



A Vision For Prosecution: Partners In A Holistic Approach To Community Safety

 Arnold Ventures

There is an emerging public consensus that the dramatic increase in American incarceration over the past 30 years has been driven by our prosecution practices.¹ There are more than 2,300 prosecutors’ offices in the United States, and the chief prosecutors leading those offices exercise tremendous power: whether and what charges to bring against someone accused of a crime; making recommendations to judges on both pretrial release and sentencing; controlling the plea bargaining process; and whether or not to divert people out of the system. By any measure, prosecutors may be the most powerful actors in the criminal justice system—yet there is so much we do not know about how they use their authority. Broad discretion, limited accountability, and incentive systems that reward punishment over rehabilitation can lead to not only opaque decision making but harmful and unjust outcomes for people and communities.

ONLY 47% OF PROSECUTORS’ OFFICES *collect data on pretrial release decision making.*²

PROSECUTORS’ PRETRIAL RECOMMENDATIONS *to judges are the greatest predictor of whether someone will be released on recognizance.*³

20% INCREASE *in the number of felony cases filed by prosecutors between 1994-2008, even as crime and arrests dropped.*⁴



We want to help realize a new vision for prosecution: one in which prosecutors’ offices are transparent and data-driven; where prosecutors use punitive measures sparingly; and where prosecutors play a central role in a holistic approach to community safety.



THE PROBLEMS

Data on prosecutorial decision making is scarce. Prosecutors exercise broad discretion during a criminal case: they decide which charges to pursue, make bail recommendations, direct plea negotiations, and recommend criminal sentences or diversion. But we know little about how prosecutors make decisions and most offices lack data that would allow us to understand.

There is no meaningful accountability for prosecutors without data. Without data capturing the decisions prosecutors make, and how they make them, we cannot assess the impact those decisions have on individuals and families; communities cannot gauge whether their elected prosecutors are abiding by the values and principles they prioritize; and prosecutors themselves cannot know whether their practices produce desired outcomes. Without an evidence base, “reform”-minded prosecutors will face difficulty demonstrating the effectiveness of their policies.

Diversion is an exception not a core strategy. At present, diversion is frequently discussed as an option available to prosecutors, but we have a limited understanding of how they exercise that gatekeeper role, and diversion is rarely incentivized or elevated as a strategic priority. This is an area of immense power where prosecutors can exercise more leadership—even though they may not always control diversion programs or hold oversight authority over practices.

OUR SOLUTIONS

Build the capacity of prosecutors to collect, analyze, and evaluate data on the impact of prosecutorial discretion. We support efforts to connect prosecutors with researchers and data experts to build greater capacity for data collection, analysis, and innovation. This capacity will allow practitioners and academics to examine short- and long-term impacts of prosecutorial discretion on individuals, families, and communities.

Promote transparency in prosecutors’ offices. It is not enough to develop internal capacity for data-driven policy and practice: prosecutors must share data with the public and engage their communities. That engagement will not only help prosecutors’ offices achieve greater transparency and accountability, it will ensure they are better able to meet community needs.

Elevate diversion and other alternatives to incarceration as core public safety strategies. Seeking to understand how prosecutors exercise their power to divert defendants, AV will support prosecutors’ offices and researchers to develop performance metrics related to diversion and alternatives to incarceration, and evaluate the impact on defendant outcomes.

1. *Bellin, J. 2018. Reassessing Prosecutorial Power Through the Lens of Mass Incarceration. Michigan Law Review, 116:6, 835-857, at 836 (citing sources). Available [here](#).*
2. *Olsen, R. et al. 2018. How Prosecutors Are Collecting and Using Data for Decisionmaking: Findings from the 2018 National Survey of State Prosecutors’ Offices, Urban Institute, at 2. Available [here](#).*
3. *Phillips, M. T. 2012. A Decade of Bail Research in New York City. New York City Criminal Justice Agency, Inc. at 57. Available [here](#).*
4. *Pfaff, J. 2017. Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform (Basic Books), at 72.*