

THE ROLE OF THE PROSECUTOR IN BRINGING ABOUT CRIMINAL JUSTICE REFORM

OCTOBER 2025

WRITTEN BY

Zaria Bender, Isabela Casimiro, Danielle Jing, Munpreet Kaur



A research report on the role of the prosecutor
and a call to action regarding their role in
criminal justice reform.

By the Future Justice Lawyers of Chicago

Introduction

Prosecutors serve as the gatekeepers of the criminal justice system. They possess broad discretion in important decisions such as whether to file charges, what charges to specifically pursue, if to offer plea bargains, and what sentences to recommend to either the judge or public defender. In essence, they hold immense power and that power shapes outcomes for individuals going through the criminal justice system. It can be both a strength and a risk. The debate over prosecutorial discretion is central to any and all conversations about criminal justice reform. Change cannot happen without them at the table. Should prosecutors be granted broad autonomy, or should legal reforms cut back their power to ensure accountability?

Their influence is present at nearly every stage of a criminal case. Prosecutors advise law enforcement on what evidence is needed to bring forth against an offender. They, once the arrest is made, formally charge the offender and, if pretrial reform exists, are the ones to recommend detention or release. During trial, they present the state's case and argue for conviction. Prosecutors recommend specific penalties and can argue for harsher or more lenient outcomes. Lastly, they even weigh in on appeals, sentence modifications, or clemency proceedings. Prosecutors shape a defendant's entire legal trajectory from the moment the handcuffs are placed. More importantly, since several criminal cases are resolved without trial, their prosecutorial decisions often have more immediate impact than judicial rulings.

Because they are positioned at the front lines of the criminal process, prosecutors are uniquely placed to either perpetuate systemic injustices or flat-out disrupt them. It is this power granted to them that has prompted calls from several advocacy groups and activists for prosecutors to become more active agents of reform. Without their willingness to engage in equitable practices, all efforts of reform die at the implementation stage and no changes to the law or policy can persuade them.

Prosecutorial Discretion: The Pros and Cons

Prosecutorial discretion allows attorneys to weigh context — such as a defendant's background, the circumstances of the offense, or the community's needs — before deciding how to proceed. As stated in the Justice Manual of the U.S. Department of Justice, “the prosecutor has wide latitude in determining when, whom, how, and even whether to prosecute for apparent violations of federal criminal law. The prosecutor's broad discretion in such areas as initiating or foregoing prosecutions, selecting or recommending specific charges, and terminating prosecutions by accepting guilty pleas has been recognized on numerous occasions by the courts.”¹

On the one hand, this flexibility enables fairness and individualized justice. For instance, several jurisdictions across the country have prosecutor-led diversion programs. These programs allow certain individuals eligible to avoid traditional prosecution. The federally-funded report by the U.S. Department of Justice found that, “successful program completion generally leads all criminal charges to be dismissed and/or expunged, whereas unsuccessful participation leads case

¹ “Justice Manual 9-27.000 - Principles of Federal Prosecution | United States Department of Justice.” *Department of Justice*, <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution>.

to be rerouted back to traditional prosecution.”² This report found that prosecutor-led diversion programs demonstrate how discretion, when applied, can provide meaningful alternatives to incarceration. More importantly, it aids first-time and nonviolent offenders to not reoffend.

On the other hand, it opens the door to inconsistencies, bias, and potential abuse. Oftentimes prosecutors’ decision to charge, offer plea deals, and sentencing recommendations are made with little to no oversight. Unfortunately, the outcomes lead to heightened racial disparities. In Michelle Alexander’s book, *The New Jim Crow*, she writes, “The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid. In Washington, D.C., our nation’s capital, it is estimated that three out of four young black men (and nearly all those in the poorest neighborhoods) can expect to serve time in prison.”³ While it is worth noting that there are several other factors that contribute to this phenomenon, unchecked prosecutorial discretion plays a very important role in enforcing these racial disparities.

Some reform advocates argue for reducing prosecutorial discretion and implementing mandatory guidelines. However, this approach has the opposite effect and it further empowered prosecutors. As stated by The Sentencing Project, “Rather than eliminate discretion in sentencing, mandatory minimums therefore moved this power from judges to prosecutors. The threat of mandatory minimums also encourages defendants to plead to a different crime to avoid a stiff, mandatory sentence.”⁴ Prosecutors often faced more pressure to charge people under rigid laws that don't reflect justice in individual cases.

