

ASSOCIATION OF
PROSECUTING ATTORNEYS

**PROSECUTORIAL CASE
BACKLOG PROJECT**

SURVEY FINDINGS REPORT

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ASSOCIATION OF
PROSECUTING
ATTORNEYS

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Introduction

The Association of Prosecuting Attorneys (APA), a non-profit organization composed of US prosecutors, conducted a survey to understand the prevalence of and factors associated with case backlogs. Backlogs occur when a large number of cases are pending before the court for a longer period than typically experienced and/or a period longer than prescribed by the court. In a survey of 50 of the largest prosecutors' offices conducted by APA in 2020, 14 responding offices reported just under 9,000 cases awaiting trial on average.¹ Following court disruptions due to COVID-19, there was an average increase of 5,565 cases per office, a 62% increase.

Case backlogs can occur when the caseload per individual prosecuting attorney rises holding all other productive capability constant. In practice, the level of staffing (measured by caseload per attorney) is extremely varied.² Further, models of prosecution vary across offices³ and different models can require a different mix of attorney specialties.⁴ Despite this complexity, office staffing is very idiosyncratic and not often tied to per attorney caseloads¹, which can result in significant and potentially burdensome individual caseloads.³ Excessive caseloads for individual attorneys can result in longer case processing time, a greater risk for decision-making errors, increased plea bargains and dismissals, career burnout, and employee turnover.⁶

Funding shocks have likely exacerbated the size of individual attorney caseloads over the past 20 years. The great recession following the financial crisis in 2008 reduced state budgets, employment, and payroll, shrinking the resources available to meet staffing and resource requests from prosecutors' offices,⁵ leading to rising prosecutor workloads and stagnating or shrinking budgets.⁶

The expectations of prosecutors and their obligations when working cases have evolved

significantly since 2007 due to changing legal requirements and new technologies. Victims' rights laws, which require additional engagement with victims, increase the amount of time spent on person-involved cases (e.g. CA Prop 9 in 2008⁷). There are presently Open Discovery laws in 46 states, up from roughly a third of states in 2004,⁸ that increase the requirements for timely evidence collection. Body-worn cameras have become more commonplace for law enforcement, as nearly 50% of 15,238 general-purpose law enforcement agencies had body-worn cameras in 2016.⁹ Video evidence generated by body-worn cameras are more labor-intensive to review, extending the amount of labor hours required to prepare a case. Additionally, the demand for specialized attorneys to review cases as part of conviction review/integrity units,¹⁰ while improving the equitable administration of justice, can potentially strain limited staffing resources.

All of these staffing and resource constraints were tested during the COVID-19 pandemic, which put unusual demands on offices to continue their essential functions despite health concerns and court closures. While many offices were able to adopt new technologies to maintain their functioning, these pivots did not alleviate the rising caseloads and work burdens on individual prosecutors.¹

Methods

Survey Design

The goal of this survey was to collect specific data regarding caseloads, staff numbers, and increases/decreases in backlogs over the past four years. Data was collected on jurisdiction- and office-level information including population size, staffing and caseload from 2019 through 2022. Additional questions focused directly on the presence of case backlogs, factors associated with backlogs, and programmatic responses to changing caseloads, particularly those due to the COVID-19 pandemic.

Office Characteristics

Offices were asked about staffing levels of adult criminal case prosecuting attorneys and the average experience level of those attorneys both presently and prior to March 1, 2020 (reflecting the onset of public lockdown due to the COVID-19 pandemic). For each year from 2019 through 2022, were asked how many prosecutors left (i.e. resigned, transferred, terminated, or retired) their office and how many were hired. Offices also were asked an open-ended question: “In your opinion, has attorney hiring been more difficult in your office since March 1, 2020? If so, please elaborate.”

Offices were asked a series of questions about the number of active cases of certain types at the time of response as well as historically as of March 1 for each year from 2019 through 2022. These case types included active adult criminal cases, person-involved (i.e. a crime that has as an element of the use, attempted use, or threatened use of physical force or other abuse of a person) misdemeanor crimes, person-involved felony crimes, non-person-involved misdemeanor crimes, and non-person-involved felony crimes.

Office characteristics captured include the types of cases they handle, whether their state is prosecution-charging or police-charging or a hybrid of both, and whether they employed a vertical, horizontal, or hybrid prosecution model. Offices also reported the population size of their jurisdiction (1-250,000; 250,001-500,000; 500,001-1,000,000; 1,000,000+).

Case Backlogs

For the purposes of this survey, case backlog(s) is defined as: “cases that are pending before the court for a longer period than typically experienced and/or a period longer than prescribed by the court.” Offices were asked to indicate whether they had an active adult criminal case backlog in the three years prior to March 1, 2020 and/or after March 1, 2020 and whether the backlog started before or after March 1 if they indicated having a backlog.

Offices were then asked what programs or efforts their office implemented to address pre-pandemic backlogs (if applicable) and which of those programs are still active today. These fields were asked similarly for backlogs that started post-pandemic. All responding offices were then asked if there were any programs that they did not implement or had to discontinue and, if so, to explain what barriers they encountered.

Backlog Drivers

To capture the potential mechanisms that caused or exacerbated backlogs during the pandemic, offices were asked what factors impacted or worsened their office’s case backlog since March 1, 2020. Offices could select any responses from the following list

- Litigation suspended or significantly reduced
- In-person appearances suspended or significantly reduced
- Staff health related impacts
- Staff access to necessary resources to complete job functions
- Attorney staff reduction/retention issues
- Non-attorney staff reduction/retention issues
- Partner agency staffing/policy changes
- Funding
- Morale
- Policy changes within office
- Other (please specify)

In a subsequent field, offices could indicate which of their selected answers continue to impact the active adult criminal case backlog.

Sample Frame

In order to draw a representative sample reflecting the variety in jurisdiction sizes served by prosecutor’s offices that was broadly nationally representative, the survey population was constructed in four tranches, combining stratified sampling and convenience

sampling. The following groups were all fielded surveys by APA.

- 50 county prosecutors' offices whose jurisdictions contained the 50 most populous U.S. cities
- The city prosecutor's office in each of the above cities if applicable
- The city prosecutor's office 2-5 most populous cities in each state not represented in the above list
- APA members and listserv members not captured in the above offices

The first tranche of the 50 largest offices comports with the large offices previously contacted by APA in the Workload and Compensation survey. Further, these offices collectively prosecute a significant share of the nation's criminal cases. The second and third groups ensured contacts were made with at least 2 if not more offices in each state. The last tranche was a convenience sample that was more likely to contain offices representing smaller jurisdictions.

The Association of Prosecuting Attorneys contacted each office with a solicitation email (appendix figure A3). The solicitation asked that a person(s) knowledgeable about office staffing and compensation complete the survey. Surveys were administered through Qualtrics and fielding began November 28, 2022 and concluded March 15, 2023.

