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## Pulling Back the Curtain: A Follow-Up Report from the ABA Criminal Justice Section Women in Criminal Justice Task Force

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## **Pulling Back the Curtain: A Follow-Up Report from the ABA Criminal Justice Section Women in Criminal Justice Task Force (TF)**

Submitted by Professor Maryam Ahranjani, TF Reporter<sup>1</sup>

“Every crisis is an opportunity...We in the legal profession have learned how much more can be done remotely. My hope is that employers...will internalize these lessons and that both women and men will use this experience to advocate for flexible work hours...”

✓ Follow-up survey respondent

### **SUMMARY**

In an era when women’s hard-fought and hard-earned participation in the workforce is in peril, the ABA Criminal Justice Section’s Women in Criminal Justice Task Force (TF) continues its groundbreaking work of documenting challenges in hiring, retention and promotion of women criminal lawyers. *Pulling Back the Curtain* follows up on the initial findings of the TF. The findings are published in the Berkeley Journal of Criminal Law<sup>2</sup> and the ABA Criminal Justice magazine.<sup>3</sup> This report describes the results of a subsequent survey of diverse criminal lawyers

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<sup>1</sup> The Task Force extends its thanks to the Criminal Justice Section for its support of all of the TF’s work, as well as to American Bar Foundation researchers Professors Ajay Mehrotra and Bob Nelson, who provided valuable advice regarding survey structure. TF Reporter and TF Data Committee Co-Chair Maryam Ahranjani, TF Advisory Board Member and Data Committee Co-Chair Yaamini Rao, and ABA Center for Innovation collaborator Sarah Glassmeyer developed the survey that serves as the basis for this report. TF Co-Chair Carla Laroche, TF members Professor Sarah Redfield and Ann Ratnayake Macy, and Yaamini Rao contributed valuable edits to this report. Nat Saing contributed critical editing and formatting assistance. All TF members are listed at the end of this report.

<sup>2</sup> Maryam Ahranjani, “*Toughen Up, Buttercup*” versus #TimesUp: Initial Findings of the ABA Women in Criminal Justice Task Force, 25 BERKELEY J. CRIM. L. 99 (2020) (providing a thorough background of the history of women in criminal law and presenting initial findings from the listening sessions).

<sup>3</sup> See Carla Laroche & Tina Luongo, *Task Force Launches*, CRIMINAL JUSTICE MAGAZINE, [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2019/spring/task-force-launches](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2019/spring/task-force-launches) (Spring 2019). Maryam Ahranjani, *Listening Session Participants Express Feelings of Isolation—and Demonstrate Resilience*, CRIMINAL JUSTICE MAGAZINE (Nov. 1, 2019), [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2019/fall/listening-session-participants-express-feelings-isolation-demonstrate-resilience/](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2019/fall/listening-session-participants-express-feelings-isolation-demonstrate-resilience/); Maria Carmen Hinayon, *Who Needs the Old Boys’ Club? Let’s Make Our Own—Highlights from the WCJ Bay Area Listening Session*, CRIMINAL JUSTICE MAGAZINE (Jan. 21, 2020), [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2020/winter/who-needs-old-boys-club-lets-make-our-own-highlights-the-wcj-bay-area-listening-session](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/winter/who-needs-old-boys-club-lets-make-our-own-highlights-the-wcj-bay-area-listening-session). Daniela Donoso, *Heavy Purse: A Law Student’s Reflection on the CJS Women in Criminal Justice Task Force’s NYC Listening Session*, CRIMINAL JUSTICE MAGAZINE (April 20, 2020), [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2020/spring/heavy-purse-law-students-reflection-the-cjs-women-criminal-justice-task-forces-nyc-listening-session/](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/spring/heavy-purse-law-students-reflection-the-cjs-women-criminal-justice-task-forces-nyc-listening-session/). Maryam Ahranjani, *Looking Back, Looking Forward* CRIMINAL JUSTICE MAGAZINE (OCT. 29, 2020), [HTTPS://WWW.AMERICANBAR.ORG/GROUPS/CRIMINAL\\_JUSTICE/PUBLICATIONS/CRIMINAL-JUSTICE-MAGAZINE/2020/FALL/LOOKING-BACK-LOOKING-FORWARD/](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/fall/looking-back-looking-forward/). Gloria Ochoa-Bruck, *The Call for the Rise of the Modern Prosecutor*, CRIMINAL JUSTICE MAGAZINE (Jan. 11, 2020), [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2021/winter/the-call-the-rise-the-modern-prosecutor/](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2021/winter/the-call-the-rise-the-modern-prosecutor/). Hon. Rachel Pickering, *An Awakening and More: How Being Part of the Women in Criminal Justice Task Force Has Provided Me with a Judicial Awareness*, CRIMINAL JUSTICE MAGAZINE (May 1, 2021), [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2021/spring/awakening-how-being-part-women-criminal-justice-task-force-provided-me-judicial-](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2021/spring/awakening-how-being-part-women-criminal-justice-task-force-provided-me-judicial-)

and judges conducted at the end of 2020. The survey posed questions related to demographics; barriers related to hiring, retention and promotion; potential solutions; and the impact of the COVID-19 pandemic on work and life.

This report is divided into four sections: a brief review of the TF initial findings; methodology; survey questions and responses; and recommendations and next steps. Concluding that hiring, retention, and, particularly, *promotion* of women in criminal justice continue to be a problem, the follow-up survey also revealed the following serious obstacles: (1) limited flexibility with work schedules (which could be addressed, for example, through job-sharing, part-time work, and working from home), (2) insufficient wellness resources, (3) deficient training opportunities, particularly in state and rural criminal law offices, and (4) short supply of meaningful mentorship. Some employers seem receptive to change but many do not. This report shares high-level takeaways and recommendations to address the barriers faced by women criminal lawyers.

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[awareness/](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2021/summer/brave-bold-booked-and-balanced/). Joy Applewhite, *Brave, Bold, Booked and Balanced* CRIMINAL JUSTICE MAGAZINE (July 20, 2021), [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2021/summer/brave-bold-booked-and-balanced/](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2021/summer/brave-bold-booked-and-balanced/). Jessica J. Yeary, *From Sweetie to Sisterhood: A Public Defender's Listening Session Reflection* CRIMINAL JUSTICE MAGAZINE (forthcoming).

