

August 2023



THE IMPORTANCE OF PROSECUTOR CASELOADS AND THE CHALLENGES OF RESEARCH



NBP

Sponsored by:

KARPEL
FOUNDATION





The Importance of Prosecutor Caseloads and the Challenges of Research

The National Best Practices Committee	iv
Introduction.....	1
Caseload vs. Workload.	2
Negative Impacts of Excessive Prosecutor Workloads.....	2
No National Workload Standard for Prosecutors.....	3
Defender Standards.....	3
Concerns About a Prosecutor Standard	3
Calculating Prosecutor Caseload and Workload	4
Time Study.....	4
Sufficiency Study	5
Comparative Analysis of Caseload and Workload.....	6
Historical Comparisons	6
Comparisons to Other Public Agencies	6
Comparisons to Other Comparable Prosecutor Offices	7
Conclusion	7



THE NATIONAL BEST PRACTICES COMMITTEE

Prosecutors' Center for Excellence's National Best Practices Committee (NBP) brings prosecutors together to share ideas, discuss challenges, and develop guidance on today's prosecution best practices.

The NBP includes experienced prosecutors from large and small offices in 27 states. The committee meets on a regular basis to collaborate on creating a vision for the prosecutor's office of the future and issuing papers related to that topic. This is the third NBP paper.

The mission of the NBP is to improve the criminal justice system by providing support, guidance, and considerations for prosecutors. The NBP addresses the challenging issues impacting victims, witnesses, the accused, and the community. The guiding principles for NBP's work are a commitment to justice, integrity, ethics, fairness, and equity for all.

See our work and our members at: [National Best Practices Committee Webpage](#)



The Importance of Prosecutor Caseloads and the Challenges of Research

INTRODUCTION

The public is seeking greater accountability and transparency from their public officials. One question that has arisen is whether a standard can be created for the ideal prosecutor caseload and workload. Such a standard would allow the public and funders to see if the prosecutor had sufficient resources for the work it handles. It is also a topic of great interest to prosecutors as they are faced with growing workloads, and they would like a way to demonstrate this increase. The increase is caused by many factors including:

- Crime has gone up in many jurisdictions, resulting in more cases to prosecute.
- Advances in technology and forensics require prosecutors to sort through time-consuming digital media and scientific evidence in every type of case.
- Backlogs caused by the pandemic ballooned the number of cases that prosecutors are managing on top of the flow of incoming arrests.
- And like other law enforcement, prosecutors are finding it harder to hire and retain attorneys and support staff. As a result, many offices are handling more work with fewer people.¹

This paper addresses the importance of understating prosecutor caseloads and workloads, and the challenges researchers have faced in studying this issue.

Our second paper on this topic, “Studying Caseloads and Workloads: Benefits for Prosecutor Management and Funding,” continues this discussion by looking at additional methods for analyzing caseloads and workloads within an individual prosecutor office, as well as how this analysis can be used for management and to persuade funders when additional financial support is needed.

¹ The information used for this paper was derived from presentations to the National Best Practices Committee by Elaine Borakove, President, JMI; Howard Henderson, Director, Center for Justice Research, Texas Southern University; and Nell Christensen, Chief Deputy District Attorney, Clark County (NV) District Attorney’s Office.

The paper also uses information from the following articles: How Many Cases Should a Prosecutor Handle? Results of the National Workload Assessment Project, APRI (2002); The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants, Adam M. Gershowitz & Laura R. Killinger, Northwestern University Law Review, Vol. 105, No. 1 (2011); An Examination of Prosecutorial Staff, Budgets, Caseloads and the Need for Change: In Search of a Standard (and subsequent clarification), Jennifer Wyatt Bourgeois, Trikeah Henry, Melissa Kwende, Howard Henderson, Center for Justice Research, Texas Southern University (2019).



CASELOAD VS. WORKLOAD.

Assessing the volume of cases and pace of disposition, as well as time and effort spent on non-case demands, allows for a full understanding of an office’s functioning and resource needs.