Analysis

Caseloads per attorney are constructed by dividing caseloads by the number of attorneys in the same year. Attorney staffing in 2022 through 2020 are constructed from present day staffing by adding back the number of attorneys who separate and deducting hires in the same year where this data is available. Otherwise, the present-day number of attorneys is used. For one office-year pair, the number of cases is interpolated where case numbers are available for the subsequent and previous year.

Numerical survey responses are described using unweighted means such that each office contributes the same weight regardless of jurisdiction population. The range of numerical responses are presented using standard deviations and interquartile ranges (the difference between the 75th and 25th percentile of responses). To protect the confidentiality of participating offices, minimum or maximum values discussed are bottom- and top-coded respectively. Individual staffing counts are rounded to the nearest 10 staff and case counts are rounded to the nearest 100 cases. When offices reported ranges for individual numerical responses, the midpoint of the range was used in all calculations or assigning of categorical description. Constructed measures (e.g., cases per attorney) were not rounded or bottom/top-coded when presented.

Open-ended responses are described qualitatively. Where applicable, responses are categorized to allow for comparison across offices. Individual responses quoted in this report have had all directly identifying information censored.

Results

Survey Response

After adjudicating multiple responses by some offices (offices could make multiple submissions to supplement partial responses), there were 31 responses, each representing a different office across 24 states. These 31 are a mix of complete responses and partial responses in which the office could be identified. The survey platform measured over 40 additional engagements with the survey, suggesting offices entered the survey platform multiple times before ultimately submitting responses in a subsequent submission.

Responses contain varying degrees of missingness, particularly with regard to case numbers. In solicitations and responses to office inquires, offices were encouraged to submit partial responses in lieu of no submission if there was a particularly

burdensome element of the survey or if a responses could not be made. Offices were encouraged to leave unknown fields blank and submit additional partial responses to supplement missing responses if data became available. Multiple responses were combined and, in rare instances, the second response was allowed to overwrite an earlier response.

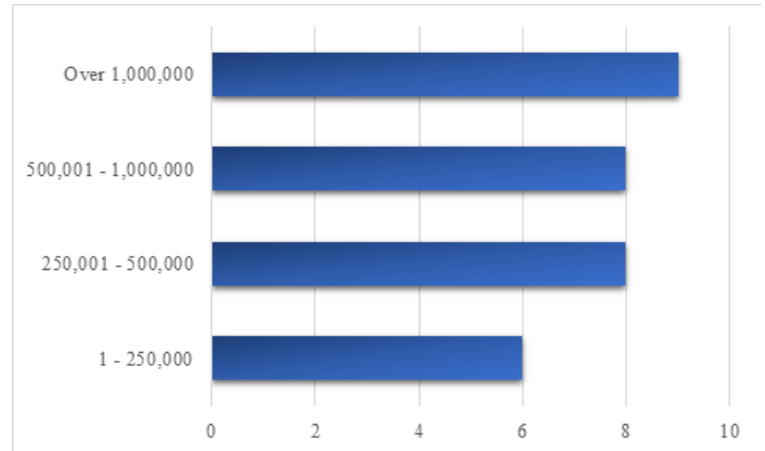
Findings

Office Characteristics

The solicitation asked that a person(s) knowledgeable about office staffing and compensation complete the survey. In nearly a third of responses, the elected or appointed prosecutor directly responded to the survey, with another third including the first assistant or team/unit leader (Figure 1). Common responses for the “other” category include other staff chiefs or assistant attorneys.

The responding offices were from 24 states, and were varied in their office characteristics. Offices were fairly evenly distributed in jurisdiction size (Figure 2). Half of responding offices (n=16) were in prosecution-charging states (where prosecutors are primary agency to bring charges), with the other half mixed between police-charging states, a hybrid of both policies, or an alternative model (Appendix Figure A1). Half of offices indicated a hybrid model of vertical and hybrid prosecution (n=16), with 13 offices reporting a vertical model of prosecution and 2 reporting a horizontal model of prosecution (Appendix Figure A2).

Figure 1: What best describes your role in the prosecutor's office?



Offices were somewhat varied on the types of cases they handle, though all offices reported handling Adult criminal misdemeanors (n=29) and/or Adult criminal felonies (n=28).

Figure 2: What is the population of your jurisdiction?

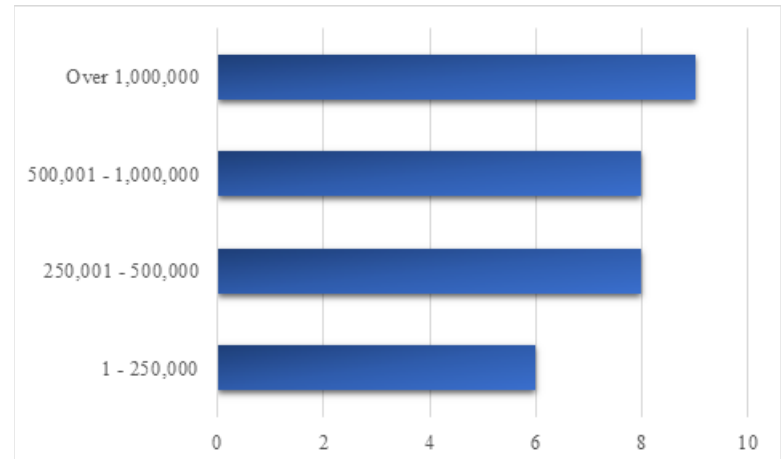


Table 1: Attorney staffing, experience and caseloads

Pre-pandemic (before March 1, 2020)	Average	Median	IQR
Number of attorneys	89	50 ^a	[30, 100] ^a
Average years of experience	10	10	[7.5, 12]
Adult criminal cases per attorney (2019) ^b	139	84	[52, 192]
In your office currently			
Number of attorneys	97	50 ^a	[30, 110] ^a
Change from pre-pandemic	4	0	[-2, 2.5]
Share with no change or declines from pre-pandemic	69%	NA	NA
Average years of experience	8	8	[7, 10]
Change from pre-pandemic	-1	0	[-2.75, 0]
Share with no change or declines from pre-pandemic	78%	NA	NA
Adult criminal cases per attorney ^c	176	100	[85, 179]
Change from pre-pandemic	37	27	[-13, 78]
Share with increase from pre-pandemic	64%		

Notes: Observations = 30. IQR = Interquartile range, the difference between the 75th and 25th percentile of the data. NA = Not applicable.^a The number of attorneys for any given office is rounded to the nearest 10 attorneys. Constructed measures, such as averages, are not rounded.^b Cases per attorney are constructed by dividing the number of cases in 2019 (n=11) by the number of attorneys on staff pre-pandemic (March 1, 2020).^c Cases per attorney are constructed by dividing the number of cases in at the time of response by the number of attorneys on staff at the time of response only for the 11 records that contain caseloads for 2019 as well.

