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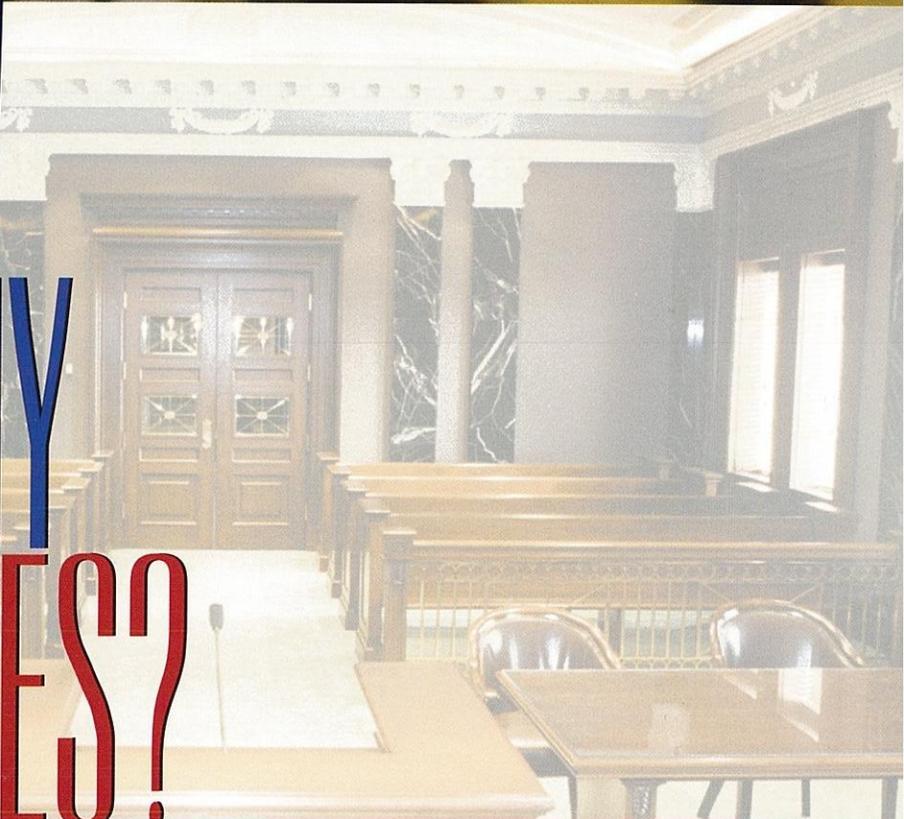
American Prosecutors  
Research Institute



**Bureau of Justice Assistance**  
Office of Justice Programs ■ U.S. Department of Justice



# HOW MANY CASES?



## How Many Cases Should A Prosecutor Handle?

*Results of the National  
Workload Assessment Project*

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National Workload  
Assessment Project*



American Prosecutors Research Institute  
Alexandria, Virginia

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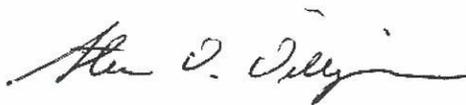
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## EXECUTIVE SUMMARY

For years, prosecutors have struggled with the question of how many cases a single person should handle in a year, operating with little or no guidance on how to assess their workloads in order to allocate staff and resources. The American Prosecutors Research Institute (APRI), with support from the Bureau of Justice Assistance (BJA), has developed a method to quantify and understand the level of effort associated with case processing in order to project resource needs. In developing a method that would best capture this, APRI found it was important to distinguish between caseload (the amount of time spent processing cases and the array of cases processed) and workload (caseload plus time associated with non-case related activities). Even more significantly, the most reliable projection of resource needs is based on the overall workload of a prosecutor and not the caseload.

Understanding that cases run along a continuum (from screening to filing, to plea or trial, and then to sentencing and possibly appeal) and that the point of disposition can dramatically affect the amount time spent on a case, APRI developed a disposition-based method for assessing both caseload and workload. The disposition-based method includes all time spent processing cases, from the initial screening through final adjudication, including post-adjudication activities, and non-case related activities such as office administration, law enforcement coordination, and community outreach to obtain an overall understanding of the office workload and staffing needs.

APRI conducted caseload and workload assessments in 56 prosecutors' offices across the country to determine if it was feasible to develop national caseload and workload standards. These assessments took into consideration the unique criminal code, the crimes over which the prosecutors have authority, and the court structure to determine what impact these factors may have on workload. APRI concluded that the variation across the country could not be controlled, and thus it is not feasible to develop national caseload and workload standards. It is possible, however, for individual prosecutors' offices and individual states to develop their own caseload and workload standards. This monograph describes the disposition-based method, reports the findings with regard to caseload and workload standards, and provides guidance to prosecutors on how to assess their own caseload and workload.

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## I. INTRODUCTION

For years, prosecutors have struggled with the question of how many cases a single person should handle in a year, operating with little or no guidance on how to assess their caseloads in order to allocate staff and resources. While there are a few non-representative studies that have established “ball-park” figures, these studies have failed to produce figures that could be used as national standards.

The most frequently cited guidelines on attorney caseload were developed in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals. Based on consensus regarding caseload, the Commission recommended that an attorney handle no more than 150 felonies per year *or* no more than 400 misdemeanors per year.<sup>1</sup> Although these figures are cited in the American Bar Association (ABA) Standards and were endorsed with modifications (to no more than 300 misdemeanors per year) by an ABA special committee studying the criminal justice system in 1989, they are not represented as ABA policy. Policy changes were never enacted, as the ABA House of Delegates did not formally approve the changes in caseload standards. Since no empirical data existed supporting the recommended guidelines, prosecutors were reluctant to accept the new ABA caseload figures.

Since earlier attempts by the ABA to create caseload guidelines, dramatic changes in the criminal justice system have continued to hinder the development of a realistic caseload recommendation. The number of cases entering the system has continued to rise, while the amount of state and local resources available to handle these cases has failed to keep pace. Changes in state and local legislation, as well as public opinion about crime and fear of crime, have made certain types of cases more complex, such as violent juvenile offenses that may now be pursued in adult court in some states. In addition, there have been advances in technology, such as integrated management information systems and automated documents that can improve efficiency and expedite the completion of routine tasks. The changes in the criminal justice system, resource levels, and emphasis on crime and justice leave prosecutors in the difficult position of trying to assess what is a realistic caseload.

In 1998, the Bureau of Justice Assistance (BJA) awarded a grant to the American Prosecutors Research Institute (APRI) to further explore prosecutor caseload in an attempt to determine if it will ever be possible to have national standards. As noted above, prior to APRI’s study, few non-representative studies had attempted to quantify a prosecutor’s caseload. Further discussion in Chapters 2 and 3 will address the challenges faced when assessing prosecutor caseload and the difficulties associated with different assessment methods.

Perhaps one of the greatest criticisms of other methods is that they simply involve case processing or the time associated with casework, without considering the prosecutor’s other professional responsibilities. As part of an effort to develop a sound assessment

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<sup>1</sup> ABA Criminal Justice Standards 5-5.3, *Providing Defense Services*, 1977.

method, APRI found it impossible to look only at case-processing time without considering time spent on non-case related activities such as office administration, community outreach, and law enforcement coordination. Thus, APRI distinguishes between caseload (the amount of time spent handling cases and the array of cases handled), and workload (the total amount of work performed, which includes both case related and non-case related activities). This is an important distinction to remember while reading this report. Ultimately, it is the workload measure that is used to determine resource needs, as discussed in Chapter 5.

This monograph is designed to help prosecutors and policymakers understand the challenges associated with assessing caseload and workload (Chapter 2) and how prosecutors and others have tried to overcome these challenges (Chapter 3). Over a 3-year period, APRI collected data on caseload and casework practices from 56 prosecutors' offices across the nation. From the information gathered, APRI developed a method to ascertain an appropriate caseload and casework for each office. This method and its application in determining the number of office personnel required for a prosecutor's office to run efficiently are discussed in Chapters 3 and 4.

## II. THE CHALLENGE OF ASSESSING CASELOAD AND WORKLOAD

Determining an appropriate caseload for prosecutors is a complex task. Any number of contextual conditions can affect how an office operates. These conditions range from the court structure, criminal code, and criminal offenses over which a prosecutor has jurisdiction to internal conditions such as office policy and practice, experience level of staff, and level of automation.

An integral step in devising a reliable caseload and workload assessment method is in understanding the challenges posed by these different contextual conditions and the impact these conditions have on an individual office's overall workload. The following sections detail the primary factors that can significantly impact workload, focusing first on external factors, then internal factors, and finally case-specific factors.

