



EXPLORING INNOVATIONS

ASSOCIATION OF PROSECUTING ATTORNEYS

Prosecutors and the Cultural, Structural and Monetary Reality of Criminal Justice Reform

Written by Erica McWhorter

Edited by APA Staff

Based on Peer to Peer Exchange and Presentations at the
June 9-10 Safety and Justice Leadership Institute

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PREFACE

Heavy reliance on jails is associated with high financial costs and is a significant burden on society. Bearing these costs inhibits prosecutors' ability to protect public safety or promote community-based prosecutions. Alternative programs to incarceration are being heralded as an important criminal justice reform strategy to decrease the use of jails. The acceptance and use of these programs and other reforms by prosecutors illustrates their role as agents of change within the criminal justice system, and as necessary proponents for widespread adoption and implementation of alternative programming.

The John D. and Catherine T. MacArthur Foundation recognized these issues and established the Safety and Justice Challenge (the Challenge) to support the development of innovative alternative programs to reduce Racial and Ethnic Disparities (RED) in the justice system and jail usage across the United States. The Challenge supports twenty sites—eleven core sites and nine partner sites-- that represent jurisdictions developing and implementing plans for fairer and more effective justice systems. The Challenge network also includes partners and strategic allies who provide sites with technical assistance, data analysis, and performance measurement.

The Association of Prosecuting Attorneys (APA) is a strategic ally in the Challenge. As part of APA's mission to enhance the effectiveness of prosecutors, APA devotes a significant portion of its programing to encouraging prosecutors and other criminal justice stakeholders to use community-based prosecution strategies. The overarching goal of *Exploring Innovations with APA*, APA's Challenge project, is to build a movement among prosecutors toward decreasing incarceration rates using alternative programs nationwide. APA's involvement in the Challenge is expected to aid in the development of both site-specific programs and publicly available resources for jurisdictions looking to develop their own alternative programs.

At the initial Leadership Institute held in Washington, DC in June 2016, the network sites met to discuss the monetary realities of developing and implementing programs that meet the "challenge" of criminal justice reform, specifically the goals of the Safety and Justice Challenge. This white paper reflects the themes and ideas that resulted from that two-day peer-to-peer exchange.



INTRODUCTION

DECISION POINTS TO REDUCE JAIL POPULATIONS

A typical criminal case has six critical junctures where decisions of system actors can affect whether an individual goes to jail: arrest; charge; appointment of counsel; pretrial release and bail; case processing; disposition and sentencing. Prosecutors are one of the system actors who can alter the trajectory of a criminal case. As ministers of justice, prosecutors are duty-bound to elevate community safety above all else. However, this does not mean that communities are necessarily always made safer by putting individuals in jail. Individuals who are incarcerated or spend prolonged periods in jail will likely rejoin their communities without ever having been rehabilitated and are likely to recidivate.

Prosecutors are uniquely situated to develop and implement alternative programs. In many jurisdictions, prosecutors will decide whether a person is charged, diverted, or is released pretrial, and ultimately whether an individual goes to jail. More broadly, prosecutors are part of the collaborative effort that will determine the outcome of a criminal case. Although prosecutors are not always charged with deciding whether an individual will spend time in jail, they are one of many system actors who can support alternative programs within a community.

However, change does not occur in a vacuum. Some offices may need to adapt to overcome institutional inertia. Offices are also encouraged to invest in systems to track and review outcomes of alternative programs. Thoughtful implementation that considers these challenges is more likely to take hold, and ultimately succeed.

CHALLENGES OF REFORM

SETTING THE STAGE: WHAT ARE THE CHALLENGES?

As part of the initial Safety and Justice Challenge Leadership Institute in June 2016, APA met with representative prosecutors from the Challenge network to explore its innovations in detail and envision goals successful programs would achieve.

The central question of that discussion was: if your jurisdiction could have \$1,000 for every jail bed saved due to your alternative program, how could those cost savings best be utilized? This question forces multiple considerations, such as balancing safety and justice, avoiding RED in jail exposure, and community buy-in. The peer-to-peer exchange raised concerns regarding the monetary constraints, cultural sensitivities, and institutional inertia to structural change. The sites provided insights into how to implement alternative programs while navigating these challenges.



IMPLEMENTING STRUCTURAL CHANGE —PHILADELPHIA'S PERSPECTIVE

The Philadelphia District Attorney's Office set a goal to reduce its jail population by 34%. To achieve this goal, Philadelphia focused on restructuring how their office assigns prosecutors at the charging and pretrial decision points. Philadelphia assigned experienced prosecutors to the charging unit and increased the number of line attorneys, while simultaneously partnering new attorneys with senior attorneys. This was a marked contrast to the traditional approach where the less experienced attorneys began their careers in the charging unit. Using the experience and knowledge of the senior staff at the charging decision point enabled the office to more efficiently and fairly charge, divert, and negotiate plea agreements. This resulted in money and resources saved to allow the office to concentrate on violent crime.

