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Bureau of Justice Statistics Bulletin

Prosecutors in State Courts, 1990

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During the year ending June 30, 1990, approximately 2,300 chief prosecutors employed about 20,000 deputy attorneys for the prosecution of felony cases in State courts. The prosecutors served the Nation's 3,109 counties and independent cities, obtaining convictions on about 668,000 felonies, according to an estimate from a nationwide survey of felony cases in 1988.

Chief prosecutors employed on average 10 assistant prosecutors and served districts with an average population of about 111,000 people. Their offices obtained about 300 felony convictions a year. One in five chief prosecutors had responsibility for more than one county.

These findings are from the National Prosecutor Survey Program (NPSP) of the Bureau of Justice Statistics (BJS), the first national survey of prosecutors since 1974, when the National District Attorneys Association (NDAA) polled over 1,100 offices.¹

Among the items covered by both the 1990 and 1974 surveys were the following:

- In 1990, 86% of the chief prosecutors had a 4-year term of office, an increase from 79% in 1974. In the earlier survey 16% of the chief prosecutors were serving a 2-year term; by 1990 that percentage had fallen to about 5%.

¹Healy, Patrick F. *National Prosecutor Survey*, Chicago: National District Attorneys Association, 1977.

The resources, policies, and practices of prosecutors — most often called district, county, or prosecuting attorneys — bear directly on the effectiveness of the Nation's response to crime. The results from the first national survey of prosecutors in more than 15 years reveal an institution that has had to change to meet new challenges in criminal justice. One important change is the increased attention and assistance being given by prosecutors to victims of crime.

- In 1990 over half (53%) the prosecutors worked at their position full time. In 1974, 44% of the prosecutors were full-time.

- In 1990 half of the full-time chief prosecutors had at least one assistant. Thirty-seven percent had more than two assistants. Of these assistants 87% were full-time. In 1974, 37% of the full-time chief prosecutors had at least one assistant and 21% had more than two; of the assistants 77% were employed full time.

- In 1990, 36% of the chief prosecutors reported adherence to explicit criteria and time limits on plea bargaining, a decrease from 80% in 1974.

- Prosecutors had more extensive contact in 1990 than in 1974 with interested parties in felony cases — witnesses, testifying police officers, and victims. In 1990, 95% of the chief prosecutors routinely notified witnesses when to appear, and 93% usually told the police and victims about the results of a case. In 1974, 77% routinely

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The 1990 survey, the first for the National Prosecutor Survey Program, is being followed this year by a second survey and an expanded questionnaire. We gratefully acknowledge the cooperation of the survey participants. Without their thoughtful and complete responses, an accurate and now up-to-date understanding of the Nation's prosecutors would be impossible.

Steven D. Dillingham, Ph.D.
Director

notified witnesses, 44% routinely reported the case outcome to the police, and 35% routinely notified the victim.

- Comparing responses in 1974 and 1990, no significant differences separated the percentages of prosecutors who reported being responsible for citizen complaints (87%), traffic infractions (86%), and juveniles (84%).

- Almost all prosecutors (97%) in 1990 handled extradition, a nonfelony matter. In 1974, 88% of prosecutors had responsibility for extraditions.

- Before 1990 responsibility for the Uniform Reciprocal Support Act had been removed from many prosecutors' offices. The percentage of prosecutors having such responsibility fell from 93% in 1974 to 69% in 1990.

- In both 1990 and 1974, about two-thirds of the chief prosecutors were notified of a felony arrest within 24 hours.

The 1990 survey of prosecutors

The National Prosecutor Survey Program (NPSP) surveyed a nationally representative sample of 290 chief prosecutors. All States except Vermont, which did not by chance enter the random sample, were represented in the survey. Completed questionnaires were obtained from 289 of them. The prosecutorial districts of these chief prosecutors encompassed a total of 514 counties and independent cities. (In this report the term "county" includes both counties and independent cities, such as Baltimore and St. Louis, that have their own court systems, separate from any adjacent or surrounding counties.)

Chief prosecutors, their staffs, and workload

What is a "chief prosecutor"?

A *chief prosecutor* is the attorney who advocates for the public in felony cases, as well as in a variety of other cases. A prosecutor's responsibilities are limited geographically. A *prosecutorial district* follows county lines and typically consists of a single county but may include two or more. In 1990 approximately half of these officials had the title of either district attorney or county attorney (table 1). A chief prosecutor may have a staff of "assistant prosecutors," attorneys who do much of the actual case work.

