



TO PROSECUTE

Interviews about early decision-making

EDITED BY EMILY LAGRATTA | FOREWORD BY KEVIN KANE

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Preface

As this book goes to print, our country is in crisis. George Floyd is yet another person of color who unnecessarily lost his life at the hands of our peers. We are mourning, and the demand for change has never been louder in recent years.

The interviews in this book were all conducted prior to Mr. Floyd's death and the protests that have followed, but the topics they cover are inseparable from the conversations we must have – and continue to have – going forward.

Prosecutors are gatekeepers to the criminal justice system. They are largely responsible for how conduct that could be charged under the law is addressed and at what costs, whether financial, human, or otherwise. This includes the behaviors of law enforcement and other community members alike.

This book is about that early gatekeeping function, which includes the initial charging decision and diversion. With this focus, these interviews capture a broader picture of the fundamental role and authority of prosecutors. This role includes addressing racial disparities in early case review, engaging local communities to guide needed change, and improving data tracking to ensure that “success” is measured in ways beyond traditional criminal justice measures. Collectively, these are the practices that achieve the core purposes of ensuring that justice is done and that public safety rights are protected. These are not ideals; they are mandates. But they must be translated into concrete practices and policies to be realized.

In reading this book, see how your peers are rethinking hiring practices, allocation of resources, culture change, and partnerships – all of which are key to this work and essential for the road ahead. We hope the candor and hard work reflected serve as further inspiration for changemakers everywhere, no matter your role. Change is difficult but possible. We urge you to wrestle with how these lessons can support your own efforts to enhance the delivery of justice. Only through our actions will we truly honor Mr. Floyd's life and others who were not afforded the equal justice we promised them.

In partnership,

NELSON BUNN
EXECUTIVE DIRECTOR, NDAA

EMILY LAGRATTA
EDITOR, *TO PROSECUTE*

Foreword

by **KEVIN T. KANE**

FORMER CHIEF STATE'S ATTORNEY OF CONNECTICUT

What is a state's attorney? Clearly, a state's attorney is a prosecutor, but a state's attorney is also much more. A state's attorney is the attorney who represents the public — the entire public. The public consists of all the people directly and indirectly affected by criminal behavior. The public consists of people who live, work, go to school, play, own or rent, run or patronize businesses, and visit and enjoy neighborhoods and communities affected by criminal behavior. The public also consists of taxpayers. A state's attorney represents everyone, collectively, and a state's attorney's duty is to seek the common good.

The most important decision a state's attorney makes is whether to charge a person with having committed a crime. Police officers have the important duty and authority to make arrests in order to protect public safety and preserve peace and order, but it is only a state's attorney who has the authority to charge. Indeed, according to state law, the court does not even have jurisdiction until a state's attorney presents an information charging a person.

As a matter of process, though, arrest reports in Connecticut are transmitted by the police directly to the court. This process is different than in most states because state's attorneys until 1984 were appointed by the judges of the courts in which they appeared and were part of the Judicial Branch. The state's attorneys did not have staffing or resources that enabled cases to be processed, and when local courts were abolished in 1961, the process of transmitting arrest information and police reports directly to the court clerk's office was created. The court clerk automatically creates the court's docket, listing the name of the accused and offenses selected by the police officer making the arrest. The system's need to efficiently process cases in the

initial stages bypassed the state's attorney's duty to make an informed decision about whether or not a prosecution should take place. Rather than deciding whether to charge a person with a crime before commencement of the judicial process, state's attorneys decide whether to nolle (in effect un-charge) charges. Although the result is the same, the process affords too little time, information, and resources to enable state's attorneys to make informed charging decisions before the judicial process is underway. This has the greatest negative impact on the high volume of low-level offenses that feed our judicial, correctional, and public defender systems. More importantly, it may lead to repeat offending by people who do not get assistance addressing their underlying problems that lead to criminal behavior.

By not asserting a role for ourselves earlier in the process, we as state's attorneys were shortchanging ourselves and our communities with too narrow a definition of our role and what it meant to do justice.

Early in 2017, we took a hard look at a hard question: What quality of justice do we want in Connecticut? The answer we came up with was a form of justice that heals and nurtures communities and makes people feel safe and secure, not apprehensive or oppressed. We want residents and businesses to feel invested – and willing to invest – in their communities.

That's easier said than done. But we knew the answer had to involve a greater investment of resources on low-level cases. Earlier and more complete information would be essential to help us make efficient and informed decisions. We also needed better ways to get help for people whose real crime was poverty, homelessness, addiction, or mental illness. Our hope was that all of these efforts would be cumulative: quicker decisions meant avoiding unnecessary court appearances and minimizing necessary ones, while also expediting the connection to needed services in the defendant's community and reducing the disruption of the lives of victims and defendants alike.

I'll leave the details to my former colleagues Gail Hardy and Catherine Austin whose interviews in this book outline how they rolled out new screening and diversion activities in their districts. But in short, we were able to test new dedicated screening units supported by in-house Resource Counselors in six jurisdictions around the state. Essentially, we gave our prosecutors the time and added expertise to achieve justice better and sooner.

I'm proud to say that in just a couple of years, our pilot project saved the public nearly 54,000 court appearances annually. That's thousands of hours of saved court time for

judges, court staff, public defenders, and the like. By handling those cases better, our system was freed up to more efficiently and effectively handle all the remaining cases better, too. The impact on individual defendants was significant also: thousands fewer missed workdays, thousands fewer disrupted childcare situations, and thousands more chances to get on with their productive lives. These are all immediate benefits. If we can also help individuals avoid future offending, we'll further amplify the benefits to the system and the community.

We wouldn't have been able to do this important work without the research and consulting guidance from the Center for Court Innovation and funding from the Herbert and Nell Singer Foundation.

We are also fortunate to be able to share with you our lessons from this work, as well as those of my colleagues nationally, in this interview book. I can see here from the rich accounts of prosecutors from around the country that they, too, have made great strides in rethinking and retooling what it means to be a prosecutor in the earliest stages of a case. I am honored to have helped lead this work in Connecticut for so many years, and now that I am retired, I aim to help amplify the stories of my fellow prosecutors nationally.

I hope the readers of this book, regardless of their role in the justice process, will join us in our quest for a more just society. We can learn a great deal from one another.

Kevin Kane

Acknowledgments

We dedicate this book to all the prosecutors and other criminal court professionals around the country who strive daily to deliver justice for those they serve. Thank you for your tireless work to elevate your profession and the broader criminal justice field. We are particularly grateful to the 20 or so prosecutors interviewed here. They were gracious with their time and offered rich insights and candor in support of this project. We applaud their on-the-ground efforts and the efforts of their colleagues to improve prosecutor decision-making.

This book is also dedicated to the hundreds of thousands of community members who experience our justice system as defendants, victims, witnesses, family members, and others whose lives are impacted by the justice system. Their voices and experiences are essential as we collectively make improvements to the delivery of justice. We hope this book will be read and put to work alongside the voices of those individuals, including those who have had opportunities for second chances.

We would also like to thank all of the institutional leaders who support prosecutors and other criminal justice improvements, of which there are too many to name here. Special thanks are due to the **National District Attorneys Association** for their guidance on this product and for helping ensure that it reaches as many prosecutors as possible. We also thank the organizations that identified prosecutors to be interviewed and resources to include in the appendix. We encourage you to consult the many resources these organizations have produced on related topics.

- Association of Prosecuting Attorneys, www.apa-inc.org
- Center for Court Innovation, www.courtinnovation.org
- Fair and Just Prosecution, www.fairandjustprosecution.org
- Institute for Innovation in Prosecution, www.prosecution.org
- National District Attorneys Association, www.ndaa.org
- Pretrial Justice Institute, www.pretrial.org
- Vera Institute of Justice, www.vera.org

This product would not have been possible without the partnership of the **Herbert and Nell Singer Foundation**. The foundation seeded recent prosecutor initiatives in Connecticut and subsequently funded this product as a way to share lessons nationally. We are grateful to the foundation for embodying the best that private philanthropy has to offer by serving as a thought partner and financial supporter to help catalyze new ideas.

We thank designer **Mike Minerva** and his team at Minerva Design for the book design and layout and to **Irma Jace** for her artwork for the cover design. We also thank **Michael Friedrich** for his diligent copyediting; any remaining typos should be attributed to the editor.

It is noteworthy that final editing and publication of the book were completed while COVID-19 affected every community in the United States and beyond. All of the contributors to this product deserve extra gratitude for continuing to aspire to next-level practice while managing the personal and professional demands of the crisis.

Last but not least, the editor would like to thank her family for their enduring support of her work, even during a global pandemic.

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David Angel

ASSISTANT DISTRICT ATTORNEY
SANTA CLARA COUNTY, CALIFORNIA

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

I think the challenge for prosecutors and the interest they represent is that rehabilitation is often viewed as an afterthought, to be dealt with by prison or probation. I'm reminded of the opinion by Supreme Court Justice Stevens in a seminal case about collateral consequences. He wrote that prosecutors and judges tend to stop thinking about the case once the door to the courtroom has closed, whereas we need to start thinking about it in a broader way. It's a radical notion. In law school and in pop culture, crime tends to look like a horrible violent offense, and the primary question is, "Is this the right guy?" But in real life, overwhelmingly, crimes are not that violent and the people charged are in fact guilty. Here in Santa Clara, relatively few of our crimes are violent. That doesn't mean they're not important, of course. Driving under the influence is a leading cause of death, not murder. Domestic violence is a leading cause of the oppression of women, not gang activity. We've seen what happens to our communities when these lower-level offenses take hold. But the typical system response used to mean that individuals convicted of those offenses would be released back to the community in days or months without the community being any safer. How can the community be safer without any meaningful rehabilitation or response to underlying addiction or other needs?

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

The way we had always done it before was to look at the facts and the case, then bring it to trial. That's it. If that's all you're doing professionally, it's very difficult to sustain, as well as difficult to examine the bigger picture. Even in our treatment court many years ago, we'd put people in jail for six months. But for what? It became very clear to me that it was better for everyone to focus on restoring people. There's no conflict between this approach and the traditional prosecution goals of public safety. In fact, diversion is usually the best method to achieve that goal.

“One of the biggest obstacles was the misconception that public safety and diversion are incompatible.”

Where did you look for ideas or resources on this topic?

It was important to us to be guided by community-based organizations and other community groups that are more attuned to these issues than we were. For example, when we started looking at mental health diversion, we were frustrated by that population's resistance to the off-ramps we established. We had thought through various ways to intervene in lieu of jail, but some of the individuals wouldn't even leave their cell to meet with their own lawyer about it. Our good ideas weren't working. We realized that there are community groups that are far more familiar with and have strategies to work with this exact population. For another initiative in our office, we started visiting prisons and meeting with inmates alongside faith-based leaders, both here in the U.S. and abroad. Those experiences and relationships changed how we think. Of course, prosecutors and judges should generate good ideas on their own — after all, we're the ones who know the system and how to implement changes — but you have to expand your world beyond those perspectives, too.

How did the political or cultural context help motivate any of these changes?

California has done diversion for years and keeps adding new opportunities. We just passed a few laws providing better mental health diversion. The new policies are getting pretty nuanced, in fact, and spur legitimate debate. For example, California passed a law that allows for diversion of individuals who are parents with primary responsibilities in the home. The goal is to avoid a lower-level criminal case spiraling that family into foster care and lost employment. But now we're on a slippery slope, ethically and morally. Should those cases also avoid conviction because of the possible collateral consequences to the individual and their family? Why should having a child mean you get a total pass? California has also had a successful approach to diversion for DUI cases where individuals avoid conviction and significant sentences. So here, the question is not so much whether to divert but rather for which cases and how.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Our county has been implementing the Sequential Intercept Model that looks at all of the decision points for possible intervention. So diversion isn't just one step at the pretrial stage; it could happen throughout the life of a case. I think this makes our approach more effective because any single diversion model would inherently exclude certain populations. For example, we don't divert domestic violence cases pretrial, but

that doesn't mean we don't consider alternatives for them later. Part of that approach has been making sure the responses are meaningful, and if you don't have the tools to make it meaningful, don't do it. I think some of our early drug courts should have been diversion programs instead. Drug testing wasn't consistent or randomized, so it probably wasn't an appropriate tool.

What does the new process or program do differently?

I'll detail the mechanics for one particular set of cases: recreational- and personal-use narcotics. Our county already has drug courts and dual diagnosis courts, but those require pretty intensive treatment and court appearance regimens that are likely the wrong approach for a routine recreational drug user. We took a fresh look at those cases: data showed that, once we excluded those with a public safety component, they accounted for 20 percent of our cases in 2018, about 5,000 people. The vast majority had only one prior arrest in the past 12 months, so we excluded individuals with more than two recent prior arrests and mailed everyone else a letter in lieu of the traditional process. The letter informed them about voluntary treatment referrals in the public health system and told them they didn't have to appear in court; they weren't being charged. For those who show up to court anyway, county "navigators" are stationed in front of court on arraignment days and there's a social worker in the courtroom to redirect eligible individuals across the street to meet with treatment providers. Originally, our partners wanted all kinds of caveats about eligibility. Their concerns were reasonable, but I believe that if you have too many restrictions, you'll grind efficiency down and fail to reach the appropriate volume we want. As a result, we've been able to free up resources in our office for more serious cases, which is why prosecutors became prosecutors to begin with.

Did these changes require new roles within your agency, and if so, how?

Even in a county like ours with a robust tradition of diversion, one of the challenges was getting line prosecutors to take on more risk and make more effort at the outset. From their perspective, it had been easier to simply say no to everyone. They wouldn't ever get blamed for taking a case to trial. We had to change that analysis. Getting the right people in these positions is key, too. It's generally not a good idea to have a new prosecutor or even a new public defender in these roles. They're going to be unsatisfied that their job is so different from what they thought they signed up for. A traditional, aggressive litigator is not as interested in the holistic approach and what's best for the defendant. They also may not have the life experience that is helpful in these cases. In addition to getting the right people, you have to support them with training and protocols so they understand the law and also the office's philosophy and rationale. They already have the right skill sets but need to learn to apply them

differently and for the right reasons. Just as we don't want someone reluctant to divert anyone, we don't want someone agreeing to divert everyone. The office needs to signal clearly what its expectations are. Take for example the issue of relapse. If we took a traditional view, after a few chances, we'd say the person has to face the consequences. But we also have to balance those fourth and fifth chances with accountability. The chances can't be endless. It comes down to supporting success, not just accountability. And staff have to know you have their back as they find that balance.

What roles do screening and assessment play in these early decisions?

Our screening and assessment practices vary between two extremes. On one end, for a simple drug possession case, we're really only doing a simple screen for eligibility. The volume and severity of those cases don't indicate a more intensive assessment. On the other hand, when we're assessing an inmate who has been incarcerated for a long time and wants to be resentenced, arguing they're not the person they were before, our assessment process is much more individualized and case-by-case. Risk assessment tools help us in two ways specific to diversion. First, we use the Arnold Public Safety Assessment for pretrial release, which is invaluable for that. It's way better than professionals' assessment alone. We also use it to determine what level of treatment someone needs if an alternative is available. We pair that with other information, including the crime charged, whether they are suffering from a mental illness that may be the cause of the crime, and whether a treatment plan is reasonably likely to address that. I wish it was more scientific than that but those questions are inherently subjective. Frankly, they're not all that different from the subjective decisions we've been making all along, like which charges are appropriate or whether this is a good case for probation. Good prosecutors and judges are well-versed in making those types of subjective decisions.

Data and Outcomes

What data is important to collect for an effort like this?

When we started doing this almost 20 years ago, our data tracking capabilities were minimal. Despite being a wealthy county located in Silicon Valley, our technology and computers are still pretty old. In my opinion, there's a real opportunity for the non-governmental sector to lend support. But we're doing our best and try to bake in data collection to all that we do. It's important to ask the right questions. For example, some people want to ask about recidivism but define it too broadly as any new crime or any probation violation. That number is deceptive, though. What most members of the community actually want to know is: If you were diverted for a drug

offense, did you go on to commit a violent crime or property crime? If not, they're not so worried about relapse. A core question is to ask if you are angry at this person, as opposed to being scared of them. Anger is not a helpful motivation, but if people are frightened of an individual's potential for violence, that's a red flag. Participants may still be using drugs, but then it looks more like a health problem than a public safety problem. We also try to collect demographic data like age, language, race, and gender. That kind of data shows you whether certain communities are underserved by a given program, which might be due to bias or a service that needs to be added, like Spanish-speaking staff. Education and class are hard to track but so important. We know that these factors are risk predictors and might help us focus on earlier interventions that would help. We also know that school truancy is a risk factor for juvenile delinquency and adult criminal contact. It's controversial, but we're thinking about how those truancy cases could be an early intervention point for courts and community workers to help.

Challenges

How did you address any internal pushback from colleagues in your office?

Implementation of these responses is really tricky. On the one hand, we want prosecutors to apply their discretion and make individualized decisions about who's a good fit. On the other hand, though, we need rules and protocols so things happen automatically for efficiency and consistency purposes. It's the same as how we respond to other cases. In California, first-time DUI cases get a certain response; second time, it's another. Standardization is already in place for lots of crimes so we don't have to reinvent the wheel every time. You've got to make diversion the same way. Then once you have the rule established, train on it, guide on it, and make sure staff know you have their back.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

We prioritized working effectively with our county and state partners. You can't do this kind of work without them. Ultimately, our biggest challenge hasn't been with our direct partners but rather with funding and resources surrounding homelessness and mental illness. Society has decided we don't want homelessness on the streets but there isn't anywhere else to put these individuals. Similarly, we don't have secured mental health facilities for severely mentally ill individuals other than our jails. We need other county and state actors to fund better alternatives.

What safeguards did you put in place to ensure proportionality and the right level of accountability for individual participants?

This became a problem for us with California Proposition 47, which reduced lots of crimes from felonies to misdemeanors. As a result, judges started handing down more jail sentences with "straight time," meaning without probation tacked onto the end. Those sentences are more desirable to participants than diversion sometimes because they're more clear cut, so our diversion numbers dropped. But if the court can order diversion as a probation condition, where the participant avoids a criminal conviction, I think it's a win all around. We know not to make the diversion offer so onerous that people don't want to do it. At the same time, particularly when there's a specific victim, there has to be accountability, like restitution, to balance the individual's needs with the needs of the victim and the community.

How have you considered and addressed racial disparities within early decision-making?

Our office conducts a regular race and prosecution study that seeks to explore honestly the data concerning crime, prosecution, punishment, and race and ethnicity. For example, one thing we learned in designing our new diversion project for recreational drug users is that people of color were disproportionately prosecuted for drug crimes before. Accordingly, our new diversion program disproportionately benefits people of color, and in this way, takes a step toward making our system more equitable.

Lessons and Next Steps

What resources or partnerships have been most helpful in launching and sustaining this work?

We tend to look at places where things have gone wrong, whether it be officer-involved shootings or racial injustices. But what about places that avoid those problems? If they have similar demographics to your jurisdiction, they may have answers you can learn from. I also think focusing on the positive is inherently more productive. Instead of bemoaning what's wrong and blaming everyone, we should focus on what we can do better. The organization Measures for Justice has helped with this by asking questions about which places have better outcomes. Sometimes better outcomes are simply a reflection of easier problems, but sometimes they're a sign that a city is doing something really well that we can replicate.

“The single piece of advice I’d give to my peers looking to build or enhance their diversionary practices is **don’t reinvent the wheel.**”

There’s always someone doing something better than you are. You don’t need to reinvent the wheel. In California, we’re struggling with bail reform. My district attorney and I are trying to get rid of cash bail. They just did this in New Jersey. Our view is to watch and learn from those examples. I don’t think we can copy directly what they did, and I’m sure there’s local variation needed. But we’ll do our best to learn from them and others.

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

Many diversion efforts start with a boutique pilot project with a couple of staff in a dedicated courtroom. The response is highly individualized and therefore can only handle a small subset of participants. That’s a great first step – start small and make corrections – but you’ve got to move past it to scale up and routinize your efforts. Think of it as a paradigm change that you can train people on. To do that, you need protocols, regulations, etc., and an expanded outlook about what’s possible. And of course, there will be risks with diversion, but try not to overreact to those dangers. Above all, keep your eye on the prize: helping people get better.



Catherine Austin

SUPERVISORY ASSISTANT STATE’S ATTORNEY
WATERBURY, CONNECTICUT

“My role as a prosecutor is to seek justice, with the hope that all individuals involved in the criminal justice system are treated with fairness and respect.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

As prosecutors in Connecticut, we didn't traditionally have much information in the early stages of a case. We'd get an incident report and information from the police that lists the charges. We didn't know someone's prior record or even have victim contact information at the point when we were first seeing a case. All those details are difficult to line up during arraignment, which is a busy time. We defaulted to whatever original charges the police had determined and saved the more detailed review for later in the case. As a result, most cases required several court appearances while we were gathering information. If we did ultimately decide a case was appropriate for an alternative, the only options were cookie-cutter pretrial diversion programs run by the court, such as our Accelerated Rehabilitation Program or Drug Education Program. We heard from participants that those programs didn't meet their individual needs. They'd attend sessions but come out at the end with the same problems. The programs weren't addressing people's root issues.

“One of the biggest obstacles was **convincing participants we were genuinely trying to help.”**

There was some initial suspicion that our request for participants to talk with our resource coordinator was motivated by some diabolical intent. We had to try to convince them that we're here to help, genuinely. We told them: “We want things to be better for you. Our resource counselor can help with that.”

How did the political or cultural context help motivate any of these changes?

The state-level administration at the Connecticut Division of Criminal Justice, the agency that employs all state's attorneys and their staffs, recognized a need to look at incoming cases for minor offenses at the onset and try to address the individual issues presented. It was the Division's aggressive pursuit of funding that enabled our office to pilot test this approach to criminal justice.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Our main goals with the Early Screening and Intervention (ESI) program are to address individuals' needs and to minimize their criminal justice impact. If possible, we want to engage people in services immediately and consistently. One of the main strategies is to eliminate excuses and barriers. With some of the court-run programs, one mess-up and you're out. No one works with those participants to help them be successful. Within ESI, our resource counselor addresses the excuses. She provides bus passes and directions for participants to get to the providers we refer them to, so they can't claim they don't have a ride or don't know where it is. As for improved justice outcomes, we want to cut down on the number of times people are coming to court and help them avoid the stigma and collateral consequences of conviction. Finally, we want all of those results to last beyond the program. For those who successfully complete, we try to do an exit interview where we convey to the participants that they can always come back to us as a resource. We tell them: “If things get tough again, come get help before you engage in that behavior again.” Trust me: We don't need the extra work and we hope they don't fail, but it's important to show them that we will welcome them back if they fall off track again.

Who's eligible for these new responses?

Originally, we wouldn't allow anyone with prior convictions into ESI. Among the first-timers, we tried to target individuals with substance use issues. Eventually, we got more nuanced, though, and started accepting those with criminal records. Criminal records are actually helpful to us because they point to unmet needs, like substance use treatment. We also consider whether someone may have limited options through other court-based alternatives. For example, if someone is about to burn their third and last chance with a court-offered diversion program, we send them to our resource counselor first to see if she can craft a better alternative. We also try to accept people who can't afford to join an alternative program that charges fees. We know that those programs, in some instances, set people up for failure. If participants don't have the money, they won't go. Working with us directly doesn't cost them anything. Moreover, our resource coordinator assists them in applying for benefits that they may qualify for in the community so they have the necessary insurance coverage or nutritional benefits.

What does the new process or program do differently?

There are two main components of our new early decision-making process: early case screening by a prosecutor and working with a resource counselor. The ESI screening prosecutor reviews new cases and meets with as many participants as she can. Ideally, she would meet with all incoming individuals arrested for low-level offenses, but in some instances she doesn't have time. For cases she thinks are appropriate for an alternative, she makes a note to that effect in the file. The idea is that the next prosecutor who handles the case will follow that recommendation. After that, all participants are directed to meet with the resource counselor. The resource counselor also convenes a meeting every week in the court's jury assembly room and invites all the relevant local organizations and service providers. She takes an expansive view of this convening because you never know what someone is going to need. She leads an open forum with participants, too, where they can ask questions or seek additional assistance, like at a resource fair. This gives them a chance to be more proactive in helping themselves.

Did these changes require new roles within your agency, and if so, how?

We have two new roles: a screening prosecutor and a resource counselor. For the resource counselor, we sought someone with the skills to recognize the social service needs of each participant and match them to the resources available in the community. The person we hired has that and more. She's also very cognizant of the basic human needs of this population. For example, she knows that they're hungry by the time they're meeting with us, especially if they have been in court all morning. If they're experiencing homelessness, they may not have clean socks or access to drinking water. So she gives them those things, as well as snacks, Band-Aids, and other amenities. It has become a team effort where the whole office staff recognizes what she is trying to accomplish and donates items whenever they can. One challenge is to help set some limits on how extensively our resource counselor helps participants. One day, I had to stop her from giving someone a ride somewhere in her personal vehicle.

“You can't operate an improved response like this without funding, talent, and a belief in the concept.”

Data and Outcomes

What data is important to collect for an effort like this?

We track the demographics of the individuals coming through, including any apparent social service needs. We also track program completion and how many court appearances individuals made, including which ones entailed seeing a judge and which only entailed meeting with our staff. But there are lots of shortcomings with tracking success solely in this way. Because of confidentiality, we don't want to track why someone came to meet with us, such as to follow up on a drug treatment referral. Further, each person's individual needs don't necessarily fit into neat categories. “Success” with one participant might differ from success with the next participant who requires a different constellation of interactions.

Is there a story or anecdote that you think best describes the successes of the new approach?

Individual stories are so important. I know the legislature doesn't respond to stories; they respond to statistics. But this work is about individuals. Showing data and numbers without personal stories misses the point. One story that comes to mind was a woman caught shoplifting girls soccer cleats from Walmart. She was working three jobs to support her family but still couldn't afford the cleats her daughter needed when she made the soccer team. She had no prior convictions, so it was a pretty obvious case to refer to ESI. She told our resource counselor that the embarrassment of not being able to afford what her daughter needed had driven her to desperation. Our resource coordinator was able to connect her to representatives at the Police Athletic League who got her not one but two new pairs of cleats. We made sure she knew that the next time she got in a bind, she could seek help first. Cases like this don't need to end up in the criminal justice system. I remember another young man who had been prostituting himself. When we referred him to our resource counselor, he told her that he had to do this work to support his family. In his time with us, he got treatment, completed his GED, and enrolled in school to become a nurse. He's going to be the first person in his family to go to college. I wish you could have seen the pride in his face when he enrolled. It still brings tears to my eyes just thinking about it. A spreadsheet of data will never do that.

“Individual stories are the most powerful data measure that we don’t yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

Our State’s Attorney Maureen Platt hosts a community meeting every six months or so where she invites different organizations, churches, and other community members. During those meetings, we present information about ESI with the hope of explaining why certain cases aren’t prosecuted and how that helps the community in the end. These interactions help the community see how alternatives may be better at producing the outcomes they truly care about, even if they may think that all they want is a jail sentence. Part of our community work is also about being cognizant of the needs of victims. Victims in Connecticut have the right to object to diversion, even though we can still act over their objection. Thankfully, I can’t think of anyone who has objected, but we know it could happen. For example, we have one major retailer that is one of our biggest and most vocal victims. We try to explain that we always have traditional responses as a last resort, but we can start by trying the alternatives. We balance our desire for giving second and third chances with the value those businesses bring to the whole community — and the cost to the whole community if those businesses leave.

Challenges

How did you address any internal pushback from colleagues in your office?

When we first started ESI, some of the tried and true prosecutors said this new approach treated individuals with kid gloves. But they came around. It’s not like we were sending violent offenders, chronic felony offenders, or other more serious cases to ESI. We explained to them that this is about giving people another chance. If the participant refuses the opportunity or continues to offend, we can prosecute them at that point. We also reminded them that this program saves our prosecutors the time of having to review and handle this subset of cases, giving them more time to spend on more serious cases.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

When we first implemented ESI, State’s Attorney Platt convened a luncheon with police and other stakeholders who would be affected by the program. We told them it would address the individuals that generate multiple calls for service or who are a constant aggravation to business owners and the community at large. With that framing, law enforcement and others saw how this new response could help them. We wanted to make clear to this audience that we’re not saying these individuals shouldn’t have been arrested. What we want is to address the underlying problem, so the cycle doesn’t continue. Everyone was on board after that luncheon. Some police even make direct referrals to the program. The police have also been cooperative with sending incident reports, criminal records, and booking sheets in a timely manner so we can use that information as part of our initial decision-making. The defense bar and public defender’s office were also very enthusiastic about resolving cases without criminal conviction or penalty. There was one judge who was concerned about confidentiality issues because the resource counselor works for our office and could become privy to incriminating information. That judge thought the resource counselor should instead be employed by the public defender’s office in case someone disclosed something incriminating in their conversations. But we pushed back: The resource counselor doesn’t focus on the legal case itself. The conversation is more generally about what’s going on with the individual. This arrangement requires trust and is working so far.

“Funding continues to make us nervous about our early screening and diversion efforts.”

What safeguards did you put in place to ensure proportionality and the right level of accountability for individual participants?

Proportionality is a concern. It’s frustrating to us because sometimes the traditional path is easier for participants. Some say: “Can’t I just pay the fine?” We had one individual arrested for panhandling, but when offered resources through ESI, he just wanted to pay the fine instead. Here he is begging for food, but he would rather pay his way out of his case. We can’t help it if some people don’t want the help we’re offering.

How have you considered and addressed racial disparities within early decision-making?

Our office gets race data from the paperwork that the police departments fill out and code. Race doesn't play a role in our recommendation anyway, so we don't really look at it. We look at the individual and their needs and try to address those needs so the behavior does not reoccur.

Lessons and Next Steps

“The primary benefit of our new approach is we produce a positive outcome for the participant, not a negative one.”

How have these efforts reshaped how you define your role as a prosecutor?

I've been a prosecutor for over thirty years. We had limited alternatives or programs for most of my career, so our options were limited to either dropping a case or prosecuting it fully. The beauty of ESI is that it gives prosecutors alternatives beyond the legislative mandates. It gives us an opportunity to respond to and address individuals' needs in a way that benefits their lives and the community. We're finally on a track where we might get better results.

If you were to do it all over again, what would you have done differently?

We've had a couple of incidents helping individuals with severe mental health issues who turned out to be potentially dangerous. They really needed greater care than what we could provide. In one instance, we had a man reporting to us every week, but when he hadn't taken his medication, he would get very angry and aggressive with our staff. We were able to work with our Department of Social Services and Department of Mental Health, and ultimately he was admitted to a state hospital. In retrospect, I fear that we put our resource counselor at risk when she was working with him. That's a conversation our police departments and other criminal justice partners are having now regularly. How can we better respond to situations with individuals with such significant needs?

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

I hope we can involve more of our prosecutors in our screening and alternatives, especially those who are early in their profession. If we can train new prosecutors in this way, they might not develop a jail-focused mindset and need retraining later. I would assume they're more open to alternatives as a starting point. We'd also benefit from an assistant for our resource counselor. There's a lot of legwork that would help our participants — like filling out applications for driver's licenses or health insurance — that the resource counselor simply doesn't have time to do but participants would benefit from greatly. I hope also we can do more to help our local veterans, such as offering a resource fair geared toward them. We are actually starting some work with our public defender's office to create a veterans focused alternative, too.