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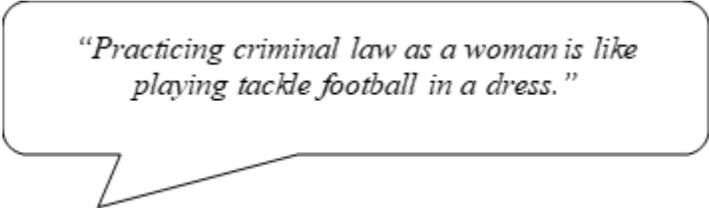
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## **INTRODUCTION**

This report follows up on the initial findings of the TF that the Berkeley Journal of Criminal Law published in December, 2020.<sup>4</sup> It describes the results of a subsequent follow-up survey conducted between late October and early December 2020. The title of this report was inspired by the idea that the COVID-19 pandemic created both a stage in which remote workers' lives are on display and a curtain (i.e., computer screen).

Concluding that hiring, retention, and, particularly, *promotion* of women in the criminal justice profession continue to be a problem, the follow-up survey revealed the following challenges: (1) limited flexibility with work schedules (which could be addressed, for example, through job-sharing, part-time work, and working remotely), (2) insufficient wellness resources, (3) deficient training opportunities, particularly in state and rural criminal law offices, and (4) short supply of meaningful mentorship and transparent policy guidance. Some employers seem receptive to change but many do not.

This report is divided into four sections: a review of the TF initial findings; a discussion of the survey methodology; an explanation of the survey questions and responses; and an assessment of recommendations and next steps. The methodology section describes the survey administration and respondents and situates the diversity of respondents within available demographic data. The section on survey questions and responses includes a summary of questions and responses, as well as separate sub-sections on the impact of the COVID-19 pandemic on women criminal lawyers, ABA membership, and miscellaneous important comments. Finally, the conclusion shares high-level takeaways and recommendations.



*“Practicing criminal law as a woman is like playing tackle football in a dress.”*

## **SUMMARY OF INITIAL FINDINGS**

When American Bar Association Criminal Justice Section (CJS) staff member Emily Johnson discovered that only 26% of the approximately 16,000 members of the CJS were women, she wondered whether that number was reflective of the total population of criminal lawyers or merely the CJS membership.<sup>5</sup> She raised her questions with CJS Director Kevin Scruggs and CJS Chair Professor Lucian Dervan.<sup>6</sup>

Considering the ABA's core goal of eliminating bias and enhancing diversity, Professor Dervan created the TF to investigate whether women faced challenged in hiring, retention and promotion in criminal law spaces. He appointed Carla Laroche, then a clinical professor at

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<sup>4</sup> Maryam Ahranjani, “*Toughen Up, Buttercup*” versus #TimesUp: Initial Findings of the ABA Women in Criminal Justice Task Force, 25 BERKELEY J. CRIM. L. 99 (2020).

<sup>5</sup> Id.

<sup>6</sup> Id.

Florida State College of Law who is currently a tenure-stream assistant clinical professor at Washington and Lee University School of Law, and Tina Luongo, chief defender at the Legal Aid Society of New York City, to co-chair the TF. Laroche and Luongo envisioned and created a vibrant TF of women with incredibly diverse lived and professional experiences to carry out its mission.<sup>7</sup>

Between late 2018 and mid-2020, the TF held listening sessions across the country and heard from nearly 200 diverse people at all stages of their careers (including law students and recent graduates) about their experiences in criminal law.<sup>8</sup>

A number of common threads regarding hiring, retention and promotion emerged from the sessions, providing insight into the question: Why are women, particularly women of color, left out of—choosing to leave—criminal law? The threads are barriers to entry and pressures to exit, explicit and implicit discrimination, and burnout/limited resources.<sup>9</sup>

### ***Challenges Include Barriers to Entry and Pressures to Exit; Discrimination; and Burnout, Resources, and Survival***

Relatively low salaries in criminal law serve as an initial and ongoing barrier, particularly for women of color and first-generation lawyers.<sup>10</sup> Other systemic obstacles to juggling work and life commitments can add pressure on women to leave criminal justice work. Similarly, stage-of-life developments that especially affect women—including marriage, childbirth and child rearing, caring for aging relatives, and menopause—are not being adequately addressed by criminal justice employers.

One woman explained, “[In my role in hiring,] a woman with three children, very well qualified, declined the prosecutor position. It didn’t pay well enough to even cover the childcare.” Another woman with aspirations to be promoted in her office explained that the only way to have a chance at promotion in her public defender office would be to handle a homicide case. “With respect to retention and promotion, [the question] is how you make it there and still have a family . . . what’s often overlooked is fertility stuff and IVF and freezing your eggs. I don’t want to have children until I’ve done a homicide [case].”

According to the women who testified before the TF, they face discrimination from all stakeholders in the criminal system (judges, opposing counsel, clients, court staff, corrections staff, etc.) based on gendered expectations. One woman explained, “Men try to intimidate you through intimations of incompetence and sometimes blatant overtures of incivility.” This discriminatory treatment is particularly challenging for women of color and LGBTQ+ women. One well-respected prosecutor described how she “was introduced by my supervisor to a judge

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<sup>7</sup> Carla Laroche & Tina Luongo, *Task Force Launches*, CRIMINAL JUSTICE MAGAZINE, [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal-justice-magazine/2019/spring/task-force-launches](https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2019/spring/task-force-launches) (Spring 2019).

<sup>8</sup> Cite to MA column

<sup>9</sup> *Id.* See also Maryam Ahranjani, *Why Are Women Lawyers Underrepresented in Criminal Justice?* AM. BAR. ASS’N (Apr. 6, 2021), [https://www.americanbar.org/groups/young\\_lawyers/publications/tyl/topics/criminal-law/why-are-women-lawyers-underrepresented-in-criminal-justice](https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/criminal-law/why-are-women-lawyers-underrepresented-in-criminal-justice).

