



Prosecutorial Attitudes, Perspectives, and Priorities: Insights from the Inside

MacArthur
Foundation

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With Gratitude

Behind every good project is a good partner. We thank our partner state and district attorney's offices for working with us. We are especially grateful to all the prosecutors who took time to share the valuable insights covered in this report. We also thank our project steering committee and advisory board members for their guidance.

This work would not be possible without the generous support of the **John D. and Catherine T. MacArthur Foundation**. Laurie Garduque, the Foundation's Criminal Justice Director, has been instrumental in shaping the project's design and implementation. We are thrilled to be part of the *Safety & Justice Challenge*, an ambitious national initiative aiming to reduce unnecessary incarceration and racial and ethnic disparities in the justice system.

This project is constantly evolving. We have received critical feedback from various community leaders, prosecutors, journalists, and policy and research experts, not all of whom are acknowledged here. We thank you for your care and contributions.

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The Office of the State Attorney for the 4th Judicial Circuit (Jacksonville, FL)

- Serving Clay, Duval, and Nassau Counties, 1.2 million residents
- Melissa Nelson, State Attorney since 2017
- Office size: 116 attorneys and 34,964 cases filed in 2017

The Cook County State's Attorney's Office (Chicago, IL)

- Serving Chicago and Cook County, 5.2 million residents
- Kim Foxx, State's Attorney since 2016
- Office size: 700 attorneys and 309,282 cases filed in 2017

The Office of the State Attorney for the 13th Judicial Circuit (Tampa, FL)

- Serving Hillsborough County, 1.4 million residents
- Andrew Warren, State Attorney since 2017
- Office size: 130 attorneys and 27,475 cases filed in 2017

The Milwaukee County District Attorney's Office (Milwaukee, WI)

- Serving Milwaukee County, 950,000 residents
- John Chisholm, District Attorney since 2007
- Office size: 130 attorneys and 10,465 cases filed in 2017

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Introduction

A Changing Prosecutorial Landscape

The field of prosecution has evolved more in recent years than ever before. As communities become more and more involved in criminal justice policy discourse, they expect something more from prosecutors. Traditional “tough on crime” rhetoric has begun taking a backseat to the ideals of fairness and community well-being. People are realizing that communities of color have been disproportionately affected by punitive arrest and incarceration practices, especially for low-level offenses. There is a growing awareness that simply locking people up takes resources away from other essential aspects of communities, like investments in education and healthcare, and does not always reduce reoffending.

Communities want prosecutors to become problem solvers. What does that mean? It means that prosecutors change the way they think about success. It means that, in addition to individual case dispositions, they think about the overall impact of their decisions. It means that they work with community leaders and other government agencies to diagnose and deal with problems before they escalate into crime. It means that they deal with racial disparities in the justice system. It means that they use data to increase public safety.

These sentiments have been reflected in recent waves of prosecutorial campaign promises and have shaped new cohorts of state and district attorneys. Society's increasing use of social media and desire for data have created a demand for information about whether prosecutors are fulfilling their commitments to the public. As a consequence, campaign promises are being more closely scrutinized, and policy changes are being assessed for their impact on communities. Many prosecutors are beginning to embrace the use of data, not only to hold themselves accountable but also to identify problems, design solutions, and track progress.

Another way the prosecutorial field is changing—though more slowly—involves how newly-elected prosecutors run their offices. Line prosecutors now have greater freedom to make the decisions they believe are fair and just, and to think about the broader effects of their decisions on victims, offenders, and communities. In some offices, they are also given an opportunity to take a step back from their usual case processing routine and look at the bigger picture. Empowering prosecutors at all levels to think about what success looks like builds better staff morale and an office culture with a stronger shared vision. In turn, reform ideas may be better and more likely to be implemented.

Also changing—though even more slowly—is the racial and gender make-up of elected prosecutors. We have seen an unprecedented wave of women and people of color running for, and often winning, elected offices. Although prosecutors do not yet fully reflect the diversity of the communities they serve and the people in the justice system, the progress is undeniable. In addition to elected prosecutors, we also see the changing make-up of prosecutors within offices, especially among new recruits. These changes are important. Greater diversity may increase public safety by helping build trust among disadvantaged communities, by encouraging greater crime reporting and cooperation, by using local knowledge to tackle community problems, and by providing positive role models for young people across all walks of life.

What The Project Is About

This project is a groundbreaking partnership between prosecutors and researchers to promote more effective, just, and transparent decision making in prosecution. It is a bipartisan effort to be smart on crime, to think about new ways to maximize public safety, to enhance fairness, and to create a new system of accountability to the public. It involves four forward-thinking prosecutors in Chicago, Jacksonville, Milwaukee, and Tampa working with researchers at Florida International University and Loyola University Chicago to take a new look at prosecutorial performance and decision making. This partnership is supported by the **John D. and Catherine T. MacArthur Foundation**.

Improving prosecutorial performance and decision making is impossible without data. Data takes center stage in the project, because it tells prosecutors what problems are the biggest threats to community well-being, and it points to ways to tackle those problems. Data helps measure the overall impact of prosecutors’ work, and it alerts them that a policy or practice needs to be continued or changed. Unfortunately, most prosecutors’ offices lack the ability to collect, analyze, and apply data to these ends. Many offices do not record the data they need. Others are missing the staff and knowledge necessary to analyze their data. Still other offices—probably most—do not have the ability and commitment to use data to guide their decisions and reforms. This project focuses on helping our partner offices and other interested jurisdictions overcome these hurdles.

The project has four distinct objectives:

- 1 To expand offices’ data and analytical capacity by assessing case management systems, making better use of existing data, and exploring options for capturing new information without creating additional burdens for prosecutors.
- 2 To assist prosecutors with tracking their progress toward greater efficiency, effectiveness, and fairness using prosecutorial performance indicators at the office and unit levels (as opposed to the individual prosecutor level).
- 3 To identify possible racial and ethnic disparities at various stages of case processing across offense categories, and to work with stakeholders to develop specific solutions to reduce them.
- 4 To establish a practice of using data to measure monthly or quarterly performance and engage with the communities.

While the project targets performance in our four partner jurisdictions, it also aims to use the knowledge generated from this experiment to advance the field of prosecution nationally. There are more than 2,300 local prosecutors’ offices in the United States, but very few organizations specialize in prosecutorial research and technical assistance. Realistically, most prosecutors’ offices will not receive any direct meaningful assistance. By building sustainable data collection, performance measurement, and communication practices for the four offices, this project provides a set of blueprints that offices across the country can use to make their own internal improvements. We realize there is no one-size-fits-all approach to prosecutorial office management that will meet every office’s needs. Writing a prescription for a patient we have not examined is hard. However, the project provides a model that other offices can use to start thinking about forming local partnerships, improving data capacity, and producing metrics for assessing their own impact.

The backdrop for this project is the *Safety & Justice Challenge*, the MacArthur Foundation initiative to reduce jail misuse and overuse as both a crucial component and a major driver of America’s over-reliance on incarceration. Unnecessary jail incarceration carries significant costs to individuals, families, communities, and society at large. These costs take their greatest toll on low-income people and communities of color. The *Safety & Justice Challenge* supports local leaders who are dedicated to safely reducing jail populations, improving justice systems, and ultimately strengthening their communities.

What The Report Is About

In a project centered on prosecutorial performance, it is important to hear from prosecutors at all levels. This report shows how prosecutors in each partner office think about definitions of success, office priorities, community engagement, incarceration, and racial disparities. The themes described in the report are not facts. Instead, they represent what prosecutors believe.

Our partner district and state attorney’s offices aim to use the findings from this report to improve management and communication. Before determining the best way to move forward, the offices must know where they currently stand. This includes understanding how line prosecutors define success and the extent to which they embrace the commitments and vision of their elected leaders. The confidential interviews and surveys provide candid assessments of line prosecutors’ views and sentiments. As this report details, each office has prosecutors that have fully embraced reform ideas as well as prosecutors who have not yet warmed up to this new way of thinking. Public safety remains an important focus, but prosecutors differ in terms of how they pursue this goal. Taking the offices’ temperature provides their leadership teams with a better understanding of when and how to roll out their reform ideas.

At the same time, the information in this report can be useful for the communities that these offices serve. Our partners have committed to conducting their work in full transparency so that they remain accountable to the public. This report is a demonstration of that commitment. Moreover, it is beneficial for community members to understand how prosecutors think about their job and mission. The hope is that this report will lead to productive conversations about how to protect the public, improve the justice system, and strengthen the relationship between prosecutors’ offices and their communities. With fast-changing societal views about justice and fairness, a report that documents prosecutors’ views on priorities and success can educate all of us about the narrowing or widening gap between community members and criminal justice actors.

This report is the first in a series of publications resulting from this partnership. Two subsequent reports focusing on racial and ethnic disparities and prosecutorial performance indicators will follow in 2019.

What Data Is Used In The Report

This report uses two different types of data collected in 2018 from all four partner offices. First, in-depth interviews with 78 prosecutors guided discussions in four primary areas: goals and priorities of their office, views on prosecutorial success, opportunities for reform in their office and the criminal justice system, and tracking office success. Interviews lasted between 40 and 75 minutes each.

Relevant data from these surveys is presented in the form of quotes from prosecutors (“What we’ve been told”) and summarized using short paragraphs (“What we’ve learned”).

Supplementing the interview data are relevant results from an online survey of 275 prosecutors. In this survey, we asked prosecutors to rate prosecutorial priorities, criminal justice policies, and feelings about work. Surveys took approximately 15 minutes to complete.

The data from these surveys are presented in the form of bar graphs at the end of each topic.

For more information about the interview and survey methodologies, please see Appendix 1. The questions used to guide the in-depth interviews are provided as Appendix 2, and the online survey questionnaire is provided as Appendix 3.

We also welcome your questions. Our contact information is provided on the back cover.



Part 1: Jacksonville Interview and Survey Findings

Foreword from Melissa Nelson State Attorney

The Office of the State Attorney
for the 4th Judicial Circuit
Jacksonville, FL

"The duty of the prosecutor is to seek justice, not merely to convict," according to the American Bar Association Standards for Prosecutors. Seeking justice can take many forms. Sometimes the right action is to file the maximum charge and seek the maximum penalty. Other times, the right action may be to divert a defendant or dismiss a case.

My approach has been to empower prosecutors to use their best judgment on every case they handle. The best decisions, in addition to considering all aspects of an individual case, foresee what would affect our communities most positively. For me, community safety and fairness have always been closely connected. We cannot ensure long-term safety if we are perceived as unfair, and we cannot achieve fairness without protecting victims and preventing crime.

Our current case management system allows us to see information such as the number of cases we file or the number of convictions we obtain. While these metrics are important for any office, we know there is more to learn. For example, we encourage our attorneys to use diversion, but we need to know which programs are most effective. We encourage our attorneys to dispose of their cases through plea bargains, but we know very little about how often charges change from one stage to another. We encourage our attorneys to be successful, but we have yet to collect data on various measures of success.

This report is the foundation for our ongoing work as it provides valuable information about perceptions of racial disparities, community engagement, office priorities, and measures of success within the office. The project helps us translate our vision for greater transparency and accountability into practice through robust data and strategic analysis.



TOPIC ONE: Perceptions of Prosecutorial Success

What we’ve learned

Theme 1.1 Prosecutors define success in a variety of ways, ranging from having a positive community impact to case processing efficiency

Prosecutorial success may take a number of different forms: lower crime rates and perceptions of safety, community and victim satisfaction, objective decision making in individual cases, positive relationships with other criminal justice agencies, and high staff morale. Individual success is also measured by quality of paperwork and meeting deadlines to avoid backlogs. Success is becoming less dependent on traditional case processing outcomes like number of trials and conviction rates. Despite identifying a wide range of criteria for success, many prosecutors had difficulty readily articulating what success looks like to them.

What we’ve been told

Public trust in the office should be the overall view of success for the office.

Decision making...you can see it in their paperwork, in their filing decisions.

Success is approaching each case objectively in a fair and impartial manner and prosecuting only those cases where the state has sufficient evidence to meet the burden of proof.

A good prosecutor is someone who keeps up on paperwork, is honest even if it hurts their case, gets along with defense attorneys without giving away the farm...

Professional demeanor with other defense attorneys, having a good reputation. That defines someone's success. Your relationship with defense attorneys is everything. You work with them nonstop.

One form of success is office satisfaction: do prosecutors want to share in the mission and effect meaningful changes.

Overall success is defined by staff morale.

Going to trial, getting the conviction is not the only goal.

I know what success means to me. But it's hard to say if there's a set criteria or formula that defines success....It's not really a job that is black and white. So it's really hard to define that in such black and white terms.

When we talk about success in the office, it's more politically motivated than anything else. Can we ever be successful when there's crime happening?...The criminal justice system is not designed to have successes and failures.

Success is a crime-free Jacksonville. Because you never get rid of crime, it's hard to define success...We are part of a cycle. We put people in jail, then they get out, then other people come in. We facilitate the process, one way or another.

What we’ve learned

Theme 1.2 Case-level decisions, timeliness, and quality of paperwork are dominant considerations for office evaluations, while prosecutors tend to undervalue the overall impact of decision making

Evaluating and improving success is still rooted in looking at individual decisions in individual cases rather than assessing the cumulative effects of decision making. Prosecutors conduct self-evaluations that are ultimately reviewed by supervisors, though most feedback is communicated through supervisors commenting on decisions in individual cases. Timeliness of case processing and quality of paperwork are important points of evaluation. However, formal evaluations are not typically a vehicle for developing plans for improving performance. Additional funding in order to hire and retain more quality staff, and increasing efficiency by going paperless and streamlining approval processes are two commonly identified means of improving success.

What we’ve been told

We have an assessment process...Whether you're meeting expectations, exceeding expectations. In that process they have to go interview other people you work with. Your support staff, your investigative staff, maybe even the judge you work with.

I think they're looking at integrity, professionalism, are we handling our caseload, are we efficient, are we showing up to court on time....

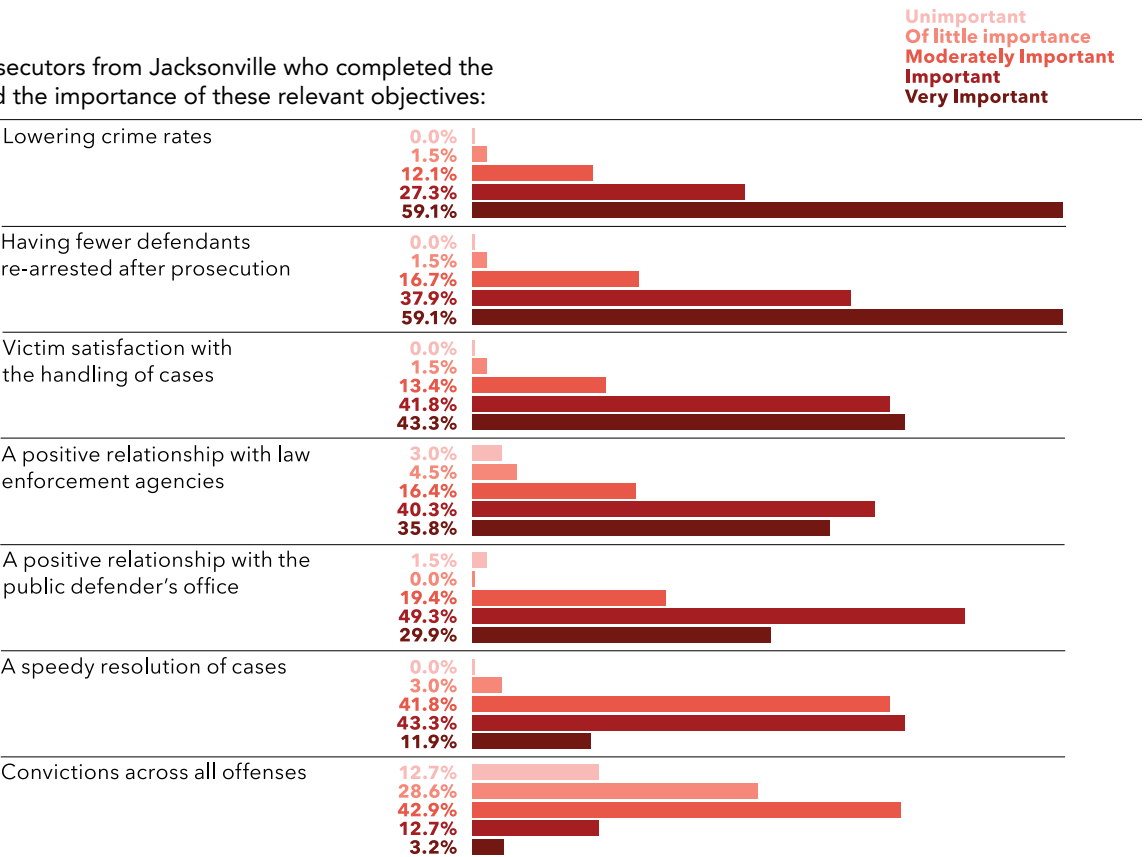
The office watches paperwork and deadlines.

Making sure paperwork gets filed appropriately. Also time stats on how quickly these are processed.

Things could be done to improve efficiency. When you improve efficiency, you give attorneys more time to review cases and make good decisions.

Attracting a higher quality [non-legal] staff with better pay. We've always been underpaid... Attracting a bit more talented, educated workforce would help.

This is how 67 prosecutors from Jacksonville who completed the online survey rated the importance of these relevant objectives:



TOPIC TWO: Current Priorities and Office Mission

What we’ve learned

Theme 2.1 Doing the right thing is widely valued by prosecutors, yet what this means is not always clear

The executive team emphasizes the importance of doing the right thing for each case by basing decisions solely on the facts of the case. The goal is not to achieve the most convictions or the most punitive sentences possible, but to ensure that the right defendants are punished, the right defendants receive treatment, and the right defendants are given another chance. Some prosecutors believe that this is a priority unique to the current administration, while others suggest it is the methods and options for attaining this goal that are different.

Theme 2.2 Under the new administration, prosecutors are encouraged to use their discretion to achieve the right outcome

Line prosecutors are granted greater autonomy with supervisory oversight, and they are expected to use their discretion to make reasonable and justifiable case decisions. Though many decisions still require supervisor approval, prosecutors are encouraged to seek mandatory minimum waivers, above- or below-guidelines sentence recommendations, and other exceptions to formal and informal policies where they believe appropriate. With that have come greater staff morale and relief from the fear that prosecutors may be fired for a single misstep.

Theme 2.3 The office should be transparent and engaged with the community

The State Attorney is focused on improving the public’s perception of the office by becoming more transparent and by engaging more proactively with community members. To achieve transparency, the State Attorney and her staff speak more frequently with the media and invite collaborations with research, policy, and advocacy groups. To increase community engagement, prosecutors are assigned to schools to educate students about the criminal justice system, and they are also encouraged to attend more community social events on behalf of the office.

What we’ve been told

The overall goal is to do the right thing, but that is not the same for everyone.

Going to trial isn’t the goal, getting a prison sentence isn’t the goal.

Now I don’t see as much emphasis on trial numbers at all. The emphasis is on trying the right cases. Some cases are so serious that they warrant no offer, some cases warrant a very high offer. The goal isn’t to try [the case], it’s to do the right thing.

What the right thing seems to be has changed. In the old administration, even when cases were falling apart, you’d be told to move forward. In the current administration, they are a lot more willing to let us not proceed or do something differently.

I’m sure there has been a shift, but I think most of it was better articulating what some of us were already doing.

The right thing isn’t a black and white thing, and different sets of eyes may see different things.

Now my manager allows me to think without micromanaging me.

That’s why the office employs people and not monkeys or balloons as prosecutors. It is the attorney’s responsibility to make a thoughtful decision about who and what to charge.

Discretion but with boundaries.

Melissa is learning...how to be flexible while still making sure people are trained to make discretionary choices that are wise.

[I was told] you have the freedom, make the decision you feel is right.

When people feel that they have the ability to make decisions, then they feel better about their work.

[I see] the changing administration as shifting the focus to community perceptions of the office, since the old administration was not viewed favorably.

One of the things Melissa has done has encouraged us to get involved with groups like [prison reentry nonprofits].

Now, in the new administration, we have a better relationship with the community. It’s the result of Ms. Nelson being more transparent and open with our decisions... We also do a lot more community projects. We go to schools, we go to career fairs, we’re all assigned to a school to meet and speak to kids. They’re trying to increase community engagement.