The office also restructured its approach to prosecutions by using focused deterrence on special populations to reduce disparities and the likelihood of increasing jail usage. Philadelphia also prioritized reducing disparities and jail populations by issuing civil citations and increasing opportunities for prearrest diversion by expanding the number and types of offenses that qualify for those sanctions.

Philadelphia took lessons from other jurisdictions like Seattle and San Francisco, when strategizing the implementation of a law enforcement assisted diversion (LEAD) inspired prearrest diversion program and a reentry initiative to give young adults charged with nonviolent narcotics offenses an opportunity to successfully redirect their lives through education and job training. These efforts may ultimately result in a reduction in the collateral consequences associated with arrests and incarceration. Philadelphia also concentrated on robust alternatives to cash bail through early bail review, expedited review of probation violations, electronic monitoring in lieu of arrest, and daily reporting centers for persons on probation. The office began using risk tools for better bail evaluations.

The sheer size of the system poses problems that contribute to system inefficiencies. Additional cultural and structural changes like vertical prosecution and geographically targeted community prosecution were among the first ways Philadelphia aimed to make its approach more efficient¹. The DA's Office also trained and hired several pretrial services advocates to assist persons entering and moving through the system. These shifts built trust between the office and the community and allowed for the office to strategically leverage resources within the community to enable outreach. The collective result was a reduction in expended time and resources and increased buy-in from system stakeholders. Even the local courts witnessed a significant reduction in its backlog.

Preliminary results have shown an improvement in public safety, cost savings, and increased collaboration among stakeholders. All system actors share these benefits, which enable more change to occur. Data are currently being collected to accurately quantify and qualify how these changes have impacted jail populations .

¹ <http://www.prosecutingattorneys.org/wp-content/uploads/Philadelphia-Implementation-Guide1.pdf>



PUBLIC PERCEPTION

Public perception of prosecutors is often a gauge of how the public views the rest of the criminal justice system. Among the challenges facing prosecutors are obtaining community trust, building relationships within the community, and encouraging collaboration. These challenges can be overcome by transparency, use and accuracy of collected data, and by clearly articulating how decisions are made with the shared goal of greater public safety.

Messaging can be used to build trust and obtain buy-in for innovative programs designed to reduce jail usage and RED. Prosecutors are often the initial gatekeepers to the system: they may determine who enters, the direction a case will take, and how individuals reenter the community. Reframing these decision points as being unequivocally in the public's interest can go a long way in maintaining public trust. Using the power of the gatekeeper at early decision points to release low-risk individuals pretrial, decline to charge, or divert to treatment, and stating that these decisions are designed to protect the public as well as contribute to a just system, can go a long way in maintaining public trust.

Timing is a key factor in messaging. In the absence of information, first reports often gain traction and quickly become enshrined in public consciousness. With the advent of new technology and information sharing, even the most expedient dissemination of information may compete with multiple narratives and at times, misinformation. Regular communication with community constituents can help maintain the integrity of messaging. Opportunities that lay the foundation for public trust can be found in the regular exchanges between prosecutors and the community.

STAFFING AND RESOURCES

Prosecutors often have insufficient resources and staff to implement reforms, and with limited or no control over the number of cases they must handle, often stretch the resources they do have to cover high caseloads. Consequently, trying to implement even simple diversion and alternative sentencing programs can place excessive demands on already constrained offices.

There are several potential improvements that can be made to alleviate these constraints. One model calls for allocating funding proportionally to the number of cases a prosecutor's office handles. Alternatively, staffing prosecutors like law enforcement, at a rate of 10 attorneys per 10,000 residents, can prevent high caseloads from overwhelming small staffs and limited resources.

Many jurisdictions are collecting data on their own offices' staffing and resources to aid in efforts to develop new funding mechanisms. For instance, Mecklenburg County, North Carolina used census data and phone interviews to determine how many citizens its prosecutor's office serves. Philadelphia, Pennsylvania created its own matrix comparing the twenty largest and most violent jurisdictions and its respective funding to demonstrate the Philadelphia District Attorney's Office's funding needs to ensure appropriate staffing and resources.



FORGING THE VISION AND MAKING IT HAPPEN

ENVISIONING WHAT THE SYSTEM CAN BE

Prosecutors participated in roundtable discussions and put forth their ideal criminal justice reforms. These discussions reflected the diversity of experiences, concerns specific to each jurisdiction, and attitudinal shifts towards reform. Brief highlights from this discussion follow here.