Staffing

Table 1 presents findings about the numbers of attorneys and their average years of experience pre-pandemic and today. Presently, the offices in the sample employ an average of 97 attorneys, up from a mean of 89 pre-pandemic. Despite an increase in the average number of attorneys, more than two thirds of offices in the sample reported either no change or a decline in the number of attorneys in their office. This discrepancy is likely due to one large office reporting a significant staffing increase that pulled up the average. Notably, the level of staffing is quite varied, with half of all offices reporting staffing between 30 and 100 attorneys.

On average, the years of experience among attorneys has declined by 1 year, with a quarter of offices indicating a reduction in attorney experience of 3 years or more. Overall, 78% of offices indicated that the level of attorney experience has declined or was unchanged in the present compared with pre-pandemic.

The average number of adult criminal cases per

attorney in 2019 was 139 cases per attorney, with a median caseload of 84 cases per attorney. Both the mean and median rose to 176 and 100 cases per attorney, respectively, at the time of surveying (2022- 2023). While a third of offices with matched records had modest declines in the number of cases per attorney, the majority of reporting offices indicated higher caseloads for attorneys in the present when compared to pre-pandemic. Importantly, this difference is not reflective of caseloads at the height of the pandemic (2020-2021), but in the years following the resumption of normal court operations in 2022.

Offices were asked about annual attorney staffing changes: the number of prosecutors who left (i.e. resigned, transferred, terminated, or retired) as well as the number who were newly hired in each year from 2019 to 2022. Of the 12 offices that completed this section of the survey, 5 reported net decreases compared with 7 who reported net increases in staffing. In 2022, on average 22% of prosecutors

resigned, transferred, retired, or terminated, with half of reporting offices reporting a share of outgoing prosecutors between 12% and 22%. Likewise, the reported numbers of prosecutors being hired in 2022 represented an average of 17% of the staff level in the same year, with half of offices reporting a share of incoming prosecutors between 8% and 23% of the same year level of staff.

Offices were asked to comment on whether they perceived attorney hiring to be more difficult post-pandemic (after March 1, 2020). Each of the 18 responding offices gave an answer affirming their difficulty hiring attorneys post-pandemic. Selected responses are produced in Table 2.

Notable trends in the responses include dwindling applicant pools and difficulties matching the compensation and benefits of other entry-level legal jobs. The responses emphasized that prosecution work has lower compensation relative to other entry-level positions (where there has been an increase in available higher paying positions), that prosecution can be very stressful with high caseloads, and that expectations of new applicants are for more flexible or remote work, which prosecutors' office are not uniformly able to offer.

Caseloads

Offices were asked to report caseloads by type for the present day (2022-2023) and years 2019-2022. Fourteen offices provided complete or partial responses to these fields, and 12 offices had sufficient responses to compare caseloads through time (i.e., a comparison could be made between present day caseloads and caseloads in either 2020 or 2019). Figure 3 shows the trends in adult criminal cases per attorney from 2019 to the present day. Among the responding offices, the average number of cases rose from 139 in 2020 to 184 in 2021, then declined slightly to 175 in 2022.

The median number of cases per attorney was 84 attorneys in 2019, which rose to 104 in 2020. The median number of cases per attorney peaked at 111 in 2022 and was 103 cases per attorney when offices were surveyed in 2023. There is a trend in which the 25th percentile climbs from just over 50 cases per attorney in 2019 to 87 in 2023, suggesting there was a larger increase in the number of cases per attorney among office that had lower case counts pre-pandemic.

Table 2: In your opinion, has attorney hiring been more difficult in your office since March 1, 2020? If so, please elaborate (Selected Responses)

Office Characteristics	Response
Role: Elected or appointed prosecutor Population: 1 - 250,000 Staff: ~30 Attorneys	<i>Yes. Salaries are less competitive than other DA Offices throughout the state. We do not offer remote work, which many attorneys are now requiring.</i>
Role: Team or unit leader or manager Population: 250,001-500,000 Staff: ~20 Attorneys	<i>Yes. Pre-pandemic, we would receive 125+ applications for an open prosecutor position. Since March 1, 2020, we usually receive less than 15 applications for an open attorney position.</i>
Role: Team or unit leader or manager Population: 500,001 - 1,000,000 Staff: ~80 Attorneys	<i>Yes. It has been especially difficult to recruit and hire lateral prosecutors (which is what we need) due to an exodus of very experienced prosecutors since the start of the pandemic. New lawyers are also more difficult to recruit and retain due to heavy caseloads and other employment options that are perhaps less stressful and more financially lucrative.</i>
Role: First assistant prosecutor Population: Over 1,000,000 Staff: ~80 Attorneys	<i>Yes. Inflation, cost of living increases, and stifling workloads have affected the number of people able and willing to work on a government salary in our jurisdiction, despite significant gains in employee compensation.</i>

Table 3: Adult criminal cases per adult criminal case attorney, 2019-2023

	2019	2020	2021	2022	2023
Average	139	155	184	180	175
Median	84	104	101	111	103
Interquartile range (25 th , 75 th percentile)	[52, 193]	[58, 179]	[79, 192]	[74, 176]	[87, 175]

Notes: Observations = 12. Cases per attorney are constructed by dividing the number of cases in at the time of response by the number of attorneys on staff at the time of response.

Four offices had lower caseloads per attorney when compared with caseloads in 2019. The remainder of offices had higher caseloads in the present day (2022-2023) when compared with 2019. There is wide variation in the number of cases per attorney, with two offices having over 400 cases per attorney in some years. While most offices experienced smooth changes in the number of cases per attorney from year to year, one office with a jurisdiction size between 500,000 and 1 million residents had an unusual pattern by which their caseloads fell significantly from over 180 per attorney in 2019 to just over 60 in 2022, climbing up to 100 per attorney in 2023.

Backlogs

Prevalence of Backlogs

Offices were asked specifically, “In your opinion, is your office currently experiencing an active adult criminal case backlog?” noting that, for the purposes of this survey, we are defining “case backlog(s)” as: “cases that are pending before the court for a longer period than typically experienced and/or a period longer than prescribed by the court.” Of the 22 offices that responded to this question, 18 indicated that they were currently experiencing a backlog. Of these 18 offices, 9 reported their backlogs had started pre-pandemic, with the other half reporting their backlogs began post-pandemic.

The offices in the smallest (<250,000) and largest (1,000,000+) jurisdiction sizes were the most likely to report that their current backlogs were from prior to March 1, 2020 (Figure 4). Offices in jurisdictions in moderately sized jurisdictions with backlogs reported that their backlogs began post-pandemic, with the exception of one office that indicated a pre-pandemic backlog. Among the four offices reporting no current backlog, one office in a moderately sized jurisdiction (population between 250,001 - 500,000) indicated a backlog during the pandemic that was resolved when trials resumed in 2021.

Of the 7 offices that reported backlogs that began pre-pandemic, 6 had the same or fewer attorneys post-pandemic (Figure 5). The one office with more attorneys was a very large office serving a jurisdiction of over 1,000,000 that increased its staff by just over 1% post-pandemic. Offices with no backlog or backlog that started after March 2020 had even mixes of changes in staffing levels. Despite this mix in staffing levels, offices whose backlogs started post-pandemic almost all indicated that the average level of attorney experience declined post-pandemic, compared to 50% of offices whose backlogs began pre-pandemic (Figure 6). This suggests that offices that had sudden onsets of case backlogs associated with the pandemic had more attorneys leave at that time.