Table 1. Title of chief prosecutors, 1990

Title	Percent of chief prosecutors
District Attorney	28%
County Attorney	27
Commonwealth's Attorney	10
Prosecuting Attorney	18
State's Attorney	9
All other titles	8

Selection and term of office of chief prosecutors

In 1990, 97% of chief prosecutors were locally elected, the same percentage as in 1974. The other 3% were appointed officials in —

- Alaska, Connecticut, and Delaware, where criminal prosecution is the responsibility of the State's attorney general
- New Jersey, where the Governor appoints a prosecutor for each county in the State
- The District of Columbia, where the U.S. Attorney for the District of Columbia prosecutes both local and Federal crimes.

Eighty-six percent of the chief prosecutors had a 4-year term of office, compared to 79% in 1974 (table 2). In 1990 fewer prosecutors had a term of office shorter than 4 years.

Prosecutor's responsibility for nonfelony matters

The 1974 and 1990 surveys presented prosecutors with a list of 16 nonfelony areas. In both years every respondent indicated responsibility for at least one of

Table 2. Chief prosecutor's term of office, 1974 and 1990

Term	Percent of chief prosecutors	
	1974	1990
Total	100%	100%
2	16	5
4	79	86
5	0	1
6	3	6
8	2	2
Mean	3.8 yrs	4.1 yrs

those areas. Overall, the responses revealed an increasing concentration on felony matters (table 3). In the later survey, a larger percentage of prosecutors reported involvement in two areas: in surrendering persons accused of an offense in another State (extradition) and in family-related matters. Decreases, however, occurred in eight areas. In the remaining six areas, any apparent change in percentages between the 2 years is likely to be the result of surveying a sample rather than the entire population of prosecutors.

Prosecutorial employment, workload, and population served

The number of assistant prosecutors rose from 17,000 in 1974 to 20,000 during the 16 years between the surveys; the percentage of full-time chief prosecutors who employed one or more assistants also went up, from 37% to 50% (table 4). These increases paralleled the 70%-growth in employment in prosecution and legal services that occurred between 1974 and 1988. The percentage of full-time personnel in prosecution and legal services, which includes civil cases, was

Table 3. Prosecutorial responsibility for nonfelony matters, 1974 and 1990

Type of nonfelony matter	Percent of chief prosecutors	
	1974	1990
Increase		
Extradition	88%	97%
Family and domestic relations	45	54
Decrease		
Nonsupport	89%	73%
Uniform Reciprocal Support Act	93	69
Public nuisance	77	69
Consumer protection	71	52
Suits for collection of taxes	62	46
Condemnation	54	42
Noncriminal cases (injunctions and suits for damages)	48	37
Other	21	10
No change		
Citizen complaints	87%	87%
Traffic	86	86
Juveniles	84	84
Paternity	67	67
Mental commitments	65	65
Environmental protection	62	62

91% in 1988, compared to 88% in 1974. In 1990, 87% of assistants were full-time employees.²

Nationally, 53% of districts had a full-time chief prosecutor in 1990 (table 5). (In 1974, according to the NDAA survey, 44% of the chief prosecutors were full-time.) In the 75 largest counties, accounting for 37% of the population and approximately 50% of reported crime and felony convictions in the Nation, all chief prosecutors were employed full time. Of the remaining prosecutors, covering 3,034 counties, 51% were full-time.

The districts of chief prosecutors with no legal assistants had on average a 10th of the population of districts where prosecutors had staff assistants. Offices of prosecutors working alone handled an average of 10 felony cases per year, compared to 364 per year in the districts with staffs. Clearly, the size of the prosecutorial staff, the average number of convictions per prosecutor, and the ratio of cases to number of assistant prosecutors were directly related to the size of the county and the resultant number of felonies.

²Sourcebook of Criminal Justice Statistics, 1976, Michael J. Hindelang, et al., U.S. Department of Justice, February 1977, table 1.49, and Justice Expenditure and Employment, 1988, BJS Bulletin, NCJ-124132, July 1990, table 7.

Table 4. Employment of assistant prosecutors, 1974 and 1990

	1974	1990
Total number of assistant prosecutors	17,000	20,000
Full-time		
Percent of chief prosecutors employing one or more full-time assistants	37%	50%
Percent of chief prosecutors employing more than two full-time assistants	21%	37%
Mean number of full-time assistants per chief prosecutor	6	8
Percent of assistant prosecutors employed full-time	77%	87%
Part-time		
Percent of chief prosecutors employing one or more part-time assistants	31%	41%
Percent of chief prosecutors employing more than two part-time assistants	8%	11%
Mean number of part-time assistants per chief prosecutor	1	1

For the workload comparisons among regions, only the South differed significantly, having a larger average of sentenced cases per prosecuting attorney (38 versus 23 in the Northeast and Midwest and 29 in the West) (table 6).