ON PROSECUTION:

Use front loading solutions to reduce the number of cases that enter the criminal justice system in the first place. For instance, offenses referred by schools and some quality of life issues can best be addressed at the community level. For offenses that require more substantial sanctions, community courts with holistic supports are likely to be the most successful. Alternative programs designed to reduce jail usage and disparities should include efforts to diminish or eliminate the collateral consequences associated with system contact, like expungement or record notations.

Intelligence driven approaches, including plea offers, can be done on a wide scale but demand stakeholder buy-in. Investments in data and case management systems for prosecutors can accurately and frequently answer questions about disparities, costs, and benefits. Data can also provide information on issues about arrests and dispositions, as well as system or program successes and failures.

ON POLICING:

In implementing community policing, law enforcement should analyze which neighborhoods need greater presence and what that presence should look like. Regular communication and outreach are vital to maintain good relationships with the community. Police should also seek to obtain community feedback to determine which crimes impact the community the most and how the community feels about certain offenses. For instance, residents of some neighborhoods respond to “nuisance” crimes, such as loitering or playing loud music by calling the police, while residents in other areas do not. Changes should be made at the initial point of contact.

Programs like Seattle’s LEAD, Los Angeles’s and San Francisco’s Neighborhood Justice Panels, and Shelby County Tennessee’s youth and gang diversion programs, are model innovations that should help redefine the criminal justice system’s initial contact with community members. To maintain public safety while demonstrating increased accountability to communities, law enforcement agencies should be able to track information that measures the success of their community policing efforts, like citizen satisfaction and procedural justice, as well as track arrests and incidents of crime.

ON EFFICIENCY:

To decrease the amount of time persons are detained pretrial, more focus should be on using risk assessment tools to remove low-risk offenders from the criminal justice system with a date to show up for court, and determine treatment options or supervision levels for moderate and high-risk individuals. Consolidating multiple cases for one person before a single court may incentivize program participation, favorable plea negotiations, and increase

the likelihood of the court reducing overall sentences. Early bail review for nonviolent offenses should be set up systemically in an automated database that sets parameters for nonviolent crimes and alerts prosecutors as to their pendency and potential for diversion or plea negotiations.

Studying the bond schedule and bond impacts on public safety will also provide insight into how to reform bond programs. A fast track bond system that allows people to go directly into treatment and that covers substance abuse, mental health, and dual diagnoses would substantially streamline early decision points for those with high exposure to the criminal justice system. Increasing the front-line systems of crisis intervention teams (CITs), would also significantly reduce the numbers of persons jailed.

The complexity of addressing mental health issues for persons entering the criminal justice system can create inefficiencies. Performing mental health evaluations at the jail upon entry instead of days or weeks later at a hospital can allow for resolution of competency issues in a timely fashion or with services in community-based locations. Additionally, mental health treatment providers should be available in jails or at other early contact points to examine records or health history, to screen persons immediately, and funnel individuals through the system to programs providing necessary services.




Each decision point, beginning with arrest, up to and including disposition and sentencing, present opportunities for diversion. Ideally diversion should occur at the earliest possible decision point to minimize the individuals exposure to the criminal justice system, and to avoid using further juridical resources when the ultimate result will be diversion. However, even if a case has entered the judicial system and consumed significant resources, an individual should still be diverted if it improves public safety and individual welfare more than incarceration does.

ON MESSAGING:

Successful messaging depends on language that is both concise and accurate. There is a significant difference between “jail” and “prison.” Prosecutors should be careful to clarify and use the appropriate term.

The “school to prison pipeline” is shifting towards “school to court,” “school to services,” and “pipeline to services.” Juveniles face a unique circumstance in which referrals from their schools can thrust them into the criminal justice system without the commission of an actual crime. However, there is now growing momentum to change the outcome of these cases.

Modifying the message to reflect this shift can engender community support for alternatives, including school and community-based solutions.



Across many jurisdictions there are important nuances to the multiple decision points at which diversion and alternatives to jail can occur. Specifically, there are alternatives to incarceration that are offered before law enforcement files a case with the prosecutor or directly with the court. There are also alternatives to incarceration typically termed “diversion” done either before a prosecutor files charges or before a plea is given. These are both distinct from alternative sentencing, which is typically done after a case has been filed and a plea has been entered. One proposal suggests using the term “deflection” to define an alternative to incarceration at the law enforcement decision point, because the individual never enters the criminal justice system, with its collateral consequences, and instead is deflected away. Getting this right is important because it can mean the difference between getting appropriate stakeholder buy-in and leaving out critical system actors. This can also interfere with identifying the earliest point at which alternatives to jail can occur.