### ***External Factors***

The number of cases referred to a prosecutor's office and the amount of time spent processing these cases are greatly influenced by factors outside the prosecutor's control. The impact of these external factors is critical to understanding the overall context in which prosecutorial workloads increase or decrease. In general, external factors may be categorized as follows: 1) legislative and operational factors, 2) criminal justice system factors, and 3) crime and demographic factors.

### **Legislative and Operational Factors**

Public opinion, special interests, and politics influence the nature and substantive content of legislation adopted in the United States, particularly legislation related to public safety issues and how the criminal justice system operates. First, state statutes and criminal codes vary from state to state. These variations significantly impact the ability to compare caseloads between jurisdictions. For example, a domestic violence offense may be classified as a felony in one state, a misdemeanor in another, while the same offense is classified as an assault in yet another. Moreover, changes occur regularly in the statutes and codes that can have an immediate effect on prosecutorial workload. Examples include:

- Mandatory sentencing legislation that can impact plea bargains and trial rates (Parent, Dunworthy, McDonald, and Rhodes, 1997; Tonry, 1987);
- Mandatory charging of serious and violent juvenile offenders as adults;
- Changes in offense classification and/or penalties, such as the reclassification of a schedule II narcotic to a schedule I narcotic or stricter penalties for crimes committed with a firearm;

- Changes in punishable crime based on emerging/new offending patterns, such as gang crimes that require more investigative and research time (Johnson, Webster, and Connors, 1995);
- New victims' rights legislation that requires more time and effort on the part of prosecutorial staff to work with victims; and
- Legislation creating new courts that are staffed by prosecutors, such as drug courts or domestic violence courts.

Second, the statutes governing the types of crimes over which a prosecutor has jurisdiction vary. For example, in Georgia, District Attorneys have primary jurisdiction over felony cases including appeals, while Solicitors General handle misdemeanors. In contrast, the Tennessee District Attorneys General have jurisdiction over both felonies and misdemeanors, but the Attorney General handles felony appeals.

Finally, the criminal justice process is also determined by state statute. In some states, cases are initiated with preliminary hearings, while other states use Grand Juries. Elsewhere, both avenues exist and the prosecutor has the discretion to choose.

These differences and changes in state statutes and legislation, as well as the variations in the criminal justice process, can make caseloads higher in one state and lower in another, which is why any standard must control for these differences.

### **Criminal Justice System Factors**

Created to operate efficiently, the criminal justice system is made up of individual components, each inter-related and dependant upon the other. As a result, factors that influence one component will ultimately affect another. For example, factors that affect the police will also affect prosecutors, which in turn will affect the courts, and so forth. With respect to prosecutorial workload, these factors may include:

- Lack of investigative resources in law enforcement agencies (resulting in an increased investigative responsibility for prosecutors);
- Police policies and procedures (e.g., enforcement of previously non-enforced laws, search and seizure rules, police stops, etc.) (Nugent and McEwen, 1988);
- Court delays (Nugent and McEwen, 1988); and
- Availability of pretrial diversion and alternative sanctions.

These criminal justice factors are difficult to control, but nevertheless should be considered when interpreting a prosecutor's workload.

## **Crime and Demographic Factors**

The final category of external factors that affect the number of cases handled by prosecutors involves crime and demographic trends. These factors include:

- Offense patterns and crime trends;
- Arrest rates, which may be affected by changes in legislation or police policy as well as public awareness of crime incidents;
- Changing population demographics such as in-/out-migration;
- Changes in socio-economic conditions that can lead to more criminal offending; and
- Economic well-being of the primary funding entity (e.g., state or county) that impacts prosecutors' annual budgets.

In addition, scrutiny from the public, advocacy groups, and other special interest groups may increase pressure to prosecute certain types of crimes more rigorously, making prosecutors less likely to reach or offer plea bargains.

## ***Internal Factors***

In some cases, internal factors that impact prosecutorial caseload and workload, such as office policies and practices, do fall under the control of the prosecutor, unlike external factors. However, other factors, such as the number of positions that a budget will support, are less easy to control and may in fact be related to external factors. Regardless, these internal factors play a major role in the demand placed on individual staff in prosecutors' offices.

The internal factors most likely to impact prosecutorial workload include the following:

- Staff resources: the number of attorneys, investigators, victim/witness personnel, and other support staff;
- Staff skills: staff experience level and appropriate training;
- Physical resources: availability of office automation, vehicles, and office space;
- Office organization: use of specialized units/staff, vertical prosecution, supervisory structure; and

- Office policies and procedures: screening and charging decisions, proactive involvement in problem-solving and crime prevention (e.g., community prosecution), and coordination with law enforcement.

## **Staff Resources**

The number of full- and part-time attorneys, investigators, victim/witness assistance coordinators, and support staff directly impacts both caseload and overall workload. An office can process more cases efficiently if it has a sufficient number of staff and an appropriate combination of office personnel in terms of the proportion of attorneys to staff.

Investigators, victim/witness assistance coordinators, and support staff play critical roles in case processing. Deficiencies in the number of staff can dramatically alter the case processing time and the overall workload of attorneys. Investigators perform a variety of tasks related to case development, including interviewing witnesses and victims, collecting evidence, coordinating with crime labs on evidence analysis, locating and transporting witnesses to court proceedings, and helping attorneys prepare exhibits for trial. Without this support, attorneys must rely on already overburdened law enforcement officers, perform these activities themselves, or rely on other staff in the prosecutor's office, affecting staff time dedicated to other office responsibilities. Similarly, victim/witness assistance coordinators aid prosecutors by handling victim notification of case status, gaining victims' cooperation, preparing victims for trial, arranging transportation for victims, and completing/obtaining victim impact statements. Support staff, in addition to assisting with any of the investigator or victim/witness assistance coordinator activities, do legal research, schedule appointments and hearings, prepare case-related documents, such as motions, and other administrative case-preparation support.

## **Staff Skills**

It is logical to assume that more experienced and well-trained staff perform more efficiently than less experienced staff, but it has been difficult to assess the actual impact that experience and training have on case processing. However, as part of a recent study to determine workload in prosecutors' offices, APRI compared the time spent conducting various activities by prosecutors with more than 5 years of experience with the time spent by prosecutors who had less than 5 years of experience. APRI found that on average, experienced prosecutors spent 35 percent more time screening cases than their less experienced colleagues and less time preparing cases and bringing cases to disposition. Prosecutors with less than 5 years of experience spent nearly twice as much time overall bringing cases to disposition. These findings suggest that experienced prosecutors invest more time initially, screening cases, resulting in the acceptance of stronger cases and better case preparation overall. Less experienced prosecutors, on the other hand, appear to accept cases more readily. In fact, APRI's study found that experienced prosecutors reported more pre-trial dispositions (i.e., guilty pleas), and less experienced prosecutors reported more trial dispositions.

## Physical Resources

To perform at an optimum level, a prosecutor's office must have not only a sufficient number of staff, but also adequate physical work space and equipment. APRI's work with 56 prosecutors' offices nationally showed deficiencies in the following areas:

- Office space;
- Computers;
- Vehicles for investigation; and
- Meeting rooms for interviews.

Automation, in particular, can be beneficial for prosecutors in several ways. For example, automated case tracking can provide a useful management tool for monitoring case flow, status, and disposition. Word processing and other software programs reduce the amount of time required to perform routine tasks by producing computerized forms and templates for motions and victim/witness notices. Also, access to automated databases for arrest records and criminal histories can decrease the amount of time needed to screen cases, make charging decisions, and prepare sentencing recommendations. Finally, integrated management information systems (MIS) that link law enforcement, prosecutors, courts, probation/parole, and corrections allow for more efficient docket management and case scheduling, as well as immediate access to critical case processing information.

## Office Organization

The organization and operation of a prosecutor's office are not guided by specific standards. Each local prosecutor determines the best structure for his/her office and the most practical method for handling cases. These decisions may include whether or not to have specialized attorneys or units to handle certain types of cases, to assign staff to cover all cases in a specific court, or to use vertical prosecution for all or some cases. Another office organization decision is the supervisory structure of the office, which may include multiple levels of review for charging and plea negotiations. While office organization and case processing structure may not have a tremendous affect on the overall workload of an office, they do have implications for how cases are distributed in an office. Moreover, use of specialized attorneys/units may impact the amount of time spent on cases, as the attorneys assigned to specialized units are generally more experienced in handling a specific case type (e.g., domestic violence, child abuse, homicide). Vertical prosecution means that a single attorney (or group of attorneys) handles a case from the initial screening through final adjudication. In offices that do not use vertical prosecution, generally one attorney handles the screening, another the preliminary hearings, and yet another the trial, which means that at each step in the process a new attorney must take the time to familiarize him/herself with the specifics of the case.