“The single piece of advice I'd give to my peers is to be open to the concept, and then look at cases one by one.”

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

My frustration has been that the legislature passes laws that require criminal conviction, but many members of society are supportive of handling those cases differently. I have seen how damaging a criminal conviction is. We could be doing more to offer alternatives and help as many people as possible avoid a criminal record, but we simply don't have the resources. If we did, we could make even bigger changes in individual lives and the community as a whole.



Sherry Boston

DISTRICT ATTORNEY
DEKALB COUNTY (DECATUR), GEORGIA

“I see my role as a prosecutor as an opportunity to address a lot of the issues I saw as a defense attorney. Instead of handling one case at a time, I am now able to handle thousands of cases at a time and re-imagine how we engage with our community.”



Lisa Moultrie

**DEPUTY CHIEF ASSISTANT
DISTRICT ATTORNEY
DIVERSION AND COMMUNITY
ALTERNATIVES PROGRAMS**
DEKALB COUNTY (DECATUR), GEORGIA

“I see my role as a prosecutor to be a voice for justice in the community. More specifically, my role as a prosecutor in diversion is to provide a way for those who have committed crime to reconcile those actions with the community and victims”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

Boston: I would say that the traditional way prosecutors handled the early stages of a case was to get a file after someone was arrested, and rubber stamp it, so to speak. We'd think: Go ahead and indict, then we'll see what happens on the back end of the case. I don't think we were assessing at the outset possible reasons for the alleged criminal behavior and whether we have a way to address it. There was some pretrial diversion programming when I became District Attorney, but we saw an opportunity to expand the program while also increasing our fairness and transparency. I wanted to make sure prosecutors were making the decisions regarding admission and removal from the program. There were no real guidelines for eligibility, except for some troubling ones, like you couldn't enter the program if you didn't have a lawyer. If you didn't have private counsel and chose not to be represented by a public defender, you couldn't participate. I understand the desire to have participants receive legal advice, but it categorically excluded too many people.

Moultrie: I agree. The traditional way would have been for us to receive the case and have the investigator and victim advocate work it up and present it to an attorney, who would then decide whether there is enough information to proceed. If yes, we would indict. That's what prosecutors have been trained to do. Diversion typically hadn't been part of that decision-making process.

“One of the biggest initial obstacles was training our lawyers to think that diversion could apply to almost every scenario.”

Where did you look for ideas or resources on this topic?

Boston: I spent six years as Solicitor General in DeKalb County before becoming the district attorney. There I saw first-hand the benefit of creating a diversion program and gained some trial-and-error experience with it. I also believe that imitation is the best form of flattery. I went to conferences to hear about what other prosecutors were doing, hosted by organizations like the Institute for Innovation in Prosecution, the Association of Prosecuting Attorneys, and Fair and Just Prosecution. Those

organizations have helped connect me with colleagues and learn about new models that I could adopt and tweak for my county.

How did the political or cultural context help motivate any of these changes?

Boston: I can't talk about change without recognizing the leadership of former Governor Nathan Deal. When I talk with prosecutors from other states, I realize and appreciate how lucky we were to have a governor who made criminal justice reform a significant platform for eight years. It was particularly helpful in a state like mine that he was a Republican. He laid the groundwork for us to expand reform that included accountability courts and diversion across the state. All of that was easier because we had a governor creating a landscape and providing resources to support us.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Moultrie: Our office only prosecutes felonies, so while misdemeanor diversion had been common in our county before, Ms. Boston sought to expand diversion for more serious cases. The goals were to increase accessibility of diversion opportunities while also freeing up prosecution resources for the most serious cases that threaten public safety. This has included developing a pre-charge unit and self-directed diversion program for felonies that we administer in-house, as well as our involvement in three accountability courts. As a matter of process, the goal was to have prosecutors add a step before accusation or indictment and consider not only whether this is this a case that should be made, but is this a case where we can successfully divert or give a second chance? We wanted this process to empower our team — from the victim advocates to the investigators — to refer cases to our new diversion unit. Empowering everyone to make referrals places less stress on the trial line attorneys. And having a diversion unit ensured more consistency and continuity in our decisions and therefore more equity. By conducting the legal analysis first, then reviewing for eligibility separately, we help prevent a dumping ground mentality that diversion is where you send weak cases. If a case shouldn't be made, it shouldn't be diverted. It doesn't matter if the person is eligible or not.

Boston: That's right. The diversion model we strive for starts not after you've already charged the case, but at the outset. The first question in reviewing a case that has legal merit should be whether this is an appropriate case for some level of diversion based on the history of the accused, the nature of the offense, or both.

Who's eligible for these new responses?

Moultrie: We immediately promulgated written guidelines that made diversion accessible to more participants. We partnered with the public defender to make sure legal representation was available during our orientation sessions, but do not require anyone to obtain an attorney to participate. We continue to follow written diversion guidelines that are required by statute, but we also made “tip sheets” to help our staff on a practical level. Eligible offenses typically include non-violent cases like theft, making false statements, obstruction, and drug possession, and exclude serious victim cases such as intimate-partner violence or human trafficking. Participants tend to have little to no criminal history and no open felonies or prior felony convictions, but we'll consider on a case-by-case basis individuals with some prior record who didn't receive any meaningful services or opportunities in the past. Our diversion unit attorneys are in a unique position to know what any past interventions may have entailed and factor that into their decision.

Boston: Being thoughtful about eligibility criteria is critical. I remember being at an Association of Prosecuting Attorneys meeting in Portland where a couple of offices were highlighting their diversion programs. One of them described their realization that they'd had a blind spot in their eligibility criteria that had produced the unintended consequence of reducing availability of the program to African Americans. There had been a hard-and-fast rule that anyone tagged as having a gang affiliation was not eligible. But that might just mean your best friend is gang-affiliated, and all of a sudden, you become gang-associated without a conviction or any direct evidence of that. Such broad language can automatically exclude a lot of people in a jurisdiction where race is a defining characteristic for gang involvement. Another example of problematic criteria would be requiring participants to be enrolled in school and completing other program mandates, which could skew toward affluent people and exclude individuals from disenfranchised communities. So while we know that having eligibility criteria is important, it shouldn't be an absolute. There should always be room to review the circumstances and be flexible to make sure you're finding the right fit.

What does the new process or program do differently?

Moultrie: For programs run by our office, successful diversion cases get dismissed with a record restriction (i.e., expungement without having to file for it). For drug courts or accountability courts, the disposition options vary. Our office serves as a gatekeeper to approving dismissal or crafting an alternative to prison or probation. We also require community service and restitution as part of all diversion cases, even for indigent defendants. But we have some flexibility for people who can't afford to

pay. In cases where the victim is a corporation or government entity, we can convert the restitution amount to community service or in some cases remove it all together.

Did these changes require new roles within your agency, and if so, how?

Moultrie: Our diversion unit attorneys each have at least ten years of experience, including in drug courts and other relevant programs, and all happen to have been defense attorneys in the past. My role in overseeing our diversion work is to provide a backstop on riskier cases, which takes some pressure off the line attorneys and staff. We also have a diversion unit assistant to help with case management. All of these changes have required a lot of office-wide training, which I lead and coordinate as part of my role. We provide diversion training for new staff and on an on-going basis at staff meetings, etc. We share the mechanics of referral, but also the philosophy behind it and our office's commitment to diversion. I tell everyone in our office: “You're not going to be dinged or docked if you refer someone who isn't ultimately eligible or diverted. If in doubt, refer it.” Ms. Boston is known for saying: “If you're thinking of probation, why aren't you thinking of diversion?”

What roles do screening and assessment play in these early decisions?

Moultrie: Screening for eligibility and level of intervention is currently done by our two diversion-unit attorneys with my help. Other screening and assessment tools aren't available to us because of the way our system is set up, where prosecutors make the decisions. Only a small subset of cases gets reviewed by our magistrate court's pretrial services, so the majority of cases we're screening won't have been assessed formally. As prosecutors, we can't interview participants ourselves to get more information because what we learn might influence their rights going forward. For example, information about employment status might influence our judgment about motive. So we're limited to the factors we can see in the file, which are criminal history, facts of the report, etc. We have to be as creative as possible in gathering information about a potential participant. One resource we have is our drug court. For some drug cases, especially those where we might need help with a determination about a defendant's needs, we can have the drug court staff conduct an assessment and send back a case that might not be clinically appropriate for their model but may be appropriate for diversion.

What does this new response cost?

Moultrie: Our pretrial diversion program requires participation fees that go toward our county's general fund. We are able to demonstrate diversion's value and the additional cost-savings to our county commission when we request our annual

budget, which includes funding diversion attorney and staff positions. The cost is \$750 per participant, which is lower than in some surrounding jurisdictions. While this helps offset our costs, the goal is not revenue-generation; it's to require participants to have some skin in the game and to experience the deterrence and accountability effects of fines. We do offer partial or full waivers for indigency, but we've reserved full waivers for homelessness or extreme poverty because we've found that full waivers are associated with program failure. Even if it's just \$100, paying something helps clients stay invested in their success.

“You can't operate an improved response like this without community buy-in and making it an agency priority.”

Boston: What I like about our model is I have lawyers whose sole focus is to review every file that comes across their desks and ask: “Is this something we can get off the traditional path? If so, does it fit into any existing programs? Or is there an alternative?” That dedicated unit is also always looking for new ideas and trends in the data. If they notice something we did in the past is no longer working or minds have changed about it, we can make the necessary adjustments. They can carry the torch around the office and engage their peers. What do you have sitting on your desk that might be good for diversion?

Data and Outcomes

What data is important to collect for an effort like this?

Moultrie: Data analysis is a real weak point in a lot of prosecutor's offices, including ours. We do collect data, but we simply don't always have the capacity to analyze the data. But we've been on the hunt for partners to help with that. Right now, we can look at how many cases we screen, and of those, how many were admitted and then completed diversion. Completion rates are particularly hard to tally and challenging to explain. I would love to better understand the obstacles to or causes of non-completion. Getting to the “why” and the participant experience is difficult.

Boston: It's important to collect data and track what success means. We're only three years into our efforts and are just now starting to see how we're performing. I do know that the difference in the number of referrals has been astronomical since my

first year. Referrals increased by about 500 percent, in part because we spent a lot of time encouraging lawyers to think about the cases and refer any possible candidates.

Is there a story or anecdote that you think best describes the successes of the new approach?

Moultrie: We are very happy when we have participants call or email our diversion unit to thank us. Last Tuesday, we had a participant who just wanted to thank us for having the diversion program. He called us eight months after we filed the dismissal of his forgery charge, telling us how much better off he was now. He said he was in a really bad place when he entered our program but was happy to tell us that he is now making close to six figures, legitimately, and his life has been transformed. This outcome may not have been possible if he had to carry title of felon for the rest of his life.

“Long-term follow-up with participants is the most powerful data measure that we don't yet track but wish we could.”

Boston: When people complete diversion, usually all we can do to track their longer-term success is to run a background check. But getting new charges is only one aspect of success or failure. I would be really interested in what hurdles or obstacles people face that might be inhibiting their success. It's that personal human data that is really informative.

How do you keep the community informed about and involved in these policy and practice changes?

Moultrie: When we go out into the community for events, we collect information about what the community wants to stay informed about. The system's effects on the community at large are just as relevant as the consequences to victims in individual cases, and community buy-in for what we're doing is essential to our expansion of diversion. You can't offer someone diversion in a category of offenses that would offend the sensibilities of the community, and it's on us to educate the public about why expanding diversion is a good idea. One of the hot-button offenses is first degree burglary. In Georgia, that's burglary of a home. Many members of the public are very offended by the idea of allowing someone charged with that offense to participate in

diversion, especially in neighborhoods that feel targeted by burglary and where there's lots of talk on neighborhood boards like Next Door. The previous administration of our office experienced backlash when the idea of diverting those cases was proposed. So we consider those cases carefully and make sure that the victim of the crime is served and on board with our plan. Victims are obviously an important group within the community we want to keep engaged. In Georgia, we are required to notify victims about our plans for the case and then victims can give their input about our disposition decision. Note that they don't have to consent before we do it, and these rights only cover certain crimes and only individuals (not corporations or government). But most victims happily support diversion because they want accountability for these individuals who are part of their community. Diversion is not a throwaway and requires participants to make restitution. Also, victims often want to avoid having to come back to court. In addition to our community outreach efforts, we have a great communications department. They put together our community newsletters that we distribute via email and social media. Those efforts also help us keep the community informed of the work we're doing.

Challenges

How did you address any internal pushback from colleagues in your office?

Boston: I came into this office with a plan that tracked what I had done as Solicitor General, which included creating a similar diversion unit. Having done it before, I knew we could put together a team to do this. We had to quickly get programs off the ground, wind down prior participants, and keep the ship moving. Our staff supported this plan.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

Moultrie: We are lucky in having good buy-in from the judiciary and defense bar. The defense bar helps explain to their clients that diversion puts dismissal in their hands. And the judiciary is typically welcoming because they're used to other forms of diversion that have been happening in Georgia for years. What's new is converting unofficial diversion agreements to something more formalized within the prosecutor's office before cases are filed. We think that's a better process because intervention is quicker and therefore more proximate to the offense. It's more clinically responsive. If someone commits an offense and doesn't see justice for two to three years, they have already disassociated the offense from what happens to them. But there are real challenges to getting intervention as quickly as possible after the arrest date. We're

working with a new pre-charge unit, which sees defendants at first appearance within 48 hours. Of the participants we get into diversion from that group, everybody starts their intervention within three months. That speed is harder for out-of-custody participants because the system doesn't prioritize them in the same way; they're at the back of the line for cases being opened and reviewed by our office. When you have a pre-charge model, it's all on us to figure out efficient scheduling so we're looking for ways to capture those cases earlier.

Boston: I'd add that it was helpful that I'd already been a part of the criminal justice community in the county before becoming District Attorney. I knew who to talk to about what and how to generate support. I had also been hearing stakeholders' concerns for years. Our county commissioners had been saying, Let's find a way to get people out of our jails who could be served in another way. But don't get me wrong, building out the necessary partnerships is critical and we continue to develop those relationships.

“Fear of a future horrible crime continues to make us nervous about our early screening and diversion efforts.”

Moultrie: There will always be the Willy Horton fear, that someone given an opportunity goes out and commits a horrible crime. That will always make prosecutors nervous if they keep that in their head. The reality is that we don't have an accurate way to predict those types of crimes, though. I try to emphasize that with our team. If there are no indicators of danger in front of us, then there's nothing to inform our decision-making against diversion. We can only use the limited information we have to evaluate the case in front of us.

How have you considered and addressed racial disparities within early decision-making?

Boston: One of the big things we have done to address racial bias in our office was to require office-wide implicit bias training. Starting in 2019, all staff received eight hours of training that is geared toward our work in the criminal justice system. Everybody, from trial assistants, to lawyers, to the staff answering the phones was required to take the training. But I think it's especially important for our staff who are making decisions, whether assessing police reports or making diversion referrals

or sentencing recommendations — they are the ones who need to understand how their biases affect those decisions. My hope is that we can make this training on-going and make sure that new employees are getting it when there's turnover. We already have a date set for this year, so anyone who wasn't here for the last one will be required to complete it this time around. A couple of people even said they'd love to take the course again. It's a big hurdle to train over 200 staff. We can't just pause court for a full day, and it's difficult to find time in an already busy schedule. But you have to get it done, and I applaud anyone who is able to do so. We've already seen the benefits of it. Just recently, I was in a meeting with some supervisors where we were debating a policy and how to write it in response to new state law. As we started to whiteboard the different options, one of the suggestions was one that might yield results that excluded a particular group based on race. The training had taught us to spot those issues, so I said, Let's review what's up here. Are there suggestions that might be based on our biases? Because we had all been through the training, we were all speaking the same language and could work through the problem. We were able to talk through something that had a racial component and move forward without it. It's not enough to check the box that you completed the training; you have to help staff put it to task in their daily work.

Lessons and Next Steps

How do you define “diversion” and situate it among your other decision-making tools?

Moultrie: Including diversion in decision-making prompts our attorneys to begin with the end in mind. What is the best result at the end of our work? Trial attorneys don't make final decisions about diversion; the diversion unit does and that requires a tight turnaround time. However, trial attorneys do have the ability to advocate for diversion, think about their sentencing recommendations, and think strategically about how to pursue their cases. Prosecutors can affect criminal justice by thinking about how charging decisions affect outcomes for both the victim and the accused.

How have these efforts reshaped the way you define your role as a prosecutor?

Moultrie: First of all, I never envisioned being a prosecutor. But I've enjoyed my time as a prosecutor. I started as a defense attorney, so I take my role as a prosecutor and minister of justice very seriously. To me, that means doing the right thing even if it doesn't advance your career. You have to hold yourself to a very high standard personally and professionally and be someone the community can trust to do justice. My personal philosophy also informs my work, which is that I believe in the ability

of people to be redeemed. Our participants receive a path forward to be contributing citizens of their communities and aren't held back in their legitimate life pursuits by their mistakes. It also means I find a way for victims of crime to feel they have a voice in seeking justice without being burdened with the effort and trauma that comes from participating in our traditional system.

Boston: This work has definitely shaped my views. I will say that when I was first appointed Solicitor General, the first thing I wanted to do was to focus on pretrial diversion. I'm reminded of this because there's an article on the wall in my office about my appointment. During an interview, I had noted a lack of centralized pretrial diversion in DeKalb County. I had come to that conclusion having been a private lawyer in various counties, including ones where I saw diversion working well for my clients. And yet in other jurisdictions, my clients would have to jump through 50 hoops to obtain the same outcome. As a private lawyer, most of my clients were people of means, so I would create opportunities for them where there were none. I knew to put my clients in counseling before anyone thought to ask or complete any other services I could think of. So when I showed up at the prosecutor's offices, I had a full package to show them regarding the ways in which we had already addressed the client's issues. It was a compelling argument for diversion. When I became a prosecutor, I thought: I want everyone to have that complete of a diversion package, whether they had access to a private lawyer or not. Everyone should have the opportunity to present their best selves. By creating diversion programs and accountability courts and operating in a sphere of fair and just prosecution, I've been able to improve those individual opportunities while also implementing system-wide change.

What resources or partnerships have been most helpful in launching and sustaining this work?

Boston: This work is all about partnerships. For every program we've created, I've gone to our criminal justice system partners and leaned on community groups that have the ability to meet the needs of our population. Whether it's a program based on substance abuse or aimed at veterans or mental health, we ask: “Who in our county or network might be willing to partner on this?” If you don't have your community stakeholders or courthouse stakeholders invested in your program, it will not succeed.

What are your plans to ensure sustainability and on-going adaptability of your existing efforts?

Boston: Document, document, document. For me, sustainability comes from documentation. Show who the providers are and what you paid them. Show how

eligibility was decided. Show how referrals worked. If you create programs that are following best practices and you document their policies, I think they're much more likely to be continued on after you leave. Documentation helps show your successor what you were doing and what was working, and helps them see how it can be taken to the next level. Without documentation, no one understands what you were doing and what the rules were. Also, make sure everyone in the office knows where to find those files. When I came in, we didn't have an internal drive on our computers where everyone could find key documents. It was chaotic. Having that documentation makes sure that programs can continue regardless of staff changes, and that others in the office can also access the information when they need it.

“The single piece of advice I'd give to my peers is **don't be afraid to push the envelope.”**

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

Boston: In many places, diversion is only available for cases that people have felt comfortable diverting, like theft, identification fraud, or personal-use levels of drug possession. Start there, for sure. But then don't stop. Think beyond the things that are easy and consider cases involving burglary or robbery. We're even starting to push ourselves to consider diversion for armed robbery. Start thinking about creating a program for those cases that makes your spine a little tingly because that's really the gap of people who are being left out of accountability and diversion. Of course, we're never going to divert murder, rape, or child molestation cases, nor should we. Those are the most heinous, violent crimes in our community. But there's a category of crimes in between those and the easy ones that gets overlooked. Yes, they're potentially scary and risky, but another way of looking at it is those are the people on the cusp of graduating to a level that they can't come back from. That category is standing on the edge of a cliff. We can reach out and pull them back. We're only going to make change in our system if we start to find ways to pull folks back from the edge.

Moultrie: My final advice is about how we treat diversion participants. Many diversion programs' staff don't view participants as their clients but I'd recommend that they

do so. Our goal is to help make sure that participants don't become permanently justice-involved, so we have to remind them that they're members of the community, as well. The way we treat them lets them know we see them that way. We treat them fairly and make sure that external providers and community service partners are not exploiting them.



Leon Cannizzaro

DISTRICT ATTORNEY
NEW ORLEANS PARISH, LOUISIANA

“I became a prosecutor to reform New Orleans’ criminal justice system and to protect the city’s citizens and visitors. I do so by advocating for tough, common-sense approaches that have a real effect on stemming violent crime.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

Traditional early decision-making focuses on the determination of whether a crime has been committed, whether the defendant is responsible, and whether the case can be successfully prosecuted. In our jurisdiction, we had some diversion options before I started but only for individuals with lower risks and needs and it took several months to get them into the program. First, prosecutors had to review the police report, then consider the merits of the case. Defendants in custody could languish in jail with no services in the meantime. If they were released on bond, there was nothing to address the problem either. Then there were a number of individuals who weren't eligible at all, like people with serious records or a history of substance use. Crimes of violence also were ineligible.

“Two of the biggest initial obstacles were limited and late access to defendants and inadequate funding.”

Where did you look for ideas or resources on this topic?

We built upon our own experiences with diversion, as well as gathered information from the National Association of Pretrial Services Agencies and their pretrial standards for diversion.

How did the political or cultural context help motivate any of these changes?

I think what motivated changes here was the frustration of seeing individuals cycle through the system without intervention or accountability. There had been a real lack of appropriate responses to defendants' risk and needs throughout the system.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Our goals are to utilize our resources and assist as many defendants as possible, all in pursuit of reducing recidivism and improving quality of life. Our new approach

aimed to use resources in a more efficient and effective way while meeting the needs of clients. Now, we ask more questions about what we know about the person. If they have a past conviction, when did it occur? Are they currently under parole supervision? For older people who have been through the system time and time again, in and out of jail, many cases have been in custody every time. Were they ever given a second chance with an alternate response? Asking these questions helps us to take a chance on these individuals. These are the people most in need of help: individuals who have previously experienced incarceration and community supervision. We want to offer them an alternative that avoids another lengthy prison sentence. Additionally, we are able now to offer low-risk and low-need clients a chance to not have their case accepted in court at all, avoiding any potential collateral consequences of a criminal case. As for expediting the process, it helps that the law requires police to submit a short statement of the facts in advance of the full police report. For many cases, we can use that statement to make our initial decision immediately after the time of arrest while we wait for the full report.

Who's eligible for these new responses?

Only cases with prosecutorial merit are eligible for diversion. After that, we make an initial determination of eligibility based on current charge and criminal history. Unfortunately, we don't know at the outset whether a person suffers from a substance abuse problem, lacks job skills, or has mental health issues. That kind of information would help us right from the beginning, but we only learn those details once they're in the program. Once we get involved with the individual, we learn a lot more about them.

What does the new process or program do differently?

Clients are placed in programming based upon their risks and needs. Each client is assigned a master's-level counselor or social worker who conducts a full psychosocial assessment and develops an individualized treatment plan with the client. We had to change our policy about allowing high-risk/high-needs individuals to participate. We also made a policy change to allow for pre-indictment diversion for lower-risk/low-needs individuals.

Did these changes require new roles within your agency, and if so, how?

We reassigned some assistant district attorneys to expedite diversion screening. The eligibility screener also contacts the probation and parole office for input on shared clients. Another staff member was assigned to send out eligibility emails to the public defender's office and letters to defendants. But having counselors and social

workers on staff has really made the biggest difference. Their experience has helped us really emphasize that the basis for many problems in the criminal justice system are substance use and mental illness. Those problems are diseases, and criminalizing a sickness is wrong. This mentality has even changed how we refer to people, as “clients.” In fact, for our pre-charge work, they’re not technically defendants anyway. But even if charges are pending, we want to treat clients with dignity and respect, not as criminals. If they’re in the office for counseling, they’ve had to accept responsibility already to get to that point. We want to let them know we care about them, and that they’re important to us. Many people have experienced rejection in their lives. No one has been a positive figure for them and given them encouragement or showed them that there’s a better way. When they get that from us and see that we’re not here to browbeat or belittle them, I think they accept and respond more positively to our efforts. We also make sure to respect the counseling relationship such that no statements made to counselors will be used in future prosecution; those conversations are privileged and private.

What roles do screening and assessment play in these early decisions?

Cases are screened for legal sufficiency first, always. Only then, if the case has merit, are individuals screened for eligibility, which is a file review. Risk level is part of the eligibility determination. We use George Mason University’s Risk-Need-Responsivity tool. Certain serious violent crimes are rejected automatically, like sexual assault, armed robbery, and homicide, but the remaining high-risk individuals all receive additional case screening by myself and our director of social services. We look at the circumstances of the crime, whether they’re on probation or parole, and what they’ve received as interventions in the past. If they had been in our diversion program before, we’re probably not inclined to give them another chance. The riskiest cases are all reviewed on a case-by-case basis. We also offer an information session at this stage if eligible clients have any questions about the program. Once eligible and accepted, we do a lengthy intake to help determine their criminogenic needs. We use the Texas Christian University tool, as well as a drug test. We then categorize by quadrants: high-risk/high-needs, high-risk/low-needs, low-risk/high-needs, low-risk/low-needs. The higher-end quadrants equate to longer engagement and more services.

What does this new response cost?

The average cost to our office per client is close to \$1,500 per year. That covers the salaries of our counselors and the in-house out-patient counseling they do, as well as the staff member screening for eligibility. We lead the groups ourselves. Everything else, like supplies, comes out of our general budget.

“You can’t operate an improved response like this without appropriate funding and commitment.”

Data and Outcomes

What data is important to collect for an effort like this?

We evaluate our program for both positive outcomes for the client, as well as public safety. We track completion rates of those who decline to participate from the beginning (about 30 percent of eligible individuals) and also those who are accepted but don’t successfully complete for whatever reason. Our recidivism rate for those who successfully complete has been between 1 percent and 1.5 percent for the past three years. Clients consistently report that the counseling component of the program has had the greatest impact on their lives.

Is there a story or anecdote that you think best describes the successes of the new approach?

While in our program, many of the high-risk/high-needs clients are experiencing sobriety for the first time in many years. Clients are accessing mental health and substance abuse services with higher levels of accountability and buy-in than they had previously. These are difficult measures to capture, but they’re powerful indicators of success. I’ve also argued that putting drug users in diversion can help dry up the drug supply that fuels gang activity. I don’t have hard numbers on whether our diversion work helps avoid new cases for that type of criminal behavior, but I think it all contributes. The goal is to minimize crime and support a peaceful, nonviolent society.

“Continued, increased quality of life is the most powerful data measure that we don’t yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

We have attempted to present stories on our programs to the local press, and a few have gotten picked up. We also plan to host quarterly lunch meetings for our criminal justice stakeholders. I think it's challenging to feel like the community is truly informed about the inner workings of a DA's office. Many people are aware of the crime problem in New Orleans and are fearful about going to certain neighborhoods at night. Because of that, I think some people think prosecutors should only be "convicting bad guys." But in my experience, even the most conservative community members think that people deserve second chances. We're trying to get the word out that diversion offers a meaningful second chance.

Challenges

How did you address any internal pushback from colleagues in your office?

Staff were informed of the policy changes and were expected to further the efforts of the program. Once staff members get to see the changes in the individual first hand, the program is readily accepted.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

When we first started, our new approach really challenged the traditional thinking among our justice system partners. Some people said: "If there are limited resources, please devote them to getting bad guys off the street." But we believe that if we can work with individuals early on and prevent escalation to more serious crimes, it's a wise investment. Put the money at the front end instead of the back end when it's too late and someone's been victimized. There have been certain naysayers who don't believe in the program, but that hasn't stopped us. We have increased the numbers of participants more than my predecessors, almost two and a half times more at certain points. As long as we can get clients in and keep the recidivism rate low, we'll keep at it.

"Our city funding sources continue to make us nervous about our early screening and diversion efforts."

What safeguards did you put in place to ensure proportionality and the right level of accountability for individual participants?

We believe that by determining both criminogenic risk and needs, we ensure appropriate placement into the program. The program is also voluntary, and all potential benefits (as well as challenges) are explained to clients prior to their agreeing to participate.

How have you considered and addressed racial disparities within early decision-making?

Our program continues to reflect the racial breakdown of the local criminal justice system. All counselors and social workers are trained in cultural competency and our program and policies reflect that. We continue to be aware of our communities' challenges and attempt to find solutions.

Lessons, Advice, and What's Next

How do you define "diversion" and situate it among your other decision-making tools?

Diversion is the process of not only diverting individuals from the traditional prosecution track but also diverting them from the negative paths they are currently walking. Our goal is for individuals to leave us better than when they came in. Prosecution tends to focus on things that are objective, like facts and legal analysis. But our work in diversion is about individuals and is therefore quite fluid and subjective.

"The primary benefit of our new approach is leaving individuals better off than when they came in."

How have these efforts reshaped how you define your role as a prosecutor?

My early work as one of our state's first drug court judges gave me a new perspective on substance abuse and trauma. Since that time, I have continued to see the damage done to individuals and to our community as a whole when we fail to intervene effectively.

What are the biggest adjustments you have made to the approach since you first started?

The biggest adjustment we've made is expanding eligibility to include higher-risk and -needs individuals. As a result, that shift required us to hire staff with different experience and form new community partnerships. This has included opioid addiction services, medication assisted treatment, detox treatment, residential treatment, etc. There was no way to provide all of that in-house; we had to partner. We also created "process groups" that are traditional therapeutic groups covering different, universal topics, like grief, financial issues, and addiction.

What resources or partnerships have been most helpful in launching and sustaining this work?

We hope our receipt of a new MacArthur Foundation grant will allow us to build on the work we've done and further expand opportunities.

If you were to do it all over again, what would you have done differently?

All of our growth has come from our experiences. We've learned as we've moved forward. Having more consistent and appropriate funding would have allowed us to serve more of the population sooner.

What are your plans to ensure sustainability and ongoing adaptability of your existing efforts?

We will continue to fight for appropriate funding levels. We do allocate a significant portion of the budget for diversion counselors.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

As we continue to improve and expand, I hope we can reach more clients and intervene in a much quicker manner. I am working on adding an assistant district attorney assigned solely to diversion cases to ensure speedy movement throughout the court process for our higher-risk clients.

“The single piece of advice I’d give to my peers is to remember that doing little to nothing with high-risk and high-needs individuals will all but guarantee their return to the system.”

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

Remember that while some people may need to be removed from their environment for public safety reasons, others can be given an opportunity to change. We can find a balance by creating new diversion tracks that allow for public safety and true change for the individual. By getting an individual to enter a plea of guilty and withholding sentencing, one can achieve both goals. Individuals can then withdraw their plea after successful completion and the office dismisses the charges. It's a win-win.