DANY’S PERSPECTIVE: HOW TO INNOVATE AND IMPROVE

Jack Maple, the inventor of Compstat², often repeated the maxim “[w]hat gets measured gets done.” Per the New York District Attorney’s Office (DANY), innovations in criminal justice should focus on goal setting and data-driven approaches. Success should be measured in crime reduction. Successful crime reduction strategies address four principles: (1) identify the goal—to reduce crime; (2) identify the measure of success—via reported crime and several key indicators; (3) develop a plan; and (4) check the status—repeated follow-up and accountability.

Following the four principles is the basis for thoughtful, measured programs. However, being innovative with the strategy means learning from others. Borrowing approaches from other successful jurisdictions allows for program implementation with much less risk because of available data. Be persistent and think like a business about office and system goals. Using the lessons learned by others as a starting point also means benefitting from their successes earlier in the process. For instance, like DANY, recognize the likelihood of system or prosecutor disconnect with the community; test the viability of ideas by measuring project performance from inception; and initiate intelligence-driven prosecution that is strategic about targeting the primary drivers of violence.

Improving on existing efforts means taking responsibility and using resources to their strategic advantage. This is termed the “moneyball” approach after the significant change in the way major league baseball teams drafted players. If the goal is to reduce incarceration, recidivism, and RED, these issues must first be measured. Just like finding high quality baseball players, statistics are better indicators than faulty intuition. While no individual is responsible for the recidivism and jail numbers, responsibility can be pinpointed with a Compstat-like system in every detention and incarceration facility, like what was done in Lucas County, Ohio. This system can measure where and why people are entering the system and factors that contributed to reductions in recidivism. Like drug court models, tracking those inputs (facilities) would lead to jails ensuring a holistic support response if recidivism rates were being tracked back to them. Similarly, regular jail audits for public safety and cost tracking would have similar results. Those systems do not place blame but instead recognize challenges and successes.

² A statistical system for tracking crime, mapping hotspots and crime drivers developed in 1994 by New York Police Commissioner Bill Bratton & his deputy Jack Maple.



Moneyballing further requires making the goal clear so the stakeholder responsibilities are also clear. Using a hypothetical example, based loosely on the monetary realities of incarceration, DANY asked: who would take responsibility if, for every day someone was kept out of jail and the community remained safe, system actors received \$1,000 or were fined \$1,000? DANY theorized that the history of the country, the momentum of criminal justice reform, and the motivation to only spend as much as necessary to keep people safe, would encourage more system actors to accept responsibility for its role in contributing to high jail populations and racially disparate treatment by the criminal justice system. DANY's moneyball theory has paid off: New York has seen significant and stable decreases in crime and such a significant reduction in jail populations that currently 75% of its jail population is persons charged with violent criminal offenses, not misdemeanors.

What's next in innovation for DANY? The office is looking to leverage its new technologies to address public health issues such as the epidemic of fatal overdoses due to opioid abuse. Ideally, a collaboration of jurisdictions would create a public health-public safety partnership using crime strategies and intelligence useful for mapping high priority persons and other top crime drivers to target access to treatment and prevent fatal overdoses.

PROSECUTORS & BUDGETS

INNOVATIVE FUNDING STRATEGIES

A key benefit of alternative programs is that they ultimately lower the overall cost of incarceration and prosecution of repeat offenders. The challenge is accessing these cost savings as a means of funding these alternative programs. Persuasive marketing pitches to local government or possible partners for reinvestment can focus on police costs and length of jail stays in comparison to the costs of diversion. Courts tend to prioritize other issues. Those pitches can be framed in terms of reinvested dollars making it possible to reduce wait times for continuances or making it possible to close or open a courtroom.

King County, Washington proposed a bargain with state and local officials. The King County Prosecutor's Office would create a "cite and release" program in lieu of charging and detaining persons for certain offenses, where 50% of the cost savings would go back to the local government for reinvestment at its discretion and the remaining 50% of the cost savings would return the prosecutor's office. Those reinvestment dollars are valuable, as the prosecutor's office can use them to deflect the costs of the prosecutor-led diversion and alternative sentencing initiatives, including staffing and other resource costs. The challenge then becomes reinvesting the cost savings back into the project or other criminal justice system innovations once the savings are realized.



REFORM WITH RESOURCES—OREGON'S PERSPECTIVE AND JUSTICE REINVESTMENT

Oregon has become the gold standard in creating reform through justice reinvestment. In 1994 Oregon voters passed Ballot Measure 11, which established mandatory minimum sentences for several crimes resulting in significantly increased prison populations. Early projections about the impact of that legislation predicted Oregon's prison population would grow by 2,000 inmates over ten years and would cost taxpayers an estimated \$600 million.