## Office Policies and Procedures

Office policy and procedures can affect prosecutor caseload and workload in a variety of ways. For example, case review, acceptance, and declination policies directly affect caseloads. Screening affects the volume of cases an office accepts. Then, if a case is accepted, charging policies will then also impact caseload levels. Finally, once cases are charged, “no plea” policies will continue to influence caseload.

In addition to case-related activities, there are policies and procedures related to prosecutor involvement in prevention activities, diversion, and other law enforcement efforts that can impact the overall workload of the entire office. For example, involvement in a community prosecution or a multi-jurisdictional drug task force activity requires time and dedication from the prosecutor and office staff.

Jacoby (1976) defines four types of office policies that can be used to distribute prosecutorial resources, all of which impact caseload and workload:

1. Legal sufficiency: policies that focus on accepting cases that include strong elements such as evidentiary strength, thereby reducing the time associated with screening and investigation of “weak” cases;
2. System efficiency: policies designed to reduce court “backlog,” using techniques such as screening, diversion, and early dispositions;
3. Defendant rehabilitation: policies that promote reduction in the number of defendants that are processed through the system; and
4. Trial sufficiency: policies that seek convictions in accepted cases.

In total, the array of policies and procedures (both case related and non-case related) adopted by an office or put in place by the criminal justice system in the jurisdiction will profoundly affect how quickly cases are processed through the system.

## *Case Specific Factors*

The nature of the offense, complexity of the case, the defendant’s criminal history and status, and the type of defense counsel can individually and collectively impact the amount of time prosecutorial staff spend on a specific case. These factors, when examined in the aggregate, compound difficulties with large caseloads and because of the unpredictability of the presence/absence of these factors, efforts to establish caseload standards. The types of case-specific factors that affect the amount of prosecutorial time cases receive, include the following:

- Case definition and counting method;
- Defense attorney type (e.g., private counsel versus public defender);
- Cooperation of law enforcement, probation, and parole agencies;

- Victim/witness issues such as willingness to cooperate;
- Number and type of pre-trial motions, continuances, and late or second preliminary hearings; and
- Case enhancers, such as complex evidence and language barriers.

## **Case Definition and Counting Method**

A recurring and fundamental challenge in caseload studies and workload comparisons is how a “case” is defined. For courts, defense counsel, and others in the criminal justice system, a case has a set beginning (arrest or filing of charges) and an ending (final disposition or termination from the system). For prosecutors, the beginning point for a case varies in part because some prosecutors are involved in the initial investigation of a criminal matter before charges are filed; others may initiate a case upon the issuance of a warrant; while others may initiate a case upon transmission of an arrest report to the prosecutor’s office. As a result, prosecutors across the country have different definitions of what constitutes a case and how these cases are counted. Thus, some prosecutors may get involved in cases earlier than others, which results in more case processing time.

Related to this conundrum of how cases are defined is the fact that prosecutors’ offices have different policies and practices for how cases are handled and counted. Some prosecutors prefer to “bundle” all charges against a single defendant and count it as one case, while others separate the charges and count them as separate cases. Further, cases involving multiple defendants may be grouped together as one case or separated and counted as multiple cases. In each situation, the office may assign one attorney or several depending on whether the charges and defendants are “bundled” together or handled separately. These are accepted practices across the country and may be based on the individual chief prosecutor’s work style and preference or state/county guidelines for case counting. However, because there is no standard case counting practice nationally, it makes caseload comparisons extremely difficult.

## **Defense Attorney Type**

The length of time a prosecution takes may be affected in part by whether the defense attorney is a public defender or a private attorney retained by the defendant (Luskin and Luskin, 1986). With the *Gideon v. Wainwright*, (1963) decision, felony defendants were constitutionally assured the right to adequate representation, regardless of financial status. This decision placed a great burden on public defenders. Like prosecutors, the level of support for public defenders varies across states, and many have large, heavy caseloads. Differential support and large caseloads impact the amount of time public defenders have to invest in each case, just as these issues affect the amount of time prosecutors can invest. Private, retained defense attorneys, whose revenues are based on the length of time a case takes, may be more likely to extend court processes by using preliminary hearings for discovery purposes, filing motions, and requesting continuances.

## **Cooperation of Law Enforcement, Probation, and Parole Agencies**

The level of cooperation among prosecutors, law enforcement, and probation and parole agencies can impact the amount of time required to process cases. Without the cooperation of law enforcement, prosecutors and their staff must spend additional time investigating the offense and obtaining criminal histories of offenders. Prosecutors also rely on probation agencies for pre-sentence investigation reports. Access to these reports, which contain information such as risk levels, is critical for prosecutors when making sentencing recommendations.

## **Victim/Witness Issues**

Victim/witness issues also impact prosecutorial caseloads. These issues include the victims' or witnesses' ability and willingness to cooperate and victims' rights regarding notification and participation. Victim/witness cooperation has a significant effect on the amount of time required for prosecution. Without victim/witness cooperation, prosecutors must seek other evidence in lieu of victim/witness testimony. In addition, the passage of victims' rights legislation regarding notification and participation often requires that prosecutors spend more time handling victim/witness issues, particularly if there is no victim/witness assistance program in the office or jurisdiction.

## **Number and Type of Pre-Trial Motions, Continuances, and Late or Second Preliminary Hearings**

Pre-trial motions, along with other motions in the court process, can increase the amount of time a prosecutor spends on a case. The last survey of prosecutor needs in 1988 showed that prosecutors believed that increases in the number of motions and motion hearings per case contributed to larger caseloads (Nugent and McEwen, 1988). Moreover, the *National Prosecution Standards* cite continuances (resulting from scheduling conflicts and intentional abuse of continuances by the defense for tactical or personal purposes) as the two primary contributors to delays in the court process (p. 189). In addition, late or second preliminary hearings delay the court process and when preliminary hearings are reheard, prosecutors must repeat preparation and familiarity with a case. This results in a retracing of steps, which is also a problem with multiple continuances (Luskin and Luskin, 1986).

## **Case Enhancers**

The nature of an offense is particularly relevant to caseload, because no two cases are exactly alike and many are confounded by mitigating factors that may increase the amount of time needed to process a case. Serious offenses, such as murder or rape, require a significant amount of prosecutorial resources because they are less likely to be pled out or the plea does not occur until just prior to trial. Consequently, these types of cases require more preparation time for preliminary hearings, motions, and trial. Add to the mix, mitigating factors such as an elderly victim, a language barrier, or complex scientific evidence, and the case processing time increases. During APRI's 3-year study of prosecutorial caseload and workload, several factors, referred to as case enhancers, were identified that can significantly impact case processing time. These include:

- Child victim/witness: victims or witnesses of a very young age (less than 10 years old);
- Senior victim/witness: victims or witnesses over the age of 65 with physical or mental frailties;
- Victim/witness with a disability: victims or witnesses with a physical or mental disability as defined by the Americans with Disabilities Act 1990;
- Defense by reason of insanity: the defense pleads not guilty by reason of insanity, which involves expert testimony as to the defendant's mental capacity;
- Language barriers/cultural diversity: the inability to communicate with the victims, witnesses, or defendants because of the language spoken or customs different from the preponderance of society, which requires additional resources such as translators;
- Capital offense: the prosecution considers or files notice of intent to pursue the death penalty;
- Gang-related offense: the criminal activities of a known gang member acting on the gang's behalf or in which defendants, victims, or witnesses are known gang members;
- Retained/private counsel: the defense counsel is a private attorney retained by the defendant as compared to a public defender; and
- Complex evidence: scientific evidence (e.g., DNA analysis), financial records, or computer evidence is involved.

Overall, APRI found that these enhancers can increase attorney case-processing time by 55 percent, investigator time by 24 percent, and victim/witness assistance coordinator time by 21 percent (Nugent and Rainville, 2000). Child victims/witnesses, capital offenses, and complex evidence have the greatest impact on case processing time. Caseload assessments must plan for the presence of these factors and be weighted accordingly.

Throughout this chapter, several issues have been explored that significantly impact prosecutorial caseload and workload. In general, these issues have not been dealt with historically in attempts to assess caseload and workload. The next chapter focuses on different strategies that have been used to assess caseload, and the strengths and weaknesses associated with these strategies.