<sup>10</sup> See also Jill L. Cruz, Melinda S. Molina & Jenny Rivera, *Hispanic National Bar Association Commission on the Status of Latinas in the Legal Profession, Study on Latina Attorneys in the Public Interest Sector, La Voz De La Abogada Latina: Challenges and Rewards in Serving the Public Interest*, 14 CUNY L. REV. 147, 199 (2010).

as a ‘spicy little Latina.’ Several women who identify as lesbian or queer reported that they were repeatedly told they did not “look or act feminine enough.” Overall, the listening sessions revealed a lack of respect for and devaluation of women and gender nonconforming individuals.

Many women criminal lawyers, particularly women of color and LGBTQ+ women, face burnout, compassion fatigue, and vicarious trauma.<sup>11</sup> They do not have the resources or support to address these challenges and asked for help to process all the stress and expectations. One lawyer noted:

“Looking young [and being a minority] has caused . . . [me] to come in overly prepared and organized to be taken seriously. I grew up with a single mom, was the first to go to college. I came in with a different perspective: I’ve had people in my family incarcerated. I became a prosecutor to help people. However, being one is hard—from all sides: defense says you’re too aggressive, victim saying not aggressive enough, cops not wanting to come in.”

Women who have remained in the field demonstrate resiliency and strong survival skills. One woman of color explained, “We bury these things [sexism, racism] because if we don’t, we can’t continue to work.” One prosecutor who is a mother of two explained that she wants to have a third child but simply cannot afford it. Between her relatively low salary, high cost of childcare, and “regular therapy required for my job,” it simply was not possible. But the costs of enduring these challenges without support are high and many dedicated and competent women seek other legal and nonlegal opportunities as a result. One Black judge explained that she “left criminal law because I couldn’t stand seeing so many young black men go to prison.”

Based on these findings, the TF proposed several strategies to address these challenges. The strategies include improving access to mentors and allies, increasing flexibility, and providing more resources.

***Strategies to Address Challenges Include: Improving Access to Mentors and Allies; Increasing Flexibility; Providing Greater Resources to Training and Support; and Collecting More Data***

The clear winner for the most important area for improving women’s careers in criminal justice is increasing access to meaningful mentorship—something that was noted as particularly lacking in our sessions. Allyship, similarly, is a critical buffer to gender-based discrimination,

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<sup>11</sup> These three conditions are interrelated and overlapping, but they can have different causes and symptoms. The U.S. Department of Justice Office for Victims of Crime describes **burnout** as “a state of physical, emotional, and mental exhaustion caused by long-term involvement in emotionally demanding situations. Symptoms may include depression, cynicism, boredom, loss of compassion, and discouragement.” Both prosecutors and public defenders reported some burnout throughout the listening sessions and in the follow-up surveys. **Compassion fatigue** is “a combination of physical, emotional, and spiritual depletion associated with caring for others who are in significant emotional pain and physical distress,” so public defenders are more likely to experience it. **Vicarious trauma** is “an occupational challenge for people working and volunteering in the fields of victim services, law enforcement, emergency medical services, fire services, and other allied professions, due to their continuous exposure to victims of trauma and violence,” so it is more often experienced by prosecutors. “Exposure to the trauma of others has been shown to change the world-view of these responders and can put people and organizations at risk for a range of negative consequences.” *Glossary of Terms*, <https://ovc.ojp.gov/program/vtt/glossary-terms> (Aug. 18, 2021).

and allies sometimes come from unlikely places. Adopting more flexible workplace policies may address drift and dissatisfaction. Based on our sessions, greater flexibility in criminal law jobs will also improve the likelihood of recruiting and retaining talented women. The TF's work so far indicates that women, particularly those in rural and under-resourced jurisdictions, need better training opportunities and resources related to wellness, diversity and inclusion, and professional development.

Based on the qualitative reports during and after the listening sessions, it was clear that the TF needed to gather more quantitative information. Through partnerships with the American Bar Foundation and the ABA Center on Innovation, the TF explored various opportunities to conduct quantitative research. After exploring a number of options and balancing the limitations posed by the pandemic with the interest in continuing to do our work despite limitations, the TF decided to conduct a follow-up survey of women who had already participated in the listening sessions. The idea was that women with whom we already had a connection would be more likely to respond than those hearing from the TF for the first time during the global pandemic while they juggled caregiving responsibilities. Another important outcome of the listening sessions were powerful columns written by women who participated in the listening sessions and TF members.<sup>12</sup>

## **METHODOLOGY**

### ***Goals***

The follow-up survey was open between October 29, 2020, and December 1, 2020 (2020 Survey). Targeted respondents included the women criminal lawyers who had participated in TF listening sessions between November 2018 and June 2020. Since the TF already invited the participants to answer many similar questions prior to the listening session, there were two goals for this follow-up survey: (1) to document participants responses to gender equity in hiring, retention, and promotion in the criminal law profession in a more effective way and (2) to seek feedback on how the COVID-19 pandemic has affected their careers. One significant addition compared to the pre-listening session survey was an attempt to assess respondents' commitment to the practice of criminal law. Presumably, feedback from highly committed practitioners as opposed to less committed practitioners is even more weighty.

### ***Who Was in the Survey Pool?***

The TF emailed the survey with a Qualtrics link to 144 women who had participated in the TF listening sessions, including 36 women who were law students at the time of their participation. Although the survey was sent to practitioners and law students, the primary goal and expectation was to hear from practitioners. Four emails bounced back and a total of nine autoreplies were received. Two out-of-office replies indicated the women were on reduced schedules due to family care responsibilities. One autoreply was an open-ended reply that the attorney was out of the office indefinitely. Two autoreplies indicated the attorneys were on leave.

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<sup>12</sup> Cite to 2020 and 2021 CJ magazine columns by Maryam Ahranjani, Daniela Donoso, Maria Carmen Hinayon, Joy Applewhite, Jessica Yeary, etc.

