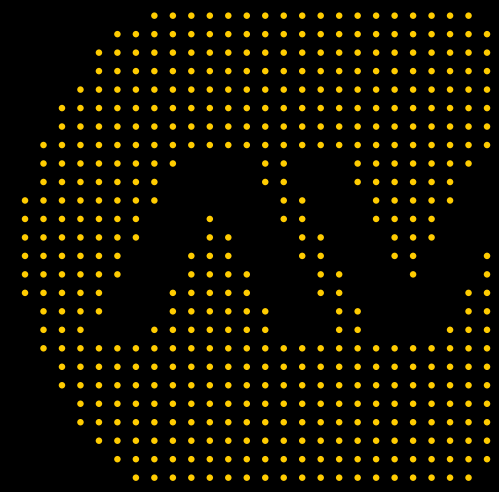


Prosecution Research Agenda Summary



APPROACH

A new wave of prosecutors has challenged the past and present harms of our criminal justice system, especially excessively punitive responses and the disproportionate impact on people who are poor and people of color.¹

Afforded broad discretionary powers, prosecutors have largely unchecked power.² Preliminary research suggests that their office policies and individual decisions impact pretrial and post-sentencing outcomes and have a disparate impact by race, ethnicity, and gender.³ Given how limited the data on prosecutorial policies and decision-making is at this point, it is critical that the research community seizes research and policy evaluation opportunities within district attorneys' offices that are committed to transparency and accountability; reducing disparities; increasing public safety; and improving outcomes and mitigating the harms of criminal justice involvement for individuals, families and their communities. To move in this direction, Arnold Ventures (AV) is committed to examining the impact of prosecutorial discretion on a number of outcomes.

AV's prosecution research agenda is guided by our pretrial justice research agenda as well as our values and principles of pretrial justice; our research philosophy; and our mission of maximizing opportunity and minimizing injustice for all.

Outcomes of interest: a holistic vision of the prosecutorial function. While the debate surrounding pretrial justice often focuses on case outcomes, it is critical that we consider a broader set of metrics. Our goal with this research agenda is to examine the effect of prosecutorial reforms across individual, family, community, system, and case outcomes, by identifying, implementing, and evaluating decision-making at five key case points: bail, diversion, sentencing, charging, and plea bargaining.

Research methods. We invest in studies that (1) demonstrate the causal impact of policies or programs aimed at improving outcomes for defendants and the working of the justice system, ideally through randomization, but also by rigorous comparisons across jurisdictions; (2) analyze pilot policies or programs and how to implement them effectively (with a clear path to a future causal impact study); or (3) produce descriptive work on prosecutorial decision making that encourages data-driven prosecution and plants the seeds of reform.

Data Quality. Poor data and limited capacity make examining the impact of prosecutorial discretion difficult. Many prosecutors' offices do not collect data on prosecutorial decisions, including bail recommendations, declinations, and initial plea offers. For this reason, we are also interested in projects that improve data collection and data quality; increase evaluation and analytic capacity; literature reviews that examine the quality and reproducibility of existing research; and in replication studies of well-known findings in different jurisdictions and settings.

ONLY 47%

**OF PROSECUTORS' OFFICES
COLLECT DATA ON PRETRIAL
RELEASE DECISION MAKING⁴**

AREAS OF INTEREST⁵, POLICY GOALS, AND RESEARCH SUBJECTS⁶

Bail Recommendations. While bail determinations are made by judges, prosecutors present their recommendations for a defendant's bail type, amount, and release conditions.⁷ Prosecutor bail recommendations are often adopted by judicial officers; one study suggests that prosecutors' bail recommendations are associated with both the release decision and bail amount.⁸ And, like charging decisions, racial disparities in bail recommendations persist. More research is needed to determine the extent of prosecutorial bias during the bail recommendation phase and the broader impact of bail recommendations on judicial decisions.⁹

- **Policy goal:** Recognizance release for all misdemeanors and lower-level non-violent charges; require least restrictive release conditions related to non-appearance and public safety risk; allow and use pre-arraignment release; limit use financial release conditions and secured bond.
- **Research subjects may include:** Impact of prosecutor bail recommendations on path of case; characteristics of such recommendations; disparities and biases; recommendation policy reforms.

Diversion. In many jurisdictions, prosecutors have the authority to divert cases out of the system at the charging stage or to recommend diversion as part of plea negotiations. However, research on prosecutorial diversion and its impact is scant, providing an opportunity to expand the body of knowledge on this emerging intervention.


- **Policy goal:** Allow diversion for all misdemeanor and lower-level non-violent charges; prioritize individual needs when diverting cases; limit the length of diversion programming; expand opportunities to those with repeat cases.
- **Research subjects may include:** Characteristics associated with diversion and differences by subgroups; charges associated/not associated with diversion and why; incentives that influence the application of diversion.

↑ 20% INCREASE

IN THE NUMBER OF FELONY CASES FILED BY PROSECUTORS BETWEEN 1994-2008, EVEN AS CRIME AND ARRESTS DROPPED.¹⁰

Sentencing. At sentencing, as at other case processing points, the prosecutor provides a recommendation that judges often adopt; systemic changes (mandatory minimums and the prevalence of plea bargaining) have shifted much of the sentencing authority from judges to prosecutors.^{11, 12, 13} Much of the research in this area is muddled regarding whose discretion and biases control sentencing. Several studies examining the effects of discretion by judges and even juries simply identify prosecutorial discretion as a corollary, without giving any specific evidence.^{14, 15, 16} Among the research that focuses exclusively on prosecutorial discretion at sentencing, much of the literature narrowly focuses on death penalty and mandatory minimum sentences.¹⁷

- **Policy goal:** Recommend lower range of sentencing guidelines for certain charges; community-based alternatives for sentencing recommendations; prioritize least restrictive conditions and least punitive disposition; establish mechanisms for sentence review; and limit revocations for technical violations for cases involving community supervision.
- **Research subjects may include:** Bias in sentencing recommendations; factors influencing sentencing recommendations; alternative sentencing recommendations; differences by sub-group.



Charging. As the first critical decision in a criminal case post-arrest, prosecutorial discretion at charging is an emerging area of interest within the legal research community and among criminologists. Existing research suggests that charging decisions are influenced by bias and produce racial disparities that account for most of the disparities throughout the life of a case, explaining longer sentences imposed on black defendants.^{18, 19}

- **Policy goal:** Expand opportunities for diversion; reduce charges filed; decline to prosecute low-level, non-violent and other categories of cases.
- **Research subjects may include:** Impact of charging on case outcomes; charging disparities; bias in prosecutorial decision-making; charging incentives; charging alternatives.

Plea Offers. Prosecutors control the plea bargaining process, which governs 90-95% of criminal cases across the U.S. each year.²⁰ The limited research available on plea negotiations suggests both racial and gender bias in the pleas offered by prosecutors to defendants.^{21, 22, 23} In particular, racial disparities are apparent in cases with low-level felonies or misdemeanors as lead charges,²⁴ while females are more likely to receive offers with larger sentence reductions than similarly-situated males.^{25, 26}

- Policy goal: offer pleas at minimal terms/lower range of sentencing guidelines, with least punitive dispositions and least restrictive conditions; end use of pleas offers as leverage for pretrial release or as deterrent to pursue trial.
- Research subjects may include: impact of plea offers on case outcomes, judicial decisions, and trials; biases in plea offers; bias in prosecutorial decision-making; incentives influencing plea offers; charges conducive to plea offers.

ENDNOTES

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