Prosecutorial work is often described in terms of *caseload* – meaning, the volume of cases a prosecutor’s office files or disposes of annually. However, the work of a prosecutor’s office includes numerous responsibilities beyond casework. Administrative and supervisory duties, coordination with law enforcement, multi-disciplinary task forces, community outreach, and legal training are just a few of these other tasks.²

This broader scope of activities can be described as the office’s *workload*- the volume of cases *plus* any non-case-related tasks. Both metrics are important.

NEGATIVE IMPACTS OF EXCESSIVE PROSECUTOR WORKLOADS

As the American Bar Association (ABA) has recognized, prosecutor overwork can negatively impact the entire criminal justice system. The ABA’s Criminal Justice Standards state:

“The prosecutor should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers the interests of justice in fairness, accuracy, or the timely disposition of charges, or has a significant potential to lead to the breach of professional obligations.”³

When prosecutors have excessive workloads, they have insufficient time to devote to each case they are assigned. This problem can lead to breakdowns in the justice process, such as the failure to convict guilty defendants, the failure to investigate claims of innocence, inadequate attention paid to victims, incomplete assessments of criminal activity, plea-bargained cases with inappropriate dispositions, and weak cases that are not dismissed promptly. Constitutional obligations, such as the disclosure of Brady material, also may be hampered. In short, excessive prosecutor workloads harm victims, defendants, and the public at large. See, [Video presentation](#)

² See, Prosecutorial Work Not included in Caseload Counts, NBP (2023) and see, Prosecutorial Work Not included in Caseload Counts, NBP (2023) at www.pceinc.org/caseloads-best-practices/. (Last viewed 8/13/23).

³ Standard 3-1.8, Prosecution Function, Criminal Justice Standards, 4th Ed. (2017)



by [Professor Howard Henderson, Texas Southern University \(2023\)](#) and [The State \(Never\) Rests, Northwestern University Law Review \(2011\)](#).

NO NATIONAL WORKLOAD STANDARD FOR PROSECUTORS

National standards for prosecutor workload or caseload do not exist. A recommended baseline number of cases per prosecutor, or a matrix that weights types of cases and non-case responsibilities, could be a helpful starting point for evaluating office workload. However, no national group has promulgated such standards.

Efforts have been made to create workload recommendations, but researchers discovered that the many substantive differences between states, localities, and individual offices stood in the way of establishing an accurate or useful model. Statutes, law enforcement policies, victim rights laws, population traits, and crime trends vary widely across prosecutorial jurisdictions. In addition, prosecutor offices diverge greatly in terms of their organizational model, policies, staffing, and available resources. This diversity of external and internal factors has made a national workload or caseload standard difficult to establish. See, [How Many Cases Should a Prosecutor Handle?, APRI \(2002\)](#) and [Video presentation by Elaine Borakove, President JMI \(2023\)](#).

Defender Standards

The lack of specific national guidance is notable given the fact that caseload standards for public defenders have existed for fifty years. In 1973, a national commission led by the U.S. Department of Justice advised that a public defender's yearly caseload should not exceed 150 felonies, or 400 misdemeanors (excluding traffic), or 200 juvenile court cases, or 200 mental commitment cases, or 25 appeals cases. Although these numbers were arrived at subjectively and not from objective data or analysis,⁴ they were endorsed again by the ABA and American Council of Chief Defenders in the 2000s, and remain the standard often used today to advocate for public defender resources.