...there’s a fear that people know what we’re doing, but that’s a good thing. It’s important that the public sees why decisions are made even though they might not agree with the decision.

What we’ve learned

Theme 2.4 Alternatives to traditional prosecution can help reduce defendants’ future involvement with the criminal justice system

Keeping defendants out of the criminal justice system is a priority for the State Attorney. The office emphasizes alternatives to conviction and incarceration, particularly for low-level offenses. Examples of alternatives include assignment to specialty courts, rehabilitative diversion programs, and the new driver’s license program. This emphasis carries over to the juvenile division; more scrutiny is given to direct transfers, and fewer juveniles are sent to the adult system for traditional prosecution.

Theme 2.5 The State Attorney’s message does not always trickle down through the office

There are a variety of ways in which the State Attorney’s goals and priorities are communicated to line prosecutors, including annual town hall meetings, individual meetings with supervisors, and emails from management and direct supervisors. However, communication of those goals and priorities sometimes does not reach line prosecutors because some mid-level managers do not buy into the State Attorney’s vision.

What we’ve been told

It used to be that diversion was only for first-time, very minor offenders. Now Melissa has expanded the scope of diversion use, to try to divert more offenders and keep them from coming back.

Getting some individuals help is important, evaluating who needs help and who needs punishment and meeting somewhere in between.

There is now room to talk about rehabilitation.

Prosecuting smarter...the office does not have the resources to lock people up indefinitely.

She is forcing some traditional [prosecutors] to think beyond the pale.

Handling juveniles is different. We don’t direct file as many juveniles. I know that’s what Melissa ran on- the juvenile issue.

It’s taking a more focused approach. Now we’re trying to revamp things in juveniles too. They’ve done a lot of research and studies on that, they’re coming up with the new driving on a suspended license program, there are a lot of different areas of improvement.

There is a clog in the drain.

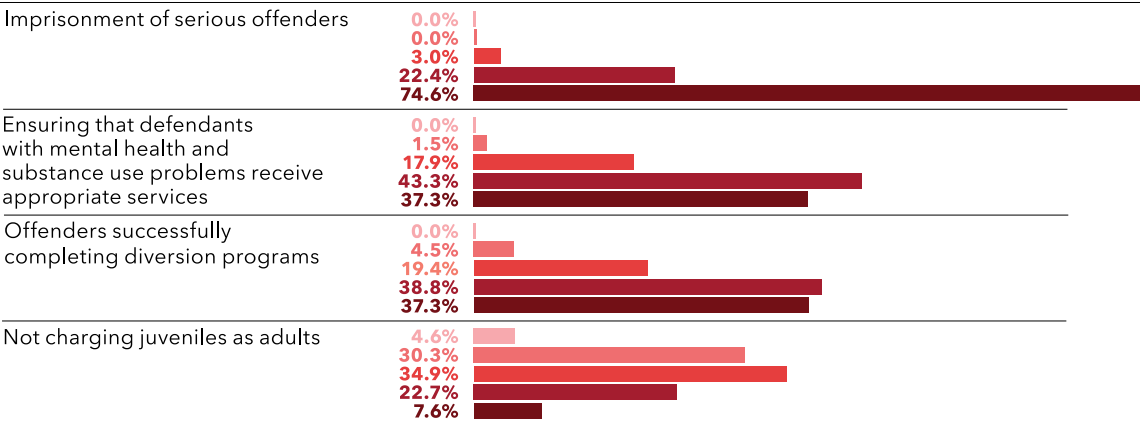
What we have is a gap. Melissa is at the top, but the people in the middle are taught to prosecute in a certain way.

The vision is clear from the top and gets muddy in the middle.

These messages are not always communicated by the mid-level management if they don’t agree with Melissa’s philosophy.

If you want a change, you have to make sure those below you have the same mindset...If you have a division chief that is not in line with the mission, then you will lose.

This is how 67 prosecutors from Jacksonville who completed the online survey rated the importance of these relevant objectives:



TOPIC THREE: Community Engagement

What we’ve learned

Theme 3.1 Communities of color do not hold positive views of the State Attorney’s office

Minority communities do not hold positive views of prosecutors, perceiving them as part of a system that is unfair and untrustworthy. Though prosecutors acknowledge this lack of trust, they are largely ambivalent about it.

Theme 3.2 Community engagement helps build trust in the criminal justice system, and it may increase reporting and cooperation with law enforcement

Engaging with the community can help build public trust in both the office and the larger criminal justice system, increasing their credibility and legitimacy. When prompted, most prosecutors also agree that community engagement may ultimately facilitate more crime reporting and improve victim and witness testimony.

Theme 3.3 Community engagement increases the public’s understanding of what prosecutors do and humanizes the institutional identity of the office

Community engagement can be educational for the public. Many community members do not understand how the criminal justice system and the law work, so community engagement helps increase that understanding. The presence of prosecutors at community events also gives a face to the office, sending the message that it is comprised of individuals who care about the community and want to protect it. However, there is little recognition that community engagement can also be educational for the office; few prosecutors expressed interest in using community engagement efforts to learn more about the specific needs of their community.

What we’ve been told

First interactions with the criminal justice system are usually negative, so attorneys get treated like a representative of a bad system.

There’s not a distrust with the office specifically, but rather with authority or the entire criminal justice system.

The African-American community did not trust or like the previous administration, so it will take time and effort for the office to earn their trust.

I think it would be good if people felt comfortable talking to the office or talking to the police department. But they’re hesitant talking to either, and sometimes they’re more uncomfortable or afraid with us than the police even. We have shootings that take place at block parties, and we end up with no witnesses.

Until you open your doors and let people in and be vulnerable, people will not trust you.

Victims and witnesses will be more likely to cooperate if they have more faith in the system. We definitely need more visibility at events.

Community ties are important- they are the mark of a good office. Victims are more likely to come forward and cooperate with prosecution when community ties are good. They also have more faith in the system if their loved ones are in the system that the person will be treated fairly, not punitively.

Community trust leads to more cooperation: more reporting, more cooperative witnesses, maybe it leads to more students realizing this is a career option or a place where ‘nice people’ work. It would be difficult to quantify, but I think it helps.

It’s not clear to younger kids what prosecutors do. They get their perceptions from TV.

People just don’t understand how the system works.

There are lots of things we do that the community isn’t aware of, things that make life better for defendants.

It can definitely help, mainly in terms of perceptions. Everyone thinks we just want to put people in prison, but that’s not the folks who work here at all. If you walk with people, they see what you are really like.

...when relationships are built, there is more communication, more of an understanding. There is access. So people are able to voice their concerns easier and know that someone is listening. We have more opportunity to show people that we care, that this isn’t about numbers, when we spend time with them.

We need to learn about community groups so that we can tell which offenders would fit well into those programs. Involvement with those groups helps us understand what’s out there, what’s available, so that we can send defendants there.

If you sit in the ivory tower, you can’t see what the people are doing.

What we’ve learned

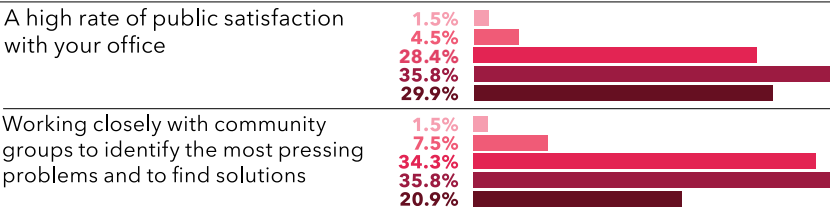
Theme 3.4 Though community engagement has become a priority for the new administration, some barriers to engagement remain

The new administration’s focus on community engagement is well-acknowledged, but some barriers keep prosecutors from engaging with the community. Engagement must often happen outside normal business hours, and heavy workloads limit the amount of time prosecutors can devote to it. Further, though racial diversity among prosecutors helps, the office specifically needs more prosecutors who have strong ties to the most disadvantaged communities. Such prosecutors increase the office’s understanding of the full range of problems that these communities face. Some prosecutors also struggle to articulate why community engagement is important and how community trust can affect the office’s success. To these individuals, the crime problem in disadvantaged neighborhoods is bleak, minority communities hold negative views of prosecutors, and no community engagement or other work by the office can solve these issues.

Theme 3.5 Prosecutors do not associate community engagement with problem solving or crime prevention

There is little acknowledgement that community prosecution strategies for identifying and addressing crime problems could be a valuable form of community engagement. Instead, prosecutors view community engagement as a tool for improving more traditional, reactionary functions of the office, such as achieving case convictions. Community members are seen more as potential victims and witnesses than as potential problem-solving partners.

This is how 67 prosecutors from Jacksonville who completed the online survey rated the importance of these relevant objectives:



What we’ve been told

This administration is more aggressive with trying to get out into the community.

I work 50 hours, go home, go running, eat dinner, and go to sleep.

What you have is a monolithic type of attorney, which is not good for the appearance of fairness and actual fairness...If you asked the number of African American attorneys in the office, you might get a different answer than how many black attorneys there are.

Ultimately yes, getting out to the community helps, but because it helps with perceptions, not because it makes us more effective as prosecutors.

I’m not too sure about outreach that is supposed to help reduce crime. I’m not sure people believe it or are helped. I feel like it’s too engrained in some people not to trust prosecutors. We’ve sent their friend to jail, and it doesn’t matter if we visit them or not. I guess maybe there could be an impact, but I have a hard time wrapping my head around it and would view that with a skeptical eye. It’s a whole bunch of TV shows where the prosecutor is all law and order, and it feels like it’d be hard to break that lifetime of opinions based on popular media.

No relevant quotes

Unimportant
Of little importance
Moderately Important
Important
Very Important

TOPIC FOUR: Use of Incarceration

What we’ve learned

Theme 4.1 The office seeks incarceration appropriately

Prosecutors vary according to how often they ask for incarceration, with some prosecutors adopting a ‘tough on crime’ approach and others taking a more lenient position. Overall, the office pursues jail and prison sentences at a reasonable rate, neither too often nor too rarely. This represents a marked departure from the previous administration, where jail and prison sentences were sought more frequently.

Theme 4.2 Some laws and penalties result in the unwarranted use of incarceration

Certain criminal laws are harsh and restrictive. Mandatory minimums, habitual offender laws, and sentencing guidelines can result in inflexible, overly punitive sentences. However, prosecutors can often counteract the severity of these laws, most notably mandatory minimums, through mechanisms like prosecutorial waivers. The threat of harsh punishment also serves as a good bargaining chip for prosecutors during plea negotiations.

What we’ve been told

Some attorneys seek too much jail, some don’t.

[Prosecutors] want to make a name for themselves because it is popular to be tough on crime.

Most people seek what they should...Some people might think I’m too low, but I don’t think I am.

Nothing comes to mind where we use it too much or too little. Once you do the job, you realize how each case has its own nuances. It’s difficult to say we aren’t doing enough or we’re giving too much.

No, we seek jail or prison appropriately. In a lot of cases we have mandatory guidelines. Most of the time it’s not appropriate to depart under that.

I don’t know whether the office is overly punitive or overly lenient, but the old administration was too punitive.

The office is seeking jail/prison time less than we were, and it’s a good thing. Especially lower-level cases, misdemeanors.

Under the old administration, cases with mandatory minimums had to be filed as such. There was no way to waive them.

I appreciate mandatory minimums to some degree, but I don’t like that they take away discretion. Domestic battery, for example, shouldn’t always have a mandatory minimum. It isn’t helpful.

DUIs have a pretty stringent mandatory minimum. And again they suspend your license for six months. That’s partly why it’s such a litigated area- there’s a lot of punishment. There are too many people in jail who are just users who are in there for too long.

Some of the sentencing guidelines are out of touch.

I’ve never let the sentencing guidelines dictate what I do. The 10-20-life, the drug mandatory minimums, the gun enhancements can be waived. So the question is whether waivers are being used appropriately by the office. There are always ways to get around policies.

We go in and out of these laws all the time.

10-20-life laws are restricting... but they can be a nice tool for negotiating.

What we’ve learned

Theme 4.3 Some crimes should not be crimes, and some felonies should not be felonies

Some crimes cause little harm to the community and should not be treated as crimes. Prosecuting these crimes unnecessarily consumes the office’s time and other valuable criminal justice resources, and incarceration is unlikely to address the underlying problems that defendants have. Likewise, some offenses that constitute felonies are treated too harshly and should be recodified as misdemeanors.

Theme 4.4 Plea offers and sentence recommendations are heavily affected by judges

Though prosecutors retain control over screening and charging decisions, disposition outcomes are influenced heavily by judges. Judges have the power to reject plea deals and determine sentences, so prosecutors often avoid rejection by making plea offers and sentence recommendations that are tailored to fit judges’ preferences.

What we’ve been told

Prostitution. My goal with prostitutes is to put them in the right program. I’ve never seen that as a crime to anyone other than themselves. They’re only harming themselves. I don’t think it should be a crime so much as marijuana should probably not be illegal. We could take a lot of people out of the CJS if we got rid of it, and we’re losing money because drug dealers are selling on the streets and not paying taxes on it. It’d be great if we turned marijuana sale into retail.

Pill laws have always seemed crazy. People getting a false prescription for themselves technically get a trafficking charge.

Petty theft has a \$300 minimum and needs to be changed. Lewdness laws, like sex between 18 and 15-year-olds, are outdated and should be amended. It’s mostly things that are too old and not appropriate for our current culture.

Crimes like grand theft, where the value threshold is only \$300. Should it really be that amount? Sometimes you have a case that’s \$301 from Walmart that doesn’t seem like it should really be a felony. Sometimes maximum penalties seem broader than what the facts really call for.

My first judge would never give me jail time.. And then another judge asks before I’ve said anything, “How much time does the State want?” and then I know the judge wants jail time and I might as well not ask for anything else.

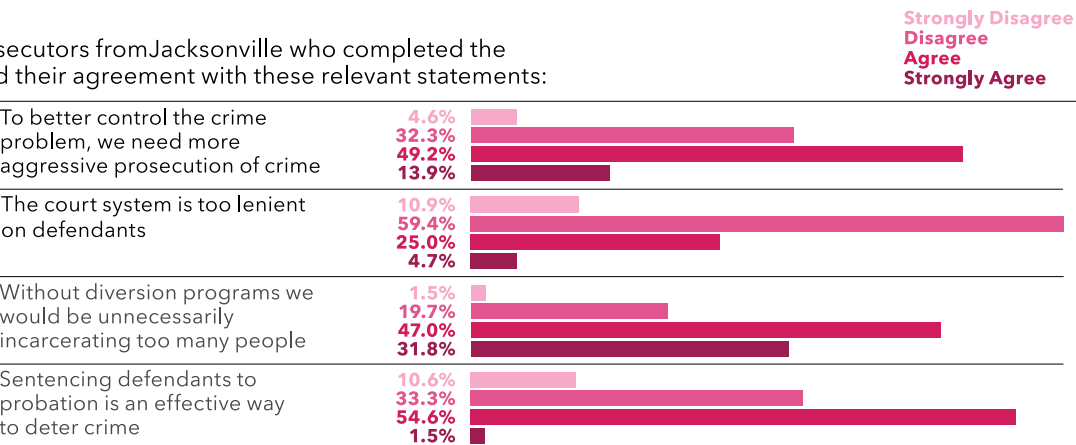
We can present reasonable dispositions all day long, but if the judge doesn’t accept it what can we do?

We make recommendations, not decisions. You really do walk into a courtroom and adapt to your judge. But in an ideal world the prosecutor would own the courtroom. It’s our decision, we charge the case, the courtroom should be ours. Instead, judges turn us down all the time. So we just go with it. And we adjust our plea offers.

Yeah, knowing what a judge will or will not accept will affect my offer. That affects whether I’m even going to file on a case, divert it or not.

We have to use our discretion, but ultimately we have to have our decision approved by the court. I don’t think it’s us that are the main driving force behind whether jail or prison is awarded.

This is how 67 prosecutors from Jacksonville who completed the online survey rated their agreement with these relevant statements:



TOPIC FIVE: Racial Disparities in the Criminal Justice System

What we’ve learned

Theme 5.1 Racial minorities are overrepresented in the criminal justice system, but these disparities are not reflective of differential treatment by criminal justice actors

Compared to the demographic make-up of the general population, a disproportionately high number of offenders processed through the criminal justice system are racial minorities. However, the overrepresentation of minority offenders in the system is not due to bias on the part of prosecutors or other criminal justice actors.

Theme 5.2 Racial disparities are due to differential offending and policing tactics

A variety of race-related factors lead to more offending by minorities. A lack of employment and educational opportunities contribute to higher rates of offending. Equally impactful is the existence of minority cultures in which dysfunctional family structures are more common, youths have little supervision, and violence and incarceration is normalized. The concentration of poverty is associated with more crime and disorder, which leads law enforcement to focus more on these neighborhoods and to arrest more black and Hispanic individuals.

What we’ve been told

It’s a fact- black people are incarcerated and charged at much higher rates.

This is America and there are disparities anywhere you look.

The disparities come in society as a whole. There are a disproportionate number of young black men who don’t have a home life.

It’s not about color, it’s about culture.

There are going to be people who aren’t working, their kids aren’t going to school, they’re dropping out by eighth or maybe tenth grade, the school systems aren’t as good...you have a never-ending poverty cycle in those communities. And you have police officers who are assigned to these communities full-time, because if there are more shootings in an area, you’re going to get a lot more police officers, and you’re going to get more arrests in that area.

...it’s police presence. There’s nothing wrong with it, to an extent, because those are the areas with more crime. When you’re constantly around your two-year-old, you’re going to see them take that cookie. If you’re not in the room, they’ll still eat the cookie, but you won’t see it. So people in both good and bad neighborhoods are doing the drugs, but they’re only seeing it in the bad neighborhoods. They’re also more likely to pull over Jerome than they are to pull over Jimmy. Both are driving fine, but one is in the wrong neighborhood and his name is Jerome.

What we’ve learned

Theme 5.3 Prosecutors do not contribute to racial disparities, and there is little they can do to remedy them

Racial disparities arise before prosecutors have access to a case, and prosecutorial decision making does not exacerbate these disparities. If case outcomes are less favorable for minority defendants, differences are due to the severity of the crime committed, defendants’ criminal histories, defense counsel type, and other legally relevant factors. Moreover, it cannot and should not be the responsibility of the State Attorney’s office to alleviate racial disparities that stem from outside the office. Prosecutors should not consider race when making their own case decisions, and they are not intended to serve as a check for other arms of the criminal justice system. The office is not part of the legislative branch and should not shape criminal justice policy.

Theme 5.4 Prosecutors feel uncomfortable discussing racial disparities

Racial disparity is not a frequent topic of conversation in the office, and many people feel uncomfortable discussing race. Minority prosecutors tend to be more comfortable discussing race with other minority prosecutors.

What we’ve been told

I don’t think prosecutors are looking at their cases thinking ‘I’m going to be harsher in this case because of race’ but I think there are differences in what goes into the case files...You can also look at two cases on paper that look the same, but when you delve deeper into the cases, this case was a push and the other ended up with two black eyes. Ultimately, you’re always going to be able to find a difference between two cases.

We’re taught to treat each case based on the merits of the individual case. But they do look at breakdowns by private vs. public attorneys, because private counsel are the one who prepare mitigation packets, come and pester about evidence, negotiate pleas, etc.

[White kids] aren’t running around with guns or gangs. And they don’t feel like they need to be on guard and keep a weapon on them at all times, because they live in nicer neighborhoods.

Prosecution-wise, no one treats anyone any differently, once we get the case. That person was in fact committing a crime, because they possessed drugs or were driving on a suspended license. So it’s not unfair that they get prosecuted for something they did.

[It’s] difficult for our office to respond to racial statements. If you tell us there are racial disparities, we won’t know what to do, because we’re specifically trying not to look at it when we make decisions. Now we’re supposed to look at it?...In a perfect world, we shouldn’t care about the arrest practices, because we shouldn’t be making decisions based on race.

Reporting comes from some areas [in the city] more than others. Do we not respond to some crimes because it would make the crime rate higher in those areas?

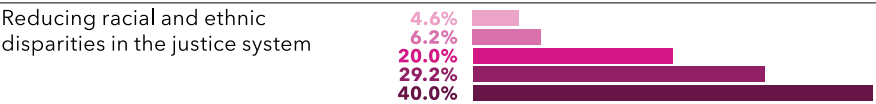
You can’t turn down a valid case because they are not bringing enough of a different type of case.

We don’t talk about it as a team, but we try to make fair sentences for each case.