### III. A REVIEW OF CASELOAD ASSESSMENT STRATEGIES

The need for an objective benchmark to determine prosecutor staff needs has prompted local and statewide studies of staffing levels. However, attempts to collect caseload data and convert them into caseload standards have proven fruitless. The major difficulty encountered in such studies has been the failure to gather enough standardized data on relevant factors to yield reliable findings.

Recognizing the need to assess staffing levels, several agencies have attempted to establish caseload standards in the past few decades (Jacoby, 1998). As previously stated, in 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended, based on a consensus regarding caseload standards, that criminal attorneys handle no more than 150 felonies per year *or* no more than 300 misdemeanors per year (ABA Criminal Justice Standards 5-5.3, *Providing Defense Services*).

Data from the Bureau of Justice Statistics (BJS) census of prosecutors in state courts have also been used as a potential source for developing caseload standards (DeFrances et al., 1996). The census, which provides information from a sample of prosecutor offices nationwide regarding staffing, budgets, and caseloads, divided jurisdictions into six strata. The six strata were based on the number of adults arrested for Part I crimes (reported in the Uniform Crime Reporting System) and then selected for a sample size of 308 individual prosecutors. Secondary analyses conducted on the BJS data to determine the average caseload for each prosecutor office reported a dramatic range between the least number of reported felony cases closed per prosecutor and the most closed (from 11 to 3575) (Jacoby, 1987), resulting in an average ratio of prosecutors to felony cases for all jurisdictions of 137.75, significantly higher than the median of 85.54. This variation is indicative of the problems associated with calculating a number without controlling for the differences in case volume between large, urban offices and smaller, rural offices. In fact the BJS census over-samples the largest prosecutors' offices in the country.

The discrepancies between the numbers provided by the National Advisory Commission on Criminal Justice Standards and Goals and the secondary analysis of the BJS data reveal similarities, but also show how different the numbers can be given different measurement and analytic techniques. Jacoby (1987) noted that any formula that calculates caseload as a simple ratio – the number of cases to number of attorneys – assumes that all cases require an equal amount of time to process, a logistical hindrance that undermines the efforts to arrive at one single number. Indeed, most efforts to calculate this number and to develop standards have been impacted by a variety of factors that need to be accounted for when attempting to conduct a sound, empirical assessment of staffing needs and levels (Jacoby, 1987).

A review of the caseload literature and state and local efforts to assess prosecutor and court caseloads<sup>2</sup> revealed wide variation in the factors used to assess caseloads and the methods by which they are calculated. Nevertheless, drawing from these previous efforts, there are basic factors that are consistently germane to caseload and workload assessments:

- The number of full- and part-time attorneys (Arney, 1997; APRI, 1996);
- The number of available attorney hours per year (Morse, 1998 and 1995; Thompson, 1998; Jacoby et al., 1993);
- Amount of time spent on non-case specific work (e.g., administration, management, programmatic activities) (Morse, 1998; Jacoby et al., 1996);
- Amount of time spent on the various aspects of case processing and the stage at which a case is disposed (Morse, 1995; Jacoby et. al., 1993; Jacoby 1987; Thompson, 1998; National Center for State Courts (NCSC), 1996);
- The number of cases processed (Arney, 1997; Jacoby et. al., 1996; NCSC, 1995);
- Type and seriousness of offense (Jacoby, 1987; Thompson, 1998, Arney, 1997; Morse, 1995; NCSC, 1995);
- The number of judges and courts (Jacoby et. al, 1993).

Although several studies investigating prosecutor and court caseloads have employed these factors, how these factors are defined and measured has a significant impact on the reliability of the results. The primary difficulty in establishing a standard formula using these factors (or a combination of these factors) is that there is little consistency in how prosecutors or courts define these factors and how these factors are measured (NCSC, 1995; Jacoby, 1987).

### ***Approaches to Calculating Caseload and Workload***

The review of the literature and previous prosecutor caseload/workload assessments reveal two general approaches for calculating caseload and workload:

1. Basic calculations using the number of cases processed divided by the number of attorneys or amount of available attorney hours (used in Washington County, Minnesota and in the state of Maine); and
2. Case weighting systems in which cases are weighted in one of three ways: estimated level of attorney effort by type of case (Wisconsin); case processing

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<sup>2</sup> Court caseload assessments examine many of the same basic factors as prosecutor caseload assessments and face many of the same challenges. As such, much insight into how courts handle these challenges in caseload analyses can be gained from a review of court caseload studies. For this reason, APRI reviewed several National Center for State Court (NCSC) studies for inclusion in this report.

time through the steps of adjudication (National Center for State Courts(NCSC)—North and South Dakota, Colorado); or a combination of both attorney time and processing time (Jefferson County, West Virginia).<sup>3</sup>

## Basic Calculations

The first approach, basic calculations, allows prosecutors to determine the average number of cases handled by attorneys in the office (i.e., caseload) and is often used to justify the need for additional attorneys. It does not, however, account for the amount of time it takes to process cases, the number of steps required to dispose a case, or differences in case complexity.

Consider the application of the basic calculation in Washington County, Minnesota and the state of Maine. As part of the 1998 budget process, the Office of the Washington County Attorney conducted an analysis of prosecutorial staffing levels and needs in the criminal division by dividing the number of open felony cases by the number of prosecutors assigned to felony cases. The resulting number was 130 open cases per attorney; this number was then compared with similar jurisdictions in the state to determine staffing needs. A similar approach was used in a needs analysis of the eight Maine district attorney offices. In Maine, the number of felonies and misdemeanors filed in a year was divided by the total number of prosecutors in all offices to determine a statewide average number of cases per prosecutor and for each office.

In both Washington County and Maine, other factors, such as increased numbers of cases going to trial, increased appeals, and increased time spent traveling long distances to court, were cited as important influences on caseload and workload. Yet, the basic formula used could not provide quantitative evidence that these factors influenced caseload or the amount of time prosecutors needed to process a case.

## Case Weighting Systems

The second approach, case weighting systems, provides a more accurate assessment of time spent on various cases, accounting for case complexity by standardizing the average amount of time per type of case and/or the amount of time spent at each step in the adjudication process. Data for case weighting on attorney time studies can be collected in a number of ways:

- Direct observations of attorney work;
- Self-reporting by attorneys;
- Focus groups of experienced prosecutors; and
- Estimates by supervising attorneys.

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<sup>3</sup> A variation of the case weighting system also was applied in the state of North Carolina using alternative measures of level of effort.

The manner in which attorney time data are collected impacts the reliability of the case weights. For example, in Wisconsin, attorneys recorded time spent on different types of cases and developed an average time spent per type of case. A focus group of experienced prosecutors reviewing the averages, concluded that the time recorded underestimated the amount of time needed for some types of cases and they adjusted the averages (S. Morse, personal communication, 1998).

Although there are strong arguments for using case weighting systems as the basis for workload assessments, case weighting does have its problems. Case weights, if applied in a standard formula, require uniform definitions of the basic factors and consistent counting methods, particularly of time and cases. Moreover, case weighting systems can only describe what the workload is at the time of the assessment; these systems can not predict what the workload will be in the future or whether the workload is too high or too low (Jacoby, 1987).

### ***Court Caseload Studies***

Judges face many of the same conditions as prosecutors in determining their caseloads (i.e., internal and external factors that complicate both the measurement and interpretation of caseload). As such, much insight can be gained into how courts handle these conditions in caseload analyses, by reviewing court caseload studies. This section provides an overview of a national court caseload assessment and state-level court caseload analyses in North and South Dakota and Colorado.

Currently, the state-of-the-art in court caseload assessments is led by the National Center for State Courts (NCSC), which has conducted numerous studies at the national and state level on court caseloads. Like prosecutors' offices, the organizational structure and jurisdiction of courts vary from state to state, making national assessments of caseloads difficult. NCSC's annual State Court Caseloads Statistics Study sets the precedent for carrying out this difficult comparative task. NCSC examined the number of case filings per judge by standardizing the number of judges per 100,000 population in each state (excluding quasi-judicial personnel such as magistrates) and dividing this number by the total number of cases filed—both civil (including domestic relations) and criminal cases (NCSC, 1995). To understand how judicial caseloads are changing and what resources are needed to handle the caseload, NCSC examined and compared:

- The number of civil and criminal filings and trends<sup>4</sup>;
- The manner of disposition;
- The number of filings per judge using standardized counts of judges and a combined total of civil and criminal case filings;
- Arrest rates, considered by NCSC to be the leading predictor of the types and volume of felony cases that will be entering the court system;

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<sup>4</sup> NCSC's State Statistics Study examines caseload in both trial and appellate courts; for the purposes of this document, we are interested primarily in trial court caseloads.