Figure 3: Current experience of an active adult criminal case backlog by jurisdiction size and backlog onset

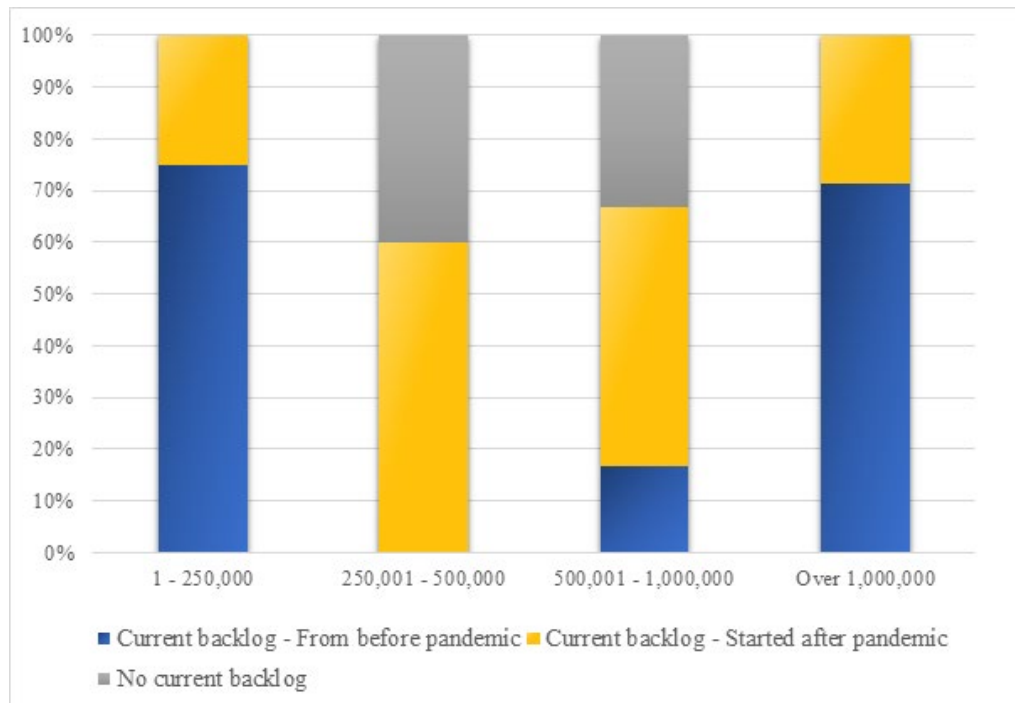


Figure 4: Current experience of an active adult criminal case backlog by staffing changes after March, 1 2020

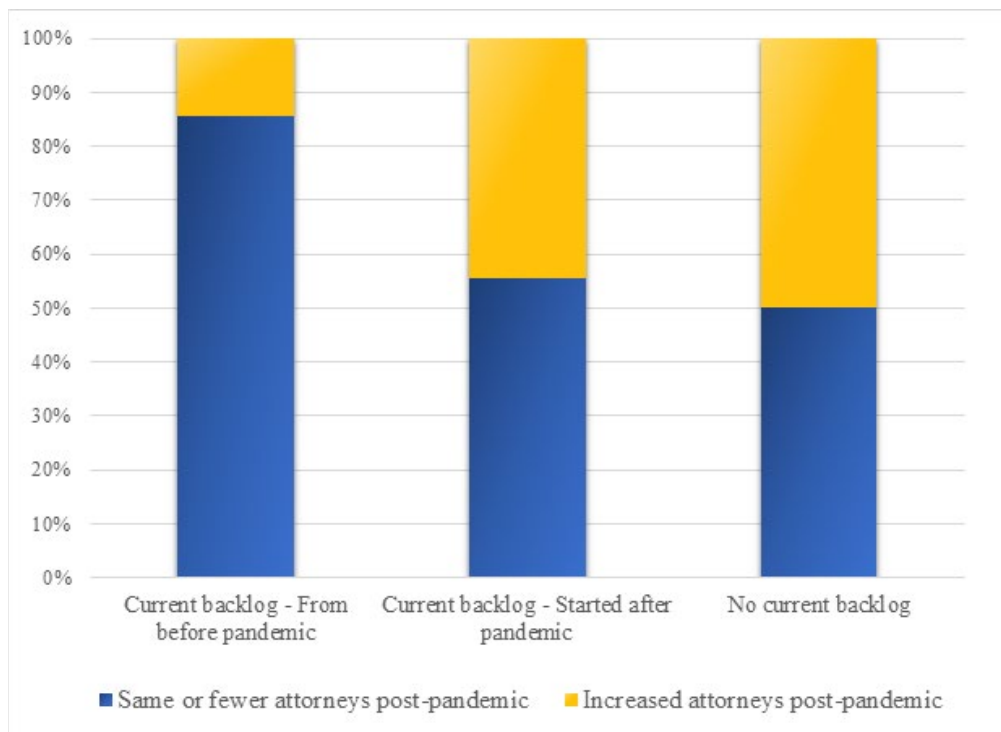
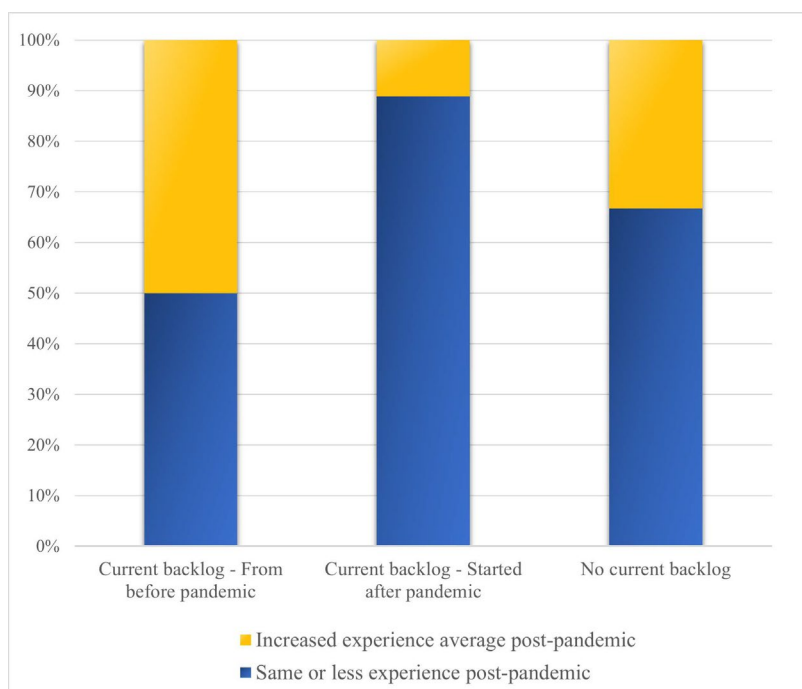


Figure 5: Current experience of an active adult criminal case backlog by attorney experience changes after March, 1 2020



Office-level Factors Associated with Backlogs and the COVID-19 Pandemic

Offices that indicated the presence of case backlogs were asked, “What factors impacted or worsened your offices case backlog since March 1, 2020?” Offices could select multiple responses from a pre-determined set of answers. The most common response among the 17 offices that provided responses were reductions in or retention of attorney staff, and that litigation was suspended or significantly reduced (Figure 7a). These factors were closely followed by issues with reductions in or retention of non-attorney staff, and that in-person appearances were suspended or significantly reduced.