Career-criminal units

Prosecutors and other criminal justice professionals have generally come to recognize that prosecuting repeat offenders effectively reduces crime. Even if the current charge against a repeat offender is for an offense less serious than past conviction offenses, prosecution may prevent yet more serious offenses. To target repeat offenders, assistant prosecutors in a specialized career-criminal unit collaborate with law enforcement agencies.³ If persons identified as career-criminals are arrested, assistants in that unit serve as the prosecutors.

³An example is New York County District Attorney's Office Annual Report, 1985-1986, pp. 14-19.

In 1990 the larger districts, with more resources, were more likely than other districts to have a career-criminal unit. While in the Nation as a whole 8% of chief prosecutors had a career criminal unit, 61% in the larger places had such a unit.

Policies and practices related to the stages of felony prosecutions

Point of the prosecutor's first involvement

The prosecutor usually does not know of a felony matter until a law enforcement agency makes an arrest. Because 95% of prosecutors receive felony cases from three or more arresting agencies, an opportunity exists for considerable variation in the time between arrest and notification of the prosecutor's office. About 73% of law enforcement agencies in the United States are State or local police departments and 18% are county sheriffs' departments;

Table 5. Prosecutorial workload and population served, by employment status of chief prosecutor, county population, and presence of assistant prosecutors, 1990

	Chief prosecutor			Counties		Staff with assistant prosecutors	
	Total	Full-time	Part-time	75 largest	Elsewhere	Yes	No
Population served per chief prosecutor (in 1,000's)							
Mean	111	186	27	1,200	73	140	14
Median	35	80	22	830	33	48	10
Average number of felony convictions per chief prosecutor							
Mean	292	523	32	4,239	157	364	10
Median	49	203	15	2,546	45	77	6
Percent of chief prosecutors							
Employed full time	53%	100%	0	100%	51%	61%	25%
Serving more than one county	20	29	11	1	21	24	10
Felony convictions per 1,000 population served							
	3	3	1	3	2	3	1
Ratio of convictions to total number of prosecuting attorneys							
	29	32	10	34	27	29	10
Note: The ratios in this table were computed as the sum of all numerators divided by the sum of all denominators. The source of workload data is the National Judicial Reporting Program survey of 1988.							

Table 6. Prosecutorial felony case workload, by region, 1990

	Average number of cases annually				
	All	Northeast	Midwest	South	West
Ratio of sentenced felony cases to total number of full- and part-time					
Prosecuting attorneys	29	23	23	38	29
Assistant prosecutors	32	24	28	42	31

the remainder are special agencies such as transit police or campus police.⁴

Some prosecutors are notified only after the arresting agency has filed papers in a special or "lower" court. This court conducts necessary pretrial events, such as informing the accused person of the charges, setting bail, and assigning defense counsel.

As in 1974, approximately two-thirds of chief prosecutors in 1990 were notified within 24 hours of a felony arrest (table 7). The proportion of prosecutors not knowing about an arrest within a day remained about the same from 1974 to 1990 despite the increased workload for police and prosecution. Lack of early notification was more prevalent in the South than elsewhere and least prevalent in the Midwest and West.

Early involvement of the prosecutor — before a felony court takes jurisdiction — permits the prosecutor to dismiss a case.⁵ In 1974, 80% of chief prosecutors reviewed all felony arrests before the case was taken into court, to determine whether the case should be prosecuted and what the proper charges should be. In 1990 that percentage had dropped to 47%. In 1990 a majority of chief prosecutors in the Midwest and West reviewed all felony arrests before filing.

Assigning prosecutors to cases

When a staff attorney handles all phases of a criminal case, the processing is known as "vertical" case assignment. A career-criminal unit, described above, is an example of vertical case assignment in which certain assistant prosecutors handle repeat offenders from the targeting stage onward. "Horizontal" assignment means that different assistants specialize in different phases — drafting complaints, conducting trials, or doing appellate work.

⁴State and Local Police Departments, 1990, BJS Bulletin, NCJ-133284, February 1992, table 1.

⁵For data on case rejections and dismissals, and the reasons for such actions, see *Report to the Nation on Crime and Justice*, 2nd ed., NCJ-105506, March 1988, p. 73. See generally, *Prosecution of Felony Arrests*, 1987, BJS report, NCJ-124140, August 1990.

More than 90% of chief prosecutors assigned some of their workload on a vertical basis, with staff attorneys keeping cases from charging onward. But in the 75 largest counties, 27% of the prosecutors, versus 72% in staffed districts elsewhere, assigned most or all of the work on a vertical basis.