Prosecutors get defensive about race.

We don’t really think enough about it to make us feel uncomfortable...We’re too busy to look up from our desks, so we don’t notice those trends...but it wouldn’t change the way we follow the law.

This is how 67 prosecutors from Jacksonville who completed the online survey rated the importance of this relevant objective:



Unimportant
Of little importance
Moderately Important
Important
Very Important



Part 2: Chicago Interview and Survey Findings

Foreword from Kim Foxx State's Attorney

The Cook County
State's Attorney's Office
Chicago, IL

The work of the prosecutor addresses a fundamental question in the criminal justice system - how to protect public safety and focus resources on serious and violent crimes, while working to minimize unnecessary contact with the justice system. That work can only reach its full potential by understanding how prosecutors' offices work. When I was sworn in as Cook County State's Attorney, I made a commitment to increasing the transparency and accountability of the State's Attorney's Office by using data to assess our performance. In service of that goal, I have created a new position of Chief Data Officer in our office and released data on cases referred to and processed by our office.

This project by Florida International University and Loyola University Chicago is part of that effort - to examine how our prosecutors think about their work and how we might use data to improve our performance. The MacArthur Foundation has always been instrumental in shaping criminal justice reform nationally, and are the driving force behind this innovative, data-driven and practical project. Yet, while data is a crucial part of our work, the criminal justice system is a fundamentally human exercise. The men and women of the Cook County State's Attorney's Office are dedicated public servants who spend their days making difficult decisions in the service of justice.

Our commitment to data and transparency does not replace that work - it is a tool to support it, helping us to ask the right questions, to identify potential areas of challenge and opportunity, and to provide our dedicated prosecutors with the information and support they need to do their critically important work.



TOPIC ONE: Perceptions of Prosecutorial Success

What we've learned

Theme 1.1 Individual success as a prosecutor is defined in terms of case preparation, effective decision making, appropriate outcomes, and acting ethically, respectfully, and in line with office policy

Most prosecutors have a multi-dimensional view of their own success. Some define success in terms of how well they prepare for their jobs - specifically how well they prepare case files or motions. Others define success in terms of decision making - whether they consider all available facts and circumstances. Others are more focused on "appropriate" outcomes, as defined by meeting the needs of the victim, the defendant, and the community. Prosecutors also define their own success in terms of how they act in court or in relation to others. Several prosecutors note that acting ethically in all situations is a mark of success. Others focus more on their interactions with other criminal justice system actors, arguing that success is defined by treating others with respect. Overall, most prosecutors provide several criteria that they use to evaluate success.

Theme 1.2 Office success is defined in terms of community perceptions, although some feel that the office has little ability to affect community perceptions.

Prosecutors define office success in terms distinct from how they define individual success. Prosecutors believe that office success is related to the perceptions of the community and community satisfaction; prosecutors understand this satisfaction as related to victim and witness cooperation with the office. Although several see community satisfaction as a measure of office success, prosecutors also believe the office has little ability to affect the community's perspective.

What we've been told

If I can resolve a case prior to trial, that is a success...If we can find a just resolution for both sides, that is a success...Judges are in a good position to evaluate someone's success: Are people prepared for motions? Are people making fair offers relative to the crime?

Success is getting the right outcome for the case at hand. The victim feels compensated and has resolution and the public is kept safe by either punishing the defendant or helping the defendant.

From an investigation stance, if law enforcement comes in for assistance or submits documents for review, and I provide effective advice for what is lacking or what needs more information to be included so the investigation comports with the law. For cases charged, review case reports to make sure officers have followed the law.

ASAs try to do a lot for everyone - victims, defendants, community. Giving back to the community by representing victims and by doing our best to help defendants would be successful...I look at it like a complete circle - addressing the needs of the entire community including the defendant and the victim.

A good prosecutor takes the time to evaluate the case individually...A good prosecutor recognizes that they have to perform these tasks living up to their ethical obligations.

What makes a good prosecutor is complying with the rules and guidelines of the office...I can look at my own cases and make sure they follow the office policies and guidelines.

It is all about balance; it is about the ability to balance facts and circumstances. There is the side of an event presented in the police paperwork and a side of the event presented by the defendant. Somewhere in the middle is the truth...I need to present the middle ground.

Treat people with respect and like human beings - the defendant and the defense team...Defendants were once the victims or the kids of victims...To treat everyone involved with respect and to consider everyone's circumstances.

How partners are reacting to your work - partners including other ASAs but also judges, defense attorneys. Success is about having a good relationship with all actors in the courtroom...Success is about being able to communicate with defense attorneys and judges and being civil... I am successful if I am honest and a straight shooter.

We also need to make sure that the community is satisfied...looking at the number of community complaints about crimes that they think we are not addressing enough.

Does the community feel the prosecutors' office is doing something for them? Right now, the community/witnesses do not trust us or want to cooperate.

Maybe whether the public sees the office as doing the right thing. The public are our customers, so satisfaction of the public is important. The public sees crime as part of the offices' responsibility to reduce, but the public also does not want an imbalance in how the office does that - they do not want long sentences or over-prosecution.

Right now, the public has distrust of the police and the courts; this spills over to the State's Attorney's office. But success is not about public perceptions of citizens - there is nothing we can do to change the perceptions of the public.

What we've learned

Theme 1.3 Some believe that other prosecutors define individual success in terms of trials or convictions

There is a strong perception among prosecutors that others in the office assess individual success in terms of trial experience. Prosecutors note that trials, convictions, and sentences are unrelated to how they evaluate their own success; however, several note that other prosecutors or supervisors rely on such measures to evaluate performance. Several also note that trial rates remain a measure used to determine promotions in the office.

Theme 1.4 Office success is defined in terms of convictions and case outcomes for violent crimes

Some prosecutors also define office success in terms of more traditional measures like convictions and sentences. These views are not necessarily inconsistent with views that define office success in terms of community satisfaction; rather, prosecutors feel that traditional measures of success like convictions remain central to the office's goals of public safety. Like definitions of individual success, definitions of office success are multi dimensional for most prosecutors.

What we've been told

Prosecutors in the office have been evaluated based on the number of jury trials they have tried. This is not a good measure of success because it does not show the work behind the scenes....New prosecutors are focused on number of trials. This runs the risk of having people try cases that could or should be resolved without a trial.

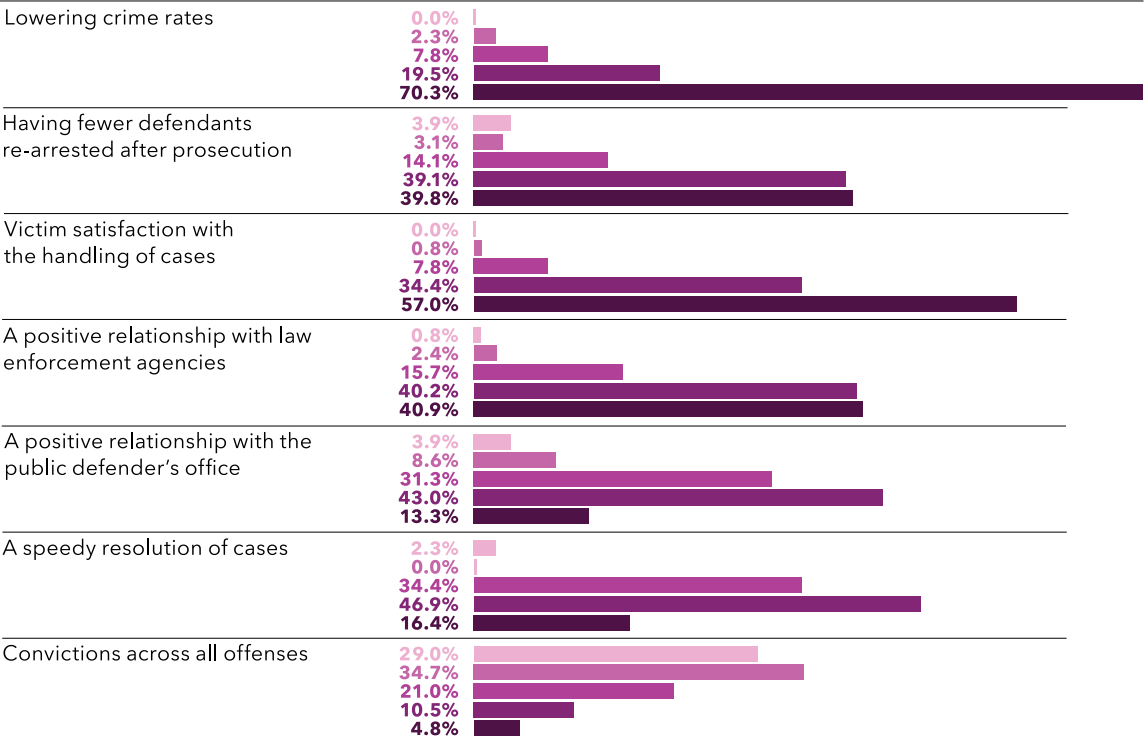
It is not about getting convictions and sending people to prison. There are people who want to get the highest penalty they can in every case...Many older prosecutors think it is about convictions and sentences. And this is passed down from older prosecutors to younger prosecutors because older prosecutors are the supervisors. That's why some younger prosecutors are unwilling to buck the trend.

Some people use other metrics; they look at the number of jury trials; and some people are upset that some people get promoted without doing many trials.

Look at conviction rates for violent crimes. Look at screening decisions of felony review. The office should not charge a case that they cannot get a conviction on.

Success depends on how the office responds to violent crime, particularly guns. The priority should be on violent offenses such as gun cases and violent crime. The office should prosecute gun cases without regard to other prevailing social issues and should be willing to hold accountable and support the prosecution of people who clearly have guns.

This is how 128 prosecutors from Chicago who completed the online survey rated the importance of these relevant objectives:



TOPIC TWO: Current Priorities and Office Mission

What we’ve learned

Theme 2.1 The office prioritizes a balanced approach to decision making, focusing on victims, defendants, and the community

Prosecutors feel that the mission of the office has changed under the new administration to one that they describe as “balance.” For some prosecutors, balance defines an approach to cases that considers the needs of the victim, the defendant, and the community. For other prosecutors, balance means ensuring the appropriate outcomes for cases - treating serious cases seriously and seeking alternatives for less serious cases.

Theme 2.2 The office seeks to accomplish its mission by expanding prosecutors’ discretion in determining appropriate case outcomes

Several prosecutors feel that the office mission is accomplished by expanding the discretion of prosecutors, which allows them to consider more factors about a defendant’s background and needs and to determine the appropriate outcome for a case. Prosecutors also appreciate the guidance provided through the office’s discretion chart, which they feel allows them to make decisions with confidence and without fear of reprisal. Overall, prosecutors embrace the efforts to ensure a balanced approach to cases and to allow prosecutors more discretion to fashion appropriate case outcomes.

What we’ve been told

The office’s mission is to be fair and to bring justice and closure to the victim and to get rehabilitation for the defendant.

Mission for the office - more transparency for the community. The goal is to get feedback from the community and to work with the community.

Looking at finding a balance between protecting victims and sentencing defendants to the appropriate sentence. It is about balance.

This administration is making a greater effort to ensure that outcomes consider all available options other than simply a conviction or probation or incarceration. We have expanded options that involve treatment and focus on non-violent offenders.

The new mission of the office is to consider whether the outcome of the case is tailored to the individual defendant.

That we uphold the law and ensure public safety. But it is also a focus on social justice. It is a priority that we treat cases individually.

I think there’s been a shift toward common sense. And that has brought with it, for example, more discretion for people...And I mean, I think it’s a good thing. I think it gives people some discretion back, and it takes a lot of the fear out of decision making that was present in the past.

The mission has always been the same - to do justice - but now it is written and communicated more clearly...The approach to justice has changed; there are now more programs, resources, discretion and more transparency about what are the needs of defendants and what does the law allow.

The new state’s attorney has provided an outline as to our discretion. I think I’ve benefitted from that. I can evaluate each case, the defendant’s family background and efforts to rehabilitate themselves.

What we’ve learned

Theme 2.3 Some prosecutors feel they have more input about the mission and direction of the office

In addition to expanded discretion, some prosecutors also feel they have greater input into the mission and direction of the office. Several prosecutors mention surveys and meetings conducted with prosecutors as ways to better understand the perspectives of staff and to collaborate on defining the direction of the office.

Theme 2.4 Some prosecutors are resistant to the new changes and see the mission of the office in terms of applying the law.

Despite the general agreement with the office mission among the prosecutors interviewed, some prosecutors do not agree with recent changes. Some of these prosecutors disagree with office policies regarding the non-prosecution of specific offenses; these prosecutors see this as a violation of their ethical duty to enforce the law. Other prosecutors disagree with what they perceive as a lenient, defendant-focused approach to prosecution, in contrast to a victim-focused approach. Finally, others maintain that some supervisors disagree with the new mission of the office, making younger prosecutors unsure about how to proceed.

What we’ve been told

The current administration is more open to discussions. More input, more surveys, more meetings, more focus groups. The administration is asking for staff input as opposed to being just told what is changing. Rather, the changes have been made based on the input.

They had a meeting and then they have group meetings...We were told what we could do to promote the mission statement, more collaborative work amongst ourselves, making yourself a resource to everybody.

The office brought back a lot more discretion to ASAs and encourages us to voice our own opinions for alternatives for cases, including alternative charges, deferred prosecution, diversion, sentence recommendations.

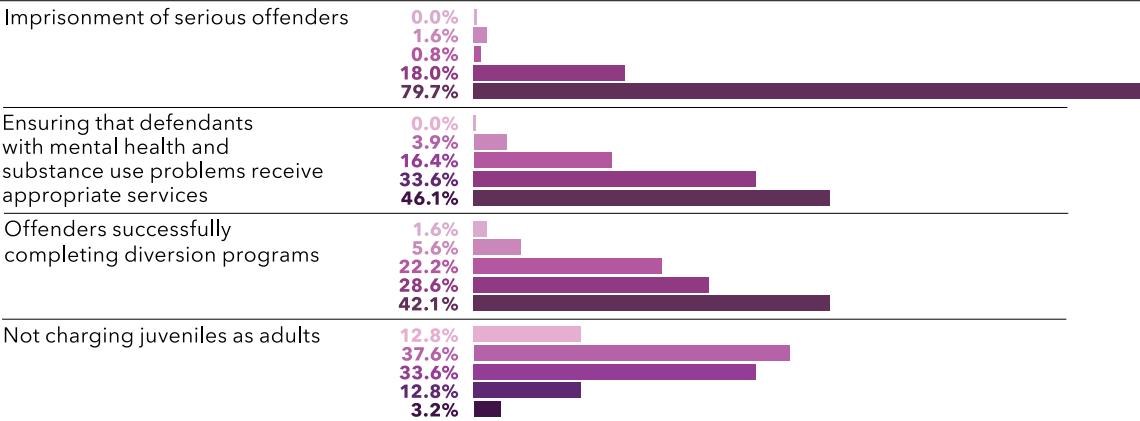
The office is more focused on social justice. For example, the recent changes to retail theft; we are rejecting retail theft cases in felony review if the dollar amount is too low - we are treating these as misdemeanors...This is about social justice, but it conflicts with our ethical duty to follow the law. I agree with the practical point of view, but not by justifying it as a way to reduce the jail population; focusing on the jail population is also a new way the office views its mission.

We are not prosecuting retail theft as a felony any more. But this is difficult for me as an attorney. As an attorney, I am to follow the law, but we are being told not to follow the law with retail theft. If we think retail theft should be sentenced differently, then we should change the law, not just say we are no longer going to follow the law.

Sometimes I disagree with the office push for lesser sentences. It should not just be about lesser sentences; sometimes you need longer sentences.

The administration is trying to push new reform priorities. Justice or advocating for the victim is being lost. There is less focus on victim’s rights under the new administration. There is a new push to take the defendant’s history or “story” into account when making decisions and we are supposed to look at the defendant in a better light than in the past.

This is how 128 prosecutors from Chicago who completed the online survey rated the importance of these relevant objectives:



TOPIC THREE: Community Engagement

What we’ve learned

Theme 3.1 Community engagement increases the public’s understanding of what prosecutors do and humanizes the institutional identity of the prosecutors’ office

The majority of prosecutors feel that citizens generally hold unfavorable views of prosecutors and the prosecutors’ office. Some responses imply that this is likely due to citizens’ contradictory views of the prosecutors’ performance – seeing the prosecutor as both overly harsh but also as not doing enough to address crime. Prosecutors feel that community engagement would better educate the public about the role of the prosecutors and the mission of the prosecutors’ office – and that this would improve citizens’ perceptions of prosecutors and the office. For some prosecutors, community engagement provides the added benefit of increasing cooperation of victims and witnesses. From this perspective, community engagement serves a public safety function as well as a public relations function.

Theme 3.2 Community engagement helps the prosecutors’ office understand citizens’ perspectives

To a lesser extent, prosecutors feel that prosecutors and the prosecutors’ office do not fully understand the needs or perspectives of citizens. Community engagement would allow prosecutors to hear directly from citizens about the problems facing communities and allow prosecutors to gain a better understanding of how citizens understand crime problems. Thus, prosecutors see community engagement as mutually beneficial.

What we’ve been told

Working with community will give people a positive view of prosecutors. This will help people see that prosecutors are helping the community. This lets people know that prosecutors are part of the solution.

So they can see, we’re human beings. We look like you. We have kids in your community. We have kids at your schools.

If we are out in the community, then we are not just people putting people in prison; the prosecutor is the person in the community helping in some way.

The community needs to know who we are and to trust us, so they will be willing to work with us. If they trust us, then they will trust in our decisions and we will not have to continually justify our decisions to them.

People gain knowledge of what the office does; this will enable us to help people and enable people to come to us for help. People may be less afraid to participate as a victim or witness.

The perception of the prosecutor is diminishing, so this is about educating the public about what the prosecutor does. Better perceptions of the community will make people feel less animosity toward the system. In some communities this will allay fears that the prosecutors is targeting certain people; in other communities, this will show that the prosecutor is still working to make the community safe.

The community only sees the prosecutor in court, and therefore only sees the prosecutor as the bad guy who wants to put their loved one in prison. If the community understands what the prosecutor does, then when we call victims or witnesses to come to court they may be more willing.

Working with community groups gives them the feeling that we’re listening to them...Maybe if they’ve been to a community function, it could be beneficial to us because they could be more willing to testify.

Community outreach is important. Going out to different events to talk to people from the community, businesses, students, teachers allows the office to learn about issues from the community’s point of view.

Working with the community would help us hear directly from the community what the most pressing problems are. People will respect the prosecutors and will be willing to talk to prosecutors. This will build a sense of trust, and then we can get better cooperation.

This is the most important – listening to people and letting them know that we are here to help.

We get to see who they are and they get to see who we are; this builds trust both ways.

What we’ve learned

Theme 3.3 Some prosecutors are skeptical that community engagement will improve citizens’ perceptions of the prosecutors’ office or willingness to cooperate

A small group of prosecutors feels that community engagement will not benefit the prosecutors’ office. One prosecutor is pessimistic that community engagement alone will change or overcome the community’s unfavorable views of the prosecutors’ office. In contrast, another prosecutor does not believe in the potential benefits of community engagement and sees it as an unworthy strategy. The former questions the effectiveness of community engagement while the latter questions the value of community engagement. However, these are not views expressed by other prosecutors.

Theme 3.4 Prosecutors see community engagement as the work of specialized units or specific programs rather than something in which all prosecutors can or should engage.

Several prosecutors compartmentalize thinking about the role of the prosecutor in the community. When asked about community engagement, some prosecutors refer to the work of community centers or discuss the activities of prosecutors in specific programs; however, they do not share a sense of how they – as individual prosecutors working in other capacities – might also engage the community. Relatedly, several prosecutors push back against the idea of volunteering in the community or personally engaging the community, saying that they do not have time for such activities. The attitude could be characterized as: “not in my job description.”

What we’ve been told

People don’t want to get involved. And I get it, but what they don’t get is, the only way to make things better ... like, you want to get these criminals off the street in your neighborhood, we need your participation. But I think that there is just such a lack of trust. I don’t know. I mean, I would like to be able to do something about it. But again, I don’t have much confidence, if I, personally, participated in a program, that anybody would believe me at all.

Right now it looks like we are just trying to appease those communities who think there is too much incarceration. Not sure if this liberal approach will improve victim or witness cooperation.