Others believe that discretion, when guided by principles of fairness and equity, is a vital tool for reform. James Vorenberg, a former Dean of Harvard Law and former Watergate Associate Special Prosecutor, advocated for prosecutors to submit annual reports on their discretionary decisions to legislative committees in order to promote transparency and accountability.⁵ It is clear that a complete overhaul of prosecutorial discretion is not the solution, rather criminal justice reforms efforts should focus on restructuring it.

Historical Context and the Rise of the Progressive Prosecutor

The 1990s “tough-on-crime” era, particularly following the passage of the 1994 Crime Bill, emphasized aggressive prosecution, mandatory minimums, and incarceration. Formally known as the Violent Crime Control and Law Enforcement Act, prosecutors during this time were encouraged to pursue the harshest charges possible, contributing to a rise in mass incarceration. As detailed in her book, Alexander noted that, “In less than thirty years, the U.S. penal

² Labriola, Melissa, et al. “Prosecutor-Led Pretrial Diversion: Case Studies in Eleven Jurisdictions.” *National Criminal Justice Programs*, U.S. Department of Justice, April 2018, <https://www.ojp.gov/pdffiles1/nij/grants/251664.pdf>.

³ Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New Press, 2020, p. 8.

⁴ “How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It – The Sentencing Project.” *The Sentencing Project*, 14 February 2024, <https://www.sentencingproject.org/fact-sheet/how-mandatory-minimums-perpetuate-mass-incarceration-and-what-to-do-about-it/>.

⁵ Bibas, Stephanos. “Prosecutorial Regulation Versus Prosecutorial Accountability.” *University of Pennsylvania Law Review*, vol. 157, no. 4, 2009, pp. 960-1016. *University of Pennsylvania*, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1188&context=penn_law_review, p. 966.

population exploded from around 300,000 to more than 2 million, with drug convictions accounting for the majority of the increase.”⁶

In the Sentencing Project’s report⁷ on the origins of “three strikes” laws, this period of time marked a dramatic expansion of prosecutorial power and influence. The 1994 Crime Bill codified these “three strikes and you’re out” rules to effectively broaden harsh capital punishment at the federal level. The new legislation pushed the state and federal justice systems to adopt harsh sentencing practices, like life imprisonment for those who were convicted of a third violent felony. This often fell at the hands of prosecutors and they became the enforcers of the 1994 Crime Bill.

According to Udi Ofer, former Director of the American Civil Liberties Union (ACLU) Justice Division of the National Political and Advocacy Department, the 1994 Crime Bill created harsh sentencing rules and incentivized states to build more prisons and truth-in-sentencing laws that scaled back parole hearings.⁸ With strong bipartisan support, including significant backing from Democrats aiming to prove their toughness on crime, the crime bill led to the implementation of strict sentencing regimes and a rapid expansion of prison infrastructure across the nation. This had massive, long term effects. Following the passage of the 1994 Crime Bill, incarceration continued to climb for an additional 14 years.⁹

Furthermore, the Brennan Center for Justice highlights how federal funding mechanisms help aid the highly punitive model. Through the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants Program, the federal government allocated \$12.5 billion to states, with nearly half of this amount remaining contingent on the adoption of truth-in-sentencing laws that limited parole eligibility.¹⁰ As a result of this program, the number of correctional facilities nationwide increased by 43 percent between 1990 and 2005.¹¹ Additionally, for a period in the 1990s, the Brennan Center for Justice estimates that a new prison opened every 15 days on average.¹² These monetary incentives drove states and their law enforcement agencies to conduct more arrests. On the state’s attorney side, this drove them to prosecute more people and presented chargers against

⁶ Alexander, p. 7.

⁷ Loehr, Daniel. “The Eugenic Origins of Three Strikes Laws: How “Habitual Offender” Sentencing Laws Were Used as a Means of Sterilization – The Sentencing Project.” *The Sentencing Project*, 5 March 2025, <https://www.sentencingproject.org/reports/the-eugenic-origins-of-three-strikes-laws-how-habitual-offender-sentencing-laws-were-used-as-a-means-of-sterilization/>.

⁸ Ofer, Udi. “How the 1994 Crime Bill Fed the Mass Incarceration Crisis.” *ACLU*, 4 June 2019, <https://www.aclu.org/news/smart-justice/how-1994-crime-bill-fed-mass-incarceration-crisis>.

⁹ *Ibid.*

¹⁰ Eisen, Lauren. “The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System.” *Brennan Center for Justice*, 9 September 2019, <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>.