The relatively high percentage of the 75 largest districts having some, but not most or all, cases assigned on a vertical basis, reflects the greater likelihood of the larger districts' handling certain cases in specialized units (table 8). Typical examples are death penalty cases, child-victim cases, sex cases, and racketeering cases.

Providing legal counsel for indigent defendants

The U.S. Constitution guarantees rights to citizens as they relate to the Federal Government and Federal criminal prosecutions. Such rights are not automatically applicable to State governments and State criminal prosecutions. In lawsuits concerning specific rights, the U.S. Supreme Court decides applicability of such rights to the States.

The sixth amendment to the U.S. Constitution establishes the right of a criminal defendant to have assistance of counsel for his or her defense. The Supreme Court has ruled that counsel must be available to any defendant who is at risk of a Federal or State sentence of incarceration.⁶ This right

⁶*Gideon v. Wainwright*, 372 U.S. 335 (1963).

extends to indigent defendants unable to pay a lawyer.⁷ If an indigent defendant who faces a penalty of incarceration wants a lawyer, the State must either provide a lawyer or seek a lesser penalty.

Public defender offices — government agencies employing attorneys to provide counsel to indigent criminal defendants — were found in 57% of prosecutorial districts. In about the same percentage (58%) of districts, the court assigned some or all cases of indigent defendants to private attorneys. In about 1 in 5 districts the courts had contracted for representation of indigent defendants with individual private attorneys, law firms, or local bar associations.⁸

Public defenders were present in nearly all of the 75 largest counties but were found in less than half of the smaller districts that had no assistant prosecutors. Public defender offices were least prevalent in the South and Midwest. The South was the region with the highest percentage of districts using assigned private counsel — 73%.

⁷*Argersinger v. Hamlin*, 407 U.S. 25 (1972).

⁸For a description of the major systems of delivery of indigent defense, see *Criminal Defense Systems*, BJS Special Report, NCJ-94630, August 1984.

Table 8. Use of vertical assignment of felony cases, by county size, 1990

Amount of cases assigned on vertical basis	Percent of chief prosecutors in		
	All	75 largest counties	Elsewhere
None	12%	4%	12%
Some	18	69	16
Most or all	70	27	72

Table 7. Chief prosecutors' involvement in felony cases before filing, by region, 1990

	All	Northeast	Midwest	South	West
Percent of chief prosecutors notified within 24 hours of felony arrest	63%	42%	83%	25%	88%
Reviewing all felony cases before filing	47	19	65	27	51

Formal commencement of felony cases in court

After a document charging a person with a crime is submitted to the felony court, an event known as a case "filing," the court takes control of the case. In 1990 more than a third (39%) of felony cases began with the filing of a charging document ("indictment") by a grand jury (table 9). In most other felony cases, the charging document is an "information" filed by the prosecutor. Either type of document states who the accused person is and what illegal acts were committed.

To proceed on the basis of an information rather than an indictment, the prosecutor normally must present the case in a preliminary hearing, which in some places occurs in a lower court. In a preliminary hearing, the judge reviews the facts and circumstances of the case to determine whether there are reasonable grounds ("probable cause") to believe the accused person committed the crime for which he or she is being charged.

The accused person may waive any right to have the matter reviewed by grand jury. Such waivers often occur, particularly when the accused decides to plead guilty early in the case.

How prosecutors initiated felony cases differed greatly by region. Cases were likely to begin with a grand jury indictment in the Northeast and the South, while cases elsewhere were more likely to begin with the filing of an information.

Use of grand juries

The fifth amendment to the Constitution establishes that a citizen accused of a felony has the right to have a grand jury, rather than the prosecutor, decide whether he or she shall be prosecuted. Except in cases that could involve a death sentence, the accused may waive this right. The grand jury right does not apply to prosecutions in State courts.⁹ About half of the States, however, have laws allowing or requiring the use of grand juries in felony cases.¹⁰ In these States, the State constitution or legislature provides for grand juries.

⁹ *Hurtado v. California*, 110 U.S. 516 (1884).

¹⁰ *Report to the Nation on Crime and Justice*, p.72.

Where grand juries are used, an indictment takes precedence over the prosecutor's view of whether probable cause exists in a case. Nevertheless, in 1990, in half of the districts the indictment could not be filed in felony court without the chief prosecutor's signature. State laws that authorize grand juries do not necessarily permit prosecutors to participate in the proceedings. Where the law permitted participation, about half (48%) of chief prosecutors chose to do so (table 10).

The court rather than the prosecutor convenes grand juries. In 44% of districts with grand juries, however, judges of a lower court or a felony court screened cases for probable cause, providing for greater grand jury efficiency. Fifty-eight percent of prosecutorial districts had grand juries that regularly returned felony indictments — 82% of districts in the 75 largest counties had grand juries versus 57% of districts elsewhere. These percentages did not include grand juries constituted for

purposes other than indictment, such as for investigation of government officials or for routine matters required by law, like inspection of local jails.

