



DATA FOR *PROGRESS*

A New Generation of Prosecutors Is Leading the Charge to Reimagine Public Safety

Prerna Jagadeesh
Isa Alomran
Lew Blank
Gustavo Sanchez

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Introduction

Local prosecutors possess unparalleled power within criminal legal systems across the country. Also commonly referred to as District Attorneys, State's Attorneys, Commonwealth Attorneys and County Attorneys, local prosecutors are responsible for the vast majority of criminal cases brought in the United States. They have nearly unlimited discretion in deciding who to charge, the type of crimes to charge, and the severity of punishment at sentencing. They are also primarily responsible for determining who stays in jail and who can be released back to their communities while awaiting trial, and they wield unmatched influence in determining the kind of criminal laws and penalties enacted by state legislatures.

Over the past five decades, prosecutors have deployed their power to charge and sentence even more people, relying heavily on incarceration or correctional supervision to control and punish people convicted of crimes. While public safety was the purported justification for this approach, a growing body of research is finding that incarceration is ineffective at deterring crime and fails to prevent violent crime in the long-term. Meanwhile, it has generated devastating consequences for many communities — particularly communities of color — in both direct and indirect ways. Mass incarceration has destabilized communities, worsened outcomes for children with incarcerated parents, increased morbidity and mortality, perpetuated generational wealth gaps, exacerbated mental illness among those incarcerated, and increased homelessness, alongside many other collateral consequences. These burdens have been imposed on Black people in hugely disproportionate numbers. On average, state prisons incarcerate Black people at five times the rate of white people, and in some states, at ten times the rate of white people. Today, one in three Black men will be incarcerated at some point in their lives.

Notably, the prosecute-and-convict approach has also neglected the interests of those who have experienced and survived crime. According to a groundbreaking survey of crime survivors conducted by the Alliance for Safety and Justice, the vast majority of victims — who are more likely to be low-income, young, people of color — prefer solutions that focus on alternatives to incarceration, such as job creation, crime prevention, rehabilitation, drug use and mental health treatment, among others. In particular, seven out of ten would rather see prosecutors invest in solving neighborhood problems through rehabilitation, not prosecution and incarceration.

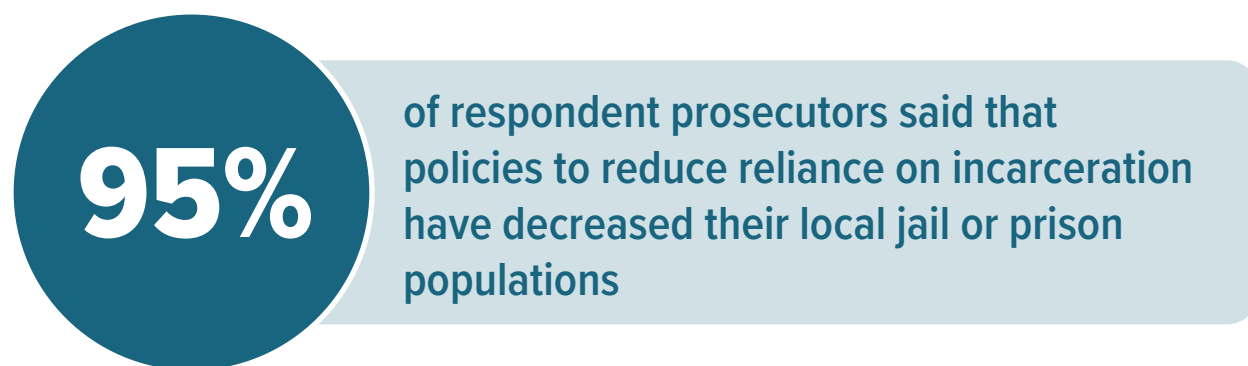
As a result, a growing number of prosecutors have begun to reimagine public safety in ways that reduce the use of prosecution and incarceration, create more effective and less destructive accountability strategies, end racial disparities, and address the drivers of criminal behavior as well as the needs of those most impacted by crime. Dozens of prosecutors have been elected across the country by campaigning on the transformation of their criminal legal systems, including in Los Angeles, Chicago, Philadelphia, San Francisco, St. Louis, Boston, Austin, and many other jurisdictions. Many were recently elected or even re-elected by robust margins, reflecting the popular enthusiasm for substantial criminal legal system reform.

In the summer of 2021, Data for Progress surveyed 19 of these reform-minded prosecutors to identify their approaches to community safety, key policy changes, goals for the future, and obstacles impeding their efforts to achieve transformational change. Their responses are detailed more fully below.