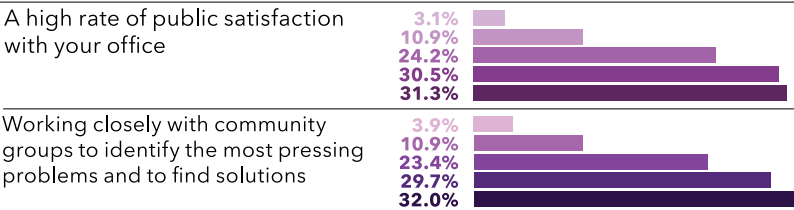
They’ve set up community justice centers, speaking to community leaders. Trying to get out our positions.

Different programs like the community justice centers help people to become familiar with expungement of convictions. The junior state’s attorney’s program allows ASAs to participate in ‘Lawyers in the Classroom’ – this can help kids develop thinking skills.

It never hurts to be more involved with the community. But it is unfair to expect ASAs to do it; we do not have the time to do work and reach out to the community. Also, there is no direction from supervisors about what it means to be ‘involved in the community’. If the office wants to focus on community outreach, they need to set up more community outreach centers.

I would love to do more community outreach, but we have to do it on our own time, which is impossible given our workload.

This is how 128 prosecutors from Chicago who completed the online survey rated the importance of these relevant objectives:



Unimportant
Of little importance
Moderately Important
Important
Very Important

TOPIC FOUR: Use of Incarceration

What we’ve learned

Theme 4.1 The office is focused on reducing incarceration by increasing the availability of alternatives for certain offenses

Most prosecutors are supportive of the use of alternatives to incarceration for certain offenses. Prosecutors discuss deferred prosecution programs, sentencing alternatives, and treatment programs as ways to both help defendants and reduce incarceration. Several prosecutors also note changes to bail practices that reduce the use of jail for pretrial detainees. Overall, most prosecutors are supportive of the office’s mission to reduce the use of incarceration.

Theme 4.2 Office policies and prosecutors’ actions can reduce the use of incarceration for certain offenses

Several prosecutors note that office policies or the actions of prosecutors reduce the use of incarceration for specific offenses. In some instances, office policies discourage the prosecution of some offenses as felonies, which can reduce the use of prison following a conviction; in other instances, prosecutors alter charging practices to avoid defendant exposure to longer sentences for some offenses. Several prosecutors also note that, for some cases, simply not prosecuting a case is an appropriate way to avoid incarceration.

What we’ve been told

For low-level drug offenders without violent backgrounds, the office is actively trying to make an effort to use alternatives to incarceration.

The Cook County State’s Attorney’s Office is providing alternative programs to give people opportunity to not be incarcerated.

Deferred prosecution is a great idea for low-level drug offenses - helping people who need help get the help they need.

Serious cases need to be take seriously. There is still an emphasis on violent crime and ensuring that the most appropriate sentence is given for these offenses. But there is also a focus on more alternatives and reducing jail populations; there is an emphasis on less serious offenses and making sure that they are not held in jail.

We are focusing on programs and alternative prosecution strategies, the use of different kinds of probation, and by providing education programs, drug treatment programs, job programs.

For certain types of crimes, we have decided not to prosecute - retail theft, prostitution.

If you get two class 2 felonies it results in a minimum of six years. Prosecutors find that they must reduce the charges to prevent this and defendants may end up with four years instead.

Taking into consideration what is a serious case and what is not. When violence isn’t part of it, looking at their background, the whole picture. Prosecution is not always the answer.

What we’ve learned

Theme 4.3 Prosecutors feel that some laws could be changed to reduce the use of incarceration

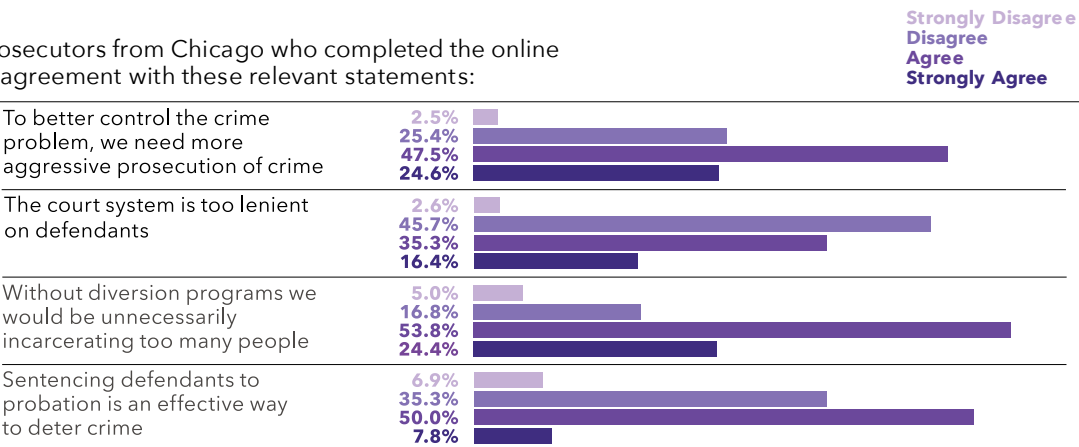
Few prosecutors point to specific laws that could be changed to reduce the use of incarceration. General references to sentences for drug offenses are often referenced, as are references to sentences for repeat drug offenses. Specific changes to state bail statutes are also noted as ways to reduce the use of jail. Overall, prosecutors do not generally see crime classifications or state sentencing laws as affecting the use of incarceration.

What we’ve been told

Delivery of controlled substance offenses is a class 2 felony, but repeat offenses are upgraded to Class X felony; changes in this would reduce the use of incarceration.

The office has been mindful of the use of incarceration and has participated in changing state statute for bail considerations. Certain classifications can earn dollars per day incarcerated toward money bond and people are also getting bond reviewed at second hearing.

This is how 128 prosecutors from Chicago who completed the online survey rated their agreement with these relevant statements:



TOPIC FIVE: Racial Disparities in the Criminal Justice System

What we’ve learned

What we’ve been told

Theme 5.1 People of color are overrepresented in the criminal justice system, but these disparities are reflective of socioeconomic differences

Some prosecutors feel that racial and ethnic disparities in the criminal justice system reflect underlying socioeconomic differences across groups. These prosecutors believe that a lack of economic opportunities, the concentration of poverty, and historical racial segregation may contribute to differences in both the concentration of crime and police enforcement. These prosecutors see racial and ethnic disparities as rooted in systemic problems in society.

Most defendants and victims come from the same predominantly black and Hispanic sections of the city...the disparity is due to economic differences in the community... some people have no other economic opportunities.

Racial disparity...exists because of the economic breakdown of different communities.

In Cook County (Chicago) the racial disparity is due to segregation. It is a systemic problem.

Racial disparity is about economic disparity.

This is due to issues in the community. Someone is impacted from the time they are born by socioeconomic factors and pressures within the community; this leads them to crime.

Racial groups come from communities that struggle from the most socioeconomic stress.

Theme 5.2 People of color are overrepresented in the criminal justice system, but these disparities are reflective of racial and ethnic differences in criminal behavior

Other prosecutors feel that racial and ethnic disparities in the system reflect underlying differences in criminal behavior across groups. These prosecutors do not discuss racial and ethnic differences in criminal behavior in terms of the root causes of crime; rather, they see these differences in terms of the objective variation in the distribution of crime in the city. These prosecutors see racial and ethnic disparities as rooted in differences in the individual decision making of defendants.

Any disparity that exists is based on differences in population. It’s a wide spectrum, certain ethnicities are more represented than others but that’s just based on the area and how much crime there is.

It is about who is committing crime and who the victims are... So, it is not about discrimination in the system, it is about the composition of the city.

I think it’s fair to say that, of course, there’s a disparity...But it’s not because the police are only in those neighborhoods...I think it lays with personal responsibility, and the decisions that are being made by the individuals...I’m of the opinion that people that go to jail for crimes earn their way there.

What we’ve learned

What we’ve been told

Theme 5.3 The prosecutors’ office can address racial and ethnic disparities by hiring a diverse staff and by looking at cases at the human level

Some prosecutors feel that the office can reduce racial and ethnic disparities in the system by hiring prosecutors of color and by encouraging prosecutors to consider and address defendants’ circumstances. Although these respondents do not explicitly state that prosecutors contribute to disparities, they acknowledge that by bringing a diversity of perspectives to the process the prosecutors’ office could reduce racial and ethnic disparities in the system.

Theme 5.4 Although racial and ethnic disparities exist, there is little prosecutors can do to remedy them

Although prosecutors acknowledge that a disproportionately high number of defendants processed through the criminal justice system are people of color, some also believe that there is nothing personally they can do to reduce such disparities. They believe disparities arise before prosecutors have access to a case and are due to factors that prosecutors cannot address. Prosecutors also believe that, while understanding the reasons disparities exist is important, it is unclear how they can use that information in making decisions. Overall, prosecutors see disparity only in terms of differences in the number of people of color processed through the system, but not in terms of differences in outcomes for people of color.

The office is cognizant of racial/ethnic disparities and there is a focus on it in the office. They are addressing it by focusing on hiring diverse prosecutors. There is a push to recruit and promote people of color.

Racial disparity is discussed in the office. The office is trying to bring racial/ethnic diversity to the staff, which will bring a diversity of perspectives.

The office encourages us to look at the circumstances of the defendant and seek to address those; addressing some of these issues will reduce racial disparities by looking at the human level.

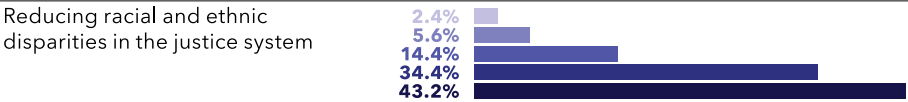
Race is never a part of the conversation. I mean, it’s just, we look at the facts, we look at the evidence, we look at the background. If we’ve got mitigation, for example, from the defendant, we look at that. We take into account all of these different factors, and race is never one of them.

ASAs also recently had training on disparities in the system, with speakers from police to academics talking about it. We learned how housing segregation in Cook County (Chicago) has led to disparities in the system. I am not sure how to use this information in making decisions about a case.

The prosecutor has little role in reducing racial disparity – it is beyond the prosecutors’ office to affect racial disparity. Racial disparity is about economic disparity, and that is something the prosecutors’ office cannot fix.

Not sure what the office is doing to reduce racial disparity. I know it is a goal of the office, but the only way to reduce disparity is to work with other stakeholders.

This is how 128 prosecutors from Chicago who completed the online survey rated the importance of this relevant objective:



Unimportant
Of little importance
Moderately Important
Important
Very Important



Part 3: Tampa Interview and Survey Findings

Foreword from
Andrew Warren
State Attorney

The Office of the State Attorney
for the 13th Judicial Circuit
Tampa, FL

The evolution of prosecutorial work demonstrates the critical role that fairness, justice, and public safety have in our communities. Despite many policy advances, the ways in which we can measure prosecutorial success have lagged behind. Conviction rates and crime rates fail to capture the complexity of prosecutorial goals, especially over longer periods. As we advance better policies and procedures, we need better metrics to evaluate success. We need ways to measure reduction in violent crime, the impact of programs that provide alternatives to arrest, and most importantly, how we protect crime victims. We need methods to measure the integrity of our prosecutions and the investment we make in diversion programs.

Our office is proud to be part of this groundbreaking initiative with the MacArthur Foundation and researchers from Florida International University and Loyola University Chicago to establish a blueprint for assessing prosecutorial effectiveness in the 21st Century. The interviews summarized in this initial report demonstrate prosecutors’ views on how to measure success and fairness. The results of the interviews provide valuable insight on topics such as case prioritization, racial disparities, community engagement, and perceptions of success. Additionally, the report identifies opportunities for and potential barriers to improving our performance and implementing new ideas to better fulfill our mission. Beyond our office, the report will provide similarly valuable information for the other participating offices and improve prosecutorial performance nationally.

This partnership is an exciting chance to redefine the next frontier of criminal justice. To better seek truth and justice, we must examine who we are as prosecutors and how, together, we build safer and stronger communities.



TOPIC ONE: Perceptions of Prosecutorial Success

What we’ve learned

Theme 1.1 Prosecutors define success in a variety of ways, ranging from having a positive community impact to case processing efficiency

Prosecutorial success may take a number of different forms: lower crime rates and perceptions of safety, community and victim satisfaction, achieving fair case outcomes, positive relationships with other criminal justice agencies, and high staff morale. Individual success is also measured by quality of paperwork, meeting deadlines, and preparedness. Success is becoming less dependent on traditional case processing outcomes like number of trials and conviction rates, though these are still considered very important for some prosecutors. Despite ultimately identifying a wide range of criteria for success, many prosecutors had difficulty readily articulating what success looks like to them.

Theme 1.2 While more funding and better technology are primary means of achieving greater success, prosecutors mentioned a variety of other avenues as well

Additional funding in order to hire and retain more quality staff, and increasing efficiency by going paperless and streamlining approval processes are commonly identified means of fostering success. More specific suggestions included improving internal communication, working better with defense attorneys, adding more management, and hiring more victim/witness support staff. While recruiting more attorneys and support staff was identified as a way to increase success, expanding staff diversity was not mentioned.

What we’ve been told

Lower recidivism rates. To me, that is success. Also knowing that the community knows that we’re out there to make it safer.

Recidivism. That’s a big one. Conviction rates- you can’t do a study without conviction rates.

Are you successfully prosecuting cases, are you taking into consideration all the right information so that at the end of the day, the community is protected and the decisions you make are fair.

How we interact with each other and the public defenders. That’s a huge part of our job. It’s not to be taken lightly that you get along with the people you work with and interact with day in and day out.

When I don’t let things build up too much, and when I feel like I have been productive.

As a prosecutor you always look at the end to the conviction. I’m very law-and-order oriented, and I think you can get people to do what you need them to do with a conviction whether they like it or not.

That is like impossible to answer. I can tell you what it isn’t. It’s not the number of people who go to prison. It’s not the number of people who get a jail sentence.

Whether justice prevailed. I don’t think that is a quantifiable concept because we have too many varying cases.

Being fair. That’s a nebulous concept- like what is fair? I know when some things aren’t fair- I feel it. And that’s a dangerous thing, to go by feelings. But sometimes, a lot of the time, I just feel it.

We need more manpower. We need an increased budget so we can have more manpower.

If you want to keep attorneys that have promise and want to continue doing this work, give them a bonus every now and again.

It would be helpful if we went paperless. Technology makes things go a lot quicker if we have an effective system. I know they do focus on it in IT. They’ve made a number of changes to CMS to make things quicker and automatic. It’s those little intermediary steps that can really hang you up.

Database that centralizes filing motions or notices....A template that would help us file motions better would help. More communication would be helpful.

[There is a] ‘them and us’ mentality among the defense and prosecutors’ offices. [It] needs to change. The offices need to work together.

I think I have been effective as a prosecutor, but more management would be good.

Because our job often handles coordination with witnesses and such, if we had a knowledgeable person who coordinated and worked with witnesses, who would sit with us during trial would be so beneficial and would save so much time...If we had someone next to us who could then talk to the witnesses and check in with them when decisions are made, things would go smoother.

What we’ve learned

Theme 1.3 There is no formal evaluation process, and prosecutors are unsure what criteria would be used for evaluation

The office does not have formal evaluation procedures for prosecutors in place. Instead, feedback is provided informally when individual case decisions are deemed inappropriate. Prosecutors generally do not know what criteria an evaluation would consider, though a few speculate that it would take into account trial preparedness, timeliness with paperwork, and opinions from colleagues and management.

What we’ve been told

I have no idea how my bosses evaluate success.

We get a pat on the back for procedural successes.

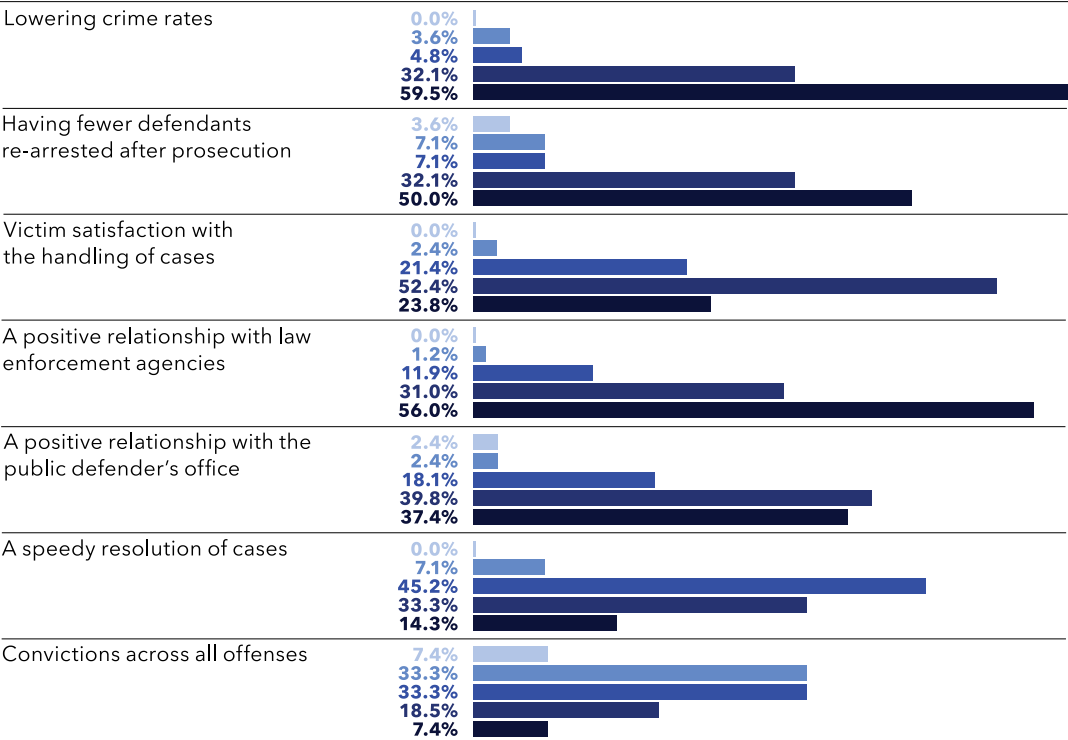
If we’re late or on time, our filing speed, are we doing our phone calls quickly, emphasis on how many trials you do (not necessarily the verdicts- everyone understands that trials are fickle). Everyone is looking at that more and more.

How people are promoted and evaluated is political. In the administration once they form an opinion about you, they don’t change. We are supposed to give people due process in court, and we don’t get that in the office.

I don’t know! No periodic reviews. I think that when you first get promoted to certain positions there are probationary periods. But beyond that, I don’t know. I’m aware of certain people in the office who have been talked to or put on probation or reprimanded for certain situations, but as far as annual reviews like that, there isn’t one.

One of my biggest frustrations is the way we promote people. We promote people based not on experience but on longevity. And there are people who have been promoted over the years that shouldn’t have been promoted. And if we did it based on talent and experience, that’d be better.

This is how 84 prosecutors from Tampa who completed the online survey rated the importance of these relevant objectives:



TOPIC TWO: Current Priorities and Office Mission

What we've learned

Theme 2.1 Alternatives to traditional prosecution allow prosecutors to prioritize serious crimes

Case prioritization is an important focus for the State Attorney. The State Attorney's office emphasizes rehabilitation-oriented alternatives to incarceration for low-level offenses so that traditional prosecution can be reserved for offenders who pose the greater risk to the community. This approach is particularly emphasized in the juvenile division, where rehabilitation is the primary goal.

Theme 2.2 Prosecutors are granted more but not unlimited discretion to achieve fair outcomes

Line prosecutors are expected to make fair and consistent case decisions. In order to accomplish this goal, they are granted some autonomy with supervisory oversight. Though many decisions require supervisor approval, prosecutors are encouraged to seek mandatory minimum waivers, above- or below-guidelines sentence recommendations, and other exceptions to formal and informal policies when they believe it is necessary to ensure just results.

What we've been told

Prosecuting dangerous criminals has always been the focus, but the diversionary programs have been expanded.

There is more of a focus on weeding out minor felonies and not imprisoning people for first-time offenses.

Incarcerate violent criminals. That's the first thing that comes to mind. That's what Mr. Warren made clear. He wants us to be focusing on violent offenses, weapons offenses.

Overall he's taking criminal records more seriously. I'd say he's being more liberal. We're not giving someone a record just to punish. We're questioning whether a conviction is necessary, or whether the person can be rehabilitated by other means.