Among the regions, the South had the highest percentage of prosecutorial districts with grand juries (92%) and the most frequent use of judges to determine probable cause before a case went to a grand jury (72%).

Use of criminal history data about the defendant

When a person is arrested or brought before a court on a criminal charge, usually a government agency keeps a permanent official record of the event. These records enable prosecutors to find out about a person's "criminal history."¹¹ That knowledge can help prosecutors make proper decisions.

¹¹ *Survey of Criminal History Information Systems*, BJS report, NCJ-125820, March 1991.

Table 9. Initiating a felony case in court, by region, 1990

Means of initiating cases	Percent of felony cases				
	Total	Northeast	Midwest	South	West
Total	100%	100%	100%	100%	100%
Grand jury indictment	39	57	27	50	20
Information following a preliminary hearing	28	17	36	12	54
Waiver of indictment or preliminary hearing	10	17	16	7	5
Other*	23	9	21	31	21

Note: The percentages in this table are mean percents, but the averaging process took into account how many felony cases each prosecutor completed in 1988 — the bigger the district, the more its data influenced the overall mean percentages.
*About half of survey respondents' written explanations of "other" indicated that sometimes an information was filed before a preliminary hearing was held.

Table 10. Prosecutorial districts using grand juries, by region and county population, 1990

	Region					Counties	
	Total	Northeast	Midwest	South	West	75 largest	Elsewhere
Percent of districts with grand juries	58%	46%	42%	92%	47%	82%	57%
Districts having grand juries, percent:							
That indicted misdemeanors	55%	58%	20%	79%	58	60	55
Where prosecutor appeared before grand jury	48	65	32	57	46	43	48
Signed all indictments before filing	29	43	24	37	18	60	28
Where judge determined probable cause before case submission to grand jury	44	10	22	72	20	38	44

Ninety-five percent of prosecutors found data on dispositions of an individual's prior prosecutions to be of value, and 78% reported arrest data to be of value. A variety of criminal history sources, such as the FBI and the local police, were used by over 70% of prosecutors (table 11). Such information may be used in any stage of a felony case but was reported to be used most often in the early stages (table 12).

Two-thirds of prosecutors found incompleteness of criminal history data to be a major problem, and almost half reported the associated problem of information that was not current (table 13). Restrictions on data to protect privacy were cited as a major problem by 11% of the prosecutions.

Plea negotiation

In a vast majority (91%) of felony convictions, the defendant pleads guilty rather than requests a trial.¹² The high percentage of guilty pleas is a key factor in minimizing case backlogs. Guilty pleas often result from negotiations: the defendant agrees to plead guilty to a lesser charge or to a charge for which the prosecutor recommends a reduced sentence. In 1974, 80% of the chief prosecutors reported having explicit criteria and time limits on plea negotiations, but by 1990 the percentage had fallen to 36%.

When a felony case does not result in a dismissal or a guilty plea, but instead goes to trial, the chances are 5 in 6 that the defendant will be convicted.¹³ Because of this rate of conviction, the chief prosecutor might be expected to prefer an end to negotiations once the prosecutor who is assigned to the case is ready for trial. Yet, 73% of chief prosecutors placed no time limits on plea negotiations.

The court may also impose deadlines on negotiations when responding to requests for extensions of time or continuances. Requests for more time to negotiate a plea agreement are sometimes made on the day of trial, even when witnesses, juries, and court personnel have already assembled.

¹² *Felony Sentences in State Courts, 1988*, table 9.

¹³ *Felony Defendants in Large Urban Counties, 1988*, BJS report, NCJ-122385, April 1990, table 13.

In most districts (86%) judges discouraged such motions on the day of trial, although in 23% of those districts with restrictions, the condition applied only for scheduled jury trials. In 23% of the districts, the court upon

Table 11. Sources of criminal history data used by chief prosecutors, 1990

Source	Percent of chief prosecutors
Federal Bureau of Investigation	81%
Local police	76
Prosecutor's own record system	72
State criminal history repository	72

Table 12. Stages of a felony case in which criminal history data were used, 1990

Stage	Percent of chief prosecutors
Pretrial negotiations	80%
Bail hearing	76
Filing charges	63
Preliminary hearing	30

Table 13. Major problems with criminal history data, 1990

Problem	Percent of chief prosecutors
Incompleteness	68%
Lack of timeliness	47
Inaccuracy	39
Restrictions that protect individual's privacy	11

request normally postponed a trial to permit additional time for plea negotiations. Practices limiting plea negotiations differed substantially between districts in the 75 largest counties and those in smaller counties and also between one-person prosecution offices and those with a staff of assistants. The larger counties and those offices with assistants were more likely to have explicit criteria controlling plea negotiations. A higher percentage of prosecutors in larger counties than those elsewhere, 46% compared to 23%, reported that courts granted continuances on the day of trial for negotiating a plea (table 14).