- The number of filings with the number of dispositions (criminal cases only); and
- State court filing rates and appeals (felony and civil findings).

Lack of uniformity in the available data and operational definitions of case categories were among the problems encountered by NCSC in assessing court caseloads nationally, resulting in an inconsistent count across the states (NCSC, 1995). Similarly, the composition of caseload reporting categories that contain similar types of cases, for which counts are taken of pending, filed, or disposed cases, varies across states. To address these issues, NCSC developed reporting standards provided to courts in the *State Court Model Statistical Dictionary*. Court structure and jurisdiction also were found by NCSC to be important in determining caseloads, particularly for making comparisons across states.

NCSC notes different strategies to address comparability such as, making adjustments to court statistics based on 100,000 population, then calculating case dispositions as a percentage of case filings, and finally, determining case filings or dispositions per judge (NCSC, 1995). NCSC also noted that it is possible to make adjustments to counts of cases to better estimate the impact of missing information or to make allowances for differences in counting methods. However, it should be noted that adjustments are not statistical adjustments but rather qualitative, and often subjective, interpretations of the data.

### **State Court Caseload Assessment in North and South Dakota**

A more in-depth understanding of the individual factors that impact caseload assessment can be gained from state-level efforts to assess judicial resources. Recent studies, conducted by NCSC in North and South Dakota (referred to hereafter as the Dakota studies), used a traditional caseload weighted methodology designed to provide accurate, easily understandable criteria to assess the need for additional judicial resources.

NCSC identified a number of quantitative and qualitative factors that influenced reliability in determining judicial resource needs. Among the quantitative factors were the availability of accurate statewide case filing data and uniformity in counting methods. Among the qualitative factors were a consideration of legal and cultural differences among local attorneys, the dynamics of local scheduling practices, and economies of scale related to the size of the court, i.e., larger courts have the ability to work more efficiently (NCSC, 1997a and b).

### **Assessing the Need for Judicial Resources in Colorado**

NCSC's 1995 State Court Caseload Statistics Study was broadened to explore the issue of workload measures in the courts. Specifically, NCSC looked at how individual states were measuring workload and identified the state of Colorado as a promising model for assessing judicial resources (NCSC, 1996). Colorado uses a weighted caseload model, similar to the model used by NCSC in the Dakota studies, which allows the Administrative Office of the Courts (AOC) to assess the courts' caseload from filing to disposition. The weighted caseload study design assesses the amount of judicial time spent on the individual steps or

events involved in processing particular types of cases and the frequency with which these events occur in each type of case.

Three primary categories of events were measured in Colorado: 1) pretrial, 2) trial, and 3) post-trial. Judges were asked to record the amount of time spent on the category events for each case processed. To determine judicial need, a “judge-year” was calculated by subtracting weekends, holidays, sick days, vacation, and judicial education days from the total number of workdays in a year—resulting in a 220-day judge year. The Colorado Administrative Office of the Courts then developed a “judge standard” to assess judicial need.

The judge standard reflects the number of cases that can be reasonably processed by a mix of judges and magistrates. Separate standards were produced for urban and rural jurisdictions and reflect the “standard” percent of workload (by case type) for judges and magistrates (e.g., domestic relations case represent 40 percent of judges’ workload and 60 percent of magistrates’ workload). To determine the judicial full-time equivalents (FTEs) needed, the total number of a specific type of case processed in a jurisdiction (e.g., felony cases) was divided by the judge standard for that type of case. More refined figures were calculated by multiplying the number of judicial FTEs by the percentage of workload defined in the judicial standards.

Despite being highlighted by NCSC as an effective method for determining judicial resources, Colorado’s method is subject to many of the same shortcomings as identified by the Dakota studies, such as this method does not consider the absence of data reflecting quasi-judicial staff or other court personnel, including trial court administrators or clerks.

### ***State and Local Efforts to Assess Prosecutor Caseload and Workload***

Several states and local jurisdictions have also attempted to assess prosecutorial caseload. Most of these studies were conducted as part of a state or local budget process. A review of these efforts provided insight into the type of information collected, how assessments were developed, along with confounding variables that may have affected the results. It should be noted that the term “case” is not defined consistently across the studies. In general, the studies define a case once charges were filed; however, in some analyses, a case begins with screening.

### **Wisconsin Prosecutor Time Reporting Study**

In the early 1990s, the Wisconsin legislature authorized a statewide study of prosecutorial case management and time reporting, following the passage of legislation that made district attorneys and assistant district attorneys state employees. The purpose of the time study was to obtain data to develop budget figures for prosecutor staff. (All other costs in prosecutors’ offices in Wisconsin are covered by counties, e.g., computers, support staff, victim/witness staff, etc.) Nearly 60 of the 71 district attorney offices in the state participated in the study.

The time-reporting study was used to determine the average number of hours a prosecutor spent on each type of case. Each case was counted by the highest charge at the time of filing. Based on reported time, the average case processing times were determined to be 100 hours for homicide cases, 8.49 hours for non-homicide felonies, 2.17 hours for misdemeanors, and 3.32 hours for juvenile cases. These average case processing times were multiplied by the average number of cases filed to determine staffing needs.

### **North Carolina Prosecutorial Resources Project**

In 1995, after a 99 percent increase in felony filings over a 10-year period, the North Carolina Conference on District Attorneys initiated a study of prosecutorial resource needs. At that time, 346 prosecutors in 39 district attorneys' offices handled more than 83,800 felonies (242 felonies per prosecutor). The Conference worked with the Jefferson Institute to conduct a study that assessed resource needs by reviewing prosecutorial policies, procedures, demographic trends, criminal justice expenditures, and crime rates.

To address the issue of prosecution personnel needs across the state, Jacoby et al. (1996) examined North Carolina's existing method for assessing prosecutorial needs. The existing method was a case weighting system derived by using population-based factors (district population, district court sites and so on) and caseload (felony and non-felony caseload).

The study found that the existing model placed too much emphasis on population-based factors, which dampened the model's responsiveness to changes in felony workload. Jacoby et al. (1996) recommended replacing the existing model with a weighted allocation model that included an analysis of Part I index offenses, Part I index arrests, adult arrests for violent crimes, Part I property crime, aggravated assault arrests, and the number of counties in the district.

### **Maine Caseload Project**

In 1996, the Maine Prosecutor's Association asked APRI to conduct a needs analysis of the eight Maine district attorney offices. The purpose of the study was to document and understand human resource needs in the state. Specifically, the research objectives included a comparison of Maine's prosecutors' criminal caseloads with the ABA standards for criminal law attorneys; a determination of how well staffed the district attorney offices were; and recommendations that might enable prosecutors to readjust workloads in their offices.

APRI used data on the number of criminal cases processed in 1995 from the Maine Judicial Department's Annual Report. The analysis provided an average workload by district and statewide. By dividing the number of felonies and misdemeanors filed statewide in a year by the number of prosecutors in all offices, the authors calculated a statewide average of 63 felony cases per prosecutor and 1390 misdemeanor cases per prosecutor. The average number of felony cases per prosecutor was believed to be well within reasonable limits for a manageable caseload. The average number of misdemeanors, on the other hand, was found to be very high when compared to the ABA Standards for Criminal Justice.

While felony cases are generally more labor-intensive than misdemeanors, the authors concluded that the misdemeanor caseload per prosecutor, along with other factors, were straining prosecutorial resources. Other factors cited in the report include increased number of DUI misdemeanor cases, the lack of automation in district attorneys' offices, and the long distances many prosecutors must travel to court or to prepare cases. Further comparative analyses of the amount of attorney time spent processing misdemeanor and felony cases would allow additional recommendations for allocation of prosecutorial resources.

### **Jefferson County, West Virginia Prosecuting Attorney**

To prepare for the local budget process in Charles Town, West Virginia, the Jefferson County Attorney reviewed caseload analyses from the APRI study in Maine and the Bureau of Justice Statistics publications, *Prosecutors in State Courts, 1992 and 1994*, and prepared a detailed analysis of his office's staffing levels and caseloads. He determined staffing needs for his office by computing an estimate of the number of person-hours available for each prosecutor and estimating the amount of time each type of case (with various dispositions) would take a prosecutor to handle.

In brief, he multiplied the number of cases (by type) by the number of prosecutor hours required for that type of case, resulting in the total prosecutor hours required to process the caseload. The total hours were then divided by the number of available hours per one full-time prosecutor to calculate the full-time equivalent (FTE) prosecutors required.