### ***Who Were the Survey Respondents?***

In terms of responses received to the survey, forty-nine women responded, including three who were law students at the time they testified. The overall response rate of 34% (49 out of 144) or almost 43% for practitioners only (46 out of 108) was quite high, especially since survey response rates were down during the COVID-19 pandemic.<sup>13</sup> It is likely that the trust relationship built through the listening sessions and follow-up correspondence contributed to the relatively high response rate.

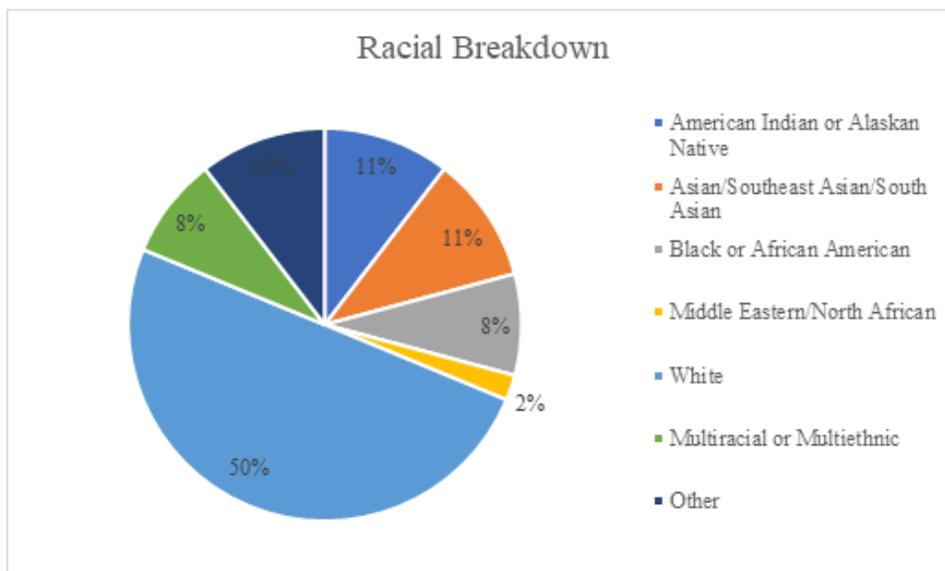
The forty-nine respondents were diverse in terms of geographic location, criminal law position, graduation year from law school, race, ethnicity, and LGBTQIA+ identification. Respondents live and work all over the country—in rural, urban, and suburban settings. They are based in the Northeast (New York, Pennsylvania, Washington DC), Northwest (Washington State), Midwest (Missouri), Southeast (Florida, Virginia), and Southwest (Arizona, California, New Mexico). Respondents included tribal, state, and federal level prosecutors, public defenders, and judges. Respondents also included law students and women working in private criminal defense and at non-profit organizations dedicated to criminal justice.

Respondents' ages ranged from twenty-three to seventy-seven, and the average age was forty-nine. Law school graduation years ranged from 1971 to 2022.

Forty-eight people responded to the questions about race and ethnicity, and one declined to answer. In terms of race/ethnicity, the survey first asked whether the respondent identified as Hispanic/Latinx. Since people who identify as Hispanic/Latinx may identify as members of various races, respondents were then invited to indicate the race(s) with which they identify. Eleven women (23%) identified as Hispanic/Latinx. In terms of race, five (10.4%) identified as American Indian or Alaskan Native; five (10.4%) as Asian/Southeast Asian/South Asian; four (8.3%) as Black or African American; one (2.1%) as Middle Eastern/North African; twenty-four (50%) as white; four (8.3%) as multiracial or multiethnic; and five (10.4%) as other.

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<sup>13</sup> Jonathan Rothbaum, *How Does the Pandemic Affect Survey Response: Using Administrative Data to Evaluate Nonresponse in the Current Population Survey Annual Social and Economic Supplement*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/newsroom/blogs/research-matters/2020/09/pandemic-affect-survey-response.html>.



In terms of gender identity, there were forty-nine responses. Forty-five (91.8%) identified as women, two (4.1%) identified as trans women, one (2.04%) identified as a trans man, and one (2.04%) identified as gender non-conforming. Forty-nine people responded to the question about sexual orientation. Forty participants (81.6%) identified as heterosexual, three (6.1%) identified as lesbians, two (4.1%) identified as bisexual, three (6.1%) identified as queer and one (2.04%) preferred not to say.

### ***Situating the Diversity of Respondents***

As explained in “Toughen Up, Buttercup” versus #TimesUp: Initial Findings of the Women in Criminal Justice TF,<sup>14</sup> there is no national demographic data on women lawyers, much less women lawyers practicing criminal law. Therefore, it is not possible to compare the demographics of survey respondents to the overall population of women criminal lawyers, or women lawyers in general, for that matter. However, the American Bar Association’s 2021 National Lawyer Population Survey provides some self-reported racial demographic information of active lawyers in the United States.<sup>15</sup>

According to that survey, 5% of lawyers identify as African American, 2% Asian, 85% Caucasian/White, less than 1% are Hawaiian/Pacific Islander, 5% Hispanic, 2% multiracial, and less than 1% Native American. The ABA survey considers Hispanic as a race, which is different from the TF’s approach, which recognizes that Hispanic Americans may identify with different races. The National Association of Law Placement’s (NALP) most recent data also provides some national data, showing that the percentage of lawyers who identify as “LGBT” continues to rise as of 2019, nearly 3% (2.99%) of their survey respondents identify as “LGBT.”<sup>16</sup>

<sup>14</sup> Ahranjani, *supra* note 2.

<sup>15</sup> AM. BAR. ASS’N, *ABA National Lawyer Population Survey: 2021*, [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/2021-national-lawyer-population-survey.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf) (last visited July 29, 2021).

<sup>16</sup> *LGBT Representation Among Lawyers in 2019*, NAT’L ASS’N FOR LAW PLACEMENT (Jan. 2020), <https://www.nalp.org/0120research>.

Measured against this data, the respondents to this TF survey were significantly more diverse than the overall population of lawyers. This aligns with the TF's articulated goal of reaching out to and elevating the experiences of traditionally excluded women and gender non-conforming people.

