Public Comments received on under the 60 Day FR Notice

Thank you for the quick response. This version is much more comprehensive than previous surveys. It's an impressive effort.

For my comment, I would just add that there is nothing about the office's processing of appeals--except perhaps for the question about whether the office has formal/ informal policies for conviction integrity. This question is a good start, but it doesn't get at the volume of appellate work that prosecutors are doing or how they are responding. I wonder if the survey might include the following questions:

Does your office handle appeals?
If yes, can you estimate how many of the following types of appeals the office has responded to in the year ending Dec 31, 2020?

- direct appeal
- postconviction (state)
- postconviction (federal)

How did your office respond (in each category direct appeal, pc state, pc federal)

- oppose - almost always, more than half, less than half, etc.
- abstain - almost always, more than half, less than half, etc.
- approve - almost always, more than half, less than half, etc.

These questions could approximate the form taken in C5, C6b, and C7a.

These questions would have value, when compared to the office's overall caseload, for establishing the appellate caseload of the surveyed prosecutors' offices. It would also help to establish postconviction case review efforts outside the realm of conviction integrity. Potential follow-up questions could ask about the number of court reversals, if any, and findings of harmless error, if any.

Admittedly, for some offices, these questions will not be relevant. However, this new version of the survey already includes a greater breadth of questions. Some additional questions surrounding appeals divisions or appellate litigation would be very valuable to researchers as well.

Thank you for considering this feedback!

Dear Mr. Browne:

We are a team of research and lawyers (including four former prosecutors) from the Reshaping Prosecution team at the Vera Institute of Justice. Thank you for the opportunity to comment on the National Survey of Prosecutors. The tenor of the times makes robust research and data collection on prosecutors particularly urgent.

We're all familiar with the statistics on mass incarceration in the U.S.: that we have less than 5% of the world's population and almost 25% of the incarcerated population - and that Black men are incarcerated at almost 6 times the rate of white men. The decisions of prosecutors bear directly on who goes to prison. The politics of prosecution are rapidly changing with more and more self-identified progressive prosecutors running on platforms of reducing racial inequities, and winning elections. In the past five months, since the death of George Floyd, national protests and the Black Lives Matter movement have elevated popular awareness of disparate racial outcomes in prosecution and the criminal justice system.

We found the proposed survey to be robust in addressing many of the issues, policies, and outcomes of concern to the reform-minded prosecutors we work with. These include questions about policies on prosecuting non-U.S. citizens, declination of quality-of-life crimes, diversion, conviction integrity, and counting the cases that are reviewed, filed, and declined - all key measures of how prosecutors exercise their discretion.

We noted, however, that there are no questions about the race, ethnicity, or gender of defendants. Given the inflection point we are at now with the heightened attention to racial disparities in the justice system from both elected prosecutors and the general public, and with this new survey, BJS should not miss the opportunity to collect this information. The attention to racial disparities and reforms that address them will continue to grow in the coming years and over the lifetime of this survey.

Given that the survey is already asking questions about counts of cases, we suggest that you include breakdows by race and gender at these prosecution decision points for felonies, misdemeanors, traffic, and other cases:

- cases reviewed
- cases declined
- cases filed
- cases involving searches arising from traffic-related stops
- cases concluded by trial
- cases concluded by plea
- cases dismissed
- cases deferred
- cases referred to diversion or problem-solving courts
- successful completions of diversion or problem-solving courts
- unsuccessful completions of diversion or problem-solving court

Our Reshaping Prosecution program works with reform-minded prosecutors to implement agendas that include reducing mass incarceration, reducing racial inequities, and increasing transparency. We believe that justice should be pursued on a systemic, not case-by-case. Data on racially disparate outcomes gathered on a national level will be critical to shaping reforms that address these inequities. For more information on our work, please visit https://www.vera.org/projects/reshaping-prosecution-program and https://motionforjustice.vera.org/.

Kind regards,

BJS Response to Public Comments received on under the 60 Day FR Notice

During the 60-day comment period, **BJS received two sets of substantive comments: Elizabeth Webster, a professor at Loyola University of Chicago, Department of Criminal Justice and Criminology, and the Reshaping Prosecution Program at the Vera Institute of Justice.** The request from Professor Webster was to include questions on processing of appeals by prosecutors in the survey. Vera Institute's request was for the survey to collect defendant demographic (e.g. race, ethnicity and gender) information.

Feedback incorporated into the survey

BJS considered each request, and determined that, in both cases, adding these questions would be too burdensome for respondents and were generally not best collected via a survey. See the below section for a more detailed description.

Feedback not incorporated into the data extraction guide

The request from Professor Webster to include prosecutors' handling of appeals is a valid suggestion, but adds more burden to respondents with minimal informational gain. The request suggested that the survey first ask if prosecutor offices handle appeals and if so, how often. With the structure of the criminal justice system, practically all prosecutor's offices are responsible for handling appellate cases as they arise and prosecutors have very little control over their appeal caseload. Additionally, gathering this data would be burdensome to respondents, particularly if their office does not have a data management system that tracks this information. BJS has collected data on criminal appeals in earlier administrative data collections and generally believes that to be the most efficient way to collect and analyze the data the requester seeks.

Vera Institute requested the instrument be modified to obtain demographic data of defendants. Such a request would be very burdensome and is beyond the scope of the proposed survey. Acquisition of defendant demographic characteristics would be better suited to other BJS data collections such as the current Criminal Cases in State Courts (CCSC) project and the forthcoming National Pretrial Reporting Program (NPRP). CCSC (OMB Clearance 1121-0371, expires 4/20/23) requests state courts to provide race, ethnicity and sex of defendants in felonies and serious misdemeanors adjudicated in state courts of general jurisdiction. While not fully responsive to the Vera Institute request, these data will cover many of the stages of adjudication on which the Vera request seeks more information.