Beginning in 2011, a solution was devised that included the establishment of a Public Safety Commission and the enactment of new legislation. The public safety commission was established by then-Governor John Kitzhaber to focus Oregon's long-term planning efforts on sentencing and public safety. The Commission consisted of leaders from all three branches of government as well as the public, to recommend a path for a broader discussion with all stakeholders before the 2013 legislative session. The Commission and legislature relied on data compiled by the Oregon Criminal Justice Commission and the Pew Center on the States in drafting policy recommendations for cost savings and reducing prison population growth. The solution was termed the Justice Reinvestment Initiative.

A two-phase plan was developed centering around the concept of justice reinvestment from decreased jail populations. Phase one planned to control the prison population by targeting persons at the front end of its criminal justice system and creating resources for a continuum of community based services, programs, and sanctions. The plan included a blueprint for reinvesting future savings into schools and public safety. The second phase established a justice reinvestment account. Implementation also included regional implementation committees and sentencing changes. These sentencing changes aimed to lower rates of incarceration for certain offenses through increased use of probation, as well as transitional leave and release options.

For prosecutors, this approach produced significant changes from previous practices. Their goals included being better informed at critical decision points, which went beyond merely changing sentencing practices. Instead, the range of offenses applicable under the new administration increased, as did the level of system-wide collaboration among stakeholders. Oregon's Department of Corrections became a fundamental stakeholder due to the policy requirements for increased supervision, services, restitution, and accountability.

Additionally, system processes changed significantly for prosecutors. Prosecutorial discretion in charging and eligibility was significantly reduced under the new scheme. Prosecutors used checklists rather than instinct to determine case eligibility for alternative programs and sentencing. Judicial settlement conferences at arraignment became mandatory for the four justice system participants (court, defense, prosecution, probation) and optional for victims. Risk assessment reports based on the Level of Service/Case Management Inventory (LS/CMI)³ and victim input are used at the settlement conferences to make decisions about release and treatment models. The goal at the settlement conferences is for stakeholders to determine if an individual is a risk to public safety or if they can be safely supervised in the community, as well as to ensure all participants buy in and are fully informed.

³ The LS/CMI and treatment models are designed to account and plan support for a wide range of factors and needs including housing, children, military & work history, and risk reduction targets.



The challenges surprisingly were not the number of people who opted out. Instead the challenges were from within the prosecutors' offices. Implementing the procedural changes required cultural and structural office changes to obtain attorney buy-in and trust. The new process reduced trial work and required more time preparing for settlement conferences. Initially, line attorneys did not like the removal of some of their discretion or the addition of checklists and "social work" functions to their duties. This reduction in trial experience for the staff also posed legitimate concerns for office management. Furthermore, it took time to obtain buy-in from the attorneys who were still unsure whether probation would hold participants accountable, but trust has been building.

The result has been a 10-12% decrease in Oregon's jail population. The state's justice reinvestment plan has allowed for a county-specific approach to how the funds are used. Some counties chose to use the reinvested dollars on implementing or updating risk assessments and electronic monitoring. Other counties chose to increase community services available as alternative sanctions.

Oregon initially reinvested a total of \$15 million between 2013 and 2015. Funds went to local jails and drug courts. The state also opted to give funding beyond the \$15 million to victim services and to the Department of Corrections for community-based corrections services. The second round of reinvestment funds covered the 2015-2017, needs to be consistent throughout budget biennium and totaled \$38 million between 2015-2017, although the cost avoidance was estimated to be approximately \$75 million. The Justice account has been updated so that money is now distributed via grants for community-based sanctions, programs, and services. A rigorous evaluation of all programs receiving funding has been added to determine their effectiveness and obtain data on costs and benefits. More complete data are expected to be available by the end of 2017. The next step in reinvestment for Oregon includes a proposal for reductions in RED in the system.

FUNDING POSSIBILITIES FROM THE CHALLENGE NETWORK

Justice reinvestment initiatives are not the only methods of funding innovative criminal justice reforms. Other prosecutors participating in the Institute shared some of the strategies and opportunities they have used to fund implementation and sustainment efforts, including grant support from government and private sources like the MacArthur Foundation's Safety and Justice Challenge⁴. Some of those network participants also addressed their ongoing needs and exchanged information on possible sources of support.

STATE OF CONNECTICUT

The State of Connecticut is using Challenge funds to promote system efficiency, particularly reducing the amount of time persons are detained pretrial. The state is focusing on creating and implementing programs for midlevel offenses where programs for low-level offenses already exist. The state will also add programs for certain other detainees and offenders who are spending unnecessary or disproportionate amounts of time detained.