Concerns About a Prosecutor Standard

Some groups have expressed concern that developing workload standards for prosecutors will lead to greater levels of incarceration. This concern is valid. A lighter workload for a prosecutor's office that prioritizes harsh prosecution, places little or no importance on diversion programs, and disregards the harms of incarceration, frees up resources to continue harmful practices and prosecutions. However, research has shown that improving prosecutor workloads can help the entire criminal justice system depending on the office's policies. While there might be stronger prosecution of certain defendants, a manageable workload also allows prosecutors to better identify cases that should be dismissed and defendants eligible for diversion programs or

⁴ See, *Securing Reasonable Caseloads, Ethics and Law in Public Defense*, American Bar Association, Standing Committee on Legal and Indigent Defense, Norman Lefstein (2011), p. 45.



treatment. See, [An Examination of Prosecutorial Staff, Budget, Caseloads, and the Need for Change](#), Texas Southern University, Howard Henderson.

CALCULATING PROSECUTOR CASELOAD AND WORKLOAD

Although national-level guidance for prosecutors is not available, states, localities, and individual prosecutor offices can develop their own workload standards. Establishing these standards involves assessing how much work prosecutors are required to handle, and then analyzing whether this caseload and workload is excessive given their procedural, legal, and ethical duties.

Several methods can be used to determine prosecutor caseloads and workloads. The most *basic calculation* is to simply divide the number of cases in an office by the number of attorneys or the number of available attorney hours. A *weighted calculation* adds more information to this process by also looking at the level of attorney effort and processing time for different types of cases. These calculations can be helpful, but they are based on limited details and only describe an office's status quo, with no insight into future workload or the time that should ideally be devoted to a case.

The most accurate and comprehensive caseload and workload calculations are accomplished using a combined *time study* and *sufficiency study*. This approach is the method of analysis preferred by researchers in the field today, as it better identifies current resource gaps and future needs. See, [Video presentation by Elaine Borakove, President JMI \(2023\)](#).

Time Study

A time study tracks the time that attorneys and support staff spend on the different types of activity that constitute the work of a prosecutor office. Activity categories are created, such as case preparation, filing of cases, pre-trial motion practice, victim and witness outreach, subpoena issuance, court appearances, and trial. For a period of time, but ideally a full year, employees – or a representative portion of them – record the time they spend each day on these activities.

Time studies also track the complexity factors of cases. For example, a simple theft case may be very straightforward and take relatively little of the office's time. On the other hand, a case with multiple defendants, multiple victims, significant violence, statutory complexity, competency issues, or insanity defenses may require far more time to shepherd to disposition. Also, within the same category of case, some can be completed quickly, while others are complex.

At the conclusion of the time study, the collected data can be analyzed to provide an array of insights into the prosecutors' workload, including:

- **Disposition Time:** The average amount of time spent to bring a case from intake to disposition.
- **Step by Step Analysis:** The time spent, and number of dispositions achieved during each step of the prosecutorial process.
- **Variations by Case:** How these time and disposition measurements vary for different types of cases.



- **Complexity Factors:** How different complexity factors affect the amount of time spent on a case, and at what point cases with those factors reach disposition.
- **Non-Case Work:** The time spent on non-case responsibilities.
- **Time Spent by Staff on Tasks:** How prosecutors and support staff are spending their time in a given day, week, month, or year in terms of casework and non-case-related tasks.
- **Hours Worked:** Numbers of hours worked, calculated by staff member, job title, unit, and the office as a whole.

This information can be used to better understand the average caseload and workload within the office or locality, and how those metrics translate into the attention and effort available for the range of cases being handled. From there, offices can evaluate whether this time, attention and effort are sufficient to provide quality representation.

Sufficiency Study

Once a time study is completed, then a sufficiency study can be undertaken. A sufficiency study is a survey that asks attorneys and staff members if the amount of time they spend on different activities is sufficient to do them competently. Do they have enough time to adequately conduct each step of their cases, as well as their other responsibilities? Too little? What would be a sufficient amount of time for each type of work they must do?

The survey also asks for reasons why the current time available is appropriate or insufficient. For example, is it simply the number of cases or other tasks being assigned that are impacting sufficiency? Or are there other factors, such as technology challenges or attorneys doing non-legal work that are costing time?