¹¹ *Ibid.*

¹² Eisen, Lauren. “The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System.” *Brennan Center for Justice*, 9 September 2019, <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>.

them with lengthier sentences. This is what allowed for the significant expansion of the scale and reach of the U.S. correctional system.

To carry out meaningful criminal justice reform and combat mass incarceration, it is critical to understand the prosecutorial practices that emerged during the “tough-on-crime” era. The policies of the past were not merely reactive to the supposed “war on drugs” environment; they were enforced by the prosecutors, of all levels, whose discretion, power, and influence have played a central role in the exponential rise of mass incarceration and systemic inequities that persist today.

Key Areas for Criminal Justice Reform at the Prosecutor Level

As established earlier, prosecutors are at every stage of a criminal case and that power that has been entrusted to them cannot only be used to enforce the law, but to also make it more equitable. Reform begins with how a prosecutor decides to use their given role at various stages of a criminal case. The American Bar Association highlights this in its *Criminal Justice Standards* on the function of the prosecutor, stating: “The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and support efforts for remedial action.”¹³

One of the most significant decisions a prosecutor makes is whether to formally charge an individual and what those charges are going to be. This decision shapes the entire trajectory of a case, influencing bail, plea negotiations, and sentencing possibilities. Justice Robert H. Jackson famously said, in his 1940 address to U.S. attorneys, that, “If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted.”¹⁴ Thus, it is important to have reform-minded prosecutors who can use their discretion to decline charges in cases where prosecution would not serve justice, particularly for low-level, non-violent offenses or cases where systemic factors, such as mental health crises or poverty, played a significant role.

Diversion programs, which offer alternatives to traditional prosecution for individuals with specific needs, are critical tools for reducing incarceration and addressing the root causes of criminal behavior. In a 2018 study in Harris County, Texas researchers found that “Diversion substantially decreased a person’s future convictions by 48 percent 10 years after participation and improved employment outcomes by 53 percent over the same period.”¹⁵ Prosecutors play a central role in expanding access to diversion programs, setting eligibility criteria, and ensuring programs are equitably administered without bias or unnecessary restrictions.

¹³ “Prosecution Function.” *American Bar Association*, https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecution-function/.

¹⁴ Jackson, Robert H. “The Federal Prosecutor.” *Robert H Jackson Center*, 1940, <https://www.roberthjackson.org/speech-and-writing/the-federal-prosecutor/>.

¹⁵ Johnson, Jason Miccolo. “Diversion Programs, Explained.” *Vera Institute*, 28 April 2022, <https://www.vera.org/diversion-programs-explained>.

Prosecutors' recommendations significantly impact whether an individual remains in custody while awaiting trial. The Illinois Safety Act demonstrates a reform model where pretrial detention decisions are based on public safety rather than financial ability to pay cash bail. Prosecutors can advocate for release with appropriate conditions for low-risk individuals, recognizing the harms of pretrial detention, including job loss, housing instability, and coercive plea pressures. Research done by the Prison Policy Initiative found that even a day or two in pretrial detention can destabilize a person's life for years, stating, "nearly half reported suffering a "material loss" from detention, including legal debt (36%), missed work (40%), lost jobs (18%), and lost property (18%)."¹⁶ By supporting pretrial reform, prosecutors can ensure that detention is used sparingly and fairly, aligning with principles of due process and the presumption of innocence.

Sentencing recommendations from prosecutors often carry substantial weight with judges, shaping the final outcomes of criminal cases. Reform-minded prosecutors can consider alternatives to incarceration, such as probation, community service, or treatment programs, particularly for non-violent offenses. They can also support sentence modifications in appropriate cases and work to reduce excessive sentencing practices that have historically fueled mass incarceration. It is believed that "Reducing *each* offender's risk of re-offense through individualized sentences for the same crime should reduce aggregate crime, thus benefiting society."¹⁷ As such, sentencing decisions should reflect proportionality, the circumstances of the offense, and the rehabilitative needs of the defendant, while prioritizing community safety and victim input.

Prosecutors have a duty to pursue justice even after a conviction has been secured. Post-conviction review units are essential for identifying and addressing wrongful convictions, particularly in cases involving coerced confessions, unreliable evidence, or prosecutorial misconduct. According to The National Registry of Exonerations' website, there have been over 3,707 exonerations since 1989.¹⁸ With more reform-minded prosecutors that can actively review cases and can collaborate with defense attorneys, there would be much more support for resentencing when appropriate, ensuring that past injustices are corrected. This commitment reflects a prosecutorial philosophy that prioritizes truth and fairness over maintaining convictions at all costs.