When asked which of the reported factors continue to impact case backlogs in the present, there was a large reduction in offices reporting that litigation or in-person appearances were suspended (Figure 7b). Roughly two-thirds of offices that indicated staffing reduction or retention issues reported that these issues continue to impact backlogs. All but one office that indicated morale was an issue, and all offices that indicated funding was an issue reported that these factors continue to impact their case backlogs.

Programmatic Response to Case Backlogs

In order to assess the programmatic response to backlogs prior to the pandemic, offices were asked, “What programs or efforts did your office implement in the three years preceding the start of the pandemic (March 1, 2020), to address the backlog at that time?” Offices were prompted with a list of examples, “diversion, deflection, mass dismissal, staffing adjustments, pleading to a lesser charge/sentence reduction, etc.”

Selected responses are presented in Table 3 along with responses to a follow-up question, “Which of these programs or efforts are still active today?” Responses were mixed in how programs addressed backlogs directly. Diversion programs of some kind were mentioned by 7 responding offices, and were all mentioned as being retained in the present. While many offices indicated that they implemented programs to directly address rising caseloads, some responses highlighted that they acted preemptively to address rising caseloads or burdens, or envisioned programs as ways to address other needs, such as staffing concerns or equitable administration of justice.

**Figure 6a: What factors impacted or worsened your offices case backlog since March 1, 2020?
Check all that apply**

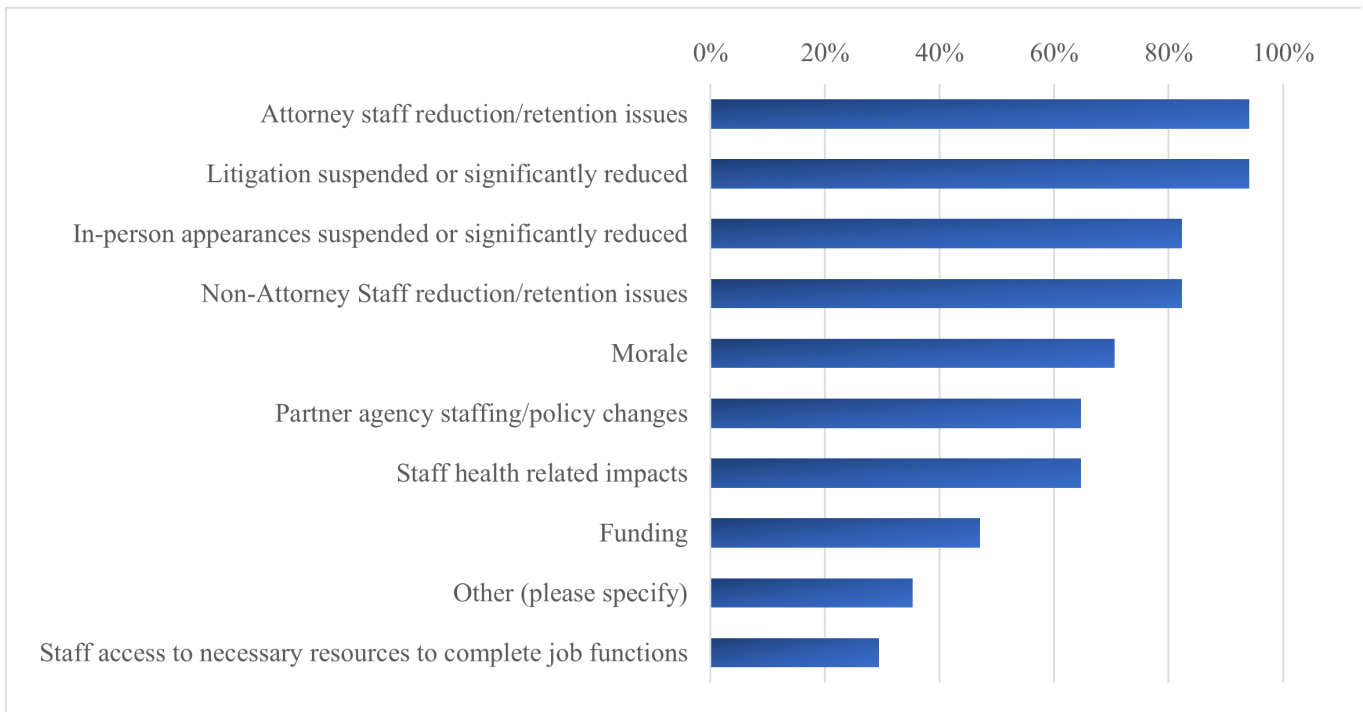


Figure 6b: Of those factors selected above, which ones, if any, continue to impact the active adult criminal case backlog?