Framing the demographic results more broadly, the percentage of women enrolling in law school has been steadily increasing. Since 2016, women have constituted slightly more than 50% of incoming 1Ls nationally.<sup>17</sup> However, the overall percentage of women *lawyers*, as opposed to law students, is just 37%.<sup>18</sup> The obstacles to hiring, retention and promotion of women criminal lawyers, particularly women of color and women who identify as LGBTQIA+, are important regardless of this trend, but the growing number of women in the profession intensifies the need to understand and eliminate these barriers.

## **SURVEY QUESTIONS AND RESPONSES**

The follow-up survey included questions similar to the ones previously asked of participants,<sup>19</sup> but expanded on personal and observed experiences related to hiring, retention, and promotion in criminal law and included a new section related to the impact of the COVID-19 pandemic on the women's lives. The follow-up survey included a mix of yes/no, multiple choice, and open-ended questions. The four major sections of the survey: 1) demographic information, 2) experiences with hiring, retention and promotion, 3) ideas related to solutions, and 4) impact of COVID-19 pandemic.

### **Questions and Responses Regarding Hiring, Retention, and Promotion**

When asked whether they personally experienced challenges with hiring, retention and promotion, twenty-six people responded. Of the twenty-six, ten (38%) said yes to hiring, fourteen (53%) said yes to retention and twenty-four (92%) said yes to promotion. Respondents were encouraged to explain in a follow-up question, and they shared the following challenges: retaliation for sexual harassment claims and cooperation with investigations, being passed up in favor of older men, difficulty in uprooting their families (which men seemed more able/willing to do), sexism, and discrimination based on religion and national origin.

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<sup>17</sup> *Law School Rankings by Female Enrollment (2020)*, ENJURIS, <https://www.enjuris.com/students/law-school-women-enrollment-2020.html> (last visited July 29, 2021).

<sup>18</sup> AM. BAR ASS'N, *supra* note 6.

<sup>19</sup> Ahranjani, *supra* note 2, at 56.



When asked whether they observed *others* experiencing challenges, twenty-seven responded. Respondents reported even higher numbers: fourteen (51%) said yes to hiring, twenty (74%) said yes to retention, and twenty-four (88%) said yes to promotion. Sixty-five percent of respondents indicated that when hiring, promotion and/or retention were issues, those who were treated negatively were likely to change jobs. Failure to accommodate women with families and intersectionality (race plus gender) were cited as the two most common reasons for making a career switch.



Despite the challenges, 47% respondents plan to stay with their employer for the foreseeable future, and 18% said they may stay. Their reasons for staying include: a love for the work and their colleagues, commitment to their clients who need them, retirement benefits, wanting to serve their people (Native Americans), and autonomy.

When asked whether when gender-related issues arise, they have an informal or formal source of support, thirty-five women provided responses. Ninety-four percent of them responded affirmatively. They were asked to describe sources of support, and the responses included colleagues, friends, women supervisors, men supervisors, HR, law partners, union, and family.

With regard to what women need(ed) to be successful criminal law practitioners, respondents listed a number of items. They include (in no particular order) intelligence, respect, passion, training, grit, creativity, compassion, ability to learn quickly, commitment to hard work, experience, organizational skills, equal playing field, empathy, strong sense of justice, resilience, preparation, determination, idealism, good judgment, mental health support, training, supportive colleagues and others, ability not to back down from lawyers who tend to bully, more funding, equal pay for equal work, active promotion of women, a boss that fights for office needs, an environment that strives to help employees reduce stress and chaos and mentors.

One comment by a respondent sums up the career arc articulated by many women. The respondent observed, “In the beginning, I needed training and mentorship. As my career progressed, I mostly just needed to be left alone.” Interestingly, though, when asked, “Have your needs changed as you have progressed in your career?” twenty-two out of the thirty-five respondents (62%) who answered stated, “No.” One comment articulates what several women said about needing more support over time because of the complexity of the cases they handle: “Need support in how to handle the gravity and destruction that can be our job.” Combining these responses with what participants articulated in the listening sessions, this inconsistency may reflect ambivalence and a sense that while they were tough and did not *need* support at any stage, they certainly would have benefitted from it.

In response to the question prompt, “What do you feel you need(ed) to remain in the criminal justice field?” mental health support and self-care were cited several times. A number of powerful comments by respondents surfaced:

- “I need to not be undermined by individuals who view my success as a threat to them.”
- “I am 65 and have been at this for 35 years, pouring heart, soul and body into this. What would it take to keep at it?? A change of pace or a break. A colleague of mine quit after about 3 years, saying she had treated the job as a sprint rather than a marathon. I feel I’ve been sprinting a marathon.”
- “As long as I can help, I need to be here.”
- “Systemic racism must be addressed.”

Of the thirty-five who provided responses to the question, “How committed are you to remaining in your office?” almost all of them said they were *at least* committed but open to new opportunities. Sixty percent said they are very committed, 14% said they are somewhat committed, and 11% said they are committed but open to other opportunities.

Thirty-five women also responded to the prompt, “Have your employers provided you with what you needed to be successful and remain in the field?” twenty answered “yes” and fifteen answered “no.” Women in the federal system seemed more likely to report satisfaction.

Of the seven women who identified as federal prosecutors, public defenders and judges, five responded to the question. Out of those five, four responded, “Yes.”