Christian Champagne

DISTRICT ATTORNEY
6TH JUDICIAL DISTRICT (DURANGO), COLORADO

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

The office that I inherited had taken a traditional approach to early decision-making that was in lockstep with law enforcement's suggested charging. Prosecutors generally tried to charge every possible crime that they could support with the evidence they had. There wasn't really any analysis of the individual human, the context, or any other sort of nuance. It was more about making decisions quickly: "Get it charged, move it on." The ultimate goal was to get as many convictions and as many long sentences as possible.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

Before I started as District Attorney, there weren't any diversion opportunities for adults, and what we had for juveniles wasn't utilized fully. There had been some restorative justice efforts in the 1990s in our county, but without much support from the prosecutor's office that idea died on the vine. We have a drug court that had been reluctantly embraced by the DA's office at the time, but prosecutors still wanted to be the gatekeeper. They didn't always consent to drug court, and defendants who did participate had to plead guilty first; the resources and support were given in exchange for a conviction. All of those guilty pleas we accumulated meant that, depending on the circumstances, people were losing their driver's licenses or spending a few days in jail. We don't have good public transit, so losing your license can be really damning. You can't get to work. Or for someone we'd put in jail for two days or five days, they might lose their job and then were at risk of losing their housing. That approach didn't make any sense. It seemed that we were roping these individuals into a system that was making their lives and the community worse off.

“Two of the biggest initial obstacles were funding for new staff and supplies and skepticism among other professionals in the justice system.”

How did the political or cultural context help motivate any of these changes?

I think criminal justice reform issues have been publicized more in recent years. It certainly catches your ear to learn that the prison population has grown 700 percent and that we incarcerate more than any other first-world country. Some of that coverage has been sensationalized, but at the same time, many community members can see the impact it's had first-hand. So when I was campaigning to become DA, I talked about how the prison over-population problem has mushroomed out of control and my aspirations to do more with diversion. People are in tune with that and are eager for a new approach: "Restorative justice? Sounds great. Tell me what that is again?" People were willing to buy into the ideas and buzz-words without really knowing what it meant. They came with open arms. Criminal justice system stakeholders, on the other hand, were slower to come around.

What were your initial goals for the new early decision-making and diversionary practices?

My approach started from the philosophical position that there are way too many people in the criminal justice system. It's been a blunt tool that has not been very effective, especially if you look at recidivism data. Over 50 percent of people returning from prison commit a new offense. That's a very expensive response for not being very effective. I set out to craft a better way to handle low-risk, low-needs individuals that doesn't involve jail or convictions — or even criminal charges. I believe most people who enter the system are good people who did something stupid and might need help getting their life back on track. Diversion seems like a great way to do that.

What does the new process or program do differently, and who's eligible?

We have a charge-based system right now where we've trained our attorneys to identify eligible cases based on charge, criminal history, and the position of the victim and community. The aim is to identify low-risk, low-needs individuals, like someone who was driving without a license. In Colorado, many people lose their drivers licenses for administrative reasons, like not paying court costs or child support, so we see hundreds of these cases every year. But what do we really want for those cases? We all want the same thing: for them to drive legally. And we want to help them navigate the system, pay their fines, etc. We took a similar approach to careless driving cases that resulted from car accidents. Our law enforcement automatically charge careless driving when there's an accident, figuring that all accidents are caused by careless driving to some extent. But instead, we prioritize having safer drivers, so we created a safe driving seminar. After they take the class and pay \$125, we dismiss the case.

Once we got our feet under us and felt good about our approach, we started to expand to different types of charges and higher-risk defendants that might need higher supervision. For example, menacing with a deadly weapon sounds scary to a prosecutor, but in our rural ranching community where many people always have a gun on their hip or in their truck, that might just be a neighbor dispute with a pistol getting waved around about a fence line or water issue. We now consider whether that's something that can be handled with restorative justice or anger management. Again, we all want the person to take responsibility and repair the harm they caused. As another example, we had a knucklehead teenager who spray painted a fancy car. Because the damage amounted to more than \$1,000, that's a felony. But with the right tools, the spray paint can be buffed off so the immediate harm is repaired. Why not help that 18-year old avoid a conviction?

Did these changes require new roles within your agency, and if so, how?

We realized early on that we'd need to bring new staff in house at the DA's office to do what we wanted to do. We were fortunate to get a grant from the state to hire and train a diversion coordinator. Without that funding, we wouldn't have been able to get this off the ground. But we also realized that it's marginally outside of our mission and comfort zone to be running a diversion program and supervising participants. Our mission is to prosecute cases, then hand them off to a judge for sentencing and probation for supervision. To handle this well, we needed someone with case management and supervision experience so we ended up hiring a former probation officer. He does intake, data tracking, and case supervision, but perhaps most importantly, he serves as a hub for our providers. He identifies the right partners who can serve our participants' needs, like mobile substance abuse testing or equine therapy. He maintains all of those spokes that otherwise an individual participant might not know how to find or connect with.

What does this new response cost?

Our original idea was to become self-sufficient using program fees, which are determined on a sliding scale. But I'm willing to subsidize participation because I don't want financial obstacles to be a barrier to entry. Here we are, four or so years later, and we still haven't become self-sufficient. It's okay as long as the grant funding holds up.

The Response

What data is important to collect for an effort like this?

As part of our grant requirements with the state, we've been required to track and analyze data. That was challenging to have forced down our throats because we're not data people; we're lawyers. But it turns out that requirement was a very wise choice by the state and has paid dividends to help us understand what kind of impact we're making. Those responsibilities fall to the diversion coordinator as part of our quarterly grant reporting. He created spreadsheets to track what we need, pulling information from intake forms about each participant. We then check back in at the one-, two-, and three-year marks. We can tally the number of participants referred, including those who didn't engage in services; numbers under supervision; numbers who successfully complete versus failed to complete; and recidivism at the three-year mark. But there's always more data we could be tracking. Our referral numbers have fluctuated up and down over time, making roller coaster-type graphs. That influx has become the focus of our efforts to improve the model at this point. Why do we get 550 referrals some years and only 175 others?

Is there a story or anecdote that you think best describes the successes of the new approach?

One of our challenges has been helping and finding alternatives for people with substance abuse issues, usually with low-level possession cases. It's a hot-button issue across the criminal justice system. The concern is that diversion doesn't have a lot of teeth, so you can't force someone to do treatment or therapy. I'm proud of the opportunities we've provided for substance use treatment because it's essentially voluntary. The people who do it know they need help but maybe can't afford it or don't know where to start. I remember one woman I'd seen in drug court three times. Each time, she'd get clean for a while and talk about being reunited with her daughter and granddaughter, but three months later, she would be using again. We decided to give her a chance in diversion and it seems to be working. I see her in the grocery store with her granddaughter now, and she comes up to give a hug every time. It gives me the chills. You never know when someone's ready. You have to be willing to give some people a second, third, and fourth chance. That's what it might take before they're ready to make a change. I had been skeptical about her because I'd seen her have so many setbacks with nothing but negative impacts on our community. But now, she's not committing crimes, has a job, and is contributing to society and to her family.

“Information about the potential participants we’re missing is the most powerful data measure that we don’t yet track but wish we could.”

I want to get better at identifying good candidates for diversion. For good reason, we prioritized getting up and running in the beginning and working out the kinks. Now, our issue is that we have a good program but we need to get more people in. Our passive approach initially of relying on individual attorneys to refer cases has had limitations. Everyone has good intentions but understandably focuses on their more challenging and neediest cases. I think we can be more systematic and data-driven about how we’re pulling potentially eligible cases.

How do you keep the community informed about and involved in these policy and practice changes?

I want to focus more on publicizing our successes to the community. We can do a better job about getting the word out. The little bit we’ve done was by happenstance via interviews and the like. I believe the success of our program and others is spreading in Colorado. When we started, we were just one of six different programs in the state. I think that’s at least doubled since then. Diversion is becoming a viable model at scale.

Challenges

How did you address any internal pushback from colleagues in your office?

I had run for office on a platform of diversion and restorative justice so it wasn’t a big surprise to anyone when I wanted to make changes in line with that. I haven’t gotten resistance, exactly, but other priorities tend to be higher on the list. Every meeting we have, I have to keep reminding people about diversion and changing the initial line of questioning. How do we get people out of the system, not just think about convictions? Should we be prosecuting at all? It takes time and reinforcement but we’re getting there.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

There’s some perception within the legal community that we were being too lenient. Some stakeholders didn’t believe the program was worthwhile, including judges,

law enforcement, probation, and even some members of the defense bar. That was challenging to navigate. But I said: “Look, we’re going to do this and this is why.”

Has the physical geography of your jurisdiction posed challenges in doing this work?

In our jurisdiction, we have one population center in one of our counties, whereas the other counties are considerably smaller. We’re also in the Four Corners region, near other states’ borders. As a result, the vast majority of our participants are within one main county but we still need ways to serve other participants remotely, perhaps in other states. That could be an online class for anger management or about safe driving. It all ties back to the population we’re looking to serve; they’re not super high-needs so the mandate can be something independent that they do on their own. Go get your drivers license in the next 90 days, then show me you did it. Of course, there’s a tension there because we are starting to serve the higher-needs people too.

Lessons and Next Steps

How have these efforts reshaped how you define your role as a prosecutor?

One of the roles of the prosecutor that has changed since diversion is in how we promote public safety. The traditional attitude towards prevention is about locking people up for as long as you can, but I don’t believe that’s productive or effective. If you really want to promote community safety, which is our deepest underlying mission, you have to approach crime prevention more broadly, including solving the root problems that are leading to criminal behavior. Diversion is a great mechanism to tackle those issues, and I believe it’s promoting our core mission.

What resources or partnerships have been most helpful in launching and sustaining this work?

I’ll add that we designed a specialized mental health diversion program as a subset of adult diversion — I’m really proud of that — to help connect clients with mental health providers. If they enroll and stay in treatment during their case plan, we’ll dismiss their charges. They’re higher-needs individuals who we want to get into treatment as our primary goal.

What are your plans to ensure sustainability going forward?

Sustainability for these programs is really challenging. We know at some point, the grant funding will run out so you have to make a plan for sustainability early on and work toward it. For us, that means figuring out how to keep it going through

program fees or through county funding. As part of that, it's important to be able to cite successes like decreased costs and recidivism rates so that you can engender goodwill and support in the community.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

As mentioned above, I'm eager to expand our efforts to more cases and more higher-needs individuals, but diversion is tough because the more difficult cases you take on, the tougher it will be to show high success rates. For example, we're under a lot of pressure to help address local homelessness. It's a large population in our community, and the issue is very much in the public eye. We know the traditional jail model doesn't work. But what might success look like in a diversion model? The outcomes for those cases might not look as impressive to funders or to the community. And there's the added challenge that I only get two four-year terms to pull this off — that is, if I get elected again.



John Chisholm

DISTRICT ATTORNEY
MILWAUKEE COUNTY, WISCONSIN

“I became a prosecutor to continue a life of public service that I found gave me a strong sense of purpose and meaning in life. I have been particularly attracted to working in a values-based organization similar to my experience in the Army.”



Jeffrey Altenburg

DEPUTY DISTRICT ATTORNEY
MILWAUKEE COUNTY, WISCONSIN

“I see my role as a prosecutor to be essentially one of maintaining the social compact in a balanced and fair manner, making sure that the community is safe and that fellow citizens' rights are protected, regardless of whether they are victims of crime or accused of crime.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

Chisholm: We started our first diversion and deferred prosecution programs back in 2007, and I try to keep in mind the historical evolution of our thinking on this and how far we've come since then. When I was running for office for the first time in 2006, both Jeff and I were experienced prosecutors. Back then, even though we had a vision for improvements we wanted to make, there wasn't a shared vocabulary about early intervention, public health approaches, and risks and needs — and how all those intersected — like there is now. I'll be the first to admit, I used to be locked into a traditional prosecutorial mindset in which there were bright-line categories of cases that are inherently dangerous and risky and therefore inappropriate for early intervention. Jeff and I used to have vigorous debates about that, and I would imagine lots of jurisdictions continue to wrestle with the same preconceptions. They can be very hard to overcome. This extends to the discomfort with the extent of inter-agency collaboration that is required to do this work well. So as we think about the old way of doing this, we deeply appreciate the social justice framework and bent of our predecessor, Michael McCann. Under his leadership, we piloted things like community prosecution and restorative justice practices. He always insisted that our job was more than just adjudicating cases. We were told to do justice in every case and think about the impact of our decision-making on the community. That being said, the office had ballooned in size from about 17 prosecutors in 1969 to over 100 in 1990, and Milwaukee was battling the introduction of crack cocaine into our communities. We also had a rising awareness of racial disparities: Wisconsin was first or second in the country in terms of highest racial disparities for incarceration. Pair that with some high-profile misconduct issues related to law enforcement, and there was a general sense that the system was not treating everyone as fairly as it could.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

Chisholm: The traditional approach involved a fairly efficient assembly-line for taking cases. The cops would make an arrest, and then individuals would be brought to the county jail, at which point our office would make charging decisions within 72 hours. There was a pretty tight window to do a thorough screening and also consult with victims. In addition, at that time, our pretrial services agency was a passive player that was undervalued and underutilized. To be honest, for years they read their assessments in court but were not recognized by the system actors to have much of a role beyond that.

Altenburg: I'll add that back then, as a community prosecutor overseeing a team of community prosecutors, it frustrated us to no end to see so many low-level non-violent offenders cycle in and out of our doors whose nuisance behavior was driven by drugs, alcohol, or mental health. While we made a lot of decisions not to charge or offered deferred prosecution agreements, it wasn't systematic in any way. We also didn't have a way to involve the defense bar or get input from participants. We acted unilaterally, which we had the authority to do, legally, morally, and ethically. But we eventually realized that it wasn't ideal to be operating in that vacuum. We wanted to be more transparent about what we were doing and why, so that motivated our initial efforts to convene the defense bar and service provider community and design a more structured and transparent process.

“When we first started to change our approach to early case decision-making, two of the biggest obstacles were **setting up an efficient screening process and getting stakeholder buy-in.**”

Where did you look for ideas or resources on this topic?

Chisholm: Jeff's work as a community prosecutor before we came into these policy-level roles had built a lot of goodwill and collaboration with the public defender's office locally. They had lots of ideas about how to better serve their clients. We also looked to a neighboring county that was piloting a new problem-solving court for operating while under the influence cases. There were some lessons there that mapped onto what we were trying to do. However, the most tangible assistance we received was through the National Institute of Corrections' (NIC) Evidence Based Decision Making Framework project. Through Milwaukee County's participation in this project, we were able map our entire system, identify the key decision points, and agree that our system reform needed to rely on best practices in risk-needs assessment rather than basing all of our eligibility determinations simply on categories of offenses.

How did the political or cultural context help motivate any of these changes?

Chisholm: As I mentioned earlier, the racial disparity data demanded that we examine our practices to see how we, as prosecutors, were contributing to that problem — not just in terms of early decision-making but across the board. We agreed to work with the Vera Institute of Justice and give them carte blanche with our review our data

systems and intake and charging decisions. That process helped us identify other resources offered by NIC, the Bureau of Justice Assistance's Justice Reinvestment Initiative, and the State of Wisconsin's Treatment, Alternatives, and Diversion grant, which helped fund our early work in this area and build what we have today.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Chisholm: We believe that the purposes of the system include being preventive and remedial. We wanted to move away from thinking about the criminal justice system as simply reactive and punitive. That new mindset allowed us to consider the root causes of crime and struggle through the question of who should get the full force of the state's response (with the ultimate end goal of incarceration) and who shouldn't. After prioritizing early intervention for a number of years now, I can tell you there's an added risk of freeing up resources to focus on the most serious, riskiest cases. We've actually seen prison sentences increase. So while we've gotten better about identifying the right people to bypass out of the traditional system, the new frontier is how best to respond to the people who are prosecuted traditionally.

Who's eligible for these new responses?

Chisholm: Everything hinges on risk and need levels. In my opinion, that's the only framework in which you can find common ground among prosecutors and defense attorneys, which is an essential collaboration for this work. The risk-needs framework is a bridge, albeit an imperfect one. I know that when we use risk tools, they're heavily influenced by structural racism. That's something to acknowledge and work to address, but I don't think you throw it out completely. Frankly, we don't have a more effective option.

Altenburg: Our thoughts about eligibility are constantly evolving. For example, we're starting to do deferred prosecution with some firearm cases. I never thought we'd do that. Frankly, I'm still a little wary of it, but it's responsive to our community where we now have a concealed carry permit process. A portion of the population arrested for firearms charges may not need a significant system response; they just need help making sure they're following the relevant laws in handling, carrying, and transporting a firearm in a safe and legal way.

What does the new process or program do differently?

Chisholm: We have two primary models that target different risk-needs levels: diversion and deferred prosecution. Our diversion program is pre-charge for a wide range of low-risk defendants with non-violent misdemeanor or felony arrests. The idea is to provide low-dosage responses consisting mainly of community service, required restitution, and possibly attending a restorative justice conference that focuses on accountability for the low-level offense. Our deferred prosecution program is post-charge and post-plea and targets medium-risk individuals. Participants are referred for individualized treatment and social services designed to reduce their risk to reoffend.

Did these changes require new roles within your agency, and if so, how?

Altenburg: Through a number of state, federal, and private foundation grants, we have been able to fund a few specialized prosecutors who screen cases on a daily basis for our diversion and deferred prosecution efforts and also work with the specialized state public defenders and pretrial case officers to move individuals through the early intervention process. Those prosecutors also act as liaisons for the rest of our staff who are interested in referring cases to the program. Finally, our specialized prosecutors work with me to conduct ongoing training for the rest of our staff on our program and process.

What roles do screening and assessment play in these early decisions?

Altenburg: It's hard to know how to reduce jail sentences without a risk-needs framework. Otherwise, you're just shooting in the wind. In Milwaukee County, everyone who is arrested and booked into the county jail is administered the short-form Level of Service Inventory-Revised: Screening Version (LSIR:SV) assessment. That classifies them as low-risk or in need of further assessment. If someone is classified as needing further assessment under the LSIR:SV, they then complete a full-length LSI-R assessment, which gives us additional information.

Chisholm: I'd add that we're missing an opportunity to assess for trauma. If you give me a reliable scale on trauma, that would help inform a lot of our decisions. It's all about helping prosecutors better understand why someone has behaved in the way they have. That helps us address the impact that behavior has had on others.

“You can’t operate an improved response like this without **collaboration and a risk-needs framework.**”

Data and Outcomes

What data is important to collect for an effort like this?

Chisholm: We have to supplement conventional measures like arrest and conviction rates in order to get at the root causes of disruptive behavior and show what impact our practices are having. For us, the number of jail beds we’ve saved and lives we’ve saved are huge measures. Even since we started the MacArthur Safety and Justice Challenge, we hit a 20 percent reduction in jail beds — with reduced racial disparities, too. Most of that reduction was due to addressing post-sentencing jail stays before transfer to prison, so not a direct result of our diversion work, but it’s still part of the bigger picture and our priorities. We’ve made great strides, but there’s a lot of frustration that the impact isn’t occurring quickly enough. We also have to define “recidivism” in the context it’s used. For example, a new drug offense for someone working through a treatment program could be viewed as relapse, whereas a new related offense after completion may be a more meaningful indication of failure. We should also look at broader measures than typical criminal justice indicators, such as access of emergency medical treatment or municipal citations for drug-related activity. For that, we need better data-sharing among agencies beyond the justice system. All that being said, our diversion work has demonstrated dramatic reductions in conviction rates, jail sentences, re-arrest rates, and durability when measured against a comparison group. Because we’ve been doing this for several years already, it meant we didn’t have these easy wins as part of our Safety and Justice Challenge jail reduction strategy, but jurisdictions that are just now implementing early interventions are seeing a great impact like we did initially. On top of all that, there’s the challenge of capturing early diversion case data in our case management system. We have a few hundred or so deferred prosecution cases that are handled by outside agencies, so the data doesn’t sync up with the cases we process directly. That means we’re missing out on telling a complete story about all that we’re doing.

“**Trauma measures** are the most powerful data measure that we don’t yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

Chisholm: I think we benefited by starting from the viewpoint that community prosecution is a philosophy, not a program. When you put prosecutors in the community with the express mission of helping solve problems, they can then act as ambassadors for the whole office and get a real feel for what the community needs. It allows us to be responsive to what makes community members anxious and affects their quality of life. Our neighborhood-level involvement also shows our investment in the community itself and that we’ve put some skin in the game. Only once you have those connections can you start to problem-solve with someone who has been accused of a crime.

Challenges

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

Chisholm: Judges were very skeptical of us initially. They had seen the shortcomings of offering treatment as part of treatment courts, which in Milwaukee County used to include young drug dealers. That approach was based on faulty reasoning that drug dealers needed or wanted treatment, whereas they’d rather just do the time. We had to convince our stakeholders that there were rational, treatment-minded approaches worth trying.

Altenburg: Again, we really emphasized collaboration in talking with stakeholders about the changes we were making, stressing that we, as prosecutors, were willing to be forward-thinking problem solvers. When you do that, it’s pretty hard for even the most hardcore defense attorneys or police officers to say they don’t want to be a part of it. In addition, once we started doing pre-charge diversion on our own without the court’s involvement and agreed to more deferred prosecution agreements with the defense, the court realized the importance of having a specialized court and judge to handle these cases.

Another specific stakeholder challenge was increasing our social service partner capacity. When we first started, there were very few pretrial services slots available for our deferred prosecution participants. We applied our community prosecution, problem-solving model by going out into Milwaukee to identify who was currently providing some kind of health and human services to our target population and what it would take for them to be part of our program. The pitch was that, while we didn't have any funding, we had an endless supply of clients. We could all serve a common goal and possibly even generate future funding.

Building into our program the input of victims was the final and most important piece of our program. Our protocol always includes consultation with the victim, so it's important to develop the right personnel and skills to have a meaningful conversation with victims. Sometimes the victim helps us create a diversion or other alternative. Other times, they are angry and want someone prosecuted fully under the law. We take those wishes seriously but also try to stick to our protocol.

“Concerns about structural bias in risk assessment and signs of risk we’re missing continue to make us nervous about our early screening and diversion efforts.”

How have you considered and addressed racial disparities within early decision-making?

Chisholm: Addressing racial disparities has been a significant part of this work. It started with acknowledging that these disparities exist and that we needed an outside review to help us plan for improvements. Vera was able to help us determine which system operations produced disproportionate outcomes, which boiled down to highly disparate charging practices for low-level drug and public order offenses. That data gave us objective license to start designing programs to address that population.

Lessons and Next Steps

“The primary benefit of our new approach is that it is intellectually and institutionally coherent.”

How do you define “diversion” and situate it among your other decision-making tools?

Chisholm: Our early intervention efforts are situated along a continuum on which there are other alternatives. Together, these all align with our goals of addressing the root causes of crime. So alongside our early intervention strategies are post-adjudication problem-solving courts, day reporting sentences, and something we call dosage probation.

How have these efforts reshaped the way you define your role as a prosecutor?

Chisholm: We hold our office to the American Bar Association model standards for prosecutors: “to seek justice, not just convictions.” Wisconsin’s professional standard for prosecutors speaks only to the mechanical terms of the job, whereas the ABA standard is aspirational. I think it captures that we should use the state’s power to make the community safer and healthier and help provide conditions for prosperity. I also think a broader role is more fulfilling for prosecutors. For example, I know some prosecutors who define themselves by how they handle homicide cases. They live to do that work. But I don’t care what anyone says: That singular focus takes a toll on those individuals. And of course, if you put those prosecutors in a regular court assignment, nothing would seem important by comparison. But it’s important for prosecutors to have options to define themselves by more than what they do in the courtroom. If they can develop relationships and engage with the community, they will have a greater sense that they are making a difference.

What resources or partnerships have been most helpful in launching and sustaining this work?

Chisholm: I can’t overstate how Milwaukee has benefited from the culture of collaboration we’ve developed with our defense bar. In most other places, the system is locked into an adversarial mode, and primacy is placed on the adjudication of cases. Don’t get me wrong: Trade craft is important, and skilled attorneys are essential to our

form of justice. But the emphasis on solving problems strictly through adjudication blinds us to a wealth of information that is true evidence. We've restricted ourselves to legal evidence for too long and forced our brains to ignore other things that are powerful evidence, whether in medicine or social sciences. Prosecutors might think: "Yeah, that makes sense, but I can't use that idea to charge someone or not. It only matters whether I can prove the case beyond a reasonable doubt." That thinking limits us. My hope is that one day, anyone who poses a risk or danger will receive a healthy, community-based response from a well-designed, well-resourced system. And that system will work because the professionals within it define their roles by a common goal and work collaboratively with one another. For now, we'll keep doing what we can with the problems that are being brought to us. I would also argue that co-location of key agencies and services is essential. Design matters. If the public defender's office is on one side of town, the prosecutor's office is in the courthouse, and service providers are yet somewhere else, you don't have daily interactions that can start to break down barriers. Any time you can retreat back into your own corner, you slip back into your old ways. I've heard that Pennington County, South Dakota, has adopted a co-location model where everything is within a block of the courthouse. You could even apply that model regionally between counties.

If you were to do it all over again, what would you have done differently?

Chisholm: The first thing we did wrong was to define our program by who wasn't appropriate, such as sex offenders. We didn't start from a framework of defining the target population we wanted to respond to differently. We should have first thought about the cases that don't need charging but rather would benefit from something else. We didn't know how to do that.

What are your plans to ensure sustainability and ongoing adaptability of your existing efforts?

Chisholm: BJA's Justice Reinvestment Initiative has been key to this work. We initially got a couple of grants to create about 500 participant slots within our early intervention program. Once we showed that the program reduced the jail and probation populations, the county started including it in their budget.

“The single piece of advice I'd give to my peers is to
collaborate.”

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

Altenburg: Collaborating with your local defense bar may seem impossible, but I can tell you, it's not. Start small. Who do you have a working relationship with? Find the one or two defense attorneys who you trust, and build on that. That's what we did.

Chisholm: I'm not a believer in the "heroic prosecutor" model of reform. True, prosecutors have enormous power but the real power is using our authority in a way that is collaborative. We have to learn to cede some of our decision-making authority to others who may be better at identifying the problems and solutions. That applies to early decision-making as well as anything.



Darcel D. Clark

DISTRICT ATTORNEY
BRONX COUNTY, NEW YORK

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

Traditionally, a single assistant district attorney might craft an alternative for one defendant with his or her defense attorney. This conversation could occur shortly after arraignments or after a year of adjournments in court. We didn't have a dedicated bureau or staff who were trained on alternatives and the necessary resources to support diversion decisions. For the most part, defendants were not getting tailored responses.

Where did you look for ideas or resources on this topic?

We are lucky in the Bronx to have Bronx Community Solutions, operated by the Center for Court Innovation. Not only do they provide the staffing and resources for alternatives in a direct sense, but they also help us think through and implement new ideas. I also thought it was important to consult other district attorneys from around the country, like Dan Satterberg in King County, Washington, who have been doing creative things for years. Why reinvent the wheel? Learning about those different approaches informed our plans, including determining the best way to replicate programs to address the specific needs found in Bronx County.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Early intervention is key. This work is too serious for us to not have a concerted, centralized response. I created an Alternatives to Incarceration (ATI) Bureau as soon as I took office, so we could change our practices to align with my mission to pursue justice with integrity. The ATI Bureau and our Overdose Avoidance and Recovery program took the approach I wanted the whole office to take, which was thinking "least restrictive outcome" for every case. We can do that at the charging decision, all the way through to disposition. I don't care what case you have. I want our prosecutors to start out by asking: "Is there anything the ATI Bureau can do for this individual?" So I expanded my approach to include screening cases for pre-arrest programming that includes restorative justice practices. A deeper dive into available alternatives is necessary, and restorative practices can help us respond to cases from petit larceny cases to serious assaults.

What does the new process or program do differently?

Our ATI Bureau screens all desk appearance tickets for possible referral to an alternative. Additionally, we identified some charges that we're not going to prosecute anymore, like for low-level shoplifting and criminal trespass. For those cases, a soft touch is more appropriate and it saves us ever having to bring charges. We chose to have the alternative response be peace circles modeled after Native American peacemaking through a now-citywide program called Project Reset. For more complicated cases with a lengthier prior record or more serious current charge, we now have a process by which we can take a closer look at their details. The final process change was making sure that cases tagged for the ATI Bureau were officially moved over to that unit as soon as possible. When we first started, there was some confusion about where the ATI cases belonged — with the referring prosecutor or the ATI prosecutor. Once we set up the right process, the originally assigned attorney was usually happy to get it off their desk.

Did these changes require new roles within your agency, and if so, how?

To lead the new ATI Bureau, I hired a former prosecutor who had also worked at a national nonprofit dedicated to alternatives to incarceration. She oversees a team of assistant district attorneys, a program manager degreed in social work, resource coordinators, and court managers. Some assistant district attorneys work as case managers to coordinate caseloads with community-based organizations. We always had social workers to assist crime victims, but I recognized the need for social workers for defendants too. Those within the Bureau receive continuous training in treatment modalities, restorative justice, procedural justice, trauma-informed practices, and data collection, and liaise with institutionally- and community-based organizations on a daily basis. Our ATI Bureau acts also as a consultant and works hand-in-hand with prosecuting ADAs throughout the office. Everyone in the office gets training on this. We trained the senior staff first, and then middle managers who pushed it down to line prosecutors. We also created an ATI hotline and email address for staff to share their feedback and questions. That new communication channel helped us figure out what to address and clarify, and earned us some buy-in too.

What roles do screening and assessment play in these early decisions?

Assessments for programming are handled externally by program providers. Resource coordinators employed by the Center for Court Innovation administer an assessment tool created by New York University. And for our OAR program, we worked with Columbia University to conduct a needs assessment of the Bronx. We rely on these reports to determine program eligibility and planning.

Data and Outcomes

What data is important to collect for an effort like this?

Technology and data tracking present challenges for our office. Data has an integral role in program delivery; however, we currently do not have a data system to suit our needs. We haven't had a clear picture of things in the past, so we don't know whether our ideas are successful in terms of long-term outcomes. Now, we only know whether participants completed or not. But we just got some funding to buy an off-the-shelf case management system. It will take a couple of years to go through the competitive bidding process, and by the time we're ready to make the purchase, the system we picked might be obsolete. Thankfully we have engaged a consultant to streamline the process, and hopefully we will implement a comprehensive system in the near future.

Is there a story or anecdote that you think best describes the successes of the new approach?

In 2017, I implemented a restorative justice program for people who have committed serious and violent felonies. We have had several people graduate from the program. One success story is a man charged with second-degree assault. The victim in his case agreed to let him participate in our program through Common Justice, an ATI for violent offenses. The young man pleaded guilty to the charge, completed the program in exactly one year with consistently excellent reports, his felony was vacated, and he was allowed to re-plead to a disorderly conduct. That young man also completed his EMT training while he was in the program. The second chance he got resulted in another first responder being available to help the community.

“Long-term participant outcomes are the most powerful data measure that we don't yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

Keeping the community informed is part of being a DA. It is my job to tell the public what we do. In the Bronx, so many people in our community have been through the system and have suffered from trauma. The community wants their prosecutors to give individuals the help they need, which includes their own loved ones. I was

just at a community meeting, and the refrain was: “We all need more services.” The challenge, of course, is to get that same community to embrace change when it comes to their block. Our communities agree that people shouldn't sit in jail — for example, they say, “Let's close Rikers” — but they change their tune when the alternate location suggested is our backyards. All of a sudden, the conversation is about “those people.” That will always be a battle until communities can see the impact with their own eyes. This work requires involving the New York City Police Department (NYPD), the defense bar, and courts, too. Together, we can ensure that diversion strategies address the needs of victims and defendants.