Among chief prosecutors who had time limits on plea negotiation, a majority (60%) required that negotiations be completed either by a set period of time before the trial date or by the end of the "pretrial conference," usually the final court appearance before trial (table 15).

Table 15. Stage in felony prosecutions at which plea negotiations must be completed, 1990

Stage of prosecution	Percent of chief prosecutors who indicated a plea policy
Before plea is entered	2%
Before indictment	3
Within set number of days from start of proceedings	1
Before or during preliminary hearing	5
Before or during pretrial conference	29
Before fixed number of days preceding trial date	31
Before trial day or commencement of trial	21
Other*	8

Note: Percentages are based on coding of respondents' written descriptions of policies. *Examples of "other": limit set with plea offer, court sets deadline, deadlines set by deputies.

Table 14. Limits in prosecutorial districts to control plea negotiations, 1990

	Counties			Staff with assistant prosecutors	
	Total	75 largest	Elsewhere	Yes	No
Percent of prosecutorial districts with:					
Explicit criteria controlling plea negotiations	36%	72%	35%	44%	8%
Policy limiting time for plea negotiations	27%	30%	27%	29%	22%
Continuances on trial day to permit more time for plea negotiations	23%	46%	23%	23%	25%

Speedy trial requirements

The sixth amendment of the U.S. Constitution guarantees to the accused in a criminal trial, whether Federal or State, the right to a speedy trial.¹⁴ In recent years legislatures and courts have established limits on the time following an arrest that a prosecutor has to bring the case to trial — speedy trial requirements. Such requirements often apply only when a defendant is held in custody rather than being granted pretrial release.

Almost three-quarters of chief prosecutors were subject to specific limits on time between charging and start of trial. These limits, with an average of about 6 months, resulted from legislation or court order.

During 1988, the median time from arrest to adjudication in felony cases in the 75 largest counties was about 3 months.¹⁵ Chief prosecutors in counties with speedy trial rules experienced an annual average of 16 dismissals for noncompliance with speedy trials. Such dismissals accounted for less than a third of 1% of all felony cases in the Nation.¹⁶ Nationally, prosecuting attorneys had an average of one felony case dismissal a year for speedy trial noncompliance.

Jury trial

The sixth amendment to the U.S. Constitution gives State and Federal felony defendants the right to trial by a jury.¹⁷ This right, used by 5% of felony defendants who were sentenced in State courts during 1988, may be waived in favor of trial by judge.¹⁸ An estimated 4% of all felony convictions are the result of a judge trial.¹⁹

In some jurisdictions the prosecutor also has the right to have a case tried by a jury. In such jurisdictions, the jury may be used even if the defendant prefers a judge trial, although how the proceedings are carried out is decided by the trial judge. The

¹⁴ *Barker v. Wingo*, 407 U.S. 514 (1972). See generally *Report to the Nation on Crime and Justice*, p.85.

¹⁵ *Felony Defendants in Large Urban Counties, 1988*, table 19.

¹⁶ The National Pretrial Reporting Program estimated that the 75 largest counties had a total of 47,000 felony cases filed during February 1988. *Pretrial Release of Felony Defendants, 1988*, BJS Bulletin, NCJ-127202, February 1991, p. 2. Twelve times 47,000 divided by 75 times 16 yields an annualized estimate of 0.2% of cases dismissed for speedy trial noncompliance.

¹⁷ *Duncan v. Louisiana*, 391 U.S. 145 (1968). For a description of the jury system, see *Report to the Nation on Crime and Justice*, p.86.

¹⁸ *Felony Sentences in State Courts, 1988*, BJS Bulletin, NCJ-126923, December 1990, table 10.

¹⁹ *Felony Sentences in State Courts, 1988*, table 10.

prosecutor may exercise this right to a jury trial for many reasons, including belief that —

- a jury is more likely than a particular judge to convict
- a jury is likely to impose or recommend a desired sentence
- a jury trial will attract more public attention to a defendant's heinous conduct.

About half of the chief prosecutors had the right to a jury trial available to them. Among places where it was available, prosecutors in larger districts and those with a staff of assistants were more likely to exercise this right. Both the existence of this right and its use varied considerably among regions (table 16).