¹⁶ Nam, Brian. "Research roundup: Evidence that a single day in jail causes immediate and long-lasting harm." *Prison Policy Initiative*, 6 August 2024, https://www.prisonpolicy.org/blog/2024/08/06/short_jail_stays/.

¹⁷ Ormachea, Pablo A., et al. "Enabling Individualized Criminal Sentencing While Reducing Subjectivity: A Tablet-Based Assessment of Recidivism Risk." *American Medical Association Journal of Ethics*, vol. 18, no. 3, 2016, pp. 243-251. *AMA Journal of Ethics*, <https://journalofethics.ama-assn.org/article/enabling-individualized-criminal-sentencing-while-reducing-subjectivity-tablet-based-assessment/2016-03>.

¹⁸ *National Registry of Exonerations: Home*, <https://exonerationregistry.org>.

Prosecutors as Community Leaders

Our interviews included a valuable firsthand account of how prosecutors can promote reform from within the system with a commitment to ethical, community-centered prosecution.¹⁹

This account describes the prosecutor’s role as dynamic — beginning with felony case reviews by the Felony Review Unit and continuing through to trial — with an ongoing evaluation of the evidence and a strong adherence to ethical guidelines. When discrepancies arise, such as inconsistencies between police reports and video evidence, the prosecutor should elevate those concerns, reflecting an internal commitment to fairness.²⁰

The prosecutor’s view of success goes beyond conviction rates. There must be a focus on victim-centered outcomes and a belief that justice includes accountability, fairness, and protecting both victims and the rights of the accused. Advocacy for ethical practices, transparency, and system improvement reflects the broader goals of the progressive prosecutor movement.²¹

Challenges to Criminal Justice Reform

In recent years, however, a shift has emerged: the rise of the progressive prosecutor. Beginning around 2015, cities like Philadelphia, San Francisco, and Chicago elected prosecutors who pledged to use their discretion to reduce incarceration, decline low-level charges, and focus on rehabilitation over punishment. This movement reflects a reimagining of the prosecutor’s role — from enforcer to reformer. However, this new vision has not come without obstacles.

Progressive prosecutors often encounter fierce political pushback from traditional law-and-order politicians, state legislatures, and powerful lobbying groups. Some states have passed laws specifically designed to limit prosecutors’ discretion when they decline to prosecute certain low-level offenses. In Florida, for instance, Governor Ron DeSantis removed two elected state attorneys from office because they declined to prosecute certain offenses in alignment with their progressive platforms.²² This demonstrates how broader political structures can override local voters’ will and chill reform initiatives.

Law enforcement unions and some judges have also resisted reform-minded prosecutors. Police associations have publicly campaigned against progressive prosecutors, accusing them of being “soft on crime.” In some jurisdictions, police have refused to cooperate fully with prosecutors who seek to hold officers accountable for misconduct or excessive force. Additionally, some judges continue to impose high bail amounts or stiff sentences, limiting the practical impact of prosecutors’ diversion and bail recommendations. This friction can hamper reform goals and create inconsistency across cases.

¹⁹ Anonymous Interview.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Kohler, Jeremy. “How Police, Politicians Undermined Reform-Minded Prosecutors.” *ProPublica*, 11 October 2023, <https://www.propublica.org/article/police-politicians-undermined-reform-prosecutors-chicago-philadelphia>.

Reform-oriented prosecutors have faced challenges in combating media narratives around the causes and antidotes to crime and violence. Because many prosecutors are elected, they are susceptible to political and community pressures. While this democratic accountability can drive change, it can also lead to short-term, reactionary decision-making — especially when public sentiment demands harsher punishments. In times of rising crime rates — or even perceived increases — media coverage often simplifies complex societal factors and places blame squarely on prosecutors who decline harsh charges or seek alternatives to incarceration.

In Cook County, for example, there has been significant misinformation about reforms made by reform prosecutor Kim Foxx; even blaming Foxx for issues completely out of her control.²³ One interviewee noted, for example, that while legislation ending money bond was designed to promote fairness and reduce unnecessary pretrial detention, public confusion and mischaracterization have led to politicized attacks on prosecutors advocating for these changes. Such backlash can stall progress, discourage innovative approaches, and make it more difficult for prosecutors to uphold their reform agendas while maintaining public trust.²⁴

Conclusion

Prosecutors have a profound influence on the trajectory of the criminal justice system. Their discretionary power makes them uniquely positioned to advance reform — yet that same discretion can also perpetuate injustice. Rather than eliminating discretion altogether, the solution may lie in how it is used: with transparency, fairness, and a commitment to justice.

