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Clarification to
“An Examination of Prosecutorial Staff, Budgets,
Caseloads and the Need for Change:
In Search of a Standard”

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Overview

In this rejoinder we provide notes to consider when reviewing our report on prosecutor caseloads. We concur with justice reformers who fear the ability of prosecutors to reverse the gains of the current decarceration movement, but the equivocal nature of this research demands that the nature and extent of prosecutor caseloads is in dire need of further inquiry. We also agree with [Gershowitz and Killinger \(2011\)](#) that prosecutors in large jurisdictions often have large caseloads, that there is harm caused by excessive caseloads, and that the best solution is to provide more resources to both the prosecutor and the public defender. There is a relationship between prosecutor staffing, budgets and caseloads but there has been no evidence that more prosecutors equates to more disparities and overincarceration than when there are not enough prosecutors. We argue that the burden of proof lies with the prosecutor to make the case for their staffing needs and that this determination be based on several factors, not any one, by itself. This burden must be situated within the context of equity and decarceration. Understanding why there has yet to be an established standard for prosecutorial caseloads may be more a matter of politics and tradition than it is a function of science.

Collaborative Engagement

Over the last few weeks, we’ve found ourselves thrust into a battle of concerned perspectives: One side asking for more resources to ensure constitutional protections and to address staffing concerns, while the other operates under the assumption that more prosecutors equates to more prosecutions, and that diversions must be maximized before there can be a determination of prosecutorial staffing levels.

In our report, we were simply providing a framework for change on the improvement of prosecutorial decision making and the potential for progressive prosecution – making painstaking efforts to ensure it was clear that the determination of a prosecutorial caseload should be based on several factors.

A few weeks after publishing our report on prosecutor caseloads we received emails from colleagues around the country wanting to let us know that there was an advocacy group concerned about the potential use of our findings in the hands of prosecutors unsupportive of justice reform. This position was noted internally among our research team and among our research advisors. Consequently, we took deliberate steps to address these concerns. In our report, we were simply providing a framework for change on the improvement of prosecutorial decision making and the potential for progressive prosecution – making painstaking efforts to ensure it was clear that the determination of a prosecutorial caseload should be based on several factors. As one of the points of comparison, we used a 1:10,000 prosecutor to population rate comparison, a customary approach in the study of criminal justice personnel and offending patterns.

Due to the potential misinterpretation of this initial comparison, we noted the following in the report:

“Due to the variability of local case processing, funding considerations and taxpayer preferentials, the American Bar Association has refrained from establishing a prosecutor to population ratio. This sentiment was echoed by the American Prosecutors Research Institute (APRI) in 2002. As a point of initial comparison, we utilize the only such proposed standard suggested for similar reasons in Wisconsin. Again, this comparison is not meant to suggest an adopted standard, but one that would allow for a comparison of caseloads across multiple jurisdictions before the consideration of important factors, of which we identify within this research brief. The comparison of prosecutor ratios should not overshadow our recommendation that the onus rest with each prosecutor’s ability to justify the need for additional funding allocations.”

Not resting on one point of comparison, we also compared the counties on case filings/dispositions and whether or not they were felonies or misdemeanors (see [Gershowitz and Killinger, 2011](#) for a discussion of this).

After our self-imposed peer-review process of subjecting our publications to review by subject-matter experts, and conversations with our research advisors, a collection of respected and credentialed stakeholders, we reached out to the concerned advocacy group for a one-on-one conversation – our typical approach to our research process.

The advocacy group agreed to a conversation and what has transpired since that one-hour exchange is what anyone would expect from a research center and an advocacy group with shared interests and mutual respect for varying approaches to criminal justice reform and mass decarceration.

Their primary fear is that rogue prosecutors will use our report’s results to erase the hard-fought gains of justice reformers, an intent that could not have been further from ours. The result of this respectfully thorny challenge has been an approach that should be used to usher in more equitable approaches to criminal justice reform.

We need each other more than ever. Justice reform is a multi-partisan issue and there’s no time for anecdotally-based quarrels. In the words of Frederick Douglass, “We must agree to work with anybody to do good and No one to do bad.” It that spirit, and as noted in our report, we emphatically clarify our reports findings in the spirit of using our research to reduce mass incarceration.

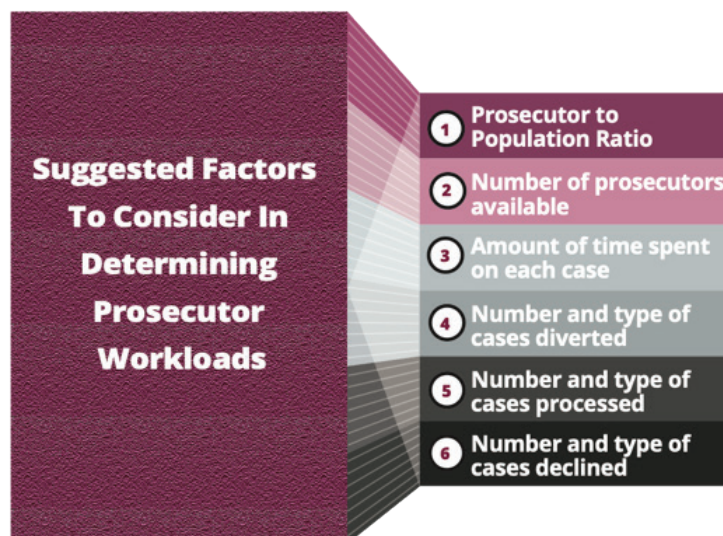
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Rejoinder Notes