The Jefferson County prosecutorial workload assessment is a comprehensive analysis of the amount of time needed to prosecute various types of cases, and ultimately the number of prosecutors required to process the caseload. Further insight might be gained by redefining the offense categories to allow for a more in-depth examination of the amount of time required to prosecute different types of violent felonies and "serious" misdemeanors.

In review, national and local efforts to establish standards for allocating attorneys vary considerably. Although most studies consider the current resource level and volume of cases of an office, no standardized model specifies other factors that need to be included. In addition, no standardized measures are proposed that could operationalize concepts (such as time or case seriousness) universally across offices or states. Although results from national and local studies have proven promising on different levels, researchers are still lacking a comprehensive approach to developing a reliable caseload standard.

## IV. THE OBJECTIVE WAY TO QUANTIFY CASELOAD AND WORKLOAD

As discussed in previous chapters, answering the question of how many prosecutors, investigators, victim/witness assistance coordinators, and support staff are needed for a prosecutor's office to function effectively and efficiently requires more than just knowing how many cases are initiated in the office and how much time is generally spent processing cases. Rather, such assessments require an in-depth understanding of how the prosecutor's office operates within the criminal justice system, the types and numbers of cases processed, time spent processing the array of cases, how cases are typically disposed, and staff time spent on other non-case related responsibilities. In other words, to accurately define resource needs, one must consider both the caseload (the amount of cases of various types that are processed and the amount of time it typically takes to process them) as well as the overall workload (case processing time combined with time spent on other prosecutorial responsibilities).

APRI has developed a disposition-based method to address the challenges to comprehensive assessment, posed by the various factors that can influence caseload and workload and the shortcomings of other assessment methodologies. The disposition-based method examines the amount of time required, on average, to bring cases to disposition, while considering the array of dispositions and other prosecutorial responsibilities. This method, which was developed and tested with 56 prosecutors' offices nationwide, provides a sound, objective methodology for assessing both caseload and workload and determining the number of staff needed to manage both.

In a disposition-based assessment, the average amount of time spent bringing a case to disposition is calculated for different types of cases in order to develop relative weights for each type of case. For example, capital murder cases typically require the concentrated time and attention of more than one prosecutor, investigator, victim/witness assistance coordinator, and support staff over a lengthy period of time. These cases often involve extensive follow-up investigation, provision of services to victims' families, numerous pre-trial hearings and motions, and a jury trial. On average, these cases require more prosecutor time than a larceny theft case, for example, that may plead out prior to trial. As part of a disposition-based assessment, the amount of time prosecutorial staff spend on different types of cases, whether or not a disposition is achieved, and the point at which it was achieved are recorded by the staff in a prosecutor's office. The amount of time and the number of dispositions at each disposition point recorded are then used to calculate the average amount of time needed to process each type of case.

Time spent on non-case related activities is added to the case processing time to determine the workload measure. The workload measure represents the number of cases of a specific type a person can handle if he or she works only on that type of case. In addition, the workload measures consider the actual number of work hours available in a year (less holidays, sick leave, vacation, and mandatory professional training hours).

The disposition-based assessment requires that attorneys, investigators, victim/witness assistance coordinators, and support staff record several key pieces of information over a set time period. This information includes:

- The activities that staff perform while working each day;
- The types of cases worked on;
- The amount of time spent on each type of activity;
- Whether or not a disposition is achieved during the course of the work performed;
- Whether or not the case involved any enhancers (e.g., child victim/witness, complex evidence, etc.); and
- The total number of dispositions (for each type of disposition) achieved during the time period and annually.

This information is collected from staff using a comprehensive time sheet, tailored to the specific roles and responsibilities of the various types of staff. To ensure the most reliable and valid data, staff must report all their work-related activities, even if they occur on weekends or in the evenings, for a set length of time. The staff-reporting period should be of sufficient length to capture a representative number of cases and dispositions. Depending on the size of the office and the number of cases processed annually, the time period may be as short as 6 weeks or as long as 12 weeks.

### ***Determining the Case Weight (Average Case Processing Time)***

The case weight represents the average time needed to process a case. In general, the case weight is the sum of all case related time by case type divided by the number of dispositions reported in the study period. There are two types of case weights, which represent the following:

1. The average time spent bringing a case to a certain point of disposition (e.g., pre-trial, trial, etc.); or
2. An overall case processing time that takes into account the array of dispositions.

Case weights for points of dispositions are created by summing together time associated with different points of dispositions for each case type and then dividing each total by the number of dispositions recorded. For example, attorneys recorded the following total time in hours and number of dispositions for homicide cases at three different disposition points:

|              | <u>Pre-Charge</u> | <u>Pre-Trial</u> | <u>Trial</u> | <u>Total</u> |
|--------------|-------------------|------------------|--------------|--------------|
| Time         | 347.9             | 1,654.9          | 246.2        | 2,249.0      |
| Dispositions | 9                 | 15               | 1            | 27           |

Thus, the average time required to bring a homicide case to a pre-charge disposition is 39 hours (347.9÷9), 110 hours for a pre-trial disposition, and 246 hours for a trial disposition. This level of detail can be very helpful in managing an office's caseload. The primary drawback with disposition-specific case weights is the difficulty in determining the number of cases of a specific type that a person can handle in a year without reliable trend data to indicate the relative proportion of pre-charge, pre-trial, and trial dispositions for each case type.

The second type of case weight lends itself more easily to the development of workload measures (number of cases that can be handled) and resource projections. This case weight is developed in a similar manner as described above. Basically, the total number of hours for each case type is summed and divided by the total number of dispositions. The primary difference is that the time is weighted according to the relative distribution of time across different types of dispositions. In other words, a single case weight must still take into account the fact that cases that go to trial take longer than cases that are screened out or disposed of prior to trial. Using the example from above, simply taking the total hours reported and dividing by the total number of dispositions produces a case weight of 83.3 hours. However, the majority of time and dispositions were recorded at the pre-trial stage. Therefore, the average case processing time is proportionately adjusted, resulting in an overall case weight of 90 hours.

### ***Calculating How Many Cases a Person Can Handle in a Year: Workload Measures***

The case weights, described in the previous section, provide an objective assessment of the average case processing time. These weights also provide the foundation for calculating how many cases of a specific type a person can handle in a year if he or she only works on that type of case, which is called the workload measure. Workload measures are derived from the average case processing time and the actual number of hours available in a year to handle cases, taking into consideration non-case related activity and time off for holidays, vacation, sick leave, and annual training.

The number of hours available for work is called the staff year value. The staff year value may vary depending on the type of staff person and the state or county mandated work schedule. An example of how a common year value is calculated for attorneys is shown below:

|                           | <u>Hours</u>                               |
|---------------------------|--|
| Work day                  | 2080 /year (8 hours x 5 days x 52 weeks)   |
| Annual Leave              | -120 /year (based on 15 days annual leave) |
| Sick Leave                | -80 /year (based on 10 days sick leave)    |
| Holidays                  | -88 /year (based on 11 holidays per year)  |
| CLE hours                 | -20 /year                                  |
| <b>Annual Year Value:</b> | <b>1772 actual hours available</b>         |

Once the staff year values have been established, the workload measures can be developed for each type of case using the following formula:

$$\text{Year Value} \div \text{Caseweight}_x \text{ (where "x" corresponds to the case type)} = \text{Workload Measure}$$

Using the previous example, the workload measure for homicide cases would be calculated as follows:

$$1772 \div 90 \text{ (homicide case weight)} = 19.69$$

Therefore, in this example, an attorney could handle approximately 20 homicide cases per year if he or she only worked on homicide cases. It is important to remember that, in this example, the greatest proportion of dispositions were recorded at the pre-trial stage, and as such, most homicide cases did not go to trial. If more homicide cases went to trial, the case weight would be larger (i.e., cases would require more processing time) and thus the number of cases that could be processed by a single attorney would be lower.

To highlight another example, the case weight for felony drug cases in one state APRI studied was 6.34. This means that the average case-processing time for drug cases in this particular state was nearly 6½ hours. Thus, an attorney in this state could handle 280 felony drug cases per year ( $1772 \div 6.34 = 279.50$ ). Whereas a larceny case in this state has a case weight of 7.10 hours. Therefore, an attorney assigned to only larceny cases could process 250 per year ( $1772 \div 7.10 = 249.58$ ). These calculations are repeated to obtain workload measures for each case type and staffing category.

