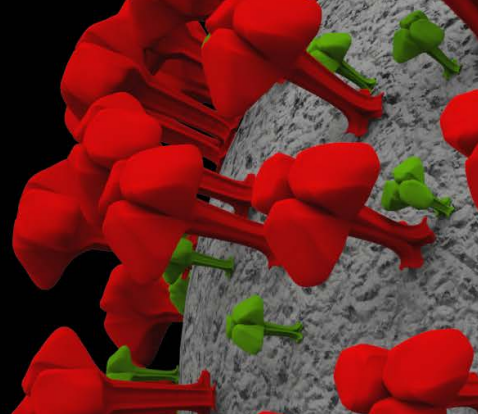


COVID-19

Prosecutor Focus Group Results



CNA and the National District Attorneys Association (NDAA) have partnered to develop and disseminate useful COVID-19 response resources to prosecutors and courts. Recognizing that prosecutors nationwide continue to grapple with increasing case backlogs, staffing shortages, and concerns related to courts reopening, CNA and the NDAA held two listening sessions in August 2021 with prosecutors from around the country. Our goal was to better understand the current challenges and concerns within their jurisdictions, especially as a result of the COVID-19 pandemic. Each jurisdiction faces a unique set of challenges; the following key themes emerged in the listening sessions:

KEY TAKEAWAYS

COURTS AROUND THE COUNTRY ARE REOPENING WITH A VARIETY OF HEALTH MEASURES IN PLACE.

As courts continue to open and operate at various levels around the country, some members of our working groups expressed concerns about their jurisdictions' health and safety protocols. Though some courts still require masks and have safety barriers installed, others are either not requiring these types of measures or are not enforcing them. One member of our working group noted that their court recently relaxed its mask mandate; however, after three individuals reported positive COVID-19 tests within two weeks, the court resumed its masking mandates.

Group members from larger offices indicated that they try to maintain a rotating work schedule, implemented since the beginning of the pandemic, to lower the number of employees in the office at that same time. One participant noted that this practice seemed important for the staff's mental health stating that "people need this, mentally."

Other participants noted that even though they have high vaccination rates within their offices, staff members who have young children in school or daycare remain concerned. Our working groups discussed the importance of continuing flexible schedules, recognizing that schools reopening for in-person learning in the midst of increased caseloads might further raise stress levels among working parents. One session of our working group stressed the importance of management staying familiar with local school and childcare openings and closures, especially with the increased number of COVID-19 cases in children.

SOME PROSECUTORS' OFFICES ARE EXPERIENCING STAFFING PROBLEMS—BOTH IN TERMS RECRUITMENT AND RETENTION.

Though this seems to be dependent on location, some members of our working groups noted that their offices are currently experiencing problems with both recruitment and retention. Participants indicated that social justice movements around the county may be related to these issues. Some participants noted that the number of applications has decreased while applications for their local public defenders' offices have increased. Overall, most participants believe that prosecutors have a public relations problem and should do a better job spreading their message to the local community.

Participants highlighted how the departure of experienced attorneys affects their case backlogs, noting that newer attorneys are not often able to handle complex felony trials—which are being prioritized in many jurisdictions. One participant noted that "the concept of a career prosecutor is not really a thing anymore." The group agreed that when experienced prosecutors leave, there is a loss of institutional knowledge that is not easily replaced.

Participants also noted that offices have not trained newer attorneys to the same level that they would have if the attorneys had started before the pandemic. One individual noted that in their jurisdiction, new attorneys are typically moved through a structured training process, but the increased numbers of experienced attorneys leaving has put pressure on the office to move people up faster. Participants discussed having additional trainings, such as mock trials, on Saturdays. Given the level of the case backlogs, however, additional training work increases both the burden on attorneys and the potential for burnout.

Not all participants agreed about staffing problems. Several individuals from Texas offices noted that they were not experiencing retention problems. This lack of consensus highlights the importance of taking a targeted approach when reviewing the situation in each office because different jurisdictions are experiencing different stressors and problems.

VICTIM SERVICES CONTINUES TO BE NEGATIVELY AFFECTED BY COVID-19 RESTRICTIONS.