Policies and practices after trial

A convicted defendant remains under the court's jurisdiction until sentencing. In about half of the districts (56%), the court retained jurisdiction over defendants even after they were committed to the department of corrections to serve a sentence of confinement. In two-thirds (67%) of the districts, the prosecutor routinely received official notification of the release of a confined person who was convicted in that district.

Information used in deciding on a sentence

Between a felony defendant's conviction and sentencing, information is often gathered to enable the judge to impose an appropriate sentence. In most districts (84%) the judge requested a presentence report containing information about the defendant and usually addressing family

and employment circumstances, any mental or physical health problems, and any history of drug or alcohol abuse. This information may have had important bearing on the choice between a sentence of confinement and a sentence of probation.

Almost all chief prosecutors (95%) in 1990 had a right to see presentence reports, compared to 87% in 1974. In most jurisdictions (84%) the judge also requested information about the victim. Where victim information was desired, it was usually (70%) requested as part of the presentence report, but in a quarter of these places (23%), the prosecutor provided it.

Prosecutors' recommended sentences

Virtually all chief prosecutors (99.5%) in the survey indicated that they were usually present or represented in court when a sentence was imposed. In 1990, as in 1974, 88% of the prosecutors recommended a sentence.

Among chief prosecutors in the Nation —

- Three-quarters (77%) were in States that required a mandatory jail or prison term for certain crimes or types of defendants; these mandatory sentencing laws influenced 82% of the affected prosecutors when they recommended a sentence.

- Three-quarters (74%) were in States where parole boards decided how much time prisoners actually serve; these parole policies or practices influenced 75% of the affected prosecutors when they recommended a sentence.

- Half (54%) were in States where guidelines required a judge to impose a particular sentence unless reasons were stated for choosing a different sentence; these guidelines influenced 68% of the affected prosecutors when they recommended a sentence.

- Half (53%) were in States where felony sentences may be reviewed by an appellate court; the possibility of such a review influenced 18% of the affected prosecutors when they recommended a sentence.

- Half (52%) were in places where the prosecutor was not permitted to negotiate a plea in exchange for a charging decision or sentence recommendation; this prohibition influenced 38% of the affected prosecutors when they recommended a sentence.

Table 16. Prosecutor's right to jury trial in felony cases, by region, 1990

	Percent of chief prosecutors	
	With right to jury trial available to prosecutor in felony cases	Who exercised available right
All	57%	45%
Northeast	34	51
Midwest	42	29
South	76	68
West	80	27
75 largest counties	56	90
Elsewhere	57	44
Sole prosecutor	53	27
Staffed	58	50

- Thirty-nine percent were in States with voluntary sentencing guidelines for judges; these voluntary guidelines influenced 52% of the affected prosecutors when they recommended a sentence.

Table 17. Prosecutors' right of appeal in felony cases, 1990

Reason for appeal	Of chief prosecutors having the right of appeal, percent who appealed
Rulings on motions	92%
Sentences	33
Determinations of guilt or innocence	5

Table 18. Chief prosecutors' participation in felony case appeals, 1990

Type of appeals court	Percent of chief prosecutors	
	Filing briefs	Making the oral arguments
Highest State court of appeals	43%	39%
Federal court	18	17
Other State court	38	30

Table 19. Prosecutorial notification of interested parties in felony cases, 1974 and 1990

	Percent of chief prosecutors	
	1974	1990
Notify witnesses to appear in court	77%	95%
Notify of disposition:		
Police	44	93
Victim	35	93
Witnesses	37	45

Prosecutors' role in criminal appeals

A convicted defendant may appeal to a higher court, asking it to review any defect in the proceedings of the original trial. Only certain major issues, such as the sentence or what trial evidence was admitted or excluded, will serve as a basis for the appeals court accepting the appeal. Under some circumstances the prosecutor may also appeal. The special conditions for a prosecutorial appeal usually do not include the prosecutor's view of the determination of guilt in a particular case (table 17).

An appeal involves two main activities: *preparing* the written document (brief) that explains both the case and the defects complained of and *presenting* this material verbally to the appeals judges (oral argument). Nearly half of chief prosecutors were routinely involved in filing briefs in felony cases when the defendant appealed (table 18).

Prosecutors' contact with parties interested in case

Prosecutors had more extensive contact in 1990 than in 1974 with persons interested in a case, such as witnesses, victims, and police officers. Almost all prosecutors were responsible for informing interested parties when to appear in court. The percentage of chief prosecutors in 1990 who routinely notified such persons of case disposition had also increased substantially since 1974, possibly reflecting recent State laws intended to benefit victims and witnesses in felony prosecutions (table 19).²⁰

²⁰ Report to the Nation on Crime and Justice, p. 82.