⁴ More information on each of the Challenge Network's programs can be found on the MacArthur Safety and Justice Challenge Website, available at <http://www.safetyandjustice.org/challenge-network/>.



HARRIS COUNTY, TEXAS

Funds from the Safety and Justice Challenge were matched by Harris County to support the county's focus on reducing its jail population. The county is undergoing a culture shift, adopting a second chance philosophy that resists dropping participants from programs. The county has received but not yet implemented the Public Safety Assessment, a pretrial risk-assessment tool developed by the Laura and John Arnold Foundation, as part of this effort. The county is dedicating much of its funding support towards programs aimed at low-level misdemeanor offenses, including retail theft and marijuana. Efforts are aimed at promoting pre-arrest diversion programs, but they are experiencing some challenges with implementing and structuring due to evidentiary concerns. They are hopeful they will be able to add more low-level offenses to the diversion and prearrest programs. The county is also seeking to re-launch a diversion court for midlevel offenses, complete with assessments and easy linkage to services and programs. Another challenge the county faces is bed space for treatment. The county is currently collaborating with probation and others to make legislative change that is in line with the new culture of keeping as many people as possible in treatment and engaged with programs, in lieu of bed space in jails. The county is seeking support and guidance on this issue.


PIMA COUNTY, ARIZONA

Pima County aims to eliminate the use of bail for low-level misdemeanor offenses, specifically for individuals with mental illness, substance abuse and homelessness. Pima County is using its Challenge funds to enhance its pretrial services department primarily by updating its Arnold Foundation Risk Assessment tool, which is state mandated. The county will perform risk assessments and mental and behavioral health screenings to support efforts to reduce the numbers of persons incarcerated at the pretrial decision point, as well as provide care for persons both during and after incarceration. The county seeks to also reduce jail capacity problems by using electronic monitoring for work release and implementing an automated reminder system to reduce the numbers of people jailed for failing to appear for court.

The county is using other resources to support progressive efforts at drug treatment courts, felony diversion with services, and a behavioral health court collaborative. The funds leveraged from the collaborative will be used to begin a consolidated problem solving court. Stakeholders are hoping the consolidated problem solving court will address issues of mental health, substance abuse, and homelessness for all 6 districts. The county is currently in the planning and funding stages of implementation. The county is also currently seeking alternative funding for expansion of the felony diversion program.

SPOKANE, WASHINGTON

Spokane County, Washington is using Challenge funds to support a goal of reducing the local jail population by 20%. The funds will enable the county to obtain an evidence-based risk assessment tool and create a more robust pretrial division. The evidenced based risk assessment tool is meant to reflect the standards set by the legislature and enhance data transparency and public trust. The funds will also enable the county to provide additional personnel and capabilities for the existing pretrial division. The county has also obtained a DSM grant to support its mental health programs, including



its treatment courts. The county is now seeking to acquire and provide additional services for persons with mental health issues who are currently in local jails.

The city of Spokane, Washington used a variety of funds, including funds from the county, to support a system wide risk needs responsiveness tool for evidenced-based and data driven decisions, particularly for participants with mental health concerns. Funds from various sources are also being leveraged to support the city's community-based prosecution efforts, including a very successful community court that has produced good data, results and buy-in. The city would like to expand and is seeking alternative funding and support ideas.

COOK COUNTY, ILLINOIS

Cook County, Illinois is using its Challenge funds to support a variety of programs, including some existing projects. Cook County intends to conduct implicit bias training for all the court stakeholders to help reduce disparities in approaches and sentencing. The county is implementing a court reminder program to reduce the number of missed court appearances and failure to appear warrants that contribute to the local jail population. Cook County is also implementing a Misdemeanor Second Look, which will bring additional stakeholders on board to assess how misdemeanors are handled system-wide. Enhancing its Second Chances program, which is a bond court initiative that reduces jail stays for pre-plea cases from 45 days to 17 days, is also expected to produce significant reductions in jail usage. However, the county is looking for ways to adequately quantify the cost savings. Additionally, the county will enhance its 34 continuum of care alternatives to incarceration. The county will also focus on the young adult population (persons ages 17- 24), and is seeking to address issues of pretrial release, reducing length of stays in jail, as well as increasing program and services supports. Cook County is also taking advantage of no cost APA resources, technical assistance and training to support and enhance its existing programs, including its young adult program.


MECKLENBURG COUNTY, NORTH CAROLINA

Mecklenburg County, North Carolina is using its Challenge funds to expand the use of its Arnold tool across other facets of its justice system. Initially, the county will ensure the tool is used at the best decision point in the systems to make it most effective and then expand its use. They are also partnering with local trainers to conduct an extensive implicit bias training using Race Matters for Juvenile Justice⁵ and look forward to expanding the training beyond juvenile justice.