Challenges

How did you address any internal pushback from colleagues in your office?

It took a while for all our staff to understand our new approach. It required culture change. We're not social workers, and this isn't a probation office. Part of that process was talking with the community. For example, to create an appropriate response for driving while intoxicated cases, we sat with the victims of drunk driving incidents and their families. For years, we heard victims' stories and thought through with them what justice would look like. We asked them: “What do you need?” Now that we have done the hard work of creating new programs and policies, it is second nature for our staff. Even if prosecutors ultimately decide that a program is an inappropriate option for a given case, at least they started by considering it.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

The police have been an obstacle. No matter how many commissioners come and go there, police think the way we measure public safety is by how many people we put in jail. We're always having that conversation. But we have partnered with the NYPD to create diversion programming for those with substance use and mental health needs. They have been good partners. It's especially hard in the Bronx because we're at the top of all of the bad lists and bottom of all of the good lists. We've been trying to get the powers that be to invest in our borough adequately so we can do what we need to do. If we're going to close Rikers Island, you'd think we could reinvest some of that savings into services like mental health, in-patient drug treatment, and affordable and supportive housing.

What safeguards did you put in place to ensure proportionality and the right level of accountability for individual participants?

It is important to consider public safety and proportionality. The safeguard in our system is the defense attorney, who can always suggest to clients that programming is not their best option. Also, our office does not penalize someone if they do not accept a program offer. Generally, defense attorneys recommend taking advantage of the alternatives we offer because they recognize the longer-term benefit on their clients' lives. We also ensure that prosecuting ADAs check in on each person's progress and are informed when someone will successfully graduate from programming. It's critical for everyone to witness success and also be informed when someone does not successfully complete programming.

How have you considered and addressed racial disparities within early decision-making?

There are communities in the Bronx that have suffered because of over-policing. For example, we know that black and white people smoke the same amount of marijuana and yet there have been significantly more black people arrested for marijuana possession. I'm well aware of this, and I'm not going to be a part of sustaining that disparity. In my role, I get to decide: Am I fully prosecuting every case that gets sent to me? No, I'm not going to be the DA who just goes along with it.

Lessons and Next Steps

How do you define “diversion” and situate it among your other decision-making tools?

Diversion should be part of a spectrum that reflects a change in philosophy. Our office no longer has a “nail ‘em and jail ‘em” mentality. We strive to figure out what justice looks like in each case. That means being thoughtful at each stage of the case, from the charging decision to disposition. There has to be a continuum of consideration and care.

What are the biggest adjustments you have made to the approach since you first started?

A new wave of adjustments is hitting us now as part of New York's bail reform, which was implemented in January 2020. Now that most defendants aren't in custody, we don't have the same leverage we did before. We have to recalculate. The Center for Court Innovation recently published an article on this topic called “The Myth of Legal Leverage” that is helpful to this conversation.

What are your plans to ensure sustainability going forward?

Our office receives grants, which are helpful in supporting this work. We are also fortunate in New York City because the city is progressive and always willing to fund innovative projects that keep people out of jail and prison. The rest has become our normal course of business and doesn't require any additional resources, but it might require that our community partners receive the funding they need to do their part. Ideally, we'd reallocate system savings to these efforts.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

A community court in the Bronx would serve a critical function in this county. It would allow us to look more carefully at the crimes in particular neighborhoods and have a single judge help connect individuals to wrap-around services in a one-stop shop. Too often now, we have to make a referral for social services and simply hope that the participant shows up.

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

Engaging the police and prosecutors should be the last resort in dealing with societal problems like addiction and homelessness, but under our current structure, we are the first stop. Legislatively, we also need to equip judges with civil remedies to require people to accept treatment. Some people have a serious mental health disorder but won't accept it and refuse to go into treatment. There should be a civil mechanism to commit those individuals to treatment. I have had an opportunity to visit mental health courts in Miami, Florida, where the law allows police to work with the defense bar to get people into treatment.



Scott Coffina

PROSECUTOR
BURLINGTON COUNTY, NEW JERSEY

“My role as a prosecutor is to help keep all members of the community safe, and to find justice, as best as possible, for everyone we deal with — crime victims, the public, and defendants.”



Melissa O'Mara

ASSISTANT PROSECUTOR
BURLINGTON COUNTY, NEW JERSEY

“I became a prosecutor to share my experience as a person whose life has been directly impacted by the criminal justice process, to serve my community by bringing my passion for justice no matter where you are sitting in the courtroom, and to promote new ideas on the role of the prosecutor.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

Coffina: The old way, we'd take nonviolent offenders arrested for shoplifting or breaking into cars — some with sporadic addiction issues — and many would sit in jail for period of time until their case was heard. Maybe they'd go to trial, but then they'd be right back on the street. They might be in and out five times doing the same thing, and we'd respond every time in the same way. It's the definition of insanity. With addiction, the habit and illness doesn't go away with that approach. In fact, it adds stress to the community.

O'Mara: I'm a relatively new prosecutor but based on speaking with other prosecutors, early decision-making wasn't focused on rehabilitation before, particularly for those with substance use disorders. An incident would happen, we'd get the evidence, and then prosecutors would move it forward. That was it.

“When we first started, two of the biggest obstacles were balancing accountability with compassion and having sufficient treatment and community resources.”

Where did you look for ideas or resources on this topic?

Coffina: When I became the county prosecutor, I got a lot of support from the former prosecutor in a neighboring jurisdiction, Joe Coronado. They had a diversion program, and he came to our county to meet with law enforcement and treatment providers and talk about how to get it done, on a nuts and bolts level. I also looked at the Gloucester, Massachusetts, police walk-in model — the first of its kind in the country. I also credit Governor Chris Christie, who I had worked with before, for helping me see addiction as a chronic disease. Equipped with these ideas, I set it as a goal to have a diversion program in place before my first year was up. But on a personal level, I also remember three months in as prosecutor, attending my son's fifth grade graduation from the Law Enforcement Against Drugs program. Each kid had written letters about how drugs may have influenced them, and the parents also write letters to kids. Three kids shared devastating stories about parents or family members

who had died as a result of addiction. It struck me how prevalent the problem was: These were three children in just one grade in one school in one town in our county.

O'Mara: I also looked into police diversion and deflection programs to “find my people.” As a law student at the time in long-term recovery from drugs and alcohol, I knew I wanted to focus my career on not only being a trial attorney at the prosecutor's office but improving deflection and diversion for those with substance use disorders. There was a new wave of law enforcement coming up that were doing things differently and I knew I has something to bring to the table based on my personal experience. I got to visit the Gloucester program and see it first-hand, which was amazing. I also got connected and involved in the Police, Treatment, and Community Collaborative, which has been a helpful resource and network to learn from.

How did the political or cultural context help motivate any of these changes?

O'Mara: Overdose fatalities and addiction is devastating our communities — something I know all too well. When I graduated law school and was looking for a job, a lot of prosecutors didn't appreciate the experience I had and didn't want to support my aspirations to do diversion and deflection. Even though I'd been in recovery for years, the stigma I faced gave me more motivation to become a prosecutor and have a seat at the table where solutions and innovative prosecutorial programs are being created. There is a new focus in the justice system on including the voices of those impacted and the recent attention addiction as a health crisis has been given made now the time to start and grow programs specifically as a prosecutor who is dealing with the many collateral consequences of addiction.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

O'Mara: Early decision-making is about what services can be put in place for victims and defendants at the earliest possible moment. Today, we are able to give the defendant the opportunity to access resources and get on the road to rehabilitation upon arrest or even at the first appearance. This new approach by prosecutors, especially alongside our state's recent bail reform where many more individuals are being released on conditions, provides new and important tools to make our communities safer.

What does the new process or program do differently?

Coffina: Our efforts include proactive interactions with at-risk folks where we bring help to the person. First, our Operation Helping Hand program supports police or a detective from our office in responding to the scene of an overdose. We also send a peer recovery specialist, who is someone who has been in a similar situation and is able to make a connection and offer help to seek treatment. We also send a recovery coach with a detective to at-risk people at their last known address. Some people are hard to find and then hard to connect with, but even being amenable to talking with a recovery specialist is a win if they now know who to call when they're ready to get help. Of course, getting someone into treatment is a homerun but as an intermediary step, it's also good to offer harm-reduction tips and connect them with someone to talk to. We have seen countless times where those connections pay off in the long run, too. Second, our Straight to Treatment program allows individuals to walk into a designated police department and meet with an officer and treatment provider or coach. People from all over, not only within our county, know that if they need help with addiction they are able to walk in and get help. We've arranged for their warrants to be recalled, and they can turn in any drugs and paraphernalia they may have without the fear of being charged. Last but not least, we also have a municipal court diversion program which is being piloted in one of our busiest municipal courts. Even before their first appearance, law enforcement officers make a referral to the municipal prosecutor and the court to encourage them to admit a person into the diversionary program. On the day of the person's first appearance, the prosecutor and the court can give a willing and eligible participant the opportunity to have their matter postponed in exchange for connecting with recovery resources. There is no promise of dismissal of charges, but at the end of the day, those individuals who take part in the diversionary program are better situated to resolve their cases when they come back before the court. It also provides them the tools to increase their quality of life and not return to the criminal justice system.

O'Mara: By having an array of diversion and deflection programs, we don't have to wait for someone's tenth arrest or when they are eligible for drug court in the Superior Court; we can get them services before then. This includes options that are completely deflective in nature, meaning no charges at all. Post-arrest, it is paramount for us to prioritize accountability for an individual's actions while giving them the opportunity to recover. What we have found through all of our recovery initiatives is that it's all about balance.

Did these changes require new roles within your agency, and if so, how?

Coffina: Melissa is our point person for recovery initiatives in the office. She assists with drug court and also is a resource for other assistant prosecutors looking to balance accountability with compassion for nonviolent offenders struggling with addiction. This is in addition to her full caseload in our case screening and grand jury unit. She's a straight-up good prosecutor. I knew from her smarts when I interviewed her she'd be a great prosecutor. In addition to that, her personal experience with addiction and recovery provides a valuable reality check about how we proceed with cases. She reminds us to cut people a break or think creatively about how to help because she knows the depths of the struggles people may be facing. She's also an example that recovery is possible. Before she even started, we had her at an event focused on positive recovery stories. People react extremely positively to see — as they do with Melissa — that they can get from where they are now, in a horrendous place, to a prestigious career and having good relationships with family and other people. In addition to Melissa, we are also, for the first time, hiring someone to lead outreach and training for our Operation Helping Hand program.

O'Mara: I'd add that the relationships we've developed with officers on the street through our recovery initiatives have allowed us to do our jobs better. If someone gets arrested for possession of heroin, officers with a recovery mindset will reach out to our office and tell us what's going on, or ask us what deflection or diversion program the person may be eligible for. Even if it is just a heads-up about who the defendant is as a person and what they are going through helps us make decisions about pretrial release and provides us a basis for a warm handoff to other recovery resources. It also gives us more information when going into plea negotiations with defense counsel to ensure a fair and just result. Internally, within our law enforcement community in Burlington County we also do language training. Words like "addict" are pejorative and dehumanizing, and we wanted to move towards more person-focused language. Small changes in language can be a powerful tool for our officers. Word choice helps build rapport, which is helpful in working with defendants and their families, even if they're not ready to go into treatment right now. To support all of this, we were able to use grant funding to hire a project manager, Rich Alexander, who is also in long-term recovery. When we're in court, he's talking with recovery coaches, scheduling people, working with the clinical supervisor for our peer recovery coaches, scoping capacity and needs for more detox beds, and ensuring that our recovery initiatives are helping the most people possible.

What roles do screening and assessment play in these early decisions?

O'Mara: Our assessment isn't always very formal. On the street with officers, there is a formalized assessment that takes place for municipal diversion or Operation Helping Hand. What I do is I build relationships with officers and other prosecutors within my office so when they see a case that might be appropriate for one of the initiatives or they encounter someone with a substance use disorder and want some feedback, they consult me or send the file my way. My assessment entails looking at a person's criminal history and what seems to be going on now, including housing, insurance resources, and other recovery capital. I check to see if they're eligible for drug court or if since the time of arrest they have taken steps through one of our programs, or through other community resources, in getting on a path to recovery. I notice whether some people might benefit more from a peer recovery coach or from a creative plea negotiation. It all depends on the individual.

What does this new response cost?

O'Mara: Our Straight to Treatment program doesn't really cost anything. Treatment providers and local nonprofits with peer recovery specialists do it on volunteered time. Police donate space in their departments and an officer to deal with outstanding warrants, and they go out in their communities to share that they're willing to help. The program is self-sustaining. The only cost associated with the program is when transportation needs to be arranged — in that case, Ms. Coffina utilizes forfeiture funds to ensure that those who are ready to get to treatment can get there. With our other recovery initiatives, we have funded the peer recovery specialists, transportation, project management and training of law enforcement officers through grant funding. Over the last year or so, Attorney General Gurbir Grewal has made it a top priority to help those with addiction by supplying New Jersey county prosecutor's offices with grant funding. We have utilized that funding to run five month-long, 24-7 operations where recovery specialists are on call to assist local law enforcement, create a municipal diversion program, and do outreach with individuals and the New Jersey Transit system that runs through our county. We also use the funding to support other county recovery resources like the sheriff's mobile Hope One response van that has a peer recovery specialist, Narcan training, HIV and Hepatitis C testing, and other resources.

“You can't operate an improved response like this without collaboration with community and county resources and educating on the disease of addiction and the stigma associated with it. Another key component is dedication. These recovery initiatives are not a typical nine-to-five job.”

Data and Outcomes

What data is important to collect for an effort like this?

O'Mara: Data collection is in the job description for our project manager and our new support agents. We collect data on everything, from demographics to service usage. In our police-led program, police departments collect that information and send it to us every week. We use that data to make sure we're hitting every population that we can. A lot of times, dealing with law enforcement, programs like this might leave out large groups that don't feel safe with police. We also track data for our Helping Hands program via intake sheets that we then enter into spreadsheets. That information is collected by our recovery specialists and is used for similar purposes and for grant reporting. We also want to make sure that the people coming to us for help are being referred appropriately and to legitimate and honest recovery resources — you can never be too careful when dealing with a population that is vulnerable.

Is there a story or anecdote that you think best describes the successes of the new approach?

O'Mara: Stories are so important to this work and often paint a picture better than the numbers. For that reason, we have our recovery coaches track narratives on participants. For example, one participant's mom texted their son's recovery coach on Thanksgiving. She sent a picture of her son before treatment, giving the middle finger to the camera, and also a picture from the present day with his family. That was a real success story, and we hear these stories all the time. At the same time, it's a good reminder of how complicated the work is. That young man didn't have a perfect journey. We were chasing him all over the place and had to clear lots of barriers, including some medical issues. At the end of the day it makes the long hours and the frustrations worth it to see someone recover before your eyes and rejoin your community.

Coffina: I agree. Just the other day, someone came up to one of our victim advocates in court and said: “Tell the prosecutor the program saved my life.”

“Long-term success is the most powerful data measure that we don’t yet track but wish we could.”

Coffina: Our biggest challenge with respect to data is finding out how participants are doing three or six months after treatment. For our police-led diversion program, we don’t have the resources to do this type of intensive follow-up. At least with Operation Helping Hand, we are able to establish a relationship and continue to maintain contact, so usually we know how participants are doing a few months after initial contact or release.

O'Mara: If people are not doing well, they will pop back up and we’ll work with them again. For people doing well, we will let them stay connected on a voluntary basis if they want. But it’s tricky because sometimes people fly the nest when they’re doing well; part of their recovery is breaking away. But for others, losing contact is a bad sign. We just always leave the doors of our police stations and office open, and the phones of our peer specialists on for when they need help again or when they want to share their story with us.

Challenges

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

Coffina: Before we had all of the recovery initiatives we have now, I remember talking with a police chief who was complaining about someone we agreed to send to drug court. The chief had the perception that drug court demands no accountability or punishment. However, at the time, drug court was the best option because the supervision is extremely intense. I told the chief to look at this defendant and another individual in his town who did not go into drug court. The drug court participant agreed to an alternate sentence of three years, and five years of intensive supervision through drug court, if he did not successfully complete the program. Recovery courts and programs provide the support that will keep the drug court participant in this case on the path to recovery. The other individual, even if convicted, likely would

get a lesser sentence and be afforded less recovery services. At that time, the person without the option of drug court was a higher risk of reoffending. Although drug court and recovery initiative participants themselves sometimes throw curveballs, the great majority of them do become better situated after program completion.

O'Mara: One of our participants refused to go to treatment until the recovery coach found a placement for his pet. You have to just figure out how to get around barriers. You also need to educate those who do not understand the disease of addiction and show them that, although in the past we addressed addiction with a purely punitive approach, there are alternative ways to address the issue that can be more effective.

Lessons and Next Steps

“The primary benefit of our new approach to these cases or individuals is we’re saving lives.”

How do you define “diversion” and situate it among your other decision-making tools?

Coffina: I don’t think of this work as a law enforcement strategy. It’s a “saving lives” strategy. Between 2016 and 2017, our county saw a 70 percent increase in fatal overdoses. We’re going to fight through this. It requires a multi-dimensional approach. Enhance enforcement. Prioritize aggressive prosecution of those who sell drugs that lead to their customers’ deaths. Get police to offer services to people on the street who are struggling; we’ll follow through. Through these efforts, we’ll save as many lives as we can. It’s extremely gratifying to know you’ve saved even one.

O'Mara: For me, diversion and deflection is about asking: “What does justice really look like and how can I serve my community?” It is about helping who you can and planting seeds of recovery where you can. For participants in our Operation Helping Hands and municipal court program, the peer recovery specialists are keeping detailed notes. If the participant does well, those notes might be used in court to support a positive case outcome. When participants come before the court, completely changed for the better, there’s so much willingness around the courtroom to get a fair disposition. So justice looks like this person being accountable for his crime and rehabilitated, so they can go on to have a beautiful life in recovery.

What resources or partnerships have been most helpful in launching and sustaining this work?

Coffina: I've been the county prosecutor for two and a half years, and even in this short time, I've seen a significant mindset shift among law enforcement. I think the approach is much more compassionate now and focused on working with the person. The instinct to consider how we can do something to avoid an arrest is at the forefront of many officers' minds today. Having more practical resources and linkages to treatment has been key. The recent Medicaid waiver, allowing Medicaid coverage for inpatient treatment at facilities with more than 16 beds, has been an important breakthrough in expanding treatment opportunities to people who do not have private insurance. Before the Medicaid waiver, it was really hard to find beds for people who needed inpatient help. Having sufficient resources is still a challenge, but at least the buy-in is there. Out of the 30 police departments in our county, I think 25 would be eager to have a diversion program in their own department if they could resource it appropriately.

What are your plans to ensure sustainability going forward?

Coffina: We continue to look for new grants, but we can also support the program through forfeiture money for expenses like participants' transportation to treatment. We also talk to our legislators about funding programming, and the county is on board with thinking through ways to go beyond our law enforcement partnerships. At the end of the day, the problems we're addressing transcend the criminal justice system.

O'Mara: We're always looking to get the biggest bang for our buck with the grant money we get. As we mentioned earlier, we were recently able to hire a new support agent, on top of our project manager, who can support and sustain our efforts. But sustainability is also about getting and keeping everyone at the table. We have great relationships with other county departments. When the sheriff's office brings out their mobile response van, we support that by having our recovery coaches show up, too, when needed. Other partners donate time and services. I also participate in our county's Local Committee on Drug and Alcohol Abuse board, which decides where relevant funding goes. It's a great forum for various agencies to put our heads together about partnership, funding needs, and collaboration.

Coffina: I agree, but I'd add that you don't have to wait to get everybody to the table before you get started. If you're ready and able to move, get started and let the latecomers jump on once you've launched. Diverse interests can slow you down. But if you do great things, people will want to follow.

O'Mara: The single piece of advice I'd give to my peers is **have a recovery voice at the table.**

Coffina: The single piece of advice I'd give to my peers is **never sacrifice your ethics.**

Coffina: I've learned that some individuals get paid to put participants into certain programs. Kickbacks are rampant. So build relationships and see where they tend to make referrals. If an agency sends everyone to the same place, make note of that. As a variation on that idea, watch out for partners who make the work about themselves and not the actual work. This work requires humility — no one has all the answers. Everyone who is addicted has their own individual story and how they'll get through it. If you catch professionals using "I" too much, your radar should go off. That isn't the way to approach this problem.

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

O'Mara: Educate yourself and others about recovery. Popular media show us that recovery looks like a 12-step, abstinence-based program, but that's not the only form it takes. Some people will stop heroin and start drinking, and that works for them. Some people will go to church instead of meetings; that might work for them. Don't exclude participants or discredit their efforts just because they don't use a cookie-cutter approach. The slogan is true: You're in recovery when you say you are. So often we're planning things for people who don't have a voice or not letting them lead their own recovery journey. That makes it all the more important to uphold high standards for your staff and partners. There are national standards available to guide you.



John Creuzot

DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

“My role as the elected criminal district attorney is to promote justice. I do so by working with community partners in defining clear parameters for individuals eligible for programs and providing the means for those individuals to participate in diversionary programs. I also see my role as promoting public safety through the prosecution of high-level offenders to the fullest extent possible. ”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

Thinking of things in a traditional way will get you exactly the same result you have gotten all along. And we know the results weren't good because of the racial disparities: African Americans were three times more likely to be charged with misdemeanor marijuana cases than people of other races. The underlying issue of substance abuse was never addressed, and prosecutor offices were just like factories turning out pleas to move cases through the system. There wasn't further assessment for pretrial defendants or an option to refer them for mental health interventions. Line prosecutors rarely directed cases to the available specialty courts; instead, pretrial release staff or the defense attorneys were the primary source of referral. Among the prosecutor-led diversion programs that did exist, they were not staffed adequately or with the right people. There wasn't a clear sense of mission. I think that's because the prosecutors themselves didn't understand the value in what they were doing. It was more of a political talking point than a way to help people.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

The impact on the individuals coming through was significant. Around 90 percent of homeless individuals charged with criminal trespass in Dallas County used to receive an average jail sentence of 33 days. Many cases had charges reduced or received sentences of time-served, so defendants were never linked to the substance use or mental health services they needed. Too many defendants also racked up fines and fees that they weren't able to pay. And for all of that, recidivism rates for the "time-served" sentences were about 63 percent. For everyone who got a criminal conviction on their record, they were now unable to obtain gainful employment, attend college, or serve in the military.

“Two of the biggest initial obstacles were inadequate pretrial assessment processes and a lack of judicial cooperation.”

Where did you look for ideas or resources on this topic?

I've always been open to thinking outside the box, and there are almost countless groups that have helped me to do so. Here in Texas, I rely heavily on groups like Texas Appleseed, the Justice Collaborative, North Texas Behavioral Health Authority, the Texas Criminal Justice Coalition, and Texas Public Policy Foundation to name a few. I've also looked to Dr. Teresa May and Judge Brock Thomas from Harris County for building a model of collaboration in addressing the challenges we face while working in restorative justice. Nationally, groups like the National Association of Drug Courts, National Drug Court Institute, Center for Court Innovation, National Center for State Courts, National Judicial College, Fair and Just Prosecution, and Law Enforcement Leaders to Reduce Crime and Incarceration have all been instrumental in various ways. Helping develop and lead training for judges and being involved in the legislative process have also informed my approach.

How did the political or cultural context help motivate any of these changes?

My prior work as a judge and as a private lawyer have given me a unique perspective on the status quo and how we might make improvements. As a private lawyer, I did what I could to get good results for my clients. I learned what I could about evidence-based practices so I could make a compelling case to prosecutors and judges, as well as how to avoid a conviction or get the best possible resolution. I didn't rely on them to come up with a good plan; I wasn't sure how educated they were about model practices. So I crafted my own evidence-based plan, and more often than not, judges and prosecutors went along with it. Getting them to delay on an indictment gave my client time to show some results and avoid having the case progress any further. I practiced as a judge in a similar way. Most notably, a big part of my 21 years as a judge was spent starting the first drug court in Dallas County. I wanted to see how we could look at participants more holistically. If we can treat them differently, at a lower level, perhaps we prevent them from relapsing or committing future offenses down the road. That program has been a great success, with many participants turning their lives around and becoming thriving, productive members of society. That being said, I believe that all parties involved in the justice system — from judges down to defendants themselves — have been historically complicit in handling cases in the same, ineffective manner. Pleading cases to a low amount of jail time or probation has done a terrible disservice to all. The lack of collaborative effort and openness to change — not to mention a lack of funding — all contributed.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

My goal as the district attorney is to approach criminal justice from a standpoint of reform and to use evidence-based methods for appropriate treatment referrals. It's important to get a good foundational assessment because it's not just about diversion. We need to pay attention to criminogenic risk factors, and sometimes the best recommendation is prison.

We now reject first-time, low-level marijuana cases and offer diversion for subsequent marijuana arrests. We also reject criminal trespass cases that do not involve a residence or the physical intrusion into property. We divert first-time cases of driving without a valid license. We are working to introduce diversionary models for those who struggle with mental health issues or substance abuse by planning for a jail deflection center. There, law enforcement will be able to drop off those with mental health issues who are committing simple criminal trespass at a location where they can be linked to services. We also started a pretrial diversion program for individuals charged with felony prostitution. Finally, we have expanded the eligibility guidelines for our existing specialty court programs, tuned up those program models, and are tracking the results to ensure effectiveness, like incorporating the Habilitation Empowerment Accountability Therapy curriculum to support positive outcomes for minority participants.

What does the new process or program do differently?

Our goal is to do an individual assessment on each person, but that's still a work in progress. For now, our pretrial diversion efforts ensure an earlier intervention whereby, upon successful completion of the program, a person's case will be expunged from their criminal record.

Did these changes require new roles within your agency, and if so, how?

We needed a few new roles to achieve what we had in mind, which required moving out some existing staff and bringing in some staff from the public defender's office. First, we now have intake prosecutors screen all cases for rejection, according to our new policies. Second, we expanded the role of our clinical assessor to include training our assistant district attorneys in best practices for assessments, conditions, substance use and mental health issues, and relevant cultural competencies. And finally, our line prosecutors were asked to stop and take a look at their cases to determine whether the

defendant would better fit into a diversionary program as opposed to going through traditional prosecution.

What roles do screening and assessment play in these early decisions?

Assessment is crucial, but a lack of resources and funding in Dallas County has made it difficult to have individuals assessed at the earliest stages of the process. This is something we're working on. I think by failing to assess for and then address mental health and substance abuse needs, we have put ourselves behind the eight ball.

What does this new response cost?

Diversion can be staff-intensive but it's worth it. Our office has nine full-time assistant district attorneys dedicated to the restorative justice division, which encompasses the mental health division, pretrial specialty courts, and diversion programs. We also have one full-time program clinician and one part-time investigator assigned to the division. We are able to absorb some of the other program costs within our standard budget and rely on volunteer ADAs in our specialty courts. The volunteer ADAs are assigned to other divisions within the office and volunteer to take on the additional responsibilities of a specialty court — team staffing, attending court, and following the progress of the participants. In 2019, these ADAs volunteered almost 700 hours to the specialty courts. One of our innovations has been to look for and apply for funding more collaboratively. Our office used to seek out only prosecution-oriented grants, but now we work with our other stakeholders to open up more funding opportunities.

“You can't operate an improved response like this without funding and stakeholder cooperation.”

Data and Outcomes

What data is important to collect for an effort like this?

We are still identifying what data is available and how to collect what is needed. For now, information is stored in three separate software applications on individual computers, but a whole range of data is necessary. Individual outcomes help motivate supporters. Community and agency outcomes help tell the story to policymakers and

other funders. For example, an evaluation of our first drug treatment court showed amazing results in terms of recidivism, but it was the financial impact that got the attention of the Texas legislature and moved them to act to expand specialty courts. (For every one dollar spent, there were over nine dollars in avoided criminal justice costs.) Those efforts have helped Texas close eight prisons — soon to be ten by 2021.

Is there a story or anecdote that you think best describes the successes of the new approach?

There was a 22-year old male arrested for manufacturing and delivery of a controlled substance and possession of marijuana. Based on his low risks and needs, he was diverted pretrial rather than being sent to a program that would over-supervise him. He wrote us at the end of his involvement:

I am writing to thank you (for) the work you have done for me in the past months. I appreciate your understanding that I had made a mistake, as unforgivable as it was, and your willingness to help right my wrongs. Without your support both inside and outside of the DA's office, I definitely would not be in the position I am now. You understood that I was truly trying to create a bright future for myself by attending college, applying to graduate school programs, and working hard to graduate at the top of my class in a competitive field.... Without your hard work on my behalf I would not be in the position to help solve a critical area of cancer research at this moment, let alone deeply learn about a field of mathematics that I have a true appreciation for. I hope that you see how your efforts paved the way for a young individual with large aspirations to continue following his dreams.

“Recidivism is the most powerful data measure that we don’t yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

I make lots of speeches. That’s intentional. It’s important for people to see me and ask me questions. Our office has a community affairs position that had been vacant, but we just hired someone and will be eager to utilize that position fully. We also write regular open letters to the community and maintain our website, Facebook, Twitter, and press releases. We also have created and shared information with our stakeholder community about our new policies and practices.

Challenges

How did you address any internal pushback from colleagues in your office?

I’m sure there was pushback, but those complaints never made it up to me. My main message was to show staff how our prior efforts had actually increased recidivism. Once we acknowledge that, we can educate ourselves about alternatives and the tools we need to work differently. Offering continuing legal education (CLE) training is a big part of this.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

We took a similar approach trying to educate our external stakeholders by explaining our philosophy and rationale. We also invited them to CLE trainings so they could learn the evidence basis for what we were doing. The police union was pretty vocal in its opposition and claimed our rejection of first-time marijuana cases caused a spike in murders in the county. Of course, that is nonsense. It’s not that we were rejecting or diverting cases across the board; it was very targeted, in part to address racial disparities. We also expected there might be some pushback from the community. I’m guessing those who didn’t vote for me, and never would, scrunch up their faces and say ugly things about our efforts. On the other hand, there are communities that understand our new policies and what we’re trying to do. Just yesterday, I got a standing ovation in a church, then when I was pumping gas across the street, everyone wanted to come up to shake my hand and give me a hug. Of course, the declination to prosecute and expungement clinics are popular in some circles, but I’m also trying to show how all of this frees up resources to focus on murders and child abuse cases, too. I don’t want this all to be about sandwiches and little bits of marijuana. The image that our office is a place where cases are dismissed is a lie. In fact, we’ve seen an increase in jury trials for some types of cases. We’re working hard to show that we are still actively prosecuting high-level offenders to the fullest extent possible.

“Lack of stakeholder cooperation and funding continues to make us nervous about our early screening and diversion efforts.”

How have you considered and addressed racial disparities within early decision-making?

We know that policing in certain neighborhoods has generated racial disparities in our system. We've seen the data but it's hard to know what to do about it. As I said earlier, rejecting all first-time marijuana arrests has been a pretty simple way to address that.

Lessons and Next Steps

“The primary benefit of our new approach to these cases or individuals is increased public safety and addressing racial disparities in policing.”

How do you define “diversion” and situate it among your other decision-making tools?

Dallas County has several diversion or alternate programs, but they do not work seamlessly together in a single process. We hope that some of our strategic planning and mapping workshops on the horizon will allow us to examine how we can blend the programs together. I also hope we can continue to be more rigorous about the program and staffing models to maximize the effectiveness of these new pathways.