NAME	JURISDICTION
Diana Becton	Contra Costa County, CA
Buta Biberaj	Loudoun County, VA
Sherry Boston	DeKalb County, GA
Chesa Boudin	San Francisco, CA
John Chisholm	Milwaukee County, WI
John Choi	Ramsey County, MN
Scott Colom	Circuit Court District Sixteen, MS
John Creuzot	Dallas County, TX
Satana Deberry	Durham County, NC
Parisa Dehghani-Tafti	Arlington County, VA
Stephen Descano	Fairfax County, VA
Kim Foxx	Cook County, IL
Joe Gonzales	Bexar County, TX
Eric Gonzalez	Kings County, NY
Andrea Harrington	Berkshire County, MA
Larry Krasner	Philadelphia, PA
Marilyn Mosby	Baltimore City, MD
Rachael Rollins	Suffolk County, MA
Dan Satterberg	King County, WA

Reducing Reliance on Incarceration

The surveyed prosecutors recognized that the marginal and disputed public safety benefits of mass incarceration are indefensible when measured against its disparate and destructive consequences in communities throughout the nation. Accordingly, reducing the use of jails and prisons proved a top-of-mind concern for respondents. At every stage of the criminal legal system, prosecutors make decisions that impact incarceration, including on pretrial release and bail, whether to prosecute at all, the nature of charges, whether to send someone to diversion and deferred prosecution, how and when to offer plea deals, sentence recommendations, and post-conviction remedies, among others. Every single one of the respondent prosecutors has implemented policies or practices in one or more of these areas that are designed to reduce the number of people they send to jail and prison, and an overwhelming majority — 95 percent — indicated that these policies have in fact led to a decrease in their local jail or prison populations.



CASE STUDY

Satana DeBerry, the District Attorney for Durham County, North Carolina, has worked to reduce the number of incarcerated individuals by declining to prosecute certain cases, and through changes in pretrial release policy. DeBerry's office has declined to prosecute simple possession of marijuana, felony possession of controlled substances without presence of violence or sale, and other offenses like shoplifting, trespassing, and prostitution. In February 2019, her office also implemented a pretrial release policy to reduce the use of money bail for lower-level offenses and reserve pretrial incarceration for cases that pose a risk to public safety. According to the Durham County District Attorney's Office Annual 2020 report, the Duke Wilson Center for Science and Justice found that these policy changes led to lower bail amounts without causing an increase in arrests or cases involving failures to appear in court. During the coronavirus pandemic, DeBerry built on those efforts by releasing people from jail to mitigate the spread of the disease among detainees, staff, and community. As a result of these combined policies, Durham County's jail and prison populations have been reduced by about 40 percent.

Similarly, San Francisco District Attorney Chesa Boudin's efforts to create a more stable and thriving community while transitioning his office away from incarceration are proving successful. DA Boudin reported that "the jail population has declined from an average daily population of approximately 1200

people in custody at the start of my tenure to fewer than 800 people in jail currently. While some of this decline is related to fewer arrests during the pandemic, much of it is also related to proactive efforts, led by my office, to reduce the number of new people detained and prioritize the resolution of cases of people previously in custody.” Boudin added that this has all happened while “overall crime is down by double digits in San Francisco.” We have demonstrated that it is possible to safely decarcerate.”

Declining Unnecessary Prosecutions

Prosecutorial offices are uniquely equipped to determine who goes to jail and prison because unlike lawmakers, they possess unilateral discretion on whom to charge, with what crime, and whether to offer a plea bargain. Prosecuting lower-level offenses, especially misdemeanor charges, can lead to significant and far-reaching consequences that exacerbate some of the underlying issues driving criminal behavior, such as homelessness, joblessness, and disqualification for public services. In addition, focusing on such cases reduces the resources available for addressing far more serious crimes. As such, declining to prosecute certain offenses is one of the most meaningful public safety choices a prosecutor can make.

The prosecutors we surveyed indicated that declining to prosecute various types of cases is a key element of their efforts to improve safety and implement fair and proportionate criminal legal policies. An overwhelming majority, 89 percent, have declined to prosecute some categories of cases. The vast majority of respondents, 80 percent, do not prosecute low-level misdemeanor and felony drug offenses, particularly those related to marijuana (in states where the use of marijuana is still illegal). Other categories of offenses that respondents have declined to prosecute include those related to sex work, trespass where the underlying driver is homelessness, and minor traffic offenses.



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CASE STUDY

Suffolk County District Attorney Rachael Rollins, elected in 2018, campaigned on declining the prosecution of 15 lower-level misdemeanor offenses in recognition that pursuing such cases can increase recidivism and divert resources away from more serious offenses. Some of the offenses included in her declination policy are trespassing, shoplifting, driving with a suspended license, breaking and entering into a vacant property to sleep, and minors in possession of alcohol.