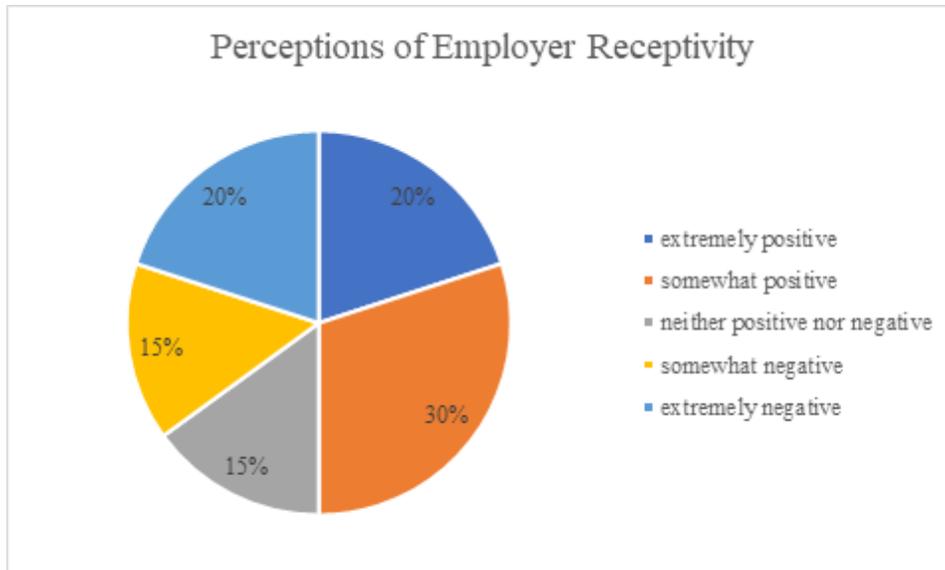
Women were invited to explain what they needed from employers to be successful and remain in the field.<sup>20</sup> The most frequent responses were support, training, flexibility and mentorship. Topics that came up more than once as unmet needs include pay equity and therapy/mental health support. When asked what policies and practices are most effective for retaining women, respondents listed the following concrete items, which have been paraphrased:

- job sharing
- seeing and experiencing promotion to leadership positions (particularly women with children)
- part-time options
- flexibility in general
- flexible work schedules
- better enforcement of workplace harassment policies
- temporary positions
- permitting children to come to the office
- equal and fair pay
- better mentoring
- more training
- listening and being more supportive/encouraging
- exit interviews
- acknowledgement that being flexible does not mean people will be ineffective

In terms of perceptions of employer receptivity to those suggestions, respondents were asked, “How receptive do you think your employer is or would have been to implementing these recommendations?” Out of 20 responses to this question, 20% said extremely positive, 30% said somewhat positive, 15% said neither positive nor negative, 15% said somewhat negative, and 20% said extremely negative.

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<sup>20</sup> See *infra* Appendix B for verbatim responses.



In response to, “What would it take to make changes?” respondents replied: budget changes, management support, adverse civil verdict, mass exodus of women of color/people of color, human resources or union pressure, and willingness to try.

### **COVID-19-related questions**

Based on what we learned during two videoconferences in Summer 2020, the TF sought to capture the ways in which the pandemic affected the work of women in the criminal legal field, and whether they hoped to keep any aspects of the pandemic workday configuration.

When asked which aspects of their lives have been disproportionately affected by COVID-19 and the fact that they are a woman, eight said childcare, four said elder care, thirteen said professional development, twenty-three said quality of life, fifteen said work performance, and four said other.

In response to the question “What other aspects of your life have been affected by the confluence of COVID-19, being a woman, and being in criminal justice?” responses included:

- “No formal coordination with courts, prosecutors and other components of criminal justice system.”
- “Everything is harder. I have two teens, both have significant mental health issues and learning challenges. Both are failing many of their classes in online school. My husband also has mental health issues. I am trying to support my family and do my job, and not doing anything as well as I would in non-COVID times.”
- “I don’t think I’ve been more affected because I’m a woman. I actually think I probably have less running around to do because my 14-year-old daughter is in virtual school and only has one extra-curricular activity that she can do--swimming every morning with her swim team, socially distanced. She can’t see friends or go anywhere. And she’s very self-sufficient with her schoolwork, so I don’t need to help her with that. I’m lucky I don’t have small children.”

- “The practice became almost more difficult because of the varied responses by Courts in different counties. It felt as if I was a new lawyer - learning how to navigate every location anew.”
- “No quality of life.”
- “I butt heads with judges even more now. Unfortunately, our district’s chief judge is a misogynist, so those battles have gone . . . poorly.”
- “Isolation.”
- “One feels even more out of the loop.”
- “Specifically I have had to pay for additional childcare for my school age child. In addition to this, any time either one of my children as a minor symptom such as a runny nose, there is a high likelihood that they will be sent home from daycare requiring me to either take off work or work from home. Unfortunately my boss does not understand that this is directly linked to COVID and not just a “sick” child. In fact, in most cases my children are not actually sick, they just are having a symptom that comes with childhood. Currently my boss will not allow us to work from home under these circumstances though he is currently letting three male employees work from home on a scheduled basis. The three young women in the office, who have chosen to pay for daycare rather than schedule work from home are not given any support when they need a day here and there to work from home. Thus we have to use our sick leave or our vacation while our male counterparts are not put in this position.”

Finally, when asked “In a post-COVID world, are there any changes you would like to keep?,” many women said they hoped some things—greater flexibility in telecommuting/telework, virtual hearings/settlement conferences, and generally more flexibility in terms of when in the day work could be completed—would remain. One respondent said, “For me personally, there are none.”

### **ABA Membership**

Nineteen respondents were current ABA members. For those who were not members, thirteen respondents indicated that membership costs too much (especially relative to benefits), ten indicated they see no benefit to their careers, four said they did not feel they would fit in, and thirteen selected “other.” The “other” responses ranged from practicing in tribal courts; ABA not being inclusive of Native American attorneys; already being involved in more salient professional organizations; and serving in a Presidential appointment or judgeship that required resignation from boards, commissions, and advisory councils.

### **Additional Important Comments by Respondents**

Respondents were invited to share additional thoughts related to hiring, retention and promotion of women in criminal law. Here are their comments and observations:

- “STEM-based criminal justice is an area of growth, and it’s currently dominated by straight, white men.”

- “Practicing in Indian Country requires serious commitment and perhaps someone from that community would be more likely to remain because of family.”
- “Women are the best lawyers in the profession. I’ve been practicing a long time and [have] seen a lot of lawyers working. No question, women are the best lawyers, certainly in criminal law.”
- “I think it’s always been better for women in criminal law than civil. That Old Boys Club is a lot harder to crack.”
- “There is a reason that our profession has such a high level of substance abuse. There is an extreme amount of conflict and stress that we deal with on a regular basis and the profession as a whole needs to address this in a more positive manner. More resources should be provided, employees should have a safe place to check in and voice their frustrations.”