What resources or partnerships have been most helpful in launching and sustaining this work?

Hiring a special programs director for our office was pivotal. This position is dedicated to assessing program strengths, identifying areas of improvement and working with our partners. I'd also credit our partnerships with the Jail Deflection Center, and a number of other community and criminal-justice partners like Salvation Army; Metro Dallas Housing Alliance; the City of Dallas Office of Homeless Solutions; and Downtown Dallas, Inc. There are simply too many others to name here.

What are your plans to ensure sustainability going forward?

Barriers are inevitable, so when we hit one, we look for an alternate plan. Data analysis is also a big part of sustainability so we can constantly assess our current programs and modify to improve outcomes. On the funding front, we're exploring both public

and private opportunities. For example, our county will fund work that has been demonstrated as viable and worthy of investment. I also think program fees are part of the equation. Fees shouldn't be contingent on participation, but some people have the ability to pay, especially after they're successful in the program and are able to be employed. Right or wrong, I have seen that part of individuals' investment in the program is when they put their own skin in the game. Some are philosophically opposed to charging fees, and I understand where they're coming from. We have some people who will never be gainfully employed because of their disabilities, so of course we won't require them to pay anything. But for those who can get back on their feet and contribute, I think that is a piece of the puzzle.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

We've got some other initiatives underway that will support this work, including strategic planning for sequential intercept mapping for Dallas County's criminal justice system. We also are starting to improve our early assessment process so we can better funnel cases to either pretrial diversion agreements, pretrial and post-plea specialty courts, or probation, all of which are better than jail at addressing underlying needs. Last but not least, we've applied for funding to help improve our referrals for medication assisted treatment within our specialty courts.

“The single piece of advice I'd give to my peers is to remember that the mind is like an umbrella: it only works when open.”

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

We can make some systemic changes here. The fact that our county did and the buildings didn't fall down might motivate other counties to try it, too. It's just like drug court: Once you get it going and have some data to show for it, people wanted to do it, even if not for the right reasons. It might take 30 years, but we'll see the impact. So then it just comes down to resources. You might want to do something for 2,000 people but only have the money to work with 300. So start with the 300 and collect data on those, then you can make a case for more funding. Start wherever you can, then try to expand.



Shawn Dick

DISTRICT ATTORNEY
WILLIAMSON COUNTY (GEORGETOWN), TEXAS

“I became a prosecutor to make our community a better and safer place to live, a community in which each and every person is valued and their rights are protected.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

Williamson County is right next door to Travis County, considered by many as the liberal center of Texas. Our county is pretty much the opposite. Like much of Texas, Williamson County was historically all about traditional law enforcement and being tough on crime. For prosecutors, the traditional mentality for each case had been: "See what you can get for it." And it felt like you had to get something for every case. I don't mean to imply that prosecutors were doing anything improper or illegal, but we had taken a different interpretation of what it meant to "do justice." In Texas, it's codified that a prosecutor's duty is to see that justice is done. It's very specific. We love the code and cite it to juries and in public announcements but sometimes that mandate means different things to different people. Furthermore, the county was a closely-knit community and bar association where all the lawyers knew each other. It lacked the diversity that larger cities have, including diversity of thought. The prevailing thinking was: This is the way we've always done it. If you get arrested for a crime, you need to go to prison for a very long time. There was little, if any, early decision-making on cases. Cases continued mostly without diversion until a defendant pled guilty. The arresting and charging decisions were substantially relegated to the relevant police agencies.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

We relished our reputation as being tough. Part of the City of Austin is in Williamson County. Most people arrested in Austin assumed they'd be sent to the Travis County jail, but once they learned they were coming to Williamson, they would panic. We figured that reputation would keep criminal behavior out of our county. But the reality, of course, was that our tough side was mainly talk. It was how we defined successes for the public and to the press in seeking maximum sentences on certain cases. But behind the scenes, lots of cases were getting probation and reduced charges and sentences. And yet, as I said, prosecutors felt that every case should get something.

"Two of the biggest obstacles were lack of resources and fear of change."

Where did you look for ideas or resources on this topic?

I may be unique in that my dad was an elected district attorney when I was in high school, so I've grown up around this. After becoming a lawyer, I was a defense attorney for about half of my career, so I'm equal parts defender and prosecutor. Being a defense attorney also brought me to different jurisdictions around the state so I picked up on what processes and programs worked and what didn't in different places. Lastly, I hate to admit this but I think my experience waiting tables as a young adult taught me more about being a good lawyer than law school did. It taught me how to read people and take responsibility for mistakes, even the ones I didn't make. I've relied on all those experiences in my current role. As for external ideas, I surrounded myself with lawyers with extensive legal experience as civil lawyers, defense lawyers, and prosecutors. My division chiefs all have more than 25 years and one over 40 years of experience. I also recruited prosecutors from other jurisdictions who have shown they're the best and the brightest.

How did the political or cultural context help motivate any of these changes?

By the time I took office, the mindset had started shifting. The county population had nearly tripled in the last 18 years and there were a lot of new lawyers in town. The county also wasn't as strongly "red" as it had been. Despite those changes, levels of community trust were extremely low. Our office had been embroiled in defending the wrongful conviction of Michael Morton, who was imprisoned for almost 25 years for a murder he didn't commit. One of my predecessors fought every step of way and, ultimately, became one of the first prosecutors to be held criminally liable for a Brady violation for failing to turn over exculpatory evidence. That case changed the law in Texas about how we do discovery. For our community, after years of trusting law enforcement and the prosecutor's office, that single case shook their trust and confidence in us. After that, we started to see a sea change of newly elected officials who had worked in bigger cities in Texas and who were more open to changing the way things had always been done. Eventually, there was a shift in our local community groups, too, as they saw that prosecutors were no longer trying to lock up everyone or get another notch on their belt.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

I had a number of goals when I started out but the main one was to have an office that restores the public's faith in the criminal justice system. That meant seeking

justice on each individual case and also improving the professionalism in our office so we can serve as a guiding force among the disparate agencies in our system. In Williamson County, there are 35 law enforcement agencies that file with our office, and they each operate as their own fiefdom. Even if it takes me my entire time in office, I'm committed to bringing everyone together so we can work in concert, in one direction. Substantively, my goal was to focus on murders, rapes, robberies, and burglaries. Having grown up in Houston, I had seen that those were the cases that really impacted communities and affected quality of life. It's not that other crimes aren't important. After all, our office only handles felonies. But I have limited resources, and I wanted to dedicate our traditional response to the most serious cases. That meant dedicating the more rehabilitative resources to other cases. I also needed our new response to address our caseloads. Our numbers were out of control. Whereas simple driving while intoxicated cases used to have one piece of evidence — namely, a videotape — now there was body camera footage from four officers, dash camera footage, lab reports, etc. Technology is great but it has produced more work for us. With our caseloads starting at 1,000 per court, there wasn't time for our experienced lawyers to use their best judgment and consider available options for each and every case.

What does the new process or program do differently?

The key for us was adding screening and intake to the process. Rather than just allowing every law enforcement officer to file whatever they wanted and deal with those cases for the next several months or years, I convinced our county commissioners to give me three experienced lawyers to help screen new potential cases. Then out of our existing staff, we restructured ten positions to run an intake unit and put a prosecutor with 40 years of experience in charge. That unit screens and reviews cases within 24 hours of arrest and follows up with the magistrates and police departments. That group determines whether to accept or reject each case. They can also refer cases directly for misdemeanor prosecution by sending cases to the county attorney's office.

We also developed an exciting, first-of-its-kind emerging adults program with the Lone Star Justice Alliance. The model is based on brain development and posits that loading up services on the front end will change behavior, versus our current approach, which produces recidivism rates of 75 to 80 percent. That's a deplorable result that just puts off problems for a later day. And with this population, the need for it is intuitive. When I talk with our communities, conservative or not, everyone has cousins, siblings, or grandchildren in the young-adult age range, and they know those individuals don't always make the best decisions. So if someone is arrested in the 17-to-24 age range for an eligible crime — essentially, everything but aggravated

robbery, aggravated sexual assault, and murder — they are eligible. We do have a caveat that allows us to opt out for certain crimes, like defrauding hundreds of people, but the aim is to have broad eligibility. At that point, there's a team of lawyers, case workers, peer support, service providers, and judges that do whatever it takes to address people's needs based on their risk and needs levels. That team has regular eye and voice contact with participants, usually every single day, and also tries to connect them to existing programs in the community. Our office does file charges, but the case goes onto a special docket. Upon successful completion, the case will be dismissed and expunged automatically. To know whether and how it's working, Harvard is conducting a randomized controlled trial. All eligible participants are randomly selected into the program or a control group. Dallas is testing a similar program model in one of its zip codes.

Then there are some changes where we're doing the best we can within the existing context. For example, we have a few problem-solving courts but they don't always have the right leverage. I am not going to wait around for the commissioners or the legislature to fix them, so we became very creative with bond conditions that offer incentives for successful completion of structured programs. For example, we can tell participants that if they successfully complete a program, we'll reduce their charges to a misdemeanor. That leaves the original motivation of a felony but reduces the impact of the conviction. For those dozens of people going through these more typical diversion courts, 18 months later, their lives look much better.

Data and Outcomes

What data is important to collect for an effort like this?

We've worked hard with our IT department to improve our data collection and analysis. I know in the first year, our intake division reviewed 3,300 cases and rejected about one fifth of them. That was 700 cases that in the past had flowed into the system and filled up courts and jails and people's time. Also, we've been able to drop our average daily jail population from 800 to the low 500s for the past two years. It has even dropped below 500 on occasion. One of the impediments we've had with data tracking is vocabulary. When you have one person arrested with heroin, marijuana, and cocaine, as well as a suspended license, is that one case or four? If they get out on bond and then get rearrested, is that a new case? Should we only count the new case if we file charges or if they're indicted? Even once our office figures out how we want to answer these questions, I've found that within Texas, each jurisdiction counts these things differently. So when you look at data collected by the Texas Office

of Court Administration, it's hard to know what it means. Our office now thinks of cases as "episodes," which might include multiple charges by the same arresting officer. We file our best case under one cause number to make clear in the statewide data what we're doing. But that approach required cleaning up a bunch of old cases that were only getting filed at the point of indictment. Then there's the mechanics of data tracking. You would think in this day and age we'd be better at statistics. In theory, we're paperless at this point so that's progress. But the only data I can vouch for are what we've collected since I've been in office.

“Participant demographics and dispositions are the most powerful data measures that we don't yet track but wish we could.”

I can tell you what cases we've rejected but it's hard to know much more about the cases coming through. I'd love to know what areas of the county are producing cases, including what officers are involved. If we have an officer that commits misconduct, I have no way to track what cases he's on.

How do you keep the community informed about and involved in these policy and practice changes?

I have avoided any proactive attempts to use social media or press releases to control a narrative out of my office. Instead, I make myself available to any community group or citizen that requests information or wants to express ideas. I regularly speak at community functions and meet with local police departments and officers of every level. Additionally, I always make myself available to the media to answer their questions as the law and ethics allow. A great lawyer once told me the two rules for media contact are to always make yourself available to them, and always tell them the truth. I have spent my entire term abiding by those two rules.

Challenges

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

I try to come up with some smaller solutions that don't require anyone else to make changes, then figure out who to partner with for bigger changes. When it came to our

new intake unit, we had to convince our law enforcement partners that we weren't trying to second guess everything they do. There was a little bit of resistance at first, but it just took some time educating them. A related challenge is syncing up our goals with those of law enforcement. For example, we've seen our drug possession filings skyrocket while drug dealing cases are declining. That seems like the reverse of what should be happening. Even though our office's message is to focus on murder and other serious cases, it seems as though law enforcement focuses on drug possession cases. Texas has not been a leader in finding ways to handle substance use issues outside of the traditional justice system, but I think we're starting to come around and move toward some specialty courts. The other obstacle is that we lack the resources to have a truly successful drug program. I'm not sure what we can do without cooperation of city attorneys, police, etc. It takes a lot of people to come together. It doesn't help that there's very little understanding about what all of us do. Members of the public don't understand. County commissioners don't understand. Even the police don't understand.

“Restoring the integrity of our office and of the criminal justice system continues to make us nervous about our early screening and diversion efforts.”

Because I was a criminal defense lawyer and had not worked for the government immediately before becoming an elected prosecutor, I think I lack some of the fears others might have. I know that if I make a wrong choice, I'll lose my position, but that isn't what drives my decision-making. What I'm really nervous about is the integrity of our criminal justice system, particularly in our county. If people don't want to vote for me, fine. I just want to do the best I can while I'm here and work to restore our office's credibility. Our office has been through a lot already with a number of high-profile mistakes. I can't worry about that now, though. We just keep doing the best we can and moving forward, one case and one day at a time, proving to the public that we can do better.

Lessons and Next Steps

“The primary benefit of our new approach is that **people receive more individualized attention and taxpayers receive a smarter, more effective criminal justice system.**”

What are your plans to ensure sustainability and ongoing adaptability of your existing efforts?

The criminal justice system shouldn't be a moneymaker. That's not why we're here. But guess what? We did save money by making these changes. When we dropped the jail population, we saved the county more than \$8 million. My office's budget is only about \$4 million. Look at the economic benefits we've accomplished. That was possible because we were willing to spend a little money to save a lot. I demonstrated the value of that investment.

“The single piece of advice I'd give my peers is to **listen to others and learn from their experiences.**”

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

The best advice I can give is to listen. I had nine months to prepare to take office. I used that time to listen to and rely upon people's experience, whether good or bad. That input should help shape your future. Hearing all those experiences let me study the options and figure out my approach. I'm kind of a nerd in that way.



Mark Dupree

DISTRICT ATTORNEY
WYANDOTTE COUNTY (KANSAS CITY), KANSAS

“I see my role as a prosecutor as making sure the criminal justice system is fair and just for everyone involved. The convictions of yesterday must hold integrity tomorrow, which is why acknowledging past mistakes is so important. As the chief law enforcement official, the prosecutor should ensure the entire community feels safe — regardless of whether it is in an urban, rural, or suburban area. Everyone needs to know and feel that the criminal justice system is fighting for them.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

The good ol' boys way of doing things has sent a huge number of people to prison. Some should be there, but some should not. That approach let us ignore the underlying issues, such as mental health, poverty, and other social issues. Looking at the numbers, it's clear how connected these issues are with the justice system. Take, for example, kids coming through the foster care system. Over 70 percent of them end up in the criminal justice system. Locking them up once they get here ignores the path they took. We need a response that looks earlier in the process and prevents them from ever entering. So that's a box we have to climb out of, but we have to be careful about how we do so.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

Whenever the police brought our office a new case, we basically rubber-stamped it. If we could charge it, we would — and at the highest level possible. I think that produced a lot of over-charging because we were trying to satisfy our law enforcement boots on the ground. We have a partnership with them and don't want to suggest they're not doing their job right by rejecting a case they brought to us. I think lots of offices still use this approach: Charge high, and then plea out to what you should have charged in the first place. This also affects trial conviction rates, which hover around 50 percent nationally. Defense lawyers have the mindset that, if prosecutors are going to come in with high charges, let's make them prove it. But very rarely could we prove it, so lots of cases were found not guilty. I think part of what has fed this tradition is a lack of trust in our assistant prosecutors. We used to have two senior deputies in every office who had to approve assistants' plea offers before bringing them to defendants. Those deputies were the gatekeepers, and they tended to keep the plea offers pretty unattractive. The offers were often as bad as a defendant going to trial and losing. Why wouldn't they just roll the dice at trial? Meanwhile, the ADAs had little discretion and weren't under much pressure to craft individualized responses because all their cases went through the same filter at the end.

“Two of the biggest obstacles were courthouse culture and connecting with the right community and social service partners.”

In terms of courthouse culture, the judges, police, probation officers, etc. were so used to the status quo that any change was going to be difficult. But it was essential to get buy-in from the judges because, ultimately, they're the ones who sentence people. If judges weren't on board, it didn't matter what we offered. In terms of community-based partners, we were starting from scratch in many ways. My office didn't have a tradition of supporting the existing problem-solving courts, like drug court, and their partners. We had to reconnect and mend those bridges that had been broken.

Where did you look for ideas or resources on this topic?

There are a few jurisdictions within Kansas that gave me ideas about diversion expansion and mental health, but beyond that, I was looking nationally. The National District Attorneys Association and their initiatives were a great resource. I also worked with Fair and Just Prosecution and looked to many of the offices that they're connected with, like Brooklyn, the Bronx, Philadelphia, and Baltimore. That exploration led me to create the first Conviction Integrity Unit in Kansas, among other things.

How did the political or cultural context help motivate any of these changes?

Community trust was terribly low. That's part of why I invested in a conviction integrity unit, which allowed us to reaffirm that convictions of yesteryear still have integrity. I worried that we were just seen as an office looking to play a “gotcha” game. By showing that we were looking to review stuff from the past, I think that brought about a lot of trust that we sorely needed.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Our initial goals were tied to changing what the office looked like. Our county is as diverse as it can be: about one third black, one third Latino, and one third white, with other ethnicities sprinkled in there, too. As the first African American elected

district attorney in Kansas, I wondered why the staff in our office didn't reflect the community it serves. For the past three decades, there hadn't been more than one African American or Latino prosecutor in our office at any given time. To continue to build trust with our community, we needed to make sure the community could see themselves reflected in the office. We did targeted recruiting. We knew sending out a traditional hiring announcement for a prosecutor's office generally does not yield a large applicant pool of minorities and women. We needed to go looking for diverse candidates and reassure them of the changes we're making. By doing so, we found plenty of capable and qualified attorneys in this state and elsewhere that diversified our staff, including by gender. Now, two of our top three deputies and our chief deputy are women. We also have more senior attorneys who are women. Alongside our recruiting and hiring efforts, we also had to address the culture. What about our culture was or wasn't conducive to other races, genders, and so on? Did the office feel racist or sexist? For example, there was a tradition in this office that when you got a hung jury, your colleagues would give you a noose. That practice is a little problematic from my perspective. But the office had never been culturally diverse so there hadn't been anyone to pick up on that sensitivity and provide a broader understanding of it. One of the changes we made was to ensure that all attorneys received implicit bias training and better understood other people's cultures.

Who's eligible for these new screening and diversion responses?

We used to offer diversion only for misdemeanor cases or for those individuals who hadn't had diversion before. Now, we have expanded to low-level felonies. In Kansas, sentencing guidelines require presumptive probation for nonviolent cases. With that as a starting point, can we have the early prosecution stage be more holistic? If it's a low-level felony, likely to go on probation, how can we accelerate the help they need to avoid future crimes and potentially avoid a conviction altogether? If we intervene effectively now, we can increase their likelihood of getting a job interview. We also did away with the exclusion for non-citizens. Now, citizenship isn't a requirement and that has really expanded the opportunities for a broad range of individuals.

Another big change concerning eligibility has been laying out the diversion offer to participants up front. It used to be that participants would have to pay a fee to apply for diversion, and only after they applied could they see what the eligibility criteria were. But if your application was turned down — and 80 percent were — that fee wasn't refunded. Now, we lay out the requirements on our website for everyone to see. Certain serious cases are excluded. Other criteria include criminal history, details of the current offense, and whether there are any victims. Once we have that information, a deputy district attorney reviews the applications and considers how

long we think they need to be on diversion. Applications can come in directly via the defense lawyer or an ADA can also make referrals.

What does the new process or program do differently?

We have four full-time employees who are dedicated to our diversion program. They function as a department. From a process standpoint, we started by flipping the decision-making for the initial review of cases. We said to the assistant district attorneys: "You work the case, come up with what you think is best, and explain why you think that's best. As long as you can justify your plan, you're good to go." That discretion and autonomy really gave people an opportunity to work. Of course, we have standards concerning plea offers and plea negotiations, but we don't dictate bright-line paths for certain cases. We let the ADAs utilize their discretion and legal skills to determine what's best to bring about justice, not just punishment. Justice for us now means: Do they need help? Should they go to prison? How long should they be away? What do we do when they come back in terms of reintegration? It's a more comprehensive and holistic view.

"You can't operate an improved response like this without patience and someone tracking participants' success."

Data and Outcomes

What data is important to collect for an effort like this?

The outcomes we have been able to show are that the participants who go through drug and mental health court are more likely to avoid coming back through system in three years than otherwise. That's a powerful outcome.

Is there a story or anecdote that you think best describes the successes of the new approach?

There was a young lady who was addicted to methamphetamine and went through diversion. Because she had access to treatment, support, and accountability, and wanted to make a change, she now is off methamphetamine. Because she did not have the charge on her record, she was able to secure a full-time job earning a livable wage. We also worked with a young man who was a senior in high school and was able

to keep the criminal charge off his record by going through diversion. He graduated with honors, went to college, and now is working within the criminal justice system as a first responder. If that charge had gone on his record, he wouldn't have been able to pursue his line of work.

“Comparison data is the most powerful data measure that we don't yet track but wish we could.”

It's actually pretty easy to track the outcomes for our newer, smaller initiatives. The data I'd love to have is about the status quo. What happens to cases that come through on probation? Did those cases originate from plea deals or otherwise? What were the completion rates and how do those line up with recidivism rates? We need that data to compare to our alternatives. Another challenge is that we've been a paper county until very recently. We just started last year trying to scan in the decades of files and documents, while also trying to use new electronic forms. A lot of our data tracking has stagnated in this transition, but hopefully it will pay off.

How do you keep the community informed about and involved in these policy and practice changes?

I was born and raised in this community and never knew the district attorney or what the office did. But in my opinion, if a person is going to go to court to fight for justice, that person needs to know the community. And it has to be more than just the DA himself and one community prosecutor. So one of the things we did when I first started was make our whole office a community prosecution office. All prosecutors must attend meetings for neighborhood watch, church groups, local schools, and other important civic and social organizations. We have been to over 200 events. We think it's meaningful that we go to them and don't always ask community members to come to us. We also created a community liaison board comprised of volunteer members throughout our community. We were intentional in selecting our members and they come from every sector of Wyandotte County. We meet quarterly in my office over coffee and cookies and share updates about our efforts, which they can then take back to their communities. We also hired our office's first public information officer. The person we hired had been a local news reporter before and knew first-hand what a black hole our office had been. Nothing came in, and nothing came out — except when there was a big crime. Creating that

position gave us the ability to begin to inform the community about other things we were doing. We now use Facebook and other social media to update the community. We have increased our followers almost tenfold. We also put out press releases on our website and host more press conferences concerning our efforts.

Challenges

How did you address any internal pushback from colleagues in your office?

It was a real challenge to get all of our staff on the same page, especially with the initial flood of changes in the first three to six months. We were doing so many community events that sometimes our staff would learn about what we were doing first on social media, as opposed to from their own colleagues. We also realized how important it was to get buy-in at all levels of the agency, not just the prosecutors. We set up meetings with our support staff, investigators, and victim advocates and gave them a safe space to share ideas and feel invested in what we're doing. As a result, those staff are much more excited to help out because they see how they're part of holistic prosecution. It required a culture shift toward being inclusive and not being condescending to our non-legal staff. There had been an expectation that they be seen and not heard, and that environment was contentious and counterproductive. Now, it's clear we're all in this together and can't do it without one another.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

We are lucky to have Court Services, which is a department within the district court that helps make sure our participants have what they need. Sending people to diversion is one thing, but making sure they're successful is another. If they fail, they've already signed the paperwork saying that the crime is going on their record. Court Services is our primary partner in making sure participants aren't set up for failure. That required a long conversation and negotiation with Court Services, though, to understand everyone's work responsibilities. Everyone is overworked and underpaid. We try to do the heavy lifting so that when we need a urine analysis or something else, they don't feel overextended.

“Balancing justice and politics continues to make us nervous about our early screening and diversion efforts.”

All elected officials run the risk that there will be opposition to change and an entrenchment in the good ol' boys approach. This job in particular is about justice, not politics. But in order to continue to do justice, you have to get into office and stay there. That's always in the back of my mind. Too often, elected officials keep the political pressure in the front of their mind and it prevents them from making progress. I think there's a balance that has to be struck.

How have you considered and addressed racial disparities within early decision-making?

As I mentioned, before these changes, 80 percent of the applicants for diversion were denied and wouldn't have their application fees returned. Word got out about this and some people stopped even applying for diversion. This affected low-income applicants, who were disproportionately minorities. We now post the requirements and have expanded diversion opportunities, which has made diversion opportunities more accessible for all Wyandotte County residents.

Lessons and Next Steps

“The primary benefit of our new approach to these cases or individuals is giving everyone a second chance, which we all need and deserve. This gives them the ability to become law-abiding and tax-paying community members.”

How have these efforts reshaped how you define your role as a prosecutor?

My understanding of this role has changed from the time I started practicing law. I was a defense lawyer before, as well as a prosecutor in another state. In both of those former roles, I thought prosecutors were always putting people in prison and slamming the door on them. I now see that this role can be very holistic. Literally, the American Bar Association describes prosecutors as “ministers of justice,” as outlined in Rule 3.8. It has been an eye-opener and changed my perspective from punisher to preventer, punisher, and re-integrator. That holistic view helps us really make our community safer. History shows us that simply locking people up hasn't worked.

What are your plans to ensure sustainability and ongoing adaptability of your existing efforts?

I think community support is essential to sustainability. Our goal has been to educate the public so that no matter who is in my position, the community will have a new expectation of their local prosecutor's office. The other part of sustainability is creating a process within the office to make it sustainable. The diversion model we implement is very cost-efficient and self-sufficient. Even if Court Services could no longer commit to assisting with the diversion program, we'd still be able to do it. Other than the Conviction Integrity Unit, we were able to do all this by utilizing existing staff and funding.

“The single piece of advice I'd give my peers is create an alternative method to intervene in criminal behavior while still holding people accountable.”

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

Speak to the community and try to really understand what's best for them. Too often, prosecutors are afraid to get feedback and ideas from the community. Our culture tells us that the public would never go for that. I believe what they'll find is that the people who put them in office want change too. Ultimately, all people want their communities safe for themselves and their children. Of course, it's easier in some ways to just keep doing what's been done before than dare to make changes, but there's huge support for change if you're willing to go there. Many law enforcement and judges want change, but they don't always feel like they're in the position to make change. Those simple conversations can push a lot of doubt out of a person's mind, and change can start to feel like a more collective effort.



Sarah George

STATE'S ATTORNEY
CHITTENDEN COUNTY (BURLINGTON), VERMONT

“I became a prosecutor to always do the right thing, regardless of the optics, the expectations, the pushback, or the political pressures. My job is to repair the harm caused by a criminal offense and make sure all parties involved come out of the system in a better place than when they came in.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

When I first came to this office nine years ago, the State's Attorney at the time, T.J. Donovan, had already started a conversation about early decision-making and diversion. In 2010, the office started a Rapid Intervention Community Court (RICC), through which lower-level offenses — including some felonies — were eligible for individualized treatment or services. But for lots of other cases, there weren't any diversionary options. My first three years as a prosecutor, I worked exclusively on domestic violence cases. Those cases weren't typically eligible for diversion, so I had no real concept about what diversion was doing or doing well because I wasn't working with it directly. When my caseload shifted to cases that might be a fit, I was encouraged to divert cases, but only if they fit a certain mold, such as young people with no record or other first-timers.

“Two of the biggest initial obstacles were fear of pushback from law enforcement and victims' needs not being fulfilled.”

Where did you look for ideas or resources on this topic?

Joining Fair and Justice Prosecution has been very valuable. When I first started, I went to multi-day convenings where we barely had time to eat. There was a flood of information. I remember one of those first convenings really challenged us to think about early diversion beyond nonviolent misdemeanor cases. I also remember learning about the relevant research showing that long-term outcomes are often better for more serious or risky participants than for low-level participants. That was surprising to me but incredibly compelling.

How did the political or cultural context help motivate any of these changes?

Chittenden County is the most progressive county in Vermont, so this is as supportive a climate as anywhere in the state. Our state legislature has also been incredibly supportive. There's a new statute that requires prosecutors to give a reason for not diverting. There's also a statewide data review by county to see who is diverting, and

if not, why not. On top of that, the community itself has been quite supportive, with the exception of an occasional upset victim.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

The biggest goal was to expand our efforts to more serious cases and so-called riskier participants. I started telling staff: “Consider anybody without a record, unless they're ineligible for diversion by statute.” For this larger pool of cases, we have two diversionary options: diversion and our RICC, which we now call Tamarack. Diversion is for individuals with no record or maybe a prior conviction on a case that hadn't been eligible for diversion. Tamarack is geared toward individuals with a longer criminal record and an identified substance use or mental health issue. The model was developed in response to the few dozen or so individuals in the community who kept picking up low-level cases, like retail theft or drug possession, and cycling through without getting any help or being able to pay the fines they were getting. Participants in both programs are entered in our system, but they do not go to court. If they are successful, then the case is never officially charged. If they are not successful, then they go through the system in the traditional process. For everyone else, we connect with pre-trial services and often consider referral to treatment court. We're also starting to send most first-time offenders or cases where there appears to be repetitive conflict between parties directly to restorative justice programming.

What does the new process or program do differently?

One of the big adjustments has been to accommodate increased demand. When we expanded our eligibility, we inevitably sent more cases to our diversion partner. They almost couldn't keep up. They were drowning. But at the same time, they believed in what we were doing and didn't want us to stop referring appropriate cases. So one tangible change has been referring the lowest level cases to the Burlington Community Justice Center, which is supported by separate funding and staff. That's a more appropriate response anyway, whereas diversion might have been too significant an intervention.

Did these changes require new roles within your agency, and if so, how?

We had to shift responsibilities among our administrative staff to have a more equitable allocation of responsibilities. Our screening of cases and referring them to pre-charge programs is now a much larger workload than it used to be and was

becoming too much work for one administrative assistant. We are constantly training attorneys in the office to look at cases in a different way. I often challenge them to find alternatives to court, and not to be afraid to make hard decisions. It is important to remind them that part of our job is educating law enforcement and other community members about the reality of our system, what we can provide, what really should be handled by others, and why.

What roles do screening and assessment play in these early decisions?

We want our prosecutors to be reviewing and making decisions throughout the process. Ask yourself: Do we have to charge this at all? Can we decline to prosecute or send the case directly to a restorative justice program? If it has to be charged, can it go through diversion or Tamarack? What is the least amount we can charge that still highlights the seriousness of the offense? Can we get them connected to services while the case is pending to keep them off supervision and out of jail? For cases we end up charging, we have two pre-trial monitors who can keep tabs on individuals pretrial and conduct additional assessments regarding their substance use or mental health needs. If the individuals do well with that, we either dismiss the case or resolve without supervision. That's the goal. We're trying to put far fewer people on supervision, and even fewer people in jail.

“You can't operate an improved response like this without staff buy-in and community support.”

Data and Outcomes

What data is important to collect for an effort like this?

Criminal justice data is severely lacking in our state. We got a new database a few years ago for all state's attorneys to use. We were told that it would compile data and run all of these amazing reports. About a year in, we realized it wasn't working. You can run the same report three times and get three different sets of numbers. The vendor is now telling us we have to upgrade to do the things we need. We're trying to figure out what to do about it at the state level; I don't have control over it at the local level, which is hard. In the meantime, we keep putting the data in and hope one day we can get it out in a useful way. Thankfully, our diversion and restorative justice

partner organizations have great data, so they've been able to pull data about referrals and success rates. For example, our Tamarack participants have a criminal conviction rate of about 16 percent, compared to the status quo of 64 percent. But what those numbers miss, of course, are all the cases we decline to prosecute or that we send to some other alternative.