One of our two sessions focused heavily on victim services. Participants expressed concern over victim services protocols that were necessary during COVID-19 becoming standard practices. One participant noted that protocol consistency is lacking for crime victims. This individual expressed concern that judges having total discretion over how hearings are being held—whether in person, virtually, or in a hybrid form—was intruding on victims’ rights. For example, this individual noted that some judges were limiting the number of people allowed in the courtrooms, and others were requiring victims and their families to be in a separate courtroom to watch the proceedings via live streaming. Participants discussed the potential for effects on jury verdicts when victims and their families were not present in the courtroom, and at least one participant noted that they believed that juries were returning not-guilty verdicts in cases where they would have expected the opposite.

Though these concerns over victims’ rights were not universal across our participants, there was an overall concern about how to move forward in a way that ensures the rights of all involved parties are being met.

JURISDICTIONS AROUND THE COUNTRY EXPRESSED CONCERN OVER INCREASING CRIME RATES.

Participants almost universally expressed concern over crime rates, especially rates of violent crimes which rose in 2020. They discussed increases in specific types of crime, such as gun crimes and homicides—especially related to domestic violence and juvenile crimes. Some participants noted that schools may not be prepared to meet the social-emotional needs of students, some of whom have been out of school for more than a year, and that this deficiency may lead to further increases in juvenile crime rates.

One participant noted that homicides are up 40 percent this year in their jurisdiction and their local detectives are clearing these cases. However, with their office’s backlogs and staffing problems, there is concern that these cases will continue to linger. Another participant indicated that, in their jurisdiction, the chief justice issued an order to release all nonviolent and misdemeanor defendants, with limited exceptions. Of these individuals, approximately 70 percent have been re-arrested and charged with another crime and approximately 30 percent have been re-arrested and charged with more serious offenses. Participants noted that increasing crime rates and bail reform policies are straining their relationships with local law enforcement. One participant indicated that their jurisdiction is receiving pushback from the local police department, which does not want to make arrests only to have the individual be released.

SOME JURISDICTIONS AROUND THE COUNTRY ARE EXPERIENCING LARGE CASE BACKLOGS.

Participants from some jurisdictions indicated that their local courts never stopped hearing cases; thus, their offices are not seeing an increase in case backlogs. Most of our participants, however expressed concern over increased caseloads and case backlogs, with some jurisdictions reporting thousands of cases currently awaiting trials because of months long court closures at the height of the pandemic. In most jurisdictions, felony cases are being prioritized, which is leading to concern about the lingering misdemeanor cases. Participants noted that defendants have no incentive to resolve cases, especially misdemeanor cases in which the defendant has been released on bond. Some participants noted that handling the felony backlogs may be less problematic than handling the misdemeanor cases. However, other participants indicated that their offices were able to decrease the number of less serious cases, but now they are seeing a change in the percentages of cases (i.e., increased numbers of serious cases and fewer less serious cases.)

Participants also indicated that, even if plenty of courtrooms were available, their offices can “only handle so many jury trials.” The general sentiment was that the case backlogs were “looming” and that management was trying to prepare

for these as best as they could. However, participants noted that with the COVID-19 variants, they also need to be prepared to have attorneys and support staff working virtually to decrease the risk of exposure.

Smaller offices feel especially burdened by backlogs. One participant indicated that their office currently has over 2,000 cases and only two attorneys to handle them. Rural jurisdictions have an added problem of convincing attorneys to relocate to, and work in, rural areas.

Participants expressed concern that criminal justice reforms and COVID-19–related orders may be adding to case backlogs. Another participant posited that their jurisdiction changed laws in a way that might encourage defendants to request jury trials, which would further exacerbate their case backlogs. Alternatively, another participant noted that their jurisdiction allows a judge to order a bench trial over the prosecution’s objections

CONCLUSION

The current state of the criminal justice system pertaining to COVID-19–related problems in prosecutors’ offices and the courts appears to be location specific. Jurisdictions are implementing various policies and procedures in attempts to manage their case backlogs, but, at this time, we do not know whether or how these policies will work. These issues need to be further studied and reviewed to determine best practices. One individual noted that the criminal justice system should stop treating this pandemic as a temporary situation and that it needs to make strategic plans so offices are not continually “operating in crisis mode.”

FOR QUESTIONS, CONTACT US AT COVID19_COURTS@CNA.ORG.