## V. TRANSLATING WORKLOAD INTO RESOURCE NEEDS

Three steps are generally needed to determine how many staff persons are needed to handle an office's caseload and workload: 1) determine the case weights, 2) calculate the workload measures, and 3) apply the workload measures to annual case dispositions. The first two steps were described in the previous section; the third step is described in detail below.

### *Developing a Resource Needs Formula*

In the disposition-based method for assessing prosecutor workload, the workload measures are applied to the annual case dispositions to determine the actual number of full-time equivalent (FTE) staff positions needed in a prosecutor's office. The formula for projecting resource needs is as follows:

$$\text{Annual Case Dispositions} \div [\text{Workload Measure}] = \text{FTE Staff Positions Needed}$$

The formula yields the most accurate projection of resource needs when the annual dispositions and the workload measure for each case type are used. Once the numbers of FTE staff positions have been calculated for each type of case, the positions are added together to determine the total number of staff needed to handle the workload, as shown in the hypothetical example below.

| Type of Case               | Dispositions | Workload Measure | Projected FTE Attorney Positions |
|----------------------------|--------------|------------------|----------------------------------|
| Criminal homicide          | 36           | 19.69            | 1.83                             |
| Rape/sex offenses          | 224          | 33.20            | 6.75                             |
| Robbery                    | 443          | 145.35           | 3.05                             |
| Aggravated assault         | 335          | 110.80           | 3.02                             |
| Larceny/theft              | 1441         | 249.58           | 5.77                             |
| Felony drug                | 2341         | 279.50           | 8.38                             |
| Economic crime/major fraud | 505          | 49.89            | 10.12                            |
| Other miscellaneous felony | 880          | 372.17           | 2.36                             |
| <b>TOTAL</b>               | <b>6205</b>  |                  | <b>41.28</b>                     |

In this example, the prosecutor's office needs slightly more than 41 FTE attorneys to handle the workload. It is important to note that how cases are defined and counted will impact the total number of positions needed. Therefore, it is imperative when assessing workload that the counting method defined for annual dispositions matches the method used to determine the workload measures. As guidance for prosecutors who participated in this landmark workload study, the following definition was institutionalized:

*A case begins when information on a criminal matter comes to the attention of a prosecutor, regardless of whether or not charges have been filed.*

To ensure consistency in case counting across jurisdictions, APRI developed and applied the following case counting rules:

- Each case is defined by the individual defendant and by incident.
- Cases involving multiple defendants are counted and recorded with separate entries for each defendant.
- Cases that involve multiple charges or counts, arising out of the same incident, are recorded with the highest charge as the case type (based on the severity of the sentence for the crime).

Although it is not necessary for offices interested in conducting workload assessments to adopt the case definition and counting methods developed by APRI, it is imperative that a consistent definition and counting method be used. For example, should standards be developed for prosecutors, a national definition and counting method will need to be established so that comparisons can be made between jurisdictions.

In addition, the resource needs formula can help prosecutors determine how many staff are needed to handle different types of cases. For example, the resource needs formula can project the number of FTE attorneys needed to handle felony drug cases, assuming these attorneys work exclusively on felony drug cases. However, the formula cannot be used to project how many drug and burglary cases an attorney can handle if he/she is assigned to both.

### ***Using the Formula to Project Current and Future Resource Needs***

The primary criticism of a workload assessment is that it measures the status quo, and prosecutors and policymakers are often concerned about institutionalizing an overworked system. First and foremost, disposition-based workload assessments have a built-in protection system to guard against institutionalizing an overworked system. APRI's workload assessments ensure that the workload measures are based on a standard number of work hours and assume that staff take full advantage of their leave benefits. This means that while staff may currently work an average of 10-30 hours of overtime a week to complete their work, the workload measure assumes that they work *only* 8 hours a day, 5 days a week.

Second, and equally as important, the resource needs formula is not static. Although the case weights and workload measures are constants in the formula, the number of dispositions reported annually is not. Therefore, the formula can be used to predict future resource needs by examining the impact of increases or decreases in dispositions on the overall staffing needs.

To project future resource needs, trends in dispositions should be established. Trends, which are often available from the state Administrative Office of the Courts (AOC), generally examine the degree of change (increase or decrease) over a certain number of years (often 5 to 10 years). The rate of change for each type of case can be used to determine how

many cases are likely to be disposed in future years. As an example, consider the following scenario:

Noname County in the rural Midwest has experienced steady increases in the number of felony drug cases that are processed by the District Attorney. The trends show an average increase between 1997 and 2002 of 14 percent annually. Their workload assessment shows the average felony drug case takes 12.53 hours to bring to disposition, and the number of drug cases an attorney can handle in a year is 130.16. Here are the resource projections for the current and upcoming years:

In 2001, 206 felony drug cases were disposed, resulting in 1.58 FTE staff positions (or one full-time and one part-time attorney) needed  $[206 \div 130.16]$ .

In 2002, felony drug cases are expected to increase by 14% as they have in the past. Therefore, the number of FTE positions needed to process drug cases will be 1.81 (nearly 2 full-time attorneys).  $[2001 \text{ FTE positions needed} \times 14\% \text{ or } ((206 \times 14\%) + 206) / 130.16]$

### ***Comparing Caseload/Workload to Other Offices***

With a comprehensive workload assessment in hand, case weights established and workload measures developed, prosecutors and policymakers generally want to know how their figures compare to other offices in the state and across the country. On the national level, comparisons cannot be made at this time (as discussed in detail in the following section).

In-state comparisons can be made, but with caution. The primary reason is that many of the contextual variables described in the first few sections, particularly external factors, can be controlled at the state level. In other words, the external factors related to the criminal code and the criminal justice system that impact an office in one part of the state will also affect offices in other parts of the state. However, there may still be internal factors that impact an individual office's caseload and workload. Consequently, it is acceptable to make general comparisons, but not direct comparisons. General comparisons would focus on whether or not case processing time is similar and if the numbers of cases a person can handle in a year are similar. In other words, are the numbers in the same ballpark? Direct comparisons of the overall caseload and workload cannot be made because the numbers are influenced by a myriad of internal factors such as office policy, procedure, and practice. In addition, determination about whether or not one office is more efficient than another cannot be made because of the internal factors that affect caseload and workload. These direct comparisons, focusing on the distribution of dispositions across case types and the mix of staff needed, should be avoided.

## National Comparisons: Is It Possible to Have National Standards?

On the national level, APRI spent 3 years collecting information to determine if national caseload and workload standards could be developed. After examining all the information collected to date and attempting to control for the effects of various external, internal, and individual case factors on the overall workload, APRI found that it was impossible for such standards to be developed. The study did, however, produce a number of interesting findings that refute some popular notions about resource allocation for prosecutors. In addition, the findings provide insight into the impact of different factors on case processing that prosecutors and policymakers should be aware of when determining budgets and resource needs.

APRI's meta-analysis of workload data attempted to standardize measures and to control for factors found to cause variations in case processing time. APRI first examined case processing times for felonies and misdemeanor cases in general and then disaggregated the information to examine case processing times for aggravated (or serious) felonies and less serious felonies and misdemeanors for each state that participated in the study. The resultant average case processing times, shown below, raised numerous questions about the development of national standards. First, there was significant variation between states in terms of their average case processing time, which indicated that the impact of various external and internal factors on caseload needed further exploration. Second, aggravated felonies in all of the states were found to take significantly longer on average to process than less serious felonies, bringing into question how different points of disposition may be related to the finding and how many of the cases involved serious complicating factors (such as the use of DNA evidence).

**Average Case Processing Times by State\***

|           | <b>All Felonies</b> | <b>Aggravated Felonies</b> | <b>Less Serious Felonies</b> | <b>Misdemeanors</b> |
|-----------|---------------------|----------------------------|------------------------------|---------------------|
| State A** | 10.1**              | 17.0                       | 7.3                          | 3.0                 |
| State B   | 16.5                | 28.8                       | 11.7                         | 5.8                 |
| State C   | 11.4                | 19.3                       | 8.9                          | 4.3                 |
| State X   | 9.0                 | 17.0                       | 5.3                          | 4.9                 |
| State Y   | 7.5                 | 12.5                       | 6.1                          | 3.6                 |
| State Z   | 7.1                 | 17.4                       | 5.9                          | 4.3                 |

\* The average case processing times shown in the table are statistical representations that have been standardized for comparison purposes. These figures were not the actual case processing times used to calculate resource needs in the participating states.

\*\* For purposes of confidentiality, APRI randomly assigned letters to the states participating in the study so that the data shown could not be associated with a specific state.