Is there a story or anecdote that you think best describes the successes of the new approach?

We're a small community with some veteran staff who have been working with a lot of these individuals for years. I recall a veteran attorney being challenged to send a very well-known offender through our Tamarack program instead of jail. The attorney was really hesitant because they had gotten so used to asking for jail. The attorney felt the person wouldn't succeed in Tamarack because of their past failures in programming. Eventually they did send the person through Tamarack and they successfully completed the program. The attorney saw that person on Church Street months later, and the person came up to the attorney, thanked the attorney for giving them a chance, and told the attorney how well they were now doing — that they just needed that chance. It was enough for that attorney to see the benefit of diversionary programs over jail, even for repetitive offenders, and they now refer cases all the time. The success stories for our short-term diversion efforts are harder to capture because we hope to only see them one time.

“Recidivism rates are the most powerful data measure that we don't yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

Most of the public doesn't perceive any changes about our referral process or policies. The only time we'd tend to hear from the community was when a particular case fell through the cracks. We've tried to take responsibility for that and work to avoid it going forward. We are also trying to be better about highlighting proactively for the public what we're doing with diversion. I take advantage of all the media attention my county gets to educate the community about alternative programs to court and the misrepresentations about the system that exist.

Challenges

How did you address any internal pushback from colleagues in your office?

I have a couple of prosecutors who have struggled to “get it.” The most common pushback I hear is that we need victim input first. I think that’s backwards: A case is either appropriate for diversion or it’s not. I tell them: “Make the decision on your own, then justify your decision to victims or others.” Prosecutors need to let go of the feeling that victims’ needs are our job solely. The entire community needs to own that responsibility. Thankfully, the rest of my staff have been on board. It helped that I had an opportunity to fill some vacancies myself when I started. The culture had been pretty toxic before I took over this position and a lot of people had left. I filled those vacancies with public defenders who I had worked with for years. They didn’t need an explanation for why diversion was good for participants, and they trusted me that I wasn’t just talking the talk.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

Law enforcement was used to diversion because we had been doing it for so long, but it took some explaining when we expanded it to more serious cases. As an example, we had a slew of school shooting threats a while back. It was very scary for school staff and those families. The people making the threats, though, were really young kids making really bad decisions. We refused to put them through the system and instead sent them to diversion. The cops were mad about that, in part because once we diverted the cases, cops weren’t allowed to talk about them with parents or the schools. But I wasn’t going to criminally charge someone just so the cops could share information with concerned parents. I had to convince the cops that they should focus on what outcomes they really wanted in the end: safety and reducing future threats. Diversion was consistent with that. It was also key for us to have visible protocols and accountability so everyone trusted the process.

The other group that has pushed back is private defense attorneys. Under the old system, they would make a pretty good penny tracking a case through the process. Now, when offered an early off-ramp, they won’t accept it outright, claiming they have to make sure their clients’ rights weren’t violated before agreeing to anything. Of course that’s important, but their clients all ultimately end up in diversion anyway. In the meantime, the lawyers are getting paid for that time. We’ve heard complaints about decreasing caseloads and how we’re going to put them out of business. The Department of Corrections has also given me a hard time that they might lose a

position because there are so few people on probation. Good! You should lose a position. We should all be striving to put ourselves out of a job. We can also strive for a situation where we can use the resources we have to deal better with the remaining cases.

“Balancing demand with available resources continues to make us nervous about our early screening and diversion efforts.”

Has the physical geography of your jurisdiction posed challenges in doing this work?

No, quite the opposite. Our county holds nearly one-third of our state’s entire population. It holds a large city and in fact has far more resources than any other county. That fact makes funding a sensitive issue because our county’s diversion program already gets about \$100,000 more than other counties in our state. But we continue to ask for more as we attempt to expand.

How have you considered and addressed racial disparities within early decision-making?

We just started tracking race so we’ll have more to say about racial disparities soon. I would love to say it isn’t an issue in Chittenden County but I am sure that it is. I have challenged staff to be cognizant of it and I’m hopeful that our data will be helpful for us to see it in numbers.

Lessons and Next Steps

“The primary benefit of our new approach to these cases or individuals is that **our caseloads are more manageable and our community is safer.**”

How have these efforts reshaped how you define your role as a prosecutor?

The role of a prosecutor is to do everything for each individual that comes before us — to make them whole in whatever way that means so they are less at risk of offending or being victimized. For too long, we considered them as others or outside of our community. That approach is wrong for so many reasons. Caring about individuals who commit crimes does not mean we don't also care about individuals victimized by those crimes. In fact, a person committing the harm today is very likely to have been a victim of something in their past or is going to be a victim in the future. It's just a different role in that moment. We should be caring for all of them in the moment we can. In doing so, that's how we keep the community safe and repair the harm.

What resources or partnerships have been most helpful in launching and sustaining this work?

Every county in Vermont has their own external diversion partner funded by the state. When we first started expanding our diversion cases, the longstanding partner in our county had to adapt to these new participants with more significant needs. This was a big ask for an old dog to learn a new trick, and in the meantime, victims lost trust in the process because some cases fell through the cracks. Now there's a new partner agency. The benefit of having a new partner is that they didn't know anything but our new normal and were motivated to figure out how best to serve our population. They worked overtime to make sure victims' needs were met, too, and that our court partners were in the loop. Admittedly, they started to get a little overwhelmed several months in, but they wisely came to us to discuss it, versus waiting for it to become a problem. I admire that they know their own abilities and strengths. We all agreed that sending fewer cases was never an option. We weren't willing to go backwards. We had to figure out something else to do. Hopefully, the high demand will help us craft an argument for additional supports and funding for critical partners like them.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

One of my hopes is that law enforcement can start to do more direct referrals to restorative justice. Then those cases wouldn't ever have to come to our office. We're trying to encourage that by telling law enforcement about the cases we ultimately refer, hoping they'll learn our criteria and start doing it themselves. That would be a huge time savings for us. I'd also like to expand the alternatives to any kind of supervision. There is so much we can do while a case is pending to connect individuals to services and meet their needs. We just need the right resources to do so.

“The single piece of advice I'd give to my peers is **develop your policies based on data and research, not a fear that there will be pushback. The research is in your favor, and everything else will follow.”**

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

If our first instinct is to put someone on supervision or in jail, we are missing an opportunity. Our community needs to take care of the people who come into contact with the criminal justice system. Wrap them up in services. Get them what they need. Jail doesn't do that. If we put them in jail, they come out at greater risk of harming or being harmed. We can take better advantage of the time we have with them, treat them with dignity, and tend to their needs, so they can move on as a healthier and therefore safer member of our community.



Gail Hardy

STATE'S ATTORNEY
HARTFORD, CONNECTICUT

“I became a prosecutor to add balance to the scales of justice, which can often seem tipped against people of color.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

Just a few years ago, there wasn't any early decision-making in effect in Connecticut. It was nonexistent. Police would make an arrest and send the paperwork to the clerk's office, which would then send it to us. By the time the paperwork got to us, the defendant had already been entered into the court system. That meant that a prosecutor had no opportunity to determine whether or not the case should be prosecuted or needed to be in the system at all. We would show up for work and diligently work through the bucket of cases until all the files had been processed. The first time we would look closely at a file was when the defendant or defense attorney was in front of us. And that, most often, was a quick look. We waited until someone was physically in front of us to think critically about a case.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

We are in a unique position in Hartford because we have a highly successful community court that we are very proud of and that is well known throughout the country. It was founded by the late Judge Raymond Norko. Unlike most other places in Connecticut, many lower-level misdemeanor charges in Hartford went to community court where they got special attention and consideration by our office and by other community court partners. But there were other cases that weren't eligible or appropriate for community court and had no alternatives other than the use of a statutory diversionary program. That meant that those cases would be resolved with community service but with no attention to the underlying issues fueling the behavior.

“Two of the biggest obstacles were **changing the mindset of our prosecutors and getting participants to accept the social service offerings rather than mere community service.”**

Where did you look for ideas or resources on this topic?

Many of our local changes were motivated by legislative leadership, especially our governor at that time, and by support from Chief State's Attorney Kevin Kane, the Division of Criminal Justice, and the Office of Policy and Management. The Division was able to secure funding from the Singer Foundation for us to work with the Center for Court Innovation to develop and pilot test a new screening and diversion model. Without that funding and guidance, I'm not sure we would have been in a position to implement the program. We didn't have the staffing or the resources that the defendants would need to make this program successful.

How did the political or cultural context help motivate any of these changes?

The legislative demand was a big part of it. We were also in a new climate where everyone was talking about criminal justice reform. Former Governor Dannel Malloy was very reform-minded and was supportive of efforts that reduced the number of times a person had to go to court to resolve their case. He wanted to see if we could reduce collateral consequences that people arrested for low-level offenses would face. Lastly, our local community here in Hartford was a motivating factor. I remember a local community activist coming to talk to me at least four years ago about a model that he heard of in New York that was implemented by the district attorney's office. I gave him the name and contact information for our chief court administrator and told him to start there. Judicial had to be on board. Past practice showed us that, as prosecutors, we couldn't just come up with reforms on our own. We would have to wait for the judicial branch to tell us what we could do and how we should do it. That was our old way of thinking.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Our goals were focused on stopping the revolving door of people coming through the system and reducing collateral consequences. We wanted to pause and think: What does this person need in order to stay out of the system? The added challenge for us was to ensure we were doing something different from the alternatives that we already had available through our community court. When we looked through our regular docket, we were able to identify some cases that were the next level of cases — those that may have been inappropriate for community court because of their seriousness or because they could benefit from added intervention. Our diversion model, called

Early Screening and Intervention (ESI), uses trained prosecutors to screen cases when they first come in, then refers appropriate cases to meet with a resource counselor with social services training. Unlike in community court, where it was the defendant's sole responsibility to follow through with completing his community service to resolve his case, the ESI program offers one-on-one support for these more serious cases. The program seems particularly well-suited for individuals who truly don't want to be a part of the system anymore and are ready for change. These individuals welcome the opportunity to have someone who can keep them on the right path to staying out of trouble.

Who's eligible for these new responses?

Eligibility is based on the person's criminal record and a review of the incident report. That doesn't mean we don't take people with prior convictions, though. In fact, ESI can be really helpful for someone who may not be eligible for other alternatives because of their record and will keep picking up more convictions if we don't try something else. Clearly, jail isn't rehabilitating people. We also try to look for indicators of other issues like substance abuse, mental health problems, or homelessness that may be contributing. Again, those are problems that jail can't solve.

What does the new process or program do differently?

Our prosecutors go through their daily docket and pull cases that may be appropriate. Then they talk with the defendants directly (if pro se) or with defense counsel to tell them what participation would entail. If the client agrees to participate, that case file gets put in a different place where one of our senior prosecutors can review it more closely, along with our resource counselor, and recommend individualized services in lieu of traditional case processing. If the participant engages in the recommended services, we will drop their charges.

Did these changes require new roles within your agency, and if so, how?

The original ESI plan called for per diem prosecutors to do the initial screening. I was concerned that their experience level wouldn't match how important those decisions are. They might be straight out of law school and lack the real-world experience that more seasoned professionals would have. Eventually, we changed it so a supervisor-level prosecutor was doing the screening. We then had him train a second senior prosecutor, and eventually, they trained all our prosecutors. We still have the per diem prosecutor, but they help out in other capacities to take on the workload that the screening prosecutors now can't handle.

“You can't operate an improved response like this without an experienced prosecutor and an experienced resource coordinator, both of whom can look past the charges in the file and see a person who deserves another chance.”

Data and Outcomes

What data is important to collect for an effort like this?

Our numbers have been impressive in terms of how many people we have served and the reduction in their number of court appearances. We can also track age and race, which are coded on the booking sheets. But beyond that, we have significant data tracking needs. We have been talking about the need for a case management system for a while now, and the legislature has established dates by which the new system has to be up and running. We'll see what happens.

“Long-term success stories — like jobs saved or homelessness avoided — are the most powerful data measures that we don't yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

Hartford is a community of neighborhood revitalization zones. The members are very familiar with the community court where our ESI program is operated, and they make sure to let us know what is working and what we need to do better. We also had a community forum at a local community college about a year into the pilot. We invited community leaders from faith-based organizations and neighborhood associations, as well as law enforcement and legislators. The goal was to report out on ESI's progress and also get their feedback about what other needs the program could address. It was an important opportunity for us to talk about the work and engage local leaders in the ongoing effort.

Challenges

How did you address any internal pushback from colleagues in your office?

In our office, we have a number of prosecutors who have been doing this work for 20 or 30 years. They're used to doing things a certain way and don't particularly appreciate change. Some of them felt like we had plenty of diversion opportunities through the court already or said we were trying to turn their job into social work. I think one of the biggest changes is that we were making their jobs more nuanced. They used to show up, "work the bucket" of cases for that day, and then do it all over again the next day. It was straightforward. They knew the people who had been coming through the court for years and knew what brought them to court. Now, we were asking them to look beyond that past record and embrace the gray area of these individuals' lives. Instead of adding another conviction to their record, why not give them an opportunity to correct that underlying issue that caused us to get to know them so well? We are fortunate to have Tom O'Brien on staff. He's one of those 30-plus-year prosecutors who initially had a hardened view of the people who came before him. But about ten years ago, he started serving as our community court prosecutor. He'll tell you that when he started in that role, he never would have guessed that he would embrace it like he has. But he gave it a fair shot and made it his own. That credibility and experience has been invaluable in the process of expanding our diversion and alternatives work — and getting his colleagues to buy into the program.

How have you considered and addressed racial disparities within early decision-making?

You hear around the country about the number of people of color in jail or otherwise involved in the criminal justice system. In Hartford, the community is largely comprised of racial and ethnic minorities anyway, and we see that population coming through the courts. The people who come through our courts are reflective of our community. Our prosecutors, on the other hand, are not.

Lessons and Next Steps

Did these efforts reshape how you define your role as a prosecutor?

No, not for me. That probably has a lot to do with my race and where I grew up. I'm from Waterbury, and I grew up in one of the lower-income sections of town. A lot of the people who I grew up around have been through the criminal justice system. I

just happened to be fortunate enough to avoid the same outcome. Furthermore, my career has included lots of other roles before I became a prosecutor. I was a public defender; that was my dream job. Before that, I was a probation officer for almost ten years and a halfway house counselor before that. I've seen firsthand that a lot of people fall into the system not because they want to be there but rather because something happened in their lives that led them to this point. And it has always been my goal to help that group of people. While I was a public defender, I realized that the power and discretion of the prosecutor allowed me to do more good than I could as a public defender. Now, as State's Attorney, I know I don't have that same individual-level impact that I had as a line prosecutor, but I think one of the most important things that I can do is hire new prosecutors with a more help-oriented mindset. If you have a law-and-order mindset, you're not the prosecutor I'm looking for. We've been down that road before. Hopefully, our veteran prosecutors can see what we're doing and get on board.

What are your plans to ensure sustainability and ongoing adaptability of your existing efforts?

We just lost our per diem prosecutor because they got hired by another office. It's unclear whether we'll get a replacement. That gets decided at our administrative office. But this program is important to us, our legislature, and our community. This is good work. I'm optimistic that our outcomes will make a compelling case for a replacement.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

I would like us to get to a point where we can handle all our cases this way. If we had more advance notice about the new cases coming in, we could divert some before they even get here. I agree with what Chief State's Attorney Kevin Kane always said: We need to take back our charging power and not defer to whatever charges the police decided. We could have our more experienced prosecutors set up within police departments like bail commissioners do, or like New York City's night court model. Those prosecutors could decide whether each case should go through the system. If there's another response, they could make an immediate referral. As progressive as Connecticut is, I know there are ways we can take some extra steps to prevent people from going through the system.

“The single piece of advice I’d give to my peers is give this approach a chance. Look at what other states are doing, and don’t be afraid to borrow what works. Tweak it and integrate it into your own office.”

Any final thoughts about how diversionary practices might best be adopted in other offices around the country?

It’s my hope that prosecutors around the country are getting on board with this way of thinking, whether they have a similar program now or not. I have two lower-level courts in my jurisdiction that don’t yet have community court or the ESI program. What I tell those supervisors is: “You don’t necessarily need a named program to do the work. Start by finding out what social services are needed and available in your community and match them with the individuals coming before you.” I tell them: “If you get stuck, call our staff in Hartford for ideas.” They’re dealing with very similar — if not the exact same — people. The same applies to offices everywhere. Look to your neighboring offices and communities for ideas and resources. And stop relying solely on defense attorneys to craft a helpful alternative. It’s within your control to recognize an underlying issue and help resolve it. That’s what gets us out of this vicious cycle.



John Hummel

DISTRICT ATTORNEY
DESCHUTES COUNTY (BEND), OREGON

“My role as a prosecutor is to be a community leader for public safety. One way to keep a community safe is to prosecute people who commit crimes, and my office does not hesitate to do this. Another way for a prosecutor to keep a community safe is to work with the community to develop programs to prevent crime in the first place. In Deschutes County we focus on crime prevention. Failing to work upstream to prevent crime would be a dereliction of duty.”

The Problem

How would you describe prosecutors’ traditional way of approaching early decision-making? What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

The traditional process for drug offense cases was to have the suspect handcuffed and brought to jail. The defense bar would get involved, court dates would proceed, and then about eight court appearances later, the judge would say: “This wasn’t the crime of the century. Jail isn’t appropriate.” In fact, everyone would want to get the person some help, including the district attorney’s office and the defense bar. So we’d send the person to an ineffective program, and wait to see the person come back through the system at some later date. My big realization was: Why should such a bad outcome take a year to pull off? Alternatively, traditional prosecution might have involved drug court for an eligible defendant. I used to think that everyone should go to drug court if they could, but I came to learn that it’s too much dosage for most people.

“Two of the biggest initial obstacles were **inertia and inertia.**”

Where did you look for ideas or resources on this topic?

It was a good opportunity for me as a new district attorney to take a fresh look and get outside advice. On day one, I received dozens of unsolicited calls and emails about models worth looking at — from Seattle, New York City, and Dallas to name a few. Through those conversations, I set out to find innovative programs, decide what would work best here, and implement it. Shortly after I started down that route, someone smarter than I am said: “That’s all well and good, but we need the people in our county to decide what’s right for us.” So while my national inquiry was helpful, I had missed the initial step of involving the community.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

If you think about the spectrum that has “tough on crime” on one end, and “soft or smart on crime” on the other, I’d say Deschutes County is somewhere in the middle. We’re tough but fair, especially toward those who aren’t hurting anyone. In defining our diversion program model, we wanted a good fit for that mentality and for our community but also something that was effective. It was a Goldilocks scenario: How do we take a one-size-fits-all approach and target it to the individual? The other challenge about early goal-setting was to be specific enough. I recall our initial few meetings of our new community advisory group called Deschutes Safe, which I’ll talk more about more later. I had asked the group to brainstorm how we can make our county safer. Those first few meetings generated all kinds of ideas and goals, such as increasing the number of kids who were reading at grade level, reducing poverty, increasing high school graduation rates, etc. But I eventually had to hit the brakes and say: “Yes, all of those ideas need to be done. But what should our relatively small DA’s office focus on?” I wanted to make sure we were aiming at projects where we could move the needle — and something more focused than just recidivism generally. That’s when we worked on identifying which serious crimes in our county have the highest recidivism rate. We needed help with that data analysis so we reached out to the U.S. Department of Justice’s Bureau of Justice Assistance and they gave us a technical assistance person for three months to mine and analyze the data. The results showed that the recidivism drivers were drug offenses and theft, and in fact, those categories of offenses were highly correlated with one another. So after all of that we decided to focus on drug offenses, figuring we might get a two-for-one and drive down theft crimes also.

What does the new process or program do differently?

The new process, which we call Clean Slate, means no arrest and no handcuffs. Instead, suspects receive a citation to appear in court in a month and are also given a card about potential eligibility for our office’s diversion program. If they’re interested, they can come to an orientation meeting any Friday at 10 a.m. to learn more. To be honest, we don’t have the volume to justify offering those informational intake sessions every week for the two or three people who show up, but it’s worth it to us for it to be very simple and convenient for participants. Along those lines, we also give them a bus pass to reduce transportation and cost barriers. When they show up, I’m there personally, as is a public defender and a drug and alcohol counselor. The

purpose of the meeting is to inform potential participants about the program, convey that it's voluntary, and provide them the opportunity to discuss it confidentially with the on-site public defender. If they decide to participate, which almost everyone does, they can they go meet with a drug and alcohol counselor for an assessment, also confidentially (although the data and findings are shared with medical providers if the potential participant enters the program). We then have an agreement with two federally qualified health centers to take appointments by phone via an on-site hotline. We aim for same-day appointments, but it usually ends up taking four days to three weeks (which is a lot better than the four or more weeks it takes for patients not in this program). Then we tell them if they show up for the appointment we make for them at the health center with a primary care provider, they're automatically in the program. If not, they have to show up in court as scheduled. We then call to verify if the participant showed up at the appointment, and if they did, we pull the case file before it's ever technically filed. This response allowed us to focus differently on another category of drug offenses: commercial drug dealers. We don't have many — only a few a year — but they are preying on those in recovery and kids. We employ an identify-and-incapacitate approach and seek the maximum time in custody for those cases. It was an efficient use of resources, compared to the 200 to 300 participants we have in Clean Slate.

Did these changes require new roles within your agency, and if so, how?

Our approach is unique because of its focus on physical health. This didn't require different staffing for our office but it did require a different outlook. Prosecutors aren't doctors, neither are judges, and yet we always make decisions about individuals' medical treatment. Our approach instead prioritizes harm reduction. We believe in getting people into care quickly, whatever that means for them. Maybe they have a substance-use disorder, but if they also have an untreated medical condition like diabetes or hypertension, it's going to be really hard to focus on recovery. As opposed to having my office determine in advance what type of treatment they should get, we let the medical professional determine that with the participant. Every initial appointment we refer people to includes a physical exam by a primary care physician. If the participant is healthy, they might not need to see them regularly. But if they have health needs, they can be scheduled accordingly or referred for specialized treatment, like chemo or for a substance use disorder. And that course of action is confidential. We don't ask participants to sign anything that would pierce the doctor-patient privilege. The only thing the doctor is required to tell us is whether the participant stopped showing up at their appointments. I don't need to know anything other than that they're participating. By doing so, we believe that makes participants less likely to be using substances than when they started.

What roles do screening and assessment play in these early decisions?

We conduct screening and assessments when interested participants meet with the drug and alcohol professional during the informational session mentioned above. Eligible participants are screened and placed in Clean Slate Level I or II based on the results of risk assessment screenings (Texas Christian University Drug Screen, the Adverse Childhood Experiences survey, and the Connor-Davidson Resiliency Scale). Level I participants receive referrals to services, but are not required to attend and are not charged with a crime, regardless of whether they avail themselves of the services. Level II participants are directly referred to a participating primary care provider at one of the two participating federally qualified health centers. If Level II participants participate in and substantially benefit from their treatment, and if they remain crime-free for a year, they are not charged with a crime and their original arrest record is expunged.

What does this new response cost?

This program would not be possible if Oregon had not expanded Medicaid under the Affordable Care Act. The vast majority of participants are either enrolled in Medicaid, or not enrolled but eligible (in which case we directly enroll them). The primary care providers at our participating federally qualified health centers bill Medicaid for the care they provide participants.

“You can't operate an improved response like this without partner and community buy-in and supportive technical assistance.”

Data and Outcomes

What data is important to collect for an effort like this?

Data is a critical piece of the Clean Slate program because we want to ultimately know whether or not Clean Slate is having a positive impact on the participants and our community. Participants complete an electronic intake form that provides us with a strong picture of what our target population looks like and the challenges they are facing from unemployment and homelessness to lack of health insurance and transportation challenges. Each participant also completes the three previously

mentioned assessment tools, and these results are collected and tracked. All this information is entered into a database that is linked to our office's case management system. We've learned that 40 percent of eligible individuals participate. Of those, 58 percent are male and the average age is 35. Most only have a high school diploma, nearly 60 percent are experiencing houselessness or are living in an unstable situation, and 57 percent are unemployed.

Thirty-six individuals have graduated, and we have an additional 25 participants who haven't recidivated and are pending graduation after their final medical appointment in the next couple of weeks. To date, the program conservatively has eliminated the need for more than 219 court appearances, and that number will grow with each graduate. We use the State of Oregon's recidivism numbers as a baseline. It is not my favorite performance measure, but it's not the worst either, as it has allowed us to compare the success of our program to traditional prosecution. Based on the state's current one-year cohort recidivism numbers, traditional prosecution yields a 51.3 percent recidivism rate statewide and 53.1 percent in Deschutes County, whereas the recidivism rate for our Clean Slate participants is only 36 percent.

“Participant health is the most powerful data measure that we don't yet track but wish we could.”

In a perfect world, I would love to measure participants' health improvements, but I don't want to if getting that data would require participants to sign a more extensive waiver. I don't want to add any additional barriers to entry. If people knew they had to share their health information, it'd be understandable if they were reluctant to join. As it is now, I am able to tell potential participants that there is no downside, only upside. If you try and fail, you're facing the same charge. And if it works, you avoid conviction and are healthier. That having been said, we're engaged in conversations with our medical providers about the possibility of obtaining disaggregated health data to help us assess whether participants' health outcomes are improved as a result of participation in this program. Stay tuned.

Is there a story or anecdote that you think best describes the successes of the new approach?

In the absence of specific quantitative health data, we do get some qualitative data on the back end when we call participants who have completed the program. We try to

make it very clear that talking with us is voluntary, and some are willing to talk with us about how the program affected their lives. I love hearing the success stories like: “I hadn't been to a doctor in 15 years. Now, I feel better and am healthy. I'm able to carry and play with my kids because my asthma is being treated.” These stories warm our hearts.

How do you keep the community informed about and involved in these policy and practice changes?

I realized early on that the community was key to have on board. I had goodwill, having just won an election. But without robust community buy-in, any new program I implemented would have fizzled after the first year. So I created a committee of community members called Deschutes Safe that included about 30 people from a variety of professions. They included subject matter experts from the criminal justice field but also other community members, such as educators, retirees, small business owners, and medical professionals. It is a great and diverse group and has helped provide feedback on our program design. Then, we were able to gather ideas that that group had vetted and take them to the greater public. We hired a local university to obtain community input on the public's priorities. Does our focus on drugs and burglary hold up? Sure enough, those crimes were top of their list, too.

Challenges

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

I figured we'd rock the boat a bit, but I was wrong about the reason why. I initially thought buy-in would be hard because everyone had determined their way was best and that they simply prefer to do things their own way. But it's not that. When I started talking about my ideas with people, citing months of data and research I'd looked into, it turns out that me being completely convinced that this is better wasn't compelling to other people outside of my office. That makes sense. If I were starting a new program, I'd want to get advice from other prosecutors. In hindsight, I should have asked law enforcement and judges in other communities that have tried similar things to come talk to our partners. Even though we were starting a new, unique program, I could have found similar aspects of it rolled out elsewhere and asked our local partners to participate in roundtables with those leaders. Absent that, stakeholders were concerned it wouldn't work and would make things worse. I needed to convince people this would work, using sources they already trusted.

Lessons and Next Steps

“The primary benefits of our new approach to these cases or individuals is **we save lives, improve families, and reduce recidivism for targeted offenses.**”

What resources or partnerships have been most helpful in launching and sustaining this work?

We were fortunate to be selected by the MacArthur Foundation to participate in the Safety and Justice Challenge. They gave us some money, but what was even more important was the technical assistance we received from the Urban Institute. Their staff member was wonderful and worked nonstop to help us develop a program model that was right for us.

What are your plans to ensure sustainability going forward?

Sustainability of crime prevention programs in one component of the criminal justice sector is best realized when the criminal justice sector is viewed as one. In other words, the courts, law enforcement, prosecutors, defense, jails, treatment facilities, probation department, and all other components of the criminal justice sector, in the ideal world, would aggregate our budgets. We would all get together and review the entire pot of money available, agree on our shared goals, decide how best to achieve these shared goals, develop budgets for the program components to achieve these shared goals, decide who should implement each program, and then allocate funds to each entity to implement the programs. Instead, if the police, for example, expend money to implement a program to divert people from jail, it is the police budget that takes the hit and the jail budget that reaps the savings. A cynic might suggest that if a government agency believes that expending additional money in their department will produce savings in another department that the agency won't expend the money. These perverse financial incentives need to be eliminated by creating the culture, and budget rules, that we are a criminal justice system that works together to achieve our community safety goals.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

We'll never stop innovating. Right now we're in the early stages of developing a program to provide veterans who are caught up in the criminal justice system with the services they require to be successful and crime-free. If you were willing to take a bullet to protect our country, the least I can do is find out who you are and what you need to be healthy and crime-free. We're also developing a program to address young adults between the ages of 18 and 25 who are suspected of criminal activity. Brain science tells us that 18 is not a magic number when it comes to brain development. We now know that the brain is developing well into a person's late 20s. Neuroscientists have concluded that, because of the stage of their brain development, adolescents are more likely to act on impulse, misread or misinterpret social cues and emotions, get into accidents of all kinds, engage in fights, and engage in dangerous and risky behavior. Knowing this information, it's clear that the purpose of juvenile court for offenders under the age of 18 (to rehabilitate as opposed to punish) should apply to people suspected of criminal activity who are between 18 and 25. We're in the early stages of developing this program, and I'm not prepared to share details yet. Suffice it to say that we're hewing to a model with the philosophy and goals of juvenile courts.

“The single piece of advice I'd give to my peers looking to build or enhance their diversionary practices is to **lean on your community to help you identify its unique public safety needs and desires.**”



Spencer B. Merriweather III

DISTRICT ATTORNEY
26TH PROSECUTORIAL DISTRICT
MECKLENBURG COUNTY (CHARLOTTE), NORTH CAROLINA

“I became a prosecutor to seek justice and advance
safety for every person I’m sworn to serve.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

The Mecklenburg County district attorney who hired me, Peter Gilchrist, was the DA for over 35 years. During that time, almost 25 or 30 years ago, he created the first prosecutor-led diversion program in the county and also helped spread diversion efforts around the state. The idea behind those initial programs was relatively simple: Make sure you're giving people an opportunity to keep their record clean and get off the traditional trajectory of the criminal justice system. At first, the diversion program was targeted to property crimes, such as throwing rocks through windows. If the accused was willing and able to pay restitution, they could earn dismissal through the diversion program. Gilchrist required that restitution be paid up to \$1,000 before being admitted into the program, as a show of good faith that the defendant was taking responsibility. It also helped make victims whole. And incredibly, many people who weren't able to pay found a way. But, in my 13 years as a prosecutor in this office, I've also seen many people who weren't able to put together even \$100 to pay for diversion, even though what we offered was vast.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

Defendants who participated in our deferred prosecution track essentially get probation for 12 to 18 months that can be completed within six months. If they complete successfully, the case is dismissed and discharged. But for defendants who chose not to enter diversion or couldn't afford to pay restitution, there were significant consequences. If someone wasn't represented by counsel and they figured it'd be easier to just plead guilty and take the conviction as opposed to complete diversion, I'd ask a defense attorney to help out and advise them about collateral consequences. Many people don't realize that a conviction, even for something minor, will render you ineligible for things like Pell Grants. Because of the monetary eligibility restrictions, we had a lot of otherwise appropriate individuals who were convicted instead of having an opportunity to keep their record clean, as we would intend for a such low-risk offender.