MESA COUNTY, COLORADO

Mesa County, Colorado previously underwent a major system overhaul as it was part of the National Institute of Corrections Evidence Based Decision Making Initiative. As part of that initiative, the county received an evaluation, resources, and support to implement a personal recognizance bond release option using risk assessments. The county will use Challenge funds to expand on the success (and jail population reductions) they saw as a result of that initiative by implementing a warrant resolution act for offenses under \$1,000 across multiple municipalities and re-implementing bond hearings on weekends and possible expanded fast track bond system that allows people to go directly into treatment for substance abuse, mental health, and dual

⁵ More information on this program is available at www.RMJJ.org.



diagnoses. Mesa County is seeking to use Challenge funds to better track its success and improve its data collection efforts, particularly for its bond schedule. Additionally, Mesa County will use Challenge funds to conduct two CIT trainings per year for law enforcement and other criminal justice professionals.

MULTNOMAH COUNTY, OREGON

Multnomah County, Oregon, which participates in Oregon's Justice Reinvestment program through its own Multnomah County Justice Reinvestment Program (MCJRP), will be furthering the goals of the state initiative in a project dedicated to its homeless population. With the success of MCJRP, Multnomah County has developed Homeless Engagement Alternatives Resources and Treatment (HEART), that aims to reduce the costs and jail usage associated with prosecuting homeless persons who commit low level offenses. Participants will receive community-based resources and supportive services in lieu of jail. The project is modeled after King County, Washington's LEAD program.

PALM BEACH COUNTY, FLORIDA

Palm Beach County, Florida has leveraged other resources to implement and expand a range of misdemeanor, DUI and treatment and community court programs. Challenge funds will go towards sustaining and expanding some of the programs aimed at reducing the likelihood of incarceration, including a DUI diversion program endorsed and supported by Mothers Against Drunk Driving (MADD), which has shown an infinitesimally small recidivism rate. Palm Beach County will also use Challenge funds to perform warrant reviews, where the State's Attorney expects to dismiss several misdemeanor and low level non-victim felonies as well as continue a Fresh Start program that gives persons an opportunity to have their cases reevaluated and new plea negotiations initiated. So far under the Fresh Start program, 400 cases have been resolved and reset with conditions. The county will also use Challenge funds to supplement its mental health diversion program, and is seeking ways and resources to be more progressive and creative and to improve its data systems.

PROSECUTORS & REFORM

After envisioning the possibilities, contemplating strategies, and determining funding sources for reform, prosecutors must prioritize to create positive change. While there are overarching priorities that can be assessed at the various decision points, there are also priorities that are specific to jurisdictions and local community needs. However, the overarching principles and ideas remain important as prosecutors work their way through competing priorities to address the issues in their respective jurisdictions.

TEN PRIORITIES AS STATED BY THE OFFICE OF URBAN AFFAIRS

As ministers of justice, the aim of prosecutors is to improve the community by promoting public safety and fairness. To ensure both safety and justice, the Office of Urban Affairs calls for prosecutors to focus on ten priorities centered around three critical system decision points.



DECISION POINT: COMMUNITY

1) Community prosecution

Engage with communities and learn about their needs and concerns. This engagement requires a team approach designed to fight crime and ensure public safety. While this method may be reminiscent of past prosecutorial approaches, it also seems to be the future of criminal justice.

2) Data

Information is critical to making effective, good decisions. Examine what data should be collected and assessed beyond the wins and losses. This means examining the number of individuals prosecuted and analyzing the race and gender of those individuals; identifying which police officers are bringing which types of cases; how individuals are sentenced; which alternatives to incarceration are working in crime reduction; and how staffing decisions impact system fairness and efficiency. Data driven approaches can also be used to identify persons frequently in contact with law enforcement, and who may have behavioral health needs that can be met in the community.

3) Transparency

An important step towards the overarching goal of fairness is opening access to the data collected and the approaches taken in analyzing data. Publicize as much of the data as possible, including data on race, gender, LGBTQ and disability status for cases, dispositions, dismissals, diversion offers, acceptances, and completions.

4) Bias

Recognize and understand bias. Require training on implicit bias, and ensure that bias does not impact decision making.

5) Creating national standards

There are benefits to consensus. Aim for 21st Century Prosecution to enable widespread understanding and symmetrical approaches to public safety and justice. Having national standards reduces disparities and assists in producing approaches that are amenable to study and correction when necessary.

DECISION POINT: COURT

6) Forensics

Review the science. Avoid the junk science and the problems resulting from questionable and discredited methods. The Department of Justice and the National Institute for Standards and Technology have created the interdisciplinary National Commission on Forensic Science to improve the practice, reliability and value of forensic science. Use these and other resources to locate and present validated scientific methods and data.