There has been a shift in that Mr. Warren seems to focus on diverting the lower-level offenses out of the system, hopefully giving us more time to focus on more serious cases.

One priority in the office is to rehabilitate juveniles and first-time offenders.

It seems like the message from the top is more about how can we help these children stay out of the system.

We try to be fair. That is our ultimate goal every day.

Fairness is the #1 most important thing- for us to be fair to both the defense and the state.

I am loving it. We are exercising the discretion we are supposed to use.

This administration thinks more about how prosecution affects defendants. Not as strict as the past administration in the sense of filing everything and seeking enhanced sentences.

What we've learned

Theme 2.3 Transparency and engagement with the community are central to the new administration's mission

Most line prosecutors acknowledge that the State Attorney aims to improve the public's perception of the office by becoming more transparent and engaging more proactively with the community. To achieve greater transparency, the State Attorney and his staff speak more frequently with the press, use social media, and invite collaborations with research, policy, and advocacy groups. To increase community engagement, prosecutors are encouraged to attend more community social events on behalf of the office.

Theme 2.4 The State Attorney's vision does not always reach line prosecutors

There are a variety of ways in which the State Attorney's goals and priorities are communicated to line prosecutors, including office-wide meetings, individual meetings with supervisors, and emails from management and direct supervisors. However, communication of those goals and priorities does not always reach line prosecutors. Sometimes prosecutors learn of office programs and objectives through press releases and social media. Other times messages are intended to trickle down through the office but do not do so because some mid-level managers do not buy into the State Attorney's vision.

What we've been told

The office is trying to do more community outreach to serve the public.

Views have changed to be a little more transparent: to get out into the community a little more, to do things social media-wise so that if we're not in the community they can see into the office.

One thing I like is that we're thinking about how our decisions affect the community and how we're interacting with the community.

I think what you all are here doing is part of it- you're here asking questions. Transparency. That's a big deal. And it starts discussion among us as prosecutors.

A lot more community involvement.

Andrew has yearly meetings and updates the office on everything that is going on in the office and initiatives he has.

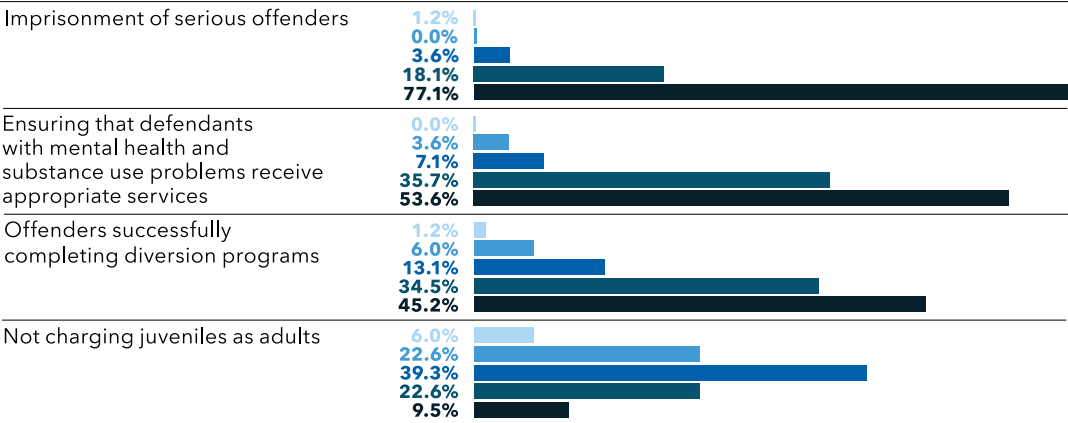
He does a lot of press interviews and then he tells us about them. He also sends emails to us sometimes.

Unfortunately it has been an area of discontent, but we have been finding out about some of these programs through email or through press releases at the same time the public finds out. Some people have been unhappy with that.

I don't think things get filtered through well. Mr. Warren has had officewide meetings...and he says what he wants to focus on. And there are instances where middle management doesn't do what he wants until he says he wants it specifically at those meetings. So things aren't clearly said until those meetings.

If Mr. Warren is set on setting other priorities, I think he needs to clearly convey those things to the chiefs. I don't think the chiefs are always communicating what Mr. Warren wants. I think sometimes they do things based on their own beliefs.

This is how 84 prosecutors from Tampa who completed the online survey rated the importance of these relevant objectives:



Unimportant
Of little importance
Moderately Important
Important
Very Important

TOPIC THREE: Community Engagement

What we’ve learned

Theme 3.1
Communities of color do not hold positive views of the State Attorney’s office

Minority communities do not hold positive views of prosecutors, perceiving them as part of a system that is unfair and untrustworthy. Though prosecutors acknowledge this lack of trust, they are largely ambivalent about it.

Theme 3.2
Most prosecutors do not see great value in community engagement

Most prosecutors do not believe community engagement is an important aspect of their job and struggle to articulate how community trust can affect the office’s success. To these individuals, the crime problem in disadvantaged neighborhoods is bleak, minority communities hold negative views of prosecutors, and no community engagement or other work by the office can solve these issues.

What we’ve been told

I think [community engagement is] worthwhile because there is probably the thought that we are law enforcement and that we are feared.

...especially in struggling areas there is a perception that we are the bad guys.

Our job is always going to be to enforce the law, so there will inevitably be parts of the community where we aren’t well-received. The public defender’s office can go and be perceived as helping, and we go to the same place and are perceived as putting people down.

We cannot worry about public perceptions of our performance.

I think it’s very tough. It’s a challenge because people see prosecutors in a certain way.

I don’t know that it changes our work one way or another.

The nature of the culture is to have non-cooperative witnesses. That’s the nature of this job. But if I go hang out with those people, that’s not going to change whether or not they are willing to be witnesses. They see street justice as being different from our criminal justice.

That sounds political. It’s only about elections. That is for the benefit of the State Attorney. I may work with someone at a church but that doesn’t address kids on the street.

While it’s important to speak with community groups and have an ongoing conversation, those community groups shouldn’t have an impact (and I don’t think they do now) because they don’t fully comprehend what’s going on in the criminal justice system. They’re not in court every day, and they don’t see the things that I see.

We can be out in the community all the time and we still won’t be able to explain to them why the 1st degree rapist who has killed people gets the same rights as every other defendant. It’s never going to happen. And it’s a waste of breath to try.

What we’ve learned

Theme 3.3
Some prosecutors believe that community engagement helps build trust in the criminal justice system, humanizes the institutional identity of the office, and increases the public’s understanding of what prosecutors do

Some prosecutors indicated that engaging with the community can help build public trust and understanding in both the office and the larger criminal justice system, increasing their credibility and legitimacy. The presence of prosecutors at community events gives a face to the office, sending the message that it is comprised of individuals who care about the community and want to protect it. The general public does not understand how the criminal justice system and the law work, so community engagement helps build that knowledge.

Theme 3.4
A few prosecutors associate community engagement with problem-solving or crime prevention

Though community engagement is viewed primarily as a method for changing the beliefs of the public, there is some recognition that community prosecution strategies for identifying and addressing crime problems could be a valuable form of community engagement. A few prosecutors expressed interest in using community engagement to learn more about the specific needs of their community.

What we’ve been told

I think it’s good for people to see what we do. A lot of people don’t know what goes on here. People should see what they pay for and what they vote for.

Some people hate law enforcement (I don’t get it- I think we’re great), but I think the more we are out there giving them information, the less they are afraid of us and the more comfortable they feel reaching out.

Some things could help them understand what we do. A lot of them see us like a figurehead. Like we’re ‘the government’. So community engagement might help humanize us and help them figure out we’re individuals who make some mistakes.

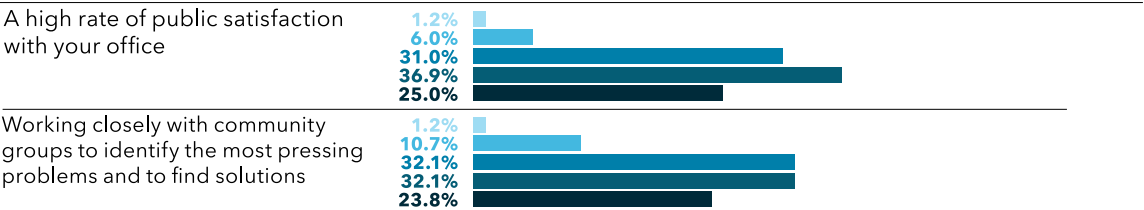
It will improve effectiveness to make sure the community does not view us as an enemy because they don’t understand the process. This would help in the long-run, especially for witness and victim cooperation.

It would go to show [us] what is important to them and what their perception is of the office and what we’re doing. Criminal laws and what we prosecute is based on what society holds important anyway. If our community decides that something is important, we should be able to change course to follow what they want us to pursue.

Anyone who tells you we should not be involved in the community is deluding themselves. We get to be a little bit too absorbed in our private lives. How will you know how to assist the community you are serving if you are not engaged?

Our job is to keep the community safe, not just to prosecute. We need to go into the community and learn the issues in that area. You develop a relationship with the areas that need us.

This is how 84 prosecutors from Tampa who completed the online survey rated the importance of these relevant objectives:



Unimportant
Of little importance
Moderately Important
Important
Very Important

TOPIC FOUR: Use of Incarceration

What we’ve learned

Theme 4.1 The office seeks incarceration appropriately

Prosecutors vary according to how often they ask for incarceration, with some prosecutors adopting a ‘tough on crime’ approach and others taking a more lenient position. Overall, the office pursues jail and prison sentences at a reasonable rate, neither too often nor too rarely.

There’s a lot of pressure from the media to lock people up. So a lot of people get caught up in the idea that if you see a crime that seems violent on its face, you should lock them up and slam the door.

I think some of it depends on the division. I’m in a division where sometimes we don’t seek jail or prison when we should.

I still have to run things by division chiefs, but it’s like if I come across as too lenient, that’s never a strike against me.

Most misdemeanors result in incarceration more often than necessary, but the office overall is not too punitive because of probation.

From what I’ve seen, there’s not a lot of jail time being offered, unless it’s an egregious offense. It’s usually repeat offenders where we start to offer jail time.

I think we see a fair amount of incarceration. It’s about right.

I don’t know, but I think we seek jail/prison sentences less often than society would imagine we do. What you see on TV is a lot different than what we in Hillsborough County actually do.

I think it’s pretty right down the middle. I say that because in every case where we make a jail offer, we almost always offer probation. We almost always give someone both options. Some people say they don’t want to be on probation, they don’t want to be on the hook. And they just want to get it done. But typically we’re fair on that because we usually give both offers. It’s usually the defendant and the defense attorney who make the decision.

What we’ve been told

The guidelines are overly punitive, and the vast majority of cases are under the guidelines.

Sentencing guidelines. Dealing in stolen property, for instance, is a Level 5 offense. If you take a couple of weed eaters from the back of a landscaping truck, then you go and pawn it, you’re automatically scoring prison, after you got \$20 for the weed eater. So yes it’s a crime that has a victim, but really? It’s not that serious.

The legislature is a mess. Sometimes they tie our hands with mandatory minimums, and sometimes it would help to have options.

Minimum mandatorys that are in place are difficult sometimes. Sometimes you are caught between a rock and a hard place. They were meant for good, but they aren’t used that way. They need to go by the wayside. We don’t like the minimum mandatorys at all.

Even when there are penalties that are severe, there are safety valves in place in our office or through the court system that allow for considerations to be made if we need to depart from the minimum mandatory.

The scoring guidelines are a little jacked up with a few different charges, so when we offer something less than the guidelines, I usually feel ok about that.

We often depart below the scoresheet recommendation for a plea to get the deal.

What we’ve learned

Theme 4.3 Some crimes should not be crimes, and some felonies should not be felonies

Some crimes cause little harm to the community and should not be treated as crimes. Prosecuting these crimes unnecessarily consumes the office’s time and other valuable criminal justice resources, and incarceration is unlikely to address the underlying problems that defendants have. Likewise, some offenses that constitute felonies are treated too harshly and should be recodified as misdemeanors.

What we’ve been told

I think most people would be on board with not charging for [drug] possession cases. We have bigger fish to fry.

Changing the cannabis laws. Allowing us to offer withholds or summarily nolle pros...having to work up a file for 8 grams of marijuana or less is a pain. Especially since the state of Florida in general is starting to change its attitude, getting that changed might be doable.

Driving on a suspended is just a stupid crime... if a person comes in with a valid license, drop the case. There’s no point.

... the number of reasons why people get their licenses taken away is crazy. I know Mr. Warren has asked us, if the defendant has gotten their license reinstated, to drop the case. I feel like we’re punishing poor people. They’ll get a ticket for rolling through a stop sign, and they get a ticket they can’t pay, and they get their license taken away. This county is giant, and the only way they can get to work is to drive, so they drive. And they get caught driving on a suspended license, and after a couple of times you’re putting them in jail, just for being poor. I try to plead down or get rid of those.

Usury laws should not be on the books. It should be civil. I also don’t want to have to prosecute driving charges and trespassing charges for the homeless. They sit on a street corner asking for money and get trespassing for it, so we’re asking them to pay money to deal with getting caught asking for money. That’s something I wish I we could change. I understand why it’s dangerous to be standing in the middle of the road asking for money but is it worth a criminal offense? I don’t think so.

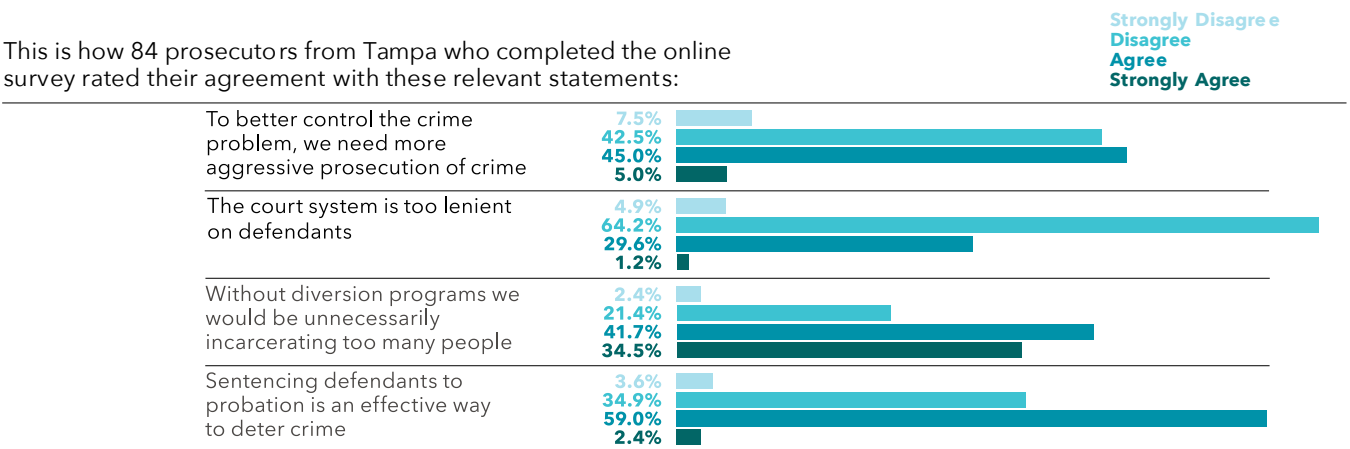
It seems wrong that you can hit a police officer and get diversion, but if you try to flee in a car from a police officer, you’re an automatic felon. We get around that in different ways, namely by altering the charge, but why shouldn’t we have discretion for that particular crime? This could be your first offense ever. That’s not cause for a felony.

Food stamp fraud cases... We shouldn’t be sending them to prison for changing a few numbers and getting a bunch of money after someone tells them they can do that. We should prosecute it, but there’s a five-year prison sentence for that third degree felony and I think it’s a little tough.

Theme 4.2 Some laws and penalties result in the unwarranted use of incarceration

Certain criminal laws are harsh and restrictive. Mandatory minimums, habitual offender laws, and sentencing guidelines can result in inflexible, overly punitive sentences. However, prosecutors can often counteract the severity of these laws, most notably mandatory minimums, through mechanisms like prosecutorial waivers. The threat of harsh punishment also serves as a good bargaining chip for prosecutors during plea negotiations.

This is how 84 prosecutors from Tampa who completed the online survey rated their agreement with these relevant statements:



TOPIC FIVE: Racial Disparities in the Criminal Justice System

What we’ve learned

Theme 5.1 Racial minorities are overrepresented in the criminal justice system, but these disparities are not reflective of differential treatment by criminal justice actors

Most prosecutors acknowledge that compared to the demographic make-up of the general population, a disproportionately high number of offenders processed through the criminal justice system are minorities. However, the overrepresentation of minority offenders in the system is not due to bias on the part of prosecutors or other criminal justice actors.

Theme 5.2 Racial disparities are due to differential offending and policing tactics

A variety of race-related factors lead to more offending by minorities. A lack of employment and educational opportunities contribute to higher rates of offending. Equally impactful is the existence of minority cultures in which dysfunctional family structures are more common, youths have little supervision, and violence and incarceration are normalized. The concentration of poverty is associated with more crime and disorder, which leads law enforcement to focus more on these neighborhoods and to arrest more black and Hispanic individuals.

What we’ve been told

I see a lot more black people in court than white people.

I think the statistics show that minorities go to prison more.

There are more people of a certain race who are incarcerated, even though more homeless seem to be white males. But there are more black people incarcerated.

I know there is a disparity, and it sucks because I sit in court and I see it.

I don’t want to believe it. I don’t see color. It’s hard for me to believe that anyone would more harshly penalize African Americans or Hispanics over whites.

I don’t think they have anything to do with our prosecution decisions. We don’t have enough time to be thinking about their race or ethnicity.

They exist. A lot. Starting from the beginning, minorities are raised in more violent cultures. We beat our kids, we go through school taught to be tougher...so things we don’t see as a problem have been criminalized, and areas of town get segregated because we hang out together,...and things we do get criminalized, and there are more police in those areas, which makes more arrests in those areas. So we get more cases for minorities in those areas, and of course from that we get more convictions for minorities. Once you get within the system, we’re not as educated as whites, we don’t have as much money to hire private attorneys that have resources and can get better deals with more money, the types of offenses we’re prosecuting for minorities are violent offenses (beating our kids has taught them that violence is ok),...and we punish violent offenses harsher....And then juveniles, it starts when they’re young. Minorities don’t have stable homes, most are single-parent homes in general, so you see kids acting out, they’re more likely to be on the streets where law enforcement can stop them. When whites are doing crime it’s in the house. Minorities are stealing cars, out on the street. All of that contributes to it.

Do I think African Americans are prosecuted more than whites? Yes, because they live in the projects and they don’t have a lot of supervision.

You might have a black kid with six prior marijuana convictions, so he scores higher, but a white kid with no prior record might smoke as much as the other, but police officers don’t patrol his neighborhood.

Racial disparity might be because of police patrolling low socioeconomic status neighborhoods.

It’s mostly policing. I don’t even know if you can necessarily blame the police. Everybody’s got their own priorities, and the priorities of the [Tampa Police Department] are different from the [Tampa State Attorney’s office]. We’re actors on the same stage, but we have different lines. And they’re usually the ones who are feeding us our lines.

The bulk of our delivery of cocaine cases involve undercover law enforcement officers in poor black communities, just to be frank. So they’re going to all be black defendants. It’s not right to nolle pros all of those, because they committed crimes. So what’s the answer? Send undercover cops to university campuses to catch white people? Maybe. I don’t know.

What we’ve learned

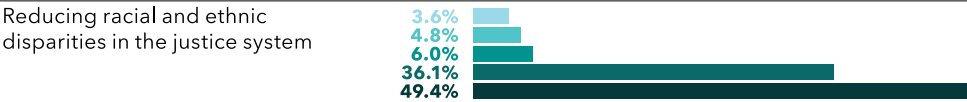
Theme 5.3 Prosecutors do not contribute to racial disparities, and there is little they can do to remedy them

Racial disparities arise before prosecutors have access to a case, and prosecutorial decision making does not exacerbate these disparities. If case outcomes are less favorable for minority defendants, differences are due to the severity of the crime committed, defendants’ criminal histories, defense counsel type, and other legally relevant factors. Moreover, it cannot and should not be the responsibility of the State Attorney’s office to alleviate racial disparities that stem from outside the office. Prosecutors should not consider race when making their own case decisions, and they are not intended to serve as a check for other arms of the criminal justice system. The office is not part of the legislative branch and should not shape criminal justice policy.