“Two of the biggest initial obstacles were **confirming we'd be able to balance the interest of ensuring equitable access to programming with making victims whole and fighting a perception that we were creating some sort of moral hazard.**”

How did the political or cultural context help motivate any of these changes?

In North Carolina, we have a unique process by which police and citizens can file complaints. As part of that process, there's no time limit for our office to approve a warrant or charge the case, which is different than a lot of jurisdictions. If police seek a summons or warrant, it's then up to us whether to try it in district court or proceed with a bill of information. We can take our time to make that decision, including requesting assessments and possibly admitting a case into a deferred prosecution track. One challenge though, which might not be unique to us, is that none of our criminal justice system partners wanted to take on the role of running diversion directly. Our state office of community corrections decided they didn't want to take on that obligation, and neither did our defender agency because they didn't want to be put in a position where they'd have to betray confidences when reporting back to the court. Neither did we. So we had to use a model that could rely on other mechanisms of supervision and services.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Of all the major counties nationally, we have a pretty bare bones operation. We try to do a great job with what limited resources we have at our disposal. But when it comes down to it, deferred prosecution is more layered than just sending someone to a program and then dismissing their case. It requires contact with victims, background checks, etc., even the simplest form. My main goal when we started was to make sure there were diversion opportunities that were cost-free. That's easier said than done. To start, there was a lot we could do by working with service providers and providing scholarships. We also made the restitution requirement in the program a condition of completion, instead of a condition of eligibility. We figure that if you're getting the

help you need and are on the road to clearing your record, you're more likely to get employment and therefore have the means to make the victim whole.

Did these changes require new roles within your agency, and if so, how?

Unfortunately, I haven't had the resources to add staff and put resources into programming. I also have decided that prosecutors are not best positioned to monitor people's success in social services programs. It's simply not the best use of our constitutional function. Instead, maybe the most efficient use of the resources I have is to work within the existing system and our local partners and divert to them. So our biggest organizational changes were in forming new partnerships in the community that could meet our participants' needs.

What does this new response cost?

A lot of programs in North Carolina require participation fees. Locally, we have diversion programming, even sponsored by nonprofits, that can cost as much as \$200. Even if nominal to some when balanced against the costs of having a criminal record, that can pose a significant barrier for many. I'm proud that our county is able to offer some diversion without fees. I throw away the advertisements I get from for-profit diversion companies, not wanting to get embroiled in that market. Diversion should not be a business. But some of my peers need a fees-based program like that because they don't have nonprofit service providers like we do that can help in-kind. I'm not sure we'd have a choice about it if we didn't have those partners. We also are fortunate to have a grant from our state's Alcoholic Beverage Control Commission, which helps cover other costs. We're still not where we want to be in terms of funding everything we want to do, but we're getting there.

“You can't operate an improved response like this without community partnerships and an appreciation for how poverty can prevent access.”

Data and Outcomes

What data is important to collect for an effort like this?

As a state, we have pretty minimal data tracking capacity. I noticed when I came into office that we weren't doing a great job tracking how many cases we were sending to diversion. That's something I changed but I worry about how well we're keeping that data. There's no place in our state databases for pre-arrest or pre-court diversion work; there's nowhere to report it. We try to have our staff be intentional about recording that information on our own but I'm sure data falls through the cracks. It's also hard to tell when someone may be tracked twice. We can only check locally what happened in past cases, and if there was a dismissal, whether they had participated in diversion. Of course, we never hear about the people for whom it has worked; we never see them again. Obviously, that is exactly the outcome we're after.

“Recidivism and racial disparity data are the most powerful data measures that we don't yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

The truth is, we have to get better about keeping the community informed. I have an ongoing community liaison project where we send staff to community meetings on a regular basis. But in general, I try to be as visible as possible. I also made a concerted effort during a recent spike in homicides to talk with community leaders about the role diversion and community programming play to curb the horrible homicide problem. Communities are more than their homicide statistics, of course. I also do ride-alongs with community leaders in our most challenging neighborhoods to point out drug deals and prostitution. It's important to get to know intimately those details and know the leaders who are creating the programming in response. Sometimes there's a role for me then to connect those leaders with the philanthropic community to help support their work. We could use more help with that. Part of community work, though, is changing how we measure success for the public. A lot of people have painted us as a caricature of a prosecutor, only focused on guilty verdicts and convictions. That's frustrating because we've been doing this diversion work for 25 years. But to be fair, we weren't talking about our successes in those terms. Now,

we produce a quarterly report for the public that includes how many cases we've diverted. When we first started putting out the reports, it seemed like a breath of fresh air to people. They thought we were doing things really differently under my leadership, but in fact, the innovative part was telling people about it.

Challenges

How did you address any internal pushback from colleagues in your office?

For one thing, I tried to bring more justice-involved people into my office and arrange for them to meet with my office's leadership team. When people who have been in our system are able to share their experiences, they motivate us to work harder at extending to every person the values we espouse about access to justice. There is no doubt in my mind that presence and experience-sharing can change perspective because I have seen that happen over time.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

There was some initial resistance when I wanted to take away the restitution requirement for eligibility, particularly among folks in the local merchant community. It was important for me to explain my decision and what the alternative was. Before, when we required restitution up front, there were lots of people excluded from diversion. They were pleading guilty, maybe getting probation, and not being successful with that path. Very few of them were going to prison, but for those who did, they got out quickly, only to reoffend again. I tried to explain to naysayers that a better approach would be to give that same, larger group access to a program that was much more likely to disrupt the trajectory. To a storeowner, that might mean one fewer person breaking into their shop.

“The possibility of a rare narrative-controlling failure continues to make us nervous about our early screening and diversion efforts.”

How have you considered and addressed racial disparities within early decision-making?

I don't have much data to back this up but one of the issues we face is making sure people are aware of our diversion programming and know it's available to them. I don't mean defendants — they often are aware — but rather members of the defense bar, law enforcement, and even prosecutors. These are the people who can really impact what relief a defendant seeks and gets. For instance, I might have African American defense attorneys who don't believe that their requests for alternatives are going to be heard or that their clients' interests will be duly considered by a white person in the DA's office, so they don't ask. Instead, they challenge the case and take it to trial. On the other hand, I think someone who feels they have a high likelihood of being heard might be more likely to request creative solutions that don't involve the traditional process. I've always believed these programs were open to all, but I've realized that if you feel they aren't, you won't take advantage of them. That breaks bad for defendants who could have been appropriate for diversion and who could have resolved their case faster, with fewer impacts on potential job prospects and a lower likelihood of recidivism. As for other racial disparities, I think the criminal justice system inherits the results of disparities that happen upstream, whether in housing or education. We may have a higher percentage of white participants in diversion because of our requirement that they have a prior clean record. If you believe communities of color are over-policed, then that affects the pool of eligible participants and their racial backgrounds.

Lessons and Next Steps

“The primary benefit of our new approach to these cases or individuals is **expanded and more equitable access to just outcomes.”**

What are the biggest adjustments you have made to the approach since you first started?

Recent legislation in North Carolina created a conditional discharge program, which is post-plea. The defense bar does not universally prefer this design. That has meant that a lot of the population we used to send to deferred prosecution has dried up.

Conditional discharge enables a judgment to be entered, but then set aside, upon the defendant's substantial completion of certain conditions. Like our original deferred prosecution program, it provides an opportunity for a clean record and does not functionally require a cost for admission to the program. While payment of restitution is likely to be a condition of the judgment, a judge will be in better position to perform an ability-to-pay assessment to see whether compliance is possible.

What resources or partnerships have been most helpful in launching and sustaining this work?

We have a wonderful addiction and behavioral health center in our county called the McLeod Addictive Disease Center that historically has had prosecutors on their board. We also have had one of the more prolific drug recovery court programs for about 30 years, which is a series of specialty courts, like DWI court, family services courts, etc. Even when the state pulled funding, the county stepped in to fund it. And as I talked about earlier, our nonprofit partners have been essential. The key has been to find ones with similar interests and goals, like the Salvation Army. We try to gauge: Do you really want to help us move the needle, or are you just trying to make a buck? We also have to make sure our partners are effective. We looked into some programs that had been recommended by the defense bar and found that there wasn't much rehabilitative or educational benefit for participants. So then the pressure's on us to find something better that isn't cost-prohibitive.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

I have a long-term vision of having diversionary opportunities available right in a person's neighborhood, in part because those neighborhoods are already invested in those people. Those are the people who know what participants need. That being said, there are risks. Not all programs or providers are high-quality and effective. We need to make sure we're not putting people in harm's way by sending them to work with someone who's not qualified to do so.

You have to be thoughtful about how you spend your time and resources. I want to be able to spend local resources going after the most violent defendants and repeat offenders. Nobody wants to spend lots of time or resources on low-level or first-time offenders you don't want to see again. You also have to understand the consequences that a criminal record has on someone, especially for people living on the brink as it is. What can we do to keep them out of the system? If you ask that question, most of us would be hard-pressed not to make use of diversion. Take advantage of what resources you've got. As prosecutors, we're ill-equipped to do social programming so ask the people who do know. Cops have a unique perspective. Schools will know people and service providers. People like us who went to school to try cases won't know how to do that on their own.

“The single piece of advice I'd give to my peers is *forge as many relationships as you can outside the justice system. It expands your tool set for diversion.*”



Lyndsey Olson

CITY ATTORNEY
ST. PAUL, MINNESOTA

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

In our office, we handle almost 13,000 cases per year with about 17 line prosecutors. That's hundreds of cases per person per year. The trial rate isn't high so we're not going in depth for every single case, but instead we're doing our best to triage, for lack of a better word. I think historically, there was less individualized analysis going into how we processed high-volume, low-level cases. We framed victory around conviction rates and weren't looking at how to work on recidivism at the front end. That being said, our office was an early adopter of reform concepts that included something the district called "community court." Unfortunately, that effort failed due to a lack of partner buy-in. The district then set up a separate diversion calendar in court, but that got us stuck in a certain paradigm about how and when diversion happened. But our office didn't control it, and it was under-resourced. A final challenge of the status quo was that our traditional approach had gotten a bit "by-the-numbers" in certain respects when it came to bail assessment. We had let the risk score replace our own analysis. If the tool said someone was a risk level 7, for example, we'd apply a formula and ask for X, Y, and Z. But that approach didn't utilize legal analysis or apply individualized justice.

“Two of the biggest obstacles were the difficulty of change in general and making sure perfect wasn't the enemy of the good.”

Change is hard, and people react differently to it. For us, it was key to get some early adopters on board. That helped move us forward in a collaborative way through change management. But it's also important to just start. Don't wait until it feels perfect. We had program models floating around for years but hadn't implemented any because none felt quite ironed out yet. Ultimately, when we implemented our restorative justice program, we started small in a couple of neighborhoods, then continued to refine and see what policy changes were needed along the way.

Where did you look for ideas or resources on this topic?

I credit my former prosecutor colleague Laura Pietan, who is now a judge, for leading a number of innovations in our office over the years. We also have a great team of dedicated prosecutors in the office who are invested in reform. Having strong local government has been key too. Our mayor, county commissioners, and judiciary have all helped support our improvements. Another source of inspiration were site visits to mature and successful programs. We observed restorative circles and panels and were able to talk with counterparts about what went well and what didn't. We worked with the Center for Court Innovation, touring community court models in New York and New Jersey. We also went to San Francisco and Yolo County, both of whom have successful neighborhood based restorative justice programs similar to the one we envisioned building. We took a lot away from these site visits. Also, we looked to Minnesota, which is doing lots of great work around the state and have partners who tend to be supportive.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Our main goal was to become more intentional in a variety of ways. We became more intentional about mentoring prosecutors and building managers and senior prosecutors who are really leading their teams. We aimed to improve our consistency and implement policies around our values and our role as stewards of justice within system. I want our prosecutors to ask: "What am I recommending and why? What makes sense for this individual in this case?" We want to make sure we have policies that can be implemented consistently and that minimize pretrial confinement whenever possible. (An exception is domestic violence cases where we are considering other innovations.) Last but not least, I wanted to make sure we were using the available data to guide our improvements. Our office has had an ongoing data project with the University of Minnesota and Harvard University that has helped us spot global trends over time and areas of opportunity. Focusing on individualized justice is important but we have to keep an eye on our impact as a whole, too, and ensure we are checking our assumptions.

What does the new process or program do differently?

Our changes were part policy and part philosophy. Our new bail guidelines policy is a bedrock piece because it reflects our values around economic justice and supports

consistency and fairness. Then there's our ETHOS Program, which stands for Engaging Community; Taking Ownership; Healing; Overcoming Obstacles; and Sustainable Solutions and uses a restorative justice model to provide a community-based, victim-centered alternative to traditional prosecution for first-time offenders. Participants who are referred to ETHOS are able to address the harm done by their offense, while also avoiding a criminal conviction. For the philosophical changes, as I mentioned earlier, my bottom-line with people has been: "Think about what you're doing and why. Yes, the new policies and programs are there as resources, but they don't take away your discretion. We're lawyers, bring me your analysis."

Did these changes require new roles within your agency, and if so, how?

We're in the middle of that evolution. We're constrained by budget policies that require external approval for any new staffing. When I came on, we hadn't added staff in 15 years and had even lost two attorney positions in that time period. Since then, though, I've been able to add new attorneys and other staff who not only helps our ability to shift more cases to alternatives to traditional prosecution, but also to continue to support new programs. In addition to staffing levels, the other change has been about training and making sure prosecutors are aware of what options they have to resolve a given case on their own, pre-charge, particularly for non-violent, low-level cases. We understand prosecutors don't have time to dig into every misdemeanor case the way they would a murder, but we still make time to explore what options provide for individualized review and the best chance at just outcomes for the victim, community, and offender.

What does this new response cost?

For our ETHOS Program, we initially contracted with an external administrator at a rate of \$1,000 per participant. During the next budget cycle, we're hoping to bring that administration in-house and hire our own staff to lead the restorative circles, conduct monitoring, expunge successfully closed cases, etc., and thereby significantly bringing down the cost. Our goal is to make the program more sustainable and allow us to expand. Lack of funding has been our main obstacle from the beginning. We knew we had a great idea and felt confident it would produce results, but we didn't receive any of the grants we applied for and the city didn't want to commit until they knew it was sustainable. People essentially said, "Have fun storming the castle," to quote the movie *The Princess Bride*. But again, all of that pointed to starting it anyway on a smaller scale, doing what we could manage within the current office budget, rather than waiting for someone else to make it happen. Contracting out our diversion services was one shortcut, batched by quarter so we didn't have to sign a huge contract we couldn't afford yet. We have some contracting authority, so we

could put out a request for proposals for that partner, which is much easier and faster than trying to get budget approval for more staff. It also saved us some time and energy training up new staff while we were busy launching it. Instead, we could focus on implementation, making improvements, and showing that it works.

Data and Outcomes

What data is important to collect for an effort like this?

Our primary measures of success are participation levels, completion rates, and recidivism rates. But our approach really lends itself to other measures of success too, like relationship change. Livability crimes can cause community disruption and multiple police calls, whereby the legal issue is really rooted in a broken relationship and disassociation with the community. Thus, the true outcomes are healing and changing that relationship. That's what we're striving for. To track those measures, we've got staff members attending sessions and reporting back to our staff, partners, and other stakeholders.

Is there a story or anecdote that you think best describes the successes of the new approach?

We have a number of stories about our ETHOS Program, whether told by participants or staff. I heard from our city council president recently that they had heard from a participant who had had a great experience and great outcomes. We also have had people participate, graduate, and then come back and offer to serve as a community voice in the restorative circles. For example, I remember an early ETHOS session involving two neighbors. The participant had been charged with a misdemeanor violation of the noise ordinance after multiple police calls about loud music. The participant and neighbor both agreed to take part in the ETHOS Program, and a restorative circle was held with both of them in addition to ETHOS volunteer community members. Through the course of the circle, their stories emerged. The participant was a younger man who worked long hours and wanted to relax by listening to music when he was home. The neighbor was an older man who had recently experienced medical problems and needed quiet time to rest. The two shared their experiences with each other, and the rest of the circle and came to realize that they actually had a great deal in common. As part of the ETHOS process, all circle members, including the participant and neighbor, reached an agreement on the things the participant would be required to complete to work to repair the harm done and successfully graduate from the program. This included working out a way to allow the participant to play his music going forward, but also help the neighbor

to communicate when he truly needed quiet. Most importantly though, the two men built community with each other and the rest of the circle. They made plans for ongoing contact and social time together to share in some of their common interests. The participant closed the circle by saying, “this is powerful, it allows for humanity.” He plans to volunteer as an ETHOS community member when the next training occurs.

How do you keep the community informed about and involved in these policy and practice changes?

The whole point of our restorative justice model is to have people involved who are representative of the community. Our work with the Dispute Resolution Center, a restorative justice non-profit with deep ties to the St. Paul community, helps us to reach a diverse set of community members who are well trained and dedicated to making their neighborhoods safer through connection. We also led a number of community feedback sessions when we were developing the model. We didn’t always get a lot of community members at each session, but we held sessions in each of our council wards to give community members an opportunity to experience the model and discuss any concerns. This work helped us to gain the support of our council members.

Challenges

How did you address any internal pushback from colleagues in your office?

Many of our team members are excited about a trajectory toward reform, but we have some staff with the traditional, law-and-order mindset. I think a lot can be achieved by communication, discussion, and analysis. You have to bring people in and hear them. I can’t tell people to restructure their basic ethics, but if they can’t reconcile their ethics with this office’s values, this office might not be the place for them. But first, I try to engage them and ask them to challenge their assumptions about what their role is, why we prosecute, and what success and justice look like.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

One of our biggest challenges externally has been working on how some law enforcement partners feel about their work. How we do the work we do is often about feelings, not facts. So, getting people to change requires a shift in emotion, not just informing them that the new way will be better, objectively. We have a great police department with great, professional people who care about people and

the community. They want to be progressive and integrated in the community, but there’s a lot of tension between that mindset and the officers who define success as a successful prosecution, jail time, and “getting the bad guy off the street.” As an example of a tension point was when we tried to change the technology that was automatically “charging” certain electronic citations, even when my office later declined to prosecute them. We received a ton of pushback from some police officers about this. They had concerns that weren’t legal barriers – in fact, our office could have just expunged the charges on our own – but rather more about how they felt about us opting for pre-charge diversion. We’re still in the process of overcoming that reaction. Even though the mayor or I had discretion to override their objections, it’s been important to help police understand how our diversion efforts work and that those efforts are not a threat to public safety. Part of that includes inviting them to see our ETHOS circles for themselves. But as a general matter, when engaging partners, we can all agree on improving public safety, having fewer people in the system, and reducing crime. The friction comes down to a question about how we’ll do it.

“Getting in touch with participants and our failure to appear rate continue to make us nervous about our early screening and diversion efforts.”

It’s hard to get a hold of people in a pretrial context who aren’t in custody. We don’t always have the correct contact information for potential participants, so that delays our conversations with them about available diversions but also just about appearing in court. Thankfully, the state court has started a statewide program that enrolls people in text reminders when possible, which should begin to make difference.

Lessons and Next Steps

How do you define “diversion” and situate it among your other decision-making tools?

We often refer to diversion as an alternative to traditional prosecution but it can mean a lot of things. I guess we’re not ready to define it yet. Not all diversion is created equal. Some fail to produce good outcomes or aren’t run well. Here, there’s only so much within our control with regard to diversion. We are reliant on judicial buy-in, pretrial contracts, and the diversion calendar. We’ll keep working to improve those.

How have these efforts reshaped how you define your role as a prosecutor?

We're asking all of our prosecutors to think about their role in a variety of ways. We want them to consider what is appropriate. Individualized justice is not just an approach for our community justice unit that oversees our diversion cases; individualized justice is part of how we all should view our role. I expect everyone to be doing it, traditional prosecution or otherwise.

What resources or partnerships have been most helpful in launching and sustaining this work?

In thinking about partnership, I consider: what are the spaces I can lead in and what are the spaces I can be a partner in? I strive to be present in those spaces where the city attorney's office is an important partner, like bail reform. Every justice partner in the system owns a piece of bail reform. No one office, or even the court on its own, can plant the flag and say we've solved it; all of us in the system need to do our part to map the points of opportunity in the system and build better alternatives. It's critical as a leader to separate where you're the lead and where you're a partner. Know where you can build the success you can manage. And when you're the lead, try not to alienate people who don't agree, but also don't be afraid to get out there and do the work yourself.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

It was really important for us to start small and not bite off more than we could chew. We started in a couple of neighborhoods and with first-time, non-violent misdemeanor offenses only. We knew it was important to do it well before talking about expanding. This is key to sustainability because we are able to show to community members and policymakers alike that we produce good outcomes that are worthy of investment. Three months in, that approach is starting to pay dividends with new grants, new staff members, etc.

“The single piece of advice I'd give my peers is **travel to other places to see different program models with your own eyes.”**

Particularly in the public sector, I know it feels extravagant at first blush to consider traveling to visit different models in different cities, but the learning opportunities, new partnerships, and take-aways to support success are critical. Seeing the Center for Court Innovation and Yolo County models, as mentioned earlier, and talking with the ground-level staff there helped us to galvanize what would fit best for us. You don't know what you don't know. Inspect the merchandise. Models that sound good might not play out well for your system or your community. For example, I never would have understood the difference between a restorative panel and a restorative circle had we not gotten to see both models in action, in person. If we'd only read about those models in a book, we wouldn't have discerned the distinctions



Kirsten Pabst

COUNTY ATTORNEY
MISSOULA COUNTY, MONTANA

“I see my role as a prosecutor as promoting community safety and protecting victims of crime while honoring the constitutional rights of all.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

I think prosecutors used to think about early decision-making as just one step along the path towards punishment. Diversion was reserved for when a prosecutor's case fell apart right before trial and they were trying to get something out of it for the victim or treatment for the defendant. Because it was an afterthought, that form of diversion was really hard to manage because it turned prosecutors into probation officers, having to monitor compliance and deal with violations. Inevitably, prosecutors were too busy and not best suited for those tasks, so lots of diversion cases fell through the cracks.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

Historically, most people got charged and sent through on the criminal justice track, from the pretrial process all the way through to trial or a plea. If the person was guilty, the system would impose conditions of probation but it would take months — sometimes years — to get there.

“Two of the biggest obstacles were law enforcement concerns that criminals would not be held accountable and community concerns that participants in diversion would commit violent crimes while in the program.”

Where did you look for ideas or resources on this topic?

I went with a colleague to a training held by the Association of Prosecuting Attorneys. We met Bob Hood and other APA folks who were amazingly helpful. They connected us to other offices that were starting prosecution-led diversion projects or had already launched similar efforts. It was great to talk to a range of like-minded prosecutors, some of whom had been doing diversion for years. Once we had a draft plan in place, we applied for a grant to have the APA help us take the next steps. Our proposal was denied at first, I think because our office is so small, but the APA figured out a way to help us. As part of that partnership, staff from the Center for Court Innovation led

a two-day planning session for us and all our criminal justice partners, which really helped us flesh out our skeletal plan and do a reality check on our workflow.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

My vision for this program came in an “aha moment” at an APA conference. I realized the system needed to better allocate the right amount of resources to the right person at the right time. I knew that if we could target those resources better than the traditional criminal justice system, we could stop wasting precious system resources on the lower-risk groups and better address the needs of higher-risk groups. Ultimately, research shows us that that approach would lower recidivism rates. We owe it to everyone to be better, which includes helping folks steer away from the justice system entirely. And it was essential to shift our approach away from using diversion only for weak cases. Instead of looking at the strength of the case, we shifted to focusing on risk and needs. So with that, we started planning in 2015 and just launched it in 2019. We have a lot of aspirations for the program, but time will tell how it all works out.

Who's eligible for these new responses?

I initially assumed our target population would be meth-addicted mothers struggling to parent their children. We quickly learned that that demographic would score out as too high-risk, high-needs. Instead, we refined eligibility to look at low-risk first-time offenders on property crimes and mostly nonviolent offenses. Risk is based on the Ohio Risk Assessment System (ORAS). We have some exceptions, though, like some partner violence cases that are ineligible even if they screen as low-risk. We also have some statutory exclusions, like driving under the influence.

What does the new process or program do differently?

We're not focused on punishment or sanctions for this group. It's all about rehabilitation. We also start the process much sooner than the traditional track would. If someone needs assistance getting their driver's license back, or getting their GED, or getting into a chemical dependency program, that's what we do. Each person's diversion plan is individualized and involves a combination of voluntary referrals and mandates.

Did these changes require new roles within your agency, and if so, how?

We created a new coordinator position using funds from our MacArthur Safety and Justice Challenge grant. It's a two-year temporary position, but we're hoping to show the benefits and make it permanent. The person we hired had worked in the pretrial and corrections field for 20 years, which is a highly relevant background for coordinating pretrial supervision. He also shares our values about the goals of the program, which is key. In the planning phase, he helped us build the program, put forms together, finalize the workflow, and get it off the ground. Now, he conducts in-person screening with all participants, checks collateral sources, and then supervises the participants to the extent they need it.

“You can't operate an improved response like this without buy-in from law enforcement and the public defender's office.”

Data and Outcomes

“Comparison recidivism data of similarly situated defendants is the most powerful data measure that we don't yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

I feel strongly that I have an obligation to communicate with the citizens who elected me. The best way to do that is to have an open and ongoing dialog with them via the media. Among my avenues to do so, I appear on a weekly radio show where I run through new complaints my office has filed and talk about new programs such as diversion. I also respond to media requests for information to share what we can with the public about individual cases. Along the way, we talk about how important it is to make improvements. It's not about indicting the way things have happened in

the past but acknowledging that we can do a better job. Resources are finite, and we need to use them in the most responsible way we can.

Challenges**How did you address any internal pushback from colleagues in your office?**

I'm just starting my second term so I'm still a relatively newly elected prosecutor. But I started building the diversion program as soon as I took office, and staff have been very supportive and understanding along the way. It has added a useful tool to our criminal justice toolbox.

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

It's been challenging to convince the public defender's office that it's worth their time to advise individuals who haven't even been criminally charged yet. It's a clunky part of the process that we have to work out. Law enforcement was also skeptical at first and felt like people were going to escape punishment. Involving them early in the planning process helped, as did being careful about who is eligible. Now, we are getting referrals directly from law enforcement. Last but not least, we've had to work to strengthen our ties with treatment providers. There are limited options around here, so it's been a challenge helping participants get chemical dependency evaluations in a timely manner.

“Fear of a bad outcome continues to make us nervous about our early screening and diversion efforts.”

We all share concerns that something might go wrong, and someone who gets a break in our program will offend again. In fact, that will surely happen. It has happened. But that eventuality shouldn't preclude every other participant from having the opportunity to lead a productive life. Of course that fear creates a lot of pressure, especially on elected prosecutors. We have to run for our job. If someone is released pretrial and overdoses, for example — or heaven forbid that person commits a new violent crime — the public sees that as a failure.

Has the physical geography of your jurisdiction posed challenges in doing this work?

Missoula itself is urban but our county is geographically huge and very rural in most parts. A lot of folks who participate in our program live an hour or more from Missoula and the programming we refer them to. We've had to be pretty creative in finding ways to help those participants. When we can, we bring services to them or find services closer to where they live. We also try to consolidate appointments — or waive their appearance all together — so if they have to come to town they can take care of multiple appointments at once.

Lessons and Next Steps

“The primary benefit of our new approach to these cases or individuals is **cost savings.”**

How do you define “diversion” and situate it among your other decision-making tools?

We have embraced pretrial supervision in lieu of jail for many years, before it was really a thing. Out of the 56 counties in Montana, my office is a real outlier. Many offices are reluctant to engage in criminal justice reforms. I think my community supports the diversion work I'm doing because they see we're saving resources. It's not necessarily philosophical but rather pragmatic.

What resources or partnerships have been most helpful in launching and sustaining this work?

Legislative changes have played a big role in this work. Some justice system players are concerned about recent reform efforts because legislators don't necessarily have on-the-ground experience about how these changes play out. It's complicated. Some reforms are very onerous on law enforcement, prosecutors, and probation, especially when they haven't been perfected yet. For example, when someone used to get violated on probation, the process was almost immediate and the person could be sent back to prison. Now, probation is required to go through a complex series of sanctions and steps first. It's well-intended, but the requirements are drafted so poorly that it has unintended consequences, like the wrong people (such as predatory sexual

offenders) getting too many second chances. As a result, the legislature has caught a lot of grief, particularly from prosecutors. But we had to start somewhere, and in my opinion, legislation has moved us in the right direction.

What are your plans to ensure sustainability and ongoing adaptability of your existing efforts?

The program itself is fairly inexpensive. It's entirely personnel. I'm already collecting the data and drafting the speech I'll make to our county commissioners to request a permanent position for the program. The county also needs a treatment center and more reentry services if this is going to be sustainable and scalable.

What are your aspirations for how early screening and diversion can continue to evolve within your jurisdiction?

My long-term goal is to drastically improve local services. Right now, there are long waiting lists for most treatment services, and most state facilities won't accept offenders until they've committed multiple felonies. We're also working with our courts to expand our treatment court options and develop new ones. There's only so much the prosecutor's office can do. We need other sectors to be able to help address the needs of these populations too.

“The single piece of advice I'd give to my peers is to **include and get buy-in from all interested and involved partners at the earliest possible planning phase.”**

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

Mass incarceration isn't working, and it's very expensive. It's time for us to take a careful look at our approach. Look at the evidence. That's what prosecutors are good at: using evidence to make an argument. So let's look at the data and evidence, and let it guide us down the path toward a more efficient, more effective criminal justice process.



Mark Vargo

STATE'S ATTORNEY

PENNINGTON COUNTY (RAPID CITY), SOUTH DAKOTA

“I see my role as a prosecutor to be the one role in the justice system that is empowered to do the right thing on every case, whether to charge or to dismiss according to the dictates of justice.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

When I was a baby prosecutor a long time ago, my basic concerns were deciding whether someone was guilty or not guilty, and if guilty, “pen” or “no pen,” meaning jail time. Those were the two things I was called upon to do. I’m not slamming the office I was in. I was in one of the best prosecutor’s offices in the country — in Miami with Janet Reno. I remember on our first day, she told us the highlight of her career had been, as a special prosecutor, exonerating someone on death row. But even under great leadership, it seemed like we started and ended our analysis with: “Did the person do it?” If a defendant asked me what was going to happen to him, I remember thinking: It already happened. You just don’t know what it is yet. If you did X, we’ll do Y. It’s mechanical. If you didn’t want that result, you shouldn’t have done what you did. I don’t think it’s unethical, but it’s a very limited approach that we used for decades. There were exceptions, of course, with innovative things we tried, like the drug court model that was started in Miami. But the bottom line was an action-consequence-accountability model. That is not how we operate today — and, to be fair, is not how Miami does things today either.

What was the status quo for the cases or individuals that ultimately became the focus of your early screening and diversion efforts?