Two years into Rollins' term, a study by the National Bureau of Economic Research found that DA Rollins' approach has led to a reduction in crime, vindicating her strategy for improving public safety in Boston. The study found that people whose prosecutions were declined by her office had 65 percent fewer misdemeanor arrests over the next two years and 75 percent fewer felony arrests than people who were prosecuted for similar charges. DA Rollins' thoughtful and safety-oriented approach has led to less crime and lower incarceration costs to be borne by the taxpayer.

Implementing Effective Diversion Programs

One of the chief goals of reform-minded prosecutors is investing in solutions that address the underlying drivers of criminal behavior, including rehabilitative and educational services that divert people away from incarceration and toward programs that target substance abuse and mental health issues. These diversion programs involve the dismissal of criminal charges after a person has fulfilled certain conditions, such as completing a rehabilitative program or performing community service. Effective diversion programs are crucial to reducing reliance on incarceration while arming individuals with the tools to forge a different path.

Each of the offices we polled indicated a strong commitment to expanding and strengthening diversion programs. Each of the 19 respondents has either expanded existing diversion programs (32 percent of offices) or added new ones (68 percent of offices). We also found that these offices are committed to making improvements to diversion programs. A strong majority, 63 percent, have a strategy in place that allows them to assess the success of new diversion programs.





63%

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The surveyed prosecutors indicated that they have worked hard to expand the use of diversion. Many have created new diversion programs for certain offenses and categories of people that were previously criminally prosecuted, including juveniles, people suffering from mental illness, and some individuals charged with gun possession and drug offenses. These offices have also increased the number of young people eligible for diversion programs, removing onerous requirements that previously barred their participation. Moreover, many offices have established restorative justice programs to “help victims heal through trauma and help people reckon with the harm caused in a rehabilitative manner,” in the words of Scott Colom, the District Attorney in Columbus, Mississippi. These offices have each diverted a significant number of individuals away from incarceration and into rehabilitative programs designed to give them a brighter future.

CASE STUDIES

District Attorney John Creuzot, representing Dallas County in Texas and elected in 2018, is focused on creating better outcomes both for those charged with crimes and the wider community he serves. In an Atlantic profile, his approach was described as “[framing diversion programs] in a practical, numbers-focused way that has served him well in the past: [they are] cheaper and allow for a better allocation of resources.”

DA Creuzot’s office has taken deliberate steps towards this end, with tangible results. Creuzot reported that in 2019 and 2020, he offered mental health-related pre-trial interventions (PTIs) to 828 people facing criminal charges, in which his office agreed to drop charges in exchange for the individual completing negotiated conditions such as a course, community service, or a fine. According to Creuzot 708 of those PTIs were successful, meaning that 708 people were able to avoid incarceration while posing no danger to the community. Additionally, DA Creuzot reported that his office admitted 511 people into pre-trial specialty courts, which adopt a problem-solving approach to addressing defendants’ needs and the underlying drivers of criminal behavior instead of resorting to incarceration. 377 of these individuals graduated from their pre-trial court program.

Another prosecutor who has implemented diversion programs with great success is Kim Foxx, State’s Attorney for Cook County, Illinois. First elected in 2016, then re-elected in 2020 by a substantial margin, State’s Attorney Foxx reported that her office has graduated 3,590 individuals from felony diversion programs and 395 individuals from misdemeanor diversion programs. SA Foxx told NPR that in her

second term her office would “[double] down on our efforts to make sure that people with substance use disorder or mental health issues have the resources they need in communities so we can stop the de facto use of our justice system.”

Opposing Cash Bail

Another key policy change for prosecutors seeking to introduce safer, fairer policies to their criminal legal systems is ending the unequal and predatory system of cash bail. Every year, over a half million people who have not been convicted of a crime are sitting in jail simply because they cannot afford their cash bail. The poorest among us are disproportionately affected by cash bail, which perpetuates cycles of poverty. Moreover, even just a few days in jail can have significant collateral consequences, making those detained more likely to plead guilty, receive harsher sentences, and ultimately more likely to commit future crimes.

Many of the surveyed prosecutors are focusing on reforming their pretrial systems. Nearly half of respondent offices oppose the system of cash bail (47 percent), with just as many respondents supporting cash bail only in certain types of cases, such as sexual assault or murder. Of the prosecutors who oppose cash bail, a strong majority — 67 percent — affirmatively request release of many defendants at their initial bail hearing. Across the entire sample of prosecutors we surveyed, an overwhelming 95 percent have requested the release of individuals held on cash bail unless they pose a risk of flight or danger to the community or the victim. Importantly, a number of the prosecutors we surveyed reported that they do not request the release of individuals held for serious or violent crimes, including murder, sexual assault, kidnapping, human trafficking, and other high level felony offenses.