Theme 5.4 Prosecutors feel uncomfortable discussing racial disparities

Racial disparity is not a frequent topic of conversation in the office. Many people feel uncomfortable discussing race, though some younger attorneys are more open to talking about it.

This is how 84 prosecutors from Tampa who completed the online survey rated the importance of this relevant objective:



What we’ve been told

There are a lot of factors at play, and they are not within the control of the prosecutor.

I see less frequent offenders who are white than those who are black. There is a disparity in repeat offending.

The longer the criminal history, the harsher the penalties, so I could see how that could be racially disparate.

I think socioeconomic status, ability to hire private counsel who could file more motions to suppress, spend more time and resources getting the prosecutor to give a better offer or a more creative solution. I know the public defender’s office is overburdened, so they don’t have the same time and resources.

If you’ve broken the law, if you’ve committed a crime, you need to be prosecuted for that. If we’re putting race and gender at the forefront, I’m making it into an issue. But when I’m not taking race into consideration, it’s not an issue.

If the police are making inappropriate arrest decisions, that’s also different and should be addressed, but not by our office.

What are we supposed to do? If I can prove the case and it is a lawful arrest, am I supposed to let them go because it’s fairer? It’s not my place to decide who to prosecute and who not to prosecute.

That’s a disparity that gets fixed at home.

The prosecutors’ office cannot help racial disparities. It’s more at the front end where law enforcement is.

It upsets me a little. I don’t look at the racial and ethnic background of the defendants.

It’s not something I hear anyone talking about.

They (prosecutors) don’t understand that you don’t need to be racist to contribute to this problem.

Among my group, the newer younger attorneys, it’s something we talk about... Not everyone in this office is willing to talk about it.

They’re great- I think everyone in this office should do [an implicit bias test]. But there would be pushback in this office. Maybe from some of the older attorneys, the conservative, right-leaning attorneys. It’s still a new concept, one a lot of people don’t know about. Seems like just a lot of kumbaya.

Unimportant
Of little importance
Moderately Important
Important
Very Important



Part 4: Milwaukee Interview and Survey Findings

Foreword from
John Chisholm
District Attorney

The Milwaukee County
District Attorney's Office
Milwaukee, WI

There is general consensus in the country that criminal justice systems need to change. The aspiration that public safety should be achieved in ways that respect the rights and dignity of the people we serve is the driving principle, but all too often we are confronted with a profound and legitimate question—change to what? The adage that you can’t change what you don’t measure is only the first understanding of the complexity in analyzing the discreet actions of police, prosecutors, courts and corrections in a meaningful way. Each system plays an important role in achieving good outcomes for both individuals and communities, but often they operate in the dark both internally and externally.

This effort by the MacArthur Foundation, Florida International University, and Loyola University Chicago offers prosecutors the opportunity to shed light on how they engage in the work and what they could do differently and more effectively based on actual data. The effort starts appropriately with the philosophical maxim to “know thyself”. As a starting point for analyzing and understanding the myriad of decision points prosecutors make on a daily basis, it’s helpful to understand what normative principles motivate prosecutors and how they perceive the work they are doing. I strongly believe that the system needs to radically redesign its front end to allow other vital institutions in the community to share in the work of safety and justice. This can be done by deliberately and structurally including public health, education and neighborhood investment partners to be part of the solution to problems. That requires different thinking from prosecutors, and I think some of that evolving change is reflected in the interviews and surveys conducted to launch this important effort.

We look forward to this partnership and hope it serves other communities around the country.



TOPIC ONE: Perceptions of Prosecutorial Success

What we’ve learned

Theme 1.1 Individual success as a prosecutor and office success are about doing the right thing, but these are hard to define and are based on individual assessment

Most prosecutors define individual success as doing the right thing. However, prosecutors have difficulty defining what that entails – some describe it in terms of their actions as an advocate while others describe it in terms of achieving appropriate outcomes. Other prosecutors are unable to provide specific criteria for measuring success. Overall, prosecutors still have difficulty articulating what success means to them. This is partly because prosecutors have an incredibly complex, multi-faceted job – they have a hard time because there are too many different aspects of their jobs for a simple idea of success.

Theme 1.2 Individual success as a prosecutor is case-specific and involves ensuring an outcome that is right for the victim and the defendant

Several prosecutors also note that success is case-specific. Prosecutors view a case as successfully handled if the views of victims, defendants, and the community are considered and if the outcome meets the needs of or is beneficial to all parties involved. Overall, prosecutors see success as taking a holistic view of a case.

What we’ve been told

When it comes down to it, every single individual referral, individual case, is it's own unique set of circumstances...I'm not sure how you measure success in our work.

I guess the way I evaluate it is, do I feel like I'm doing the right thing, for the right reasons? If I look myself in the mirror and say I did the right thing. Sometimes it's making the tough decision where I'll take a risk on this guy, even if somebody said that's a bad idea.

I guess I'd evaluate my own individual success by, I don't know, this might sound vague, do I feel like I really did the right thing and that I did my best to get what I believed was the most appropriate just outcome.

It really depends on each case – the overall goal is to do justice. So, if I feel I have done justice, then I am being successful. If I feel I did the right thing.

I think that success, from a prosecutor standpoint, as found in just really taking a position that you believe is right and true, and advocating for that position, and being able to leave any meeting, or hearing, or trial knowing that you did your best to advocate.

I think it's probably one of the most difficult aspects of the job...I think a good prosecutor has to walk in with the understanding that they have to be their own measure of their success.

That's hard to say because everything is so segmented in the office. I have no idea what happens in general crimes. I have no idea what happens out in children's court.

People ask us, how are you doing?...They are like, what's your success rate? What do you mean by success? I can give you a number and say 80% of the people complete our DPA's [deferred prosecution agreements]. Then how often do they re-offend within six months or a year, two years, three years?

Well, I don't know, because I don't know that you can evaluate success by conviction numbers, or maybe some people think recidivism numbers is an appropriate way to evaluate it...I don't know if that's an appropriate way, because as much as we talk about changing people's behavior... we can't make them stop committing crimes.

If the victim involved is satisfied with the results and you come to an agreement with the defense, I'd consider that to be a success. That if everyone is on the same page, about the resolution of a case, I consider that to be a form of success.

I think a good prosecutor is somebody who listens to all sides. You, of course, want to listen to officers and victims of crimes, but also the defendants themselves or at least their attorneys and what information they're going to provide you. As best you can, take this inexact science and try and come up with this most reasonable outcome that somewhat benefits everybody including the person you're prosecuting.

I think a good prosecutor is someone who seeks to do the right thing no matter what that is. A good prosecutor should not be driven by guilty verdicts or convictions or statistics, but driven by doing the right thing on every particular case, finding what that measure of justice is on every particular case, the best outcome for a victim, the best outcome for a defendant and the best outcome for our community.

What we’ve learned

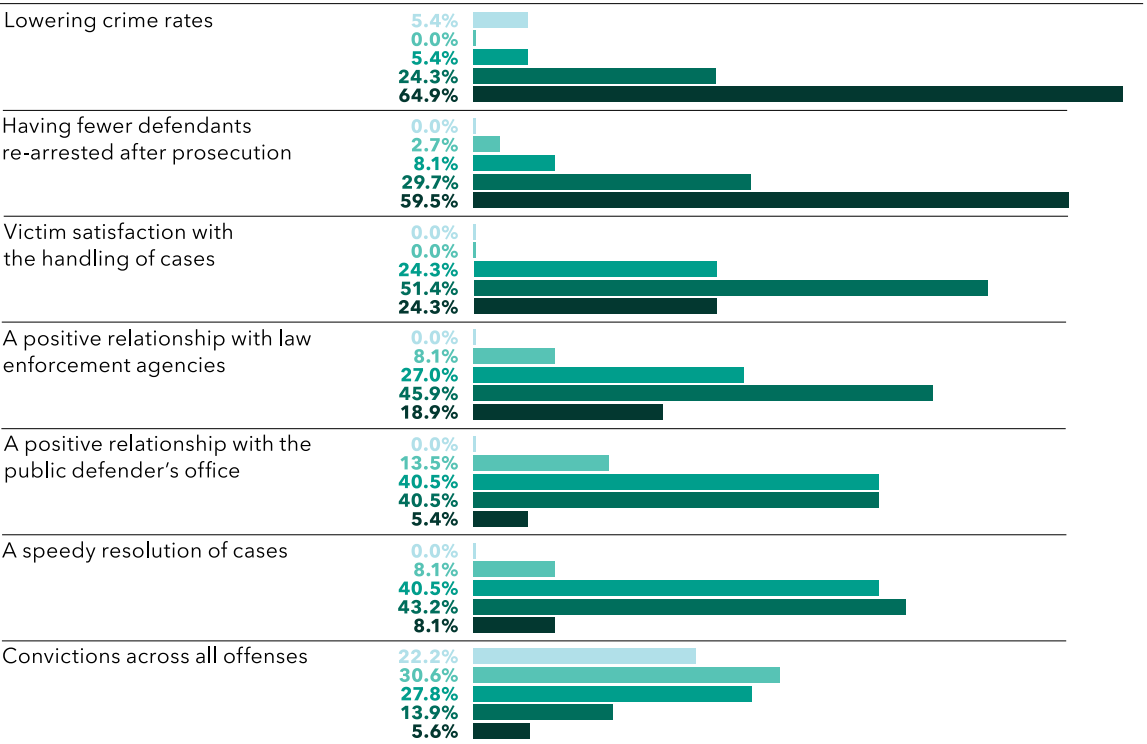
Theme 1.3 Individual success is about appropriate charging decisions and good working relationships

Several prosecutors define individual success in terms of case outcomes, but not in traditional terms of convictions or sentences. Some prosecutors argue that success involves proper charging, with one prosecutor specifically pointing to dismissal rates as a measure of success – high dismissal rates are seen as a mark of poor charging decisions. Other prosecutors also see individual success in terms of how they interact with other people. In some instances, this involves simply being well-prepared before going to court or interacting with others. In other instances, prosecutors seek to maintain relationships and to treat defense attorneys, judges, and defendants with respect.

Theme 1.4 Success is about reducing violent crime and recidivism

Most prosecutors define office success in term of addressing violent crime, reducing crime, and reducing recidivism rates; yet, several are skeptical that the office can have a lasting effect on crime. This is partly because prosecutors are skeptical that sanctions or programs can change people's behavior. As such, although prosecutors generally see the mission of the office as crime reduction, they are not sure that the office can achieve that mission.

This is how 37 prosecutors from Milwaukee who completed the online survey rated the importance of these relevant objectives:



What we’ve been told

The dismissal rate, I think, is super important. I think it's more important than the charging rate or the conviction rate...It measures a bad decision you made at charging.

How well you're analyzing cases and making charging decisions and advocating.

Do good work negotiating with defense attorneys. This means making sure I hear the defense attorney's view of the evidence and of the defendant. Being good at communicating with defense.

Your colleagues are a good measure of your success...and getting good responses from judges, from defense attorneys from the community, at least in how individuals are treated when they encounter the system is probably a really good measure of success.

I think early intervention, I think you would want to look at are people succeeding and has the re-offense rate gone down. On violent offenders...you'd want to look at maybe a conviction rate.

One of the practical applications would be that crimes are punished in a just way that the community would somehow react, and there'd be less crime.

The goal of every prosecutors' office is to get to the point where there is no more need for us, in other words no more crime. So, if we are prosecuting cases against identified high value targets that can reduce crime and improve quality of life, then we are successful.

Success is if I never see the same criminal defendant in the court system again. Getting a person into a program or treatment and getting them out of crime is a success. Or if the person is a seriously dangerous offender, if I can remove them from the community.

Unimportant
Of little importance
Moderately Important
Important
Very Important

TOPIC TWO: Current Priorities and Office Mission

What we've learned

Theme 2.1 The office prioritizes thoughtful decision making at the front-end of the prosecution process

Prosecutors see the mission of the office as focused on early diversion from the system. Specifically, prosecutors describe a focus on accurate screening and charging practices as important to keeping certain cases out of the criminal justice system. They also note the focus on diversion programs, getting defendants help to address underlying problems. Overall, prosecutors describe the mission of the office as focused on looking for alternatives to prosecution at the front end of the prosecution process.

Theme 2.2 The office addresses violent crime with serious sanctions, while addressing non-violent crime with alternatives to prosecution

Most prosecutors describe the mission of the office as focused on distinguishing between violent and non-violent crimes. Prosecutors note that the primary goal of the office is to focus on violent crime and to address it with traditional prosecution and serious sanctions. Prosecutors also note that this is complimented with a focus on non-violent crime and addressing such offenses with non-traditional prosecution, including diversion, treatment, and non-incarcerative sanctions. Overall, prosecutors see the office's clear distinction between the treatment of violent and non-violent crime as a defining feature of the office's mission.

What we've been told

I guess the priorities in our office is to make sure that we charge the cases that we believe fit the law, fit the statutes...then we can charge that case and proceed without infringing on anybody's constitutional rights. That's what I think it also comes to a point of managing your caseload and knowing what you're charging rather than just charging everything.

I know the office's priority will always be to make sure that you're charging the person that you believe committed the crime that you're charging them with.

I will say, of early intervention and trying to find out if the criminal justice system, the lofty goal of justice is better served by means outside the system than within the classic criminal justice criminal courts system.

It doesn't benefit anybody for someone, for example, to be prison bound because they have a significant substance abuse issue or a diagnosed history of mental health issues. We try to divert those cases away from a traditional prosecution model and put those people in touch with resources that are going to address their specific problems.

I feel like prioritizing alternatives to prosecution, being more community oriented, the deferred prosecutions, the community prosecutions.

I think there's a heavy goal of doing diversions, doing deferred prosecutions, trying to keep people out of the criminal justice system and keeping certain labels from them if we can.

I would say the biggest change that I have perceived is trying to find ways to avoid prosecution in more cases and to see what can be done in terms of alternatives to prosecution.

Obviously I think that there's an interest in addressing violent crime. Sort of the flip side there's also an interest and emphasis on trying to reduce incarceration for those crimes or offenses or offenders that don't really warrant incarceration.

I think we're trying to identify the bad people and handle them one way, and everybody else a different way.

One priority of the office is to use traditional criminal justice methods to focus on drug dealers and violent people. The other priority of the office is to focus on treatment and restorative justice.

I think a big goal of this office is to send a message to the community that gun crimes, specifically, are taken seriously and that we are to aggressively prosecute those...And I think the really big overarching goal is to try and use your discretion always to find the most just outcome on a case...whether that's sending it back for a ticket, getting maybe the victim and the defendant in for some counseling, figuring out is a criminal charge needed.

I think the message that we try to deliver is that there's a small group of people that truly present a danger to the community. And so our job on those cases is to protect the community and remove those individuals from the community...I think the vast majority of individuals we encounter have a number of multifaceted issues and needs, and so I think the office has really tried to respond in a way that recognizes that our community is one that needs to prioritize mental health treatment...alcohol and drug assessments and treatment.

What we've learned

Theme 2.3 The office prioritizes reducing crime by changing behavior

Some prosecutors describe the mission of the office not just in terms of seeking alternatives to prosecution, but in terms of changing behaviors. These prosecutors see the primary goal of the office as reducing crime; in turn, all decisions - including the use of incarceration and the use of alternatives - are seen in terms of how those decisions can affect the behavior of defendants to reduce the incidence of crime in the future.

Theme 2.4 The office focuses on issues of disparity, trauma, and restorative justice

Several prosecutors also mention recent additions to the mission of the office. Prosecutors note increasing attention to and efforts to reduce racial disparities in the system. Others see a possible expansion of alternative prosecution strategies for violent offenders and a growing awareness of the need to address trauma in the community. Overall, these mark a clear focus on the needs of the community within the office's mission and in the minds of many prosecutors.

What we've been told

I would say the primary goal is to reduce the rate of crime. That is the priority at all times. Whenever I'm evaluating a case, my question is "how can I make this not happen again?"

So I think our goal is always how can we help them change their behavior, guide them into whatever programs it is so they can lead a more pro-social life...So we try and balance all of that, especially with our victims' needs. If there are immediate safety concerns, how can we address that and make the community a safer place, I think is always our number one priority.

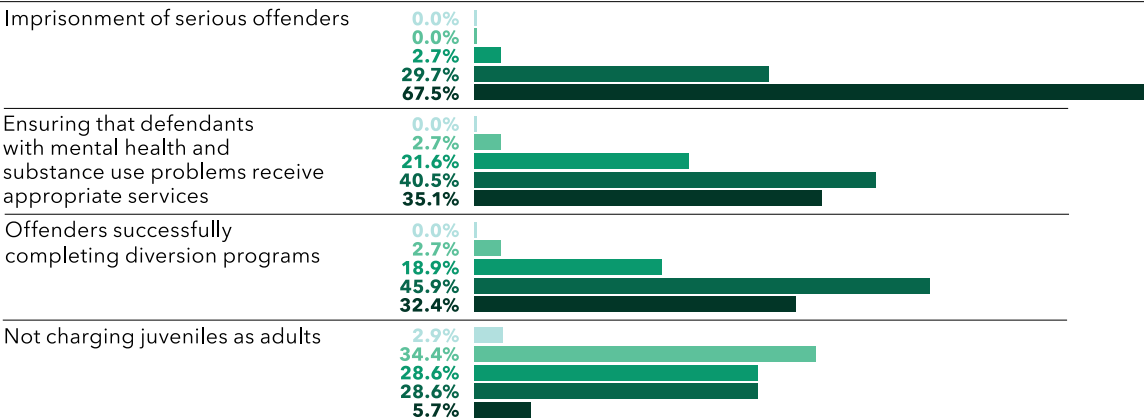
So trying to achieve some modicum of justice, hold the offender accountable, try and affect some behavioral change if that's possible in whoever the guy is, the defendant is, and to assist the victims. I think those are our primary goals.

But in the last few years, there has been a focus to be more cognizant of racial disparity and the use of incarceration. We are cognizant of how we treat young African American men and what we can do to improve how they are treated.

There is also a "small crack in the door" to consider alternative prosecution strategies for violent criminals, including programing and restorative justice approaches to violent offenders.

There is also a focus on understanding trauma of both defendants and victims and the community and how to address trauma based issues. The office is building awareness of this through required training, disseminating readings, community conferences, restorative justice approaches. Everyone we service has experienced trauma - defendants, victims, the community.

This is how 37 prosecutors from Milwaukee who completed the online survey rated the importance of these relevant objectives:



TOPIC THREE: Community Engagement

What we’ve learned

Theme 3.1 Prosecutors compartmentalize the concept of community engagement to specific units within the office

Most prosecutors view community engagement as a preventive crime control and public health initiative performed in collaboration with police. As such, they frame it through the work of the community prosecution unit, and are therefore primed to perceive community engagement as performed by specific prosecutors rather than as an office-wide endeavor. When asked about community engagement, they often refer to the work of this unit. While prosecutors strongly believe in the value of the office engaging the community, few speak about their own professional involvement with, or obligation to, community engagement.

What we’ve been told

Well I think we do some of that through the community prosecution units...I think that was a big part of that whole program was to be in touch with the community and work with them in conjunction in reducing crime, targeting areas where criminal activity was centered. So I think that we’re trying to do that and have been for a long time, with specific community prosecution.

Possibly if there could be better relationships built with police and people in communities, and I think they’re trying to do that. Another big initiative of this office is their community prosecutor program, and I think that’s encouraged. Having a better understanding of the people and the type of crime that’s happening in particular little areas and getting to know community members, getting to know people I think it can help.

It happens in a multitude of ways, and depending on what divisions in the office you’re in, but for example, we have police officers that are collaborating with a prosecutor out in the community to work with the homeless population...so that we’re not punishing these individuals, but trying to find a path for these individuals back into having a residence and having an income and being able to support themselves.

Theme 3.2 Through community outreach and public education, the prosecutors’ office can better educate communities about their work and improve public perceptions

Some prosecutors describe how enhancing public knowledge of prosecutors’ work and decision making—especially in regard to alternatives to incarceration—could be beneficial. Less often, prosecutors speak of public education as a tool to inform citizens about crime and victimization. Overall, about half of the respondents describe benefits of community outreach beyond the community prosecution unit. However, these benefits are still expressed in fairly abstract terms that fall short of implicating individual prosecutors in this work.

I think it can improve the image of the office and the way that the community views what we’re doing...And it’s critically important that as much of the population as possible has a positive perception of what we do because if the public doesn’t cooperate with us it makes it impossible to do our job.