## **PRELIMINARY RECOMMENDATIONS AND NEXT STEPS**

This report amplifies the diverse experiences of the people who took the time to respond to this survey. Women criminal lawyers serve a critical role in the promotion of justice. The people who responded to this survey by and large are passionate about their work and are committed to continuing to practice criminal law. However, they identified some major, persistent challenges. Broadly speaking, they include (1) limited flexibility with work schedules (which could be addressed, for example, through job-sharing, part-time work, and working remotely), (2) insufficient wellness resources, (3) deficient training opportunities, particularly in state and rural criminal law offices, and (4) short supply of meaningful mentorship.

These challenges are firmly entrenched and are felt even more profoundly by women with intersectional identities. For example, women of color (particularly Black, Indigenous and Latina women), women from low-income backgrounds, women who have significant educational debt, women with obligations to their extended families and communities, LGBTQ+ people, and others, described the many layers of challenges they face in navigating both workspaces and their personal lives. The high-intensity and emotional nature of criminal law heighten the experience of representing defendants and the state in a system that often seems unfair and imbalanced.

Only systemic solutions will lead to long-term improvements in the hiring, retention and promotion of women criminal lawyers. The chart below describes potential solutions, most of which were identified by the women in the follow-up survey or in the listening sessions:

Challenge	Potential Systemic Solutions for Employers to Implement
Limited flexibility with work schedules	Policies that allow job-sharing, part-time work, and working from home; court schedules that accommodate children’s school schedules
Insufficient wellness resources	Creating wellness spaces in offices and courthouses; provide free therapy and other wellness information, policies and programs; meet regularly with attorneys to assess job satisfaction and avoid feelings of invisibility
Deficient training opportunities	Pool resources with other jurisdictions; amplify existing free resources through ABA and state, local, and affinity bars
Short supply of meaningful mentorship	Pool resources with other jurisdictions; amplify existing free resources through ABA and state, local, and affinity bars; create more meaningful mentorship opportunities and incentivize/recognize participation

Employers should view women’s drift as a significant problem. The COVID-19 pandemic has both exacerbated and exposed the tightrope on which many working women walk.<sup>21</sup> Women’s scars and challenges from the COVID-19 era have affected and will continue to affect their role in the work force and as lawyers.<sup>22</sup> Because of increased caregiving responsibilities, many women have stepped out of the work force and others have reduced their hours.<sup>23</sup>

The pandemic has also provided a window into what greater flexibility could look like, and the responses from our survey indicate hope that some aspects of working remotely will be retained. Such changes must come as a result of open, honest dialogue and culture changes within offices. One judge (who does not have children herself) noted at a listening session, “My observation after years of experience is that women with children make the best criminal lawyers.”<sup>24</sup> She described their organizational and time management skills, capacity for empathy, and problem-solving abilities as the top reasons. This anecdote is confirmed by

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<sup>21</sup> Jennifer L. Smuts, *Coming Up for Air: Women in Law and Adapting to the Impact of COVID-19*, JD SUPRA, (Mar. 4, 2021), <https://www.jdsupra.com/legalnews/coming-up-for-air-women-in-law-and-8541536/>; Cynthia L. Cooper, *Work-Life Imbalance: Pandemic Disruption Places New Stresses on Women Lawyers*, AM. BAR ASS’N (Dec. 18, 2020), <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2021/december/worklife-imbalance-pandemic-disruption-places-new-stresses-women-lawyers/>.

<sup>22</sup> Alexandra Samuel, *How Working From Home Has Changed Employees*, WALL STREET J. (June 12, 2021), [https://www.wsj.com/articles/working-from-home-employees-11623463249?st=silpq9hc2i5lf94&reflink=desktopwebshare\\_permalink&fbclid=IwAR1WJsSXOrTo91J39RIXbaqZ7HA1gdcB-bFm0p\\_15McEnCRqZEjdZduvus0](https://www.wsj.com/articles/working-from-home-employees-11623463249?st=silpq9hc2i5lf94&reflink=desktopwebshare_permalink&fbclid=IwAR1WJsSXOrTo91J39RIXbaqZ7HA1gdcB-bFm0p_15McEnCRqZEjdZduvus0).

<sup>23</sup> *Id.*

<sup>24</sup> Notes on file with author.

numerous studies of professional women.<sup>25</sup> In fact, researchers have found that “over the course of a 30-year career, mothers outperformed women without children at almost every stage of the game. In fact, mothers with at least two kids were the most productive of all.”<sup>26</sup>

Employers should be concerned not just about retention and promotion of current women criminal lawyers. They also should be aware of demographic changes on the horizon. The enrollment of women in law schools has been steadily climbing in recent years, and, presumably, so too will the number of women who could potentially be hired as criminal lawyers. The combination of the unique features of criminal law—racial and ethnic bias, litigation schedule and related stress, the emotional toll of working in a system that many feel is unjust, and relative lack of resources—with the realities of balancing out-of-work responsibilities of caregiving mean that the profession must adapt, or run the risk of losing highly-skilled, highly qualified women. Sprinting a marathon is simply not sustainable.

With the support of current CJS Chair and TF member April Frazier Camara and incoming CJS Chair Wayne McKenzie, the TF plans to host focus groups in November 2021 and April 2022 with criminal justice stakeholders to share ideas and findings, and to pressure test the TF’s suggested remedies. The TF will collect, digest, and reformulate the focus groups’ input into further advocacy within CJS and the larger ABA, as well as continue to write about our work.<sup>27</sup> Focus group participants will receive a succinct chart that describes identified challenges and sample solutions.

With their input and the CJS’s continued support, the TF seeks to make the criminal legal profession more welcoming and inclusive for all lawyers, especially those who, like the survey respondents, face too many barriers currently.