Methodology

Sampling error of statistical estimates

NPSP data were obtained from a sample and not from a complete enumeration. Consequently they are subject to sampling error. A standard error, which is a measure of sampling error, is associated with each number in the report. In general, if the difference between two numbers is at least twice the standard error of that difference, there is at least 95% confidence that the two numbers do in fact differ; that is, the apparent difference is not simply the result of surveying a sample rather than the entire population.

All differences discussed in this report had a confidence interval at or above 95%. In BJS reports, such differences are stated to be "statistically measurable."

A sample estimate which is a number, rather than a difference between numbers, also has a standard error. An interval computed as an estimate plus or minus 2 times its standard error is an interval within which we can be 95% confident that the true number lies. (The true number is the one that would have been found in a complete enumeration.) Estimates and standard errors of a number of the major statistics used in this report are given in the appendix table.

Sampling of prosecutors

The Census Bureau mailed questionnaires to the 290 chief prosecutors in the NPSP survey. These respondents were chosen because the counties where their offices are located had participated in the nationally representative survey of 1988 felony sentencing for the National Judicial Reporting Program (NJRP). Therefore, the prosecutors with offices in those counties were a nationally representative sample of chief prosecutors nationwide.

Before drawing a sample of counties in the NJRP survey, the 3,109 counties and independent cities were grouped together into 8 strata, depending on the number of felony cases that were filed in 1985, the most recent year for which court-census data are available. The sampling for the counties in NJRP was carried out within each stratum separately, to assure that counties of all sizes would be in the sample. Hence, the NPSP survey covers prosecutorial districts of all sizes.

A given prosecutor's probability of being selected in the NPSP survey was the probability of that person's county being sampled for NJRP. The inverse of the probability of selection is the weight used to convert the sample data into estimates that relate to the entire population from which the sample was drawn. Those 20% of the total universe of chief prosecutors whose districts encompass more than one county had more than one chance to be in the sample, and in such a case, the probability of selection was the probability of one or more of those counties being chosen in NJRP.

The total number of felony cases in 1988 were known for any chief prosecutor in the survey whose district was comprised of a single county. But for prosecutors having more than one county, the total for the district had to be estimated, based on what was known about the NJRP county in that district. The estimation process took advantage of a high degree of statistical correlation between the total number of prosecuting attorneys and the total number of felony cases found in NJRP counties. This was applied statistically to the total number of prosecuting attorneys district-wide, obtained in the NPSP survey. Using this procedure, the national total number of cases comes within 4% of that already measured in the NJRP survey.

For the multicounty districts, districtwide population served by the chief prosecutor was also estimated. Since those counties were identified on the NPSP questionnaire, their sampling strata could be found in the NJRP sampling roster. The average (mode) population by stratum within geographic region was used in place of the missing population data, on the basis of the high degree of correlation between total cases and total population. This procedure produced figures that in the aggregate came to within 2% of the actual 1988 national total population.

Questionnaires were received from 289 of 290 contacted chief prosecutors. Data for all questions from a comparable responding jurisdiction, chosen randomly, were substituted for the missing survey responses of the one nonrespondent chief prosecutor.

Appendix table. Selected estimates and standard errors, 1990 survey

	Estimate	One standard error
Total number of prosecuting attorneys	22,234	1,459
Total number of chief prosecutors	2,272	151
Total number of assistant prosecutors	19,962	1,524
Mean population served per district	110,975	10,408
Mean number of assistant prosecutors per district	9	1
Mean number of felony convictions per year per district	292	35
Ratio of cases to prosecuting attorneys, by region:		
Northeast	29	2
Midwest	23	2
South	38	3
West	29	4
Percent of chief prosecutors who are full-time	53%	4%
Percent of chief prosecutors serving one county	80%	3%
Percent of chief prosecutors with no assistant prosecutors	23%	4%
Percent of districts with grand juries	58%	5%
Percent of districts with speedy trial requirements	71%	4%
Percent of districts with career criminal units	8%	2%

This BJS Bulletin was written by John M. Dawson, BJS statistician. Tom Hester edited it and Pat Langan provided the statistical review. Stephanie Brown and Steve Owens of the Governments Division of the Bureau of the Census conducted the survey. Marilyn Marbrook, Priscilla Middleton, Jayne Pugh, and Yvonne Boston produced the report.

NCJ-134500 March 1992

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Data utilized in this report are available from the National Archive of Criminal Justice Data at the University of Michigan, P.O. Box 1248, Ann Arbor, MI 48106; 1-800-999-0960. The dataset is archived as the National Prosecutors Survey, 1990 (ICPSR 9579).

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