Prosecutors contend they need more staff to ensure due process and increased diversion options. Critics, who believe more prosecutors equate to more convictions, are concerned that these additions would reverse justice reform efforts. Recognizing that we are at a critical juncture in justice reform, with limited, third party, objective research, we at the Center for Justice Research sought to find out just what the nature of prosecutor budgets, caseloads and staffing levels were around the country. By doing so, we could begin the process of understanding the role of prosecutor staffing levels in today’s systematic reformatory movement. Our study highlights the challenges faced by prosecutors, denotes the concerns of policymakers and recognizes the trepidations of justice reformers. In short, we sought to establish a foundation to begin a conversation on the need for evidence-supported suggestions for moving justice reform forward through the 2,400 prosecutors around the country.

After months of research and countless conversations, we soon realized that prosecutor caseloads could not be examined in a vacuum. They must be understood within the context of population sizes, arrest patterns, case processing time, diversion programming, outright declinations (i.e. formal refusals to charge), and more importantly, their impact on historically disenfranchised communities. Prosecutors can only be assessed if and when they have the optimal level of resources with the proper controls to ensure that they don’t erode the gains of the current justice reform movement. Any staff additions must be aligned with established guidelines to prevent disparities.

Figure 1: Factors to Consider in Determining Prosecutor Workload



After many conversations with various members of the criminal justice community, it became clear that large workloads and inadequate funding created obvious problems at any decision point in our criminal justice system, a fact that almost no researchers disagree with. Prosecutors

are not immune to this reality. In fact, an overwhelming majority of the research suggests that overworking prosecutors would increase the likelihood of extended case processing time, errors, plea bargains, stress-related burnout and turnover. Though these are but a few of the challenges raised by prosecutorial staffing concerns, the minority community ultimately bears the brunt of these consequences, as Blacks and Hispanics are more likely to face conviction.

To our knowledge, there have been no recent attempts to determine the average number of hours it takes to process a case through a district attorney’s office. A contemporary assessment is very important given the advent of body camera and forensic evidence. Studies comparing prosecutor budgets, caseloads and staff are few and far between. As a result of our access to prosecutor data, we wanted to put forth some evidence-supported recommendations for better understanding of the prosecutor caseload needs.

At the Center for Justice Research, we aim to create a more equitable criminal justice system. By proposing a few formulas that can put in place caseload standards for district attorney offices, we are better able to assist this widespread dilemma. One solution is to establish parameters by which prosecutors can determine their appropriate caseloads, respective of local nuances. Simultaneously, using pre-charge diversion programs – such as diverting marijuana possessors before arrest - would go a long way toward reducing the impact of a criminal record.

Prosecutors, in this era of ‘mass-decarceration’, must ensure that they exercise their unbridled discretion in an unbiased manner. At the same time, society cannot afford for prosecutors to be understaffed, overworked, underfunded or misaligned with the most effective approaches. Diversions are a necessity to this movement. Political arguments undergirding policy decisions must be based on facts. In effect, we must ask, “How many prosecutors are necessary for the establishment of constitutional protections and diversion programming?” If we are to take justice reform seriously, these questions must be answered.

By finding a balance between justice reform-oriented prosecutors and protectors of public safety, Harris County could transform its criminal justice system into a more equitable design and serve as a model for Texas and this country. With the largest incarceration population in the state, Harris County must continue to tie their asks to needs while diverting the possible, incarcerating the necessary, and maintaining public safety.

Prosecutor caseloads are not just a matter of hiring more prosecutors, but also are about the costs associated with the additional courtroom employees that will need to be included in the augmentations. Funding will be needed to increase the prosecutor’s staff, hiring prosecutors committed to decreasing incarceration populations could offset costs and even save taxpayers money, none of which should be done absent consideration of diversions and declinations, the onus of which lies in the hands of the district attorney.

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Our report recommends that each prosecutor determine their own needs and utilize an agreed upon set of metrics for this determination. We also recommend prosecutorial caseload/workload standards be contextualized within the needs of the public defender’s office. Such a move was supported by the recent budget increase of \$9 million for the public defender’s office in Harris County. Finally, we noted that diversion must not only rely on the determination of the prosecutor’s office but is also a responsibility of every criminal justice decision point, especially the police. In short, police and prosecutors must work together to apprehend the necessary, divert the most warranted, protect the innocent and respect the need for public safety.

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Keeping unnecessary people out of the criminal justice system will reduce the amount of staff, energy, food and other costs needed to facilitate a large incarceration population. At the end of the day, reducing prosecutor caseloads is not just about funding, but about ensuring constitutional protections for everyone.

About the Center for Justice Research

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

The Center for Justice Research can be reached at 713-313-6843 or visit [**centerforjusticeresearch.org**](https://centerforjusticeresearch.org)