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<sup>25</sup> Matthias Krapf, Heinrich W. Ursprung, and Christian Zimmerman, *Parenthood and Productivity of Highly Skilled Labor: Evidence from the Groves of Academe*, *Journal of Economic Behavior & Organization* (Jan. 2014), <https://s3.amazonaws.com/real.stlouisfed.org/wp/2014/2014-001.pdf>.

<sup>26</sup> Ylan Q. Mui, Study: Women with more children are more productive at work, WASH. POST (Oct. 30, 2014) <https://www.washingtonpost.com/news/wonk/wp/2014/10/30/study-women-with-more-children-are-more-productive-at-work/>.

**APPENDIX A: ABA Criminal Justice Section Women in Criminal Justice Task Force**

**Leadership Team**

**Carla Laroche, Co-Chair**

Assistant Clinical Professor of Law  
Director, Civil Rights and Racial Justice Clinic  
Washington and Lee University School of Law (VA)

**Tina Luongo, Co-Chair**

Attorney-in-Charge, Criminal  
Defense Practice  
The Legal Aid Society (NY)

**Maryam Ahranjani, Reporter**

Associate Professor and Don L. & Mabel F. Dickason, University of New Mexico School of  
Law (UNMSOL)

**Members**

**Lara Bazelon** (Professor of Law, Director of the Criminal & Juvenile Justice and Racial Justice  
Clinics, University of San Francisco School of Law (CA))

**The Honorable Gloria Ochoa-Bruck** (Kalispel Tribal Court (WA))

**Barbara Creel** (Professor of Law and Karelitz Professor of Evidence and Procedure, UNMSOL)

**April Frazier Camara** (Vice President of Strategic Alliances and Innovation, National Legal  
Aid and Defender Association (DC))

**The Honorable Bernice Donald** (U.S. Court of Appeals for the Sixth Circuit (TN))

**Daniela Donoso** (Equal Justice Works Fellow, Legal Services of North Florida (FL))

**Maria Carmen Hinayon** (Complaints Resolution Officer, Office for the Prevention of  
Harassment and Discrimination University of California- San Francisco (CA))

**The Honorable Denise Langford-Morris** (Oakland County Circuit Court (MI))

**Ann Ratnayake Macy** (Founder and former Executive Director, National Center for Child  
Abuse Statistics and Policy (DC))

**The Honorable Rachel Pickering** (3<sup>rd</sup> Judicial District (KS))

**Sarah Redfield** (Professor of Law (emerita), University of New Hampshire School of Law  
(ME))

**Major Susan Upward** (U.S. Marine Corps (NC))

## **APPENDIX B: Responses to Level and Type of Support from Employers**

- “There are very little resources for therapy and mental health. This field is full of substance abuse because of the amount of stress and the level of workload we have. My employer specifically also has not recognized the additional stressors that COVID has created in terms of childcare.”
- “As a trial lawyer, the office provided little support for logistical issues related to evidence presentation. I was not provided assistance with moving large 65" TVs for closing arguments. I was forced to do so in a skirt suit, with heels, and hurt myself before closing arguments in a child molest case. Certainly, my focus should have been on substantive trial work rather than physical labor that should have been performed by my support staff. This gender-neutral policy overlooked the fact that I am 5'1" and 115 lbs and moving a TV of that size was not easy. Further, moving heavy boxes of files to court each day is overwhelming. My male counterparts voiced no complaints, which reflected poorly on me when I did.”
- “Promoting competent women to visible positions. Women as supervisors with power to make decisions.”
- “I am able to attend trainings and webinars.”
- “Sometimes they do and sometimes they don't. It depends on the year.”
- “Sexism and dismissive.”
- “My work is non-traditional, so most of my work is self-reliant. Prior to COVID, I was able to attend training I requested local and those requiring travel. I also have access to legal databases to conduct research.”
- “I am a sole practitioner; I provide what I need.”
- “I'm self-employed. I take care of myself.”
- “I only had one employer and he and the office were very supportive.”
- “Prior to my current role, I did not receive the support I needed and there were fewer opportunities to grow and lead.”
- “leeway to grow, leadership opportunity, and ability to make significant decisions and determine direction of the work”
- “They need to pay women equally. That issue is emblematic of a lack of support for the women in this department that has cost us a number of good attorneys.”
- “I did not feel supported or mentored necessarily from employers who were focused on my career advancement. However, as my own boss, I am responsible for my own advancement (and the advancement of other women in the practice).”
- “As a program director, it has always been difficult to do this work because of the need for additional resources, i.e., attorneys, advocates and financial. At times, priorities must be juggled to benefit staff and clients.”
- “I have always worked with my father as the lead partner of our firm. Therefore, many of these questions are inapplicable to me - such as "policies" or "retention.”
- “They undermine my position as an administrative position instead of legal; even though be essential personnel.”
- “Overall, the various U.S. attorneys I worked for supported me and helped me to be successful, or at least didn't stand in my way. Some were more supportive than others. In general, I felt most supported when my supervisors understood my strengths and weaknesses, assigned me cases based on my strengths, and provided training and resources to address weaknesses.”

- “I often was alone and isolated. I didn't feel I had someone who had my back or was interested in my growth or development.”
- “I've been with the FPD for [many] years - superb training, usually provided with what I need to do my job. Caseload has been for the most part manageable, although right now with compassionate release stuff I feel overloaded. Boss has been great at not micromanaging and yet having our backs.”
- “Lack of resources and mentorship.”
- “I practice civil law and have worked for civil law firms. They are not equipped to address criminal issues.”
- “I have a strong, collaborative relationship with my employer and ask for what I need and generally am able to secure it. Mutual trust is important as is our mutual regard.”
- “They have not provided what we need, more humans doing this job, because the county will not provide. Our bosses would if they could.”
- “In my current position as a resource attorney I have time flexibility and control my workload. I did not have either when I was at a large public defense agency.”
- “My time in federal defender offices has allowed me to develop meaningful mentor relationships, adequate resources, and relevance within the profession.”
- “For the most part my employer has provided the basic tools needed to be successful. I was recently promoted to a management position but because of a budget and personnel freeze my ability to do my job effectively has been affected.”
- “It has been extremely difficult to obtain additional personnel positions and adequate funding.”