in-person operations requiring flexible or hybrid scheduling and the use of significant amounts of personal protective equipment or structural changes such as installing plexiglass barriers.

While all offices reported some form of adjustment to workflow to improve office safety, others reported detailed efforts, some of which were coordinated with state and local agencies, to maintain full levels of operations. For example, one office acquired over hundreds of laptops and webcams for remote staff, created virtual courtrooms to maintain virtual operations and set up a number of call centers, hotlines, and social media sites to increase community engagement. This experience suggests that what may seem like common or baseline expectations for maintenance of operations can, in practice, require significant costs and time resources. Further, prosecutors’ offices can be highly integrated into their communities, and even moderate disruptions can have profound downstream effects. Many offices described successful efforts to maintain full operations, some of which relied on close relationships with other municipal partners. However, other offices reported significant challenges in maintaining full operations, with roughly half reporting at least some cessation of trials and a significant rise in the number of cases awaiting trial.

Survey responses indicated that case backlogs increased from just under 9,000 on average at the start of 2020 to 14,056 following court disruptions associated with the

pandemic. The average increase in case backlogs across responding offices was 62%. However, it should be noted that because only eight offices provided a response on this particular subject, this finding is more appropriately classified as qualitative than quantitative. While we caution against interpreting these as estimates for broader levels of case-backlog nationwide, these instances indicate that pandemic disruptions have had significant effects on case backlogs in at least some prosecutors' offices that manage tens of thousands of cases in the most populated counties in the country.

This qualitative analysis of individual office staffing, compensation and programs demonstrates the wide variety in these measures of office resourcing and prosecutors' office activities. Future research can better contextualize how the returns to changes in these parameters and investments in office personnel and resources by collecting more detailed information on caseloads and other metrics that offices reported are used in their staffing and evaluation processes. Additionally, larger samples will allow for broader understanding of the impact of staffing, compensation and workload on the functioning of prosecutors' offices. The qualitative nature of this report, coupled with the large size and scope of each responding office however, is very revealing as to how staffing and compensation decisions vary considerably across offices and the potential implications these resource decisions can have for both prosecutors and community members throughout the country.

Conclusion

The prosecutors' offices studied in this survey are among the largest in the country, each with a jurisdiction containing hundreds of thousands of residents. Each office processes thousands of cases and employs dozens if not hundreds of attorneys and staff. Despite their size and the scope of their responsibilities to ensure the carriage

of justice and the pursuit of safer communities, our findings suggest that some if not all of these offices are constrained in their ability to best achieve these goals due to inadequate staffing, compensation, or resources to erect new courts and programs to better serve their communities. These challenges have likely been exacerbated by disruptions from the COVID-19 pandemic, and may result in further strain, burnout, and attrition that can undermine the functioning of prosecutors' offices. Evidence of inefficient staffing, compensation, and moderate take-up of auxiliary programs such as specialty courts suggests that there is scope for new models of staffing, resourcing, and workflow that can improve the capacity of prosecutors to pursue justice, build trust and make their communities safer and healthier.

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