Based on the variation in processing times across states and the difference in processing time for aggravated felonies, APRI conducted analyses to determine the individual effects of the following factors on case processing time:

- Percentage of cases settled at trial;
- Percentage of cases with enhancers (complicating factors);
- Availability of non-attorney staff; and
- Number of courts served.

Experienced prosecutors know that cases that go to trial generally require more time than cases disposed prior to trial. APRI's study found that case processing time increased significantly with the percentage of felony cases that go to trial but not for misdemeanor case processing time. This means that as the percentage of felony cases that go to trial increases, so too will the amount of time needed to handle felony cases. In fact, regardless of office size, a 1 percent increase in the number of felony cases that are disposed at trial can result in an increase in overall felony case processing time by almost 30 hours. In other words, suppose an office has a trial rate of 5% and the average felony takes 20 hours to dispose; if the trial rate increases to 6 percent, the average felony case processing time would increase to almost 50 hours. Additionally, a 1 percent increase in the number of aggravated felony cases can lead to an increase in overall case processing time of 15 hours per case.

Often, cases that go to trial do so because of the complexity of the case. Therefore, APRI examined the impact of the following factors, called case enhancers, on case processing time:

- Child victim/witness;
- Senior victim/witness;
- Victim/witness with a disability;
- Defense by reason of insanity;
- Language barriers/cultural issues;
- Capital offense;
- Gang-related;
- Complex evidence such as financial records, computer evidence, scientific evidence, DNA evidence, or reluctant/uncooperative victims or witnesses;
- Domestic violence;
- Out-of-state parties to the case; and
- Retained private counsel.

As expected, APRI found a strong correlation between the percentage of felony cases with enhancers and case processing time. Thus, the time needed to dispose of a felony case increases as the percentage of felonies with enhancers increases.

Investigators, victim/witness advocates, and other non-attorney staff play critical roles in case processing, performing numerous tasks required for case screening, preparation, and administration that would otherwise need to be performed by attorneys or not performed altogether. By providing information for investigations, coordinating victims and witnesses, and providing general administrative support, non-attorney staff can greatly aid attorneys. In fact, APRI found that there is a relationship between the presence of non-attorney staff and case processing time. The time spent by attorneys processing cases decreases with the presence of victim/witness advocates and support staff. The presence of investigators, however, did not have an impact on attorney case processing time. This finding provides strong empirical evidence that the ratio of attorneys to non-attorney staff has a direct impact on attorneys' case processing time and thus the ratio should be considered in determining resource needs.

APRI's examination of the impact that the number of courts served has on case processing time revealed interesting results that ultimately should be explored further. (Limitations in APRI's data made such further exploration methodologically impossible.) APRI found that the more courts served by a prosecutor's office decreases felony case processing time, but increases misdemeanor case processing time. This finding may be related to scheduling and docketing procedures because the number of misdemeanor cases is so large relative to the number of felony cases. However, this hypothesis requires more studying.

Because it would be impossible, not to mention undesirable, to mandate or recommend standards in terms of how many cases of an aggravated nature a prosecutor should take or how many cases should go to trial, national standards are not feasible. Furthermore, APRI's study demonstrates that caseload and workload comparisons between states would be invalid and unreliable.

## **Conclusion**

APRI's study findings suggest two conclusions. First, the number of attorneys in an office may be a more useful measure of office size rather than other related measures (i.e., crime rate and population served). Second, using traditional resource projection measures, such as population served, is counterproductive, because they are not significantly related to office output measures (i.e., case dispositions) when other variables are taken into consideration.

Based on these two conclusions, it is not possible to develop national standards because it is impossible to control the factors that create substantial variation across the county. It is possible that national standards would encourage attorney productivity. However; standards based solely on current factors without controlling for the number of

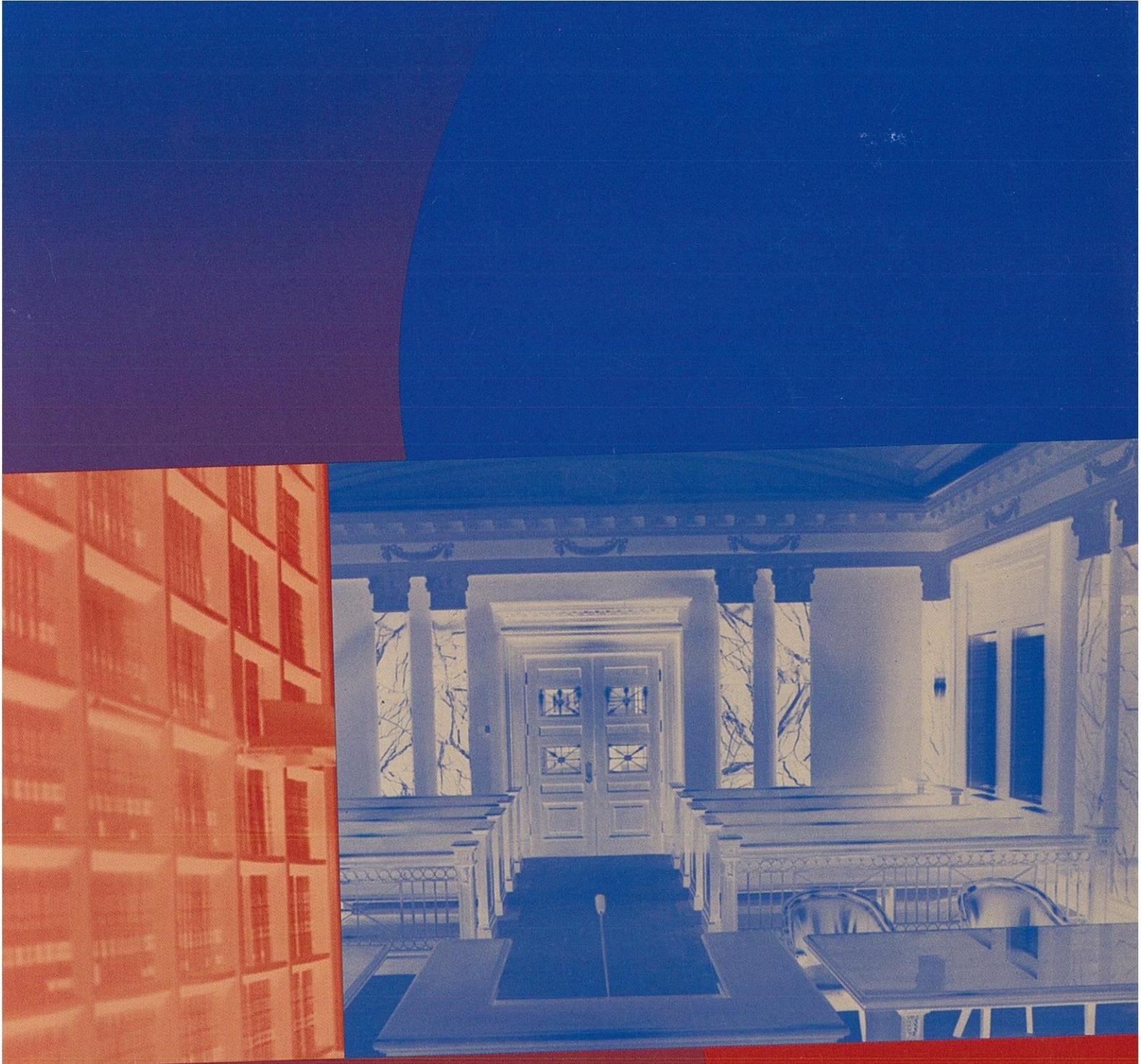
aggravated cases and the percentage of cases disposed at trial (and other local factors), will over-provide attorneys in some offices and under-provide in others. Such an allocation will not result in a golden mean at the national level. Rather, attorneys in under-staffed offices will be unable to spend sufficient time on cases to see that justice is done, and in over-staffed offices, the surplus of attorneys could drain public coffers. In both situations, standards based solely on readily-available benchmarks (such as population) result in net productivity losses instead of inspiring productivity gains.

Although it is desirable to many to have national standards, APRI's findings demonstrate that such standards would be fatally flawed without significant efforts to create a national method of case counting and for tracking those factors most likely to impact caseload (described above). However, it is possible to establish state and local standards using the method described earlier. At the state and local levels, it is possible to control the exogenous variables that prohibit national standards. As such, individual state and local standards may prove to be of far greater value and more reliable and useful in the local administration of justice, than any attempt could be to use national standards.

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