The survey results about sufficient time are then compared to the time study's results about the average time actually spent per task, and the variance between them can be calculated. This analysis provides crucial data about:

- **Slowing Factors:** Factors that are negatively affecting the time to disposition for different case types.
- **Case Weight:** How much effort is needed versus the actual time expended for various kinds of cases.
- **Ratios of Complex Cases:** Ratios of complex to non-complex cases in the office and in a typical prosecutor caseload.
- **Workload Measure:** The level of individual and staff effort on case-related and non-case-related activity.
- **Reasonable Volume of Work:** How many cases and non-case tasks an attorney or support staff member can reasonably handle.
- **Ratio of Lawyers to Support:** How the ratio of lawyers to support staff impacts time spent on case and non-case work.



- **Resource Projections:** Resource projections for meeting the office’s overall workload, so that individual employees do not carry excessive workloads. See, [Video presentation by Elaine Borakove, President JMI \(2023\)](#).

COMPARATIVE ANALYSIS OF CASELOAD AND WORKLOAD

Comparing data points about an office’s work is another useful method for understanding caseload and workload, and for demonstrating that workload has become excessive.

Historical Comparisons

- **Workload today compared to other points in time:** An office can look at how it functions today compared to its workload in earlier time periods. A comparative analysis might focus on the number of cases handled, the types of cases, any non-case responsibilities, the number of attorneys and other staff, and the experience-level of those employees. Comparing these numbers over different time periods can reveal whether staffing and expertise are keeping up with the workload the office must handle.
- **Specific case types compared to other points in time:** Complex cases that require more time to handle, such as homicides, sex crimes, frauds, and cyber-related crimes may increase or decrease over time. Analyzing those crime trends, as well as the number of attorney and staff available to work on those cases, also can provide insight into workload and needed resources.
- **Average time needed to prosecute a case compared to other points in time:** As technological advances change the nature of crime investigation and evidence, the average case may take more time to properly prosecute. Offices with historical data on average time spent per case can compare this information to the time currently spent on cases, and then determine whether evidence management and similar factors are impacting their workloads.

Comparisons to Other Public Agencies

- **Prosecutor resources compared to public defender and appointed counsel resources:** The resources allocated to other publicly funded attorneys’ offices in the criminal justice system can offer a useful comparison to prosecutor resources. Comparative numbers of cases and attorneys are an intuitive starting point but given the differences between the job duties of a prosecutor and a defense attorney, these comparisons may be misleading. Ideally, all agencies should work together to ensure that they are receiving sufficient funding to meet their statutory and ethical obligations.
- **Prosecutor resources compared to law enforcement and court resources:** Other agencies within the criminal justice system likely receive resource allocations from the same state and county sources that fund prosecutor offices. A comparison with law enforcement and court allocations may identify discrepancies that can bolster an argument for more prosecutor resources.



Comparisons to Other Comparable Prosecutor Offices

Researching the staffing, caseloads, and workloads of prosecutor offices of a similar size, jurisdiction, and organizational structure can shed light on how prosecution is funded and organized across the country. For example, small offices tend to have less resources and higher caseloads. Also, caseload numbers will vary significantly depending on whether the office practices “vertical” or “horizontal” prosecution. These comparisons can help demonstrate if an office’s resources are not aligned with the norms within the same state and in other states.

CONCLUSION

Caseload and workload are the fundamental measures of how a prosecutor office functions. Yet, national standards for prosecutors do not exist. Instead, each office must calculate its own caseload and workload, and assess whether it has sufficient resources to competently meet these demands. Time studies, sufficiency studies, and comparative analyses are effective methods for undertaking these assessments.

In our next paper, the National Best Practices Committee will delve further into this discussion by exploring practical aspects of analyzing and using caseload and workload information within an office (rather than a national standard), including:

- Methods for calculating caseloads and demonstrating trends using case management tools.
- Components for calculating prosecutor workload, including non-case related work.
- The complexities of different types of cases and calculating the sufficiency of time devoted to different types of cases that are in the caseload.
- How to use caseload/workload data to advocate for additional office resources.