Take for example a simple drug possession case, say a couple of marijuana joints, or petty theft under \$400. Those kinds of cases resulted in convictions, plus an average of \$650 in fines and costs, plus attorney fees. If that \$650 is imposed on a young person of affluence, it means nothing because mommy and daddy pay the bill. And if it’s imposed on a young person of lesser means, it never gets paid. Conceivably, for someone in the middle of the spectrum, the offender might pay it personally, but that’s probably rare. For everyone, though, there are significant collateral consequences of that conviction. You can’t get a federal job or contract, can’t live in federally-funded housing, and can’t get a student loan for ten years. Essentially, you can’t work, can’t live, and can’t go to school. How surprised should we be when those same people end up stealing things or slinging dope to make a living? The system as it existed wasn’t designed to effectuate change.

“Two of the biggest initial obstacles were **lack of accountability and resources.**”

Where did you look for ideas or resources on this topic?

I remember sitting next to Manhattan District Attorney Cy Vance, Jr. at a National District Attorneys Association (NDAA) event and hearing him talk about their new young adult diversion model. He hadn’t started it yet but they were working out the plans for it. It piqued my interest, and he and his team helped me flesh out my own version of their model and build upon their planning documents. That type of networking opportunity is one of the things I love about NDAA.

How did the political or cultural context help motivate any of these changes?

Right around the time I became the state’s attorney here, South Dakota had decided it had too many people in their penitentiaries so the state passed Senate Bill 70, which provides for presumptive probation for the two lowest felony classes. Soon, our jails were full of the felony defendants who no longer got sent to prison but were getting caught up with probation violations, and misdemeanor defendants ended up with fines and court costs as their sentences. And the probation population also had much higher needs and higher risks than before, but there hadn’t been a corresponding increase in probation officers who could handle that population. There was also almost nothing in the way of treatment facilities. Of course, we all acted surprised when people started coming back into the system at record levels. Personally, it wasn’t that I had lost faith in probation or probation officers, but rather had lost faith in our success. We were underfunding and under-resourcing that approach, so it created a ripe climate for change.

I’ll also add that I bring a different background than a lot of prosecutors because I was a federal prosecutor with a unique role. In my federal existence, I was the assistant U.S. Attorney prosecuting cases out of the Pine Ridge Indian Reservation, which was everything from gun charges to low-level marijuana possession that would typically never get near a federal court. I frequently had defendants who cooperated with the process to help us get the next-worst defendant in the case. This put me in a unique position to sit in a room with a lot of people, as we did debriefings and prepared for trial, who have really endured the system. It gave me a more rounded-out image of defendants as real people.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

In thinking about my new role as State's Attorney in Pennington County, I took a hard look at the misdemeanors coming through. It dawned on me that, instead of deciding that I am the mechanical hand of God who imposes the penalty for what someone did, a better practice is to attempt to see whether we can effectuate change so we never see that person again. We started with some basic principles, like that the offender never pays a dime other than restitution. Restitution is the victim's money and can only be forgiven by them. But we made every other aspect of participation free. Otherwise, it just becomes a rich-kids-get-out-of-jail-free card. But we also wanted to make sure it was harder than pleading guilty. There might be fewer consequences with our approach, but it will require more personal effort on the participant's part to go change something and better themselves so they never come back into the system.

Who's eligible for these new responses?

Initially, we didn't have any personnel or money to dedicate to this, so we started small. I handed over the idea to my misdemeanor supervisor, Carolyn, in whom I had implicit faith. She had worked with me in the federal system for 10 years, and I was lucky to have someone I trusted. She created it out of whole cloth, starting with about ten young adults. She found the programming, like Moral Reconation Therapy (MRT), and found community service partner sites like Habitat for Humanity and the Humane Society. We leaned on community service a lot during that initial timeframe, as well as nonprofits like Lifeways. Many of those agencies have programming available that's already funded. With those in hand, we started with ages 18 to 25, limited to marijuana and petty theft charges, but expanded to other nonviolent and simple assault charges after about six months. We had defense lawyers, judges, and even prosecutors asking for exceptions.

What does the new process or program do differently?

I have three boys who are now in their 20s. When they were teenagers and young adults, if I was worried that they would get into trouble, I might have called up a friend and asked for helping keeping them busy: "My boy is in trouble and needs less time on his hands." I was in a position where I could have done that for my sons. But for many of the kids who come through our system, their folks don't have that capacity. So, in a nutshell, we become that connector for them. More specifically,

we have four components of diversion at this point: extracurriculars, counseling, employment assistance, and community service. For the extracurriculars piece, we recognize that many of these kids simply have nothing better to do. They're not inherently bad or on track to become a drain on society; what they need, mostly, is to hang out with better people. Research shows that engagement in extracurriculars has all sorts of benefits flow from it. We don't have the infrastructure to develop our own mentoring program, so we connect participants to an extracurricular opportunity of cultural significance, like a Native American powwow program. Imagine wandering into a drum group in your t-shirt and sneakers with everyone else in full regalia. For kids who get into it and come regularly, they can learn to make their own regalia. Next, the counseling component is largely about education. Participants can get help getting their GED, or whatever they need. We've had lots of volunteers and churches come forward to help with that piece. Third is employment-related. We offer job shadowing, like sending kids to tour a Caterpillar manufacturing facility. If they get the chance to sit in on a government contract meeting, it's a good reminder about what's at stake concerning collateral consequences, since a conviction might bar them from that work in the future. We also set up 30- to 90-day paid internships. Each company has its own rules about who they'll work with in this capacity, but we have enough to make it work. Most kids then emerge at the end with a feel for what it's like to get a regular paycheck, as well as with a professional reference that means something to future employers. Similarly, we also try to set up paid apprenticeships — like with a restaurant group or construction company — that can earn someone a full-time job if they're successful. Last but not least is community service, which is the effort requirement I mentioned earlier. A lot of these kids have never had the simultaneous sensation of being happy and tired, except maybe playing sports. We want them to feel proud of their efforts, and with a local unemployment rate approaching 90 percent in some of our communities, we realize kids may not have many role models for that in this economic situation. So we don't tell participants where to go, only the number of hours they have to do. They pick a place that's convenient and of interest to them. I think that makes them more likely to get it done and feel like they've contributed to their community. If they can experience that feeling in our program, maybe they'll get addicted to it.

Did these changes require new roles within your agency, and if so, how?

At this point, we have six dedicated full-time staff working on diversion, three for adult diversion and three for juvenile diversion. The diversion coordinators have been key because they supported our ramped-up volume from about eight to ten participants a month to eight to ten a week. We got very lucky with our initial diversion coordinator because he was former law enforcement but also had managed grocery stores in the

region and had experience working with adults with developmental disabilities. He knew the right service providers and employers to connect with our participants.

What does this new response cost?

Getting public funding for any of this has been really difficult because politicians are reluctant to spend money today to save money tomorrow. Because of that, I have to make this work with almost no budget. In addition to in-kind partnerships, we've had some luck getting a couple of banks to give \$1,000 contributions to our providers. We also had a church raise \$600 for us. Those are non-negligible amounts and show the buy-in we have at different levels.

“You can't operate an improved response like this without community buy-in and individualized programming.”

Data and Outcomes

What data is important to collect for an effort like this?

At this point, only our young adult diversion program has been running long enough to track recidivism over a meaningful period of time, but those numbers are incredible. Only about 19 percent get new arrests within one year. If I can keep 80 percent or more of these kids out of the system, that translates to huge savings.

Is there a story or anecdote that you think best describes the successes of the new approach?

I'm trained in the art of persuasion, and anecdotes are a big part of that strategy. All the time, people are telling us that our program changed their life or that they would be dead without it. We routinely hear about their specific successes, too, whether it be getting married or being employed. At least once a week, my diversion folks fill me in on the people who are eligible for expungement. We have given the community back engineers, nurses, carpenters, and cooks. Young men and women who had all but abandoned their children are stepping up as parents. But I also like to talk about the indirect success in terms of community buy-in. The work that we have been doing in the community has helped change the way that we are perceived. If the community sees me out advocating to give defendants a chance to be better, to ensure

that the system does not prevent them from positive change, I feel like we get a very different response on those other occasions where we are looking to impose serious consequences. They understand that is not our only goal.

“Juvenile recidivism is the most powerful data measure that we don't yet track but wish we could.”

How do you keep the community informed about and involved in these policy and practice changes?

A good prosecutor should be out in their community anyway. What's nice about our diversion work is it gives me a fun thing to be talking about when I am out there. Frankly, there aren't a lot of things that prosecutors do that the general public find interesting, like having a new designated domestic violence prosecutor or a new plan to save money on drug testing. Mostly, the public wants us to be invisible and get our jobs done. But our diversion work, especially with young adults, is something that people find interesting, and it has become part of the face of the office. Then, while I'm doing outreach on this topic, perhaps there are other, harder things to talk about that we can get into because I'm already in regular dialogue with them. For example, when I want to talk about warrant resolution in a specific community, it won't be the first time they've seen me. At the individual level, if I go 20 times into a community to try to get somebody out of trouble, and the 21st time is to bring someone in on a warrant, I have more credibility and support. It's the same if I have to show up after an officer-involved shooting. I'm showing them I do more than lock up people or side with law enforcement.

When I moved to South Dakota, I had no knowledge of Native American culture and didn't pretend to. I knew there would be racial tensions to address. Diversion programs give you an in, though, especially in places where it's hard to build trust. I remember going out and describing the alternatives I wanted to create. I asked: “Will you help us? Will you help us mentor them? Help feed them? Help give them internships?”

Challenges

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

I'll admit, I initially expected we'd have some people accuse us of "coddling criminals." The defense bar was immediately supportive, perhaps unsurprisingly, but so was the bench, the community, and even some long-standing police officers. The police support did surprise me, at the time. As I look back on it, though, it makes sense that some of the old-school officers were supportive, because they likely applied their own informal diversion back in the day before everyone got so risk-averse. In the old days, if you caught a kid with a marijuana joint, some officers would have crumpled it up and told the kid they got lucky today for not being arrested. That doesn't happen anymore. They're worried they'll be accused of offering that opportunity to some people and not others, or that if the same kid gets on something stronger next week, their butt will be in a sling. There's something positive about that instinct, though, which makes it all the more important to have a court response that is consistent and appropriate.

Individual victims are another group we've had to work with in support of this. It seems like for the more serious cases, like home burglaries, most victims are on board, but then there's the occasional car that gets keyed where the owner wants the kid strung up by his toes.

"Short-sighted politicians continue to make us nervous about our early screening and diversion efforts."

Has the physical geography of your jurisdiction posed challenges in doing this work?

I only have about 100,000 people in my county, and my office only has about two dozen attorneys when we're fully staffed. One benefit of a smaller community is that word of mouth is a powerful force. I can meet with about 20 community members one day, but by the next morning, 100 people have heard about the conversation. Our size also means we can get a lot done and have the right groups represented with about ten people at the table. I understand that might not be a scalable approach to bigger jurisdictions, but I'd certainly recommend it to all the offices out there that are similarly sized.

At the other end of the spectrum, though, we are a very large county in geographic terms, over 100 miles wide. And even though we are a small city by most measures, we are the regional draw for events, for shopping, and for entertainment. This includes several reservations, where the poverty and unemployment rates are vastly different. Early on, this presented challenges for offenders who were not able to travel freely between Pennington County and their home communities for treatment, programming, or work.

How have you considered and addressed racial disparities within early decision-making?

We have kept very close track of our racial disparities, as we are aware of the significant over-representation of Native Americans in our justice system and our jail. Early on, there were areas where we felt we needed to improve on our ability to get Native offenders informed, so that they could enroll in diversion, and so that they would get all the benefits of dismissal and expungement. We quickly realized that many offenders did not take advantage of the ability to expunge their arrest records, so we decided that we would do that for them. Even now, though, we see some racial discrepancies on that metric and are exploring some avenues to address that, particularly in the filing fees that the court system imposes. I am glad to say that, in terms of being offered diversion, completing programming, and recidivism, our success rates are remarkably consistent across racial categories.

Lessons and Next Steps

"The primary benefit of our new approach to these cases or individuals is that we are fully engaged with our community, including offenders, in a way that is proving to be game-changing."

What resources or partnerships have been most helpful in launching and sustaining this work?

Our community service and social service partnerships have been key in more ways than one, including the opportunity to build trust with those organizations. Particularly with Native American tribes, they're skeptical of the state coming along

and telling them how to run things. I think anyone should view that approach skeptically. So we start by trusting. Instead, with our service providers, we don't have a checklist or form they have to fill out when we hand off a diversion participant. We don't need to know whether participants showed up right at 8 a.m. and clocked out at 4 p.m. Frankly, most people who complete community service end up doing more than they were required to do anyway, especially disengaged young adults. We trust our partners to tell us how someone did and don't want to put ourselves in a position where we're micromanaging them. We say: "I'm giving them to you. You tell me when they're done." If I want tribal partners, which I desperately do, I need to take a step back and let go a little. Then I can focus on what's most important, which is the partners' sterling reputation and results. "Trust, but verify," is part of my vocabulary. We keep data on our various providers. If one is falling off the charts and not accomplishing much, we don't use them as much.

If you were to do it all over again, what would you have done differently?

Our juvenile diversion wasn't well-received by our law enforcement community initially because we didn't do a good job getting their involvement from the beginning. We just announced that we were doing it. I learned that lesson and made sure to involve law enforcement on an on-going basis. That has included having some participants come through to meet with our partners, some of whom are nephews or neighbors. There's nothing like knowing a kid that came through to generate support.

What are your plans to ensure sustainability going forward?

We were able to use grant money to cover the first year's salary of our coordinator. After that, we moved that position onto the county budget and now are using grant funds for a new coordinator position, focusing on drug diversion of mostly meth and heroin cases. Yes, we've had to spend some staffing money on those new positions but you have to take the long view. These positions save all kinds of resources down the line.

“The single piece of advice I'd give to my peers is **do not do this part-way. It requires a true commitment but is undeniably well worth the effort.”**

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

Diversion is an easy sell. If you commit to it, get good people, and do it well, this is an approach that makes sense.



Andrew Warren

STATE ATTORNEY
13TH JUDICIAL DISTRICT (TAMPA), FLORIDA

“I became a federal prosecutor to serve my country. I ran for State Attorney to make my community safer for my children and to promote fairness and justice for everyone.”

The Problem

How would you describe prosecutors' traditional way of approaching early decision-making?

For the past generation, prosecutors have traditionally viewed the system as a way to implement a punishment rather than implement a long-term problem-solving approach. The question has been: How do we win this case? Prosecutors weren't thinking about long-term or collateral consequences. That approach is myopic because it only considers one of the goals of the criminal justice system, which is accountability. For me, there are additional goals: reducing recidivism, rehabilitating offenders, and supporting victims. We've focused too much on punishment alone without really thinking about what happens when people get out of the system and reducing the number of people there in the first place.

What was the status quo for the cases that ultimately became the focus of your early screening and diversion efforts?

Our approach had been formulaic and lacked perspective. Rather than thinking through solutions, prosecutors traditionally treated each case like a law school exam where the desired outcome becomes the conviction and sentence rather than improving public safety.

“Two of the biggest initial obstacles were short-sightedness and agency culture.”

Where did you look for ideas or resources on this topic?

Various books, white papers, and law review articles have informed my views. When I became State Attorney, I brought that information with me and tried to connect with prosecutors generating good ideas in other places, copy them, and adjust them to our context. Some offices are the usual suspects in big cities with high-profile elections, but they're not the only ones innovating. For example, District Attorney Christian Gossett has been innovating in Winnebago, Wisconsin, for years. With every passing year, there are more offices added to that list.

How did the political or cultural context help motivate any of these changes?

I think there was a cultural context that made change more possible. Our office's culture is part of a broader prosecutorial culture that has failed to empower prosecutors to use their discretion. And now, we find ourselves in a rare moment because people are talking about and are aware of criminal justice issues to an increasing degree. When challenges in the criminal justice system become kitchen table and water cooler conversation among the general public, that makes fertile ground for change. Even if the average person doesn't know specific problems or solutions, there's a sense: "I'm pretty sure we can do a better job." I liken it to global warming and the movie *An Inconvenient Truth*. Before the movie came out, people sort of understood the issue. Afterwards, many more people understand it, even if they don't know the specifics. Similarly, justice reform awareness has hit a critical mass, and that context has helped reform-minded prosecutors get elected.

The Response

What were your initial goals for the new early decision-making and diversionary practices?

Our goal has been to take a long-term, strategic problem-solving approach to cases. We ask: "How do we handle this case to make the community safer, reduce the likelihood of recidivism, and also give the victim what they want and deserve?"

Who's eligible for these new responses?

The specific approach depends on the case. For example, our philosophy and goals manifest differently in juvenile justice cases versus adult drug possession cases. Overall, we employ diversion toward the lower levels of criminality. "Tough on crime" works pretty well on murders and armed robbery, but not very well on lower-level cases. So those are the ones we target with an alternate approach. For example, we created a juvenile pre-arrest civil citation program to put first-time, low-level offenders into the equivalent of probation without the formal process of arrest or prosecution. The sanctions imposed are the same as if they had been prosecuted, but we do it without the arrest or conviction hanging over their heads forever — which makes it harder from them to get a job, go to college, or join the military. That's an example of how we can increase public safety while steering kids out of the downward spiral of the system.

What does the new process or program do differently?

Diversion is finding a non-traditional approach to prosecution that focuses on accountability, rehabilitation, and recidivism rather than punishment. Our efforts are individualized as much as possible. Our policies typically have guiding principles, but we try to be flexible enough to make individualized assessments.

Did these changes require new roles within your agency, and if so, how?

We created new positions for certain things and changed the responsibilities for others. The challenge has been making it clear to everyone what I want from them. For example, one day, a prosecutor came to me for advice about an upcoming sentencing in a juvenile case. “I don’t know what to ask for. I don’t know what you want,” they said. “I’m thinking of recommending the middle of the guidelines.” I responded: “I can’t answer that question. There’s no formula or calculation.” I proceeded to spend several minutes walking through the goals of the criminal justice system and the relevant factors and encouraging the prosecutor to recommend a sentence that balanced those goals. And after all that, the prosecutor looked at me and said, “So, the bottom of the guidelines?” The story highlights the challenge in teaching people that their job requires them to use their discretion and check that analysis with their supervisors. In thinking about how specific job titles or responsibilities may have changed, I sent some of them off to do research: “You’re my problem-solving court coordinator. You should be spending X hours per week reading and learning about drug treatment, so you can help fashion decisions.” For other line prosecutors, there’s no formal training we can do. It just takes time to add the step in the process to really think about each case. Each case is a problem to be solved, not a person to be prosecuted. Is this someone who needs to be locked up and neutralized from society? Or will prosecution offer no benefits to the community?

What roles do screening and assessment play in these early decisions?

Screening and assessment is critically important for cases involving substance abuse and mental health because they orient us to the rehabilitation needed to reduce the likelihood of the defendant reoffending. For these cases, we use the Levels of Service/Case Management Inventory system (LS/CMI), a validated risk-needs-responsivity assessment. This tool allows us, based on empirical data, to evaluate what a person’s risk factors are, and what they need in terms of sanctions, treatment, and oversight to succeed.

What does this new response cost?

The cost depends on the type of program, and yes, there are costs. For example, when we decided to create a problem-solving coordinator, that meant pulling a prosecutor from prosecuting cases to fill that new role. To fill the gap, I either had to increase the caseload of everybody else or add another staff member. Other components need grant funding or partnership with outside agencies, and there can be huge costs to doing this, too. But usually, these costs are outweighed by the cost-savings. Our civil citations program, for example, saves us the cost of prosecuting traditionally and saves the rest of the system money too. Putting someone in drug treatment costs money, but not as much as putting them in prison or bearing the cost of them reoffending. We are also able to do a lot through partnerships that don’t cost us directly. For example, our Veterans Treatment Court utilizes the U.S. Department of Veterans Affairs to provide treatment at no direct cost to us. We also hold expungement clinics with partner agencies already serving a similar population. We provide the labor, and outside groups provide the dollars.

“You can’t operate an improved response like this without a clear mission and an agency culture to support it.”

Data and Outcomes

What data is important to collect for an effort like this?

Well-defined success and recidivism metrics are key. People talk about recidivism data, but what does it mean? Over what timeline are you tracking? Does a driving under the influence charge or misdemeanor marijuana possession flag the same way as armed burglary? In most cases, “recidivism” doesn’t capture those nuances. If someone has committed multiple robberies and years later reoffends with a disorderly conduct misdemeanor, that’s progress. We’ve been working on creating better data infrastructure that can capture these nuances. For example, we’re trying to track repeat DUI cases. If someone gets a new DUI charge, we failed. If not, we succeeded. Thankfully, I inherited a very good information-technology department. They used to be tasked with just making sure the phones and computers operated, but we’ve expanded their scope to helping the office be successful. They were motivated by and have fully embraced the idea that they can do more than get files to open and

computers to turn on. They're doing advanced data tracking for us, in aggregate and in specific cases. I think they're excited to be doing forward-thinking work.

Is there a story or anecdote that you think best describes the successes of the new approach?

We had a juvenile who was being charged with a new offense but had a long history of family violence against his mother. The prosecutor in that case took a few extra minutes to ask what happened with this young man and his history and discovered that he used to be an A and B student, never in trouble before. But over the past few years, he'd had multiple run-ins with the law and now was a D and F student. During that time, his mother had become homeless; they were bouncing around, including at the mom's boyfriend's house. It was a bad situation. So here was a young man who had come through the system a few times, but no one had stopped to ask why. It wasn't too late for a second chance. We happened to have some new partnerships helping homeless youth, so we got him into a program where he's living in a home for formerly homeless kids. It's a great feeling to know that we succeeded — in terms of public safety and that young man's life — because our prosecutor spent a few extra minutes with that case.

“Detailed recidivism data is the most powerful data measure that we don't yet track but wish we could.”

Success should be individualized and depends on the program. That requires detailed recidivism data. Then success becomes much more than just the total number of convictions.

How do you keep the community informed about and involved in these policy and practice changes?

We do a lot of community engagement. I personally, along with other attorneys in our office, speak regularly to community groups. We launched a business academy to educate business leaders about our criminal justice system. But one of our more unique efforts is our community council. It's made up of a cross-section of community members — by geography, demographics, and industries where they work. Some work in the justice system, but not all. We bring them in to talk about policy issues. We think of them as ambassadors, our earpiece and mouthpiece. We want them to

come to us with issues from their neighborhoods, agencies, and networks; talk with us about those issues; and then bring that messaging back. We started it in 2018 and set up two-year terms. It's disappointing the first terms are almost up because the current members are great, but it will be good to recruit a new batch.

Challenges

How did you address any external pushback from stakeholders such as law enforcement or the defense bar?

We've had some pushback internally and externally, which is expected. Our response is the same. We try to teach people about our mission, show them the problems with the status quo, and ask for their input in coming up with solutions. If they don't like my solutions, I invite them to suggest others. It started with a listening tour at the beginning of my term. I met with the defense bar en masse, as well as in smaller meetings. There were also forums via other formal organizations of criminal justice agencies.

“The one-off case that falls through the cracks continues to make us nervous about our early screening and diversion efforts.”

If we have a diversion program where 99 percent of participants complete and go on to win the Nobel Prize, but one person goes on to kill someone, everyone focuses on that one person. It's every prosecutor's nightmare. Educating the public is the safeguard for that.

How have you considered and addressed racial disparities within early decision-making?

We've done two things to examine racial disparities. The first was responding to a documented problem in the prosecution of drug cases for juveniles and direct filings as adults. Once we identified the problem, we made changes. We also partnered with the University of South Florida to audit what we've been doing. The second thing we're doing is examining our metrics of success as part of the MacArthur Foundation's Safety and Justice Challenge. A research report came out in 2019, and we continue

to monitor and address disparities within our office. There was news coverage locally about what the data said, but the bigger story, in my opinion, is how we are taking an innovative approach to track so much data and to report that information to the community.

Lessons and Next Steps

“The primary benefit of our new approach to these cases or individuals is **long-term public safety.**”

What are the biggest adjustments you have made to the approach since you first started?

We’ve had to change our policies to accommodate the practical realities of limited resources. We often have to find the next best alternative.

What are your plans to ensure sustainability going forward?

Our best sustainability plan is to make sure our prosecutors understand the mission and their roles in advancing that mission. It sounds simple, but the reality is that some prosecutors can’t articulate a mission for our office that I agree with, much less one that I want. The mission is about public safety and increasing fairness and integrity in the system. We will succeed when we all embrace that every decision we make should advance that mission.

“The single piece of advice I’d give to my peers is **understand your local problems and keep an open mind about possible solutions.**”

Any final thoughts about how prosecutors elsewhere can improve early decision-making?

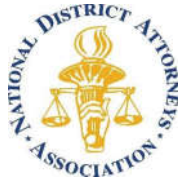
Look at what has worked elsewhere. You don’t need to reinvent the wheel. Also, don’t feel like there’s nothing you can do about the challenges you face. Just change the way you prosecute. Invent a program. Get an outside agency to help you. See your job as broader than prosecuting cases. Problem-solving is the key.



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About Emily LaGratta

Emily LaGratta, J.D., is a justice reform consultant and innovator who has worked with criminal justice agencies across the country since 2009. She is the founder of LaGratta Consulting LLC, which aims to help local and national justice leaders prioritize system fairness, user voice, and creative partnerships. Before starting LaGratta Consulting, Emily was the Director of Procedural Justice Initiatives at the Center for Court Innovation, where she oversaw a multi-million dollar consulting practice on the topics of procedural justice and community justice. This work included supporting the Connecticut Division of Criminal Justice's early diversion work that spurred the creation of this book. Other interview books she's created include *Daring to Fail* and *To Be Fair*. Emily started her legal career as a public defender in Harlem and continues to live and work in Manhattan. www.lagratta.com



About the National District Attorneys Association

Founded in 1950, the National District Attorneys Association (NDAA) is a national, nonpartisan nonprofit membership association that provides training, technical assistance, and membership services to prosecutors around the country in support of the prosecution profession. As the oldest and largest association of prosecutors in the country with over 5,000 members, its mission is to be the voice of America's prosecutors and to support their efforts to protect the rights and safety of the people by providing its members with the knowledge, skills, and support they need to ensure justice is attained. NDAA serves as a nationwide, interdisciplinary resource center for research, training, knowledge building, and accountability as it works to promote a fair and equitable administration of justice. www.ndaa.org



About the Herbert and Nell Singer Foundation

Established in 1982, the Herbert & Nell Singer Foundation serves as a legacy of the founders' shared passion for private philanthropy and humanitarian efforts. Today, the Foundation engages in collaborative partnerships and research initiatives that empower community leaders to address the challenges they face in innovative ways. The Foundation seeks to learn alongside these leaders and provide resources to support criminal justice reform, early childhood education, and post-secondary school persistence – especially targeted to serve low-income families and people of color. The Foundation does not consider unsolicited requests for funding.

About Irma Jace

Irma Jace is a visual designer from New York City. Her full portfolio work ranges from original artworks in a variety of media to graphics and product user experience design. She has a personal connection to this project based on her prior experience participating in a diversion program. She was 21 years old and not in a good place in her life when she was arrested for a low-level offense in Brooklyn, New York.

It was the first time she was dealing with the justice system directly and never predicted she'd end up there. Sitting in the police precinct for hours and having to face her family afterwards gave her a rush of humiliation and fear of what was to happen next. She was released with a future court date without knowing that she'd soon be contacted by staff from a local diversion program called Project Reset, operated in partnership with the Kings County District Attorney's Office and Center for Court Innovation. Getting the call was a huge relief. The staff were a huge help, and the whole experience was quite remarkable. She felt treated fairly and respectfully, despite her initial shame in being there. The experience gave her a sense of comfort with acknowledging her mistake and taking responsibility for her actions. In exchange for her participation in the program, her case was never heard in court and her criminal record remains clear and untarnished. www.irmajace.com

Relevant Resources

Below are select topical resources recommended by the editor, project partners, and interviewees.

- “Core Competencies for Peer Workers in Behavioral Health Services,” Substance Abuse and Mental Health Services Administration (2015), available at www.samhsa.gov/sites/default/files/programs_campaigns/brss_tac/core-competencies_508_12_13_18.pdf
- “Creating Off-Ramps: A National Review of Police-Led Diversion Programs,” Tallon, J. et al, Center for Court Innovation (2016), available at www.courtinnovation.org/sites/default/files/media/document/2018/Creating_Off_Ramps.pdf
- “Frequently Asked Questions: A Look into Court-Based Behavioral Health Diversion Interventions,” Council of State Governments Justice Center (2020), available at www.csgjusticecenter.org/wp-content/uploads/2020/05/JC_Fact-Sheet_FAQ-A-Look-into-Court-Based-Behavioral-Health-Diversion-Interventions_508accessible.pdf.
- “Mapping the Landscape of Prosecutor-Led Pretrial Diversion,” Noble, D., Institute for Innovation in Prosecution, Criminal Law Practitioner (in publication 2020), available at www.crimlawpracblog.wixsite.com/crimlawpractitioner
- “Diversion 101,” National Association of Pretrial Service Agencies, available at www.napsa.org/eweb/DynamicPage.aspx?Site=NAPSA&WebCode=Diversion
- “From Funnels to Large Scale Irrigation,” Chisholm, J. and Reed, T., Harvard Executive Session (2019), available at www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/reed_chisholm_changing_the_criminal_justice_system_paradigm.pdf
- “Multisite Evaluation of Prosecutor-Led Diversion Programs,” Rempel, M. et al, Center for Court Innovation (2018), available at www.courtinnovation.org/sites/default/files/media/document/2017/Pretrial_Diversion_Overview_ProvRel.pdf
- “Promising Practices in Prosecutor-Led Diversion,” Fair and Just Prosecution (2017), available at www.fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.Diversion.9.26.pdf
- “Prosecutor-Led Diversion: Case Studies in Eleven Jurisdictions,” Labriola, M. et al, Center for Court Innovation (2017) available at www.courtinnovation.org/sites/default/files/media/documents/2017-11/pretrial_diversion_case_study_report_final_provrel.pdf

- “Prosecutor-Led Diversion Toolkit,” Association of Prosecuting Attorneys, available at www.diversiontoolkit.org/
- “The Progressive Prosecutor’s Handbook,” Sklansky, D., UC Davis Law Review Online (2017), available at www.lawreview.law.ucdavis.edu/online/vol50/Sklansky.pdf
- “Unlocking the Black Box of Prosecution,” Vera Institute of Justice, available at www.vera.org/unlocking-the-black-box-of-prosecution

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To Prosecute aims to celebrate and advance the improvements countless prosecutor's offices have made in recent years to enhance early decision-making practices. Whereas traditional prosecution decisions were more binary — to prosecute or not — many prosecutors have found new and creative ways to intervene early in a case to change individual and system outcomes for the better.

This book compiles interviews with approximately 20 senior prosecutors from 2019 and 2020. The interviews address how these prosecutors frame the status quo concerning early decision-making, what resources and data guide their improved practices, and how to ensure collaboration, fairness, and community input along the way. These perspectives come from jurisdictions small and large, progressive and conservative, and with a range of cultural and funding climates. Collectively, they answer a fundamental question about what it means to be a prosecutor. The interviews are both unique and profoundly united with one another.

The hope is for these first-hand accounts to inspire continued innovation and adoption of early screening and diversionary practices among a diverse readership of prosecutors and justice system professionals.

This book was funded by the Herbert and Nell Singer Foundation in partnership with the National District Attorneys Association and LaGratta Consulting LLC. Feedback about the book is encouraged and can be directed to emily@lagratta.com.



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