I think there has to be a huge education commitment to educate the public on why community supervision could be better and perhaps make a safer community than just the traditional model of thinking locking people up is what keeps people safe.

What we’ve learned

Theme 3.3 Some prosecutors value community input and believe that the prosecutors’ office could learn from the community as well

Some prosecutors also speak of valuing community partnerships to assist with creative prosecution strategies, whether that be through connecting defendants to community resources, by addressing the root causes of crime, or by reducing reliance on traditional prosecution.

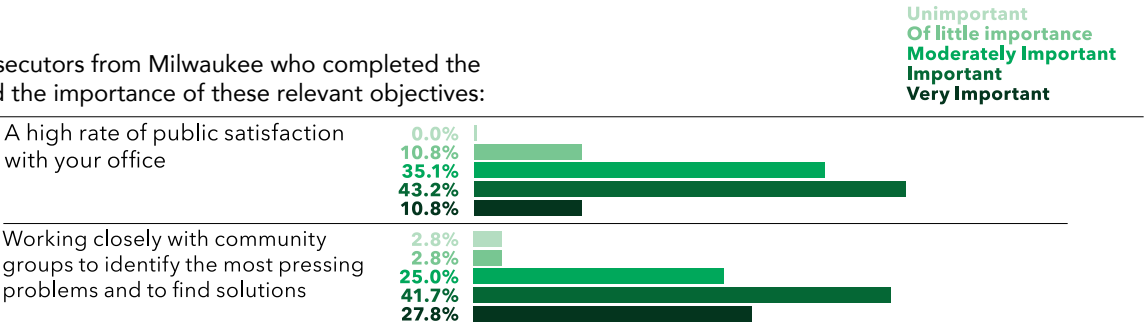
What we’ve been told

Sometimes, we think we’re doing everything right and the community is like, ‘no you’re not. This is a problem.’ We’re like oh, we didn’t realize that. I think it’s kind of a give and take.

Community groups could tell me what resources are available for convicted people...If the community approached me, I’d feel much better about a lighter sentence [in specific cases].

What is the point of this work if we are not listening to and responding to what the community needs?

This is how 37 prosecutors from Milwaukee who completed the online survey rated the importance of these relevant objectives:



TOPIC FOUR: The Use of Incarceration

What we’ve learned

Theme 4.1 Prosecutors focus on limiting the use of incarceration in most cases and believe alternative sanctions can better address the root causes of criminal behavior

Prosecutors are very focused on reducing the use of incarceration in nearly all cases. Many prosecutors focus on diverting cases at the beginning of the prosecution process as a way to avoid the use of prison. Others focus on avoiding prison sentences as a sanction for most offenses and see probation as the appropriate sentence in many cases. Overall, prosecutors prioritize addressing the root causes of criminal behavior – substance use, mental health issues – and seek out alternative sentences, even for some violent offenders.

What we’ve been told

There’s definitely an overall message communicated that we don’t need to be incarcerating people who don’t need to be incarcerated. And that, if there’s a better and more productive solution to address the fundamental root problem, that you can use, then you should use that solution first.

I just finished a trial yesterday, first time offender, it was a bad one...And for most first timers I try to go straight to probation, but it also involves violence, although it wasn’t charged, and a gun case, for which the office recommends incarceration. So I’m rattling that around in my head, and I know some people down the hall were like just ask for the max...I don’t know about that.

I set goals for myself, first time offenders, I try to keep out of incarceration whenever possible. People that do not have violent offenses necessarily, I try whenever possible to fast track out of the criminal justice system into like DPAs [deferred prosecution agreements] or tickets if they’re appropriate for those or for lighter probationary sentences.

We all have an understanding down here that those are the people that we’re going to give a diversion to, give them the treatment, so that they can avoid coming back into the system because usually their contact with the criminal system is guided by their addiction.

Identifying individuals that have an underlying condition that’s causing them to do these things. So either a mental health issue, or a substance abuse issue. Identifying those people and providing them with the resources to help prevent them from engaging in this behavior in the future. I would say is something that we all are pushed to try to do on a daily basis when the case is appropriate. You gotta take community safety into account first and foremost. That’s the whole point of the job. But once you’ve determined that this person could be a realistic and reasonable risk in the community, then what are you doing to avoid unnecessary incarceration?

The use of DPAs [deferred prosecution agreements] is a major way we do this where we suspend proceedings and a person meets certain conditions; if the person follows conditions, the case is dismissed. Probation is also always the first option in a case – we try to see if probation is an appropriate option. But if we want to prevent incarceration, we need to address the root causes of crime.

And I think that even for people with prior records, if they’re doing things that are driven by their addiction and they’re willing to cooperate with a diversion program, I think most of us have gotten pretty comfortable now giving them another chance with some kind of a diversion, even if it’s a deferred prosecution agreement, and instead of just convicting everybody and seeing if they end up in prison or not, try to give them a chance, even if they do have a prior record.

What we’ve learned

Theme 4.2 Prosecutors also see the need to reduce the collateral consequences of incarceration and a criminal conviction

Several prosecutors maintain that the focus should extend beyond simply reducing the use of incarceration. Rather, these respondents argue that prosecutors should seek to reduce the collateral consequences of prosecution. This includes both reducing the stigma of a criminal charge and reducing the impact of incarceration by seeking shorter sentences or local sentences. Overall, these prosecutors see their role as helping people avoid the long term-effects of conviction and sentences.

Theme 4.3 Prosecutors focus on reducing pre-trial detention, and point to the recent adoption of risk assessment tools to reduce the use of jail

When asked about the use of incarceration, most prosecutors focus on reducing the use of prison post-conviction. However, a few prosecutors note the need to reduce the use of incarceration for pre-trial detainees. Overall, these prosecutors point to offices’ support of risk assessment tools as a local mechanism to reduce pre-trial jail populations. Some also point to recent efforts to expedite pre-trial processes as a further way to reduce the use of pre-trial detention.

What we’ve been told

I think that’s a huge thing to reduce incarceration and not just incarceration...For some people it’s just the stigma of having a criminal charge on their record that anybody could look up. I mean, would I rather spend 10 days in jail than be on a computer somewhere where somebody can say, “Oh he was charged and convicted of this.”

I would say I think about it more and more in the past two years than I did at the start...If I need incarceration at all, can I at least keep the person in the community where they can be out to go to work or to take care of their own kids? Does that keep the family structure together? Does that provide this person with some hope that things will get better after they serve their sentence...I would say Milwaukee County is doing a good job in at least making sure it’s in our minds each day about what recommending any time in jail or certainly any time in prison really means and the collateral effect that has.

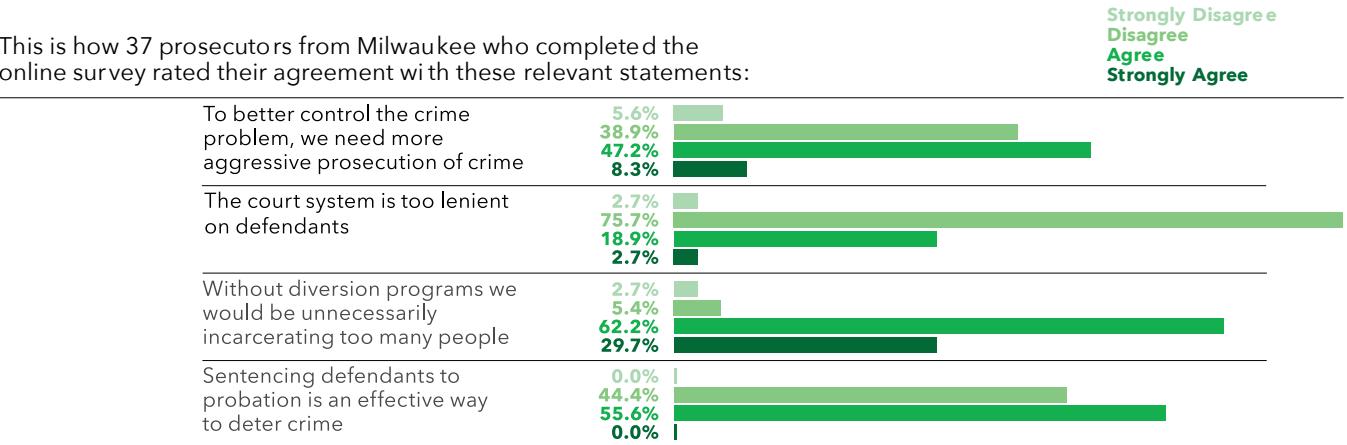
Stop recommending such high incarceration at sentencing... Judges don’t often stray from a prosecutors’ recommendation... more times than not the judge is using the prosecution’s recommendation as a serious gauge of what to sentence somebody to...Start recommending less jail time...I’m like, yeah, they need to be punished but can we punish them with a shorter prison term.

I’d say there’s been an emphasis, especially in the last couple of years, on decreasing the amount of incarceration, whether it’s being held at pre-trial or it’s incarceration as a sentence.

We have the PSA [Public Safety Assessment] now. We’re staffed seven days a week, so that obviously will help with incarceration, because we can just review cases faster. They’re implementing some e-referral systems which in theory will make things move faster and then get people who are lower level offenders out of custody quicker.

And then also we do that a lot with our bail entries, either kind of up to speed on that whole thing, but how people are determined to be bail risks and whether this person truly needs to be sitting incarcerated prior to adjudication of their case or not.

I think one way that our office is doing that is bail reform. We have really made a commitment to not keeping individuals held unnecessarily on cash bail in the Milwaukee County Jail. We’ve made a commitment to, in most cases, using a risk assessment tool that really assesses an individual’s level of risk on, number one, returning to court, and number two, committing more crimes.



TOPIC FIVE: Racial Disparities in the Criminal Justice System

What we’ve learned

Theme 5.1 Racial disparity in the criminal justice system exists because of historical social inequalities that lead to disparate rates of offending

Overall, prosecutors acknowledge that a history of racial discrimination in the jurisdiction contributed to disparities in the criminal justice system. They describe how systemic social issues, such as poverty, segregation, and poor educational systems, are the source of these disparities. Several reference information they acquired through a training on race provided by the office.

Theme 5.2 Racial disparities exist, but racial bias in criminal justice system processing does not. Focusing on the prosecutors’ office is not the answer

About half of the prosecutors do not believe that prosecutors and other criminal justice system professionals—with the possible exception of police—contribute to racial disparities. Many of them describe their role as reactive; in order to be fair to all defendants and victims, they must respond to the cases that they receive without regard to race. Some express frustration and fatigue about discussions of racial bias in the criminal justice system and feel that this focus is misplaced.

What we’ve been told

Milwaukee has a history of segregation and it has led to there being higher crime areas and poverty...and that unfortunately is often minorities in our community...and then there’s crime as a result of that. So we get a disproportionate number of referrals for people, maybe people of color because in this community there’s a lot of people in poverty who happen to be people of color.

Without opportunities, people still need to survive, so some of them turn to crime.

The vast majority of criminal defendants are African American. Vast majority. And we’re an incredibly segregated city. And in African American communities and some other communities that are, we’ll say non-white, poverty and the issues that go with that are much more prevalent than say, in Whitefish Bay, or Shorewood or Wauwatosa.

In reactive units, we just deal with what is coming in...the racial disparity is a reflection of these historical patterns.

Viewed from the perspective of the Milwaukee county district attorney’s office I would say that we don’t pick the people that are referred to us. We try to make decisions as to what happens to those people without respect to race or creed. Of course, I’m very sensitive to any suggestion that there is a problem, but I don’t necessarily see one myself at this point.

I would spend much more time looking at how to get people jobs, how to get a better education, how to have them raised in a home without violence. If those things happened, the stuff on our end would become much, much more of a nonissue than us getting together and talking about implicit bias in prosecutors.

I’m not saying we don’t have a problem. It’s terrible...but maybe the problem is more with the families, and the school system, and the education, and the opportunities, and the neighborhoods that they’re growing up in.

What we’ve learned

Theme 5.3 Prosecutors can contribute to racial disparities and should consider what they can do to help alleviate them

The other half of respondents believe that prosecutors could contribute to racial disparities, and conversely, could contribute to alleviating them. However, they are not always sure what to do about it. Some ideas included: hiring more minority prosecutors, taking defendants’ backgrounds into account, building relationships with the community, or educating prosecutors and other criminal justice system professionals about implicit bias. Some of these prosecutors express frustration about not knowing how to approach the problem. Nevertheless, they value discussions about racial bias in the criminal justice system, and they express a desire to attempt to address it.

What we’ve been told

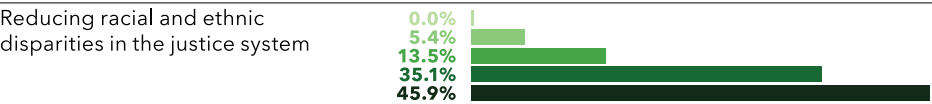
We certainly see a lot of people who their parents just weren’t very good examples for them or men, for example, whose fathers were in prison or killed or just not around...I think that’s important to know because I don’t think I can evaluate that person the same as I would somebody from a middle class home with both parents in it who has chosen to go out and engage in similar type crimes. I think those are different circumstances.

I see a difference in how people are interacted with. Whether it’s a victim or a defendant, interactions with someone based on their race. What’s offered as an offer from the prosecution side or if something gets charged from the prosecution side, to what kind of sentence ends up happening from the judge, to defense attorneys and how hard they advocate for their clients. I have seen a difference. Anytime you try to point it out, people will have a million and one reasons why it’s not about race it’s about this, this, this, and the other.

Most of my [defendants and victims] are minorities, so for sure that exists, and I think the answer as to why is because it exists. It’s like a cycle...As far as why that started, that probably goes way back...But how do you fix that?...If you treat everyone the same, this guy’s a shooter, and if you ignore the fact that he never really had a chance, then you’re just perpetuating it.

[The race training] has opened up discussions that I find to be good discussions that make all of us step back and think about what our implicit bias is and how do those affect us.

This is how 37 prosecutors from Milwaukee who completed the online survey rated the importance of this relevant objective:



Unimportant
Of little importance
Moderately Important
Important
Very Important



Discussion

What Success Means and Why Thinking About Success is Important

We started this project by asking prosecutors what success meant to them. We did so because we wanted line prosecutors to play an active role in shaping our project. We also wanted to know how they think about their jobs, and to what extent their views vary among themselves and align with the vision of their elected leaders. Some of the responses were quite predictable. A number of prosecutors talked about the importance of low crime rates, community safety, and conviction rates in discussing office success; some even mentioned maintaining high staff morale. Consistent decisions, objective evaluation of the facts in each case, and trial experience were also high on the list of their definitions of individual success; a few also mentioned producing high-quality paperwork, meeting deadlines, and being respected by judges, defense attorneys, and other prosecutors.

More surprising was that most prosecutors still had difficulty articulating what success meant to them. This is partly because prosecutors have an incredibly complex, multifaceted job. As a result, many respondents defined success in multiple ways that were often contradictory. Most have not thought about this in a while.

Line prosecutors often understand their primary function as justly and expeditiously responding to the constant flood of cases onto their desks. This does require survival skills. According to the Bureau of Justice Statistics, in a given year, the average felony prosecutor disposes of 121 cases (Prosecution in State Courts, 2007). And as the tide gets higher, expeditiousness may become more important than other goals. Though attorneys often aspire to become prosecutors because of their commitment to the pursuit of justice—and many of them enthusiastically told us so—after joining the office they find themselves acting as assembly line workers. Given this reality, very few may find it possible to take a step back from individual cases and look at the bigger picture. In some instances, prosecutors also questioned whether it is their job to think about what success means for a prosecutor's office.

Evaluating success without understanding how prosecutors' decisions impact the community is problematic. Therefore, prosecutors should use all the tools in their toolbox to maximize their positive impact. One such tool is community engagement, which can help build legitimacy in the justice system, encourage crime reporting and cooperation, and target and solve local problems. Data can be another powerful tool. Numbers can tell the office and communities where, for example, reform strategies have worked or racial and ethnic disparities exist. They can also help prosecutors distinguish dangerous offenders who need to be incarcerated from those who can safely be diverted. These tools are increasingly being emphasized by elected prosecutors, including our project partners.

Recent prosecutorial elections across the country have provided a powerful indication of marked changes in what people want from the criminal justice system and their elected leaders. We are seeing dozens of prosecutorial offices that have been contested, and often won, by reform-minded thinkers. However, for reforms to take hold, a wider appreciation and appetite for improvement is needed at all levels of the office. While it is only state and district attorneys who are directly elected by the public, the responsibility for success falls equally on the shoulders of all prosecutors.

What are Prosecutorial Priorities and How Well the Message Trickles Down

Priorities should define success. If getting convictions is the priority, then a high conviction rate is an appropriate measure of success. If victim satisfaction is the priority, then offices should measure their success based on victim satisfaction surveys. And if reducing recidivism is the priority, then maybe prosecutorial success lies in identifying the right defendants for the right diversion programs.

Prosecutors told us that their offices have several different priorities. They strongly believe that they should prioritize cases with the greatest public safety return, which requires identifying, convicting, and incarcerating violent offenders. Reducing recidivism was also mentioned repeatedly. While incarceration can still be a powerful tool to deal with repeat violent offending, many prosecutors argue in favor of using treatment-based alternatives to incarceration. They very much want to know which diversion programs are particularly effective.

“Doing the right thing” or “taking a balanced approach” to decision making is another dominant priority. Yet this unifying mantra may actually disguise the differences between two fairly opposing philosophies: applying the law indiscriminately versus using discretion to tailor decisions to each case. For prosecutors who subscribe to the former philosophy, there is a clear distinction between the legislative and executive branches of government, and prosecutors are part of the executive, so determining what behaviors are crimes or setting sentencing policies is overstepping their bounds. Prosecutors on the other side of the continuum believe that they are granted ample discretion to decide which cases to prosecute, which offenders to divert, and which sentences to pursue. For this group, pursuing every case with equal zeal is unrealistic or does not advance justice, so discretion allows them to prioritize some cases over others. Falling in between these two philosophies, there are many prosecutors who are amenable to office reforms but still hold some traditional views.

When newly elected prosecutors take office, they quickly realize that getting everyone on the same page is not easy. Setting new priorities does not necessarily mean the message will automatically trickle down. This may be a communication problem, a buy-in problem, or both. Prosecutors in all four partner offices told us that messages from the executive team do not always make it down to line prosecutors. Specifically, when the elected leader’s vision is intended to spread through the office from top to bottom, it sometimes becomes trapped in middle management. Mid-level managers who do not support their elected leader’s mission do not always communicate office priorities to their line staff. As a result, hiring junior prosecutors, many of whom may have joined the office because they believe in the elected’s vision, will not guarantee sustainable reforms. These new hires will fall back on conventional ways of doing business if their direct supervisors continue to evaluate them primarily on trial experience and conviction rates.

What is The Meaning of Community Engagement for Prosecutors

When it comes to community engagement, there are things that prosecutors agree on and things that they do not. There is widespread acknowledgement of a decades-long disconnect between communities and prosecutors’ offices. However, not every community is viewed as equally distant. Some prosecutors see themselves going back to the communities that they “belong to” to educate residents about the criminal justice system and perhaps even coach a youth soccer team. But many prosecutors—regardless of race—have difficulty imagining themselves spending time in minority neighborhoods. They acknowledge that they do not look the same, they do not speak the same language, and they have nothing to offer there. What those communities need most is not what prosecutors can provide: education, employment opportunities, and family support. This sentiment sometimes even cuts across racial lines. As one prosecutor told us, there is a difference between being African American and being black, suggesting that not all African American prosecutors possess the community ties and knowledge they need to engage with all local residents.

What prosecutors do not agree on is the value of community engagement. Several say it is extremely important, because they cannot do their job without community support and buy-in. To overcome the perceived disconnect between communities and prosecutors’ offices, several prosecutors told us that community engagement will help humanize the prosecutor’s office and help the public see that prosecutors are “just like them.”

Only a handful of prosecutors believe community engagement will help to educate prosecutors about what problems are important to the public, so that the office can better respond to community needs and priorities. Most prosecutors embrace their elected leaders’ commitment to community engagement, even if they are not always sure how to realize that commitment. Indeed, they were unclear about how to incorporate community engagement into their work or said that they did not have time for it. More importantly, perhaps, was that some prosecutors compartmentalized community engagement, seeing it as the work of specialized units or specific prosecutors. A couple went so far as to say it is a waste of time. These skeptics believe that it does not serve a meaningful public safety purpose. It does, though, help with the face recognition that elected prosecutors count on for re-election.