The progressive prosecutor movement represents a bold experiment in this direction, offering a compelling vision of reform through prosecutorial leadership. However, its success depends on more than good intentions — it requires structural support, community engagement, and a justice system that holds all actors, including prosecutors, accountable.

Ultimately, criminal justice reform cannot succeed without the deliberate and thoughtful participation of prosecutors. By reshaping the way they use their discretion, prosecutors can play a leading role in building a more just, equitable legal system for all.

Reform is possible within existing structures. Focusing on continuous case evaluation, victim-centered outcomes, and a commitment to transparency demonstrates how prosecutors can align their ethical obligations with the goals of justice reform. By leveraging tools such as community-centered diversion programs, post-conviction review units, and fair pretrial practices, prosecutors can help reduce unnecessary incarceration while maintaining community safety and accountability.

²³ Chicago Appleseed Center for Fair Courts, and Chicago Council of Lawyers. “When You’re a Hammer, Everything’s a Nail: Examining the ‘Progressive Prosecutor’ Movement and Possibilities for Future Reform.” March 2024, https://www.chicagoappleseed.org/wp-content/uploads/2024/03/20240315_Examining-Progressive-Prosecutor-Movement_Chicago-Appleseed-Council-of-Lawyers.pdf#:~:text=minded%20prosecutors%20face%20significant%20challenges%20as%20it,policy%20changes%20to%20gr eater.

²⁴ Anonymous Interview.

At the same time, reform must address the systemic and historical factors that shape prosecutorial practices, including laws that incentivize harsh sentencing, funding structures tied to incarceration rates, and public misconceptions about crime and punishment. Prosecutorial reform should not be viewed in isolation but as part of a broader strategy to transform the criminal justice system into one rooted in equity, rehabilitation, and human dignity.

As communities, policymakers, and scholars continue to advance justice reform, it is crucial to recognize the immense power prosecutors wield and to ensure that this power is exercised responsibly. By fostering an environment where reform-minded prosecutors are supported, held accountable, and encouraged to innovate, we can move closer to a system that serves all people justly and equitably.

Call to Action

Support Reform-Minded Prosecutors Running for Public Office

The election of prosecutors who are committed to justice reform is crucial. Voters can research candidates' platforms on issues such as diversion programs, bail reform, and transparency initiatives. Supporting reform-minded candidates ensures that prosecutorial discretion is used to advance fairness and equity within the justice system.

Engage in Local Advocacy and Community Education

Communities can hold prosecutors accountable by attending town halls, participating in court-watching programs, and engaging in public comment during county board meetings. By understanding the policies and practices of local prosecutors, community members can advocate for data transparency, annual reporting on charging and sentencing practices, and the expansion of restorative justice initiatives.

Stay Informed and Challenge Misinformation

Misinformation can derail reform efforts, as seen in public discourse surrounding policies like the Illinois Safety Act. It is important to verify information through reputable sources, understand the actual impacts of reform policies, and challenge narratives that conflate reform with rising crime without evidence.

Vote in Local Elections

Prosecutors are typically elected at the county level, making local elections critically important for justice reform. Voting in these elections is one of the most direct ways to influence how prosecutorial discretion is applied in your community, from pretrial decisions to post-conviction review processes.

Advocate for Systemic Support and Structural Reforms

Even well-intentioned prosecutors require structural support to sustain reform efforts. Community members can advocate for funding behavioral health diversion programs, expanding public defender resources, and implementing data collection systems for prosecutorial offices to track racial disparities and case outcomes.

Cultivate Ongoing Dialogue About the Role of Prosecutors

Justice reform is an ongoing process requiring sustained community involvement. Schools,

universities, faith organizations, and community groups can create spaces for dialogue about the power prosecutors hold and the reforms needed to ensure accountability and fairness within the system.



Chicago Appleseed Center for Fair Courts is a collaborative 501(c)(3) non-profit organization advocating for fair, accessible, and anti-racist courts in Chicago, Cook County, and across the state of Illinois.



The Chicago Council of Lawyers is Chicago's public interest bar association, advocating for the fair and effective administration of justice.

This report was researched and written collaboratively by the members of the Future Justice Lawyers of Chicago.



FUTURE JUSTICE LAWYERS

CHICAGO APPLESEED & CHICAGO COUNCIL OF LAWYERS