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47%

of respondent prosecutors oppose the system of cash bail, with another 47% only supporting it for certain types of cases, such as sexual assault or murder.

CASE STUDY

Parisa Dehghani-Tafti, Commonwealth's Attorney for Arlington County in Virginia, said during her successful campaign in 2019 that her "chief priority is to ensure that justice and safety are not opposing values. For too long, our criminal legal system has prioritized practices that, by design or impact, have resulted in gross race and class disparities." One way her office has pursued true and fair community safety is by requesting the release of individuals held on cash bail. Only three months into her administration, Dehghani-Tafti's office reduced their jail population by 25 to 30 percent.



67%

Of prosecutors opposing cash bail, 67% affirmatively request release of many defendants at their initial bail hearing.

Establishing Conviction Integrity and Sentencing Review Units

Many reform-minded prosecutors have established or expanded Conviction Integrity Units (CIUs) — teams that investigate, identify, and remedy wrongful convictions. Nearly half of the prosecutors surveyed, 47 percent, said they have established a Conviction Integrity Unit, and another 16 percent said they have expanded an existing Conviction Integrity Unit. Together these prosecutors reported that they have provided relief in over 330 cases, including overturning at least 47 wrongful convictions.



47%

of respondent prosecutors have established a Conviction Integrity Unit, and an additional 16% have expanded an existing Conviction Integrity Unit.

Reform-minded prosecutors have also led the charge in establishing Sentencing Review Units (SRUs) that carefully review excessively harsh sentences. These SRUs combat mass incarceration by seeking the re-sentencing of individuals who have served lengthy sentences that are disproportionate to the nature of the corresponding crime, and whose incarceration does not serve the interest of public safety. However, not all prosecutors that want to establish Sentencing Review Units are able to do so. In many instances, state laws do not allow for sentencing review — prosecutors in Virginia, Mississippi, and Texas are barred from pursuing sentencing reviews under current state law.

CASE STUDY

Kim Foxx, State’s Attorney for Cook County, oversees a Conviction Integrity Unit that was established in 2012. The Foxx office reports that since the beginning of 2016, the CIU has provided relief on 118 cases, representing 98 individuals. This includes vacating the wrongful drug convictions of 15 men in November 2017, after the CIU revealed that former Chicago Police Sergeant Ronald Watts had attempted to extort these men, planted felony-level drug amounts on them if they did not comply, and then lied about it under oath. This was the first mass exoneration of its kind in Cook County. In total, as of last December, Foxx’s CIU has helped reverse a total of 100 wrongful convictions involving former Sergeant Watts.

Chesa Boudin, District Attorney for San Francisco, leads one of the offices that has created and implemented a new Sentencing Review Unit to remedy unduly harsh sentences. Boudin reported that his office has resentenced 50 convicted individuals from prison to early release since taking office in 2020.

Conclusion

Prosecutors are arguably the most powerful force in the criminal legal system and are uniquely situated to create innovative, safe and effective accountability policies that improve community safety and stability. Nearly all of the respondents to this survey have introduced substantial reforms to their systems — reducing reliance on incarceration, declining unnecessary prosecutions, implementing effective diversion programs, opposing cash bail, and establishing Conviction Integrity and Sentencing Review Units — that are slowly rebuilding community trust through more fair and proportionate responses and better public safety outcomes.

While their efforts are already proving effective, these prosecutors need more resources to fully implement their visions for justice and safety. In our survey, we asked the respondent prosecutors to specify what types of resources and support they need most to build the systems they promised constituents. The most cited resource — listed by 10 of the 19 prosecutors — was increased funding to provide more non-incarceration alternatives to the court system. As one prosecutor wrote, “I would

like to divert more people away from the court to a more restorative and supportive system, that could also meet the needs of the person harmed, but few of these exist. ‘Divert to what?’ is the question often asked.” Nine of the 19 respondents also identified improving research and data systems — including more robust data collection, better data management software, and increased technical support from data analysts — as critical to both developing and tracking outcomes of policy changes. Five respondent prosecutors also cited a need for better training and guidance from experts in reform, and four cited a need for stronger communications staffing to better communicate improved safety outcomes to their communities. With these additional resources, the respondent prosecutors would be much better equipped to build the safer and more equitable justice systems they envision.