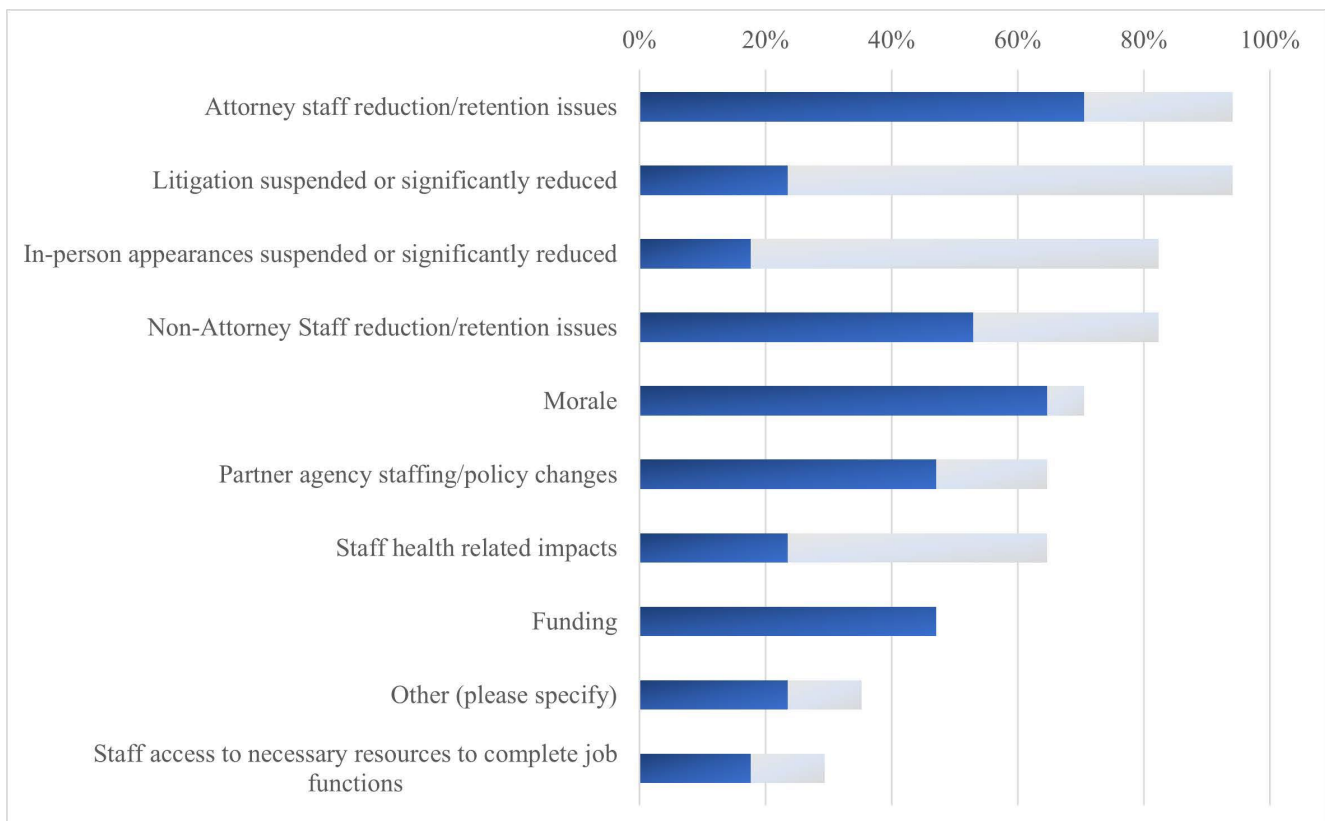


Table 4: What programs or efforts did your office implement in the three years preceding the start of the pandemic (March 1, 2020), to address the backlog at that time? (Selected Responses)

Office Characteristics	<i>What programs or efforts did your office implement in the three years preceding the start of the pandemic (March 1, 2020), to address the backlog at that time?</i>	<i>Which of these programs or efforts are still active today?</i>
Role: Elected or appointed prosecutor Population: 1 - 250,000 Staff: ~10 Attorneys	<i>Before the pandemic, we were simply understaffed (attorneys and court personnel) as well as lacking infrastructure to handle the staff we really need. It was “do your best with what we have.” The office increased some starting wages to attract more candidates, used juvenile and drug diversion courts, as well as active plea bargain negotiations.</i>	<i>We still have “the OG” methods, but with even fewer staff, more cases, and a new office culture. We are adding paid internships for law students, reaching out to new avenues for recruitment, and accessing new resources such as APA involvement.</i>
Role: Elected or appointed prosecutor Population: 250,001 - 500,000 Staff: ~40 Attorneys	<i>We took no formal steps to reduce backlog. We already had diversion in place and focused on making consistent, justice and fairness-led plea offers.</i>	Nothing has changed.
Role: Deputy Chief of the Trial Division Population: Over 1,000,000 Staff: 300+ Attorneys	<i>There was not a significant backlog as of 3/1/2020, although we may have been seeing the beginnings of one due to changes to the discovery laws.</i>	<i>Diversion programs, but they were designed to address equitable concerns, not backlogged cases.</i>

In order to assess the programmatic response to backlogs after to the pandemic, offices were asked, “What programs or efforts did your office implement after the start of the pandemic (March 1, 2020), to address the backlog?” Selected responses are presented in Table 4 along with responses to a follow-up questions, “Which of these programs or efforts are still active today?” and “Are there any programs that you did not implement or had to discontinue? If so, please explain what barriers you encountered.”

Offices enumerated many specific programmatic responses to pandemic disruptions and associated case backlogs. Key themes in the responses revolved around *staffing, case dispositions* (e.g., diversion, deflection, dismissal, discretion in charging or pleas) and *efficiencies*.

Some offices mentioned ad hoc staffing increases. For example, one office hired back former prosecutors part time to assist in case screening. Others received temporary funding to hire support staff or additional prosecutors, but this was not a common response. More frequently, offices reported staffing “adjustments.” When this is described specifically, adjustments refer to reassigning semi-specialized staff to different tasks to explicitly manage high caseloads.

For example, one office serving a large jurisdiction (1,000,000+) reported they, “assigned misdemeanor DV cases to additional attorneys who previously had not handled those cases. Brought in retired DDAs to assist our current trial DDAs in writing trial briefs on backlog cases. Shifted non-trial work (e.g., calendar coverage) previously done by backlog trial attorneys to non-trial attorneys.” Interestingly, this office and others reported retaining changes to staffing assignments, though many offices reported lack of funding for ad hoc staffing increases or lack of staff to maintain other post-pandemic programs to address backlogs.

Offices reported a wide variety of programs and strategies to manage case backlogs that operate by changing the ultimate disposition of cases. The strategies reported by offices, along with key examples, are described in detail in Table 5. Offices report that these programs were almost all retained through 2022. One notable exception was the discontinuation of misdemeanor diversion courts in one jurisdiction due to their state decriminalizing low-level drug possession.

Table 5: What programs or efforts did your office implement after the start of the pandemic (March 1, 2020), to address the backlog? (Selected Responses)

Office Characteristics	<i>What programs or efforts did your office implement in after the start of the pandemic (March 1, 2020), to address the backlog?</i>	<i>Which of these programs or efforts are still active today?</i>	<i>Are there any programs that you did not implement or had to discontinue? If so, please explain what barriers you encountered.</i>
Role: Elected or appointed prosecutor Population: 1 - 250,000 Staff: ~10 Attorneys	<i>I wasn't in charge at the time but our office was more aggressive with plea negotiations.</i>	<i>All.</i>	<i>We did not discontinue anything. We did not add any new diversion courts, which was one idea but our metrics show that diversion courts aren't very efficient or effective overall. When they do work, it's inspiring, but with limited resources it's not currently a viable option.</i>
Role: Legal Support Manager Population: 250,001 - 500,000 Staff: ~20 Attorneys	<i>We screen through the backlog for any same-defendant cases when a new case is booked in the jail under arrest so that defendant's referral/ backlog cases are bundled with new arrests for more efficiency.</i>	<i>We continue to screen through the backlog as defendants are arrested.</i>	<i>Yes, standard review of referral cases (other than the bundled cases addressed above). We did not have enough staff to address these cases.</i>
Role: Team or unit leader or manager Population: 500,001 - 1,000,000 Staff: ~80 Attorneys	<i>Mass dismissal, staffing adjustments, pleading to a lesser charge/ sentence reduction, dismissal of old bench warrant cases, adjusting filing standards for non-person misdemeanors.</i>	<i>Staffing adjustments, pleading to a lesser charge/ sentence reduction, dismissal of old bench warrant cases, adjusting filing standards for non-person misdemeanors.</i>	<i>We discontinued many misdemeanor diversion courts due to either pandemic related court closures or due to new legislation that decriminalized small drug possession conduct (e.g. closure of drug treatment courts).</i>
Role: Team or unit leader or manager Population: 500,001 - 1,000,000 Staff: ~40 Attorneys	<i>Property calendar resolution event; warrant review and dismissal; realignment of trial attorneys with judicial assignments; moratorium on charging felony drug possession for personal use amounts / We started monthly meeting with the bench and defense bar to look at numbers and reduction plans were developed. We created resolution events and made list of old cases that required dismissal. We also created policies to not prosecute felony related drug poss. offenses. I joined in reduction of bail and incarceration policies with law enforcement and the bench.</i>	<i>All of these, with the exception of jail reduction.</i>	<i>A criminal sexual conduct trial event. The event was too difficult to prioritize due to lack of resources on our side and non-compliance on the defense side. The bench had adequate staffing to hold the event,</i>
Role: Deputy Chief of the Trial Division Population: Over 1,000,000 Staff: 300+ Attorneys	<i>More discretion in charging, centralized grand jury scheduling, more centralized trial prioritization, lesser charging and sentencing on non-violent crimes.</i>	<i>All.</i>	<i>We pulled back on some work on proactively investigating unsolved crimes, and lost personnel who had been involved in facilitating re-entry programs. The latter has been restored. More generally, we had to do more with less, so case outcomes have re-calibrated around our resources.</i>