Here is why community engagement should matter. It serves communities by building greater confidence and efficacy in the criminal justice system. Empowered communities have a stronger voice and are better able to shape government responses to their needs. They can also hold prosecutorial offices accountable for ensuring safety and equitable treatment of defendants. Community engagement serves victims by improving the likelihood of crime reporting that triggers service delivery and greater protection from future harm. It serves prosecutors by securing convictions for dangerous offenders through greater witness cooperation. Finally, if engagement ultimately helps bring crime rates down, it also serves taxpayers by allowing them to reallocate their dollars to areas where they are needed more.

What Prosecutors Think About Racial Disparity

We asked prosecutors what they feel when they hear “racial disparities in the criminal justice system”. The combination of their words, their gestures, and their facial expressions told an important story. Generally, there was overwhelming discomfort, whether they thought about racial disparities in the criminal justice system or in prosecutorial decision making. However, the level of discomfort varied across jurisdictions. Our sites have had different levels of exposure to racial and ethnic disparity discourse, and the reactions to our questions ranged from allergic (“It sounds accusatory and makes me sick to my stomach.”) to jaded (“Ok we get it, it’s a problem.”). Either way, many prosecutors did not see how their decision making can contribute to racial disparities. Nor did they see how they could ameliorate the disparities they inherit in their cases.

Disparities start with differential offending, prosecutors told us without hesitation. According to many of them, impoverished communities of color have long been the epicenter of crime and violence. What causes this concentration is a combination of children being raised without supervision in broken families, failed schools that are preoccupied with maintaining order rather than teaching, and limited access to stable, well-paying jobs. Prosecutors told us that over the years, these social problems have produced and perpetuated crime and disorder, and violence has become an integral part of the “culture”.

The fact that there are disproportionately more people of color behind bars is undeniable, but according to many prosecutors, a fairly simple formula explains why this happens. Minority neighborhoods have more crime, which results in greater police presence, which results in more arrests, which results in more cases filed with defendants from those neighborhoods. Police are tasked with dealing with crime, so they naturally gravitate toward the areas that have more of it. Ultimately, then, disparities are due to differences in criminal behavior and enforcement, not prosecutors’ decisions.

Most prosecutors do not believe it is their responsibility to address disparities they inherit. In fact, most believe that there is not much they can do to fix problems that they did not create. “We don’t see the defendant’s race when we get a file from the police,” prosecutors routinely told us. To them, this race-blind approach makes it impossible to make biased decisions. As a result, no matter what racial disparity—warranted or unwarranted—may be uncovered, it can always be argued that prosecutors themselves could not have contributed to it.

Very few prosecutors told us that prosecutorial decisions may be contributing to racial disparities. Among those who did express this concern, it was not clear to them how this happens and what to do about it. Some thought that hiring more minority prosecutors, building relationships with the community, or educating prosecutors about implicit bias could help. Others told us that taking defendants’ backgrounds into account in decision making could reduce disparities.

Overall, there is little realization that disparities in prosecution may accumulate without any intentional or implicit bias from prosecutors. Prosecutors follow numerous laws, policies, and practices, many dating back decades. Some of these may contribute to disparities. The infamous crack versus powder cocaine sentencing law disparity is a powerful example. Risk assessment tools, the proliferation of which we have seen in recent years, are another example of how policies may trigger unintended racial disparity. When these tools are based on prior arrests, some of which may be the result of biased arrest practices, prosecutors can introduce disparity without even being aware of it. Understanding how disparity can metastasize in the criminal justice system helps prosecutors challenge those practices and implement appropriate reforms.

What is Data and Why It Should Matter Office-Wide, From the Elected to the Line Prosecutor

When we ask line prosecutors what kind of data would help them do their jobs better, they typically give one of two answers. Some bring up case “stats”, pieces of information like an offender’s rap sheet or details of the offense. This case-specific kind of data helps them decide what the appropriate disposition is for each case they process. Alternatively, others say that they do not use data, because ‘data’ means summary statistics, and prosecutors’ decisions should be driven by the facts in each case rather than by cold, hard numbers. Each case is unique, as most prosecutors tell us, so generalizing across cases does not make any sense. In fact, many prosecutors are convinced that their decisions will be biased if they base them on ‘data’ rather than individual case facts.

Prosecutors are not evaluated on the cumulative impact of their decisions, and they do not see much value in looking at trends in their own and their offices’ decision outcomes. What many of them do see, unfortunately, is potential for data to be used against them. Case trends can be used inappropriately to label offices and individual prosecutors as racist, or punitive, or even lazy. Whether these labels are fair or not, you can expect an adverse reaction from prosecutors. Who would want to be singled out for worsening racial disparities, or putting too many people in prison, or not moving cases along fast enough? It does not help that we still do not have many examples nationally where data has made prosecutors’ daily lives easier or their decisions better.

This project is premised on the idea that data can and should be helpful for criminal justice reform. It can meaningfully inform office-wide policy as well as individual case decisions. Knowing that the dismissal rate for cases with minority victims is increasing over time can help prosecutors develop targeted strategies for initial and follow-up interactions with, for example, LGBTQ and religious minority victims. Distinguishing between prior custodial sentences imposed post-conviction and prior sentences of time served can help prosecutors identify which defendants should receive custodial plea offers in subsequent cases. Recognizing which diversion programs are most effective in reducing recidivism can help offices choose which programs to offer, and to which offenders. Using such data does not replace the consideration of individual facts in each case, but it provides additional tools for pursuing justice while maximizing benefits for the community.

Collecting data is not just a right anymore, it is a responsibility. Professionals, from doctors to educators, are being evaluated based on their impact on those they serve. Prosecutors are no longer any different. State and district attorney candidates make promises during their campaigns, and the communities that vote them into office expect to see that those campaign promises are kept. Data allows prosecutors’ offices to evaluate their own impact and then report back to their communities. At the same time, it is unrealistic to expect that offices without experience collecting and using data to guide their decisions will develop that capacity overnight.

While we are talking about responsibilities, we want to think about how research and academic communities can provide more meaningful assistance to their local state and district attorney’s offices. Researcher-prosecutor partnerships are still disappointingly rare, but they are becoming possible. The experiences we have had show clear benefits for both ends of this partnership.



Appendices

Appendix 1: Methodological Note

Qualitative Interviews

The primary source of data for this report is a series of interviews conducted in 2018. The Jacksonville, Tampa, and Milwaukee offices provided the researchers with a complete list of prosecutors in the offices. In Jacksonville and Tampa, prosecutors were stratified into four groups based on seniority and participants were randomly selected from each stratum, to ensure that prosecutors at all levels of the office would be represented in the sample. In Milwaukee, prosecutors were randomly selected from the full list. The Cook County (Chicago) office provided the researchers with a list of 21 prosecutors, so no random selection was possible. Selected prosecutors were sent an individualized email inviting them to participate in a formal interview and offering them time slots. One follow-up email was sent to those who did not respond. Prosecutors who did not respond to the follow-up email, declined to participate, or were unavailable were not contacted again. For all sites except Cook County (Chicago), an alternate was then emailed using the same email protocol. These procedures yielded the following response rates:

- Jacksonville:** 25 interviews completed out of 38 prosecutors invited to participate (66%)
- Cook County:** 14 interviews completed out of 21 prosecutors invited to participate (67%, see note above)
- Tampa:** 22 interviews completed out of 38 prosecutors invited to participate (58%)
- Milwaukee:** 17 interviews completed out of 85 prosecutors invited to participate (20%)

Interviews were conducted in-person in private meeting spaces at the offices or via phone. Participants were first asked to read a consent statement detailing the purpose of the interview. The statement made clear that participation was voluntary, participants could decline to answer any question or stop the interview at any time, participants’ identities would be kept confidential, and no quotes used in any report would be associated with any individual. Individuals were then asked to provide their signature acknowledging their consent to participate.

The Florida International University research team conducted and analyzed the interviews in Jacksonville and Tampa; the Loyola University Chicago team did so in Cook County (Chicago) and Milwaukee. Interview questions guided discussions in four areas: office goals and priorities, views on prosecutorial success, opportunities for office and criminal justice reform, and tracking office success. The full interview instrument is provided as Appendix 2. Interview notes were first read by research teams in their entirety. Team members then separately identified all themes mentioned in responses and organized these themes by question. In instances where there was initial disagreement about whether a particular theme was present or appropriate, interview notes were revisited until the team reached a consensus.

Online Surveys

Results from an online survey completed in 2018 by prosecutors in the four partner offices supplement the interview findings. Lists of all prosecutors in each office (excluding appellate, civil, and non-trial prosecutors) were provided, and an initial email invitation was sent to all individuals included on the list. The email included a web link to the online survey questionnaire, hosted on Florida International University’s Qualtrics and Loyola University Chicago’s Opinio platforms. Those who chose to complete the survey questionnaire by accessing the web link were asked to first read a consent statement detailing the purpose of the questionnaire. The consent statement made clear that participation was voluntary, information collected would be kept confidential, and all reports based on the data would be presented in the aggregate without associating any responses to individual prosecutors. After reading the statement, individuals were asked to provide a digital signature acknowledging their consent. In an effort to increase the participation rate and maximize the utility of the data being collected, three follow-up emails were sent to prosecutors with the web link to the survey. These procedures yielded the following:

- Jacksonville:** 67 surveys completed out of 109 prosecutors invited to participate (62%)
- Cook County:** 128 surveys completed out of 470 prosecutors invited to participate (27%)
- Tampa:** 84 surveys completed out of 128 prosecutors invited to participate (66%)
- Milwaukee:** 37 surveys completed out of 93 prosecutors invited to participate (40%)

Questionnaire items are presented in a multiple-choice format and address prosecutorial priorities and criminal justice policies. Items pertaining to priorities are rated on a five-point scale ranging from “Unimportant” to “Very Important”. Items pertaining to policies are rated on a four-point scale ranging from “Strongly Disagree” to “Strongly Agree”. The full survey instrument is provided as Appendix 3.

Appendix 2: Qualitative Interview Instrument

Opening Question:

1. Why did you decide to become a prosecutor? Where do you see your career going from here?

SECTION 1: Goals and Priorities for the Office

2. In your own words, what do you see as the current priorities in your office?

Probes:

- a) How are these priorities communicated to you and your colleagues?
- b) To what extent are priorities set by administration, and to what extent are they set by individual prosecutors or units?
- c) Do you understand the priorities?
- d) Do the priorities reflect your priorities?

3. In your view, have there been any changes in terms of how the office views its mission since the new administration took over?

Probe:

If supervisor, how do you communicate priorities set by management to your staff?

4. What criteria would you use to assess the overall success of your office?

5. What changes do you think would increase your office’s overall success?
(This can be anything including training, new guidelines, caseload management, technology upgrades, new diversion programs, etc.)

5. (continued)

SECTION 2: Perceptions of What Constitutes a Good Prosecutor

6. How do you judge your own success as a prosecutor?

Probe:

How does the office evaluate your success as a prosecutor?

7. To what extent is your view about what makes a good prosecutor shared by other line prosecutors in your office?

8. What changes do you think would increase your own ability to be more effective as a prosecutor?

SECTION 3: Suggestions for Reform (Office-wide)

9. What do you see as some areas of reform necessary to promote the mission of your office?

10. Do you think your office seeks jail/prison sentences more or less often than it should?

11. In what ways can working with community groups help improve the work of your office?

12. Are there specific changes in existing law that you think should be made to increase or reduce the use of incarceration?

13. Are there data reports that you wish you could have on specific things that would help you to be more efficient and fairer in your job?

Probe:

When was the last time you thought to yourself, “I wish I had [this] data or [this] piece of information?

14. What is your view of racial/ethnic disparities in the CJ system?
- a. Can you describe them and why do you think they exist?

b. What efforts is your office making, if any, to reduce racial and ethnic disparities in the justice system?

c. Are there specific changes in the existing law or office policies that you think should be made to reduce these disparities?

d. Is there anything you think lawmakers can do to reduce these disparities?

SECTION 4: Suggestions of What to Measure with Performance Indicators

As you may know, we are developing indicators to measure the performance of prosecutors’ offices over time. We wanted to get a sense of what you think should be measured under the following broad categories.

15. Community safety and wellbeing – what are some specific ways we can think about and measure “community safety and wellbeing” as it pertains to your office’s work? (e.g., successful completion of diversion programs)

16. Capacity & Efficiency – what are some specific ways we can think about and measure “capacity & efficiency” as it pertains to your office’s work? (e.g., timeliness of case processing)

17. Fairness & Impartiality – what are some specific ways we can think about and measure “fairness/impartiality” as it pertains to your office’s work? (e.g., differences in custodial sentences for similar offenders)

17. (continued)

SECTION 5: Prosecutorial Characteristics

18. Race – what is your race (let them self-identify)?

☐ Black

☐ White

☐ Asian

☐ Other

19. Ethnicity – what is your ethnicity (let them self-identify)?

☐ Hispanic

☐ Non-Hispanic

☐ Other

20. Age – what year were you born?

Include number

21. Unit identity – in what unit/division/bureau of your office are you currently assigned?

22. Experience level as a prosecutor – how many years of prosecutorial experience do you have?

Include number

23. Experience level as an attorney – how many years of overall experience do you have as an attorney?

Include number

24. Prior experience as a defense attorney – have you ever worked as a defense attorney?

☐ YES

☐ NO

25. Prior experience as a law enforcement officer- have you ever worked as a law enforcement officer?

☐ YES

☐ NO

26. Caseload – how many open criminal cases do you currently have?

Include number

Appendix 3: Online Survey Instrument

SECTION 1: Your views of prosecutorial priorities

Below are statements about possible prosecutorial priorities. For each statement choose the number that best corresponds with how important each priority is to you as a prosecutor.

	1 = Unimportant	2 = Of little importance	3 = Moderately important	4 = Important	5 = Very important
1	Using data to guide decision making for your cases				1 2 3 4 5
2	A positive relationship with law enforcement agencies				1 2 3 4 5
3	Having fewer defendants re-arrested after prosecution				1 2 3 4 5
4	A high rate of public satisfaction with your office				1 2 3 4 5
5	Not charging juveniles as adults				1 2 3 4 5
6	Imprisonment of serious offenders				1 2 3 4 5
7	Low declination rates at case screening/filing				1 2 3 4 5
8	Low dismissal rates after charges are filed				1 2 3 4 5
9	Ensuring the integrity of convictions				1 2 3 4 5
10	Offenders successfully completing diversion programs				1 2 3 4 5
11	Guilty pleas to the most serious charges filed				1 2 3 4 5
12	A speedy resolution of cases				1 2 3 4 5
13	Avoiding unnecessary pretrial detention for indigent defendants who cannot post bail				1 2 3 4 5
14	Prosecutors winning appeals (appellate court upholding conviction and/or sentence)				1 2 3 4 5
15	A positive relationship with the public defender’s office				1 2 3 4 5
16	Victim satisfaction with the handling of cases				1 2 3 4 5
17	Reducing racial and ethnic disparities in the justice system				1 2 3 4 5
18	Convictions across all offenses				1 2 3 4 5
19	Identifying defendants with mental health and substance use problems				1 2 3 4 5
20	Ensuring that defendants with mental health and substance use problems receive appropriate services				1 2 3 4 5
21	Making sure that the justice system connects homeless defendants to appropriate services				1 2 3 4 5
22	Working closely with community groups to identify the most pressing problems and to find solutions				1 2 3 4 5
23	The use of diversion for eligible defendants				1 2 3 4 5
24	Lowering crime rates				1 2 3 4 5

SECTION 2: Your views of work and well-being

The following nine statements are about how you feel at work. Please read each statement carefully and decide if you ever feel this way about your job. If you have never had this feeling, select “0” (zero). If you have had this feeling, indicate how often you felt it by selecting the number (from 1 to 6) that best describes how frequently you feel that way.

	0 = Never (never)	1 = Almost Never (a few times a year or less)	2 = Rarely (once a month)	3 = Sometimes (a few times a month)	4 = Often (once a week)	5 = Very often (a few times a week)	6 = Always (every day)
25	At my job, I feel bursting with energy.						0 1 2 3 4 5 6
26	At my job, I feel strong and vigorous.						0 1 2 3 4 5 6
27	I am enthusiastic about my job.						0 1 2 3 4 5 6
28	My job inspires me.						0 1 2 3 4 5 6
29	When I get up in the morning, I feel like going to work.						0 1 2 3 4 5 6
30	I feel happy when I am working intensely.						0 1 2 3 4 5 6
31	I am proud of the work that I do.						0 1 2 3 4 5 6
32	I am immersed in my work.						0 1 2 3 4 5 6
33	I get carried away when I am working.						0 1 2 3 4 5 6

SECTION 3: Your views of the treatment of defendants by the criminal justice system

Below are statements about how the justice system treats defendants. For each statement, indicate whether you strongly disagree, disagree, agree, or strongly agree by clicking the corresponding number.

	1 = Strongly disagree	2 = Disagree	3 = Agree	4 = Strongly agree
34	To better control the crime problem, we need more aggressive prosecution of crime.			1 2 3 4
35	Defendants’ history of mental health should be considered when making charging decisions			1 2 3 4
36	The court system is too lenient on defendants			1 2 3 4
37	Sentencing defendants to probation is an effective way to deter future crime.			1 2 3 4
38	A defendant who is convicted of physically or sexually abusing children should never be released from prison.			1 2 3 4
39	Without diversion programs we would be unnecessarily incarcerating too many people			1 2 3 4
40	Plea bargaining is just another way for defendants to avoid the punishment they deserve.			1 2 3 4
41	Our court system over-relies on pretrial detention.			1 2 3 4
42	Prosecutors are too soft on defendants with a prior conviction.			1 2 3 4

Section 4: Your background information

The following questions are about you and your background. Please circle the number that best corresponds to each item. For each question, please select one answer.

43. What is your gender?

☐ Male ☐ Female ☐ Non-binary/third gender ☐ Prefer not to say

Prefer to self-describe

44. What is your racial background?

☐ Black or African-American ☐ White ☐ Asian

Other or more than one race (please specify)

45. What is your ethnic background?

☐ Hispanic ☐ Non-Hispanic

Other or more than one ethnicity (please specify)

46. Were you born in the United States?

☐ YES ☐ NO

47. What year were you born?

48. What is your marital status?

☐ Single, never married ☐ Married or domestic partnership ☐ Widowed ☐ Divorced ☐ Separated

49. Do you have children?

☐ YES ☐ NO

50. On an average night, how many hours of sleep do you get? (hours)

51. Have you ever been a victim of a violent crime? ***

☐ YES ☐ NO

i. If yes, when was the most recent victimization?

☐ Within last year ☐ Within last 5 year ☐ Greater than 5 years ago

52. On a scale of 1 to 10, "1" being "extremely liberal" and "10" being "extremely conservative", where would you fall? ***

Include number

53. How many years of overall experience do you have as an attorney?

years

months

54. How long have you been with the prosecutors' office?

years

months

55. How many open criminal cases do you currently have?

56. Do you work in a specialized unit (e.g. drug unit, homicide unit, sex crime unit, etc.)

☐

YES

☐

NO

57. Are you a supervisor or unit head?

☐

YES

☐

NO

58. Before coming to the prosecutors' office, were you ever a prosecutor in another office?

☐

YES

☐

NO

59. Before coming to the prosecutors' office, were you ever in private practice?

☐

YES

☐

NO

60. Before coming to the prosecutors' office, were you ever a defense attorney?

☐

YES

☐

NO

This concludes the survey. Thank you very much for your participation.

*** Item was not included in the administration of the Cook County (Chicago) surveys.

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About Florida International University

Florida International University is classified by Carnegie as a R1: Doctoral Universities - Highest Research Activity and recognized as a Carnegie engaged university. It is a public research university with colleges and schools that offers 196 bachelor's, master's and doctoral programs in fields such as engineering, computer science, international relations, architecture, law and medicine. This project is housed in the Department of Criminology and Criminal Justice and the Center for the Administration of Justice, which are part of the Steven J. Green School of International and Public Affairs.

About Loyola University Chicago

Loyola University Chicago, a private university founded in 1870 as St. Ignatius College, is one of the nation's largest Jesuit, Catholic Universities and the only one located in Chicago. Recognizing Loyola's excellence in education, *U.S. News and World Report* has ranked Loyola consistently among the top "national universities" in its annual publications. Loyola is among a select group of universities recognized for community service and engagement by prestigious national organizations like the Carnegie Foundation and the Corporation for National and Community Service.