7) Move away from the money bail system

There are two reasons to incarcerate individuals: they pose a flight risk or a danger to public safety. Poverty and many low level-offenses are no longer valid reasons to incarcerate people. Fixed bail systems have significant problems as demonstrated by the 2015 Ferguson Report released by the Department of Justice. The economics of jailing persons for an average of 23 days shows that it is more harmful than beneficial to both the community and the person being detained. Data-driven validated risk assessments can be used to better assess risks to public safety while reducing the jail population.



8) Diversion

System-wide plans for low-level offenses and diversion options like LEAD reduce the burdens on the system and allow prosecutors to focus on violent crime and difficult cases. Efficiency and justice can be achieved by providing specified help to individuals and redirecting resources away from rote case processing.

9) Criminal justice legislation

Federal efforts at reform have shown a significant reduction in the number of persons incarcerated with the Bureau of Prisons and have also positively impacted the rate of recidivism. State and local jurisdictions should analyze federal legislation to see if and how the federal system gets it right, so they can learn from its efforts.

DECISION POINT: CELLBLOCK

10) Reentry

The role of the prosecutor includes considering reentry and recidivism. At the federal level, all prosecutors have reentry coordinators. Ensuring services are provided during incarceration, which requires working with agencies across the system, is also a necessary step to ensure reentry is successful. Reviewing the rates of recidivism in the federal system demonstrates that the current federal approach is successful in reducing recidivism rates.

BUILDING CONSENSUS ON NEXT STEPS AND NEEDS

Systemic reform takes vision. Innovations in safety and justice begin with identifying priorities. Effectuating the most change requires analyzing the needs of each respective jurisdiction, to determine what priorities matter most. Effective solutions need receptivity to community needs, fellow stakeholder concerns, and an appreciation for the growing flexibility of the criminal justice system.

At the June 2016 Leadership Institute, participants were asked what they believe as prosecutors is the one thing necessary to achieve positive changes in the criminal justice system. These are some of their ideas.

REDUCING JAIL POPULATIONS

- Implement a faster process to reduce the time persons are detained and incarcerated
- More pre-filing diversion
- Expand use of Crisis Intervention Training (CIT) by law enforcement
- Reexamine drug laws
- Pre-arrest risk assessments at first point of contact with law enforcement
- Utilize risk assessments early in the process so that they are available for bond review; be mindful that law enforcement will need to buy-in, and will also need training about gathering and storing risk assessment information
- Focus on diversion for nonviolent midlevel offenses



CONCLUSION

REDUCING RECIDIVISM

- Establish more day reporting facilities for pretrial release and probation
- Increase use of electronic monitoring
- Focus on nonviolent midlevel violations of probation
- Identify persons who need services at the front end of the system more frequently and consistently. This can be addressed by prosecutors who make decisions at early system decision points
- Use data to reassess individual level and period of involvement in treatment, alternative sentencing and diversion programs
- Increase diversionary programs that treat criminogenic needs

CHANGING THE STANDARD SYSTEM APPROACH

- Improve plea negotiations
- Increase focus on risk needs and receptivity; Understand people must be amenable to treatment
- Holistic approach to risk needs responsivity throughout entire criminal justice system, beginning at the pretrial decision point; Risk needs responsivity principles and training should apply to experts and employees
- Move to a data-driven criminal justice system

PREVENTING CRIME

- Push high quality early childhood education—a crime prevention strategy

ADDRESSING SYSTEM RESOURCE ISSUES

- Improve data collection, use and information technology in prosecutors' offices and throughout the criminal justice system
- Address the lack of immediacy of resources

ADDRESSING COMMUNITY CONCERNS

- Getting the community to understand and be aware of messaging
- Funding public health issues that impact public safety

The Safety and Justice Challenge has recognized and supports the need for development of innovative alternative programs to reduce RED and jail usage across the United States. As prosecutors play a vital role in critical decision points, they are key stakeholders in participating in the Challenge and rethinking jail use. Prosecutors must be smart, adaptive, and perceptive. Being smart on crime means using data, having meaningful relationships with stakeholders, and utilizing resources to fund and implement solutions. It also means preparing prosecutors' offices for structural changes in case handling and culture shifts in the way prosecutors view their role within the system.

Thanks to the support of foundations such as the John D. and Catherine T. MacArthur Foundation, achieving both safety and justice while reducing jail usage and RED in jail populations is possible. Prosecutors have the necessary support to prevent crime, ensure equal justice, and ultimately make communities safer. Effective program implementation can be achieved through community-based prosecution, data-driven scientific approaches, and community resources.



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