Table 6: Case disposition programs implemented after the start of the pandemic (March 1, 2020), to address the backlog

Program Type	Summarized and Specific Examples from Responses
Screening ^a	<ul style="list-style-type: none"> • New screening protocols or more expanded guidelines for which cases should be screened out • <i>“(Regarding barriers) Screening protocols were adjusted based on issues with comprehension of programs by law enforcement and other community partners.”</i>
Dismissal ^b	<ul style="list-style-type: none"> • Mass dismissals of certain case types, including traffic cases, drug possession for personal use, old bench warrant cases • <i>“We created resolution events and made lists of old cases that required dismissal. We also created policies to not prosecute felony related drug poss. offenses”</i>
Diversion	<ul style="list-style-type: none"> • Diversion into specialty courts (e.g., mental health, firearms) • Expansions of eligibility into existing diversion programs • <i>“Our office partnered with other County agencies to implement a specific pre-filing diversion program co-located in jails to make connections to services at the time of arrest for many charges.”</i>
Plea	<ul style="list-style-type: none"> • Increases in number of plea deals offered • Pleas involving lesser charges or greater sentence reductions • Offering plea by mail to avoid in-person arraignments
Warrant Review	<ul style="list-style-type: none"> • <i>“Review of cases in warrant and applied updated guidelines for possible dismissal, referral to diversion, or plea by mail.”</i>

Notes: ^aScreening can refer to a wide variety of case reviews before charges are filed, however screening is likely to occur in prosecution-charging states, where prosecutors decline to file charges and a case is not initiated. ^bDismissal typically occurs in police-charging states, where police file charges and prosecutors subsequently decide to dismiss the case and not move forward with the case.

Screening or large scale dismissal was reported by 7 offices, with screening programs being retained while some offices indicated that certain mass dismissals were not retained through 2022. Increased offering of plea deals, lesser charges or sentencing, or broader discretion in charging was reported by 6 offices. In total, 12 of 17 responding offices indicated some form of programmatic response to case backlogs that involved changing the disposition of cases.

The third common type of programmatic response to case backlogs were those that involved realizing efficiencies in the processing of cases (assuming they were not dismissed or screened out). Table 6 presents a summary of the efficiencies offices realized to address their post-pandemic backlogs. There was some overlap

between responses regarding improved scheduling and adjustments to calendar coverage that enabled attorneys from different units to be more flexible in covering for each other. Likewise, there was some overlap between the use of screening with the intent of changing the case disposition and similar screening procedures to identify potential efficiencies in case processing.

When comparing program adoption and retention to office characteristics, such as attorney staffing, jurisdiction size, or model of prosecution, there were no clear patterns that offices with any particular characteristic were more or less likely to adopt a particular approach to managing their backlogs.

Table 7: Efficiency programs implemented after the start of the pandemic (March 1, 2020), to address the backlog

Program Type	Specific Examples from Responses
Calendar Scheduling and Special Events	<ul style="list-style-type: none"> “...centralized grand jury scheduling, more centralized trial prioritization.” “property calendar resolution event”
Technology	<ul style="list-style-type: none"> Some offices implemented new call systems or sought to address need/demand for remote work (though no office indicated) Move to paperless operations
Case Screening	<ul style="list-style-type: none"> “We screen through the backlog for any same-defendant cases when a new case is booked in the jail under arrest so that defendant's referral/ backlog cases are bundled with new arrests for more efficiency.”

There were 5 offices with detailed programmatic responses that also provided caseloads in all years. Two of these offices reported decreases in the numbers of cases per attorney. Both of these offices served large jurisdictions of 1,000,000+, had over 250 attorneys on staff, and each had a wide array of programs to address rising caseloads including multiple diversion programs, improved scheduling, and mass dismissals during the pandemic. The three offices with increased caseloads per attorney interestingly contained the only two offices with a horizontal prosecution model, and either indicated lack of funding/resources for programs to address backlogs or inaction from a previous administration in addressing backlogs.

Discussion

The prosecutors’ offices that responded to this survey serve some of the smallest and largest jurisdictions in the US across 24 states, and collectively prosecute a significant share of all

state-level crime, administering justice for victims, families, and communities. These offices also administer programs that divert thousands of people away from the criminal justice system into specialty courts, counseling services, or health treatment, often addressing long-unmet needs. Every individual case, whether it is brought to trial or dismissed, is handled by individual prosecuting attorneys working in conjunction with office staff and other criminal legal system partners. Excessive caseloads that place undue burden on prosecutors can hinder their ability to fulfill their roles as prosecutors, drive experienced attorneys out of the profession, and delay cases, sometimes by many years.

Responding offices were extremely varied in their levels of staffing, in both the numbers of attorneys and the number of cases per attorney. These align with previous findings that prosecutor office staffing is not necessarily commensurate with jurisdiction size or caseloads^{1,2} and that some offices have caseloads well in excess of their peers and above the consensus maximum numbers of cases set by the National Advisory Commission on Criminal Justice Standards and Goals.¹¹ Many respondents to our survey indicated that funding was a driver of their criminal case backlogs and was explained to have hindered offices ability to manage their backlogs through insufficient staffing through mechanisms like inability to hire new prosecutors or retain experienced attorneys. Following the pandemic, we measured a reduction in the overall experience level of prosecutors while also seeing the levels of staffing remain stagnant or shrink in many offices.

These high caseloads potentially understate the workloads that prosecutors experience due to policy and technological changes over the last 20 years that have increased the labor hours and obligations associated with most cases. Open discovery laws, which mandate automatic timely disclosure of case evidence, have condensed the time window to provide discoverable materials to 30 days or shorter. At the same time, new technologies like body worn cameras and other digital recordings have ballooned the amount of discovery evidence requiring review by prosecutors.

The COVID-19 pandemic in the Spring of 2020 led to widespread office and court closures in addition to health and safety concerns for office staff and other participants in the legal process. We find evidence in agreement with a significant disruption due to court suspensions that exacerbated case backlogs. However, while the suspension of in-person operations was strongly associated with post-pandemic backlogs, challenges to funding, morale, and normal function of partner agencies continue to drive prosecutor case backlogs today after the in-person restrictions have been lifted.

Interestingly, many pandemic-era programs and practice changes to address rising backlogs programs have been retained, such as scheduling/technological efficiencies or diversion/deflection programs. However, staffing remains a challenge to maintaining these and other practice changes. When comparing program adoption and retention to office characteristics, such as attorney staffing, jurisdiction size, or model of prosecution, there were no clear patterns that offices with any particular characteristic were more or less likely to adopt a particular approach to managing their backlogs. Despite retaining these policies, we still observe many offices with higher caseloads today than in 2019 prior to the pandemic without a commensurate increase in staffing.

This study has some important limitations. The high burden of collecting historical case data was

associated with high rates of nonresponse and partial response. As such, the sample of responding offices cannot reliably generate estimates to staffing or caseload changes nationally. However, the sample is geographically and population diverse, providing a wide array of office experiences that likely mirror those of many offices around the country. There is potentially some selection into the survey sample by offices experiencing particularly severe case backlogs, though the responses by some offices indicating no backlog or little programmatic response are reassuring that sample participation is not completely driven by selection.

Conclusion

Case backlogs present a serious challenge to not just prosecutors' offices, but the functioning of the entire criminal legal system. We find that caseloads have grown post pandemic and remain higher than pre-pandemic levels despite the resumption of normal operations and a varied programmatic response to address backlogs that remains in place in many offices today. We find that morale challenges during the pandemic and lack of funding to hire and retain prosecutors are the most salient reasons that offices are not able to act to the fullest extent possible to address their case backlogs.

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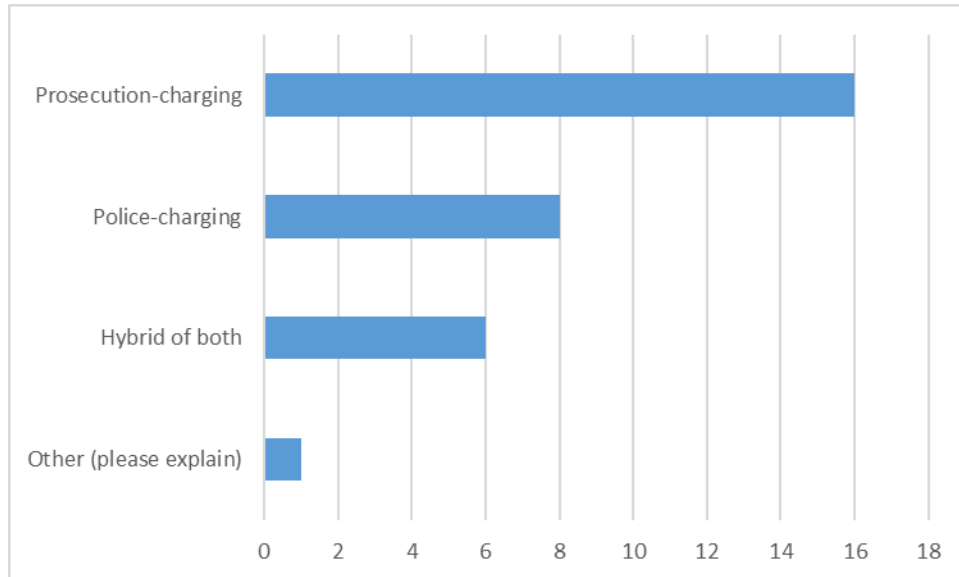
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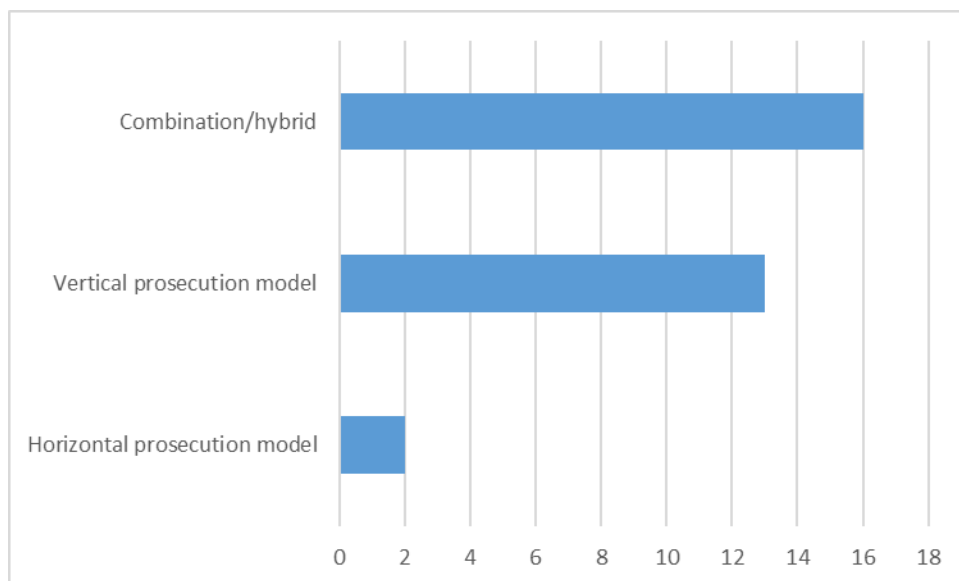
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Appendix A: Additional Figures

Appendix Figure A1: Is your state generally a prosecution-charging (prosecutors determine what charges to bring) state or a police-charging (police determine what charges to bring and swear out warrants) state?



Appendix Figure A2: Does your office employ vertical prosecution, horizontal prosecution, or a combination/hybrid of both?



Appendix Figure A3



Dear Colleagues,

Currently no nationally representative estimates or census exist showing how prosecutor's offices compensate staff or allocate their resources. Offices may lack the staff or resources needed to handle their caseload in a timely manner and efforts to increase staff can be hindered by budget constraints set by municipalities, counties or states. Though offices can seek funding through other 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.

The Association of Prosecuting Attorneys, in collaboration with Lafayette College, has created a survey to determine staffing and compensation levels for prosecutor's offices and how these staff are allocated across different programmatic needs. The goal of this survey is to resolve this knowledge gap while also determining the effect of Covid-19 on staffing and workloads.

We encourage you to select a person knowledgeable about your office's staffing, budget and caseloads to complete the survey. Please follow the below link to complete the survey, and thank you in advance for your participation.

Best Regards,

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